IN THE PRIVY COUNCIL 41, 1967 No. 31 of 1958

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

B E T W E E N :

1. H.E. GOLIGHTLY
2. TETTEY GBEKE II ... (Defendants) Appellants

- and -

1. E.J. ASHRIFI
2. A.E. NARH
3. CHARLES PAPPOE ALLOTEY (Plaintiffs) Respondents

(and connected consolidated Appeals)

R E C O R D O F P R O C E E D I N G S

PART I

Pages 1 to 316

W.W. BOX & CO.,
28 Great James Street,
Bedford Row,
London, W.C.1.
Solicitors for the Appellants.

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

IN THE PRIVY COUNCIL

No. 31 of 1958

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

B E T W E E N :

Suit No. 7/1951

1. H.E. GOLIGHTLY and
2. TETTEY GBEKE II ... ... (Defendants) Appellants

- and -

1. E.J. ASHRIFI
2. A.E. NARH and
3. CHARLES PAPPOE ALLOTEY ... (Plaintiffs) Respondents

- and -

B E T W E E N :

Suit No. 11/1943

TETTEY GBEKE representing Atukpai
(6th Defendant) Appellant

- and -

1. C.B. NETTEY (substituted by C.O. Aryee) on behalf of himself and the families of Nii Aryee Deki
2. KORTI CLANHENE and
3. NEE NETTEY ... ... (Plaintiffs) Respondents

- and -

B E T W E E N :

Suit No. 15/1943

1. TETTEY GBEKE II representing the Otuopais and
2. COMFORT OKRAKU ... (Defendants) Appellants

- and -

MAMIE AFIYEA as Head and Representative of the Okaikor Churu Family of Gbese Quarter Accra ... ... (Plaintiff) Respondent

- and -

B E T W E E N :

Suit No. 2/1944

NII TETTEY GBEKE Dsasetse of Otuopai for himself and as representing the Stool and people of Otuopai ... (Plaintiff) Appellant

- and -

1. ERIC LUTTERODT
2. QUARSHIE SOLOMON
3. CONRAD LUTTERODT and
4. NUMO AYITEY COBLAH (for Ga, Gbese and Korle Stools) ... (Defendants) Respondents

- and -

B E T W E E N :

Suit No. 7/1944

NII TETTEY GBEKE for Atukpai Stool
(13th Defendant) Appellant

- and -

NII ADOTEI AKUFO present Head substituted for Odoitso Odoi Kwao of Christiansborg Acting Head of Nee Odoi Kwao Family of Christiansborg and Accra on behalf of herself and as representing the members of the said Nee Odoi Kwao Family
(Plaintiff) Respondent

- and -

B E T W E E N :

Suit No. 5/1949

NII TETTEY GBEKE II Atukpai Stool Dsasetse for himself and as representing the Atukpai Stool of Gbese Accra ... ... (Defendant) Appellant

- and -

1. A.A. ALLOTEY and

2. ERIC P. LUTTERODT for and on behalf of the Lutterodt family of Accra
(Plaintiffs) Respondents

- and -

B E T W E E N :

Suit No. 46/1950

NII TETTEY GBEKE II on behalf of himself and as representative of all the principal members of the Atukpai Stool ... (Plaintiff) Appellant

- and -

1. D.A. OWUREDU and

2. R.O. AMMAH ... ... (Defendants) Respondents

- and -

B E T W E E N :

Suit No. 39/1950

NII TETTEY GBEKE II Acting Mankralo of Otuopai (Defendant) Appellant

- and -

1. R.A. BANNERMAN and

2. NUMO AYITEY COBBLAH Korle Priest on behalf of the Ga, Gbese and Korle Stools (Plaintiffs) Respondents

(CONSOLIDATED APPEALS)

R E C O R D OF P R O C E E D I N G S

INDEX OF REFERENCE

PARTS II and III

E X H I B I T S

The Respondents object to the inclusion of all Exhibits in the Record of Proceedings other than Exhibit No. 110.

OTHER DOCUMENT

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IN THE PRIVY COUNCIL No. 31 of 1958

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

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- and -

1. E.J. ASHRIFI
2. A.E. NARH and
3. CHARLES PAPPOE ALLOTEY ... (Plaintiffs) Respondents

- and -

B E T W E E N :

Suit No. 11/1943

TETTEY GBEKE representing Atukpai
(6th Defendant) Appellant

- and -

1. C.B. NETTEY (substituted by C.O. Aryee) on behalf of himself and the families of Nii Aryee Deki
2. KORTI CLANHENE and
3. NEE NETTEY ... ... (Plaintiffs) Respondents

- and -

B E T W E E N :

Suit No. 15/1943

1. TETTEY GBEKE II representing the Otuopais and
2. COMFORT OKRAKU ... ... (Defendants) Appellants

- and -

MAMIE AFIYEA as Head and Representative of the Okaikor Churu Family of Gbese Quarter Accra ... ... (Plaintiff) Respondent

- and -

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Suit No. 2/1944

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- and -

1. ERIC LUTTERODT
2. QUASHIE SOLOMON
3. CONRAD LUTTERODT and
4. NUMO AYITEY COBLAH (for Ga, Gbese and Korle Stools) ... ... (Defendants) Respondents

- and -

B E T W E E N :

Suit No. 7/1944

NII TETTEY GBEKE for Atukpai Stool
(13th Defendant) Appellant

- and -

NII ADOTEI AKUFO present Head substituted for Odoitso Odoi Kwao of Christiansborg Acting Head of Nee Odoi Kwao Family of Christiansborg and Accra on behalf of herself and as representing the members of the said Nee Odoi Kwao Family
(Plaintiff) Respondent

- and -

B E T W E E N :

Suit No. 5/1949

NII TETTEY GBEKE II Atukpai Stool Dsasetse for himself and as representing the Atukpai Stool of Gbese Accra ... ... (Defendant) Appellant

- and -

1. A.A. ALLOTEY and

2. ERIC P. LUTTERODT for and on behalf of the Lutterodt family of Accra
(Plaintiffs) Respondents

- and -

B E T W E E N :

Suit No. 46/1950

NII TETTEY GBEKE II on behalf of himself and as representative of all the principal members of the Atukpai Stool ... ... (Plaintiff) Appellant

- and -

1. D.A. OWUREDU and
2. R.O. AMMAH ... ... (Defendants) Respondents

- and -

B E T W E E N :

Suit No. 39/1950

NII TETTEY GBEKE II Acting Mankralo of Otuopai (Defendant) Appellant

- and -

1. R.A. BANNERMAN and
2. NUMO AYITEY COBBLAH Korle Priest on behalf of the Ga, Gbese and Korle Stools (Plaintiffs) Respondents

(CONSOLIDATED APPEALS)

R E C O R D O F P R O C E E D I N G S

In the Native Tribunal

No. 1

Summons (11/43)

26th April, 1943.

No. 1

S U M M O N S
(11/43)

Suit No.169/43

IN THE TRIBUNAL OF THE PARAMOUNT CHIEF OF THE GA STATE

EASTERN PROVINCE GOLD COAST COLONY

BETWEEN

C.B. NETTEY for and on behalf of himself and the families of Nii Aryee Deki Korti Clanhene and Nee Nettey, Plaintiff

- and -

KWAKU FORI, MALAM ALIBRAKA, BABA MANUAH, D.M. ETTA and TETTEY GBEKE representing Atukpai, Defendants

To: Kwaku Fori, Malam Alibraka, Baba, Manuah, D.M. Etta and Tettey Gbeke representing Atukpai of Accra and Adabraka.

You are hereby commanded to attend this Tribunal at Accra on Wednesday the 19th day of May 1943 at 8.30 o'clock a.m. to answer a suit by C.B. Nettey etc. of Accra against you.

The plaintiff claims as head and successor of Nii Aryee Diki Kontihene and Nii Nettey's family a declaration of title as against the defendants jointly and severally to all that piece or parcel of land situate lying and being at Alajo Accra and bounded on the North by plaintiff's property on the South by Kpehe Gon on the East by Kotobabi on the West by Odor stream (b) £50 damages for trespass by defendants jointly and severally on the said land and (c) for an injunction restraining the defendants their agents, servants etc. from entering thereon and doing any manner of work.

Sum claimed	...	£50. -. -
Tribunal fee	...	1. 5. -
Mileage & Service	...	7. -
		£51.12. -

Issued at Accra the 26th day of April, 1943.

(Sgd.) Tackie Oblie
Ga Manche.

Take Notice: If you do not attend the Tribunal may give judgment in your absence.

In the Native Tribunal

No. 2

Summons (15/43)

3rd June, 1943.

No. 2

S U M M O N S
(15/43)

Suit No.207/43

IN THE TRIBUNAL OF THE PARAMOUNT CHIEF OF THE GA STATE
EASTERN PROVINCE GOLD COAST COLONY

~~MANTSE QUARSHIE as Head of Okaikor Churu Family~~
Sic Plaintiff

* Substituted by Court on 29/3/46.
J.H.C.
Judge.

* DANIEL QUAYE TETTEH as Head and representative of the Oakikor Churu Family of Gbese Quarter, Accra, Plaintiff

v:

TETTEY GBEKE representing the Otukpais, Defendant

To - Tettey Gbeke of Accra.

You are hereby commanded to attend this Tribunal at Accra on Monday the 14th day of June, 1943, at 8.30 o'clock a.m. to answer a suit by Mensah Quarshie etc. of Accra against you.

The plaintiff as head of Okaikor Churu of Gbese late of Accra deceased claims against the defendant as representing the Atukpais of Accra a declaration of title in respect to All that piece of land situate lying and being at Kokomlemle in the Accra District and bounded on the north by properties belonging to J.H. Adams and Botoku measuring 1456 feet more or less on the south by property belonging to Tetteh Morton measuring 1225 feet more or less on the east by property belonging to Tetteh Ashato measuring 366 feet more or less and on the west by Accra to Nsawam-Kibbi Road and measuring 553 feet more or less (b) The plaintiff further claims from the defendant £100 damages for trespass on the said land and for a perpetual injunction restraining the defendant, his servants or agents from interfering with the plaintiff's right in respect of the property described supra.

Issued at Accra the 3rd day of June, 1943.

Sum claimed	...	£100. -. -
Tribunal fee	...	1. 5. -
Mileage & Service	...	1. -
		£101. 6. -

(Sgd.) Tackie Oblie
GA MANCHE.

TAKE NOTICE - If you do not attend the Tribunal may give judgment in your absence.

No. 3

STATEMENT OF CLAIM
(11/1943)

In the Supreme Court

No. 3

Statement of Claim (11/1943)

12th July, 1943.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN PROVINCE
DIVISIONAL COURT, ACCRA
A.D. 1943

BETWEEN

C.B. NETTEY for and on behalf of himself and the families of Nii Aryee Deki Kontihono and Nee Nettey — Plaintiff

- and -

KWAKU FORI, MALAM ALIBRAKA, BABA MANUAH, D.M. ETTA and TETTEY GBEKE representing Atukpai, — Defendants

STATEMENT OF CLAIM

1. The plaintiff is the Head of the Family of Nii Ayi Deki (sometimes known as the Family of Nii Ayi Deki and Nii Nettey) of the Konti (otherwise known as the Akomfodi) clan of Gbese, Accra and the occupant of the Stool of the said Family of Ayi Deki.

2. All that piece or parcel of land situate at Alajo and bounded on the North by Tesahono (or Tesano), Ologobi and Laigon, on the South by Kojo Gon (Kojo Hill) otherwise known as Kpehe Gon (Kpehe Hill), on the East by Jawhowulu (or Djaw-wulu) and Dakubi stream and Kotobabi land and on the West by Abata or Odow (Odor) stream running alongside the Nsawam Road, was given to the late Nii Ayi Deki (deceased) by way of absolute gift for the use of the family of the said Nii Ayi Deki of the Konti (or Akomfodi) clan by the Accra Confederacy Chiefs in or about the year 1740 as a mark of recognition of the noble and valiant part played by the said Nii Ayi Deki and his subjects of the Konti (or Akomfodi) clan in the war between the Akwamus and the Gas.

3. The piece of land the subject matter of this suit bounded on the North by Plaintiff's land, on the South by Kojo Gon (Kojo Hill) otherwise known

In the Supreme Court

No. 3

Statement of Claim (11/1943)

12th July, 1943 - continued.

as Kpehe Gon (Kpehe Hill), on the East by Djaw-wulu and Dakubi stream and Kotobabi land and on the West by Odor stream running alongside Nsawam Road is a portion of the land referred to in paragraph 2 supra.

4. The said family of Nii Ayi Deki by themselves, their servants, their tenants and their Licensees have been in uninterrupted possession, as owners, of the said piece of land referred to in paragraph 2 supra of which the said piece or referred to in paragraph 3 supra is a portion since the said gift and have exercised undisputed rights of ownership in and over the said land and have at all material times been in exclusive possession and occupation of the said land.

5. The defendants in January, 1943, did unlawfully enter into and upon that portion of the plaintiff's land that forms the subject matter of this suit and did unlawfully remove the plaintiff's boundary trees. The defendants have since the said unlawful entry cut down the plaintiff's mango and other trees and have cleared the forest of some portions of the land and thereon have unlawfully made farms and erected buildings.

6. The plaintiff therefore claims:

(a) £50 (Fifty pounds) damages for trespass.

(b) A perpetual injunction to restrain the defendants, their servants and workmen from continuing or repeating the said trespass.

DATED AT KWAKWADUAM CHAMBERS, ACCRA, this 12th day of JULY, 1943.

(Sgd.) Akufo Addo
SOLICITOR FOR PLAINTIFF.

To the Registrar,
Divisional Court,
Accra

and

To the Solicitors of the above-named defendants.

No. 4

In the Supreme Court

No. 4

Statement of Defence (11/43)

23rd July, 1943.

STATEMENT OF DEFENCE
(11/43)

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN PROVINCE
DIVISIONAL COURT, ACCRA
A.D. 1943.

BETWEEN

C.B. NETTEY for and on behalf of himself and the families of Nii Aryee Deki Kontihone and Nee Nettey, Plaintiff

- and -

KWAKU FORI, MALAM ALIBRAKA, BABA, MANUEH, D.M. ETTA and TETTEY GBEKE representing Atukpai, Defendants

STATEMENT OF DEFENCE of Defendants Malam Alibraka and Baba herein delivered the 23rd day of July, 1943.

1. That about eight years ago, a portion of this land was gifted to the defendants by one Tetteh Botchey and Coleman all of Osu and the defendants were placed in possession thereof made farms and erected houses thereon and the defendants in turn gave portion thereof to other people by way of a gift.

2. That about five years ago, Tettey Gbeke the last defendant herein and others as representing the Atukpais of Accra began to disturb defendants' possession thereof upon the grounds that the defendants' grantors had no power to grant the said land to defendants.

3. That to avoid litigation, the defendants had to approach Tettey Gbeke and other members of Atukpai family and the same land was granted by way of absolute gift to the defendants.

4. That later on, the plaintiff herein told the defendants that they had trespass upon a small

In the Supreme Court

No. 4

Statement of Defence (11/43)

23rd July, 1943 - continued.

portion of the plaintiff's land in that area, and in consequence, the plaintiff, the defendants and defendants' grantors from Atukpai family met on the land, and defendants' grantors told plaintiff that the defendants had not trespassed upon the plaintiff's land and this is responsible for the initiation of this suit.

5. That the defendants say that they are ready and willing to recognise the plaintiff herein as the owner of this portion of land if he can succeed in this action against the defendants' grantors whose head is Tettey Gbeke the last defendant herein when the necessary native custom relative to a gift will be performed by the defendants in respect of the small portion claimed by the plaintiff.

Dated at Akuapim Chambers, Accra, this 23rd day of July, 1943.

(Sgd.) A. Obuadabang Larbi

Solicitor for 2nd and 3rd Defendants.

The Registrar,
Divisional Court,
Accra.

And

To the above-named Plaintiff
C.B. Nettey etc.
His Solicitor or Agent,
Accra.

In the Supreme Court

No. 5

Statement of Defence (11/1943)

24th July, 1943.

No. 5

STATEMENT OF DEFENCE
(11/1943)

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN PROVINCE
DIVISIONAL COURT, ACCRA.
A.D. 1943

Transferred Suit
No.11/1943

BETWEEN:

C.B. NETTEY for and on behalf of himself and the families of Nii Aryee Doki Kontihene and Nee Nettey, Plaintiff

- and -

KWAKU FORI, MALAM ALIBRAKA, BABA, MANUEH, D.M. ETTA and TETTEY GBEKE, representing Atukpai, Defendants

STATEMENT OF DEFENCE delivered the day of July, 1943

1. The defendants say that the land in dispute in this action is land belonging to the Atukpai Stool and that the 6th defendant is the present Head of Atukpai and that the defendants are in possession under the title of the Atukpai Stool.

2. The defendants deny the allegations contained in paragraphs 1, 2, 3, 4 and 5 of the said Statement of Claim.

3. In further answer to paragraph 1 of the said Statement of Claim the defendants say that:

(a) The plaintiff as Asafoatse Nettey and one Charles Okee Aryee for himself and as representing the family of the late Asafoatse Nii Aryee Dikie brought an action in the Tribunal of Senior Divisional Chief of the Ga State, Gbese, Accra, against Alibraka (one of the defendants herein) Giwando and Baba (another of the defendants herein) claiming damages for trespass on the identical land in dispute herein.

In the Supreme Court

No. 5

Statement of Defence (11/1943)

24th July, 1943 - continued.

(b) The 6th defendant herein as the representative of the Atukpai Stool owning the said land intervened and by consent the plaintiffs withdrew the case from the Native Tribunal and submitted it to Native Arbitration for settlement and was settled the Arbitrators being Nai Wulomo and his Elders who found the plaintiffs guilty.

4. In further answer to paragraphs 2, 3 and 4 of the said Statement of Claim the defendants say that the said Charles Okoe Aryee mentioned in paragraph 3a hereof, in 1941, surveyed the Atukpai land and made a plan of it showing its boundary with Nii Aryee Deki's Family land he the said Charles Okoe Aryee being a son of the said Nii Aryee Deki.

5. In further answer to paragraph 5 of the said Statement of Claim the defendants say that they have never crossed the Atukpai boundary and are in possession of the land claimed herein by virtue of the title of the Atukpai Stool.

(Sgd.) Frans Dove
Defendants' Solicitor.

To the Registrar,
Divisional Court,
Accra.

And to the above-named Plaintiff
His Solicitor or Agent, Accra.

No. 6

In the Supreme Court

No. 6

Reply (11/43)

19th August, 1943.

R E P L Y
(11/1943)

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN PROVINCE
DIVISIONAL COURT, ACCRA.
A.D. 1943

BETWEEN:

C.B. NETTEY for himself and on behalf of the families of Nii Aryee Deki, Kontihene and Nee Nettey, Plaintiff

- and -

KWAKU FORI, MALAM ALIBRAKA, BABA, MANUEH, D.M. ETTA, TETTEY GBEKE representing Atukpai, Defendants

R E P L Y

1. The plaintiff joins issue with the defendants upon their defence.

2. In further answer to paragraph 3 of the defendants' Defence the plaintiff says the action referred to therein was taken by the said C.O. Aryee a junior member of the family at the request and by the authority of the plaintiff who is the head of the Family, and that the said action was withdrawn at the instance of the 6th defendant for extra-judicial arbitration and settlement but it failed. It is not true therefore to say that the Arbitrators found the plaintiff guilty.

3. In further answer to paragraph 4 of the defendants' Defence the plaintiff says that the families of Nii Aryee Diki and Nee Nettey whom he represents were not at any time aware that Charles Okoe Aryee a Surveyor by profession and a member of the families aforesaid had been employed by the Atukpai to make a surveyed Plan for the Atukpai, and that when the families knew about it and discovered that part of their family land had been included in what was alleged to be Atukpai Stool land they the said families caused an action to be brought in the Gbese Tribunal against the 6th defendant and others for trespass. This was the

In the Supreme Court

No. 6

Reply (11/43)

19th August, 1943 - continued.

action referred to in paragraph 3 of the Defence. The plaintiff family is not in any way bound by the unauthorised acts of the said Charles Okoe Aryee.

4. In further answer to paragraph 4 the Plaintiff says that the said Charles Okoe Aryee is a great grandson, and not a son, of the said Nii Aryee Diki.

Dated at Kwakwaduam Chambers, Accra, this 19th day of August, 1943. 10

(Sgd.) Akufo Addo
Solicitor for Plaintiff.

The Registrar,
Divisional Court,
Accra,
and
The above-named Defendants,
or their Solicitors.

No. 7

Statement of Claim (15/43)

4th September, 1943.

No. 7

STATEMENT OF CLAIM (15/1953)

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN PROVINCE
DIVISIONAL COURT, ACCRA

BETWEEN

MENSAH QUARSHIE as Head of Okaikor Churu Family, Plaintiff

- and -

TETTEY GBEKE as representing the Atukpais, Defendant

STATEMENT OF CLAIM

1. The plaintiff Mensah Quarshie is the Head and representative of the members of the Family of Okaikor Churu late of the Gbese Quarter in Accra deceased.

2. The said Family of Okaikor Churu are the owners of all that piece or parcel of land situate

lying and being at Kokomlemle in the Accra District and described in the claim in the Writ of Summons herein.

3. The said land the subject matter of this suit descended to the said Okaikor Churu family from their ancestor Okaikor Churu to whom it was granted by the Gbese Stool then occupied by her brother Mantse Amar of Gbese in or about the year 1875.

4. The said Okaikor Churu was in undisturbed possession of the said land from the time of the said grant in or about the year 1875 until her death in or about the year 1924, and she exercised acts of ownership over the same.

5. The said Okaikor Churu amongst other acts of ownership granted licence to the Gbese Stool Family to use a portion of the said land as burial ground for members of the said Stool Family several of whom are lying buried there.

6. The said Okaikor Churu by documents in writing and otherwise dealt with the said land as owner.

7. By an Instrument in writing dated the 14th day of March, 1921 the said Okaikor Churu mortgaged the land the subject matter of this suit to one Fahim Joseph Hage as security on behalf of one William Ashong Quartey.

8. In execution of a decree of the Supreme Court of the Gold Coast Colony in the suit "Fahim Joseph Hage versus William Ashong Quartey and Okaikor Churu" dated the 28th day of March 1925, the said property was sold to Mrs. Mary Duran Hage under a Writ of Fi:Fa: at a sale by Public Auction, and the said Mary Duran Hage obtained from the Court a Certificate of Purchase of the said land dated the 13th day of May 1925 and registered in the Gold Coast Land Registry as No.251/1925.

9. By a consent judgment of the Supreme Court of the Gold Coast Colony, Divisional Court Accra in the suit No.77/1925 of "W.A.Quartey and Affiyea as Successor of Okaikor Churu versus Fahim Joseph Hage and the Sheriff" it was ordered inter alia that upon payment by the plaintiff Affiyea of the total sum of Fifty three pounds three shillings and one penny (£53.3.1) amount of judgment debt and costs in the suit of Fahim Joseph Hage versus W.A. Quartey and Okaikor Churu together with other expenses the said property sold and comprised in

In the Supreme Court

No. 7

Statement of Claim (15/43)

4th September, 1943 - continued.

the said Mortgage dated the 14th day of March 1921 be reconveyed to the plaintiff Affiyea as successor of the said Okaikor Churu by the said Fahim Joseph Hage and Mary Duran Hage.

10. Accordingly on the 18th day of March 1926 the said amount of £53.3.1 was paid by the said Affiyea a daughter of the said Okaikor Churu.

11. That the said Affiyea acted as aforesaid on behalf of the Family of Okaikor Churu then deceased and redeemed the said property for the Okaikor Churu Family.

12. Until in or about the year 1942 the said Family of Okaikor Churu deceased have been in undisturbed possession and occupation of the said property, and have exercised acts of ownership over the same including cultivation by members of the Family, sales of portions thereof under instruments in writing and licences to several persons to occupy in accordance with native custom.

13. The Atukpais - Defendants - in or about the year 1942 commenced to commit trespass on portions of the said land which they then claimed as Atukpai land and purported to sell portions thereof.

AND THE PLAINTIFF claims as in the Writ of Summons herein:

(a) A declaration of the plaintiff's title as Head and representative of the Okaikor Churu Family to the piece or parcel of land described in the Writ of Summons herein.

(b) One hundred pounds (£100) damages for trespass committed by the defendant and his people on the said land described in the Writ of Summons.

(c) A perpetual Injunction restraining the defendant, the Atukpai people, their servants or agents from entering upon the said land, dealing with it in any manner whatsoever and from interfering with the rights and occupation of the plaintiff and the members of the Okaikor Churu Family in respect of the said land the subject matter of this suit.

Dated at Accra the 4th day of September, 1943.

(Sgd.) E.C. Quist
Counsel for plaintiff.

(1) To the Registrar,
Divisional Court, Accra.
and
(2) To the defendant Tettey Gbeke as Head of the Atukpais of Accra, His Solicitor, Counsel or Agent.

No. 8

STATEMENT OF DEFENCE
(15/43)

In the Supreme Court

No. 8

Statement of Defence (15/43)

20th September, 1943.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN PROVINCE
DIVISIONAL COURT, ACCRA

Transferred Suit
No.15/1943

BETWEEN

MENSAH QUARSHIE, as Head of Okaikor Churu Family, Plaintiff

- and -

TETTEY GBEKE as representing the Atukpais, Defendant

STATEMENT OF DEFENCE delivered the day of SEPTEMBER, 1943.

1. The defendant denies the allegations contained in paragraphs 1,2,3,4,5,6,7,8,9,10,11,12 and 13 of the Statement of Claim.

2. In further answer to paragraphs 1, 2 and 3 of the Statement of Claim the defendant says:

(a) That land on the Eastern side of the Kwabenyan Road or Accra-Nsawam Road between Fanofah Valley on the South and Jorwulu on the North-West and Blakpatso Gono on the North was granted in or about the year 1827 by the then Ga Mantse Nii Tackie Commey according to Native Customary Law to Nii Tetteh Churu then Head of the Otuopai Stool for the use of the Otuopai people.

(b) That the Gbese Stool has never owned any land in the area described in paragraphs two (2) supra and could not have made the grant alleged in paragraph three (3) of the Statement of Claim.

(c) That the villages of Kokomlemle and Akrade between which the land in dispute herein is situate were made long before the year 1875 by the Otuopai people and their licences.

In the Supreme Court

No. 8

Statement of Defence (15/43)

20th September, 1943 - continued.

3. In further answer to paragraph four (4) of the Statement of Claim, the defendant says that the said Okaikor Churu was never in possession of the said land from 1875 to 1924 or at any other time whatsoever.

4. In further answer to paragraph five (5) of the Statement of Claim, the defendant says that the Head of Otuopai Stool and no other persons have allowed one Gbese Mantse and other persons to be buried in the burial ground on the land in dispute.

5. In further answer to paragraphs 6,7,8,9,10 and 11 of the Statement of Claim, the defendant says that the Otuopai Stool had no knowledge or information as to the matters mentioned therein but that in 1908 one ADU TERNTERN a cousin of the said Okaikor Churu obtained permission from Nii Tetteh Quarmine, Caretaker of Otuopai Stool lands during the Bubonic Plague in Accra to build a hut and live on a portion of the land in dispute and that in 1916, years after the said hut had fallen into ruins the said Nii Tetteh Quarmine refused permission to the said Okaikor Churu to rebuild the said hut and that on the 22nd September, 1916, the said Nii Tetteh Quarmine wrote to the said Okaikor Churu warning her not to enter upon the land now in dispute.

6. (a) In further answer to paragraphs eleven (11) and twelve (12) of the Statement of Claim, the defendant says that on the 20th day of January, 1939, Nii Tetteh Churu acting for the Otuopai Stool wrote to the said Afrieyea warning her to quit the land now in dispute.

(b) That the following persons licences of and purchaser from the defendant's Stool are in occupation of the land in dispute in this action namely: 1. Moses Klu Sowah, 2. Members of the family of the late Adjoitse Klu of Otuopai, 3. Members of the family of the late Awomayra of Otuopai and there are also ruins of Utuopai houses.

7. In further answer to paragraph 13 of the Statement of Claim the defendant says that the Otuopai Stool claims the land now in dispute as Otuopai Stool property and that in 1941 the defendant and Otuopai elders entered into an Agreement with the Gold Coast Government for the layout of the land in dispute and adjoining areas

belonging to the Otuopai Stool.

Dated at Accra this 20th day of September, 1943.

(Sgd.) Francis Dovo
Solicitor for Defendant.

The Registrar,
Divisional Court, Accra.

And to the above-named plaintiff, Mensah Quarshie, as head of Okaikor Churu Family, His Solicitor or Agent, Accra.

In the Supreme Court

No. 8

Statement of Defence (15/43)

20th September, 1943
- continued.

No. 9

R E P L Y
(15/43)

No. 9

Reply (15/43)

27th September, 1943.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN PROVINCE
DIVISIONAL COURT, ACCRA

Transferred Suit
No.15/1943

MENSAH QUARSHIE, as Head of Okaikor Churu Family, Plaintiff

v.

TETTEY GBEKE as representing the Atukpais, Defendant

R E P L Y

1. The plaintiff joins issue with the defendant and his statement of defence.

2. In further answer to paragraph 2 of the Statement of Defence the plaintiff says:-

(a) That the Atukpai people who are members of the Gbese quarter, have no recognised Stool under the Ga Federation and own no lands attached to such Stool.

In the Supreme Court

No. 9

Reply (15/43)

27th September, 1943 - continued.

(b) That according to Ga Native Customary Law, the Ga Manche cannot make a direct grant of land, the land in dispute and all adjoining Ga land being under the Gbese Stool with the Korle Wobii as Caretakers which Stool and caretakers only can jointly or severally make grants thereof.

(c) That Kokomlemle village was founded by Tetteh Ashatu alias Okaitse Tetteh of Gbese, and that the village of Akrade was founded by Botoku of Okuwe also in the Gbese Quarter.

3. In further answer to paragraph 5 of the Statement of defence the plaintiff does not admit that in 1908 one Adu Terntern a cousin of Okaikor Churu obtained permission from Nii Tetteh Quarmin caretaker of Atukpai Stool lands to build a hut and live on a portion of the land in dispute, nor that in 1916 the said Nii Tetteh Quarmin refused permission to the said Okaikor Churu to rebuild the said hut and that on the 22nd September, 1916 the said Nii Tetteh Quarmin wrote to the said Okaikor Churu warning her not to enter upon the land now in dispute.

4. In further answer to paragraph 6 of the statement of defence the plaintiff denies:-

(a) That on the 20th January 1939 or at any later date Afieyea received a letter written by Nii Tetteh Churu acting for the Atukpai Stool warning her to quit the land now in dispute

(b) Says that Moses Klu Sowah purchased a portion of the land in dispute from the Okaikor Churu family in the year 1937 for which he holds a Deed of Conveyance from the said family, also that the late Adjeitso Klu occupied a portion of the land in dispute by the leave and licence of the said Okaikor Churu. The portion occupied by the members of the family of the late Awomayra is outside the land in dispute.

5. In further answer to paragraph 7 of the Statement of Defence, the plaintiff says that the Okaikor Churu family have no knowledge of any agreement by the Atukpai people with the Gold Coast Government for the layout of the land in dispute and they cannot be affected by any such agreement.

Dated at Accra the 27th day of September, 1943.

(Sgd.) E.C. Quist
Solicitor for Plaintiff.

To the Registrar, Divisional Court, Accra.
And to the above-named defendant, Tettey Gbeke as representing the Atukpais, their Solicitor, Agent, Accra.

No. 10

In the Native Tribunal

No. 10

Summons (2/44)

25th November, 1943.

S U M M O N S
(2/44)

IN THE TRIBUNAL OF THE PARAMOUNT CHIEF OF THE GA STATE,
EASTERN PROVINCE, GOLD COAST COLONY

NII TETTEY GBEKE II DSASETSE OF OTUOPAI as representative of for himself and as representing the Stool and people of Otuopai, Plaintiff

- and -

ERIC LUTTERODT, QUARSHIE-SOLOMON and CONRAD LUTTERODT all of Accra, Defendants

x NUMO AYITEY COBBLAH for and on behalf of the Ga, Gbese and Korle Stools.

x Joined by Order of Court dated 23/4/51.

To - Eric Lutterodt & ors. of Accra.

You are hereby commanded to attend this Tribunal at Accra on Wednesday the 8th day of December, 1943, at 8.30 o'clock a.m. to answer a suit by Nii Tettey Gbeke etc. of Accra against you.

The plaintiff's claim is £100 damages for trespass by entering upon the plaintiff's land known as Kokomlemle lands situate to the north of Adabraka Accra and on the eastern side of the Accra-Nsawam Road and cutting down mango trees, digging up cocoa nut trees and removing vegetables, fixed pillars and other plants. Kokomlemle land is bounded on the north by Blakpatso Gon and Reindorf's land on the south by Lomo-Ansah's land to Kradsiibon, on the east and south-east by Osu land and on the west by Accra-Nsawam Road, Lutterodt family land and Jorwulu. The plaintiff further claims perpetual injunction restraining the defendants their servants and agents from entering upon the said land.

Issued at Accra the 25th day of November, 1943.

Sum claimed	...	£100. -. -
Tribunal fee	...	1. 5. -
Mileage & Service	...	4. -
		£101. 9. -

(Sgd.) Ayite Adjin III
Ag. Ga Manche.

TAKE NOTICE - If you do not attend the Tribunal may give judgment in your absence.

In the Native Tribunal

No. 11

Summons (7/44)

28th January, 1944.

No. 11

SUMMONS (7/44)

IN THE TRIBUNAL OF THE PARAMOUNT CHIEF OF THE GA STATE

EASTERN PROVINCE, GOLD COAST COLONY

BETWEEN

ODOITSO ODOI KWAO of Christiansborg Acting Head of Nee Odoi Kwao Family of Christiansborg and Accra on behalf of herself and as representing the members of the said Nee Odoi Kwao family, Plaintiff

-and -

CONRAD LUTTERODT of Accra, MALAM ATTA of Accra, MALAM SOLOMANU TUBA alias QUARSHIE SOLOMON of Adabraka, Accra, CODJOE SOLOMON of Adabraka, BAKO of Adabraka, ADAMU of Accra IMORU of Accra, LARWEI AMOAKU and ALFRED NUMO of Accra, Defendants

x Joined by Order of Court dated 23/2/51. J.

( ) Joined by Order of Court dated 23/4/51 J.

x NII AZUMA III, Head of Brazilian Community, (2. OKWEI OMABOE, OSIAHENE of Osu Mantse, 3. NUMO AYITEY COBBLAH on behalf of Ga, Gbese and Korle Stools, 4. NII TETTEY GBEKE on behalf of Otukpai Stool, 5. H.C. KOTEY on behalf of Kotey family, 6. W.S. ANNAN, Ag. head of Osu Tetteh family) Defendants

To: Conrad Lutterodt & Ors.

You are hereby commanded to attend this Tribunal at Accra on Monday the 21st day of February, 1944 at 8.30 o'clock a.m. to answer a suit by Odoitso Odoi Kwao etc. of Accra against you.

The plaintiff's claim for herself and as Head and representative of the Nee Odoi Kwao family against the defendants is for (a) One hundred Pounds (£100) damages for trespass committed by the defendants upon the plaintiff's (Nee Odoi Kwao Family) land situate at North Adabraka in Accra being portion of plaintiff's (Nee Odoi Kwao Family)

land generally known and called Akanetso land, bounded on the North by plaintiff's (Nee Odoi Kwao Family) land on the South by plaintiff's (Nee Odoi Kwao Family) land, on the East by plaintiff's (Nee Odoi Kwao Family) land and on the West by Korle-We lands known as Akwandoh lands. (b) Recovery of possession of the said land above described in paragraph (a) from the defendants Malam Solomon Tuba alias Quarshie Solomon, Bako, Adamu, Imoru, Alfred Numo and Larvi Amoaku, (c) Permanent Injunction restraining each and every one of the defendants their servants Licensees, Agents or workmen from entering upon, occupying, erecting any building upon, cultivating, working upon, collecting and receiving moneys in respect of portions thereof or dealing in any manner whatsoever with the said land above described in paragraph.

In the Native Tribunal

No. 11

Summons (7/44)

28th January, 1944 - continued.

Sum claimed	...	£100. -. -
Tribunal fee	...	1. 5. -
Mileage & Service	...	9. -
		£101.14. -

Issued at Accra the 28th day of January, 1944.

(Sgd.) Ayitey Adjin III
Ag. Ga Manche.

TAKE NOTICE: If you do not attend the Tribunal may give judgment in your absence.

In the Supreme Court

No. 12

Statement of Claim (2/44)

22nd February, 1944.

No. 12

STATEMENT OF CLAIM (2/1944)

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN PROVINCE
DIVISIONAL COURT, ACCRA.

Transferred Suit No.2/1944

NII TETTEY GBEKE II, Dsasetse of Otuopai etc., Plaintiff

v.

ERIC LUTTERODT QUARSHIE SOLOMON and CONRAD LUTTERODT, Defendants

STATEMENT OF CLAIM delivered the 22nd day of FEBRUARY, 1944.

1. The plaintiff is the present head and representative of the Otuopai Stool in the Gbese Quarter of the Ga State.

2. The first and third defendants are alleged to be members of the family of the late William Lutterodt of Accra.

3. More than a hundred and ten years ago the then Ga Mantse Nii Tackie Komey and the then Korle Priest Numo Ayitey Buafo and others granted for services rendered a large tract of land a portion of which is in dispute in this action to Nii Tetteh Churu of Otuopai for use of himself and the people of Otuopai.

4. The Otuopai people and their tenants and grantees have been in occupation of the area so granted for all these years with the exception of portions to the north which the Otuopai Stool joined the Ga Stool in alienating to the late William Lutterodt senior and the Reverend Carl Reindorf.

5. The land so alienated to the said William Lutterodt was defined at the time of the alienation and was in or about the year 1890 delineated in a plan made by a surveyor named Engmann when one George Lutterodt a son of the said William

Lutterodt proposed to mortgage the land which had been given to his deceased father the said William Lutterodt and was endeavouring to take more land than had been given to his father.

6. About six or seven years ago one Nicholas Lutterodt a grandson of the said William Lutterodt and the then head of the Lutterodt family requested Nii Tettch Churu the then head and representative of the Otuopai Stool to show to him the boundaries of the land which his grandfather had acquired from the Otuopai Stool whereupon the said Nii Totteh Churu deputed Okai Addy Adjetey Okai Addytse Kojo Tetteh Oboe Addy and Ayi Kwame to proceed to the land with the said Nicholas Lutterodt who was accompanied by Quarshie Obla Lutterodt Walter Lutterodt and a boy to show them the boundaries.

7. The said Okai Addy and others then went upon the land with the said Nicholas Lutterodt and others and showed them the boundaries which were then marked by

8. The members of the Lutterodt family had never at any time gone beyond the boundary of the Lutterodt family land until and since the judgment delivered on the 1st of December, 1942 by Mr.Justice Lane in the case of Dr. F.V. Nanka-Bruce etc. v. Tettey Gbeke (the plaintiff) and A.A. Allotey since which time in consequence of Obita Dicta pronounced by the said Judge in the said judgment the defendants and other persons have been disputing the title of the Otuopai Stool to the land granted to the Otuopais also mentioned in paragraph 3 hereof.

9. The defendants have since the 1st of December, 1942 entered upon the land described in the writ of summons herein and cut down mango trees dug up cocoanut trees and removed vegetables and other plants and also fixed pillars on the land and have on several occasions been accompanied by numerous people carrying cutlasses and sticks.

The plaintiff therefore claims £100 damages for trespass and further claims perpetual injunction restraining the defendants their servants and agents from entering upon the said land.

(Sgd.) Frans Dove
Plaintiff's Solicitor.

To the Registrar Divisional Court, Accra.
And
To the above-named defendants their Solicitor or Agent, Accra.

In the Supreme Court

No. 13

Statement of Defence (2/44)

6th March, 1944.

No. 13

STATEMENT OF DEFENCE
(2/44)

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN PROVINCE
DIVISIONAL COURT, ACCRA

Transferred Suit
No.2/1944

NII TETTEY GBEKE II Dsasetse
of Otuopai etc., Plaintiff

v.

ERIC LUTTERODT, QUARSHIE SOLOMON
and CONRAD LUTTERODT, Defendants

STATEMENT OF DEFENCE delivered the
day of MARCH, 1944.

1. The defendants deny paragraphs 3 and 4 of plaintiffs' Statement of Claim and say that the plaintiff did not at any time join the Ga Stool in granting any land to the late William Lutterodt senior and the Reverend Carl Reindorf.

2. The defendants deny paragraph 5 of plaintiffs' Statement of Claim and say that in 1890 George Lutterodt a son of the late William Lutterodt could not make a plan by himself alone of the Lutterodt Family land to mortgage and therefore challenge the accuracy of this Statement and defy the plaintiff to produce the plan made by the said Engman a Surveyor.

3. The defendants deny paragraphs 6 and 7 of the plaintiffs' Statements of Claim and say that no boundaries were ever pointed out nor marked by any person to late Nicholas Lutterodt. The plaintiff knowing that this Statement is not true does not name the person who marked out the boundaries to the late Nicholas Lutterodt.

4. Defendants in answer to paragraph 8 of plaintiff's claim say that they knowing the boundaries of the piece of land given to the late William Lutterodt by the then King Tackie and his people

including the Korle Priest over ninety years ago do not rely upon the judgment delivered by Mr. Justice Lane in the case of Dr. F.V. Nanka Bruce etc. versus Tetteh Gbeke (The plaintiff) and A.A. Allotey to know the extent of the boundaries of the late William Lutterodt's land the subject matter of this suit.

5. The defendants (torn off) to the plaintiff nor have they removed fixed pillars etc. from any land belonging to plaintiff.

6. The defendants further say that the late William Lutterodt's land does not form boundary with the Otuopai Stool land and therefore plaintiff cannot maintain an action for damages or claim perpetual injunction restraining them their servants and agents from entering upon a land the ownership of which has not been proved to be that of the plaintiff.

(Sgd.) V.L. Buckle
Defendants' Solicitor.

To the Registrar,
Divisional Court, Accra,

and to

The above-named plaintiff
his Solicitor or Agent,
Accra.

In the Supreme Court

No. 14

Reply (2/44)

18th March, 1944.

No. 14

REPLY (2/44)

IN THE SUPREME COURT OF THE GOLD COAST

EASTERN PROVINCE

DIVISIONAL COURT, ACCRA

Transferred Suit No. 2/1944

BETWEEN:

NII TETTEY GBEKE II, Dsasetse of Otuopai etc., Plaintiff

- and -

ERIC LUTTERODT QUARSHIE SOLOMON and CONRAD LUTTERODT, Defendants

REPLY delivered the 18th day of MARCH, 1944.

The plaintiff joins issue with the defendants on their Statement of Defence.

(Sgd.) Frans Dove,
Plaintiff's Solicitor.

To the Registrar,
Divisional Court, Accra.

And to the above-named defendants, their Solicitor or Agent, Accra.

In the Supreme Court

No. 15

Order for substitution. (15/43)

29th March, 1946

No. 15

ORDER FOR SUBSTITUTION
(15/1943)

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND COURT, ACCRA.

BETWEEN

MENSAH QUARSHIE as Head of Okaikor Churu Family, Plaintiff

- and -

TETTEY GBEKE, as representing the Atukpais, Defendant

(L.S.)
(Sgd.) J.HENLEY COUSSEY
Judge

ORDER FOR SUBSTITUTION

UPON HEARING Mr. Emmanuel Charles Quist of Counsel for Daniel Quaye Tetteh and Upon reading the affidavit of the said Daniel Quaye Tetteh in support of application on notice for substitution herein:

IT IS HEREBY ORDERED that Daniel Quaye Tetteh in his capacity as Head and Representative of the Okaikor Churu Family of Gbese, Accra, be substituted in place of Mensah Quarshie the plaintiff herein now deceased.

AND IT IS FURTHER ORDERED that copy of this Order herein be served on the said Daniel Quaye Tetteh as Head and Representative of the Okaikor Churu Family of Gbese, Accra.

Given under my hand and the seal of the said Court at Victoriaborg, Accra, this 29th day of March, 1946.

(Sgd.) K.O. Quansah
Registrar, Land Court.

In the Supreme Court

No. 16

Order for substitution and Joinder (15/43)

3rd September, 1948

(Sgd.) J.JACKSON
Judge.

No. 16

ORDER FOR SUBSTITUTION AND JOINDER
(15/1943)

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND COURT, ACCRA.

Transferred Suit
No.15/1943

DANIEL QUAYE TETTEH, as Head and Representative of the Okaikor Churu Family of Gbese Quarter, Accra, Plaintiff

versus

TETTEY GBEKE, as representing the Atukpais, Defendant

ORDER FOR SUBSTITUTION AND JOINDER HEREIN.

UPON HEARING Mr. Kofi Adumua Bossman of Counsel for and on behalf of Mamie Afieye, the applicant herein and UPON READING the Affidavit of the said applicant filed herein on the 2nd day of September, 1948, in support of application on Notice for an Order for substitution and Joinder herein:

IT IS HEREBY ORDERED that the said Mamie Afieye the lawfully appointed successor of the late Madam Okaikor Churu deceased and Head of the Okaikor Churu family according to Native Customary Law be and is hereby substituted in place and stead of Daniel Quaye Tetteh, the plaintiff herein, former Head of the said Okaikor Churu family, who has ceased to act as such Head of the said family.

IT IS HEREBY FURTHER ORDERED that (1) Comfort Okraku and (2) Sohby Baksmaty, both of Accra who claim portions of the land, the subject matter of dispute in the above suit and who are likely to be affected by the result of this action be and are hereby joined as Co-defendants in the above cause.

AND IT IS HEREBY FURTHER ORDERED that copies of this Order and the Writ of Summons herein be served on (1) Comfort Okraku and (2) Sohby Baksmaty the said co-defendants, both of Accra.

Given under my hand and the seal of said Court at Victoriaborg, Accra, this 3rd day of September, 1948.

(Sgd.) K.O. Quansah,
Registrar, Land Court.

No. 17

In the Supreme Court

No. 17

Statement of Defence (15/43)

4th January, 1949.

STATEMENT OF DEFENCE
(15/1943)

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND COURT, ACCRA.
A.D. 1949

Transferred Suit
No.15/1943

MAMIE AFIYEA, as Head and Representative of the Okaikor Churu Family of Gbese Quarter, Accra, Plaintiff

v.

TETTEY GBEKE II, representing the Otuopais, Defendant

COMFORT OKRAKU and SOHBY BAKSMATY, Co-Defendants

1. The Co-defendant, Sohby Baksmaty denies paragraphs 2,3,4,5,12 and 13 of the plaintiff's statement of claim.

2. The Co-defendant is not in a position to admit paragraphs 1,6,7,8,9,10 and 11 of the plaintiff's said statement of claim.

3. In further reply to paragraphs 2,3,4 and 5 of the statement of claim, the co-defendant says that the portion of the land in dispute occupied by him was granted some years ago by the defendant, or his predecessor in title to one Madam Korkor Addy an Otuopai woman.

4. By deed of conveyance dated the 18th day of March, 1946, and registered as No.223/1946 in the Deeds Registry, Accra, the said Korkor Addy conveyed the said piece or parcel of land to one Agnes Larteley Mensah.

5. By deed of conveyance made the 8th day of April, 1947, and registered as No.417/1947 in the Deeds Registry, Accra, the said Agnes Larteley Mensah granted and assigned the said property to the co-defendant, Sohby Baksmaty. That said piece or parcel of land so conveyed to the co-defendant, Sohby Baksmaty is:

In the Supreme Court

No. 17

Statement of Defence (15/43)

4th January, 1949 - continued.

"All that piece or parcel of land situate lying and being at Kokomlemle, Accra, and bounded on the north by proposed Road measuring seventy-seven feet (77') more or less, on the south by Q. Papafio's land measuring seventy-seven feet (77') more or less, on the east by Korkor Addy's land measuring one hundred feet (100') more or less, and on the west by Otuopai Stool Land and measuring One hundred feet (100') more or less"

6. The co-defendant and his predecessors in title have been in undisputed possession of the said land for many years.

7. In further reply to paragraphs 1,6,7,8,9,10 and 11 of the plaintiff's statement of claim, the co-defendant, Sohby Baksmaty says that he had no knowledge or information as to the matters therein mentioned.

Save as hereinbefore expressly admitted the co-defendant, Sohby Baksmaty denies each and every allegation contained in the plaintiff's statement of claim as if they were herein set out in detail and traversed seriatim.

Dated at La Chambers, Accra, this 4th day of January, 1949.

(Sgd.) N.A. Ollennu,
Solicitor for Co-defendant
Sohby Baksmaty.

The Registrar, Land Court, Accra.

And to the above-named Plaintiff, Mamie Afiyea, Her Solicitor or Agent, Accra.

And to the above-named Defendant, Tettey Gbeke II, His Solicitor or Agent, Accra.

And to the above-named 1st Co-defendant, Comfort Okraku, Her Solicitor or Agent, Accra.

No. 18

In the Supreme Court

No. 18

Statement of Defence (15/43)

4th January, 1949.

STATEMENT OF DEFENCE
(15/1943)

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND COURT, ACCRA
A.D. 1949

Transferred Suit
No.15/1943

MAMIE AFIYEA, as Head and Representative of the Okaikor Churu Family of Gbese Quarter, Accra, Plaintiff

v:

TETTEY GBEKE II, representing the Otuopais, Defendant

COMFORT OKRAKU and SOHBY BAKSMATY, Co-Defendants

STATEMENT OF DEFENCE OF CO-DEFENDANT COMFORT OKRAKU

1. The co-defendant Comfort Okraku denies paragraphs 1,2,3,4,5, 12 and 13 of the plaintiff's statement of claim.

2. The co-defendant is not in a position to admit paragraphs 6,7,8,9,10 and 11 of the said statement of claim.

3. In further reply to paragraphs 1,2,3,4 and 5 of the plaintiff's statement of claim, the co-defendant, Comfort Okraku says that the land in dispute is portion of land owned by the Otuopai Stool. The said land has been in possession of the Otuopai Stool and people since the year 1827.

4. In further reply to paragraphs 4 and 5 of the statement of claim, the co-defendant says that portion of the said land was in or about the year 1945 granted in accordance with native custom to her as an Otuopai woman. The said grant was, at her request confirmed by deed of gift dated the 11th day of April, 1947. The Co-defendant has remained in undisputed possession of that portion of the land since the date of the grant.

In the Supreme Court

No. 18

Statement of Defence (15/43)

4th January, 1949 - continued.

5. In further reply to paragraphs 6,7,8,9,10 and 11 of the statement of claim, the co-defendant says that she had no knowledge or information as to the matters therein mentioned.

Save as hereinbefore expressly admitted the co-defendant denies each and every allegation contained in the plaintiff's statement of claim as if they were herein set out in detail and traversed seriatim.

Dated at La Chambers, Accra, this 4th day of January, 1949.

(Sgd.) N.A. Ollennu,
Solicitor for Co-defendant,
Comfort Okraku.

The Registrar,
Land Court,
Accra

And to the above-named Plaintiff,
His Solicitor or Agent,
Accra

And to the above-named Defendant - Accra.

And to the above-named 2nd Co-defendant - Accra.

In the Native Tribunal

No. 19

Summons (5/49)

February, 1949.

No. 19

EASTERN PROVINCE GOLD COAST No.221/49

IN THE GA NATIVE "B" COURT ACCRA.

BETWEEN

A.A. ALLOTEY of Accra Plaintiff

- and -

NII TETTEY GBEKE II, Atukpai Dsasetse for himself and as representing the Atukpai Stool of Gbese, Accra, Defendant

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To Nii Tettey Gbeke II Atukpai Stool Dsasetse for himself and representing the Atukpai Stool of Gbese, Accra.

You are hereby commanded to attend this Native Court at Azumah House Division 1 on Monday the 21st

day of March, 1949, at 8.30 o'clock a.m. to answer a suit by plaintiff against you.

In the Native Tribunal

No. 19

Summons (5/49)

February, 1949 - continued.

The plaintiff's claim is for a declaration of title to all that piece or parcel of land situate lying and being at North Kokomlemle near Lagos Town and described as follows: On the north and south west by property of the Lutterodt family of Accra and measuring 22 feet each side or howsoever the same may be described (b) £50 for trespass for damages on the said land whereon plaintiff through his agents or servants caused cement pillars to be broken and (c) for an injunction to restrain the said defendant and all those acting on his behalf from entering into the said land.

Claim	...	Declaration of title
Fees	...	£2. -. -
Service	...	1. -
Mileage	...	-. -. -
Complt. Fee	...	£2. 1. -

Dated at the day of February, 1949.

Take notice that if you do not attend the Native Court may give judgment in your absence.

No. 20

In the Supreme Court

No. 20

Statement of Claim (5/49)

15th June, 1949.

STATEMENT OF CLAIM
(5/1949)

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND COURT, ACCRA.

A.A. ALLOTEY of Accra, Plaintiff

versus

NII TETTEY GBEKE II, Atukpai Stool Dsasetse for himself and as representing the Atukpai Stool of Gbese Accra, Defendant

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CO-PLAINTIFFS STATEMENT OF CLAIM.

1. The Co-plaintiff Eric Lutterodt is the acting Head of William Lutterodt Family of Accra. The Co-plaintiffs John Albert Solomanu

In the Supreme Court

No. 20

Statement of Claim (5/49)

15th June, 1949. - continued.

Lutterodt and Conraldt Lutterodt are members of the said family.

2. The said William Lutterodt's family are owners in fee simple of all that piece or parcel of land in Accra known as Kpehe lands.

3. The said lands were for a consideration granted to the late William Lutterodt about a century ago by the then Ga Mantese Nii Tackie Tawiah I and his elders and priests, which grant was confirmed by a document executed by the said King Tawiah I in the year 1865.

4. Upon the grant aforesaid William Lutterodt went into possession and occupation and commenced farming the land, and placed caretakers and overseers thereon.

5. William Lutterodt and his Family aforesaid exercised full rights of ownership over the said land by collecting tolls from persons who farmed portions of the said land with the family's permission.

6. The late William Lutterodt in his life-time built a village on the land known as Obloni Kwadjo, by which name William Lutterodt was popularly known.

7. After the grant thereof, William Lutterodt traded extensively on the land and thus the village established by him became known as Kpehe meaning "Market".

8. When Government made a lay out on the land the Co-plaintiff John Albert Solomanu Lutterodt by his own effort made a road of about 3,000 feet on the land right up to the Ring Road, and the fruit trees, casava trees etc. which were destroyed were paid for by the Co-plaintiff John Albert Solomanu Lutterodt.

9. The Lutterodt Family as owners of the Kpehe land sold a small portion of the said land to the plaintiff A.A. Allotey on the 8th May, 1948 and the area of the land so sold is comprised in the land known as Kpehe land.

10. The land above referred to is all that piece or parcel of land known as Kpehe lands Accra and bounded as follows:

From the north of Fanofa, the three palm trees to a Tunyo tree on the hill, straight to another Tunyo tree near Kotobabi, on to Onya Kobina tree, then back to the three palm trees.

In the Supreme Court

No. 20

Dated at Apiado Chambers, Accra, this 15th day of June, 1949.

Statement of Claim (5/49)

(Sgd.) E.O.O. Lamptoy,
Solicitor for Co-Plaintiffs.

15th June, 1949 - continued

The Registrar,
Land Court,
Accra.

And to the above-named defendant or his Solicitor.

No. 21

No. 21

ORDER FOR INTERIM INJUNCTION
(2/1944)

Order for Interim Injunction (2/44)

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND COURT, ACCRA

25th August, 1949.

Transferred Suit
No.2/1944

NII TETTEY GBEKE, Dsasetse of Otuopai and as Representative for himself and as representing the Stool and people of Otuopai, Plaintiff

v.

ERIC LUTTERODT, QUARSHIE SOLOMON and CONRAD LUTTERODT all of Accra, Defendants

---

(Sgd.) S.O.QUARSHIE IDUN
Judge.

ORDER FOR INTERIM INJUNCTION

UPON HEARING ERIC LUTTERODT the first defendant herein and UPON READING the Affidavit of the said ERIC LUTTERODT filed on the 16th day of August, 1949, in support of application on notice for order for interim injunction herein:

In the Supreme Court

No. 21

Order for Interim Injunction (2/44)

25th August, 1949 - continued.

IT IS HEREBY ORDERED that the parties to this suit and/or their agents be and are hereby restrained from disposing of any portions of the land the subject matter of this action pending the hearing and determination of the suit.

AND IT IS FURTHER ORDERED THAT buildings already commenced may be continued but no new building should be constructed and that persons who claim to have bought portions of the land are not to place any building materials on the same

Given under my hand and the seal of the said Court at Victoriaborg, Accra, this 25th day of August, 1949.

(Sgd.) Dugbartey Narnor
Registrar, Land Court.

In the Native Court

No. 22

Summons (46/50)

26th September, 1949.

No. 22

S U M M O N S
(46/50)

EASTERN PROVINCE GOLD COAST — No.392/49

IN THE GA NATIVE "B" COURT, ACCRA

BETWEEN

NII TETTEY GBEKE II etc., — Plaintiff

- and -

D.A. OWUREDU and R.O. AMMAH, — Defendants

To: R.O. Ammah of Accra.

You are hereby commanded to attend this Native Court at James Town on Thursday the 6th day of October, 1949, at 8.30 o'clock a.m. to answer a suit by plaintiff against you.

The plaintiff claims (a) £50 (Fifty pounds) damages for trespass on the plaintiff's land at south east Kokomlemle, Accra, and bounded on the north by Proposed Road measuring 100 feet more or less on the south by Otuopai Stool land measuring 100 feet more or less, on the east by Otuopai Stool land measuring 100 feet more or less on the west by Otuopai Stool land measuring 100 feet more or less (b) That the defendants claim their title from Korle Webii and since Numo Tetteh Quaye Molai acting Korle Priest instituted an action against the plaintiff and others in 1943 for Kokomlemle lands including Akwandor, and judgment went against

In the Native Court

No. 22

Summons (46/50)

26th September, 1949.
- continued.

him the Acting Korle Priest (substituted by Numo Ayitey Cobblah, the Korle Priest) in Land Court on the 31st May, 1947 and in the West African Court of Appeal on the 13th December, 1947, and therefore the defendants are wrongly in law and custom to litigate against each other in respect of the said land (c) That the first defendant D.A.Owuredu forceably erected a building on the said land after several warnings by the plaintiff herein (d) Recovery of Possession of the portion thereof wrongfully occupied by the defendants D.A. Owuredu (e) Perpetual injunction against both defendants, their agents, privies and servants from further commission of any other form of trespass on the said parcel of land the subject matter of this suit.

Dated at Accra the 26th day of September, 1949.

Claim	...	£50. -. -	R/P.
Fees	...	2. -. -	
Service	...	2. -	
		£52. 2. -	

(Sgd.) E.T. Kpakpo
President of Native Court.

Take notice that if you do not attend the Native Court may give judgment in your absence.

In the Supreme Court

No. 23

Statement of Claim (39/50)

23rd October, 1950.

No. 23

STATEMENT OF CLAIM
(39/1950)

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND COURT, ACCRA.
A.D. 1950.

ROBERT ALEXANDER BANNERMAN of Accra, Plaintiff

NUMO AYITEY COBBLAH, Korle Priest, Co-plaintiff

v.

J.S. ABBEY of Labadi, Defendant
NII TETTEY GBEKE, Co-defendant

STATEMENT OF CLAIM filed on behalf of the PLAINTIFF herein by AKUFO ADDO, Esquire.

1. By an Indenture of Gift dated the 28th day of September, 1943 and registered in the Deeds

In the Supreme Court

No. 23

Statement of Claim (39/50)

23rd October, 1950 - continued.

Registry as Number 641/1950 and made between Tetteh Kwei Molai Acting Korle Priest and Representative of the Korle Family of Accra as Donor and the plaintiff as Donee the land the subject matter of this suit was granted and conveyed to the plaintiff by way of absolute gift for an estate in fee simple.

2. The plaintiff has since the said grant which was approved by the Gbese Mantse been in possession of the said land undisturbed until sometime in July 1950 when the defendant wrongfully entered in and upon the said land and started building operations thereon.

WHEREFORE the plaintiff claims as per his Writ of Summons.

Dated at Kwakwaduam Chambers, Accra, this 23rd day of October, 1950.

(Sgd.) Akufo Addo
Plaintiff's Solicitor.

To the Registrar,
Land Court, Accra
and
To N.A. Ollennu, Esqr., Solicitor for the defendant and Co-defendant.

No. 24

No. 24

STATEMENT OF CLAIM (39/1950)

Statement of Claim (39/50)

2nd January, 1951.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND COURT, ACCRA
A.D. 1951

Suit No.39/50

ROBERT A. BANNERMAN, NUMO AYITEY COBBLAH, — Plaintiff Co-plaintiff

v.

J.S. ABBEY of Labadi, NII TETTEY GBEKE II, — Defendant Co-defendant

---

STATEMENT OF CLAIM filed herein on behalf of the CO-PLAINTIFF herein by AKUFO ADDO, Esquire

---

1. The co-plaintiff is the Korle Priest of Accra and Head of the Korle Webii (korle Family) and the

occupant of the Stool of the Korle Wobii.

2. The co-plaintiff, the Ga Mantse and the Gbese Mantse are joint owners of certain lands in Accra commonly known and called the Kpehegon, Akrade, Kokomlemle, Akwandor and Fanofa lands and the person entitled by native customary law to alienate and to protect such lands.

3. The land the subject matter of this suit is a portion of the area of land known and called the Akwandor lands.

4. The co-plaintiff with the consent of his elders and with the approval of the Gbese Mantse conveyed by a Deed of Gift dated the 28th day of September, 1943 to the plaintiff by way of absolute gift, and the co-plaintiff therefore seeks a declaration that the land in dispute is a portion of the Akwandor lands and that the plaintiff's title to the said piece of land is good by virtue of the Deed of Gift aforesaid.

Dated at Kwadwaduam Chambers, this 2nd day of January, 1951.

(Sgd.) Akufo Addo
Co-Plaintiff's Solicitor.

To the Registrar, Land Court, Accra - and

To N.A. Ollennu, Esqr., Solicitor for defendant and Co-defendant.

In the Supreme Court

No. 25

Statement of Defence (39/50)

2nd January, 1951.

No. 25

STATEMENT OF DEFENCE
(39/1950)

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND COURT, ACCRA

ROBERT ALEXANDER BANNERMAN of Accra, — Plaintiff
NUMO AYITEY COBBLAH Korle Priest, — Co-plaintiff

v.

J.S. ABBEY of Labadi, — Defendant
NII TETTEY GBEKE, — Co-defendant

1. The defendant is not in a position to admit or deny paragraph 1 of the plaintiff's Statement of Claim, and says further that the Korle family of Accra had no title in the said land in 1943 which it could convey.

2. The defendant denies paragraph 2 of the Statement of Claim.

3. By an Indenture dated the 1st day of April 1949 Nii Tettey Gbeke Dsasetse and Acting Mankralo of Otuopai Accra granted and conveyed to the defendant all that piece or parcel of land the subject matter of this suit, and placed defendant in position thereof.

4. The defendant has from the date of the said conveyance being in undisturbed possession of the said land, keeping it clean and placing building materials upon it. The defendant has a plan passed for building on the land and was about to start the said building when in July 1950 the plaintiff caused a writ of summons to be served upon him.

Save as hereinbefore expressly admitted the defendant denies each and every allegation contained in the plaintiff's Statement of Claim as if the same were herein set out in detail and traversed seriatim.

Dated at La Chambers, Accra, this 2nd day of January 1951.

(Sgd.) N.A. Ollennu
Solicitor for Defendants.

The Registrar,
Land Court, Accra.
And to the above-named plaintiff or his Solicitor Akufo Addo, Esqr., Accra.

No. 26

COURT NOTES ORDERING CONSOLIDATION AND SURVEY

2nd January, 1951

In the Supreme Court

No. 26

Court Notes ordering Consolidation and Survey.

2nd January, 1951.

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION
(LAND DIVISION) held at Victoriaborg, Accra, on TUESDAY the 2nd day of JANUARY 1951, before JACKSON, J.

Suits: 19/43, 1/44, 23/44, 2/44, 7/44
10/44, 116/45, 25/44, 15/48,
17/48, 33/50, 35/50, 39/50,
41/50, 46/50, 47/50.

Counsel before Court -

Bossman, Ollennu and Quist-Therson.
Numo Ayitey Cobblah representing Ga Manche Stool.

BY COURT -

It is agreed by Counsel that the land embraced in the above cited suits is Stool land of the Ga Manche, who made grants of certain portion of it to families or persons who are either plaintiffs or defendants in these actions. Others of the parties in these suits are persons who claim to have derived their titles through those grantees. It is agreed that to facilitate the trial of these actions it is desirable that they should all be consolidated and that the Ga Manche Stool shall open that evidence as the plaintiff, and evidence the nature of the grants made to those parties who claim directly under him. The other plaintiffs, will then reply as if they were defendants and give evidence in support of their claims followed by the several defendants.

In this manner at the close of the evidence I shall be in a position to give judgment in respect of the claims made in each writ. To further facilitate the trial it is desirable the the areas of land claimed, and which have been shown on several plans, shall all be reduced to one common plan, so as to indicate clearly if, and where, any of the claims may compete.

I do accordingly order that the above cited suits be consolidated for trial and that all of the plans which have been filed shall be superimposed upon a single plan, namely the cadastral plan of that area of Accra.

In the Supreme Court

No. 26

Court Notes ordering Consolidation and Survey.

2nd January, 1951 - continued.

Let the following parties each deposit a sum of £10 in Court in respect of this survey work namely Numo Ayitey Cobblah, Nii Tettey Gbeke, H.C. Kotey, E.P. Lutterodt and Odoitso Odoi Kwao. Deposit to be made within one week. Counsel agreed that Mr. F.H. Simpson shall be the Surveyor engaged to do this work. Superimposed surveyed plan to be filed within 2 weeks.

Trial on 23rd January, 1951.

(Sgd.) J. Jackson
J.

No. 27

Court Notes recording Appearances of Counsel.

24th January, 1951 - continued.

No. 27

COURT NOTES RECORDING APPEARANCES OF COUNSEL

24th January, 1951.

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION
(LAND DIVISION) held at Victoriaborg, Accra, on WEDNESDAY the 24th day of JANUARY, 1951, before JACKSON, J.

NUMO AYITEY COBBLAH

v.

J.W. ARMAH

- and -

1. R.A. BANNERMAN
2. N. AYITEY COBBLAH

v.

1. J.S. ABBEY
2. NII TETTEY GBEKE II

together with 17 other suits consolidated for trial.

Court -

s.i.c. All of these 8 suits relate to lands which are delineated in green, red, yellow, brown and blue on plan - Reference Sheet C.27 which is filed and which is admitted by the consent of all parties and is marked as Exhibit No. "A".

These delineations only show the boundaries

claimed by those parties who sue on behalf of Stools or families, and do not pretend to indicate the limits of the other parties claims who claim under grants or sales made to them by those Stools or families. In those cases the areas in dispute are shown in other plans which have been filed from time to time and which come within those areas delineated in the colours I have already mentioned.

It is agreed that the plaintiff in suits 33 and 39/50 namely the Korle, Gbese and Manche Stools shall open the case as their claims cover the greater area of land and that all other parties affected by these claims will be at liberty to cross-examine.

Hutton-Mills for Ga Manche Stool
Lamptey for the Korle and Gbese Stools
Hutton-Mills informs me that Akufo Addo appears for Halm-Owoo (Suit 41/1950) also for R.A. Bannerman (Suit 39/50).

Quist-Therson for Odoitso Odoi Kwao family.

Quist-Therson -

Mr. Akyeampong asks me to say that he appears with me.

Lamptey -

I also appear in suits 19/43 and 2/1944 on behalf of Lutterodt Family and all defendants in suit 7/1944.

Ollennu -

I appear for Nii Tettey Gbeke, J.S. Abbey (39/50), J.W. Armah (No.1/44) and (33/50) also for J.C. Komey (17/48), Mary O. Ankrah (25/44), E.K. Ashanti (116/45) also for Farrar (116/45), Cofie and Marbell (15/48), Kadire Gimba (38/50), Mad. Lartey (47/50) Comfort Okraku (Suit 15/43), G. Sackey (14/48) and J.C. Nortey (18/1948).

Lyle for H.C. Kotey.

Quist-Therson with Akyeampong appears for all defendants in 23/44.

E.B. Okai (Suit 25/1944) in person.

In the Supreme Court

No. 27

Court Notes recording Appearances of Counsel.

24th January, 1951 - continued.

Sarah Okai absent

Afiyie (Suit 15/1943) in person

Sohby Baksmaty absent.

S.K. Dodoo absent.

D.A. Owuredu (46/1950) in person.

R.O. Ammah (absent).

Obeyea, Ayeley and Asantuwah (Suit 14/48) (18/48).

Lamptey -

It is not denied that the whole of this land at one period belonged to the Ga Stool and its subordinate Stool the Gbese Stool. We do not deny that from this area certain grants of land have been made by us.

Court. -

Very well I will commence hearing the evidence of the Ga Stool tomorrow at 9 a.m.

(Sgd.) J. Jackson.
J.

No. 28

Opening of Counsel for Korle Priest.

29th January, 1951.

No. 28

OPENING OF COUNSEL FOR KORLE PRIEST

29th January, 1951

IN THE SUPREME COURT OF THE GOLD COAST

EASTERN JUDICIAL DIVISION

(LAND DIVISION) held at Victoriaborg, Accra, on MONDAY the 29th day of JANUARY, 1951, before JACKSON, J.

N.A. COBBLAH
v.
J.W. ARMAH
and
1. R.A. BANNERMAN
2. NUMO AYITEY COBBLAH
v.
1. J.S. ABBEY
2. NII TETTEY GBEKE II
And other consolidated actions.

Assessor absent.

In the Supreme Court

No. 28

Opening of Counsel for Korle Priest.

29th January, 1951 - continued.

Court -

I will go on in his absence.

Assessor (W.M.Q. Malm) now appears.

Lamptey opens

When the Gas were first heard of in this part of the world they lived on a hill about 11 miles from Accra called Ayasu. About middle of 16th century they migrated towards the sea. The first who migrated were the Onormroko family, which is a sub-branch of the Gbese Division. They were hunters and while hunting came nearer the sea. They were the first people to discover the Korle Lagoon and from that time the Priests of that Lagoon were appointed from the Onormroko Family and were from that time styled the Onormroko Korle Webii (i.e. children of the Korle Household). It is known that all the land this side of the Sakumo River - a river which lies west of the Korle lagoon. The Korle Priest then became owner of the lands to hold them for himself and the Gbese Stool. Subsequently the other Gas who were at Ayasu also migrated to this area and when they came, they subjects of the Ga Stool, recognised the interest of the Ga Stool. Gbese had no Stool when they left Ayasu. They founded the Stool in Accra with the permission of the Ga Manche. From then on they held the land for themselves and for the Ga Stool. From time to time they made grants of this land to some Ga subjects and we will lead evidence to show the grants we have made within this land in dispute, a large portion of which we still retain. I will call the surveyor later.

Ollennu -

My friend Mr. Asafu-Adjaye is with me.

In the Supreme Court

Korle Webii Evidence

No. 29

J.N. Plange (1st Witness for Korle Webii)

29th January, 1951.

Examination.

No. 29

J.N. PLANGE (1st Witness for Korle Webii)

1st Witness for Korle Webii -

John Nyan Plange (m) s.s. in English -

Trader living near Salaga Market. I am 53 years of age. I know Ayitey Cobblah. He is the Korle Priest. I am the grandson of one of the late Korle Priests named Nii Tetteh Oyiram.

I know the lands in dispute. The Korle Stool and Gbese and Ga Manche Stool are the owners of this land. I am one of the elders of the Korle Family. My duties are to look into the papers of the Korle Family and be one of the persons who grants lands.

I was one of the elders who put the Priest on the Korle Stool and I am one of those who gives him the history.

I know the history of the Korle lands. As I was told by the elders sometime in the 16th century the Ga people were at Ayasu, a place 12 miles from Accra, the Onormroko family then were hunters and hunted and first located the Korle Lagoon. They found 2 large pots containing some beads. They took the pots home, where they were residing in their hunting camp. The spirit of the lagoon came upon a woman living there named Dede and she narrated the purpose of the lagoon. Dede was of Gbese.

The whole of these Ga lands became the property of the fetish which was named Korle named after the beads (called Korle beads) and that name was then given to the lagoon.

Dede narrated that the land having a boundary with Labadi on the west had 2 palm trees near the Sakumo River on the west and the Akwapim Hills on the north - the sea was the other boundary.

She named a place called Obenesu as being the boundary with Labadi.

In reply to Court -

Some fetish priest was then residing at Labadi in those days and that fetish owned that land.

Examined -

After a time about 1699.

In reply to Court -

This is what I was told at the time from the illiterates.

Examined -

The whole Gas then came to the coast here and the Ga Manche all met us here. We recognized him as our Manche and as having an interest in this land from then we granted lands to people or to families and if anyone trespasses we sue him and we are sued in respect of this land.

About 1947 I showed Mr. F.H. Simpson a licensed surveyor the boundaries of grants made to several people and Mr. Simpson was instructed to make a plan showing these boundaries.

Q. Have you at any time granted any land to Tettey Gbeke? A. No.

Q. For how long have you been making these grants?
A. For about 30 years ago.

Q. Can you give us names of persons to whom you have been a party in granting lands on the land in dispute?
A. The Accra Academy, The Roman Catholic Mission, R.A. Bannerman, K.G. Konuah, Halm-Owoo and some other people.

In reply to Court -

Q. Were these grants evidenced in writing?
A. Yes - we gave them documents which are in their possession.

Examined -

Q. Have you personally been a witness of any grant not made in writing? A. No.

Q. In your family have you any verbal records of lands granted to people?
A. Yes.
My grand uncle told me of such grants - he was the Korle Priest.

In the Supreme Court

Korle Webii Evidence

No. 29

J.N. Plange (1st Witness for Korle Webii)

29th January, 1951

Examination - continued.

One of these he mentioned was Kwartei Chomani. William Lutterodt was also granted a site. One Tetten Ntsre was granted a site. One Botok was granted a site. Tetteh Churu was also granted a site. Ashia To was also granted a site. Manche Ama's sister.

In reply to Court -

Her name was J.H. Adams.

Examined -

Kwaku Okyiami was granted a site. R.B. Okai was granted a site. Djani was granted a site. T.S. Quarcoopome was another. Mallam Futa was another Odoi Kwao was also granted a site. H.C. Kotey was also granted a site.

In reply to Court -

Q. How many of these people have erected building on the land?

A. I cannot tell. Up to 1939 there were no buildings on this land excepting a few villages.

Examined -

Q. Are these grants still in the hands of the original grantees?

A. Some are in their hands.

Q. Who built these villages.

A. Odoi Kwao, Tetteh Churu Ashiato, Botoko, Ashun Marbell, Mallam Futa, Kwate Chomani, J.H. Adams.

In reply to Court -

These villages are still there.

Cross-examination.

Cross-examined by Hutton-Mills (for Ga Manche.)

Q. Did you make these grants as caretaker of the Ga Stool? A. Yes.

Q. Whenever grants are made you have to get the consent and concurrence of the Ga Stool?

A. No.

Cross-examined by Ollennu -

Q. Do you claim this land as Ga Manche land or as land of the Korle Fetish family?

A. It is the land of the Ga Manche, Gbese and Korle Stools - three Stools.

Q. You know that any rights that Korle had have been revoked by the Ga Manche and Gbese Manche?
A. No.

Q. Is it not true that in about 1945 the Ga Manche and Gbese Manche caused their Solicitor Mr. Koi Larbi to write to say that they had revoked it?

In reply to Court -

Q. Have you been given any notice to produce such a letter? A. No.

(In absence of this notice evidence of contents of letter cannot be given).

x x x x

Cross-examined

30th January, 1951

Q. Are you giving evidence on behalf of the Gbese Manche or is the Gbese Manche coming to give evidence himself or by his linguist?

A. I am not giving evidence on behalf of Gbese Manche.

Court -

The writ as issued out of the Native Court dated the 22nd August, 1949, shows that both parties sue and defend in their personal capacities. There is no record of any amendment of the writ having been made in the Native Court. I am referring now particularly to Suit 33/50 - but in the proceedings in the Magistrate's Court as constituted by the District Commissioner the plaintiff purports to sue in a representative capacity and it is in that capacity that the Order of Transfer. That Order however cannot enlarge or amend the capacity of the parties in which they sue in this writ.

Lamptey -

Ask leave to amend to read after the name Cobblah "Korle Priest for and on behalf of the Korle Stool, Gbese Stool and Ga Mantse Stool."

x x x x

In the Supreme Court

Korle Webii Evidence

No. 30

F.H.S. Simpson (2nd Witness for Korle Priest)

31st January, 1951.

Examination.

No. 30

F.H.S. SIMPSON (2nd Witness for Korle Priest)

2nd Witness for Korle, Gbese and Ga Stools -

Frank Herman Shang Simpson (m) s.s. in English:-

Licensed Surveyor. Live Accra. I made this plan. An order was made for me to make it in suit. It was made in an action in 1945 between Tetteh Quaye Molai v. Tettey Gbeke & 15 others.

The plaintiff pointed out to me his boundaries and the defendants were represented by one Aryee. Aryee showed me their boundaries. The plaintiff was there - a day or two later some of his representatives pointed out the boundaries to me.

This is the man Aryee now in Court who pointed out the defendant's boundaries.

After plan was prepared I went on the land again upon instructions of the Court to show the areas which plaintiff said he had sold to other people. Jacobson and some others showed me those areas when I went that second time. I saw Mr. Plange (1st witness) and Mr. Annan there (also in Court) and I marked these areas in light brown or biscuit colour.

Q. Look at this plan (Exhibit "1") do you know anything about it?

A. This Court made an order for me to show the boundaries of the various portions in the suits before the Court now.
The claim of the plaintiff in the 1945 is shown on the new plan (Exhibit No. "1") as being marked in green.

Q. What was Plange doing?

A. He was with Mr. Jacobson pointing out boundaries to me.

Court -

Let plan be admitted and marked "B".

Cross-examined by Ollennu -

Q. It was in the year 1944 that you actually went on the land to make the survey?

A. Yes.

Q. But you completed it in January 1945?

A. Yes.

Q. In 1944 Mr. Aryee gave you an old plan?

A. Yes I remember he gave me a certain old plan.

Q. And at his request did you reproduce it?

A. Yes - I made a copy at his request.

Q. Is this the copy which you made?

A. Yes this is the copy.

Q. Original plan was dated when?

A. 1890 and was made by a surveyor called E.F. Engman when completed I handed a copy to Aryee (Tendered for identification and marked No."1").

Q. You remember a case before Ga Manche's Tribunal between Ashrifi v. Golightly.

A. Yes.

Q. In that case did the President give you any order?

A. Yes.
He gave me a verbal instruction and a written description.

Q. Was that description the same as appears here?

A. It looks like the description he gave me.
(Tendered for identification and marked "2")

Q. What order did President give you?

A. I was asked to try and mark out the land described on a topo sheet of Accra.

In the Supreme Court

Korle Webii Evidence

No. 30

F.H.S. Simpson (2nd Witness for Korle Priest)

31st January, 1951

Cross-examination - continued.

In reply to Court -

Q. Was that possible with that data?

A. I did it as accurately as I could with that description.

Cross-examined -

Q. Look at this sheet. Did you mark that description on this sheet?

A. Yes and I marked it in green.

(Tendered for identification and marked No."3").

Q. Does that land appear to be near any land shown in plans "A" and "B"? 10

A. Yes a small portion (the southern portion of "C") covers a part of the western portion of land shown in this plan (B). This area shown on "A" is roughly that area outlined in red on this plan (Exhibit "B").

No further cross-examination or re- examination.

x x x x

No. 31

NII TETTEY GBEKE

In the Supreme Court

Atukpai's Evidence

No.31

Nii Tettey Gbeke.

5th February 1951.

Nii Tettey Gbeke II s.s. in Ga -

Am Dsasetse and Head of Atukpai Family. We have a Stool in Atukpai. It is the Mankralo's Stool for Gbese Quarter. I am now Acting Mankralo. I know the land in dispute. I claim the area shows as edged in pink on the plan (Exhibit No. "1"). I claim it for my Stool and its subjects. Tradition says that we asked the Ga Manche for land and land was given to us. It is said that the land was given because they all went to the war.

Have known this land since I was young. I was 56 years old last June. Since I have known it I met Atukpai people on this land.

Examination.

x x x x x x x x x

In reply to Court -

Q. Do you agree that by customary law no Stool land can ever be sold unless there is first in existence a Stool debt?

A. If there is no Stool debt - Stool land cannot be sold.

x x x x x x x x x

Cross-examined -

Cross-Examination.

Q. You are familiar with Ga custom?

A. I know some but not all.

Q. Do you say that when a person in Accra is given land to farm on that the title in the land is transferred to him?

A. (Witness quibbles and does not answer).

x x x x x x x x x

In reply to Court -

Q. Are all Atukpais Gbese people?

In the Supreme Court

Atukpai's Evidence

No.31

Nii Tettey Gbeke.

5th February 1951.

Cross-Examination - continued

A. They are - but there is a difference - there are also other quarters in Gbese.

Q. What are the names of these other quarters in Gbese?

A. Onanlarkor, Judjorse, Manche Blohum, Sornmena, Sakumo-Tsoshishi.

Q. And you tell me that you don't know whether any of these quarters were given similar grants after the 1826 war?

A. I don't know.
Yes - they all took part in the war.

Cross-examined -

Q. You admit that in these days that any Gbese man could farm on this land without permission?

A. Anybody who wanted to farm would have to get permission from the one who is looking after the land.

Q. You said that E.B. Okai did not own land in this area?

A. I said so.
I heard him give evidence.

Q. Okai is an Atukpai man?

A. He is an Atukpai on his mother's side and Korle We on his father's.

Q. And he evidenced that he got this land from the Korle Priest?

A. That is what he said.
Every Atukpai must obtain permission to farm from the Head.

In reply to Court -

Q. Why did he go to the Korle Priest?

A. I don't know.

Q. Would it be because he wanted to do more than farm and to build?

A. I don't know.

In the Supreme Court

Atukpai's Evidence

No.31

x x x x x x x x x

Nii Tettey Gbeke.

5th February 1951.

Cross-Examination - continued.

Q. What power has a Stool of alienating land to one of its members?

6th February 1951

A. If the Stool wants money - say to litigate a case - it has the right to sell. Litigation is not more profitable to one than land itself.

x x x x x x x x x

No.32

NII TACKIE KOMEY

No.32

Nii Tackie Komey: 16th Wit. for Nii T. Gbeke II.

Nii Tackie Komey II (m) s.s. in Ga:

Ga Manche. Live in Accra.

x x x x x x x x x

14th February 1951.

Q. According to Ga custom if land is granted to an individual or family or another Stool who has charge or control of these lands?

Examination.

A. The people to whom the lands were given - because they all serve the Stool.

In the Supreme Court

Atukpai's Evidence

No.32

Nii Tackie Komey: 16th Wit. for Nii T Gbeke II.

14th February 1951.

Examination - continued.

In reply to Court -

Q. Do they serve the Stool with their lands?

A. As they are the subjects of the Ga Manche if something happened about the Stool and they were told about it - they play their part.

Q. That is not an answer to my question (question repeated)?

A. Yes. (After quibbling).

Examined -

Q. If lands are granted to such people - do the Korle Webii look after these lands as caretakers?

A. They have no rights in these lands.

x x x x x x x x x

Cross-Examination.

Cross-examined -

Q. Has any member of the Gyasi asked you to take steps to recover these lands?

A. No. As a chief they are my subjects - it is not proper for me to sue them.

Q. Do you agree that the Korle Webii are the caretakers of the Ga Stool land?

A. I do not deny that - they are the caretakers.

In reply to Court -

Q. Is there any land, say within a radius of 10 miles, which is not Ga Stool land?

A. For more than 10 miles. The elders can say. All within radius of ten miles will be Ga Stool lands.

Cross-examined -

Q. And you admit that as caretakers of Ga Stool lands - Korle Webii have a right to sue in respect of them?

A. They have no right to sue without the consent of the owner.

In reply to Court -

Q. And who is the owner?

A. The Ga Stool.

Cross-examined -

I know late Tackie Yarboi, Ga Manche - predecessor of mine.

Q. Read this document.

A. Yes - it is evidence given by Tackie Yarboi. I do not agree with what he said then.

In reply to Court -

Q. Would you agree that your predecessor had quite as good an opportunity of knowing tradition as you?

A. No - some persons cannot keep things in memory.

Q. How long had your predecessor been Manche before he died?

A. Nearly 30 years. This kind of history about the origin of the Korle Priest was invented. I don't believe that tradition. The people now in Accra all come together - they were driven here by the wars and everybody was looking for a place to stay. They all became Ga Stool lands after they had settled.

Q. Do you believe in the old saying that what land a man acquires he acquires for the Stool?

A. If he acquired it alone without the support of anyone - everything is his.

Q. And disbelieving as you do the Korle Webii tradition - what gave the Korle Webii this pre-eminence in the past in land affairs?

A. After driving our enemies away we needed someone to protect our lands. He was responsible for blessing the land. We trusted him to protect the land.

In the Supreme Court

Atukpai's Evidence

No.32

Nii Tackie Komey: 16th Wit. for Nii T. Gbeke II.

14th February 1951.

Cross-Examination -continued.

In the Supreme Court

Atukpai's Evidence

No.32

Nii Tackie Komey: 16th Wit. for Nii T. Gbeke II.

14th February 1951.

Cross-Examination - continued.

Q. What has caused you now to cease to trust him?

A. We haven't - but we did not empower him to take action.

Lamptey -

I tender minutes of evidence for identification - marked "AA".

Cross-examined -

Q. Is it not a fact that you are not in speaking terms with the Gbese Manche?

A. We are not.

In reply to Court -

Q. Does that arise out of official or private difference?

A. It is official.

Cross-examined -

Q. He was on the Stool as Gbese Manche before you and acting Ga Manche?

A. Yes. Yes Otuopais are Gbese people. Otuopai Mankrado Stool is by itself.

Q. I suggest this is also one of your reasons to obstruct this action?

A. No.

In reply to Court -

Q. What is your reason for saying that the Korle Webii should not take action?

A. Because they did not tell me of it.

Q. Had they done so would you have approved?

A. As they are my children I would not approve - both sides are my children - I would invite them to my house.

Q. Do I take it you are against litigation in any form?

A. As a father it is not a good thing.

Cross-examined -

I pass Kokomlemle at times and I see some buildings there.

Q. Did you take any steps to see who were selling the lands?

A. The Atukpai people are there and if anything happened there they would let me know.

Q. Do you mean that if they sold land they would let you know?

A. Yes - according to custom if you want to sell land you must come and consult the Ga Manche who will depute people to join the Korle Webii and go to the place where they are going to see the lands.

Q. Have Atukpai ever brought sales of land to your notice?

A. No. If Atukpai people say they must not see me before selling land then they have set custom aside.

In reply to Court -

According to custom the one who requires the land know that Korle Webii people who look after the land - they will come with rum together with the Korle Webii.

Q. Do I understand that this is done when a person requires land for any purpose whatsoever?

A. Yes.

Q. If a person sought Atukpai permission to farm only for 10 years would he have to come to the Ga Manche?

A. Yes.

Cross-examined -

As they did not inform the owner before took action they are wrong.

x x x x x x x x x

In the Supreme Court

Atukpai's Evidence

No.32

Nii Tackie Komey: 16th Wit. for Nii T. Gbeke II.

15th February 1951.

Re-Examination.

Q. You say that if land is to be sold the Korle Webii will have to consult the Ga Manche - what lands are those to which you refer?

A. The lands that have been granted to people don't concern the Ga Manche - only those lands that remain.

Q. If people who have been granted land wish to sell - do they have to consult the Korle people?

A. No - the Korle Webii have no interest with them.

x x x x x x x x x

No.33

Court Notes of Amendment of a Plaintiff's Capacity.

28th February 1951.

No.33

COURT NOTES OF AMENDMENT OF A PLAINTIFF'S CAPACITY

28th February, 1951.

In the Supreme Court of the Gold Coast, Eastern Judicial Division (Land Division) held at Victoriaborg, Accra, on Wednesday the 28th day of February, 1951, before Jackson, J.

Suit 15/43.

Afiyie
v:
1. Tettey Gbeke
2. Comfort Okraku
3. Sohby Baksmaty
And 18 other consolidated suits.

Court -

On the 30th January an application for leave to amend plaintiff's capacity in which he sued was applied for by Mr. Lamptey and I granted leave in the terms prayed - I did not record that leave at folio 399 of Volume 15 and I now record it.

Bossman for plaintiff.

Ollennu for defendants.

No.34

C. E. REINDORF

In the Supreme Court

Atukpai's Evidence

No.34

C.E.Reindorf.

20th March 1951.

Cross-Examination.

To Court.

x x x x x x x x x

Q. You are Gyasekye of the Ga Stool?

A. Yes.

x x x x x x x x x

In reply to Court -

I have a big knowledge of Ga affairs. Originally in Accra the owners of the lands were the hunters and the priests. At that time we had no Manche. The Priest was the Paramount person. At that time all the lands were in the hands of the Priest (Korle Webii). Then the title Manche was introduced. After the Akwamu wars - the Akwamus were driving the Gas then kingship was introduced and the Asafo (military companies) were introduced - we adopted the Akan Fashion. Then all the lands were entrusted to Korle Family as hereditary caretakers of the lands and they have been looking after the interests of the lands ever since for the Paramount Stool. It is said in 1733 the Stool was first created.

Q. How far could Stool land be sold in the olden days?

A. In the olden days they were not sold - they were communal lands.

Q. When were sales of Stool lands in Accra first introduced?

A. They are not sold.

Q. I have been told that Stool lands may be sold if there is a debt?

In the Supreme Court

Atukpai's Evidence

No.34

C.E.Reindorf.

20th March 1951.

To Court - continued.

A. That is so.

Q. If there is no debt?

A. Then grants are given.

Q. May a grantee sell his grant to a stranger in any circumstances?

A. He could not do that.

Cross-Examination.

Cross-examined by Ollennu -

Q. Is it not correct that the very first Priest to settle was the Nai Priest?

A. Yes - he was the very first man here - he is the sea priest.

Q. Who came first the Gbeses or the Aseres?

A. The kingdom of Accra started at Ayawaso. Gbese came here first while Aseres were still at Ayawaso.
My father wrote the history of the Gas and I revised the 2nd Edition.

In reply to Court -

The second edition does not vary from the first edition.

Cross-examined -

Q. You know that the Aseres have lands in Accra over which the Korle We are not caretakers?

A. That is so - all the Divisional Chiefs in Accra have lands and the Korle We has no control over them.

In reply to Court -

There are seven Divisional Chiefs, Gbese, Asere, Abola, Otublohum, Sempe, Alata and Akumaji.

Cross-examined -

Each of these Divisions have land attached to their Stool.

In reply to Court -

Q. If Gbese wished to sell land to pay a debt could they do so, without the consent of the Ga Stool?

A. They could not.

Q. Could Alata sell Stool land to pay a debt without permission of the Ga Stool?

Could Sempe?

A. It could. Abola is the Ga Manche's quarter. The others could sell.

Q. Why is there this difference between Gbese and the other Divisional Chiefs?

A. Because Gbese is a "nephew" of the Paramount Stool. If any land, of whatever division, is being alienated the Ga Manche must be informed and proper ceremony observed.
If Government acquired land and it happened to be in Alata - the Ga Manche must be informed and he is entitled to one-third.

Cross-examined by Ollennu -

Q. Do you say that apart from compulsory acquisition and a Stool debt land cannot be sold?

A. It can be sold.

In reply to Court -

Q. In what circumstances may it be sold when there is neither a debt nor an acquisition?

A. Supposing that land was granted to me by the Stool I could sell it under certain circumstances.

Q. What would be examples of such circumstances?

A. If my family was in debt and it was granted to me I have the right to sell.

In the Supreme Court

Atukpai's Evidence

No.34

C.E.Reindorf.

20th March 1951.

Cross-examination - continued.

Cross-examined -

Q. There are sub-stools in Accra which own land?

A. Yes.

Q. They have the right to sell the land outright without any control by the Ga Manche?

A. Only if it had been sold to them by the Paramount Chief.

In reply to Court -

When land is sold like that it becomes the self-acquired property of the purchaser. In his life-time the purchaser may sell it or devise it by Will. If he does not on his death it becomes family property. If the family is in debt they can sell. It is not the custom, it is what has been going on. I agree it should be stopped. It is not a custom it is a practice.

Cross-examined -

I started to make this road in 1920. The road is no longer there - it has been built over. I went up to Ashanti in 1934.

Cross-examined by Hutton-Mills -

Q. If as Your Honour suggested a Head of a Family gets into debt by extravagance and you know that by custom he can be removed from the Headship?

A. Yes.

Q. And that no family property can be sold without the consent of the principal members?

A. Yes.

Q. You said that this practice of sale was a practice - I put it to you that it is a modern practice?

A. That is so.

Re-examination.

Re-examined -

Q. Is there a distinction between land owned by a Divisional Stool and land granted to say the Ankrahs?

A. The grants are ones made for services rendered to the Stool and a portion of the land would be given to the family and becomes then our personal property and they are at liberty to do whatever they like.

Q. Does the grantee hold the land as a sacred trust for the Ga people?

A. No. People are permitted to farm on any Stool land and we call it shifting cultivation - they have no interest - they cannot sell. Where streams meet at Kpehe is not to my knowledge called "Fanofa".

In the Supreme Court

Atukpai's Evidence

No.34

C.E.Reindorf.

20th March 1951.

Re-Examination - continued.

No.35

COURT NOTES CONSOLIDATING SUITS 11/1943, 8/1945 and 6/1949 WITH OTHERS

No.35

Court Notes Consolidating Suits 11/1943, 8/1945 and 6/1949 with others.

30th March, 1951.

30th March 1951.

In the Supreme Court of the Gold Coast, Eastern Judicial Division (Land Division) held at Victoria-borg, Accra, on Friday the 30th day of March, 1951, before Jackson, J.

19/43

Nii Tettey Gbeke
v:
Lutterodt & others
And other consolidated suits.

Motion ex-parte by J.J.Ocquaye, Head of Nettey Quarshie Family to be made a party to these actions.

Applicant heard - Move in terms of my affidavit.

John Joseph Ocquaye (m) s.s in English -

In reply to Court -

Q. Have you at any time taken any action in any Court in relation to this land in dispute.

In the Supreme Court

Atukpai's Evidence

No.35

Court Notes Consolidating Suits 11/1943, 8/1945 and 6/1949 with others.

30th March 1951 - continued.

A. In 1943 my uncle C.B. Nettey sued Kwaku Fori and others in the Native Court and which was transferred here - that actipn is still pending in this Court. Kwaku Fori obtained the permission from the Atukpais. Land is situate just east of Kpehe. It is family land given to Nettey Quarshie the Head by the Gbese and Ga Manches long before 1854.

Q. With whom have you a boundary in the north?

A. I've forgotton the name. On the west at the Nsawam Road we have a boundary with Korle Webii. On the south our boundary is Akwando Hill north of Ring Road. On the north east our boundary is with Owu - east with Osu people.

Q. What are the physical features of that eastern boundary?

A. Where our people farm.

Court -

It appears that there are 3 suits instituted at the instance of the appellant Ocquaye and which have been on the list for a very long time, and one since 1945 and that they should now be consolidated.

Lamptey -

I concur. The cases will have to be heard sometime.

Let the following suits be consolidated with the others now before me namely:-

8/1945 - 1. J.J. Ocquaye
v:
S.S. Coker.

6/1949 - 2. J.J. Ocquaye
v:
Aryee.

11/43 - 3. S.S. Coker
v:
Kwaku Fori & others.

Let plaintiff delineate on Plan Exhibit "A" the limits of his claim. Notices to be sent to the defendants that the trials will be conducted on Wednesday the 4th April, 1951.

(Sgd.) J. Jackson,
J.

In the Supreme Court

Atukpai's Evidence

No.35

Court Notes Consolidating Suits 11/1943, 8/1945 and 6/1949 with others.

30th March 1951 - continued.

No.36

COURT NOTES AS TO LINGUISTS' EVIDENCE

No.36

Court Notes as to Linguists' evidence.

2nd April 1951

Numo Ayitey Cobblah

v:

J. W. Armah
And other consolidated suits.

Court -

I will now hear the evidence of the linguists subpoenaed by the Court.

No.37

LINGUIST BORQUAYE

No.37

Linguist Borquaye.

2nd April 1951.

Witness called by Court -

Emmanuel Boye Tono Borquaye (m) s.s. in Ga -

Examination by Court.

I am linguist to the Gbese Manche. Have been linguist for 28-29 years. My father was linguist to the Gbese Manche. The elders instructed me

In the Supreme Court

Atukpai's Evidence

No.37

Linguist Borquaye.

2nd April 1951.

Examination by Court - continued.

regarding the customs as well as my father. Gbese Manche has 3 linguists of which I am the senior.

Q. Do you know what are the limits of the Stool lands in Accra - I refer to all 7 Divisions?

A. The people who look after the Stool land know these limits and in the Gbese Quarter these people are known as the Korle Webii.

Q. Do the Stool lands of Gbese Manche include any part of the Manche land?

A. Yes - from Ussher Fort up to where the Town Council office is and up to Municipal Area Boundary.

Q. Is all of that area Stool land or are any parts not?

A. There is none which is not under the Stool.

Q. If a family in Accra have occupied such land for say 100 years and have built upon it and have improved it - is it still Stool land?

A. The family and the land are still under the Stool.

Q. If the whole family wished to sell the land would the consent of the Gbese Manche be necessary?

A. It is necessary.

Q. Apart from the consent of the Gbese Manche is any other person's consent required by custom?

A. No other person need be consulted.

Q. Need the Ga Mantse be consulted?

A. He will be informed when the contract is completed and to give something to the Manche to pour libation for the Stool.

Q. Will the Korle Webii be informed?

A. The family must go to them first before going to Gbese Manche.

Q. Can Korle Webii act without Gbese Manche?

A. They cannot.

Q. In the case of a sale are the other Divisions informed?

A. No - there is no need as they have their own portions.

Q. May lands be freely sold or are there any restrictions upon such sales?

A. In olden days Ga lands were not sold.

Q. Not in any circumstances?

A. In the case of Stool debt it could be sold.

Q. You were going to tell me what you found when you became a linguist. What was that?

A. When I first became a linguist lands were not sold but when they started making the Railway and the Market - lands were in big demand by the Syrians and the Kwahoos and sales then became frequent. The lands were sold in secret.

Q. In ancient days if such sales were made in secret - what would be the custom?

A. If the Korle Webii heard of it the vendor and purchaser would be brought before the Manche and the contract would be quashed. All Stool lands in the town belongs to Stools and not to families.

Q. Can Stool land in any circumstances cease to be Stool land and become Family land?

A. No - in no circumstances.

Q. If the Gbese Manche with the Korle Webii made a grant of land to an individual say as a reward for war services - would the land, the subject of the grant, cease to be Stool land and become the grantees own property?

A. It still remains Stool land - the land in such cases is not given outright. It cannot be sold without the consent of the Manche. If sales

In the Supreme Court

Atukpai's Evidence

No.37

Linguist Borquaye.

2nd April 1951.

Examination by Court - continued.

of land had been the ancient custom there would be no land left now.
Yes - if you did not behave very well - you would be sold in the past. If a person sold Stool land without permission he is damaging the house and he would be sold and put far away.

Q. Is there any other way in which custom expresses its displeasure?

A. It will go to Court.

Q. Does any question of forfeiture arise?

A. The property will be recovered from the purchaser and the vendor will be expelled from the family.

Q. By what means will expulsion be arrived at?

A. He will be turned out of the family house and his property thrown out. He will then join either the Military or Police Forces.

Q. How are subordinate Stools created in the Ga State?

A. A man who has shown bravery in the war would get one by the Order of the Manche.

Q. How was the Gbese Stool created?

A. No one knows how the first Stool was created.

Q. Has the Gbese Manche permitted the creation of any sub Stool?

A. Yes.

Q. Can you name them?

A. Nii Laki, Nii Owu, Nii Ayesenda, Nii Fiti, Nii Kwashi Plan - the latter Stool is now in the hands of the Atukpai Family. It is not recognized as the Atukpai Stool. After death of Nii Kwasi Plan - his sister's son was the right man to come on the Stool. This nephew's father came from Atukpai and got possession of the Stool and there is a dispute about it.

Q. In the case of the subordinate Stools - may

these Stools sell without the consent of the Gbese Manche?

A. They cannot.

Q. What is the position of the Korle Webii in connection with these subordinate Stools?

A. The Korle Webii are the caretakers of the land and they must be consulted before the person selling the land go to the Gbese Manche. It could only be sold for a debt.

Q. If land was sold in such circumstances that is owing to a debt would the purchaser acquire rights in the land entering free from the Stool?

A. If a Ga man bought Akwapim lands - the land there and the Ga man are still the property of the Ga Stool and the Ga Manche must be given something.

Q. What I mean is this - after the purchase of the land could the purchaser sell it - say to a Syrian or to a European free from all control of the Stool?

A. The Stool would have no further control. If the purchaser sold to a complete stranger e.g. an English man and an American or even a man from Lagos the Stool could buy back the land by paying the purchase price.

Q. If the purchaser had put up buildings to the value of £20,000?

A. The Stool would have to pay it or the land would be gone for ever.

Q. Does the title of Mankralo exist in each Division?

A. In Accra there is only one and that is in Sempe. Osu have one and Labadi have one.

Cross-examined by Lamptey -

Q. Refer to Stool at Atukpai - has anyone been enstooled to occupy it since Nii Addy?

A. No - after death of Addy there were only acting caretakers of the Stool.

In the Supreme Court

Atukpai's Evidence

No.37

Linguist Borquaye.

2nd April 1951.

Cross-Examination - continued.

Q. Was there any land attached to Kwashi Plan's Stool?

A. Yes - my father told me he had land and even some in Accra.

Q. Had Kwashi Plan any other land?

A. I could not say off hand.

Cross-examined by Bossman -

Q. Can you tell His Honour the circumstances under which a subject might acquire a portion of land outright i.e. free from any control by the Stool?

A. In no circumstances could land be given to a subject of the Stool outright.

Q. You mean he could not acquire a gift of land outright?

A. If a Gbese man I went to the Asere Manche and asked him for land - if he gave it to me outright and I wished to sell it - I would have to consult him first before I sold it.

Q. You know the Ankrah Family?

A. Yes.

Q. Ankrah got land from Gbese Stool after coming back from war from the Ga Stool - is that not so?

A. He asked for land and it was given to him.

Q. Do you say that you have exercised any control over that land since he got it?

A. He was given that land to give to his captives to farm and work on it - it was not given to him to build on and he has no right to sell that land without the consent of the Manche.

Q. Government has made several acquisitions of portions of this land - has the Gbese Stool ever made any claim as having any interest in the land?

A. If the Gbese Manche chose to claim he could. I cannot say if he claimed or not. The Manche said the land was given to Ankrah and not to Otublohum people.

Q. You gave evidence when Odoi Kwao people were fighting with the Brazilian people?

A. Yes.

Q. You said in evidence that the Ga people had given land to Odoi Kwao family?

A. I said that the one I assisted in farming that area told me that it had been given to Odoi Kwao family by the Ga Stool.

Q. Has Stool claimed any interest in that land?

A. Yes - when Mallam Futa wanted to be there - he was brought to the Gbese Manche and even the money was handed to the Gbese Manche.

Q. Apart from that case - tell me of another?

A. That is the only one I know of. If any transactions have been made without the knowledge of the Manche - then they are stealing the land and it is the duty of the Manche to stand against them.

Q. The Gbese Stool gave land to Lomo Ansa Family from Farrar Avenue northwards to Fanofa - where Ring Road is now?

A. Yes - I have heard he was given land in that area.

In reply to Court -

Yes - Fanofa is where Ring Road is today.

Cross-examined -

Q. Do you admit that from Farrar Avenue almost up to Ring Road is now covered with houses?

A. Yes.

Q. In which instance did Gbese Manche join in the conveyance?

In the Supreme Court

Atukpai's Evidence

No.37

Linguist Borquaye.

2nd April 1951.

Cross-Examination - continued.

In the Supreme Court

Atukpai's Evidence

No.37

Linguist Borquaye.

2nd April 1951.

Cross-Examination - continued.

A. I cannot mention any particular person who did - I have always told the Manche that things are going wrong - but he does not seem to listen to my advice.

In reply to Court -

I was born in about 1893.

Cross-examined -

Q. You remember the case of the Brazilians - they were granted land?

A. Yes - all the lands were given for farming - they were not given to be sold.

Q. That covers the major part of Adabraka?

A. That land was acquired by Government.

Q. From Farrar Avenue coming south to the Junior Government School - that area?

A. That was the area given to the Brazilians for farming cassava.

Q. Government acquired the land at time of bubonic plague to make a settlement?

A. Yes - in the valley at Adabraka.

Q. Did you know that compensation for that area was paid to the Brazilians?

A. It was given to Nii Tackie Oblie the ex-Ga Manche and Nii Okaija the Gbese Manche. I am saying that as a fact. My father told me that.

Cross-examined by Enchill -

Q. You said that formerly Stool land was never sold unless the Stool was in debt?

A. Yes.

Q. In cases where Stool land was sold to pay for a Stool debt, are you saying that the purchaser got the land outright?

A. That is correct.

In reply to Court -

Q. By "outright" means he could re-sell to a stranger without leave from anybody?

A. That is so.

Cross-examined -

Q. Supposing the Stool owed money and gave land to their creditor to settle that debt is that not the same as a sale in repayment of a Stool debt?

A. Yes - it would be the same.

In reply to Court -

Q. Could it not equally be a pledge?

A. Something else would have to be said.

Cross-examined by Miss Baeta -

Q. Which Stool is senior the Gbese or the Kwashie Plan?

A. Kwashie Plan is a sub-Stool to the Gbese Stool.

Q. When did Gbese Stool come into existence?

A. We cannot say - it is a long long time ago. If Gbese are Fantis - they would not circumcise. We descend from the Nai.

No.38

LINGUIST AMARTEIFIO

Witness called by Court -

Ebenezer William Amarteifio (m) s.s. in Ga

Senior Linguist of Asere Stool. My father was a linguist but I did not succeed him. A man Djorsie succeeded my father - I succeeded this man in 1906 - since then I have been the linguist.

In the Supreme Court

Atukpai's Evidence

No.38

Linguist Amarteifio.

2nd April 1951.

Examination by Court - continued.

Q. Do you know what are the limits of the Stool lands in Accra?

A. I know some.

Q. Is any part of the Municipal Area Stool land?

A. Yes - it is all Stool land.

Q. When land is granted to a family for farming or building does it cease to be Stool land?

A. No - the Stool still has control over the land.

Q. Is there any difference if a gift of land is made to a person?

A. There is a difference. Firstly if it has been given to farm only - you have no right to give it to anyone to put up a building or to sell it. Secondly if it has been given as a gift and you are allowed to build on it - a relative of that person may be given permission by the grantee to build as well or without the lease of the Stool who granted the land.

Q. Can Stool land be sold.

A. Yes.

Q. There is no restriction upon such sales?

A. If the public refuse it cannot be sold.

Q. How will the public express its opinion?

A. It cannot be sold without consulting them.

Q. What will be done with the proceeds of the sale where the public have agreed to the sale?

A. It will be used for the Stool - it might be to pay for a debt or if money was required for any festival.

Q. If money was required for say the yam festival would a collection be made?

A. What I first saw was that land was not sold. If a yam festival was to be performed money would be collected as well as foodstuffs.

Q. If the land was sold would the Stool lose all control over it?

A. The Stool would have no further control.

Q. If there was no Stool debt could land been sold?

A. It could not.

Q. Since you have been a linguist has land been sold?

A. Yes - I refer to acquisition by Government.

Q. Have not lands been sold by individuals or members of your Stool?

A. The families in the Asere Division who have land sell them.

Q. Is there family land apart from Stool land in Asere?

A. There is no difference; they are subjects of the Stool and land is family land - the family can sell the land without permission of the Stool, but they must give the Stool drink. They must inform the Stool. That would be after the sale.

Q. Do I understand that Stool land which has been long occupied by a family and built upon may be sold to anyone without any consent of the Stool being required?

A. Yes.

Q. That land then before the sale is family land and has ceased to be Stool land?

A. That is correct - in speech it is Stool land but in practice it is family land.

Q. Can a family sell family land where there is no family debt?

A. No - they cannot - unless something has happened for instance if money is required for a big case.

In the Supreme Court

Atukpai's Evidence

No.38

Linguist Amarteifio.

2nd April 1951.

Examination by Court - continued.

Q. Before selling land will the family seek to raise the money by other means?

A. They will try and if they cannot they will sell the land.

Q. Why would they sell if they could raise the money by a pledge?

A. Some people like to sell - some like to pledge.

Q. Would you say then that practically the whole of Accra town is in practice owned by several families? 10

A. That is so.

Q. So that each family could sell its property without any reference to the Stool until after it had been sold i.e. it would only have to give the Stool drink?

A. If the families were in debt.

Q. So that if all families did sell their lands - the Stool would have lost all its rights in Stool land?

A. Yes - that is so. 20

Q. Is that the ancient law?

A. What I saw in 1885 - I was born in 1875 - was that lands were not sold.

Q. When did you first see sales of land?

A. Recently it was after 1940 - they started selling lands in Asere Quarter.

Q. Did the Stool elders do anything about this?

A. Yes the Manche stood against the families who had done so - and the families brought the purchase money to the Manche and the Manche gave the family a part. 30

Q. If you were right when you told me that a family could sell without any reference to the Manche - then would you agree that the Manche was wrong in demanding a part of the money?

A. Yes - in a sense - the Manche has the right. I want to explain. The purchaser suggested that he should see the Manche. The Manche is a witness to the sale so he gets some money.

Q. Could the Manche forbid a sale by the family?

A. He could provided he found the money for the debt.

Q. Could a family sell land in order to purchase trading goods? e.g. to buy from Kingsway, S.A.T., Machinery Company, in order to stock a store and open a Retail Shop?

A. They could not do that.

Q. How could they be prevented from doing so?

A. I have never seen that happen - no one could prevent it.

Q. Is this as you found native custom when you were young?

A. No - that is what they are doing and the land is all going out.

Q. And by your native law you are unable to prevent this?

A. I don't know of any.

Q. When you were young if a family sold land what could you do?

A. Lands were not sold then.

Q. Why were lands not sold when you were young?

A. In those days the Manchemei and people valued the land.

Q. In what ways did they value it?

A. In the same way they worshipped the Stool - so they worshipped the land. At present the people who sold the land have disgraced the Stool. If as a Chief you allow land to be sold or sell it yourself you disgrace the Stool.

In the Supreme Court

Atukpai's Evidence

No.38

Linguist Amarteifio.

2nd April 1951.

Examination by Court - continued.

Q. When the Manche receives a part of the purchase money - does that relieve his sense of disgrace?

A. He is disgracing himself - he should not accept it and tell them not to sell the land. The whole public (the Asafo) will stand against the family - they would not allow the purchaser to put up the building - they would destroy it.

Q. Who is the person entitled to create a sub-Stool?

A. If a person has displayed gallantry - his family will make the Stool for him and after that is done you will tell the Manche.

Q. What is meant by a "subordinate Stool".

A. If you are a well-to-do man you make a Stool and it is recognized by the family and you start serving it.

Q. How many Mankralos are there in the Ga State?

A. In Accra there is one. One is at Osu, one is at Labadi and the other is at Sempe.

Q. Is there a Mankralo in Gbese?

A. No - the title then is Akwashong.

No cross-examination by Lamptey

Cross-examination

Cross-examined by Enchill -

Q. Do you know if pledges of land form a part of the Ga Stool custom?

A. It is not - a Manche does not pledge land.

No.39

Linguist Quaye.

2nd April 1951.

Examination by Court.

No.39

LINGUIST QUAYE

Witness called by Court -

James Allotey Quaye (m) s.s. in Ga -

Linguist of Sempe Division. I succeeded Sarka who was my uncle. My father was not a linguist.

I succeeded my uncle about 20 years ago. While my uncle was linguist I attended State affairs with him. Sempe is a subordinate Stool under the Ga Paramount Stool. I do not know the history of its creation. There are subordinate Stools in all our villages.

Q. Before these Stools are made is the Sempe Manche consulted?

A. Yes.

Q. What ceremony, if any, is performed?

A. The villagers will slaughter sheep, make a feast in the village, drink and pour a libation in a room in the house where the feasting is held. The Sempe Manche will be informed - but will not attend the feast. The Stool will be smeared with the blood of the sheep.

Q. How many Mankralos are there in the 7 Divisions of Accra?

A. One and he comes from Sempe.

Q. What are his duties?

A. If a meeting is to be held he is responsible and in absence of the Manche he will act as Manche and among his duties he is to see that a Manche is installed.

Q. Are there any Stool lands in Accra town proper?

A. All the Stools have land there.

Q. Is there any land in Accra town which has ceased to be Stool property?

A. Yes - there is some?

Q. How did that land cease to be Stool property?

A. If there is a family that has done good work for the Stool - it will be given land.

Q. Are there many instances of that in Accra?

A. There are some. I can give only one instance of that and that is that on my mother side I

In the Supreme Court

Atukpai's Evidence

No.39

Linguist Quaye.

2nd April 1951.

Examination by Court - continued.

have land in Asere Stool land - which I inherited from my ancestors. This is land in the town at Abekan. This land has not been built over. In the centre of Accra by Weslyan Chapel there is land belonging to Abbeytsewe Family - which is family land and not Stool land.

Q. Was it ever Stool land?

A. Yes it was before - that was during my ancestor's time. This land is within Asere Stool land - but has ceased to be Stool land because the Stool gave it to the family as an outright gift.

Q. Could that family sell the land to a stranger without asking permission from anybody?

A. It could.

Q. How old are you now?

A. I am 59 years old.

Q. Has that been the native custom so long as you can remember?

A. Yes.

Q. Has that family ever sold any of the land?

A. Yes - they have sold many parts of land in Accra proper to Accra people and to strangers.

Q. Can you remember when the first sale was made?

A. I should say that some had been sold before I was born.

Q. In Accra proper and within Sempe is there more Stool land or more family land?

A. Originally it was all Stool land - it is now all occupied by families.

Q. By reason of gifts?

A. Yes.

Q. So then there is no Sempe Stool land left in Accra proper?

A. That is so.

Q. Is there any Sempe Stool land left anywhere?

A. From Korle Gonno to Lagba. That is all Stool land.

Q. Has that land been appropriated to anybody?

A. Many people live on it. If someone wants land it will be given to him and then it ceases to be Stool land.

Q. So that all Stool land will cease to exist?

A. That is so. The land can be sold without reference to anybody.

In the Supreme Court

Atukpai's Evidence

No.39

Linguist Quaye.

2nd April 1951.

Examination by Court - continued.

Adjourned to 3rd April, 1951.

(Sgd.) J. Jackson,
J.

James Allotey Quaye resumes evidence -

3rd April 1951.

No Counsel in Court - No cross-examination.

No.40

No.40

Linguist Lartey.

LINGUIST LARTEY

3rd April 1951.

Witness called by Court -

Ayikai Lartey (m) s.s. -

Examination by Court.

Am Linguist of Akumaje Division. Have been linguist for the past 2 years when I succeeded Odei - the linguist and who was related to me. He was my uncle.

In reply to Court -

My father was also a linguist after the influenza (1918).

Examined by Court -

Akumaje Division in Accra town proper is at

In the Supreme Court

Atukpai's Evidence

No.40

Linguist Lartey.

3rd April 1951.

Examination by Court - continued.

junction of Horse Road and Hansen Road and around that area.

Q. In that area is there any Stool land?

A. No - there is none.

Q. What type of holding by custom exists in that area?

A. There is Stool land in Accra proper.

Q. Is there less Stool land of your Division in Accra proper than there was fifty years ago?

A. It is exactly the same now as it was 50 years.

Q. Can you explain this apparent contradiction?

A. After return from the Awuna War - the second war (1875) land was apportioned among some of the elders and Akumaje received its portion.

Q. By what name is that portion known?

A. Akumaje Stool land.

Q. Since that war has any of that land ceased to be Stool land?

A. I did not hear that.

Q. When the Chief of Akumaje got that portion did he sub-divide it among the families in that Division?

A. He did not - he settled on it with his family.

Q. How many familes are there in Akumaje?

A. Three senior families.

Q. Has each family its own allotment of land?

A. They have not.

Q. Can Akumaje sell any part of its portion of land?

A. If Stool owes a debt it can.

Q. Before resorting to such sale must any senior person be consulted?

A. They will inform the Manche of Akumaje.

Q. From whom did Akumaje originally receive the portion of the land?

A. The Ga Manche.

Q. Would the Ga Manche have to be consulted before any such portion was sold?

A. No.

Q. If Akumaje lands were insufficient for their needs - to whom would the Akumaje Manche turn?

A. Ga Manche.

Q. Then would not the Ga Manche say: "I gave you this land and you have sold it without any reference to me - there is no more for you"?

A. He had given us the land. Yes - there would be no land left for food. I heard the evidence of the linguist of the Gbese Manche.

Q. Do you disagree when he said that after the contract of sale was completed the Ga Manche would be informed?

A. I disagree.

Q. So that so far as the control of Ga lands is concerned he is no better a person than any of the seven Divisional Manches?

A. That is so.

Q. Has the Korle Webii any control over Akumaje lands?

A. He has no control at all.

Q. When it was said that the Korle Webii is the caretaker of Ga lands - of which particular land is he the caretaker?

A. They worship the Lagoon and they control all the land around.

In the Supreme Court

Atukpai's Evidence

No.40

Linguist Lartey.

3rd April 1951.

Examination by Court - continued.

Q. That means then to the north, west and east of Lagoon?

A. That is so.

Q. Then from Gbese to the Korle Lagoon would be under the caretakership of the Korle Webii?

A. That is so.

Q. And that would include Akumaje in Accra proper?

A. No we form a boundary with them.

Q. Who made that boundary?

A. Our ancestors. Yes they knew the Korle Priest looked after the lands.

Q. Then why do you not consult the Korle Webii before you sell?

A. He is not the caretaker of Akumaje Stool lands.

Cross-Examination.

Cross-examined by Lamptey -

Q. Before the fetish grove came to where it is now in Gbese it was at Sarkoshishi (in Asere)?

A. That is so. Yes Nii Ayi Kai founded Akumaje.

Q. He was a Gbese man?

A. Yes.

Q. Think of that time. Did your ancestors tell you that the Korle Webii then looked after all the Korle land?

A. No - I was not told all you are saying.

Q. And you say that your ancestor did not tell you who gave Ayi Kai the land now called Akumaje?

A. It was said that the Manche who was on the Stool before Tackie gave the land.

Q. Do you say that until 1875 there was not in existence such a thing as the Akumaje Division?

A. There was a quarter in Accra called Akumaje

before then but the land had not then been blessed.

Q. Who was the caretaker of the lands in that area before that "blessing"?

A. There was nobody.

Q. Tettey Gbeke is your son-in-law?

A. Yes.

No.40

Linguist Lartey.

3rd April 1951.

No cross-examination by Ollennu -

No further cross-examination.

Examination by Court - continued.

No.41

Linguist Quaye (recalled)

3rd April 1951.

LINGUIST QUAYE (RECALLED)

James Allotey Quaye, re-called by leave of Court-

Cross-examined by Lamptey -

Cross-Examination.

Q. You were asked yesterday what was old custom - not what has happened recently - do you say that apart from Accra which had been settled at the time you were born - that the farm lands at the back of Accra may be sold by a subject of a Divisional Stool without reference to the Divisional Manche e.g. a subject of Sempe given land to farm and live on - can he sell such land without consulting the Sempe Manche - is that the custom?

A. According to Ga custom if the subject had been given that land to farm and settle on, he has no right to sell the land.

Q. Why did you tell His Honour yesterday that a subject of the Stool could sell land without the consent of the Manches?

A. I did not say so.

In the Supreme Court

Atukpai's Evidence

No.41

Linguist Quaye (recalled)

3rd April 1951.

Cross-examination - continued.

Cross-examined by Ollennu -

Q. You said there were distinctions - what are these?

A. If you are a subject of a Manche Stool and the land has been given to you as a gift you have the right to sell it and you will tell the Manche after you have done so and give him a drink.

In reply to Court -

Q. If the subject did not inform the Manche - what action will a Manche take in such circumstances?

A. The Manche would send for you and you would be fined 32/-.

Cross-examined -

Q. There are certain Sempe lands which are owned by Sempe families?

A. That is so.

Q. Is it not correct that these families have been selling their family lands without reference to the Sempe Manche?

A. Some of them sell the land before they tell the Manche.

In reply to Court -

Q. Have you ever sold any land yourself?

A. Yes - I sold some of my own land 2 years ago.

Q. Give me the earliest date on which you have ever sold any land?

A. About 4 years ago.

No.42

LINGUIST DODOO

In the Supreme Court

Atukpai's Evidence

No.42

Linguist Dodoo.

3rd April 1951.

Witness called by Court -

Robert Amamoon Dodoo (m) s.s. in Ga -

Linguist to Nleshi Manche. Linguist since 8 or 9 years ago. Succeeded Obayo Kofi who was my cousin. My father was not a linguist.

The Nleshi Division in Accra proper is situate at James Fort in James Town. We are the descendants of people said to have been brought here by a European called James.

Examination by Court.

Q. Are there any Nleshi Stool lands in the built up area of Accra?

A. There are.

Q. How were they created Stool lands?

A. I was not told.

Q. How do you know that they are Stool lands,

A. During the performance of customary rites I got to know it from my father.

Q. Did your father ever tell you that the Stool lands in ancient days were larger than they were when he told you this?

A. He did not.

Q. Since you came to know that certain lands were Stool lands - have any of these lands ceased to be known as Stool lands?

A. They are still under the Stool.

Q. Do people regard Stool lands with any kind of religious veneration?

A. We worship the gods of the Stool lands.

Q. Is the prosperity of these lands in any way dependent upon the goodwill of these gods?

In the Supreme Court

Atukpai's Evidence

No.42

Linguist Dodoo.

3rd April 1951.

Examination by Court - continued.

A. Yes - because we give them food every year.

Q. What is the belief if you ceased to give them food?

A. There will be trouble on the land - there will be drought and famine.

Q. If you sold these lands say to the United Africa Company how would the goodwill of the gods be retained?

A. Before we sold the land we would let the United Africa Company know that we had a fetish on the land and we would reserve the right to go on the land to make our offerings.

Q. So, in fact you never part with complete control of the lands?

A. We would beg the United Africa Company if it was not in the Deed of Conveyance.

Q. The Assessor tells me that to this very day such food is offered within the precinct of the Government House?

A. That is so.

Q. Would you tell me to what extent, if at all, Divisional Stool lands may be sold?

A. There might be a Stool debt and the Stool had no money - it would pay the debt.

Q. If that land had been occupied for very many years by a particular family what would happen then?

A. If a family had that land for very many years - the Stool would give that family land somewhere else.

Q. If that family, and not the Stool, owed the debt could that family sell that land?

A. The family would inform the Chief if it was in debt and would ask for permission from the Stool to sell a portion of land.

Q. You have heard other witnesses say that no such

permission is required - have you any comments to make on that evidence?

In the Supreme Court

Atukpai's Evidence

No.42

Linguist Dodoo.

3rd April 1951.

Examination by Court - continued.

A. According to Ga custom - the Stool must be informed before family land is sold.

Q. I am told that lands are given to the families in a manner described as "outright" - could it not sell such lands?

A. It has no business to do so unless the Stool have given their permission.

Q. Since you have been a linguist can you recollect any occasion upon which such a family has sought such permission?

A. No.

Q. Can you recollect any instance when a family have sold <u>without</u> asking such permission?

A. No.

Q. It has been said by some Judges that Stool lands become family lands and then been owned by the family as their absolute property do you agree?

A. If that happened the Stool itself is not in existence. If Stool lands ceased to exist - then there would be no need for a Stool to remain. The reason I say that is that if Stool land becomes family land - then there would be no land left for the Stool and the gods would kill all the people.

<u>Cross-examined by Lamptey</u> -

Cross-Examination.

Q. Even today, in James Town, Stool lands at Korle Gonno are occupied by James Town families?

A. That is so.

Q. Have any of those families, even today, the right to sell the land?

A. They have not without permission from the Stool. The Nleshi lingust gave evidence in the Weija Waterworks Enquiry in 1916.

Q. And that when compensation was paid the James

In the Supreme Court

Atukpai's Evidence

No.42

Linguist Dodoo.

3rd April 1951.

Cross-Examination - continued.

Town Manche gave a portion of it to the Ga Manche?

A. That I would not know. I was not a linguist then.

Cross-examined by Enchill -

Q. Are there any other circumstances other than debt in which a Stool may sell land?

A. Except for a debt they would not sell land.

Q. When land has been sold to pay a Stool debt does the Stool retain any interest in the land?

A. If it was an outright sale then the Stool would have no interest.

In reply to Court -

Q. The offering to the gods would be forgone?

A. No - we would stipulate that the purchaser permitted us to sprinkle food on the land each year.

Cross-examined by Enchill -

Q. If the purchaser refused to permit it - then the Stool might be compelled to sell it outright?

A. If purchaser would not agree would not sell - if we did we would be killed by the gods.

In reply to Court -

Q. Is there any Stool land upon which such offerings are unnecessary?

A. There are many such parts of Stool land.

Cross-examined -

Q. If such land was sold the Stool no longer has an interest in such land?

A. That is so.

In reply to Court -

Q. Could you at any further date buy back that land

even were the purchaser unwilling to sell?

A. It could not do so.

Q. Could I, a stranger, purchase this complete interest?

A. Yes - you could.

Cross-examined -

Q. If money was owing by the Stool to an individual and the Stool gave the individual land in settlement of that debt would the position be the same?

A. I want that question to be much clearer as there is a difference between pledging and selling.

Q. Have you ever been told of any Stool pledging land to raise money to pay a debt?

A. Not in Nleshi.

In reply to Court -

Q. Have you ever known of a case in which your Stool has sold Stool land to discharge a debt?

A. I know of no such case.

Cross-examined by Ollennu -

Q. Is it correct that when your ancestors came first they occupied Sempe Stool lands?

A. I don't know that - how James Town got this land I don't know.

Q. Do you know the Ga phrase "yi ba fo" (selling outright)?

A. I know it.

Q. Is it correct that it literally means "cutting the leaf from the tree"?

A. That is so.

In reply to Court -

Q. So the tree remains undamaged?

In the Supreme Court

Atukpai's Evidence

No.42

Linguist Dodoo.

3rd April 1951.

Cross-examination - continued.

A. That is so.

Cross-examined -

Q. Is not that same phrase used when there is either an absolute gift or a sale of land?

A. That is so.

Q. If such land is sold and there is no fetish on it - there is no reservation to the Stool to sprinkle food?

A. That is so.

Q. You know that the Stool can either sell or make an absolute gift. If Stool wants to sell land - cannot a subject of the Stool buy if he has money?

A. That is correct - if the Stool wants money.

In reply to Court -

Q. Would it be necessary to sell if a pledge could raise the money to discharge the debt?

A. The Stool might like to pledge it - but the subject might not be willing.

Q. Is it not a common place to pledge land to raise money e.g. to secure a cocoa customer?

A. Yes. The Stool could pledge the land if it would find someone to advance the money.

Cross-examined by Ollennu -

Q. Do you know that if a Stool makes an outright gift to a family subject to the Stool that family becomes the absolute owner of that land?

A. Yes - if it were given as an absolute gift.

In reply to Court -

Q. And in such a case would the consent of the Stool be necessary before the family could sell?

A. It would be necessary - because the Stool gave the land and they would have to be told.

Cross-examined -

Q. Is the Manche not merely informed after the sale because he is a subject of the Stool?

A. No - if he did not tell the Manche that does not show any respect.

In reply to Court -

Q. If he did sell without first telling the Manche could he be punished by customary law?

A. Yes.

Q. What would be the punishment?

A. He would be fined.

Q. Would forfeiture even be ordered in such cases?

A. No.

Q. You heard one witness say yesterday that in olden days such a man would be driven out of his family house. Have you ever heard of such a thing in your Division?

A. I have not.

Q. In James Town are lands ever given as "gifts"?

A. They are not given as gifts - but if a person wants land he comes to the Manche i.e. a Stool subject asks for land to put up a building and it will be given to him.

Cross-examined by Ollennu -

Q. You know the area in front of Accra Royal School occupied by the C.F.A.O.?

A. Yes - I know it.

Q. Did you know it was sold by the Abloh-Mills family?

A. No - I did not know that. I know it is occupied by the C.F.A.O.

Q. You know the Sanbu Zongo area (Lartebiokorshie)?

In the Supreme Court

Atukpai's Evidence

No.42

Linguist Dodoo.

3rd April 1951.

Cross-Examination - continued.

Did you know it was owned by Abloh-Mills family?

A. I know that is James Town Stool land. I do not know it belongs to Abloh-Mills family. I have heard that they had been litigating - but I do not know what for.

In reply to Court -

Yes - we regard litigation as a disgrace.

Cross-examined -

Q. Did you not give evidence in a case between Abloh-Mills and Ashia-Mills?

A. No. I did not.

Cross-examined by Ollennu -

I know the land on which Palladium stands. It is in James Town Stool land.

Q. Do you know it was owned by the Hansen family?

A. I don't know that. I know it is James Town Stool land.

Assessor -

In James Town no one would dare to sell land without the permission of the Manche.

No.43

Linguist Hagan.

3rd April 1951.

Examination by Court.

No.43

LINGUIST HAGAN

Witness called by Court -

Kofi Hagan (m) s.s. in Ga -

Linguist of Otublohum Division. Have been a linguist for 15 years. My father was not a linguist. I succeeded my uncle as a linguist.

Q. You have heard the evidence of the five linguists already called. I would like to have your views of customary law in relation to the matter dealt with?

A. According to our custom we don't sell lands. Therefore according to our custom it is not correct to say that we either sell or pledge lands according to custom. We only give our lands to people who want land to live on. If the land is given to you and you behave well you live on the land for ever. But if you misbehave you will be driven out of the land. This is all what I know.

In the Supreme Court

Atukpai's Evidence

No.43

Linguist Hagan.

3rd April 1951.

Examination by Court - continued.

No cross-examination by Lamptey.

No cross-examination by Ollennu.

Cross-examined by Enchill -

Q. Does the Stool ever sell land in any circumstances at all?

A. It never sold land before - therefore I cannot say whether there are any circumstances or not in which land could be sold.

(Sgd.) J. Jackson,
J.

No.44

LINGUIST ALIMO

No.44

Linguist Alimo.

4th April 1951.

Examination by Court.

Witness called by Court -

Alimo (m) s.s. in Ga -

Linguist of Ga Manche. Have been linguist since 8 years. I succeeded my father who was linguist before me.

Abola Mantse has its own linguist. There are 7 divisions in Accra. Each Division has its own Stool. Each Stool has lands attached to it. The Ga Manche is the father of all 7 Stools and he is the owner of all the lands attached to the 7 Stools.

In practice each Stool looks after its own land.

In the Supreme Court

Atukpai's Evidence

No.44

Linguist Alimo.

4th April 1951.

Examination by Court - continued.

Q. Is there any circumstance in which the Ga Manche could interfere with the several administration of the land by these Divisions?

A. The Ga Manche cannot interfere if the land is being dealt with in accordance with custom.

Q. Could the Stools sell their lands without any reference whatsoever to the Ga Manche?

A. They have that right.

Q. Can you give me any instance of land being dealt with contrary to custom?

A. I have not witnessed any dealings in land contrary to custom for me to be able to say.

Q. You are aware of the sales of land in Kokomlemle?

A. Yes I know.

Q. I understand from your previous replies that what has been done at Kokomlemle has the approval of the Ga Manche?

A. I know that Kokomlemle has been sold and that action has been taken in the Court.

Q. You know that the Ga Manche has joined in this action?

A. Yes.

Q. Why then is he interfering in land matters?

A. Ga Manche cannot withdraw from the case.

Q. I understand from you he has no interest in the land whatsoever?

A. The Ga Paramount Stool is head of all the Stool lands and has an interest in the lands.

Cross-Examination.

Cross-examined by Lamptey -

Q. You said if a Divisional Stool chose to sell its lands the Ga Manche would not interfere?

A. He has right to sell without Ga Manche's interference but Ga Manche has a share in the money.

Q. If a subject of a Divisional Stool starts selling lands without reference to the Stool what will happen to him?

A. He has no right to do it. He would have stolen the land. He would be dealt with as a thief. In olden days he would be expelled and executed. In ancient days sales were illegal.

In reply to Court -

Q. What has softened your hearts?

A. The Europeans who had brought us money.

Cross-examined -

I don't know little about the connection between the Ga and Gbese Stools.

In reply to Court -

Q. Have you ever heard that the Ga Stool to the Gbese Stool is like uncle to nephew?

A. I know that.

Q. Why is that simile introduced?

A. It would mean that Gbese Stool inherit the Ga Stool. The Ga Manche is not selected from Gbese. He is taken from the Ruling House in Abola Division. It is Abola-Tumawe.

Cross-examined by Lamptey -

Q. Does not Gbese Manche act when Ga Stool falls vacant?

A. That is correct. I don't know that Kokomlemle lands belong to Gbese Stool.

In reply to Court -

Q. To whom does it belong?

A. I don't know.

Q. Have you yet decided in your private meetings to whom it shall belong?

In the Supreme Court

Atukpai's Evidence

No.44

Linguist Alimo.

4th April 1951.

Cross-Examination - continued.

A. I've not heard of any such meetings.

Cross-examined -

I was linguist to the late Nii Tackie Tawia II. I remember the case before M'Carthy, J. in 1947 - I was not in Court.

Cross-examined by Ollennu -

Q. Do you know that in addition to the Divisional Stools there are sub-stools in Accra?

A. I do not know. I've heard of the Stool of Ankra Family of Otublohum.

Q. Can you remember any other sub-stools e.g. in Alimo House or your own house?

A. Yes - there is a sub-stool.

Q. Do you know of any sub-division in Gbese which has a sub-stool?

A. Nii Tettey Churu Family Stool. It is called Atukpai.

In reply to Court -

Q. How long have they had the Stool?

A. A very long time. The Stool is in the Stool house now.

Cross-examined -

Q. Do these sub-stools own land?

A. Yes - they have lands.

Q. Have they the same rights over these lands as have the Divisional Stools?

A. Once a Stool has been created and land attached it has.

In reply to Court -

Q. What formalities have to be observed before lands can become attached to such a sub-stool?

A. As soon as the Stool is created - people are deputed to apportion land to that Stool.

Q. Which people apportion the land to the sub-stool?

A. The people from the Divisional Stool as well as the people from the sub-stool and they will go onto the land - it will be apportioned to the sub-stool.

Q. Can there be any doubt as to what are the boundaries of land so apportioned?

A. There can be no doubt. If it can be found who farmed first there the land belongs to that man.

Cross-examined by Ollennu -

Q. Can you explain what you mean by a man who steals land?

A. I mean a man who goes about selling land.

Cross-examined by Lamptey -

Q. Your father, Okyeame Lartey was given a piece of land at Alajo by the Korle Webii?

A. That is true.

Q. Apart from that land has your family - the Alimo family - any Stool land?

A. It has no other land except the one at Alajo.

Q. Did your father found the Stool?

A. It was there before my father came.

Q. But it had no land attached to it before your father got the land at Alajo?

A. The land at Alajo was given in my grandfather's time.

Q. Was the man who founded the Stool - the man to whom the land was given?

A. No.

In the Supreme Court

Atukpai's Evidence

No.44

Linguist Alimo.

4th April 1951

Cross-Examination - continued.

In reply to Court -

Q. So the Stool when first created had no land attached to it?

A. That is so.

(An unsatisfactory witness in demeanour - very hesitant in his answers).

No.45

F.H.S.Simpson (called by Court) as to plan "142".

31st May 1951.

Examination.

No. 45

F.H.S. SIMPSON (CALLED BY COURT) AS TO PLAN "142"

Witness called by Court -

Frank Herman Shang Simpson (m) s.s. in English

Licensed Surveyor. I marked the claims of the parties as I had marked them on plan "A". The lines marked in green show the areas marked in biscuit colour on Exhibit "B". The numbers in black ink show the plots in dispute shown to me by the Korle Priest's representative - the parties themselves would not show them to me.

Mr. Ollennu -

It seems that the location of the plots are correct.

Lamptey -

I concur and consent to plan going in.

(Admitted and marked "142").

Judgment read.

Plans marked "A", "B" and "142" are to be retained in this Court as forming a part of the record.

(Sgd.) J. Jackson,
J.

31. 5. 51.

No. 46

In the Supreme Court

No.46
Judgment.
31st May 1951.

JUDGMENT

(This judgment has been divided into numbered sections for convenience of reference).

In the Supreme Court of the Gold Coast, Eastern Judicial Division (Land Division) held at Victoriaborg, Accra, on Thursday the 31st day of May, 1951, before Jackson, J.

JUDGMENT -

1. The following twenty-five (25) causes relate to claims made by various Stools, families or individuals praying for declarations of theirtitle to lands. There are in addition claims for damages for trespass, and prayers for injunctions. The land in question is for the greater part known popularly either as Kokomlemle or Akwandor lands.

2. The following are the names of the parties to each of those causes and the date of the issue of the writ upon which the causes of action are founded.

(1) 7/1951.

E.J. Ashrifi, A.E. Narh and Charles Pappoe Allotey	Writ not available. Hearing of suit commenced in Tribunal of Paramount Chief of the Ga State on 29th April, 1940. Claim set out at page 2 of Record of Appeal in docket 11/45. Now before this Court on transfer after order for re-trial.
v:	
H.E. Golightly and Tettey Gbeke II	

In the Supreme Court

No.46
Judgment.

31st May 1951 - continued.

(2) 11/1943.

C.B. Nettey (substituted by C.O. Aryee) on behalf of himself and the families of Nii Aryee Diki, Korti Clanhene and Nee Nettey. — 26th April, 1943.

v:

1. Kwaku Fori
2. Mallam Alibraka
3. Baba
4. Manueh
5. D.M. Ettah
6. Tettey Gbeke representing Atukpai.
7. Dsasetse P. Tetteh Botchey of Osu Stool.

(3) 15/1943.

Mamie Afiyea, as Head and representative of the Okaikor Churu Family of Gbese Quarter, Accra. — 3rd June, 1943.

v:

Tettey Gbeke II representing the Atukpais, Comfort Okraku and Sohby Baksmaty.

(4) 1/1944

H.C. Kotey — 20th October, 1943.

v:

1. J.W. Armah
2. Nii Tettey Gbeke
3. Numo Ayitey Cobblah (for and on behalf of the Ga, Gbese and Korle Stools) (joined during present proceedings).

(5) 19/1943.

Nii Tettey Gbeke

v:

Eric Lutterodt
Quarshie Solomon
Conrad Lutterodt
Nii Azuma III
Okwei Omaboe, Osiahene of Osu Mantse
on behalf of the Ga, Gbese and Korle Stools.

No writ was issued upon which action can be maintained. Order of Transfer was made upon a misapprehension as to its issue. There was in fact an application only - no writ was issued.

(6) 2/1944.

Nii Tettey Gbeke, Dsasetse of Atukpai for himself and as representing the Stool and people of Atukpai.

25th November, 1943

v:

1. Eric Lutterodt
2. Quarshie Solomon
3. Conrad Lutterodt
4. Numo Ayitey Cobblah (for Ga, Gbese and Korle Stools) (joined during this present proceedings).

(7) 7/1944.

Odoitso Odoi Kwao of Christiansborg, Acting Head of Nee Odoi Kwao Family of Christiansborg and Accra on behalf of herself and as representing the members of the said Nee Odoi Kwao Family.

28th January, 1944

v:

1. Conrad Lutterodt
2. Mallam Ata
3. Mallam Solomon Tuka alias Quarshie Solomon
4. Codjoe Solomon
5. Bako
6. Adamu
7. Imoru
8. Larwei Amoaku

In the Supreme Court

No.46

Judgment.

31st May 1951 - continued.

9. Alfred Numo
10. Nii Azuma III (Brazilian)
11. Okwei Omaboe (for Osu Stool)
12. Numo Ayitey Cobblah for Ga, Gbese and Korle Stools
13. Nii Tettey Gbeke for Atukpai Stool
14. H.C. Kotey for Kotey Family
15. W.S. Annan for Osu Tetteh Family (10-15 joined during this present proceedings).

(8) 8/1945.

J.J. Ocquaye as Head of Nettey Quashie Family. — 23rd November, 1944

v:

S.S.Coker (substituted by C.O. Aryee) for himself and as Head of the Families of Ayi Diki and Nee Tettey.

(9) 10/1944.

Odoitso Odoi Kwao of Christiansborg, Acting Head of Nee Odoi Kwao Family of Christiansborg and Accra on behalf of herself and as representing the members of the said Nee Odoi Kwao Family. — 24th January, 1944

v:

Eric Lutterodt of Accra on behalf of himself and as Head and representing the Wilhelm Lutterodt Family of Accra.

(10) 23/1944.

H.C. Kotey as Head and representative of the Nii Kotey Family. — 9th October, 1944

v:

1. Nikoi Kotey
2. Kwaku Aponsah
3. Q. Lutterodt
4. E.P. Lutterodt
5. Numo Ayitey Cobblah for Ga, Gbese and Korle Stools (5th joined during the present proceedings).

(11) 25/1944

E.B. Okai and Sarah Okai — 31st July, 1944

v:

Mary Chamla Ankrah and Nii Tettey Gbeke

(12) 116/1945.

E.B. Okai and Sarah Okai — 9th October, 1945

v:

E.K. Ashanti and H.E. Farrar.

(13) 15/1948

E.B. Okai and Sarah Okai — 16th July, 1947

v:

1. E.M. Cofie
2. J.T. Marbell
3. E.A. Marbell.

(14) 17/1948

E.B. Okai and Sarah Okai — 24th July 1947

v:

J E. Koney.

(15) 14/1948

Obeyea, Ayeley and Asantuwah as successors of late Madam Elizabeth Lamptey alias Afi (deceased) — 17th November 1947

v:

G. Sackey

(16) 18/1948

Obeyea, Ayeley and Asantewah (as successors of late Elizabeth Lamptey alias Afi deceased). — 29th December 1947

v:

J.C. Nortey.

In the Supreme Court

No.46

Judgment.

31st May 1951 - continued.

(17) 13/1948

Mustapha Thompson — 22nd January 1948

v:

1. C.A. Ashong (substituted by Emanuel Bernardson Ashong)
2. Akuyea Addy as next friend of her infant daughter Lucy Beatrice Ashong.

(18) 6/1949

J.J. Ocquaye, Head of Nii Nettey Quarshie Family. — 4th March, 1949

v:

Charles Okoe Aryee, Head de son tort of the late Nii Aryee Diki family, Numo Ayitey Cobblah for and on behalf of the Ga, Gbese and Korle Stools (joined during present proceedings).

(19) 5/1949

A.A. Allotey, Eric P. Lutterodt for and on behalf of the Lutterodt family of Accra. — 16th February, 1949

v:

Nii Tettey Gbeke II Atukpai Stool Dsasetse for himself and as representing the Atukpai Stool of Gbese, Accra.

(20) 33/1950

Numo Ayitey Cobblah, Korle Priest for and on behalf of the Korle Stool, Gbese Stool and Ga Mantse Stool. — 22nd August, 1949

v:

J.W. Armah.

In the Supreme Court

No.46

Judgment.

31st May 1951 - continued.

(21) 47/1950

Numo Ayitey Cobblah, Korle Priest for and on behalf of the Korle Stool, the Gbese Stool and the Ga Mantse Stool. — 1st September 1949

v:

Madam Theresa Amerley Lartey.

(22) 38/1950

Numo Ayitey Cobblah, Korle Priest for and on behalf of himself, the Korle Stool, the Gbese Stool and the Ga Mantse Stool. — 1st September 1949

v:

E.B. Kadire Gimba.

(23) 46/1950

Nii Tettey Gbeke II on behalf of himself and as representative of all the principal members of the Atukpai Stool. — 26th September 1949

v:

D.A. Owuredu and
R.O. Ammah

(24) 39/1950

1. R.A. Bannerman
2. Numo Ayitey Cobblah, Korle Priest, on behalf of the Ga, Gbese and Korle Stools. — 27th July 1950

v:

1. J.S. Abbey
2. Nii Tettey Gbeke II, Acting Mankralo of Atukpai.

In the Supreme Court

No.46

Judgment.

31st May 1951 - continued.

(25) 41/1950

Thomas Kojo Halm-Owoo 22nd July 1950

v:

1. S.K. Dodoo
2. Wilkinson Sai Annan for Osu Tetteh Family (joined during this present proceedings).

3. On the 2nd January last sixteen of these causes came before me for trial when it was agreed by Counsel and the parties concerned that the land embraced in these actions was the Stool land of the Ga Manche and who had made certain grants of portions of it to families and to individuals who were either plaintiffs or defendants in this action. Here I would observe that the use of the word "grant" was not used in its strict legal sense as meaning the transfer of ownership. It was used solely for the purpose of admission as relating to transfer of property in the land.

4. It was agreed that to facilitate the trial of the actions they should be consolidated and an Order for consolidation was made. Later during the trial when it came to my notice that other causes relating to the same land were awaiting trial, and when the parties appeared before me - these actions were again consolidated with the former ones and in all 25 causes were so consolidated.

5. It was agreed that the case should be opened by the Ga Stool (represented by Numo Ayitey Cobblah who sued on behalf of the Ga, Gbese and Korle Stools) to enable evidence to be given as to the rights in property which had been conveyed by that Stool to others, and that the other plaintiffs or defendants who claimed title under the Ga Stool should then adduce their evidence in support of their claims, and that upon the conclusion of that evidence I would hear the evidence in support of each individual cause brought before me, reserving liberty for the parties who had already given evidence to adduce further evidence in support of each individual action.

6. Later in the course of the trial other parties

who appeared to me to be likely to be affected by the result of the trial were given leave to be joined as parties and were so joined. I refer in particular to the claims made by the Osu Stool, the Brazilians and the Osu Tetteh Family.

7. The Plan exhibited as "A" shows the area claimed by the principal Stools and families, whilst the plan admitted and marked as "B" supplements plan "A" and affords illustration of the sites referred to in much of the evidence given before me. The land was visited by me on three occasions, on one of which I heard additional evidence in the hamlet of Agortin, and on a fourth visit, and the last occasion, to hear the evidence of an old woman in her house at Akradi.

8. It will be seen from plan "A" that the land is situate immediately to the north of Accra and is on the right hand side of the main Nsawam-Cape Coast road as one goes out from Accra. The evidence satisfies me that until the last 4 to 5 years or so the land was used practically exclusively for farming purposes and that apart from the older villages of Kpehe Kokomlemle, Akradi, Agortin and Senchi on the west and the fairly recent settlement of strangers on the north at "Lagos Town", and on the north-east at Nima there were no buildings of a modern design.

9. Today the exact contrary is shown. There is barely the vestige of a farm existing in the western and southern areas, and that land is now covered by houses of modern design constructed of cement blocks and some of which have two, and one has even, three storeys (i.e. ground floor and two storeys) and where the buildings have not been completed there are either the foundations of other new buildings or the ground is strewn with building material in the preparation for the erection of other new houses. When I saw the land in October 1946 whilst I was in Accra upon other duties that land at a casual glance could be described as open and uncultivated "bush". When it is observed that no less than 12 of these causes were commenced before the end of 1945, causes in which injunctions had been asked for, but which in some cases had not been granted, one can only observe that the result has been deplorable, and that what has been sought to be avoided by the issue of these writs, namely the indiscriminate sale of land

In the Supreme Court

No.46

Judgment.

31st May 1951 - continued.

for building purposes, has been destroyed, very largely by the lack of vigour of all persons engaged in that litigation, and not least by the conduct of this Court in permitting the adjournments as it has done.

10. I have had over 30 years practical experience of land litigation in West Africa and I am only too well aware of the causes of these delays, as I am aware of their effects. The effects are well illustrated in these proceedings and have resulted in a trial lasting fifteen weeks which had it been conducted five years ago might well have been concluded in as many hours. What could then have been seen by the Court on the land i.e. the physical view of the acts of occupation of people living and farming on the land, as contrasted now with the interminable examination and cross-examination of witnesses to enable the Court to determine these facts, which it could then have seen for itself with very little effort. Delay truly tends to defeat justice and I have done my best with t he material now available to me.

11. The land is situate in an area known to some as Akwando or Kokomlemle. To others it is known as Akwando or Fanofa lands. For the purposes of this judgment I will refer to these parcels of land by the name which has acquired popularity, namely Kokomlemle lands.

12. Kokomlemle is a hamlet situate about half a mile south of the 3 mile post on the main Accra/ Nsawam road. It is situate on the extreme western side of the lands in dispute and which cover an area of approximately two (2) square miles. The evidence shows that until about 1938 or so the land was used exclusively for farming. It is poor farming land suitable only for the cultivation of such crops as cassava and groundnuts. The land is also covered with small and stunted mango and cashew trees which illustrates well the poverty of the soil. On the western side the land rises from Ring Road northwards to the hamlet of Kokomlemle. Going from west to east the land falls away, then rises again fairly steeply up to the plateau south of "Lagos Town" and which area is more commonly known as Akwando. The land then falls away again sharply to the east and down to the new strangers' settlement known as Nima and again slopes down in a southerly direction across

the land later referred to as Akanetso. The low lying country to the south of the Ring Road and following the water course (now dry) and described on plan "B" as Mamobi Djo, is commonly described locally as Fanofa.

13. It is high ground and enjoys the prevailing breezes coming from the sea, without being too close to suffer their ill and corroding effects upon building materials. It is an area ideally situated by nature to form a good residential suburb just outside of the busy trading centre in Accra and has already, whilst these actions have been lying dormant in the Court, developed into what I would style a good middle-class residential area. By Order 47 dated 9th October, 1943, made under Section 4 of the Accra Town Council Ordinance, 1943 and with reference to the plan Z1765 a reproduction of which appears in the Schedule to that Order, the whole area in dispute now falls within the limits of Accra and to which the Building Regulations have been applied so as to conform with the planned lay-out as seen in the plan exhibited and marked as No.142.

14. Thus the area has been laid out in plan, although not on the ground, in plots designed to afford facilities for the extension of the built up area in Accra just south of the area in dispute and which now covers the whole of the area in dispute. The land thus developed its potentialities and the persons then in occupation and who claimed to have rights of occupation commenced within the past 10 years to sell the land, and since the writs in the earlier action were issued i.e. nearly 6 years ago the pace has so accelerated i.e. despite the applications for injunctions that now there remains very little of the land which has not been sold and built upon. Further the parties to these actions represent merely a fraction of the persons who are likely to be affected by the decisions which will be given in this judgment. When it is realized upon the evidence that plots of land measuring 125 feet by 75 feet are being sold for as much as £75 i.e. more than £340 an acre, the value of this land alone, without having any regard whatsoever to the value of the buildings upon it, has a potential value of between a quarter and a half million pounds sterling, then the temptation to sell can be appreciated, and it is in relation

In the Supreme Court

No.46

Judgment.

31st May 1951 - continued.

to these sales and the denial by one party of another party's right to sell, that these cases have come before the Court for determination.

15. An appreciation of the historical background of the people who claim to be the owners of the lands is essential to a full understanding not only of the claims, but of the nature of the dealings in the land.

16. This evidence is derived from the testimony of John Nyan Plange who gave evidence in this respect on the 29th January last, and that of Dr. C.E. Reindorf the Dsasetse of the Stool who gave evidence on the 20th March. The former is one of the elders of the Korle or Onormroko Family. The latter is the Dsasetse and the Head of his family and a son of the late Revd. C.C. Reindorf whose "History of the Gold Coast and Ashanti" has been referred to in the Courts. That historical or traditional evidence I accept as being the history as it is accepted today. There was no evidence before me to the contrary.

17. The tribe that inhabits the lands around Accra are called the Gas. They are said to have come out of the sea and there is a belief that rocks now in the sea are the fossilised remains of some who failed to get ashore, and these rocks are still today the subject of worship by the fetish priests. Of that earlier existence there is only tradition of a fictional order and the earliest historical knowledge of the Gas or certainly the Gbese section of the Gas, is that they inhabited a place called Ayawaso, about 12 miles north of Accra. Among the Gbese people was a family called Onormroko and the tradition is that they were hunters and that during their travels they discovered the Korle Lagoon, which runs into the sea just west of James Town.

18. There they are said to have found two large pots containing some beads, named "Korle", which they took home with them to their hunting camp. There a woman named Dede is said to have become inspired by the spirit of the lagoon and what is now known as the Korle Fetish then came into being, and the lands all around were placed under the protection of the priestess (Wulomo) of that juju and from that day to this has been known as the Korle Wulomo.

19. In those ancient days the Priest was regarded

as the owner of all the lands around, and which are now known as Accra and which include the lands now in dispute.

20. The people from Gbese then migrated from Ayawaso to the coast and settled in the area where the Gbese Quarter is today. In Accra it is said they met the Ga Manche and it is said that in about the year 1733 the Stool was first created and the Gbese Stool then became subordinate to that of the Ga Stool.

21. No doubt this tradition might be denied by other sections of the Ga Tribe and no one can be dogmatic as to what happened in these ancient days and of which there is no written record. The tradition I have narrated is the one which is regarded as binding only upon the Gbese and the Ga Stool in its relation to the Gbese Stool.

22. The evidence before me, and this evidence is afforded in the judgment delivered by Crampton Smyly, C.J. on the 24th July, 1918, in an Enquiry under the Public Lands Ordinance No.8 of 1876 in re the land for the Accra Water Works shows that the Ga Tribe is divided into three divisions:- Ngleshie or James Town on the west, Kinka or Ussher Town in the centre, and Osu or Christiansborg to the east - all under the Manche of Abola quarter in Kinka (afterwards described as the Ga Manche).

23. Kinka or Ussher Town is divided into four quarters namely Abola, Asere, Gbese and Otublohum forming the centre. Ngleshie or James Town into three quarters namely those of Alata, Sempe and Akumaji the left wing, and those on the right wing comprise Osu, La, Teshi Nungwa and Temma.

24. There is no dispute that the Gas were immigrants, and that after their arrival the Sempes and Akumajis separated themselves, either from the Aseres or the Gbeses and settled on the other side of the Korle Lagoon the Sempes subsequently returning to the side and that the English came at the latest 1762 and built James Fort.

25. The traditional evidence as to the origin of the Korle Fetish if it is to be accepted, and I think it must be accepted, shows that the Korle family came from a quarter in the same Division as

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Abola, from which the Ga Manche came, and that in consequence the relationship of the Ga Manche to the Gbese Manche is closer than that for instance with the Sempe or Osu Manche and for that reason no doubt the relationship of the Ga Manche to the Gbese Manche was described to me by Dr. Reindorf as being that of "uncle and nephew". That early age was described to me as being the age of the rule of the Priests, but that for reasons of defence against hostile tribes in the centre the community had to be marshalled for its defence, and in doing so, adopted the Asafo, or Company organization of the Fantis and that then followed the introduction of Kingship or Manchedom i.e. a transition from rule by the Priests and their fetish, to rule by the Manches supported by the fetish priests.

26. The whole of ones experience and education in West Africa leads one to the conclusion that Sir H.S. Maine in his "Ancient Law" (10th Edition) at p.134 was probably right when he said:

> "It is just here that archaic law renders "us one of the greatest of its sources ... It "is full, in all its provinces of the clearest "indications that society in primitive times "was not what it is assumed to be at present, "a collection of individuals. In fact, and in "the view of the men who composed it, it was "an aggregation of families. The contrast "may be most forcibly expressed by saying that "the unit of an ancient society was the Family, "of the modern society the individual .. Cor- "porations never die and accordingly primitive "law considers the entities with which it deals "i.e. the patriarchal or family groups, as per- "petual and inextinguishable."

It is important to keep this factor always in mind when balancing and assessing the value of evidence and the degree of relationship with which one person may regard another.

27. In ancient days quite clearly the family known as Onormroko or Korle We would be regarded as the unit which owned the land, with the Fetish Priest as its spiritual protector.

28. As the rule of the Manches developed and

greater power came to them, by reason of the military organization under their command - so the power of dealing with the land gradually passed from the hands of the Korle We into the hands of the Ga Manche, and who appears tacitly to have delegated that control into the hands of the Manche of the quarter of each division, with the Korle We retaining a modified interest in the land instead of that absolute interest which the family possessed prior to the introduction of this title of Manche and the creation of the Stools.

29. The Korle We, it has already been seen, were hunters. By their following they were the people who were the fullest acquainted with the four corners of the Ga lands and to them the Manches looked to ensure that strangers did not intrude and settle themselves on the lands, which they regarded as their own lands and which, by now, were regarded as lands attached to the Ga Stool, each quarter administering its own portion of these lands and each quarter owning a Stool subordinate to that of the Ga Manche.

30. What are the boundaries of these divisions and quarters there is no evidence - but there did arise evidence during the trial which puts in issue the boundary between the Gbese and Osu quarters.

31. Within the Gbese quarter the evidence shows that there are five families namely Onormroko (Korle We), Nudjorse, Manche Blohum, Sornmens and Sakumo Tsoshishi (evidence of Nii Tettey Gbeke on the 5th February) and that until the migration of the Gas from Ayawaso - the family of Onormroko had been regarded as the owners of the land as being its first occupants.

32. Today they are described as being the "caretakers" of these lands for the Ga, Gbese and Korle Stools. But it is must be clearly understood that the word "caretaker" does not mean simply one who looks after the land for another, but connotes one who has an interest in the land and by customary law he is usually the one who has the greatest interest in the land. And that, as has been already observed, was historically the position of the Korle We, but it is extremely doubtful if that is the case today, and which matter will be referred to later when I discuss the question of native

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customary law.

33. The rights of the parties in respect of the law which is to be administered to them is governed by the provisions of Section 74 of the Courts Ordinance provided that such native law or custom is not repugnant to natural justice, equity and good conscience nor incompatible either directly or by necessary implication with any ordinance for the time being in force and particularly in causes and matters relating to the tenure and transfer of real and personal property.

34. It is notorious in West Africa that in causes where the rights of the parties are dependent exclusively upon native law or custom it is extremely difficult to find satisfactory evidence of the native law or custom which has prevailed in any given area since ancient times and even more difficult to determine how much of that old law has survived or has been modified by usage.

35. The difficulties have been added to by the decision given in the Full Court in 1884 in the case of Welbeck v: Brown (Sarbah's Fanti Customary Laws 2nd Edition page 185) and the varying language in which this law is described.

36. This Court must in cases like the present ones give to the parties "the benefit of any native law or custom existing in the Gold Coast, such law or custom not being repugnant to natural justice, equity and good conscience, nor incompatible either directly or by necessary implication with any ordinance for the time being in force".

Then the language changes and continues: "Such laws and customs shall be deemed applicable....." and later again the word "or" crops in, but in subsection 2 the legislature reverts to "and".

By section 34 of the Interpretation Ordinance the word "or" shall be construed disjunctively "unless a contrary intention appears".

But when the decision in Welbeck v: Brown was given in 1884 the Interpretation Ordinance contained no section similar to our section 34.

To carry out the intention of the legislature,

it is occasionally found necessary to read the conjunctions "or" and "and" one for the other and to indicate a similarity and not a difference.

The language used by the learned Judges in that case heard in 1884 appears that they read the word "or" as implying similarity between the words native law and or custom and in the judgment set out at p.185 the learned Judge specifically refers to native law and custom and not native law or custom.

That decision affirms in very certain terms (with McLeod, J. dissenting) that before this Court may give the person the benefit of a custom he must satisfy the Court that it is one which has existed since time immemorial, and that if it can be shown that what is described as a custom has originated at a later date, and that is a date later than 1189, then it is no custom at all and the party cannot receive the benefit of it under the jurisdiction conferred upon this Court by the provisions of section 74.

37. But the matter has been even further complicated, not this time by the acts of the Judges, but by the acts of the legislature, when on the 1st November, 1927, the Native Administration (Colony) Ordinance came into force and where in Section 2 is contained for the first time a definition of what is styled "Native Customary Law" and which is defined as meaning:

> "a rule or a body of rules regulating "rights and imposing correlative duties, being "a rule or body of rules which obtains and is "fortified by established native usage and "which is appropriate and applicable to any "particular cause, action, suit, matter, issue "and question and includes also any native "customary law which shall have been declared "under section 130 to be a true and accurate "statement of such native customary law."

This definition was re-enacted when that Ordinance was repealed and replaced in Section 2 of the Native Authority (Colony) Ordinance, 1944, and wherein by the provisions of Sections 30 and 31 a State Council may declare what is, or may modify native customary law subject to receiving the

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subsequent approval of the Governor in Council.

38. The point is one of considerable importance as "native customary law" now gives validity to usages which by accepted principles of law need not have existed since time immemorial, nor need they necessarily be confined to a limited locality.

Had the legislation in 1927 amended the words "native law or custom" in Section 19 of the Supreme Court Ordinance to "native customary law" or had a similar amendment been made in 1944 in the Courts Ordinance all would have been well, or in any event not quite so difficult.

39. Now the law administered in the Native Courts under the provisions of Section 15 of the Native Courts Ordinance is the Native Customary Law prevailing within the jurisdiction of the Native Court.

In all the causes before me the writs were issued out of a Native Court. Had they been heard in that Court then native customary law would have governed the proceedings and in cases such as these, i.e. land cases, the appeal would come before this Court and would be decided by the law administered in the Native Courts i.e. native customary law.

40. Can it be said that because these causes were not heard in the Native Court but were transferred to this Court under the provisions of Section 54 of the Native Courts (Colony) Ordinance, 1944, that the parties are to be deprived of the benefits of usages and that their rights are to be whittled-down to that of "customs" which must have been presumed to have been in existence in 1189, when they themselves (the Ga tribes) were not even, by their tradition, an entity in being? To adjudge so appears to me to be an absurdity of such magnitude that no legislature could possibly be deemed to have intended it, and I hold that in construing the words "native law or custom" or "native law and custom" in Section 74 they must be construed to have the same meaning as "native customary law", has by its definition in Section 2 of the Native Authority (Colony) Ordinance.

41. Further by reason of the provisions of Section 74 the benefits can only relate to rights of the parties by native customary law existing in the Gold Coast and which means existing in the Gold Coast at

the time the Courts Ordinance came into force, and that was on the 1st July, 1935.

42. Now what are the sources available to this Court in proof of the existence of such rules fortified by established native usage? The written authorities I have relied on are:

(1) The decisions of the Judicial Assessors, first appointed about 1844. (Redwar's "Comments on Gold Coast Ordinance" p.2, and abolished upon the enactment of the Supreme Court Ordinance in 1896).

(2) From 1876 to 1935 the decisions first of the Full Court and later those of the West African Court of Appeal and the Divisional Courts.

(3) Bye-Laws made in respect of the Ga tribe under the provisions of the Native Jurisdiction Ordinance of 1883.

(4) Declarations or Modifications of Customary Law approved by the Governor in Council in accordance with the provisions either of the Native Administration (Colony) Ordinance 1927 or the Native Authority (Colony) Ordinance 1944.

(5) The writings of well known (and deceased) text book writers notably Sarbah's "Fanti Customary Laws" and "Fanti Law Reports" Casely Hayford's "Gold Coast Native Institution", Hayes Redwar's "Comments on Gold Coast Ordinance" and in a very much lesser degree to Reindorf's "History of the Gold Coast" Reindorf himself being a man of the Ga Tribe (whose tradition and law is now in issue).

The unwritten sources are:

(1) Persons whom I considered to have special knowledge of native customary law and who gave evidence under the provision of Section 74(2) of the Courts Ordinance.

(2) Parties or witnesses called by them whom I considered to have that special knowledge.

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43. Before analysing the evidence given in respect of these several sources it would not be out of place here, to refer to the notes made by the then Right Honourable Sir Frederick Pollock - which appear at p.46 of Maine's "Ancient Law" and where he said:

> "No intelligent lawyer would at this day "pretend that the decisions of the Courts do "not add to and alter the law. The Courts "themselves, in the course of the reasons given "by these decisions, constantly and freely use "language admitting that they do ... But British "Judges are bound to give decisions in conform- "ity with the settled general principles of "English law, with any express legislation "applicable to the matter heard, and with the "authority of their predecessors and their own "former decisions. At the same time they are "bound to find a decision for every case, how- "ever novel it may be; and that decision will "be authority for other like cases in future; "therefore it is a part of their duty to lay "down new rules if required. Perhaps this is "really the first and greatest rule of our "customary law: that, failing a specific rule "already ascertained and fitting the case in "hand, the King's Judges must find and apply "the most reasonable rule they can so that it "be not inconsistent with any established "principle."

44. The principal issues of native customary law that I am asked to decide are:

(1) Are sales of land known to native customary law?

(2) If they are, is there any limitation to the exercise of that right?

and (3) Is the existing native customary law repugnant to natural justice, equity and good conscience?

45. The first question can be answered readily by reference first to Sarbah's "Fanti Customary Laws" and secondly by the decisions of the Courts. I refer to pages 85 and 86 of Sarbah's "Fanti Customary Laws" where he writes:

"...the careful student will doubtless not "fail to observe that, of all things, land is about "the last thing which became the subject of an out-"and-out sale. Owners of land were as reluctant "and unwilling to part with their land and inheri-"tance as was Ephron, the Hittite, to sell a bury-"ing place to Abraham, as recorded in the Holy Writ. "Rather than sell his land, the Fanti landowner "prefers to grant leave to another, a friend or "alien, to cultivate or dwell upon it for an inde-"finite period of time, thus reserving unto himself "the reversion and the right to resume possession "whenever he pleases.

"...Before the prohibition of slavery (i.e. in "1874) (the brackets are mine) and pawning on the "Gold Coast, rather than part with the family inher-"itance, members of a family have cheerfully volun-"teered to be sold to raise money for the payment of "a pressing family liability. But in process of "time, and especially since the emancipation of "slaves and the prohibition of slavery, the sale of "lands has been of more frequent occurrence in the "coast towns."

46. The issues before me relate to lands in the northern environs of the coast towns of Accra. The only reported cases heard before the Judicial Assessor to the Native Courts relating to sales of land that I can trace prior to the enactment of the Supreme Court Ordinance in 1876 are:

1. Samuel Tokoo v: Kwaw Asumia (1870).
2. Mary Barnes v: Chief Quashie Atta (1871).
3. Quamina Awortche v: Cudjoe Eshon (1872).
4. Sarah Parkar v: Mensah (1871).

These cases establish that sales of family land were recognized, but only in cases of debt and only then when the debt had been incurred with the knowledge of a family and had further consented to land being given as security for the repayment of that debt (Tokoo v: Asumia).

47. In Quamina Awortche v: Cudjoe Eshon it was decided:

> "It would be necessary for all members of "the family to meet and discuss, and if there "was land to be sold, all the members would

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"meet and get strangers to be witnesses, and "family would concur for payment of the debt; "as many members as could be got should repre- "sent the family".

48. In the case of Mary Barnes v: Chief Quashie Atta, a case which related to Stool lands, D.P. Chalmers, Judicial Assessor said:

> "I apprehend that not even the regular "occupant could alienate property without some "concurrence by the people of the Stool who "have an interest in it, and are usually con- "sulted on such a matter."

49. It was, I think, quite clearly established by these cases that Stool or Family property could be sold (and by sale I mean the alienation of the Stool or family interests in that land) if it could be shown that the members of the Stool had a knowledge of the creation of a debt by a member of its family and had consented to family land being the security for its due repayment.

In 1876 such cases had to be regarded in the light of Section 19 of the Supreme Court Ordinance and the Courts then by statute could not give a person a benefit of any such Customary Law unless it was not repugnant to natural justice, equity and good conscience.

To determine whether such contracts of sale are or are not so repugnant the Court must have regard to the quality of the interest in land possessed by the Stool or Family in its commmnal status and that possessed by each of its members.

50. I refer now to two of the text-books where the principles of native customary law set out therein have from time to time been referred to by the Courts when weighing the oral evidence heard before them.

51. (a) The earliest in time is that of Sarbah, who was a well known legal practitioner practising in these Courts in the early part of the latter part of the last and the early part of this century.

(b) Sarbah in his "Fanti Customary Laws" at pages 78-79 says:

"Whenever there is a stool or family debt, "the stool or family property, whether moveable "or immoveable, can be taken and sold to pay "such debt. And where the members under the "stool or of the family refuse or are unable to "pay such lawful liability, the stool-holder or "head of the family can after due notice to the "senior members of the stool or family, with or "without their concurrence, mortgage or pledge "any stool or family property (Aidoasi v: Abban, "2 F.L.R.90).

.....

"Neither the head of the family acting "alone, nor the senior members of a family act- "ing alone, can make any valid alienation nor "give title to any family property whatsoever.

"Any person buying or advancing money on "any property should carefully inquire whether "the property is ancestral, or family, or "private. If he finds from his inquiries that "it is not of the last description, he is bound "to inquire into the necessity for the aliena- "tion, and find out whether all the beneficiaries "are parties to the transaction; whether such "alienation benefits the estate or family ...."

(c) The learned author then considered the Indian Case Pardy v: Koonware 6 Moore's Indian Appeal 423 and the judgment of the Privy Council which reads:

"The court will consider whether the debt "for the discharge of which the alienation is "alleged to have taken place, has been incurred "owing to misfortune, an income inadequate for "the ordinary expenditure, of a person in the "position of the person incurring the debt, or "antecedent mismanagement of other managers; "or, on the other hand, whether it is owing to "profligacy and wanton waste of the estate on "the part of the alienor; and if the latter "state of facts be proved, the court will scru- "tinize rigidly to see if the person advancing "the money was in any way a party to such pro- "fligacy or wanton waste, and if it be shown "that he was so cognizant of or a party to it, "the court will not deem the alienation to have "been lawful."

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Commenting upon the judgment Sarbah adds:

"Thus decided their lordships of the Queen's "Privy Council, and it is worthy of remark, "that in the native tribunals the purchaser of "ancestral family or stool property must have "clean hands, if he is to retain possession of "such property."

(d) These curbs upon the alienation of Stool or Family lands are due to the corporate character of Stools and Families interests in land which are regarded as perpetual and inextinguishable.

52. I now refer to the writings of Hayes Redwar in his "Comments on Gold Coast Ordinance" atpage 71 et seq. The learned author served for many years at the end of the last century as a District Commissioner, Queen's Advocate and lastly a Judge of the Supreme Court. He writes:

"It has been shown above that there is, in "strictness, no such thing as 'Tenure' in the "English legal sense in the Native Land System "of the Gold Coast, but that the 'absolute "ownership' of the land is vested in the native "landowners, with no ultimate reversion to the "Crown in any event. Another point to be re- "membered is that waste land and jungle are, "notwithstanding their unoccupied condition "not without an owner, every foot of the land "being either attached to some Chief's 'Stool', "or forming a portion of 'Family land.' It "may be mentioned here that the Gold Coast "native farmer follows a system of migratory "cultivation which consists of clearing the "bush by burning and planting the landfor a "certain time, removing to other lands at the "determination of this period (which is fixed "by agreement with the owner of the land) so as "to allow the soil previously cultivated to lie "fallow, and in this way to recover its "richness, ...

"Because of this generally followed prac- "tice, no land at the Gold Coast can, according "to Native Law, be deemed to be waste land, or "of no value, as at any time permission may be "given by the owner to clear and cultivate any "portion of his jungle lands, in consideration

"of 'tribute' in money or kind, or even of "some sort of quasi-feudal service rendered in "return for the use of the land (Abessibro v: "Ama, coram Hayes, Redwar, J. '1893) F.L.R.78)."

"Another peculiarity of the Native Land "System is that the land is, as a rule, owned "by 'Communities', either of the 'Family' or "as attached to some Chief's 'Stool' and vested "in the Chief jointly with his Councillors of "the Stool.

"Similar principles of ownership are app- "licable to either of these Communities, and "neither the Head of the Family nor the Chief "has anything but a joint interest for life "with the rest of the Community, nor can he "deal in any way with the land without the "consent or concurrence of the rest of the Com- "munity, except in certain circumstances which "will be subsequently explained. It is his "duty to manage the property for the collective "benefit of the whole Community."

At page 75 the author continues:

"According to the ancient Native Law "(before alterations were brought about by the "gradually solvent action of contact with "European laws and usages) there was no such "thing as the absolute alienation of land, and "the mere usufruct was all that could be ob- "tained, by the consent of the owner in the "manner which has been mentioned before."

Now this is of importance because if the word "custom" is to be interpreted following the decision in Welbeck v: Brown then there can by custom be no such thing as a sale of land, since as it is known that no European was in contact with the people of the coast before the 14th century, it must have been a usage and not a custom since if what the author said is true there was no custom for alienation of land before the commencement of the first year of the reign of Richard I which was 1189 as decreed by the Statute of Westminster 3 Edn. 1 C. 39 (1275).

"Gradually, however, verbal sales and "mortgages or pledges of land in the presence "of witnesses came into use, most probably

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"under pressure from creditors of the Family "to whom the Community was heavily indebted. "Finally, as the result of contact with the "English legal system, and the desire of Europeans to acquire land for various purposes, "there came the absolute sale and conveyance "of land by deed, and the mortgage by deed, to "meet the not unnatural objection of European "merchants to rely on verbal pledges of land "in the presence of witnesses, when wishing "to take security over the lands of their "native agents to secure the proper accounting "for of money in the agents' hands. In such "transactions at these it is plain that care "must be taken by purchasers, lessees, or "mortgagees, to ensure that the consent of all "parties having an interest in the property "dealt with should be obtained, otherwise the "transaction may be held invalid...

"... It follows, also, from the circumstances that the question whether any estate "or interest passes in any such transaction "must, from the nature of the case, depend on "the right to convey by Native Law, that care "should be taken not necessarily that all "persons interested should execute a conveyance, "but that evidence should be given of the necessary consents required by Native Law having "been obtained....

"The mere fact that such a conveyance bears "upon its face the names and marks of illiterate "persons is not sufficient, inasmuch as these "names and marks may have been inserted in the "conveyance without their knowledge."

These words were written in 1909 and my long experience has taught me they are true today as they were then.

53. In the cases before me have been put in evidence many deeds of conveyance drafted and signed by legal practitioners of this Court in which various titles are set out as being ones in "fee simple".

54. I can understand a European lawyer being trapped into this error in his first few weeks in this Colony, but I cannot believe that any legal practitioner, who is a native of West Africa, can have any

illusions on this matter and were the most simple searches for title made, which it is his duty to do, as is evidenced throughout the case, such a title would have been challenged immediately. It is a title, which by fairly recent legislation, can now be obtained in Lagos in Nigeria, and the requirements to obtain one are onerous and strict in their application. There is no such legislation in the Gold Coast and a lawyer who attempts to create by his own writing an estate in land which he must know his client does not possess, prostitutes his profession and loses his good name. That it has been done in the Gold Coast thousands of times (as I was told from the Bar) affords no defence; it merely adds to the ignominy. On more than one occasion it has come to my notice in these Courts that there is a reason for this practice, and that is, that a Bank or European Commercial houses will not advance money by way of mortgage upon a security of less than that title in land, and often it has appeared to me and especially in the absence of the publicity which such sales demand by native law, that the deed was never intended to have any relation to land at all but was solely a collusive act between parties to raise money by way of mortgage.

To induce a person to lend money and to hold out a false fact, namely that the borrower is seized in an estate of fee simple in the land, I need not point out is a very serious criminal offence by all who lend their hands to such a palpable fraud.

55. The appeals from the Native Courts show that immediately a mortgagor attempts to exercise his power of sale, then it appears that:

(a) the land was family property or Stool property, and

(b) the mortgage was invalid by reason of lack of the necessary consents.

It is for these reasons that when deeds are put in evidence without any further evidence to show that the requirements of customary law have been obeyed and particularly that at the time of the sale that all neighbours had been made aware of that sale of these means, to which I will refer later, and which factors are inherent in such sales by customary law, the weight that might be attached to them

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in an English Court and dealing with English tenure of land and land conveyancing, loses considerably in weight in its absence.

56. That sales or mortgages have become extremely prevalent is shown in the figures at page 37 of the Havers Report of Commission of Enquiry "into expenses by litigants in the Courts of the Gold Coast and indebtedness caused thereby" when Mr. Havers (now Mr. Justice Havers) said:

> "I examined a number of the instruments "which are registered in the Land Registry "under the Land Registry Ordinance .... "During the three years prior to the war, "1,067 instruments were registered in 1937, "1,008 in 1938 and 1,145 in 1939. During the "years 1920 to 1944, the number of instruments "registered was 19,794 of which the vast "majority are conveyances in English form.
>
> "The persons to whom land has been con- "veyed by such conveyances claim that they are "entitled to the freehold of the land conveyed "to them. Further, as I have already pointed "out, land originally held on a native custom- "ary tenure is constantly being sold in execu- "tion of decrees of the Courts.
>
> "The certificate of purchase granted by "the Supreme Court under Schedule 3, O.44, "r.34 certifies that the purchaser is declared "to be the purchaser of the right title and "interest of the judgment debtor in the lands, "which is obviously the most that the purchaser "can acquire.
>
> "Nevertheless the purchaser often seems to "be under the impression that he has purchased "the freehold, whatever title the judgment "debtor may have, and in subsequent transac- "tions relating to this land the freehold is "usually conveyed."

I would add that unfortunately so often there are legal practitioners who prepare such later conveyance and who clearly have made no enquiry as to the title of the judgment debtor and which, had enquiry been made, would reveal that he possessed but a life interest - and interest which upon his death

would devolve upon his successor by custom and upon which event the purchaser's interest in the land would cease.

57. A study of the West African Court of Appeal Reports and the Divisional Court Reports indicate that sales of land are of common occurrence in this Colony. But these decisions are ones which relate solely to the existence of such contracts as between two parties, they afford no guide as to their validity when challenged by a third party, other than those which seek to set aside sale of family land which have been made by a member of Family without the knowledge and consent of its other members. There is little or no guide by decided cases as to whether a sale of land has obtained the force of law by usage. I can find no decision to say that a subordinate Stool may sell land with the concurrence of the Paramount Stool for the reason that it has been established by the Courts as being approved by native customary law by reason of usage.

58. I have dealt at great length with this matter as a very great part of the evidence is afforded by such deeds and my mind has been affected considerably by what weight may be given to such deeds (a) in the light of what publicity accompanied the contract of sale (b) the nature of the occupation following that sale (c) the conduct of persons interested in land but not parties to such sales (d) to what extent, if any, was the land, the subject of the sale, effectively occupied by the purchaser.

59. In the cases before me the whole land was admittedly in the first instance the property of the Ga Stool and a part of the case, in fact the principal factor, set up in the trial, relates to what is said to have been a grant of land made by the Ga Stool to the Atukpai Family more than 100 years ago, and whilst discussing what interests such communities and individuals may possess in Stool or Family land I would advert to the Full Court Judgment in the case of Lokko v: Konklofi (1907) Renner's Report and to the judgment of Sir W. Brandford Griffith, C.J. where at p.452 he says:

> "Stool property is on a different footing. "I do not recollect ever having heard of family "property having been partitioned; on the

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"other hand, it is common in cases before this "Court for a person to say that the land is "his because he got it from his father or "grandfather. He does not say so in so many "words, but it is clear that his father or "grandfather first farmed the land, then built "a village on it, settled on it, and became in "time to be recognized as the exclusive owner "of the land. Possibly the first entry may "have been with the consent of the Stool, but "gradually without further application to the "Stool, occupation ripened into full ownership. "In this manner much stool land has become "private land. I have never known a case "of family land having become private land in "this way".

Now in this case the learned Judge was discussing whether a judgment creditor might sell ancestral land inherited by the debtor Konklofi and which land had admittedly at one time been a part of the Stool land.

The learned Chief Justice went on to say:

"Stool land is nearer akin to waste land "than to family land; subjects of the stool "farm where they please as long as they do not "disturb other occupiers; they may apply to "the stool for land, but often they do not; "all that is generally expected of them is to "make contributions to their particular head. "As decisions with respect to family land do "not apply. I must consider the case upon "its own merits."

The learned Chief Justice then dealt with the facts as if they were being dealt with by a Native Court and upon the merits held that the land could be sold in execution for the satisfaction of the debt. The decision was approved by the Full Court.

60. As the decision was admittedly founded neither upon the basis that the land was either Stool land or family land - but rather on the grounds of natural justice, equity and good conscience it appears that these phrases I have referred to may be treated as "obiter".

But for the reason that the Judges of the Supreme

Court have always regarded the decisions and "obiter" of the late Brandford Griffith, C.J. with such very great respect, and which I share in the fullest measure, I find myself disturbed at finding that stool land may lose its character by reason of long occupation and other development of the land by members of their families of the Stool. It would seem that a Stool owner's title of ownership could be wholly ousted by such long occupation and user and that eventually in a place as Accra, whose urban areas are extending rapidly from day to day, stool land would cease to exist, and where the town has been built up by the industry of the members of the Stool that the Stool has been ousted and a family or individual title substituted.

61. That certainly was not the opinion of the linguists of the Chiefs of the Divisional Stools I heard - nor was such a suggestion put to me by any witness or Counsel. The highest point reached was to ask me to say that certain land had ceased to be Stool properly, namely, that of the Atukpai family, who founded their claim, not by reason of long occupation and user, but upon a grant and a grant used in its strictly legal meaning "an absolute transfer of ownership."

62. But there is the decision of the West African Court of Appeal given in 1933 in the case of C. Boi Owusu & anor. v: Manche of Labadi (1 W.A.C.A. 278) where the Court held that long and uninterrupted user had not ousted the original title of the Stool.

Now this case is of particular importance and relevance as it is one which governs native customary law within the Ga State, and of which Labadi is a part. Labadi lies due east of the Osu Stool lands.

In that case it was admitted that the appellants had been in long occupation (for four generations) and the ratio decidendi was "was the land, Stool "land, when they first occupied it, and if so, can "long user and occupation which was at its outset "not adverse to the Stool title, change its char- "acter by such long user and so oust the rights of "the Stool?" The answer was an emphatic "no".

63. It was further the contention of the Stool owners in that case that any of the people of Labadi

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could go without payment to the Stool and farm on vacant land within that area and that in consequence a number of villages had sprung up.

That is precisely the case put before me now by the Ga, Gbese and Korle Stools, the variation being the reliance upon what are alleged to have been grants made by the Stool to families which are said to have effected the absolute transfer of ownership in land as opposed to the transfer of property in land.

64. The evidence before me and the authorities already referred to satisfy me that:

(1) a member of a Stool may farm where he wishes upon stool land which is unoccupied without first obtaining any formal leave or permission.

(2) Casual farming for a season or two, which is later abandoned, creates no interest in land.

(3) Sustained occupation coupled with the erection of buildings in furtherance of such occupation by farming creates a hereditable interest in land or even continuous farming alone provided it be sufficiently localized.

(4) Upon the death of the founders of such farms and buildings the land then acquires the character of family property.

(5) Land not built upon but farmed by the successor in title of the founder of such farm also in similar circumstances became clothed with the character of "family lands" whilst so farmed.

(6) Land unoccupied by building or farms may be allotted by the Head or Caretaker of the Stool to other members of the Stool either by way of gift or licence.

65. (a) It will be observed that once land acquires the character of ancestral or family land, the land then becomes vested in the person who inerits the estate as the "successor" and who for

his life, or until he is removed from his office as "successor" by the rest of the family, holds the land during his life time for and on behalf of himself and the members of this family who are entitled to acquire a life interest in the land in accordance with the rules of inheritance by customary law which governs the individual - the general rule is that descent is traced through the deceased's mother.

(b) It is not uncommon to find the original ancestor buried in the land and when this is so the land acquires a character of special trust and sanctity, since the welfare of the land largely depends upon his worship.

(c) A "successor" enjoys certain rights over the usufruct of the land and which rights are agreed when he is appointed successor. Against these assets must be placed his liability to pay any debts owed by his predecessor in title.

(d) With this exception it may be said that in the theory of the law each member of a family has an equal and indivisible life interest in the land.

(e) In practice that interest depends more closely upon the character and industry of the individual. The industrious man farming and enjoying the larger area, the lazy man either farming a very small area or not at all.

(f) Within this community of vested life interests there are other relatives whose interests are contingent, and which will not become vested until either his or her aunt or uncle dies. Such people have no active or controlling voice in family meetings - but their contingent interests must always be regarded and protected, if for the reason alone that the gods of the original ancestor will bring disaster upon the land should what he has left become destroyed by self seeking individuals. It is the voice of natural justice, equityand good conscience speaking.

(g) It is not difficult to appreciate after a careful assessment of these very limited rights in land, which are virtually trusts, that alienation of land in the ancient days was unknown and will even today, by right thinking people, be resorted

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to only in the direst distress, and when every other channel to prevent this course has been explored and has failed.

(h) Nor is it surprising to find expression of disapproval of sales made in contravention of these principles, whereby what a community has inherited by the industry and labour of its predecessor in title it seeks to destroy to effect its personal pecuniary gain at the expense of others who have either vested or contingent interests and who confidently anticipate that they may become vested ones in the ordinary course of events. One witness (Dr. Reindorf) expressed the opinion that sales of land in such circumstances were wrong and should be stopped.

(i) I have no hesitation whatsoever in describing sales of land in such circumstances as being repugnant to natural justice, equity and good conscience.

(j) Cases, it is true, may arise where to deny to a creditor the repayment of a just debt and to permit a family to retain a realizable asset would be equally repugnant to natural justice, and which cases have already been referred to.

66. I can find no modification of these principles of law to be found in any of the bye laws made under the Native Jurisdiction Ordinance (No. 5 of 1833) nor in any approved resolution made under Section 130 of the Native Administration (Colony) Ordinance nor by Section 31 of the Native Authority (Colony) Ordinance, 1944, and even had such modifications been approved by the Governor in Council, they would still, I think, be subject to this Court's review as to this natural justice, equity and good conscience when a party seeks his benefit under the provisions of Section 74 of the Courts Ordinance.

67. I can find no reported decision of any Court in this Colony which has had to decide affirmatively whether in the absence of a sale under duress by reason of debt sales of family or Stool lands are valid by native customary law. That is the main issue before me and it is idle to discuss a large number of cases which discuss the validity of sales between the parties upon grounds other than those in issue here.

68. An issue in law before me is whether there is in existence in Accra today a rule or a body of rules, regulating the sale of land where no debt exists, which has been forfeited by established native usage and is applicable to the issues before me now. The usage is native i.e. it is "one which is indigenous" and is proved by the oral evidence of persons who became cognisant of its existence by reason of their occupation and trade or position. The evidence must be clear and convincing, it must also be consistent (Halsbury Laws of England 2nd Edition Vol.10 p.60).

69. There is clear evidence before me, of a documentary nature, that sales of land accompanied by their written evidence in the form of deeds were in existence here as far back as 1891. I refer here to Exhibit "110". The conveyance of land by Yeboah Kwamin to the late Revd. Reindorf. There is no evidence before me as to whether at the date of that sale there was a debt owed by the grantor to the grantees or otherwise. There is no evidence as to whether the land sold was the self-acquired property of the grantor. A reading of the covenants suggests his interest in the land was of that nature that he was not conveying Stool or Family land. However that is undeterminable. It is however of importance as "self acquired" property may be disposed of absolutely during the lifetime of the owner or by will. But on his death it again resumes its ancestral character.

70. "A usage is not proved by merely bringing "the person interested in establishing its "existence to give oral evidence of its exis- "tence unsupported by any other evidence" (Halsbury Laws of England Vol.10 p.61).

It must be shown that the usage is certain and reasonable and so universally acquiesced in that everybody who has an interest in the land knows of it, or might know if he took the pains to enquire.

"If the evidence tends to show that the "alleged usage is in a high degree unreasonable, "this fact will be of weight in considering "whether or not the alleged usage does, in fact, "exist" (Halsbury p.62).

71. Instances of the usage having been acted upon

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must be evidenced. It is insufficient to ask a witness who had no interest in a particular piece of land to say "Do you know this land was sold to the French Company?" and to receive the answer "I know". It is of no evidential value. Again it is of no value to assert an act which one seeks to prove to be a usage unless that act has been performed in the manner which local custom prescribes. What must be established quite clearly is that, in the absence of any debt, it is accepted usage for Stool lands to be sold by families or individuals irrespective of any consent by the Stool owner. It is that absence of the Stool owner's consent together with that of all having interests in the land, that is the crux of the matter, and the acquiescence in this usage by other Stool owners in this District or Colony. Reiterated declamation from the Bar that it is the customary law affords no evidence whatsoever.

72. In sales of land in England a purchaser by his solicitor has to make reasonable and diligent search to ensure that a valid title is conveyed. If he does not then he is deemed to have had notice of any fact that would have come to his notice had he searched with due diligence. In England the dealing with the land through the ages has been evidenced by documents of title. There has been since 1066 when a complete survey of the lands and the owners of the lands was compiled in the Domesday Book, and this has developed through the ages and in more recent times by Ordnance Surveys whereby certainty as to the identity of the land conveyed may be had with reference to such a plan.

73. In this Colony there has not existed, and does not exist to this day, any sign or even approach to such an objective, since the Lands Registry Ordinance whilst regulating to some extent priority among deeds and affording notice makes no pretence at any registration of title and it is this absence of a cadastral survey that largely prevents it - apart from the absence of any legislation.

74. But in this Colony the wisdom of theages formed a perfectly adequate substitute for the written word, and clearly social life with its commitments and obligations could not have survived had it been otherwise. I refer now to the degree of publicity that must attend the sales of land by

native customary law. The land to which these rules fortified by established usage related were agricultural lands, and the lands, in issue, in this case were at the date of the issue of writ and at the date of the sales of land of that description.

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75. At p.86 of his "Fanti Customary Laws" Sarbah says:

> "To constitute a valid sale of land on "the Gold Coast there must be -
>
> .....
>
> "3. The marking out or inspection of the "land and its boundaries, and, if necessary, "the planting of boundary trees, and fixing of "boundary marks."

At page 93 he goes on to say:

> "When the owners of the land consent to "sell, a day is fixed for inspecting the land. "The owners of land adjacent to and abutting "upon land under inspection are invited to be "present, so that disputes as to boundary "marks may be averted in the future. Where "the land is a town plot, and the intending "purchaser knows it, an inspection may be "waived."

76. When the nature of land tenure of Stools of families is appreciated and when it is appreciated that each member may farm on Stool land where he wills, provided it is not occupied by another member, and when further it is appreciated that farming is a matter of shifting cultivation and that what land one man occupies one year he may not re-occupy for another three or even more, (but without losing his rights in the land), then and only then is it fully appreciated how wise and how necessary were these ancient usages so to guarantee publicity to alienation of land and which might be the subject of such rights.

77. In my judgment a vendor or a purchaser or his legal practitioner who sells or buys land without ensuring that he acts with due regard to custom at once affords evidence as to his bad faith, and to his knowledge of the invalidity of his title to sell. It is evidence, and in my judgment, cogent evidence of the existence of bad faith by all concerned.

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78. In all the sales of land which have been evidenced before me and evidenced by deeds drawn up by legal practitioners in this Court the most striking feature was that absolute lack of publicity and the clandestine nature of the transactions. Nothing of the sales was ever known to an adjoining occupant of land until he saw on the land cement and other materials designed for the construction of a house and then, immediately his right was challenged and the sale for the first time had become known and the result was the writs issued in this action and many more which I am told are awaiting trial in the Native Court.

79. Clearly on these facts there has been shown to have been no acquiescence. The contrary is clearly established. Even did the evidence show that this particular usage had obtained the force of native customary law I would hold that in the absence of evidence (a) a Stool or Family debt concurred in by the Stool or Family was in existence (b) that they had exhausted all means of raising money to pay the debt e.g. by way of loan on native mortgage (always redeemable) that a sale of Stool or Family lands was, for the reason I have given earlier, repugnant to natural justice equity and good conscience.

80. There is however one aspect which I must not overlook when discussing the validity of the sales of land by customary law and that is the decisions of these Courts which have held repeatedly that sales of family land, made without the concurrence of the members of the family are not void but voidable,

> "provided they avail themselves of their "right timeously and under circumstances in "which, upon the rescinding of the bargain, the "purchaser can be fully restored to the posi- "tion in which he stood before the sale" (Kwesi Manko & ors. v. Bonso & ors. 3 W.A.C.A. 62).

In my judgment, with great respect, these decisions go perilously near to the wind to destroy one of the factors which goes to the very root of the validity of a sale by customary law and which Sarbah has described as being necessary for the constitution of a valid sale.

Where family property is house property the

chances of a fraudulent disposition of that property contrary to the interests of individual members is not so great, but as was seen in the case of Kwesi Manko v: Bonso, harm was done, and the essential common sense of the law, when viewed from the aspect of the environment in which people in this Colony live, becomes manifest.

81. But when sales of agricultural land are contemplated by the Head of a Family then his failure to observe the due formalities by him of customary law, and of which he is aware, is very strong evidence of bad faith towards those to whom he owes a duty, namely those who have appointed him to be the Head to protect their property, and as has been seen in a decision given by the Privy Council on appeal from an Indian Court, corresponding care must be taken by a purchaser.

82. But in sales of Stool land, and especially sales of a subordinate Stool, the land has the character of public property, property in which many families and all its members have equal interests, and the evidence of the linguists given before me goes as far as to say that in olden days in the event of a sale of such land, without the full concurrence of the Stool owner and his subjects, the vendor would suffer the penalty of outlawry and there appears to have been in the past not only a prohibition but a sanction to enforce that prohibition. Again there can be no question or doubt in these matters, if vendor and purchaser are law abiding citizens, and where a Stool is ready and anxious to sell to discharge a debt, and in my judgment sales of the Stool without first having received consent of the Stool owner or if a subordinate Stool then that of the owner and that of the Paramount Stool, as well and attended with the publicity that custom requires, having regard to whether the land is house or farm property, are void ab initio, since the failure to observe these customs affords evidence of complicity in acts deemed by customary law to be not only wrong, but unlawful.

83. That is the law as I understand it in the Ga State and appears to be similar to the Akan law at Akim Kotoku which was discussed in the Privy Council in the appeal from the decision of the West African Court of Appeal in the case of Ohene Kojo Sintim v:

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Appeatu & ors. (2 W.A.C.A. p.202) where Their Lordships say:

> "It is not in dispute and indeed was "clearly admitted by the appellants that the "consent or concurrence of the occupant for the "time being of the paramount stool of Mansu was "an essential condition of the validity of a "sale of the land in question."

All the stronger when there is the absence of consent of the owner of the subordinate Stool and who immediately controls the lands.

84. Quite clearly were it either in the interests of the community or desired by the community that Stool or Family lands should be sold contrary to the principel established as early as 1876 then the State Council, i.e. the Ga Native Authority would have exercised its powers under Section 31 of the Native Authority (Colony) Ordinance, 1944 and modified the native customary law accordingly. That it has not done. The Courts will not legislate and prescribe rules of native customary law which are not existent when the Legislature has provided machinery whereby they may be so declared or modified.

85. Now as to the unwritten sources of the law.

The evidence of the linguists of the Ga State who were called by me afforded the same evidence and even Nii Tettey Gbeke, the man against whom is principally directed the charges of selling land unlawfully, in reply to a question by me, admitted that Stool land could not be sold unless there was in existence a Stool debt.

86. I have discussed these matters at great length for the reason that without keeping all these principles and rules alive and before one the legal rights of the parties cannot be ascertained with any degree of certainty.

87. I will now analyses and discuss the evidence generally as it affects the interests in land of the larger units or communities engaged in this litigation.

They are:

(1) The Ga, Gbese and Korle Stools.
(2) The Osu Stool.
(3) The Odoitso Odoi Kwao Family.
(4) The Osu Tetteh Family.
(5) The Kotey Family.
(6) The Lutterodt Family.
(7) The Ayi Diki Family.
(8) The Nettey Quashie Family.
(9) Brazilians.
(10) The Atukpai Stool Family and
(11) Government of Gold Coast.

And it will be convenient to deal with the interests of these families in the order I have placed them and then having determined what are the interests of these communities in the lands described in the plans, to discuss the evidence relating to the individuals claiming under these families and give judgment in each action in the order in which the suit came before me for trial.

GA, GBESE AND KORLE STOOLS -

88. I have already discussed the traditional and historical background from the days of the original settlement of the Gas up to comparatively recent years. I will now deal briefly with theissues raised by the various communities before me.

The Ga Stool, as has already been seen, is recognized in Accra as the Paramount Stool. The Gbese Stool, the occupant of which is the Gbese Manche, is a subordinate Stool, and within that quarter is found the Atukpai Family which is said to have established a private Stool of its own within recent years but of which fact the evidence is inconclusive.

89. The lands occupied by the people of the Gbese Stool, and which are within the Ga Stool lands, were originally owned, but are now managed, by the Onormroko family, also known as the Korle-We (We = family), one of the five families within the Gbese Quarter, and the Priest of which family is known as the Korle Wulomo (Wulomo = Priest) and who is

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recognized as the "caretaker" of the lands for the Ga, Gbese and Korle Stools by native customary law.

90. The line delineated in green on the plan exbibited and marked "A" describes for the purposes of this action what is claimed to be a perimeter within which line all the land is said to be Ga, Gbese and Korle Stool land. That perimeter does not pretend to describe the entire limits of these Stool lands and which it is claimed extend further afield to all points of the compass; but the eastern boundary does purport to be a boundary up to which line the Osu Stool, have been permitted to occupy the land, although it is claimed that the Gas original boundary to the east was one with Labadi, a town to the east of Christiansborg (Osu) and east of the Osu Settlement.

The line delineated in red indicates the limits of the land which the Atukpai Stool Family aver was granted to them absclutely by the Ga Stool more than a century ago.

The red hatched line traversing the whole area diagonally from south east to the north west is the line which the Osu Stool claims to be the boundary between themselves and the Gbese Stool.

The claims made by most of the other communities are delineated in varying colours. It will be convenient to deal with the conflicting claims by going first from east to west and starting first with that of the Osu Stool.

To follow the evidence in detail it is necessary to read it with reference generally to the plan exhibited and marked as "B".

OSU STOOL -

91. The traditional story of the first settlement made by the Osus in this area as evidenced by the Acting Osu Manche on the 5th April was that they came originally from a place called Osudoku, and from there came to Osuko (a few miles to the north of the land in dispute) where they stayed for a long time and from thence they settled at Legon (where the new University is to be built in the near future about 6 miles north of Accra). At the time of their arrival the Gas had already settled

and they spoke an almost identical language. He said, in contradiction to the opening address by his Counsel, that they arrived before the Labadis. In this respect I prefer the traditional history given on behalf of the Ga Stool and am satisifed that they arrived after the Labadis had settled on the coast to the east of the Gas. They (Osus) then occupied lands to the east of the Gbese people. It has already been seen that by native law all land is deemed to be owned by someone, and accepting,- as I do, the Ga tradition as to the boundaries with Labadi when the Osus first arrived, they quietly settled upon Ga land with the permission of the Gas and founded their settlement on the sea coast at the place now called Christiansborg.

92. When they first arrived they were quite clearly a mere handful of people - a family - which had been compelled to leave the community with which it had lived by reason of some scandal regarding the loss of some precious beads. This transaction apart from its recital by a witness for the Osus is referred to by Reindorf at p.41 of his "History of the Gold Coast and Ashanti."

93. Quite clearly the needs of that family on its first arrival would be very small and the direction in which they would be permitted to farm would be indicated in a very rough and ready manner for them, as indeed the evidence satisfies me is the case to-day when anyone seeks permission to occupy land on which to farm. From the sea shore a general direction to the north would be indicated and quite possibly towards Legon was the direction then indicated. Legon is situate to the north of this land between Achimota and Dodowa.

94. As the family grew, and families instead of a family became the order of the day, needs of the community increased, so would unappropriated land further inland and going towards Legon be gradually occupied by the increasing members.

95. The evidence satisfies me beyond any doubt whatsoever that no physical objects were ever pointed out by the Gas to be the boundary. The Osus kept to the east and worked in a northerly direction. As they spread west towards the Gas - within that general trend towards the north - so they would tend to come into contact with the Gas farming in that

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direction and would automatically cease to go any further. In those days the population was small, the land had no great economic value other than that of supplying the communities domestic needs, there was plenty of land for all, and no occasion to cause friction by trespassing on another's preserves.

96. So through these three centuries the population, both of the Gas and the Osus increased, so also has the economic value of the land, and land has become increasingly the most valuable asset of every community. So much unappropriated land as the Osus occupied by the tacit permission of the Gas - so that land tended to be regarded as the property of the Osu Stool. Quite clearly at any time, had they so desired the Gas could have said to the Osus "You can farm no further than this" and that in effect is what has happened in recent years, and when each party sets up physical features to which he will swear in Court that they were indicated to his ancestors as being the ancient boundaries, and that his ancestor has told him so, one can be pretty certain in most cases, that there is a witness in the box of very doubious credibility.

97. No one with any appreciation of land and population problems in this part of the world would accept such a native story, all that can be said is that up to the limits of land which has been effectively occupied by a community, there may be physical features e.g. trees or streams, and which by tacit consent are accepted by each as his neighbour's boundary, and the thinner the population, and when there is little occupation of land, the more obvious these facts become. It is sometimes said "everyone knows his own boundary." It is a most fallacious statement and often quite untrue. All that a community can say, with any certainty, is what area of land they have farmed or hunted over. The history of the old tribal wars up to the end of the last century and the evolution of the economic development of the land in the last 50 years, and especially when viewed in the light of the excessive and protracted land litigation, leads one more and more to that one conclusion, namely that boundary marks were the exception rather than the rule, and that land ownership or tenure from an owner, depends almost exclusively upon what land has been effectively occupied. What a man owns by farming today, he may lose all rights by failing to return to the same

area within a few years. And it is to "effective occupation" that I look primarily when weighing the evidence in land causes such as these.

98. It will be convenient here to trace the western limits of effective occupation from the south-eastern corner of the land in dispute where the land to the east is described as "Government land".

The boundary at this point was the subject of litigation in 1931 when the land to the east was acquired by Government for the European Residential Area Extension. Plan Y177 (between pages 3 and 4 of Ex.No.24 and the Judgment of Hall, J. in this Enquiry) shows that the Osu Stool claimed land as far as the line followed by the pillars Nos.64/28/13 via pillars 14, 15 and 19 to pillar GCGH 2. Now in that Enquiry the Odoi Kwao Family claimed rights as owners over the area coloured in that plan in yellow (a more or less triangular wedge of land from a point situate midway between pillars 28/14 and 28/15 and as far and then beyond GCGH 2) and which line when translated on to the plan exhibited before me and marked as "B" arrives at a point about 2000' south of the words "Nee ma village". At page 38 of that judgment the learned Judge said:

> "I find therefore that the Odoi Kwao family "has made out its claim."

99. There was no evidence before me that to the west of this line there had been any effective occupation by any Osu man, whereas there was evidence of farming by people of Odoi Kwao, and ruins, said by Odoi Kwao in the 1931 Enquiry and before me to be a "village" - but which Hall, J., referred to as a "broken down Ashanti compound house" and which upon my inspection certainly now had closer resemblance to a single building rather than the remains of a village.

100. Mr. Bossman, Counsel for the Osus, and after the close of the evidence tendered, and I accepted, a deed said to have been executed by certain persons of the Gbese Quarter with the concurrence of the Odoi Kwao Family to one John William Appiah (Ex.31). There was no evidence given as to from whose custody it had come. There was no evidence of any occupation of the land by Appiah. All that Mr. Bossman could tell me was that he had obtained it "from a

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fellow who was managing the affairs of the late Appiah." Mr. Bossman asked me to admit the document as evidence of an admission made by the Odoi Kwao Family that Osu owned land immediately to the north of plot 25 on plan B.

Mr. Buckman, who made the survey of the land and the plan attached to the deed, gave evidence. He had no clear recollection as to the position of the land which he had then surveyed many years ago, but indicated to me an area close to Nima as being its approximate position and about 200 yards south of it.

On that plan the land to the north is described as being Okakoe and which on the plan "B" is shown to be situate north of Mamobi. It is also clear by the evidence of Narh Nortey that the Osus describe the land at Nima as being Akanecho (Akanetso) LAND AND THE LAND surveyed may well have been situate where Nima is today and is Mr. Buckman's recollection, rather than land further to the south which Mr. Bossman argues was its locality.

101. I am never anxious to reject ancient documents unless they are manifestly inadmissible by reason of complete irrelevance as I am only too well aware that the balance of probability in litigating relating to possession of land so often depends upon just a grain that topples the balance, but in the absence of proof of possession so as to enable the exhibit to qualify for admission as an ancient document, and in the absence of either proof of its due execution or its waiver by consent, I asked Mr. Bossman to justify to me its reception. He appeared to be quite perplexed, if not put out, by my even having the temerity to query such a frayed and obviously ancient document and asserted in the most definite term that such deeds, when shown to have been registered, as this one was, was admissible in evidence by reason of the provision of Section 26 of the Land Registry Ordinance. I am afraid I was trusting enough to rely upon Counsel's assurance without seeking verification by reading the section myself.

Section 35 certainly does not permit a deed purporting to be the original to be put in evidence, it only gives legislative sanction for a "copy or extract or certificate or registry purporting to be

signed by a registrar" to be receivable in evidence and the reasons for that are quite obvious because it is a copy of a document registered in accordance with the strict provision of that ordinance and to that copy of a copy is attached the guarantee of authenticity with attaches itself of a document kept in public custody, an authenticity which Exhibit "31" lacks.

Apart from the fact that the evidence as to locality is so vague as to be uncertain and dangerous to rely on, this deed not having been proved to have been duly executed I do find to be inadmissible and I do reject it and do direct that it be so marked and returned to Counsel who put it in.

102. Now coming north to this village of Nima. This village was founded by a man named Mallam Futa who gave evidence before me on the 1st February. This witness appeared to me to be a truthful witness and one with no particular axe to grind. I am satisfied that he obtained permission to settle here, and to build a village, for the accommodation of strangers like himself in 1931, when he paid the Odoi Kwao family a sum of £30 for the permission and for which payment he received the receipt exhibited as No.41. There is further documentary evidence that subsequently in each successive year he paid rent to that family. There is no evidence, which I can accept, that the Osu people made any objection to that occupation, and it is difficult to see how, in their position on the land how they could have made any objection unless they themselves had been in effective occupation of the land as licensees of the Ga Stool and there was no such evidence upon which I could place any reliance.

103. Going further north we arrive at the irregularly shaped rectangle marked in "biscuit" colour on plan "B" and which is described as "Reindorf's land" and to the east is the village of Mamobi. Reindorf's land was the subject of litigation last year in the Ga Native Court between Dr. C.E. Reindorf and his family v: Mallam Futa and the Odoi Kwao family. (Exhibit "135"). The claim there was for a declaration of title to a piece of land situate between Karlbilawe and Mamobi Hill and damages for trespass. In that case Reindorf founded his claim upon a purchase made by his father from the late Nii Yebuah Kwami, the then Mankrado of

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Osu. It appears that Reindorf attempted to build south of the water course (now dry) described as Mamobi-Djo and in the area now known as Nima. This was resisted by Malam Futa and the action was taken. The Odoi Kwao Family claimed that the land was theirs by reason of the permission given to them many years ago and when they first occupied the land. Now it must be remembered that the Ga, Gbese and Korle Stools were not parties to this action and had cases pending in this Court concerning the same land, and in which they deny they ever gave the Odoi Kwao permission to settle other than in the small area marked on plan "B" biscuit colour and numbered thereon as plots 24-25. Neither was the Osu Stool a party. The Native Court dismissed Reindorf's claims finding that he was neither entitled to the declaration he sought nor the damages for trespass.

The appeal to the Land Court was dismissed by Coussey, J. on the 30th March 1951, during the pendency of these actions.

104. The issues before me are whether that area of land had been:

(a) granted to the Odoi Kwao Family by the Ga, Gbese and Korle Stools, or

(b) was in effective occupation of the Osus by reason of the licence of the Ga, Gbese and Korle Stools.

I am quite satisfied upon the evidence and after viewing the land in this area that the Odoi Kwao Family have never occupied this area of land.

105. Now if it had been occupied by the Osus I would not be surprised to hear that an Osu man had sold it outright without reference to the Ga or Gbese Stool as quite clearly Osu and Gbese are to all intents and purposes independent one of the other. Osu land, in what I may style the recent past, has been dealt with as if it were a separate entity from the general Ga Stool lands.

106. The late Dr. Reindorf, a Ga man, a well known and respected Missionary and a keen historian (as is evidenced by his writings) would be very unlikely to make any mistake in this respect I would imagine,

and I think it must be a reasonable presumption upon evidence which is extremely slender - but does weigh down on the side that when he made the purchase the land recognized to be Osu land as between the Gbese, Osu and Odoi Kwao I do find for the Osus in this respect. That finding is reinforced by my inspection of the land which tended to show I could place more reliance upon the witnesses called by the Osus in respect of effective occupation here than I could place on that of the witnesses called by the other interested parties and I am of the opinion that this effective occupation is operative up to the western limits of Reindorf's land.

It also finds support in the fact that prior to this deed there were already buildings on the land built by Dr. Reindorf and there is no evidence that such building was ever challenged by the Korle We. I think here that the best may be presumed, namely that having built he would enter into the agreement with the person he believed and had possessed the rights of occupancy there and that absence of challenge leads me to believe he was right in his belief.

107. From the north-western top of Reindorf's land and then going northwards there is a considerable conflict of evidence and doubt, and where an Osu man has built there and his right to build has been challenged by one claiming under the Korle Stool or Atukpai family, then I think I can only revert to my original thesis, and that is, that where there is any extension of Osu occupation, then the onus lies upon the Osu man to stop unless he can prove affirmatively that he has obtained formal permission to extend to that area, since when the rights of the subjects of the Gbese Stool, who have a right to occupy any unappropriated land, comes into conflict with an Osu, who for these purposes is a mere licensee, then, in the absence of that express permission, the rights of the Gbese Stool subject must I think prevail.

108. The village of Kotobabi is quite clearly an Osu settlement and I must decide the line to be drawn between that village and land appropriated to the use of the villagers, and which has not been challenged, and the land to the west which is claimed by the Ga and Gbese Stools and persons claiming under them and the Atukpai Stool Family claiming by nature

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of a grant from the Ga Stool.

That line must necessarily be somewhat uncertain in the very nature of things, but the ink line drawn by me and marked "AAAA" is the most reasonable line I can find as marking the division of effective occupation between the Osus and the Gbese and I found it on the land - leaving the Osus to the north of that line until it reaches the green hatched line and then running in a northerly direction towards Achimota.

Thus from the pillar 2000' south of the letters "Nee ma village" on plan "B" I have marked the limits of effective occupation by subjects of the Osu Stool by the letters "A".

ODOI KWAO CLAIM -

109. The traditional evidence in respect of the first settlement on this land, described as being called Akanetso, was given by a witness E.M.Nikolai Kotey, who described himself as a principal member of the Odoitso Odoi Kwao Family. It is said that more than a century ago their ancestor named Nii Odoitso Shishiagbo obtained permission from the Ga Manche, Gbese Manche and Korle Priest to settle on this land and to found a village and that a village was founded by this man and his family. A part of this land this witness averred was the part claimed by them in 1931 in the European Residential Extension Enquiry and in respect of which as has already been seen, they recovered judgment. Now the Ga, Gbese and Korle Stools whilst admitting that some land was given to them to occupy, deny that it was an area any greater than the plots numbered 24 and 25 shown on plan "B". Now these Stools must have been fully alive to the nature of that Enquiry in 1931 which, upon their Counsel's own opening address, was a part of their Stool lands, and I do not think they would have stood by and permitted the Odoi Kwao family to collect the compensation, which was the inevitable consequence of success at such an Enquiry under the Public Lands Ordinance, if they had not then known that the Odoi Kwao family as the people in occupation of that land, had justification in claiming and obtaining that compensation.

110. Quite clearly they were given rights of occupancy over a very much larger area of land than the Ga, Gbese and Korle Stools are prepared now to

admit, and I now come to the site of Nima Town and in which respect, as I have said before, I accept in whole the evidence of Mallam Futa and which evidence affords very strong corroboration of the evidence given on behalf of Odoi Kwao - that his tenure was derived from the rights of occupation enjoyed by the Odoi Kwao Family and which had, in turn, been derived from the permission to occupy given to them by the Ga, Gbese and Korle Stools.

111. It must be clearly understood that this is not to be construed in any way to mean that the Odoi Kwao are the owners of this land to the exclusion of everyone else. They quite clearly are not. The only rights which they possess in the land are the ones which were either granted to them expressly or which were in contemplation but not expressed. Those rights I find were rights to occupy and farm the land in accordance with principles of native customary law operative at the time the right to occupy was granted, and that the leave and licence given to Mallam Futa had to receive and did receive the prior sanction of the Gbese Manche.

112. These rights of occupancy were challenged by the Atukpai Family sometime about 1940 and by the Lutterodt Family some 4 years after that, but the land in respect of these conflicting claims lies further to the west and is situate west of the water course styled Mamobi Djor. The sisal plantation, palm plantation and quarry claimed by Nikolai Kotey to be the property of the Odoi Kwao Family are shown on the plan exhibited and marked as No. "25" snd are situate approximately west of the words "Niiman village" and west of "Bawale Dso" (another name for the water course). Apart from extremely vague evidence in respect of these places there was not a title of evidence to show that this family had occupied any land whatsoever to the west of the watercourse (Bawale or Mamobi Djor) and the western limits of the lands occupied by them with the permission of the Ga, Gbese and Korle Stools I find is that watercourse.

113. I now cross this watercourse and deal with the claims made by the Osu Tettey and Kotey Families.

114. I will deal with that of Osu Tettey first -

The land which he claims is marked by the line "ABC" on the plan dated the 4th January, 1945 and

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marked as "100".

It is a portion of land of a triangular shape immediately north of the point where the watercourse crosses the Ring Road.

I am satisfied that the land was originally acquired by one Osu Tettey for farming purposes. The great grandson of Osu Tetteh gave evidence. His name is Wilkinson Sai Annan and he was a witness whose demeanour at all times led me to have confidence in his credibility. His case was straightforward and he did not attempt to embroider it. The land was farmed by his ancestor, who had married a woman from the Gbese Royal House named Akaitso Anna, and it was through her that he first sent his slaves (domestics) to farm this land and which with very little interruption of time has been farmed by the descendants of Osu Tetteh up to today. The rights of the family are farming ones and they cannot be dispossessed of these rights other than by their free consent so long as their conduct towards the Gbese Stool conforms with the good standards required by native customary law.

KOTEY FAMILY -

115. Herbert Charles Kotey is now the Head of the Family. He is a man of 80 years of age and claims rights in the land by reason of rights obtained by his father from the Korle Priest, and who died in 1880. His evidence was that his father, his aunt and his father's children had from as long as he could remember farmed this land and that no one had attempted to interfere with their enjoyment of it until one Tettey Addy of Atukpai trespassed on the land and was promptly sued in the Native Tribunal of the Gbese Manche the proceedings in which are exhibited and are marked as "L". Tettey Addy was adjudged guilty of trespass and had to pay the costs. The site of this alleged trespass is not clear - but appears to have been somewhere to the north of and quite close to where Ring Road is today.

116. In 1937 the Korle Priest issued a writ against certain members of the Kotey Family in respect of this land (Exhibit "10"). The case was instituted for the reason that the Koteys had sold a plot of land (where Ring Road is today) to Dr. Nanka Bruce.

The case drifted on into 1939 and the Korle Priest informed the Tribunal that the Atukpai Quarter were also claiming this land and asked for directions. The Tribunal did nothing about it. The final judgment was arbitrary, uncertain and unsatisfactory. It ordered the land, Akwandoh, of which they confessed they did not know the boundaries, should be divided equally between the plaintiff and the defendants. The record of Appeal proceedings heard before Wilson, C.J. on the 17th August, 1949, (Ammah v: Wuredu & ors.) shows that on appeal the case was referred back to the Native Court for a decision on the merits and that suit is now before me. In the earlier case the Native Court thus found for the Korle We but on appeal to the Provincial Commissioner and the West African Court of Appeal a judgment of non-suit was entered with leave to institute a fresh action. That was in 1943.

117. Thus in effect between the years 1939 and 1943 the whole of this area of land marked in yellow on plan "B" was put in issue as between the Korle and Kotey families suing as families and not as Stools and in the latter proceedings in which judgment was given on the 3rd June, 1950, in the Native Court as between the Kotey and Atukpai families in respect of a piece of land north of Ring Road and with a frontage upon Ring Road measuring 570' and which judgment is now the subject of an appeal pending in this Court.

118. In neither of these actions were the Ga, Gbese and Korle Stools qua Stools representad and I am of the opinion that it is reasonable to assume that in the earlier action these Stools would understand that the Korle Priest would be prosecuting or defending their interests and not denying his trust as it appears he did by setting up a claim to the land as the family property of the Korle Webii and thus attempt to put back the clock of history 300 years. That this was the case is clearly evidenced in the case heard in 1947 before M'Carthy, J. (Exhibit "18") and in which case the Korle Priest set up a title in the family as opposed to the Stool and in which action he was non-suited, a judgment which on appeal was affirmed (Exhibit "19").

119. In my judgment these proceedings in no way affect the title of the Ga or Gbese Stools and to construe them as such would be to connive at what in my judgment was clearly fraudulent conduct on the part

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of the Korle Priest i.e. whilst occupying a position of trust as caretaker of Stool lands, he attempted in breach of that trust, to obtain a declaration of title in favour of his own family, who are solely joint beneficiaries with the Ga and Gbese Stool communities.

120. Now this plan (Exhibit "47") is purely a unilateral act done by the predecessor in title of H.C. Kotey. The evidence given in the claim on behalf of the Osu Tetteh Family clearly shows that in one respect at least that right to survey was challenged and that is in respect of part of the eastern boundary and where is marked the tomb of Osu Tetteh. I accept the evidence that this plan was made, as it is purported to have been made on the 22nd April, 1915, and it does afford evidence that the surveyor did see farms on the land and which he has sited on the plan, but is no evidence, in the absence of other evidence that those farms were made by the persons named therein or that they farmed there with the permission of the Kotey Family.

121. In the evidence before me in support of occupation by farming there has been none given in which I could locate any of the places with any certainty.

Throughout the trial and on repeated occasions I invited Counsel's attention to the necessity for strict identification of the areas which it were sought to be proved occupied, and I indicated to Counsel, more than once, that the most satisfactory manner in which to do this was for the witness, whom it was proposed to call, should go with the surveyor on the land and indicate to him the site in respect of which his evidence would be given, and that with this information evidence by the surveyor would afford that degree of particularity which was not only desirable but essential

122. I will deal with that area shown on plan Exhibit "47" from north to south. There is no evidence that any one is now farming the areas said to have been farmed either by Atakojo or Yemonor any evidence that the persons named did.

There is evidence that a feeder line passed through a then palm plantation, situate about 800' south-east of Atakojo's farm, a feeder line built during the last war to the Airport and knowledge of

which was admitted by Kotey.

Kotey also admitted, and there was no other evidence, that compensation was paid for the destruction of these palms when that line was built and Kotey received none of that compensation. That is very cogent evidence in my judgment that Kotey at that time, enjoyed no rights of occupation in that area.

123. Coming further south to the area south-west of "Adjei's farm" and thence due south to the northern section of "Quarcoopom's" farm there was the evidence given by K.G. Konuah, the Principal of the Accra Academy that on the 14th November, 1936, an area of land measuring 1000 feet square was conveyed to the Academy by the Korle Priest, the Gbese Manche and others (Exhibit "K"). The evidence of the manner in which some 500 school children marched to that site in that same year, and cleared the whole area of the then existing bush, afforded as clear evidence of the publicity of a permit to occupy as has been given before me during the whole trial. And I accept Mr. Konuah's evidence in its entirety. That evidence shows that at that time there were no buildings in existence nearer than a distance of 500 yards. That there were in existence no farms whatsoever he said but that the whole area was full of mango and cashew trees, the fruits of which the school children enjoyed except upon one occasion when a woman protested - but whose protests were not followed up by any other action after Police action had been taken. From that date the playing fields had been regularly used and not until 4 years later did anyone make any pretence of having any interests in the land and that was not until in 1940 when a man who called himself Okai said he was a man of Atukpai and had an interest in this land. From that day i.e. 14th November, 1939, the Academy have maintained two sheds on this land, to shelter watchmen of theirs to watch their interests and to this day no one has directly challenged the Academy rights by any action in Court.

124. Is it conceivable that if this area was being farmed, or that persons had rights of farming in this area derived from Kotey, that they would not have said so.

I do not believe Kotey's evidence that he ever had any interests in land there.

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125. There is some evidence, but evidence of a very vague nature as to locality, and to which I have referred before, which was the subject of an action for trespass in 1916 against Tettey Addy. That was an action in which the Native Tribunal held, and quite correctly, that Tettey Addy defended in his personal capacity alone, and had destroyed certain trees to the north of Ring Road which the Native Tribunal adjudged had been Kotey's property. The situation of these trees has never been evidenced to me with any particularity and as mango and cashew trees abound throughout the lands and have been propagated in the past rather by the acts of nature than by the industry of men, I do not think that such a casual act of possession i.e. a habit of collecting fruits from particular trees is very cogent evidence of the interests in land claimed by Kotey i.e. a right to sell without leave or licence of anyone. That persons have farmed in the area to the immediate north of Ring Road was evidenced by witnesses advancing the cause of the Osu Tettey family, but I can find no evidence to justify any finding that north of the Ring Road land has been effectively occupied by the Kotey Family in any area other than to the west of the western boundary of the land I have adjudged to belong to the Osu Tetteh family and any further west than to east of plot marked 15 on Exhibit "B" and to the south of plots marked 16 and 17 on that same plan. There is no evidence of any occupation, or evidence given by any neighbour in respect of land claimed by Kotey to the south of Ring Road, and this judgment merely affirms that by reasons of long possession derived through his aunt by reason of possession given to their father, the present Kotey family, whoever they may be by right of inheritance, still possess what appear to be rights of farming in that small area, but possess no power of alienation of the land other than by the consent of the parent Stools.

How far these rights still exist in view of the decision given by the Native Court on the 3rd June, 1950, rests entirely upon the question as to how far these interests in land can subsist in the face of the Atukpai claim, i.e. apart from the Ga, Gbese and Korle claims.

126. In my judgment the issue depends entirely upon that issue and which was the main issue, to all intents and purposes, namely "have all the interests

in land in this area formerly owned by the Korle and Gbese Stools, through whom Kotey claim title, been transferred by grant to the Atukpai family?" Quite clearly no such grant was ever made to the Atukpai Family for reasons I am giving later. I am not satisfied that the Kotey Family have established that the land to the south of the Ring Road was a part of the land originally acquired by their ancestor and in the absence of such evidence that it did not form a part of the land given by the Korle Priest to her ancestor, then it must be assumed to be unappropriated land belonging to the Gbese Stool. I find that the Kotey Family are entitled to farm and to use the land for these purposes only, in that area marked by me in red ink as "ABCD" on the plan marked No. "142". The land cannot be alienated (i.e. by transfer of right) without the prior consent of the Gbese Manche or alienated (by transfer of ownership) without the consent of both the Ga Manche and Gbese Manche.

127. I will now address my mind to the claims of the LUTTERODT FAMILY -

Their claim is marked on plan "A" by the line coloured in sepia.

It rests upon what is admitted by the Atukpai Family (in their pleadings) was a sale to the late Wilhelm Lutterodt. The sole issue was "what was the area of land so sold?" The Lutterodt family say it was the area within the line coloured in sepia. The Atukpai family, and in this the Ga, Gbese and Korle Stools in general concur, that there was a sale, but aver it was that area of land, almost square in shape, with its perimeter marked with a dotted red line and indicated by a number 2 in a circle, and situate in the north-west corner of the land at Kpehe.

128. The Lutterodt found their claim upon two documents, and which I did admit as having some evidential value, I must admit not of much greater weight than traditional evidence - since all it purports to be are statements recorded by the Lutterodts (there is no evidence that anyone else wrote them) very many years ago. It is akin to a statement of tradition but to some extent is more cogent: if it be admitted that they are genuine documents found among the belongings of an owner of land, and I am satisfied that

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they do fulfil that description. The documents I refer to are exhibited and marked as "88" and "89". Exhibit "88" is both dated and signed. Exhibit "89" is neither dated nor signed, nor is there any evidence as to whose handwriting it is on that piece of paper.

129. Exhibit "88" reads as follows:

"We undersign Chiefs from Noojor - and "Atipai of (?) Gbese quarter do hereby bind our- "selves today to Mr. W.A. Lutt (the name "pre- "sumably is" Lutterodt - the last 4 letters "having been torn away from the paper) the sum "of one hundred and eighty dollars or in ser- "vices at the Head and a half per the Dollar "from the amount lent from him: the 1st July, "1865 in three weeks from date say on the 11th "October this year.

"Accra 20th September, 1871."

Then came appended some thirteen signatures. Now there is evidence that Wilhelm Lutterodt, at that time, was a very prosperous trader in Accra and that he had financed the Ga and Gbese Stools in a tribal war then by giving to them powder and arms and Exhibit "95" again is merely evidence of a unilateral act by its writer that King Tackie and Chiefs of Ussher Town were indebted to Wm. Lutterodt for goods supplied between the period April 15th 1863 and January 1st 1867 in a sum of £36.18.0.

130. That sum of £36.18.0 is found repeated in Exhibit "89" and which writing was quite clearly made after the death of Wilhelm Lutterodt and to whom it refers as "old W.A.Lutterodt, Deceased."

This is the whole writing as set out:

"Dr. King Tackie and people to W.A.Lutterodt.

"To King Tackie and people	£36: 18: 0
" Besey (? Gbese) people	31: 10: 0
" Noojorsah and Atookpai	40: 10: 0
	£108: 18: 0 "

In payment of the above stated sum the land at Numomonaa was given to old W.A. Lutterodt, Deceased. Boundary of which is as follows from the palm trees

to north of at Fanofa to the Tunyo tree on the hill on the south from the Tunyo tree on the south to another Tunyo tree on the same hill near Kotobabi and from that Tunyo tree to Onya Kwarbrah in the north and further from Onya Kwabra to the 3 palm trees and this is the boundary of land given to the late W.A. Lutterodt in payment of monies he advanced the Chiefs.

There is no evidence that any Ga, Gbese or Atukpai man wrote the document.

131. I have visited both of the sites which the Atukpai Family and the Lutterodts contend were these boundaries so described, and I heard with little sense of confidence the evidence given by the Atukpais of a time when it was alleged that one of the Lutterodts enquired of the Atukpais and asked them to indicate their boundary, and were it not for the fact that there was an admission of such a sale, I would have been extremely reluctant to enter judgment at all on such evidence, since, as I have said before, there is no documentary evidence signed by any person from the Ga, Gbese or Korle Stool or any of the families named in these documents to evidence that liability. Exhibit "89" appears to be merely a memorandum drawn up by some successor to the late Wm. Lutterodt, and had there been such a sale, I feel sure it would have been signed, as was the earlier acknowledgment of a debt made on the 20th September, 1871 (Exhibit "88").

132. It must be remembered that certainly not before 1890 the village of Kokomlemle was not in existence and that the village now referred to as Kpehe was then known as Numomonaa and was probably the only settlement of any kind between Accra and Tessa (further north on the Nsawam Road) and what was then called the Kibbi Road. Although "Fanofa" does literally mean "a stream upon a stream" and could equally well indicate the confluence of any two rivers - there is very cogent evidence that when people in Accra refer to "Fanofa" that they are referring to the confluence of the rivers from Mamobi on the north-east and the river Odaw which meet just west of the Nsawam Road that Fanofa describes the area just south of what is now that portion of Ring Road. The description to me, after viewing the land, leads me to believe that the writer of that document was referring to the area surrounded by the line coloured

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sepia, rather than to that small rectangle of land near Kpehe.

133. The amount paid for the land i.e. if it was sold at all, would indicate in these days an area very much larger than the one pleaded by the Atukpais. But if in fact there was a sale of that land, it would be a fact notorious certainly to all members of the Lutterodt family and there is certain evidence to which I will refer that, in my judgment, makes any suggestion of the sale of the larger area complete nonsence.

134. There is the evidence of a very old man who was unable to walk to Court and whose testimony I heard in his house at Agortin on the 20th April. I refer to that of William Marbell Botwe. His house and place of first settlement at Agortin is situate about 1000 feet south of Kpehe, and he said he first obtained permission to build a house there from one Tetteh Kwamin who was then living in Kokomlemle and that he had sold a portion of this land which he understood to be William Lutterodt's land to Theodore Taylor (now Nii Bonne) and that his right to do so was challenged by the Atukpai Family. Now this man Botwe claimed to be a member of the Lutterodt Family and that action was heard in the Ga Tribunal in 1938. I refer to the proceedings admitted and marked as No.38 and in which this man Botwe together with Theodore Taylor were plaintiffs. There was not a word there to suggest that the land was the property of the Lutterodt family; the whole trend of the admission then made by Botwe was to the effect that by selling land which he had acquired through the Atukpais he had "stolen" it. If this land had been the family land of the Lutterodts they must have been aware of these facts and especially of the building of that enormous house by Nii Bonne and which is styled "Royalt Castle". Again all along the western fringe of the main Nsawam Road there are buildings, which, if the contention of the Lutterodts is correct must have been built upon their family land. I constantly enquired as to tenancies on that side of the road. No evidence whatsoever was forthcoming to say that a single plot of land on that side of the road had been occupied by the permission of the Lutterodt Family. That evidence had it been forthcoming was material in the highest degree, since no man could have been other than aware of these acts of possession. Where evidence by

witnesses of facts material to a party's cause of action is not forthcoming there is a presumption of law that had those witnesses been called their testimony would have been adverse to the party calling them.

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135. Other than evidence as to forcible entry by members of the Lutterodt family into lands occupied by other families for farming purposes, and entries made since this land became the target of land speculators, there is no evidence which I can accept, of a single act of occupation outside of that small rectangle marked by the dotted line in red at Kpehe, which had been occupied other than as the result of high handed and manifestly illegal and even criminal acts of forcible entry into lands. There is evidence, which is not sought to be rebutted, that within that small rectangle of land at Kpehe that the Lutterodt Family have dealt with that land as if they were the exclusive owners and in view of the admissions made and the acquiescence of all parties in these acts asserting legal rights within that small area, I am satisfied that the Lutterodt family have established a claim, but beyond these limits they have failed.

136. I now come to the claims made respectively by the Ayi Diki and Nettey Quarshie families whose claims abut only slightly upon the main claims and which is the land surrounding the village north of Kpehe and described on plan "B" as Alajo.

AYI DIKI AND NETTEY QUARSHIE FAMILIES -

Both parties failed to evidence any act of occupation within the area on plan "B" between the northern limits of the claim made by Atukpai and marked in red and the southern boundary marked as hatched in green indicating the claim made by S.S. Coker then representing the Ayi Diki or Nettey Quarshie family and shown on plan "B". I will deal with the claim in detail when I consider each suit separately.

BRAZILIANS -

137. This is the area shown as being hatched in pink in the extreme south-eastern corner of plan "A". It was the subject of Suit 24/1944 between the Odoi Kwao Family as plaintiffs and the Brazilian Community

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and others as defendants. It is now the subject of an appeal pending in the Privy Council. All parties are agreed that this area should be regarded as removed from the present controversy and is not considered any further in this judgment.

GOVERNMENT OF THE GOLD COAST -

138. Certain areas have been acquired by the Government of the Gold Coast under the provisions of the Public Lands Ordinance. The Attorney General was joined as a party and it is agreed that the areas marked in blue within the land now in dispute and shown on the plan exhibited and marked as No. "93" are the lands so acquired and that this judgment must be read where that may become necessary, as if these lands were excluded from the terms of the judgments.

ATUKPAI FAMILY -

139. This family is one of the five (5) families living in the Gbese Quarter. Their claim is founded on what they aver was a grant, (and using the word in its strict legal sense i.e. the transfer of ownership) of land made to them about 125 years ago by the Ga Manche Takie Commey, the Korle Priest and others to Nii Tetteh Churu, the then Head of the Atukpai Stool for the use of the Atukpai people. (That was their pleading in paragraph 3 of their statement of claim in Suit 2/1944).

140. They aver that the line coloured in red and marked on both the plans "A" and "B" indicates the boundaries of the land which was then granted to them and in respect of which they aver they have absolute ownership and have full power to alienate any of these lands to strangers or otherwise without reference to, or authority from, anyone, other than the principal members of the family, subject to the qualification which Nii Tetteh Gbeke freely admitted to me when giving evidence on the 5th February, that no Stool land could be sold unless there was first in existence a Stool debt.

141. Now this outright grant of land is denied by the Ga, Gbese and Korle Stools, and whilst admitting that Atukpai people do farm portions of theland, they aver do so not by reason of any grant or even formal licence, but solely by the reason that being

members of the Gbese Stool they have the right of occupying for the purposes of farming any Gbese Stool land which is vacant land. It is agreed that the mere farming of land for a season or so vests no right or interest in land in property, and that for such a right to become vested there must be regular sustained cultivation, and that if a man fails to develop the land then another has the right to take his place i.e. where the other formerly farmed and that because farms may be found at one side of the land, and the same man in the course of shifting cultivation may farm the next year a mile away - say to the east - these facts give him no interests in the intervening and unappropriated land which is free for any member of the Gbese Stool to cultivate. They argue that the land has never lost its character as Gbese Stool land, and that for the past 50 years they have from time to time made grants of such land for varying purposes but that here the word grant is used loosely, and as denoting solely a transfer of property as contrasted with a transfer of ownership. They deny that Atukpai have any authority to sell land. The distinction is very important when dealing with land tenure by customary law.

142. These are principles of customary law which I think cannot be disputed and have received the judicial hall mark of authority in cases as Alinah v: Kennedy (1921) E.C. 20-21, 21 which gives guidance as to the matter of casual farming. Long and uninterrupted user of land-by subjects of a Stool was considered by the Court of Appeal in the case of In re land at Nkwantamang, Owusu & anor. v: Manche of Labadi, 1 W.A.C.A. 278 G.C. - it was a local case and it was held that such factors, by themselves, was insufficient to oust the title of the Stool. This case must be considered in conjunction with the earlier case decided by the Full Court in Lokko v: Konklofi in 1907 and where Brandford Griffith C.J. appeared to say that long and uninterrupted possession did ultimately tend to destroy the Stool estate and convert it to family absolute ownership. For the reasons given earlier I think that can only be construed as "obiter dicta" and the later Labadi case is in my judgment, the guiding and binding authority in respect of that proposition of customary law.

143. In Quarm v: Yankah II & anor. (I W.A.C.A. 80 G.C.) it was held that Stool land is the possession

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of a subject of a Stool with the consent or by the grant of such Stool cannot be alienated by the Stool to a stranger without the consent of this subject of the Stool in possession of the land is an authority which governs the rights of a subject of a Stool when it is sought to alienate Stool land, a part of which is in his possession. The word grant used here by the author of the Digest was adopted from the language used by Sarbah and referred to by the learned Chief Justice who delivered that judgment. I can only presume that Sarbah used the term grant as meaning the transfer of property and not ownership as is claimed now by the Atukpai family.

144. The issues before me were quite clear. They were:

(1) was there an absolute transfer of ownership made by the Ga Manche and Korle Stool about 1827 to the Atukpai family? and

(2) if so, what were the boundaries of that grant, and

(3) if there was no such grant what interests in the land have the Atukpai family?

145. The evidence earliest in time relates to the occupation of the village now known as Kpehe by the slaves (or domestics) of William Lutterodt and that there was established a trading station where persons from the interior brought their produce and sold it to Lutterodt's servants who transported it to their master in Accra. This Lutterodt Family was founded from the alliance of an Atukpai woman with a Danish man and the family descending from that alliance are regarded by customary law as being members adopted by the Atukpai Family and as a part of that legal entity.

146. There appear to have been no other villages established at that time to the south of Kpehe. The next village south of Kpehe, to be founded in point of time, was quite clearly the one now known as Kokomlemle and which is situated on the Accra/Nsawam Road roughtly 600 yards north of Ring Road.

147. (a) The case for the Atukpais is that Kokomlemle was founded by one Tettey Kwamin, an elder of Atukpai and that it was he, who became the "caretaker"

of these lands, and as people asked for land on which to settle it was he who would give them the leave and licence and show them where they could stay.

(b) The case for the Ga, Gbese and Korle Stools is that Tetteh Churu of Atukpai was granted a site to build and occupy at the place where Kokomlemle is situate today.

(c) I will now review the evidence in respect of this single matter.

148. Nii Tettey Gbeke II evidenced for Atukpai in this respect as follows:-

"Q. I now take you to Kokomlemle village "whose village is that? When you were young "who occupied it?

"A. Otukpai people. Numo Tetteh Kwamin "was the Head.

Afum Ade's evidence was:

"I live at Kokomlemle. I was born there. "I grew up there. When I was young my father, "Tetteh Kwamin, was the Head of that village.

On the 9th February he said:

"I left there (i.e. Kokomlemle) to come to "Accra more than 40 years ago. ... In these "graves are buried my father who was buried "there 31 years ago i.e. (about 1930).

Cross-examined he was asked:

"Q. Kokomlemle was founded during the Boer "War?

"A. That is not correct. The last time I "saw Tetteh Churu alive was before the influenza "(1918). He was living at Kokomlemle. He "died before my father (Tetteh Kwamin died about "1930).

"Q. Did you know that in the Chief's List "in 1914 your father's name appears as the "Chief of Tessa?

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"A. Yes I know that.

"Q. And in the same list Tetteh Churu's "appeared as Onukpa of Kokomlemle?

"A. I don't know that - I was not the "printer."

Chocho Amartey's evidence was:

"Tetteh Kwamin gave us the land and we put "up a building there. ... This was 40-50 years "ago. It was during the time of the plague "(1908). He (Tetteh Kwamin) was staying at "Kokomlemle. My village is between Kokomlemle "and Akrade. ... Tetteh Kwamin was my grand-"father."

Mensah Nortey Yeboah said:

"I know Tetteh Kwamin.

.....

"At that time Tetteh Kwamin was Head at "Kokomlemle - it was not true that he was care-"taker. Tettey Fio was caretaker of Atukpai "lands."

William Steven Kwabena's evidence was:

"I know Tettey Churu. He was my uncle. "He died in about 1933. I stayed with him "when I was young at Kokomlemle. He was there "before I went there to live with him."

This witness was aged about 70 years and he was speaking of a time anything from 50-60 years ago.

"When I went there first to live with my "uncle he (Tettey Churu) was the only person "living there with his wife. My uncle's wife "came from Gbese. She was called Dede Afiyie."

149. That is a summary of the Atukpai's evidence upon this matter, and there is no direct evidence as to who founded Kokomlemle - the evidence of William Steven Kobena suggests it would be his uncle Tetteh Churu - since he was the first man to build there and that would be sometime between 1890 and 1900.

150. Now what is the evidence of the Ga, Gbese and Korle Stools in this respect:

John Nyan Plange's evidence was:

"Tetteh Churu was also granted a site."

Herbert Charles Kotey cross-examined said: (aged 70 years):

"Q. When you were young the Atukpais lived "at a village called Kokomlemle - some of them?

"A. They settled at the top of the hill."

That evidence again is of the slenderest value to establish when and by whom was Kokomlemle founded.

I now turn to the evidence of H.A.K. Nelson given to me on the 28th February and I will say at once that this is evidence upon which I place considerable reliance - as again he appeared to me to be a man with no axe to grind, a witness of excellent demeanour, and ready to answer questions without equivocation, and which was a happy change.

His evidence was:

"I live at Kokomlemle with my father George "Aruna Nelson. Lived exactly on top of the "hill. ... I know Okaikor Churu. I knew her "both at Accra and Kokomlemle.

"Q. How did you get to know her at Kokom- "lemle?

"A. When we went to live there in 1896 I "saw her on the land.

"<u>In reply to Court</u> -

"Q. Was any other person owning land between "you and Okaikor Tsuru (Churu)?

"A. Not at first - but later an old man "called Tetteh Kwamin had land between hers and "ours. We lived to the south of Okaikor Churu. "Yes Tetteh Kwamin had land to the north of us "and Okaikor Churu was still further to the "north.

.....

"He (Tetteh Kwamin) came after me. Tetteh Kwamin

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"was my father's brother-in-law.

.....

"Q. At time you lived there do you remember "Tetteh Churu Ashiato?

"A. Yes - he was the man we met on the land "when we first got there.

"Q. Who was then known as the leading "figure in Kokomlemle?

"A. There were only 2 people living there - "Ashanto (Tettey Churu) and the man Okai from "whom we bought the land."

The witness was 70 years old.

151. That evidence certainly does not support the suggestions, and it is only a suggestion, it is never advanced in so many words - that Tetteh Kwamin was the first person to occupy the land at Kokomlemle and was placed there as "caretaker" for the lands "granted to Atukpai".

It is quite clear that more than one person was in this neighbourhood before Tetteh Kwamin arrived and the evidence not only that just cited, but other evidence before me does tend to show that Tetteh Kwamin was originally at a place called Tessa - situate well north of the land in dispute, and did not settle at Kokomlemle until about the end of last century or even later.

The evidence does tend to show that it was the man Tetteh Churu who was the first there and there is no evidence to rebut Plange's evidence that he was there by permission of the Korle Priest.

152. Kokomlemle seems to have been founded sometime between 1890 and 1895 and that Tetteh Churu and the old woman Okaikor Churu were two of the earliest settlers in that part.

That it was recognized as Tetteh Churu's village rather than Tetteh Kwamin's is evidenced also by certain plans of which the survey was made at the instance of the Atukpais, and where this site of Kokomlemle is described as "Tetteh Churu's" village. I refer particularly to Exhibit No. A.136 - which

was said to have been made in 1890 (a thing I doubt) but where that village is clearly indicated as "Kokomlemle or Nii Tetteh Churu's village."

If there had been an out and out grant of a piece of land, the boundaries of which had been shown to the grantee and which would have been done were the grant one of that nature, there would be no shadow of doubt as to the identity of the boundary marks.

153. Now take the eastern part of the land. The evidence is of the nature of tradition and what was shown to the surveyor is alleged to be what Nii Tettey Gbeke was informed by his elders as to what was their ancient boundary. The description of these boundaries is said to have been handed down orally through the ages since the alleged grant in 1826 or 1827. The subject of the boundaries of the Atukpai land came before the Courts in 1931 when land at the south-eastern corner of this land in dispute and adjacent to it became the subjects of enquiry under the Public Lands Ordinance and when Nii Tetteh Churu claimed a sum of £30,000 compensation in respect of a small rectangular piece of land east of and abutting the line drawn between pillars 28/13-28/15. I refer to the judgment of Hall, J. (Exhibit "24)" dated the 11th February, 1931. At page 16 the learned Judge said:

> "I may say at once that in my view the "Atukpais have certainly failed to make out any "case for compensation."

154. But the point of interest is that of the evidence given by Nathaniel Tetteh Nii Addy on the30th January, 1931 before Hall, J. (Exhibit "90") and also was the grandson of Nii Tetteh Churu (of whom we have heard so much).

There was not one word of this grant said to have been made in 1826 "for services rendered" which if true now, must have been known then and more readily available to the memory at that time.

155. Learned Counsel for the Gbese Stool submits that this tale of a grant was one fabricated quite recently to bolster up these claims. I asked Mr. Ollennu, learned Counsel, if he would indicate to me in what year this suggestion of a "grant" was first

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mooted by the Atukpais. He was unable to do so. I can find no evidence other than that this suggestion was made for the first time some time not much earlier than 1939, when both began to realize for the first time the potentialities of this land in respect of land for residence instead as formerly it was used for farming, and even then to a very limited degree.

156. Again if there was such a grant how did the Atukpai people permit the Odoi Kwao family to occupy such a large area as they have and in the vicinity of Nima to occupy it as if they were the owners i.e. by accepting rents from strangers?

The supine conduct of the people of Atukpai in the face of these events can have no other interpretation than that they knew perfectly well that they had no interests in the land there.

157. Again they cannot account for the occupation of the land by the Kotey or Osu Tetteh families. As far back as 1916 there is evidence of Kotey Family recovering damages for trespass on a part of this land from Tetteh Addy, a man of Atukpai and undoubtedly an important member of that family. It was perfectly clear that Kotey was in occupation. There was never any question that he had and obtained his rights of occupation through anyone in Atukpai. If the Atukpai Family at that time i.e. 35 years ago, had obtained a part of this land, they certainly must have known about it then, if they do now, why did they not challenge Kotey's occupation. They did nothing. The answer again is quite clear in my judgment. It was because they knew they had no interest in the land in that area by customary law.

158. Again in 1936 when the Accra Academy cleared a large area of land, what do the Atukpai people do? They did nothing. To this day they have not challenged their rights in any Court and the Academy obtained their conveyance of rights in that area of land from the Gbese Manche and the Korle Priest.

Had they any belief in a grant having been made to them and in the nature of their character and personalities as I have seen them before me for some fifteen weeks - I do not believe they would have

remained mute had they possessed any belief whatsoever in any grant having been made to them in 1826.

Had they at that time any such belief they would not only have approached the Principal of the Academy but they would have approached the Ga Manche and made the most vigorous protests. They did not.

159. I can only come to the conclusion that it was when instructing their Counsel for these cases which have arisen since 1940, when on the 29th April, 1940, Nii Tettey Gbeke was joined as defendant in a suit then before the Ga Tribunal namely, Ashrifi, Narh and Allotey v: Golightly was before this Court as Suit 7/1951 and where Tettey Gbeke gave evidence of this grant in 1826 and when he testified as follows, that the suggestion was first made. That evidence was:

> "The Onukpa of Atukpai Tetteh Churu and "the Priest of Afiyea Numo Kpanie approached "the then Gbese Mantse, Nii Krobo Sackie to "consult the then Ga Mantse Tackey Komey to "allot them land on which to farm. The Ga "Mantse consented to allot this land and "directed his elders Onamroko Korle Wulomo "Ayitey Boafo and some elders who went and "delineated the land now called Kokomlemle "land."

Land allotted to a family on which to farm, as was evidenced here, is a very far cry from what is evidenced before me now, namely, a grant of the absolute ownership of the land.

160. That evidence does also afford some further corroboration of the case for the Ga, Gbese and Korle Stools - namely that land was granted to Tetteh Churu to live upon and farm at Kokomlemle and of which fact the evidence of H.A.K. Nelson afforded as complete corroboration as the passage of time and memory would permit.

161. In other words whatever rights the people of Atukpai were given have never been enlarged beyond these rights then given to Tetteh Churu i.e. to build and occupy coupled with the rights of any member of the Gbese Stool to farm in this area.

162. I am told now not that this grant was for

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farming purposes but that it was an outright and absolute grant of land of services rendered by the Atukpais during a war sometime in 1826. Nii Tettey Gbeke admitted under cross-examination that all the families of Gbese went to that war i.e. the five families, but cannot say whether any such grants were made to the other families, a thing which he must know one way or the other as a Gbese as it would form an important part of Gbese tradition and it is a little difficult to understand if a grant was made to one family, why similar grants were not made to the four others.

163. Against these general facts which negative rather than affirm that there was any grant made to Atukpai, what is the evidence which could be interpreted either as the acts of a person affirming this right of absolute ownership or what are the acts which either affirm or lend colour to a right of possession to such lands - i.e. acts of the family qua family and not by its individual members.

They are said to be:

(a) The foundation of Lagos Town by a stranger (Braima) with the consent of Tetteh Churu the then Mankrado of the Atukpai Family for which £100 is said to have been paid in "1936 or so" - but of which transaction there is afforded no documentary evidence in support.

(b) 1940-41 Tesilima village (north of land) said to have been founded by strangers with Tettey Gbeke's permission and of which, it was admitted, there was no documentary evidence in support of such an agreement.

(c) 1939 - Grant to Salifu of land straddling Ring Road. Salifu, was a stranger employed at the Supreme Court, Accra, as a messenger.

(d) 4th November, 1941 - Agreement made by Nii Tettey Gbeke and the Military Authorities Area Command Accra for the temporary occupation of the village of Akaladi (north of Kokomlemle in consideration of rent and compensation (Exhibit No."2")).

(e) Agreement made on 27th December, 1941, between Nii Tettey Gbeke and the Governor of the Gold Coast Colony permitting entry into land east of Kokomlemle and north of Ring Road to facilitate the construction of roads, drains, latrines, incubators and other works in consideration of the payment to them of one shilling (Exhibit No."3").

(f) Letter dated the 1st May, 1945, by the Gbese Mantse to Nii Tettey Gbeke asking that a portion of Atukpai Stool land be given to the Gbese Stool to liquidate a Stool debt (Exhibit "4").

164. Now in respect to (a) the buildings at Lagos Town. Braimah who gave evidence on the 12th February said that £15 was given to Nii Tetteh Churu as "drink" on the 15th November, 1937 - that "no one was living there at the time. It was a thick bush" and that a deed was executed on the 28th December, 1937 conveying a portion of land 1000' and 2000' to Chief Abudu Kadiri Braimah for a term of 99 years for a sum of £100 and a rent of 2/6 per annum. This witness stated that building commenced in 1939.

An inspection of this area shows that the buildings erected have far exceeded the acreage granted to them and that the area so granted is undefined. These rights were challenged by the Korle Priest when he caused a writ to be issued out of the Ga Tribunal on the 29th April, 1943, an action which finally came before M'Carthy, J. and in which the Korle Priest was non-suited for the reasons I have already described, namely that he could not establish that the lands were the "family" property of the Korle Family.

165. Reference (b) - This land was claimed by the Osus and the evidence was that the "strangers" living there made agreements both with the Osus and the Atukpais.

166. Reference (c) - Nii Tetteh Churu on the 30th December, 1937, conveyed to this man Salifu for a sum of £100 an area of land straddling Ring Road which in this plan attached to the deed shows it to measure 27776 feet by 1278 feet on the north and

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415 feet on the south in that conveyance Nii Tetteh Churu purported to convey an estate "seized in fee simple free from incumbrances and family or tribal claims whatsoever". His occupation of that area was also challenged in that action which came before M'Carthy, J.

This area of land so conveyed covers practically the whole of the plot conveyed to the Accra Academy by the Korle Priest in 1936. The sale to Salifu quite clearly offended all principles of customary law as to publicity and nothing was known of that sale until the Principal of the Accra Academy became aware that he (Salifu) was building on land already granted to the Academy.

167. (d) This agreement is not contradicted in any express term and there is evidence that people of Atukpai had occupied that area and had built such buildings on the land for a very long time, probably rather more than 40 years.

168. Now the evidence in respect of sales of land made in this area by the Atukpai Stool. I tabulate them in chronological order:

(1) 20th January, 1940, (junction of Ring/Nsawam Roads) sold to Golightly for sum of £120. The estate purported to be conveyed was an estate in fee simple free from all incumbrances.

(2) 10th May, 1940 - Conveyance to William Botchway Marbell of land situate at Agortin, following an action in the Tribunal referred to earlier in this judgment.

(3) 26th September, 1942 - Sale to Moses Klu Sowah of an estate in fee simple. Land situate on Nsawam Road between Kokomlemle and Akrade.

(4) 20th July, 1943 - Sale to G.A. Agyare of estate in fee simple of land situate north of Akrade.

(5) 8th September, 1943 - Sale of land situate on Nsawam Road south of Kokomlemle to Mary Duncan.

(The deeds evidencing these conveyances are those marked "129", 130", "18", "16" and "97"). Exhibits "68", "69", "71", "76", "78", "80", "85" and "112 evidence sales of land by Nii Tettey Gbeke to various individuals between the dates 8th September, 1943, and 1st April, 1949.

169. All of these transactions have little evidential value as acts evidencing ownership since:

(a) there was no publicity accorded to these transfers of property as is required by customary law,

(b) the sales only became known when the grantees commenced building operations,

(c) there was no acquiescence or "standing by" as the parties claiming interest in the land promptly asserted their claims of right in the Courts and several of which are now before me for trial.

All acts were post litem motam.

170. Learned Counsel for the Atukpais laid considerable emphasis on the effects of the decisions given in two actions, the first one being Suit No. 25/1927 in which Yates, J. gave judgment on the 21st January, 1927 and the later one is the judgment of this Court delivered by Lane, J. on the 1st December, 1942, and which judgment was affirmed by the Privy Council on the 11th July, 1950. (I refer to Exhibits "11", "8" and "138").

171. In the earlier case i.e. the one in 1927 Tetteh Kwei Molai, who was then the Acting Korle Priest claimed "for himself and as the representative of the other members of the Korle Webii" a declaration of title to certain lands situate between near Avenor and Kokomlemle as against certain members of the Okai Tisah Family (and which included Emma C. Bruce and Dr. F.V. Nanka Bruce). The land then claimed straddled the Nsawam Road from west to east and in that action although the plaintiff claimed on behalf of the Korle Family alone, his claim was clearly that he sued as the "caretaker" of the lands as a subsidiary Stool to the Ga Stool and which the learned Judge accepted as proven.

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The plea of the plaintiff was clear, namely that by customary law when a grant of land is made to an individual for farming purposes - these rights of ownership could never be lost by long possession or occupation by the descendants of that individual and that the rights of possession had been lost by reason of the conduct of a person placed on the land by the defendant.

The learned Judge then found as a fact that a grant of land for farming purposes had been made to the defendant's ancestor, Okai Tiseh, by the then Korle Priest and that a slave named Kadabi did then build house or hut on the right hand side of the road.

The learned Judge accepted the evidence that Kadabi moved that hut from the right to the left hand side of the Nsawam Road, and from there farmed this land on both sides of the main road.

The plaintiff failed to show that Kadabi had been removed from the land for non-payment of tribute and failed to show that he had abandoned possession in other way.

The plaintiff was then non-suited, and which by the effect of our Rules Order 39, Rule 3, operated as a judgment on the merits for the defendant. In other words that the defendants as the descendants of Okai Tiseh retained the rights of farming granted to Okai Tiseh by the Korle Priest.

It will be noted that at no stage of these proceedings were the Atukpai Family ever mentioned and there is no suggestion that they attempted to be made a party to that action.

172. (a) But in 1942 the rights of this same Family are again the subject of litigation, but this time the Family are the plaintiffs and are resisting claims now made by the Atukpais to ownership of a large area of land, and including this smaller area which had been the subject of litigation sixteen years earlier in 1926.

(b) The opening lines of the learned Judge in his judgment refers to the then recent layout for suburban development in this area which had added a new interest to land and which he said had up till

then had little value and was regarded even as agricultural land of no great merit; but which had acquired value for building purposes as the town had spread in that direction.

(c) The land in issue is delineated and edged in pink on the plan admitted in this case and marked as No. "60". The Atukpai Family made no claim to any land to the west of the Hsawam Road and their defence was the one set up by their claim today, namely, an ancient grant to them of the absolute ownership in the land by the Ga State.

(d) The case for the Atukpai family was that they had granted a portion of this land about 35 years before that action to Adams, who was the predecessor in title of the 2nd defendant, Allotey and that any grant made to Okai Tiseh was invalid in face of the ancient grant made to the Atukpai Family by the Ga Manche, which they averred was in 1822 (not 1826 as now pleaded). They pleaded they were unaware of the earlier action in 1926 and that it created no estoppel. The learned Judge at p.8 of that judgment refers to the conduct of Samuel Addy and the head of the Atukpai Family during the 1926 proceedings.

He said:

> "but it showed that his family were willing "to stand by and see litigation proceed as to a "piece of land which they are claiming now to be "theirs. He was then supporting the party who "was claiming for the Korle Webii against the "present plaintiff (who is now seeking to estab- "lish his title through the Korle Webii) whereas "now the Atukpai family are seeking to controvert "a title to this land through the Korle Webii, "and incidentally any claim by the Korle Webii "to adjoining land.
>
> "The defendants put in issue the alleged "title of the Atukpai to the larger area edged "green of which the pink area is said to be "part. I must say at once that they certainly "failed to convince me as to that title ..."

At page 11 the learned Judge continues:

> "They successfully upheld the rights in

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"the 1926-28 case as far as the Korle Webii "were concerned, the Atukpais not intervening.

"In 1937 when a piece of this land was "advertised for sale as belonging to Tetteh "Kwei Molai, they protested the sale was aban- "doned. The Atukpai still had made no claim..."

At page 17 the judgment goes on:

"I consider that the plaintiff's case of "use and occupation fails. ... No clear case "even of squatting on the pink area has been "made out. For it would seem that after "Kadibi's hut and farm on the right was given "up, the plaintiff's family defendants farmed "on the left ....."

At page 18 the judgment refers then to the Atukpai defence:

"It is not necessary to consider the defen- "dant's case at length since the plaintiff has "not established his case. It is sufficient to "say that the Atukpais would appear to me to "have no claim to the pink edged interest being "litigated and made no claim until 1937 or 1938. "Their claim seems to me to be entirely bogus "and there is no satisfactory evidence of a "grant by the Ga Manche Tackie Komey as they "claim."

The learned Judge then advanced further reasons why in his judgment the Atukpai's claim was bogus.

(e) Then by way of obiter the learned Judge at p.20 added:

"title would seem to remain in the Gbese "Stool and their caretakers the Korle Webii. "This however is not directly in issue and is "merely an expression of opinion."

(f) A judgment of non-suit was entered and the action was dismissed with costs as regards Nanka Bruce's claim to the portion of land on the right of the road.

(g) On the 11th July, 1950, the Privy Council dismissed the appeal made by Nanka Bruce from a

judgment of the West African Court of Appeal dated the 7th March, 1949, dismissing an appeal by Nanka Bruce from the judgment of Lane, J. but which deleted the words "and the action dismissed". In my judgment all that this case decided was that the Family of Okai Tiseh had failed to prove:

(a) their title to an outright grant of land by the Korle We and

(b) use and occupation of the land to the right of the road subsequent to the time when the family abandoned farming in that area which had been farmed by a slave named Kadibi.

In my judgment it exemplifies solely the well accepted rules of customary law that:

(a) any member of a Stool has an inherent right to farm at will any area of Stool land he may find unappropriated land,

(b) farming conveys to the farmer no title to the land on which he farms,

(c) the failure to continue farming in an area is deemed to be an abandonment of such licence, and

(d) any other member of the Stool may subsequently farm that area abandoned.

Whilst the judgment operates as an estoppel as against the Okai Tiseh family - it in no way operates as such against the Ga, Gbese or Korle Stools as Stool land owner and caretaker nor against any other person claiming under them.

In my opinion these cases in no way advance the Atukpai's claim.

173. (a) Now there is another piece of evidence upon which considerable stress was placed by Counsel for the Atukpais and that was an affidavit sworn to by Tetteh Kwei Molai, Acting Korle Priest on the 4th September, 1920.

(b) I am asked to admit it as an admission of Atukpai rights in land as shown in the plan annexed

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to that affidavit. Its admissibility was challenged on the ground that there was no evidence that the deponent was in fact Tetteh Kwei Molai, the Acting Korle Priest.

(c) It was an affidavit which sought to establish that one Annan, a then Korle Priest on the 8th August, 1911, sold the land (shown as edged in pink on the plan) to N.C. and J. Vanderpuye. There was no evidence that this piece of land had ever been occupied by the Vanderpuyes, and their successor in title who gave evidence before me said he had no idea where this land was situate, and only tried to locate it when he came "successor" and found the affidavit among his deceased predecessor-in-title's effects. For this reason I held it could not be admissible in evidence as an ancient document, but that it might be admissible as the declaration of a deceased person against title (interest).

(d) By the General Procedure Rules Schedule 2 Order 6 Rule 17:

> "Before an affidavit is issued in this "Court for any purpose, the original should be "filed in Court, and the original or an office "copy shall alone be recognized for any purpose "in the Court."

I did admit that affidavit in evidence, and it was not until the final addresses that I observed this Rule. This affidavit has not been filed and prima facie therefore it cannot be used for any purpose. But say for sake of argument this technical defect had been overcome by filing it now - could it not be used? I think it could.

(e) In cases where hearsay evidence of tradition is so freely admitted as to what is alleged to have been said by one person to another, I think it would be unreal to wholly ignore this document, which on the face of it certainly appears to be a genuine one, and I have deemed it to be admissible in evidence as the declaration of a deceased person against interest.

It is against interest as:

(a) this land is situate in the north area of the land now in dispute and in the area

now known as Lagos Town,

(b) the Korle We as caretakers of Gbese Stool lands were the owners of all the lands at one time,

(c) there is a statement which can be construed as an admission that land to the south of the land sold to Vanderpuye was Atukpai land.

But it is no admission of a grant to Atukpai - it is solely an admission that Atukpai had some interest in land there. When Lagos Town was founded in 1938 there were neither farms nor buildings in that area. That is the evidence of Bukare (called by the Atukpais).

It would appear that when the affidavit was signed there must have been some form of occupation by Atukpai people e.g. farms and farming huts - but of this there is no evidence.

The situation may well have been as it was with the slave Kadibi in the case of Nanka Bruce v: Tettey Gbeke already referred to i.e. an abandonment of a farming interest and that is as far as I can interpret that document with the other evidence before me.

174. (a) Learned Counsel's argument was that all lands surrounding the area in dispute had been granted by the Korle We to some one and that they cannot now say that having granted all the surrounding land - the remaining core, as it were, has been granted to no one.

(b) There is no evidence that all the surrounding land has been granted outright to anyone. On the western side the only portion put in evidence in any detail was that referred to in the Nanka Bruce v: Tettey Gbeke case and is the only instance cited by Counsel on that flank - that was a case in which the claim to that outright grant had been non-suited. The only evidence of any such absolute grant is the one to Wilhelm Lutterodt at Kpehe and but for Atukpai admission of that fact, I should have hesitated more than once before pronouncing for the Lutterodt family.

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(c) There is no evidence of any absolute grant in the north. There is (a) the grant to Ayi Diki or Nettey Quashie to occupy land to farm on (b) that tacit consent to the occupation by the Osus on the rest of the northern and estern boundary, and the permission given to the Odoi Kwao family to occupy the area described as Akanetcho. As regards the southern area - there is no evidence of any grant made by the Ga Stool other than that of a small area in the south-east to the Brazilians.

(d) That argument clearly has no substance. I agree with learned Counsel when he says that the Korle We had no title to sell lands and it is quite clear that they have done so for very many years, in breach of their trust and without accounting to their partners (namely the Ga and Gbese Manche).

175. (a) Counsel asked me to say that the Gbese Manche's letter written to Nii Tettey Gbeke on the 1st May, 1945, is an admission that the Kokomlemle lands did belong to the Atukpai Stool. Now that letter asks for land at Kokomlemle to be transferred to him to sell to discharge an unspecified Stool debt, and the request makes it quite clear that the transaction must not be regarded as any other than a Stool matter, but in the last four lines of that letter the writer specifically reserves to himself and his family for "their private use" the right to use any of this land.

There was no evidence of any reply having been sent to that letter.

(b) In my judgment far from this letter being any admission of transfer of an absolute right of ownership to Kokomlemle lands, it is rather an assertion by the Stool owner of his interest and that of other members of his family (not Atukpais) in this land, and tends rather to negative than to affirm the argument advanced.

(c) I would also observe that this letter, however admissible in evidence it might have been of such an admission, loses considerably in its weight by reason that it was written "post litem motam" and in this respect the action and conduct of the three principal portions, namely the Ga and Gbese Manche and the Korle Wulomo (Priest) must not be overlooked. The Korle Priest quite clearly had been attempting

and was attempting at the time the letter was written, to claim all the lands as the property of his family (the Onamoroko or Korle Family) in abuse of his trust as the "caretaker" of the Ga Stool lands, and that there had been considerable friction between them as to their interests in these lands as evidenced by:

(a) publication of a notice by the Solicitor to the then Acting Korle Priest, Nii Tetteh Quaye Molai in the "Daily Echo" dated the 2nd March, 1943, in which all these lands were claimed to be the property of the "Korle We Family".

(b) The writ issued in 1943 by Ayitey Cobblah, Korle Priest against Tettey Gbeke and others claiming all the land to be "Family" land and which the Gbese Manche opposed that claim and asked unsuccessfully to be joined as a party to which M'Carthy, J. refers at p.3 of Exhibit "18".

(c) A further publication, this time in the "African Morning Post" dated the 12th July, 1947 in which Ayitey Cobblah, the first Korle Priest (and a party to these actions) claimed again and in the most unambiguous terms that the land was the property of the Onamoroko Korle We family of Accra.

(d) The evidence of Nii Tackie Komey II on the 14th February last when after perjuring himself and denying he had any knowledge of a meeting with his Solicitor and the Korle Priest he admitted such a meeting - and only after I had given his own Counsel freehand to cross-examine him if necessary on this point. The allegation made was that at that meeting he had requested the Korle Priest to make a declaration renouncing any rights in the land.

(d) I will not pursue this matter any further than to say that it was quite clear that the three partners are still at arms length in the matter of these lands and in my judgment it is in each case due to a desire to obtain personal profits from the land and to deny to the members of the Stools the

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rights which they are entitled to enjoy in these monies as administered by the Native Authority under the provisions of Section 32(2) of the Native Authority (Colony) Ordinance, 1944, and which appears to have been deliberately ignored by the several members of the Native Authority for the Ga State. In order to ensure that I had not been misled in this respect I invited the District Commissioner to give evidence to allay any such fears of mine. The District Commissioner informed me that I had not arrived at wrong conclusions, and that he could give no evidence that would be other than embarrassing to himself. I am mentioning this matter, that it may not be said that hard words have been used, without giving adequate facilities to have them rebutted.

176. (a) There is one other piece of documentary evidence upon which I must comment and that is Exhibit "136" which is a copy of a plan which Mr. Simpson, Licensed Surveyor testified he had copied from a document handed to him by the man Aryee (a witness and the one who throughout the case has been sitting behind Counsel for Atukpai and as I am told "instructing him").

(b) That document purports to have been made in 1890 by the instructions of the Atukpai elders. Now quite clearly a unilateral act of this nature is no evidence in support of the title; at its highest it can be said to be evidence that the present claim to this large area of land was in being 61 years ago, and to rebut the allegation that the claim is of recent origin. Counsel for the Ga, Gbese and Korle Priests allege that the original is a forgery and was manufactured for the purposes of evidence in the 1945 case heard before M'Carthy, J.

(c) I asked where the original was repeatedly, and all I could get were vague suggestions that it was still an exhibit in some Court or other. On the 25th April the Registrar of the Land Court produced the Exhibits Book to show that this "old" plan had been handed to Mr. Aryee and that he had signed as having received it. Mr. Ollennu, Counsel for the Atukpais, explained that his clients admitted they had received it, but could not trace it now. In view of certain aspects of this copy tendered I was extremely suspicious regarding the authenticity of the original and particularly so as Mr. Halm, the

Assessor, and who had been the Assessor in the 1945 case, informed me that the document then tendered was of doubtful age and that the learned Judge (M'Carthy, J.) then had been unable to decipher the date even with the assistance of a magnifying glass. My suspicions as to the genuine quality of the original was heightened by certain aspects revealed in the copy. If it had been made in 1890 then quite certainly there were not in existence then eleven houses at Kokomlemle as shown in Exhibit "136" - since the evidence satisfies me that when the witness Nelson went there first, and that was in 1896, there were only two men living there. At that time the village of Akradi was not even in existence and the evidence of the old woman Ayele, whose testimony Mr. Ollennu has asked me to hear at Akrade, is that she and her husband had founded that village about 45 years ago. It must, in any event have been after 1896, since she says that they obtained the permission to occupy that land from Tetteh Kwamin and at that time this man had not yet arrived in Kokomlemle.

(d) There is again the heading "Otuopai Stool Lands". There is some evidence of the creation of a Stool in Atukpai, but very vague and uncertain and that was certainly not much earlier than in the 20's of this century.

(e) Again I notice the scale is 1/800 feet. Quite clearly if a surveyor has made such a plan it could not have been so described, since from Kpehe to the extreme boundary with Osu on the east and Mamobi to the north represents 220 yards: which is absurd since the actual surveyed distance between this point and the main Nsawam road at Kpehe is 8000 feet and quite clearly if this is a true copy, and that in the evidence, the original document is of doubtful validity.

(f) I can place no reliance upon the evidence that the plan copied by Mr. Simpson was one prepared in 1890 and if it were in existence when as recently as 1926 - it is remarkable that Samuel Addy then Head of the Atukpai family and who was then in a case concerning land at Akrade supporting a person claiming under the Korle We. On the balance the evidence supports the charge that it was a document manufactured for the 1945 case and rebuts the suggestion that it was made in 1890.

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177. The personal relations of these partners, certainly that of the Ga Manche and the Korle Wulomo have been strained and I cannot believe other than that the Gbese Mantse must have been affected by them. I was told he would give evidence - but he did not go into the box.

It is for these reasons that I regard any statements, declarations or writings of these three parties since the dispute was "post litem motam" (and that arose somewhere about 1937) as being to some extent tainted and losing much of its weight in evidence.

178. There was also some evidence that during these years the Gbese Manche had certified on deeds of conveyance to the "fee simple title" of the Atukpais, at a time when some kind of an unofficial Deeds Registry appears to have been opened in that quarter, and that upon each such sale of a land there is evidence that he received some money described to me as "drink". There is no evidence that the monies so collected found a resting place other than in the pocket of the Gbese Manche.

179. It is for these reasons that I view with suspicion this evidence relating to acts of the parties since the time when dispute first arose as to ownership of these lands (and that appears to have started sometime about the year 1940), when the Accra Academy's title was challenged in a half hearted manner, and was precipitated after Nii Tettey Gbeke became aware of the proposed layout in this area for residential purposes and signed the agreement with Government on the 27th December, 1941.

To that agreement Mr. Ollennu, now Counsel for the Atukpais was the witness. It was signed in the presence of an Assistant District Commissioner and at page 3 of that agreement (of which only a certified true copy was tendered) I observe that in the Form of Agreement the following words appear:

> "I of the State of Paramount
> "Chief of hereby assent to the
> "above written disposition of the land herein-
> "referred to."

Now that was clearly intended to be signed by the Ga Manche who is the Paramount Chief. It was

not signed and affords to me corroboration of the evidence given that when the Ga Manche and Ga Gbese heard of this agreement they objected to it. The agreement as it stands is clearly only a unilateral act. So far as the Ga, Gbese and Korle Stools are concerned it affords no evidence of any acquiescence. The evidence on the contrary speaks to its rejection.

180. It is upon this evidence that I am asked to believe the traditional story that in 1826 or 1827 there was an absolute grant of the ownership of these lands (shown on plan "A" as being edged in pink) by the Ga Manche and Korle Priest to the then Head of the Atukpai Family. I have no hesitation whatever in endorsing the view that was held by Lane, J. in 1942 in the case of Nanka Bruce v: Tettey Gbeke namely that the claim is bogus, and I agree with Mr. Lamptey, learned Counsel for the Ga, Gbese and Korle Stools that the mere fact of persistently selling land, whilst its ownership was in issue, affords no additional weight to the evidence and that what I must regard is the situation as it existed before this building commenced and which precipitated one of the first of these actions namely the one in which Lane, J. gave judgment on the 1st December, 1942.

181. I am also satisfied upon the evidence that the Atukpai people have behaved in an abominable manner and that the high handed action of such people among others, such as the ex-messenger Salifu and their Counsel's "instructor" Aryee, and whose acts can only be described as ones of hooligans. Their behaviour is one which in ancient days would have been held justification for the forfeiture of the lands and for their bodies to be sold as slaves.

182. Before I go on to each of the actions in detail I will now address my mind as to the interests in land enjoyed by the Atukpai Family "ante litem motam".

(a) I find that the lands in dispute are a part of the Ga Stool lands.

(b) I find that they are a part of the lands which the Gbese Stool subjects enjoy independently of the other Divisions or Quarters of the Ga State.

(c) I find that the lands immediately prior to

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the institution of these actions was agricultural land.

(d) It was agricultural land of a very poor order and very sparsely farmed.

(e) That each and every subject of the Gbese Stool land had an inherent right to farm on unappropriated land within this area without express permission being required of anyone.

(f) The right to farm was coupled with an implied right to construct buildings to be occupied and used in direct furtherance of that farming.

(g) No estate in land is created by making a single farm.

(h) Land made into a farm and not re-farmed after the normal period required in which it shall be fallow, is deemed once again to be unappropriated land.

(i) That the Korle Priest as the "caretaker" of these Stool lands may make grants of land to members of the Stool for specific purposes e.g. to build for the purpose of residence or trade.

(j) That right cannot be exercised in derogation of a subject's right to farm i.e. it can only be exercised on land deemed to be unappropriated, and that may be, as has been seen, either land not farmed at all, or land that has been farmed and then abandoned.

(k) That before any member of the Gbese Stool and of which the Atukpai Family are members, may deal with land otherwise reference must first be made either to the Gbese Manche, or in some cases to the Gbese Manche and Ga Manche, e.g. mortgagee of land by customary law (known as pledges) made to a stranger to the Stool would require the consent of the Gbese Manche, leases in similar circumstances would require the same authority.

(l) Sales of land outright or mortgages of land in English form, carrying with it the right of sale in certain eventualities can never be made unless first the prior consent is obtained both of the Gbese Manche and of the Ga Manche.

(m) Such sales can never be approved unless it is first ascertained that:

(a) a Stool debt is in existence

(b) that its existence was due to no fault of the individual

(c) that the principal members of the family whose lands are involved have consented.

The reasons for these curbs on alienation are not difficult to understand, since if one Stool of the State sold its lands, it would have a right to occupy other Stool land and it might ultimately find itself obliged by necessity to encroach upon land which another Division or Quarter had formerly regarded as its own, and in my judgment whatever may have been the practice in the past, it does appear to me that in any sale of Stool land the whole Manchemei (i.e. the Manches of every Quarter or Stool) should be consulted before a sale is permitted.

It is quite clear by the provisions of the law as it stands i.e. as from 1st April 1945, by reason of Section 32 and especially 23(2) of the Native Authority (Colony) Ordinance, 1944, that the proceeds of such sales or a part of them may come within the sources of revenue of the Ga Native Authority and which by the provision of Sub-section (2) are under their control and management.

The Native Authority in fact consists of these Manchemei to whom I have referred.

(n) I find that there was no specific grant made to the Atukpai Family in 1826 or at any other time.

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(o) I find that the only rights in land occupied by any member of the Atukpai Family when the cause of these actions arose in about the year 1940 were rights of the same degree as that of any member of the Gbese Stool.

183. It will be convenient to deal now with each separate action in the order in which they were heard during the trial.

184. Suit No.15/1943 - Afiyie v: Tettey Gbeke -

(a) This suit was commenced by a writ issued out of the Tribunal of the Paramount Chief of the Ga State on the 3rd June, 1943, when Mensah Quarshie then claimed as the head of the Okaikor Churu Family of Gbese a declaration of title to land situate at Kokomlemle and which was further particularised in the writ.

The plaintiff claimed further a sum of £100 damages for trespass to that land and an injunction.

When the suit came before me for trial on the 28th February last, Afiyie had been substituted as plaintiff, whilst Comfort Okraku and Sohby Baksmaty had been joined as defendants.

Pleadings had been filed in 1943.

(b) The plaintiff's case is that the Gbese Stool granted this land to Okaikor Churu in about the year 1875 and that the Gbese Stool was then occupied by her brother named Mante Annan and that until 1924 when she died she (Okaikor Churu) had remained in undisturbed possession of that land.

The plaintiff says that in or about the year 1942 the defendants committed acts of trespass upon the land by selling it and setting up their title as absolute owners.

(c) The defendant Tettey Gbeke's case is that in the year 1827 this land was granted to his predecessor-in-title namely Nii Tetteh Churu the then Head of the Atukpai Stool for the use of the Atukpai people.

They averred that these villages called Kokomlemle and Akrade were established by Atukpai people

long before the year 1875 and denies Okaikor Churu's possession at all.

The defendant generally traverses paragraph 13 of the statement of claim and by necessary implication deny any trespass or sale of land.

The land in issue is that plot marked as No.4 in the plan exhibited and marked as "B" which I visited on the 5th March.

(d) The evidence given by the plaintiff and her witness impressed me generally as being frank and truthful.

I accept the evidence that the late Okaikor Churu, who was not an Atukpai woman, and was the sister of the late Manche Ama of Gbese, and that this land was given to her by him some time about 1875 and that she lived or worked on this land until the time of her death sometime about 1924 and that she was buried in that land in a cemetery reserved for distinguished members of the Gbese Stool. On my visit I found a tomb with a head stone inscribed:

"Here lies the body of the late Nai Priest
"of Accra.
"From this 18th century to the 19th century
"32 on the Stool, Aged 84 approximately
"Nai Priest Yaote."

This is evidence of great weight as it appears to me again to negative any question of this land, containing the bodies of such eminent persons, to be conveyed absolutely to a single family, namely Atukpai. It is on the other hand cogent evidence that, certainly up to the year 1932 when the Nai Priest was buried the land had retained its character as Gbese Stool land.

There was evidence which I accepted that Adu Tuntun, a nephew of the late Manche Ama, had assisted Okaikor Churu to build this house. There is evidence that during her lifetime Okaikor Churu mortgaged the land and subsequently redeemed it.

Exs. "F" and "57"

If that evidence is accepted, and I do accept it, then that land whilst farmed retains to that extent the character of the family land of Okaikor

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Churu and of whose family Afiye is at present the head.

The evidence of the witness Nelson particularly impressed me as being, not only that of a truthful man, but one who possessed intimate knowledge of the land since 1896 when he first saw the land and saw Okaikor Churu there.

It is quite clear that, at that time, the man Tetteh Kwamin apart from farming somewhere towards Nsawam had not built there, and that the first to build were Tetteh Churu and a man called Okai.

(e) The evidence called by the Atukpai family did not impress me at all. The man Aryee, apart from possessing most of the attributes of an untruthful person, quite clearly had very little or no knowledge of the locality, and this in the latter respect also applied to the witness Ahiney, whose evidence, when I viewed the land, proved to be not as reliable as I had believed it to be when she was in the box.

There is the admission by the pleadings that Tettey Gbeke on behalf of the Atukpai Family had sold portions of the land and that fact finds corroboration in the evidence that there are buildings which have been recently erected on the land, and which, when I saw them, had not been wholly completed and the Atukpai Family do not deny the buildings were built by reason of sales made to persons by them, but there was no evidence that they had been built by the other defendants Comfort Okraku or Sohby Baksmaty and who did not give evidence.

(f) The plaintiff, Afiyie, is granted a declaration that she and the other member of the Okaikor Churu Family, are possessory owners of that portion of land numbered as No.4 and marked in "biscuit" colour upon the plan admitted and exhibited as "B", which they are entitled to use for purposes of farming and residence by the members of their family, subject to the rights of the Ga and Gbese and Korle Stools who are recognised by customary law as being the allodial owners of that land.

In respect of the trespass by authorizing this building of a house which is located on site marked

No.3 on the plan admitted and marked as "142" the nature of the trespass was one which has destroyed the character of the land as farming land and was perpetrated without any bona-fide claim of right, and was persisted in despite protests and a writ being issued to prevent further damage. I assess the general damages at £100.

The plaintiff is granted the injunction prayed for.

185. (a) I will now deal with Suits 25/1944, 116/1945, 15/1948 and 17/1948 -

(b) They all relate to that piece of land which is marked as No.2 in "biscuit" colour on the plan exhibited and marked as "B".

(c) Suit 25/1944

E. B. Okai and Sarah Okai

v:

1. Mary Obamla Ankrah
2. Nii Tettey Gbeke.

The writ was issued out of the Tribunal of the Paramount Chief of the Ga State on the 31st July, 1944, and claimed as against Mary Duncan £50 damages for trespass to land and injunction.

Nii Tettey Gbeke was joined as a defendant, in his personal capacity, and the suit was transferred by an order made by the Brazilian Community on the 15th December, 1944, and which became a case pending in this Court on the 1st April, 1945.

By an order made on the 3rd February, 1946, Mary Duncan was substituted for Mary Obamla Ankrah who had died.

These 4 suits were consolidated for trial by an order made on the 10th March, 1949. Pleadings were ordered in Suits 25/1944 and 15/48.

A statement of claim was filed by the plaintiff on the 12th March, 1949, but no statement of defence was filed by the defendants.

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(d) Suit No.116/1945

E. B. Okai and Sarah Okai

v:

1. E.K. Ashanti
2. H.E. Farrar.

A writ was issued out of this Court by the plaintiffs on the 9th October, 1945, claiming as against the defendants £100 damages for trespass to land and an injunction in restraint of further acts of trespass.

An interim injunction was granted by M'Carthy, J. on the 18th October, 1945, restraining the defendants their agents and servants from building or carrying on building operations on the land.

Pleadings were filed.

The case for the plaintiffs is that they are the children of the late Robert B. Okai who, upon his death, succeeded to his property, and whose rights in that property were confirmed by a Deed of Gift made to them in 1936 by the Gbese Manche and Korle Priest. They say that on the 23rd October, 1945, the defendants unlawfully entered that land and placed there a quantity of sand, cement and other building materials.

The defendant, Ashanti, pleads by way of defence that the land had been sold to him on the 27th September, 1944, by one Joseph Adjetey Okai and admit that in September, 1945, he started to build on the land. The defendant traverses all the facts set out in the plaintiffs' statement of claim.

The defendant, Farrar, pleads that he entered the land as upon the instructions of the defendant, Ashanti and as his caretaker to build the house.

(e) Suit 15/1948

E. B. Okai and Sarah Okai

v:

1. E.M. Cofie
2. J.T. Marbell
3. E.A. Marbell

The plaintiffs issued their writ out of the Ga Native Court on the 16th July, 1947, claiming as against the three defendants a declaration of title to a part of the land already described, £50 damages for trespass and an injunction to restrain further acts of trespass. The suit was transferred to this Court and pleadings were duly ordered and filed.

The plaintiffs rely upon the same title as pleaded in the former suit, but add a paragraph to show that their father R.B. Okai derived his title by reason of a grant made to him in 1908 by the Korle Priest.

The defendants traverse the plaintiffs' claim to title and claim title as absolute owners by reason of a conveyance made to them by the Atukpai Stool in 1945 and 1948. They plead that they are in occupation of the land.

(f) Suit 17/1948

E. B. Okai and Sarah Okai

v:

J. E. Koney

The plaintiffs issued their writ out of the Ga Native Court on the 24th July, 1947, claiming as against the defendant £50 damages for trespass to land and an injunction. The suit was transferred to this Court where pleadings were ordered and filed.

The plaintiffs rely on the same title as they do in the former cases and plead that in December, 1945, the defendant unlawfully entered their land, brought upon it building materials and refused to remove them when requested to do so.

(g) I will now address my mind to the evidence called in support and defence of these allegations and which I heard on the 2nd, 5th, 6th and 7th March.

The sites of the alleged acts of trespass are indicated with more particulars in the plan exhibited and marked as No. "142" and which sites are indicated by the black figures 4, 5, 6 and 7.

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There is some conflict of evidence as to whether a grant made in 1908 was one made for farming or for building purposes. The plaintiff E.B. Okai says that it was for farming purposes, but Komey Kwao, who is a somewhat older person, says it was for building purposes, and that at the time of this grant the land was measured by ropes and that to its east was land farmed by Tetteh Kwamin, but that the land given to R.B. Okai had no fruit trees or farms on it whatsoever.

I accept that evidence and the rights enjoyed then by R.B. Okai (who had failed to build) were no more extensive than were the rights of any other Gbese man who had farmed a plot of Stool land. The evidence does show however that sometime between 1919 and 1930 some cousins of R.B. Okai were permitted to occupy the land and whilst there they lived in a corrugated iron shed.

(h) In 1933 R.B. Okai died intestate and it would follow in the ordinary course of events that the land would then acquire the character of ancestral property, and that the person appointed by the Family to be the "successor" would enjoy a life interest in the usufruct of the land, permitting his relations by blood, so long as they assisted him in farming, to share in its fruits.

(i) At that time Robert Okai - his full brother - (and who gave evidence) would have been a man of some 72 years of age and since the land then was purely farming land and of not much use to anyone at that, I can well believe his evidence, that he did surrender his rights in the land to his late brother's children the plaintiffs and that is evidenced further by the deed entered into by him with the Gbese Manche and Korle Priest on the 10th December, 1936. Why £25 was paid I fail to understand if the deed was what it purported to be, and if it was made in the circumstances evidenced, and of which there is no reliable evidence by way of rebuttal. It was a transaction which might well have been interpreted as a sale under colour of a gift and such deeds do give rise quite naturally to much suspicion. As quite clearly the Gbese Manche and Korle Priest either or both are in no better a position in respect of sales of land than are any individual members, since it must be remembered that Stool land being held in the nature of a trust

cannot be sold, except under the very exceptional circumstances which I have discussed earlier in this judgment.

(j) This deed would have the effect solely of transferring to the plaintiffs the interest in the land which was possessed by Robert Okai at the time he gave the land to his nephew and niece - namely a "life interest" to hold for the life of Robert Okai and then on his death to the person appointed by the family to be his "successor."

(k) No person can transfer to another person a larger interest in land than the one he possesses. At the highest the interest possessed by Robert Okai was a life interest. If he likes to transfer those rights to another during his lifetime - that is his own affair, and the plaintiffs enjoy life interests alone. I am, of course, accepting the deed in the light of the evidence given by the donors.

(l) It is quite clear that the plaintiffs have already abused their trust and have admitted selling parts of these lands, but, I would hold that all that they have transferred to their purchaser is the life interest of R.B. Okai and which is a possessory right in land to be enjoyed for the period of the life of Robert Okai and that no greater interest in land has passed to them.

(m) But quite clearly a person cannot come to this Court and complain of another's act of trespass, if he, has transferred his right of possession to another, or even if he has only transferred a part of that interest he cannot succeed unless he can show that the trespass has been committed upon that part of the land on which he has retained the possessory rights.

(n) The same arguments apply to his prayer for a declaration of title - he cannot succeed unless he can show affirmatively which part of the area has been transferred since any rights he may enjoy in the part transferred and clearly different to those in the part retained.

(o) Quite clearly the Atukpai Family have proved no interest in this area of land at all - apart from the evidence of farming in the area around it.

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(p) I do, for the reasons already given enter a judgment of non-suit with leave to bring fresh actions within a period of three months. The costs of this action are to await the event of the new ones. If new actions are not prosecuted then the defendants are at liberty to apply for costs. This judgment has the same application in respect of Suits 25/1944, 116/45 and 15/48 in which I do order that a judgment of non-suit be entered with leave to bring a fresh action.

186. Suit No. 33/1950

The land in dispute in this suit is the one marked in black and numbered as No. 11 in the plan marked "142" and is partly in and partly outside of the area marked as No. 14 and shown in "biscuit" colour on the plan Exhibit "B".

Numo Ayitey Cobblah, Korle Priest for and on behalf of the Korle Stool, Gbese Stool and Ga Mantse Stool.

v:

J. W. Armah.

The plaintiff issued his writ out of the Ga Native Court on the 22nd August, 1949, claiming as against J.W. Armah a declaration of title to land and £50 damages for trespass. The suit was transferred to this Court. Pleadings were ordered and were duly filed and on the 30th January last leave was granted to amend the capacity in which the plaintiff sued from a personal to a representative one.

The plaintiff's case is that he is the "caretaker" of lands, of which this forms a part, which are owned by the Ga, Gbese and Korle Stools and that the defendant built upon that land.

The defendant admits building upon this land but denies that the plaintiff is the owner and says he purchased the piece of land upon which he built from Nii Tettey Gbeke of Atukpai.

He pleads further by way of estoppel that the plaintiff is not entitled to the relief he seeks by reason of the non-suit entered in 1927 in the case

of Numo Ayitey Cobblah v: Nii Tettey Gbeke II (i.e. the case already referred to and in which M'Carthy J. gave judgment).

I have already found as a matter of fact that:

(a) there was no grant of land made to the Atukpai in 1826 or at any other time,

(b) that any farming or occupational rights of Atukpai people are inherent as being members of the Stool,

(c) that Atukpai are incapable of selling land other than with the prior consent of the Ga and Gbese Manches and Korle Wulomo,

(d) that such permission can only be granted in the most exceptional circumstances.

The defendant does not attempt to set up any possessory rights in farming in that land that could not previously have been exercised by any individual member of Atukpai.

It was agreed that all land except these parts which had formed the subject of qualified grants was the land of the Ga, Gbese and Manche Stools and before the defendant can succeed he must show that he was a bona fide purchaser i.e. either that there had been a sale approved by the Manche or that he had acted in a bona fide manner and could not have by reasonable and diligent enquiry made himself acquainted with the fact that there had been no such approval.

Such onus he failed to discharge.

The plaintiff is entitled to a declaration that he is the "caretaker" of Stool lands on behalf of the Ga, Gbese and Korle Stools and of which lands described in the writ they are the owners.

In respect of the claim in trespass the plaintiffs are entitled to receive damages in respect of that land which lies outside of the area No.14 and which general damages I assess at £50. I have assessed damages at this sum in view of the complete and absolute absence of good faith on the part of the defendant and whose act was insulting in the

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extreme to the true owners of the land. The defendant is a nephew of the man Aryee, who may be described as one of the prime movers in this wanton destruction of Stool property, and can plead no ignorance either of the facts or of the native customary law which governs his conduct in such matters. Whatever rights - and very dubious ones - in farming - he clearly forfeited by custom when he attempted to destroy the rights of the land owners.

187. I will now deal with Suit 1/1944.

Suit 1/1944

H. C. Kotey

v:

1. J.W. Armah
2. Nii Tettey Gbeke
3. Numo Ayitey Cobblah for and on behalf of the Ga, Gbese and Korle Stools.

The plaintiff issued his writ out of the Tribunal of the Senior Divisional Chief of the Ga State on the 20th October, 1943, claiming as against J.W. Armah and Nii Tettey Gbeke (a) a declaration of title to land and (b) recovery of possession of that land.

The suit was transferred to this Court by an Order of Transfer made by the Provincial Commissioner on the 18th December, 1943.

The land which is the immediate cause of this action is the one built upon by J.W. Armah and which also was the subject of the action in Suit 139/50, namely partly inside and partly outside of plot marked No. 14 in Exhibit "B".

The general claim made by Kotey is in respect of the area outlined in yellow on the plan exhibited and marked as "A". In my findings as to the interests in land enjoyed by the Kotey Family within that area I have already found as a fact that none have been established beyond the eastern limits of the plot 15 or the southern limits of plot 16 marked on plan "B".

It follows that in the area built upon by Armah

the Kotey Family have no interests in the land and as against the defendant J.W. Armah and Nii Tettey Gbeke I do dismiss their claims, and as against Numo Ayitey Cobblah I do dismiss the claims and enter judgment for the defendant.

183. I now refer to Suits 38/1950 and 39/1950 tried by me on the 9th March.

I will deal first with Suit 38/1950 which relates to a plot of land marked as No. 10 in black ink in the plan marked as Exhibit "142" and which falls within the larger plot marked as No. 14 in the plan marked "B".

Numo Ayitey Cobblah, Korle Priest for and on behalf of the Korle Stool, the Gbese Stool and the Ga Manche Stool.

v:

H. B. Kadire Gimba.

The plaintiff issued his writ out of the Ga Native Court on the 1st September, 1949, claiming against the defendant:

"Declaration of title and recovery of possession to all that piece or parcel of land situate at Akwandoh, Accra, behind the Ring Road on which the defendant has built a structure.

"2. £50 damages for unlawful entry and failure to obtain permission from plaintiffs the rightful owners of the land."

The suit was transferred to this Court when pleadings were ordered and duly filed.

The statement of claim was not prepared by a Legal Practitioner and does not advance the details of the claim much beyond those shown on the writ. He claims as the "caretaker" of the Stool lands in issue.

Neither was the statement of defence prepared by a Legal Practitioner - defendant pleads that he is a sub-lessee of Nii Tetteh Churu who conveyed the land and other land to one Alhaji Salifu Bumbukari on the 30th December, 1937. That the defendant then became the lessee of Salifu Bumbukari to

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whom he pays an annual rent of 10/-. He avers that his entry into the land was lawful.

I am satisfied upon the evidence of Plange and the Deed (Exhibit "79") that a large piece of land was leased to the Roman Catholic Mission and that the plot shown as numbered 10 on the plan admitted and marked as Exhibit "142" is the site upon which the defendant H.B. Kadire Gimba built a house in 1944 and that despite a warning given to him by the plaintiff he continued to build and completed the house in 1946.

At this time there was an action pending in this Court between the Korle Priest and Nii Tettey Gbeke in respect of this whole land and in which Salifu Bumbukari was also a defendant. In 1947 the Korle Priest was non-suited by M'Carthy, J., for the reasons already given to me. It was an action in which the Ga and Gbese Stools had asked the Court to be joined and were refused permission by the learned Judge. The effect of the judgment was solely that the Korle Priest had failed to show that this land was the family property of the Korle people. It created no estoppel as against the Stools in these circumstances.

What the nature of Gimba's rights in the land are, are unknown in the absence of the deed. When an agreement is reduced into writing then oral evidence cannot be given of its contents unless the absence of the writing has been satisfactorily explained. No such circumstances exist here. In any event - what rights had Salifu in the land and who obtained this land, as he evidenced on the 13th February, from the Atukpai Family. The Atukpai Family could not possess a greater right than the right to occupy the land for the purposes of farming or the erection of building in furtherance of such purpose. Salifu is a complete stranger to the Stool concerned, and if it had been alienated except with the express consent of the Stools, a heinous offence by customary law had been committed and such a sale was void ab initio.

But there was no evidence that any Atukpai man had ever farmed this land at the time of the alleged gift to Salifu. If any Atukpai man had been farming in that area, why was he not called? He alone could give satisfactory evidence of such farming.

But even had there been evidence of such farming, the evidence of this gift depriving the rights of the Atukpais of farming within the area granted to him, is clear evidence of the Atukpai's intention of abandoning any rights in that land for the purposes of farming, and on such an abandonment the land would resume its character of "unappropriated Stool land" and which by custom is managed by the Korle Priest on behalf of the Stools. A lease to a Mission to erect buildings for the purposes of education is clearly no ill-use of Stool land.

It follows that the only person from whom the defendant could obtain a title of any description in the land was from the Ga, Gbese and Korle Stools and that not having that permission, he was a trespasser on this land.

The plaintiff is entitled to a declaration that he is the owner of this piece of land by customary law and he is further entitled to recover the possession of the land I do so order.

I do award to the plaintiff the sum of £50 damages in respect of the unlawful entry into the land.

189. Suit 39/1950

1. R.A. Bannerman
2. Cobblah, Korle Priest, on behalf of the Ga, Gbese and Korle Stools.

v:

1. J.S. Abbey
2. Nii Tettey Gbeke II.

(a) The plaintiff issued his writ out of the Ga Native Court on the 27th July, 1950, claiming as against J.S. Abbey £50 damages for trespass to land and recovery of possession of that land situate near Ring Road, Accra.

On the 8th August, 1950, Numo Ayitey Cobblah, Korle Priest obtained leave to be joined as a plaintiff claiming as the "caretaker on behalf of the Ga, Gbese and Korle Stools."

On the 10th August, 1950, the Native Court

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granted to the plaintiff an interim injunction restraining the defendants from further entering into the land and continuing building operations. The suit was transferred to this Court by an Order made on the 8th September, 1950, when pleadings were ordered and which were duly filed.

(b) At no time is there any record of Nii Tettey Gbeke II having been permitted to be joined as a defendant. His name appears to have been introduced first by his Counsel, Mr. Ollennu, who headed the motion paper as if Nii Tettey Gbeke II had been joined, and the fact of which joinder had been testified by affidavit on the 16th August, 1950. There is no reason why he should not be joined, as he is quite clearly a person who may be affected by the result of this suit, and I have accordingly permitted him to be so joined.

(c) The plaintiff claims a title in fee simple by reason of an absolute gift made to him on the 28th September, 1943 by the Korle Family and that the defendant wrongly entered the land and commenced building.

(d) The defendant in paragraph 1 of the statement of defence denies that the Korle Family had any title in the land which they were capable of conveying.

He denies paragraph 2 of the statement of claim i.e. that he entered the land and built, but in almost the next breath, Mr. Ollennu, Counsel who drafted the pleadings, admits in paragraph 4 that he was in undisturbed possession of the land, had placed building materials upon it, and had had a plan passed to enable him to commence building.

(e) No statement of defence was filed in reply to the statement of claim filed by the 2nd plaintiff Numo Ayitey Cobblah and the facts so pleaded must be deemed to have been admitted.

In paragraph 3 Numo Ayitey Cobblah pleads:

"The co-plaintiff with the consent of his "elders and with the approval of the Gbese Mantse "conveyed by a Deed of Gift dated the 28th Sept- "ember, 1943, to the plaintiff by way of absolute "gift and the co-plaintiff therefore seeks a

"declaration that the land in dispute is a por-
"tion of the Akwandor lands and that the plain-
"tiff's title to the said piece of land is good
"by virtue of the deed of gift aforesaid."

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(f) The land now in dispute is situate at the place marked No. 14 in the plan exhibited and marked as "142". It is within the area of land which I have adjudged to be within the lands of the Kotey Family claim who derived their title from the Korle Priest sometime in the last century.

When I say I do not believe that this so called "gift" of land in consideration of a payment of £25 had the approval of the Gbese Manche, I would go even further and say that they were not even aware, at that time, that there had been such a disposition of land. Had there been this knowledge the Gbese Manche would have joined in the deed, and as he has been shown to have been joined in several others.

At that time (1943) the Gbese Manche was aware certainly of reports of clandestine dealings in land by the Korle Priest - dealings seeking to oust the Stool title and to claim the land as the Korle Family property, and this fact was evidenced by Okai, and whose testimony in this respect, I accepted, and that they were doing precisely what Okai alleges was charged at that meeting, if it did require corroboration, was supplied in the highest degree possible by their conduct before M'Carthy, J. in 1947 when despite an amendment of the writ to place the Korle Priest in the position of the "caretaker" for the Stools - he persisted that he held the title as owner for the "family" and it was for failing to establish this fact that he was non-suited.

(g) There is no evidence whatsoever that any publicity attended this transfer of and quite clearly it was one of several clandestine dispositions of land made by the Korle Priest with the intention that what should pass was the property of the Family and not of the Stools.

(h) Quite clearly the Korle Priest cannot dispose of property which became the property of the Kotey Family as far back as last century, by reason of its transfer to the late Kotey. It is

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again one of the typical examples of criminal fraud in the sales of land in Accra, by selling the same piece of land to more than one person, and holding out that the Vendor possesses an estate in fee simple, an estate in land which it is impossible to hold in the Gold Coast, and when a Legal Practitioner draws up a deed in these terms on the facts as shown in this case, it is a false representation of an existing fact to the vendor and one in which the Legal Practitioner who prepares the deed abets.

(i) For these reasons I do dismiss the plaintiff's claim.

190. Suit 19/1943

Nii Tettey Gbeke

v:

1. Eric Lutterodt.
2. Quarshie Solomon.
3. Conrad Lutterodt.

On the 20th August, 1943, the Solicitor for the plaintiff applied by way of motion to the Provincial Commissioner's Court at Koforidua to stop the hearing of the above cited suit pending in the Tribunal of the Paramount Chief of the Ga State and to transfer it to the Divisional Court, Accra.

At that time no writ had been issued out of the Tribunal as should have been clear to the Legal Practitioner who moved the Commissioner's Court, since on the 19th of that same month Nii Tettey Gbeke had sworn in an affidavit that he had applied for a writ, but after the application the Tribunal had been closed owing to the suspension of the Ga Manche. Quite clearly no writ was ever issued. Acting under the misapprehension that a writ had been issued the Provincial Commissioner transferred the suit to the Divisional Court and which became a suit pending in this Court on the 1st April, 1945, of amending legislation.

Quite clearly without the issue of a writ no suit can be deemed to have been commenced, let alone transferred, and for these reasons I do hold that I have no jurisdiction to entertain this action and which I do strike out of the list.

191. Suit 2/1944

In the Supreme Court

Nii Tettey Gbeke, Dsasetse of Otuopai for himself and as representing the Stool and people of Otuopai.

v:

1. Eric Lutterodt.
2. Quarshie Solomon.
3. Conrad Lutterodt.
4. Numo Ayitey Cobblah for and on behalf of the Ga, Gbese and Korle Stools.

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(a) The plaintiff issued his writ out of the Tribunal of the Paramount Chief of the Ga State on the 25th November, 1943, claiming as against the first three defendants £100 damages for trespass to land and an injunction.

The suit was transferred to this Court by the Court of the Provincial Commissioner and pleadings and a plan were ordered. It was ordered that the area in dispute be marked on the plan then being prepared in the case of Tetteh Kwei Molai v: Tettey Gbeke and which is the plan admitted and marked as "B". The 4th defendant was joined during the course of this trial.

(b) The plaintiffs in their pleadings set up a title said to have been granted to them about 1826 and admit that a piece of land was alienated to the late William Lutterodt, but affirm that the area so delineated was defined in a plan made by a surveyor named Engman in 1890 and that it is the area now delineated at Kpehe on the plan "B" by a pink dotted line and showing a piece of land of a rectangular shape.

They averred that the Lutterodt Family had at no time gone beyond these limits until after the judgment of Lane, J. in the case of Dr. Nanka-Bruce v: Tettey Gbeke and Allotey, when certain comments were made by the learned Judge as to his disbelief in the claim set up by the Atukpais as to the ancient grant said to have been made to them.

The plaintiff further averred that since the 1st December, 1942 (i.e. the date of the aforesaid

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judgment) the defendants entered their land, cut down trees and growing crops and pillared the land.

(c) The defendants in their defence put the Atukpais ancient grant (1826) in issue. They deny there was in existence any such plan said to have been made in 1890.

The pleading as to the alleged acts of trespass are generally traversed, but the pleading is in such a torn and dilapidated state that I cannot now read it. The issue before me in this respect was quite clear. The defendants in their evidence admitted entry into the land in the manner described in the plaintiff's pleadings, but say they did so as it was their land and they were clearing it for the purposes of building there.

(d) Apart from the evidence in support of the grant said to have been made in 1826 and which evidence, as I have said before I disbelieved, the plaintiff gave further evidence relative to the sale of land made to the late Wilhelm Lutterodt in the last century and which evidence I have discussed elsewhere.

(e) Now the claim is one for damages for trespass to land and the plaintiff Nii Tettey Gbeke sues both in a personal and a representative capacity.

Five individuals and all members of the Atukpai Family evidenced acts of trespass apart from Nii Tettey Gbeke himself.

Now as I have found before, there is no evidence which I can accept which shows that any grant of land of any description, was made to the Atukpai Family qua Family. I have also found that it is Gbese Stool land upon which any member of the Gbese stool may farm unappropriated land and every member of the Atukpai family qualifies for this right in exactly the same degree, no higher and no lower.

It is also quite clear to me after hearing the evidence and viewing the land that farms accompanied by farm houses were established by members of the Atukpai Family in the locality between Kokomlemle and up near Kpehe and which include the villages of Akradi, Agortin and Senkyi. It is equally clear

that upon the death of any such individual, the land which he occupied and farmed assumed the character of family land, tracing the person having the interest thereon through the founder's mother. There is no heritable interest in the Head of the Atukpai Family - since that Family had never acquired such a title. Quite clearly for these reasons alone the community of Atukpai cannot maintain an action in trespass, if anyone of its members suffers injury as the result of trespass, since those who have no farm on the land enjoy no possessory title which could be injured in that way. Even were the family the owner, it could not maintain such an action unless the land were vacant.

But the vacant land here has been adjudged to be Gbese Stool land.

(f) Of those who complain of trespass only Nii Tetteh Gbeke sued in a personal capacity and it is in that capacity alone that he might succeed.

A plan was ordered. The case was one in trespass. Not one of the sites of these alleged areas of trespass have been located - except in vague terms. I can visualise those near Senchi - but I cannot say where is the farm in respect of which Nii Tetteh Gbeke complains.

His evidence was:

"I have farm on the land and gave it to "Addy Kodjo who employs labourers to farm it "for me.

"Q. In July 1943 did you receive some "information?

"A. Yes. In consequence I went to the "land. I saw that my ocro and tomato farms "had been destroyed as well as other farms "belonging to my people and the coconut trees "had been cut down."

Not only is the locality of his farm or farms unascertained, but that evidence is purely hearsay and neither this man Addy Kojo nor any one of the labourers who were said to have been employed by him were called.

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As repeatedly I had to draw Counsel's attention to the fact that the best evidence of farming is to call the farmer, and who can always say with certainty not only where he farms, but also the names of the persons who farm in the environment, and as material witnesses were not called I could only draw the most unfavourable conclusions.

As I have said I have no doubt in my mind that members of Atukpai do farm in this area, but that is insufficient to establish the plaintiff's individual claims and for these reasons I do dismiss them.

192. Suit 23/1944

H.C. Kotey as Head and Representative of the Nii Kotey Family.

v:

1. Nikoi Kotey, 2. Kwaku Aponsah,
3. Q. Lutterodt, 4. E.P. Lutterodt,
5. Numo Ayitey Cobblah for and on behalf of the Ga, Gbese and Korle Stools.

The plaintiff issued his writ out of the Tribunal of the Paramount Chief of the Ga State claiming as against the first four defendants a declaration of title to land, £100 damages for trespass and an injunction.

It was transferred to this Court by an Order made by the Provincial Commissioner's Court on the 4th November, 1944. Pleadings were ordered and were duly filed and it was ordered further that a plan be prepared showing the various claims. That order was made on the 27th September, 1945.

There was no evidence before me to show that any of the defendants or their agents or servants had entered into the land which I have adjudged to be the farming land of the Kotey Family. The acts of trespass alleged to have been committed were ones in the northern area of Kotey's claim and an area in which I found that the plaintiff had failed to establish any rights of ownership. I do dismiss the claims.

193. Suit 14/1948

Obeyea, Ayeley and Asantewah.

v:

G. Sackey.

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The plaintiffs, who sue as the successors of the late Madam Eliza Lamptey, issued this writ out of the Ga Native Court on the 17th November, 1947, claiming as against the defendant £50 damages for trespass to land and an injunction. The suit was transferred to this Court when pleadings were ordered and filed.

The land is situate immediately to the north of the plot marked as No. 9 in "biscuit" colour on the plan marked "B" and opposite to Ofosu Quartey's village on the west of the Nsawam Road.

The plaintiffs claim the land by reason of a devise made to them by Will, and which land their mother had received as a gift by the Korle We people in 1924.

They pleaded that in November, 1947, the defendant trespassed on the land and started building and continued to build despite these warnings for him to stop.

The defendant puts in issue the plaintiffs' title and claim ownership of the land by reason of a deed executed on the 27th July, 1943, whereby Emmanuel Tetteh Addy conveyed to him the land in an estate in fee simple.

They neither admit nor deny building other than by the general traverse in paragraph 9 of the defence. The evidence leaves no doubt that the defendant has built.

The devises are set out in the copy of the Will admitted in evidence marked as "H".

The land is said to have been situate at Kpehe. The plaintiffs Ayeley and Asantewah are nieces of the late Elizabeth Lamptey. Obeyea is a sister of the deceased.

The plaintiffs testified that in the lifetime

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of their relative they had assisted her in farming the land.

Asantewah testified that she had made a small cassava farm there since her aunt's death in 1943.

The evidence of B.C. Kwamin, a cousin of the deceased was that over 30 years ago he was present when a piece of land 200 feet square was given to Elizabeth Lamptey by the then Korle Priest and that it was situate in the place indicated by the plaintiffs. He says it was given to her as she was a Gbese woman and that she wanted the land upon which she intended to put up a building. The witness says he signed a deed about 3 to 4 years after the land had been measured. This deed has not been put in evidence, and the explanation for its absence was given by Naa Darkua Akoshie, a child of the deceased, and a witness who impressed me as being a truthful person. Her testimony is that sometime about 1941 or 1942 Nii Tettey Gbeke questioned her about their rights in the land in consequence she obtained the deed from her mother and handed it to Nii Tettey Gbeke, but eventually received it from him and gave it to the plaintiffs.

She says that after her mother's death she saw that a small shed had been erected on the land and that people were making white lime there, and that she then put a fence of corrugated iron around the plot, and which was later removed by someone.

Anna Plange, whose evidence I accept as being that of a truthful person, testified that her mother Korkor had land adjoining that belonging to Elizabeth Lamptey and which she had obtained before Elizabeth. Further corroborative evidence of Elizabeth Lamptey's occupation of this land was afforded by the evidence of Odebana, another witness whose testimony bore the imprint of truth.

The defendant Sackey's evidence was that he bought this land from the Atukpai people sometime between 1940 and 1941. The deed evidencing this sale to him however recites that he purchased it on the 27th July, 1943, from Emmanuel Tetteh Addy who had obtained the land in January, 1941, by reason of a gift from Nii Tettey Gbeke, on behalf of the Atukpai Stool.

Although Emmanuel Tetteh Addy was in Court he was not put in the box to evidence how he obtained this land nor was any deed of conveyance to him evidenced.

These transactions which appear to have been of a clandestine nature and reeking of bad faith were made at first about the period when Elizabeth Lamptey's deed was handed by Naa Darkua Akoshie to Nii Tettey Gbeke, evidence which I accept to be the truth.

I place very little reliance upon what was done upon the land subsequent to the death of Elizabeth Lamptey since all these acts were "post litem motam" at a time when the whole of this land became the subject of controversy between the Ga, Gbese and Korle Stools, the Korle Family, the Atukpais, Lutterodt, and Odoi Kwao families - each one attempting to stake claim to lands which by then had such promise of marketable value.

The only issue between the parties is: "Who had the better possessory title to the land, the Atukpai Family or the sister and nieces of the late Elizabeth Lamptey".

In the absence of the deed said to have been executed in favour of Elizabeth Lamptey I am unable to accept any title founded upon such a deed.

But quite clearly as a Gbese woman she had a right to farm this land and had farmed this land up to the time of her death in 1943. The three plaintiffs by customary law are all persons who could inherit an estate in the land upon the death of Elizabeth Lamptey intestate. In the absence of any evidence as to any greater interest in the land than one of farming or of building, an interest which cannot be alienated without the prior consent of the Ga and Gbese Manche, I hold that the devise is invalid, but that the plaintiffs did have interests in possession upon an intestacy.

As I have already found the Atukpai Family qua family have no interest in the land other than those which may have been acquired by individual members of that family or upon the death of such members to their "successors" by customary law.

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The defendant has failed to show that he obtained the estate from such a person.

I am satisfied that the defendant has erected a building on the land of the plaintiffs. I am satisfied that he attempted to buy land in bad faith and in defiance of customary rules and that the plaintiffs have suffered damages which I assess at £50. I do enter judgment accordingly.

The plaintiffs may have their injunction.

194. Suit 18/1948

Obeyea, Ayeley and Asantewah

v:

J.C. Nortey.

The plaintiffs, suing as the successors of the late Elizabeth Lamptey, issued their writ out of the Ga Native Court on the 29th December, 1947, claiming (a) a declaration of title and (b) £50 damages for trespass.

An injunction was subsequently applied for. The suit was transferred to the Court where pleadings were ordered and filed.

The plaintiffs claim is founded upon the same title as the one pleaded by them in Suit 14/48.

The defendant, Nortey, claims rights of ownership in this land in an estate or fee simple by reason of a deed executed on the 27th October, 1939, by Nii Tettey Gbeke, said to be the original owners.

The land in dispute is a part of the land the subject of the devise in the last action.

I accepted the evidence given by the plaintiffs and I found that up to the time of the death of Elizabeth Lamptey on the 13th February, 1943, she had the sole possessory rights in this area of lands and which were rights of farming, and which rights descended upon her death to these persons entitled by customary law. I find that each of the three plaintiffs has a possessory right in that land.

The defendant has failed to show that on the

27th October, 1939, or at any other time, had Nii Tettey Gbeke any interest in this land capable of being conveyed and that the conveyance of an estate in fee simple is one unknown to the law of this Colony. Again this sale was of a clandestine character and one which in my judgment exhibits bad faith both on the part of the vendor and the purchaser.

The plaintiffs are entitled to damages which I assess at £50 and they may have their injunction.

In the absence of a surveyed plan delineating the precise area of the land claimed I am unable to grant any declaration of title as prayed for.

195. Suit No.46/1950

Nii Tettey Gbeke II on behalf of himself and as representative of all the principal members of the Atukpai Stool.

v:

1. D.A. Owuredu
2. R.O. Ammah.

The plaintiff issued his writ out of the Ga Native Court on the 26th September, 1949, claiming as against the defendant £50 damages for trespass to land, recovery of possession of the land and an injunction.

The suit was transferred to this Court. No pleadings were ordered.

The land is situate between plot Nos. 18 - 23 and marked in biscuit colour on plan "B" and as plot 12 in the plan marked as Exhibit No. "142".

Counsel called no further evidence. Plaintiffs rely on the grant made to them in 1826.

Owuredu claims title under the Korle We as from 1946 and admits building.

Ammah claims title through the Kotey Family and admits building.

For the reasons already given by me the Atukpai

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Family have failed to prove any title to the land and there is no attempt made to set up the claim of any individual member of the Atukpai Family in respect of any possessory rights.

I express no views as to the validity of the title upon which the defendant Ammah relies.

I do dismiss the plaintiff's claims.

196. Suit 41/1950

Thomas Kojo Halm-Owoo

v:

1. S.K. Dodoo
2. W.S. Annan as Head of the Osu Tetteh Family.

The plaintiff issued his writ out of the Ga Native Court on the 22nd July, 1950, claiming as against the defendant S.K. Dodoo a declaration of title to land (b) £50 damages for trespass (c) recovery of possession of the land (d) an interim injunction.

An interim injunction was granted by the Native Court in these terms on the 11th August, 1950:

> "The locus in quo has been inspected by "the Court. It finds that the defendant had "completed his building, such as out house, on "the land in dispute. The Court cannot re- "strain the defendant from entry into the said "house but injunction allowed restraining the "defendant from committing any further trespass "in respect of erecting any building until "hearing and determination of this suit."

The suit was transferred to this Court on the 13th October, 1950, and pleadings were ordered and filed.

The land in dispute is situate between the plot marked as No. 17 on plan "B" and Ring Road and is shown also as plot 13 in the plan exhibited and marked as "142".

The plaintiff claims title by reason of a conveyance made to him by the Korle Priest on behalf of

the Korle We on the 13th February, 1945, of a title in fee simple (Exhibit "104").

The defendant S.K. Dodoo claimed title under a deed of conveyance executed on the 8th November, 1948, by Nii Tettey Gbeke.

W.S. Annan, Head of the Osu Tettey Family was joined as a defendant on the 9th February last.

No evidence was called by the plaintiff other than by tendering the deed which was admitted in evidence by consent.

The defendant Dodoo who is a 1st Division Clerk employed in the Supreme Court at Accra testified that he purchased this land from Nii Tettey Gbeke for a sum of £75 and who executed a deed of conveyance to him on the 8th November, 1948, conveying what was purported to be an estate in fee simple. He says he started building in 1949 and completed the building in April or May, 1950.

The defendant Annan claims that the building was made on land which is a part of the Osu Tettey land and which boundaries he indicated to the surveyor and which are now delineated on the plan exhibited and marked as No. "142", the three corners of which I have marked with the letters A. B. C.

This plot of land falls within the area of land I have adjudged to be the property of (a) the Osu Tettey Family on the eastern side and (b) Kotey Family on the southern and a part of the western boundaries.

The other portion of the western boundary and the northern boundary i.e. lying to the north of the land adjudged to be Kotey's I find is unappropriated land and is the property of the Ga, Gbese and Korle Stools.

The conveyance made to the plaintiff is a conveyance of land purporting to be the property of the Korle Family and was made at a time when that Family quite clearly were claiming the land in breach of their trust as caretakers of the Ga and Gbese Stool lands.

The conveyance was bad and void ab initio since

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the Korle Family qua Family had no interest in the land capable of being conveyed at all other than as "caretaker" jointly with and on behalf of the Ga and Gbese Stools.

The conveyance to the defendant Dodoo was made by a person who had no interest in the land capable of being conveyed.

The defendant, however, was justified in asking to be joined and in respect of that portion of land in plot 13 which falls within the Area A, B, C there will be judgment for the defendant, Annan. The plaintiff's claims are dismissed.

197. Suit 47/1950

Numo Ayitey Cobblah for and on behalf of the Korle, Gbese and Ga Stools.

v:

Lartey.

The plaintiff issued his writ out of the Ga Native Court on the 1st September, 1949, claiming as against the defendant Theresa Amerley Lartey a declaration of title to land and £50 damages for unlawful entry thereon. The suit was transferred to this Court.

No pleadings were ordered.

The area in dispute is a part of the plot marked as No.14 in plan "B" and which is marked as No.9 on the plan marked No. "142".

The plaintiffs say that they are the owners and that the defendant entered into the land and commenced to build and that despite their protests she continued. This was in 1941. As a result of this act of others she among others were sued in Suit 12/1943 - Ayitey Cobblah v: Tetteh Gbeke & Ors. (Exhibit "18") - but that they were non-suited.

Miss Baeta, Counsel for the defendant, informed the Court that her client, the defendant, was absent but that apart from her client's title deeds she was affording no further evidence and asked leave to tender this deed on the following Monday. I consented to this concession being granted.

On Monday the 2nd April the defendant again was absent and she was not represented. I then closed the case.

The plaintiff is entitled to judgment upon the admission made at the opening of the case - namely that all unappropriated land in this area is deemed to be the Gbese and Korle Stool land. I do enter judgment for the plaintiff for the declaration as prayed for and for £50 damages in respect of the trespass.

198. Suit 7/1944

Odoitso Odoi Kwao, Head of Odoi Kwao Family.

v:

1. Conrad Lutterodt, 2. Mallam Ata, 3. Malam Solomon Tuka Alias Quashie Solomon, 4, Codjoe Solomon, 5. Bako, 6. Adamu, 7. Imoru, 8. Larwei Amoaku, 9. Alfred Numo 10.Nii Azuma III (Brazilian), 11.Okwei Omaboa (for Osu Stool), 12.Numo Ayitey Cobblah for Korle, Gbese and Ga Stools, 13. Nii Tettey Gbeke for Atukpai Stool, 14.H.C. Kotey for Kotey Family, 15.W.S. Annan for Osu Tetteh Family.

(a) The plaintiff issued her writ out of the Ga Native Court on the 28th January, 1944, claiming as against the first nine defendants £100 damages for trespass to land (b) recovery of possession of that land and (c) an injunction restraining any further acts of trespass. The suit was transferred to this Court by an Order made by the Provincial Commissioner on the 18th March, 1944, and pleadings were ordered and were duly filed.

The land in dispute is the area delineated by a red line on the plan admitted in evidence and marked as No."25".

(b) The plaintiff as Head of the Nee Odoi Kwao Family of Christiansborg pleads that the Family is the owner of that area of land delineated by the red line by reason of a grant made to one Odotei Shishiabo, the ancestor of the plaintiff's family in

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or about the year 1810 by the Ga Manche, Gbese Manche and Korle We Stool and that during the year 1944 the defendant Conrad Lutterodt accompanied by the 4th defendant entered the land and allotted portions of it to the 2nd defendant Mallam Atta, the 3rd defendant Quashie Solomon as well as to the 5th, 6th, 8th and 9th defendants and that the 3rd, 5th, 6th, 7th, 8th and 9th defendants during this year 1944 erected buildings upon it.

The buildings referred to are those marked in yellow on the plan and situate about 500 yards east of Senchie village.

(c) The 1st - 9th defendants deny that the plaintiff's family is the owner of the land and say they are the owners of all that land shown on the plan and delineated by a yellow line.

The defendants do not expressly deny the allotment of land or the building complained of and are deemed to have admitted these facts.

(d) At the trial the 10th to the 15th defendants were joined.

(e) Nii Azuma III on behalf of the Brazilian Community claims that the community are the owners of all that piece of land and shown as hatched in red on plan "A" in the extreme south-eastern corner by reason of a judgment of the Land Court affirmed by the West African Court of Appeal which judgments form the subject of Exhibits "140" and "141".

(f) Okwei Omaboe claims that all that land lying to the east of a line marked by red crosses on plan "A" and which runs diagonally across the land in dispute from south-east to north-west is the property of the Osu Stool by virtue of long and uninterrupted settlement.

(g) Numo Ayitey Cobblah representing the Ga, Gbese and Korle Stools whilst admitting that the Odoi Kwao Family were permitted to occupy the area described by plots 24 and 25 marked in biscuit colour on plan "B" deny that the plaintiff family have any rights in the other part of the area claimed and claim that the whole of the land apart from plots 24 and 25 and those other portions marked in biscuit are unappropriated lands and are the property of the

of the Ga, Gbese and Korle Stools. They deny the claim set up by the Osu Stool, the Atukpai Stool, the Kotey Family (other than in respect of a small area east of the plot marked No. 15 in plan "B"). They deny that the Osu Tettey Family have any interest in this land.

(h) Nii Tettey Gbeke for the Atukpai Stool claims the whole land by reason of a grant made to them in 1826 by the Ga, Gbese and Korle Stools.

(i) H.C. Kotey claims on behalf of the Kotey Family all that area shown on plan "A" as being edged in yellow as ancestral property derived under his father by reason of the permission given by the Korle Stool to occupy that area.

(j) Annan on behalf of the Osu Tettey Family claims rights of occupation of that triangular area which I have marked by the letters ABC on plan No. "142".

He also claims under the Korle Priest. I have already discussed the evidence in relation to the claims made by the several parties and have determined the interests in land possessed by the several Stools or families.

(k) In respect of the Lutterodt Family and those claiming under them I find that the Odoi Kwao Family possess no interests in land to the north or west of the water-course known as Bawala Djo. I have similarly found that the Lutterodt Family possess no interests in land beyond that area of a rectangular shape, situate at Kpehe and marked with a red dotted line on plan "B" and that the Odoi Kwao family have failed to establish any possessory rights in the land upon which the original defendants have allotted land or built houses. In respect of the first nine defendants I do dismiss the claims.

(l) In respect of the claim made by the Brazilian Community the plaintiffs are estopped as the result of the judgments already referred to and I do enter judgment for the Brazilian Community in respect of that area in the south shown on plan "A" as being hatched in red.

(m) In respect of the Kotey Family whose land

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it has been adjudged lies to the west of the water-course known as Bawala Djo I do dismiss the plaintiff's claims.

(n) In respect of the Osu Tettey Family's land I do dismiss the plaintiff's claims for the same reasons.

(o) In respect of the claim made by the Atukpai Stool neither the plaintiff's family nor the Atukpai Stool Family have satisfied me that they possess any interest in the area of land which is the subject matter of this action.

(p) Last I came to the case of the Osu Stool. As against this defendant the plaintiff has satisfied me that by reason of permission granted to his family to occupy land in this area, by reason of that permission granted to them by the Ga, Gbese Mantse Stools, they do have possessory rights in the area claimed up to the limits of the following boundary.

From pillar 64/28/15 in the south-east corner of the land shown on plan "B" and following that pillared line (marked in green) up to the point which I have marked as "A" (just to the north of the word "incinerated" and from thence to the water-course Mamobi Djo) and following the course of the stream in a westerly direction to the south-western corner of that plot of land numbered as 26 on plan "B" and which I have again marked as "A". There was no evidence before me that any member of the Osu Stool had crossed these limits so as to effect any trespass upon the land of the Odoi Kwao Family nor was there any evidence that they threatened to do so as to justify the granting of any injunction and I do therefore dismiss their claims.

(q) As against the Ga, Gbese and Korle Stools I am satisfied that the area granted to the Odoi Kwao Family or that area in which they have acquiesced in its enjoyment by the members of that family extends beyond the limits of plots 24 and 25 or to the extent which I have already described in this judgment. There was no evidence of any act of trespass or any threat of trespass by the defendants and in the absence of any prayer for a declaration of title I do dismiss the claims as set out in the writ of summons.

199. Suit 11/1943

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C.B. Nettey (Substituted by C.O. Aryee) on behalf of himself and the Families Nii Aryee Diki, Korti Clanhene and Nee Nettey.

v:

1. Kwaku Fori, 2. Mallam Alibraka, 3. Baba, 4. Manueh, 5. D.M.Ettah, 6. Tettey Gbeke representing Atukpai, 7. Dsasetse P. Tetteh Botchey of Osu Stool.

(a) The plaintiff issued his writ out of the Tribunal of the Paramount Chief of the Ga State on the 26th April, 1943, claiming as against the defendants (a) a declaration of title to land (b) £50 damages for trespass to land and (c) an injunction.

The suit was transferred to this Court by an order made by the Provincial Commissioner on the 19th May, 1943. Pleadings and a plan were ordered on the 23rd June, 1943. The pleadings were duly filed.

On the 27th November, 1943, Dsasetse P. Tetteh Botchey of the Mankralo Stool of Osu was joined as a defendant and an appeal against that order was dismissed by the West African Court of Appeal on the 27th November, 1943. Subsequently C.B. Nettey died and S.S. Coker was substituted as plaintiff on the 4th August, 1944. Upon the death of S.S.Coker, the present plaintiff C.O. Aryee was substituted.

No plan was filed by the plaintiff in accordance with the order made on the 23rd June, 1943.

(b) The plaintiff in his pleadings avers that in the year 1740 the land described in the writ was given to his ancestor Nii Ayi Diki by way of absolute gift for the use of the family by the Accra Confederate Chiefs.

He avers that in January, 1943, the defendants unlawfully entered the land and removed the plaintiff's boundary trees, cut down mango and other trees farmed and erected buildings.

(c) The defendants Mallam Alibraka and Baba

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replied that about 8 years before the date of this writ (i.e. about 1935) the land in question was given to them by Tetteh Botchey and Coleman of Osu and that they then made farms and built houses. That five years later Tettey Gbeke and others of Atukpai (i.e. about 1940) queried their rights of possession and that to avoid litigation they sought and obtained this land from the Atukpai Family. A little later the plaintiff family taxed them with having encroached upon his land and finally say that they are willing to recognise the plaintiff as the owner if he can succeed in this action.

(d) The other defendants aver that the land in dispute is the property of the Atukpai Family and of which Tettey Gbeke is the Head.

(e) In the absence of the plan which was ordered and for the non-production of which the plaintiff Aryee could give no satisfactory explanation, I asked him if he accepted the boundary said to have been shown to the surveyor by the late S.S. Coker and which are indicated by the green hatched lines at the north western corner of the land in dispute and as shown on the plan "B". Aryee said that those boundaries were wrong, and he then indicated to me by a line which I have drawn north of the village of Alajo and marked "B". I am not prepared to grant a declaration of title unless a plaintiff can show me affirmatively by a survey made by a licensed surveyor the four corners of the land which he claims, and in my discretion I decline to make any order in respect of this declaration of title prayed for.

(f) Now with regard to the claim for damages in trespass the plaintiff Aryee and the plaintiff Ocquaye in the other suits consolidated at the trial were so engrossed in venting their spleen the one with the other, that not one word of evidence that any one of the seven defendants had committed any act of trespass, such as had been alleged in the writ of summons, and in this respect there was no case for the defendants to answer and they made no answer, in point of fact several of them were not even in Court or represented by Counsel should it have been necessary for them to answer.

I do accordingly dismiss the claims.

200. Suit 8/1945

In the Supreme Court

J.J. Ocquaye as Head of Nettey Quashie Family.

v:

S.S. Coker (Substituted by C.O. Aryee) for himself and as Head of the Families of Ayi Diki and Nee Nettey.

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The plaintiff issued his writ out of the Tribunal of the Paramount Chief of the Ga State on the 23rd November, 1944, claiming as against the defendant a declaration of title to land. Upon the motion of Ocquaye heard before the Provincial Commissioner on the 3rd February, 1945, the suit was transferred to this Court on the 24th October, 1945, a plan was ordered.

Pleadings were filed.

The plaintiff, Ocquaye avers that he is the Head of the Nettey Quashie Family of Gbese and that the village of Nettey was known as and called Alajo and all the lands referred to in the writ of summons is the absolute property of Nettey Quashie by reason of its gift to him by the people of Gbese long before 1854 and that the Nettey Quashie Family, their servants and licensees have been in undisturbed and uninterrupted possession of that land as owners.

The defendant puts every one of those facts in issue and pleads that the land is the property of the Ayi Diki family by reason of the land being given to them by way of gift in 1870 by the Ga Confederacy Chiefs.

No plan of the land claimed in the writ had been filed by the plaintiff Ocquaye and as had been ordered more than five years ago. I directed him to have his claim delineated on the plan marked as "A" and this was done and is shown and delineated by the line marked with green crosses.

There were two clear and preliminary issues before me, namely:

(1) Was the land granted to Nii Ayi Diki in

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1870 or to Nettey Quashie in 1854?

(2) What were the limits of the lands so granted?

There is no documentary evidence to support either of the parties title to the land or as to the quality of the interest which had been granted. Those matters can only be determined in the light of the evidence demonstrating the conduct of the parties and of the grantors.

There is evidence which shows that the Ayi Diki Family owns other property in Accra and that Nettey Quashie was a member of that family. The evidence is quite clear that until a time which would approximate to the Ordinance to provide for the abolition of slave dealing (Ordinance No.1 of 1874) there were a number of slaves, or as they are called "domestics" who inhabited dwelling houses at the place now called Alajo.

It is quite clear that that settlement was known then to those living there and to their neighbours as Nettey's village and that it was possibly at the advent of this Ordinance that its name was changed to Alajo and which the evidence shows means "God had given us freedom". The evidence of Richard David Nettey was quite definite upon this point. He was born in the year 1868 and his father and Nettey Quashie were brothers of the same father and his evidence was that when Nettey Quashie died the man referred to throughout the trial as Captain Nettey became the successor to both Ayi Diki and Nettey Quashie.

There was no evidence to support any claim to a grant of land other than that the first founder had permission from the Ga and Korle Stools to occupy the land, to build on the land and to farm it, and on a view of the evidence I am of the opinion that the preponderance of probability lies in support of the claim that the original grant was one made to the late Nettey Quashie and not to Ayi Diki.

Now as to the limits of that grant. I am satisfied that no boundaries were ever marked out within which Nettey Quashie was permitted to occupy and build and that in accordance with the general farming practice he would farm so much of the land

as he and his domestics were capable of or willing to farm, and would farm until they come into contact with any other Gbese man. Such occupation is proved quite obviously by:

(a) individuals who have hoed and farmed the land and are able to indicate to a surveyor the precise locality of such farm and

(b) neighbours who farm nearby and have in the nature of things ocular evidence of such farming.

There was no such evidence before me, and the action was mainly fought upon a slanging match between the parties Ocquaye and Aryee, and whose conduct was quite clearly not approved by other members of the family who gave evidence, and who were clearly indifferent as to either's claim to be the Head of any family.

Following upon the determination of these two major issues, the first one only of which has been determined affirmatively and that is that the village of Alajo and the land farmed around is the property of the Nettey Quashie branch of the larger Ayi Diki family.

Then arises the issues as to who is the Head of that family. Whether it be Ocquaye or Ayi Diki. That is solely a matter for the Family to decide and to appoint the person they consider the most suitable for the position and no man can say he is the Head of Nettey Quashie Family unless he can show affirmatively that he has been so appointed in accordance with the customary law.

The general rules of succession follow the following principles which are set out by Sarbah at pages 33-37 and 101 of his "Fanti Customary Laws" and which are applicable, with a very minor difference to the Ga law namely, that children of a six cloth marriage have certain rights in property upon the death of their father.

These principles are:

(1) A family consists of all persons lineally descended through females from a common ancestress.

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(2) Where the founder of a family is deceased then the senior male member in the line of descent is, in the absence of any direction to the contrary, the penin (Head of Family).

(3) The right of inheritance is only through the female, and pedigree is traced through the female line, and that only.

Persons in line of succession are:

1. Mother.
2. Brothers according to seniority.
3. Nephews by seniority.
4. Sisters.
5. Sisters daughters.

Failing these -

6. Mother's brothers by seniority or election.
7. Mother's sisters.
8. Mother's sisters children.

The Head of a family is appointed from these classes, although it is accepted that for special reasons, one member may be passed over for another.

Aryiee denies that Ocquaye has been appointed head of the family and says further that by reasons of birth he would be incapable of being so appointed. I will deal with the last aspect first. Is he a member of the family (i.e. as recognised by native law, not the English conception of a family)?

He says he was authorised by Mr. Richard Nettey and some of the elders of the family to take this action. He says that Nettey Quashie the founder of Alajo was his grandfather and that they lived in the same house. Nettey Quashie died in 1904 and from then C.B. Nettey took care of the village. In 1908 he was elevated by the Gbese Stool to the rank of an Asafoakye and that C.B. Nettey was recognised as being the person entitled to receive any tolls that came out of the land. Ocquaye agrees that at this time C.B. Nettey is also recognised as the Head of the Ayi Diki Family of which the Nettey Quashie is a branch. There was a conflict of opinion between Ocquaye and C.B. Nettey as far back as 1918.

C.B. Nettey died in June, 1943, shortly after he had issued the writ on the 26th April, 1943, which was the subject of suit 11/1943.

He was asked by Mr. Lamptey under cross-examination:

Q. You were C.B. Nettey's servant?

A. Yes - I was his nephew - I call it a nephew. My mother's father and C.B. Nettey's father were brothers.

.....

Q. Your mother is descended from Ayi Diki family?

A. Yes.

The evidence of Richard David Nettey when cross-examined was:

Q. Who was Nettey Quashie's mother?

A. I don't know her name.

Q. Was S.S. Coker recognised as Head of the Nettey Quashie Family?

A. Yes.

Now how is the claim of Aryee supported in the light of "succession" by customary law?

He put in evidence a genealogical tree which was admitted and marked as No.113 and Ocquaye did not challenge its accuracy.

His evidence was:

"I know J.J. Ocquaye. He is a nephew of "Capt. Nettey whom I succeeded as Head. Capt. "Nettey succeeded Nettey Quashie."

In reply to me he said:

"I am of the same family as J.J. Ocquaye "but I descend from an older child."

Now quite clearly upon the evidence of this

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genealogical table upon which Aryee relies as C.B. Nettey was the son of Nettey Quashie (the founder), he was not in native law a member of Nettey Quashie's family, since he (C.B. Nettey) would have to trace his rights of succession through his mother, the wife of Nettey Quashie and it is through his mother that he will look to her rights of succession. Quite clearly upon the death of Nettey Quashie and the death of Adjo Nokor Nettey, his nephew, Coker was by the strict law the most eligible person to be appointed the "successor" or "head" to the family of Nettey Quashie. C.B. Nettey appears to have been however a man of some influence and quite frequently it seems that when a person in the direct line is considered unsuitable he will be passed over for another in the extended family; but here they went still further and appointed one outside of the family, unless C.B. Nettey was a child of a six cloth marriage and would have some heritable interest in the estate of the late Nettey Quashie, of that there is no evidence.

However that may be it seems that the true line was reverted to when C.B. Nettey died, and when Samuel Sylvanus Ocker, the nephew of Nettey Quashie, was made Acting Head, pending the appointment of a Head to the Nii Aryee Diki and Nee Nettey Families, pending the completion of the "Funeral ceremonies" for the late C.B. Nettey (see affidavit attached to the motion on notice dated the 27th July, 1944 in suit docket 11/1943).

It is quite clear that affidavit that Nii Nettey or Nettey Quashie Family is recognised as a separate family to Ayi Diki and quite clearly so long as there are in existence persons who can directly trace their descent through the female to Nettey Quashie, those persons have the prior claim, but not necessarily the right to be appointed to the Head of the Nettey Quashie Family. Quite clearly however if Ocquaye's mother was Korkor and then he admits, his mother was not and could not be a member of Nettey Quashie family and he must look to his rights of inheritance through her alone and in which respect he has offered only the vaguest evidence an evidence which I cannot accept. Nor am I satisfied upon the evidence that a Head has been appointed for the Nettey Quashie Family or for that matter for the Ayi Diki Family either, and the evidence of Alice Nettey, who was called by Aryee, was

eloquent upon the subject, when she said, in this respect, that the general opinion of the family favoured quite another person as head and who was neither Ocquaye nor Aryee.

There is clear evidence that C.O. Aryee has been selling land which is the property of the Nettey Quashie Family and I am not prepared to say upon the evidence that Ocquaye is not entitled to be heard when he asks this Court for a declaration of title to protect this property, as quite definitely the property does require some protection.

No member of the Nettey Quashie Family has objected to him taking this action on their behalf and whilst I am not prepared to say that he is the Head of that family, there has clearly been no such election, I am prepared to grant to the Nettey Quashie Family qua Family a declaration that the village now known as Alajo was founded by Nettey Quashie and that the persons known to customary law as the family of the said Nettey Quashie family have rights by inheritance of the property in that village and the surrounding lands as farming land, and which they hold as family land and as a part of the Ga, Gbese and Korle Stool lands. The plaintiff has failed to satisfy me that in the south their land extends beyond or to the east of the Djorwulu Huam.

The plaintiff is entitled to a declaration of the family's rights in these terms.

201. 6/1949

J.J. Ocquaye.

v:

1. C.O. Aryee, 2. Numo Ayitey Cobblah for and on behalf of the Ga, Gbese and Korle Stools.

The plaintiff issued his writ of summons out of the Ga Native Court against C.O. Aryee claiming a declaration of title to land at Alajo, (b) an injunction (c) £50 damages for trespass.

I have dealt with the question of title in the previous suit 8/1945 but in which the Korle Priest

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was not a defendant. The declaration granted in that suit was granted subject to the rights of the Ga, Gbese and Korle Stools and which in my judgment must extend, as being unappropriated land, as far south as the green hatched line shown in Exhibit "B" and along that line on the eastern side up to the boundary with the Osus at the point "A" where that green hatched line intersects the line shown in pink as claimed by the Atukpais, subject to the exclusion of that small part adjudged to be Lutterodt's land which falls within that area shown as being edged with a green hatched line.

Now as to the claim in damages, I am treating this claim as if it were being made by the community known as the Nettey Quashie Family. There was quite clear evidence given by Mary Marian Nartey that C.O. Aryee, the defendant had sold a piece of land, within the area of Alajo for a sum of £21.10.0 and that although he had not yet executed a deed the draft of that deed (Exhibit "119") showed that the intention of Aryee was to convey to her an estate in fee simple.

Such an act was not only dishonest and an attempt to sell Stool land in which a family only owned rights of occupation and farming under the Gbese Stool and an attempt to oust that Stool's title, but it was an attempt to destroy the title of the Nettey Quashie Family. It is quite clear upon the evidence alone that the defendant Aryee is quite unfitted to be the Head of any family.

There was no evidence adduced in respect of the sale said to have been made to Abraham Kwartelai Quartey as set out in the writ nor is it certain what is the act of trespass upon which he relies in his writ.

There is the clearest evidence that the defendant Aryee does intend to alienate the land by sale.

I do dismiss the claim for damages but do grant an injunction that the 1st defendant, his agents and or servants are restrained from dealing in any way with the lands situate at Alajo and which have been adjudged to be the property of the Nettey Quashie Family.

In respect of the 2nd defendant I make no order

other than as to costs.

202. 13/1948

Mustapha Thompson.

v:

1. C.A. Ashong (Substituted by E.B. Ashong)
2. Akuyea Addy as next friend of her infant daughter Lucy Beatrice Ashong.

The plaintiff issued his writ out of the Native Court on the 22nd January, 1948, claiming as against the defendant, C.A. Ashong, a declaration of title to land (b) £50 damages for trespass and (c) an injunction. The suit was transferred to this Court upon the application of C.A. Ashong.

Pleadings were ordered and filed.

The land in dispute is situate at the place marked as plot No.16 in the plan marked No."142".

The plaintiff pleaded title by reason of a purchase made by her in 1944 from one Kofi Parry who had purchased it from the Korle Priest and pleaded further that the defendant, Ashong had trespassed upon this land by placing sand and other building materials on it.

The defendant puts all the facts pleaded in issue. At the hearing Akuyea Addy was joined as a defendant who pleaded that this land had been granted to her infant daughter by the Atukpai Family.

The plaintiff's evidence is that he purchased this land from Halm Owoo and from Kofi Parry and a third portion of this plot was from Kofi Parry.

The deeds of conveyance were admitted in evidence by consent and are marked as Exhibits "121" - "125".

On the 26th April, 1944, Thomas Kojo Halm-Owoo conveyed to Mustapha Thompson that plot of land 200 feet by 100 feet which is described in the plan attached to this deed (Exhibit "121"). The vendor purported to convey an estate in fee simple in

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consideration of the payment to her by the purchaser of the sum of £65.

On the 2nd May, 1944, Tetteh Quaye Molai, Acting Korle Priest conveyed to John Kofi Parry a piece of land 200 feet by 100 feet (described in the plan attached to the deed (Exhibit "124")) for £20. The vendor purported to convey as Korle Priest land "belonging to the Korle Webii" and which they purported were held by them in an estate in fee simple.

This land is situate south and adjacent to the plot conveyed by the deed (Exhibit "121"). 10

On the following day the 3rd May, 1944, John Kofi Parry by a deed conveyed this same plot of land (i.e. Exhibit "124") to the plaintiff Mustapha Thompson of Lagos, Nigeria in consideration of the payment to him of a sum of £52.10.0 realising a profit of £30 on the day's transaction.

On the 13th May, 1944, Thomas Kojo Halm-Owoo by a deed (Exhibit "125") conveyed to John Kofi Parry a piece of land measuring 200 feet by 100 feet in consideration of a sum of £20. Thomas Kojo Halm-Owoo purported to convey an estate in fee simple. This plot of land lies to the north and adjacent to the plot conveyed to the plaintiff by the deed (Exhibit "121"). 20

On the 29th March, 1945, John Kofi Parry by a deed (Exhibit "123") conveyed this same piece of land (i.e. the land conveyed by Exhibit "125") to the plaintiff in consideration of a sum of £52.

Thus by the 29th March, 1945, it will be seen that the plaintiff, Mustapha Thompson, had acquired in all a plot with a frontage on Ring Road of 200 feet and going to depth northwards of 300 feet, having acquired his title on the plot adjacent to the ring Road from the Korle Family and the two plots to the north of it as derived from Halm-Owoo as the root of title. 30

On the 31st December, 1947, Nii Tettey Gbeke for the Atukpai Stool by a deed (Exhibit "126") conveyed to Lucy Beatrice Ashong a plot of land measuring 70 feet by 100 feet for a sum of £100 and which plot of land overlaps the plots conveyed under the deeds marked as "121-125" on those plots 40

eastern extremities by about 10 feet i.e. by checking the measurements as from the pillar shown on those sketch plans as ATS.848. It is in respect of this strip with a frontage of approximately 10 feet and a depth of 150 feet that this litigation is founded.

The evidence as to the titles of the Stools and families which must be read in conjunction with the evidence given in each individual suit, shows that this land falls within the area adjudged to be that of the Kotey Family and unless the plaintiff can show that both Halm-Owoo and the Korle We Family had acquired an estate in fee simple from the Kotey Family he has no title at all and the same remarks apply to the Atukpai Family.

For these reasons I do dismiss the plaintiff's claims.

203. Suit 5/1949

1. A.A. Allotey.
2. E.P. Lutterodt.

v:

Nii Tettey Gbeke II for Himself and as Representing the Atukpai Stool.

(a) The plaintiff issued his writ out of the Ga Native Court in February, 1949, claiming as against the defendant Nii Tettey Gbeke a declaration of title to land situate near Lagos Town (b) £50 damages for trespass and (c) an injunction. On the 21st March, 1949, E.P. Lutterodt was joined as a plaintiff. The suit was transferred to this Court on the 28th April, 1949, and pleadings were ordered on the 26th May, 1949.

The plaintiff, Allotey, filed no statement of claim.

The Lutterodt Family filed a statement of claim averring that the land in dispute was a part of the land sold to William Lutterodt in 1865, and that on the 8th May, 1948, they sold a portion of that land to the plaintiff Allotey. No statement of defence was filed by the defendants.

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This land is described to me as being situate about 2000 feet to the west of the "N" in "Neema" as shown on plan "B".

In the absence of the filing of the statement of claim as ordered by the Court, I do strike out the claim made by the plaintiff Allotey. In respect of the claim made by the Lutterodt family - that family cannot establish its title unless it can satisfy me that in this area they have obtained possessory rights in the land from the Ga, Gbese and Korle Stools and upon that point I have already adjudged that they have acquired no interests in the lands outside of the limits of that rectangular area of land situate near Kpehe.

(b) The defendant relied upon evidence they had given earlier in the trial. In this respect I would say that that evidence did not satisfy me that any member of the Atukpai Family had farmed in that area so continually and so uninterruptingly that it could be said that the land had acquired the character of family land as derived by the descendants from the ancestor who first farmed there. The land in that area quite clearly was unappropriated land until this fraudulent scramble for title to land commenced shortly after the earthquake in 1939.

I do accordingly dismiss the claims.

204. Suit 7/1951

1. E.J. Ashrifi, 2. A.E. Narh,
3. C.P. Allottey.

v:

1. H.E. Golightly, 2. Tettey Gbeke.

(a) This action was commenced in the Tribunal of the Paramount Chief of the Ga State early in 1941 when the plaintiffs, then styled E.J. Ashrifi and A.G. Gogo Narh claimed as against the defendant H.E. Golightly (a) £25 damages for trespass to land (b) an injunction.

On the 23rd July, 1941, one Joseph Allotey was joined as a plaintiff. On the 16th December, 1941, there appears to have been cross-examination by someone styled "co-defendant" presumably Tettey Gbeke, although I can find nothing in the record to

show that he had been permitted to be joined as a party.

But by the 12th July, 1942, the title of the suit has been altered to "Golightly & another" and the joinder of Tettey Gbeke and the waiver of the strict rules of Court seems to have been implied. On the 19th July, 1943, judgment was entered for the defendants. From that decision the plaintiffs appealed and on the 20th April, 1948, the appeal came before Coussey, J. who allowed the appeal, set aside the judgment of the Native Tribunal and ordered a trial "de novo" in the Land Court. On the 4th April, 1951, the order was reversed by Coussey, J. and ordered that the suit be remitted to the Ga Native Court for re-hearing. The suit was then transferred to this Court.

(b) The land in dispute is that plot which is marked in biscuit colour and described as No. 1 in plan "B" and as plot 8 in plan "142".

(c) The opening addresses of Counsel were agreed to be treated as pleadings. Mr. Bossman for the plaintiffs' case is that in 1908 this piece of land was granted to one Sam Djani by the then Korle Priest and in 1918 the Acting Korle Priest and his elders executed a Deed of Conveyance to the successor of Djani in respect of this same plot and that he started to build - but died before he was able to complete the house. Then it is averred that Djani was succeeded by his uncle Allotey and who on the 14th December, 1937, sold the land to Ashrifi and Narh the present plaintiffs. That in 1939 they received a letter from Nii Tetteh Churu of Atukpai claiming the land and that shortly afterwards Golightly entered the land, started to build and continued to build despite the warnings of the plaintiffs.

(d) The case for the defendants is that the land is part of the property of the Atukpai Family and that the land was granted to Golightly by them in 1938.

(e) The evidence of J.N. Plange, a witness called by the plaintiffs and who had earlier given traditional evidence in respect of the Ga, Gbese and Korle Stools says that after the bubonic plague in 1908 when he was then a boy of about 10 years

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old, many subjects of the Gbese Stool approached the Korle Priest to let them have land on which to build. He says that at that time he was a servant being in the house of the Korle Priest and remembers that one Djani did apply for land, but says he did not accompany them to the land, so as to know its locality then.

One Daniel Sackey, whose evidence impressed me as being that of a truthful person, testified that he was one of those people who had acquired land in that area in 1908, and that he had applied for it at the same time as Djani. He says that Djani started to build a concrete block building some 3-4 years after he first got the land.

C.P. Allotey, the son of Joseph Allotey, testified that the late Djani was his father's uncle and died in 1935. His evidence again bore the stamp of truth and in that evidence is found corroboration of the building by Djani on this land. His evidence was that his father had sold the land to Ashrifi, the plaintiff and Exhibit "R" is a copy of a deed registered in the Lands Registry showing that on the 14th December, 1947, Joseph Allotey sold this land to Erastus John Ashrifi and Adolphus Emmanuel Gogo Narh in what was purported to be an estate in fee simple. The purported fee simple was one transferred to his predecessor in title Samuel Abotchie Dsane, by Tetteh Kewi Molai, the Acting Korle Priest by a deed dated the 28th January, 1919.

(f) The case for the defendant Golightly is that sometime in 1938 he was living in the Akim Abuakwa District and decided to buy a piece of land to build on and hearing that the Atukpai people were in charge of the Kokomlemle Lands he approached first Nii Tettey Addy and on his death Nii Tettey Gbeke and bought this piece of land and in respect of which Nii Tettey Gbeke executed a deed of conveyance on the 20th January, 1940. He made several inquiries he says. He first asked his father-in-law a man of Atukpai and he says he asked the Asafoakye of Abola.

He says that apart from the foundation of a concrete building there was a cassava farm upon which he put labourers to farm and whereupon the plaintiff told him that he had bought this land. Under cross-examination he said that he came from

the Abola Quarter and that Nii Tettey Gbeke had explained that the unfinished building was one put up by Djani and which they had prevented him from continuing. He said he did not go to verify these facts from Djani's family as he accepted the word of Nii Tettey Gbeke.

(g) I accept the evidence that sometime about 1908 the Korle Priest did grant to the late Djani this plot of land upon which to build. I view the absence of any documentary evidence in this respect with considerable misgiving as it is quite clear that, and that time, Annan Bibbo, the Acting Korle Priest, was familiar with evidencing these matters in writing. I refer in this connection to Exhibit "115" which is evidence of a grant made in similar circumstances to "Ayidiki Ayetey Family" and in which document there is contained an express provision prohibiting alianation which reads:

> "they have no power whatever to mortgage "sell, dash or allow anybody to build thereon "without our permission."

At the end came these very pregnant words:

> "and if he did as such without our know-"ledge violated the custom of Mantse Okaijah "and his Mantsemei and £50 will be claimed for "the violation of the said custom ..."

There, in the clearest terms, are the conditions of the grant stated and quite clearly in those days (1908) the Korle Priest was an honest man and one who not only understood custom, but insisted upon its being respected by the person to whom he made grants. Those were the rights conveyed by S.A. Dsane up to 1918 when his interests in the land were enlarged by a sale of this land made to him by Tetteh Kwei Molai, the then Acting Priest. Now quite clearly the Korle Priest could not convey the absolute ownership in land in which he only possessed a joint interest with the Ga and Gbese Manches and when it had been said in other judgments of this Court that the Korle Priest, as "caretaker" of the land had a right to alienate such land, the word alienate can only be construed as meaning "to transfer a right to another" but not to "transfer a title of absolute ownership". In my judgment the Korle Priest acted "intra vires" in 1908 but "ultra vires"

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in 1918 and that without the consent of the Ga and Gbese Manches and the subjects of the Gbese Stool and accompanied by the circumstances of debt as already discussed, he possessed no greater an interest in land in conveyancing matters other than to "transfer a right". However it was done, and it is quite clear that the sale by Tetteh Kwei Nolai is one of several that he made and which has contributed so largely to the present dispute, i.e. when other people e.g. the Atukpais and Lutterodts Families saw, the evil conduct and its profit they also decided to emulate, and they did emulate, the sorry example set to them.

(h) But in viewing the rights of the parties it is quite clear that as between a person deriving a title (however defective) coupled with possession from the Korle Priest, has a better title than the one derived from Golightly who derived it from the Atukpai Family who had no title at all and no possessory interest.

The plaintiffs Ashrifi and Narh are entitled to judgment and I do award them jointly £25 damages for trespass and they are entitled to their injunction which I do grant them.

The plaintiff Allotey has failed to show that he has any possession interest in the land and I do dismiss his claim.

205. Suit 10/1944

Odoitso Odoi Kwao for and on behalf of the Nee Odoi Kwao Family.

v:

E.P. Lutterodt for himself and on behalf of the William Lutterodt Family of Accra.

The plaintiff issued her writ out of the Tribunal of the Paramount Chief of the Ga State on the 24th January, 1944, claiming as against the defendant a declaration of title to land.

The land in question is the same as that which was the subject of the suit No.7/1944 which was an action in trespass against three members of the Lutterodt Family and other persons and in which the

writ was issued on the 24th January, 1944.

For the reasons given by me in the judgment in Suit 10/1944 I do dismiss the plaintiff's claim and in the same terms.

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206. INTERESTS OF MEMBERS OF THE ATUKPAI FAMILY -

(a) I have already held that the Stool Family qua Family have no interests in the land, but that certain members of that Family have inherited interests in land.

If it is difficult or well nigh impossible to identify these several interests with certainty these members can only thank their Family and advisers for the very unsatisfactory position they are in by reason of the indecent, reckless and unlawful manner in which their so called elders in their Family have behaved.

Their conduct has been that of hooligans rather than responsible men.

(b) I am satisfied that the village of Kokomlemle was founded sometime between 1890 and 1896 by a man named Tetteh Churu and that he was a member of the Atukpai Family. The story of the grant I have already held to be a fabricated one and the presumption must be that Tetteh Churu's occupation in view of the acquiescence of the Gbese and Korle Stools, was a lawful one and it follows that the argument put forward by Mr. Lamptey, Counsel for the Gbese Stool, is probably the correct one, namely that he as a Gbese man had a right to farm there and occupied the land and built himself a house in which to live and carry on that farming.

I have dealt specifically with certain areas abutting upon the main Accra/Nsawam road and on the right hand side and subject to these claims I am of the opinion that within an area which I will now describe, members of the Atukpai Family, occupied the land, farmed on it and built upon it in pursuance of that farming.

That Tetteh Kwamin arrived sometime after 1900 is fairly certain. That he was an industrious farmer is also fairly certain, but I am satisfied that in this area he was in no stronger a position,

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in respect of interests in land, than was any other Gbese man who might care to occupy the land for farming.

(c) The evidence satisfied me that the hamlets now known as Akalade, Agortin and Senchi had their origin by reason of the occupation of the land by members of the Atukpai Family and who, as they came, made enquiry of Tetteh Kwamin, who was then the oldest and most respected inhabitant, as to what was unappropriated land.

It was the normal conduct. It was gentlemanly conduct and so much in contrast with the vulgar conduct of today.

It is also good native law that if land is given to a person for a specific purpose or is permitted to occupy it for that purpose and then abandons that purpose, all his interests in the land revert to the Stool. Now when as was evidenced by Nii Tettey Gbeke himself that the land was granted to the family for farming - that would by native law limit the use to which they might put the land without first receiving the consent of the Stool owner. Now it is quite clear that, even were it admitted that the family qua family had any rights of farming, the intention to sell the land, and that is manifestly evidenced, shows an intention of the abandonment of its original user, and that they couldnot deal with it in any other way without first making a new agreement with the Stool owners.

(d) But in my judgment if I were to hold that these members of the Atukpai Family had identified themselves with their "elders" conduct and have now lost their interests, I should be doing less than justice to them, as it was quite clear upon the evidence given to me by one or two old women that they did not like the way things were going now, and that if they continued they would lose their farms and the very foundation of their lives. It is quite clear that Nii Tettey Gbeke and his fellow bullies, such as Aryee and Salifu have been over-riding the interests of their feebler but law abiding members. The interests of the little man or the little woman cannot be over-ridden in this roughshod manner, which is nothing but a reversion to the ancient law of the jungle, and it is within this area which I will now demarcate, and where I find exist interests

in farm lands and farm buildings and in which area the interests of members of the Atukpai Family largely preponderate i.e. subject to the rights of other persons which have already been determined by me in the suits tried during the course of this consolidated action. The area within which these interests in land subsist are within the area which I have marked in red ink on the plan numbered "142" and which I have indicated further by the letters "EFGH" also in red ink.

207. These judgments must also be construed with reference to the rights of the Crown in this area and which have been shown as marked in blue on the plan admitted in evidence and marked as No. "93".

208. Subject to these claims established by:

(a) The Osu Stool
(b) The Odoi Kwao Family
(c) The Osu Tettey Family
(d) The Kotey Family
(e) The Lutterodt Family
(f) The members of the Atukpai Family
(g) The Brazilian Family
(h) The Nettey Quashie Family
(i) The Crown

all of the land shown on plans "A" and "B" having been put in issue as between the Ga, Gbese and Korle Stools and the above-named parties, must be deemed to have been at the date of the issue of the writs, (in many cases, several years ago) unappropriated vacant lands owned by the Ga, Gbese and Korle Stools and I do enter judgment accordingly.

(Sgd.) J. Jackson.
J U D G E

Mr. Halm, Assessor, intimates to me that he is in complete agreement with the whole judgment.

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No. 46a

Court Notes Awarding Costs.

1st June 1951.

No. 46a

COURT NOTES AWARDING COSTS

1st June, 1951.

In the Supreme Court of the Gold Coast, Eastern Judicial Division (Land Division) held at Victoriaborg, Accra, on Friday the 1st day of June, 1951, before Jackson, J.

Kokomlemle Consolidated Suits.

Assessment of Costs -

Lamptey - 10

Submit that in assessing Counsel's costs - they would be assessed in each case separately.

Court -

Would it be satisfactory if I assess first the fees to be allowed to the parties in respect of the services of Counsel and then as each suit is dealt with independently I will apportion to each party a proportion of these fees which I allow in respect of each suit, as in the course of the action one or two Counsel had been briefed throughout. 20

Lamptey -

That would be satisfactory to me.

Quist-Therson -

Trial has lasted 15 weeks - sitting 5 full days each week. Am of opinion it would be more convenient to determine the fees in bulk.

Court -

I will hear each Counsel in respect of costs.

Lamptey -

Immense amount of labour involved. Case started on the 23rd January and with very little interruption went on for 15 weeks until judgment was reserved on

9th May. Suggest that work done justifies fees at rate of 15 guineas per diem. I had to attend throughout the trial. Submit we are entitled to our full costs.

Quist-Therson -

Odoi Kwao Family and Korle Stool have not been successful as far as we are concerned. We have been shown entitled to a bigger area than they had admitted. We are entitled to costs against them, against the Atukpai and the Osu Stool.

Miss Baeta (for Atukpai Stool) -

I have no instructions.

Bossman -

I appeared for plaintiff in 15/1943, No.7/51. I appeared for Ashrifi the successful plaintiff, Osu Stool were in part successful, I also appeared for Nii Azuma III (Brazilians).

Court -

Numo Ayitey Cobblah who appeared for and on behalf of the Ga, Gbese and Korle Stools is allowed the sum of 850 guineas as fees in respect of the services of Counsel.

Odoitso Odoi Kwao the Head of the Odoi Kwao Family is allowed the sum of 500 guineas fees in respect of the services of Counsel.

Osu Stool -

The issue here was as against the Ga Stool. They were successful only in respect of the area around Mamobi and Kotobabi and they were unsuccessful in respect of the land principally in dispute, i.e. east of the line drawn by them diagonally across plan "A".

Upon this issue in my judgment the Gas should not have put in issue the northern area and neither should the Osu in respect of the southern. In this respect each of the Stools must bear their own costs.

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Court Notes Awarding Costs.

1st June 1951 - continued.

Osu Tettey (did not employ Counsel) -

H.C. Kotey - In respect of the Kotey claim I do allow to him in respect of Counsel's costs the sum of 50 guineas.

Lutterodt Family -

The only award to the family was the piece of land which the Ga, Gbese and Korle Stools admitted had been conveyed and there was no occasion for any litigation by them. They entered into litigation to inflate their claim. They must bear their own costs.

Suit 15/1943 - Afiyie v: Tettey Gbeke -

I assess the plaintiff's costs of 40 guineas (including 25 guineas Counsel's costs) to be paid by Tettey Gbeke on behalf of the Atukpai Family.

25/1944, 116/1945, 15/1948 and 17/1948.

Costs of these actions to await the event of the new ones if brought. If not prosecuted within 3 months then the defendants are at liberty to apply to the Court for costs.

33/1950 - Numo Ayitey Cobblah v: J.W. Armah

I do assess the costs recoverable by the plaintiff as against J.W. Armah which I assess at 10 guineas (including 7 guineas Counsel's costs).

1/1944 - H.C. Kotey v: 1. J.W. Armah
2. Nii Tettey Gbeke
3. Numo Ayitey Cobblah

The 1st defendant obtained no title from the 2nd defendant who himself was in the position of a trespasser and in these respects the plaintiff and the 1st and 2nd defendants must bear their own costs. The 3rd defendant is entitled to recover costs which I assess at 3 guineas (including 2 guineas Counsel's costs).

38/1950 - Numo Ayitey Cobblah v: H.B. Kadire Simba

I do award to the plaintiff the sum of 12 guineas (including 9 guineas Counsel's costs).

39/1950 - 1. R.A. Bannerman
2. Numo Ayitey Cobblah

v:

1. J.S. Abbey
2. Nii Tettey Gbeke II (personal capacity alone).

All parties acted in bad faith and each must bear their own costs.

19/1943 -

No writ was issued at all in this action. No step was taken by any party to stay the progress of the claim. Each party to bear his own costs.

2/1944 - Nii Tettey Gbeke v: Lutterodts and Numo Ayitey Cobblah

The plaintiff's claims were dismissed. They in common with the first three defendants were acting like hooligans and invading land belonging to another with the purpose of selling it. They will all bear their own costs. The costs of the 4th defendant (Korle, Ga and Gbese Stools) are to be recovered from the Atukpai Family in a sum that I will assess later.

14/1948 - Obeyea, Ayeley, Asantewah v: G. Sackey.

The plaintiffs are entitled to their costs which I assess at 25 guineas (including 15 guineas Counsel's costs).

18/1945 - Obeyea, Ayeley and Asantewah v: J.C.Nortey

The plaintiffs are entitled to their costs which I assess at 25 guineas (including 15 guineas Counsel's costs).

46/1950 - Nii Tettey Gbeke v: 1. Owuredu, 2. Ammah.

The defendants are each entitled to their costs which I assessed at 10 guineas each including (7 guineas Counsel's costs in each instance).

41/1950 - Thomas Kojo Halm-Owoo v: 1. S.K. Dodoo
2. Osu Tettey Family

The plaintiff and 1st defendant to bear their

In the Supreme Court

No.46a

Court Notes Awarding Costs.

1st June 1951 - continued.

own costs. I do award to the Osu Tetteh Family 4 guineas costs.

Suit 47/1950 - Numo Ayitey Cobblah v: Lartey -

I do assess costs at 5 guineas for plaintiff (including 7 guineas Counsel's costs). (sic)

7/1944 - Odoitso Odoi Kwao v: Lutterodt & ors.

This action was in relation to land which has been adjudged to have been unappropriated land. It was land upon which so far as it related to the first nine defendants neither the plaintiff nor these defendants had any rights whatsoever.

But the claim was put in issue in respect of other parts of the land claimed by the Brazilians and in respect of those or some of these claims, they must pay towards the costs made necessary by including in their claims lands which belonged to others.

In this respect the Brazilian Community have been put to inconvenience and expense and they are entitled to their costs which I assess at 10 guineas (including 3 guineas fees). The Osus were put to the expense of defending the action in respect of the areas around Mamobi and Kotobabi and where they were successful. They however raise further issues claiming practically the whole of Odoi Kwao land and in which they have been unsuccessful. The Osus must bear their own costs.

As against the Ga, Gbese and Korle Stools who denied any grant beyond the limits of plots 24 and 25, it is quite clear that the grant was in respect of a larger area and in respect of these matters which added to the expenses of Odoi Kwao they are entitled to recover their costs which I assess at 15 guineas (including 10 guineas Counsel's costs).

Kotey Family is entitled to its costs which I assess at 15 guineas (including 10 guineas counsel's fees) and Osu Tettey Family is entitled to recover its costs which I assess at 5 guineas.

Atukpai Family to pay their own costs.

11/1943 - C.B. Nettey (substituted by C.O. Aryee)
v:
Kwaku Fori & ors.

The defendants put in no appearance and I make no order as to costs i.e. apart from Atukpai who should have never defended the action and will pay their own costs.

8/1945 - J.J. Ocquaye v: S.S. Coker (substituted by C.O. Ayree)

I assess the costs of the plaintiff recoverable from the defendant at 7 guineas.

6/1949 - J.J. Ocquaye v: 1. C.O. Aryee
2. Numo Ayitey Cobblah

The plaintiff is entitled to recover costs from both defendants (this is not to be construed in any way as affecting the 2nd defendant's reversionary title). I do assess the plaintiff's costs as against the 1st defendant at 7 guineas and as against the 2nd defendant at 3 guineas.

13/48 - Mustapha Thompson v: 1. Ashong
2. Akuyea Addy (as next friend etc.)

The sales were invalid by customary law and each party is to pay his own costs.

Suit 5/49 - 1. Allotey
2. E.P. Lutterodt
v:
Nii Tettey Gbeke

Each party to pay his own costs.

7/1951 - Ashrifi & ors. v: Golightly

Again this suit arises out of clandestine dealings in Stool land by all the parties and each one to pay his own costs.

10/1944 - Odoitso Odoi Kwao v: Lutterodt.

Each party to pay its own costs.

In the Supreme Court

No. 46a

Court Notes Awarding Costs.

1st June 1951 - continued.

Court -

It remains now for me to apportion what amount of the costs awarded to the parties in respect of their Counsel's fees and as assessed in respect of the Ga, Gbese and Korle Stools, the Odoi Kwao Family and the Kotey earlier this morning should be borne by any other party to these consolidated suits.

Lamptey -

As far as we are concerned the Lutterodts have put us to expense and then the Atukpais - as well as the Kotey in respect of the northern part of his claim.

23/1944 - H.C. Kotey v: Nikoi Kotey & ors.

I found that the Kotey family had no possessory rights in the land and that the first four defendants were in a similar position each one making bogus claims in order to effect sale of Stool land. Each party to pay his own costs with exception of Numo Ayitey Cobblah, the owner of that unappropriated land and to whom I award 3 guineas costs (including 2 guineas Counsel's costs).

Quist-Therson -

We say Atukpais should pay us costs as they claimed all of that area as well as the Osus.

Bossman -

As regards Osus the northern part must be borne in mind and in which respect the Osus were successful.

Court -

Does anyone else wish to address me on the matter of costs.

Of the Counsel's costs assessed in respect of the Ga, Gbese and Korle Stools, Nii Odoi Kwao family and the Kotey family, the Ga, Gbese and Korle Stools are entitled to recover from the Atukpai Family the sum of 500 guineas and from the Lutterodt Family the sum of 250 guineas and from the Osu Stool the sum of 75 guineas and from the Kotey Family the

sum of 25 guineas.

Of the Counsel's costs awarded to the Odoi Kwao Family amounting to 500 guineas, that family are entitled to recover from the Atukpai Family the sum of 400 guineas, from the Osu Stool 100 guineas.

The Kotey Family is entitled to recover from the Atukpai Family the sum of 50 guineas.

(Sgd.) J. Jackson,
J.

In the Supreme Court

No. 46a

Court Notes Awarding Costs.

1st June 1951 - continued.

In the West African Court of Appeal

No.47

Notice and Grounds of Appeal by Nii Tetteh Gbeke and 10 others.

28th August 1951.

No.47

NOTICE AND GROUNDS OF APPEAL BY NII TETTEH GBEKE AND 10 OTHERS

(Title contains the titles of all the 25 suits in the same order as and substantially identical with the list of 25 suits as set out by numbers and parties in the Judgment of the Supreme Court on page 105).

TAKE NOTICE that the Defendants NII TETTEY GBEKE, H.E. GOLIGHTLY, COMFORT OKRAKU, J.W. ARMAH, G. SACKEY, J.C. NORTEY, AKUYEA ADDY (as next friend of her infant daughter Lucy Beatrice Ashong) J.W. ARMAH, MADAM THERESA AMERLEY LARTEY, H.B. KADRI GIMBA and S.K. DODOO, being dissatisfied with the decision of the Land Court contained in the Judgment of Jackson, J. dated the 31st day of May 1951 do hereby appeal to the West African Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

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

2. The whole of the decision of the Lower Court.

In the West African Court of Appeal

No.47

Notice and Grounds of Appeal by Nii Tetteh Gbeke and 10 others.

28th August 1951 - continued.

3. Grounds of Appeal:

1. The judgment is against the weight of evidence.

2. Because the consolidation of the several claim is irregular and embarrassing and thereby caused a confusion in the determination of the right of the parties in the respective cases.

3. Because the trial Judge failed to apply the correct interpretation on the kind of customary law that is applicable to the facts of the cases before him.

4. Because the trial Judge failed to give effect to the defendant's long and undisturbed possession of the lands in dispute.

5. Because the learned Judge failed properly to construe the case of Lokko vs: Konklofi F.C. (1907) Renner's report and merely drew wrong inferences from the facts of the cases before him.

6. The trial Judge misdirected himself on the issues involved in the case.

7. The trial Judge misdirected himself on the effect of the judgments in the case Tetteh Quaye Molai acting Korle Priest vs: Emmanuel Bannerman and Dr. Nanka-Bruce, and Dr. Nanka-Bruce vs: Nii Tettey Gbeke, and Numo Ayitey Cobblah etc. vs: Nii Tettey Gbeke upon the case of the Korle Priest.

8. The trial Judge failed to direct himself properly on the claim made by Korle Webii in the case Tetteh Quaye Molai Acting Korle Priest vs: H.C. Kotey and its effect upon the case of the plaintiffs.

9. The trial Judge overlooked overwhelming evidence on the record, oral and documentary proving occupation by the Atukpai people of almost the whole land.

10. The plaintiffs were estopped by their

admission oral and documentary from denying a grant to the Atukpai people.

11. The trial Judge wrongly interpreted the letter written by the Gbese Mantse and his elders to the Atukpai Stool.

12. The trial Judge misjudged the effect of the certification by the Dsasetse and of the Ga Mantse, and particularly when neither the Gbese Mantse nor Dr. Reindorf the Ga Mantse's Dsasetse offered any explanation to the said certifications to give a meaning - other than the ordinary meaning - of the words used.

13. There was no evidence to support the findings that the Atukpai Stool was of a recent creation.

14. The Court failed to direct itself on the evidence of grant of land to sub-Stools. Afiyea vs: Nii Tettey Gbeke No.15/1943.

15. The finding of a grant to Afiyea is against the principle which the trial Judge laid down as to subjects of the Gbese Stool.

16. The Court failed to direct itself on the long undisturbed possession of portions of the land by Atukpais and those claiming through them.

17. The Court misdirected itself on the effect on the possession of century on this land.

And as to the following cases:-

E.B.Okai & anor. vs: Mary O. Ankrah No.25/44.

E.B.Okai & anor. vs: Ashanti & ors. No.116/45.

E.B.Okai & anor. vs: E.M.Cofie & ors. No.15/48.

E.B.Okai & anor. vs: J.E.Koney No. 17/48.

18. The trial Judge failed to direct himself

In the West African Court of Appeal

No.47

Notice and Grounds of Appeal by Nii Tetteh Gbeke and 10 others.

28th August 1951 - continued.

on the evidence of occupation by Atukpais and description of the same in the deed relies upon the plaintiffs that Atukpai were in possession of all the lands round about. (sic)

19. The plaintiffs could not have acquired any interest in the land upon the Judge's own findings.

4. To set aside the judgment of the Lower Court and to enter judgment for the appellants.

5. Persons directly affected by the Appeal:

E.J. Ashrifi	...	Accra
A.E. Narh	...	Accra
C.O. Aryee	...	Accra
Mamie Afiyea	...	Accra
H.C. Kotey	...	Accra
Eric Lutterodt	...	Accra
Quarshie Solomon	...	Accra
Conrad Lutterodt	...	Accra
Nii Azuma III	...	Accra
Okwei Omaboe, Acting Osu Mantse	...	Accra
Numo Ayitey Cobblah	...	Accra
Charles Pappoe	...	Accra
Odoitso Odoi Kwao	...	Accra
Malam Ata	...	Accra
Malam Solomon Tuka alias Quarshie Solomon	..	Accra
Codjoe Solomon	...	Accra
Bako	...	Accra
Adamu	...	Accra
Imoru	...	Accra
Lawei Amoaku	...	Accra
Alfred Numo	...	Accra
W.S. Annan	...	Accra
Nikoi Kotey	...	Accra
Kwaku Amponsah	...	Accra
Q. Lutterodt	...	Accra
E.P. Lutterodt	...	Accra
E.B. Okai	...	Accra
Sarah Okai	...	Accra
Madam Obeyea	...	Accra
Madam Ayeley	...	Accra
Mustapha Thompson	...	Accra
J.J. Ocquaye	...	Accra
Nii Tackie Kommey II Ga Mantse	...	Accra

A.A. Allotey	...	Accra
D.A. Owuredu	...	Accra
R.O. Ammah	...	Accra
R.A. Bannerman	...	Accra
Thomas Kojo Halm-Owoo	...	Accra
Nii Ayitey Adjin III, Gbese Mantse	...	Accra

Dated at La Chambers, Accra, this 28th day of August, 1951.

(Sgd.) N.A. Ollennu
Solicitor for defendants/appellants.

The Registrar,
West African Court of Appeal,
A C C R A.

In the West African Court of Appeal

No.47

Notice and Grounds of Appeal by Nii Tetteh Gbeke and 10 others.

28th August 1951 - continued.

No.48

NOTICE AND GROUNDS OF APPLICATION TO VARY BY ODOI KWAO FAMILY (Suits 7 & 10/1944).

No.48

Notice and Grounds of Application to vary by Odoi Kwao Family (Suits 7 & 10/1944).

28th September 1951.

In the West African Court of Appeal
Gold Coast Session, Accra
A.D. 1951.

NOTICE OF RESPONDENT OF INTENTION TO CONTEND THAT DECISION OF COURT BELOW BE VARIED
RULE 20.

(Titles of Suits Nos. 7/1944 and 10/1944 as set out in Judgment of Supreme Court on page 105).

TAKE NOTICE that upon the hearing of the above appeal the Respondent herein intends to contend that the decision of the Court below dated the 31st day of May, 1951 shall be varied as follows:

In the West African Court of Appeal

No.48

Notice and Grounds of Application to vary by Odoi Kwao Family (Suits 7 & 10/1944).

28th September 1951 - continued.

That a declaration of title be made in favour of the Odoi Kwao Family in respect of land lying to the west and north of the watercourse (Bawale Djo) up to the western and northern limits of the Respondent's claim.

AND TAKE NOTICE that the grounds on which the Respondent intends to rely are as follows:-

1. The learned trial Judge was wrong in declaring that the Odoi Kwao Family established no interest in land lying to the west and north of the watercourse (i.e. Bawale Djo) because that finding was against the weight of evidence.

2. The learned trial Judge was wrong in refusing to make a declaration in favour of the Odoi Kwao Family on the ground that the Respondent did not claim a declaration, because the Respondent did claim a declaration in suit No.10/44.

DATED AT KWAKWADUAM CHAMBERS, ACCRA, THIS 28TH DAY OF SEPTEMBER, 1951.

(Sgd.) Akufo Addo
Respondent's Solicitor.

To

The Registrar,
W.A.C.A.,
ACCRA.

And To:

Conrad Lutterodt, Malam Ata, Malam Solomon, Codjoe Solomon, Bako, Adamu, Imoru, Okoe Omaboe, Numo Ayitey Kobbla and Nii Tettey Gbeke all of Accra.

No.49

In the West African Court of Appeal

No.49

Notice and Grounds of Appeal by H.C. Kotey for Kotey Family.

17th January 1952.

NOTICE AND GROUNDS OF APPEAL BY H.C. KOTEY FOR KOTEY FAMILY

IN THE WEST AFRICAN COURT OF APPEAL
GOLD COAST SESSION
VICTORIABORG
Accra.

Consolidated Suits.

(Title refers to the same 25 suits as did the Notice and Grounds of Appeal by Nii Tettey Gbeke and 10 others on page 255).

NOTICE OF APPEAL (RULE 12)

TAKE NOTICE that the Appellant (H.C. Kotey, Head of the Kotey Family, Plaintiff in Suits No. 1/1944 and 23/1944, and Defendant in Suit No. 7/1944) being aggrieved by and dissatisfied with that part of the decision more particularly stated in paragraph 2 hereof of the decision of the Land Court, Accra, contained in Judgment of His Lordship Mr. Justice Jackson dated the 31st day of May, 1951, DOTH HEREBY appeal to the West African Court of Appeal upon the Grounds set out in paragraph 3 hereof, and will at the hearing of the appeal seek the relief set out in paragraph 4.

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

2. The parts of the decision of the lower Court complained of are as follows:-

"Those portions of the judgment of the "Court awarding title to portions of the yellow "area claimed by the Kotey Family (except the "portion marked A, B,C,D in the plan 142) to "Numo Ayitey Cobblah for the Ga and Gbese Stools, "(b) that portion of the judgment awarding a "portion of the yellow area claimed by the "Kotey Family to W. Sai Annan for Osu Tetteh "Family, and (c) the following passages of the

In the West African Court of Appeal

No.49

Notice and Grounds of Appeal by H.C. Kotey for Kotey Family.

17th January 1952 - continued.

"judgment affecting the claim of the Kotey "Family - That there is no evidence of any "occupation or evidence given by any neighbour "in respect of land claimed by Kotey south of "Ring Road, and this judgment merely affirms "that by reason of long possession derived "through his aunt by reason of possession given "their father the present Kotey Family, still "possess what appear to be rights of farming in "that small area, but possess no power of "alienation of the land other than by the con- "sent of the parent Stools.
"I am not satisfied that the Kotey Family have "established that the land to the south of the "Ring Road was a part of the land originally "acquired by their ancestor.
"I find that the Kotey Family are entitled to "farm and to use the land for these purposes "only, in that area marked by me in Red ink as "A,B,C,D, on the plan marked 142. The land "cannct be alienated (i.e. by transfer of right) "without the prior consent of the Gbese Manche "or alienated (by transfer of ownership) without "the consent of both the Ga Manche and Gbese "Manche".

3. The grounds of appeal are as follows:-

1. The trial was materially defective and irregular by the wrongful joinders at various stages of so many parties having different and varying interests or claims, as well as the wrongful consolidation of so many opposing claims involved in so many suits - whereby as far as the appellant H.C. Kotey, Head of Kotey Family is concerned he was made to assume both the roles of a plaintiff and a defendant in, and at the same trial, and thereby experienced considerable embarrassment and difficulty in establishing his rights to the land he claimed as against the several parties opposed to him.

2. The learned trial Judge's proposition of Native Customary Law that a grant by way of gift made by the Korle Wulomo alone without the concurrence of the Gbese Manche or the Ga Manche does not

vest the grantee with absolute title - is wrong and contrary to the authority of many decided cases both in the Native Courts or Tribunals as well as the Supreme Court.

3. That in so far as the learned trial Judge decided as follows:- "This judgment merely affirms that by reason of long possession derived through his aunt by reason of possession given by their father, the present Kotey Family still possess what appear to be rights of farming in that small area but possess no power of alienation of the land other than by the consent of the parent Stool" - his judgment is (a) contrary to the admission of the Korle Priest that there was an outright grant to the Kotey Family (b) contrary to Native Customary Law and (c) contrary to the equitable doctrine of long possession propounded in the Bokitsi Concession case.

4. That the learned trial Judge in dealing with the claim of the Kotey Family misconstrued and misunderstood the proceedings and judgment of suit in the Gbese Tribunal in 1916 Kotey v: Tettey Addy Exhibit "L" - and was not only wrong in taking the view that it was merely a trespass action but did not raise any question of title to land, but also taking the view that "Tettey Addy defended in his personal capacity alone."

5. That the learned trial Judge in dealing with the claim of the Kotey Family - did not give adequate and proper consideration and effect to the result of the previous litigation from 1937 to 1943 between Tettey Kwei Molai Acting Korle Wulomo v: H.C. Kotey (Exhibit "10") whereby the Korle Family's claim to the same area of land now in dispute between that family and the Kotey family was non-suited - nor to the admission of the Korle Wulomo in that suit.

6. The learned trial Judge in dealing with

In the West African Court of Appeal

No.49

Notice and Grounds of Appeal by H.C. Kotey for Kotey Family.

17th January 1952 - continued.

the case of the Kotey Family was palpably in error in his view, which accepting the evidence that the plan Exhibit "47" was made in 1915 and was genuine that (a) the evidence given on behalf of the Osu Tetteh Family clearly shows that in one respect at least the right to survey was challenged and (b) there is no evidence that those farms (which the surveyor saw on the land sited on the plan) was made by the persons named therein or that they farmed with the permission of Kotey Family, because firstly, no evidence was given on behalf of the Osu Tetteh Family that they challenged the 1915 survey, and secondly, the witnesses of the Kotey Family did give evidence of those who made the farms with the permission of the Kotey Family on the land at the time of the 1915 survey - and it would appear as though the evidence - escaped the Judge's attention.

7. The learned trial Judge in dealing with the Kotey Family claim and placing reliance on the evidence of Mr. K.G. Konuah, Principal of the Accra Accademy and coming to the conclusion that he believed Kotey's evidence that he ever had any interests in land there - appears to have overlooked the indisputable fact that from about 1937 shortly after Mr. Konuah's alleged purchase right up to 1943, litigation was going on between Konuah's vendor or grantors the Korle Wulomo and the Kotey's in respect of the land including the area conveyed to Konuah, and that the litigation resulted in the discomfiture for the time being of the Korle Family.

8. The learned trial Judge in dealing with the claim of the Kotey Family and saying "There is no evidenve or any occupation or evidence given by any neighbour in respect of the land claimed by Kotey to the south of Ring Road" - I am not satisfied that the Kotey Family have established that the land to the south of the Ring Road was part of the land originally acquired by their ancestor" was clearly

in error, because there was the oral evidence of Nii Azuma the southern boundary owner, as well as documentary evidence of plans and other documents to substantiate the claim to land south of the Ring Road down to the Brazilian northern boundary by the Fanofa valley or streamlet.

9. The judgment of the learned trial Judge awarding the major portion of the plaintiff's land to the Korle Wulomo for himself and the Gbese and Ga Stools, and a smaller portion to the Osu Tetteh Family, is manifestly against the weight of the evidence.

4. Relief sought from the West African Court of Appeal are (i) the setting aside of the judgment awarding mere farming rights and the right to use for that purpose only in respect of the area marked A,B,C,D on Plan No. 142 to the Kotey Family - And the entry of judgment awarding title and perpetual injunction in favour of the Kotey Family in respect of the whole area coloured yellow claimed by the Kotey Family as against all the defendants in Suit No. 1/1944 and 23/1944 (ii) Order dismissing the claim of the plaintiff in Suit No. 7/1944 against the Kotey Family (the 14th defendant) in that suit, and (iii) An order setting aside that part of the judgment of the Court awarding a portion of the area claimed by the Kotey Family to the Osu Tetteh Family, defendant in Suit No. 41/1950.

5. The persons directly affected by the appeal are -

(1) Numo Ayitey Cobblah for and on behalf of the Ga Gbese and Korle Stools as 3rd defendant in Suit No. 1/1944.

(2) Numo Ayitey Cobblah for Ga, Gbese and Korle Stools as 12th defendant in Suit No. 7/1944.

(3) W. Sai Annan for Osu Tetteh Family as 15th defendant in Suit No. 7/1944 and

In the West African Court of Appeal

(4) Numo Ayitey Cobblah for Ga, Gbese and Korle Stools as 5th defendant in Suit No. 23/1944, all of Accra.

DATED AT AZINYO CHAMBERS, ACCRA THIS 17TH JANUARY, 1952.

(Sgd.) K. Adumua-Bossman,
Solicitor for H.C. Kotey (Head of Kotey Family - Appellant).

No.49

Notice and Grounds of Appeal by H.C. Kotey for Kotey Family.

17th January 1952 - continued.

No.50

Additional Grounds of Appeal by Nii Tettey Gbeke and 10 others.

30th December 1953.

No.50

ADDITIONAL GROUNDS OF APPEAL BY NII TETTEY GBEKE AND 10 OTHERS

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

(Title as in the original Notice and Grounds of Appeal on page 255 except No. 18/1948).

PLEASE TAKE NOTICE that at the hearing of the above Appeal the Appellants will ask the leave of this Honourable Court to add the following grounds of Appeal to those already filed:-

20. The procedure was wrong, because such miscellaneous suits should not have been consolidated, but a suit (or suits) should have been selected and heard as a test case (or cases).

21. The procedure was wrong, because the suits in fact, were not dealt with as consolidated suits but seriatim.

22. The procedure was calculated to shift the onus of proof.

23. The procedure was executive rather than judicial,

and the proceedings resembled a commission of enquiry, rather than litigation.

24. The procedure was confusing, and makes it extremely difficult, if not impossible, for another Court to weigh the evidence.

25. The trial was materially defective and irregular in the wrongful joinder at various stages of so many parties having different and varying interests or claims, as well as in the wrongful consolidation of so many opposing claims, involved in so many suits, whereby, inter alias, the Appellant Nii Tettey Gbeke II, the Head of the Atukpai Family, was made to assume the roles both of Plaintiff and of Defendant in the same trial, and thereby experienced considerable embarrassment and difficulty in establishing his rights to the land he claimed as against the several parties opposed to him.

26. The preliminary enquiry into the cases for the Stools charged the mind of the Judge, before he had commenced to hear the separate suits, with views on Native Customary Law, which are reflected in his judgment.

27. The preliminary enquiry into the cases for the Stools militated against the interests of the Defendants-Appellants.

28. In his findings in law, the Judge created his own standard and fitted the facts to them.

29. The Judge reversed the normal procedure, viz., to find as fact, and then in law.

30. The exposition of Native Customary Law contained in the Judgment was derived in part from unreliable sources, or from sources outside the scope of cross-examination.

31. The Judge treated Native Customary Law as stereotyped and incapable of adaptation to social development.

32. The Judge ignored the development of Native Customary Law, and the rapidly increasing number of individual titles to land.

In the West African Court of Appeal

No.50

Additional Grounds of Appeal by Nii Tettey Gbeke and 10 others.

30th December 1953 - continued.

33. The Judgment overlooked modern authorities on the subject of native lands.

34. The Judge denied the possibility of a fee simple, or its equivalent, in spite of instances to the contrary, within common knowledge.

35. The Judge's finding that subjects of a Stool have the right to farm anywhere, is contrary to the rule that the Chief allots the site. (Fanti Customary Laws, 2nd Edition 272).

36. The Judgment is contrary to decided cases in Native Customary Law, and, in particular, it is contrary to Judgments of the Privy Council, in the cases of Enimil v. Tuakyi and Angu v. Attah (P.C. Judgment 15th July, 1952) in which the fact that occupiers' rights can ripen into ownership, carrying with it a power of sale, was recognised.

37. The Judge was bound by the Judgments of the superior Courts which he criticised.

38. The Judge was biased against purchasers of land, and showed this very clearly in many expressions of disapproval which occur in his judgment.

39. The Judge relied too much upon his own experience, and drew his opinions from this.

40. To restrict sales of Stool lands to cases where there is a Stool Debt, would involve the execution of conveyances, not only by the grantors, but by their Chiefs and Paramount Chiefs, with corresponding payments to these functionaries.

41. Wrongful reception of evidence and wrongful rejection of evidence.

42. Evidence was taken irregularly at the visits of inspection, inasmuch as, either it is not stated for which party the evidence was taken, or no suit is mentioned.

43. The Damages and Costs are excessive.

44. The Court had no jurisdiction to consolidate the above-mentioned suits or to proceed with

No.50

Additional Grounds of Appeal by Nii Tettey Gbeke and 10 others.

30th December 1953 - continued.

the trial of them as consolidated suits in the manner it did or at all.

Dated at Cape Coast this 30th day of December, 1953.

(Sgd.) C.F.H. Benjamin,
SOLICITOR FOR DEFENDANTS-APPELLANTS.

TO THE REGISTRAR,
WEST AFRICAN COURT OF APPEAL, ACCRA.

AND TO THE FOLLOWING RESPONDENTS:-

	E.J. Ashrifi	Accra	Alfred Numo	Accra
10	A.E. Narh	Accra	W.S. Annan	Accra
	C.O. Aryee	Accra	Nikoi Kotey	Accra
	Mamie Afiyea	Accra	Kwaku Amponsah	Accra
	H.C. Kotey	Accra	Q. Lutterodt	Accra
	Eric Lutterodt	Accra	E.P. Lutterodt	Accra
	Quarshie Solomon	Accra	E.B. Okai	Accra
	Conrad Lutterodt	Accra	Sara Okai	Accra
	Nii Azuma III	Accra	Madam Obeyea	Accra
	Owei Omaboe, Acting Osu Mantse	Accra	Madam Ayeley	Accra
			Mustapha Thompson	Accra
20	Numo Ayitey Cobblah	Accra	J.J. Ocquaye	Accra
	Charles Pappoe	Accra	Nii Tackie Kommey II Ga Mantse	Accra
	Odoitso Odoi Kwao	Accra	A.A. Allottey	Accra
	Malam Ata	Accra	D.A. Owuredu	Accra
	Malam Solomon Tuka alias Quarshie Solomon	Accra	R.O. Ammah	Accra
			R.A. Bannerman	Accra
	Codjor Solomon	Accra	Thomas Kojo Halm-Owoo	Accra
	Bako	Accra		
	Adamu	Accra	Nii Ayitey Adjin III Gbese Mantse	Accra
30	Imoru	Accra		
	Lawei Amoaku	Accra		

In the West African Court of Appeal

No.51

Additional Grounds of Appeal by Odoi Kwao Family.

7th April 1954.

No.51

ADDITIONAL GROUNDS OF APPEAL
BY ODOI KWAO FAMILY
(Suits 7 & 10/1944)

IN THE WEST AFRICAN COURT OF APPEAL
GOLD COAST SESSION

(Titles of Suits 7 & 10/1944 as on page 259).

ADDITIONAL GROUNDS OF APPEAL

TAKE NOTICE that at the hearing of the above appeal the Appellants will seek leave of this Honourable Court to argue the following Grounds of Appeal in addition to those already filed -

3. The learned Judge was wrong in holding that the Western limits of the land occupied by the Appellants Odoitso Odoi Kwao, Nii Odoi Kwao Family were the water course, Bawale or Mamobe Djor, and that there was no proof of occupation by them to the west of the said water course, in view of the fact that there was evidence of such occupation by the Nii Odoi Kwao Family, and evidence in the past they had been treated as owners.

4. The learned Judge was wrong in holding that the Nii Odoi Kwao Family were not exclusive owners of the land of which he found them to be in occupation, this finding being contrary to Native Law and custom as interpreted in various decisions of the Courts including the previous Judgments of the Divisional Court and the West African Court of Appeal in respect of portions of the area claimed by the Odoi Kwao Family herein.

No.51

Additional Grounds of Appeal by Odoi Kwao Family.

7th April 1954 - continued.

5. The findings of the learned trial Judge in so far as they are adverse to the claims and interest of the Nii Odoi Kwao Family are clearly against the weight of evidence on record.

Dated at Accra the 7th day of April, 1954.

(Sgd.) E. Kurankyi Taylor.
COUNSEL FOR NII ODOI KWAO FAMILY.

THE REGISTRAR,
WEST AFRICAN COURT OF APPEAL
ACCRA.

AND TO

CONRAD LUTTERODT AND OTHERS.

No.52

No.52

Motion for Substitution - Suits 7 & 10/1944.

26th April 1954

MOTION FOR SUBSTITUTION - SUITS 7 & 10/1944

IN THE WEST AFRICAN COURT OF APPEAL
GOLD COAST SESSION

(Titles of Suits 7 & 10/1944 as on page 259).

MOTION EX PARTE

MOTION EX PARTE by James Quist-Therson of Counsel for and on behalf of Nii Adotei Akufo for the substitution of the said Nii Adotei Akufo the present Head of the Nii Odoi Kwao Family of Christiansborg and Accra in place of the late Odoitso Odoi Kwao the Respondent herein now deceased.

To be moved on Tuesday the 8th day of June 1954 at 9 a.m. or so soon thereafter as Counsel may be heard.

Dated at Christiansborg, Accra the 15th day of March, 1954.

(Sgd.) J. Quist-Therson,
COUNSEL FOR NII ADOITEI AKUFO.

The Registrar,
West African Court of Appeal,
Accra.

(Filed 26th April, 1954).

In the West African Court of Appeal

No.53

Court Notes of Substitution (Suits 7 & 10/1944).

1st December 1954.

No.53

COURT NOTES OF SUBSTITUTION (Suits 7 & 10/1944)

1st December, 1954.

In the West African Court of Appeal, Gold Coast Session: Coram Foster Sutton, P., Smith, C.J. Sierra Leone, and Coussey, J.A.

Civil Motion
No. 31 of 1954.

Odoitso Odoi Kwao, etc. 10

v.

Conrad Lutterodt & Ors.

Motion ex parte for an order substituting Nii Adotei Akufo present head etc. for Plaintiff herein.

Mr. Quist-Therson moves:

Order in terms of motion. Costs in the cause.

(Sgd.) S. Foster Sutton, P.

1. 12. 54.

No. 54

In the West African Court of Appeal

No. 54

COURT NOTES OF ARGUMENTS

Court Notes of Arguments.

1st December, 1954

2nd to 6th December, 1954.

CORAM: FOSTER SUTTON, P., SMITH, C.J. SIERRA LEONE and COUSSEY, J.A.

Civil Appeal No.106/1953.

Preliminary.

Mr. Benjamin (Mr. Ollonnu with him) for the appellants in 1st Appeal, namely, suit numbers 7/1951; 11/1943; 15/1943; 19/1943; 2/1944; 7/1944; 14/1948; 18/1948; 13/1948; 5/1949; 47/1950; 38/1950; 46/1950 and 39/1950 also 33/1950.

Mr. Bossman for the appellants in the 2nd appeal - suits Nos. 1/1944 and 23/1944.

The plaintiff in suits Nos. 7/1944, and 10/1944 has filed notice that decision of Court below be varied.

Mr. Quist-Therson (Dr. Taylor with him) for the plaintiff.

Taylor: asks leave to withdraw notice to vary in so far as 10/1944 is concerned - there is no appeal in that case and the notice was filed in error.

Leave to withdraw the notice granted.

(Intd.) S.F.S., P.

Dr. Taylor: (appears alone - Quist-Therson sick). Appears for plaintiff respondent in 7 of 1944 - also notice to vary judgment.

Mr. Bossman: For respondent/plaintiff in 15 of 1943; in 19/1943 for Okwei Omaboe, Osiahene of Osu Stool.

Mr. Obetsebi Lamptey: For plaintiffs/respondents in 7/1951 Nos. 1 and 2, that is to say E.J. Ashrifi and A.E. Narh; Respondent No.3 in 1/1944. Numo Ayitey Cobblah; Respondent No.3 in 19/1943 - Numo Ayitey Cobblah; Respondent No.4 in 2/1944. Numo Ayitey Cobblah; Respondent No.12 in 7/1944. Note: he was defendant No.12 and it is the 13th defendant who has appealed.

Note: 19/1943 was struck out on ground that there was no writ. See p.

In the West African Court of Appeal

No. 54

Court Notes of Arguments.

2nd to 6th December, 1954. - continued.

Lamptey: A variation of judgment in favour of the plaintiff may adversely affect my client - we are not concerned with 13th defendant's appeal.

Respondent No. 5 in 23/1944. Numo Ayitey Cobblah for Ga, Gbese and Korle Stools; Respondent in 33/1950 that is to say plaintiff/respondent. Same Cobblah - Korle Priest; Plaintiff/respondent 47/1950; Plaintiff/respondent 38/1950 - same person; 2nd Respondent in 39/1950 - same person 3rd defendant/respondent in 1/1944; 5th defendant/respondent in 23/1944, that is to say - also appearing in 2nd appeal. (Note: there is no appeal by Ollennu's clients).

For Atukpai and others

Benjamin: Argues ground 2 of original grounds of appeal and ground 44 of additional grounds. "44. The Court had no jurisdiction to consolidate the above mentioned suits or to proceed with the trial of them as consolidated suits in the manner it did or at all". Refers to Order 3 Rule 9. To consolidate actions must be same subject matter. Civil Summons p. of record. Compare 1 with 2. Parties not the same. Parcels of land are not the same. They are not same parties and relate to different areas of land. Not in same right. Submits "No suit can lawfully be consolidated unless a single suit could lawfully have been originally instituted between the parties". Cecil v: Brigges 100 E.R.344 (1788). (Note: pre-judicature Act). English R8 Order 49. Section 70 Courts Ordinance.

Admits that the consolidation was done by consent of parties.

Submits anyway consolidation was improper. We rule that having consented in the Court below to the suits being consolidated it is not open to counsel now to argue that Court exercised its discretion wrongly by consolidating.

(Intd.) S.F.S., P.

We do not call upon counsel for respondent on the point.

In our view this is not a matter of jurisdiction - but one of procedure, and in view of the consent of all parties to the suits being consolidatod - we hold that they cannot now be heard to complain that the wrong procedure was followed.

(Intd.) S.F.S., P.

Ollennu: Argues other grounds. Right to alienate Ga Stool land.

Submits: Trial Judge erred in conclusions he drew. Erred in finding that a family who had acquired Stool Land could not alienate i.e. could not acquire such an interest in Stool land as to enable them to dispose of it to third persons.

Also erred in holding that no Stool land could be alienated even by the Stool itself except in cases where it was done to pay off a Stool debt. Submits that in this connection trial Judge meant something akin to a foe simple - that is to say an absolute disposition.

Submits Judge misdirected himself in holding: "That a family cannot alienate an interest which it had in land". Submits that a family can alienate rights it has acquired in land without affecting the reversionary interest of the Stool therein. They can sell their rights without consent of Stool.

The Stool can call upon purchasers to render customary services or pay customary tribute to Stool.

Trial Judge did not consider that aspect of the case at all.

Submits that whatever a person may purport to do by way of conveying the fee simple in such land all they really do - as a matter of law - is to transfer or convey their "right title and interest". Whatever that may be that is all they can do if land is still Stool land - i.e. if Stool still have a reversionary interest in the land.

Note: Whenever "fee simple" is used - intended to convey "absolute interest" with no reversionary right in stool.

Atuokpais were allowed to build villages - We rely upon grant we alleged was made to Atuokpais 100 years ago. Submits that Atuokpais as a body-corporation - family - they acquired as a family and can dispose of it in same capacity. One head of Atuokpais originally was granted the land and he placed the others on it. There is no evidence of any individual Atuokpais going on land and settling there on his own.

Ollennu: Refers to p. line

Adjourned to 2.12.54.

(Intd.) S.F.S., P.

In the West African Court of Appeal

No. 54

Court Notes of Arguments.

2nd to 6th December, 1954 - continued.

2nd December 1954.

Ollennu: Points out that there is no writ between Atuokpai and Ga, Gbese and Korle.

There are only two suits before the Court in which the Atuokpai are plaintiffs i.e. 19/1943 and 2/1944 and 46/1950 in each of these the Atuokpai sued in trespass - p. of record i.e. 2/1944. P. is Statement of Claim 46/1950 - Civil Summons p. of record no statement of Claim 19/1943 no writ no Statement of Claim but 2/1944 really takes its place. Not dealing with 19/1943 because there is nothing before Court.

It was admitted on all sides that land in dispute in all the suits was originally Ga Stool land. Admission appears p. of record. Trial Judge refers to it at p. Refers to p. commencing at line - line p. line

Lamptey - P. - line - referred to grants made by Korle - Plange p. - line When Korle case concluded "I opened for the Atuokpai - p. of record - Ga Manche gave evidence for the Atuokpai p. of record. Nii Tettey Gbeke.

Evidence re villages p. . Evidence re grants p. . Plange gave names of members of Atuokpai family to whom Korle had made individual grants - but he did not call them we did - and they gave evidence for us. Exhibit "E" p. Conveyance made as Head of Atuokpai family. Refers to evidence of A. Allotey p. . Witness was recalled pp.

Exhibits 14 and 15. Refers to certificates attached to the Exhibits and the receipts.

Exhibit 4 p. signed by Gbese Mantse. This document recognises our Stool. Atuokpai Stool as entity holding the land. Signed by Gbese Mantse. Witness at p. line

Q. Who gave you the authority to receive these moneys?

A. The Ga Manche and the Gbese Manche.

Evidence of Plange p.

Exhibit "6" p. Affidavit sworn to on 4th September 1940. "South by Atuokpai land". Submits. It does bind the Korle Priest - at that time they denied land belonged to Ga Stool.

Foundation of villages - Judgment p. Kokomlemle village - finding

Agortim - p. Senchie - Kpehe - Lagos Town. Nima village p. but "we do not claim to have founded this village".

Refers to evidence pp. and on. The matter went before the Ga Manche and he directed the Atuokpais to grant land to Taylor. Refers to evidence Nii Kobina Bonnee III - p. , makes point that no one troubled him on land after Atuokpais granted land p. . Village called Sekyi.

Refers to Exhibit "5". Lease granted by Atuokpai - Note - capacity in which they grant the lease. "Alienation of family land". Submits. Document does show that the Atuokpai were dealing with the land.

1.15 p.m. adjourned to 2.45 p.m.

(Intd.) S.F.S., P.

Ollennu: Trial Judge found that all the villages already named were made by Atuokpai people. P. line . Then he went on to say that it was family land of these people. Submits that having been placed on land by Atuokpai head their occupation was through Atuokpai Stool or family. Submits there is no evidence of the individuals settling by themselves. Again refers to documents - 1st Affidavit of Korle Priest. Submits that is an admission that Atuokpai occupied land - refers to of record - trial Judge's comments on it. The document was merely tendered to show that Korle Priest anyway admitted that Atuokpai had land to South. Then Exhibit "15" and certificate - latter was given one year after Deed was executed. The Certificate was put in as a sample, see evidence at p. line and on - and p. line Note: There are 2 Certificates - Exhibit "14" signed by representative of Ga Stool as well as Gbese Manche. These are all the more important because trial Judge found as a fact that land could not be alienated without Ga Manche and Gbese Manche joining in.

In the West African Court of Appeal

No. 54

Court Notes of Arguments.

2nd to 6th December, 1954 - continued.

Exhibit "4" p. . There he refers to Atuokpai Stool Land and he says where the land is "KOKOMLEMLE LANDS", in year 1945 - Note: Document also signed by Gbese Akwashongtse and Chief Linguist.

Trial Judge's comments at p. line - Does not reserve right to "Use" but to "ask". Submits trial Judge completely misdirected himself regarding the effect of the document. Lokko v. Konklofi 2 Renner p. 450 at pages and Dealt with by trial Judge at p. line - Submits not "obiter" - Moreover it was a judgment of a superior Court in the year 1907.

Principle Kobina Angu v. Cudjoe Attah P.C. Judgments 1874 - 1928 p.43. Reads from p. 44 Owusu v. Manche of Labadi Vol. 1 W.A.C.A. p. 278 - Submits that trial Judge erred in relying on this case to deprive us of our rights - that was a compulsory acquisition case - Submits in this case there was a grant -

Points out inconsistency in judgment says cannot be alienated - Stool land - except for a Stool debt - then perfectly in order to alienate to a Mission.

Trial Judge having found in this action p. and that Lutterodt were only entitled to a very small portion of the land - See p. - lines to - Submits they were certainly entitled to judgment for something even if only nominal, for such damage as affected our reversionary rights.

Kwaku v. Ofori. Full Court Judgments 1926-29, p.87 at p.

Judgment and

Finds also trespass is not properly proved -

Trespass

Refers to evidence p. - re: trespass - from line Refers to p. - re trespass from line and p. - line

Adjourned to 3.12.54.

(Intd.) S.F.S., P.

3rd December 1954

Ollennu - Refers to evidence of George Addy Tettey - - Cross-examination at p. line p. Note: See in particular evidence at p. of the record from line . This witness is one of the elders of the Ga Paramount Stool - has represented them in Court cases p. , line - "I have heard of absolute grants to people".

Question arises "What is position of Korle Priest in this case". He is claiming in these cases a right in his Korle family - not as caretaker of Ga Stool.

Submits that trial Judge misdirected himself regarding cases put in re: Korle family claims to ownership - line p. - Judgment - "In my opinion these cases in no way advance the Atuokpai's claim".

They were put in to refute the Korle family claim. Refers to evidence of Plange p. line

Point is summed up in question put:

Q. "In that notice you claimed the land as owned exclusively by the Onormroko family (Korle)".

A. "It was written upon the instructions of the Korle Priest".

(lines p. of record).

Korle persisted in claiming ownership in Korle family.

Submits that when Plange said "We never made any grants to 'Atuokpai" he was talking of Korle We not Ga. In view of all evidence - documentary and oral - trial Judge ought to have directed his mind to determining boundaries of various claimants. Trial Judge found as a fact that a grant had been made to the Kotey family - Note but only for farming - see p. "If our grant is proved the only areas to be executed would be those such as Kotey's"-

We = House

If our grant is proved grants made subsequently in derogation of our grant would be void. Therefore submits that in cases where we have been sued - Atuokpai - for trespass we are not trespassers and claims should have been dismissed.

In the West African Court of Appeal

No. 54

Court Notes of Arguments.

2nd to 6th December, 1954 - continued.

The Korle Priest

Also in cases where claims are based on our grants judgment should be for or against as the case may be.

Lamptey: Main claim - Atuokpais claim that there was a grant to them. Statement of Claim p. paragraph 3 contains general claim. Judgment p. - line

Exhibits "4", "14" and "15" - Korle has for many years claimed land as their family land.

Historically land was - originally - Korle Priests - Korle We. Transition from owner to Caretaker not clearly defined until the case before M'Carthy J. in 1947. Note: See amendment asked for p. line Refers to amendment asked for line p. of record - Note, however, observations of M'Carthy J. p.

Korle Priest has been dealing with land over a long period without consent of Ga or Gbese Stools - i.e. as of right. Korle Priest has executed conveyances and generally dealt with land without opposition. Gbese Manche obtained a conveyance from Korle Priest Exhibit "0" p. of record.

If we are only joint owners no one could alienate without consent of others - that is to say legally. A lot has been done, however, by way of alienation by the Korle We - Korle Priest - without query by the Ga and or Gbese Stool.

Submits: that certificates on "14" and "15" do not - or were not intended to imply that Atuokpai had right to alienate.

Ga Manche and Gbese Manche took no action to interfere in alienations by Korle Priest until they applied to be joined in the case before M'Carthy - that is to say in the year 1947 - they were not in fact joined.

Affidavit of Acting Korle Priest Exhibit "6" p. See plan "South by Atuokpai land".

Submits that any transfer of land would require consent of all three Ga, Gbese and Korle Priest. If consent of all three not obtained void.

Exhibits "14" and "15" land represented there is in area in dispute - it is between Kokomlemle and Lagos Town. Evidence of Tettey referred to by Ollennu. Refers to his Tettey's affidavit p. of record - para. 8. There he said Lutterodt had

never had a grant - but when he gave evidence he said that they had.

Evidence supporting the grant. Apart from evidence of Tettey Gbeke p. and that of Ga Manche there is no evidence to support grant to Atuopai - that is to say grant 100 years ago. See particularly evidence line p. and compare with his evidence at line .. p. - re: Ga Custom "must first get permission before you build" - In acquisition proceedings p. - in year 1931 they did not assert an absolute grant.

Refers to evidence p. - See judgment at p. "Not one word of grant said to have been made in 1856" (Exhibit "90") p. is the evidence.

George Addy Tettey evidence p.

If they had a grant they certainly would have said so in the acquisition proceedings in 1931, but they did not.

We do not deny that certain subjects of the Stools have occupied the land - including the Atuokpai - but there occupation has by no means ripened into ownership.

P. - some land was sold about 19 years ago (before 1931) and Gbese Manche got the money about £20.

Judgment - last paragraph on p. - Korle case was that "Tetteh Churu Ashiato" was first settled at Kokomlemle.

The evidence tends to show that Kokomlemle was not founded by an Atuokpai man but by Tetteh Churu - a Korle We man.

Refers to Exhibit "T". Chiefs List for 1914 p. - the man who was then Head man was Tetteh Churu and Tette Kwamin was at Tesano.

Tete Tsuru or Tsru red Tete

There is evidence that Tette Kwamin is a member of Korle We - he may of course also be an Atuokpai p.

Adjourned to 2.30 p.m.

(Intd.) S.F.S., P.

In the West African Court of Appeal

No. 54

Court Notes of Arguments.

2nd to 6th December, 1954 - continued.

Lamptey - Atuokpai have not challenged all of the grants made by Korle We in area in dispute - this in spite of fact that they had notice of them.

(1) Evidence of Daniel Sackeyfio Quarcoopome - p. "Korle Priest granted it to me in 1908" - the land is between Plot 1 and 14 on Exhibit "B" line p. adjoins S.A. Djane's land which was subsequently acquired by the plaintiff in suit No. 7 of 1951.

(2) Evidence of E.B. Okai - he is plaintiff in Suit 25 of 1944. Evidence p. - Deed of Conveyance from Korle Priest Exhibit "C" Vol. p. - Conveyance was by Korle Priest and Gbese Mantse.

(3) W.A. Quartey - p. Speaking as to land in suit 15 of 1943 - Trial Judge gave judgment for plaintiff possessory title - Judgment p. line "Nai Priest" is an Abola man - see traditional evidence discussed at p.

(4) Plot No.8 Exhibit "B" - Evidence Peter O.M. Anteh p. - Deed - Exhibit "G" p. of Vol. dated 1935 -

Note
Land is marked yellow in Exhibit "B". Marked "A" "B" "C" "D" small area awarded for farming purposes.

(5) Suit No.1 of 1944 and 23 of 1944. Plaintiff was H.C. Kotey in each case. Exhibit "L" p. Tetteh Addy was then head of Atuokpai family and he was found guilty of trespass. Judgment was delivered by Gbese Manche. Refers to evidence p. Evidence of user adverse to Atuokpai claim of an outright grant.

(6) Suit No.7 of 1944 - relating to Plots 24 and 25 on "B". Atuokpai claimed these plots as being in their area. Kwao claimed a grant from the Korle Priest line p. Note: The Atuokpai claim is outlined in pink on plan - Exhibit "B".

(7) Suit - none.

Evidence Plot No.26. Reindorf p. Conveyance Exhibit "11" grant was from Osu -

(8) Suit not on appeal but was one of those consolidated - No.41 of 1950. Area of land marked "AB" by trial Judge on Exhibit "B". Judgment p. - Evidence p. W.S. Annan. Korle We made the grant together with elders of Gbese.

(9) Modern grant - Plot 16 - Exhibit "B" p. - Evidence of Konuah - Grant made by Korle We - Exhibit "K" p. Vol. - and Gbese Manche.

Submits clearly no grant to Atuokpai family.

Subjects of stool cannot alienate land without permission of Stool or in this case all of the joint owners - Ga, Gbese - Korle.

Agree that Stool land can only be alienated to pay debt of Stool. Supports judgment which finds to that effect.

Cites Labadi case. But note - that was a case of a judgment creditors sale - and purchaser only took the right title and interest of the judgment debtor and any disabilities attached thereto.

Adjourned to 4.12.54.

(Intd.) S.F.S., P.
3.12.54.

4th December 1954.

For Kotey Family

Bossman: Responding to appellants case - I associate myself with some of my learned friend Mr. Lamptey's submissions. In particular submit various grants negative the appellants case of an outright grant to Atuokpai as a family. In any event must have had full knowledge and acquiesced.

Acts of ownership by my clients - 15/1943 and 1/1944. We were in occupation and exercised full acts of ownership - this fully accepted by trial Judge.

Kotey's claim - one incident Exhibit "L" p. It is first case on record in which you have a contest between grantee of Korle and Atuokpais and the latter lost - most significant - in 1916 and again in 1930 - their present claim of a grant qua family was not raised on either of these occasions. Certificates attached to Exhibits "14" and "15" cannot affect us Kotey's title derived from Korle Priest by native custom - no deed.

We object to finding at p. - line - "I am not satisfied -----" Nature of tenure - extent of grant. Area is shown Yellow on Exhibit "B".

In the West African Court of Appeal

No. 54

Court Notes of Arguments.

2nd to 6th December, 1954 - continued.

Plange admitted that certain outright grants had been made p.

Korle case was - in Court below - that Korle Priest represented Ga and Gbese Manche and was authorised to make grants of land.

Refers to evidence line p. - D.S. Quarcoopome. This witness was called by Korle Priest to help establish right in Korle to make grants.

Dr. Bruce claimed title through us - we got from Korle Priest. They have not questioned Bruce's title. They put him forward to prove that he had a good title which was adverse to claim of Atuokpai - p.

Korle has changed front before this Court - In Court below they claimed right to make outright grants. Now say all three must join. Here they even went as far as to submit that no outright grant of any Stool land can be made except to satisfy a Stool debt. What they are now trying to do is to derogate from their grant to us. We were used as their main pillar of support against the Atuokpai case.

Boundaries of our land. All Korle said about our area was that they did not give us so large an area.

Plan Exhibit "47" - p. made in 1915. Nothing happened then until 1937 when we sold to Bruce then Korle Priest sued us - Writ p. Judgment is at Exhibit "49".

Refers to Exhibit "50" p. - Korle were non-suited in that action brought against us.

Note: Ga Mantse was President of Ct. p. and he never raised any question about validity of Korle grant. Only extent of it. Note Constitution of Ct. p.

Native Court gave us 50% of land - We then appealed and got the judgment set aside - Korle could not establish their claim so held on appeal but by consent they were given leave to bring new action.

N.B. Exhibit "L" proceedings were in fact admitted by consent - merely to show what the proceedings were about. Lamptey tendered judgment and proceedings and later made note that latter had been admitted by consent, line p.

P. "Korle Priest - gave him" -

Korle made many grants alone. Plan Exhibit "45" p. Brazilians case - p. Plango was then representing Brazilians and they called Kotey to prove his boundary now claim with the Brazilians.

See p. of record - para.4. Korle - apart from saying too big - never attempted to define meets and bounds.

Judgment p. - misdirected himself because he failed to give due weight to matters. Refers to p. Ga and Gbese Manche know their native law and custom. Native Courts know the native law and determine what it is.

Refers to evidence of Codjoe - p. and Zogbo p. Not necessary to call every farmer on the land - this evidence was not controverted.

Position of Korle We in so far as land in dispute. In 1896 Korle We family got a declaration as to what their family land was.

Declaration at p. Exhibit "9". Plan at land of Korle We family edged green - it is just to the north of the land in dispute in present case. Document is attested by Ga Mantse and Gbese Mantse - signed also by the then Korle Priest.

Counsel admits that none of the land in dispute in this case is in area of land included in Green on Plan at p.

Having armed themselves with this document they then sued Kotey people - the document was put in evidence in case before Native Court, p. reads last para. on p. Exhibit "A" was this document.

Passage in Lane J's judgment about Exhibit "9" p. line They - Korle p. - then relied on Lane J's obiter for their claim to land as Korle We family and seem to have discarded the declaration at p. Notice in Press p. 6th Feb., 1943.

Refers to Exhibit "1" p. Notice - 12th July, 1947. Korle by that notice was clearly warning off Ga and Gbese Mantse.

P. = W.A.C.A. Judgment on M'Carthy J's decision - previous pages.

Submits: Trial Judge held that only persons who can consent to alienation of land - Stool land - are Ga and Gbese Manche - and Korle have not

In the West African Court of Appeal

No. 54

Court Notes of Arguments.

2nd to 6th December, 1954 - continued.

appealed against that decision. Therefore Exhibits "14" and "15" - certificates attached thereto have great significance in so far as our claim is concerned.

Ga Mantse by his evidence at p. admitted that it was Atuokpai who were people to alienate land to one of his Elders.

Refers to Exhibit "13" p. then Exhibit "4". Then evidence of Kotey that Atuokpai were on land - shows they were there as a Colony - no other families.

Submits that Ga, Gbese and Korle Priest are estopped from denying our grant as alleged by us.

Adjourned to Monday 6.12.54.

(Intd.) S.F.S., P.
4/12/54.

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Reply for Atukpais.

Ollennu: The grants referred to by Lamptey - Korle We - in not one single instance have the grantees been able to take over plots and effectivoly occupy them.

(1) P. Evidence of D.S. Quarcoopome - could not say where the plot was. No evidence of occupation - very vague.

Evidence of Ashrifi - p. Warned him not to go on land saying it belonged to Atuokpai, p. Prohibited from going on land. Golightly occupied - he got his title from Atuokpai.

(2) Okai - evidence p. line Again at p. - Okai - line and on.

(3) P. line and on. P. - did not know what happened on land since 1913.

Submits that there is evidence that persons claiming through Atuokpai have been in effective occupation of land since 1890 - at least 40 to 50 years anyway.

p. Annan - Tetteh Kwamin was on the land.

P. - Evidence of people actually on the

land. Tettey Gbeke, 40 to 50 years ago - lived on land all time with my family - children - no one from Korle We has attempted to interfere with us.

Both he and his wife are Atuokpai people - Again p.

See also evidence at p. line - another Atuokpai onland for 40 years.

Evidence of Nii Tettey Gbeke line

Cemetery p. A.T.A. Kotey p. line
"I hear that permission was sought from Numo Tettey Addy". p. line

Note. Evidence p. It seems that a lot of people from different families were buried there.

We say he need not deal with Lamptey's (4).

(5) Case was one of trespass. Man concerned was at loggerheads with Atuokpai Head - record shows that clearly.

H.C. Kotey's evidence p. (Exhibit "B") he stole my father's land and put a shed upon it - it has been there for 22 years p. Afum Ade is one of the Elders of Atuokpai - he claims through us.

Then there is the other evidence of farms and mango trees of Atuokpai people round Solomon's land - p.

Refers to judgment p.

(6) Plots 24 and 25. Submits that as soon as Kotey interfered with land Atuokpai sued us - line p. and again - he repeats it at p. line

(7) Plot No.26 Dr. Reindorf. Submits that his evidence of occupation is very slight. It was in fact a grant from Osu. The Korle now claim it as Ga land.

(8) Area of land marked "AB" on Exhibit "B".

Apart from the evidence W. Sai Annan gave regarding ancient occupation of this land there was no evidence of adverse occupation which could be said to affect Atuokpai.

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But note evidence at p. See judgment evidence reviewed p.

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(9) Plots 14, 15, 16. Plot 16 is almost entirely covered by claim of Salifu. Academy grant is admitted to be a very modern one. Salifu never permitted them. Academy to have peaceful occupation he lives on it. Refers to p. is the evidence of occupation by Salifu - paid the Atuokpai £7.

Bossman: Asks leave to address us regarding his two clients in light of certain observations made by Ollennu.

Leave granted.

Reply for Kotey Family and Afiyi

Bossman. Refers to evidence Gbeke re Afiyi's land - p. Conflict started round about 1937-39. Her plot is No.4 on Exhibit "B" hatched yellow - orange (edged blue on copy of "B" in record).

Cemetery - refers to persons who were buried there. Sakumo Priest was allowed to be buried on land - also to evidence p. Ayele gave permission - accepted drink. Fact of permission was not challenged - p. line and p.

When considering question of acquiescence these facts should weigh and it was considered in that light by trial Judge.

For Odoi Kwao Family (Suit 7/44)

Quist-Therson: Lamptey - I wish to argue right of my friend to be heard on claim for variation of the judgment since there is no appeal - Suit No. 10 of 1944.

They are asking for a variation of the judgment in so far as it affects us, that is to say in Suit No. 10 of 1944.

Note - Judgment was delivered on 31st May, 1951, and notice of variation was not filed until 29th September, 1951.

Variation is not claimed in 7/1944 but in 10/1944.

Taylor replies: says they are asking for a variation in 7/1944 - admits that they cannot ask for variation in 10/1944 - there being no appeal. We are respondents in 7/1944.

Lamptey agrees - notice in order.

Quist-Therson: Trial Judge found land had been granted to us for farming only and as to some Judge held we had not established any right.

Farming rights only - Submits finding not supported by any cases or by the evidence on record.

We draw attention to fact that only 10 mentioned at foot of notice have been served - Agrees only affects the ten named.

Refers to Redwar p.72 and 74 to 76. Submits that for a long time now absolute alienations of land has been recognised.

It has not for a long been contended by anyone - including Paramount Stool - that land cannot be alienated - unless of course it. - the grant is limited to farming only. If a grant is made it may be used for any purpose.

Refers to Exhibit "22" - and "21" - "21" "22" p.

We have already been declared owners of land shown edged in yellow on plan at against all the persons who appeared in case - Exhibit "22" including Ga Manche p. - he withdrew his claim by not proceeding with it.

Exhibit "25" - area outlined in purple. We got a declaration as owners against Dr. Easmon in the year 1931.

Refers to Exhibit "24" p. - vast number of claimants - our claim was No. IV. Atuokpai were also claimants. Our claim Odoi Kwao family - was dealt with in judgment which is at p. line Compensation paid to us was £1,150 p. was based on full ownership - not merely farming. Ga and Korle Stools did not put in a claim at all. Submits they cannot now say we are not full owners - the land is part of the same holding as the land now in dispute although not in the actual area in dispute, it was part of the same grant. In that case we claimed through a grant from Ga Stool against many other interests. If it had not been an outright grant Ga Stool would have come in and claimed some of the compensation - but they did not.

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Our case was set out at p. from line

In more recent times there have been conveyances Exhibit "40" p. We purported to convey the fee simple - and conveyance was witnessed by Korle Priest and Gbese Mantse. See p. This is part of land with which we are actually concerned in this case. It is near Ring Road about 150 yards from it p. line Exhibit "40" was tendered through Annan Kotei p. - Korle Priest was present - Gbese Manche was present. P - line

Refers to p. - Acquisition case - Exhibit "22". The Korle Priest was a witness for Odoi Kwao regarding the land.

Exhibit "41" p. This is the receipt we gave to Malam Amadu Futa for the payment in respect of land - Korle and Gbese alleged to have been present. Area found by Court is set out from line p. It is the area to the East of the river.

N.B. Exhibit "69" p.

Neema village - the Atuokpai claim that Neema village - area.

Refers to Exhibit "66" - Gbese Mantse letter. This was after Neema village had been in existence for 10 years.

Exhibit "36" p. letter signed by Ga Native Authority - President - i.e. the Ga Manche - to Ag. Senior D.C., Accra, saying that Nii Odoi Kwao family -

Now as to area on West of river.

Ga Manche - Gbese Manche - Korle - Atuokpai - did not bring action against us true they were joined by Order of Court in our suit against the Lutterodt - 7/1944.

P. - Writ - sued them as trespassers 7/1944 and in Writ at p. sued for a declaration - that became 10/1944. Submits that they gave evidence of possession of land shown between yellow and red edging at Exhibit "25". We claimed cemetery on West side of river - Nii Odoitei Shishiabo's village below the cemetery. Refers to p.

Evidence re: cementery - line p. 9 old tombs.

Cannot say where feeder line was to run East or West of river.

Submits that they were only persons who applied and got compensation - but cannot say which side of the river the new feeder line was going to run.

Sisal plantation.

Lamptey: We indicate that we do not wish to hear him regarding land to west of river in suit 7/1944 - Quist-Therson's appeal.

Land to East - They are not respondents in the case against us in 7/1944, the Nii Tettey Gbeke for Atuokpai is the only appellant.

Submits they not being respondents in 7 of 1944 their notice to vary judgment under Rule 20 (1) is of no avail - they ought to have appealed. Their claim as to trespass against 1st 9 defendants was dismissed as against Lutterodt and his tenants. Ga, Gbese and Korle have not appealed so he is not a respondent - as against them - They ought to have appealed against the finding that there was no trespass against him.

We allow Quist-Therson to reply on this point - as sole party in 7/1944. Submits this was merely a cross-appeal. Refers to Rule 20 and the rule requires us to give notice to every party who may be affected by our notice.

Lamptey: The fact that they have got judgment in respect of adjoining land does not mean that they hold land within area in dispute under same conditions. Admits letters "65", "66" and "67" are difficult to explain away and "36".

Bossman's case: Kotey - We do not and never have denied that we gave Koteys right to farm but that is not a gift outright. Koteys land is shown on Exhibit "B". Trial Judge believed Osu Tetteh's evidence. There was abundant evidence that Accra Academy has been there unmolested by Kotey for Long time - Grant to Academy was made by Korle Priest shown on "B" - biscuit 16.

He was rightly limited to area he proved to be in occupation of.

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Kotey got no compensation in respect of the Ring Road acquisition. Submits that all the evidence shows that Kotey could not have gone beyond the area given to them in the judgment.

Exhibit "142" -

In red A. C. he adjudged to Kotey
B D
A
In black B he adjudged to Tettey
C

In view of evidence asks that all appeals be dismissed - and findings were supported by the evidence.

Further reply for Kotey Family

Bossman: P. W.S. Annan was made a co-defendant. We were not brought into that case at all. Trial Judge could not use findings in that case against us. Finding against Osu Tetteh could not affect us. He found no trespass had taken place and dismissed the claim.

Eastern boundary Exhibit "25" the people on East acknowledge that we have the boundary on their West.

South - p. - Head of Brazilian Community admitted he had boundary with Afutu Kotey - line We did get compensation 1/- so did Korle Priest and Nikolai in respect of Ring Road acquisition.

Bossman: Submits that on the evidence judgment against his clients unjustified.

C. A. V.

(Intd.) S.F.S., P.
6.12.54.

Wilkinson Sai Annan - Suit No.7/1944 - representing Osu Tetteh Family - now appears for first time - and asks to be heard. His land is to West of river. Now says he does not wish to say anything.

C. A. V.

(Intd.) S.F.S., P.
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IN THE WEST AFRICAN COURT OF APPEAL

GOLD COAST SESSION

Coram:

FOSTER-SUTTON, P.
SMITH, C.J., Sierra Leone.
COUSSEY, J.A.

Civil Appeal No.106/53

4th March, 1955

(Suit No. 7/1951)

E.J. ASHRIFI, A.E. NARH and CHARLES PAPPOE ALLOTEY, Plaintiffs-Respondents.

vs:

H.E. GOLIGHTLY and TETTEY GBEKE II, Defendants-Appellants

- and -

(Suit No.11/1943)

C.B. NETTEY (substituted by C.O. ARYEE) on behalf of himself and the families of Nii Aryee Deki, Korti Clanhene and Nee Nettey, Plaintiffs-Respondents

vs:

TETTEY GBEKE representing Atukpai, 6th Defendant-Appellant

- and -

(Suit No.15/1943)

MAMIE AFIYEA, as Head and Representative of the Okaikor Churu Family of Gbose Quarter, Accra, Plaintiff-Respondent

vs:

TETTEY GBEKE II, representing the Otuopais, and COMFORT OKRAKU, Defendants-Appellants

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-and -

(Suit No. 2/1944)

NII TETTEY GBEKE, Dsasetse of Otuopai for himself and as representing the Stool and people of Otuopai, Plaintiff-Appellant

vs:

ERIC LUTTERODT, QUARSHIE SOLOMON, CONRAD LUTTERODT, NUMO AYITEY COBBLAH (for Ga, Gbese and Korle Stools), Defendants-Respondents

- and -

(Suit No. 7/1944)

NII ADOTEI AKUFO, present Head, substituted for Odoitso Odoi Kwao of Christiansborg, Acting Head of Nee Odoi Kwao Family of Christiansborg and Accra on behalf of herself and as representing the members of the said Nee Odoi Kwao Family, Plaintiff-Respondent

vs:

NII TETTEY GBEKE for Atukpai Stool, 13th Defendant-Appellant

- and -

(Suit No.14/1948)

OBEYEA and AYELEY, as successors of late Madam Elizabeth Lamptey alias Afi, deceased, Plaintiffs-Respondents

vs:

G. SACKEY, Defendant-Appellant

- and -

(Suit No.18/1948)

OBEYEA and AYELEY, as successors of late Elizabeth Lamptey alias Afi, deceased, Plaintiffs-Respondents

vs:

J. C. NORTEY, Defendant-Appellant

- and -

(Suit No.13/1948)

MUSTAPHA THOMPSON, Plaintiff-Respondent

vs:

AKUYEA ADDY as next friend of her infant daughter Lucy Beatrice Ashong, 2nd-Defendant-Appellant

- and -

(Suit No. 5/1949)

A.A. ALLOTEY, ERIC P. LUTTERODT for and on behalf of the Lutterodt Family of Accra, Plaintiffs-Respondents

vs:

NII TETTEY GBEKE II, Atukpai Stool Dsasetso for himself and as representing the Atukpai Stool of Gbese, Accra, Defendant-Appellant

- and -

(Suit No.33/1950)

NUMO AYITEY COBBLAH, Korle Priest for and on behalf of the Korle Stool, Gbese Stool and Ga Mantse Stool, Plaintiff-Respondent

vs:

J. W. ARMAH, Defendant-Appellant

- and -

(Suit No.47/1950)

NUMO AYITEY COBBLAH, Korle Priest for and on behalf of the Korle Stool, the Gbese Stool and the Ga Mantse, Plaintiff-Respondent

vs:

MADAM THERESA AMERLEY LARTEY, Defendant-Appellant

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- and -

(Suit No.38/1950)

NUMO AYITEY COBBLAH, Korle Priest for and on behalf of himself, the Korle Stool, and Gbese Stool and the Ga Mantse Stool, Plaintiff-Respondent

vs.

K. B. KADIRE GIMBA, Defendant-Appellant

- and -

(Suit No.46/1950)

NII TETTEY GBEKE II, on behalf of himself and as representative of all the principal members of the Atukpai Stool, Plaintiff-Appellant

vs:

D.A. OWUREDU and R.O. AMMAH, Defendants-Respondents

- and -

(Suit No.39/1950)

R.A. BANNERMAN, NUMO AYITEY COBBLAH, Korle Priest on behalf of the Ga, Gbese and Korle Stools, Plaintiffs-Respondents

vs:

NII TETTEY GBEKE II, Acting Mankralo of Otuopai, Defendant-Appellant

- and -

(Suit No.1/1944)

H. C. KOTEY Plaintiff-Appellant

vs:

NUMO AYITEY COBBLAH (for and on behalf of the Ga, Gbese and Korle Stools), 3rd Defendant-Respondent

- and -

(Suit No.23/1944)

H. C. KOTEY as Head and representative of the Nii Kotey Family, Plaintiff-Appellant

vs:

NUMO AYITEY COBBLAH for Ga, Gbese and Korlo Stools, 5th Defendant-Respondent

- and -

(Suit No. 7/1944)

NII ADOTEI AKUFO, present Head substituted for Odoitso Odoi Kwao of Christiansborg, Acting Head of Nee Odoi Family of Christiansborg and Accra on behalf of herself and as representing the members of the said Nee Odoi Kwao Family, Plaintiff-Appellant

vs:

CONRAD LUTTERODT, 2. MALLAM ATTA, 3. MALLAM SOLOMON TUKA alias QUARSHIE SOLOMON, 4. CODJOE SOLOMON, 5. BAKO, 6. ADAMU, 7. IMORU, 8, OKWEI OMABOE (for Osu Stool), 9. NUMO AYITEY COBBLAH for Ga, Gbese and Korle Stools, 10. NII TETTEY GBEKE for Atukpai Stool, Defendants-Respondents

(CONSOLIDATED)

J U D G M E N T

1. This is an appeal in sixteen out of twenty five Consolidated actions which were tried in the Land Court at Accra before Jackson, J., who delivered judgment on the 31st of May, 1951, after a trial lasting about fifteen weeks. The evidence and the judgment are both voluminous but this Court is not unfamiliar with the issues of native customary law and native tenure involved.

2. The appeal concerns a large area of land lying

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to the North of the town of Accra, which is now being developed as a residential suburb. Until comparatively a few years ago this land was open country of little value. There were a few mud-hut settlements on it; it was poor farming land but mango and cashew trees grew on it and cassava farms were dotted about. With the growth of Accra the land in dispute, which is about two square miles in extent, has become very valuable and the evidence shows that when this was realised by those who had, or claimed, an interest in it there was a scramble to sell to those who wished to erect homes, schools and other buildings on the land. In some of the suits, a declaration of title, damages for trespass and injunction were claimed; in others, a declaration of title and recovery of possession.

3. In his judgment, the learned trial Judge reviewed the historical background of the Ga people, the main facts and the native customary law applicable thereto. Next he considered the interests in land, by the user thereof, of a member of a Stool. As the parties in the several actions claimed title from one or more of the Stools or larger communities before the Court, the trial Judge next considered and determined the interests in the land of those Stools or communities. He then dealt with each separate action, giving judgment therein according to the titles held to be established by the vendors of the parties, being one or other of the Stools or communities. The appeal before us is principally against the learned Judge's findings as to the main principles applicable to the cases and it would, therefore, be convenient if we follow the same method in deciding the appeal.

4. The main question which the learned trial Judge had to decide, and we also have to determine, is who are the proper Stools, communities or persons entitled by native customary law to alienate the lands in issue; under what circumstances they may do so and the interests that pass on such alienation. On these matters the trial Judge set out his findings as follows:-

"(a) I find that the lands in dispute are a "part of the Ga Stool lands.

"(b) I find that they are a part of the lands "which the Gbese Stool subjects enjoy independently "of the other division or quarters of the Ga State.

"(c) I find that the land immediately prior to

"the institution of these actions was agricultural "land.

"(d) It was agricultural land of a very poor "order and very sparsely farmed.

"(e) That each and every subject of the Gbese "Stool had an inherent right to farm on unappro- "priated land within this area without express "permission being required of anyone.

"(f) The right to farm was coupled with an "implied right to construct buildings to be occu- "pied and used in direct furtherance of that "farming.

"(g) No estate in land is created by making "a single farm.

"(h) Land made into a farm and not <u>re-farmed</u> "after the normal period required in which it shall "be fallow, is deemed once again to be unappropri- "ated land.

"(i) That the Korle Priest as the "care-taker" "of these Stool lands may make grants of land to "members of the Stool for specific purposes e.g., "to build for the purpose of residence or trade.

"(j) That right cannot be exercised in deroga- "tion of a subject's right to farm, i.e., it can "only be exercised on land deemed to be unappropri- "ated, and that may be, as has been seen, either "land not farmed at all, or land that has been "farmed and then abandoned.

"(k) That before any member of the Gbese Stool "and of which the Atukpai Family are members, may "deal with land otherwise reference must first be "made either to the Gbese Manche, or in some cases "to the Gbese Manche and Ga Manche, e.g., mortgage "of land by customary law (known as Pledges) made "to a stranger to the Stool would require the con- "sent of the Gbese Manche; leases in similar cir- "cumstances would require the same authority.

"(l) Sales of land outright or mortgages of "land English form, carrying with it the right of "sale in certain eventualities can never be made "unless first the prior consent is obtained both "of the Gbese Manche and of the Ga Manche.

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"(m) Such sales can never be approved unless it is first ascertained that:

"(a) a Stool debt is in existence,

"(b) that its existence was due to no fault of the individual,

"(c) that the principal members of the family whose lands are involved have consented."

5. Before us, the main criticism was (a) against the finding that Stool land can never be sold outright except to satisfy a Stool debt and (b) the finding that the Korle Priest as "caretaker" of the lands may only allot unappropriated land to members of the Gbese Stool and that outright sales of lands can only be effected by the Korle Priest with the prior consent of the Gbese Manche and of the Ga Manche.

6. These findings are all findings of fact arrived at after a careful review of the evidence particularly, as affecting the Atukpai community, although they apply in general throughout the case. This Court, sitting on appeal, must therefore be cautious in dissenting from those findings unless it is clear that the learned Judge misinterpreted the relevant evidence or the law applicable thereto,

7. The traditional evidence as to the authorities in control of the land is that originally this control was vested in the Korle family (whose head is the Korle Priest) as owners and founders but, in the course of time. the temporal authorities, the Ga and Gbese Manches as representing their respective Stools, became joined with the spiritual authority in this control.

8. From the evidence and the history of the Ga people it would appear that the Paramount Ga Stool has no private or family land of its own, but, as overlord, it has by usage, the reversion and ultimate control of all Ga lands. As the family of Onormroker or Korle We (House), the original owners of the land, are subjects of the Gbese Stool, that Stool and all its subjects, by usage and consent, acquired a usufructuary right in the lands. These interests of the Ga and Gbese Stools, carrying with them incidents of protection and control,

became a burden on the absolute ownership formerly enjoyed by the Korle We family.

9. In 1898, the then heads of the Korle family made a declaration, which was attested to by the two Manches, appropriating to themselves a considerable area of land to the north of the land now in dispute as the Korle family property. This declaration of 1898 was considered by this Court in appeal No.62 of 1947, Ayitey Cobblah, Korle Priest v: Tettey Gbeke & Ors. It is now clear from the evidence before us, and the trial Judge took the same view, that by this appropriation the Korle Priest and his house or family did not renounce their rights as the third member of the controlling authority over the remainder of the Gbese Stool lands including the area now in issue, which had, in ancient times, been land of the Korle We or house.

10. All might possibly have been well if the three controlling authorities had pulled together in performing their functions. Unfortunately, the weakness of human nature over-rode principle and so in spite of the Korle having appropriated and defined their own family lands, they from time to time asserted rights over lands outside that area without reference to the Ga and Gbese Stools. There is, also, evidence that the three authorities had from time to time disputed among themselves, some claiming a superior and some a sole right over the lands. It seems that in recent years the Ga and Gbese Stools took no steps to interfere with alienations by the Korle We until the 1947 suit above referred to.

11. The position was further complicated by the acts of certain occupants of the land, principally the Atukpais represented by Tettey Gbeke II, the Odoi Quao family, the Lutterodt family and the Kotey family who claimed the right to dispose of portions of the land without reference to their overlords, founding such right on a traditional absolute grant from the Stools or one or other of them.

Five main points were argued before us:

(1) Can the Stool lands within the area of this dispute be alienated and if so in what circumstances?

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(2) Assuming they can be, is it a complete severance or is there a reversion in the Stool?

(3) Who is the proper authority to alienate Stool lands, and what is the position of the Korle Priest?

(4) Can there be any relaxation of the native customary law or usage?

(5) On the facts of this case does equity and good conscience require that we should hold that there should be, or in fact has been, a relaxation?

12. Before proceeding further it may be as well to set out the character of the land tenure applicable, for the main relevant findings of the learned trial Judge are, we think, in accord with it.

In Amodu Tijani v. Secretary, Southern Nigeria, 1921, 1 A.C.399 at p.404 the Privy Council set out the opinion of Raynar, C.J. in a Report on Land Tenure in West Africa as substantially the true one, namely:

"The next fact which it is important to bear "in mind in order to understand the native land law "is that the notion of individual ownership is "quite foreign to native ideas. Land belongs to "the community, the village or the family, never "to the individual. All the members of the commu- "nity, village or family have an equal right to "the land but in every case the Chief or Headman "of the community or village, or head of the "family, has charge of the land, and in loose mode "of speech is sometimes called the owner. He is "to some extent in the position of trustee, and as "such holds the land for the use of the community "or family. He has control of it, and any member "who wants a piece of it to cultivate or build a "house upon, goes to him for it. But the land so "given still remains the property of the community "or family. He cannot make an important disposi- "tion of the land without consulting the elders of "the community or family, and their consent must "in all cases be given before a grant can be made "to a stranger. This is a pure native custom along "the whole length of this coast, and wherever we "find, as in Lagos, individual owners, this is "again due to the introduction of English ideas..."

About six years later, in Sunmonu v. Disu Raphael 1927 A.C. 881 at p.883 the Privy Council in reaffirming the above passage, observed, "Their "Lordships are aware that it is possible by special "conveyancing to confer title on individuals in "West Africa, but it is a practice which is not to "be presumed to have been applied, and the presump- "tion is strongly against it. Prima facie the "title is the usufructuary title of the family, and "whoever may be in possession of the legal title "holds it with that qualification."

13. The learned trial Judge held that Stool lands cannot be sold outright except in satisfaction of a Stool debt. While it is right to say that he had evidence to that effect before him, that finding appears to us to be far too sweeping to be upheld. Reference to the works of Redwar and Casely Hayford shows that outright alienation of land, although originally unthought of, has for many years past come to be recognised by native usage. There is, further, the obiter dicta of Osborne, C.J. in a Lagos case of 1909 D.W. Lewis v. Bankole 1 N.L.R. 82 at p.105 where, on a question whether by native customary law a family house could be let or sold he observes "According to the Lagos Chiefs, the "present custom is that it can be let with the "consent of all branches of the family but cannot "be sold. The idea of alienation of land was un- "doubtedly foreign to native ideas in olden days, "but has crept in as the result of contact with "European notions and deeds in English form are "now in common use." And Webber, J. observed 21 years later in Brimah Balogun & Ors. v. Saka Chief Oshodi, 10, N.L.R. 36 at p.53 "The Chief character- "istic feature of native law is its flexibility - "one incident of land tenure after another dis- "appears as the times change - but the most import- "ant incident of tenure which has crept in and "become firmly established as a rule of native law "is alienation of land". In our opinion the existence of a Stool debt was not at the times material to this enquiry a necessary preliminary condition to the sale of Stool land.

14. As to the second question, if the proper authorities with the proper consenting parties purport to make an outright grant without any reservations, we consider that they cannot later be heard to say that reservations of some kind were implied. It is true that if the grant is

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made to a subject of the Stool, that subject, by virtue of his personal allegiance to the Stool, owes it duties and services, but that is a matter of personal allegiance and does not arise out of the grant. If the grant is to a stranger or if the land is eventually conveyed or transferred to a stranger who owes no personal allegiance to the Stool, it appears to us that he holds the land without any restriction and without a reversion to the Stool as the Privy Council observed in S.Oshodi v. Brimah Balogun & Ors., 4 W.A.C.A. 1 at p. 2 and 1936 2 A.E.R. 1632.

15. On the third question as to who is the proper authority to alienate these lands, the learned trial Judge found that the Korle Priest as the caretaker of the lands may make grants of lands to members of the Stool for specific purposes, that is, to farm or to build for the purposes of residence or trade. He also held that this right can only be exorcised over land which is deemed to be unappropriated, but that if the land is sought to be mortgaged or sold outright the prior consent of the Gbese Manche and the Ga Manche must be obtained. It was argued before us on behalf of the Korle Priest that he also is a necessary consenting party to the validity of any such sale and whether lands sought to be sold are vacant lands or lands in the occupation of members of the Stool. Against this contention the appellants have urged strongly that the evidence before the Court reveals great confusion as to the exact position of the Korle family and Priest in relation to the lands in issue and that he is not a necessary party to such alienations.

Several passages in the judgment declare however that the three Stools, Ga, Gbese and Korle (the Korle sometimes in the judgment being referred to as a stool and sometimes as a We meaning House) are "co-owners", "joint-beneficiaries", "Partners" or again as "allodial owners" of the land by customary law.

On a careful consideration of all the evidence we consider that the Korle We or Stool are co-owners with the Ga and Gbese Stools. It is therefore a correct finding and one supported by the evidence that the prior consent of the three entities, Ga, Gbese and Korle is necessary to an outright alienation of the lands in dispute.

16. Whilst therefore we are unable to agree with the learned trial Judge that native custom and usage prohibits a sale of stool land except under the necessity of a pressing stool liability, such as debt, we are in agreement with him that in the cases before the Court such sale can only be effected with the prior concurrence of the three entities, Ga, Gbese and Korlo who jointly own the land and that publicity is necessary in such transactions, the publicity being a safeguard provided by native customary usage against the clandestine disposal of land without the knowledge of the necessary parties.

It is, of course, fundamental that the three controlling authorities cannot alienate stool land without obtaining the consent and concurrence of individuals or families, being subjects of the Gbese Stool who are in occupation, or of strangers who have properly been granted some interest, be it a farming or occupation interest, in the land.

17. Turning now to the groups or communities who claim title to portions of the land and a right to transfer title outright to others of the parties in the several suits which were consolidated for trial but separated for judgment, the first group are the Atukpais. They assert a right, as absolute owners, to the major portion of the lands in dispute by virtue of a grant, according to their tradition, made over a hundred years ago by the Stools to an elder of Atukpai who became caretaker of the lands and gave licenses to people to occupy the land. The alleged outright grant was denied by the three Stools who significantly were represented by the Korle Priest in some of the actions before the Court.

18. The learned Judge, after a careful review of the relevant evidence, found emphatically that no such grant had ever been made, a finding with which we are in full agreement. He was satisfied however that individual persons of the Atukpai quarter of Gbese and their descendants as families had for fifty years or more occupied farms and a few villages on the western side of the land in dispute along what is now the Nsawam road. He further held that these individuals and families were in occupation under their general right as subjects of the Gbese Stool to farm and reside on Gbese Stool land. It is clear as stated in Amedu Tijani's case, supra, that those rights of occupation are hereditable according to native custom.

In the West African Court of Appeal

No. 55

Judgment.

4th March, 1955 - continued.

The rights enjoyed by the Atukpais as Gbese subjects are those set out under heads (a) to (h) in the judgment of the Court below and which are enumerated earlier in this judgment.

19. The learned trial Judge held, and we are in full agreement, that the Atukpai Stool constituted as such with Nii Tettey Gbeke as its head or Dsasetse could not effectively convey in fee simple or by outright grant any interest in such land, as individual members or families alone had the usufruct of localities actually occupied by them consistently with the rights of other subjects of the Gbese Stool.

20. Mr. Ollennu for the Atukpais has urged the Court to reverse this finding. He has drawn attention to several instances where the heads of the Atukpais have purported to act in respect to land which individual Atukpais have occupied as if the title were vested in the Head of the Atukpai as a community. It seems to us that the Atukpais, being an apparently coherent unit, have taken advantage of the dissension between the Ga and Gbese Manches and the Korle Priest over the control of these stool lands, but this course of conduct by the Atukpais is completely unwarranted and was not left so unchallenged as to justify us in reversing the findings on this important aspect of the case. As the learned Judge observed "the "mere fact that the Atukpais had persistently sold "plots of land whilst its ownership was in issue "lends no additional weight to the Atukpais' case".

21. It follows that the appeals in suits Nos. 11/1943, 15/1943, 2/1944, 7/1944, 13/1948, 14/1948, 18/1948, 5/1949, 33/1950, 38/1950, 39/1950, 46/1950, 47/1950 and 7/1951, wherein the appellant is the Atukpai representative or a party claiming through them, are dismissed. In this context we would observe that some of the appellants were successful defendants in whose favour the plaintiffs' actions were dismissed in the Court below. They apparently appealed because they thought certain general findings in the judgment might adversely affect them in the future.

22. As to the claim of the Odoi Quao family, the learned Judge found that this family held a large area of land depicted on the plans along the eastern side of the land in dispute up to and including

the village of Nima and having as its western boundary the Mamobi Djor or water course. He held however that the grant to the founder of the family was only to occupy and farm the land in accordance with native custom and not a grant as exclusive owner giving them the right to alienate the land to strangers.

We agree with the finding of the learned Judge as to the restricted area of land which the Odoi Quao family are entitled to under the grant but in our view the learned Judge failed to pay due regard to several matters in evidence which indicate the nature of this family's tenure.

When the Government in 1933 sought to acquire compulsorily a long strip of land which was part of their holding, this family put in a claim for compensation as owners in possession. Neither the Ga Manche nor the Gbese Manche put in a claim; on the contrary the then Korle Priest testified in Court in support of the Odoi Quao family as owners and on that basis the Court awarded them full compensation. In our opinion this indicates very strongly that the three controlling authorities considered that they had no reversionary rights in the land for which they could claim compensation. Furthermore the Gbese Manche wrote to the District Commissioner that he had no claim over the Odoi Quao land and, in the year 1950 when it was intended to erect an electrical testing box at Nima village on the land, the Ga Manche, in answer to an enquiry as to who was the proper person to negotiate with, wrote to the District Commissioner giving the head of the Odoi Quao family as owner of the land.

According to the finding of the trial Judge this occupation originated in a grant properly made a hundred or more years ago, and it is clear to us that whatever may have been the terms or reservations of the original grant, the Manches and the Korle Priest by their conduct have acknowledged it to have been an outright grant and they cannot now be heard to say that there were reservations amounting to a reversion in the Stools.

So far as affects Suit No.7/1944 therefore, the judgment of the Court below is varied so as to declare that the Odoi Quao family are owners by absolute grant of the area of their claim up to the eastern bank of the Mamobi Djor or watercourse.

In the West African Court of Appeal

No. 55

Judgment.

4th March, 1955 - continued.

23. The Kotey family who are plaintiff-appellant in Suits Nos. 1/1944 and 23/1944 complain as to the finding of the Court that they had failed to establish that the land to the south of the Ring Road claimed by them was granted to their ancestor and further that they have only farming rights and that the area of land held to be in their occupation cannot be alienated by transfer of their farming rights without the prior consent of the Gbese Manche or alienated by transfer of ownership without the consent of the Ga Manche and Gbese Manche. As to the area of land found for them this is a finding of fact on the evidence which we have no reason to disturb. As to the restriction on alienation this is in accord with the native customary law which we have upheld. In our opinion the concurrence of the Korle Priest as well as the Manches is a pre-requisite to alienation. The appeals in the two suits mentioned are therefore dismissed.

24. As to whether there can be a relaxation of the native customary law or native usage as to the alienation of Stool land and whether in the cases before us it would be equitable to upset purchases of land which have been followed in many cases by the erection of substantial buildings thereon, Section 87(1), formerly Section 74 of the Courts Ordinance and formerly Section 19 of the Supreme Court Ordinance provides: "Nothing in this Ordin- "ance shall deprive the Courts of the right to "observe and enforce the observance, or shall deprive any person of the benefit, of any native "law or custom existing in the Gold Coast, such "law or custom not being repugnant to natural "justice, equity or good conscience x x x. "Such laws and customs shall be deemed applicable "in causes and matters where the parties thereto "are natives, and particularly, but without deroga- "ting from their application in other cases, in "causes and matters relating to the tenure and "transfer of real and personal property x x x"

25. Interpreting the above this Court pointed out in Koney v. Union Trading Co., 2 W.A.C.A. 188 at p.194 and in Ferguson v. Duncan W.A.C.A. 16th May 1953 (unreported) that where, as in this case, all the parties are natives the native customary law shall be deemed applicable and the onus is upon the party who opposes the application of such native customary law to satisfy the Court that it should not be applied.

Such native law or custom, as the learned Judge hold, must be not the native law or custom or usage of ancient times, but existing native law or custom.

26. Bearing in mind the community of vested interests of a Stool and its subjects in Stool land, there is a very heavy onus upon a native who would maintain that a native custom as to the tenure of land which in this case requires alienation by outright sale to be made jointly by the three owning and controlling authorities does not now exist and that it is repugnant to natural justice, equity and good conscience. That onus was not discharged. It is a custom that fetters each of the joint owners and thereby safeguards the rights of generation unborn.

27. In our opinion this is not a case in which the Court in the exercise of its equitable jurisdiction should implement the actions of persons who have selfishly and without title purported to sell as a fee simple a usufruct in land amounting to occupation of Stool land under native customary tenure. It seems to us that the equities are more on the side of the subjects of the Stool than in favour of the all-too-eager speculator who has ignored wilfully or otherwise the true nature of the title he sought to acquire. In this context the learned trial Judge comments on the building activity that persisted after most of the actions were instituted.

28. It appears that in the year 1947 the Gbese Manche opened what is described in the judgment as "a kind of unofficial Deeds Registry" and that for a small consideration he certified as a good title two deeds of conveyance, both bearing date the 5th March 1946 relating to plots within the land in dispute wherein is recited as a root of title, a prior Deed of Conveyance from Nii Tettey Gbeke as Dsasetse of the Atukpai Stool. It has been urged on behalf of the Atukpai appellant that these two certificates (and the evidence suggests that more may have been issued by the Gbese Manche) are admissions that the Atukpai Stool are absolute owners of the land claimed by them and that they are entitled to make outright alienations.

In rejecting this submission the learned Judge referred to the strained relationship between the three controlling authorities at a time when motives of self interest apparently outweighed

In the West African Court of Appeal

No. 55

Judgment.

4th March, 1955 - continued.

their obligations to each other and pointed out that these certificates were issued ex post facto.

29. In our opinion since the only rights in the land of any member of an Atukpai family at the material time were rights of the same degree as that of any other subject of the Gbese Stool, a Conveyance by a so-called Atukpai (Otuopai) Stool alleged to be constituted with elders and councillors is an entity to which, upon the conclusions we have reached, land was never granted. That entity therefore could not convey any land or otherwise deal with it. The recited Conveyances by Nii Tettey Gbeke for the Atukpai Stool are null and void, and being a nullity they cannot be authenticated.

30. It was pointed out by the trial Judge that the Atukpai as families or as individuals, as some old people testified, had never consented to their usufructuary interests being dealt with by Nii Tettey Gbeke and his group. In these circumstances to hold that these documents had the effect of even transferring rights of occupancy might well do grave injustice to the individual rights of Atukpai people.

31. But although these certificates are inoperative to authenticate a transaction which is itself void, the Gbese Stool, and the Ga Stool also, if it is bound by any of these certificates and as to which we are not called upon to express an opinion may, as joint owner in whom there is a vested right or interest in the land be held to have waived or abandoned that right. The certificates do not, however, give validity to the Conveyances because the Korle Priest, as caretaker and acting for his House or family, a necessary party to a sale, is unaffected.

32. We have given the question of costs of these appeals most anxious and careful consideration and have reached the conclusion that, having regard to the behaviour of the Stools as between themselves which in our view did nothing to discourage litigation and of the fact that they were collectively represented by one Counsel on the appeal, the fairest order to make is to leave each party to bear its own costs in the following suits, namely: Nos. 11/1943, 15/1943, 1/1944, 2/1944, 7/1944, 23/1944, 13/1948, 14/1948, 18/1948, 5/1949, 33/1950,

38/1950, 39/1950, 46/1950, 47/1950 and 7/1951.

Further as to suit No.7/1944, As the Odoi Quao family have succeeded in varying the judgment on one issue, but have failed as to the other issue which they raised, it is ordered that each party shall bear its own costs.

(Sgd.) S. Foster-Sutton, P.

(Sgd.) A. C. SMITH, C.J.

(Sgd.) J. Henley Coussey, J.A.

C.F. Hayfron-Benjamin (Ollennu with him) for the Atukpai Stool and other Appellants (other than the Nii Kotey and Nee Odoi Kwao Families).

K.A. Bossman for the Nii Kotey Family.

J. Quist-Therson (Kurankyi-Taylor with him) for the Nee Odoi Kwao Family.

Obetsebi-Lamptey for the Ga, Gbese and Korle Stools.

In the West African Court of Appeal

No. 55

Judgment.

4th March, 1955 - continued.

No. 56

No. 56

NOTICE OF MOTION by ATUKPAI STOOL & PEOPLE for Conditional Leave to Appeal to H.M. in Council

Notice of Motion by Atukpai Stool & People for Conditional Leave to Appeal to H.M. in Council.

17th March, 1955

IN THE WEST AFRICAN COURT OF APPEAL
GOLD COAST SESSION, ACCRA
A.D. 1958

W.A.C.A. Civil Appeal No.106 of 1953

Suit No.7/1951.

E.J. ASHRIFI, A.E. NARH, and CHARLES PAPPOE ALLOTTEY, Plaintiffs-Respondents

versus

H.E. GOLIGHTLY & TETTEY GBEKE II, and 15 other cases (Consolidated) generally known as KOKOMLEMLE LAND CASES: Defendants-Appellants

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TAKE NOTICE that this Honourable Court will be moved by C.F. Hayfron-Benjamin of Counsel for

In the West African Court of Appeal

No. 56

Notice of Motion by Atukpai Stool & People for Conditional Leave to Appeal to H.M. in Council.

17th March, 1955 - continued.

the Atukpai (Otuopai) Stool and people the Appellants in the above-mentioned and other suits, namely, Suits Nos. 11/1943, 15/1943, 2/1944, 7/1944 5/1949, 46/1950, 39/1950, and on their behalf on Monday the 9th day of January 1956 at 9 o'clock forenoon or as soon thereafter as Counsel can be heard for an Order for Leave to Appeal from the Judgment of this Honourable Court delivered on or about the 4th day of March, 1955 against the Atukpai (Otuopai) Stool and people to Her Majesty in Council, England, pursuant to Section 3(a) of the West African (Appeal to Privy Council) Order in Council, 1949 AND for any such further or other Order as to the Court may seem fit.

DATED at ACCRA, this 17th day of MARCH, 1955.

(Sgd.) Nii Tettey Gbeke II,

SOLICITOR FOR ATUKPAI (OTUOPAI) STOOL AND PEOPLE (APPLICANTS)

sic.

THE REGISTRAR,
West African Court of Appeal,
and to
(1) The Ga Mantese, (2) The Gbese Mantse and (3) The Korle Priest representing the Ga, Gbese, Korle Stools all of Accra or their Counsel E. Obetsebi Lamptey of Accra.

No. 57

No. 57

COURT NOTES granting Conditional Leave to Appeal to H.M. in Council

Court Notes granting Conditional Leave to Appeal to H.M. in Council.

16th January, 1956.

16th January, 1956.

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

CORAM COUSSEY, P., KORSAH and JIBOWU, JJ.A.

Civil Motion
No.16 of 1955

E. J. ASHRIFI & ORS.

v.

H. E. GOLIGHTLY and
TETTEY GBEKE II, etc.

Motion on notice by the Atukpai Stool per Nii Tettey Gbeke II for conditional leave to appeal to the Privy Council.

Mr. Ollennu to move.

Mr. Akufo Addo for Respondents.

In the West African Court of Appeal

No. 57

Court Notes granting Conditional Leave to Appeal to H.M. in Council.

16th January, 1956

- continued.

O R D E R -

Conditional Leave to appeal to the Privy Council is granted subject to the following conditions:-

(a) The Appellants within three months to deposit £500 in Court or to enter into security with two sureties to the satisfaction of the Court in the sum of £500 for the due prosecution of the appeal and the payment of all such costs as may become payable to the Respondents in the event of the Appellants not obtaining an Order granting them final leave to appeal or of the appeal being dismissed for non-prosecution or of Her Majesty in Council ordering the Appellants to pay the Respondents' costs of the appeal.

The question of the sufficiency of the security is to be decided by a single Judge of the Court upon motion by the Appellants due notice thereof being given to the Respondents.

(b) The Appellants to deposit in Court within three months the sum of £600 towards the costs of preparing the record.

(c) The Appellants within three months to give notice to the Respondents.

Costs to be costs in the appeal.

(Sgd.) J. Henley Coussey, P.

In the West African Court of Appeal

No. 58

Notice of grant of Conditional Leave to Appeal to H.M. in Council.

6th February, 1956.

No. 58

NOTICE of grant of Conditional Leave to Appeal to Her Majesty in Council

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

W.A.C.A. Civil Appeal
No. 106 of 1953
Suit No.7/1951

E.J. ASHRIFI, A.E. NARH and
CHARLES PAPPOE ALLOTEY, Plaintiffs-Respondents

vs.

H.E. GOLIGHTLY and TETTEY
GBEKE II, Defendants-Appellants
and 15 other Cases Consolidated
Generally known as Kokomlemle
Land Cases.

TAKE NOTICE that the Otuopai (Atukpai) Stool and people, the Appellants in the above-mentioned and other Suits, namely Suits Nos.11/1943, 15/1943, 2/1944, 7/1944, 5/1949, 39/1950 and 46/1950, have obtained Conditional Leave to Appeal against the Judgment dated on or about the 4th day of March, 1955, of the West African Court of Appeal to the Judicial Committee of the Privy Council, England, and are proceeding with the appeal.

Dated at La Chambers this 6th day of February, 1956.

(Sgd.) N. A. Ollennu
SOLICITOR FOR STOOL & PEOPLE
OF ATUKPAI (APPELLANTS)

THE REGISTRAR,
West African Court of Appeal
Accra

And to

(1) The Ga Mantse, (2) The Gbese Mantse and
(3) The Korle Priest representing the Ga, Gbese, and Korle Stools, all of Accra.

CERTIFICATE OF SERVICE.

UPON the 11th day of February 1956, at 9.15 a.m. and 9 a.m. copies of this Notice of Appeal were served by me on the Gbese Mantse, the Korle Priest and the Ga Mantse, both personally at Accra.

(Sgd.) E. W. Allotey,
Bailiff Grade II.
13/2/56.

No. 59

MOTION by Atukpai Stool & People for Final Leave to Appeal to Her Majesty in Council

In the West African Court of Appeal

No. 59

Motion by Atukpai Stool & People for Final Leave to Appeal to Her Majesty in Council.

28th March, 1956.

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

W.A.C.A. Civil Appeal No.106 of 1953

E. J. ASHRIFI & OTHERS Plaintiffs-Respondents

v.

H. E. GOLIGHTLY and TETTEY GBEKE II, Defendants-Appellants
And 15 other cases Consolidated generally known as Kokomlemle Land Cases.

TAKE NOTICE that this Honourable Court will be moved on Monday the 23rd day of April, 1956 at 9 o'clock in the forenoon, or so soon thereafter as Counsel can be heard by Nii Ama Ollennu, Esquire, of Counsel for and on behalf of the Otuopai) Stool and people (Appellants to Privy Council) in Suits Nos.7/1951, 11/1943, 15/1943, 2/1944, 7/1944, 5/1949, 39/1950 and 46/1950 of the Consolidated Suits for an Order granting Final Leave to appeal to Her Majesty's Judicial Committee of the Privy Council, England, from the Judgment dated on or about the 4th day of March, 1955 of this Honourable Court, the conditions of appeal imposed on the Applicants herein on the 16th day of January, 1956 having been fully complied with within the period of three months AND for such other relief or Order as to the Court shall seem just.

DATED at La Chambers this 28th day of MARCH, 1956.

(Sgd.) N. A. Ollennu
SOLICITOR FOR THE STOOL AND PEOPLE OF ATUKPAI.

THE REGISTRAR,
West African Court of Appeal, Accra,
And to
(1) The Ga Mantse, (2) The Gbese Mantse and
(3) The Korle Priest representing the Ga, Gbese and Korle Stools, all of Accra.

CERTIFICATE OF SERVICE.

il 1956 three (3) copies

In the West African Court of Appeal

No. 59

Motion by Atukpai Stool & People for Final Leave to Appeal to Her Majesty in Council.

28th March, 1956 - continued.

of this Motion Paper, together with attached Affidavit were served by me on the Ga Mantse, the Gbese Mantse, and Korle Priest, personally in their houses at Accra.

(Sgd.) M. In. Abu
Bailiff
6/4/56.

No. 60

Court Notes granting Final Leave to Appeal to Her Majesty in Council.

23rd April, 1956.

No. 60

COURT NOTES granting Final Leave to Appeal to Her Majesty in Council

23rd April, 1956.

IN THE WEST AFRICAN COURT OF APPEAL,

GOLD COAST SESSION:

CORAM COUSSEY, P., KORSAH, C.J., and BAKER, Ag.J.A.

Civil Motion
No.18/56

E. J. ASHRIFI & ORS.

v.

H.E. GOLIGHTLY and ANOR.
etc.

Motion on notice by Atukpai Stool and people for Final Leave to appeal to Privy Council.

Benjamin moves for final leave to appeal.

Order as prayed.

(Intd.) J.H.C., P.