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No. 15 of 1941.

INSTITUTE OF ADVANCED
LEGAL STUDIES

In the Privy Council.

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

44443

CONSOLIDATED SUITS AND APPEALS.

BETWEEN

(1) OPANYIN KWASI BAAH (substituted for OPANYIN
KOFI FRIMPONG) Plaintiff-Appellant

AND

KWAME ABOSSI, ABUAGYE, and BAFUOR
KWADWO BOADI Defendants-Respondents

AND BETWEEN

(2) BAFUOR KWADWO BOADI Plaintiff-Respondent

AND

OPANYIN KWASI BAAH (substituted for OPANYIN
KOFI FRIMPONG) Defendant-Appellant.

RECORD OF PROCEEDINGS.

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In the Privy Council.

No. 15 of 1941.

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

CONSOLIDATED SUITS AND APPEALS.

BETWEEN

(1) OPANYIN KWASI BAAH (substituted for OPANYIN
KOFI FRIMPONG) *Plaintiff-Appellant*

AND

KWAME ABOSSI, ABUAGYE, and BAFUOR
KWADWO BOADI *Defendants-Respondents*

AND BETWEEN

(2) BAFUOR KWADWO BOADI *Plaintiff-Respondent*

AND

OPANYIN KWASI BAAH (substituted for OPANYIN
KOFI FRIMPONG) *Defendant-Appellant.*

RECORD OF PROCEEDINGS.

No. 1.

Notice of Oath Case, Boadi v. Frimpong, No. 91/1933.

In the
Native
Tribunal.

IN THE TRIBUNAL OF OMANHENE, AKYEM ABUAKWA.

Oath Case No. 91/33.

Between

BAFUOR KWABENA BOADI *Plaintiff*

and

OPANYIN K. FRIMPONG *Defendant.*

No. 1.
Notice of
Oath Case,
Boadi v.
Frimpong,
No.
91/1933,
5th Sep-
tember,
1933.

10 To Op. K. Firempong of Gyagyati now at Koforidua.

The claim of Plaintiff herein as against you in the above-named Oath
Case is as follows :—

In the
Native
Tribunal.

The Plaintiff claims £100 damages from the Defendant for trespass committed by the Defendant on the Plaintiff's land otherwise known as Jajati by surveying the land aforesaid without the knowledge and consent of Plaintiff.

No. 1.
Notice of
Oath Case,
Boadi v.
Frimpong,
No.
91/1933,
5th Sep-
tember,
1933—
continued.

The above case is fixed for hearing until Monday the 2nd day of October, 1933.

If when the case is called you do not appear and answer the Tribunal will proceed to hear the case without you and you will be dealt with for breach of the oath.

Issued at Kyebi this 5th day of September, 1933.

10

By Order of the Tribunal,

(Sgd.) ED. MENSAH OHENENG,
Registrar.

In the
Supreme
Court of the
Gold Coast
Colony
(Provincial
Com-
missioners'
Court).

No. 2.

Motion and Order for transfer of *Boadi v. Frimpong* to Supreme Court.

9th October, 1933.

IN THE SUPREME COURT OF THE GOLD COAST COLONY, EASTERN PROVINCE, held at Koforidua on Monday the 9th day of October, 1933, before His Worship LEONARD WARNER JUDD, Acting Commissioner, Eastern Province.

20

No. 2.
Motion and
Order for
transfer of
Boadi v.
Frimpong
to Supreme
Court,
9th and
17th Octo-
ber, 1933.

BAFUOR KWABENA BOADI	...	...	...	...	...	<i>Plaintiff</i>
					<i>versus</i>	
OPANYIN K. FRIMPONG	...	...	...	...	...	<i>Defendant.</i>

MOTION ON NOTICE on behalf of the above-named Defendant for an Order on the Tribunal of Omanhene Akim Abuakwa to stop the hearing of this case in the Akim Abuakwa Tribunal and for the transfer of the said case to the Divisional Court, Accra, or for such other order as to the Court may seem fit.

17th October, 1933.

BY COURT :

30

Motion as prayed. The Tribunal of the Paramount Chief of Akim Abuakwa is ordered to stop the further hearing of this case which is to be enquired of, tried and determined by the Divisional Court sitting at Accra. Costs of motion to be costs in the Cause.

(Sgd.) L. W. JUDD,
Acting Commissioner, Eastern Province.

No. 3.

Request for Issue of Summons, Frimpong v. Abossi, and others.

In the Native Tribunal.

No. 3.
Request for Issue of Summons.
Frimpong v. Abossi and Others,
22nd November, 1934.

IN THE NATIVE TRIBUNAL OF THE OMANHENE OF AKYEM ABUAKWA, KIBI, EASTERN PROVINCE—GOLD COAST COLONY.

The Registrar,
Tribunal of the Omanhene of Akyem Abuakwa, Kibi.

Sir,
Please cause Writ of Summons to issue according to particulars hereunder and oblige.

10 KOFI FRIMPONG (of Koforidua) Plaintiff

versus

KWAME ABOSSI, KOFI ASARE MANTE AND ABOAGYE (all of Jajati near Muoso) Defendants.

By Order of Court.

BAFUOR KWADWO BOADI, etc., *co-Defendant*.

The Plaintiff's claim against the Defendants jointly and severally is for (a) Declaration that he is owner of " All that piece or parcel of land known as Giagiati Land situate at Muoso in Akyem Abuakwa and hereunder " described," and (b) Recovery of Possession from the Defendants of the said Land and (c) One Hundred and Fifty Pounds (£150) damages for the said Defendants' trespass and wrongful occupation of the said Land to wit :—

30 " All that piece or parcel of land with villages messuages, trees, " crops, streams, ponds, farms and hereditaments thereon situate at " Muoso in Eastern Akim and known as and called ' Giagiati Land ' " and bounded on the North by River Giagiati between it and land " belonging to Kwahus and measuring Twenty miles more or less " on the South by land called Kankan belonging to the Vendors and " measuring Twelve miles more or less on the East by Road from " Adasawase to Bepon in Kwahu between it and land belonging to the " people of Adasawase and measuring Twelve miles or less and on the " West by the Junction of Rivers Giagiati and Asubone between it " and land belonging to people of Akoaboso Sudenkum Stream and " Fahiako village measuring nine miles more or less."

Dated this 22nd day of November, 1934.

KOFI FRIMPONG X
his
mark

Plaintiff-Applicant.

(Sgd.) M. B. BOYE DOE,
Writer & Witness to mark.
L. Clerk. Free of Charge.

In the
Supreme
Court of the
Gold Coast
Colony
(Provincial
Com-
missioner's
Court).

No. 4.

Court Notes of transfer of Frimpong v. Abossi to Supreme Court.

IN THE SUPREME COURT OF THE GOLD COAST COLONY, EASTERN PROVINCE, held at Koforidua on Monday the 11th day of March, 1935, before His Worship THORLEIF RATTRAY ORDE MANGIN, Deputy Commissioner, Eastern Province.

No. 4.
Court Notes
of transfer
of *Frimpong*
v. *Abossi*
to Supreme
Court,
11th and
18th March,
1935.

KOFI FRIMPONG *Plaintiff*
vs :
KWAME ABOSSI, KOFI ASARE, MANTE and ABOAGYE *Defendants.*

MOTION ON NOTICE by Kofi Adumua-Bossman for the Plaintiff 10
herein for an order transferring the above-named suit from the Tribunal
of the Omanhene of Akim Abuakwa to the Divisional Court, Accra, for
hearing and determination.

18.3.35.

Mr. BOSSMAN Counsel for Plaintiff moves.

Explains that the Omanhene of Akim Abuakwa had prior transactions
on the land in dispute, and that a case dealing with the same piece of land
has been determined by the Divisional Court.

Motion granted.

(Sgd.) T. R. O. MANGIN, Ag. C.E.P. 20

In the
Supreme
Court of the
Gold Coast

No. 5.

Court Notes (Frimpong v. Abossi).

21st August, 1935.

No. 5.
Court Notes
(*Frimpong*
v. *Abossi*).
21st
August,
1935.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN PROVINCE, held
at Victoriaborg, Accra, on Wednesday, the 21st day of August, 1935,
before His Honour JOSEPH MERVYN ST. JOHN YATES, Ag. C.J.

KOFI FRIMPONG

vs :

KWAME ABOSSI ET AL.

BOSSMAN for Plaintiff.

30

AWERE for 1st and 4th Defendants.

3rd Defendant dead.

2nd one out of Colony and not served.

Counsel ask that an order for survey be made. Application granted.
Order made accordingly. Counsel will jointly draft the order. Adjourned
till 23rd Sept. for mention.

(Sgd.) ST. JOHN YATES, C.J.A.

No. 6.

Order for Joinder (Frimpong v. Abossi).

In the
Supreme
Court of the
Gold Coast.

No. 6.
Order for
Joinder
(Frimpong
v. Abossi),
7th Septem-
ber, 1935.

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

(L.S.)

(Sgd.) St. John Yates,
Ag. : Chief Justice.

KOFI FRIMPONG Plaintiff

versus

10 KWAME ABOSSI, KOFI ASARE, MANTE and ABOAGYE Defendants.

ORDER FOR JOINDER AS CO-DEFENDANT.

UPON MOTION made to this Honourable Court on the 7th day of September, 1935, by Ofei Awere of Counsel for the Defendants Kwame Abossi and Aboagye and UPON READING the Affidavits of Kwame Abossi of Adukrom and Jejeti and Kwadwo Boadi, Odikro of Asunafo filed on the 2nd day of September, 1935, this COURT DOTH ORDER that BAFOUR KWADWO BOADI, Odikro of Asunafo representing the Stool of Asunafo be joined as Defendant in this action and that the Writ of Summons herein and all subsequent proceedings be amended by adding the name of the said
30 BAFOUR KWADWO BOADI, Odikro of Asunafo, representing the Stool of Asunafo, as Defendant.

AND IT IS FURTHER ORDERED that a copy of this Order for joinder with Writ of Summons attached thereto be served personally upon the said BAFOUR KWADWO BOADI, Odikro of Asunafo, representing the Stool of Asunafo. AND that the further hearing of this action be Monday the 23rd day of September, 1935, at 8.30 o'clock in the forenoon. •

Given under my hand and the Seal of the said Court at Victoriaborg, Accra, this 7th day of September, 1935. •

(Sgd.) ROBERT A. BANNERMAN,
Registrar, Divisional Court.

In the
Supreme
Court of the
Gold Coast.

No. 7.

Court Notes (Boadi v. Frimpong).

No. 7.
Court Notes
(Boadi v.
Frimpong),
6th Decem-
ber, 1938

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN PROVINCE, held
at Victoriaborg, Accra, on Tuesday, the 6th day of December, 1938,
before COOPER, Ag. J.

BAFUOR KWABENA BOADI Plaintiff
vs :
OPANYIN KOFI FRIMPONG Defendant.

Mr. AWERE for Plaintiff.

Mr. BOSSMAN for Defendant.

10

Counsel agree that the actions are in the nature of cross-actions with regard to the same land and should be heard together.

Awere states that Boadi has now been destooled. He is contesting the destoolment from Asunafo stool. He cannot come to Court. Doubtful if he has authority to sue or defend for stool.

COURT—He has not brought action in representative capacity. He refers to land as his own.

AWERE—Chief always sues in representative capacity.

COURT—These cases have been pending many years.

BOSSMAN—It has been ruled by Court of Appeal that a writ in 20 a Native Tribunal cannot be amended by the Court. *Malm v. Wulff*. I am prepared to prove title in action in which Frimpong is Plaintiff and ask for a declaration. I am prepared to go on.

AWERE—I appear for all Defendants in second action. *Malm v. Wulff* decided case must be heard as transferred to the Court. Not making application to alter form of summons. Feels that he cannot appear for Boadi personally as his instructions are really from the Stool of Asunafo which Boadi no longer represents. Calls no evidence. Plaintiff is unavoidably absent.

COURT: Ample notice has been given. Exactly the same question 30 of title is involved in the case of *Frimpong v. Boadi* which can be conveniently tried in that case.

Case to go to bottom of short list of land cases.

(Sgd.) GUY COOPER,
A.G. J.

No. 8.

Court Notes of Counsels' Openings (Frimpong v. Abossi).

6.12.38.

OPANYIN KOFI FRIMPONG Plaintiff
v.
 KWAME ABOSSI, KOFI ASARE, MANTE and ABOAGYE Defendants.
 BAFOUR KWADWO BOADI, etc. co-Defendant.

In the
 Supreme
 Court of the
 Gold Coast.

No. 8.
 Court Notes
 of Counsels'
 Openings
 (Frimpong
 v. Abossi,
 6th Decem-
 ber, 1938.

BOSSMAN for Plaintiff:

AWERE for Defendants. Objects that he cannot cross-examine on behalf
 10 of stool as he is not now instructed.

COURT: Cross-examination can be reserved. We must get on.

BOSSMAN opens:— Plaintiff claims declaration of title to Jejeti
 land. Land bought by Plaintiff's uncle Yao Anno from Muoso Stool as
 far back as 1905 for £346. Plaintiff's predecessor was a Juaben man. He
 allowed Jejeti Odikro to collect tolls in respect of this land. This has
 been done to present day. Tolls are paid to Plaintiff. The whole of this
 land with a far larger tract has been subject of claim by Omanhene of Akim
 Abuakwa and the Muoso Odikro Affam against the Omanhene of Kwahu
 and the Mpraeso Chief in Suit 68/22. A boundary, the river Jejeti, was
 20 fixed between the States. The sale by Muoso Stool to predecessor of
 Plaintiff was admitted in evidence. Plaintiff does not live on land. He has
 possession of the land through his tenants. Yao Anno died about 1918
 and was succeeded by Plaintiff, his nephew. Plaintiff has a village and
 farm on the land. He visits it occasionally. Plaintiff was in undisturbed
 possession of the land until about 1933. He had a proper survey of the
 land made and pillars fixed on the boundaries. Boadi then tore down the
 pillars, swore an oath, and issued the summons in the other action. At
 that time it was found that Abossi and others had been planting along
 the western boundary. Plaintiff then took action. Plaintiff's root of title
 30 is Conveyance of January, 1905, from Muoso Chief to Yao Anno. Document
 is duly registered. The boundaries in the deed show clearly that the
 Plaintiff is entitled to all the land coloured pink in the plan. The
 Defendants are all trespassers. They have made farms, disturbed tenants
 and broken pillars. We say the land was always Muoso Stool land, not
 Asunafo Stool land.

AWERE pleads:—(on behalf of all Defendants except Boadi).

In possession so far as Abossi and other Defendants of land edged
 green in plan having acquired that land by purchase from Stool of
 Asunafo about 16 years ago when that Stool was occupied by Bafour
 40 Aprede.

In the
Supreme
Court of the
Gold Coast.

No. 8.
Court Notes
of Counsels'
Openings
(*Frimpong*
v. Abosi,
6th Decem-
ber, 1938—
continued.

Undisturbed possession ever since. Large cocoa farms have been made. Villages have been built. After Apiede's death about four years after the sale, Bafuor Boadi is his successor on stool. Only disturbance was when Plaintiff's men cut tracks for purpose of survey. Disturbance reported to Odikro of Asunafo who met Plaintiff's people at Jejeti railway station. Omanhene's oath sworn that acts of cutting tracks were acts of trespass. Oath case reported but Plaintiff would not attend Tribunal. After this Plaintiff order pillars to be put on land. Then Boadi had the pillars broken down. No trespass has been committed. The breaking of pillars was done by Boadi in exercise of his right. The villages and farms were not made clandestinely. The land was Asunafo land up to sale. 10

EVIDENCE FOR OPANYIN KOFI FRIMPONG.

Evidence
for
Opanyin
Kofi
Frimpong.

No. 9.

Isaac Odoye.

No. 9.
Isaac
Odoye,
6th Decem-
ber, 1938.

ISAAC ODOYE, s.o.b. English. *1st Witness for Plaintiff.*

EXAMINATION-IN-CHIEF :

Examina-
tion.

I live in Accra at Adabraka. I am a retired catechist. At one time I was a lawyer's clerk. I was clerk to the late Mr. Hutton Mills, Senior. I went to him in 1903. I left him about 1907. I remember at that time the Muoso Chief Apontua. He came to the office; he came and brought 20 a case against one Adjua Fi, a Queen. That is how I got to know him. I know that because of that case he sold some of his stool land. I can't remember all who bought the land. One Anno bought the land. I hold in my hand a deed of conveyance. It was drafted by lawyer Mills and copied by me. I see my own signature on the document. The document was executed in lawyer Mills office. Apontua and Afam and Badiako executed it in my presence. It was read over and interpreted to them in my presence. Yao Anno also executed it. It was later stamped and registered by our office.

Exhibit
"A."

(Bossman tenders deed in evidence. Exhibit "A." No objection 30
by Awere.)

Cross-
examina-
tion.

CROSS-EXAMINED: Mr. Mills made the sketch inside the deed. I copied it. He didn't go to land himself before making it. I can't say if Chief Apontua knew "miles." He did not tell me how he had measured it.

Re-exami-
nation.

RE-EXAMINED (by leave): The parties said that the money had been paid already.

No. 10.

Kofi Frimpong.

KOFI FRIMPONG, s.a.r.b. Twi. *Plaintiff*.In the
Supreme
Court of the
Gold Coast.No. 10.
Kofi
Frimpong,
6th Decem-
ber, 1938.

EXAMINATION-IN-CHIEF :

I am an elder and a farmer of Koforidua. Yao Anno was my uncle. He is dead. He died about 10 years ago. I have brought this action against Abossi and others in respect of Jejeti land. I know the land. The Jejeti river bounds the plot going to the Kwahu side. On South it is bordered by Kankang lands. On East by Bepong Chief's land. There is an old road to mark the boundary. The old Kwahu road turns at Muoso. Then boundary runs to Fianko. Then it runs to the junction of the Asuboni and Sidukum streams. Then it runs to Asuboni and Jejeti junction. The junction of the streams. All that land belonged originally to the Muoso people. My predecessor Yao Anno bought it from the Muoso people. I was present and took part in the sale. The Muoso Chief was Kwesi Apontua. The negotiations for sale were at Koforidua. Apontua, Kweku Afam, Kwami Bediako, the Mankrado of Muoso and other elders and young men came. The ones I have not named did not execute the paper. A bailiff called Tawiah was with Apontuah. Bailiff said that the lawyer said that the land should be sold. My uncle agreed to buy the land. People went to see the land. I went with Bediako and Affam and Abiyuna, all Muoso people to see the land. My uncle also went. On my uncle's side were Kwao Penyin from Jejeti and other Jejeti people. We went round the boundaries I have already described. We did not cut a boundary. We stayed in a village called Bomia about the middle of the land. After the inspection the money was paid in Koforidua at Gyasihene's house. Safohene Boateng and other elders of Koforidua were present. I remember £300 as the price. There were other expenses which I do not remember. Then we came to Accra with the Bailiff. I did not come to Accra. My uncle and Apontuah came. My elder brother Kwesi Boateng came. They brought document "A" from Accra. My uncle gave it to me. I have kept it since. I gave it to my lawyer for this action. My uncle did not live on the land. The Odikro of Jejeti was living on the land before it was sold. My uncle left him in charge of land as he was already in possession. He was left as caretaker. My uncle wanted him to buy the land but he had no money. He was one Kwabina Danquah. He is dead. Yaw Owusu is his successor. The Jejeti people paid tolls to my uncle. The Odikro collected them. I received them on behalf of my uncle. When he died I received them myself. The Jejeti people are Juabens like me. So are the Kankangs. We come from Ashanti. Kankangs on south derived title from Apontua. I have not given permission to any except Jejeti to farm there. I do not farm there myself. An Accra man made a village for me. He is called Agyiri. I go there periodically. I have sued Defendants as they have made

Examina-
tion.

In the Supreme Court of the Gold Coast.

No. 10. Kofi Frimpong, 6th December, 1938.

Examination—continued.

farms and villages on the land. I discovered that about six years ago. The Jejeti people made a report to me. I saw Abossi. The Defendants said that the Odikro of Asunafo had sold the land to them. I wrote to Odikro Kwabene Boadi on the subject. He said that the land he sold was his and not mine. I asked permission from my elders and went with a surveyor to put pillars on my land. The surveyor was called Okai. I started cutting a boundary and fixed the pillars. That was the first time I saw the farms which had been made. Boadi threw down the pillars. He then sued me at Kibi. I subsequently sued him. I know Adjua Fi. She comes from Akuaboso. She had a boundary with the Muoso people. The land was sold to pay for litigation with her. At one time she was Odikro of Akuaboso. She was destooled. I don't know where Asunafo land is. It does not bound with mine.

Adjd. to Dec. 13th.

(Sgd.) GUY COOPER, Ag. J.

No. 11. Court Notes (Frimpong v. Abossi and Bodi v. Frimpong), 16th February, 1939.

No. 11.

Court Notes (Frimpong v. Abossi and Boadi v. Frimpong).

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN PROVINCE, held at Victoriaborg, Accra, on Thursday, the 16th day of February, 1939, 20 before COOPER, Ag. J.

KOFI FRIMPONG Plaintiff
vs.
KWAME ABOSSI, KOFI ASARE, MANTE and ABOAGYE ... Defendants.
BAFOUR KWABENA BOADI, etc. co-Defendant.

Mr. BOSSMAN for Plaintiff.

Mr. AWERE for Defendants and co-Defendant.

BAFOUR KWABENA BOADI

v.

OPANYIN K. FRIMPONG.

30

AWERE for Plaintiff.

BOSSMAN for Defendants.

Counsel agree that both actions should be heard together as issues are identical and second action be treated as part heard with the other.

Plaintiff interposes.

EVIDENCE FOR OPANYIN KOFI FRIMPONG (continued).

No. 12.

Frank H. Simpson.

FRANK HERMAN SIMPSON, s.o.b. *2nd Witness for Plaintiff.*

I am a Licensed Surveyor living at Accra. I hold in my hand a plan signed by E. E. K. Okai, Licensed Surveyor. I know his signature well. I worked with him in making this plan. Mr. Okai is now in the Tarkwa area. I do not know the exact whereabouts. The land is said to be the property of Anno situated at Jejeti. I have seen Exhibit "A" when we were engaged on this work. There is a sketch plan at end of conveyance. That was the basis of the plan we made.

The plan was made about September or October, 1933.

(Plan tendered and admitted in evidence. Marked Exhibit "B.")

I identify Opanyin Frimpong. He went with us on land and pointed out lands to us. He employed us to make the survey.

CROSS-EXAMINED :

When we started the work there was no dispute in Court. Before we finished some people on the land objected. Kwame Abossi (identified) objected. I met him at a village. The village was in a cocoa farm. The farm was not very old enough to bear. We went round the limits of the land. We did not mark farms or villages, only the boundaries.

In the Supreme Court of the Gold Coast.

Evidence for Opanyin Kofi Frimpong—*continued.*

No. 12. Frank H. Simpson, 16th February, 1939.

Examination.

Exhibit "B."

Cross-examination.

No. 13.

George D. Plange.

GEORGE DOUBT PLANGE, s.o.b. *3rd Witness for Plaintiff.*

I am Licensed Surveyor living at Accra. By Order of Court I made a plan of the lands in dispute in this case. I see the plan I made. All parties were present. They pointed out their boundaries. I demarcated their claims on the plan.

(Plan tendered and admitted in evidence. No objection. Exhibit "C.")

I had Exhibit "B" with me. My instructions were to mark the claims of all parties.

Adjourned to Feb. 17th.

(Sgd.) GUY COOPER,
Ag. J.

No. 13. George D. Plange, 16th February, 1939.

17th February, 1939.

In the
Supreme
Court of the
Gold Coast.

Counsel agree that proper name of co-Defendant is Kwadwo Boadi
not Kwabena Boadi.

Evidence
for
Opanyin
Kofi
Frimpong—
continued.

GEORGE DOUBT PLANGE, *3rd Witness for Plaintiff.*

EXAMINATION-IN-CHIEF, continued.

No. 13.
George D.
Plange,
17th Febru-
ary, 1939—
continued.

The greater portion of the land is forest land. I see the portion of " C " marked in blue. That is claimed by co-Defendant Boadi. There are many farms farmed by Kankang persons. I did not see their headman. Plaintiff mentioned to me that Kankang people farmed them. I located the farms of the Defendants in green section. I think Kweku Aboadjaye's farm was the oldest. It was nine or ten years old at the time I surveyed it. Romia is an old ruined village. The line passed through it. All the parties accompanied me. I was told the name but not the owner. I asked who was owner of the " Old Farm " near there. No one could tell me. As to " New Farm " Plaintiff told me it had been made by Jejeti's. It was just made. I did not see Adjoa Fi or any representative of hers. On plan " B " pillars were shown. There were none when I went there. The portion to the East of the railway was not in dispute so I did not examine it. 10

Examina-
tion—
continued.

CROSS-EXAMINED :

Cross-
examina-
tion.

In the green area there were several villages. There were houses on all the farms. In Kweku Aboagye's farm there were about seven swish huts with thatched roofs. Kwame Abossi's farm is not a large one. It was about seven or eight years old when I saw it. They were young trees. Not bearing. I was there from October 19th to 26th. I did not see any cocoa there. There were no buildings standing at Romia. I saw old bottles and cooking pots. Old dishes. I think that they showed that site had been inhabited. Kwame Abossi said that it was on his land. No Kwahu man was present. Boadi himself told me that he had told Abossi to remove these pillars. I inserted the eastern portion of the land which is not in dispute from Exhibit " B." I did not go there. At Fuianko there were signs of a swish house broken down. Also old pots and bottles. Both Boadi and Plaintiff claimed it. Plaintiff told me that land to south of pink line was Akuaboso land. Boadi claimed it. I put Plaintiff's name in brackets to show who told me. No Akuaboso people were there. Boadi told me what he said was Adjoa Fi's land. Plaintiff said that it was Kankang land. The farms on the green portion are easily seen. Anyone can see that the land is cultivated. I saw one Kankang man on a farm. He did not tell me who allowed him to farm. He was on farm marked Bah and sons. Abossi said that he had given him the land to farm. I met a man in the village marked Kofi Frimpong's. He was an Accra man Agyiri. He said Plaintiff had given him the village. Exhibit " B " shows total area of Plaintiff's land as 10.399 square miles. 30

RE-EXAMINED :

I have not got the letter instructing me to make the plan. I now see a copy of it.

(Copy of instructions put in by agreement. Exhibit "D.")

Abossi said that Romia was within the area he was claiming. The original owner was not mentioned so far as I can remember. I understood that Agyiri was in the village under Plaintiff not as owner but as caretaker. There is a forest between Frimpong's village and Abossi's farm. One cannot see from one to the other.

Evidence
for Opanyin
Kofi
Frimpong—
continued.

No. 13.
George D.
Plange,
16th Febru-
ary, 1939—
continued.

Re-exami-
nation.

Exhibit
"D."

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No. 14.

, Kofi Frimpong (resumed).

KOFI FRIMPONG (under oath).

CROSS-EXAMINATION, continued.

Boadi is Odikro of Asunafo. Asunafo land does not bound with mine. I do not know where it is. When I was having the survey made (B) he claimed that land was his. That was the first time I heard of him. I remember a case between Omanhenes of Akim Abuakwa and Kwahu about land in this vicinity. My uncle was not alive. I gave evidence in the case. I sent a representative to produce the conveyance "A" in Court. I gave evidence for the Kwahu side. Co-Defendant Boadi as Odikro of Asunafo represented the Asunafo Stool which was a party to the case. The Muoso Stool was also a party. I was with Plange all the time he was making his survey. I have not claimed any rent from the Kankangs who have made farms as they are my people. We are all Juabens. They got permission from Apontua, Odikro of Muoso. I forget the name of the present Muoso Chief. I don't really know how the Kankangs started farming on my land. I have no objection to them doing so. I do not know the present chief of Kankang personally. I knew the old chief Akusa. He is dead now. I have subpœnæd his successor. Since I bought the land mentioned in "A" I and my predecessor have been in possession of it.

30

Adjourned to February 20th.

(Sgd.) GUY COOPER.

No. 14.
Kofi
Frimpong
(resumed),
17th Febru-
ary, 1939.

No. 15.

Court Notes (of Consolidation), 20th February, 1939.

It is agreed by Counsel that actions should be consolidated. Kofi Frimpong to be treated as Plaintiff.

No. 15.
Court Notes
(of Con-
solidation),
20th Febru-
ary, 1939.

No. 16.

In the
Supreme
Court of the
Gold Coast.

Kofi Frimpong (again resumed).

Evidence
for
Opanyin
Kofi
Frimpong—

KOFI FRIMPONG.

CROSS-EXAMINATION, continued.

continued.

No. 16.
Kofi
Frimpong
(again
resumed),
20th and
21st Febru-
ary, 1939.

Cross-
examina-
tion—
continued.

I did not know Apeagyi who was on the Stool of Asunafo. I don't know about him. I never lived there. I never received a letter from him claiming the land. I remember swearing an affidavit about five years ago. It was in respect of an application for transfer. I never had a claim from Apeagyi. I had one from Boadi. When I went to the land with my uncle we were three days on the land inspecting the boundaries. The whole land was forest land. The railway had not come. We started at Muoso Nkwanta. We did not cut boundaries. Marks were made on trees to show the boundaries. Some of the marks are still there. I have never cut a line. We did not measure the land. At that time it was not usual to measure with ropes. A week after we visited the land my uncle paid for it and the papers were prepared at Accra. We started the inspection from the source of the Jejeti river. There was no mark there. There is a village called Apesika there. We then followed the stream to Jejeti town. The river was the boundary. It is the boundary as far as the junction of the Jejeti with Asuboni river. We slept at a village called Romia in the forest. We slept there the first night. The second day we inspected from the junction of the stream to Sidenkum stream and returned to the village. (Note Sidenkum is marked on "B.") We made no mark as the point was marked by the junction of the stream. From there we went to Fuianko. We went through the forest. There was a hunter's path. I considered that as the boundary. It was a straight path. From Fuianko we went to Muoso Nkwanta. On the road there is a big tree which was on the left hand side. This was the boundary. There was an old path from Fuianko to Muoso Nkwanta. From Muoso Nkwanta we walked to the junction of the streams Biater and Kwate. There was a big tree at the junction. Apontua marked it with a cutlass. The mark is still there. We followed the Kwate stream for a little way and then got on a road leading to Apesika. I showed Okai the boundaries before he made Plan "B." I showed the Conveyance "A" to the surveyors. I have often visited the land. I did not make farms there. I visited the land every year. After the conveyance I visited the land about four months later. The land was put in charge of the people of Jejeti. The Odikro of Jejeti knew the boundaries. He went with us on the first inspection. In those days land was not measured when sold. Apontua mentioned the dimensions of the land as shown on the Conveyance. I don't know the distances myself. I put Agyiri to make a farm and village on the land. My uncle was dead then. He died about seven years ago. I had no village on the land when he died. I took Agyiri round my land. I showed him the boundaries. I showed him all my land. At that time Abossi had

not made a farm on the land. This was before Okai made Plan "B." He made the plan about one year later. I know that now there are some new farms. There is cocoa on them. They are just starting to grow. When I spoke to Abossi he said that he had been there six years. My people asked him about the farms. Then the Defendants put me in fetich. They swore that they had bought the land. I got a letter from Boadi. It is annexed to my Affidavit of December 5th, 1934.

(Original letter put in by consent. Marked Exhibit "E.")

I did not know it was from Apiagyo. I have never been to Asunafo. At the first inspection Adjoa Fi was in Accra. I did not see the Akuaboso people on their boundary. The Kankang people did not come. Nor did the Kwahus. There was an action in 1923 between the Omanhenes of Akim, Abuakwa and Kwahu. Akim claimed all the land. The Asunafo Stool was a party. I know that some Kankang people are farming on the land claimed by Boadi and Abossi. They are Juabens like me. I questioned them. I let them farm as they are my brothers. They had no cocoa yielding. I don't know the name of the Kankangs. One Bah is among them. I don't know Yao Oti. I did not know a former Odikro of Kankang, Yao Ewusi. I knew one Yao Akusi. I do not know R. J. Botahene or Kwesi Adae. Bah told me that Akims were farming on the land. He did not tell me that Abossi had given him leave to farm. The farms were food farms. Not cocoa farms in bearing. A woman was Odikro of Kankang at the time.

.Adjourned to February 21st.

GUY COOPER.

21st February, 1939.

I have never taken tribute or tolls from Bah. Agyiri farms for me. I went with Okai when he made his survey. I saw cocoa farms in the land. The trees were about six years old. They were making branches. Not bearing. I could not understand Plange's evidence. When the land was sold "guaha" was cut. This was done at Koforidua. I bought the land according to native custom. It was the custom to plant Ntome trees on the boundary. Now cement pillars are placed. No Ntome trees were planted on the land. It was after the purchase of the land according to custom that the paper "A" was made at Accra. In the former case in Court I was summoned to produce the Conveyance. I did not take sides with the Kwahus. Muoso is under the Stool of Abuakwa.

RE-EXAMINATION.

When I slept at Romia village during the first inspection the Muoso people said it belonged to them. When I went with Surveyor Plange the village was in ruins. Apontua, the vendor, had let the Jejeti people settle on the land. He asked them to help pay his debt. They could not do so, so Apontua sold land to my uncle. Other marks can be used beside Ntome trees to mark boundaries. At time of purchase one Darkwa was Odikro of Jejeti. He is dead. Yao Ewusi is the present Odikro.

In the
Supreme
Court of the
Gold Coast.

Evidence
for
Opanyin
Kofi
Frimpong—
continued.

No. 16.
Kofi
Frimpong
(again
resumed),
20th and
21st Febru-
ary, 1939—
continued.

Cross-
examina-
tion—
continued.

Exhibit
"E."

No. 17.

Kobina Nketsia.

Evidence
for
Opanyin
Kofi
Frimpong—
continued.

KOBINA NKETSIA, s.a.r.b. Twi.

EXAMINATION-IN-CHIEF.

I am a farmer of Koforidua. I am son of Plaintiff. He succeeded my father Yao Anno. My father bought land at Jejeti. I was a boy at the time but I understood about the purchase. I did not go to inspect the land. Later my father told me that he had bought land from Apontua and we must go to Accra to make a paper. I went with him. Apontua came, also Affam and Bediakor. I was present when the paper was made before lawyer Mills. I touched pen to witness it. I am illiterate. I can recognise that "A" is the paper I saw at lawyer Mills. 10

No. 17.
Kobina
Nketsia,
21st Febru-
ary, 1939.
Examina-
tion

Cross-
examina-
tion.

CROSS-EXAMINED.

I was not a small boy. (Witness points out in Court a boy of about 16 years.) I was as old as that. I remember the clerk who was present. He is called Odoye.

No. 18.
Yao Ewusi,
21st Febru-
ary, 1939.

No. 18:

Yao Ewusi.

YAO EWUSI, s.a.r.b. Twi.

Examina-
tion.

EXAMINATION-IN-CHIEF.

I am Odikro of Jejeti. I am a farmer also. I know the Plaintiff. I have known him since I was a boy. I knew his uncle, Yao Anno. Jejeti belongs to the Plaintiff. I collect cocoa from the farmers and bring it to him. My predecessor did this. When I succeeded I continued to do so. He told me that when we fought with the Ashantis the Juabens went first to Bepon in Kwahu. While living there the young men of Kwahu fought with them, so my predecessor went and begged the Odikro of Muoso. He gave them leave to settle at Jejeti. At that time no farms were made. There was a case between Adjoa Fi, Odikro of Akuaboso and Apontua, Odikro of Muoso. My predecessor's son had found a nugget of gold in a gold pit. Adjoa Fi claimed it but the son took it to the Odikro of Muoso who had given us the land. There was an action in the High Court. The Odikro of Muoso got judgment but he had spent a lot of money on the case and got into debt. He came and told my predecessor that he wanted help. My predecessor was Kofi Dakwa. Dakwa had no money to help Apontua. So Apontua then sold the land to the Plaintiff's uncle, Yao Anno. Dakwa arranged with Anno that we should remain on the land. We used to dig 30

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for gold. Then we stopped that and planted cocoa. We paid tolls to Anno, first of all in gold and then in cocoa. Dakwa told me the boundaries of Jejeti land. From Apesika the boundary follows the Jejeti river to Sidenkum stream. From there the boundary runs to a village called Fuianko. From there to the junction of the old Muoso road, Muoso Nkwanta. Then round to Jejeti River. My people farm that land. The railway line crossed the land. My people have farmed on both sides of the line. I have not seen the Plaintiff himself make a village but an Accra man, Agyiri, made a village for him. Plaintiff stayed there from time to time. Agyiri is at present in
 10 prison. There are Jejeti farms beyond the Plaintiff's village, away from railway. The cocoa on these farms is not yet bearing. I have heard the name of Romia village. I have not been there. It is an old village. A hunter called Kwesi Agyirim used to go and hunt there. This was before the land was sold by Apontua. One of the Plaintiff's sons Kobina Kuma lived with me. He used to inspect the land. He made a report to me. It was some time ago. I informed Plaintiff. Then Plaintiff came with a surveyor and boundary pillars were set up. I heard someone had pulled them down. I don't know the Kyerepong settlers personally. I have heard the name of Abossi. I first heard of them some time before the survey was
 20 made. I know the co-Defendant Boadi. I have never had dealings with him in regard to this land. I have never heard that Asunafo Stool owned all land up to the railway.

CROSS-EXAMINED.

I carried my uncle's bag to Accra when the case was heard in High Court between Adjoa Fi and the Muoso Stool. I was a boy. I saw Adjoa Fi at Accra during the case. My predecessor did not pay toll to Muoso except in respect of gold. I have not been all over the land except when surveyor came. I was told of the boundaries. I don't know who gave the land on which the railway was built to the Government. I was not on
 30 Stool when railway was made. Plaintiff gave the land for the lorry road. Or Yao Anno. Dakwa was a caretaker for Yao Anno. I never heard who gave the land for the railway. We have paid tribute to Plaintiff in respect of cocoa farms. They are on the land Yao Anno bought at Jejeti. I have seen some of the farms. Some are on lorry road to Kankang. Some on the Kwahu side. I have not collected tolls from farms near Romia as farms are not bearing. Kwesi Annan has a farm near there. Abo Kojo Mensah, Kofi Boateng; Kweku Ninno used to farm there but he is dead. Kobina Kuma had farmed there. A child of mine Kojo Dakwa farmed there and many others. By "there" I mean on the west side of the railway. I have
 40 gone to some of these farms. I went to Kweku Ninno's farm when he died. It was near Romia. He planted cocoa. After his death the farm was abandoned. My people were not driven off the land. They are farming there still. Some of the farms are near the Jejeti stream. I did not know Apiagya. I was not on the Stool at the time of the dispute between Akim Abuakwa and Kwahu. I have been on the Stool about three years. I remember representatives of the two parties coming to Jejeti. I did not see Boadi there. I did not see Boadi when the surveyor came to erect the pillars.

In the
Supreme
Court of the
Gold Coast.

Evidence
for
Opanyin
Kofi
Frimpong—
continued.

No. 18.
Yao Ewusi,
21st Febru-
ary, 1939—
continued.

Examina-
tion—
continued.

Cross-
examina-
tion.

In the
Supreme
Court of the
Gold Coast.

Evidence
for
Opanyin
Kofi
Frimpong—
continued.

No. 18.
Yao Ewusi.
21st Febru-
ary, 1939—
continued.

Cross-
examina-
tion—
continued.

I never heard that an oath was sworn to stop the surveyor making the survey. I was not on Stool. I only succeeded about three years ago. I never heard of Baodi swearing an oath. The boundary pillars placed were removed by Asunafo people. I heard this. I did not see it myself. Before Kobina Kuma made the report to me my young men had on several occasions reported that Kyerepongs were on the land. I was a linguist before I was on the Stool. I never heard of any oath being sworn against Plaintiff. I did not hear that Boadi came to Jejeti to swear the oath before the Odikro. I may have been away at the time. When the Juabens were first put on the Jejeti land the boundaries were not pointed out. Hunters used to go all over the land. Jejeti stream is boundary with Kwahu. The railway went through some of the Jejeti farms. Two of the farms were Akyire's and Kobina Mensah. Also my son Kofi Twidan's. His farm was near the river. The nearest town is Kankang. The people are Juabens. I don't know if Abossi and his people drove Kankangs off the land. I can't say if there are any boundary marks. I have been to Akuaboso. I don't know where Akuaboso land is. I don't know the owner of the land between Kankang and Asuboni. I am an Ashanti man. I don't know about the Akim land or the boundaries. I know of the boundaries because my predecessor told me of them. I have never heard of Akute. Romia stream joins Jejeti. The Akibesu stream runs through Muoso in its lower course. I don't know a stream called Enyemne Wodea. There is no Jejeti man called Bah. I don't know about Kankang people.

Adjourned to February 22nd.

GUY COOPER.

22nd February, 1939.

My predecessor settled on the old road from Accra to Kwahu. Farms have been made on both sides of the road. The Muoso Chief did not state any boundaries to Jejeti land. He did not mention boundaries with Akuaboso or Asunafo. My predecessor did not tell me the limits of the land.

Re-exami-
nation.

RE-EXAMINED.

We are still where we first settled. The lorry road has passed round the town of Jejeti.

No. 19.
Kwami
Dankwa,
22nd Feb-
ruary, 1939.

No. 19.

Kwami Dankwa.

KWAMI DANKWA, s.a.r.b. Twi.

Examina-
tion.

EXAMINATION-IN-CHIEF.

I come from Bepong in Kwahu. I am a Safohene. I am here to represent the Odikro of Bepong who has been summoned. I know the last

witness the Odikro of Jejeti. I don't know the history of the Jejeti people. They went there before I was born. I have heard that they used to live in Bepong. Their young men used to fight with us. I have heard that they obtained permission from Kwesi Apontua, Chief of Muoso, to settle on the land of Muoso Stool. The Ohene of Bepong has a boundary with the Plaintiff on the Kwahu hill. The Plaintiff invited the Ohene to come with him and define the boundary. This was nearly five years ago. I was deputed to represent him. A surveyor came from Accra. We made the boundary. It starts from Apesika by a stream. It runs in S. direction to Bonakrom stream. Then to junction of Kwate and Biater streams. I don't know how far Jejeti land extends along the Jejeti stream. Before Plaintiff got the land it belonged to Apontua, the Odikro of Muoso. He got into debt and sold it. I don't know Asunafo. I have been an elder about ten years. I have never heard that Asunafo bounded with Bepong.

CROSS-EXAMINED.

I have told what I have heard about the Jejeti people. I have heard the name of Yao Anno. I heard that the Bepong Stool was represented when Apontua sold the land to Yao Anno. Plaintiff told me. I don't know how long ago it was. The Bepong Chief has told me that he himself checked the boundary when Apontua sold. The boundary was marked with stones, bottles and trees. It was cut when the surveyor came. I did not see any boundary marks there. No bottles or Ntome trees. I went as far as the boundary with the Kankang people. I know the boundary. I do not know Apontua's other boundaries. I don't know the extent of his land.

BY COURT.

The Plaintiff's land is on the right hand side of the path from Bepong to Adasanase.

No Re-examination.

No. 20.

Kwami Peter.

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KWAMI PETER, sworn on Bible. Twi.

EXAMINATION-IN-CHIEF.

I am a carpenter of Jejeti. I know the Plaintiff. He is my elder. I know the Defendants. I went to serve them with the original summons in this case. I farm myself. I made a farm on Jejeti land. It is on the left hand side of the railway line coming from Accra. There are four or five others farming there. Kwami Buorbrih, Kwami Ankra, Kwesi Annan, Boateng, Kweku Nimmo. My farm is not bearing cocoa at present. Only part of it is bearing. We are all the same. The cocoa is not ripening. I made the farm about six years ago. I will give a tribute of cocoa to the Plaintiff.

In the
Supreme
Court of the
Gold Coast.

Evidence
for
Opanyin
Kofi
Frimpong—
continued.

No. 19.
Kwami
Dankwa,
22nd Febru-
ary, 1939—
continued.

Examina-
tion—
continued.

Cross-
examina-
tion.

By Court.

No. 20.
Kwami
Peter,
22nd Feb-
ruary, 1939.

Examina-
tion.

In the
Supreme
Court of the
Gold Coast.

I am a Juaben from Koforidua. 'There are farms on the other side of the line. They all come from Jejeti.

Evidence
for
Opanyin
Kofi
Frimpong—
continued.

CROSS-EXAMINED.

I was not at Jejeti' when the railway was built. It was years later that I went to Jejeti.' I went with the others at the same time to farm. We were the first Jejetis that side of the line. I don't know when this case commenced. This farm is the first time I have farmed cocoa. The time a cocoa tree takes to bear depends on the soil.

No. 20
Kwami
Peter.
22nd Febru-
ary, 1939—
continued.

No Re-examination.
Adjourned to February 23rd.

GUY COOPER,
Ag. J.

10

Cross-
examina-
tion

No. 21.

Boakyi Akossi.

No. 21.
Boakyi
Akossi,
23rd Febru-
ary, 1939.

BOAKYI AKOSSI, s.a.r.b. Twi.

EXAMINATION-IN-CHIEF.

Examina-
tion.

I am Odikro of Kankang. The Kankangs are Juabens. They obtained permission to settle there from the Muosohene. At the same time the Jejetis settled. This was in my father's time.

Examina-
tion by
Court.

BY COURT.

Jejeti and Kankang are not Juaben names. Akim names.

20

Examina-
tion—
continued.

EXAMINATION-IN-CHIEF, continued.

According to tradition we got permission and settled on the Kankang land. Afterwards the owner of the land Apontua said that he was in debt. We bought a portion of the land on which we were settled. The remainder we had no money to buy. On North we formed boundary with Yao Anno, the Plaintiff's predecessor. The boundary runs from junction of Biater and Kwate streams to old Muoso Nkwanta. From there the land of Muosohene starts. My ancestors came to Kankang before the Jejetis came. When they got permission from Muosohene to settle on the land they found a nugget of gold.

30

(Awere objects that witness cannot give evidence as to tradition of Jejeti. He is limited to Kankang history.)

COURT. The evidence relates to history of Jejetis who are Juabens and neighbours. I shall admit it for what it is worth. Objection over-ruled.)

EXAMINATION-IN-CHIEF, continued.

There was a case in this Court about gold digging on the land. The Odikro of Muoso got judgment. But all the same he got into debt and

had to sell his land. Some was sold to the Kankangs. Some more was sold to Yao Anno. I do not know the Asunafo land or people. No Kankangs farm on their land by permission. I do not farm myself. Some Kankangs may have gone on land and made farms without my permission. A boundary was cut between the land we bought and Muoso land. I do not know how far Muoso land stretches beyond that. I do not know Kwami Abossi. When surveyor came I pointed out the boundary. I was not on the Stool then. I represented the Stool.

In the
Supreme
Court of the
Gold Coast.

Evidence
for
Opanyin
Kofi
Frimpong—
continued.

CROSS-EXAMINED.

- 10 I was put on the Stool about 2½ years ago. I do not know my age. The elders told me the history. They did not tell me how long ago the land was bought. I learnt the history when I sat down and the elders and my grandfather talked about the history. I know that Plaintiff succeeded Yao Anno. I bound with him. The man who founded Kankang is dead. His successor is still alive. I call him my grandfather. I don't know when he told me about the land. I have only seen a surveyor come once. I cleared the boundary then. I was a young man then. I don't know if this case had started. There is a cement pillar on the lorry road. That marks boundary between Muoso and Kankang. It is an old pillar. I met
20 surveyor in Kankang town. I do not know his name. I did not see any other pillars put up on the boundary. The boundary was marked by a Daoma tree, another Sidua tree. I don't know Akuaboso or its people. I have heard of Asunafo the village. I live now at Koforidua. A week ago I was subpoenaed to attend this Court. The present lorry road deviates a little from the old road. It has been straightened. The old bush track was quite different from the lorry road. Coming from Anyinam the land sold to Kankangs was on right hand side of road. The land on left hand side of road belongs to Ohene of Muoso. I don't know how much was paid for our land. I have not got the paper here. I know two Bahs at Kankang.
30 I don't know where they farm. I know Yao Oti. He was formerly on Kankang Stool. He is dead. I don't know where he farmed. I don't know if he farmed on Asunafo land. I know Kesi Adae but not his farm. I don't know Romia village. Have never heard of it. I have not been to Fianko. I have passed down the railway line. I have heard of Ahiresu stream. I have passed over it in a train. The land on both sides of line belongs to Muoso. It is forest on West side. I don't know if there are any Kankang farms on West side of railway. I am under the Stool of Effiduase. The Nifahene of New Juaben. I am also under Chief of Muoso. The Kankangs bought the land before Yao Anno. I did not know Yao
40 Anno. The Jejetis have been in possession of the land Yao Anno bought. I don't know if they have farms on it. Jejeti village is on Plaintiff's land. I don't know if it was there when land was sold to Yao Anno.

No. 21.
Boakyi
Akossi,
23rd Febru-
ary, 1939—
continued.

Examina-
tion—
continued

Cross-
examina-
tion.

Re-examination.

No questions.

Adjourned to February 24th.

GUY COOPER,
Ag. J.

In the
Supreme
Court of the
Gold Coast.

No. 22.

Kofi Ampedu.

24th February, 1939.

Evidence
for

Opanyin
Kofi
Frimpong—
continued.

No. 22.
Kofi
Ampedu,
24th Febru-
ary, 1939.

Examina-
tion.

KOFI AMPEDU, s.a.r.b. Twi.

EXAMINATION-IN-CHIEF.

I am Ohene of Mpraeso under the Omanhene of Kwahu. I own land north of Jejeti river. On Accra side I bound with Muoso land. It used to belong to Kwesi Apontua as Chief of Muoso. I formed boundary with him from lorry road to junction of Asuboni river with Jejeti. Apontua is dead. Yao Anno who succeeded him is dead. At present it is not Muoso land. Apontua sold it to Anno. Plaintiff succeeded Anno. I have never known the Asunafo people claim the land South of Jejeti stream. My Stool in 1923 had litigation with Akim. I have been Ohene since 1917. I was gazetted in 1918. I joined with Omanhene of Kwahu to sue Muosohene and Omanhene of Akim Abuakwa in connection with the boundary. At same time Atibie Chief and Omanhene of Kwahu sued the Asunafo Chief and Omanhene of Akim Abuakwa. At same time Obomeng Chief and Omanhene of Kwahu sued Abomoso Chief and Omanhene of Akim Abuakwa. The cases were consolidated and the case was known as the Kwahu—Akim Abuakwa boundary case. In that case a plan was made by Mr. Armah Kwantreng. In that action I succeeded in maintaining my contention that my boundary with Muoso was what I have said. To the eastward of Mpraeso land is Bepong land. At the time of the action Yao Anno was in possession of Jejeti land. I got a document from him. (Exhibit "A" identified.) When surveyor Kwantreng made survey I sent a representative. All the parties sent representatives. I see the plan made by him. (Marked for identification.)

CROSS-EXAMINED.

I got Exhibit "A" from Yao Anno. He was living at Koforidua at the time. I first enquired for him at Jejeti. Yao Anno visited Jejeti as it was his land. His people lived there. It is a town not a small village. The people on the land were his tenants. I cannot say when Yao Anno acquired the land. I don't know when Jejeti was founded. I may not have been born then. It was not founded by Yao Anno. I can't say myself if the town is on Plaintiff's land. I only know my boundary. By native customs a town cannot be sold. It can be pawned.

(Counsel invite me to note that the numbers of the Consolidated Suits are 68/22, 69/22, 70/22.)

My case was the first one. I gave evidence first. I had nothing to do with the Asunafo suit. The actions determined the boundaries between Kwahu and Akim Abuakwa. That was the issue. It was a dispute between the Kwahus and Akims. It was not a dispute among the Akims themselves. I have visited Jejeti town.

No Re-examination.

No. 23.

K. Armah Kwantreng.

KWAMINA ARMAH KWANTRENG, s.o.b. English.

EXAMINATION-IN-CHIEF.

I am a licensed surveyor of Accra. I remember the Akim-Kwahu boundary case in 1923. I was appointed by the Court to survey the boundaries in dispute. The Plaintiffs were :—

- 10 The Chief of Mpraeso.
 The Chief of Atibie.
 The Chief of Obomeng.
 The Omanhene of Kwahu.

I forget the names of the Akim sub-chiefs. When I made the survey the Kwahus were represented but the Akims did not turn up. The plan was produced in Court. It was accepted by the Judge when I satisfied him that the Akims had been told to attend but did not do so. I see a copy of the plan now. It shows land adjoining the Akim-Kwahu boundary. Also natural features.

(Tendered in evidence as evidence of topography. Awere does not object if this is all it is to be used for. Admitted Exhibit "F.")

- 20 The river Jejeti is shown on that map. The river Asuboni is also shown. Also the railway and the main road. Sidenkum stream is shown on map. Fianko is shown. Spelt differently. Romia stream is shown. Also Abehinsu stream. Asuboni and Jejeti junction is shown.

CROSS-EXAMINED.

- 30 The plan shows the limits of the Kwahu sub-chiefs land. There was no dispute among themselves. The Akim chiefs did not indicate their limits as they did not attend. I made the plan about 1923. There was a lorry road then. I was told that it deviated a little from the old path. The present Government road deviates still more. When I was there the road was a Chief's road. I see plans "B" and "C." They are to the same scale and should be identical. They are not quite identical. This may be due to tracing paper shrinking more in one case than the other.

BY COURT.

Akwaboso is not marked on my plan.
No Re-examination.

In the
Supreme
Court of the
Gold Coast.

Evidence
for
Opanyin
Kofi
Frimpong—
continued.

No. 23.
K. A.
Kwantreng,
24th Febru-
ary, 1939.

Examina-
tion.

Exhibit
"F."

Cross-
examina-
tion.

In the
Supreme
Court of the
Gold Coast.

No. 24.

Court Notes.

No. 24.
Court
Notes.
24th February,
1939.

BOSSMAN tenders copy of judgment in Akim-Kwahu boundary case. A WERE states that he is prepared to agree that the copy is correct, objects that it is inadmissible as against present Defendants.

BOSSMAN. Plaintiff claims through Muoso Stool. Defendants through Asunafo Stool. Both were parties to the dispute.

COURT. I shall allow the judgment to be put in. How, if at all, it binds the parties to the present action is a matter for consideration.

Exhibit
"G." [sic]

Certified copy of judgment in Consolidated Cases 68/22, 69/22, 70/22 10 admitted. *Exhibit.*

BOSSMAN asks to amend writ by adding in claim (b) "portions" after the word "Defendants."

A WERE objects. Court no power to make amendment.

COURT. Amendment seems to me unnecessary. The Court can make an order in any terms it likes.

Case for Plaintiff closed.

EVIDENCE FOR KWAME ABOSSI, KOFI ASARE, MANTE and ABUAGYE.

Evidence
for Kwame
Abossi,
Kofi Asare,
Mante and
Abuagye.

No. 25.

Kwame Abossi.

20

KWAME ABOSSI, s.a.r.b. Twi.

No. 25.
Kwame
Abossi,
24th February,
1939.

EXAMINATION-IN-CHIEF.

Examina-
tion.

I am a farmer of Adukrom in Akwapim. I know the Odikro of Asunafo. The first one I knew was Apiagye. The present one is Kwami Boadi. He is on Asunafo Stool now. I went to Apiagye to buy land. This was 18 years ago. I and my company met. There were three elders with me—Kobina Okoo, Kobina Efum and Kewku Abuagye. I was the head of all of them. There were several in different groups. We went to Apiagye at Asunafo. He deputed a man to show me the land. He agreed to sell me the land if I liked it. One Doku, Kweku Oduro, Kweku Amoah were deputed to show me the land. I told Apiagye I liked the land. He told me to drink rum. I then according to custom gave one case gin, one piece of cloth, one piece of silk, one umbrella and cash £4. 10/-. Those were customary present. I then went back to my country. I returned two weeks later. He then deputed the same people and his clerk, Teacher Misa, with several other people 30

who went on the land again to show it to us. The Omanhene deputed Tchum Barima Atta Yamoah to represent him. We went on the land at a place called Wusasi. The village belongs to the Odikro's father. It is near the river of that name. Odame farms near there now. From Asoasi we went to Romia and Jejeti junction. From there to junction of Jejeti and Asuboni streams. We were cutting a boundary along the river. We cut as far as the Sidenkum stream. Then on down the Asuboni to Ototrenini tree. We put under that tree a bottle according to custom. From there we went to an Oson tree which was marked with a gin bottle.

10 The boundary on the south was with a Krobo man, Akute. I bought my land before he did. Beyond his land I bounded with Asunafo land. Then we went to Opepoa trees and broke a bottle there. All the way we were cutting a line. We then went to Romia—Jejeti junction. I had then been all round the land I wanted. After that I paid the man who cut the boundary. I paid £60 and a case of gin for the cutting. I paid for the land £8 a rope. A rope is 24 fathoms. The total amount I paid was £1,034. 5/-. There is still a balance of £100 which I have not paid. After I paid the sum I cut "guaha" and paid £10. "Guaha" was cut at Asuasi. It was an old village. We built huts there. It is not occupied now. Kobina Poku

20 cut guaha on behalf of my company. Kweku Oduro cut guaha for the Asunafos. The representatives of the Omanhene were present. We have made farms and villages on the land. The farms are cocoa farms. We started farming ten years ago. That was when we made villages. Altogether 27 farms have been made. There is a village on each. Some of the trees are bearing, not all. We were undisturbed till about five years ago a surveyor came on my land. At time I bought my land I did not know Plaintiff. I first saw him when the surveyor came. I was at my village when surveyor came. I spoke to Plaintiff. I said "This land belongs to me. You have

30 "no right to bring a surveyor on the land." He said that the land was his. I denied it and ordered him off my land. He went away. Surveyor said that he was cutting to make a plan. I sent a messenger to Odikro of Asunafo. He sent three messengers to me. They were the same who had cut the boundary. They came to my village. When they came they said that Odikro had told surveyor not to do anything on the land. They met surveyor at Jejeti railway station. I went with them. I did not see Plaintiff there. I saw cement pillars on my land. I found them after the Asunafo messengers had returned. There were several of them. I saw eight in all. I saw six actually on my land. I informed the Odikro of Asunafo. He sent men to break down the cement pillars as the land belonged to him.

40 Then I and Odikro went to Jejeti and saw Plaintiff at house of one Danquah. Odikro swore oath on Plaintiff that land in dispute belongs to him. After that Plaintiff brought an action against me. Some Jejeti people tried to make farms on my land. This was about three years ago. I drove them away. They came back and I again drove them away. I know Bah of Kankang. He has made a farm on my land. I gave him permission to farm there. I saw Bah hunting on my land. I stopped him. I also gave Asare leave to make a farm. Also Kwesi Adae and Buatahene and several

In the
Supreme
Court of the
Gold Coast.

Evidence
for Kwame
Abossi,
Kofi Asare,
Mante and
Abuagye—
continued.

No. 25.
Kwame
Abossi,
24th Febru-
ary, 1939—
continued.

Examina-
tion—
continued.

In the
Supreme
Court of the
Gold Coast.

26

others. I am still in possession of the land I bought. Much of it is uncultivated.

Evidence
for Kwame
Abossi,
Kofi Asare,
Mante and
Abuagye—
continued.

BY COURT.

When I first saw the land it was all forest, no farms. On east side I bound with Asunafo land.

No. 25.

CROSS-EXAMINATION.

Kwame
Abossi,
24th Febru-
ary, 1939—
continued.

Along Jejeti I bound with Mpraeso and Kwatia people.
Adjourned to February 27th.

GUY COOPER.

Examina-
tion by
Court.

27th February, 1939. 10

Cross-
examina-
tion.

When I bought land I did not know that Asunafo Stool was litigating about it. From Asuboni-Jejeti junctions to south the Kwahus are on the other side of the river. I do not border with the Akuaboso stool land. It is ten years since I started farming. The land was shared out between the company. The members all started farming. I pointed out the pillars. I helped to break down the pillars on my own land. I saw six broken down. I know that the boundary between Kwahu and Akim Abuakwa has been fixed. I had bought my land before the boundary was fixed. I think that it was fixed about ten years after I bought the land. I know the old village of Romia. It belongs to Asunafo. There was no one there when I bought the land. It was in ruins. I don't know Fuianko. It is not on my land. 20

No Re-examination.

Examina-
tion by
Court.

BY COURT.

The delay in making the farms after the sale was because my company had other lands which it was cultivating.

No. 26.
Kwabina
Affum,
27th Febru-
ary, 1939.

No. 26.

Kwabina Affum.

KWABINA AFFUM, s.a.r.b.

Examina-
tion.

EXAMINATION-IN-CHIEF.

30

I am Okyeame to Chief of Awukugua in Akwapim. I know Abossi. I knew Kwami Apeagye. He was Odikro of Asunafo in Akim. Eighteen years ago I went with Abossi to Asunafo. We first went to ask if there was

land for sale. Afterwards we bought land. We went to the land. The Asunafo Chief sent men with us. The Omanhene of Akim Abuakwa sent two men to represent him. We lodged at Wusasi. We started to inspect the boundary from the junction of the Romia stream with Jejeti stream. We went down the rivers to an Ototremimi tree which was Akute's boundary. Four bottles were fixed there. Then we walked to an Oson tree which was marked with two bottles. From there to an Opope tree where a bottle was fixed. Thence we went to Romia and Jejeti junction where we fixed a bottle. The land was bought for £1,034. 5/-. The price was £8 a rope.

In the
Supreme
Court of the
Gold Coast.

Evidence
for Kwame
Abossi,
Kofi Asare,
Mante and
Abuagye—
continued.

No. 26.

Kwabina
Affum.
27th February,
1939—
continued.

10 BY COURT.

I am one of the elders of the company.

EXAMINATION-IN-CHIEF, *continued.*

“Guaha” was cut. Kweku Oduro cut the Guaha for Asunafo, the vendors. The boundaries were cut to mark them. I went over the land myself. There were no farms there then. It was all forest. I did not see a village at Romia. There might have been a hunter's camp. The company has made many farms on the land now. We started farming many years ago. The only disturbance we have had was about six years ago when Frimpong started troubling us. I saw workmen there who said that they
20 were working for Frimpong. I saw them coming from Jejeti station. They were cutting places to put pillars. The Plaintiff was with them. Abossi protested as he said that he had bought the land. Plaintiff said that he had bought the land. Abossi said that he would report to Asunafo. Boadi came. There was a meeting at Jejeti station. Boadi swore the Wukuda oath against Frimpong. A week later Boadi came and went to Jejeti and put matter before Odikro there. The matter was reported to Kibi. Then Frimpong had case transferred here.

Examina-
tion—
continued.

CROSS-EXAMINED.

We came straight from Awukugua to the land. I was satisfied that
30 the land we bought was Asunafo land. The Omanhene sent representatives. Apiagye made all arrangements with Omanhene. When we marked the boundaries no other boundary owners were present. Everyone knew that we had bought the land. I often met the people we bounded with. One was Sah from Atoasi. He worked at Jejeti and Asuboni junction. He was a Kwahu man. He was an Atibi man, not from Mpraeso. Another man came from Odumase in Krobo. He was on the other side of the river in Kwahy. Beyond the Romia stream towards Jejeti station some of the land belongs to Adjua Fi and some to Boadi. By Adjua Fi I mean
40 Akuaboso Stool. I have never had any dispute with Mpraeso Chief about my boundary. No Jejeti people came on my land till after the oath was sworn. They have made a new farm near Romia since that date. I know

Cross-
examina-
tion.

In the
Supreme
Court of the
Gold Coast.

28

Evidence
for Kwame
Abossi,
Kofi Asare,
Mante and
Abuagye—
continued.

the Accra man, Agyiri, who farmed near the station. About six years ago I went to the farm with Boadi. Boadi swore the oath against him for being on his land. I have not seen Agyiri since. I know Fuianko as a hunter's camp belonging to Adjua Fi of Akuaboso. I believe it belongs to Akuaboso. I don't know. The measurement of the land we bought was 129 ropes.

No Re-examination.

BY COURT.

No. 26.
Kwabina
Affum,
27th February, 1939—
continued.

There are Kankang people on our land. They made farms. I and Abossi went to see them. I saw Bah. He told me that they didn't know that the land had been sold and as they had no place to grow food they had come to farm there. 10

Examina-
tion by
Court.

No. 27.

Martin Asare.

No. 27.
Martin
Asare,
27th February, 1939.

MARTIN ASARE, s.o.b. Twi.

Examina-
tion.

EXAMINATION-IN-CHIEF.

I live at Kankang. I know the lands in dispute. I know Abossi. I farm a portion of land. I know the owner of it. The land is called Ofumsu land. It is a stream called Ofumsu. The land belongs to Abossi. I have been there six years. I farm with several others. The elder is Bah. Robert Buatahene is another. There are many of us. Kwami Donkor is another. They all come from Kankang. We are all Juabens. When we first went Abossi drove us away. Then he gave us permission to farm there when we begged him. Our Odikro deputed us to go and get permission. Our farms are two hours' walk from Kankang. When we made the farms we did not know the owner of the land. I know Frimpong. I did not know Anno. I first met Frimpong when a surveyor came to survey the boundary. The surveyor was Plange. That was the first time I heard of Frimpong in connection with the land. Enyeneme Wodua stream runs through our farms. Before that coming from Kankang I cross the Ahiresu. Near the Ahiresu Kankang people have made farms. Most of the land is forest. I am still farming the land. 20 30

CROSS-EXAMINED.

Cross-
examina-
tion.

I know that some Kankangs are farming on Muoso stool land. I previously farmed myself on Muoso land. The farm was finished so I left it. Juabens live at Ngleshi. I know that it belongs to Muoso Stool. I don't know the boundaries between the various Akim stool lands. When we made the farms we took a chance as to who the real owner was. I have never met a Jejeti man on the land. I know Kwesi Oduro, a Jejeti man. I have not seen him farming near our farms.

No. 28.

Kojo Boadi.

KOJO BOADI, s.a.r.b. Twi.

EXAMINATION-IN-CHIEF.

I am Odikro of Asunafo. It is eight years since I became Odikro. My predecessor was Apiagye. I know Abossi. It is about 18 years since I first saw him. He came to Asunafo. He said that he wanted land to buy. Land was sold to him. It was near Jejeti stream. I was present at the sale. The boundaries were cut. The boundaries were (witness
10 describes boundaries as green line on Plan "C"). The land was Asunafo land. It was stool land. Abossi and his company came on the land and have been farming there since. About six years ago I heard that Plaintiff was disturbing Abossi and went on land. I then swore an oath against him that he had no right on my land. I swore that it was Asunafo stool land. The Asunafo land is bounded by Akuaboso stool on one side, the Jejeti side. The boundary is the Subri and Birim junction. Then to the source of the Subri. There is a big stone there. From there the boundary runs to the railway. It runs to a place where the Government have built a bridge over Jejeti stream. It is the railway bridge. My stool land is on left of
20 railway going to Kumasi. Muoso land is on the right. Beyond the Jejeti and Asuboni rivers are the Kwahus. After that I bound with Abomoso. The land on Plan "C" marked Akute land was Asunafo land but was sold by me to Krobo people. The land has been Asunafo land since time immemorial. One Kodia founded Asunafo. Also Bonsa. He came from Ashanti—Mampong. I know of Obiagyi Abuakwa. He came from a place called Akakum. Kodia bought land from him. The land given bounded with Muoso in the olden days. It runs from Twerebusu to the old Kwahu Road and then to Jejeti. Asunafo land was on left hand side
30 that the land up to the railway is all ancestral land acquired by my ancestors. At present Akuaboso has land between Asunafo and Muoso land. Adjua Fi and the Akuaboso people used to live at Kwabeng. My ancestor Kodia brought them back from Kwabeng. He paid their debts. Then Kodia gave them land at Akuaboso from Achirrikum to old Kwahu road so that they bounded with Muoso people. On the left hand side of the Subirisu is Asunafo land, on the right Akuaboso. The town of Akuaboso was named after Akua Abosso who washed gold. He was an Asunafo man.

BY COURT.

40 All this was many years ago. I believe before the Katamanso War. I call myself Akim not Ashanti.

In the
Supreme
Court of the
Gold Coast.

Evidence
for Kwame
Abossi,
Kofi Asare,
Mante and
Abuagye—
continued.

No. 28.
Kojo Boadi.
27th Febru-
ary, 1939.

Examina-
tion

Examina-
tion by
Court.

In the
Supreme
Court of the
Gold Coast.

Evidence
for Kwame
Abossi,
Kofi Asare,
Mante and
Abuagye—
continued.

No. 28.
Kojo Boadi.
27th Febru-
ary,
1939—
continued.

Examina-
tion—
continued.

EXAMINATION-IN-CHIEF, continued.

I know the Ahiresu and the Romia stream. Ahiresu rises near Bekoasi. It crosses the railway line. The land between Romia and Jejeti streams belongs to me. It goes as far as the railway station and beyond. On South my boundary starts at a rock. The boundary between myself and Adjua Fi has been cut by a surveyor. This was done about three or four years ago in connection with this case. It is an old boundary. It is all forest between the Subri and the Jejeti. I have been through it. There are some farms there. They are on the land I sold to Abossi. The remaining land has not been sold. I know Romia. My ancestors made it. There is another old village Otwinage. Also one called Sidekum. There is a village at Wusasi. 10 I heard that Muoso stool had sold land to Yao Anno but it did not concern me. I was not called to see the boundaries. I heard at Asunafo that Frimpong was claiming the land. There were no boundary marks on the land before I sold it. I saw the boundaries marked by Abossi. Later I saw that a path had been cut into Adjua Fi's land. This was about three years ago. That was when I swore an oath against Plaintiff. The path was being cut on my land as a boundary. When I saw some Jejeti people on my land I swore an oath and drove them away. They were near Jejeti station. They were making farms there. They are not there now since I swore the oath. I do not know that Frimpong has a village on the land. 20 I know Agyiri. I have seen him on the land. I saw him making a farm on my land. I swore an oath on him. When Omanhene sent his messenger Agyiri ran away. I have not seen him since. I left matter in hands of Abossi. I took part in the Kwahu-Akim Abuakwa dispute. I never heard then that any of my land had been sold. I first heard it suggested six years ago. I was not on the Stool when I heard that Muoso land had been sold to Yao Anno. I know town of Jejeti. The land on which it was built was bought by Yao Anno. It was not bordering Asunafo land at all. I don't know boundaries of the land that was sold.

Adjourned to February 28th at 10 a.m.

GUY COOPER.

30

28th February, 1939.

When land was sold to Anno no representative of Asunafo Stool was called. I repeat that my boundary on east is with Akuaboso not Muoso.

Cross-ex-
amination.

CROSS-EXAMINED.

I admit that in ancient days we bounded with the Muoso people at Twerebum which is a deep pool in the Birim river. When land is sold it is the custom to inform the neighbouring owners. When I sold to Abossi I did not inform Akuaboso as the land did not bound with Akuaboso. No other stool was concerned. I know the custom of Akim Abuakwa. A person 40 cannot sell land which is not his. He cannot give title to others to land which is not his. A subject of a stool is entitled to farm stool land but the land belongs to the stool. If a stranger farms on stool land he has to pay

tolls. A subject of the stool does not pay tolls for his farms but he has to pay stool debts. A stranger can never acquire land merely by farming. All land is subject to stool of Omanhene. The local stools own the land jointly with the paramount stool. I had a predecessor on stool, Oyimka. He is alive and now in Accra. He represented the stool in the dispute with Kwahus. I did not come to Accra for the case. I don't know much about that case. The land I sold was virgin forest when sold. One cannot sell farms. I have heard of Fianko village. It belongs to Akuaboso. One Otchere was given permission to make that village. At that time rubber was 10 tapped. He gave one-third of proceeds to stool. Akuaboso land runs up to the Jejeti river. Formerly both Kwahus and Akims collected rubber. I have had no litigation with Mpraeso except the big boundary dispute. There has never been litigation between Muoso and Asunafo. When we were litigating with the Kwahus the Jejeti was fixed as a boundary. I told the surveyor that the railway was my boundary. When railway was made the Omanhene sent representatives. The Omanhene granted the land for the railway. No Odikro was consulted. The Asunafo stool is a sub-stool to Abomoso stool. The Abomoso Chief was informed of the sale of the land. It was not necessary for him to be present. The Abomoso boundary is not 20 near the land. I have not complained to Omanhene about Abomoso Chief. I have heard that Muoso sold land to Kankangs. As Muoso land does not bound with me I am not concerned. There is no village at Sidenkum now. Asunafo land extends beyond Sidenkum stream.

RE-EXAMINED.

By custom it was sufficient for Omanhene to be represented at sale.

BY COURT.

I have parted with all rights in the land sold. Abossi could now sell it to someone else.

In the Supreme Court of the Gold Coast.

Evidence for Kwame Abossi, Kofi Asare, Mante and Abuagye—*continued.*

No. 28. Kojo Boadi, 27th February, 1939—*continued.*

Cross-examination—*continued.*

Re-examination.

Examination by Court.

No. 29.

Yao Oyimka.

YAO OYIMKA, s.a.r.b. Twi.

EXAMINATION-IN-CHIEF.

I am a farmer of Asunafo. I was formerly on the stool. My predecessor was Sah. Apiagye succeeded me. At present I am elder to the stool. Last witness is now on stool. I know the Asunafo stool lands. They bound with Akuaboso stool lands on left hand side from Asuboni stream. Beyond Jejeti and Asuboni junction we bound with Kwahus

No. 29. Yao Oyimka, 28th February, 1939.

Examination.

In the
Supreme
Court of the
Gold Coast.

Evidence
for Kwame
Abossi,
Kofi Asare,
Mante and
Abuagye—
continued.

No. 29.
Yao
Oyimka,
28th Febru-
ary, 1939—
continued.

Examina-
tion—
continued.

beyond the rivers. Further west we bound with Abomosos at Owurasupon stream. I know the land in dispute in this case. It is bounded on east by Akuaboso land. The Subri is the boundary. From source of Subri boundary runs to the train line where it crosses Jejeti river. There is a Government pillar there. They were put there after the Kwahu-Akim case. I represented the Asunafo stool in that action. I was on the stool at the time. Before the railway came the boundary on the Jejeti river with the Akuaboso land was marked by a tree. That tree was about 20 minutes' walk from the rail going towards Asunafo land. Asunafo people have built villages on the land in dispute, Romia, Otwinaye, Sidenkum, Wuasi. All these villages are ruins now. They are all on Asunafo stool land. I know that Apiagye, when he was on the stool sold land to Kwami Abossi and his company. They are Kyerepongs. The villages I mentioned are on the land sold to Abossi. I was sick at the time of the sale. About a year ago I went on the land. I don't know Frimpong. I met him on the land when the surveyor came. The surveyor I mean is Plange. I had never seen Frimpong on the land before. I heard that Frimpong had put up pillars. I was one of those that broke the pillars down by order of Boadi. Apiagye was on the stool about 10 years. It was five or six years after the sale that Abossi reported that Frimpong had set up pillars. Asunafo has never sold land to Juabens. Some Kankangs are farming on Abossi's land. I have heard that one Agyiri made a farm on the land and that he ran away when Boadi swore on oath against him. The farm he made is near the railway station on Asunafo land. I don't know who gave him permission to make the farm.

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Cross-
examina-
tion.

CROSS-EXAMINED.

I was on the Asunafo stool for 16 years. I was on the stool at the time of the Kwahu-Akim case. The Muoso Chief was then Affam. He was sued in the case. I was sued by the Atibies in the first place. All the cases were heard together. It was a dispute between Kwahu and all the people of Akim. I don't remember when a white man called Phillips enquired into the Mpraeso boundary. I didn't hear about it. I knew Apontua, the Muoso Chief. I was not on the stool when he was chief. I never heard of the sale of land to Yao Anno. I heard of it when this case started. The Government pillars show the boundary between the Akims and Kwahus. I never litigated with Apontua. My land runs along the Jejeti river. The Kwahus are on the other side. The only strangers I know on the land are the Kankangs on Abossi's land. They made the farms. Then Abossi gave them permission to stay. I know the boundary between Akwaboso and Muoso lands. It runs from Twiribum on the Birim to the old Kwahu road. The old road runs through Muoso. I know the camp Fianko. It was founded by a hunter. It is in Abossi's land. That was one of the Asunafo villages. No, it is on Akuaboso land. We are under Abomosos stool. I was present when the pillars were broken. About six pillars were broken down. They were all on Abossi's land.

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40

RE-EXAMINED.

No questions.

No. 30.

Theodore Misa.

THEODORE MISA, s.o.b. Twi.

EXAMINATION-IN-CHIEF.

I am a public letter writer. I live at Asunafo. I am also called Dawson. I am related to stool family. Boadi is my elder brother. I know Abossi. He bought land from stool. Apiagye was on the stool at the time. I can't remember the year. I assisted in the sale. I helped to measure the land. It is known as Jejeti land. We measured the land as shown in green on Plan "C." I saw bottles fixed to mark the boundary. The boundary was cut. Then a sheep was killed. "Guaha" was cut. No other stool but that of Asunafo was present. There were two representatives of the Omanhene. They saw that everything was done according to custom. They were present when "Guaha" was cut. The price was £1,034. 5/-. There is still a balance of £100 owing. The Asunafo stool has other land in the neighbourhood. It extends from Jejeti village. One boundary is source of Subri. There we bound with Akwaboso stool. From there boundary extends to railway between miles 93 and 94, on the railway. From there boundary is the railway line to Jejeti stream. Akwaboso land is on other side of railway. I can't speak personally as to the boundary before the railway came. When railway was made it was agreed as the boundary. Asunafo lost a little land to Akwaboso.

Adjourned to March 1st.

GUY COOPER,
Ag. J.

1st March, 1939.

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I see Exhibit "E." I wrote it. I wrote it to some labourers who were making farms for Jejeti people on Asunafo stool land. I wrote this about ten years ago. Apiagye was Chief of Asunafo at the time. I wrote it at Atoasi village. I gave it to a young man Kweku Doku to serve on the labourers. I heard that the labourers were employed by the Jejeti people. The labourers said so. After I sent the letter I heard nothing more about it. I know the Plaintiff. I first met him about six years ago. I heard from Abossi that Plaintiff was surveying the land. The Chief told me to enquire into the matter. I met Plaintiff at Jejeti railway station. Boadi was there. Plaintiff said that the land had been bought from Apontua. Boadi then swore the great oath that the land was Asunafo land sold to Abossi. The surveyors were told to discontinue the work. One was called Okai. Plaintiff did not reply to the oath. We then returned to Asunafo. I had never seen Plaintiff on the land. About a week later Abossi complained that pillars were being fixed by surveyors on his land. I went with several others and met Plaintiff at railway station. The Odikro had all the cement pillars removed. He again swore the oath. Plaintiff did

In the
Supreme
Court of the
Gold Coast.

Evidence
for Kwame
Abossi,
Kofi Asare,
Mante and
Abuagye—
continued.

No. 30.
Theodore
Misa,
28th Febru-
ary, 1939.

Examina-
tion.

In the
Supreme
Court of the
Gold Coast.

Evidence
for Kwame
Abossi,
Kofi Asare,
Mante and
Abuagye—
continued.

No. 30.
Theodore
Misa,
28th Febru-
ary, 1939—
continued.

Examina-
tion—
continued.

Cross-
examina-
tion.

not reply to the oath. Case was then reported to Omanhene and fees paid. The oath was sworn at the station. The Odikro of Jejeti was not there. All the pillars were removed and thrown into the river. I was present when Plange made his survey. Plaintiff pointed out what he maintained was his boundary. From Asuboni River to Fianko he said that the boundary was a straight line. It ran through forest. There was no sign that a boundary had been marked. From Fianko to the railway there were no signs of a boundary. It was all forest. Boadi pointed out his boundary. It is not a straight line. It runs through farms and forest. It is an old boundary. There are ancient gold mines. There are some farms on the land bordered in blue on Plan "C." The surveyor saw the farms. I did not see Plaintiff's village. There was an Accra man who made a farm. When Odikro swore an oath and sent messengers he ran away. Plaintiff said that it was his village. The Jejeti labourers I wrote to were working on Abossi's land near Romia. I did not go there myself. 10

CROSS-EXAMINED.

When I wrote the letter I had not met Plaintiff. I heard there were about four labourers. Apiagye died about a year ago. He abdicated about three years after the letter was written. I can't remember how long he reigned. Ohimka was on stool at time of Kwahu boundary case. He abdicated soon afterwards. I wrote the letter after the land had been sold to Abossi. I don't remember how long after. That was the first sale of land on that side. It was virgin forest before. No pillars or trees were put on boundary of Asunafo land. Akwaboso land is between main road and railway up to Jejeti stream. In Kwahu case Asunafo stool claimed land beyond Asuboni river. Before that case we had no dispute with Mpraeso Chief. I did not come to Accra in connection with that case. I once heard that Asunafo and Akwaboso had a dispute about the land in question. That was a long time ago. I did not visit the land till the present dispute arose. Farming began on the land about ten years ago. I don't know about Muoso boundaries. All the pillars erected by Plaintiff on our land were removed. Right up to the railway. About eight in all. The Kankangs had permission from Abossi to make farms on his land. The stool has not given permission to Kankangs to make farms on Asunafo stool land. 20

No. 31.

Kweku Sey.

KWEKU SEY.

EXAMINATION-IN-CHIEF.

I am Odikro of Akwaboso. My predecessor was Adjua Fi. She is now dead. I know Boadi. I also know the Muoso Chief. My stool has land bounding with Asunafo land. I know the Birim river. Boundary runs along Subri stream till it falls into Birim. I have a right to fish in the Subri. There is a big rock at source of Subri. I know Fianko. From
 10 there, there is no definite boundary with Asunafo. We belong to the same clan. I call Asunafo my brother. I know the Jejeti stream. My land extends up to it. We take the railway line as a boundary since it was built. In the olden days there was no definite boundary. The present boundary with the Kwahu is the Jejeti stream. Akwaboso land goes as far as that to east of railway. On east I bound with Muoso land. I know the town of Bekoasi. It is on my land. From there my boundary with Muoso runs across the railway to a stream called Apaopong. Then it follows the main road. It used to follow the old road. The boundary formerly ran right through Jejeti town to the Jejeti stream. Now it
 20 follows the motor road. We had a dispute with Muoso as to boundary. The Omanhene settled it at Kibi. He fixed the motor road as the boundary. We consented. The motor road now goes round Jejeti. Jejeti town is now on Muoso land. The rest house was formerly on my land. I don't know of Yao Anno. I have heard of Plaintiff Frimpong since I came to Court. I have never seen him on my land. About five years ago I heard that Jejeti people were farming on my land. I sent my linguist to swear an oath that land belonged to me. No answer has been made to the oath. I have not visited the land since.

CROSS-EXAMINED.

30 I have not heard about Muoso selling land. I have been on the stool about ten years. I succeeded Adjua Fi who was destooled. I have never heard that Akwaboso land extended up to Asuboni river. I agree that Muoso stool gave town of Jejeti to Juabens who now live there. I have heard that Kankang was also given to Juabens. I have heard that our stool once claimed all the land from Jejeti town to Asuoboni river from Muoso. Akwaboso and Asunafo claimed it jointly. Also Abomoso. Abomoso is the head of us all. I am claiming for all three. The boundaries are not fixed between us as we are brothers. I was a boy when the boundary dispute with Muoso took place. I have never heard that Sidenkum stream
 40 was the boundary of Muoso land. We have no boundaries with Muosos there. I have never heard the name Romia. When Adjua Fi was on the stool the boundaries were discussed with the Omanhene. Affam was then Odikro of Muoso. Jejeti people were farming on my land between the road and the railway.

In the
Supreme
Court of the
Gold Coast.

Evidence
for Kwame
Abossi,
Kofi Asare,
Mante and
Abuagye—
continued.

No. 31.
Kweku Sey,
1st March,
1939.

Examina-
tion.

Cross-
examina-
tion.

In the
Supreme
Court of the
Gold Coast.

No. 32.

Kweku Doku.

Evidence
for Kwame
Abossi,
Kofi Asare,
Mante and
Abuagye.
continued.

KWEKU DOKU, s.a.r.b. Twi.

No. 32.
Kweku
Doku.
1st March,
1939.

Examina-
tion.

EXAMINATION-IN-CHIEF.

I am Mankrado of Asunafo. I know Abossi. I remember when he came to buy land. I was one of the parties to the sale. I went to the land. (Witness describes boundaries as shown on Plan "C" in green.) Bottles were placed. A boundary was cut. I know the Odikro of Akwaboso. Our boundary runs down the Subri to junction of Birim. The railway is boundary on east. We do not bound with Muoso land at all. I saw 10 Plange when he made his survey. He was sent from the Court. We went along the railway boundary. The surveyor was not taken into the land between Romia and the railway. We only went round the boundaries. I saw the farms made by Abossi. I saw Kankang farms near southern boundary by our land. I knew the Accra man, Agyiri. He made a farm. An oath was sworn against him and he ran away and has not returned.

CROSS-EXAMINED.

No questions.

Case for Defence closed.

No. 33.
Court Notes
of Counsel's
Address,
1st March,
1939.

No. 33.

20.

Court Notes of Counsel's Address.

AWERE addresses Court.

Asks for separate judgment in each case. Frimpong's claim based on Exhibit "A." No witnesses from Muoso stool called. Sale according to native custom must be proved. "A" only confirms that sale. No boundaries cut. Abossi not disturbed till the survey.

BOSSMAN does not address Court.

Adjourned to March 3rd for judgment.

GUY COOPER.

No. 34.

Court Notes of Judgment.

In the
Supreme
Court of the
Gold Coast.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN PROVINCE, held
at Victoriaborg, Accra, on Friday the 3rd day of March, 1939, before
COOPER, Ag. J.

No. 34.
Court
Notes of
Judgment,
3rd March,
1939.

10 Consolidated	{	KOFI FRIMPONG, <i>Plaintiff</i>	Mr. BOSSMAN for Plaintiff.
		<i>vs.</i> •	
		KWAME ABOSSI & three others, <i>Defendants.</i>	Mr. AWERE for Dr. DANQUAH for all Defendants.
		BAFOUR KWADWO BOADI, <i>co-Defendant</i>	
		and	
		BAFOUR KWADO BOADI, <i>Plaintiff</i>	Mr. AWERE with Dr. DANQUAH for Plaintiff.
		<i>vs.</i> •	
		OPANYIN KOFI FRIMPONG, <i>Defendant.</i>	Mr. BOSSMAN for Defendant.

20 Judgment for Defendants Kwami Abossi and three others against
Kofi Frimpong with costs to be taxed.

Kofi Frimpong non-suited as against Kwadwo Boadi.

Kwadwo Boadi non-suited as against Kofi Frimpong.

No order as to costs.

Non-suit not to have effect of judgment on the merits.

See Judgment Book
Vol. 14, pp. 71/77.

GUY COOPER,
Ag. J.

In the
Supreme
Court of the
Gold Coast.

No. 35.

Judgment.

No. 35.
Judgment,
3rd March,
1939.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN PROVINCE, held
at Victoriaborg, Accra, on Friday the 3rd day of March, 1939, before
COOPER, Ag. J.

Transferred Suits
Nos. 35/33 and 12/35.

Consolidated	{	BAFOUR KWADWO BOADI	...	...	...	<i>Plaintiff</i>	
						<i>vs.</i>	
		OPANYIN KOFI FRIMPONG	...	...	...	<i>Defendant</i>	10
						<i>and</i>	
		OPANYIN KOFI FRIMPONG	...	...	...	<i>Plaintiff</i>	
						<i>vs.</i>	
		KWAME ABOSSI, KOFI ASARE, MANTE and					
		ABUAGYE	...	...	...	<i>Defendants.</i>	
		BAFOUR KWADWO BOADI	...	...		<i>co-Defendant.</i>	

JUDGMENT.

These two actions have been transferred to this Court from the Native Tribunal of Akim Abuakwa at Kibi. The first action, Transferred Suit No. 35/33, *Boadi v. Frimpong* was commenced by an oath sworn by Boadi 20 against Frimpong in or about September, 1933. Boadi claimed damages for trespass against Frimpong. His complaint is that Frimpong had a survey made of land known as Jejeti without the consent of Boadi. Boadi is Odikro of Asunafo and alleges that the Jejeti land is really Asunafo stool land.

The second action was commenced by summons by Frimpong against Aboasi and others.

He claimed (a) Declaration of title to Jejeti land. (b) Order for recovery of possession of this land. (c) Damages for trespass.

After the transfer of the case to this Court Boadi applied to be joined 30 as a co-Defendant in the second action and an order was made to this effect. The actions were consolidated and it was agreed that Frimpong should be treated as Plaintiff in the consolidated actions.

The dispute concerns the ownership and occupation of a portion of land situated near Jejeti on the northern boundary of Akim Abuakwa. This land until quite recently was virgin forest. It lies in a region which was in the past, as History records, constantly laid waste by wars between the Ashantis and their allies the Kwahus, and the Akims. It was quite undeveloped and only used for hunting and collecting snails and wild rubber. A glance at survey map (sheet 96) shows that on the South there is a line 40

of Akim villages, Muoso, Akwaboso, Asunafo, etc., but to the northward in the direction of the Kwahu boundary the country is bush or forest with no settlements except small camps or farms.

The boundary between the Kwahu and Akim Abuakwa States was fixed in 1923 by this Court and forms the northern boundary of the land at present in dispute. The judgment in that case, Exhibit "G," was put in evidence, but it is clear that the litigation only decided the boundary between the Akims and the Kwahus and not the boundaries of the various Akim stool lands between themselves. It cannot bind the present parties

10 as a judgment *in rem*.

About the year 1875 the people of Juaben in Ashanti revolted against Kumasi. They were defeated and numbers of refugees escaped to Kwahu and Akim. Most of them settled finally in the neighbourhood of Koforidua now known as the New Juaben District; but there were other Juaben settlements in particular at Kankang and Jejeti. From the evidence I find that the Juabens at Jejeti were permitted to settle there on Muoso stool land by the then Chief of Muoso, but no definite boundaries were fixed at that time. (See the evidence of Yao Ewusu.)

There was apparently no cultivation or farming at that time. There

20 is evidence that Muoso successfully maintained a right to a share in gold found by the Jejeti people as against the stool of Akwaboso. There is however no evidence before me as to where this gold was found. As a result of this litigation the Chief of Muoso, though successful, found himself in debt and had to sell some of the stool lands. He sold land to Yao Anno, a Juaben man from Koforidua, and the predecessor of the Plaintiff Frimpong. According to Frimpong's evidence the land was first sold according to Native Custom and then a Deed confirming the sale, Exhibit "A," was drawn up at Accra by the late Mr. Hutton-Mills. The Deed was duly registered and contains a rough plan of the land sold. It

30 is dated January 2nd, 1905. It purports to be a conveyance of the land specified from the people of Muoso to Yao Anno. I have said that the Conveyance contains a rough plan of the land sold but the word "rough" hardly expresses the crudity of the plan which was evidently drawn by someone who had no knowledge whatever of the site. It is enough to say the measurements show that an area of about 150 square miles was conveyed whereas we now know that the area is less than 10½ square miles. The boundaries are, however, described and it has been decided in *Quarshie v. Plange*, F.C. 1926-29, page 246, and other cases, that where

40 description of the boundaries differs from the measurements on a plan the description prevails. The description of the boundaries in Exhibit "A" is on the North by the river Jejeti, there is no difficulty as to this boundary. On the South by Kankang land belonging to the Vendor. This boundary is a little vague. On the East by a road from Bepong to Adosawase. This boundary is not in issue in the present case. On the West by the Asuboni or Si river to the junction of Sidenkum stream and then a line to Fahiako or Fianko. This boundary can also be identified.

An accurate survey has been made of these boundaries by order of the Plaintiff in 1933 (Exhibit "B"). The land was also surveyed by order of

In the
Supreme
Court of the
Gold Coast.
—
No. 35.
Judgment,
3rd March,
1939—
continued.

In the
Supreme
Court of the
Gold Coast.

No. 35.
Judgment,
3rd March,
1939—
continued.

the Court in 1935. The plan made by Mr. Plange, Surveyor, is Exhibit "C." When he made the survey all the parties were represented and this is the plan I shall refer to in this judgment.

The land claimed by the Plaintiff Frimpong is divided into three portions which I shall describe as coloured on the plan. First, PINKACRE which lies to the east of the Railway. As to this land there is no dispute in the present action. Second, BLUEACRE to the West of the Railway line which the Defendant Boadi claims to be Asunafo stool land. Third, GREENACRE still further west which Abossi and others bought from the Asunafo stool and on which they have made farms. Frimpong claims 10 a declaration of title to all this land. He must therefore prove ownership of the land west of the Railway as his right is disputed by Boadi and Abossi.

Boadi is claiming damages for trespass to BLUEACRE. He must therefore prove possession either actual or constructive since trespass is an injury to a possessory right.

Abossi makes no claim himself, but merely defends and traverses Frimpong's right to ownership or possession of GREENACRE. As to Frimpong's claim he bases his title on the sale by Muoso stool to Yao Anno in 1904. I find that there is *prima facie* evidence from Frimpong's testimony 20 and in Exhibit "A" that there was a purported sale of the land described. But I am not satisfied that this land was in fact Muoso stool land which could be alienated by the Chief of Muoso. It is remarkable that not a single witness from Muoso was called by the Plaintiff. The Plaintiff says that he, on behalf of Yao Anno, inspected the land and went round the boundary at the time of the sale 35 years ago but he does not suggest that any representative of Asunafo or other neighbours was present. No boundary lines were marked or cut, no farms were made, no other acts of ownership were performed.

In view of the nature of the country, I find it difficult to believe that 30 Frimpong could have followed straight lines through the forest without cutting a boundary. In fact whatever rights he had he certainly went to sleep on them till 1933. Then he started to make a farm in the north part of BLUEACRE near Jejeti Railway Station and certain other of his tenants from Jejeti also made farms in that vicinity. This was about six years ago and was the first act of ownership or possession of BLUEACRE of which there is evidence. As soon as he heard of these farms Boadi at once protested and commenced proceedings. Frimpong therefore has given no proof of adverse possession of BLUEACRE. I think there can be no doubt that in 1904 the boundaries between the various stool lands had 40 not been definitely fixed. All this tract of country was of little value or no value except to wandering hunters. I may say that from the Government Survey Map it would seem reasonable that the land should belong to Asunafo rather than Muoso since it could be easily reached by following up the Asuboni river and the streams running into it, whereas to reach it from Muoso would mean crossing a number of rivers or streams. However I have not sufficient evidence before me to decide the ownership of BLUEACRE. All I decide is that there are no "accomplished facts" within

the meaning of the cases cited under "land" in Griffith's Digest to support Frimpong's claim and there is no direct evidence that the land was Muoso land and that the Vendors could give a good title. The burden of proof is on Frimpong and he has failed to support it. He is therefore non-suited on this part of his claim against Boadi.

As to GREENACRE "a fortiori" Frimpong fails. There is clear evidence that at a time certainly more than ten years ago the stool of Asunafo had sold GREENACRE (and also adjoining land not now in dispute) to the Defendant Abossi and a Company or Syndicate of Kyerepongs who are represented by the Defendants Abossi and others; that a boundary was cut and marked; that numerous farms were made; that for several years they remained in undisturbed possession of the land and it was not till 1933 that Frimpong made any claim to GREENACRE. He then had it surveyed and erected pillars but Abossi and Boadi at once protested. It is noteworthy that when certain Kankangs made farms on GREENACRE Abossi objected and they remained only by permission from Abossi. The Kankangs are Juabens like Frimpong and the Jejeti people. It seems that they knew nothing about Frimpong's claim to this land. Exhibit "C" does show one Jejeti farm on GREENACRE but according to the surveyor Plange it is a new farm made since this dispute arose. I find therefore that so far as Frimpong's claim to GREENACRE is concerned there is proof of the "accomplished facts" and adverse occupation by Abossi and his Company which shows that they are now lawful owners and occupiers of the land. There will therefore be Judgment for the Defendants Kwame Abossi, Kofi Asare, Mante and Abuagye as against Frimpong with costs to be taxed.

I must now turn to BLUEACRE in the case where Boadi claims damages for trespass from Frimpong. As I have already said, the Plaintiff in such action must prove actual or constructive possession. I do not think it necessary to go in detail into the confusing and contradictory evidence as to the boundaries of the Asunafo and Akwaboso stool lands. It is sufficient to say that there is really no evidence that BLUEACRE has ever been occupied or used by the people of Asunafo. In recent years as I have said people from Jejeti have made farms near the northern boundary. It also appears that Kankangs have made farms along the southern boundary. But on the evidence before me I find it quite impossible to decide who is entitled to the possession of the land which I have described as BLUEACRE. Therefore in the action Boadi-Frimpong there will be a non-suit. As both Frimpong and Boadi have been non-suited I make no order as to costs with respect to them. These non-suits do not amount to a Judgment on the merits.

(Sgd.) GUY COOPER,
Acting Judge.

Counsel—Mr. OFEI AWERE with Dr. J. B. DANQUAH for Plaintiff in the first action and Defendants in the second action.

Mr. K. A. BOSSMAN for Defendant in the first action and Plaintiff in the second action.

In the
Supreme
Court of the
Gold Coast.

No. 35.
Judgment.
3rd March,
1939—
continued.

In the
West
African
Court of
Appeal.

No. 36.

Grounds of Appeal.

No. 36. IN THE WEST AFRICAN COURT OF APPEAL.
Grounds of
Appeal.
23rd March.
1939.

Between
KOFI FRIMPONG *Plaintiff-Appellant*
vs.
KWAME ABOSSI & OTHERS *Defendants-Respondents*
and
BAFOUR KWABENA BOADI *Plaintiff-Respondent*
vs.
OPANYIN KOFI FRIMPONG *Defendant-Appellant.*

10

Filed 27/3/39
at 10.35 a.m.

(Intd.) J.E.O.
for Registrar, Divisional Court, Accra.

The Appellant, being dissatisfied with the Judgment of the Divisional Court, Accra, delivered on the 3rd day of March, 1939, and having obtained final leave to appeal therefrom dated the 21st day of March, 1939, hereby appeals to the West African Court of Appeal upon the grounds hereinafter set forth.

20

GROUNDS OF APPEAL.

1.—That the Court was wrong in holding that “ there is no direct evidence that the land was Muoso Stool Land and that the vendors “ could give a good title ” because there was abundant evidence of Boundary Owners, principally Ohene Ampadu of Mpraeso the Northern Boundary Owner and also Exhibit “ G ” which evidence was in no way discredited, that the area comprised in the Conveyance and claimed by the Appellant was Muoso stool land validly sold to the Appellant’s predecessor in title.

2.—That the Court’s decision in respect of the area described as Greenacre “ that there is proof of accomplished facts and adverse occupation “ by Abossi and his Company which shows that they are now lawful Owners and Occupiers of that Land ” is contrary to law because the principle of acquisition of title by long possession is not applicable to the particular circumstances of this case.

30

3.—That the Court was bound to find that the area “ Greenacre ” occupied by the Defendants Abossi and others was Asunafo stool land before it could come to the conclusion that the Defendants’ occupation thereof under and by virtue of an alleged sale by the Asunafo stool gave the said Defendants proper title, and the Court not having found that the area is Asunafo stool land, was wrong in holding that Asunafo Licencees or Tenants acquired a valid title as against third parties claiming through other stools.

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Appeal.
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10 4.—That the Defendants did not prove any conduct on the part of the Appellant Frimpong which disentitles him to claim the area “ Greenacre ” in spite of the occupation of same by Abossi and others—and did not establish any estoppel against the said Appellant.

continued.

20 5.—That the Court did not sufficiently consider the evidence of Ohene Ampadu of Mpraeso and Exhibit “ G ” which though not operating as *res judicata* as the Court held, nevertheless established that up till 1923 it was the Muoso stool who was known to be the Owner and Occupier of and the person sued together with the Omanhene of Akyem Abuakwa, in respect of the area just immediately South of and adjacent to the River Jejeti up to the point where it meets the Asubone Stream, which is the same area as that claimed in this suit—and did not sufficiently consider other evidence in favour of the title of the Muoso stool to the land the subject-matter of the suit—and the Court’s decision is therefore against the weight of evidence.

6.—That the Appellant proved a Valid Purchase from the Muoso stool and proved also that even as late as 1923 the Muoso stool was the Occupier and Owner of the land sold—and was therefore entitled to Judgment against the Defendants-Respondents.

Dated this 23rd day of March, 1939.

(Sgd.) K. ADUMUA BOSSMAN,
Solicitor for Appellant.

30

To the Registrar, Divisional Court, Accra and to the above-named Defendants-Respondents: Kwame Abossi, Kofi Asare, Mante and Aboagye, their Agent or Solicitor and to the above-named Plaintiff-Respondent: Bafour Kwabena Boadi his Agent or Solicitor.

No. 37.

Court Notes.

In the
West
African
Court of
Appeal.

No. 37.
Court
Notes,
26th Febru-
ary, 1940.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Victoriaborg, Accra, on Monday, the 26th day of February, 1940, before Their Honours Sir DONALD KINGDON, C.J., NIGERIA (President), Sir PHILIP BERTIE PETRIDES, C.J., Gold Coast, and ALFRED NOEL DOORLY, J., Gold Coast.

Civil Appeal.

BAFUOR KWADO BOADI Plaintiff-Respondent

v.

10

OPANYIN KOFI FRIMPONG Defendant-Appellant

and

OPANYIN KOFI FRIMPONG Plaintiff-Appellant

v.

(1) KWAME ABOSSI, (2.) KOFI ASARE, (3) MANTE,
(4) ABUAGYE, and (5) BAFUOR KWADWO BOADI Defendants-Respondents.

APPEAL from Judgment of COOPER, Ag. J., dated 3rd March, 1939.

E. C. QUIST (with him K. A. BOSSMAN) for Appellant.

OFEI AWERE (with him J. B. DANQUAH) for 1st, 4th and 5th Respondents.

20

Awere reports that 3rd Respondent Mante, is dead—died before the trial—see page 4.

2nd Defendant was never served and took no part in trial—but both 3rd Defendant (dead) and 2nd Defendant got judgment with costs against Appellant.

Quist states that only the three Defendants viz. 1st, 4th and 5th Defendants have been served with Notice of Appeal.

Quist asks to be allowed to go on with the appeal against 1st, 4th and 5th Respondents.

Court approves.

30

No. 38.

Court Notes of Counsel's Arguments.

No. 38.
Court
Notes of
Counsel's
Arguments,
26th Febru-
ary, 1940.

QUIST for Appellant.

Judgment at page 38.

Grounds of Appeal page 42.

See Map "C."

(1) Mr. E. C.
Quist, for
Frimpong,
Appellant.

Boadi claimed Blueacre but was non-suited. Judge did not award this to us although he said we had made a prima facie case. Judge awarded

Greenacre to 1st and 4th Defendants solely on account of occupation—only five years undisturbed possession.

Grounds 1, 5 and 6 together.

Judgment page 40.

Judge decided against us on two grounds—

1. We did not establish the land was Muoso stool land.

2. We did not prove acts of ownership.

I submit that there was abundant evidence that land was Muoso stool land.

10 See Exhibit "A"—pages 52-55.

I submit that this document sufficiently recites that it was Muoso stool land.

(In answer to Court): Nobody from Muoso was called to prove this, but that should not be made a point against us, especially as we called disinterested persons to prove it.

See page 8.—The clerk who witnessed "A."

Page 9.—Plaintiff himself.

Page 13.—

Page 16.—Evidence of Odikro of Jejeti—page 17.

20 Page 18.—Kwami Dankwa.

Pages 20-21,—Boaki Akossi.—Odikro of Kankang.

Page 22.—Ohene of Mpraeso.

See Plan Exhibit "F" and Exhibit "G." page 56.

Asunafo sat by in that case as regards this land.

I submit that when Judge said there was no evidence showing that the land was Muoso stool land he erred.

(Note by Court: "No *direct* evidence").

The only evidence on the other side is at:—

Page 29.—Odikro of Asunafo.

30 Page 31.—Yao Oyimka.

Both interested persons.

(Question by Doorly, J.:—Was Asunafo cross-examined as to "sitting by"?).

See page 30, lines 11-13.

Oyimka was called—he was predecessor on Asunafo stool—page 31.

(Question by Doorly, J.—as above):

Yes—page 32, line 32.

It seems to indicate that he was asked about sitting by.

No evidence of use by Asunafo—see page 41, line 31.

40 (A short adjournment.)

On resumption.

QUIST continues.

Page 40, line 48.—Judge said no "accomplished facts."

If that means acts of ownership—see page 16 and page 9. "My
"uncle left him in charge." "Paid tolls."

Page 16.—Cocoa tribute—gold and cocoa tolls.

In the
West
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Court
Notes of
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ary, 1940—
continued.

(1) Mr. E. C.
Quist, for
Frimpong,
Appellant—
continued.

In the
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No. 38.
Court
Notes of
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ary, 1940—
continued.

(1) Mr. E. C.
Quist, for
Frimpong,
Appellant—
continued.

Pages 19 and 20.—Farming.

It is significant that there is no boundary between all the areas.

Grounds 2, 3, and 4—pages 42 and 43.

See Judgment page 41.

See pages 24, 25. Undisturbed possession for only five years.

Adverse occupation for five years is not such as to deprive us of our title if we have otherwise established it.

Opanyn Kwame Adu v. : Kwasi Kuma, 2 W.A.C.A., p. 240.

We bought from Muoso in 1905—over 33 years before suit heard.

Other side say they bought from Asunafo later (?1921).

Judge never made any finding that land was Asunafo land and so Asunafo could give title. He said we did not satisfy him that it was Muoso land—but I have shown abundant evidence that it was Muoso land.

If they failed and we failed and we have our registered deed and have shown acts of ownership—how can Judge say that five years' adverse possession ousts us.

I submit judgment cannot stand. He non-suited Boadi in his claim and held Defendants in second suit were lawful owners and occupiers of the same land.

10

(2) Mr. O.
Awere, for
Respon-
dents.

AWERE for Respondents.

In Plan "C," Appellant claimed all except the most southerly.

Defendant Abossi claimed Greenacre.

Boadi claimed Blueacre.

No one but Plaintiff claimed Pinkacre.

As to Blueacre—that was claimed by Boadi.

Judge was not satisfied and non-suited Boadi.

Cap. 4, Schedule 3, Order 39, Rule 3.

Here Judge declared non-suits not to amount to judgment on merits.

As to Greenacre—Appellant produced Exhibit "A."

It was admitted by Frimpong that the sale to him was by native custom and that "A" was made subsequently.

See pages 40, 41, 51, 53.

At 39. The sketch at page 53 was made in Accra and is hopelessly wrong. Therefore they were bound to call witnesses to prove the sale by native custom which the deed purported to confirm.

As they did not do that the Judge was perfectly right to say that they had failed to prove their title.

If Plaintiff says this land was sold to me by native custom, Guaha was cut at Koforidua. If the sale by native custom was bad, it could not be confirmed by deed. Why did they shirk proving that sale by native custom ?

In the ordinary way the purchasers always call their vendors to prove the sale—incidentally giving evidence of their own title showing their right to sell.

Judge finds prima facie evidence of *purported* sale, but was not satisfied that land was Muosos.

20

30

40

“ Not a single witness from Muosos called by Plaintiff.”

Muoso is in Abuakwa and has a Chief on the stool.

Why was he not called ? instead of outside persons. Why not call some of the people of Muoso who went on the land at the time of the sale ?

Page 40. “ No neighbours.” Asunafo was a neighbour.

(BOSSMAN disputes that. Says it is Akwaboso land, not Asunafo, which borders Greenacre on the South West.)

AWERE—We called Akwaboso—page 35.

As to Ampadu of Mpraeso being independent. In 1923 Frimpong’s predecessors had already bought. Frimpong’s predecessor’s name does not appear on the plan.

Adjourned till 27th February, 1940.

DONALD KINGDON,
President.

26th February, 1940.

27th February, 1940.

AWERE is stopped except he is asked if he can support the word “ owners ” at line 23, page 41, in the judgment.

AWERE.

20 I can, because that finding is not based upon occupation only. It is based upon the evidence of Abossi and his witnesses Affum, Martin Asare supported as it were by the evidence of their vendor Boadi.

Judge found they proved ownership of Greenacre though he non-suited Boadi as to Blueacre

See pages 27, 24—a detailed account of the purchase.

(In answer to Court): The claim of Frimpong in respect of Greenacre was for (a) a declaration of title, (b) possession, (c) damages (see page 3). We only had to prove lawful occupation to succeed.

30 Our defence was we bought it and are in possession—we did not have to prove ownership in order to succeed, once Frimpong failed to prove ownership.

I don’t want more than preserves our judgment. If Judge said anything surplus, I don’t press for its retention.

BOSSMAN in reply on behalf of Appellant :—

As to Greenacre—

We submit that in order to give judgment for Defendants for Greenacre, it was necessary to prove lawful occupation by them.

40 If this had been a question of stool land and the people in occupation—stool subjects—then there is a recognised right for a subject of the stool by native customary law to enter into occupation without the express licence or leave of the owner. But in this case which is private land (claimed as such by us) then it is necessary to establish occupation with the leave and licence of the owner.

Now if Defendants had been Asunafo subjects actually found in occupation of the land—that would be some evidence that the land is

In the
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No. 38.
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Notes of
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26th Febru-
ary, 1940—
continued.

(2) Mr. O.
Awere, for
Respon-
dents—
continued.

(3) Mr. K. A.
Bossman,
for Appel-
lant.

In the
West
African
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Appeal.

No. 38.
Court
Notes of
Counsel's
Arguments,
26th Febru-
ary, 1940—
continued.

(3) Mr. K. A.
Bossman,
for Appel-
lant—
continued.

Asunafo land. But when they are entire strangers relying on a sale, then the Judge must find whether the people who sold to them had a title to do so.

Asamangkese Arbitration—Divisional Court, 1926–29, at pages 297 and 302, paragraph 5.

As to Blueacre—

Having found we had made a *prima facie* case, and Defendant having failed to displace it, Judge should have awarded Blueacre to us.

We did subpoena people from Muoso and their attitude was that they were not with us.

(Doorly, J., points out that yesterday Quist said they were not called 10 because they would obviously have supported Frimpong.)

Judgment delivered after a short adjournment.

DONALD KINGDON,
President.

27th February, 1940.

No. 39.
Judgment,
27th Febru-
ary, 1940.

No. 39.

Judgment.

JUDGMENT.

This is an appeal solely on the facts and we may say at once that, except as hereinafter appears, we see no reason to differ with the Court 20 below on any of the findings.

The history and facts of the case are fully set out in the judgment of the Court below and need not be recapitulated in detail here.

In the second action the Appellant claimed a declaration of title to both "Blueacre" and "Greenacre," recovery of possession and damages.

As regards "Blueacre" the learned Trial Judge held that the Appellant had failed to discharge the onus of proof which was upon him and non-suited him with a declaration that the non-suit did not amount to a judgment on the merits. We entirely agree with this decision, and, in view of the fact that the Appellant failed to call any representative of the Muoso stool to support the right of that stool to sell the land in question, we think that no other decision was possible. 30

As regards "Greenacre" the Judge found that "there is proof of the "accomplished facts" and adverse occupation by Abossi and his company "which shows that they are now lawful owners and occupiers of the land" and gave judgment for the Defendants with costs.

The words quoted seem to suggest that the learned trial Judge considered that any shortcomings in the proof of a legal title might be made good by proof of "accomplished facts." If this was indeed his view, it could not be justified by the decisions on the point. But in any case it

was not necessary for him to decide whether or not the Defendants had a legal title, and they had not asked for a declaration. We think therefore that this part of the judgment should be amended by striking out the words "owners and," and we order accordingly. Subject to this the decision as to "Greenacre" is upheld.

In the first case Boadi claimed damages from Frimpong for trespass on "Blueacre." In this the Judge entered a non-suit not amounting to a judgment on the merits. We see no reason to disturb this finding.

10 There is one other point which does not arise on the appeal but which should be mentioned. We notice that although one of the Defendants in the second case had died and another had not been served, the case proceeded as though they were both parties to it and indeed judgment with costs was given in their favour. This procedure was, of course, quite wrong.

Subject to the order already made, as to deleting the words "owners and" from the judgment, the appeal is dismissed with costs assessed at £44. 1. 0. in favour of the three Respondents who have been represented on this appeal.

DONALD KINGDON,
President.
P. B. PETRIDES,
C.J., Gold Coast.

20

A. N. DOORLY,
Judge.

27th February, 1940.

In the West African Court of Appeal.

No. 39. Judgment, 27th February, 1940—*continued.*

No. 40.

Certificate of the Order of the Court.

APPEAL from the Judgment of COOPER, Ag. J., of the DIVISIONAL COURT OF THE EASTERN PROVINCE, ACCRA, dated the 3rd day of March, 1939.

No. 40. Certificate of the Order of the Court, 27th February, 1940.

BAFUOR KWADWO BOADI *Plaintiff-Respondent*
v.
30 OPANYIN KOFI FRIMPONG *Defendant-Appellant*
and
OPANYIN KOFI FRIMPONG *Plaintiff-Appellant*
v.

(1) KWAME ABOSSI. (2) KOFI ASARE. (3) MANTE.
(4) ABUAGYE and (5) BAFUOR KWADWO BOADI *Defendants-Respondents.*
(Consolidated).

THIS APPEAL coming on for hearing on the 26th and 27th days of February, 1940, before Kingdon, C.J., Nigeria (President), Petrides, C.J., Gold Coast, and Doorly, J., Gold Coast, in the presence of Mr. E. C. Quist

In the
West
African
Court of
Appeal.

No. 40.
Certificate
of the
Order of
the Court,
27th Febru-
ary, 1940—
continued.

(with him Mr. K. A. Bossman) for the Appellant and Mr. Ofei Awere (with him Dr. J. B. Danquah) for the 1st, 4th and 5th Respondents.

I HEREBY CERTIFY that a Judgment was given as follows:—

The Judgment of the Court below shall be amended by striking out the words "owners and" where they appear in the sentence—

"I find therefore that so far as Frimpong's claim to Greenacre is concerned there is proof of the 'accomplished facts' and adverse occupation by Abossi and his company which shows that they are now lawful owners and occupiers of the land."

Subject to this amendment the appeal is dismissed with costs assessed at £44. 1. 0. in favour of the three Respondents Kwame Abossi, Abuagye and Bafuor Kwadwo Boadi. 10

The Court below to carry out.

Given under my hand and the Seal of the Court this 27th day of February 1940.

(L.S.)

DONALD KINGDON,
President.

No. 41.

Court Notes of Final Leave to Appeal to His Majesty in Council.

No. 41.
Court
Notes of
Final Leave
to Appeal
to His
Majesty
in Council,
16th Sep-
tember,
1940.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Victoriaborg, Accra, on Monday, the 16th day of September, 1940, before Their Honours Sir PHILIP BERTIE PETRIDES, C.J., Gold Coast (Presiding), ROBERT STROTHER-STEWART and CHARLES EDWARD WOOLHOUSE BANNERMAN, JJ. 20

OPANYIN KOFI FRIMPONG

v.

KWAME ABOSSI AND OTHERS

and

BAFUOR KWADWO BOADI

v.

OPANYIN KOFI FRIMPONG. 30

BOSSMAN applies on notice and states all conditions fulfilled.

ORDER—Final Leave granted as prayed.

PHILIP B. PETRIDES,
Presiding Judge.

R. STROTHER-STEWART,

J.

WOOLHOUSE BANNERMAN,

J.

No. 42.

Order for Substitution of Kwasi Baah as Appellant.

In the
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IN THE WEST AFRICAN COURT OF APPEAL.
GOLD COAST SESSION—ACCRA.

(L.S.)

DONALD KINGDON, *President.*

No. 42.
Order for
substitution
of Kwasi
Baah as
Appellant,
11th No-
vember,
1940.

10 Consolidated	{	OPANYIN KOFI FRIMPONG ... <i>Plaintiff-Appellant</i>
		<i>v.</i>
		KWAME ABOSSI, ABUAGYE, and KWADWO BOADI <i>Defendants-Respondents</i>
		and
		BAFUOR KWADWO BOADI ... <i>Plaintiff-Respondent</i>
		<i>v.</i>
		OPANYIN KOFI FRIMPONG ... <i>Defendant-Appellant.</i>

ON APPEAL TO PRIVY COUNCIL.

WHEREAS Final Leave to appeal to His Majesty's Judicial Committee of the Privy Council was on the 16th day of September, 1940, granted in the above case AND WHEREAS the Record has since become defective by reason of the death on the 22nd day of September 1940, of
20 Opanyin Kofi Frimpong, the Appellant herein, and application was on the 11th November, 1940, made to this Court by Counsel for the Appellant for a Certificate showing who, in the opinion of the Court, is the proper person to be substituted or entered on the Record in place of the said Opanyin Kofi Frimpong, since deceased.

NOW THEREFORE, under the provisions of Rule 25 of the Rules made under the "West African (Appeal to Privy Council) Order-in-Council, 1930," It is hereby certified that in the opinion of this Court Kwasi Baah, the Successor according to Native Customary Law and the Head of the Family of the said Opanyin Kofi Frimpong, the Appellant herein,
30 is the proper person to be substituted or entered on the Record in the place of the said Opanyin Kofi Frimpong, now deceased, and he is hereby substituted or entered therefor accordingly.

Dated at Victoriaborg, Accra, this 11th day of November, 1940.

T. F. GOODMAN,
Chief Registrar.

Exhibits.

EXHIBITS.

“ A.”
 (Plaintiff's): “ A.” (Plaintiff's.) Conveyance from Kwasi Apontua and Others to Yao Anno. 7/05.
 Conveyance from Kwasi Apontua to Yao Anno, 2nd January, 1905.

THIS INDENTURE made the second day of January One thousand nine hundred and five Between KWASI APONTUA Chief of Muoso in Eastern Akim, Kwaku Affam, Councillor, and Kwamin Badiako, Captain, all of Muoso in Eastern Akim aforesaid in the Gold Coast Colony (Vendors) and Captain Yao Anno of Koforidua-Dwaben in the said Colony (Purchaser) of the other part.

WHEREAS the said Chief Kwasi Apontua, Kwaku Affam and Kwamin Badiako are the representatives of the people of Muoso who by the native customary law are entitled to sell, grant or alienate stool or town lands of Muoso aforesaid. 10

AND WHEREAS the said Chief Kwasi Apontua, Councillor Kwaku Affam and Captain Kwamin Badiako incurred various debts by defending actions brought against the stool lands of Muoso, and to prevent all the stool lands of the said town of Muoso from being disposed of by persons who lent money towards the defence of the above recited actions the said Chief Kwasi Apontua, Councillor Kwaku Affam and Captain Kwamin Badiako with the knowledge, consent and concurrence of the elders and principal people of Muoso have agreed to sell a portion of the Muoso stool lands to pay, adjust, and settle the debt so incurred. 20

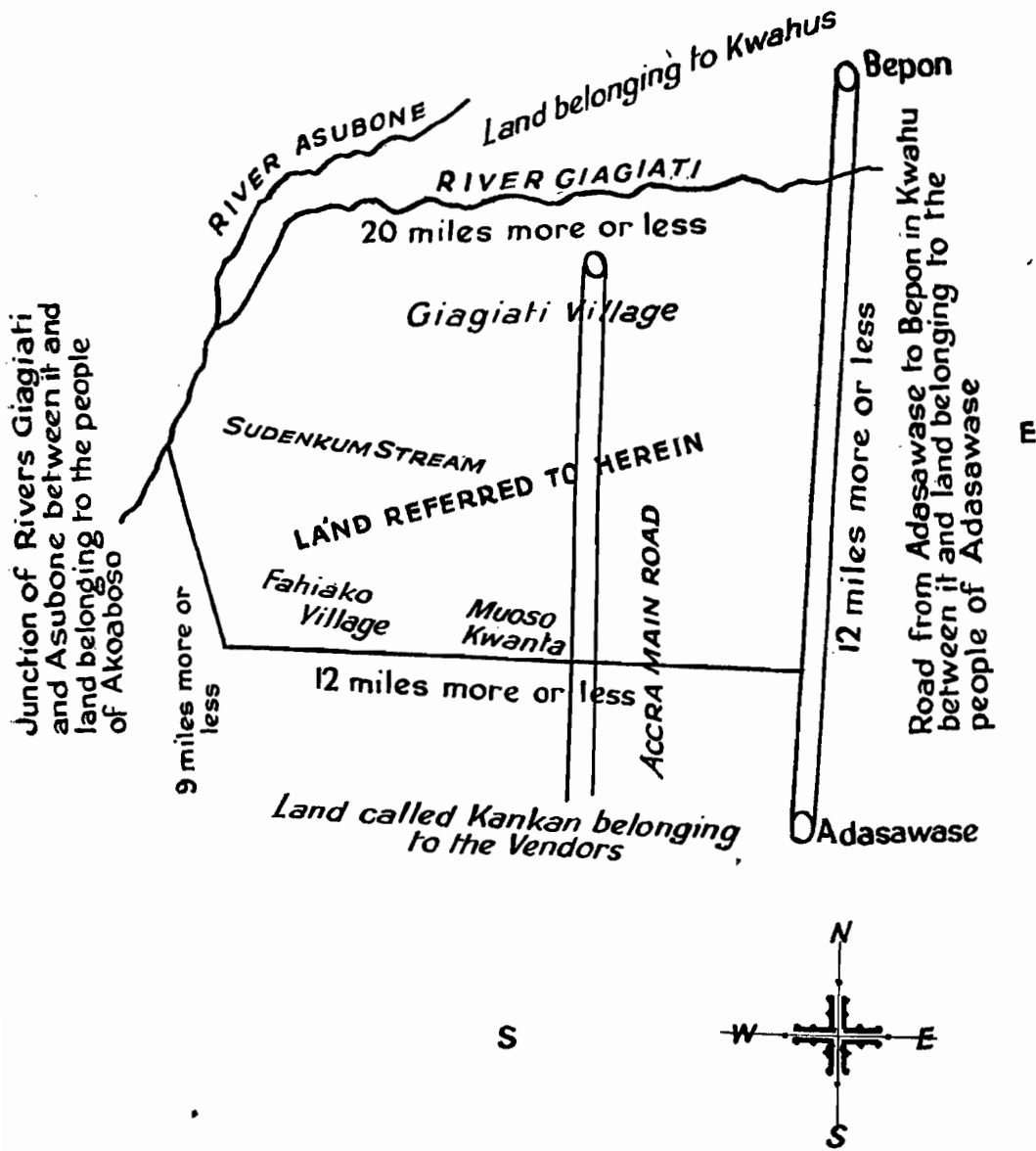
AND WHEREAS the said Chief Kwasi Apontua, Kwaku Affam and Kwamin Badiako have agreed with the said Yao Anno for the absolute sale to them of the hereditaments intended to be hereby granted, and the inheritance thereof in fee simple in possession free from incumbrances at the price of Three hundred and forty six pounds (£346. 0. 0.) sterling.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said Agreement and in consideration of the said sum of Three hundred and forty six pounds (£346. 0. 0.) as purchase money to the said Chief Kwasi Apontua, Kwaku Affam and Kwamin Badiako paid by the said Yao Anno on or before the execution of these presents (the receipt whereof the said Chief Kwasi Apontua, Kwaku Affam and Kwamin Badiako do hereby acknowledge and from the same do hereby release the said Yao Anno) the said Chief Kwasi Apontua, Kwaku Affam and Kwamin Badiako as representatives of the people of Muoso aforesaid who by the native customary law are the beneficial owners of the said property do hereby grant unto the said Yao Anno his heirs and assigns All that piece or parcel of land with villages, messuages, trees, crops, streams, ponds, farms and hereditaments thereon situate at Muoso in Eastern Akim and known as and called Giagiati Land and bounded on the North by River Giagiati between it and land belonging to Kwahus and measuring twenty miles more or less on the South by land called Kankan belonging to the Vendors and measuring twelve miles more or less on the East by a Road from 30 40

Adasawase to Bepon in Kwahu between it and land belonging to the people of Adasawase and measuring twelve miles more or less and on the West by the junction of Rivers Giagiati and Asubone between it and land belonging to the people of Akoaboso, Sudenkum stream and Fahiako village and measuring nine miles more or less and which said land with messuage and tenements thereon are more clearly delineated in the plan hereunder drawn

Exhibits.
 —
 "A."
 (Plaintiff's).
 Conveyance
 from Kwasi
 Apontua to
 Yao Anno,
 2nd Janu-
 ary, 1905—
continued.

N.



Exhibits.
 —
 " A "
 (Plaintiff's).
 Conveyance
 from Kwasi
 Apontua to
 Yao Anno,
 2nd Janu-
 ary, 1905—
continued.

Together with all buildings, fixtures, trees, crops, streams, ponds, farms, rights, easements, advantages and appurtenances whatsoever to the said hereditaments appertaining or with the same held or enjoyed or reputed as part thereof or appurtenant thereto and all the estate, right, title, interest, claim and demand whatsoever of the said Chief Kwasi Apontua and the sub-chiefs and people of Muoso aforesaid in to and upon the said land and premises and every part thereof TO HAVE AND TO HOLD the hereditaments and premises hereby granted or expressed so to be unto and to the use of the said Yao Anno his heirs and assigns for ever.

AND the said Chief Kwasi Apontua, Kwaku Affam and Kwamin 10
 Badiako do hereby for themselves, their heirs, successors and assigns covenant with the said Yao Anno, his heirs and assigns that notwithstanding any act deed or thing by the said Chief Kwasi Apontua Kwaku Affam and Kwamin Badiako done or executed or knowingly suffered to the contrary they the said Chief Kwasi Apontua Kwaku Affam and Kwamin Badiako now have good right to grant the hereditaments and premises hereby granted or expressed so to be unto and to the use of the said Yao Anno, his heirs and assigns in manner aforesaid AND that the said Yao Anno his heirs and assigns shall and may at all times hereafter peaceably and 20
 quietly possess and enjoy the said hereditaments and premises and receive the rents and profits thereof without any lawful eviction, interruption, claim or demand whatsoever from or by the said Chief Kwasi Apontua, Kwaku Affam and Kwamin Badiako or any person or persons lawfully or equitably claiming from, under or in trust for them and that free from all incumbrances whatsoever made or suffered by the said Chief Kwasi Apontua Kwaku Affam and Kwamin Badiako or any person or persons lawfully or equitably claiming as aforesaid.

AND FURTHER that they the said Chief Kwasi Apontua Kwaku Affam and Kwamin Badiako and all persons having or lawfully or equitably claiming any estate or interest in the said hereditaments and premises or 30
 any of them or any part thereof from, under or in trust for them the said Chief Kwasi Apontua Kwaku Affam and Kwamin Badiako shall and will from time to time and at all times hereafter, at the request and cost of the said Yao Anno his heirs or Assigns do and execute or cause to be done and executed all such acts, deeds, and things whatsoever, for further and more perfectly assuring the said hereditaments and premises and every part thereof unto and to the use of the said Yao Anno, his heirs or assigns in manner aforesaid as shall or may be reasonably required.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals the day and year first above written. 40

					Their	
Chief KWASI APONTUA	...	...	...	x	(L.S.)	
KWAKU AFFAM	...	...	...	x	(L.S.)	
KWAMIN BADIAGO	...	...	...	x	(L.S.)	
YAO ANNO	...	...	...	x	(L.S.)	
					marks	

Signed sealed and delivered in the presence of the undersigned witnesses after the foregoing had been read over and explained to the abovenamed Kwasi Apontua, Kwaku Affam, Kwamin Badiako and Yao Anno in the Twi language by Isaac Adoi through Charles Adjaye who expressed themselves to perfectly understand the same before making their marks thereto.

Exhibits.
—
"A."
(Plaintiff's).
Conveyance
from Kwasi
Apontua to
Yao Anno,
2nd January, 1905—
continued.

(Sgd.) ISAAC ODOI.

(Sgd.) CHARLES ADJAYE.

Their

KWASI BUATEN. x

KWABENA NKETIA. x

marks.

10

In accordance with Section 18 of the Stamp Ordinance of 1889 I certify that in the opinion of the Commissioners of Stamps this Instrument is chargeable with a duty of Twenty seven pounds.

(Sgd.)

Commissioner of Stamps.

Commissioner of Stamps Office,
Accra, 27th February, 1905.

ACCRA REGISTRY.

20 Engrossed on pp. 423-426 in Conveyance and Leases Register Book,
Vol. XVI, No. 24.

(Sgd.) HENRY THOMPSON,
Deputy Registrar of Deeds.

This is the Instrument marked "A" referred to in the oath of Isaac Odoi sworn before me this 27th day of May, 1905.

(Sgd.) HENRY THOMPSON,
Deputy Registrar of Deeds.

30 On the 27th day of May, 1905, at 8 o'clock in the forenoon, this Instrument was proved before me by the oath of the within named Isaac Odoi to have been duly executed by the within named Kwasi Apontua, Kwaku Affam, Kwamin Badiako.

(Sgd.) HENRY THOMPSON,
Deputy Registrar of Deeds.

Exhibits. "G." (Plaintiff's.) Judgment in Akim-Kwahu Boundary Suits (Nos. 68, 69 and 70 of 1922).

"G."
(Plaintiff's).
Judgment
in Akim-
Kwahu
Boundary
Suits
(Nos. 68, 69
and 70 of
1922), 29th
August,
1923.

IN THE SUPREME COURT OF THE GOLD COAST COLONY, EASTERN PROVINCE,
held at Victoriaborg, Accra, on Tuesday, the 29th day of August, 1923,
before His Honour Mr. Justice EWEN REGINALD LOGAN, Acting Chief
Justice.

Suit No. 68/1922.

KWAKU AKUAMOA V, Omanhene of Kwahu and KOFI
AMPADU, Odikro of Mpraeso Plaintiffs

versus

10

OFORI ATTA, Omanhene of Akim Abuakwa, and KWAKU
AFFAM, Odikro of Muoso Defendants.

Suit No. 69/1922.

KWAKU AKUAMOA V, Omanhene of Kwahu, and KWESI ABRA,
Odikro of Atibie Plaintiffs

versus

OFORI ATTA, Omanhene of Akim Abuakwa, and OYIMKA,
Odikro of Asunafo Defendants.

Suit No. 70/1922.

KWAKU AKUAMOA V, Omanhene of Kwahu and YAO MENSAH,
Odikro of Obomen Plaintiffs

20

versus

OFORI ATTA, Omanhene of Akim Abuakwa and GYETOA,
Odikro of Abomosu Defendants.

JUDGMENT.

In these three consolidated actions the principal Plaintiff is Kwaku
Akuamoah V, Omanhene or Head Chief of Kwahu and the other Plaintiffs
are sub-chiefs of Districts under him ; the principal Defendant is Ofori
Atta, Omanhene or Head Chief of Akim Abuakwa, and the other Defendants
are sub-chiefs of districts under him,

30

The suit is for the purpose of determining the boundary between Kwahu
and Akim Abuakwa. The Plaintiffs claim as their boundary (1) the Jejeti
River from a point where it is crossed by the Accra-Kwahu Road at Jejeti
Town to its junction with the Assuboni River—that is the Mpraeso claim ;
thence (2) following the course of the combined rivers now called the
Assuboni to its junction with the Akowurun River—that is the Atibie
claim ; thence (3) still following the course of the Assuboni to its junction

with the Owurunsupon, and thence ascending the course of the Owurunsupon to its source in the Kadi Mountain—that is the Obomen claim.

- The Defendants claim as their boundary a straight line drawn from the Jejeti River at Jejeti Town to the Kadi Mountain. They claim that is the boundary fixed by Mr. J. R. Phillips who was appointed a special Commissioner by the Governor in 1893 to determine the boundary between the two peoples. That was their claim when the issues were fixed at the beginning of the case. Towards the end of the hearing they wanted to alter the issue and to claim that Mr. Phillips' boundary was a line drawn
- 10 West from the Jejeti River at Jejeti Town to the Akowurun River and thence ascending that river to its source in what they claim to be part of the Kadi Mountains, but for reasons which I recorded at the time I was unable to agree to their application and held that the case must be decided on the issues originally framed together with the additional issue, made on 31st May, viz. :—“ What is the correct boundary between Eastern “ Akim and Kwahu.”

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 “ G.”
 (Plaintiff's).
 Judgment
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 1922), 29th
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 1923—
continued.

The plan Exhibit “ B ” shows the boundaries claimed by the Plaintiff and the three sub-chiefs under him.

- The evidence put before the Court by the parties consists of
- 20 (1) Mr. Phillips' judgment or more properly speaking, award, and an extract from his report made to the Governor at the time, both of which have been admitted in evidence by consent (2) the history of the stools whose chiefs are parties to the suits, as handed down from one chief to another by word of mouth, admissible in such cases according to the established practice of our Courts (3) evidence of occupation (4) evidence of payment of tribute or toll and (5) certain documents constituting admissions, and other evidence of ownership.

- I shall first deal with Mr. Phillips' judgment. It appears that disputes had arisen between the Chief of Mpraeso and the Chief of Muoso and also
- 30 between the Atibie and Obomen people as to their boundary *inter se*, and that in consequence Mr. Phillips was sent down to settle the boundary between Eastern Akim and Kwahu. Unfortunately, his full report is not available and it is impossible to fit the boundary laid down in his judgment with the admitted geographical facts, as appears plainly from Mr. Clen-dinning's evidence. Mr. Phillips, as he explains, did not go over the land owing to the thickness of the bush, he held his enquiry at Abetifi a Kwahu town some little distance from the disputed boundary and in consequence as is easy to understand, he has fallen into certain geographical errors which made it extremely difficult to say what was the boundary which he
- 40 intended to lay down.

The boundary fixed by him appears in paragraph 7 of his judgment which reads as follows :—

“ The boundary between Akims and Okwan (i.e. Kwahu) is a line
 “ direct from the stream Gyegyeti where it crosses the road at that
 “ place in a due westerly direction across the stream Assuboni to
 “ the stream Owurunsu and along the Northern bank of that stream
 “ to its source in the Kadi Mountain.”

Exhibits.
 —
 "G."
 (Plaintiff's)
 Judgment
 in Akim-
 Kwahu
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 August,
 1923—
continued.

The word "Su" means river or stream and at first sight one would suppose that by the Owurunso, Phillips meant the river Owurun which is shewn on the plan Exhibit "B." However, this river is altogether outside the disputed area and both sides are agreed that it is not the river which he intended. There are two main streams between Jejeti Town and the Kadi Mountain, the Akowurunso and the Owurunsupon, and it is clear that by the Owurunso he meant one or the other of these. Plaintiffs say he meant the Owurunsupon and Defendants say he meant the Akowurunso. It appears from the evidence of Captain Favell, Deputy Director of the Cadastral Branch of the Survey Department of the Gold Coast Government, that there is a range of mountains marked on the old Government plans of the district (Exhibits W.1 and W.2) which were published in 1907 and 1908, as Kadi Mountains. The highest point of this range is a peak called Kadi Beppo. The word "Beppo" means mountain and Kadi Beppo therefore means Kadi Mountain and is the same as the point marked on the plan Exhibit "B" as Kadi Trig (meaning Kadi Trigonometrical point). There is another peak called Kokrobetianfro Beppo, i.e., Kokrobetianfro Mountain, which is shewn on the old Gold Coast Survey Map, Exhibit W.2, as a separate mountain altogether from the Kadi Mountains. It appears, however, from Captain Favell's evidence that Kokrobetianfro Beppo is incorrectly placed on the old Map and should be about one mile further South and in fact forms a part of the Kadi Mountain range, and is so shewn on the new Government Survey Maps (Exhibit "V") now in course of publication. It forms the Northern end of the range and there is a high ridge between the two peaks. Captain Favell says he uses the term "Kadi Range" for the sake of convenience. On the old Survey it is marked "Kade Mountains," but there is no evidence to show that the range had ever been called Kade Mountains by the inhabitants in the neighbourhood or that it was so called in Phillips' time. On the evidence it appears that there are two distinct peaks called respectively Kade Beppo and Kokrobetianfro Beppo, joined together by a ridge. The Owurunsupon rises in Kade Beppo and the Akowurunso rises in the Kokrobetianfro Beppo and the sources of the two rivers are about $2\frac{1}{2}$ miles apart, a considerable distance for the purpose of the present case. A straight line drawn due west from Jejeti Town would cross the Assuboni River and would also cross the Akowurunso, but it would pass North of the Owurunsupon River and considerably north of Kadi Beppo. It would apparently pass a little South of the source of the Akowurunso. An attempt was made to cut a boundary in March, 1922, by the Survey Department in accordance with Phillips' line, but the attempt was abandoned as it was found impossible to reconcile his line with the geographical features.

In this connection I will refer to the letter of 26th March, 1916, (Exhibit "D") from the Omanhene of Kwahu to the Omanhene of Akim Abuakwa. This is the letter referred to by Mr. Coussey when the issues were fixed, as the letter in which the Plaintiff himself laid down the boundary. In that letter the Omanhene of Kwahu wrote "I have the honour to inform you that the boundary between Akim and Kwahu is a line drawn direct

“ from the stream Gyegyeti where it crosses the Road at that place in
 “ a due westerly direction across the stream Asubone to the stream Ka-
 “ Owurunsu and along the Northern bank of that stream to its source
 “ in the Kadi Mountain. This boundary was finally decided on the
 “ 6th December, 1893, by J. R. Phillips, Esquire, and his decision was
 “ approved of by the late Governor F. M. Hodgson ; therefore this boundary
 “ remains unalterable.”

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 “ G.”
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10 It appears that the Omanhene told his linguist what was to be said
 in this letter in the presence of Ebenezer Tham the actual writer and the
 linguist then dictated to Tham, after which the linguist touched the pen.
 There is, in fact, no stream called the “ Ka-Owurunsu ” but is part of
 Defendants' case that by the stream “ Ka-Owurunsu,” the Plaintiff meant
 the “ Akowurunsu.” Ebenezer Tham, called by the Defendants with
 seeming reluctance in consequence of a ruling of the Court, gave no support
 to this theory, and an early application was made by Mr. Coussey to treat
 him as a hostile witness, so that he might be cross-examined. I saw no
 sufficient reason for allowing this. It seems to me quite clear that the
 Omanhene was quoting from Phillips' judgment, as Ebenezer Tham states.
 I feel no doubt that “ Ka-Owurunsu ” is a misquotation and should have
 20 been “ Owurunsu.” The letter of the Omanhene of Kwahu does not
 therefore take the matter any further, and on the evidence before me,
 I find it impossible to say with confidence what Phillips intended though,
 were it necessary to give a decision I should be inclined to say that when
 he spoke of a river rising in Kadi Mountain, he must have meant rising in
 Kadi Beppo, and therefore the Owurunsupon, and not the Akowurunsu
 which rises in Kokrobetianfro Beppo. However, I am not called upon to
 decide the point, the issue being, not what was Phillips' boundary, but
 what is the true boundary between the Kwahus and Akims.

30 At the opening of the case an issue was framed at the request of
 Defendants' Counsel, as to whether Plaintiffs were estopped by Phillips'
 decision. Nothing has been said to me on the point by Defendants' Counsel
 in his final address and all I need say on the point is that unless and until
 Phillips' boundary is ascertained, there can be no estoppel.

Although Phillips' boundary for the reasons I have stated cannot be
 established, many of the findings in his judgment and much of his report
 are of great assistance and I think are entitled to great weight, Mr. Phillips
 having been on the spot and having interviewed several of the principal
 parties to the dispute 30 years ago, when various matters of great importance
 in the case as now presented to me, were of recent occurrence.

40 With regard to the history of the various stools concerned, I desire
 to point out that it is extremely difficult to check the truth of the so-called
 history. Statements handed down by word of mouth, through a long chain
 of depositories are apt, even with the best intention, to vary in the telling,
 even without taking into consideration the natural bias which tempts
 historians to make their story as favourable as possible to their own side.
 Further the statements are, so to speak, ex parte, and cross-examination
 is of little service. Each side tells its own history and sticks to it. Further

Exhibits. it is often impossible to say whether a witness giving evidence of tradition, is telling the story handed down to him at the proper time and through the proper channels or is merely repeating a story in which he has been carefully coached for the purpose of the action in which he is a witness. If the lesson had been learned with care, it is very difficult to distinguish it from genuine history. There is again the difficulty of dates. The best way of checking the witnesses' knowledge is generally by means of dates, but unfortunately dates are the one thing of which Native Africans are entirely ignorant. The only means of arriving at an approximation of a date seems to be by reference to a war. At best, by such methods, the required date can only be vaguely guessed at. However, for the purpose of this the dates of certain well known wars in the history of this country have been agreed upon by Counsel and I append them here :—

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Akwamu War	1733 to 1742.
Bonna War	1742.
Katamansu War	1824 to 1826.
Glover War	1873/4.
Ya Santoa War	...	...	...	...	1900.

Under these circumstances although tradition has its place in suits like the present one, our Courts have been accustomed to look with little confidence on evidence of tradition unsupported by more substantial proof, such as occupation, proof of which when shewn to have existed undisturbed over a considerable number of years, has always been looked upon as the best test of ownership. See *Tetteh Kwaku v. Kpakpo Brown and others*, Judgment of Sir W. Brandford Griffith, C.J., on 21st February, 1910. In the matter of land at Christiansborg and Labadi, Judgment of Sir W. Brandford Griffith, C.J., on 3rd June, 1902, and *Mantse Otabe Agyeman V. and others v. Kojo Atua and others*, Judgment of E. C. Watson, J., on 6th June, 1913.

I propose to deal first with the claim of the Mpraeso people, as it rests on different evidence to that of the other two sub-plaintiffs.

It appears that the Kwahus originally came from Adanse in Ashanti, where they served the Ashantis. The Ashantis were at war with the King of Denkere and in consequence of troubles there the Kwahus under the leadership of Mampong Adjaye migrated to Abene where they conquered Baadu who was ruling over the people then living in Kwahu. Baadu then became a subject of the Omanhene of Kwahu and pointed out two roads which he was guarding, one leading down the Kwahu Hill or Scarp to Abetinsu on the road to Accra. The other from Akowurunso to the Owurunsupon. Mampong Adjaye placed the first road in charge of his own people and the latter in charge of the Obomens and Atibies. The Mpraeso also came from Adanse where they had also served the Ashantis, but they came later than the other Kwahus, they joined the Kwahus and were given the Mpraeso land to live on and were told to help guard the roads, and they formed two outposts at Abetinsu and Osesekro near to the junction of the Jejeti River and the Assuboni River, and they occupied

the land between these two outposts, and helped to guard the roads as far as the Jejeti River. On the other side of the Jejeti were the Akims, who had also migrated from Ashanti, and who were hostile to the Ashantis, with whom the Kwahus continued to be in alliance; neither side crossing the river. That is the Mpraeso story.

The Akim story is that the Akims originally inhabited the present site of Akim Abuakwa but that after a lapse of years they removed to Adanse in Ashanti and served the King of Denkere. When war broke out between Denkere and Ashanti the Akims sided with the Denkeres, who were defeated and subdued. The Akims then migrated back to their original habitation, where in the meantime the Akwamus had settled. The Akwamus had become the leading nation in that part. The Akims assisted by other tribes, including the Obomens, who were anxious to throw off the Akwamu yoke, fought the Akwamus and drove them across the Volta River. The Akwamus had occupied the whole territory up to the foot of the Kwahu Hill, including the land now in dispute, and on their defeat the whole of their territory became attached to the paramount stool of Akim Abuakwa.

The Pomase people who had migrated with the Akims from Ashanti, helped the Akims in the Akwamu War, and when the Akwamus were driven away, the Pomase people were allowed by the Akims to settle on a part of the conquered territory, extending as far as the Abompong and Abomensua streams under the Kwahu Hill. Eventually they removed a short distance to the site of the present Abomoso hence their name.

It is admitted that from the time of the Akwamu War, between 1733 and 1742, down to the Glover War in 1873/4, when the Kwahus are stated to have made their submission to the British through the "introduction" of the Akims, there was constant warfare between the Ashantis with their allies the Kwahus and the Akims, but before touching on this, I will refer to certain incidents mentioned in the course of the hearing.

It is alleged by Ofori Atta, Omanhene of Akim Abuakwa, that at the time of the Akwamu War, the Kwahus were at Dukumang near the Volta River and that it was only after that war that they settled on the top of the Kwahu Hill and it is suggested that they did not come from Adanse at all, but that the real ancestors of the Mpraeso originally came from Adanse with the Akims. Yao Mensah, the Obomen Chief, says that the Kwahus went to Dukumang from Abene after they had migrated from Ashanti, for the purpose of a war there and remained away for seven years and then returned to Abene. It has been argued, as I understood it, that as the Obomens did not join the Kwahus till after the Akwamu War and, as it was Mampong Adjæ, the original founder of the Kwahu State, who told them to guard the roads, therefore Mampong Adjaye cannot have come to the Kwahu Hill till after the Akwamu War, i.e., after the Akims had taken possession of the country up to the foot of the Hill, and that the Akims were therefore the original occupiers of the disputed land. In the absence of definite dates of the events which happened at this early period

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in the history, it is impossible to speak with certainty as to this, but it seems to me much more probable that the Kwahus and Akims both migrated from Ashanti at about the same time in consequence of the trouble between the kingdoms of Denkere and Ashanti, which is established history, and Phillips in his judgment lays it down clearly that "the first people who occupied land between the foot of the mountain and Gyegyeti were Okwans (Kwahus) and they did so without opposition." It is also said that there was no road from Akowurunso to the Owurunsupon which the Obomens or Atibies could have been told to guard, as alleged by the Kwahu witnesses. There is some confusion between the different witnesses as to these roads, and again it is difficult to speak with certainty about such remote matters. The road from Akowurunso to Owurunsupon may be merely a general expression indicating the country between those rivers. 10

Ofori Atta, on giving the Akim history, has told about a grant of land made by a former Chief of Muoso to Eniwa (or Ni Waw) Donkor. The story is that Kuapia (or Krapia), Chief of Muoso married a sister of the Chief of Mpraeso and that they had a daughter called Eniwa Donkor. When Kuapia died, Eniwa Donkor then living at Mpraeso, went to Muoso and made a very expensive funeral custom for her father. She then asked the elders of Muoso for a piece of land on which her people could hunt and collect snails, and in recognition of her services at the funeral she was allowed, subject to payment of tolls, to have the use of the land at the foot of the Kwahu Hill stretching from the Abomena Su to Nkwana on the East side of the Accra road. The boundaries of this land have not been stated, except in so far as they appear from the position of the above-mentioned rivers, which are both marked on the Government Map (Abetifi Sheet, Exhibit W.2). None of the other Akim witnesses have alluded to this alleged grant and the claim appears to have been tacitly dropped in favour of another grant of a more extensive and more clearly defined tract of land, which is stated to have been made by Chief Ponko to the Atibies, to which I shall refer later. Chief Ponko's grant, although in respect of a larger piece of land, clearly includes a large part of the same area which is said to have been given to Eniwa Donkor as will be seen on reference to the Government Map. The northern boundary of Ponko's grant, as given by Kofi Boadi, one of the Akim witnesses, extended from the Abomena Su to a point on the Accra road a little South of Abetinsu, and Abetinsu is a little South of the spot where the Accra road crosses the Nkwana. I should not have thought it necessary to allude to the Eniwa Donkor grant except for the fact that it is referred to in Phillips' report, and that it shows how the Akim claim has been shifted, even during the present action. Phillips refers at some length to the Eniwa Donkor grant and it is evident that the Akim claim to the disputed land, as made before him, so far as the Mpraesos were concerned, was based on this alleged grant. Phillips mentions that in later years, when Apontua was Chief of Muoso and rubber was found on the land, Apontua began to levy tribute on rubber and game there, but he adds that "the levies were not made in any systematic way, neither was it generally known that such royalties were habitually made." The rubber, 30 40

he says, became exhausted four years before his enquiry and there was no evidence of any later payments having been made, and in his judgment he states clearly that the Akims had shown no good right to levy such tribute. The grant to Eniwa Donkor is inconsistent with Chief Ponko's grant to the Atibies, but the matter is instructive as shedding light on the Defendants' methods.

10 Evidence has been given by the Mpraeso witnesses that a board was affixed to a "brebretin" tree at the junction of the Jejeti and Assuboni Rivers by order of Phillips, in order to mark his boundary. It is admitted that this board is no longer there but nail holes were found in the tree to which it is said to have been attached, by Mr. Armah Kwantreng, the surveyor, when he was making his survey for the purpose of this case. Phillips in his judgment says nothing about this board, though he does direct that an "Intomeh" tree should be planted on the Jejeti road, i.e., at the other end of the Mpraeso land, to mark the boundary. I am not satisfied that Phillips ordered any board to be placed on the brebretin tree, though possibly one may have been put there by the Plaintiffs at some time or other.

20 A considerable amount of evidence of occupation of the disputed land has been given on behalf of the Mpraesos. Very little cross-examination was directed to this evidence and comparatively little evidence of occupation has been offered by the Akims. So far as the Mpraeso claim is concerned, I do not think that I need refer to this evidence in detail. The salient fact in regard to the whole of the Akim claim is that between the Akwamu and the Glover wars a period of about a century and a half, the Ashantis and Akims were constantly at warfare and the Akims were getting very much the worst of the deal. Defendant's Counsel in his final address, has discreetly drawn a veil over that aspect of the matter, but the evidence leaves no room for doubt. It is established out of the mouth of Ofori Atta, 30 the Akim Chief.

40 "The Ashantis," he says, "and with them probably the Kwahus, sometimes came as far as Kyebi and Akwapim and even to the sea Coast." "In one disastrous war, i.e., the Bonna War, about 10 years after the Akwamu War, the Akims were subdued and made tributaries of the Ashantis, in that war the Kwahus were with the Ashantis and it was not until the 'Katamanso' war in 1826 that the Ashanti power was broken. Yet in spite of this, he says, the area was never conquered by the Kwahus, the Ashantis never settled there, the Kwahus only occupied the top of the Hill. The Kwahus may have had spies, but they never came down the Hill, and the Akims were right to the foot of the Hill. The Ashantis he says, came for plunder, never for settlement."

I find it quite impossible to accept this view of the matter. I think Ofori Atta's evidence points in no uncertain way to the truth of the Kwahu story, that they were guarding the roads at least as far as the Jejeti River, only a small portion, that is of the land which was over-run by them during

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the wars, and that they were in effective occupation, even though they may have had no permanent villages there, as would appear from paragraph 11 of Phillips' report. Occupation, it must be remembered, in those days did not mean a great deal, the country was sparsely inhabited and we have it in evidence that owing to the wars there was no time to make farms, only to hunt and collect snails, and Ofori Atta admits that hunter's huts, so long as they remained, would constitute occupation, as also would killing game and collecting snails.

There is other important evidence in support of the Mpraeso case.

(1) On 2nd January, 1905, Kwasi Apontua, Chief of Musos and Affam's predecessor on the stool, sold to Yao Anno a large tract of land on the South side of the Jejeti River. The Deed of Conveyance, in which Affam joined as a councillor of the stool, and which was duly registered on 27th May, 1905, in the Registry of Deeds Office, states that the land sold was bounded "on the North by River Giagiati between it and land belonging to Kwahus" and a rough plan in the deed shows "land belonging to Kwahus" on the North side of the Jejeti River, and also shows that the land sold was traversed by the Accra main road, part of the land being on either side, i.e., East and West of the Accra road. The Deed and the plan taken together clearly show, to my mind, that part of the land sold was West of the Accra road and that the Jejeti River was the boundary between the land sold and the Kwahu land. It is not disputed that the land was sold by Apontua but it is claimed that sub-chiefs of Akim had no right to sell their stool lands without the permission of the Omanhene; and it has not been proved that this particular sale was ever brought to the notice of the Omanhene. (2) On 20th August, 1919, in consequence of some white men coming to cut a boundary, Kofi Ampado, Chief of Mpraeso, wrote to Affam, then Chief of Muoso, to ask the reason for this proceeding. The letter was carried to Affam by two messengers Kobina Yeboah and Akwesi Boateng. Kobina Yeboah delivered the letter to Affam and a reply was written by one Martin Adei in Yeboah's presence and delivered to Yeboah by Affam. Yeboah took the letter to Kofi Ampado and a copy of it is in evidence, the original having been lost. In that letter Affam writes "The matter you are referring to was that one European came and asked me to go and shew him my boundary with the Mpraesos, and I shewed him that our boundary is the junction of Jejeti and Assuboni."

That is the boundary now claimed by the Mpraesos. Yeboah also testifies to a conversation which he had with Affam to the same effect. More than a year afterwards, on 1st October, 1920, Affam wrote another letter to Kofi Ampado to cancel his previous letter and stating, so far as can be gathered from the very defective English used, that at the place in question the Mpraesos had a boundary with the Chief of Abomoso. The writer offers no explanation whatever of his reason for going back on his previous letter.

The Defendants have tried to get rid of this very damaging evidence by showing that the Muosos had no land on the West or left side of the Accra road, looking towards Kwahu, and consequently that they had no

- boundary with the Mpraesos, so far as the disputed land is in question, and it is apparently suggested that they were therefore not in a position to say in regard to the disputed land, what was or was not Kwahu land. The Defendants have not been successful in this attempt. Ofori Atta, while claiming that the Muosos are on the East side of the road, is unable to say whether it is the Asunafos or the Akwabosos who own the land on the West side, it appears that there is a boundary dispute between Asunafo and Akwaboso—while Kofi Tano, the Abomoso linguist, states clearly that the Muoso land is on the left side of the road going towards Kwahu. Kwahu
- 10 Affam, the present Chief of Muoso and a Defendant in the case, who is obviously the person best fitted to give evidence on the subject has not been called as a witness. Instead a man named Kwesi Adai, who is put forward by the Defendants as being a linguist of Muoso has been called. He stated first that Muoso land was on the left of the road going from Anyinam to Jejeti Town, i.e., the Accra road. He qualified this in cross-examination, by saying that the Muoso land was on the right. It is difficult to see how the town can be distinguished from the land. The Government plan (Kibbi Sheet, Exhibit W.1) shews that the town (there spelt Muso (Imorsu)) is a considerable distance West of the road, though the boundaries are not
- 20 given. It is not necessary for me to decide what are the boundaries of Muoso land. One thing at least is clear from the evidence of Ofori Atta himself, that is that there have been disputes between the Muosos and the Akwabosos about the land to the West of the Accra road and that in 1915 the Muosos were claiming the land which was leased to Yao Anno, while Apontua had claimed Bekkoase land in the same neighbourhood and West of the Accra road (see Exhibit "B"). It has not been stated that these disputes have been settled. Neither Apontua nor Affam, it is clear, has any reason to favour the Kwahus, yet both of them have made statements to the effect that the Kwahus owned the disputed land North of the Jejeti
- 30 River and that the Jejeti River was the boundary. It has been argued that the Omanhene is not bound by the admissions of his sub-chiefs. I need not decide here how far the Omanhene is bound by such statements, it is sufficient to say that they are evidence against his case.

With regard to Affam's letter of 20th August, 1919, it was strongly urged at the hearing that the letter was not admissible in evidence until it was proved that Affam understood its contents.

- I ruled that under the circumstances which I have already mentioned, the letter was admissible and raised at least a presumption that it expressed the intention of the person who sent it. After further consideration, I am
- 40 still strongly of the same opinion. Were the Courts of this country to rule otherwise, the conduct of business between illiterate persons by means of correspondence would be impossible. West African natives engaged in business are often unable to write and carry on their business by means of clerks, who write their letters. If it were necessary for the recipient to prove that the sender understood the contents of his own letter, no business could be carried on by correspondence. A person about to enter into a contract on the basis of an offer made in a letter from an illiterate, would

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Exhibits. have to see the writer or the sender first to find out if the illiterate really understood what he purported to have said—an impossible procedure. The onus therefore lay on the Defendants, if they alleged that Affam did not understand what he purported to have written, to call Affam to say so. They have not done so, but have called instead Kwesi Adai, who says he represents Affam. This witness has admitted that Yeboah brought a letter from the Chief of Mpraeso for Affam and that Affam gave Yeboah a letter to take back in reply, though he denies that Yeboah had any conversation with Affam. He says that he was present when the reply was written but he has not attempted to say that it was contrary to what Affam intended, nor has he even been asked to explain why Affam went back on his first letter more than a year afterwards. Affam's two letters must speak for themselves and they must also be considered in connection with the Deed of Conveyance of 2nd January, 1904, to which Affam was a party. I must however comment on the methods employed by the Defendants in regard to Kwesi Adai. He came to Court without any linguist's stick and he knew practically nothing about Muoso or its history or anything to do with this case. He admitted that it is the custom for a linguist who is representing his chief to bring his stick with him and that he knew of no instance in which a linguist has represented his chief in Court without a stick. It is indeed common knowledge that linguists must bring their linguist sticks with them on official occasions. I do not believe that this witness is a linguist at all, nor do I believe one word that he has said in Court. I do not believe that Affam is ill, as he said. I believe that the Defendants have put forward this witness falsely as being Affam's linguist because they dare not call Affam himself. When the trial of this was nearly completed after a hearing which had extended over more than a month, and when both Counsel had said that they were anxious to complete the evidence before the commencement of the Assizes two days later, Defendants' Counsel informed me that Kwesi Adai was unwell, and unable to appear and that he would ask for an adjournment until after the Assizes, for the purpose of calling him. Only a few minutes afterwards I was informed by Plaintiffs' Counsel that it had been discussed that Kwesi Adai was then actually at the Court. He was then sent for, found in the witness waiting room and brought into Court. No explanation whatever of this extraordinary incident has been offered by the Defendants and I have no doubt whatever that an attempt was being made to deceive the Court and that the Defendants were trying to get the hearing adjourned over the Assizes, for some purpose of their own. It was a most discreditable incident and went far to ripen into conviction a suspicion which had been slowly forming in my mind that the Defendants' case was not being conducted in a bona fide manner; and it has seriously prejudiced their case in my eyes. In my opinion the Mpraeso people have established their case conclusively and I find that their boundary is as claimed by them viz.: the Jejeti River from where it is crossed by the Accra Road at Jejeti Town to its junction with the Assuboni River.

I come now to the Atibie and Obomen cases, which depend upon much the same evidence and can be considered together.

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The Atibies also came originally from Ashanti in consequence of some war there, probably (though it has not been stated), the same war between Denkere and Ashanti, which seems to have caused a general upheaval in that part of the country.

They came first to a place called Akowuda which is not shewn on any of the maps but appears to be somewhere near Kadi Mountain, then moved on to Nantohia and finally settled at Atibie with the consent of the Omanhene of Kwahu. They reported their arrival at Akowuda to the Omanhene and were then told by him to guard the road up to the River
 10 Owurunsupon, and when they subsequently removed to Atibie, they were told to continue to guard the same road. It is claimed on behalf of the Akims that the Atibies moved from Akowuda to Nantchia and from there to Atibie on the Kwahu Hill under pressure from the Akims. They are said to have been discovered at these places by an Akim hunter, who reported to his Chiefs, who caused them to be driven away. This story is denied by the Atibies and it seems to rest on no solid foundation. Kofi Tane Linguist of Abomoso, who tells it, says that the Atibies stated they were going to join the Omanhene of Kwahu, but that although they were numerous they at once ran away both from Akowuda and Nantchia without
 20 giving any trouble, when the Akims appeared on the scene. Seeing that the Akims, according to Kofi Tano, were then at war with the Ashantis and their allies the Kwahus, and as I have pointed out, by no means getting the best of the struggle, the story is improbable.

The Obomens came from a different part altogether. They were originally under Ansa Sasraku, Omanhene of Akwamu, when that kingdom was at the height of its power, but when the Akwamus were defeated and driven across the Volta, the Obomens, who had been living near Nawam, separated from the Akwamus and took refuge with the Kwahus. They say they had a relative in Kwahu named Konsa Brempon, who took them to
 30 Mampong Adjaye, who was at enmity with the Akims and that Mampong Adjaye told them to guard two roads (1) from Atibie crossing the Owurunsupon to Ambomoso and (2) from Obomen crossing the Kade Stream to Abomoso. They say that they settled at Kadeaso (Kaddewaso) otherwise called Akwansram, on the banks of the Kadi River, and that from there they guarded the road; the Akims had a village at Esumase (which is not shown on the map), from where they guarded and the two tribes used to meet at a place between called Akadowase. Kaddewase, it may be noted is west of Kadi Mountain and outside the disputed area, and it is admitted that the Akims are now there. The Obomens say that they
 40 guarded up to the Owurunsupon River but did not cross it, meaning as I understand it, that they guarded the Eastern bank of that river, and that they continued to serve the Ashantis until the English came. Both the Atibies and the Obomens claim by right of occupation.

The Akim's case is based primarily on right of conquest and occupation of the conquered territory, when the Akwamus were defeated and driven away and the Abomosos put in their place by the Omanhene of Akim but they allege that the Atibies (and subsequently the Obomens) were allowed

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by them to occupy a large part of the conquered territory, subject to payment of tribute. They claim, as regards this part of the conquered territory, not to be in occupation themselves, but that the Atibies and Obomens are there with their leave and licence.

"After the land was given to the Atibies by "Ponko" says Yao Oyinka, Chief of Asunafo, "the Asunafos and Abomosos did not use it."

As regards the lower or southern portion of the disputed land, they claim to be in actual occupation, though it has been stated by Yao Oyinka that the Omanhene of Akim has told his people to keep off the disputed land within the last six or seven years, pending the settlement of the dispute. 10

The story of the grant of the land to the Atibies, subject to payment of tribute, as told by Kofi Tano, Linguist to the Chief of Abomoso, is as follows :—

A very long time ago, no information as to the date is available, a certain Atibie man named Dame Ananso, came to Pomase and pawned his brother Bah Ngwah to an Abomoso man for £24. Bah Ngwah remained at Pomase and married there. Some years later, when Ponko was Chief of Abomoso, Bah Ngwah was called back to Atibie and became Chief of the Atibies. Bah Ngwah then asked Ponko for a piece of land to farm on, and after reference to the Omanhene of Akim his request was granted, 20 subject to payment of tribute in respect of treasure found or game killed, and then, it is said, the Atibies descended for the first time from the hill to which they had been driven from Akowuda and Nantchia. Kofi Tano is somewhat vague as to the boundaries of the land given to the Atibies. He says it extended from the Abompong stream at the foot of the Kwahu Hill as far as the Akowurunsu, where the old Abomoso road to Obomen crosses it. The land Southwards, he says, after crossing the Akowurunsu, was not given to Bah Ngwah. Ofori Atta although speaking of the incident, did not attempt to give the boundaries. Kwaku Amponsah when re- 30 examined was rather more precise but it is only when we come to the evidence of Kofi Boadi, who claims to be a member of the Stool family of Abomoso, that the boundaries are clearly given. He states them as follows :—

From Abomena Su to Abompong River, thence to Nsuta River, thence following the Pankese road to Nkorkor, then leaving the Pankese road by another road to the top of the Kade Bepon, thence to the source of the Akowurunsu, thence following the Akowurunsu to where it is crossed by the Kwahu-Abomoso road, thence by a hunter's path to the main Anyinam-Kwahu Road, i.e., the Accra road at a point a little below Abetinsu, where there is a pamprama tree and then following the main road to the Abomena 40 Su. Yao Oyinka corroborates this.

The Atibies admit that Bah Ngwah married an Abomoso woman, but they deny that this event caused them to descend the Hill or that tribute has been paid by them in consequence. In proof of their story of the grant of the land by Ponko to the Atibies, the Defendants have produced evidence of payment of tribute. General evidence of such payment was given by Kofi Tano, but on cross-examination this evidence was shown to be vague

and unreliable, and the Defendants have been content to base their case on a few specific instances to which I will now refer. The first instance alleged is when Asare Dua was Chief of Abomoso and Nsor Kodjo Chief of Atibie, Asare Dua was the immediate predecessor of Dansu, and Nsor Kodjo was succeeded by Etham. Dansu was Chief of Abomoso at the time of Phillips' Enquiry in 1892. It is therefore possible to fix approximately the date of the occurrence; it must have been in the latter part of the 19th century. Kofi Tano's evidence that it was before the Djadam war cannot possibly be correct, if Ofori Atta's evidence is accepted.

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- 10 It is alleged that Asare Dua demanded toll or tribute of Nsor Kodjo. Nsor Kodjo refused saying the land was his. Asare Dua swore the " Wukuda " Oath. Nsor Kodjo failed to reply and his own elders then decided that he had done wrong and that the land belonged to Akim, whereupon Nsor Kodjo pacified Asare Dua with £8 and was given back the land on the old terms. Two other such incidents are alleged in Dansu's time. (1) Dansu heard that a calabash had been found in the Akowurunsu without being reported to him. Dansu went to Atibie and demanded an explanation. Etham and his elders admitted that they had done wrong and pacified Dansu. Dansu took the calabash away to the Omanhene of
- 20 Akim who said it was nothing, and the calabash was left in possession of the Chief of Abomoso and is now produced from his custody. (2) A long time after this Dansu went to Atibie again and demanded tolls. Etham offered £6 which was refused. Dansu then according to Kofi Tano returned to Kyebi and reported the matter to his Omanhene, and the Omanhene sent for Etham but the latter did not come. After that, Dansu gave to the Obomens, who had previously asked him for land, a part of the land which had been given to the Atibies. A document (Exhibit " K ") dated 16th February, 1892, was drawn up and £24 was paid by Abanquahm the then Chief of Obomen. Kofi Boadi tells the story rather differently. He
- 30 says that when Etham refused to pay more than £6, Dansu went to Obomen, returned after a time, and informed Etham that he had divided the land and given half of it to the Obomens and half to the Atibies. Etham then refused to pay the £6 and claimed that the land was his. Oaths were sworn by Etham and Dansu and, in consequence, each of them was taken prisoner by his own people, according to custom. Kwaku Amponsah, brother of Dansu, has given evidence of what took place at Obomen. The land given to the Obomens was the land between the Kwahu-Abomoso road and the Akowurunsu from the point where the Abomoso road crosses that river and thence as far as the source of that river.
- 40 In proof of Dansu's deal with the Obomens, evidence has been given of two specific instances of tribute being collected from them. It is alleged that on two occasions, shortly after the land was given them by Dansu, gold nuggets were found by women in the Kansa stream at the foot of the Kwahu Hill, and that on each occasion Dansu sent messengers to Abanquah to demand a share of the finds, and that Dansu was given a share, Abanquah also getting a share. The value of the gold nuggets found on the first occasion was £16, and on the second occasion £27.

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Now with regard to the alleged grant by Ponko to the Atibies, none of the Akim witnesses have been able to give even approximately the date when Ponko was Chief of Abomoso, though all of them, with one exception, say that it was in the olden times, a very long time ago. Kofi Boadi says there were two Chiefs between Ponko and Asare Dua, but in doing so, he only shows his ignorance, as it is certain that there must have been many more. It seems certain that Ponko must have been Chief in the early days after Akwamu war, when, as clearly pointed out, the Akims were in a constant state of warfare with the Ashantis and their allies the Kwahus and suffering severe defeats at their hands, and what I have said in this connection in regard to the Mpraeso claim, applies with equal force to the Atibie claim. 10
 It is unlikely in the extreme that Ponko can have been in a position effectively to confer any rights over land at the foot of the Kwahu Hills, nor is it likely that the Akims, who were the enemies of the Ashantis, would be disposed to give land to the Kwahus to occupy. Further, as has been pointed out by Mr. Sawyerr, it is an unheard-of thing that an Omanhene should give part of his lands to the sub-chiefs of another Omanhene to occupy : and Kofi Tano admits that he does not know of any other instance in which sub-chiefs of one Omanhene have paid tolls to another Omanhene.

I pass on to the three specific payments of tribute of which evidence 20
 has been given in support of the alleged grant to the Atibies.

(1) When Nsor Kodjo pacified Asare Dua with £8 after being found in the wrong by his own elders. The evidence as to this is tradition only, and it has been pointed out that Kwabina Mensah, Chief Linguist to the Omanhene of Kwahu, who appeared to give evidence on behalf of his Omanhene as to the history of the stool, was not cross-examined at all about the incident. There was no cross-examination until Kwesi Abra, Chief of Atibie, gave evidence. Kwesi Abra denies all knowledge of the affair and denies that the Atibies paid tribute to the Abomosos. There is a discrepancy in the evidence of Ofori Atta as to this incident. He says 30
 that the Atibies disputed the Obomens title (i.e., to the land given by Dansu) and when this dispute arose, Asare Dua swore an oath against Nsor Kodjo. But it is to be observed that the land was given to the Obomens by Dansu, who succeeded Asare Dua, so that Asare Dua could not have sworn the oath in consequence of the dispute, as the land had not then been given. It has been argued by Defendants' Counsel that an error was made in taking down the evidence and that it should read the Atibies disputed the Abomosos title. It is possible, but the context does not seem to indicate it. (2) The finding of the calabash in the Akowurunsu and Dansu's claim to it. 40

This incident is also denied by Kwesi Abra, but three eye-witnesses, Kwaku Amponsah, a surviving brother of Dansu, Kofi Boadi, who claims to belong to the Abomoso stool family, and Kwaku Bediako, stool carrier to the Chief of Abomoso, testify to it on behalf of the Defendants. None of these witnesses appeared to me to be reliable. Kwaku Amponsah's demeanour impressed me most unfavourably and in addition he was obviously lying when cross-examined as to the £24 which Phillips took

- from Dansu and returned to Abanquah. Kwaku Amponsah states that Phillips took £25 from Dansu in two sums of £20 and £5 because Dansu showed disrespect to the Government, in not answering Phillips' summons. That is not even the Defendants' case (see Exhibit "K") and Phillips has stated quite clearly why the money was taken (see his judgment, paragraph 8), Kofi Boadi also impressed me unfavourably. He seemed from his own statement to have come primed to speak about one particular piece of stool history and I felt considerable doubt, after hearing his opening statement, as to whether he was qualified to speak at all about stool matters. He is an Atibie man though he was careful not to mention this until cross-examined. When Dansu came to Atibie, Boadi was living there in a humble capacity with his wife and had nothing to do with stool matters. It was only after he went to Abomoso and succeeded to Apenten's property that he had anything to do with stool matters, and that was after Dansu's second visit to Atibie and after Dansu gave the Atibie land to the Obomens. Kwaku Bediako was one of the last witnesses called by the Defendants. He has given evidence at great length, which, if it can be believed, is of considerable importance, but I look upon it with suspicion. He stated that Boadi was older than he was, but when Boadi was brought into Court, it was obvious that he was the younger man. His evidence as to the custom when a stranger kills game on another man's land was, to say the least of it, peculiar. (3) Etham's offer of £6 to pacify Dansu. Kwesi Abra denies this also and it may be noted that in cross-examination he was asked if £9 was paid by Etham to Dansu. Kwabina Mensah, the Kwahu Linguist, was not cross-examined about the matter. On behalf of the Defendants the same three witnesses, Amponsah, Boadi and Bediako again testify to the incident and I need not comment further on their evidence.
- There is no doubt that Dansu did go to Obomen, and that he made over to Abanquah, Chief of the Obomens, a portion of the land alleged to have been granted to the Atibies by Ponko, and that he was paid £24 by Abanquah. The transaction was recorded in writing, see Exhibit "K" dated 16th February, 1892. This transaction was one of the matters inquired into by Phillips and his report is illuminating. Abanquah he says, for his own reasons got Dansu to sell him some land between Okwan (Kwahu) and Abomoso for gold mining purposes, maintaining (probably to avoid the payment of a royalty to the Okwan King) that it was Akim land. Phillips goes on to describe his interview with Abanquah and how Abanquah eventually admitted that the land was Okwan land. Elsewhere in his report, Phillips describes Dansu as a turbulent and troublesome man, and it seems to me extremely probable, in view of these remarks, that Dansu had been playing a game of bluff with Etham, that he went to Atibie for the express purpose of picking a quarrel with Etham, so that he might have an excuse for giving the *(sic)* to Abanquah, who as the evidence shews, had previously asked Dansu for a piece of land to farm on. Phillips held that Dansu had no right to sell the land and declared the transaction null and void and ordered the £24 to be returned to Abanquah. It is clear that if the land had originally been granted to the Atibies by the

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Abomoso Chief, subject to payment of tribute, Dansu would have been within his rights in taking the land from Etham, on failure to pay tribute, and giving it to Abanquah; it follows that Phillips must have disbelieved the Akim's story of the grant by Ponko, *if indeed it was put before him as to which there is no evidence.* I see no reason why Phillips' conclusions should not be accepted; he was on the spot inquiring into the matter immediately after the occurrence and had the best means of judging. He is supported by Yao Mensah the Obomen Chief, who says that Abanquah and Dansu both lied at the inquiry and by Kofi Amuyao, Safuhene of Obomen to the same effect. As to the finding of gold nuggets in the Kansa stream, after the grant to Abanquah, and payment of a share to Dansu by Abanquah, this goes with the rest of the case. If the grant to Abanquah was void, payment of a share of the nuggets was equally void and the fact of payment, even if proved, establishes nothing. Yao Mensah admits that there was one find of £16, but denies the finding of nuggets value £27. He denied that any share of the £16 worth had been given to Dansu. When cross-examined he explained clearly and without prevarication how the find had been divided, in strong contrast to some of the witnesses for the defence. Yao Mensah's evidence throughout was given clearly and precisely. He impressed me very favourably and I consider that he was by far the most satisfactory witness called on either side. 10

With regard to the whole question of the alleged grant by Ponko to the Atibies, with which I have dealt at some length, I come to the conclusion that the Akims have entirely failed to make out a satisfactory case. The story is improbable on the face of it and it is supported by evidence which is inadequate and unreliable. If tribute had really been paid to them for a century or more, as they allege, they ought to have been able to produce better evidence. 20

I pass on to deal with the evidence put forward by the two parties in regard to the remainder of the disputed land. Both sides base their claims on occupation. During the course of the hearing the Akims have laid claim to the whole of the Obomen territory as shown on Exhibit " B," but inasmuch as at the beginning of the case, they only claimed the land South of a straight line drawn from Kadi Mountain to the point where the Jejeti River is crossed by the Accra road, I have refused, as already stated, to allow them to alter the claim as then made and I shall not deal with any evidence of occupation of land North of that line. The Southern boundary of the land alleged to have been granted by Ponko to the Atibies is stated to run from a point on the Akowurunso, where it is crossed by the Abomoso road near Assuboni Station (Kobina Asare's village) to a point on the Accra Kwahu road, South of Abetinsu where there is a pamprama tree. The boundary is said to follow a hunter's path through the forest between those two points, but no evidence has been given as to the exact course of this path nor of any village through which it passes, nor of the exact situation of the pamprama tree on the Accra road, but I must take it that the path runs more or less in a straight line from Assuboni Station to a little South of Abetinsu, and I do not propose to deal with evidence of 40

occupation North of that line, as the Akim case as to that area is not based on occupation. I shall only deal with evidence South of these lines, in respect of the Atibie and Obomen claims.

Evidence has been given on behalf of the Defendants that a large tract of land lying between the Owurunsupon and the Akowurunsu Rivers were sold 13 years ago in manner provided by native custom by Owusu, Chief of Abomoso, to Nathaniel Mensah and J. N. Alema and a plan of the land (Exhibit "X") made by surveyor Armah Kwantreng for the purchasers in 1920 has been put in evidence. The land appears to stretch
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 20 bought by him which is not in ruins. Sampson has been held out by all the Obomen witnesses as the owner of the village. He is stated to be now actually there, but sick. Nathaniel Mensah says Sampson stole the land, but I am far from satisfied that Mensah has any right to be there himself and I do not think that this evidence helps the Defendants.

As to the evidence of occupation—I propose to deal first with the Obomen land, and shall refer to the villages as to which evidence has been seriatim: but it may be pointed out first that the country is still very sparsely populated, much of it is still bush and a single hut with a farm round it is called a "village," while about four huts would constitute a large
 30 village.

FOHIAKO OR SAMPSON'S VILLAGE.

I have already referred to this. It is admitted that Sampson is living there and there is a considerable amount of evidence to show that he is the owner and that it has been inhabited by the Obomens for a long time past. Nathaniel Mensah's evidence was not reliable. He first said that he had placed Kwamin Dapah an Obomen man in charge of it, then it appeared that Dapah had been dismissed nine years previously and that Kwadjo Sono living at Whintia about two miles away was in charge and that Mensah's own village (if ever he had one), was in ruins.

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 "G."

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Siaw's grandfather came from the Akim side to Attoase, Kwabena Darkwa admits that about a year ago he found Kojo Siaw and another Kwaku living at Attoase—they had come there, he says, during his absence, and when he told them to go away, they went, apparently without offering any objection. " Except for this " says Kwabena Darkwa, " I have slept at " the village every night since I heard (about one year ago) the Kwahus " were claiming it." This comes rather oddly from an Akim man, when the Akim case is that they have been told by their Omanhene to keep off the disputed land.

That is the evidence as regards the occupation of the disputed land. 10
 Evidence has been given on behalf of the Defendants of a few isolated acts of levying of tolls in respect of game, snails, etc. by Akim never on Kwahu men but if in fact this really happened and the evidence is far from convincing, it appears to have been done in a very irregular manner and without proper authority. I attach no weight to that evidence.

The evidence of occupation is contradictory and in relation to particular incidents, it is often difficult to say where the truth lies. Obviously there must have been deliberate perjury on one side or the other, in regard to some of the incidents.

Taken as a whole, there are a few remarks which I have to make about 20
 it. The surveyor, Mr. Armah Kwantreng, gave notice to both parties to attend the survey, but only the Kwahus came.

The Kwahus were the people in occupation and they pointed out as Kwahu villages, all the villages shown on the plan. No Akims were to be seen on the land at all.

Seeing that this dispute has been pending for a long time past, it seems extraordinary that the Akims should have neglected the opportunity to point out the villages which they claimed, if their claim is a genuine one. They have attempted to make good the omission by calling witnesses who now say they are in occupation of the villages which the Kwahus pointed 30
 out to the surveyor, villages which the surveyor found to be occupied by Kwahus. That evidence would have been more convincing if the Akims had accepted the invitation of the surveyor to attend the survey. It is true that it is stated on behalf of the Defendants that they have been ordered by their Omanhene to keep off the disputed land pending the settlement of the dispute, but that statement is largely discounted by the fact that at least three of the Akim witnesses to occupation states they have come straight from the villages on the disputed area for the purpose of giving evidence in Court.

The Akims cannot have it both ways. As regards the Atobie land, 40
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Seeing that this dispute has been pending for a long time past, it seems extraordinary that the Akims should have neglected the opportunity to point out the villages which they claimed, if their claim is a genuine one. They have attempted to make good the omission by calling witnesses who now say they are in occupation of the villages which the Kwahus pointed 30
 out to the surveyor, villages which the surveyor found to be occupied by Kwahus. That evidence would have been more convincing if the Akims had accepted the invitation of the surveyor to attend the survey. It is true that it is stated on behalf of the Defendants that they have been ordered by their Omanhene to keep off the disputed land pending the settlement of the dispute, but that statement is largely discounted by the fact that at least three of the Akim witnesses to occupation states they have come straight from the villages on the disputed area for the purpose of giving evidence in Court.

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in other respects, and that having failed to cross-examine the Atibie witnesses as to occupation, they were unable to give evidence-in-chief in regard to villages as to which the Atibies had given evidence. The triangular piece of land between Attoase, Ekosso and the junction of the Owurunsupon and Assuboni Rivers is almost unoccupied. Only three villages there, are shown on the plan and they are "hunter's camps" or temporary villages.

10 Kwasi Abra's village at the junction of the Assuboni and Akowurun Rivers is merely a farm, it has no house at all on it. Signs of occupation of the land by the Attibies and Obomens become less, the farther they get from the Kwahu Hill.

In conclusion. The case depends upon the probability of the stories told by the opposing parties, so far as that can be gauged by reference to established facts, and upon the creditability of the witnesses. I have pointed out the improbability of the Defendants' case as set out, in regard to various matters. I have referred to the manner in which their case has been put before the Court—the apparent alteration of their story as the trial proceeded, the unreliability of their witnesses, suggestions made in cross-examination and not followed up by their witnesses when giving evidence-in-chief, the application at the end of the trial to alter the issue, 20 the incident in regard to Kwesi Adai, the reluctance to call Ebenezer Tham followed by application to treat him as a hostile witness when his evidence proved unfavourable—all these things have led me to the conclusion, formed slowly as the trial proceeded, that the Defendants' evidence as a whole was untrustworthy and their case not one in which the Court could feel confidence. After a very long hearing I have come to the conclusion that I cannot accept the Defendants' story and that, generally speaking, where it conflicts with the Plaintiffs' story, I ought to accept the latter. The only point as to which I feel in doubt, is in regard to the triangular piece of land between Attoase, Ekosso and the junction of the Assuboni 30 and Owurunsupon rivers. I have pointed out that this land is almost unoccupied.

There is a good deal of evidence in regard to Attoase and I have come to the conclusion that Plaintiffs' version should be accepted.

Ekosso is more doubtful. The only other evidence relates to Anyinase, as to which some slight evidence has been offered by Defendants. I have come to the conclusion that this triangle of land should be awarded to the Defendants, leaving Attoase and the farm attached to it (Kojo Siaw's) to the Plaintiffs and Ekosso, which apparently only consists of two hunter's huts, to Defendants.

40 My Judgment, therefore, is that the correct boundary between Eastern Akim and Kwahu is as follows:—

Starting at the point where the Jejeti River is crossed by the main Accra road, as marked by an Ntomeh tree in accordance with Phillips' judgment, thence following the course of the Jejeti River to its junction with the Assuboni River, thence ascending the Assuboni River until the nearest point in its course to Attoase is reached, thence leaving the Assuboni River and passing South of the Attoase and the farm attached to it, thence

Exhibits.

—
" G."

(Plaintiff's).
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1923—
continued.

Exhibits. in a straight line, crossing the Akowurunsu South of Pahapaha to a point
 " G." on the Owurunsupon River North of Ekosso, thence ascending the Owurun-
 (Plaintiff's) supon River to its source in Kadi Beppo. Judgment for Plaintiffs
 Judgment accordingly.
 in Akim- As regards costs, Plaintiffs have substantially succeeded in their case
 Kwahu and must have the costs of the action.
 Boundary
 Suits Counsel—
 (Nos. 68, 69 Mr. AKILAGPA SAWYERR for Plaintiff.
 and 70 of Mr. J. HENLEY COUSSEY (with him Mr. TETE KWESI ORGLE) for
 1922), 29th the Defendants. 10
 August,
 1923—
 continued. E. R. LOGAN,
 Acting Chief Justice.

" E." " E." (Defendants'). Letter from Opanyin Kwadwo Boadi.

(Defen-
 dants').
 Letter from
 Opanyin
 Kwadwo
 Boadi
 (undated).

ATAWASE IN ZUSLE.

We have dismissed these labourers whom I we understand are working
 for you. The land already sold by Omanhene's permission to Kyerepong's
 headman named Kwame Abosi and Co.

Take notice that you have no right to enter in this site of Stream
 Djadjati.

We are

(Sgd.) OPANYIN KWADWO BOADI.

„ LING. KWABENA BOA.

„ SIMEON ATTA.

„ T. O. DANSOU.

for

(Sgd.) KWAME APEAAGIE,

Odk. of Asufo.

Witnesses :

(Sgd.) KWAKU DOKU.

„ KWAKU MAM.

„ KWAME ABOSI.

Their

x

x

x

mks.

20

30

Take Notice that to step in this site of Djadjati you violate Omanhene's
 oath Wukuda and Kwanyakoe.

W. & W.

(Sgd.) T. O. DANSOU.

occupation North of that line, as the Akim case as to that area is not based on occupation. I shall only deal with evidence South of these lines, in respect of the Atobie and Obomen claims.

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I have already referred to this. It is admitted that Sampson is living there and there is a considerable amount of evidence to show that he is the owner and that it has been inhabited by the Obomens for a long time past. Nathaniel Mensah's evidence was not reliable. He first said that he had placed Kwamin Dapah an Obomen man in charge of it, then it appeared that Dapah had been dismissed nine years previously and that Kwadjo Sono living at Whintia about two miles away was in charge and that Mensah's own village (if ever he had one), was in ruins.

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by the Obomens ; but on neither side has the alleged occupant of the village been called. I have already commented on the evidence of Boadi and Bediako.

OWURUNSUPON OR KWAMIN AFRAM'S VILLAGE.

This is claimed by Kwamin Afram on behalf of the Obomens and by Kofi Boadi on behalf of the Abomosos. Kwamin Afram has given evidence that he is in occupation and it is admitted that he has lived there, but it was suggested in cross-examination that he went to live there with the permission of the Chief of Abomoso. It was also suggested that on one occasion he came to fish there and gave a leg of game to Boadi as tribute to the Chief of Abomoso. Kwamin Afram denies this and the two stories do not seem hang together. Boadi, as already pointed out, is an Atibie man who has migrated to Abomoso ; he does not profess to be living in the village now, but says that he has placed his son Kofi Kyere in charge of it. Kofi Kyere has not given evidence. I consider Kwamin Afram's story the more creditable one. 10

GROMISSA OR KYEKYEWERE OR KOFI DOMPHEH'S VILLAGE.

Evidence of ownership is given on behalf of the Obomens by Yao Mensah, Kofi Amuyao, Yao Busum and Kwesi Yentumi.

EKOSSO.

20

There is a direct conflict of evidence as to this village between Kwesi Yentumi, Linguist of Obomen, who claims to have two hunter's huts there, and Kwaku Banor, an Asunafo man, who claims it on behalf of the Defendants and says that he has come straight from the village to Accra for the purpose of this case. Each denies having ever seen the other at the village.

According to the Surveyor, Ekosso is only a temporary, which means a shed with four corner poles and a roof of some sort.

ANYINASE OR EYINAWASE.

(Sic) This is another temporary village, and is claimed on behalf of the Defendants by Yao Dako and Asunafo man, who says he has come here direct from the village at the request of his Omanhene for the purpose of giving evidence in this case. Kwaku Banor gives evidence in support. Yao Mensah, the Obomen Chief, denies that it is occupied by Yao Darko and says that Atta lives there now, but Atta has not been called to give evidence. Yao Busum also claims it on behalf of the Obomens. 30

I will now deal with the Atibie villages.

WANSANABIAMPA.

This village is shown on Exhibit " B " as a ruin, but is claimed on behalf of the Defendants by Kwaku Hene, an Asunafo man, who says he has been living there for a long time past, but as he places the village on 40

the wrong side of the Akowurun River to that shown in the plan, I do not think much reliance can be placed on his evidence. He is contradicted by Kwesi Denteh, a witness for the Plaintiffs, who says he used to have a village there which is now in ruins.

KOKROMPE.

This is one of the more important villages and is claimed by Kwaku Adai on behalf of the Atibies, he says he has lived there for 13½ years, and that it was founded long before Phillips' enquiry. Except for a bald statement that Adomako had been at Kokrompe, this witness's evidence which
10 was given at considerable length, has remained uncontradicted.

ESASE

is another of the more important villages. There is again a direct conflict of evidence between the parties. Kofi Dansu for Plaintiffs swears that he has been there for 16½ years and that no Akim man has ever occupied any portion of it during that time, whilst Kwaku Anto, on behalf of Defendants, says that it is his village, and that he has two huts there and that Dansu is lying.

It has been pointed out by Mr. Sawyerr that Defendants' cross-examination indicated one story, whilst Kwaku Anto giving evidence in-
20 chief, told quite a different story and it is contended that Anto's story is an afterthought and that if true, it would have been put to Plaintiffs' witnesses in cross-examination. Kwaku Anto has sworn that ten years ago he saw that three Kwahus, of whom Dansu was one, had killed a hog and that he made them give him a leg which he took to the Odikro of Asunafo. Both Kwesi Abra and Kofi Dansu were cross-examined as to Kwahu Anto but there was no mention of the hog story at the time.

NYAMKUMASE AND NANKESSE AND PAHAPAHA.

Kofi Omari, an Atibie Councillor states that he has three farms at
30 Nyankumase, that he knows Nankesse, Pahapaha and other villages and that they all belong to the Chief of Atibie, and he is corroborated by Kwaku Adai, the occupant of the neighbouring village of Kokrompe. There was no suggestion in cross-examination of either of these witnesses that there were any Akim owners of these villages and in fact no Akim owner has been put forward by the Defendants.

ATTOASE.

There is again a direct conflict of evidence in regard to this village. It is claimed on behalf of the Plaintiffs by Kojo Siaw, an Atibie man, and on behalf of the Defendants by Kwabena Darkwa, an Asunafo man; each claim to have come straight from the village for the purpose of this case.
40 It is admitted that the village was originally made by Noama, an Akim man, but it is said that when the boundary was cut out after Phillips' enquiry, an exchange took place, Noama went across to the Akim side and Kojo

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 it. The surveyor, Mr. Armah Kwantreng, gave notice to both parties to attend the survey, but only the Kwahus came.

The Kwahus were the people in occupation and they pointed out as Kwahu villages, all the villages shown on the plan. No Akims were to be seen on the land at all.

Seeing that this dispute has been pending for a long time past, it seems extraordinary that the Akims should have neglected the opportunity to point out the villages which they claimed, if their claim is a genuine one. They have attempted to make good the omission by calling witnesses who now say they are in occupation of the villages which the Kwahus pointed 30
 out to the surveyor, villages which the surveyor found to be occupied by Kwahus. That evidence would have been more convincing if the Akims had accepted the invitation of the surveyor to attend the survey. It is true that it is stated on behalf of the Defendants that they have been ordered by their Omanhene to keep off the disputed land pending the settlement of the dispute, but that statement is largely discounted by the fact that at least three of the Akim witnesses to occupation states they have come straight from the villages on the disputed area for the purpose of giving evidence in Court.

The Akims cannot have it both ways. As regards the Atibie land, 40
 the evidence of occupation strongly supports the Kwahus. It is only in regard to Attoase and Esase that there has been any real evidence for the Defendants. As regards the Obomen land the evidence is more equal, but in this connection it is worthy of remark that the Obomen witnesses gave evidence after the Atibie witnesses, and all along it has been strongly urged that the Defendants have been shifting their case and that they have only brought evidence of occupation on discovering the weakness of their case

in other respects, and that having failed to cross-examine the Atibie witnesses as to occupation, they were unable to give evidence-in-chief in regard to villages as to which the Atibies had given evidence. The triangular piece of land between Attoase, Ekosso and the junction of the Owurunsupon and Assuboni Rivers is almost unoccupied. Only three villages there, are shown on the plan and they are "hunter's camps" or temporary villages.

10 Kwasi Abra's village at the junction of the Assuboni and Akowurun Rivers is merely a farm, it has no house at all on it. Signs of occupation of the land by the Attibies and Obomens become less, the farther they get from the Kwahu Hill.

In conclusion. The case depends upon the probability of the stories told by the opposing parties, so far as that can be gauged by reference to established facts, and upon the creditability of the witnesses. I have pointed out the improbability of the Defendants' case as set out, in regard to various matters. I have referred to the manner in which their case has been put before the Court—the apparent alteration of their story as the trial proceeded, the unreliability of their witnesses, suggestions made in cross-examination and not followed up by their witnesses when giving evidence-in-chief, the application at the end of the trial to alter the issue, 20 the incident in regard to Kwesi Adai, the reluctance to call Ebenezer Tham followed by application to treat him as a hostile witness when his evidence proved unfavourable—all these things have led me to the conclusion, formed slowly as the trial proceeded, that the Defendants' evidence as a whole was untrustworthy and their case not one in which the Court could feel confidence. After a very long hearing I have come to the conclusion that I cannot accept the Defendants' story and that, generally speaking, where it conflicts with the Plaintiffs' story, I ought to accept the latter. The only point as to which I feel in doubt, is in regard to the triangular piece of land between Attoase, Ekosso and the junction of the Assuboni 30 and Owurunsupon rivers. I have pointed out that this land is almost unoccupied.

There is a good deal of evidence in regard to Attoase and I have come to the conclusion that Plaintiffs' version should be accepted.

Ekosso is more doubtful. The only other evidence relates to Anyinase, as to which some slight evidence has been offered by Defendants. I have come to the conclusion that this triangle of land should be awarded to the Defendants, leaving Attoase and the farm attached to it (Kojo Siaw's) to the Plaintiffs and Ekosso, which apparently only consists of two hunter's huts, to Defendants.

40 My Judgment, therefore, is that the correct boundary between Eastern Akim and Kwahu is as follows:—

Starting at the point where the Jejeti River is crossed by the main Accra road, as marked by an Ntomeh tree in accordance with Phillips' judgment, thence following the course of the Jejeti River to its junction with the Assuboni River, thence ascending the Assuboni River until the nearest point in its course to Attoase is reached, thence leaving the Assuboni River and passing South of the Attoase and the farm attached to it, thence

Exhibits.
—
"G."
(Plaintiff's).
Judgment
in Akim-
Kwahu
Boundary
Suits
(Nos. 68, 69
and 70 of
1922), 29th
August,
1923—
continued.

Exhibits.
 ———
 " G. "
 (Plaintiff's).
 Judgment
 in Akim-
 Kwahu
 Boundary
 Suits
 (Nos. 68, 69
 and 70 of
 1922), 29th
 August,
 1923—
continued.

in a straight line, crossing the Akowurunso South of Pahapaha to a point on the Owurunsupon River North of Ekosso, thence ascending the Owurunsupon River to its source in Kadi Beppo. Judgment for Plaintiffs accordingly.

As regards costs, Plaintiffs have substantially succeeded in their case and must have the costs of the action.

Counsel—

Mr. AKILAGPA SAWYERR for Plaintiff.

Mr. J. HENLEY COUSSEY (with him Mr. TETE KWESI ORGLE) for the Defendants.

10

E. R. LOGAN,
Acting Chief Justice.

" E. "
 (Defendants').
 Letter from
 Opanyin
 Kwadwo
 Boadi
 (undated).

" E. " (Defendants'). Letter from Opanyin Kwadwo Boadi.

ATAWASE IN ZUSLE.

We have dismissed these labourers whom I we understand are working for you. The land already sold by Omanhene's permission to Kyerepong's headman named Kwame Abosi and Co.

Take notice that you have no right to enter in this site of Stream Djadjati.

We are

20

(Sgd.) OPANYIN KWADWO BOADI.

Their

„ LING. KWABENA BOA.

x

„ SIMEON ATTA.

x

„ T. O. DANSOU.

marks

for

(Sgd.) KWAME APEAAGIE,

Odk. of Asufo.

Witnesses :

30

Their

(Sgd.) KWAKU DOKU.

x

„ KWAKU MAM.

x

„ KWAME ABOSI.

x

mks.

Take Notice that to step in this site of Djadjati you violate Omanhene's oath Wukuda and Kwanyakoe.

W. & W.

(Sgd.) T. O. DANSOU.

“ D.” (Plaintiff’s.) Joint Instructions to Surveyor.

Exhibits.

P. O. Box 398,
Accra.
13th September, 1935.

“ D.”
(Plaintiff’s.)
Joint
Instructions
to Surveyor,
13th Sep-
tember,
1935.

Mr. George D. Plange,
Licensed Surveyor,
Adabraka,
Accra.

Sir,

10 Land situate at Jejeti Eastern Akim Eastern Province of the
Gold Coast Colony—as per Plan hereto attached.

The land the subject of the attached Plan is now the subject of dispute
in case Kofi Frimpong versus Kwame Abossi and others before the
Divisional Court, Accra, and we desire to ask you to go on the land with
the parties in the Suit and carry out the following instructions :—

- (i) To demarcate on the old Plan the areas localities or spots which
the Plaintiff alleges are being farmed used or occupied by the
Defendants without his consent and authority.
- 20 (ii) To demarcate the boundaries of the area claimed by the Defendants
as their property and to make it quite clear whether such area
claimed by the Defendants is within or without the limits of the
land shown on the old plan as belonging to Yaw Anno.

We shall be glad to know per bearer if you can undertake this survey
work, and if so what your charges will be and also if you can complete the
work in about a month’s time from date.

We are,

Yours faithfully,

K. ADUMUA-BOSMAN,
Solicitor for Plaintiff.

30

OFEI AWERE,
Solicitor for Defendants.

In the Privy Council.

No. 15 of 1941.

ON APPEAL FROM THE WEST AFRICAN COURT
OF APPEAL, GOLD COAST SESSION.

CONSOLIDATED SUITS AND APPEALS.

BETWEEN

- (1) OPANYIN KWASI BAAH (substituted
for OPANYIN KOFI FRIMPONG)
AND *Plaintiff-Appellant*
KWAME ABOSSI, ABUAGYE, and
BAFUOR KWADWO BOADI
Defendants-Respondents

AND BETWEEN

- (2) BAFUOR KWADWO BOADI
Plaintiff-Respondent
AND
OPANYIN KWASI BAAH (substituted
for OPANYIN KOFI FRIMPONG)
Defendant-Appellant.
-
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RECORD OF PROCEEDINGS.

A. L. BRYDEN & CO.,
5 The Sanctuary, Westminster, S.W.1,
Appellant's Solicitors.