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23, 1964

IN THE PRIVY COUNCIL

No. 32 of 1963

APPEAL FROM THE FEDERAL SUPREME
COURT OF NIGERIA

B E T W E E N :

DR. ESIN ANWANA ESIN
(For himself and as
representing the Esin
Family of Eyo Abasi)

Appellant

- and -

- 1. ATANG EDEM ABASI } of Eyo Abasi
- 2. ASUQUO EFFIONG }
- 3. OKON AKPE }

Respondents

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
**INSTITUTE OF ADVANCED
 LEGAL STUDIES**
 22 JUN 1965
 25 RUSSELL SQUARE
 LONDON, W.C.1.

78597

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Solicitors for the Respondents.*

IN THE PRIVY COUNCILNo. 32 of 1963APPEAL FROM THE FEDERAL SUPREME
COURT OF NIGERIA

B E T W E E N :

DR. ESIN ANWANA ESIN
(For himself and as
representing the Esin
Family of Eyo Abasi)Appellant

- a n d -

1. ATANG EDEM ABASI } of Eyo Abasi
2. ASUQUO EFFIONG }
3. OKON AKPE } Respondents

RECORD OF PROCEEDINGS

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E X H I B I T S

<u>Exhibit Mark</u>	<u>Description of Document</u>	<u>Date</u>
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C	Receipt for £13 for sale of land to Anwana Esin Anwana alias John Esin Anwana	17th January 1919

Exhibit Mark	Description of Document	Date
D	Lease Ebisio of Eyebosio to Anglo French Timber Co., Oron.	19th December 1919
E	Lease, The Nigerian Timber & Construction Co. Ltd. to D.G. Hall & Another	20th August 1926
F	Consent to Assignment of Lease	18th August 1922
G	Indenture of Lease, Obong E. Abasi and Others to F.J. Stratford and Another	7th August 1936
H	Letter. F.J. Stratford to J. Esin.	30th October 1933
J	Letter, Chief Okung Esin and Others re "Protest List"	3rd April 1959
K	Certificate of Ownership of James A. Udoh	11th October 1959
L	Copy of High Court proceedings in Suit No. CEL/1954	26th April 1954
M	Native Court copy of Proceedings in Case No. 583/54	7th July 1954 to 29th January 1955
N	Copy of Proceedings in Magistrate's Court, Oron No. C/49A/1935	8th October 1935 to 9th January 1936

APPEAL FROM THE FEDERAL SUPREME
COURT OF NIGERIA

B E T W E E N :

DR. ESIN ANWANA ESIN
(For himself and as
representing the Esin
Family of Eyo Abasi) Appellant

- and -

10

1. ATANG ADEM ABASI) of Eyo Abasi
2. ASUQUO EFFIONG }
3. OKON AKPE } Respondents

RECORD OF PROCEEDINGS

No. 1.

ORDER FOR RETRIAL

In the Native
Court

20

By virtue of the powers vested in the District
Officer under Section 28(1) (b) of the Native
Courts Ordinance, Cap.142 of the Laws of Nigeria
I, NATHANIEL OLANIPEKUN AKINYEMI, Asst. District
Officer of the Eket Division hereby order that
Oron Native Court Land Civil Suit No.563/54,
particulars of which are shown in the schedule
hereto, be retried before the Supreme Court of
Nigeria

No. 1

Order for Retrial
31st January 1955

REASONS FOR RETRIAL

1. The parties to the case have retained the services of Lawyers and wish to submit survey plans of the area in dispute during the proceedings.

In the Native Court

No. 1

Order for Retrial 31st January 1955 (Continued)

- 2. The land in dispute is crown land.
- 3. The plaintiff wishes to call a witness who is not subject to the jurisdiction of the Native Court.

Made at Oron this 31st day of January, 1955.

(Sgd) N.O. Akinyemi
Asst. District Officer
Eket Division

No. 2

No. 2

Particulars of Claim.

10

Particulars of Claim

SCHEDULE

Case No. & date	Parties	Particulars of Claim	
563/54	Dr.Esin Anwana	Plaintiff claims right of ownership and title for the land on which the Customs site is situated on Esin Ufot Eyo Abasi, Oron, as being his hereditary landed	20
7/7/54	Esin of Esin Ufot		
	Vs.		
	1.Atang Edem Abasi of Eyo Abasi	property the land in question having been bought and used over 40 years by the following ancestors of his: this land was bought by my grandfather, Esin Anwana Esin from Chief Anwans Nyeke both of Eyo Abasi; by, grand uncle Bassey Anwana Esin, from Ukpaema both of Eyo Abasi; by Chief John Anwana Esin father from Chief Nya Umo both of Eyo Abasi; cost of the land about £14.10s and a cow only.	30
	2.Asuquo Effiong of Eyo Abasi		
	3.Okon Akpe of Eyo Abasi		

Case No. P a r t i e s Particulars of Claim
& date

In the Native Court

No. 2

Particulars of Claim (Continued)

2. I humbly request that suit No.413/54/20 instituted by me on 28/4/54 against the plaintiffs be adjourned to next month till after the present suit has been determined by this court

10

No. 3

Order for Pleadings.

In the High Court

In the Supreme Court of Nigeria
In the Supreme Court of the Calabar Judicial Division

No. 3

Holden at Uyo

Order for Pleadings 2nd March 1955

Before the Honourable Mr. Justice Horace Stanley Palmer

20

Puisne Judge

Wednesday 2nd day of March, 1955

BETWEEN:

Dr. Esin Anwana Esin for himself
and as representing the Esin
FamilyPlaintiff
of Eyo Abasi, Oron

A n d

- 1. Atang Edem Abasi) of Eyo
- 2. Asuquo Effiong) Abasi...
- 3. Okon Akpe) Defendants

30

Udoma for Plaintiff

Anwan for Defendants

In the High Court

No. 3

Order for Pleadings 2nd March 1955 (Continued)

Order - S/C and plan 120 days

Defence - 60 days from service of S/C and plan.

(Sgd) Horace S. Palmer

Puisne Judge

2/3/55

No. 4

No. 4

Statement of Claim

Statement of Claim 27th June 1955.

In the Supreme Court of Nigeria

In the Supreme Court of the Calabar Judicial Division

10

Holden at Eket

Suit No.C/2/1955

BETWEEN:

Dr. Esin Anwana Esin for himself and as representing the Esin Family of Eyo AbasiPlaintiff

A n d

- 1. Atang Edem Abasi
 - 2. Asuquo Effiong
 - 3. Akon Akpe
- } of Eyo Abasi
.....Defendants

20

STATEMENT OF CLAIM

1. The plaintiff is a member of the Esin Family of Eyo Abasi, Oron and sues for himself and as representing the Esin Family aforesaid by whom he has been duly authorized to bring this action. The defendants are natives of Eyo Abasi, Oron and are sued jointly and severally in this action.

2. The land is subject matter of this action (hereinafter called the land in dispute) is known as "EKPE OLUHU" and comprises 4 contiguous portions. The said land is situate at Esin Ufot, Eyo Abasi, Oron and is particularly delineated and shown on the plan filed in this action. The land in dispute is bounded as follows:-

In the High Court

No. 4

Statement of
Claim 27th
June 1955
(Continued)

- 10 (1) On the North by the land formerly leased to Messrs. Elder Dempster Lines Ltd. and the Lands of Willie Afagname and Chief Enyekeng and the Cross River
- (2) On the West by the land of Chief Johnson Esin Anwana and Obogho Inyang's land and a thick forest.
- (3) On the South by the land of Obogho Inyang and the land of Ekpe Utok; and
- 20 (4) On the East by the Oron Sawmill land.

These boundaries are clearly set out and delineated on the plan filed in this action and to be produced at the hearing, and the land in dispute is on the said plan verged red. The various portions comprising the land in dispute are marked for identification purposes 'A', 'B', 'C', and 'D' on the said plan.

- 30 3. The land in dispute is the property of the plaintiff and his people whom he represents in this action. The plaintiff and his people have inherited the same from their ancestors or predecessors-in-title, Chiefs Esin Anwana Esin, John Esin and Abasi Anwana Esin who originally acquired the same many years ago from various persons and natives and people of Eyo Abasi. Ever since the said acquisition by purchase the plaintiff's
- 40 ancestors before the plaintiffs and the plaintiff and his people had exercised and are still exercising maximum acts of

In the High
Court

No. 4

Statement of
Claim 27th
June 1955
(Continued)

ownership over the Land in dispute by farming the same, remaining in possession of the same, granting portions of the same to strangers as tenants without let of hinderance by the defendants or by any body else. The plaintiff and his people are in possession of the land in dispute.

4. In exercise of his right of ownership, in or about 1914 the plaintiff's predecessor-in-title Chief Esin Anwana Esin placed his juju known as "AKA NJOM" on the land in dispute and thereafter placed his slave Ayang Esin therein as the caretaker thereof in order to prevent any interference on the land by anybody else. 10
5. In or about 1928 there arose a dispute between Ekpe Utok and Chief John Esin over the portion of the land in dispute marked "D" on the plan filed herein. In consequence of that dispute a boundary was fixed between Ekpe Utok and Chief John Esin, the plaintiff's predecessor in-title who thereupon erected concrete pillars along the boundary separating his land from that of Ekpe Utok on the southern portion of the land in dispute. 20
6. It had all been peaceful between the plaintiff and his people on the one hand and the defendants on the other hand. The defendants had always recognised and respected the rights, title and interests of the plaintiff and his people on the land in dispute until in or about 1952 when the Crown notified its intention to acquire the portion within the land in dispute together with a portion of Eyo Abasi land verged yellow on the plan filed herein. It was then for the first time that the defendants, despite the fact that they are not in possession of the land in dispute but the plaintiff and his people are, laid claim to the same as their exclusive property. 30 40
7. In furtherance of the said claim the defendants appeared before the Supreme Court, Calabar holden at Eket and claimed to be

exclusively entitled to the compensation payable in respect of the portion to be acquired aforementioned by the Crown. Thereupon the plaintiff and his people decided to establish by Court action their right, title and interest in and over the land in dispute. Wherefore the Plaintiff's Claim against the defendants jointly and severally as follows:-

In the High Court

No. 4

Statement of Claim 27th June 1955 (Continued)

- 10 (i) A declaration of title to all that piece or parcel of land known as "EKPE ALUHU" situate and being at Esin Ufot, Eyo Abasi, Oron, the said land being the exclusive property of the Esin Family, and delineated on the plan to be filed in this action and be produced at the hearing.
- 20 (ii) An injunction to restrain the defendants, their servants and agents and each and every one of them from any further act of interference with the right title and interests of the plaintiff and his people over the said land.

Dated at Aba this 27th day of June, 1955.

(Sgd) E. Udo Udoma
Solicitor for the Plaintiff

No. 5

Statement of Defence

No. 5

In the Supreme Court of Nigeria

Statement of Defence 3rd September 1955

30 In the Supreme Court of the Calabar Judicial Division

Suit No. C/2/1955

Filed at 8.55
of 3/9/55

Dr. Esin Anwana Esin
for himself and representing
the Esin Family of Eyo Abasi,
OronPlaintiff

versus

In the High Court

No. 5

- 1. Atang Edem Abasi)
- 2. Asuquo Effiong) of Eyo Abasi
- 3. Okon Akpe)Defendants

Statement of Defence 3rd September 1955 (Continued)

STATEMENT OF DEFENCE

1. The defendants admit that the plaintiff on record, Dr. Esin Anwana Esin, "is a member of the Esin Family of Eyo Abasi, Oron", but at the trial will require strict proof of his authority, capacity and"/or authorization to sue as" representing the Esin family aforesaid. The Defendants admit that they are members of Eyo Abasi as stated in para. 1 of the Statement of Claim. 10
2. The Defendants know the piece of land set out and/or otherwise delineated in the plan dated 6th day of April 1955 by Mr. E. Ekpenyong, Licensed Surveyor filed in this suit and described in para. 2 of the Statement of Claim and admit that it is situate at Esin Ufot, Ryo Abasi, Oron; but deny that it has at any time been known as and/or called EKPE PLULU and comprises A,B,C,D, as separate and/or distinct portions as alleged in the said para. 2 of the Statement of Claim aforesaid at all. The said piece of land verged red in the said plan is a portion of land known as EYOSATAI FAMILIES LAND lying between Idua Asan land on the one side and Udung Esang land on the other side and includes the land in dispute as shown in the plan dated 4th day of August 1955 by the same Surveyor Mr. E. Ekpenyong and filed (and served) with this Statement of Defence. 20 30
3. The said EYOSUTAI FAMILIES LAND, including the land in dispute, has from time immemorial been in the effective occupation, possession and/or use of the EYOSATAI FAMILIES of Eyo Abasi Oron as owners by right of first occupation who have since exercised over same maximum acts of ownership according to native law and custom without let and/or hinderance from the plaintiffs and/or any one else. 40

4. The Defendants deny that the piece or parcel of land in dispute covered by the plan and referred to in para. 2 of the Statement of Claim or any portion of it had at any time been purchased by the Plaintiff's ancestors or predecessors-in-title, Chief Esin Anwana Esin, John Esin and Abasi Anwana Esin from various persons and peoples of Eyo Abasi, and also that any portion of the said piece of land has at any time been in the said plaintiff's control and/or occupation as titular owners, and that they had ever granted same to strangers as tenants to the knowledge and/or with the acquiescence of the defendants or at all.
- 10
5. The defendants admit para. 7 of the Statement of Claim and state that the claim referred to therein was made in the exercise of the defendant's right of ownership of the piece of land in issue in the compensation case referred to.
- 20
6. Other than as admitted above, directly and/or by necessary implication, the defendants deny all the allegation of facts contained in the Statement of Claim to the same extent and/or as if they were set out ceriatim and in like manner traversed.
7. (a) The Defendants will at the trial rely on the proceedings and judgment in the Native Court of Oron Civil Suit No.563/54 between the same parties and in respect of the same piece of land and will found a plea of res judicata on same.
- 30
- (b) The Defendants will also at the trial maintain that the transfer of the said Native Court of Oron Civil Suit No.563/54 aforementioned is bad in law.
- (c) The Defendants will also at the trial rely on the judgments in the Magistrate Court's Suit No.C/49A/35 and will found a plea of res judicata on same.
- 40

In the High Court

No. 5

Statement of Defence 3rd September 1955 (Continued)

In the High Court

No. 5

Statement of
Defence 3rd
September 1955
(Continued)

(d) The Defendants will also rely on the proceedings and judgment in the Magistrate Court's Suit No.C/23/35.

Dated at Calabar this 25th day of August 1955.

(Sgd) E.E.E. Anwan
Solicitor for the Defendants

No. 6

Proceedings
26th February
1959

No. 6

PROCEEDINGS.

AT EKET, Thursday the 26th
day of February, 1959. Suit No.C/2/1955.

Dr. Esin Anwana Esin and Ors.

10

versus

Atang Edem Abasi and Ors.

Anwan moves in terms of motion dated 5th December 1958.

Eno, for Udoma does not oppose.

ORDER: Case restored to list for hearing at next Eket Session or some other Sessions by agreement of Counsel.

(Sgd) Horace S. Palmer
Puisne Judge
26/2/59.

20

14th September
1959

At Uyo, Monday the 14th day of September, 1959.

Suit No.C/2/1955.

Dr. Esin Anwana Esin & Ors.

versus

Atang Edem Abasi & Ors.

Dr. Udoma for the Plaintiff

In the High
Court

Mr. Anwan for the Defendants

No. 6

Case adjourned to 23/9/59 for hearing.

(Sgd) H.U. Kaine
14/9/59.

Proceedings
14th September
1959 (Continued)

At Uyo, Wednesday the 23rd day of September 1959.

Suit No. C/2/1955.

Dr. Esin Anwana & Ors.

23rd September
1959

versus

10 Atang Edem Abasi & Ors.

Dr. Udoma for the Plaintiffs .

Mr. Anwan for the Defendants.

Dr. Udoma says that the Court has already dealt with the question of the transfer of the suit mentioned in para.7 (b) of the Statement of Defence and that this affects the issue raised in para.7 (a). He says he would like to know whether the Counsel for the Defendants intends to take up para.7(c) and (d).

20 Mr. Anwan says that he has just pleaded those judgments but does not intend to rely upon them and that he would like evidence to be taken first.

Dr. Udoma says that since he has raised the issue he should say whether he intends to drop those pleas of estoppel now before he opens his case for the case is not supposed to go on when those pleas are still standing.

30 RULING - The plea of res judicata when raised can be taken at the beginning of the case if it would settle the whole issue at once but when once the defendant has indicated that he does not intend to rely solely on

In the High Court

No. 6

Proceedings
23rd September
1959 (Continued)

it, there is nothing to prevent evidence from being taken I therefore overrule the objection.

Dr. Udoma opens his case. He says that the defendants lay claim simply because there is a compensation to be paid for the acquisition of the land by the Government.

Plaintiffs Evidence

No. 7

Ekpo Ekpenyong Examination

No. 7

Plaintiffs Evidence

Ekpo Ekpenyong

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1ST PLAINTIFFS' WITNESS - EKPO EKPENYONG - Sworn on Bible States in English - I am a Licensed Surveyor resident at No. 28 Abua Street, Calabar. I prepared a plan for the plaintiffs in this case. I made the left hand side of the plan but the Director of Surveys added the right hand side. The land was shown to me by the plaintiffs and they took me round the boundary. During the survey I saw the concrete pillar which was said to be buried by Chief John Esin and marked 'A'. Plan tendered - No objection. Plan admitted and marked Ex. "A". I see this plan now shown to me. The red verge on the plan is represented by the green verge which was added by the Director of Surveys in Ex. "A". Tendered for identification. Admitted and marked Identification '1'. I see the plan on the lease now shown to me and I say that the red verge on the plan is represented by the green verge on Ex. "A". Tendered for identification - Admitted and marked Identification 30 2. The plaintiffs showed me the land to the north west of the land in dispute as a piece of land formerly leased to Elder Dempster Lines Ltd and the land in the North-East as Oron Sawmill Premises. I see the plan attached to the lease granted to Oron Sawmills and I say that the plan corresponds with the area shown by me in the north-east of Ex. "A" Tendered for identification. Admitted and marked Identification 3.

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Cross-Examination

CROSS-EXAMINED BY MR. ANWAN - The letters A, B, C and D on the plan were not inserted by me and I do not know what they indicate. I see Chief John

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Esin's land. It is separated from Eyo Abasi land by the brown verges. I agree that the dotted line which runs from west to east at the southern boundary of Eyo Abasi land is the line referred to as "The position of an old foot path". This dotted line is the southern boundary of Chief John Esin's land I see the land indicated as Chief Esin Anwana Esin's land. It is bounded on the north by the old foot path referred to above. The eastern boundary of Chief Esin Anwana Esin's land is indicated by a line of Oboti trees which run from the 3rd peg along the old foot path down to the southern boundary of the land in dispute. The two pillars in the west and the other in the east along the road from Oron Museum to Methodist Boys High School were not survey pillars. I also did some survey for the defendatns. This plan shows the whole of the land claimed by the defendants as the property of their family and in it I also inserted the land now in dispute. I tender the plan. No objection - Plan admitted and marked Ex. "B". When I was making Ex. "B", a sketch attached on to a judgment was referred to me. I was able to make out the features of that sketch on the ground. I incorporated the features on Ex. "B". This is the sketch that was referred to me - Tendered as an Identification Admitted and marked Identification 4. The features are indicated by circles verged red in Ex. "B".

In the High Court

Plaintiffs Evidence (Continued)

No. 7

Ekpo Ekpenyong Cross-Examination (Continued)

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RE-EXAMINED BY DR.UDOMA - It was only a sketch not a Survey plan. The sketch was a rough sketch by the Court.

Re-Examination

No. 8

No. 8

ESIN ANWANA ESIN

Esin Anwana Esin Examination

2ND PLAINTIFFS' WITNESS - ESIN ANWANA ESIN -

Sworn on Bible States in English - I am also known as Dr. Essien. I am a Medical Practitioner at Oron. I am a native of Oron and I come from Eyo Abasi village at Oron. I bring this action on behalf of the whole Esin Family. I sue the

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In the High Court

Plaintiffs Evidence (Continued)

No. 8

Esin Anwana Esin Examination (Continued)

defendants personally because they laid claim to this land in their personal capacity when the question of compensation arose. The land in dispute is known as "Ekpe Oluku". The land comprises four pieces bought at different intervals. These four portions are indicated by the letters A,B,C,D in Ex. "B", and the letters were inserted by the Director of Surveys on my instruction and in my presence. As a result of the order of this Court I took the 1st P.W. to the land in dispute. I showed him all the features in Ex. "A". As a result he gave the plan Ex. "A" which I filed in Court and which is now tendered in Court as Ex. "A". The land in dispute is bounded in the north west by the land formerly leased to Elder Dempster Lines Ltd.; on the north east by Eyo Abasi land; on the East by Oron Sawmills; on the South east by Ekpe Utok's land. The boundary here is shown by a pillar which was erected by my father John Anwana Esin in February 16th, 1928. There were live trees "Okono trees" now cut down when this case was pending in the Native Court. They were cut down by unknown persons. The land in dispute is bounded on the South by the land of Obogbo Inyang; on the South west by a forest land used as a bad bush and on the west by Anwana Ewekere's land, Johnson Esin Anwana's land, Chief Esang Enyekung's land and another Johnson Esin Anwana' land. The whole of this land in dispute is Esin Anwana Esin's family land. The portion of the land indicated by "A" in Ex. 'A' was acquired by my father John Anwana Esin in 1919 from the Chiefs of my village Eyo Abasi. This is the receipt which my father received from the vendors. Tendered - Mr. Anwan objects. He says that document does not indicate precisely the land referred to. Dr. Udoma says that that is a question of weight and proof not of admissibility. Objection overruled. Document admitted and marked Ex. "C". The portion of the land indicated by B in Ex. "A" belonged to my grandfather Chief Esin Anwana Esin. He bought it from his friend Anwana Nyehe for one cow and drinkables according to native custom. This was long before my father bought the portion referred to above as "A". My father paid £13 and the usual customary drinks for "A". The

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portion of the land indicated by "C" was bought by my uncle Abasi Anwana Esin 1925 for £7:10/- from his friend Ukpaeme. He was an Eyo Abasi man now dead. This portion was only a portion of the whole land sold to him the remaining portion having been acquired by the Oron Sawmill for which I receive the rent of 10/- annually for the family. This amount is paid to me up to the present day. The whole rent for the various owners of different portions is £66 but my family gets only 10/- out of this sum of money. The portion of the land indicated in Ex. "A" as 'D' was bought by my father in 1914 for £14:10/- and some customary drinks. The whole of this land is used as a family land. My family farms the land and there are cassava farms belonging to us on the part not occupied by the Customs Department. A portion of the whole land in dispute was leased to Anglo French Timber Company in 1919 and there was a lease executed between my people and the Company. This is the lease. Tendered - No objection Identification 2 now admitted and marked Ex. "D". Later the same portion of land was leased to Nigerian Timber and Construction Company. This was a sublease from Anglo French Timber Company. Tendered - No objection. Sub-lease dated 20/8/26 admitted and marked Ex. "E". There was a document of consent executed by my family before Ex. "E" was made. Tendered - No objection admitted and marked Ex. "F". Later on some part of this portion of land was leased to Stratford and George Allen. Tendered - No objection - Admitted and marked Ex. "C". Before this lease was executed there was a correspondence between my father and Mr. Stratford. Letter dated 30/10/1933 - Tendered. No objection - Admitted and marked Ex. "H". I got the plan Identification (1) withdrawn by the Plaintiffs' Counsel Apart from the portion of the land acquired by Government the whole land in dispute is now from. My family has always been in possession of the land in dispute since it was acquired by our ancestors. There is another portion of our land now in dispute for which we receive £1.10/- annually from the Sawmills making a total of £2. If any part of Eyo Abasi land is leased, the head of the village signs but the individual owners of the different portions have to share the rents accruing therefrom. It was

In the High Court

Plaintiffs Evidence (Continued)

No. 8

Esin Anwana Esin Examination (Continued)

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In the High Court

Plaintiffs Evidence (Continued)

No. 8

Esin Anwana Esin Examination (Continued)

when the Government wanted to acquire the land for Customs purposes that I summoned a meeting of the whole family of Eyo Abasi including the Defendants and it was then the defendants began to lay their claim. I summoned them because part of the land to be acquired was a communal land of Eyo Abasi family. The defendants had their own portion to farm and they never farmed on the land now in dispute. The defendants claim the land in dispute as their own exclusive property not as that of the whole family of Eyo Abasi. Hence this action and I claim as per the writ of Summons and the particulars set out in paragraph 7 of the Statement of Claim. The case No.C/49A/1935 did not refer to the land in dispute.

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Cross-Examination 24th September 1959

CROSS-EXAMINED BY MR. ANWAN -- deferred to 24/9/59.

Case adjourned to 24/9/59

(Sgd) H.U. Kaine
Ag: Puisne Judge

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At Uyo, Thursday the 24th day of September, 1959.

Dr. Udoma for the plaintiffs

Mr. Anwan for the defendants.

P.W.2 - Esin Anwana Esin still on his oath - I am a native of Eyo Abasi. My family is one of the eight families in Eyo Abasi. The defendants are also members of Eyo Abasi. They come from Eyo Sutai family which is also one of the eight families. My grandfather bought the portion named B in Ex. "A" from Chief Anwana Nyehe. He is from Eyo Sutai family. I say that Bassey Anwana Esin bought plot "C" from Ukpaeme. Ukpaeme is not from Eyo Sutai family. He was of Ottisong Abasi family now extinct. I do not know that he has a son called Otisong Ukpa. I see this man in Court. I have been told that he is a son of Ukpaeme. I do not know that he is from Eyo Abasi. I now say that if the family of Ukpaeme is not extinct there will be nine families in Eyo Abasi but I say that the family of Ukpaeme is almost extinct. Now there are eight families at Eyo Abasi. He will be a

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native of Eyo Abasi but he will belong to the 9th family.

In the High Court

N.B. - The witness is referring to Otisong Ukpa.

Plaintiffs Evidence (Continued)

No. 8

Esin Anwana Esin Cross-Examination 24th September 1959 (Continued)

I say that plot D was bought from Aya Umo. He was from Eyo Sutai family. I agree that plots B and D originally belonged to the individuals of Eyo Sutai family. I say that plot 'A' was bought from Eyo Abasi Chiefs. After the case of 1908 against Richard Henshaw it was agreed that the whole water front from the ancient path should be the communal property of the whole of Eyo Abasi family. The old foot path is on the plan in Ex. "D" but not correctly set out. The foot path between plots "A" and "B" is a part of the old foot path. I say that in 1908 there was a big land case between the Henshaws and the Eyo Abasi Chiefs. The Eyo Abasi Chiefs were the plaintiffs. I say that the 1908 case was in respect of the water front land. The whole of the land from Idua Asang to Udung land comprising the whole of the water front was agreed to be a communal land. We have to pass the Methodist Boys School when going from Idua Asang to Udung land and a portion of the Methodist High School is a communal land. I say that a portion of Idung Abang land from the ancient foot path to the water front is a communal land. The other families that came to help in the 1908 case were Idun Usutai and Idun Ekpo and Eyo Ebiesio. Eyo Esutai was one of the families that owned the land from the old foot path to the water front. My family Idun Esin owned the land on which the Oron Boys High School was built. My family Idun Esin had no interest in any portion of land in Ex. "A" before 1908 I say that Ex. "C" is a document in connection with the purchase of plot "A". I had no personal knowledge of the transaction but Ex. "C" is from my father's archives. Anwana Esin Anwana alias John Esin Anwana is my father. At that time one of the signatories Eyan Asanam was the head chief of the Eyo Abasi family. Chief Esin Anwana Esin was my grand father and the second head chief. He was one of the signatories - Abasi Etan Ewak was the head chief of Eyo Sutai

In the High Court

Plaintiffs Evidence (Continued)

No. 8

Esin Anwana Esin Cross-Examination 24th September 1959 (Continued)

family at that time. They were all illiterates. Ex. "C" was witnessed by four persons and the writer. I do not know when my grandfather died. If my father said that he died in 1918 it might be a mistake. I cannot say for which case the summons in Ex. "C" refers but I know that the Henshaw case continued until 1920. I agree that the two houses in plot "A" of Ex. "A" are still in existence. I do not know when they were built I grew up to meet them. The owners are not members of my father's family nor members of Esin's family. They are members of Eyo Ebiesio Abasi family. The houses were built after the purchase of the land by my father. People are still living there. They make farms on plot "A" on my permission. I do not know Biosio Okon. I do not know Okon Ating but I know Sam Uya. I gave him the place to stay. Ma Edua Abang is now dead but I permitted Sam Uya to live in the house. Efiong Esang Ebianha is still alive. The father of Efiong Esang Ebianha was my father's father-in-law. My father gave him the place to build and when he died his son continued to live there. I cannot say definitely who built the present house now on the site whether it was Efiong or his father Esang. I know Ikpe Esang. He lives in the house with Efiong. He is Egiong's junior brother. They do not use the place as part and parcel of Eyo Abasi communal land. There is a shed near the beach on plot "A". It is used for selling fish and garri. Iquo John and Arit Mbunanie use the shed amongst others. The women collected money to build the shed. The other women came to me to complain that Iquo and Arit wanted to collect money regularly from them but I told them not to pay. Iquo is my sister-in-law and she lives on my land. I have threatened her with ejection from my land if she continued to give trouble. It is not true that Iquo and Arit pay tribute from the tolls collected from the shed to the head chief of Eyo Abasi. I gave evidence concerning this land in dispute in the Native Court and I referred to Ex. "C" in connection with plot 'A'.

My grandfather knew the perimeter of the land which he bought in plot "B" of Ex. "A". There were witnesses to the sale. They came from my

family. They are Chief Ekpe Esin, Okung Esin, Okodi Udo Esin and another. I said in the Native Court that no relatives Anwana Nyehe were present when he sold plot "B" to my father. I agree that the whole of plot "B" was leased to the Anglo French Timber Company together with other pieces of land. I cannot say whether plot "B" was bought before 1908 or not. Now I change to say that my grandfather had acquired interest in plot "B" long before the case in 1908. My father was in possession of the record of the case in 1908 but when he died the record was lost. I have got another copy of the record. It is not true that the Anglo French Timber Company came for the lease of the land in 1916 after the 1908 case. The area leased to Anglo French Timber Company in 1919 was the area verged green in Ex. "A". The boundaries of the land in Ex. "D" were described as the property of John Esin because at that time my father was the head of the Esin family. I say that the places described as the site of old French Buildings were not properly sited on Ex. "A" hence they are outside the land leased to the French Company. I also say that the one in the south was never leased to the French Company but to one Mr. Walker by my father. I agree that the French Company had two buildings near the ancient foot path. The French Company had also a storeyed building but it is not sited on the plan. It was near the present road to the Methodist Boys High School but outside the area given to Customs. I agree that it is near the place sited on Ex. "B". They left the buildings behind when they went away. The buildings were demolished by Ekpe Uto of Eyo Sutai family and their head chief but as they were going away my people seized all the materials from them. My father sued Ekpe Uto in the Magistrate's Court claiming damages for trespass but he died before the case was tried. I know one Tom Mamfe. He used to be my tenant. I did not know him as one of the labourers living in the French Company buildings. I do not know that the labourers continued to be there for 6 months. The labourers' Quarters were demolished by my family but it was the bungalow that caused trouble. I deny that Tom

In the High Court

Plaintiffs Evidence (Continued)

No. 8

Esin Anwana Esin Cross- Examination 24th September 1959 (Continued)

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In the High Court

Plaintiffs Evidence (Continued)

No. 8

Esin Anwana Esin Cross-Examination 24th September 1959 (Continued)

Mamfe was collecting rents from the labourers and paying the rents to Eyo Sutai family. I said in the Native Court that while I was in England my uncle wrote to me that the 3rd defendant was planting cassava on my father's land. I told him not to fight until I returned.

This was in 1951. The Government announced their intention to acquire the land in 1952.

Anwana Nyehe had a beautiful daughter by name Nkoyo Anwana Nyehe. She was married to my father in April 1929. Anwana Nyehe did not allow my father to cultivate plot 'B'. He did not marry the girl from Anwana Nyehe but from his brother. My grand father had a piece of land from Anwana Nyehe near to the Holy Child Convent at Oron. I do not know when it was bought. This piece of land is far away from the land in dispute. The defendants made the suggestion in the Native Court that that is the land that I was confusing with plot "B" but I do not agree. I have however not been able to find any document in connection with this sale. What I say about plot "B" is what my uncle told me and also by other witnesses. I do not agree that my father was farming plot "B" because of his connection with Nkoyo Anwana Nyehe. I say that Aya Umo sold plot "D" to my father for £14. He was from Eyo Sutai family. He had a brother by name Umo Utuk who was a friend of my father and married my father's aunt. My father lived in the house of Umo Utuk for a short time after the death of Aya Umoh. Aya Umoh had two brothers Umoh Utuk and Ekpe Utuk. When Ekpe Utuk grew up he complained that he was young when his brother sold the land to my father so it was decided that my father should give him a portion of the land. This was done and a boundary was fixed by my father and Ekpe Utuk - See the S.E. of the plan Ex. "A". The portion which was purchased by my father in plot "D" was then longer than what is shown in Ex. "A". The land was Umoh's family land before the sale. The second defendant is a son of Aya Umoh. Plot "B" sold by Anwana Nyehe was his personal land. My father put on the pillars at the boundary between himself and Ekpe Utuk but the Okono trees were planted on the boundary by Ekpe Utuk. My father put in 19 pillars but they were uprooted and Okono

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10 trees destroyed before the inspection by the Native Court. Only one of the pillars was left. The 19 pillars were along the South-Eastern and Southern boundaries of the plot. I do not agree that what was given to Ekpe was his own share of the partition of the land which was alleged to have been sold. The pillar in the South west of plot 'B' was also placed at the same time as the nineteen other pillars.

10 It is not correct that the plot verged purple in Ex. 'B' was pledged to my father for £3. I did not say in the Native Court that the land in dispute belonged to Eyo Sutai family but that the people who sold the land to us were from Eyo Sutai family. It was when this case arose that all the descendants of Esin Anwana Esin decided to treat all their lands as a common property of the Esin family and fight the case together. In my family I am

20 the head of Esin family not because I am the oldest but because we have inheritance by the rule of primogeniture.

Case adjourned to 25/9/59

(Sgd) H.U. Kaine
Ag: Puisne Judge

At Uyo, Friday the 25th day of September, 1959

Dr. Udoma for the plaintiffs

Mr. Anwan for the defendants.

30 P.W. 2 - ESIN ANWANA ESIN - Still on his oath - Cross-examination by Mr. Anwan continues - I was the only plaintiff on record representing the family in the Native Court. In this court I had added three other plaintiffs. The name of Johnson Esin Anwana was not included in this Court merely because two properties belonging to him were mentioned by me in the Native Court. Anwana Abasi Esin one of the co-plaintiffs has since died. By Esin family I mean "Udun" Esin. I know Chief

40 Ekpo Esin. He is my grand uncle. I now say that Chief Ekpo Esin is my second cousin, his grandfather being of the same father with my

In the High Court

Plaintiffs Evidence (Continued)

No. 8

Esin Anwana Esin Cross-Examination 24th September 1959 (Continued)

Cross-Examination (Continued) 25th September 1959

In the High Court

Plaintiffs Evidence (Continued)

No. 8

Esin Anwana Esin Cross- Examination 25th September 1959 (Continued)

grandfather. I claim to be the head of the Esin family not from my grandfather but from the very first ancestor whose name was Esin. I claim this property not for Udun Esin but for my grandfather's family. Part of the land leased in Ex. 'D' belonged to Eyo Sutai. I am aware of the action between Chief Etoyo Mkposu and my father Chief John Esin. My father was the defendant. It originated in the Oron Native Court, Calabar. It was a land case concerning the water front of my present building. I do not know of any specific name given to the land. The house in which I am now living was not in existence at the time of my father. I know Chief Manson's house. The compound is still there. I am not a Surveyor. I do not know whether the property is properly sited on your plan. I do not know Ani's house. I know Willie Afaha Ema's house. It is still there. I know Asana Ebana's house and also Edua Abana's house. I know the land that was leased to the Nigerian Timber Company. The houses I say that I know can still be identified on the ground. All these features are between Idua Asan land on the west and Udung Esang land on the East. Excepting willie Afaha Ema's house all the other features are between the road to the Methodist Boys High School and the water front. The cause of action in that case was not the piece of land on which my house is built. The cause of action was a piece of land in front of my house from the ancient foot path to the water front. It is within the land described in your plan Ex. 'B'. My house had a shed on the land then in dispute when he was clearing the Mangrove forests. The land on which my house is situate was not in issue. I remember I signed this letter dated 3/4/59. Tendered - Dr. Udoma objects. He says that the letter is irrelevant. He says that the issue of the headship has never been raised in the pleadings. Mr. Anwan says that para. 1 of his Statement of Defence makes the letter relevant. I overrule this objection. Letter admitted and marked 'J'.

Re-Examination

RE-EXAMINED BY DR. UDOMA - I know well about the 1935 case that went to the Magistrate's Court on appeal and I know the land that was in dispute quite well. I never knew that the Defendants had

made a plan. The land shown in Ex. 'B' is not a communal land of Eyo Abasi but belongs to individuals. The land shown green in Ex. 'A' was granted to the French Company by Eyo Abasi and not by Henshaw. There was no plan made in the 1935 case in the Native Court. The land which was in dispute in that case was part of the communal land of Eyo Abasi. I say that Plot 'B' was acquired long before the Henshaw case. I was not born at the time the land was bought. My family has been using plot 'B' to the exclusion of others since I was born. The two houses shown on plot 'A' were built with the permission of my father. Apart from these two houses there are no other houses on the land in dispute except those recently built by Customs & Excise. Each individual who had land in the lease of the French Company gave his consent. Everyone from Eyo Abasi knew about the lease. The Summons which my father issued when Eyo Sutai demolished the buildings of the French Company without his consent could not be traced so I have no certified copy of it. The two plots I mentioned in the Native Court as the properties of Johnson Esin are on the western side outside the land in dispute. My father paid £14.10/- for plot "D". The shed on plot "A" at the water front was originally built by the Isobo tenants of mine but when they left I permitted the women to erect their own shed there after the Isobo tenants had gone. I allow them the free use of the place. The defendants were present when the decision was taken by the whole people of Eyo Abasi between my father and Ekpo Utuk. None of them protested and we were all farming side by side, they on theirs and we on ours. This was in 1928 and we had never been disturbed. The people who live in the houses on plot "A" are not Eyo Sutai people. They are natives of Eyo Abasi but they are our tenants and recognise us as such.

In the High Court

Plaintiffs Evidence (Continued)

No. 8

Esin Anwana Esin Re-Examination (Continued)

Case adjourned to 19/10/59 at Calabar.

(Sgd) H.U. Kaine

Ag: Pusine Judge

In the High Court

No. 9

Court Notes

Plaintiffs Evidence (Continued)

No. 9

Court notes 19th October 1959

At Calabar, Monday the 19th day of October, 1959.

Mr. Arikpo for Dr. Udoma for the Plaintiffs

Mr. Anwan for the defendants.

Mr. Arikpo says that Dr. Udoma is asking for adjournment till next Session. He refers to the letter written to Court

The Court observes that the application came rather too late and that this is the only case before the Court from today until Thursday. Under the circumstances the Court cannot grant the application. Mr. Arikpo then consulted the plaintiffs and agreed to proceed with the case but asks that the case be adjourned until tomorrow in order to get more instructions. Mr. Anwan does not oppose.

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Case adjourned to 20/10/59 for hearing to continue

(Sgd) H.U. Kaine
Ag: Puisne Judge

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At Calabar, Tuesday the 20th day of October, 1959

Mr. Arikpo for Dr. Udoma for plaintiffs

Mr. Anwan for defendants

No. 10

No. 10

Effiong Essang Ebiangha Examination

EFFIONG ESSANG EBIANGHA

3RD PLAINTIFFS' WITNESS - EFFIONG ESSANG EBIANGHA

Sworn on Bible states in Efik. I live at Asin Ufot Eyo Abasi - A farmer. The house in which I live was built by my father. My father is dead. He obtained the land from Chief Esin the father of the first plaintiff. My father was the father in law of Chief Esin. I was not present when

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Chief Esin gave the land to my father. It was my father who told me. I have been living there from my childhood. I am about 60 years old. I have always been living in the house. No body else has ever used the land in the premises. There are fruit trees in the premises, pears and coconut trees. They were planted by my father and the plaintiffs people. Throughout the period that I have lived there not one of the defendants has challenged my right to be there.

In the High Court

Plaintiffs Evidence (Continued)

No. 10

Effiong Essang Ebiangha Examination (Continued)

Cross-Examination

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CROSS-EXAMINED BY MR. ANWAN - The house was built by my father about 60 years ago. I was old enough to know when the house was built. My father was living at Oron Beach when he gave his daughter to Chief Esin. I cannot say whether the house was built before the first world war. The plaintiffs use the land between my house and the water front and nobody else. I do not know of any shed at the water front in front of my house. I do not know a woman called Arit Mbonganie. I do not know Iquo John Ekereke I do not know Afiong Abasi Etan Awak. I do not know whether such people pass in front of my house to sell fish at the beach. I visited the beach last about two months ago. I do not know an Ibo man called Chilbuzo Okpala. We never discussed in my house about leasing a portion of the beach to him. I never heard of the case between Ayo Abasi chiefs and Chief Henshaw. I am a native of Eyo Abasi I do not know that all the land in the water front belongs to Eyo Abasi family.

RE-EXAMINED BY MR. ARIKPO - None

No. 11

SAM UYAI

No. 11

Sam Uyai Examination

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4TH PLAINTIFFS' WITNESS - SAM UYAI - Sworn on Bible. I live at Eyo Abasi at Oron - A farmer - I lieve in the compound of Ma Edua Abang's house. Ma Edua is dead. One Warri a stranger sold the house to me. Warri is now dead. I bought only the house. John Esin is my ground

In the High Court

Plaintiffs Evidence (Continued)

landlord He was the father of the 1st plaintiff. The 1st plaintiff is not my ground landlord. I have been living there for about 20 years. I know the defendants. They never came to me to say that the land was theirs.

No. 11

Sam Uyai Examination (Continued)

CROSS-EXAMINED BY MR. ANWAN - I now say that I live in Ma Edua's house. I first lived there as a tenant before I bought I knew Ma Edua Abang. I was then living at the Sawmill premises.

Warri was my first landlord. Before I came to the house Ma Edua had died. When a wall of my house fell down one Ifang an uncle of the 1st plaintiff stopped me and said that the land was the property of the Esin family. At that time the father of the 1st plaintiff had died. I bought him drinks and begged him and he allowed me to repair the wall. We made a written agreement when Dr. Esin returned from England and made palaver with me. This agreement was made two years ago. This is the agreement. Tendered -

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Cross-Examination

No objection - Admitted and marked Ex. "K". The 1st plaintiff said I should not pay rents because the man who sold the house to me did not pay rents. I make farm in the premises. I pay rents for the land I farm on. I used to pay to the 3rd plaintiff when the 1st plaintiff was not in the country. I still continue to pay rents to 2nd and 3rd plaintiffs I was informed that I would give evidence before the Session at Uyo. I am not on subpoena. There is a shed at the waterside. The shed was built about three months ago. Formerly women used to sit in the open and sell fish. I know Arit Mbang Anie and also Iquo John Ekereke and Afoing Abasi. They have been selling fish there for about five years. I do not know that they pay rents to Eyo Abasi Chiefs. I know the last witness. The beach where the shed is is very near his house.

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Re-Examination

RE-EXAMINED BY MR. ARIKPO - I thumb printed it two years ago. I thumb printed two papers. I thumb printed two papers at the same time.

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No. 12

EKPO ESIN

In the High Court

Plaintiff's Evidence (Continued)

No. 12

Ekpo Esin Examination

5TH WITNESS FOR THE PLAINTIFFS - EKPO ESIN -
Sworn on Bible States in Efik-- I live at Eyo
Abasi - A farmer - I am 90 years old this year.
I have lived at Oron all my life I know the
land in dispute. I gave the land which is
requisitioned by the Customs and Excise. The
land belongs to Esin Anwana Esin. One Anwana
10 Nyehe sold the land to him. I was present
when the land was sold to him. He gave a Cow
to the owner of the land and the value of the
Cow was then £12. He also gave him drinks
worth 14/-. There were two other persons
present. They were Abasi Anwana and Ating
Anwana. There were other people also present
including Okung Esin. Esin Anwana Esin was
my half brother. Before I gave the land to
20 Customs I and others of our family were farm-
ing on it. There was no dispute about the
land until I granted it to the Customs. No
other person was using the land except members
of the Esin family. I know John Esin. He was
my half brother. He had a piece of land which
he bought from Aya Umo. The land is near the
French Company. He bought it for £14. 10/-.

CROSS-EXAMINED BY MR. ANWAN - The 1st plaintiff
the son of my brother, is the head of the Esin
family but I am the eldest in the family. I
30 am under the headship of the 1st plaintiff. I
am the paramount head of the Eyo Abasi Esin
family is one of the families in Eyo Abasi
village, there are eight families in Eyo Abasi.
I know one Otisung Ukpa. He is an Eyo Abasi
man. He belongs to Eyo Sutai family. He is
not a grandson of Anwana Nyehe. This very
case was once tried in the Native Court at Oron.
I did not give evidence in the Native Court.
I am the only Ekpo Esin in my family. I now
40 remember that I gave evidence in the Native
Court in this case. I was present when he
Esin Anwana Esin bargained for the purchase of
the land from Anwana Nyehe. I was present when
they agreed upon one Cow and also drinks worth
14/-. All this took place in the house of
Esin Anwana Esin. I saw the

Cross-Examination

In the High Court

Plaintiffs Evidence (Continued)

No. 12

Ekpo Esin Cross-Examination (Continued)

Cow when it was handed over. We also went on the land which was purchased. I told the Native Court that I was present during the transactions. The 2nd defendant is a son of Aya Umo. The 2nd defendant asked me in the Native Court whether I was present when Aya Umo sold a piece of land to John Esin and I said that I was present. The land is on the left side of the road of Esin Ufot to the Methodist Boys' High School. I mean the road from Oron Museum to the Methodist Boys' High School. I now say that the land is on both sides of the road. When I told the Native Court that the land was on the right I was referring to a foot path and when I told this Court that the land was on the left I was also referring to another foot path leading to the French Company. The land along the river side is the property of the whole of Eyo Abasi. I do not know the Ibo man called Chibuzo Okpala. I remember a lease that was to be made to an Ibibio man. I was a party to the lease. The proposed lease had a boundary with the Customs. The land we wanted to lease was not within the land in dispute. It is true that John Esin was married to Nkoyo Anwana Nyehe a daughter of Anwana Nyehe but that it was not through her that John Esin entered the land Plot "B".

Re-Examination

RE-EXAMINED BY MR. ARIKPO - I was present when arrangements were being made to lease the land to Chibuzo Okpala. We asked him to bring money but he did not, so we refused him permission to go on the land. I never leased the land to him. By the Court - I knew the land where Ma Edua Abang's house is and also the land where Efiong Essang Ebianha's house is. They belong to the 1st Plaintiff. But we have told the 1st Plaintiff that the land near the waterside in front of these houses belongs to the whole of Eyo Abasi Family. I know the place where the women are selling fish. The land belongs to the whole of Eyo Abasi family. The women used to pay some tribute to the Chiefs of Eyo Abasi.

The Counsel are asked if they had any questions. Mr. Anwan said he had none. Mr. Arikpo says he has. By Mr. Arikpo - The chiefs of Esin Ufot who receive the tribute are the

chiefs of Eyo Abasi. Any Eyo Abasi man can go and live there. We took the decision that the whole water front should be the property of Eyo Abasi since the case of the Eyo Abasi family and chief Henshaw.

In the High Court

Plaintiffs Evidence (Continued)

No. 12

Ekpo Esin Re-Examination (Continued)

10 Mr. Arikpo asks for adjournment to reconsider the position of his clients as regards the evidence given by the last witness about the portion of land marked "A" on the plan. Mr. Anwan has no objection.

Case adjourned to 21/10/59.

(Sgd) H.U. Kaine
Ag: Puisne Judge

No. 12 (a)

No. 12(a)

EKPO ESIN (Recalled)

Ekpo Esin (Re-called)

At Calabar, Wednesday the 21st day of October 1959.

Mr. Arikpo for the plaintiffs

Mr. Anwan for the defendants.

20 Mr. Anwan applies that the last witness be recalled so as to offer him the opportunity of putting a question to him about the Crown lease which was made to the Crown by the last witness and the defendants.

30 Mr. Arikpo objects. He says that recalling the last witness will serve no useful purpose because the last witness has already told the Court that the land at the water front was a communal land and for that reason the defendants must have joined to grant the lease.

R U L I N G - I think that the application is fair at this stage of the proceedings and I do not think that to recall the last witness will do injustice to the plaintiffs or prejudice their case now. Afterwards it is important that all relevant matters which will help the Court to

In the High Court

come to a decision will be placed before the Court.

Plaintiffs Evidence (Continued)

Application granted.

No. 12(a)

Ekpo Esin (Re-called) (Continued)

5th PLAINTIFFS' WITNESS - recalled - Ekpo Esin - Sworn on Bible States in Efik - XXd by Mr. Anwan - I know the piece of land which was granted to the Customs. I gave the land to the Government. I remember we appeared before a Judge at Eket to determine who own the land and the amount of compensation to be paid. I agree that I appeared before the Judge with the first defendant and one Ebiekpe but it was in connection with the strip of land which is near the water front. Mr. Anwan seeks to tender the proceedings in Suit No.C/1/54 - The Lieutenant Governor, Eastern Nigeria vs. Chief Atang Edem Abasi and others. Mr. Arikpo has no objection - Admitted and marked Ex. "L". I did not oppose Atang Edem Abasi taking part in granting the lease because part of the land granted was communal. The land is near the water and not part of the land now in dispute. He joined in granting the lease as one of the chiefs of Eyo Abasi. All the chiefs of Eyo Abasi were in Court and I represented them.

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Cross-Examination

Re-Examination

RE-EXAMINED BY MR. ARIKPO - It was made clear to all the chiefs of Eyo Abasi that their interest in the grant was that communal strip of land near the water front. Dr. Esin joined us in making the claim.

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No. 13

No. 13

George Henry Allen Examination

GEORGE HENRY ALLEN

6TH PLAINTIFFS' WITNESS - GEORGE HENRY ALLEN - Sworn on Bible States in English - I live at Oron - Sawmiller. I have a lease of the land I occupy. This is my lease. Ex."G" identified. I pay rents to the chiefs and people of Eyo Abasi. I know the land lying to the west of the portion leased to me. I have seen the late John Esin and his wife farm that land about 1934 - 1936 I have lived at Oron

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since January 1934. Throughout this period I have not seen any other person other than members of John Esin family farm the land.

In the High Court

Plaintiff's Evidence (Continued)

No. 13

George Henry Allen - Examination (Continued)

CROSS-EXAMINED BY MR. ANWAN - I knew members of late John Esin family as from January 1934 and I knew they were farming the land. John Esin also gave me a right of way over his land to reach the main road. I agree that at that time he was the head chief of Eyo Abasi.

Cross-Examination

10 RE-EXAMINED BY MR. ARIKPO - None.

No. 14

No. 14

OKON ESIN

Okon Esin Examination

7TH PLAINTIFFS' WITNESS - OKON ESIN - Sworn on Bible States in Efik - I live at Eyo Abasi - A farmer. About 70 years old. I am related to the 1st plaintiff. His father was my elder half brother. It was bought by my father Anwana Esin. He bought it from Anwana Nyehe for a Cow and drinks. I was present at the transaction. There were other people present. We farm on the land. A part of it was given to the French Company. The house was broken down and the land used in farming. I know John Esin. He had a land to the right of my father's land when facing the sea. He bought the land from Chief Aya. He bought it for £14.10/-. I was present. Aya's brother Ekpe complained that Aya had no right to sell the whole land to chief John Esin. Ekpe summoned the village and reported that the land sold by Aya to John Esin included his own land and that he wanted his land excluded. The village agreed with him

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In the High Court

Plaintiff's Evidence (Continued)

No. 14

Okon Esin Examination (Continued)

Cross-Examination

and made an order accordingly. They cut a portion and gave to Ekpe and on the boundary they planted "OKONO" trees. John Esin also put cement pillars to mark the boundary.

CROSS-EXAMINED BY MR. ANWAN - The sale by Anwana Nyehe was in my father's house. My father first sent his brother Abasi to see whether the land was large enough for a Cow before he paid for it. This was many years ago. I was then about 10 - 12 years old. I gave evidence in this case in the Native Court. I told the Native Court that I was then a very small boy. I went with Abasi to see the land. I did not tell the Native Court that only Okodi and Abasi went. I too was in the company. The land was not measured but they showed us the boundaries and we marked them with sticks. It was Anwana Nyehe who showed us the four boundaries. It was then a forest land. 10

I do not remember the year in which John Esin bought a piece of land from Aya Umo. I remember the case between Eyo Abasi Chiefs and Richard Henshaw. I cannot say whether the sales to Esin Anwana Esin and John Esin were before or after the case. A portion of the land in dispute was leased to Anglo French Timber Company. The two plots had been sold to my father and my brother long before the French Company came. I know the land that was leased to the French Company. The area near the water belonged to Eyo Abasi village but the land inland belonged to individuals. I know Tommy Mamfe. I do not know whether he was the head labourer of the French Company. When the French Company houses collapsed we asked the labourers out and took our land. We broke down the houses and removed the materials. I know Esang Abasi. When he came to remove the materials we challenged him and recovered 20 30

the materials from him. I know Ukpi Utuk. He was one of those who came with Esang Abasi and we took the materials from them. I know that John Esin took action against Ukpi Utuk, claiming £300 in the Magistrate's Court for the materials he removed. The case was not decided before John Esin died. We recovered some not all the materials from Ukpi Utuk and his people. I do not know that Ukpi Utuk took action in the Native Court to recover those materials we took away from them. John Esin was my half brother. The land he bought from Aya Umo was his personal property and now that he is dead it belongs to his children. Johnson Esin the 2nd plaintiff is my half brother. He too bought some land near my father Esin Anwana Esin. We have not mixed up the ownership of these lands with our father's land. If in case of farming we farm our individual plots but if a stranger comes to acquire land we all come together and give any portion of the land to him. If a stranger wants to acquire Johnson Esin's land he will consult us and if we give our consent he will sell if not he will not sell.

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In the High Court

Plaintiff's Evidence (Continued)

No. 14

Okon Esin Cross-Examination (Continued)

RE-EXAMINED BY MR. ARIKPO - None.

Mr. Anwan calls his first witness.

Defendant's Evidence

No. 15

ASUQUO EFFIONG.

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Defendant's Evidence

No. 15

Asuquo Effiong Examination

1ST DEFENDANTS' WITNESS - ASUQUO EFFIONG -
 Sworn on Bible States in Efik - I live at Oron. A farmer, I am a native of Eyo Abasi and I belong to Eyo Sutai family of Eyo Abasi. I know the 1st defendant in this case. He is now dead. He was the head of my family. The 3rd defendant is also a member of my family. I know Okon Edoho Nai sitting in Court. His father was the 1st defendant's half brother and

In the High Court

Defendant's Evidence (Continued)

No. 15

Asuquo Effiong Examination (Continued)

also the half brother of Anwana Nyehe, I know the land in dispute. A portion of it has been leased to the Government. I know the whole land claimed by the plaintiffs. It is not true that John Esin bought plot "A" in 1914. I am a principal member of Eyo Abasi. Plot "A" belongs to the whole of Eyo Abasi right down to the waterside. I know the two houses in Plot "A". The plot of Ma Edua Abang was given to her by the whole of Eyo Abasi so also the plot of Esang Ebienha the father of Efiong Esang Ebianha. There is a shed at the beach. The tribute of that shed is paid to the chiefs of Eyo Abasi. The owners of the two houses are also natives of Eyo Abasi I agree that from the old path right down to the water is the communal property of Eyo Abasi. Before 1908 case with Henshaw the whole of the water front including plot "A" was the property of Eyo Sutai only. The property referred to as Plot "B" was not sold by Anwana Nyehe. I agree that Anwana Nyehe sold a piece of land to Esin Anwana Esin but it is not near the land in dispute but near the Convent School about 1½ miles away. Plot "B" was once acquired by the French Company for building labourers' quarters. The land was used for farming before the French Company came. The French Company left the houses and the labourers paid us rents through their head labourer Tom Mamfe. When the labourers left we broke down the houses and took away the materials. We were not challenged by anybody and there were no cases about the removal of the materials. Anwana Nyehe had a daughter called Nkoyo She was John Esin's wife. After the French Company had left; Anwana Nyehe gave a portion of the land to Chief John Esin to farm on because he was his son-in-law. It was not a outright gift. He gave him the land to farm until he would ask John Esin to return it. No member of Esin's family was on the land before this gift to John Esin. It is not true that Chief John Esin bought plot "D" for £2.10/- from my father Aya Umo in 1914. I know the extent of the land which is claimed as plot "D" It is on both sides of the road from the Museum to the Methodist Boys High School and also on both sides of the road leading to the Saw Mills. The whole of plot "D" belongs to my father. There was some land transaction between my father and

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John Esin. The villagers accused my father of being a wizard and gave him Esere Beans to eat. Chief Nyong Efana hears of it and threatened to report the matter to the police. John Esin told my father about it and asked my father to give him something to be given to Chief Nyong so as not to report the matter. My father then pledged the land shown in my plan to him for £3 and the money was given to Chief Nyong. Akpe Utok was my uncle. There was no dispute between my uncle and John Esin. Akpe Utok is dead. He left grown up daughters but the sons are very small. I know nothing about the concrete pillars. I saw them when the Surveyor was making a plan for me. The plaintiffs had made their plan before us. There are no "OKONO" trees there. The plaintiff told the Native Court that there were Okono trees there but when the Court members went on inspection no "OKONO" trees were found. We have not redeemed the land pledged to John Esin. They are still using the land but we occupy the surrounding parcels of land. The land which the plaintiffs said that Abasi Anwana Esin bought from Ukpaeme was not the property of Ukpaeme byt my family property. Ukpaeme is now dead. The present head of his family is now Otisung Ukpa. This case was brought to this Court after judgment in the Native Court. Most of the witnesses who gave evidence in the Native Court for the plaintiffs also gave evidence in this Court. Mr. Anwan seeks to tender the proceedings only to show that what the witnesses for the plaintiffs told this Court was not what they told the Native Court. He said also that the proceedings in the Native Court had already been marked as Ex. "A" in this Court when he took a preliminary objection in this Court which went against him.

Mr. Arikpo objects to the document going in. He says that the Counsel for the defendants is trying to put in by the back door proceedings which have been declared already a nullity.

In the High Court

Defendant's Evidence (Continued)

No. 15

Asuquo Effiong Examination (Continued)

R U L I N G - I have to say that the proceedings in a preliminary objection are also part of the proceedings in a suit and any document tendered during such a preliminary objection also forms

In the High Court

Defendant's Evidence (Continued)

No. 15

Asuquo Effiong Examination (Continued)

part of the proceedings in the suit. This document sought to be tendered has already been so marked as an Exhibit and if these proceedings were to go to the appeal Court the document will no doubt form a part of the proceedings. But the learned Counsel for the defendants wants it to go in also as a test of the credibility of some of the evidence given by the plaintiff's witnesses. I have to say that during cross-examination of some of these witnesses the Counsel made it clear that the story now told by the witnesses now differs in some material particular from what they told the Native Court. On this ground also I am of opinion that this document is also admissable but excluding the judgment of the Native Court. Document admitted and marked Ex. "M". 10

I know one Etoyo Mkposu. He was the head of my family. Sometime ago he had a case with Chief John Esin.

Case adjourned till 22/10/59. 20

(Sgd) H.U. Kaine
Ag: Puisne Judge

At Calabar, Thursday the 22nd day of October, 1959.

The plaintiffs in person.

Mr. Anwan for the defendants.

1ST DEFENDANT'S WITNESS - ASUQUO EFFIONG - Sworn on Bible States in Efik - Examination in chief continued - The case between Mkposu and Esin was in the Oron Native Court. The case also came on appeal to the Magistrate's Court, Calabar. I bought the proceedings in the Magistrate's Court. This is the certified copy of the proceedings - Tendered - Dr. Esin the 1st plaintiff objects. He says the land in dispute in that case is not the land in dispute in this. 30

Mr. Anwan says that he had not laid his foundation yet. I agree with Dr. Esin that this document cannot go in until foundation is laid for it.

I know the land that was in issue in that case. The land was called Ibuot Esan Ekeng. It lies between Idua Asan land and Udung Esan land. It passes through the land leased to the Nigerian Timber Company. A portion of the land now in dispute is a portion of the land leased to the Nigerian Timber Company. The features shown on the sketch made by the Magistrate are still on the land and where shown to the Surveyor who made my plan Ex. "B". I say that the land in dispute is that case contains a part of the land now in dispute. Mr. Anwan seeks to tender the document.

In the High Court

Defendant's Evidence (Continued)

No. 15

Asuquo Effiong Examination (Continued)

Dr. Esin objects. He says that the sketch made by the Magistrate did not include the land in dispute. He says that the land then in dispute was the frontage of his present house and does not affect the land now in dispute. He said that the Magistrate made a sketch to show the extent of the land which was involved in Henshaw case.

Mr. Anwan says that a part of the land now in dispute was a part of the land in the case sought to be admitted in evidence.

R U L I N G - I am inclined to agree with the Plaintiff that the land in dispute was not clearly shown in the document sought to be tendered and that the Magistrate sketch was not intended to be a sketch of all the land then in dispute before him. I shall however admit the document as having some relevance about the matter now in issue. Document admitted and marked Ex. "M".

I never heard that my uncle Ekpo Utok went to Chief John Esin for the land to be divided. I should have known if it had happened. We gave part of the land said to be in plot to Tommy Mamfe and also to Okon Atifit.

CROSS-EXAMINED BY DR. ESIN - I live in my mother's house in Idua Asan land. It is about half a mile from the present Customs site. I have lived at Idua Asang for about 20 years. I have not since then lived at Esin Ufot that is all. The land

Cross-Examination

In the High Court

Defendant's Evidence (Continued)

No. 15

Asuquo Effiong Cross-Examination (Continued)

between Idua Asang land and the Customs site. I am 49 years old. I cannot tell when Henshaw case took place. I was a small boy. I can tell the Court the land involved in the Henshaw case. It was in respect of a piece of land from Idua Asang to Esuk Oron village which is beyond Udung Esang land. The land then in dispute stretches from the water front to the present main road. The whole of the present Customs land was inside the land in dispute in the Henshaw case. 10
The whole of the land involved in the Henshaw case did not become the communal land of Eyo Abasi after the case. I cannot believe you if you said that the land in dispute in the Henshaw case was from the old bush path to the water. Anwana Nyehe died in about 1922 or 1923. I told the Native Court that Anwana Nyehe died in 1919. Chief John Esin married Nkoyo Anwana Nyehe before the death of her father. She had no husband before she married my father. I did not tell the Native Court that her first husband was Abasi Ekeng Ita. I cannot believe you if you said your father married Nkoyo on 10/4/1929. Nkoyo Anwana is still alive. I cannot say how many children she had for your father. I will believe you if you said that Nkoyo only had one son for your father. The land on which you built was given to your father by Chief Atang Edem Abasi. I remember I told the Native Court that the land belonged to Abasi Enang who sold it to Dr. Esin's father but the waterside belonged to Eyo Abasi. We are farming the land to the western side of the land which I said that Anwana Nyehe gave to John Esin. I agree that Johnson Esin the 3rd plaintiff farms on part of this land outside the land in dispute. My brothers sold it to Eyo Okon Ubukpa and he sold it to Johnson the 3rd Plaintiff. I was told by Chief Atang Edem that our brothers sold it. 20 30

Ekpe Utok was my uncle. He is now dead. I cannot say if it was Ekpe Utok who sold the land to Eyo Okon Ubukpa. After leaving the place where Johnson Esin farms and going towards the river it is Chief Esang Enyekung who farms the land. He got it from my brothers but I do not know how. I agree that it was one J.A. Ekong of Big Qua town who sold it to Chief Esang Enyejung. Near the 40

river it is the communal land of Eyo Abasi.

We have never leased out the land in plot A to any one because it is the property of the whole of Eyo Abasi. We have joined Eyo Abasi to lease it out to one Ibo man. The lease was not published because it was unusual to do so. Only when Europeans want to acquire land that a public notice is put out. Your brothers knew about the lease to Chibuzo Okpala.

In the High Court

Defendant's Evidence (Continued)

No. 15

Asuquo Effiong Cross-Examination (Continued)

10 Case adjourned to 23/10/59.

(Sgd) H.U. Kaine
22/10/59.

At Calabar, Friday the 23rd day of October, 1959.

Suit No. C/2/1955.

Dr. Esin Anwana & Ors.
versus
Atang Edem Abasi & Ors.

The Plaintiffs in person.
Mr. Anwan for the Defendants.

20 D.W.1 - Asuquo Effiong - sworn on Bible States in Efik

CROSS-EXAMINED BY DR. ESIN CONTINUED - Effiong Esang has not acknowledged me as his landlord because the place where his house is situate is the property of the whole of Eyo Abasi. The shed at the beach has no walls. I cannot tell whether the women from your family pay for the use of the shed. I do not believe that it was you who allowed Isobo men to use the place.
30 They were to my knowledge permitted in Eyo Abasi. I know the stream called Udine Odi Oron. It is in plot "A". I remember the land around the stream was cleared by Chibuzo Okpala. I do not know that one Fraser wanted to have the land. Sam Uyai is not my tenant. It was Eyo Abasi who gave the place to Ma Edua Abang and Sam Uyai who lives there. The head of my house represented us in the 1954 case when the Government wanted to determine the owners. I know that you were one

In the High Court

Defendant's Evidence (Continued)

No. 15

Asuquo Effiong Cross-Examination (Continued)

of the claimants. I do not know who leased the land on the west of plot A to Elder Dempster Lines Ltd. I do not know that the lease was by Chief William Afahame and Chief Esang Enyekung. I know that the property occupied by Okon Archibong was given to him by Eyo Abasi. I know Chief Oboho Abasi's house. I do not know that the land was given to him by your father. I know Willie Afaha Eme's house. He does not pay us rents. My family used to lease out lands near the water from the old bush path to the river. We leased land to one Utuk. No other families took part in the transaction. I was one of the signatories to that agreement. The land from Idua Asang to Udung Esang is known as Ibuot Ikot Ekeng and also as Esin Ifot and also as Akpe Oluhu. I do not know the part called Ndon Oboho. I cannot remember when Otoyoko Mkpoko sued Ekpenyon Abasi. I know Otoyoko Mkpoko. He was once the head of my family. Oron Sawmill where Mr. Allen is is a communal property. 10 20

I remember I told the Native Court that three pieces of plot were sold in Plot "D" by Aya Umo and that since then I have never collected rents from them.

The annual rent paid by Oron Sawmill is £66. £60 belongs to the building fund of Eyo Abasi. The balance of £6 is shared among the eight houses. It is not true that the balance is shared by individuals who own land inland. I will not believe that 10/- of this amount is paid to Esin Abasi the son of Abasi Anwana Esin. I know that there was a house with iron sheets roof near Willie Afaha Eme's house belonging to one Etim Oyo Ita. The land belongs to Chief Odoho Nsi. His son is sitting down in the Court with us. I do not know on what condition the land was given to him. I said in the Native Court that the land belonged to Anwana Nyehe. He was of the same father with Odoho Nsi. I do not know who owns the land now. There is a new house on the land. Many people own lands from the placed claimed by us but they got them from us. 30 40

Re-Examination

RE-EXAMINED BY MR. ANWAN - The land sold to Etim Oyo Ita was the family land of Odoho Nsi and Anwana

Nyehe. I cannot go to the three plots on plot "D" sold to John Esin and do anything there.

In the High Court

Defendant's Evidence (Continued)

No. 15

Asuguo Effiong Re-Examination (Continued)

No. 16

No. 16

EKPO KPENYONG

Ekpo Ekpenyong Examination

10 2ND DEFENDANTS WITNESS - EKPO EKPENYONG - Sworn on Bible States in English - I live at No. 28 Abua Street, Calabar Retired Civil Servant, a Licensed Surveyor. I was the plaintiff's first witness and I tendered Ex. "A" and "B" I also surveyed the land for a lease to Chibuzo Okpala This is the copy of the plan I made for him. It was signed by me and countersigned by the Director of Survey. Mr. Anwan now seeks to tender the plan for identification only. Dr. Esin opposes. He says that he was not present when the survey was made. Objection overruled. Plan admitted and marked - Identification 5.
20 Ex. "A" is of the same scale with Identification 5. The land in Identification 5 takes the whole of plot "A" in Ex. "A" except the portion leased to Customs but it extends westwards beyond plot "A" to the small stream. It embraces the two houses in the south of Plot "A".

CROSS-EXAMINED BY DR. ESIN. - I made your plan Ex. "A" first before I made Identification 5. I did not contact you before I made Identification 5.

Cross-Examination

No re-examination.

In the High Court

No. 17

OKON ALA

Defendants Evidence (continued)

No. 17

Okon Ala Examination

3RD DEFENDANTS' WITNESS - OKON ALA - Sworn on Bible States in English - I live at Oron - A Museum Attendant at Oron I am a native or Eyo Abasi. I know the parties in this case. I belong to the Eyo Biosio family. I know the Customs site at Oron. The land between the old foot path and the river belongs to the whole of Eyo Abasi family but the portion inland belongs to the defendant's family known as Eyo Suitai. The remaining part of plot "A" belongs to the whole of Eyo Abasi family. I was once the Secretary of Eyo Abasi village Council and an important member. I am now about 35 years old. I do not know that the whole of Plot "A" was sold to John Esin. As far as I know the people who farm plot "A" are the people who live in the two houses shown in plot "A" with the exception of the water front which is a forest. The Shed near the waterside was put up by members of Eyo Abasi. They obtained no permission from Dr. Esin to do so. They put up the shed in their own right. The buildings left behind by the Anglo French Timber Company were removed by one of the defendant's relatives called Samson Ekpe Utok about 10 years ago. My father took away some iron sheets without his knowledge. He was annoyed and my father returned them to him and apologised. He sold some iron sheets to one Esang Abasi. The inland portion of the lands in dispute are owned by families. The Eyo Sutai family owns their land in branches. I know Chibuzo Okpala. In 1957 there was a proposed lease to him. This is the copy of the proposed lease. I read and interpreted it to the chiefs of Eyo Abasi. The lease must be signed by the Head Chiefs of the eight families. This proposed lease was signed by the eight chiefs. Lease tendered - Dr. Esin opposes the admission - He said that this lease was made when the matter was already in Court.

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Mr. Anwan says that the maxim ante litem notam refers only to documents made by the parties to the Suit by that the document now sought to be tendered was not so made. He said that the document is admissable because of the

plaintiff's witnesses was a signatory to the lease.

In the High Court

Ruling adjourned to 26/10/59.

(Sgd) H.U.Kaine
Ag: Puisne Judge

Defendants Evidence (Continued)

No. 17

At Calabar, Monday the 26th day of October, 1959.

Okon Ala Examination (Continued)

10 R U L I N G - There is nothing on the face of the document sought to be tendered that is satisfies the requirements of the provisions of Section 8(1) and 15 of the Land Registration Ordinance Cap.108 of the Laws of Nigeria in that there is nothing to show that it was executed before a Magistrate or a Justice of the Peace since all the signatories are illiterate and that it has been registered. The document is therefore rejected.

Same parties, same appearances. Ruling read and document rejected.

20 3rd Defendant's Witness - Okon Ala - Sworn on Bible Evidence continued - I know the piece of land that was proposed to be leased to Okpala. The lease was not completed because my family and the defendant's family refused to release the money paid by the leasee until all monies paid for other such leases had been produced so a quarrel arose and the chief of Eyo Abasi wrote the leasee that money paid by him has not been shared and asked him not to go on the land.

30 CROSS-EXAMINED BY DR. ESIN - My maternal grand father is Eyang Asanan. I do not know when he died but I was small. He was then paramount chief of Eyo Abasi. I know that Obiosio Nkoho succeeded my grandfather as the head chief of Eyo Abasi. I never heard about this sale to your father by the chiefs of Eyo Abasi in 1919. I know a man called Eyang Ala. He is my eldest brother. He lives at Esin Ufot, Eyo Abasi. The land on which he lives is my father's land. My father bought it from a certain member of Eyo Sutai family.

Cross-Examination

In the High Court Some members of Eyo Sutai family and others
witnessed the sale. Your father was there.
I now say that the demolition of the French
Company buildings took place about 20 years ago
because it happened before your father died. I
know one Ikpe Ama. He comes from my family. I
heard he sold land to you and we have informed
you not to buy because it is a communal to that
particular Sub family. I know that a part of
Plot "B" was given to your father by Anwana Nyehe 10
but I do not know the dimensions. This was on
account of his wife Nkoyo. I was told about it
by the villagers in your presence. You are still
farming a part of it which is not included in the
lease to the Customs. The defendants were farming
in the other part before Nigerian Timber and
Construction Company left.

Defendant's Evidence (Continued)

No. 17

Okon Ala
Cross-
Examination
(Continued)

Re-Examination RE-EXAMINED BY MR. ANWAN - My grandfather Eyang
Asanam was illiterate. He could neither read nor
write. John Esin was their Secretary. 20

No. 18

Okon Atifit Examination

No. 18

OKON ATIFIT

4TH DEFENDANTS' WITNESS - OKON ATIFIT - Sworn on
Bible States in Efik - I live at Esin Ufot, Oron
- A farmer - About 75 years. I belong to Enwang
family. I know the parties to this case. I know
the land leased to Customs. I have lived at Oron
for about 40 years. The water guard houses are
built at Esin Ufot. I know that when going from
the Esin Ufot to the beach the left hand side 20
belongs to the plaintiffs. I know the land where
the Customs quarters are built. I used to see
John Esin farming one side and Ekpe Utok farming
the other before the Customs came. The land I
was referring to is part of Customs land. I did not
know Anwana Nyehe. He was dead before I arrived
there. Apart from John Esin other children of
Esin Anwana Esin were also farming there. I did
not meet the French Company. I met houses which
had been deserted. One Ekpe Utok sold the houses 30
to Esang Abasi and Effiong Abasi. The houses
were near the road. A portion of the buildings was
in the parcel land now occupied by Customs and a

part to the right of it. I have sometimes farmed on the land near the road going to the Oron Sawmills. It was given to me by Ekpe Utok. I am now farming only on the right. Customs came after I had farmed on the left side of the Sawmills Road. John Esin was my friend. He also gave me land to farm upon. Going from the Museum to the Methodist Boys High School, the place he gave me to farm was on the right of the main road and is near the path going to the Sawmills. When going along the main road we have to pass the path before reaching my farm. Chief John Esin told me that it was Aya Umoh who sold the land to him for £3.

In the High Court

Defendant's Evidence (Continued)

No. 18

Okon Atifit Examination (Continued)

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CROSS-EXAMINED BY DR. ESIN - It was a storey building occupied by a European that Ekpe Utok demolished. I did not see a fight when the house was demolished. I did not know when Ekpe Utok sued your father in Court about the property Ekpe Utok gave me the both sides of the path to the Sawmills to farm. He gave four plots to farm but the one given to me by John Esin was the larger. Your father told me that he bought the land from Aya Umo.

Cross-Examination

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No re-examination.

No. 19

No. 19

ABANG IFANG

Abang Ifang Examination

5TH DEFENDANTS' WITNESS - ABANG IFANG - Sworn on Bible States in Efik - I live at Esin Ufot, Oron - A fisherman. I know Ma Edua Abang. She is now dead. She was my grandmother. I know the land leased to the Government for the Customs Department. I also know the house of Esang Ebiana. I also know my grandmother's house. I was born there. I know San Uyai. He lives in my grandmother's compound. There are four houses in the compound. One of the three remaining houses is occupied by my brother's wife and her children and the two others, one by Iquo and the other by Okong Atim. Iquo and Okon Atim are not my relatives. Sam Uyai never bought the house,

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In the High Court

Defendant's Evidence (Continued)

No. 19

Abang Ifang Examination (Continued)

although I heard he bought it from Warri. I asked Warri why he sold it and he said the house was pledged to him by my elder brother. My grandmother told me that the plot was sold to her by Eyo Abasi people during the Henshaw case. I am the head of the family of my grandmother. I am about 35 years old or more. I never heard that the plot has been sold to anybody. It was my grandmother who gave to Iquo's mother the place where Iquo now lives. Iquo is of the same mother with Okon Atim. 10

Cross-Examination

CROSS-EXAMINED BY DR. ESIN. - I am a native Osu Ofi, not of Eyo Abasi but I was born at Eyo Abasi. My mother died at Esin Ufot. I agree that your Cousin Ikot Esin married my Aunt Bassey Edua Abang. She was known as Bassey Ekanem. It is not true that your father allowed my grandmother to live on that land on account of that marriage. I know that my uncle Okon Ekanem committed adultery with your father's wife Nyong. I cannot remember that your father on account of that drove away Ma Edua and all her relations. I do not know who planted the cocoa yams in the compound. I do not remember that I gave the land to Mesuhe Enoune my mother-in-law and your people drove them away. The coconuts are taken by Customs servants. I used to pluck the coconuts before the Customs took over. If somebody bought the land I should have been informed. 20

Re-Examination

RE-EXAMINED BY MR. ANWAN - I never gave the land to my mother-in-law. It never happened. I left Ma Edua's house about 14 years ago. The coconut trees are inside our premises. 30

No. 20

No. 20

Ekpo Yang Examination

EKPO YANG

6TH DEFENDANTS' WITNESS - EKPO YANG - Sworn on Bible States in Efik - I live at Eyo Abasi - A farmer - I am a Chief of Eyo Abasi. My family in Eyo Abasi is Udung Okung. I am the head chief of that family. I am about 60 years old. I know about Henshaw case. I was then a young man. 40

In the High Court

Defendant's Evidence (Continued)

No. 20

Ekpo Yang Examination (Continued)

10 Since that case the water front lands of Eyo Sutai became the communal property of Eyo Abasi. I know the Customs site. The portion near the river is our communal property. No land near it has been sold to anybody. The place where the two houses are in plot "A" O has never been sold to Chief John Esin. The chiefs of Eyo Abasi never borrowed money from Chief John Esin nor sold any land to him. We do not sell communal land even to Eyo Abasi people. Three heads of Eyo Abasi families cannot even sell communal land in the absence of the five other families.

20 CROSS-EXAMINED BY DR. ESIN - My father was Eyang Asanam. My junior brother is Samson Eyang. He is now dead. He was an educated man. It has always been our customs not to sell land without the consent of all the eight families. Before land is leased to a stranger the eight families must also sign. I know A.U. Utuk of Uyo. He had a lease of Eyo Abasi communal land but there is a dispute between the man who gave him the lease and the people of Eyo Abasi. The case is not yet in Court. The land was leased to him by Esang Enyekung. I agree that the land was leased to Utuk by four chiefs but we are challenging it. I know Okon Archibong's name in this Court. The house in which he trades was built by a European. He leased it from Esang.

30 I have been seeing the house for about five years ago. We did not authorise the lease. We hope to take action against him. Several pieces of land have been leased out by individuals. We hope to take action.

Cross-Examination

No re-examination.

No. 21

TOM AYUK

No. 21

Tom Ayuk Examination

40 7TH DEFENDANTS' WITNESS - TOM AYUK - Sworn on Bible States in English - I live at Esin Ufot. Labourer under Timber Company. I was a head man under Sawmill. I came to Oron 20 years ago. I was a head man under Anglo French Timber Company.

In the High Court

Defendants Evidence (Continued)

No. 21

Tom Ayuk Examination (Continued)

I was living in their quarters. When they left I was still in their quarters for two years. I was paying rents to Sampson Ekpe Utuk. The European was living in the Storey building. It was Ekpe Utuk who demolished the house when the European left. There was no fight after the demolition. I was still living in the labourer's quarters when the Storey building was dismantled. I was also making farm near the labourer's quarters and it was Samson Ekpe Utok who gave me the land. I know the 1st plaintiff.

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Cross-Examination

CROSS-EXAMINED BY DR. ESIN - I paid the rents for about two years. I was not disturbed by any one. I never told the Native Court that John Esin came and told me not to pay rents to Ekpe Utok and I refused. One coming from Esin Ufot will pass the old French Company's Storey building before he will reach my house. There was no fight when the house was broken down.

No re-examination.

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Case for the defence

Adjourned to 27/10/59 for address.

(Sgd) H.U. Kaine
Ag: Puisne Judge.

No. 22

Counsel's Address 27th October 1959

Anwan for the Defendants

No. 22

COUNSEL'S ADDRESS

At Calabar, Tuesday the 27th day of October, 1959.

Plaintiff's present and in person.

Mr. Anwan for the defendants.

Mr. Anwan addressing the Court says that this case was transferred from the Native Court after judgment had been given; that the judgment was set aside; that Dr. Esin was then the only plaintiff up to the time when the Statement of Claim and Statement of Defence were

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filed; that later by a motion the writ of Summons was amended to include more names but that the Statement of Claim had not been amended; that the 4th plaintiff Anwana Abasi Esin was dead before the hearing of the case began; that the particulars of claim before the Native Court have been amended in para.7 of the Statement of Claim and that is now the case before the Court. He says that the land in dispute is described in para.2 of the Statement of Claim and marked A, B, C and D in Ex. "A"; that the root of title sought to be established in this case is purchase which the root of title is based upon occupation from time immemorial. He says that the latter type of cases is governed by principles enunciated in Ekpo vs. Ita 11 N.L.R. page 68; but the principles governing the former set of cases are enunciated in Cobblah vs. Gbeke, 12 W. A.C.A. at pages 294 - 295. He refers to the last para. of page 295. Mr. Anwan says that the plaintiffs admit that the whole land in dispute was formerly the property of Eyo Sutai but that plot "A" and the land on the east became the communal property of Eyo Abasi in 1908. He said that plaintiffs now claim A, B, C and D by purchase and the onus is therefore upon them to prove sale. He says that the plaintiffs rely upon Ex. "C" to prove that "A" is their property. He says that no man was called from Eyo Abasi to support the sale in Ex. "C". He now refers to Land Registration Ordinance, Cap. 87 of the 1923 Edition of the Laws of Nigeria - Definition on Instrument which he says is the same thing as 1948 Edition of the Laws of Nigeria. He says that Ex. "C" was not registered in accordance with Section 6 of the Land Registration Ordinance of 1916 and that if it was an instrument conferring title it must have been registered. He now refers to Section 14(1), 15 and 23 of the same Ordinance He says that Dr. Udoma said that he was tendering the document as a receipt hence he did not oppose its admission as an instrument. He also referred to the hand written part of Ex. "C" and said that that one was dated 17/1/1959 and stamped on 26/2/1919. He referred to Ex. "N" and said that John Esin gave evidence

In the High Court

No. 22

Counsel's
Address 27th
October 1959
(Continued)

Anwan for the
Defendants

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In the High Court

No. 22

Counsel's Addresses 27th October 1959 (Continued)

Anwan for the Defendants (Continued)

that he died in 1918 and therefore he submits that he could not have signed the document in 1919 as Ex. "C" purported. He now refers to the evidence of the 5th Plaintiff's witness - Chief Ekpo Esin who is a member of the plaintiffs family and now head of Eyo Abasi in which he says that part of Plot "A" near the water is still a communal property and that the women selling fish at the waterside still pay tribute to Ayo Abasi. He also referred to the evidence of Ekpenyong Abasi in Ex. "N" who said that it was Anwana Esin who gave Esang Ebiana the place where he lived. He now refers to the evidence of 3rd P.W. Efiang Esang Ebiana and 4th P.W. - Sam Uyai and to the document Ex. "K" and said that these witnesses should not be believed. He said that Ex. "K" was made on 11/10/59 for the purpose of this case. He now proceeds with Plot "B". He says that evidence revealed that this was the property of Anwana Nyehe. He says there is no document of support the sale by Anwana Nyehe to Anwana Esin; that Dr. Esin's evidence was what he was told; that 5th and 7th P.W. gave evidence to support the sale. He asked the Court to discountenance the evidence of the 5th P.W. Ekpo Esin because in this Court he said he was present at the sale and in the Native Court he said he was not vide Ex. "M", page 21, lines 11 and 12. As regards the 7th P.W. Okung Esin, he referred the Court to his evidence in the Native Court, Ex. "M" page 23-28 and said that it was not consistent with what he said in this Court. He now refers to Ex. "D" a lease to Anglo French Timber Company and he says that the area of land involved includes portions of A,B,C and D and some other lands and it is shown verged green on Ex. "A"; that the grantors are the people of Eyo Abasi and nothing to show that any part of it belonged to the plaintiffs' family. He said that the same applied to Exs. "E", "F" and "G" and could not be relied upon to prove exclusive ownership. He now referred to what happened when the Anglo French Company left and left behind some houses and said that it was the plaintiffs case that there was a struggle for the materials. As regards plot "C" he says that the plaintiffs claimed that it belonged to Abasi Anwana Esin the 4th plaintiff; that Abasi Anwana Esin has since died and the only evidence about his ownership or purchase from

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Ukpa Eme was a hearsay from Dr. Esin. He said that the first defendant Atang Edem Abasi is dead and that he was of the same family with Anwana Nyehe and despite the fact the somebody from that family was in Court sitting near the defendants he was never substituted.

10 He now comes to Plot "D". He asked the Court not to believe the story that Ekpe Utok challenged only a part of the sale and not the whole sale. He refers to the case of G.B. Ollivant & Co. Ltd. vs. Mohamed Mustapha, 7 N.L.R. page 29, vide page 32 to show that when a part of the evidence of the witness is not reliable it does not mean that the whole evidence should be rejected. He now cites the Laws of England (Halsbury's 2nd Edition at page 255, Vol.19.) He now refers to the case of Coker vs. Ogunde, Vol.15, N.L.R. page 7.

In the High Court

No. 22

Counsel's Addresses 27th October 1959 (Continued)

Anwan for the Defendants (Continued)

No. 23

No. 23

20 DR. ESIN for the Plaintiff

Dr. Esin for the Plaintiff 29th October 1959.

30 DR. ESIN now replies - He says that Ex. "C" is an ancient document and should be treated as such. He said that Ekpenyong Abasi was a very old man and could have made slips as shown in Ex. "N"; and that the land then in dispute was far away from the land now in dispute. He now deals with plot "A" and submits that there is sufficient evidence to show their ownership of it. He says that Ex. "K" was made in 1957 and not in 1959 as the document shows; that he has always been in possession of plot "A" that they are not only the occupiers of communal land by right of purchase; that his 5th P.W. Ekpo Esin did not know much about the document he was asked to sign and to cover up himself, he says that the water front of plot "A" did not belong to me; that the women selling fish put up their shed about four or five months and he has allowed them to remain there out of mere
40 courtesy.

As regards plot "B", he asks the Court to read the Statement of Defence and compare it with the evidence given by the defendants in this Court. He said that his father married Nkoyo

In the High Court

No. 23

Counsel's
Adresses 29th
October 1959
(Continued)

Dr. Esin for
the Plaintiff
(Continued)

when her father Anwana Neyhe was dead and therefore Anwana Nyehe could not have given the land to his father because of the marriage with his daughter. He asked the Court to believe the evidence of the 4th D.W. as a witness of truth and also of the 6th P.W. Mr. Allen. He asked the Court not to believe the evidence of Okon Ala D.W. 3 because it was given out of malice and also the evidence of Tom Uyuk the 7th D.W. He said that his family had always been in possession of Plot "B". 10

He now goes to plot "C". He said that his grand uncles Abasi Anwana Esin bought plot "C" and paid £7.10/- for it and gets 10/- annually up to this day.

He says that his father bought Plot "D" and put in pillars which have been uprooted by the defendants except two. He refers the Court to the plain in Ex. "D" and says that it supports his own case. As regards the bungalows he said that when they were demolished by the defendants his people objected. That there was a fight and some of the materials recovered. 20

Judgment on 30/10/59.

(Sgd) H.U. Kaine
Ag: Puisne Judge

No. 24

Judgment 30th
October 1959

No. 24

JUDGMENT

At Calabar Friday the 30th day of October, 1959.

Plaintiffs in person.

Mr. Anwan for the defendants. 30

J U D G M E N T

The plaintiffs' claim is for a declaration of title to all that piece or parcel of land known as "Ekpe Oluhu" situate and being at Esin Ufot, Eyo Abasi, Oron and an injunction to restrain the defendants their servants and agents.

The plaintiffs' case may be summarised as follows:- The land in dispute is shown in the Plan Exhibit 'A' to be divided into four parts marked A,B,C and D and separated from each other by foot paths. It is the plaintiffs' case that plot "A" was bought by Chief John Esin in 1919 from the chief of Eyo Abasi and Exhibit "C" was tendered as a receipt of that purchase. Plot 'B' was said to be bought by Chief Esin Anwana Esin the grandfather of the 1st plaintiff from Anwana Nyehe for one cow a very long time ago. There is no document to support this purchase. Plot 'C' was said to be bought by Abasi Anwana Esin in 1925 for £7. 10. Od from one Ukpaeme. This purchase is also not supported by any document. Plot 'D' was said to be bought by Chief John Esin the father of the 1st plaintiff from Aya Umo who was related to the 2nd and 3rd defendants for £14. 10. Od and some customary drinks in 1914. There is no document in support of this purchase.

In the High Court

No. 24

Judgment 30th
October 1959
(Continued)

The plaintiffs called witnesses to support their contentions. The third witness Efiang Esang Ebianha who lives in one of the houses shown in Plot 'A' said that the house was built by his father and he got the land from Chief John Esin: that he was not present when his father got the land from Chief John Esin but that his father told him. He claimed to be about 60 years old. Under cross-examination he said that the house was built about 60 years ago, that the plaintiffs used the land between his house and the water front and nobody else. He denied any knowledge of the shed near the waterside which is alleged to be used by women for selling fish.

The fourth witness was one Sam Uyai who lives in the compound shown in plot 'A' as Ma Edua Abang's house. His evidence was that he bought the house from one Warri but that his ground landlord was Chief John Esin and that he had been living in the house for the past 20 years. Under cross-examination he said that when a wall of his house fell down and he wanted to repair it, one Efiang a relative of the 1st plaintiff stopped him and said that the land was their own and that he obtained his permission before he re-built the

In the High
Court

No. 24

Judgment 30th
October 1959
(Continued)

wall. He claimed also to farm in the premises and to pay rents to 2nd and 3rd plaintiffs and made an agreement with Dr. Esin, Exhibit "K".

The 5th plaintiffs' witness was Ekpo Esin a man of about 90 years old. He claimed that it was he who leased the land to the Government for Customs and Excise. He said that the land belonged to Esin Anwana Esin who bought from one Anwana Nyehe; that he was present when the sale took place for the value of one cow; that before he gave the land to the Government he and other members of the Esin family were farming on it and that there was no dispute until the land was granted to the Government. He also gave evidence about plot 'D'. He said that John Esin bought a piece of land from Aya Umo for £14. 10. Od. Under cross-examination the witness said that the 1st plaintiff is the head of Esin family being the son of his elder brother Chief John Esin but that he the witness was the paramount head of Eyo Abasi; that he knew one Otisung Ukpa as belonging to Eyo Sutai family of Eyo Abasi village; that he was present when Chief John Esin bought land from Aya Umo. He agreed that the land along the river side was the property of the whole of Eyo Abasi. He said that the land occupied by Efiang Esang Ebianha and Ma Edua Abang belonged to the 1st plaintiff but that they have told the 1st plaintiff that the land near the waterside was the property of the whole of Eyo Abasi; that the land where the women are selling fish also belongs to Ayo Abasi who collect tribute from the women. He said that he knew the land which was granted to the Government; that he appeared with the first defendant and one Ebiekpe before a Judge at Eket to determine who own the land and the amount of compensation to be paid; that he appeared with thos men on account of the strip of land which is near the water front. Copy of the proceedings was admitted Exhibit "L". Continuing the witness said that he did not oppose Atang Edem Abasi the 1st defendant taking part in granting the lease because part of the land granted was communal; that the communal land is near the water and not part of the land now in dipute; that the 1st defendant joined in granting the lease as one of the Chiefs of Eyo Abasi; that all the Chiefs of Eyo Abasi were in Court and that it was made

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clear to them that all their interest in the grant was the communal strip of land near the water front and that Dr. Esin the 1st plaintiff joined in making the claim.

In the High Court

No. 24

Judgment 30th
October 1959
(Continued)

10 The 6th plaintiffs' witness was George Henry Allen. He identified Exhibit "C" as the lease which he obtained from the Chiefs and the people of Eyo Abasi for his Sawmills. He said that he paid rents to the chiefs and people of Eyo Abasi; that he knew the land lying to the west of the land leased to him and that he had seen Chief John Esin and his wife farm there between 1934 and 1936. Under cross-examination the witness said that Chief John Esin gave him a right of way over his land to reach the main road and that at that time he was the head chief of Eyo Abasi.

20 The 7th plaintiffs' witness was Okon Esin about 70 years old. He said that he was related to the 1st plaintiff; that his father was his half brother, that he knew the land on which Customs is situated; that it was bought by his father Anwana Esin who bought it from Anwana Nyehe for a cow and customary drinks; that he was present at the sale; that a part of it was occupied by the Anglo French Timber Company and when they left; their house was broken and the land used for farming. Continuing the witness said the John Esin also bought a piece of land from Aya Umo in his presence for £14. 10. Od; 30 that later on Aya Umo's brother called Ekpe Utuk objected to the sale of the whole of their land to Chief John Esin and the village decided that a part of the land should be returned to Ekpe Utuk and when this was done; "Okono" trees were planted to mark the boundary while Chief John Esin put cement pillars. This was the plaintiffs' case.

40 The defence opened with the evidence of Asuquo Bfiong the 2nd defendant as Defendants' witness No.1. He said that he knew the land in dispute and also the portion referred to as Plot 'A'; that it was not true that plot 'A' was sold to Chief John Esin; that plot 'A' is the communal property of the whole of Ey0

In the High
Court

No. 24

Judgment 30th
October 1959
(Continued)

Abasi; that the whole of Eyo Abasi gave land to Esang Abianha and Ma Edua Abang to build on; that after the 1908 case with Henshaw the whole of the water front from the old foot path to the river became the communal property of the whole of Eyo Abasi.

As regards plot 'B' he said that Anwana Nyehe never sold it to Esin Anwana Esin; that Anwana Nyehe sold land to Esin Anwana Esin but that it is near the Convent about $1\frac{1}{2}$ miles away and not near plot 'B'; that plot 'B' was once acquired by the Anglo French Company and that when they left, his family collected rents from their labourers through Tom Mamfe and also demolished and removed the materials from their old buildings without any interference; that Chief John Esin married a daughter of Anwana Nyehe called Nkoyo and that it was after the Anglo French Company left that Anwana Nyehe gave a part of Plot 'B' to Chief John Esin to farm as his son-in-law; that no member of Esin's family was on the land before this gift to John Esin. 10 20

As regards Plot 'D', he said that he knew the whole extent of it; that it is not true that his father Aya Umo sold it to John Esin; that there was some land transaction between his father Aya Umo and John Esin and that it concerned a small strip of land shown in the defendants' plan Exhibit "B" which was pledged to John Esin. He denied that there was any dispute between Ekpe Utuk and John Esin. He said that he knew nothing about the concrete pillars and that he saw them when the Surveyor was surveying the land. He said that the land which Dr. Esin claimed that Abasi Anwana Esin bought from Ukpaeme was not the property of Ukpaeme but of the witness's family that Ukpaeme is now dead and the present head of his family is Otisung Ukpa. This witness tendered the proceedings in the Native Court Exhibit "M" and the copy of the proceedings in the case between Mkposu and John Esin in the Magistrate's Court Exhibit "N". 30 40

Under cross-examination the witness said that Anwana Nyehe died in 1922 or 1923 but that he told the Native Court that Anwana Nyehe died

in 1919; that John Esin married Nkoyo before the death of her father; that Nkoyo is still alive; that the land on which Dr. Esin has his residences was sold to his father by the 1st defendant Chief Etang Edem Abasi; that Johnson Esin the 3rd plaintiff bought some land to the west of Plot 'B' from Eyo Okon Mbukpa who got it from the witness's brothers and that Johnson Esin is now farming the land. He also agreed that one Chief Esang Enyekung has some land there sold to him by members of the witness's family. He also agreed that Udim Odi Oron Stream is in plot 'A'; that the land between Idua Asang to Udung Esang was known as Ibuet Ikot Ekong and also as Esin Ufot or Akpa Oluhu; that he remembered telling the Native Court that three pieces of plot were sold in plot 'D' by Aya Umo and that since then he has not collected rents from John Esin family and that many people own lands from the places claimed by them but that they got the land from members of his family. He admitted that he cannot go to the three plots sold by Aya Umo to John Esin to do anything.

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October 1959
(Continued)

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The defendants' 2nd witness was Ekpo Enyekung a licensed surveyor who gave evidence that the plot which the chiefs of Eyo Abasi wanted to lease to Chibuzo Okpala covered the whole of Plot 'A' with the exception of the portion already leased to the Government.

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The 3rd defendants' witness was Okon Ala a Museum Attendant at Oron. He said that he knew the land leased to the Government; that from the old foot path to the river belonged to the whole of Eyo Abasi and the portion inland to the defendants; that plot 'A' belongs to the whole of Eyo Abasi and was never sold to John Esin; that the shed near the water front was put up by Eyo Abasi; that when the Anglo French Company left; a member of the defendants' family called Ekpe Utuk removed the materials some of which were bought by his father; that the inland portion of the lands in dispute was owned by families in Eyo Sutai. Under cross-examination the witness agreed that his father had a piece of land at Esin Ufot which he bought from a

In the High Court

No. 24

Judgment 30th
October 1959
(Continued)

member of Eyo Sutai family. He said that he knew that a portion of Exhibit "B" was given to John Esin by Anwana Nyehe but he does not know the dimensions; that the 1st plaintiff is still farming a part of it which is not given to the Government.

The 4th defence witness was Okon Atifit a farmer of about 75 years old. He said that he knew the land occupied by the Customs; that John Esin was farming one side and Ekpe Utuk the other before the Customs came; that other members of the Esin family used also to farm with John Esin; that he had farmed on the land near the road going to Oron Sawmills and that it was given to him by Ekpe Utuk; that John Esin also gave him land on the right side of the main road when facing the east and that John Esin got the land from Aya Umo. 10

The defence also called three other witnesses Abang Ifang who claimed to be a grandson of Ma Edua Abang, Ekpo Young, a chief of Eyo Abasi and Tom Ayuk often referred to in the proceedings as Tom Mamfe. I hope to deal with their evidence in the findings of the Court. This was the defence. The Counsel then addressed the Court and Dr. Esin made a reply (his Counsel being absent). 20

I have to say that the evidence in this case reveals that all the pieces and parcels of land from Idua Asang to Udung Esang vide Exhibit 'B' was formerly the property of Eyo Sutai family of Eyo Abasi. About the years 1908 there was a case between one Richard Henshaw on one side and the Chief and people of Eyo Abasi on the other. In consequence of this case the people of Eyo Abasi decided to make all the land along the river front from the foot path to the river the communal property of Eyo Abasi. The evidences also reveals that Eyo Sutai has also several branch families and that the land was owned not by the Eyo Sutai family as a whole but by these branch families. There is also abundance of evidence to show that at various times individuals of Eyo Sutai have disposed of what they called their sub-family land and that many pieces and parcels of land now lying between Idua Asang and Udung Esang belong to individuals who are not members of Eyo Sutai often by purchase. This finding is abundantly 30 40

supported by the plan Exhibit 'B' which is defendants' plan as well as the evidence of the 1st defendants' witness. In like manner several pieces and parcels of land along the river front have been disposed of by the Chiefs and people of Eyo Abasi to various people.

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Judgment 30th
October 1959
(Continued)

10 I am therefore satisfied that individuals can own land by purchase in what the 1st defendants' witness described as Esin Ufot or Akpe Oluhu that is all the land between Idua Asang and Udung Esang.

Continuing I have to say that it is the plaintiff's case that within the land now in dispute they also agree that the land from the old foot path to the river referred to in this case as plot 'A' belonged to the chiefs and people of Eyo Abasi from 1908 and that the inland pieces and parcels of land were the property of Eyo Sutai.

20 The plaintiffs in this case are the descendants of Esin Anwana Esin while the defendants belong to two families of Eyo Sutai which for the purpose of convenience I shall refer to as the families of Anwana Neye and Aya Umo. Both the plaintiff and the defendants belong to the village of Eyo Abasi and often have one paramount chief. This fact has caused some degree of complication in this case for it is often
30 difficult to know when the paramount head is acting in the interest of his family or of the whole village of Eyo Abasi.

40 Having laid this foundation I now come to deal with the bone of contention between the parties. Although in paragraph 7 of their Statement of Claim the plaintiffs say that they are asking for a declaration of title and injunction to what they describe as Ekpe Oluhu, it turns out at the hearing that the land is divided into four parts marked 'A', 'B', 'C' and 'D' in the plan Exhibit 'A' and alleged to have been acquired at different times and by different persons all of whom are members of Esin Anwana Esin family. Both the

In the High Court

No. 24

Judgment 30th
October 1959
(Continued)

plaintiffs and the defendants know the extent of these four plots which appear to be demarcated with foot paths in the plan Exhibit 'A'. I shall therefore deal with the land in dispute plot by plot just as the case was presented in the Court.

Plot 'A' - It is the plaintiffs' case that this plot was bought by Chief John Esin from the chiefs and people of Eyo Abasi in 1919 for the sum of £13 and a document prepared in support of the transaction Exhibit 'C'. This was tendered by the plaintiffs as a receipt. They have done so because they know that Exhibit 'C' cannot be treated as a deed of conveyance. It was neither properly executed as provided in Land Registration Ordinance nor registered. I have then to deal with it as a purchase receipt. There is no doubt that the document refers to plot 'A' or part of it and is an ancient document but there is something in it which makes it fishy and that is that the document is made up of two parts one typed and the other written. The typed one which is duly stamped is supposed to be a true copy of the one written. The one written was said to be executed on the 17th January, 1918, but the typed copy was not executed and the transactions in it were dated 17th January, 1919. At least this false date in the typewritten copy made it possible for the instrument to be stamped by the Commissioner of Stamp Duties without incurring any penalty. The whole document appears fishy and cannot be safely relied upon to be of evidential value. The copy which is written with hand is not duly stamped and properly speaking is not admissible in evidence. Another defect of the document is that it does not clearly show the extent of the land alleged to have been sold. The spring road which is referred to is not shown on any of the plans nor Okon Basseyy Okwi's compound.

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There are two houses in plot 'A', one belonging to Efiong Esang Abianha and the other to Ma Edua Abang. Efiong Esang Abainha gave evidence as the plaintiffs' 4th witness and said that it was John Esin who gave his father the land. He was not an impressive witness and does not seem to know things which were as near to him as his nose. Also one Sam Uyai who lives

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10 in Ma Edua's compound gave evidence that he too acknowledged the plaintiffs as his ground landlord. He tendered an agreement, with Dr. Esin, Exhibit 'X' which he claimed was made in 1957 but which has turned out to be made on 11th October 1959 when this case was being heard. Ordinarily this document would not have been received in evidence but because of this recent date the Court felt it should go in at least as document produced by the plaintiffs' witness which was against the interest of the plaintiffs'.

In the High Court

No. 24

Judgment 30th October 1959
(Continued)

20 The plaintiffs also called Ekpo Esin the 5th plaintiffs' witness an old man of about 90 years and a very impressive witness. He belongs to the plaintiffs' family and is now the Head Chief of Eyo Abasi. He gave evidence that part of plot 'A' near the river front does not belong to the plaintiffs that it is the communal property of Eyo Abasi and that the 1st plaintiff has been told that that portion is not his land. He however said that the land occupied by the two houses belonged to the 1st plaintiff. This appears to be contradicted by the evidence given in Exhibit 'N' by Ekpenyong Abasi a witness of theirs and the head chief of Eyo Abasi in 1935 who said that Esin Anwana that is John Esin's father bought the land which is now occupied by Asana Ebianha meaning Esang Ebianha. The 30 defendants on the other hand say that Plot 'A' is still the property of the whole of Eyo Abasi. With all these consistencies and inconsistencies before me I cannot hold that the claim to Plot 'A' has been satisfactorily proved.

40 I now come to plot 'B'. This plot was alleged to have been bought by Esin Anwana Esin the grandfather of the 1st plaintiff from Anwana Nyehe. Ekpo Esin and Okon Esin testified to this sale. The defendants say that it was given to John Esin by Anwana Nyehe. I do not believe them. I have before me sufficient evidence to hold that it was a purchase by Esin Anwana Esin from Anwana Nyehe. I believe Dr. Esin when he said that his father married Nkoyo Anwana Nyehe in April 1929 when Anwana Nyehe was already dead according to the 1st defence witness in 1922 or 1923. Also the

In the High Court

No. 24

Judgment 30th
October 1959
(Continued)

4th witness of the defendants Okon Atifit supported this contention when he said that he saw the members of Esin Anwana farming the place. There is also the plan in Exhibit 'D', a plan which was superimposed on the plan Exhibit 'A' and therein edged green. This document was made as far back as the 19th December, 1919. The plan shows that not all the land in plot 'B' was leased to Anglo French Timber Company Limited in 1919 and the land to the west of the plan is described therein as the land of John Esin in the plan. This corresponds to that part of Plot 'B' not included in the lease. There was a descendant of Anwana Nyehe's family in the Court but he gave no evidence to deny the sale. The denial came from the 1st defendant who belongs to Aya Umo family and also from Okon Ala whose evidence did not impress me. He seems to have some axe to grind with the 1st plaintiff and his ready answers to every question made me believe his interest lies some where. I have also not lost sight of the fact that Tom Ayuk the 7th defence witness corroborated the story of the 1st defence witness that he was paying rents accruing from the labourer's quarters to Ekpe Utuk. This witness who is still a tenant of the defendants in another piece of land not in dispute gave me the impression that he was talking to please his landlord. Diminutive in size he behaved like a little clown in Court. He told the Native Court that when he was paying the rents to Ekpe Utuk he was challenged by John Esin not to do so but he refused and continued to do so; in this Court he categorically denied that fact and said that the Native Court record was incorrect. Even there, there is evidence that John Esin asked him not to do so. However the labourers' quarters are shown very near the old foot path separating the communal land from plot 'B' and cannot be said to lie entirely in plot 'B'. I am therefore of opinion that the plaintiffs have proved their case with respect to plot 'B'. Even if the story of the defendants be believed they said that Anwana Nyehe gave part of plot 'B' to John Esin; that his family was in possession of it when the Government acquired it and they still farm the portion to the west not acquired by the Government but there is no evidence from them to show the

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extent of the land given to John Esin by Anwana Nyehe.

In the High Court

No. 24

Judgment 30th October 1959
(Continued)

10 I now come to plot 'C'. This is a very small plot Dr. Esin said that his uncle Abasi Anwana Esin the 4th plaintiff, now dead bought it from one Ukpaeme in 1925 for £7.10.0d; that a part of the land extended into the portion leased to the Oron Sawmills and that he is still collecting 10/- for the family of Abasi Anwana Esin for that portion. the 1st witness for the defence just gave a vague denial that Ukpaeme did not sell the land because it was the communal property of Eyo Sutai. It may be noted that evidence reveals that Ukpaeme does not belong to the same family branch as the other defendants and there is evidence already that each branch family has its own land and can dispose of it. Ukpaeme has a descendant one Otisung still living and yet he does not appear to challenge the plaintiffs. Even Dr. Esin was not cross-examined as to the source of his knowledge about the purchase. Whatever happens I believe his evidence. I am therefore of opinion that the plaintiff has proved his case as regards plot 'C'.

30 I now deal with plot 'D'. This plot is said to have been bought by John Esin from Aya Umo. There is evidence that when Aya Umo died his brother Ekpe Utuk who was young when the sale took place complained to the whole village of Eyo Abasi about the sale and John Esin prevailed upon to give him some part of the land and a boundary fixed. John Esin's pillars were seen and marked by the Surveyor. The 1st defence witness agreed that he saw the pillars when he was making his survey plan for this case but he did not know how the pillars came to be on the land. This piece of evidence was corroborated by Ekpo Esin and Okon Esin who were eye witnesses and who impress me as witnesses of truth.

40 The defendants on the other hand said that it was a small piece of land shown in their plan Exhibit 'B' that was pledged to John Esin by Aya Umo. In this Court they maintained

In the High
Court

No. 24

Judgment 30th
October 1959
(Continued)

that it was a pledge and not a sale but when they were challenged about the evidence which they gave in the Native Court that Aya Umo sold the land to John Esin they agreed and from thence turned to say that John Esin bought the land and that his family is still in occupation of it. They however insisted that the land never extended beyond the main road to the northern side.

It may be noted that in the plan attached to Exhibit 'D' which was made in 1919 in the lease of the Anglo French Timber Company Limited the land to the south of the lease was marked therein as the land of John Esin. Again this plot which is superimposed on the plan Exhibit 'A' did not take the whole of plot 'D' and the part which corresponds with the unoccupied part of plot 'D' is the part marked John Esin's land, in the plan in Exhibit 'D'. Also there is the evidence of Mr. George Allen a very important personality who had lived with the people since 1934. He is the European owner of the Oron Sawmills. He testified that it was John Esin who gave him the foot path from the main road to the Oron Sawmills and this foot path is almost in the centre of plot 'D'. When I compare this piece of evidence with that of the 4th defence witness I seem to prefer that of George Allen because of its permanent feature.

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I shall also mention the fact that when Ekpo Esin the present head of Eyo Abasi was asked why he appeared with the defendants in the High Court when the Customs lease was being acquired by the Government he said that this was because a part of the land sought to be acquired was communal land and that he made it clear to the chiefs of Eyo Abasi that their only interest in the lease was that communal land near the river and not the land inland. A look at the map Exhibit 'A' will show that part of plot 'D' is in the Government lease.

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But the defendants said that the old bungalow left behind by the Anglo French Timber Company was demolished by Ekpe Utuk and the materials removed by him. According to the defendants' plan Exhibit 'B', this bungalow was

sited on plot 'D'. I have to say that I do not disbelieve the story that Ekpe Utuk demolished the house and removed the materials, but I also believe the plaintiffs' story that he was challenged by the Esin family and some of the materials recovered from him and that John Esin even sought remedy in the Court of law but the case was not decided before he died. I also believe that there was a fight over the incident. I am not surprised that Ekpe Utuk did so because he was the man who challenged the sale of the land to John Esin by Aya Umo before the people of Eyo Abasi intervened.

In the High
Court

No. 24

Judgment 30th
October 1959
(Continued)

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I am satisfied therefore that the plaintiffs have proved their case on plot 'D'.

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I therefore grant declaration of title to the plaintiffs on Plots 'B', 'C' and 'D' and also an injunction against the defendants restraining them from interfering with the plaintiffs' rights in Plots 'B', 'C' and D without the consent of the plaintiffs.

The plaintiffs claim to Plot 'A' is dismissed.

Judgment read. Declaration and injunction given on plots 'B', 'C' and 'D'. Claim to plot 'A' dismissed.

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I assess the costs against the defendants at 50 guineas. In doing so I have taken into consideration the fact that the plaintiffs lost a part of their claim.

(Sgd) H.U. Kaine
Ag: Puisne Judge
30/10/59

In the Federal
Supreme Court

No. 25

Notice and
Grounds of
Appeal 26th
November 1959

No. 25

IN THE FEDERAL SUPREME COURT OF THE FEDERATION OF
NIGERIA.

HOLDEN AT LAGOS

NOTICE AND GROUNDS OF APPEAL

Between

Suit No. C/2/1955.

1. Dr. Esin Anwana Esin
 2. Chief Johnson Esin Anwana
 3. Chief Daniel Ebito Esin
 4. Anwana Abasi Esin (deceased).....
- Plaintiffs - Respondents

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a n d

1. Atang Edem Abasi (deceased)
2. Asuquo Efiiong
3. Okon AkpeDefendants - Appellants.

1. TAKE NOTICE that the Defendants, being dissatisfied with the decision of the High Court of the Calabar Judicial Division of the Eastern Region of the Federation of Nigeria contained in the Judgment of His Lordship Mr. Justice Hyacinth Ugboma Kaine, Acting Puisne Judge, dated Friday the 30th day of October, 1959, do hereby appeal to the Federal Supreme Court Lagos upon the Grounds set out in paragraph 3 hereunder, and will at the hearing of the Appeal Seek the Relief set out in paragraph 4 hereunder.

AND the Appellants further state that the names and Addresses of the Persons directly affected by the Appeal are those as set out in paragraph 5 hereunder.

30

2. Part of the decision of the Lower Court complained of:-

That part of the Judgment of the Lower Court granting declaration of title and an injunction to the Plaintiffs in respect of Plots 'B', 'C' and 'D' of their claim in the above suit.

In the Federal
Supreme Court

No. 25

Notice and
Grounds of
Appeal 26th
November 1959
(Continued)

"purchase. Whatever happens I believe
his evidence. I am therefore of opinion
that the plaintiff has proved his case
as regards Plot 'C'."

- (iii) "I have also not lost sight of the fact
"that Tom Ayuk the 7th defence witness
"corroborated the story of the 1st
"defence witness that he was paying
"rents accruing from the labourers'
"Quarters to Ekpe Utuk. This witness 10
"who is still a tenant of the
"defendants in another piece of land
"not in dispute gave me the impression
"that he was talking to please his
"landlord Even there,
"there is evidence that John Esin
"asked him not to do so. However the
"labourers' quarters are shown very
"near the old foot path separating the 20
"communal land from plot 'B' and
"cannot be said to lie entirely in
"Plot 'B'.
"Even if the story of the defendants
"be believed they said that Anwana
"Nyehe gave part of Plot 'B' to John
"Esin; that his family was in possession
"of it when the Government acquired it
". but there is no
"evidence from them to show the extent 30
"of the land given to John Esin by
"Anawana Nyehe".
- (iv) "But the defendants said that the old
"bungalow left behind by the Anglo
"French Company was demolished by
"Ekpe Utuk and the materials removed
"by him. According to the defendants'
"plan this bungalow was sited on plot
"'D'. I have to say that I do not
"disbelieve the story that Ekpe Utuk
"Demolished the house and removed the 40
"materials, but I also believe the
"plaintiffs' story that he was challenged
"by the Esin family and some of the
"materials recovered from him and that
"John Esin even sought remedy in the
"Court of law but the case was not

"decided before he died. I also
"believe that there was a fight over
"the incident. I am not surprised
"that Ekpe Utuk did so because he was
"the man who challenged the sale of
"the land to John Esin by Aya Umo
"before the people of Eyo Abasi
"intervened".

In the Federal
Supreme Court

No. 25

Notice and
Grounds of
Appeal 26th
November 1959
(Continued)

- 10 (v) "Also there is the evidence of Mr.
"George Allen a very important
"personality who had lived with
"the people since 1934.
".....He testified that it
"was John Esin who gave him the
"foot path from the main road to
"the Oron Sawmills and this foot
"path is almost in the centre of
"Plot 'D'. When I compare this
20 "piece of evidence with that of the
"4th defence witness I seem to
"prefer that of George Allen
"because of its permanent feature".

Contra on earlier finding of
fact to wit:-

- 30 "Both the plaintiffs and the
"defendants belong to the village of
"Eyo Abasi and often have one
"paramount chief. This fact has
"caused some degree of complication
"in this case for it is often
"difficult to know when the
"paramount head is acting in the
"interest of his family or of the
"village of Eyo Abasi."

- 40 (vi) "There is also the plan in Exhibit
"'D', a plan which was superimposed
"on the plan Exhibit 'A' and therein
"edged green. This document was
"made as far back as the 19th of
"December 1919. The plan shows that
"not all the land in plot 'B' was
"leased to Anglo French Timber
"Company Limited in 1919 and the
"land to the west of the plan is

In the Federal
Supreme Court

No. 25

Notice and
Grounds of
Appeal 26th
November 1959
(Continued)

"described thereon as the land of John
"Essien in the plan. This corresponds
"to that part of plot 'B' not included
"in the lease".

"It may be noted in the plan attached
"to Exhibit 'D' which was made in 1919
"in the lease of the Anglo French Timber
"Company the land to the south of the
"lease was marked therein as the land
"of John Essien. Again this plot which
"was superimposed on the plan Exhibit 'A'
"did not take the whole of plot 'B' and
"the part which corresponds with the
"unoccupied part of plot 'D'

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are serious misdirections which have resulted in a
grave miscarriage of justice.

- 4. Relief sought from the Federal Supreme Court
To set aside that part of the judgment
for declaration of title and an injunction
granted to the plaintiffs and costs; and/or
dismiss their claim in respect of Plots
'B', 'C' and 'D' of their claim in this
Suit, OR IN THE ALTERNATIVE to order a
new trial in the suit. 20

- 5. Persons directly affected by the Appeal:-

Names.

- (a) Dr. Esin Anwana Esin
- (b) Chief Johnson Esin Anwana All of Oron
- (c) Chief Daniel Ebitto Esin Plaintiffs-
- (d) Anwana Abasi Esin (deceased) Respondents

a n d

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- (a) Atang Edem Abasi of Eyo Abasi (deceased)
- (b) Asuquo Effiong of Eyo Abasi Defendants-
- (c) Okon Ekpe of Eyo Abasi Appellants

Dated at Calabar this 26th day of November,
1959.

(Sgd) E.E.E. Anwan
Counsel for Defendants-Appellants

No. 26

In the Federal
Supreme Court

ADDITIONAL GROUNDS OF APPEAL WITH
AFFIDAVIT IN SUPPORT.

No. 26

IN THE FEDERAL SUPREME COURT OF THE
FEDERATION OF NIGERIA.

Additional
Grounds of
Appeal with
Affidavit in
Support 18th
March 1963

HOLDJIN AT LAGOS

Suit C/2/1955
F.S.C.443/61

10 Between: 1. Atang Edem Abasi } Defendants/
2. Asuquo Effiong } Appellants
3. Okon Akpe }

and

Dr. Esin Anwana Essien and Ors.
Plaintiffs/
Respondents.

MOTION ON NOTICE

20 Take Notice that the Honourable Court
will be moved on the 6th day of May, 1963, at
the hour of 9 o'clock in the forenoon or so
soon thereafter as the appellants or their
Counsel on their behalf can be heard for
leave to file and argue additional grounds of
appeal for such order or orders as this
Honourable Court may deem fit.

Dated at Lagos this 18th day of March, 1963.

(Sgd) B. Agusiobo
f. J. C. Anyaduba & Co.,
Legal Practitioners.

ADDITIONAL GROUNDS OF APPEAL

30 Error in Law (1) That the proceedings in High
Court Calabar are nullity in that
the District Officer had no
jurisdiction to transfer the
case which was already pending
on Appeal in the Magistrate
Court, Calabar.

In the Federal
Supreme Court

No. 26

Additional
Grounds of
Appeal with
Affidavit in
Support 18th
March 1963
(Continued)

- (2) That since the plaintiff was claiming specific areas out of the whole land as shown in Exhibits "A" namely A.B.C, and D. - and since these specific areas were not clearly delineated in Plaintiff's plan as to their extent and certainty and plaintiff's evidence in this respect being vague, the learned trial Judge was wrong in Law to grant the declaration of title and injunction for indeterminate areas of land. 10
- (3) That the District Officer had no jurisdiction to set aside the judgment of the Native Court on review without hearing from the other side who would be affected by the Order, and order setting aside the Native Court judgment and transferring the case to High Court is null and void.
- (4) By L.N.47/1955 Gazette Supplement No. 21 of 12/5/55 - the Power conferred on a District Officer and Resident shall not be exercisable in relation to any proceedings in which an appeal lies of right and therefore the District Officer had no jurisdiction to deal with the Native Court case after it had gone to the Magistrate Court on Appeal.
- (5) By the order of transfer, Dr. Esin purported to be suing in his personal capacity, but on transfer to the High Court, the Statement of Claim disclosed that he was prosecuting the case in a representative capacity without the Order of the High Court authorising him to do so.

(Sgd) B.A. Agusiobo
f. J.C. Anyaduba & Co.,
Legal Practitioners.

For Service on Plaintiffs/Respondents

In the Federal
Supreme Court

C/O Their Solicitors,
Chief M.E.R. Okorodudu, Q.C.,
L a g o s.

No. 26

Additional
Grounds of
Appeal with
Affidavit in
Support 18th
March 1963
(Continued)

A F F I D A V I T

I, BERNARD AGUSIOBO, Solicitor for the firm of J. C. Anayaduba and Company, No. 45, Old Market Road, Onitsha, Nigerian citizen, make oath and state as follows:-

- 10 1. That I am a Solicitor in the firm of J.C. Anyaduba and Company, legal practitioners.
2. That our firm was briefed by the 2nd Defendant/Appellant to argue the appeal.
3. That our firm did not conduct the case at the High Court Calabar.
4. That we received the records of appeal last week from the 2nd Defendant; and
20 after going through them we deemed it necessary to file further grounds of appeal in addition to the ones already filed.
5. That the 2nd Defendant who is instructing us in the appeal told us that the delay in forwarding the Records of appeal was that the records were originally forwarded to the 1st Defendant who has since
30 died.
6. That he (the 2nd Defendant) went to the house of the 1st Defendant to look for the records.
7. That we deem it necessary in the interest of justice to file additional grounds of appeal and that the delay in doing so was not deliberate.

In the Federal
Supreme Court

No. 26

Additional
Grounds of
Appeal with
Affidavit in
Support 18th
March 1963
(Continued)

That I make the Affidavit in support
of my motion asking for leave to argue
additional grounds of appeal which have
now been filed.

(Sgd) B.A. Agusiobo
B. A. Agusiobo

Sworn this 18th day of March, 1963
at the Federal Supreme Court Registry
L a g o s.

BEFORE ME

10

(Sgd) A. A. Vera Cruz
COMMISSIONER FOR CATHS.

No. 27

No. 27

Judge's Notes
9th May, 1963

JUDGE'S NOTES

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

ON THURSDAY THE 9TH DAY OF MAY, 1963

BEFORE THEIR LORDSHIPS

SIR LIONEL BRETT, KT. FEDERAL JUSTICE
JOHN IDOWU CONRAD TAYLOR FEDERAL JUSTICE
SIR VAHE ROBERT BAIRAMIAN, KT. FEDERAL JUSTICE

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F.S.C.443/1961

Atang Edem Abasi ors. versus Dr. Esin Anwana Esin

Appeal from E.R. High Court.

Anyaduba for appellants.

Okorodudu (& Alele) for respondent

Anyaduba asks leave to argue additional G/A. Not
opposed.

Granted.

Anyaduba as to jurisdiction of native court in which proceedings originally instituted.

In the Federal Supreme Court

No. 27

Public Lands Acquisition Ord. s. 10 Cap. 185 of 1948 edition. Record p. 28 - claim by defendants started when Govt. wanted to acquire the land. Jackson v. Cook (1936), 3 All ER 680.

Judge's Notes
9th May, 1963
(Continued)

10 Plaintiff's plan Exh. A shows crown lease in centre of area claimed - not demarcated but agree notice of acquisition must have contained accurate description.

Order of retrial - p. 1, Nature of claim in native court - "the land on which the Customs site is situated" - claim enlarged in High Court Reason for transfer. " 2. The land in dispute is crown land".

Proceedings before Brown J in 1954 - Exh. L p. 112. No conflict of interest argued then.

Native court had no jurisdiction to entertain action as a whole. Not severable.

20 In Exh. A the letters A, B, C and D were inserted by Director of Surveys. Boundaries between them not shown.

Malm v. Wulff 3 WACA 232.

Chief Okorodudu as to jurisdiction

Jackson v. Cooke dealt with different act - and no clear decision in it as to jurisdiction. Last page.

30 Exh. L. At most Nat. Ct. jurisdiction is excluded from the Crown Land - it could also give judgt. as to title without reference to compensation.

Nat. Ct. summons taken out 7.7. 54 - After Exh. L 26.4.54.

No reason why whole of larger area should not be dealt with by Native Court. Does not affect acquisition proceedings.

In the Federal
Supreme Court

No. 27

Judge's Notes
9th May, 1963
(Continued)

Matter was severable in any event.

S/C p. 3 para. 2 described land in dispute.

Parties agree that Magistrate's Court proceedings produced as Exh. B at page 15 ought to form part of record and that substantive appeal cannot be heard without them. They are very brief.

Adjourned. Decision as to jurisdiction to be delivered 16 May.. If necessary date will then be fixed for the hearing.

(Sgd.) L. Brett
FEDERAL JUSTICE.

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No. 28

Judgment of
Bairamian F.J.
24th May, 1963

No. 28

JUDGMENT OF BARAMIAN F.J.

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

ON FRIDAY THE 24TH DAY OF MAY, 1963

BEFORE THEIR LORDSHIPS

SIR LIONEL BRETT FEDERAL JUSTICE

JOHN IDOWU CONRAD TAYLOR FEDERAL JUSTICE

SIR VAHE BAIRAMIAN FEDERAL JUSTICE

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F.S.C. 443/1961

BETWEEN :

- | | |
|---------------------|--|
| 1. ATANG EDEM ABASI | } OF EYO ABASI.....
DEFENDANTS/APPELLANTS |
| 2. ASUQUO EFFIONG | |
| 3. OKON AKPE | |

A N D

DR. ESIN ANWANA ESIN FOR
HIMSELF AND AS REPRESENTING
THE ESIN FAMILY OF EYO ABASI PLAINTIFFS/
RESPONDENTS.

30

JUDGMENT

In the Federal
Supreme Court

No. 28

Judgment of
Bairamian F.J.
24th May 1963
(Continued)

BAIRIMIAN, F.J. The defendants complain against the judgment of the High Court, Eastern Region, declaring the plaintiff's family to be owners of an area of land at Oron which includes the parcel of land acquired by Government under notice given in 1952.

10 Usually, when notice of acquisition is given, these questions arise - (1) what is the proper amount of compensation to pay; (2) who are the persons entitled to it; (3) in what proportion are they entitled - The Public Lands Acquisition Ordinance (Chapter 185 in the 1948 edition of the Laws) provides (in the 1948 text) that all these questions shall be determined in the Supreme Court, of which the High Courts of Lagos and the Regions are the successor courts under the constitutional changes of recent years. The means provided is that of a
20 summons, normally taken out by the appropriate officer of Government and naming the persons claiming to be entitled as respondents, and asking the Supreme Court - I am speaking of the pre-High Court days - to decide the questions which have arisen. The effect of the provisions of that Ordinance was to make the Supreme Court in those days the proper court for deciding these questions, and to exclude the Native
30 Courts from entertaining suits on title to land acquired by Government. See Jackson v. Cooke, 1937, A.C. p. 205, on the similar provisions in Ghana, then known as the Gold Coast.

40 From the pleadings of the parties in the suit now on appeal it is clear that after Government gave notice of acquisition, a dispute arose between the Esins and the Abasis on which of them was entitled to the compensation: each claimed to be the owner of the land acquired; and their pleadings show that each made a claim of title to the land. That is equally apparent from Exhibit L - the notes of Brown, J., at the hearing on 26th April, 1954, at Eket, of the summons taken out by the Lieutenant-Governor of the Eastern Region, in which the respondents were -

In the Federal
Supreme Court

No. 28

Judgment of
Bairamian F.J.
24th May, 1963
(Continued)

1. Chief Atang Edem Abasi
2. Doctor Esin Anwana Esin
3. Chief Ekpo Esin.

Dr. Esin was absent, the other two were present; the Court took evidence on the acquisition, and looked at the Land Officer's report, and made this order -

"Order: Amount of rent payable annually to be £50 as offered by the Lieut.-Governor and is now payable to the persons entitled as landlords." 10

Referring to that hearing, Dr. Esin, after stating in paragraph 6 of his Statement of Claim in the suit in hand, that after the Crown gave notice of acquisition, the Abasis for the first time laid claim to the land as their exclusive property, goes on to say in paragraph 7 that:-

"In furtherance of the said claim the defendants appeared before the Supreme Court, Calabar holden at Eket and claimed to be exclusively entitled to the compensation payable in respect of the portion to be acquired aforementioned by the Crown. Thereupon the plaintiff and his people decided to establish by Court action their right, title and interest in and over the land in dispute". 20

and the defendants, in paragraph 5 of their Defence say -

"The defendants admit para. 7 of the Statement of Claim and state that the claim referred to therein was made in the exercise of the defendants' right of ownership of the piece of land in issue in the compensation case referred to". 30

Thus it is clear that the parties had conflicting claims, and the proper course for the Esins was to prosecute their claim of title upon the summons in the compensation proceedings. Chief Ekpe Esin

was present at the hearing, but the judge's notes do not show that he advanced any claim. Dr. Esin was absent; and paragraph 7 of his Statement of Claim shows that he and his people decided to establish by Court action their title to the land acquired by Government. He sued Atang Edem Abasi and two others in the Native Court of Oron (the proceedings are Exhibit M) stating that -

In the Federal
Supreme Court

No. 28

Judgment of
Bairamian F.J.
24th May, 1963
(Continued)

10 "The Plaintiff claim right of title and ownership for the land on which the customs site is situated on Esin Ufot, Eyo Abasi, Oron, as being his hereditary landed property, the land in question having been bought and used for over 40 years by the following ancestors of His" etc.

20 The judgment was "For the defendants Case dismissed". Below that there are notes of review by an Assitant District Officer, who, in the absence of the parties, at the request of the plaintiff, made an order on 31st January, 1955, under section 28(1) (b) of the Native Courts Ordinance, that the Native Court suit be retried before the Supreme Court of Nigeria. In the former Supreme Court the suit number is C/3/1955; eventually it was heard in the High Court of the Eastern Region, and judgment was given for the plaintiffs for the land shown on
30 plan No. ISH.3 verged red - plaintiff's exhibit A - an area which includes the land acquired by Government (verged yellow on the plan) plus some land to the west and south of it.

40 The defendants in their appeal against the judgment have objected that the suit in the Native Court related to the land acquired by Government; that the Native Court could not have entertained such a suit; that, consequently the Assistant District Officer could not validly have ordered a retrial; and that therefore the proceedings in the former Supreme Court and its successor, the High were a nullity.

 The plaintiff argues that the suit in the Native Court was not about compensation, and, in

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(Continued)

any case, it related to a larger area that that acquired by Government. The first argument has no substance: both Dr. Esin and Atang Edem Abasi, not to mention Chief Ekpo Esin, were respondents to the compensation summons, and the dispute on title to the land acquired should have been litigated upon the summons in the former Supreme Court and could not have been litigated in the Native Court in a suit between Dr. Esin and Atang Edem Abasi. Did the suit in the Native Court relate to a larger area?

10

The terms of the claim in the Native Court are not clear, but when one reads the inspection note and the Finding below it (page 175 of the typed record) one sees that the Native Court understood the dispute relate to the "Customs Site", that is to say the land acquired by Government. The inspection note suggests that the perambulation asked for by the parties went no further south than the road which is the southern boundary of the land acquired by Government. The Finding relates to that land only. If the inspection note is not absolutely clear, it is not unreasonable to read it in the light of the Finding. In my view the Native Court suit related to the land acquired by Government. (There is no need to consider whether the Native Court could have entertained a claim to a larger area including that land.)

20

In my judgment thereofre, the defendants' objection succeeds. I have to add that the matter is not so simple as it might appear; although it is the High Court which adjudicated on title, it did so in proceedings which it could not have entertained. Section 10 of the Public Lands Acquisition Ordinance confers jurisdiction in these terms - (as in the original text) -

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"The amount of compensation due, if any, and every such case of disputed interest or title shall be settled by the Supreme Court, which Court shall have jurisdiction to hear and determine in all cases mentioned in this section upon a summons taken out by the Chief Commissioner or, if the lands are situated in the Colony, the Chief Secretary, or any person holding or claiming any estate

40

or interest in any lands named in any notice aforesaid, or enabled or claiming to be enabled by the Ordinance to sell and convey the same."

In the Federal Supreme Court

No. 28

Judgment of Bairamian F.J. 24th May, 1963 (Continued)

10 A summons was taken out by the Lieutenant-Governor (the successor of the Chief Commissioner); there was already a dispute between Dr. Esin and Atang Eden Abasi, and both were respondents to the summons. The Supreme Court had jurisdiction to hear and determine their dispute upon a summons taken out under that Ordinance; it had no jurisdiction to hear it in a suit between Dr. Esin and Abasi brought in the Native Court contrary to law and invalidly ordered to be retried in the Supreme Court.

20 I propose making and order as follows - The appeal from the judgment of the High Court, Eastern Region, dated 30th October 1959, be and is hereby allowed, and the proceedings in the Calabar suit No. C/2/1955 be and are hereby set aside as a nullity, with costs of appeal to the Appellants/Defendants assessed at ninety guineas, and in the court below at sixty guineas.

(Sgd.) Vahe Bairamian

FEDERAL JUSTICE

Brett, F.J. I concur

30 (Sgd.) L. Brett

FEDERAL JUSTICE

Mr. J.C. Anyaduba for the Appellants/Defendants.

Chief M.E.R. Okorodudu, Q.C. (Mr. J. Alele with him for the Respondents/Plaintiffs.

As to the second point it was conceded by Counsel that if the appeal is to be heard on the merits then it will be necessary for the Court to have before it Exhibit "B" - the proceedings in the Magistrate's Court - which was formally marked during the hearing in the Court below on the point of the validity of the order of transfer, but which by oversight was not included in the list of exhibits in the proceedings now before us. I shall here confine myself solely to the first point to which I have above referred.

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No. 28(b)

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Taylor, F.J.
24th May, 1963
(Continued)

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It cannot be disputed that if, at the time the suit was instituted in the Native Court of Oron, the whole of the land in dispute had been the subject matter of acquisition by the Government, any question relating to compensation and indeed any conflicting claims to title must be determined by the High Court and not the Native Court. The point, and in my view, the sole point for our consideration at this stage of the appeal is whether the land the subject matter of the claim in the Native Court and here I place emphasis on the words the subject matter of the claim, was land over which the Native Court had jurisdiction. To decide this point one is perforce obliged to look at the Writ in that Court and any other matter in those proceedings which will be of assistance in determining the area of land which was the subject matter of the Writ. The claim reads as follows:-

40

"Plaintiff claims right of ownership and title for the land on which the Customs Site is situated on Esin Ufot Eyo Abasi, Oron, as being his hereditary landed property the land in question having been bought and used over 40 years by the following ancestors of his: this land was bought by my grandfather, Esin Anwana Esin from Chief Anwana Nyeke both of Eyo Abasi; by my grand uncle Basseyy Anwana Esin, from Ukpaema both of Eyo Abasi; by Chief John Anwana Esin my father from Chief Nya Uno, both of Eyo Abasi; cost of the land about £14:10:- and a cow only."

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No plan was filed in the Native Court, but from the claim one sees that the land in dispute consisted of three plots of land purchased:-

- (1) by Esin Anwana Esin from Chief Anwana Nyeke;
- (2) by the plaintiff's grand uncle Bassey Anwana Esin from Ukpaema; and
- (3) by Chief John Anwana Esin, plaintiff's father from Chief Nya Umo.

Evidence of the purchase of these plots of land was deposed to by the plaintiff in the Suit in the Native Court and Judgment was entered for the defendants and Plaintiff's case was dismissed. This dismissal can, in my view only have reference to the claim as set out by me above. Now in order to determine the area of land in dispute it is necessary to refer to the plaintiff's plan filed in this Suit on appeal before us for in the order of transfer we have as one of the reasons for transferring the case to the then Supreme Court the following:- 10 20

"The parties to this case have retained the services of lawyers and wish to submit survey plans of the area in dispute during the proceedings."

When one looks at the plan filed, Exhibit "A", and the evidence of the plaintiff explaining the portions A, B, C and D depicted on the plan, it will be seen that the area marked "B" is the same as the first plot purchase from Chief Anwana Nyeke, 30 that the area marked "C" is the same as the second plot purchased from Ukpaema, and the area marked "D" is the third plot purchased from Chief Nya Umo. As to the fourth plot which is marked "A" on the plan and in respect of which the receipt of purchase exhibit "C", was tendered it is referred to by the plaintiff in the Native Court case in these words:-

"There is a small another piece of land on the old road side to the water side which my father bought from Eyo Abasi Chiefs for £13 in 1918, 17th January. This piece of land is include on the side where Customs is built." 40

10 There can in my view be not the slightest
doubt that the area the subject matter of the
Native Court suit was the land shown as edged
red in Exhibit "A". To say that because the
claim begins by saying that the area is the
one on which the Customs site is situated,
therefore that claim relates and relates only
to the area edged yellow on Exhibit "A" is to
say that in a claim for title to land on which
20 a certain premises is situate, the area in
dispute is just a mere strip of land which
houses the four corners of the particular
erection. I am fortified in the view I hold
by the fact that the area edged brown in
Exhibit "A" is not a part and parcel of the
land in red claimed by the plaintiff, and
part of the Customs Site is included in that
area. The Customs Site is contained in an
area measuring 10.67 acres whilst the total
30 area of land claimed by the plaintiff is
19.39 acres. Of the 10.67 acres comprising
the Customs Site an area of 2.67 acres
contained in the area edged brown is outside the
area claimed by plaintiff and edged red. The
net result being that the area of land
remaining after the Customs Site has been
excised is larger than the latter. It
cannot and has not been contended that the
Native Court has no jurisdiction over the
40 larger area of land. Further the area
remaining after the Customs Site has been
excised is, as shown in Exhibit "A", a
defined area. In my view the proper course
to take is to excise the Customs area, the
smaller area over which the Native Court had
no jurisdiction for the reasons already
stated, from the rest of the land in dispute
and hold that there was jurisdiction to
entertain the suit. The effect is that the
evidence relating to Plot C, which is wholly
taken up by the Customs Site, will be dis-
countenanced. As for plots A, B and D, only
portions have been acquired for the Customs
and the evidence relating to the purchase of
all the plots would be material. I should say
that I am not here guided by what would be the
more convenient course to take in view of the
sole issue before us as already set out by me.

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No. 28 (b)

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24th May, 1963
(Continued)

I would therefore hold that there was jurisdiction in the Native Court to that extent.

(Sgd.) John Taylor,

FEDERAL JUSTICE

Mr. J.C. Anayaduba for the Appellant.

Chief M.E.R. Okorodudu, Q.C. (Mr. J. Alele with him) for the Respondent.

No. 29

Order
24th May 1963

No. 29

ORDER.

10

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

Suit No.C/2/55
F.S.C. 443/1961

On appeal from the judgment of the High Court of the Calabar Judicial Division.

(Sgd) L. Brett

FEDERAL JUSTICE
PRESIDING

Between:

Atang Edem Abasi }
Asuquo Effiong }
Okon Akpe } ..

Defendants/
Appellants

20

and

Dr. Esin Anwana Esin }
for himself and as }
representing the Esin } ..
Family of Eyo Abasi. }

Plaintiff/
Respondent

Friday the 24th day of May 1963.

UPON READING the Rcord of Appeal herein, and after hearing Mr. J.C. Anyaduba of counsel for the Appellants and Chief M.E.R. Okorodudu, Q.C. (Mr. J. Alele with him) of counsel for the Respondents:

30

IT IS ORDERED --

In the Federal
Supreme Court

No. 29

Order
24th May, 1963
(Continued)

1. that this appeal be and is hereby allowed;
2. that the proceedings in the High Court be and are hereby set aside as a nullity; and
3. that the Respondent do pay to the Appellants costs of this appeal assessed at 90 guineas and costs in the below assessed at 60 guineas.

10

(Sgd.) J.A. Ade Farasin
CHIEF REGISTRAR

No. 30

No. 30

ORDER GRANTING FINAL LEAVE TO APPEAL
TO PRIVY COUNCIL.

Order Granting
Final leave to
Appeal to
Privy Council
6th August 1963

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

Suit No.C/2/1955
F.S.C. 443/1961

20

Application for an order
for Final leave to appeal
to the Privy Council.

Between:

Dr. E.A. Esin.....Applicant
(For himself and as
representing the
Esin family of Iyo
Abasi)

30

A n d

1. Atang Edem Abasi
 2. Asuquo Effiong
 3. Okon Akpe
- (Tuesday the 6th day of August, 1963.

(Sgd.) L. Brett
Ag. CHIEF JUSTICE
OF THE FEDERATION

In the Federal
Supreme Court

No. 30

Order Granting
Final Leave to
Appeal to
Privy Council
6th August 1963
(Continued)

UPON READING the application herein and the affidavit of the Applicant sworn to on the 19th day of July, 1963, and after hearing Mr. J.A. Cole hold brief for Chief M.E.R. Okorodudu Q.C., of counsel for the Applicant and the Respondents not being present or represented:

IT IS ORDERED that final leave to appeal to the Privy Council be granted.

(Sgd.) M. A. Macauley
CHIEF REGISTRAR

APPEAL FROM THE FEDERAL SUPREME
COURT OF NIGERIA

B E T W E E N :

DR. ESIN ANWANA ESIN
(For himself and as
representing the Esin
Family of Eyo Abasi) Appellant

- and -

1. ATANG EDEM ABASI) of Eyo Abasi
2. ASUQUO EFFIONG)
3. OKON AKPE) Respondents

RECORD OF PROCEEDINGS

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London, S.W.1.

Solicitors for the Appellant

Hatchell Jones & Co.
90, Strand Street,
London, E.C.3.
Solicitors for the Respondents.