

Tetteh Animle II. - - - - - *Appellant*

v.

Theophilus Kwabla Otibo and another - - - - - *Respondents*

FROM

THE SUPREME COURT OF THE GOLD COAST COLONY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 25TH JULY, 1927.

Present at the Hearing :

VISCOUNT HALDANE.

MR. JUSTICE DUFF.

SIR ADRIAN KNOX.

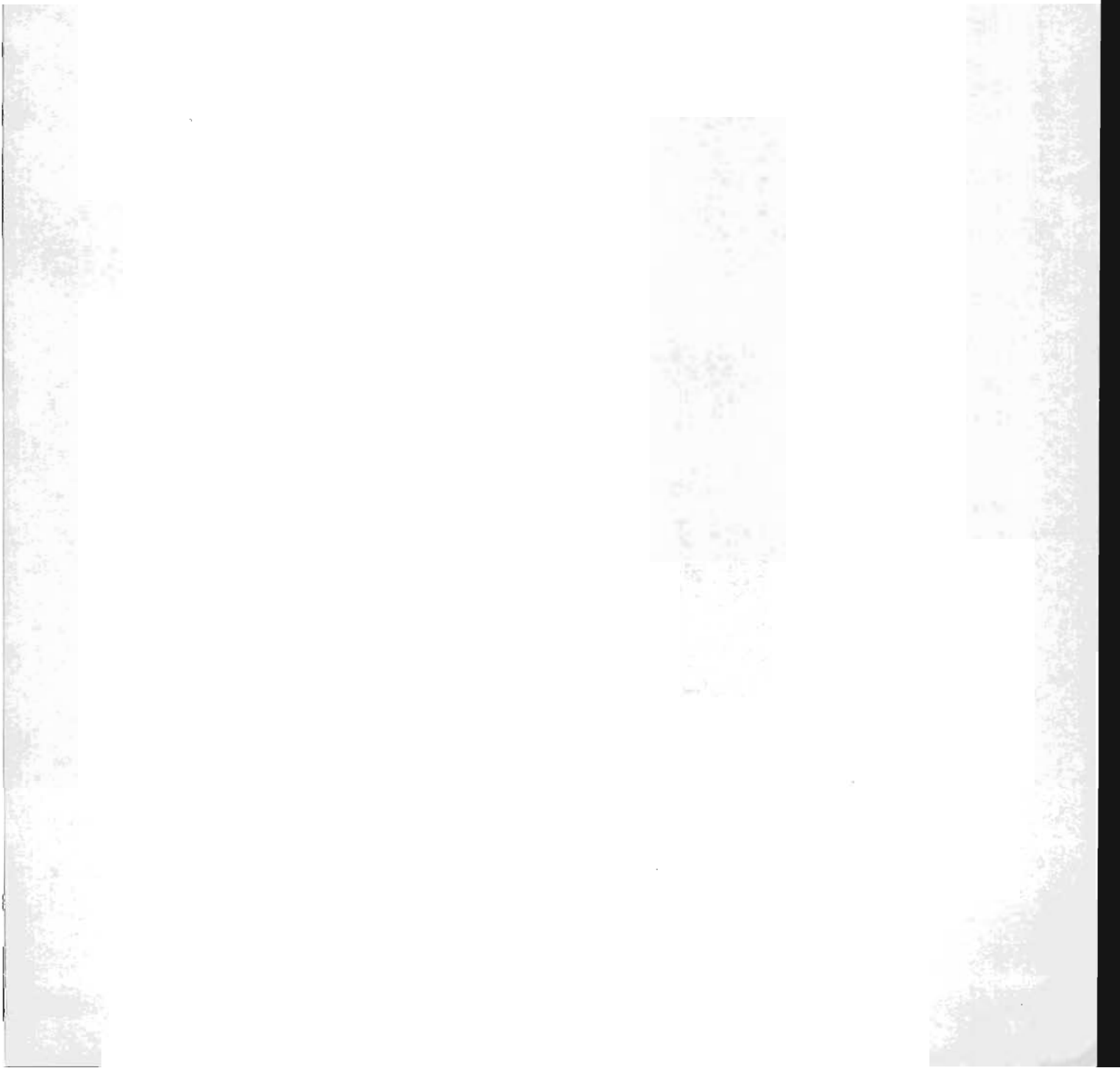
Delivered by SIR ADRIAN KNOX.

In this action, as now constituted, the appellant claimed against the respondents a declaration of his title to a parcel of land in the Volta District of the Gold Coast Colony, more particularly described in the writ of summons. On the trial of the action the learned Chief Justice of the Colony refused to accept the evidence of the witnesses called on behalf of the appellant, and, being of opinion that the appellant had failed to prove his claim, non-suited the appellant. Having regard to O. xxxix of the Rules of Court in force in the Colony, the effect of this order is the same as a judgment against the appellant so far as either of the respondents is concerned, but the respective rights of the respondents *inter se* are not affected by it.

An appeal from that judgment to a Full Court of the Supreme Court of the Colony was dismissed, the Court being of opinion that no sufficient reason had been adduced which would justify it in coming to a different conclusion on the question of the appellant having failed to prove his claim. This is an appeal from that decision.

At the hearing of this appeal the only grounds relied on by counsel for the appellant were (1) that the verdict was against the weight of evidence and (2) that even if the learned Chief Justice was right in non-suiting the appellant he should have directed that the non-suit should not have the same effect as a judgment on the merits—see Order xxxix R. 3 of the Rules above referred to.

With regard to the first ground the questions decided on the trial of the action were questions of fact, the decision of which turned on the evidence given orally. The onus of proving his title was on the appellant, and the learned Chief Justice, who had the advantage of seeing the witnesses and hearing them give their evidence, was not favourably impressed by the witnesses called for the appellant and refused to accept their testimony. On this ground and on this ground only he held that the appellant had failed to establish his claim. The Full Court of the Colony saw no reason to differ from the conclusions of the learned Chief Justice on the question whether the evidence was sufficient to establish the claim of the appellant. There are, therefore, concurrent findings of fact by the Court of first instance and the Court of Appeal in the Colony which, if accepted, dispose of the appellant's claim. Their Lordships find nothing in the arguments advanced before the Board which would justify them in setting aside the concurrent decisions of the Courts of the Colony on the question of fact which was really the only question to be decided, viz., whether the Osudoku people were in occupation and possession of the lands in dispute, and the only remaining question is whether the judgment ought to be varied by inserting a direction that it shall not have the same effect as a judgment on the merits. It is clear that the learned Chief Justice in omitting to give any such direction exercised the discretion given to him by the Rules after full consideration of the circumstances of the case. The Full Court of the Colony approved of the form as well as of the substance of his judgment, and there is nothing in the circumstances of this case to warrant their Lordships in inserting in the judgment a proviso which was deliberately omitted by the Chief Justice who was in a better position than their Lordships to determine which form of order would best serve the ends of justice. For these reasons their Lordships are of opinion that the appeal should be dismissed with costs to the second respondent who alone appeared, and they will humbly advise His Majesty accordingly.



In the Privy Council.

TETTEH ANIMLE II

v.

THEOPHILUS KWABLA OTIBO AND ANOTHER.

DELIVERED BY SIR ADRIAN KNOX.

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