GH3.67

IN THE PRIVY COUNCIL 16, 1961 No. 34 of 1959

ON APPEAL

FROM THE COURT OF APPEAL, GHANA

IN THE MATTER OF PROPOSED BEMU RIVER FOREST RESERVE BLOCK 1.

B E T W E E N :-

NANA DARKO FREMPONG II, OHENE OF ACHIASI (Claimant) Appellant

— and —

MANKRADO KWAKU EFFAH. MANKRADO OF APERADE (Substituted for NANA OTSIBU ABABIO II, OHENE OF APERADE (Claimant) (deceased)) Respondent

RECORD OF PROCEEDINGS

HERBERT OPPENHEIMER, NATHAN & VANDYK,
20, Copthall Avenue,
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E.C.2.

Solicitors for the Appellant.

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S.W.1.

Solicitors for the Respondents.

IN THE PRIVY COUNCIL — No. 34 of 1959

ON APPEAL

FROM THE COURT OF APPEAL, GHANA

B E T W E E N:

NANA DARKO FREMPONG II,
OHENE OF ACHIASI (Claimant) — Appellant

— and —

MANKRADO KWAKU EFFAH.
MANKRADO OF APERADE
(Substituted for
NANA OTSIBU ABABIO II, OHENE
OF APERADE (Claimant) (deceased)) — Respondent

E X H I B I T S

DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL BUT NOT REPRODUCED

Description of Document	Date
Affidavit of Service of Notice of Appeal	25th May 1957
Notice to Settle Record of Appeal	12th April 1957
Court Notes as to Security for Costs	9th May 1957
Bond for costs on Appeal	13th May 1957
Justification of Sureties	13th May 1957
Request to increase deposit	29th June 1957
Motion on Notice to adduce Fresh Evidence.	21st October 1957
Affidavit of Otsibu Ababio in support	21st October 1957
Court Notes of Argument on that Motion	4th November 1957
Application for Conditional leave to Appeal to Privy Council	2nd December 1957
Affidavit filed in support.	3rd December 1957
Affidavit of Service.	8th January 1958
Court Notes granting Conditional Leave.	13th January 1958
Notice of Appeal.	28th February 1958
Affidavit of service.	11th April 1958
Affidavit supporting Application for Final Leave.	8th March 1958
Affidavit of Service	24th May 1958
EXHIBIT	
"G" Boundary Schedule of Block 1 put in on the 27th November 1956 by A.W.Addo-Ashung, Assistant Conservator of Forests. -	

IN THE PRIVY COUNCIL No.34 of 1959

ON APPEAL

FROM THE COURT OF APPEAL, GHANA

IN THE MATTER OF PROPOSED BEMU RIVER FOREST RESERVE BLOCK 1.

B E T W E E N :-

NANA DARKO FREMPONG II, OHENE OF ACHIASI (Claimant) Appellant

— and —

MANKRADO KWAKU EFFAH. MANKRADO OF APERADE (Substituted for NANA OTSIBU ABABIO II, OHENE OF APERADE (Claimant) (deceased)) Respondent

S

In the Court of the Reserve Settlement Commissioner of The Gold Coast.

No. 1.

Commissioner Pullen's Opening Observations.

16th April 1953.

No. 1.

COMMISSIONER PULLEN'S OPENING OBSERVATIONS

IN THE COURT OF THE RESERVE SETTLEMENT COMMISSIONER OF THE GOLD COAST HELD AT ODA, BIRIM DISTRICT, ON THE 16th DAY OF APRIL, 1953, BEFORE HIS WORSHIP ARTHUR PHILIP PULLEN, ESQUIRE, O.B.E., RESERVE SETTLEMENT COMMISSIONER

IN THE MATTER OF THE PROPOSED BEMU RIVER FOREST RESERVE.

PARTIES PRESENT:-

1. W.H.Jack, Assistant Conservator of Forests, Oda.
2. Nana Oware Adjakum II, Omanhene of Akim Busume.
3. Abroquah Gyimpim, Regent of Akim Kotoku State.
4. Nana Kweku Owua, Ohene of Wurakese, Representing Omanhene of Assin Apimanim.
5. Nana Kwa Fosu II, Ohene of Gyambra, Representing Omanhene Essikuma.
6. R.M. Korsah, Ohene of Amanfupong.
7. Kojo Osei alias Yaw Efum, Linguist, Representing Ohene Franten-Akenkanso.
8. Kweku Baah for Peprah & Coy.
9. Otoo Kwadjo for Otoo Kwadjo & Coy.

In the Court of the Reserve Settlement Commissioner of The Gold Coast.

No. 1.

Commissioner Pullen's Opening Observations.

16th April 1953 - continued.

BY COMMISSIONER: I should explain to all interested parties why it is necessary to hold a fresh enquiry into the settlement of this Reserve. Most of you here today will remember that you attended an enquiry here on 6th October 1952 and made claims to ownership of farms and in two cases to the purchase of land from Stool holders.

The Assistant Conservator of Forests raised no objection to the admission of unrestricted rights over all farms so claimed by the local inhabitants and it is my intention to award in due course unrestricted rights of ownership over those farms which are not subject to any dispute.

Two claims to purchase of land by Otoo Kwadjo & Company and Peprah & Company alias F. H. Akuffo were made at the last enquiry and the sales were not disputed by the Vendor Stools.

This fresh enquiry held under Gazette Notice No.147 of 19th January 1953 is essential because I was appointed by Notice of Gazette Notice No. 1636 of Gazette No.65 of 1st September 1951 to hold the enquiry into the Bemu Reserve excluding the Essikuma State portion, because the Essikuma Native Authority had some years ago signed Bye-Laws over the portion owned by that State but the boundaries over which such Bye-Laws operated had never been defined.

During my enquiry of October 6th 1952, I found that Aperade Stool which serves Akim Busume State owns land jointly with the Stool of Amanfupong (Essikuma State) and they have no common boundary nor do they wish to declare one between them. So it has now been necessary to revoke the Bye-Laws made by the Essikuma Native Authority which obviously could not operate over the land of Aperade Stool serving what was the Akim Busume Native Authority. So we start again, each Stool who has interest in land in this Reserve should make its claim, although it is evident from the previous enquiry that there is no agreement on Stool boundaries. If you are unable to agree on the boundaries which separate each Stool, I have no other recourse but to ask the Supreme Court to determine the issues in the appropriate Lands Divisional Court under Section 9(4) Cap. 122.

I do not wish to hear any claims to land on

the portion to the North-east of the road leading to Aperade from Amanfupong because there is a dispute lying within the jurisdiction of the Privy Council which may not be settled for some time. It is my intention to exclude that area from this enquiry for the time being by dividing the Reserve into Two Blocks providing that no other disputes arise during this enquiry.

The Stools concerned in the land in this Reserve should be made aware of Concessions Gazette No.2 of 1953 in regarding to enquiry No.2462 Cape Coast. This shows that a Concession has been applied for by Mr. M.R. Stein, the grantor of which is shown as the Omanhene of Essikuma but as the plan shows that the Concession will pass over the land sold by Stool of Aperade to Peprah & Co., and to Otoo Kwadjo by the Akenkanso Stool the Stools concerned should take whatever steps they consider necessary at the Concession enquiry Court.

No. 2.

W.H.JACK (ASSISTANT CONSERVATOR OF FORESTS)

Witness No.1, William Hugh Jack, A.C.F., s.o.b.

I am the Assistant Conservator of Forests, Oda, representing the Forestry Department at this enquiry. Notices under Section 32(2) of Cap. 63, now Section 33(2) of Cap.122, were served as follows:-

9th	September,	1935	on the	Omanhene of Akim Busume
9th	"	"	"	Ohene of Aperade
7th	December	1935	"	Omanhene of Essikuma-Breman
19th	"	"	"	Ag. Odikro of Amanfupong.

This notice gives the Native Authorities six months in which to constitute the Forest Reserve under Bye-Laws, failing which it is stated, it will be constituted under the Forests Ordinance. Bye-Laws were signed by the Essikuma State Council for their portion of the Forest Reserve and approved by the Governor in Council on the 25th September, 1940. These Bye-Laws were subsequently revoked by the

In the Court of the Reserve Settlement Commissioner of The Gold Coast.

Evidence

No. 2.

W.H. Jack (Assistant Conservator of Forests).

16th April 1953 - continued.

Essikuma Native Authority who signed the Essikuma Native Authority (Bemu Forest Reserve) Rules 1951 for the portion of the Reserve which lies within the area of the Essikuma Native Authority. These Rules are published at pages 669 and 670 of Gazette No.54 dated 21st July, 1951, with a subsequent correction notice published at pages 1389 of Gazette No.80 dated 27th September 1952. I refer to Government Gazette No.20 dated 4th February 1950 on page 112 of which is published a notice under Section 5(1) of Cap.122. The Forests Ordinance, of the Governor's intention to constitute the Bemu River Forest Reserve (excluding the Essikuma State portion) giving his reasons and appointing the District Commissioner, Oda, to be the Reserve Settlement Commissioner. I refer to Government Gazette No.65 dated 1st September 1951 on page 770 of which is published a notice under Section 5(2) of Cap.122 appointing Arthur Philip Pullen, to be Reserve Settlement Commissioner for the proposed Bemu River Forest Reserve (excluding the Essikuma State portion) in succession to the District Commissioner, Oda, who was unable to complete his duties.

I refer you to Gazette Notice No.147 published in Gazette No.7 of 19th January, 1953, revoking the Essikuma Native Authority (Bemu River Forest Reserve) Rules 1951. And revoking Gazette Notice No.1636 of 24th August 1951 published in Gazette No.65 of 1st September 1951. This in effect closes the previous enquiry opened on 6th October 1952, and makes provision for the opening of a new enquiry over the whole Reserve. The map exhibits I tendered as Ex. A and B. at the previous enquiry still hold good and are retendered as evidence. I tender in evidence Gold Coast Survey Field Sheets Nos. 52 and 54, scale 1.62,500 on which are shown in green the boundaries of the proposed Bemu River Forest Reserve (accepted and marked Exhibit 'A'). This shows the position of the Reserve in relation to the surrounding country. I also tender in evidence a plan showing the boundaries of the proposed Forest Reserve on a scale 1.12,500, this plan is not numbered. It is a sunprint of a plan prepared by the Forestry Department and on it are shown the boundaries of 61 farms demarcated by the Forestry Department (accepted and marked Exhibit 'B'). The area of the proposed Reserve is approximately 16.868 Square miles or 10,795.5 acres. The area of demarcated farms Nos.1 to 61 is approximately

Exhibit 'A'.

Exhibit 'B'.

1.45 Square miles or 924.3 acres. The external boundaries were originally demarcated by the Forestry Department from December 1935 to July 1936, and the internal boundaries were demarcated from June 1936 to January 1937, and September 1937 to February 1938. Farms 25-60 were re-surveyed from October 1938 to January 1939.

In the Court of the Reserve Settlement Commissioner of The Gold Coast.

Evidence

No. 2.

W.H.Jack (Assistant Conservator of Forests).

16th April 1953 - continued.

x x x x

(Intd.) A.P.P.
R.S.C.
16/4/53.

No. 3.

No. 3.

Commissioner Riley's Observations and Proceedings.

25th October, 1956.

COMMISSIONER RILEY'S OBSERVATIONS AND PROCEEDINGS.

IN THE COURT OF THE RESERVE SETTLEMENT COMMISSIONER OF THE GOLD COAST, HELD AT THE MAGISTRATE'S COURT, ODA, ON THURSDAY THE 25th day of OCTOBER, 1956, BEFORE HIS WORSHIP PETER MYLES RILEY, ESQUIRE, RESERVE SETTLEMENT COMMISSIONER

IN THE MATTER OF THE PROPOSED BEMU RIVER FOREST RESERVE (BLOCK I) RE-OPENED.

PRESENT:-

1. Nana Otsibu Ababio II, Ohene of Aperade.
2. Nana Darko Frempong II, Ohene of Achiasi.

BY COURT: You the Stools of Aperade and Achiasi are the two parties concerned in the Bemu River Block I enquiry, you are both I think aware of the position to date but I will recapitulate briefly:- On 6th October, 1952, Mr. Pullen, who had been appointed Reserve Settlement Commissioner for the whole of the proposed Bemu River Reserve in succession to the previous Commissioner who had been unable to commence his duties, opened the enquiry. Formal evidence of service of Notices, etc., was taken and also evidence of farm claims, alienations, and boundaries, which covered the whole Reserve.

It became evident for various reasons that a fresh Gazette Notice would have to be issued and a-

In the Court of the Reserve Settlement Commissioner of The Gold Coast.

No. 3.

Commissioner Riley's Observations and Proceedings.

25th October, 1956 - continued.

new enquiry held. When this new enquiry was opened by Mr.Pullen on 16th April, 1953 he addressed the Court as follows:-

(He quotes Commissioner Pullen's Observations ante from page 2 line 18 to page 3 line 8 inclusive)

As a result of the above Mr.Pullen divided the Reserve into two Blocks, one being Block I now the subject of this enquiry and which lies to the North-East of the road leading from Amanfupong to Aperade. The Privy Council has now given its decision on the land issue which previously held up the Reserve Settlement in this area so that I can now proceed, having been appointed Reserve Settlement Commissioner by Gazette Notice 302 published in Gazette No.9 of 29th January, 1955. As you are aware it was necessary owing to further land disputes to divide Block II of the Reserve into Blocks II and III and the enquiries into these two Blocks have been completed. Some evidence has already been taken in respect of this Block I by Mr. Pullen and if necessary it can be repeated for the sake of clarity. I do not intend to commence proceedings de novo but to continue the enquiry commenced by Mr. Pullen as authorised by Section 5(2) of Cap.157 (No objection is raised to this). Before proceeding further it will be necessary for the boundaries claimed by each party before the High Court, the West African Court of Appeal and the Privy Council to be shown on a plan in so far as they effect Block I.

From the plans now produced by each party it is clear that Aperade claim all the Reserve as part of their whole claim while Achiasi only claims a part. It is not possible from the plans to fix the actual Achiasi claim in Block I. The Court orders the Ohene of Achiasi to have his boundary cleared and cut in the Reserve by 12th November, 1956 on which date the Forestry Surveyor will go to Achiasi and commence the survey.

The Enquiry will re-open on 27th November 1956 at Oda and both parties are warned to attend.

(Sgd.) P.M.Riley,
Reserve Settlement Commissioner.
25/10/56.

No. 4.

In the Court of the Reserve Settlement Commissioner of The Gold Coast.

No. 4.

Proceedings.

27th November, 1956.

PROCEEDINGS.

27.11.56.

IN THE COURT OF THE RESERVE SETTLEMENT COMMISSIONER OF THE GOLD COAST, HELD AT MAGISTRATE'S COURT, ODA ON TUESDAY THE 27th DAY OF NOVEMBER, 1956, BEFORE HIS WORSHIP PETER MYLES RILEY, ESQUIRE, RESERVE SETTLEMENT COMMISSIONER

IN THE MATTER OF THE PROPOSED BEMU RIVER FOREST RESERVE BLOCK I.

Re-opened 27/11/56.

PRESENT:-

1. Mr. Addo Ashung, Assistant Conservator of Forests, Oda.
2. Nana Otsibu Ababio II, Ohene of Aperade
3. Nana Darku Frempong II, Ohene of Achiasi and Tarkwahene of Akim Abuakwa.
4. Counsel for Aperade Mr. Asafo-Adjaye.

Sundry Farmers.

EVIDENCE

Evidence

No. 5.

No. 5.

F.W. ADDO ASHUNG

F.W.Addo Ashung (Assistant Conservator of Forests).

27th November, 1956.

1st Witness: F.W.Addo Ashung s.o.b. I am Assistant Conservator of Forests Oda, representing the Forestry Department at this enquiry. Notices under Section 33(2) of Cap.122 (now Section 34(2) of Cap. 157) were served as follows :- On September 9th 1955 on the Omanhene of Akim Busume and the Ohene of Aperade. On 7th December 1955 on the Omanhene of Asikuma-Bremen and on 19th December on the Acting Odikro of Amanfupong. These Notices gave the Native Authority six months in which to constitute the Bemu Forest Reserve under Bye-Laws failing which it is stated it will be constituted under the Forestry Ordinance. Bye-Laws were signed by the Asikuma State Council on 5th September 1940. These Bye-Laws were subsequently revoked by the Asikuma Native Authority who signed the Asikuma Native Authority (Bemu Forest River Reserve) Rule 1951 for the portion of the Reserve which lies

In the Court of the Reserve Settlement Commissioner of The Gold Coast.

Evidence

No. 5.

F.W.Addo Ashung (Assistant Conservator of Forests).

27th November, 1956 - continued.

within the area of the Asikuma Native Authority. The Rules are published at pages 669 and 670 of Gazette No.54 dated 21st July 1951 with a subsequent correction notice published at page 1289 of Gazette No.80 dated 27th September, 1951. I refer to Government Gazette Notice No.2 dated 4th February, 1950 on page 112 of which is published a notice under Section 5(1) of Cap.122 the Forest Ordinance of the Governor's intention to constitute the Bemu River Forest Reserve (excluding the Asikuma State portion) giving his reasons and appointing the District Commissioner Oda to be Reserve Settlement Commissioner. I also refer to Government Notice 65 dated 1st September, 1951 on page 770 of which is published a Notice under Section 5(2) of Cap.122 appointing Arthur Philip Pullen Esquire to be Reserve Settlement Commissioner for the proposed Bemu River Forest Reserve (excluding the Asikuma State portion) in succession to the District Commissioner Oda who was unable to complete his duties. I refer you again to Gazette Notice No.147 published in Gazette 1007 of 19th January 1955 revoking the Asikuma Native Authority (Bemu River Forest Reserve) Rules 1951 and revoking Gazette Notice 1636 of 24th August 1951 published in Gazette No.65 of 1st September 1951. This in effect closes the previous Enquiry opened on 6th October 1952 and makes provision for the opening of a new enquiry over the whole Reserve. The enquiry was re-opened on 16th April 1953 by A.P.Pullen Esquire. During the course of this enquiry the Reserve Settlement Commissioner divided the proposed Forest Reserve into 3 Blocks and proceeded to give judgment on Block II on 8th June, 1954. I refer you to Gazette Notice No.302 published in Gazette No.9 of 29th January 1955 which appoints Peter Myles Riley Esquire as Reserve Settlement Commissioner in succession to A.P.Pullen in respect of Blocks I and III as the latter was unable to complete his duties in respect of these Blocks. Block III Enquiry has now been completed by you and Block I in which there was a land dispute between the Stools of Achiasi and Aperade has now been taken on appeal to the Privy Council where judgment has been given. I produce as Exhibits copies of the decisions given in the Supreme Court, Cape Coast, the West African Court of Appeal and Privy Council in respect of this land dispute.

Exhibits A.B.C. accepted.

Exhibits D & E. accepted.

I tender in evidence Gold Coast Survey Field Sheets No.52 and 54 Scale 1/62,500 on which are

shown in Green the boundaries of the proposed Bemu River Forest Reserve and the boundary of Block I. These Field Sheets show the boundaries of the Reserve in relation to the surrounding country. I also tender in evidence a plan showing the boundaries of the proposed Bemu River Block I Reserve on a Scale of 1/12,500. This plan is not numbered and has been prepared by the Forestry Department, on it are shown the boundaries of 34 farms demarcated by the Forestry Department. The area of Block I is 3.71 square miles.

The area of demarcated farms in Block I is approximately 561.63 acres.

I produce a boundary Schedule for Block I.

Exhibit F. accepted.

Plans tabled and examined by parties.

Exhibit G. accepted.

Cross-Examined by Court: Yes the Achiasi people showed the Forestry Surveyor their boundary which is shown on the plan. It was not necessary to show the Aperade claim as they were claiming the whole Reserve.

There are no Concessions or alienations in Block I only Farms.

The farms in Block I belong to the Achiasi, Aperade, Awisa and Nyankumasi farmers.

Since Mr. Pullen opened the enquiry in 1953 the farms have been re-checked and re-surveyed. The names of the owners and size of the farms is as follows :-

Farm No.	Owner	Acres.
25	Kojo Asanti of Nyankumasi	2.50
26	- do -	7.5
27	Kofi Nsuwaa of Nyankumasi	23.75
28	Kofi Owusu of Nyankumasi	7.75
29	Kwesi Bamfo of Nyankumasi	32.5
30	Kobina Enkatia of Nyankumasi	7.0
31	Kojo Donkor of Nyankumasi	.5
32	Yaobo of Nyankumasi	3.25
33	Kojo Amansi of Aperade	16.75

In the Court of the Reserve Settlement Commissioner of The Gold Coast.

Evidence

No. 5.

F.W.Addo Ashung (Assistant Conservator of Forests).

27th November, 1956 - continued.

Farm No.	Owner	Acres.
34	The Ohene of Aperade	27.5
35	Kweku Asa of Awisa	8.5
36	The Ohene of Aperade	16.25
37	- do -	3.25
38	Effua Hanson of Achiasi	36.25
39	Yoa Botwe of Achiasi	5.0
40	Kwabena Amoa of Achiasi	25.0
41	Kwame Aboagya of Nyankumasi	12.5
42	Kwesi Owusu of Nyankumasi	21.75
43	Effua Hanson of Achiasi	6.25
44	The Ohene of Aperade	7.5
45	S.K.Tandoh of Aperade	22.5
46	Kwame Awuah of Nyankumasi	6.75
47	The Ohene of Aperade	14.5
50	Yao Botwe of Achiasi	3.5
51	Kofi Nsua of Nyankumasi	4.25
52	The Ohene of Aperade	15.5
54	- do -	7.5
56	- do -	8.25
57	- do -	6.25
58	Kojo Kobi of Achiasi	1.5
59	Kweku Aboa of Achiasi	2.5
60	Kofi Amoama	1.98
61	The Odikro of Nyankumasi	13.0
62	Samson White of Aperade	10.5
	Total Acres	561.63

The above are all food and cocoa farms.

Cross-Examined by Counsel of Aperade: I am not aware of any previous demarcation of land in Block I in connection with a dispute with Aperade. I do not know the exact boundaries between Achiasi and Aperade in their land dispute which has been before the Privy Council.

No further question.

No. 6.

KOFI APPIAH

2nd Witness, Kofi Appiah, s.a.r.b. I am a farmer and have a farm in the Reserve but it is not on the list read out by the last witness.

Mr. Addo Ashung, Assistant Conservator of Forests states: At a previous enquiry held by Mr. Pullen this farm was examined by an Agricultural Officer and disallowed. It is so stated in the proceeding in the Block III enquiry.

NOTE BY COURT: The Assistant Conservator of Forests is correct.

The claim is not allowed.

No. 6.
Kofi Appiah.
27th November, 1956.

No. 7.

KOFI AKA

3rd Witness, Kofi Aka, s.a.r.b. I am a farmer of Aperade. I have a cocoa farm in Block I which was made by my uncle Akaanwama many years ago. It was not read out by the 1st witness.

Cross-Examined by Court: No I have never put in a claim yet.

No. 7.
Kofi Aka.
27th November, 1956.

No. 8.

KOFI AFFEDZE

4th Witness, Kofi Affedze, s.a.r.b. I am a farmer of Aperade. I have a cocoa farm in Block I. It has been going some time and my name has not been read out. I did not claim before as I did not know where or how to claim.

Cross-Examined by Counsel for Aperade: Yes I obtained my farms from the Ohene of Aperade.

No further Claimants.

No. 8.
Kofi Affedze.
27th November, 1956.

In the Court of the Reserve Settlement Commissioner of The Gold Coast.

Evidence

No. 9.

A.W.Addo-Ashung (Recalled)

27th November, 1956.

No. 9.

A.W.ADDO-ASHUNG (Recalled)

1st Witness: Recalled states: The Forestry Department are prepared to grant similar communal rights in Block I to those Stools and Stool subjects who are entitled to them as were granted in Block III they are :-

1. Hunting -	Unrestricted but no Steel traps to be used.	
2. Fishing -	Unrestricted but no streams to be dammed.	
3. Collection of Snails, Honey, Mushrooms and Wild yams.	- Unrestricted.	
4. Collection of - Firewood, Deadfall only and for personal use.		
5. Chew sticks, sponges, Canes, Tie Tie, Thatch Fu Fu sticks, Building poles, Bamboo, Clay and sand.	-	On Free Permits from the Competent Authority for personal use only and not for sale.

No.10.

Nana Darku Frempong II.

27th November, 1956.

No. 10.

NANA DARKU FREMPONG II

5th Witness, Nana Darku Frempong II, Ohene of Achiasi and Tarkwahene of Akim Abuakwa s.o.b. I agree to the communal rights which have been allowed. As regards any revenue which may accrue from the sale of Timber or from Minerals this is arranged by the State Council who decide how much should be paid to the Local and State Councils. The Stool as such gets nothing.

The Communal rights are shared with all subjects of the Akim Abuakwa Stool. As regards to farmers on any land that is mine in the Reserve they can remain provided they come to me and acknowledge me as the land owner. I would not turn any one off who is prepared to do this, nor would they have to pay anything.

No. 11.

In the Court of the Reserve Settlement Commissioner of The Gold Coast.

Evidence

No.11.

Nana Otsibu Ababio, II.

27th November, 1956.

NANA OTSIBU ABABIO II.

6th Witness, Nana Otsibu Ababio II, Nifahene of Aperade states: I agree to the Communal rights allowed. These rights can be enjoyed by all Aperade and Amanfupong people and also to any strangers living on the land. If any game is killed I get a leg. As regards any revenue accruing from the sale of Timber or from Minerals this divided at present into three parts. The Local Council takes 2 parts and one part is given to Amanfupong and Aperade for the Stools. This is subject to any amendment that may be made under the Local Government Ordinance. As regards farmers living on my land in the Reserve they would be allowed to remain provided they paid no tribute on the Abusa system.

BY COURT: The Ohene of Achiasi asks that an adjournment be granted until tomorrow so that his Counsel can appear.

Since there are two more farm claims to be investigated i.e. those of 3rd and 4th witnesses. I adjourn until 8th January 1957, when the Enquiry will re-open at Oda. All parties warned to attend and the two farm claimants and Forest Ranger are instructed to proceed to the Reserve and inspect the farms.

(Sgd.) P.M.Riley,
RESERVE SETTLEMENT COMMISSIONER
27th November, 1956.

No. 12.

No.12.

Proceedings.

8th January, 1957.

PROCEEDINGS

IN THE COURT OF THE RESERVE SETTLEMENT COMMISSIONER OF THE GOLD COAST, HELD AT THE MAGISTRATE'S COURT, ODA, ON TUESDAY THE 8th JANUARY, 1957, BEFORE HIS WORSHIP PETER MYLES RILEY, ESQUIRE, RESERVE SETTLEMENT COMMISSIONER

IN THE MATTER OF THE PROPOSED BEMU RIVER FOREST RESERVE (BLOCK I)

Re-opened.

PRESENT:

1. Mr.Addo Ashung, Assistant Conservator of Forests, Oda.

In the Court of the Reserve Settlement Commissioner of The Gold Coast.

2. Nana Darku Frempong II, Ohene of Achiasi and Tarkwahene of Akim Abuakwa.

3. Mr. S.D. Opoku-Afari Counsel for Achiasi.

4. Nana Otsibu Ababio II.

No.12.

Proceedings.

8th January, 1957 - continued.

5. Mr. Asafo-Adjaye Counsel for Aperade.

Evidence

No.13.

A.W.Addo-Ashung (Recalled).

8th January, 1957.

No. 13.

A.W. ADDO-ASHUNG (Recalled)

1st Witness, A.W.Addo-Ashung, (Recalled) s.o.b. I am the Assistant Conservator of Forests Oda. The two farms ordered by Court on 27th November, 1956, to be seen have been inspected. The farms of Kofi Aka (3rd Witness) was seen to be a piece of forest land which could not have been used as a farm for perhaps 30 years. There were no cocoa trees on it and it was high forest.

The farm of Kofi Affedze was inspected and found to be right outside the Reserve.

Cross-Examined By Court: Yes both parties were present when the farms were inspected.

NOTE BY COURT: The claim of Kofi Aka is disallowed.

No further questions.

No.14.

Court Notes.

8th January, 1957.

No. 14.

COURT NOTES

BY COURT: The Court will now hear arguments by Counsel to decide on the correct interpretation of the Privy Council decision in so far as it affects the land in the Bemu River Block I. The Court cannot in any way re-open the land case or hear further evidence on this subject.

No. 15.

In the Court of the Reserve Settlement Commissioner of The Gold Coast.

No.15.

Addresses of Counsel.

8th January, 1957.

ADDRESSES OF COUNSEL

For Aperade.

Mr. Asafu-Adjaye for Aperade. Appellants before the Privy Council. I wish to produce some documents which will help the Court to understand the position. These documents are not intended in any way to dispute the decision of the Privy Council but to help to clarify that decision. They should have been produced in Court before but were not.

For Achiasi.

Mr.Opoku-Afari for Achiasi (Respondents before the Privy Council). I object to these documents being produced as since it has been stated they should have been produced before they therefore comprise further evidence and no new evidence is admissible now. It is tantamount to re-opening the case. Objection upheld.

Mr. Adjaye continues: The main question concerns the Bemu River Reserve Block I of which the Appellants, my clients the Aperade, claim to be the owners of the whole of the Reserve and that Achiasi have no land there whatever. The Court has taken statements from Aperade farmers showing they have land in the Reserve. Achiasi when called upon to make a statement could only say they were relying on the Privy Council decision. If Achiasi contend that they are the owners of part of Block I they should have come forward and made statement to that effect. No such statement was made before this Court. If Achiasi contend that they own the land they should be asked who have boundary with them on the adjoining land and if there are such persons they should be called upon to give evidence to that effect before this Court. The Achiasi have failed in this Court to show possession of the land or to call witnesses to show the boundaries which gave them the right to be in Block I. A mere statement of fact that they own the land is not sufficient in this Court. The Privy Council judgment was mainly based on supporting the decision of the West African Court of Appeal and did not give the Achiasi people the ownership of the land. The West African Court of Appeal judgment states that a person must prove his claim and not depend on the weakness of his opponents case. The West African Court of Appeal decision gave no title to the

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Achiasi and says so as they sought no title. I wish to emphasize that part of the record of the West African Court of Appeal which reads "Such a judgment decrees no title to the Defendant he not having sought the declaration". In no part of the defence filed by the Achiasi people did they claim any title and that being so the West African Court of Appeal did not decree that the land was the property of the Achiasi people. They cannot say the Aperade people having had their claim dismissed means that the land is ours. The law lays down that every party to a suit must show his claim. The Achiasi did not claim the land so they cannot at any stage claim title. In the Privy Council judgment it is recorded "there is no ground for interfering with the order of the Court of Appeal and the appeal ought therefore to be dismissed". A number of farmers gave evidence in the Court to show they were in possession of land in the Reserve and were paying tribute to Aperade. We assert that the question of title to the land in the Reserve is still open. Neither the judgments of the West African Court of Appeal nor the Privy Council confer any title to Achiasi. The boundaries on the plans produced were vague and this is supported by the Privy Council judgment paragraph 2 which reads "It is to be noted that neither in the statement of claim nor in the order of the Court is there a reference to any plan by means of which it would be possible to identify the boundaries of the area in respect of which the declaration of title was then granted". I call attention also to the following part of the Privy Council judgment which reads "The Appellants called representatives of several Stools whose lands were said to border on the disputed area and they deposed that they had boundaries with the Appellants and not with the Respondents but except for the testimony given for the Eduasa Stool no definition was afforded as to where the boundaries ran and this branch of evidence therefore did not provide the useful proof that it might otherwise have done". The evidence of the Eduasa Stool was the only piece of evidence that was relevant and this was acknowledged by the Privy Council although they did not give judgment for Aperade. The reason why the West African Court of Appeal and the Privy Council set aside the decision of the Supreme Court is contained in the following words of the Privy Council judgment: "By reason of the two cases filed by the Plaintiffs in

respect of this land and having regard to the fact that the Defendants have never sought a declaration of title I am satisfied that of the two parties it is the Plaintiffs only who can be said to have acted timeously in asserting their rights, this being so the Plaintiffs are entitled to the declaration sought and I so order". We assert the dispute is still unsettled and therefore we submit the Privy Council judgment did not award any land in Block I to Achiasi. We submit that in connection with the whole Reserve it is the Aperade who have been approached by Government and this has never been challenged by any one and all tribute has been paid to Aperade and they have always collected Timber Revenue from this land. Finally we have submitted all the facts which prove our right of ownership to the land which rights have never been challenged by Achiasi and if Block I had not been established Achiasi would never have dared to dispute our claim and even though Aperade were not able to satisfy the Court as to their claim the West African Court of Appeal and the Privy Council did not bestow it on Achiasi and this is borne out by the two appeal judgments. If Achiasi were owners of the land why did they not ask for title? I wish to produce the plan of our claim which was Exhibit "B" in the Supreme Court.

Exhibit "H" accepted.

The learned Counsel stated that all we rely on is the decision of the Privy Council. That is not so. He argued that we should have made a claim but this is wrong reasoning. In the Gold Coast there is nothing like "long occupation" which gives title as we have plenty of land and some one can occupy land for many years without being regarded as the owner. He mentioned that we did not call evidence of surrounding Stools but only called Eduasa which evidence was not corroborated. It was also contended that no judgment had given Achiasi title, but I contend that where a person has been occupying piece of land and claims that it has been in his possession from time immemorial, if some one claims that land from him and fails in his claim the land must remain with the persons against whom the claim has been made. We hold the land until we have been successfully challenged. It is nonsense to say because the Courts did not award a title therefore we cannot own the land. If some one claims the spectacles I am wearing and loses his claim it does not mean I cannot have my spectacles because I did not claim them. From the

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beginning we have always said the land belonged to us and the Plaintiff who brought action against us failed to disprove our ownership. The cases of this nature we rely on our pleadings and in our pleadings we said the land was ours. The learned Counsel quoted the cases Kodiline v. Odu and Ado v. Wusu which were quoted in the West African Court of Appeal judgment but these cases only proved that the onus of proof rested on Aperade and this the Privy Council upheld. It is not logical to say that because Aperade lost therefore so did Achiasi. The main point is we are the owners of the land and always have been and Aperade have not been able to prove to the contrary. It is a lame argument to say that because we did not claim title therefore in so far as this case is concerned we can have no title. Between the two of us who is in the soundest position? We have not lost title but Aperade have. The people whom Aperade claim to have been farming the land and to be the Aperade people have now run back to us to ask our permission to farm. Learned Counsel says the question of ownership is still open that is so in respect of any other claimants but not Aperade. There have been plans made and I produce the one we produced in the Supreme Court where it was marked Exhibit "E". It shows our claim and part of the Forest Reserve. As for the statement that Government have always approached Aperade about land in the whole Reserve, this is so for Blocks II and III but not for Block I as Government have always been careful about whom to approach for this Block. When Mr. Pullen opened the enquiry originally it was at once found that a land disputed existed in Block I and it was subjudice and that is why the enquiry into this Block was then adjourned.

Exhibit "I" accepted.

The Aperade in their statement of claim claimed a large area which included Block I, now if this Enquiry grants one single farm claimed by Aperade in Block I to Aperade it would be going against the Privy Council judgment. The enquiry into Block I has been delayed on account of Aperade claiming farms on our land, they have lost their claim and no one else has claimed therefore the land in the Reserve is ours. The fact that they sued only us showed they knew we had an interest in the land no one else. I claim the land is now that of Achiasi since no one else is claiming or has claimed it. It certainly cannot now belong to Aperade in the Reserve.

BY COURT TO MR. ASAFO ADJAYE: Will you please repeat your arguments which referred to cases quoted in the West African Court of Appeal judgment.

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By Court.

MR. ASAFO ADJAYE: The principle of law involved in all claims of title to land is that the Plaintiff should satisfy the Court by all reasonable means within his power that he is entitled to the land claimed and that the Plaintiff should not be allowed to rely upon any weakness of the Defendants statement. Claims by either party must be specific and therefore accordingly judgment should be specific. Specific claims specific decrees; if no claim in respect of land no decrees can be made by any Court and that is the law and it is for this reason the case Adu v. Wusu of Vol. 4 page 96 is quoted by the learned judges. I quote from the judgment "The onus lies on the Plaintiff to satisfy the Court that he is entitled on the evidence brought by him to a declaration of title. The Plaintiff in this case must rely on the strength of his own case and not on the weakness of the Defendants case. If this onus is not discharged the weakness of the Defendants case will not help him and the proper judgment is for the Defendant. Such a judgment decrees no title to the Defendant he not having sought the declaration". No Court can adjudicate on a claim to land where no claim has been made and that is why the judge said "such a judgment decrees no title to the Defendant" and there is nothing on record which says the land belongs to the Defendant i.e. Achiasi.

For Aperade.

MR. OPOKU-AFARI: May I point out that any time when Counsel desires to quote a principle of law in a particular case he should quote the whole principle as there may be other matters which may be relevant. The West African Court of Appeal judgment continuing on the principle which has been quoted by my learned friend goes on to say "In applying the principles laid down in the case Ado v. Wusu the trial judge appears to have lost sight to the fact that the Respondents were the persons seeking relief at the hands of the Court not the Appellants. The former were asking for declarations of title and the onus of proving that they were entitled to such relief was clearly upon them. In order to succeed they had to prove that they were entitled to be declared the owners of the land in question." The onus of proof was clearly upon Aperade they have failed to produce proof and that is the whole

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principle. We have been sued to clear off the land and that claim has failed therefore we must remain on the land until some one else succeeds in removing us. The Aperade found us on this land and tried to remove us they failed and if the land does not belong to us to whom does it belong?

Adjourned until 29/1/57
for judgment.
(Sgd.) P.M.Riley,
Reserve Settlement Commissioner.

No.16.

Judgment.

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No. 16.

JUDGMENT.

JUDGMENT AT ODA - 12th FEBRUARY, 1957.

1. HISTORY:

The past history of this Reserve is somewhat involved and complicated and may be summarised as follows: In September and December 1935 Notices under Section 32(2) of Cap.122 (now Section 34(2) of Cap.157) were served on the Omanhene of Akim Busume, the Ohene of Aperade, the Omanhene of Asikuma-Bremen and the Odikro of Amanfupong. These Notices gave the Native Authorities 6 months in which to constitute the Bemu River Forest Reserve under Bye-Laws failing which it would be constituted under the Ordinance. The Asikuma State Council signed Bye-Laws on 5th September 1940 which were subsequently revoked by the Asikuma Native Authority who signed the Asikuma Native Authority (Bemu River Forest Reserve) Rules 1951 for the portion of the Reserve lying within the area of the Asikuma Native Authority. In Gazette No.20 of 4th February 1950 a Notice was published under Section 5(1) of Cap.122 announcing the Governor's intention of constituting the Bemu River Forest Reserve excluding the Asikuma State portion. The District Commissioner Oda was appointed Reserve Settlement Commissioner and later by Government Gazette Notice No.65 of 1st September 1951 he was replaced by Mr.A.P.Pullen, O.B.E. Mr.Pullen opened his Enquiry on 6th October 1952 during the course

of which he found that the area over which the Asikuma Native Authority had made Rules in 1951 had never been defined although it lay within the whole of the Bemu River Reserve with which he was dealing. It was therefore impossible for him to continue an enquiry which excluded the Asikuma State portion. It was also discovered that the Aperade Stool, which served the Akim Busume State, owned land jointly with the Stool of Amanfupong (Asikuma Stool) and had no communal boundary nor did they wish to declare one. In view of the above it became apparent that the Asikuma Native Authority Rules in 1951 would have to be revoked as they concerned the Amanfupong and Aperade land in the Reserve and were therefore ultra vires in that they could not operate on land within the jurisdiction of another State i.e. Akim Busume. In Gazette No.7 of January 1955 by Notice 147 of 14th January 1955 the Asikuma Native Authority (Bemu River Forest Reserve) Rules 1951 were revoked as also was Gazette 1636 of 24th August 1951 published in Gazette 65 of September 1951 which appointed Mr. Pullen Reserve Settlement Commissioner. These notices in effect closed Mr. Pullen's enquiry opened on 6th October 1952 and made provision for the opening of a new enquiry over the whole Reserve. This fresh enquiry by Mr. Pullen commenced on 16th April 1955 and owing to Stool land disputes it was found necessary to divide the proposed Reserve into three Blocks. Block I, the subject of this enquiry, was found to contain a land issue between the Stools of Aperade and Achiasi which was before the Privy Council and therefore at that time had to be adjourned, Block II which has been settled by Mr. Pullen and Block III which has been disposed of by myself. Gazette Notice 302 published in Gazette 9 of 29th January, 1955 appointed me Reserve Settlement Commissioner in succession to Mr. Pullen in respect of Blocks I and III. Since the Privy Council gave their decision on 2nd July 1956 the enquiry into Block I was resumed by me on 25th October, 1956.

II. PROCEDURE:

Notices under Section 7 of Cap.122 (now Cap. 157) were issued and served on those concerned in 1953 and the enquiry by the consent of Aperade and Achiasi was continued from the adjournment by Mr. Pullen on 16th April 1953 and not commenced de novo. At the first session held by me on 25th

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October, 1956 the position as regards Block I was explained to all parties and an order made by Court for Achiasi to produce a plan showing the land boundaries claimed by them in the Reserve. It was not necessary for Aperade to produce any plan since the land they had claimed before the Privy Council and Lower Courts included all Block I. At the second session the Assistant Conservator of Forests Oda Mr. Addo-Ashung related the history of Block I and produced copies of the judgments given by the Supreme Court Cape Coast, the West African Court of Appeal and the Privy Council in respect of the land dispute between Aperade and Achiasi. A plan showing the Achiasi claim in the Reserve was also forthcoming.

III. DESCRIPTION:

The area of the whole Bemu River Reserve is approximately 16.868 square miles and that in Block I 3.71 square miles. The area of demarcated farms in Block I is 561.63 acres. Schedule I attached to this judgment gives the boundary description for the area now recommended for reservation. There have been no alterations to the original boundary description at any stage.

No concessions or alienations exist in Block I.

IV. CLAIMS:

Apart from the land dispute now finalised in the Privy Council the only claims were those relating to farmers in the Reserve and communal rights.

FARMS:

As regards farms some claims to farms throughout the whole Reserve were made before Mr. Pullen prior to 16th April 1953 these included claims in Block I. Since then Block I claims have been rechecked and the final approved list of demarcated farms is given in Schedule III attached to this judgment. One farm claim was disallowed, because the land had not been cultivated for many years prior to the formation of the Reserve. It should be noted that both the Aperade and Achiasi chiefs agreed that whatever might be the final judgment given by me they would allow all demarcated farms on their land in the Reserve to remain. The Achiasi stipulated that Aperade and other farmers should acknowledge Achiasi the land owners and Aperade that other than Aperade farmers should pay tribute on the Abusa system. To this I agree.

COMMUNAL RIGHTS:

Claims were made by both Aperade and Achiasi to certain communal rights in the Reserve. After considering the views of the Forestry Officer these claims have been allowed where possible to the subjects of the Chiefs who own land in the Reserve. These rights are similar to those awarded for Blocks II and III and are given in Schedule II.

LAND DISPUTE:

Apart from deciding on farm and communal claims the main duty of this enquiry has been to interpret correctly the decision of the Privy Council. It was made clear from the outset that no fresh evidence affecting the land dispute between Aperade and Achiasi could be accepted. The history of the dispute is as follows: In August 1951, the Aperade Stool sued the Stool of Tarkwa Achiasi in the Supreme Court Cape Coast claiming:

"1. Declaration of Title to all that piece or parcel of land commonly known and called Amanfupong and Aperade Stool land situate in the Western Akim District and bounded on the North by the lands belonging to the Stool of Eduasa, and Ewisa respectively on the South by lands belonging to the Stools of Wurakessi, Jamra and Asantem respectively on the East by lands belonging to the Plaintiffs Stool and Suasi Stool respectively and on the West by Akenkanso stream and Wurakessi Stool land.

2. Five hundred pounds damages as per mesne profits".

The case was heard on 11th August 1951 and judgment given for Aperade for the declaration sought and also a nominal sum of £5 for the mesne profits. Achiasi appealed to West African Court of Appeal who on 11th January 1952 allowed the appeal and set aside the judgment of the Court below on the grounds that onus of proving title rested with the Defendant-Respondent's Aperade and that they had "signally failed to discharge the onus which was upon them". The matter was then taken to the Privy Council and their Lordships on 2nd July 1956 upheld the decision of the West African Court of Appeal.

It is the duty of this Court to interpret the

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decision of the Privy Council only in so far as it concerns land inside the Bemu River Reserve Block I. Arguments were heard by Counsel for Aperade Mr. Asafo-Adjaye and Counsel for Achiasi Mr.Opoku-Afari.

Mr. Asafo-Adjaye asked permission to produce as exhibit certain documents which he stressed did not in any way dispute the decision of the Privy Council but would assist the Court in clarifying that decision. He stated the documents should in fact have been presented as evidence before. Counsel for Achiasi objected on the grounds that since these papers were of such a nature as to have been, according to Counsel for Aperade, of value before other Courts to accept them now would be tantamount to accepting fresh evidence or re-opening the case. The Court was in agreement with Mr.Opoku-Afari and upheld the objection. Arguments for Aperade can be summarised under the following heads:

1. Achiasi should themselves have made a claim to the land but have never done so and therefore cannot be awarded the land.
2. The fact that Aperade lost their claim to this land does not mean that Achiasi gained title and the dispute is still therefore unsettled.
3. The vagueness of the boundaries claimed and shown on plans produced in the High Court.
4. That during the whole period covering the formation of the Bemu Forest Reserve it was Aperade who were approached by Government and not Achiasi.

As regards (1) and (2) Counsel supported his arguments with the quotation recorded by West African Court of Appeal in the case Kodilinve v. Odu and the principles enumerated in that case by Webber C.J. The relevant portion quoted is "such a judgment decrees no title to the Defendant he not having sought declaration". The quotation was only given in part and its main object was to affirm that the onus of proof lay on the Plaintiff, in this case Aperade, to satisfy the Court that he was entitled to the land and not to depend on the weakness of the defence. The statement that such a judgment decrees no title to the Defendant he not having sought one applied to that particular

case and is not applicable I suggest in a case such as this where the Defendant claims to be already in possession of the land. The Supreme Court did indeed find it fact that both parties were in actual possession of parts of the area. If a person believes himself to own a certain object and to be in actual possession of it is it necessary for him, should that object be claimed by another person, to counterclaim? In point of fact the Achiasi did produce a plan Exhibit 'I' before the Supreme Court and the same plan before me which shows the area of the land they claim and the area in respect of the Bemu River Block I which is shown Exhibit 'F'. In no part of the decision by West African Court of Appeal or the Privy Council is it laid down or stated that because the Achiasi did not claim title therefore they have no title. This is pronounced in the High Court but that judgment has been upset. Their Lordships indeed record their view of the High Court decision in the following words. "His decision seems to have been based on nothing more convincing than the fact that the Appellants had twice before been litigants in respect of the disputed area or some area related to it which the Respondents Stool had not moved to assert their title in the Courts". In this respect the judgment of the West African Court of Appeal given at Accra on 22nd February, 1944 in the case.

Fiaja Addai Kwasi and Narkrodo Danku all of Awudome on behalf of the people of Awudome, Plaintiffs-Appellants v. Fiaja Abutia and Fiaja Ayitey of Abutia Kloe representing the people of Abutia, Defendants-Respondents, is applicable. The relevant portion of that judgment reads "because it is well established (and in this the Respondents Counsel at once concurred when asked by Court) that when that is the case a declaration of ownership and possession cannot be made in favour of the Defendants since there is no claim by him before the Court nor can a declaration of boundaries be made when that is not one of the claims at issue.

In such cases the proper course is merely to dismiss the Plaintiffs claim. This of course does not mean that the matter is any the less res judicata in favour of the Defendants".

As regards (3) there is some substance in this and their Lordships of the Privy Council do in fact

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comment on the inadequacy of the boundary description when they say "there is nothing in the evidence which makes it possible to say that these are adequate description of the boundaries and in fact an order in that form would do little to settle the title to any particular area" and again "The Respondents to call representatives for two neighbouring Stools on the subject of contiguous boundaries but it would nevertheless be very difficult to make out at any rate from the printed record where their own Stool lands were said to be and where it was that they believed their boundaries coincided with that of the Respondents" and still further "conceivably it was not impossible, but undoubtedly it would have been very difficult for a trial judge to extract from such evidence any pattern of asserted rights that would justify attributing a whole defined area to the Stool lands of one party or the other". Full weight has been given to their Lordships views and were this Court concerned with the whole area in dispute the description of the boundaries as claimed by Aperade would be inadequate for the settlement of title to that area, but I am only concerned with a small area which is in no way contiguous with the land belonging to the Stools of Eduasa, Ewisa, Wurakessi, Jamra or Asantem and indeed has not been claimed by any of these and Stools only by Aperade whose claim has been dismissed. A glance at the plans Exhibit "A" shows the portion of Block I in relation to the Eduasa or Ewisa areas in the North and Exhibit "H" shows the approximate boundaries of Wurakessi, Jamra and Asantem which are many miles to the South of Block I. The area of the latter is in fact almost in the centre of the whole area as regards the boundaries of the above Stools. Similarly to the East the Reserve boundaries do not appear from the plans to be adjacent to Aperade or Suasi lands while the Akenkanso stream on the West which the Plaintiffs claim as part of the boundary is a considerable distance from Block I. This Court is of opinion therefore that the vagueness of the boundaries claimed by Aperade for the whole are not vague in respect of the land inside Block I. Aperade have claimed this land as part of the whole, they have had their claim dismissed and at no time has any other Stool claimed Block I.

As regards argument No.4 namely that while the Bemu River Reserve was being formed it was only Aperade who were approached.

This may have been the case in so far Blocks II and III and possibly for Block I in the early stages but it was the very fact that there was a dispute between Aperade and Achiasi which had commenced in August 1951 that caused Mr. Pullen, the Reserve Settlement Commissioner who opened the enquiry in 1952, to exclude that area; the Government would not have dealt exclusively with Aperade in the first place, if indeed they did, had they been aware of such a dispute.

Counsel for Achiasi argued that the fact that no judgment had been given awarding Achiasi title did not in this case mean that they were not the owner of the land; he contended that his clients had always occupied the land and that the claim to it came from Aperade who had lost therefore Achiasi could continue to occupy until successfully challenged by some other party. Although Achiasi did not actually counterclaim they did, so Counsel affirms in their pleadings, say the land was their's and did in fact produce a plan before the High Court showing their boundaries (Exhibit I). He stressed that Achiasi had always owned the land they claim and that Aperade had not been able to prove to the contrary.

This Court holds the following views:

1. That Aperade by the Privy Council decision have lost all the area they have claimed which area is shown on the plan, Exhibit 'H' produced in this Court and which plan was produced and accepted as Exhibit 'B' in the Supreme Court case.

2. That the area of Bemu River Block I is within the area claimed by Aperade and does not border on any of the outer boundaries of the claim in such a way as to make the claims by either party to land in the Bemu River Block I vague or inadequate. The fact that no other Stool has yet contested the ownership to this land in the Reserve must indicate it belongs to either Aperade or Achiasi and the Courts have decided against Aperade.

3. That the fact that no judgment was given by West African Court of Appeal or the Privy Council for Achiasi does not mean the land is not theirs and in the absence of any

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other claimants and since Achiasi are already occupying portion of the land it is assumed the area they claim in Block I belongs to them.

In view of the above this Court decides that the land claimed by Achiasi in Bemu River Block I as shown in the plan Exhibit "F" belongs to Achiasi.

(Sgd.) P.M.Riley,
RESERVE SETTLEMENT COMMISSIONER.

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SCHEDULE I

DESCRIPTION OF THE AREA COVERED BY THE ENQUIRY BLOCK I.

Commencing at B.P.14. on the Amanfupong Aperade Road the boundary runs on a bearing of 321 degrees 30 minutes for a distance of 45½ chains to B.P.15; thence on a bearing of 223 degrees 30 minutes for a distance of 18½ chains to B.P.16; thence on a bearing of 270 degrees for a distance of 20½ chains to B.P.17; thence on a bearing of 350 degrees 30 minutes for a distance of 18½ chains to B.P.18; thence on a bearing of 64 degrees for a distance of 56 chains to B.P.19; thence on a bearing of 340 degrees for a distance of 26½ chains to B.P.20; thence on a bearing of 355 degrees for a distance of 24½ chains to B.P.21; thence on a bearing of 58 degrees for a distance of 56 chains to B.P.22; thence on a bearing of 357 degrees 30 minutes for a distance of 101½ chains through B.Ps.23 and 24 to B.P.25; thence on a bearing of 320 degrees for a distance of 22 chains to B.P.26; thence on a bearing of 37 degrees for a distance of 35 chains to B.P.27 at the side of the Central Province Railway line; thence along the side of the Railway line towards Aperade in westerly direction for a distance of 53 chains to B.P.28; thence on a bearing of 195 degrees for a distance of 31 chains to B.P.29; thence on a bearing of 250 degrees for a distance of 41½ chains to B.P.30; thence on a bearing of 170 degrees for a distance of 36 chains to B.P.31; thence on a bearing of 199 degrees 30 minutes for a distance of 85 chains through B.P.32 to B.P.33; thence on a bearing of 214 degrees 30 minutes for a distance of 81½ chains through B.P.34 to B.P.35 situated on the side of the Amanfupong Aperade road thence along this road

in an easterly direction for 166 chains to B.P.14 the point of commencement.

All bearings are approximate and refer to True North.

All distances are more or less.

SCHEDULE II

COMMUNAL RIGHTS ADMITTED

I Nature of right	II Extent of right	III Persons permitted to exercise rights
1. Hunting	Unrestricted provided no steel traps used.	Stool subjects of Aperade, Amanfupong and the Akim Abuakwa Stools within their respective areas.
2. Fishing	Unrestricted provided no streams dammed	- do -
3. Collection of Snails, Honey, Mushrooms, Wild Yams.	Unrestricted.	- do -
4. Collection of Firewood.	Deadfall only for personal use.	- do -
5. Chew sticks, Sponges, Canes, Tie Tie, Thatch, Fu Fu Sticks, Building poles, Bamboo, Clay and sand.	On free permits from the Competent Authority for personal use only and not for sale.	- do -

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SCHEDULE III

INDIVIDUAL FARMING RIGHTS ADMITTED

1 No.	2 Area	3 Right Holders
25	2.50	Kojo Asanti of Nyankumasi.
26	7. 5	- do -
27	23.75	Kofi Nauwaa of Nyankumasi.
28	8.75	Kofi Owosu of Nyankumasi.
29	32. 5	Kwesi Bamfo of Nyankumasi.
30	7.	Kobina Enhata of Nyankumasi.
31	. 5	Kojo Donkor of Nyakumasi.
32	3.25	Yaobo of Nyankumasi.
33	16.75	Kojo Amansi of Aperade.
34	27.5	The Ohene of Aperade.
35	8. 5	Kweku Asa of Aperade.
36	16.25	The Ohene of Aperade.
37	3.25	- do -
38	36.25	Effua Hanson of Achiasi.
39	5.	Yoa Botwe of Achiasi.
40	25.	Kwabena Amoa of Achiasi.
41	12.5	Kwame Aboagya of Nyankumasi.
42	21.75	Kwesi Owusu of Nyankumasi.
43	6.25	Effua Hanson of Achiasi.
44	7. 5	The Ohene of Aperade.
45	22. 5	S.K.Tandoh of Aperade.
46	6.75	Kwame Ewuah of Aperade.
47	14.5	The Ohene of Aperade.
50	3. 5	Yao Botwe of Achiasi.
51	4.25	Kofi Nsua of Nyankumasi.
52	15. 5	The Ohene of Aperade.
54	7. 5	- do -
56	8.25	- do -
57	6.25	- do -
58	1. 5	Kojo Kobi of Achiasi.
59	2. 5	Kweku Aboa of Achiasi.
60	1.98	Kofi Amoama
61	13. 0	The Odikro of Nyankumasi.
62	10. 5	Sampson White of Aperade.

TOTAL 561.63 Acres.

SCHEDULE IV

RIGHTS ADMITTED STOOLS

1 Holder	2 Extent of Right	3 Nature of Right
The Achiasi Stool.	The Stool area within the Reserve.	All Communal rights as detailed in Schedule II.
The Aperade Stool including Amanfupong	- do -	All residual rights of ownership to land together with natural products and Minerals therein are vested in the Achiasi and Aperade Stools subject to obligations to comply with native customary law and the provisions of any Ordinance and direction given by the Forestry Department for the management of the Reserve in accordance with the provisions of Section 18 of the Forestry Ordinance Cap. 157.

No. 17.

NOTICE OF APPEAL

IN THE WEST AFRICAN COURT OF APPEAL
GOLD COAST SESSION - ACCRA

NOTICE OF APPEAL

IN THE MATTER OF THE PROPOSED BEMU RIVER FOREST RESERVE (BLOCK I)

1. The Chief Conservator of Forests, Accra — Respondent
2. Nana Otsibu Ababio II, Ohene of Aperade — Claimant-Appellant
3. Nana Darko Frempong II, Ohene of Achiasi — Claimant-Respondent

In the West African Court of Appeal.

No.17.

Notice of Appeal. 4th March 1957 - continued.

TAKE NOTICE that Nana Otsibu Ababio II, Ohene of Aperade, Boundary and Communal Rights Claimant of the proposed Bemu River Forest Reserve (Block I), being dissatisfied with the decision of the Court of the Reserve Settlement Commission of the Gold Coast dated the 12th day of February, 1957 at Oda Birim District, Eastern Region, 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 Appellant further states that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

2. PART OF DECISION OF THE LOWER COURT COMPLAINED OF :-

The whole decision

3. GROUNDS OF APPEAL:

(1) Because there was Misdirection or Error in Law - The Interpretation placed by the Reserve Settlement Commissioner on the authority quoted by Claimant-Appellant's Counsel as recorded by the West African Court of Appeal in the case Kodilinye vs. Odu and the principles in that case by Webber, C.J., and the arguments put up by Claimant-Appellant's Counsel are a big contrast.

(2) Because boundaries of land required for Bemu River Forest Reserve not adequately or properly shown.

(3) Because no Notice was served on Amanfupong who it is alleged jointly owned land with Aperade to prove his correct boundary with Achiasi.

(4) Because approach of Aperade by Government was in itself an acknowledgment that Achiasi owned no land in the area required for Forest Reserve or if Achiasi did they should have themselves made a claim to the land but had not done so and therefore cannot now be awarded the land.

(5) Because the views forming the basis of Reserve Settlement Commissioner's decision are otherwise wrong and untenable.

In the West African Court of Appeal.

No.17.

Notice of Appeal.

4th March 1957 - continued.

4. RELIEF SOUGHT FROM THE WEST AFRICAN COURT OF APPEAL:

(a) Reversal of Judgment of the Court of the Reserve Settlement Commissioner at Oda, Birim District dated the 12th day of February, 1957.

(b) Amanfupong to be given chance to come into the Enquiry to prove boundary of his land with Achiasi and/or Aperade Stools.

10 5. PERSONS DIRECTLY AFFECTED BY THE APPEAL:

Names and Addresses:

1. The Chief Conservator of Forests, Accra.
2. Nana Darko Frempong II, Ohene of Achiasi, Achiasi.

DATED at Cape Coast this 4th day of March, 1957.

(Sgd.) Otsibu Ababio II
Claimant-Appellant.

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20 No. 18.

No.18.

Supplementary Grounds of Appeal.

21st September, 1957.

SUPPLEMENTARY GROUNDS OF APPEAL.

PLEASE TAKE NOTICE that at the hearing of the above appeal, the Appellant will ask leave of the Court to amend his Grounds of Appeal by the addition of the following :-

1. The Reserve Settlement Commissioner was wrong in law in holding in effect that so far as the Appellant's (Aperade) claim was concerned the matter was Res Judicata by reason of the decision
30 of the Privy Council in Privy Council Appeal No.24 of 1953 (Exhibit C).

2. The said decision of the Privy Council did not result in judgment for the Respondents (Achiasi). As such, the Commissioner was wrong in decreeing ownership of the area in favour of the Respondent when he had led no evidence to establish ownership to the area of Block I Forest Reserve.

In the West African Court of Appeal.

No.18.

Supplementary Grounds of Appeal.

21st September, 1957 - continued.

3. The Reserve Settlement Commissioner was wrong in law in holding that the Appellant (Aperade) was estopped by the said Privy Council judgment and failed to recognise the distinction between a mere dismissal of an action and nothing more, and a dismissal which decides that the Plaintiff has no title.

4. There being no identity of subject-matter either in the physical sense, or in a judicial sense in the two suits the decision of the Commissioner cannot be supported; since it proceeds wholly upon the assumption that as there are only two claimants to Block I namely Aperade and Achiasi, if the former is estopped then the latter succeeds in establishing his right to all they claim.

DATED at Adontene Chambers, Accra, this 21st day of September, 1957.

(Sgd.) E.O.Asafu-Adjaye,
SOLICITOR FOR APPELLANTS.

The Registrar,
Ghana Court of Appeal,
Accra.

And to:

1. Nana Darku Frimpong, Ohene of Achiasi.
2. The Chief Conservator of Forest, Accra.

No.19.

Further Supplementary Grounds of Appeal.

21st October, 1957.

No. 19.

FURTHER SUPPLEMENTARY GROUNDS OF APPEAL

PLEASE TAKE NOTICE that at the hearing of the above appeal, the Appellant will ask leave of the Court to amend his Grounds of Appeal by the addition of the following:-

1. Wrongful rejection of admissible evidence; to wit:

   Judgment of the Divisional Court, Cape Coast, dated 19th November, 1926 relating to land comprising the area of Block I Forest Reserve in suit entitled:-

No.19.

Further Supplementary Grounds of Appeal.

21st October, 1957 - continued.

Ohinba Abina Egyie of Aprade and Robert Marmaduke Korsah of Saltpond for themselves and on behalf of the Oman of Aprade and other descendants of the former Oman of Amanfupon Plaintiffs

versus

Odikro Kodjo Dufoh for and on behalf of himself and the members of his family Defendant

between the privies of Claimant Appellants and the privies of Claimant Respondents and/or persons in identical interest with Claimant in the above Enquiry Respondents.

DATED at Adontene Chambers, Accra, this 21st day of October, 1957.

(Sgd.) A. Asafu Adjaye
p.p. E.O.Asafu-Adjaye & Co.,
Solicitors for Appellant.

The Registrar,
Ghana Court of Appeal, Accra.

And to:

1. Nana Darko Frempong, Ohene of Achiasi.
2. The Chief Conservator of Forest, Accra.

No. 20.

No.20.

Court Notes of Hearing.

5th November, 1957.

COURT NOTES OF HEARING.

5th November, 1957.

In the Court of Appeal, Tuesday the 5th day of November, 1957.

Cor: van Lare, Ag. C.J., Granville Sharp, J.A. and Amaa Ollennu, J.

Civil Appeal No.67/57

Re Proposed Bemu River Forest Reserve Block I.

Nana Otsibu Ababio II Claimant-Appellant

v.

Nana Darku Frempong II, Claimant-Respondent

Mr. Asafu-Adjaye for the Appellant.

In the West African Court of Appeal.

No.20.

Court Notes of Hearing.

5th November, 1957 - continued.

Dr.Danquah leading Akufo Addo and Dau Sakyi for the Respondent.

Court: Leave granted to argue supplementary grounds filed.

Asafo-Adjaye: Argues grounds 1, 2, 3 and 4 supplementary grounds together.

(1) Commissioner wrong in holding Exhibit "C" - res judicata.

(2) There is a distinction between a mere dismissal of an action and nothing more and a dismissal which decides that the Plaintiff has no title.

(4) No identity of subject matter.

Submits: The judgment of the Privy Council Exhibit "C" does not create estoppel in any form v. Aperade.

Reasons: (1) The judgment of the Privy Council was not an absolute determination that Plaintiff had no title. The action stood dismissed and no judgment pronounced in favour of Achiase.

(2) Aperade by itself was not a party to the Privy Council case, nor was it a privy of a party therefore there can be no estoppel.

(3) Subject matter of the Privy Council case is not the same as the subject matter before the Enquiry. In the physical sense it was not; and not also the same in the juridical sense. Refers to the Privy Council judgment Exhibit "C" p.68 underlined p.70 line 36-41 paragraph 3 "area" claimed - indeterminate area in dispute; p.71 line 50 p.72 - line 15.

Submits in the words of the Privy Council the area claimed lacks description and therefore no title could be given.

Per Ollennu: In the writ land claimed is determinate therefore Aperade, Plaintiff, lost in respect of that land as against the Achiase. Refers to judgment of the Land Court p.61 - lines 44-46 refers to Hall's judgment. Copy of Hall's judgment referred to and last three paragraphs of Hall's judgment. Land marked R.E.H. in Exhibit.

Per Sharp: Privy Council dismissed the claim; but the title of a smaller area in Hall judgment has been declared in favour of Aperade.

Asafu-Adjaye: Refers to Spencer Bower on Res judicata p.20/21 paragraph 41 - Dismissal only means denial of relief sought.

Cites: p.359 Vol.26 English Rept. Brandley v. Order.

" p.1160 Vol.26 " Gregory vs: Moultworth: whether there has been a determination on a part between the parties.

" p.1115 Vol.41 Bainbridge vs: Bradley: Test Test to be applied in determining res judicata.

Submits: If the Plaintiff claimed a large piece of land for declaration of title; it is in respect of the whole area that title is claimed; if he fails on the ground of indeterminate area that would not mean failure in respect of a specific area in respect of which there is a binding judgment in favour of the Plaintiff.

In the 1926 case judgment entered for Aperade.

In the 1926 case the Achiases were in a position where they ought to have applied to be joined but they did not do so therefore:

Summary:

(1) Judgment of P.C. was not an absolute determination that Plaintiff had no title.

(2) That if Achiase relies on P.C. judgment Court must be satisfied that Aperade no title to this land or to any part of it.

(3) All that P.C. said is that Plaintiff was not to be said to have made out their title to any particular "area" of land and they had not proved their boundary sufficiently to enable declaration to be made in their favour. The nature of the declaration must be such that subsequent generation must be able looking at the declaration to know the specific area in respect of which such a declaration made.

(4) Area claimed not treated in the P.C. judgment as being a defined area, but always as something indeterminate, i.e. no declaration of title can be given for uncertifiable boundary.

Submits: That there was no real adjudication by P.C. as to Plaintiff's title to any particular piece of land. Submits therefore in conclusion

In the West African Court of Appeal.

No.20.

Court Notes of Hearing.

5th November, 1957
- continued.

that Aperade not estopped and Settlement Commissioner was wrong in holding as he has done.

Part II: Submits Commissioner should not have declared that P.C. judgment is not an estoppel also because Aperade by itself was not a party to the Privy Council case, nor was it a privy to a party to that case. That being so there can be no estoppel when they claimed Block I Forest Reserve alone. Plaintiffs in the P.C. case were Aperade and Amanfupong jointly and not Aperade alone - see p.70 P.C. judgment. In the Enquiry Aperade claimed Block I alone and not jointly with Amanfupong. Submits no evidence in the enquiry Aperade claim for themselves and Amanfupong jointly. First proceedings in a joint claim, claimant in enquiry is Aperade alone.

Part III: Submits no estoppel because subject matter of the Privy Council not the same in identity as subject matter in the Enquiry. For estoppel to operate subject matter in both must be identical - Refers to p.409, 8th Edition Phipson on Evidence.

Submits in the physical sense no identity. Area of land in P.C. case not defined - undeterminable. Lords of the P.C. had in mind the vagueness of the land claimed in that case. Land in dispute in the Enquiry certain, submits specific land can not be deemed to be included in the indeterminate area.

Juridical sense: Submits not the same as in both cases. In one matter is whether Amanfupong and Aperade were jointly entitled to certain land, joint right. Issue before enquiry whether Aperade is owner of Block I.

Submits judgment of Commissioner founded on wrong premises.

Refers finally to decision of this Court in Evi Yiboe vs. Yaw Duedu; submits case distinguishable from present case on the facts.

Akufo Addo: Submits that the 1926 case was evidence in the Dennison case. When once a matter has been adjudicated upon one cannot re-open it; submits that undue latitude had been given to the Appellant.

Argument of Asafu Adjaye this morning is the sort of argument advanced on appeal on the judgment in the Dennison judgment. Submits the merits of the

1926 Hall's judgment is not the concern of this Court: If this is omitted we have the Court of Appeal judgment and the Privy Council judgment on the Dennison judgment.

Does the effect of this operate as an estoppel? When a judgment is delivered it is the decision in the highest Court that matters - p.35 Spencer & Bower on "Res Judicata"

Position is Asafu Adjaye says the W.A.C.A.and P.C. decision merely amount to mere dismissal and therefore this would not amount to estoppel per res judicatam.

There is a dismissal on the merits, or for a technical flaw etc. But when case is dismissed on the merits, such a dismissal is good for all purposes for estoppel per Res judicatam. On Estoppel see Everest & Strode 2nd Edition page 31. "The meaning of it (dismissal) in pleading .... as a bar etc." Submits the test is, was it the same issue that must be decided again which had been dismissed previously. Main reason is the same party should not be allowed to relitigate the same issue.

On joint parties - the fact that Aperade and Amanfupong jointly failed cannot mean that one alone without the other cannot be deemed to have failed.

Submits that parties are in the Dennison case, Aperade and Achiase as in the Enquiry as to ownership as to Block I. Enquiry adjourned because

Submits as to identity of subject matter submits that the fact that the subject matter of the Forest Enquiry is only just a small portion called Block I of a larger area of the P.C.; case does not for the purpose of estoppel any the less the same subject matter as the P.C's case.

Refers to what the Commissioner says on the pt. p.21, 22 and 23 At pages 25-26 - Block I far from the Edusa, Ewisa and Wurakessi boundaries.

Adjourned until 9 o'clock tomorrow morning 6.11.57.

6th November, 1957.

6th November, 1957.

Akufo Addo: In the 1926 Hall's judgment - this

In the West African Court of Appeal.

No.20.

Court Notes of Hearing.

6th November, 1957 - continued.

judgment was tendered in the Dennison case - and dealt with by the judgment of Dennison and held that the 1926 judgment not an estoppel against the Defendants in that case and the Respondent.

This is an adjudication in a matter in which the effect of the 1926 judgment had been pleaded and ruled against the Aperade. Dennison found both sides in possession, but found that the Achiase had been exercising more effective acts of ownership.

If Dennison, J. had stopped there he would have entered judgment for the Achiase (Respondent) but he went wrong in saying the Plaintiff (Appellants) were active in prosecuting their case. If the legal point on which Dennison J. had erred, i.e. guilt of laches is excluded submits on the balance of probabilities judgment would have been for the Achiase if they had counterclaimed.

Refers p.65 Dennison J's judgment.

p.68 W.A.C.A's. judgment - did not set aside findings of fact in favour of Respondents in this case.

p.70 P.C. judgment also confirms.

Submits if the Claimants before the Enquiry were three then Aperade would have been permitted to lead evidence in respect of the 3rd Claimant other than Achiase; but would not be heard against Achiase.

Upon dismissal of claim: Dismissal of Plaintiff's action is not to be described as a "mere" dismissal. Plaintiff was dismissed because he had not complied with providing the necessary evidence. Submits in the Dennison's judgment there is a determination of the vital issue between Achiase and Aperade.

Refers to Spencer & Bower p.28/9: On dismissal of action or motion.

Submits it is only where the dismissal is only a technical point e.g. jurisdiction such as would not prevent the unsuccessful Plaintiff in bringing another action where a dismissal of an action does not operate as a res judicata.

In the present case looking at the whole of the judgment and all the circumstances it is clear that issue was one of ownership of land which had been canvassed and thrashed out. The end result was that Aperade lost to Achiase and therefore it

is submitted that Aperade is estopped from re-litigating with Achiase in respect of the land.

Commissioner referred to the Abutia case.

All Parties: In the Dennison case Amanfupong and Aperade said they were joint owners and therefore sued jointly. Both Aperade and Amanfupong lost jointly; it cannot be argued that Aperade alone nor Amanfupong alone had not lost.

Identity of the subject matter: Covered yesterday. There is no doubt that Block I fell within the disputed area in the Dennison's case.

Asafu Adjaye: Submitted distinction between a joint claim and individual claim. Joint claim is a legal issue different from individual claim. Refers to Bower & Spencer p.30 end of para.41 - "Not proven" does not mean declaration made; it means facts not proved. Refers to Evi Yiboe vs. Yaw Duedu - judgment paragraph 2. There is no uncertainty about the identity; res judicata - subject matter must be identically the same.

Page 6/7 shows declaration in favour of one party;

Page 11 paragraph 2 of Bossman. sic.

Submits in this case: 3 things missing: (i) No declaration, (ii) Land not the same, (iii) Previous litigation not between the same parties.

Requirements of Res Judicata: See: 1 W.A.C.A.192 at 196 and 198; 6 W.A.C.A. at 76.

Privy Council criticised the W.A.C.A. judgment. Privy Council says case "Not proven" in page 71. P.C. judgment.

C. A. V.

(Intd.) W.B.V.

In the West African Court of Appeal.

No.21.

Judgment.

26th November, 1957.

No. 21.

JUDGMENT.

IN THE COURT OF APPEAL, ACCRA, GHANA.

Coram:

Van Lare, Ag. C.J.,
Granville Sharp, J.A.,
Ollennu, J.

26th November, 1957. Civil Appeal No.67/57

Bemu River Forest Reserve (Block I)
The Chief Conservator of Forests, Accra — Respondent

Nana Otsibu Ababio II, Ohene of Aperade, — Claimant-Appellant

v.

Nana Darko Frempong II, Ohene of Achiasi. — Claimant-Respondent

JUDGMENT

GRANVILLE SHARP, J.A.: This is an appeal from a judgment of Mr. P.M. Riley, Reserve Settlement Commissioner, given on the 12th February 1957 at the conclusion of an enquiry into claims to interests in land in the area of the Bemu River Forest Reserve.

For the purposes of this appeal the only part of the Forest Reserve area which is brought into consideration is the part denominated "Block I" which the Commissioner, then Mr. Riley's predecessor, separated from the rest of the area because a dispute had arisen at the time of the enquiry between the Appellant and the Respondent - the Aperade and the Achiasi Stools respectively -which affected the land to the north-east of the Aperade -Amanfupong road in which Block I is to be found.

Two other areas of the Reserve were separated into Blocks II and III, in relation to the former of which a dispute also existed, but at the time material to this appeal such dispute had been settled; all legitimate claims had been accepted, and there remained only the dispute between the Claimants in Block I, the Aperade and the Achiasi Stools, relating to land which was in extent greater

than Block I itself, and greater than the land in Block I to which the Achiasi Stool was laying claim before the Commissioner within the area of Block I, to the whole of which the Aperade Stool was laying claim.

It was this dispute that caused the Commissioner when he resumed the enquiry on the 16th April, 1953, after an adjournment from the 6th October, 1952, to state that he did not wish to hear any claims to land on the portion to the north-east of the road leading to Aperade from Amanfupong because the dispute was then within the jurisdiction of the Privy Council and was not likely to be settled for some time.

On the 2nd July 1956 the judgment of the Judicial Committee of the Privy Council was delivered, and, on the 25th October, 1956, Mr.P.M.Riley, who had then succeeded Mr.Pullen, re-opened the enquiry, but further adjourned the proceedings to the 27th November next following on the grounds that it appeared necessary for the boundaries claimed by each party before the High Court, the West African Court of Appeal, and the Privy Council to be shown on a plan in so far as they affect Block I. He added "From the plans now produced by each party it is clear that Aperade claim all the Reserve as part of their whole claim while Achiasi claims only a part", but pointed out that it was not possible from these plans to fix the actual Achiasi claim in Block I and ordered the Ohene of Achiasi to have his boundary cleared and cut so that the Forest Surveyor might on the 12th November 1956 survey the area.

The survey was duly made, and the enquiry was resumed on the 27th November, 1956 when the plans were formally handed in and accepted; also handed in and accepted were the judgments given in the Supreme Court, Gold Coast, the West African Court of Appeal and the Privy Council in the land dispute between Aperade and Achiasi Stools to which I have referred.

It is material to point out here that learned Counsel for the Aperade, apparently in answer to a question put to him by the Commissioner stated that he was not aware of any previous demarcation of land in Block I in connection with a dispute with Aperade and that he did not know the exact boundaries between Achiasi and Aperade in their land dispute which had been before the Privy Council.

In the West African Court of Appeal.

No.21.

Judgment.

26th November, 1957 - continued.

After formal evidence, not affecting the present appeal, had been given the enquiry was adjourned and was resumed on the 8th January, 1957, and it is in relation to the course then taken by the Commissioner that the matter comes before this Court.

At an early stage in the resumed enquiry the Commissioner stated that he would proceed to hear arguments by Counsel to decide on the correct interpretation of the Privy Council decision. Mr. Asafu-Adjaye then sought to put in certain documents that he said should have been produced in Court before, but were not, and grounded his application on the suggestion that, while they were not in any way intended to dispute the decision of the Privy Council they would help to clarify that decision.

Mr. Opoku-Afari objected to the acceptance of the documents and his objection being upheld, they were rejected. They were however tendered in this Court and examined and their importance will emerge later in this judgment. It can be said now generally but later with more particularity that in the main the competing arguments on behalf of Aperade and Achiasi Stools respectively were: on behalf of Aperade that the decision of the Privy Council was not conclusive against them, that the question of title to the land in the Reserve as between them and Achiasi was still open, that the judgments in W.A.C.A. and the Privy Council conferred no title on Achiasi who could not be heard to say that the land was theirs merely on the basis that the claim of Aperade before W.A.C.A. and the Privy Council had been dismissed; that Aperade were not precluded by the judgments in question from advancing their claim to Block I - on behalf of Achiasi, in summarised form, that Aperade were precluded by the judgments in question from asserting title to any land in the Reserve; that in their statement of claim they had claimed a large area which included Block I; that they lost their claim and that it would be derogatory of the decision of the Privy Council if the Commissioner were to grant a single farm within Block I to Aperade, and that no one else having claimed the land it should be adjudged to Achiasi.

It will now be convenient to consider the nature of the claim that came before the Supreme Court, the West African Court of Appeal and the

Privy Council and the decisions therein before reviewing the law and stating what is in my opinion, the effect of the impingement of the law upon the decisions in question, the Commissioner having held in the judgment appealed from, to put the decision at the present stage in its simplest form that Aperade having claimed Block I as part of the whole of their claim before the Courts had their claim dismissed and the right of Achiasi to possess the land claimed by them until successfully challenged by some party other than Aperade.

On this, which I regard as the point of cardinal importance in the case, he expressed himself as follows :-

"(1) That Aperade by the Privy Council decision have lost all the area they have claimed which area is shown on the plan Exhibit 'A' produced in Court and which plan was produced and accepted as Exhibit 'B' in the Supreme Court case.

(2) That the area of Bemu River Block I is within the area claimed by Aperade and does not border on any of the outer boundaries of the claim in such a way as to make the claims by either party to land in the Bemu River Block I vague or inadequate.

The fact that no other Stool has yet contested the ownership of this land in the Reserve must indicate it belongs to either Aperade or Achiasi and the Courts have decided against Aperade".

The writ of summons before the Supreme Court of the Gold Coast in the action which eventually reached the Privy Council set forth the claim of the Plaintiff (the chiefs of the Aperade and the Amanfupong) to "all that piece or parcel of land "commonly known and called Amanfupong and Aperade "Stool land situate in the Western Akim District "and bounded on the north by lands belonging to the "Stools of Eduase, Ewisa respectively on the south "by lands belonging to the Stools of Wurakessi, "Jambra and Asantem respectively in the east by "lands belonging to the Plaintiffs Stools and Sur-"asi Stool respectively and on the west by Akenten-"su stream and Wurakessi Stool land".

The Achiasi Stool defended this claim with a simple plea of "not liable", and Dennison, J. on the

In the West African Court of Appeal.

No.21.

Judgment.

26th November, 1957 - continued.

11th August, 1951 adjudged in favour of the Plaintiffs on the grounds that on a question of laches, rejecting the question of traditional history that had been voluminously raised in evidence, the Plaintiff had been the more diligent and the less at fault in a case where both parties had slept on their rights and that therefore being not so much blame-worthy in this respect as the Defendants, were entitled to the declaration of title sought by them. He cited the case of Nehirahene Kojo Addo v. Buoyemhene Kwado Wusu in 4 W.A.C.A. p. 96 upon the obligation of persons with interests in land to act timeously, and based his decision entirely on this principle.

On appeal to West African Court of Appeal it was argued on behalf of Achiasi that the real question in the case was not that of laches but the question whether the Plaintiffs had discharged the burden of proof laid upon them to establish their title to the land in accordance with the principle laid down in Kodilinoe v. Odu, W.A.C.A. Vol.2 p. 336. Upon a consideration of the argument and the record of the case West African Court of Appeal supported this view and upheld the test in the last cited case, allowed the appeal and reversed the judgment of Dennison, J.

In this form the matter came before the Privy Council who delivered judgment on the 2nd July, 1956. In the course of their judgment their Lordships commented as follows on the judgment of the Supreme Court: "It is to be noted that neither in "the statement of claim nor in the order of the "Court is there a reference to any plan by means "of which it would be possible to identify the "area in respect of which the declaration of title "was thus granted. The description used is no "more than a verbal description of the land".

Their Lordships then discussed the question of traditional history and upon this concluded as follows:- "The Assessor who sat with the Judge at "the trial accepted the Respondents tradition in "preference to that of the Appellants. The Judge "did not express any disagreement with him on this "point .. .. .. in their Lordships opinion there "is too vague a relation between these ancestral "stories and the proof of ownership of the area .. "to make it of any great importance which story was "accepted and which rejected in the case" and further "the learned Judge ... was probably right in

"saying that he was not prepared to decide the case "on the strength of any traditional history. But "he himself chose instead a determining test that "is even more vulnerable".

Their Lordships then considered the reasoning upon which W.A.C.A. had reversed the decision of the learned Judge in the Land Court viz: the failure of the Plaintiff to establish his title by adequate affirmative evidence, and commented "It can "be said that this again presents itself as a some- "what summary dismissal of a volume of evidence "that certainly went some way towards supporting "the Appellant's claim, and it perhaps overstates "the weakness in the evidence if allowance is made "for the fact that in cases of this kind standards "of proof have to be adopted it would seem, to the "unavoidable vagueness of much of the subject mat- "ter".

I cite these passages from their Lordship's judgment for the purpose of showing that neither the reasoning of the learned Land Court Judge nor of their Lordships in W.A.C.A. received the unqualified approval of their Lordships in the Privy Council, and of indicating that one must look elsewhere in the judgment to explain why their Lordships said "even so their Lordships who had the advantage "of an exhaustive analysis of the evidence from "Counsel representing the respective parties do not "come to any different conclusion from that reached "by the Court of Appeal".

Their Lordships' reason for arriving at this conclusion is to be found at a stage earlier in their judgment and is stated as follows:-

"The effect of the rest of the evidence can "be sufficiently stated in this way: The Appellants "called representatives of several Stools whose "lands were said to border on the disputed area and "they deposed that they had boundaries with the "Appellants and not with the Respondent. But ex- "cept for the testimony given for the Eduasa Stool, "no definition was afforded as to where these "boundaries ran and this branch of the evidence "therefore did not provide the useful proof that "it might otherwise have done. The Respondent too "called representatives of two neighbouring Stools "on the subject of contiguous boundaries, but it "would nevertheless be very difficult to make out "at any rate from the printed record where their

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No.21.

Judgment.

26th November, 1957 - continued.

"own Stool lands were said to be and where it was "that they believed that their boundaries coincided "with those of the Respondent ... it would have "been very difficult for a trial Judge to extract "from such evidence any pattern of asserted rights "that would justify attributing a whole defined "area to the Stool lands of one party or the other".

Earlier still in their Lordships' judgment, when dealing with the verbal description of the land in dispute they said "There is nothing in the "evidence which makes it possible to say that these "are adequate descriptions of boundaries and in "fact an order made in such form would do little "to settle the title to any particular disputed "area. However that may be, the order of the Su- "preme Court was reversed by a judgment of W.A.C.A. "dated 11th January 1952 and the Appellants' action "stands dismissed ... In their Lordships opinion "there is no ground for interfering with the order "of the Court of Appeal and the appeal ought there- "fore to be dismissed".

Viewing the matter in the light of these extracts from the judgment of the Privy Council the situation existing as a result of their judgment was as follows: The Supreme Court had for a reason which the West African Court of Appeal regarded as irrelevant, and which the Privy Council disapproved rather than approved, made a declaration of title to the land in favour of the Appellants. The West African Court of Appeal had, for a reason which the Privy Council did not unequivocally approve reversed this decision and the action of the Appellants stood dismissed. The Privy Council, applying a test of their own and holding that the boundaries of the land were too vague and indefinite to justify a declaration of title to any particular Stool, seem to have regarded the '<u>rationes decidendi</u>' in both lower Courts as being immaterial, but none the less refused to disturb the situation in which, as the result of the West African Court of Appeal decision, no declaration of title in favour of either party was subsisting.

I have dealt with this part of the case because Mr. Asafu-Adjaye in the course of his very able argument contended that the result of it all must be held to be a bare dismissal of the Appellants' claim and did not amount to a determination of any issue as to title between the parties.

He drew our attention to the passages in Spencer Bower on 'Res Judicata' at pages 28 and 29 which advert to the fact that "where an action ... is dismissed it is often a question whether there is any determination except upon dismissal", and cited the case amongst others, of Brandlyin v. Ord, 26 Eng. Reps. p.359 in which the Lord Chancellor in 1738 laid it down as a rule that where the Defendants plead a former suit that the Court implied there was no title when they dismissed the bill, is not sufficient, they must show it was "res judicata", an absolute determination in the Court that the Plaintiff had no title. For myself I find this an attractive argument in the present case, but inasmuch as it is not necessary for the purpose of a decision upon the appeal I mention it only out of respect for learned Counsel.

A more formidable ground of appeal argued before this Court by Mr. Asafu-Adjaye was that the Commissioner was wrong in accepting the Respondents plea of a former suit and in holding that the Appellants were by the judgment of the Privy Council estopped from laying claim to any land in Block I of the Bemu River Forest Reserve. He grounded this contention upon two reasons; first that the parties in the suits are not the same and second that the subject matter in the Privy Council case is not the same in identity as the subject matter before the enquiry.

As to the first reason advanced I say no more than that, with great respect, I can find little substance in it. As will appear later however it is not necessary for the purposes of this appeal to consider it further.

The real gravamen of learned Counsel's argument is that the Commissioner treated the subject matter in the Privy Council case as being the same as the subject matter before him, and therefore shut the Aperade out of the enquiry and awarded title to the Achiasi, who up to then had not at any stage specifically laid claim to any of the land in question. As has already been stated, certain documents were tendered in support of the Aperade claim and were rejected. I am of the opinion that, if the Commissioner had not at a very early stage in the resumed enquiry firmly concluded in his mind that the Appellants were estopped by the Privy Council judgment, he might have found that the documents assisted him, one way or the

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other, in deciding, on evidence, whether the issue before him was the same as the issue in the Privy Council.

However that may be, it is not for this Court to decide upon their evidential or persuasive value at any resumed enquiry that may be held, and I therefore refrain from so doing.

The law of 'Res Judicata' is well settled and well understood; perhaps in these Courts more than elsewhere, where repetitive litigation is not so common an occurrence. It was accurately stated by Mr. Akufo-Addo in almost the form in which it is stated at page 409 of the 8th Edition of Phipson on Evidence viz: "In order that a former judgment "should conclude the parties thereto or their privies, either as an Estoppel or as evidence, the matter in dispute must be identical in both proceedings"; or as Mr. Akufo-Addo put it "No two parties "or their privies can litigate twice about the same "subject matter". sic.

The question for decision therefore is whether the issue raised in the Privy Council case is identical with the issue raised before the Commissioner, and it is pertinent at the outset in considering this question to refer to some of the observations and findings of the Commissioner himself. He directed himself as follows:-

"It is the duty of this Court to interpret the "decision of the Privy Council only in so far as it "concerns land inside the Bemu River Reserve Block "I ... but I am only concerned with a small area "which is in no way contiguous with the land belonging to the Stools of Eduasa, Ewisa, Wurakessi "Jambra or Asentem and indeed has not been claimed "by any of these Stools".

Thus the Commissioner had found, and indeed he could do no other having regard to the plans that were before him, that the boundaries in dispute in the Privy Council in no way relate to the boundaries involved in the claims before him, indeed he went further, for in expressing his views at the conclusion of his judgment he states: "The "area of Bemu River Block I is within the area "claimed by Aperade and does not border on any of "the outer boundaries of the claim in such a way "as to make the claims by either party to land in "the Bemu River Block I vague or inadequate;" which I take it to mean that the Privy Council's

finding of vagueness and inadequacy in relation to the outer boundaries did not decide that the inner, and therefore lesser, boundaries were similarly designated.

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I agree with him in this, but I cannot understand his subsequent finding that the Courts have decided against Aperade, except upon the basis that he wrongly applied in a case where "res judicata" was alleged, and sameness or identity was thus in issue, the axiomatic mathematical truth that the part is included in the whole overlooking the more relevant consideration that one cannot accept the further truth that the part is less than the whole, and then follow by postulating that the two are one and the same thing.

He erred in this, and he erred further in failing to apply the test upon this issue that has been described in the case of Furness v. Hall, 25 T.L.R. 233 as the safest test; namely, whether the evidence required to support a claim to the area in Bemu River Block I would be the same as that that was led in the former case, as to wider boundaries on its way to the Privy Council. For myself I cannot see how the evidence could possibly be the same in both cases, but it was a question upon which the Commissioner refused to hear evidence.

In finding as I do that, contrary to the decision of the Commissioner, Aperade are not estopped, and are entitled to present their claim before him, I am fortified by the meanings attributed to the words "identical" and "identity" in the Shorter Oxford English Dictionary. I find the following: "Identical - the same the very same ... "agreeing entirely in material, contribution, pro- "perties, constitution ... expressing or affecting "identity" and "Identity - the quality or condition "of being the same ... absolute or essential same- "ness".

I find myself unable to condescend to the fallacy of asserting that the smaller part is the same as the greater whole, or the equal fallacy, elementary in each case in my opinion, that merely because the part is included within the whole the two are one and the same thing.

For these reasons I would allow this appeal, set aside the decision of the Commissioner in each of its findings and remit the case for a rehearing.

(Sgd.) G.Granville Sharp.

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VAN LARE, Ag. C.J.: I also agree that the appeal be allowed and the matter remitted for a rehearing as I do not think for the reasons given by my brother Granville Sharp that the Stool of Aperade is estopped by the final judgment delivered in the suit Nana Owudu Aseku Brempong II & Others etc. v. Nana Darku Frempong II etc. concerning a certain piece of land admitted not to be identically the same as the area of land covering Block I in this enquiry before the Commissioner from presenting their claim. Estoppel is a special plea, and "Res Judicata" in particular is a complex legal notion involving a combination of several essential elements, one of which is identity of the subject matter. The plea of estoppel fails if the judgment is not sufficiently clear and unqualified with respect to the subject matter in the subsequent litigation.

Lord Romer in New Brunswick Rail Co., v. British & French Trust Corporation, (1939) A.C. 1 at p.43 said:

"It is no doubt true to say that whenever a "question has in substance been decided, or has in "substance formed the ratio of, or been fundamental to the decision in an earlier action between "the same parties, each party is estopped from "litigating the same question hereafter. But this "is very different from saying that he may not "thereafter litigate, not the same question, but a "question that is merely substantially similar to "the one that has been already decided. If in an "action the question of the construction of a particular document has been in substance decided, "each party to the action is subsequently estopped "from litigating the same question of construction "of that particular document. But he is not estopped from subsequently litigating the question "of another document even though the second one is "in substantially identical words. For the documents are two distinct documents, and the questions of their construction are two distinct "questions".

In my view although the area in dispute is less than the area litigated in the former suit nevertheless the two areas are not identically the same subject matter. The question involved in this enquiry may be substantially similar to the one already decided, but it cannot be said that it is

the same question because the extent of the area is not the same. Although the concept of estoppel is not generally regarded as a substantive rule of law it is none the less often described as a rule of evidence. That is why I consider that the Commissioner should not decline hearing the Aperade Stool from leading evidence in respect of its claim to the area in dispute and the matter should then be left at large for a decision.

(Sgd.) W.B. van Lare

OLLENNU, J.: Whilst I agree with the principles of the law relating to res judicata enunciated in each of the judgments just read by my two learned brothers, I do not share in the interpretation they each place upon the term "identical subject matter" or "the subject matter must be identically the same". In my opinion that interpretation is too narrow.

In the action which commenced in the Supreme Court and determined in the Privy Council, the Appellant claimed declaration of his title to a well defined area of land, the boundaries of that land were set out with precision in the writ of summons and its extent accurately delineated on plan made for the purposes for the case. That plan was tendered in evidence in the present proceedings.

That claim put in issue the Appellant's title to every inch and every square inch of land comprised in or comprehended by the area so described and delineated; a judgment in the case must therefore affect not only the perimeter, but also the surface of that land.

He could, in that suit, have obtained declaration of his title to the whole of that area or to such portion of it in respect of which he was able to establish his ownership.

It is not difficult to see from the judgment that the learned Judge of the Supreme Court, regarded the balance of probabilities on the evidence of tradition, of exercise of right of ownership, and admissions made by two witnesses for the Appellant to be in favour of the Respondent. But he gave judgment for the Appellant because he found, to use his own words, that "of the two parties it is the Plaintiffs only who can be said to have acted timeously in asserting their rights".

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The West African Court of Appeal set aside that judgment on the grounds that the Appellant failed to prove that he was entitled to be declared the owner of the land in question.

An appeal was taken to the Privy Council, and their Lordships among other things, said:

> "The whole question is whether, upon a proper assessment of the evidence, the Appellants had or had not made out their title to the 'area' claimed. The trial Judge thought that they had, but then founded himself upon a method of assessment which is quite plainly unsatisfactory. The Court of Appeal thought that they had not, and their Lordships do not differ from the Court of Appeal".

And after observing that the test applied by the Appeal Court perhaps overstated the weakness in the evidence of the Appellant if allowance is made for the standard of proof required in cases of that kind, having regard to the unavoidable vagueness of much of the subject matter, their Lordships concluded their judgment in the following words:-

> "But even so, their Lordships, who had the advantage of an exhaustive analysis of the evidence from Counsel representing the respective parties, do not come to any different conclusion from that reached by the Court of Appeal".

The result of that litigation is that the Appellant was not found to be entitled to declaration of ownership to the land he claimed or to any portion of it.

Thus the evidence adduced by the Appellant failed to establish his title when tested by standard of proof which is lower than was normally applied. Although in that suit the Appellant claimed declaration of title to a large piece of land, yet, as I have stated above, he would have been entitled to declaration of his ownership to such portion of it which by his evidence he could prove belonged to him.

A defence of res judicata will succeed not only when the cause of action was the same but

also when the Plaintiff has had an opportunity of recovering and but for his own fault might have recovered, i.e. when it was open to him to recover in the first action, that which he seeks to recover in the subsequent suit, Halsbury 3rd Edition Volume 15, page 185, paragraph 358, and see the case of Re Hilton Ex Parte March (1892) 67 L.T.594. And the following passage appearing in the case of Hoystead v. Commissioner of Taxation (1926) A.C.155 at page 166 is in point:-

> "the same principle - namely, that of setting to rest rights of litigants, applies to the case where a point, fundamental to the decision, taken or assumed by the Plaintiff and traversable by the Defendant has not been traversed. In that case also a Defendant is bound by the judgment although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken. The same principle of setting parties' rights to rest applies and estoppel occurs".

Dealing with the heading "Identity of subject matter as a condition of Estoppel per Rem Judicatam" the following appears in Spencer Bower on Res Judicata, at page 115 paragraph 178:

> "For this purpose identity of subject matter means not only eadem res, but eadem questio - not only identity of subject-matter in a physical sense, but also identity of subject matter in a juridical sense".

He said that neither of these two forms of identity is sufficient without the other to support a plea.

And at page 116 paragraph 179 under the heading "Physical Identity" the following appears:-

> "There is no discrepancy or conflict of the nature above indicated, and there can, therefore, be no estoppel, unless that to which the res judicata relates, whether for instance, land, or its situation, or condition, goods, a person, an instrument, or a legacy is physically identical with, or physically comprehends, that to which the claim, or defence, or case set up in the subsequent proceedings relates".

For the purposes of this case the important

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words in that passage are those I have underlined - "Physically comprehends, that to which the claim, or defence or case set up in the subsequent proceedings relates".

The Oxford Dictionary defines comprehend as "to include" "to take in".

In the case of Long v. Gowlett (1923) 2, L.R. Ch.D. 177, a Plaintiff owner of a Water-Mill, had sued in a previous action to restrain the riperian owner of land higher up a river from obstructing his access to that land along the north bank of the river for the purpose of repairing the bank and cutting weeds, and had failed. He had based his claim to relief in that suit upon a prescriptive right to an easement to pass along both banks of the river. Subsequently he brought an action against a successor to the Defendant in the former suit to assert his right to pass along the south bank of the said river. A plea of res judicata was entered. It was argued on behalf of the Plaintiff that the subject matter of the second suit was the south bank only, and is therefore not identical with that in the former suit. It was held that a determination of the right claimed over the north bank of the river in the first suit, put into issue ownership of a right over the whole section of the river including the two banks, and therefore the subject matter of the second suit was included in the subject matter of the first, and plea of res judicata was sustained.

See also the case of Outram v. Morewood, (1803) 3 East 345, reported in 102 English Reports, at page 630. There a Plaintiff sued for trespass to a mine the plea of the defence put in issue his title to a whole area under which the vein trespassed upon was situate. He recovered damages for trespass. A successor to the Defendant in the former suit trespassed upon another part of the mine, and put in issue the Plaintiff's ownership of that particular vein. It was held that he was estopped by the judgment in the former suit from relitigating the Plaintiff's ownership of that particular vein, since it was within the limit of the area of the bigger land the ownership of which was traversed in the previous suit.

In the course of his judgment in that case Lord Ellenborough, C.J. stated as follows :-

"it is not the recovery, but the matter alleged by the party, and upon which the recovery proceeds, which creates the estoppel. The recovery itself ..... is only a bar to the future recovery of damages for the same injury, but the estoppel precludes parties and privies from contending to the contrary of that point, or matter of fact, which having been once distinctly put in issue by them, ... has been, on such issue joined, solemnly decided against them".

I am of the opinion that in this legal sense a part of a subject matter is identical with the whole. Unless that legal term is so interpreted anomalies will occur and the law relating to res judicata will become ridiculous.

If what I have stated is not the proper legal interpretation to be placed upon the term, what will happen is that a man who sues for declaration of his title to Black Acre and loses, will divide the same Black Acre into two or more parts which are together co-extensive with Black Acre, and sue separately for declaration of his title to each of them, and when he fails again, sub-divide the divisions, or divided the said Black Acre under another scheme and litigate his title to them ad infinitum: In my opinion if this were permitted, as Knox, C.J., puts it in Hoystead v. Commissioner of Taxation (1926) A.C.155 at 165, "litigation would have no end, except legal ingenuity is exhausted". In my opinion the question to be answered in this case is "does Block I fall within the area of land over which the parties litigated".

That question in my opinion is answered by the Settlement Commissioner who found that Block I is a small area almost in the centre of the land the boundaries of which are described in the claim which went before the Privy Council, and is in no way contiguous with the land belonging to the Stool described as boundary owners of the land in the Privy Council suit.

The land in dispute in the Privy Council case is therefore shown to include or to comprehend Block I. In the Privy Council title to the whole area including the area of Block I was litigated. In my opinion, therefore, the judgment of the Privy

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Council should operate as res judicata and the Reserve Settlement Commissioner was right in so holding.

Title of the Appellant was the issue litigated in the Privy Council case; the title is in issue in the present proceedings. The physical subject matter in dispute in the Privy Council case includes within it and comprehends the physical subject matter of the present proceedings. Therefore both in the juridical and physical sense, the subject matter of the present proceedings is identical with the subject matter of the Privy Council case and since all other elements of the principle of res judicata are present, these present proceedings are in my opinion res judicata.

It is for these reasons that I find myself unable to agree with my two learned brothers.

I would dismiss the appeal.

(Sgd.) N.A. Ollennu.

Asafu-Adjaye for the Appellant.

Akufo-Addo, Dua Sekyi with him for the Respondent.

No.22.

Application dated 7th March 1958 and Order granting Final Leave to Appeal to Her Majesty in Council.

26th May, 1958.

No. 22.

APPLICATION AND ORDER GRANTING FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

IN THE COURT OF APPEAL,
ACCRA. A.D. 1958

IN THE MATTER OF BEMU FOREST RESERVE (BLOCK I)

The Chief Conservator of Forests, Accra. Respondent

Nana Otsibu Ababio II, Ohene of Aperade, Claimant-Appellant

vs.

Nana Darko Frempong II, Ohene of Achiasi, Claimant-Respondent

In the West African Court of Appeal.

No.22.

Application dated 7th March 1958 and Order granting Final Leave to Appeal to Her Majesty in Council.

26th May, 1958 - continued.

APPLICATION FOR AN ORDER FOR FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

TAKE NOTICE that this Court will be moved by E.Akufo-Addo, Esquire, Counsel for the Ohene of Achiasi and on his behalf on Monday the 26th day of May, 1958 at 9 of the clock in the forenoon or so soon thereafter as Counsel may be heard for an Order for Final Leave to Appeal to Her Majesty in Council from the judgment of this Court delivered on the 26th day of November, 1957 And/Or for any such further Order or Orders as to the Court may seem fit.

DATED AT KWAKWADUAM CHAMBERS, ACCRA, this 7th day of March, 1958.

(Sgd.) E.Akufo Addo
SOLICITOR FOR THE OHENE OF ACHIASI.

26th May, 1958.

In the Court of Appeal, Monday the 26th day of May, 1958.

Cor: Sir Arku Korsah, C.J., Granville Sharp, J.A., and Ollennu, J.

Mr. Akufo Addo for Appellant.

Mr. Cross for Respondent.

Mr. Akufo Addo moves in terms of papers filed.

Mr. Cross no objection.

Court: Granted as prayed.

(Sgd.) K.A. Korsah, C.J.

E X H I B I T S

Exhibits

"A"

Land Court Judgment, Brempong v. Frempong.

11th August, 1951.

"A". LAND COURT JUDGMENT, BREMPONG v. FREMPONG

In the Supreme Court of the Gold Coast Lands Division, Cape Coast, Saturday the 11th day of August, 1951, Before Mr. Justice Dennison.

Transferred Suit No.12/1949

Nana Owudu Aseku Brempong II, alias Albert Robertson Micah Korsah and Nana Agyeiku Apare, Ohene of Aperade for themselves and on behalf of their respective Stools, Plaintiffs

v:

Nana Darku Frempong II, Ohene of Tarkwa Achiasi in the Akim Abuakwa State for himself and on behalf of the Stool of Tarkwa Achiasi and people, Defendants

JUDGMENT:

The Plaintiffs in their Writ of Summons claimed as follows :-

"The Plaintiffs' claim is for a Declaration of Title to all that piece or parcel of land commonly known and called Amanfupong and Aperade Stool land situate in the Western Akim District and bounded on the North by lands belonging to the Stools of Eduasa, Ewisa respectively on the South by lands belonging to the Stools of Wurakessi, Jambra and Asantem respectively on the East by lands belonging to the Plaintiff's Stools and Surasi Stool respectively and on the West by Akenkensu Stream and Wurakessi Stool land.

2. Five hundred pounds damages as for mesne profits".

The land claimed is the same as that the same Plaintiffs claimed from Odikro Kojo Dufoh in a case tried and determined in 1926 by, as he then was, Hall, J. The Plaintiffs in paragraph 9 of their statement of claim have pleaded that the present Defendants are estopped by reason of the Judgment of this said case from contesting the

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Land Court Judgment, Brempong v. Frempong.

11th August, 1951
- continued.

Plaintiffs' title, especially having regard to the fact that Dufoh was a sub-Chief of the present Defendants. After argument I admitted this judgment in evidence, my reason for doing so was that the said judgment being a judgment in personam would, on the disclosed facts, bind the Defendants if they had not taken part in the proceedings as it affected their interests, and they were aware of the suit. However in 1926 the Defendants did endeavour to be joined as co-defendants, their application was refused on the grounds that they were tardy in making the application. In his judgment Hall, J. was at pains to point out that the Achiases, the Defendants were in a position to take action if they so desired - vide pages 169 and 172 of the said judgment in the Record of Appeal in the 1926 case - in view of the Defendants' attempted joinder and this letter dictum I agree that this judgment does not in itself act as an estoppel against the Defendants.

Mr. Benjamin submitted in his closing address that the Plaintiffs had not any community of interest and this being so they were not entitled to bring this action. This same point was dealt with in the 1926 case and I have come to the conclusion, with respect, that the learned trial Judge was correct in ruling that the joinder was proper. The reasons being that the 1st Plaintiff, who struck me as a witness of truth, whilst stating he was not under any chief, claimed that he and the 2nd plaintiff jointly owned this land, in this he was supported by the 3rd witness for the Plaintiffs, who is the Mankrado of Aperade. In this respect it is to be noted that the 2nd Plaintiff did not give evidence to support his case, relying presumably on the evidence of the Mankrado. I accept the evidence of these two witnesses when they state the land is owned jointly between the 1st Plaintiff and the Stool of Aperade, this being so they have a clear community of interest and are, therefore, entitled to sue jointly in this suit.

The Assessor gave the following considered opinion :-

"This case is an intricate one. I have read the 1926 judgment of Hall, J. The judgment in that case has no bearing on this present action.

My opinion in this case is that according to

the Plaintiffs' claim it has been proved by the Defendant that his predecessors came and settled at the place called Komisa but owing to ravaging deaths removed to a place called Beposu and from there they moved to Okyi tree, which was named Tarkwa Achiasi.

The fact is admitted that the Defendants migrated from Juaso and settled at Tarkwa Achiasi, that is, free land containing Okyi trees long before the Denkyira War. According to the evidence adduced before the Court, Plaintiffs had scattered to different parts of the country owing to the war but the Tarkwa Achiasi people were not scattered because they were masters or the conquerors.

One of the witnesses of the Defendant whose name is Kojo Boapim II, the Twafohene of Denkyira State is successor of Anansi, who with two others, subdued their enemies during the Denkyira War.

According to Native customary law and usage if a State or Division of a State is besieged by another State and conquered and all their possessions confiscated the conquered people have no claim whatsoever to the lost heritage.

I refer to page 57 of Sarbah 2nd Edition clauses 1 and 2. Therefore Plaintiffs have no claim whatsoever against the Defendants".

With regard to this opinion Mr.Bannerman-Hyde made allegations in Court against the Assessor after he had delivered his opinion; these allegations I disregard. Counsel are always given an opportunity by me to oppose the choosing of any particular Assessor, this was in fact done by Counsel for the Defendants in the present case.

From a careful consideration of the evidence as a whole it has been established that both parties are in actual possession of parts of the area in dispute. The Plaintiffs in fact admit this by claiming mesne profits from the Defendants. Also in this regard the Defendants have proved to my satisfaction that they have, and I consider in good faith whether rightly or wrongly, made grants of land to various concerns, including the Basel Mission, in the past; I accept the evidence 1st witness for the defence, Kojo Amofu with regard to these grants. The only opposition made by the

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Land Court Judgment, Brempong v. Frempong.
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- continued.

Plaintiffs in respect of these various grants is that which concerns the issue of a Concession to Messrs. James Colledge & Co., Ltd., but as against this the 1st Plaintiff, when re-called, admitted that the Defendants had been cutting Timber on this land for a number of years; this supports the evidence for the Defendant when he stated they had been cutting timber for a number of years on the land. This evidence standing alone would tend to support the Defendant's case - see Rosa Anna Millar v. Kwadjoe Kwayisi 1 W.A.C.A. at p.7 - there are, however, other matters to be taken into consideration and with which I will deal later.

Mr. Benjamin at one stage submitted that the Plaintiffs had not pleaded possession of the land, no doubt it would have been better pleading to have done so specifically but I consider the Plaintiffs have in fact so pleaded when they claim damages for mesne profits.

The Plaintiffs gave as a reason for not attending the survey made by Mr. Mensah that as they had no boundary with the Defendants it was not necessary for them to attend; as this is the very point in issue I find the Plaintiffs attitude unreasonable on this point, but no doubt they acted upon advice which I can only say I consider was ill-advised. It is of the greatest assistance to the Court trying these cases if both parties are present when a Surveyor is making a plan of the area in dispute, if the claims of all interested parties appear on the same plan it makes the issue simpler inasmuch as it can be seen at a glance what is claimed by each party to the suit. In this suit three plans are in evidence and somewhat difficult to reconcile in various matters such as the manner in which various place names are spelt, the addition of villages and the omission of others.

In all suits similar to this a lot of evidence of traditional history is led by both parties, most of this is of necessity hearsay and I would not care to have to decide a case on such evidence. For example a witness for the Plaintiffs, P.6 Kojo Nkrumah, who was aged about 85 years old, stated that this land was given to the Defendants as a free gift, were this to be accepted on its face value it would weaken, if not destroy, the Plaintiffs' case; again the 5th witness for the Plaintiffs stated he "served the Defendants". Cases such

as this have long been a bone of contention in this province, and with the upward trend in the price of cocoa and timber they are increasing in numbers at a rapid rate. Since this suit started other parties have filed a suit which affects part of this same land. In the absence of any law relating to Prescription or Limitation there appears to be no finality to this type of litigation.

The Court of Appeal for Western Africa have in many cases laid it down that a person with a right or interest in land must act timeously. I refer especially to the case of Nchirahene Kojo Addo vs. Buoyemhene Kwadwo Wusu in 4 W.A.C.A. page 96 and the case therein referred to at page 100. I intend to approach this case, as I have in other similar cases, from this very equitable proposition of the law. Litigants who let others occupy and improve their land and take no action until the value of the produce of the land has risen, as have the prices of cocoa and timber in this Colony, can expect no sympathy from this Court.

In this case both parties have slept on their rights and I have to consider who is the worse offender.

In 1926 the Plaintiffs brought their action against Dufoh and it was only when the proceedings were nearly finished that the present Defendants thought of protecting their rights. Although Hall, J. expressed his views on what he considered the Achiases might do in the light of the 1926 case they have taken no action whatsoever. The Plaintiffs also have allowed a long gap of time to intervene before taking action against these alleged trespassers; it is however in their favour that they have again taken action. That is to say that twice in the last 25 years they have filed proceedings in this Court in order to protect their rights.

The Assessor has based his opinion principally on the evidence of traditional history and the rights of the conquerors. My disagreement with his views in no way reflects on his appreciation of this history. It is not to be expected that the Assessor would be aware of the decision of the West African Court of Appeal regarding people with rights to land acting timeously. By reason of the

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Land Court Judgment, Brempong v. Frempong.

11th August, 1951 - continued.

two cases filed by the Plaintiffs in respect of this land, and having regard to the fact that the Defendants have never sought a declaration of title, I am satisfied that of the two parties it is the Plaintiffs only who can be said to have acted timeously in asserting their rights, this being so the Plaintiffs are entitled to the declaration sought and I so order.

The evidence as to loss of mesne profits is not supported by an independent evidence, where a large amount of money is claimed I consider the claim should be supported by such evidence, no such evidence having been produced I award the Plaintiffs the nominal sum of £5. Plaintiffs to have the costs of this action, Counsel costs assessed at 60 guineas remaining costs to be taxed.

(Sgd.) T.A. Dennison,
JUDGE.

Counsel:-
J. Bannerman-Hyde for Plaintiffs.
Benjamin, Danquah & Alakija for Defendants.

"B"

West African Court of Appeal Judgment, Brempong v. Frempong.

11th January, 1952.

"B". WEST AFRICAN COURT OF APPEAL JUDGMENT - BREMPONG v. FREMPONG.

WEST AFRICAN COURT OF APPEAL
General Sitting held at Accra,
11th January, 1952.

Cor: Foster-Sutton, P.,
Coussey & Manyo-Plange, JJ.

Civil Appeal No.39/51

Nana Owudu Aseku Brempong II, alias Albert Robertson Micah Korsah & Nana Agyieku Afare, and on behalf of their respective Stools — Plaintiff-Respondents

v.

Nana Darku Frempong II, Ohene of Tarkwa Achiase in the Akim Abuakwa State for himself and on behalf of the Stool of Tarkwa Achiase and people — Defendant-Appellant

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JUDGMENT:

FOSTER-SUTTON, P.: The Plaintiffs-Respondents in

this case claimed for a "Declaration of Title" to land which is commonly known as Amanfupong and Aperade Stool land situated in the Western Akim District, Cape Coast, and £500 damages for mesne profits.

In the Court below a considerable amount of evidence, usually described as "traditional history", was led by both parties, and although the learned trial Judge says in his Judgment, "I would not care to have to decide a case on such evidence", I think it is clear that he regarded it, on balance as in favour of the Defendant-Appellant. He also found as a fact that both parties are in actual possession of parts of the area of land in dispute, and that the Appellants have made grants of land in the area to various concerns and that only one of such grants has been contested by the Respondents.

Having arrived at these conclusions the learned trial Judge went on to say :-

> "The Court of Appeal for Western Africa have "in many cases laid it down that a person with "a right or interest in land must act timeously; "I refer especially to the case of Nchirahene "Kojo Addo v. Buoyemhene Kwadwo Wusu in 4 "W.A.C.A. page 96 and the case therein referred "to at page 100. I intend to approach this "case, as I have done in other similar cases, "from this very equitable position of the law. "Litigants who let others occupy and improve "their land and take no account until the value "of the produce of the land has risen, as have "the prices of cocoa and timber in this Colony, "can expect no sympathy from the Court. "In this case both parties have slept on their "rights and I have to consider who is the worse "offender".

He concluded his judgment by saying:-

> "By reason of the two cases filed by the Plaintiffs in respect of this land, and having "regard to the fact that the Defendants have "never sought a declaration of title, I am "satisfied that of the two parties it is the "Plaintiffs only who can be said to have acted "timeously in asserting their rights, this being so the Plaintiffs are entitled to the declaration sought and I so order".

And he awarded the Respondents a nominal sum of £5

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"B"

West African Court of Appeal Judgment, Brempong v. Frempong.

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in respect of their claim for mesne profits.

On behalf of the Appellants Mr. Bossman argued that the learned trial Judge misdirected himself as to the real issue in the case, that the Respondents were the parties who were claiming a declaration of title to the land in dispute and that the onus of proof was, therefore, upon them. He submitted that the question which ought to have been asked was "the burden of proving their title to the land is upon the Plaintiffs, have they in fact discharged it", and that the principles enunciated by Webber, C.J. in the case of Kodilinye v. Odu, reported in W.A.C.A. Reports, Volume 2 p.336, are applicable to the case before us, and not those laid down in the case of Ado v. Wusu, W.A.C.A. Reports, Volume 4 p.96.

The relevant portion of the former judgment is to be found at pages 337 and 338, and reads as follows:-

> "The onus lies on the Plaintiff to satisfy the "Court that he is entitled on the evidence "brought by him to a declaration of title. "The Plaintiff in this case must rely on the "strength of his own case and not on the weak- "ness of the Defendant's case. If this onus "is not discharged, the weakness of the Defen- "dant's case will not help him and the proper "judgment is for the Defendant. Such a judg- "ment decrees no title to the Defendant, he not "having sought the declaration. So if the "whole evidence in the case be conflicting and "somewhat confused and there is little to choose "between the rival traditional stories the "Plaintiff fails in the decree he seeks, and "judgment must be entered for the Defendant."

In applying the principles laid down in the case of Ado v. Wusu the trial Judge appears to have lost to sight the fact that the Respondents were the persons seeking relief at the hands of the Court, not the Appellants. The former were asking for a declaration of title, and the onus of proving that they were entitled to such relief was clearly upon them. In order to succeed they had to prove that they were entitled to be declared the owners of the land in question.

I agree with the submission made by Counsel for the Appellants that the proper test to apply in a case such as this is that laid down in the

judgment of Webber, C.J., to which I have already referred. Applying that test I am of the opinion that the Respondents signally failed to discharge the onus which was upon them. That being so it follows that, in my view, this appeal should be allowed and the judgment of the Court below be set aside. I would fix the costs of the appeal at £42.7.6d.

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"B"
West African Court of Appeal Judgment, Brempong v. Frempong.
11th January, 1952
- continued.

COUSSEY, J.: I concur.

MANYO-PLANGE, J.: I concur.

"C". JUDGMENT OF PRIVY COUNCIL
BREMPONG v. FREMPONG

"C"
Judgment of Privy Council, Brempong v. Frempong.
2nd July, 1956.

Privy Council Appeal No.24 of 1953

Nana Owudu Aseku Brempong III and Another — Appellants

v.

Nana Darku Frempong II, — Respondent

From

West African Court of Appeal

Judgment of the Lords of the Judicial Committee of the Privy Council, delivered the 2nd July, 1956

Present at the Hearing:

Lord Morton of Henryton
Lord Radcliffe
Lord Somervell of Harrow
Mr. L.M.D. de Silva

(delivered by Lord Radcliffe)

This appeal concerns a boundary dispute between Plaintiffs who were claiming a declaration of title in respect of an area of land in the Gold Coast Colony on behalf of their two Stools, Amanfupong and Aperade, and a Defendant who represented the Achiase Stool. The land, according to the Plaintiffs, was the joint property of their Stools: according to the Defendant it belonged to his Stool and had been his Stool land from time immemorial.

At the trial of the action, which took place

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"C"

Judgment of Privy Council, Brempong v. Frempong.

2nd July, 1956 - continued.

in the Supreme Court of the Gold Coast, Lands Division, the Plaintiffs, the present Appellants, were granted a declaration of title in the terms asked for by their Statement of Claim. The order in question was made on the 11th August, 1951. It is to be noted that neither in the Statement of Claim nor in the Order of the Court is there a reference to any plan by means of which it would be possible to identify the boundaries of the area in respect of which the declaration of title was thus granted. The description used is no more than a verbal description of the land as "that piece or parcel of land commonly known and called Amanfupong and Aperade land situate in the Western Akim District and bounded on the North by lands belonging to the Stools of Eduasa and Ewisa respectively, on the South by lands belonging to the Stools of Wurakessi, Jambra, and Asentem respectively, on the East by lands belonging to the Plaintiffs' Stool and Surassi Stool respectively and on the West by Akankensu Stream and Wurakessi Stool land". There is nothing in the evidence which makes it possible to say that these are adequate descriptions of boundaries and in fact an Order made in such form would do little to settle the title to any particular disputed area. However that may be, the Order of the Supreme Court was reversed by a judgment of the West African Court of Appeal dated 11th January, 1952, and the Appellants' action stands dismissed. Before this Board they argued either that the Order of the trial Judge should be restored or that the case should be sent back to the Lands Division of the Supreme Court for a new trial.

In their Lordships' opinion there is no ground for interfering with the Order of the Court of Appeal and the appeal ought therefore to be dismissed. They will refer to so much only of the evidence given at the trial as is necessary to explain why this must be so. There is no point of law which bears upon the issue between the parties and the whole question is whether, upon a proper assessment of the evidence, the Appellants had or had not made out their title to the "area" claimed. The trial Judge thought that they had, but then he founded himself upon a method of assessment which is quite plainly unsatisfactory. The Court of Appeal thought that they had not, and their Lordships do not differ from the Court of Appeal.

Both sides called a number of witnesses at the

hearing. The bulk of their evidence can be grouped under three separate heads - tradition, acts of occupation and recognition of boundaries.

As is not unusual in these cases, there was a conflict between the traditions of the contending Stools as to how and in what right they came upon the lands which they now occupy. The Appellants' story was that they were original settlers and the Respondent's predecessors were imigrants from Ashanti who had got whatever land they did own at Achiase through a grant from a former Chief of the Aperade Stool. The Respondent on the other hand maintained that his Stool too descended from original settlers, entitled to the Achiase lands of their own right: the Appellants, they said had suffered conquest and dispossession at the time of the Denkyira wars some hundreds of years ago, at which time the Achiase men, having taken the winning side, had been installed by the Denkyira as overlords of the surrounding land. The assessor who sat with the Judge at the trial accepted the Respondent's tradition in preference to that of the Appellants. The Judge did not express any disagreement with him on this point. Their Lordships see no ground for taking a different view: but in their opinion there is too vague a relation between these ancestral stories and the proof of ownership of the area which is the subject of claim to make it of any great importance which story was accepted and which rejected in this case.

The effect of the rest of the evidence can be sufficiently stated in this way. The Appellants called representatives of several Stools whose lands were said to border on the disputed area and they deposed that they had boundaries with the Appellants and not with the Respondent. But except for the testimony given for the Eduasa Stool no definition was afforded as to where these boundaries ran and this branch of the evidence therefore did not provide the useful proof that it might otherwise have done. The Respondent too called representatives of two neighbouring Stools on the subject of contiguous boundaries, but it would nevertheless be very difficult to make out, at any rate from the printed record, where their own Stool lands were said to be and where it was that they believed that their boundaries coincided with those of the Respondent.

There was evidence on both sides as to acts of

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occupation. But apart from one or two disputed places, the evidence on this part of the case could hardly be regarded as even conflicting. Rather it seemed to show that at different points in the area persons had started cultivation or founded settlements who in some cases looked to the Appellants, in other cases to the Respondent, as Stool owners of the bits of land which they occupied. Conceivably it was not impossible, but undoubtedly it would have been very difficult, for a trial Judge to extract from such evidence any pattern of asserted rights that would justify attributing a whole defined area to the Stool lands of one party or the other.

In any event the case called for a fairly close analysis of the considerable bulk of evidence and that weighing of the respective elements which the Judge who conducts the trial is specially qualified to perform. Unfortunately that is not the treatment which it received. The assessor, as has been said, not only accepted the Respondent's tradition as to his Stool's origin but seems also to have regarded the Appellants as having lost all title to their lands at the time of the Denkyira conquest: and, on this basis, he regarded the Appellants as having "no claim whatsoever" against the Respondent. This is a very summary assessment of the effect of the evidence as a whole; and the learned Judge, while not disagreeing with the assessor's view as to the traditional history, was probably right in saying that he was not prepared to decide the case on the strength of any traditional history. But he himself chose instead a determining test that is even more vulnerable. His decision seems to have been based on nothing more convincing than the fact that the Appellants had twice before been litigants in respect of the disputed area, or some area related to it, while the Respondent's Stool had not moved to assert their title in the Court. In effect his ratio decidendi is contained in the one sentence of his judgment: "By reason of the two cases filed by the Plaintiffs in respect of this land, and having regard to the fact that the Defendants have never sought a declaration of title, I am satisfied that of the two parties it is the Plaintiffs only who can be said to have acted timeously in asserting their rights, this being so the Plaintiffs are entitled to the declaration sought and I so order".

To decide the case on this ground is to turn

one item of evidence, relevant though not necessarily significant, into the whole determining issue of the case.

When the appeal was taken to the West African Court of Appeal the Court rightly rejected the reasoning of the trial Judge and held that judgment ought to have been given according to the established principle in such cases, that a Plaintiff must succeed on the strength of the evidence that supports his own title not on any weakness in the evidence that might prove title in his Defendant. Applying that test they found that the Appellants had "signally failed" to discharge the onus which was upon them and accordingly reversed the judgment that had granted declaration of title.

It can be said that this again presents itself as a somewhat summary dismissal of a volume of evidence that certainly went some way towards supporting the Appellants' claim: and it perhaps overstates the weaknesses in their evidence if allowance is made for the fact that in cases of this kind standards of proof have to be adopted, it would seem, to the unavoidable vagueness of much of the subject matter. But, even so, their Lordships, who had the advantage of an exhaustive analysis of the evidence from Counsel representing the respective parties, do not come to any different conclusion from that reached by the Court of Appeal.

Their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The Appellants must pay the Respondent's costs.