

4, 1950

No. 96 of 1947.

# In the Privy Council.

## ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL.

31953

BETWEEN

AKISATAN APENA OF IPORO  
LAWANI OF IPORO and  
I. A. SODIPO OF IKEREKU (Defendants)

UNIVERSITY OF LONDON  
W.C. 1.

9 - NOV 1950

INSTITUTION OF APPELLANTS AND  
LAW STUDIES

AND

1. AKINWANDE THOMAS
2. OKE SOGBESAN
3. AIYE SAKOTUN
4. OKE SANYAOLU
5. SANNI FALOLA
6. YESUFU OJODU
7. J. A. SOYOYE
8. ADEKUNLE COKER
9. M. J. BAMGBOLA

For themselves and on behalf  
of that section of the Iporo  
Community Abeokuta, known  
as Iporo No. 2

(Plaintiffs)

- Respondents

AND

OBA ALAIYELUWA ADEMOLA II (Defendant)

- Pro forma  
Respondent.

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ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL.

BETWEEN

AKISATAN APENA OF IPORO

LAWANI OF IPORO and

I. A. SODIPO OF IKEREKU (Defendants) - - - Appellants

AND

1. AKINWANDE THOMAS

10 2. OKE SOGBESAN

3. AIYE SAKOTUN

4. OKE SANYAOLU

5. SANNI FALOLA

6. YESUFU OJODU

7. J. A. SOYOYE

8. ADEKUNLE COKER

9. M. J. BAMGBOLA

For themselves and on behalf of that section of the Iporo Community Abeokuta, known as Iporo No. 2

(Plaintiffs) - Respondents

AND

OBA ALAIYELUWA ADEMOLA II (Defendant)

- Pro forma Respondent.

20

RECORD OF PROCEEDINGS.

No. 1.

APPLICATION FOR SUMMONS.

IN THE SUPREME COURT OF NIGERIA.

Ibadan Judicial Division.

Between—

1. AKINWANDE THOMAS

2. OKE SOGBESAN

3. AIYE SAKOTUN

30 4. OKE SANYAOLU

5. SANNI FALOLA

6. YESUFU OJODU

7. J. A. SOYOYE

8. ADEKUNLE COKER

9. M. J. BANGBOLA

For themselves and on behalf of that section of the Iporo Community Abeokuta, known as Iporo No. 2

- - - - - Plaintiffs

and

1. OBA ALAIYELUWA ADEMOLA II

2. AKISATAN APENA OF IPORO

3. LAWANI OF IPORO

40 4. I. A. SODIPO OF IKEREKU

- - - Defendants.

In the Supreme Court of Nigeria.

No. 1.

Application for Summons, 21st August 1945.

*In the  
Supreme  
Court of  
Nigeria.*

No. 1.  
Applica-  
tion for  
Summons,  
21st  
August  
1945,  
*continued.*

The Plaintiffs seek against the Defendants a declaration that the installation by the 1st and 2nd Defendants of 1 (a) the 3rd Defendant as the Oluwo of Iporo Township Abeokuta, on 26th January, 1945, and (b) the 4th Defendant as the Balogun of Iporo on February 1st 1945, is contrary to the Native Law and Customs of the people of Abeokuta to which the Plaintiffs and the Defendants both belong.

(2) The Plaintiffs also claim an Injunction restraining the said Lawani and the said I. A. Shodipo from acting as or performing any of the customary functions of the Oluwo of Iporo and the Balogun of Iporo respectively.

10

The Plaintiffs sue for themselves and as representatives of that section of Iporo Community in Abeokuta known as Iporo No. 2 and who with the other section of the Iporo Community (Iporo No. 1) have the sole prerogative of conferring the title of the Oluwo of Iporo and the Balogun of Iporo.

Dated at Ibadan this 21st day of August 1945.

(Sgd.) IRVING & BONNAR.

(Sgd.) F. R. A. WILLIAMS.

Solicitors to the Plaintiffs.

Plaintiffs' Address :—

c/o Their Solicitor  
41 Idumagbo Avenue,  
Lagos.

20

Defendants' Address :—

1. Ake Abeokuta.
2. Iporo Abeokuta.
3. Iporo Abeokuta.
4. Ikereku Abeokuta.

Summons £4.10/-

Service 4/-

£4 14/-

30

No. 2.  
Notice of  
Motion,  
21st  
August  
1945.

No. 2.

NOTICE OF MOTION.

IN THE SUPREME COURT OF NIGERIA.

Ibadan Judicial Division.

(Title as No. 1.)

TAKE NOTICE that this Honourable Court will be moved on Friday the 24th day of August 1945 at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard for an Order that the approval of the

Court be given to the Plaintiffs to sue on behalf of that Section of the Iporo Community known as Iporo No. 2 and for such further or other Orders as this Honourable Court deems fit.

Dated at Ibadan this 21st day of August 1945.

(Sgd.) IRVING & BONNAR.

(Sgd.) F. R. A. WILLIAMS.

Plaintiffs' Solicitors.

*In the  
Supreme  
Court of  
Nigeria.*

No. 2.  
Notice of  
Motion,  
21st  
August  
1945,  
*continued.*

Plaintiffs' Address:—

10 c/o Their Solicitor,  
41 Idumagbo Avenue,  
Lagos.

Defendants' Address:—

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No. 3.

**AFFIDAVIT IN SUPPORT.**

**IN THE SUPREME COURT OF NIGERIA.**

Ibadan Judicial Division.

No. 3.  
Affidavit  
in support,  
21st  
August  
1945.

Suit No. I/46 of 1945.

(Title as No. 1.)

We Akinwande Thomas, the Base of Iporo, Abeokuta, trader and  
20 Adekunle Coker, Licensed Surveyor of 66 Clifford Street, Ebute Metta,  
make oath and say as follows:—

1. That we are the 1st and 8th Plaintiffs respectively in the above suit.

2. That we have been duly authorised by that section of the Iporo Township known as Iporo No. 2 to institute the action in the above suit.

3. That the 2nd, 3rd, 4th, 5th, 6th, 7th and 9th Plaintiffs in the said suit have also been similarly authorised to sue.

(Sgd.) A. THOMAS.

(Sgd.) ADEKUNLE COKER.

30 Sworn at the Supreme Court Registry,  
Lagos, this 21st day of August 1945.

Before me,

(Sgd.) M. O. ADEWUNMI,  
Commissioner for Oaths.

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*In the  
Supreme  
Court of  
Nigeria.*

No. 4.  
Civil  
Summons,  
22nd  
August  
1945.

No. 4.  
CIVIL SUMMONS.

PROTECTORATE OF NIGERIA.

In the Supreme Court of the Ibadan Judicial Division.

No. 4 A618.

Suit No. I/46/1945.

Between AKINWANDE THOMAS & 8 Ors. (For them-  
selves and on behalf of that Section of the  
Iporo Community, Abeokuta known as Iporo  
No. 2) - - - - -

Plaintiffs

and

10

OBA ALAIYELUWA ADEMOLA II & 3 Ors. Defendants.

To :— 1. Oba Alaiyeluwa Ademola II of Ake, Abeokuta.  
2. Akisatan Apena of Iporo of Iporo ,,  
3. Lawani of Iporo of Iporo ,,  
4. I. A. Sodipo of Ikereku ,,

You are hereby commanded in His Majesty's name to attend this Court at Abeokuta on a date to be notified later at 9 o'clock in the forenoon to answer a suit by the Plaintiffs of c/o Their Solicitor, 41 Idumagbo Avenue, Lagos against you.

The Plaintiffs seek against the Defendants a declaration that the 20 installation by 1st and 2nd Defendants of 1 (a) the 3rd Defendant as the Oluwo of Iporo Township, Abeokuta, on 26th January 1945 and (b) 4th Defendant as the Balogun of Iporo on 1st February 1945 is contrary to the native law and customs of the people of Abeokuta to which the Plaintiffs and the Defendants both belong.

2. The Plaintiffs also claim an Injunction restraining the said Lawani and the said I. A. Sodipo from acting as or performing any of the customary functions of the Oluwo of Iporo and the Balogun of Iporo respectively.

The Plaintiffs sue for themselves and as representatives of that section of Iporo Community in Abeokuta known as Iporo No. 2 and who 30 with the other section of the Iporo Community (Iporo No. 1) have sole prerogative of conferring the title of the Oluwo of Iporo and the Balogun of Iporo.

Issued at Ibadan the 22nd day of August 1945.

	£	s.	d.
Summons	4	10	0
Service		4	0
Hearing		—	

£4 14 0

(Sgd.) C. N. S. POLLARD, 40  
Acting Puisne Judge.

C.R. No. B300473 of 22.8.45 (Intd.) E.S.C.

TAKE NOTICE :—That if you fail to attend at the hearing of the suit or at any continuation or adjournment thereof, the Court may allow the Plaintiff to proceed to Judgment and Execution.

## No. 5.

## COURT NOTES granting Motion.

## IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Ibadan Judicial Division holden at Ibadan.

Before His Honour Mr. Justice NOEL POLLARD—Acting Judge.

Friday the 24th day of August 1945.

AKINWANDE THOMAS & Others

*versus*

10 OBA ALAIYELUWA ADEMOLA & Others

Williams in support of the Motion.

Motion granted and approval given to the Plaintiffs to sue in the representative capacity shewn in the event.

(Sgd.) C. N. S. POLLARD,  
Ag. Judge.

*In the  
Supreme  
Court of  
Nigeria.*

No. 5.  
Court  
Notes  
granting  
Motion,  
24th  
August  
1945.

## No. 6.

## COURT NOTES as to Jurisdiction.

## IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Ibadan Judicial Division Holden at Ibadan.

20

Before His Honour Mr. Justice NOEL POLLARD—Acting Judge.

Tuesday the 18th day of September 1945.

(Title as in No. 1.)

Williams for Plaintiffs.

Adefolu and O. A. Alakija for Defendant.

O. A. Alakija submits.

1. Defendant is a public officer by virtue of his being a Native Authority of Abeokuta and therefore notice should have been served on him under the Native Authority Ordinance 1943, Section 61 (2).

30 Action founded as a result of alleged intention of Defendant to allot title of the Abese of the Egbas on one I. A. Sodipo.

Defendant cannot in his private capacity confer any title far less that of Abese of the Agbas.

Before he became an Oba he was a Prince. As such he had no power to confer any title. It is only by virtue of the office of Oba that he can confer any title at all. As Oba he is Native Authority.

No. 6.  
Court  
Notes as to  
jurisdic-  
tion,  
18th  
September  
1945.

*In the  
Supreme  
Court of  
Nigeria.*

No. 6.  
Court  
Notes as to  
Jurisdiction,  
18th  
September  
1945,  
*continued.*

Sec. 19 of N. A. Ordinance shows that Defendant has the right to administer Native Law and Custom. The conferring of the title is part of the Native Law and Custom.

2. Appointment of Chiefs. Refers to Ordinance No. 14 of 1930 as amended by Ordinance No. 20/45 sections 3 of Ordinance 20/45 give Governor exclusive jurisdiction wherever a dispute arises as to the appointment of a chief or head chief.

Head chiefs in the Protectorate are Oba of Benin : Alafin of Oyo : The Oni of Ife : The Alake of Abeokuta : The Awujale of Ijebu Ode.

The Governor's powers are not limited to head Chiefs : but to any chief at all. So that wherever there is a dispute concerning the appointment to any chieftancy under Native Law and Custom this Court has no jurisdiction. 10

He refers to the endorsement: and cites *Adanji vs. Hunvoo* 1 N.L.R. 75.

Two things have to be distinguished.

1. Appointment under Ordinance 14 of 1930 and
2. Appointment of Chiefs pure and simple. Title and dignity

*Adanji vs. Hunvoo* decides (2) beyond doubt.

In this case all that is claimed is an injunction to restrain Defendant from conferring a title. It is not shown that any interest or any kind of property flows from the conferring of the title. Refers to *Okupe vs. O. Soyebó* 3 W.A.C.A. 151. 20

*Williams.*

As to notice—Defendant is sued as the Oba of Abeokuta and in his capacity as a chief duly appointed under Native Law and Custom.

Under Native Authority Ordinance any person or groups of persons could be made Native Authority by the Governor.

Such gubernatorial appointment does not vest in him the power which the Oba is now claiming for himself. 30

The Oba is not claiming the power in his capacity of Native Authority. No section in the Native Authority Ordinance can be cited by Alakija in support of that part of his submission.

If the Oba alleges that he is exercising that power under the Native Authority Ordinance he has to prove it. Defendant is sued as the Oba and not as Native Authority.

As to Supreme Court jurisdiction. Sub. (2) section 2 of Ordinance No. 14 of 1930 vests jurisdiction in Governor only with regard to Chiefs who have been appointed. This is a claim for an injunction. S.C. jurisdiction is not ousted. 40

Also Ordinance 14/30 does not apply to this case in view of section 5 as enacted by ordinance 20/1945. There is only one Native Authority for Abeokuta—that is one man—the Alake of Abeokuta. There is no chief associated with him. There is no council which operates with the Alake of Abeokuta in law.

Gazette No. 26/1945 dated 2.5.45 page 1015 the Alake of Abeokuta is set out as the Native Authority for the Egba Division.

See Native Authority Ordinance : Montol for inclusion of chief *and council*. No mention of any advisory Council.

Re Base Title and dignity of Abese of the Egbas Submission premature. 50  
There is no evidence on which this issue can be determined.

All that *Adanji vs. Hunvoo* decides is that Court after hearing all the evidence should then and then only determine whether or not an injunction should be granted. It does not supply authority for dismissing the action at this stage. Salary is attached to the office of Abese of the Egbas.

Death removed the former Abese of the Egbas—that is how the office became and is now vacant.

*O. A. Alakija in reply.*

A number of facts could have been properly set out in pleadings. As to the title of Abese being connected with property, the endorsement on  
10 the writ should have disclosed that.

Abese as such is not entitled to anything at all.

As a member of the Egba Central Council he is entitled to a certain amount.

It is true that the Abese becomes automatically member of the Egba Central Council.

This Council advises the Alake. It does so by native law and custom. Court refers to section 33 of Ordinance No. 17 of 1943.

I. A. Sodipo is not a member of an advisory council. I have no material before me at this stage to determine factually the issues that have  
20 arisen in the course of the submission. I therefore overrule the submission. Counsel are agreed that it would be of immense advantage if pleadings were ordered: and if the action was transferred to Abeokuta.

As the Court is informed that no ill results will follow from the delay thereby occasioned the Court orders:—

1. Statement of Claim to be delivered within 14 days.
2. Defence to be delivered within 14 days thereafter.
3. Reply if necessary to be delivered within 7 days thereafter.

Action to be heard in Abeokuta.

Interim injunction to continue.

30 Costs to be costs in the cause.

Liberty to apply in Chambers for any order or orders.

5. Relating to Notices to admit facts: as to interrogatories or Notices to admit Documents.

(Sgd.) C. N. S. POLLARD,  
Acting Judge.

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No. 7.

STATEMENT OF CLAIM.

IN THE SUPREME COURT OF NIGERIA.

(Title as in No. 1.)

*In the  
Supreme  
Court of  
Nigeria.*

No. 6.

Court  
Notes as to  
Jurisdic-  
tion,  
18th  
September  
1945,  
*continued.*

No. 7.  
Statement  
of Claim,  
24th  
September  
1945.

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STATEMENT OF CLAIM.

(1) The Plaintiffs are the representatives of that section of Iporo township in Abeokuta known and recognised by the Defendants as "Iporo No. 2."

(2) The 1st Defendant is the Oba Alaiyeluwa Ademola II of Abeokuta duly elected and installed as such under native law and custom.

*In the  
Supreme  
Court of  
Nigeria.*

No. 7.  
Statement  
of Claim,  
24th  
September  
1945,  
*continued.*

(3) The 2nd Defendant is the Apena of Iporo township duly appointed and installed as such under native law and custom.

(4) The 3rd Defendant was until 26th January 1945 the Balogun of Iporo duly appointed and installed as such under native law and custom.

(5) The 4th Defendant was until 1st February 1945 the Bagbimo of Iporo having been duly appointed and installed as such under native law and custom.

(6) Iporo township is one of the townships in Egba Alake Section of Abeokuta. Each of these townships have within it an Ogboni Society established under native law and custom. 10

(7) These Ogboni Societies have within them certain bodies consisting of title holders. Among these bodies are the Iwarefa and the Ologun and other bodies not necessary for the purpose of this action

(8) The bodies referred to in paragraph 7 above have the right under native law and custom to fill vacancies within their ranks. Thus when there is a vacancy in the Iwarefa or the Ologun Society (e.g. by death of a holder of an Iwarefa or Ologun title) the Iwarefa or the Ologun Society, as the case may be, will meet to appoint a new candidate.

(9) When a new candidate has been appointed he should be submitted for approval to the Iwarefa (unless he is an Iwarefa appointee in which case 20 such approval is no longer necessary). Then the installation ceremonies will follow.

(10) In Iporo township the titles of the Iwarefa are :—Lisa, Odofin, Aro, Asalu, Base, Baala, the Oluwo and the Apena.

(11) In Iporo township the titles of the Ologun society are :—Balogun, Otun, Osi, Eskerin, Seriki, Bada, etc.

(12) On 26th January 1945 acting upon the instructions of the 1st Defendant, the 2nd Defendant took the 3rd Defendant to the Ogboni House at Iporo (without consulting the Iwarefa) and performed ceremonies declaring in course thereof that the 3rd Defendant had been installed as the 30 Oluwo of Iporo.

(13) On 1st day of February 1945 acting upon the instructions of the 1st Defendant, the 2nd Defendant caused ceremonies to be performed at Ogboni House at Iporo (without consulting the Iwarefa or the Ologun Society) and in the course thereof declared the 4th Defendant as the Balogun of Iporo.

(14) The 1st Defendant claims further that he has the prerogative under native law and custom to appoint and confer Iwarefa and Ologun titles in Iporo township which claim the Plaintiffs say is contrary to native law and custom. 40

(15) The Plaintiffs will contend that the appointment and installation of the 3rd Defendant as the Oluwo of Iporo is contrary to the native law and custom in that (a) his appointment is not in accordance with the customary procedure as outlined in paragraphs 8 and 9 of this Statement of Claim. And (b) the 3rd Defendant being at the time of the purported installation the Balogun of Iporo the most Senior Ologun title, it is contrary to native law and custom to make him the Oluwo, the most senior Iwarefa title in the township.

(16) The Plaintiffs will contend that the appointment and installation of the 4th Defendant as the Balogun of Iporo is contrary to native law and 50 custom on the grounds (a) That the purported appointment and installation was not in accordance with customary procedure as described in

paragraphs 8 and 9 of this Statement of Claim. (b) That it is against custom to appoint one holding the Bagbimo of Iporo (an inferior Agemo title) to the most senior title in the Ologun Society in the township. (c) The 4th Defendant being an Ikereku and not an Iporo man cannot assume the title of Balogun of Iporo.

(17) The holders of the Iwarefa titles have the right to the major share of the fees paid on the death of every member of the Ogboni Society (e.g. Owo Itufo, Owo Iteku etc.) These fees vary from 11/- to £11.

10 (18) The remainder of the fees described in paragraph 17 will be shared by the members of the other Societies.

(19) Whenever a candidate is to be installed he has to pay certain fees to the Iwarefa varying from £1 10/- to £30. The Iwarefa after taking their share will allot the remainder to the senior members of the other Societies to be shared by them.

(20) The Iwarefa also receive certain moneys from tenants on Iporo lands situate at Orile Iporo. These rents are shared by the Iwarefa and the Ologun and the other Societies. These rents vary between £50 to £100.

20 (21) The title holders take according to the seniority of their title. The Olowo being the most senior of the Iwarefas and the Balogun, the most senior of the Ologuns.

(22) Since their purported appointments, the 3rd and 4th Defendants have been acting as the Oluwo of Iporo and the Balogun of Iporo respectively in spite of the repeated protests of the Plaintiffs.

Whereupon the Plaintiffs claim as per the writ of summons.

Dated at Lagos this 24th day of September 1945.

(Sgd.) F. R. A. WILLIAMS,  
Solicitors to the Plaintiffs.

*In the  
Supreme  
Court of  
Nigeria.*

No. 7.  
Statement  
of Claim,  
24th  
September  
1945,  
*continued.*

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No. 8.

**INTERROGATORIES.**

30 IN THE SUPREME COURT OF NIGERIA.

(Title as in No. 1.)

**INTERROGATORIES.**

(1) Was there a meeting of the Iwarefa of Iporo at which the appointment of the 3rd Defendant as the Oluwo of Iporo was considered and approved ?

(2) If so, when ?

(3) Was there a meeting of the Iwarefa of Iporo at which the appointment of the 4th Defendant as the Balogun of Iporo was considered and approved ?

40 (4) If so, when ?

(5) Does the 1st Defendant claim to have the prerogative of appointing the Oluwo and the Balogun of Iporo ?

Dated this 25th day of September 1945.

(Sgd.) F. R. A. WILLIAMS,  
Plaintiffs' Solicitor.

No. 8.  
Interroga-  
tories,  
25th  
September  
1945.

## IN THE SUPREME COURT OF NIGERIA.

No. 9.  
Defence of  
2nd, 3rd  
and 4th  
Defendants,  
8th  
October  
1945.

(Title as in No. 1.)

## DEFENCE.

Save and except as are hereinafter expressly admitted the Defendants deny all the allegations of facts contained in the Plaintiffs' Statement of Claim as if each and every one of such allegations has been taken separately and specifically traversed.

1. The Defendants deny paragraph 1 of the Plaintiffs' Statement of Claim and say that the 3rd and the 5th Plaintiffs are the title holders of Iporo Township in Abeokuta the 1st Plaintiff having been dispossessed of his title of Base of Iporo. 10

2. The Defendants admit paragraphs 2, 3 and 4 of the Plaintiffs' Statement of Claim.

3. The Defendants deny paragraph 5 of the Statement of Claim but say that the 4th Defendant was the Bagbimo of Iporo up to the 26th January 1945.

4. The Defendants admit paragraphs 6, 7, 10 & 11 of the Plaintiffs' Statement of Claim. 20

5. The Defendants deny paragraphs 8, 9, 12 and 13 of the Plaintiffs' Statement of Claim and put the Plaintiffs to the strict proof thereof.

6. The Defendants deny paragraph 14 of the Statement of Claim and say that the 1st Defendant has the right to approve the appointment of an Iwarefa or Ologun after same has been duly appointed by the Iporo Township.

7. With regard to paragraph 15 of the Statement of Claim the Defendants say that the 3rd Defendant had been appointed and installed the Oluwo of Iporo, in accordance with native law and custom. And that it is not contrary to native law and custom to make the 3rd Defendant (the Balogun of Iporo) to become the Oluwo of Iporo. 30

8. As regards paragraph 16 of the Statement of Claim the Defendants say that the 4th Defendant had been duly appointed and installed the Balogun of Iporo in accordance with the native law and custom. And that the Bagbimo of Iporo is not an inferior title in that it is the next in rank to the Apena in the Ogboni cult.

The Defendants deny that the 4th Defendant is an Ikereku although he lives in the Township.

9. The Defendant while admitting paragraphs 17, 18 & 19 of the Statement of Claim say that the fees are in respect of the duties which every Society in the Ogboni had to perform at the funeral of every member of the Ogboni Society. But the fees are not as stated by the Plaintiffs. 40

10. The Defendants deny paragraph 20 of the Plaintiffs' Statement of Claim and put the Plaintiffs to the strict proof thereof.

11. As regards paragraphs 21 & 22 of the Plaintiffs' Statement of Claim the Defendants say that although fees are shared by the Ogboni Societies the Plaintiffs with the exception of the 3rd and the 5th have no right to lodge any protest against the appointment and the installation of any chieftaincy in Iporo Township.

12. The Defendants will contend at the hearing of this action that this Honourable Court has no jurisdiction in a matter like this.

And that the Plaintiffs are not entitled to claim as per the Writ of Summons.

Dated at Abeokuta this 8th day of October 1945.

(Sgd.) A. A. MAJEKODUNMI,  
2nd, 3rd and 4th Defendants' Solicitor.

*In the  
Supreme  
Court of  
Nigeria.*

No. 9.  
Defence of  
2nd, 3rd  
and 4th  
Defendants,  
8th  
October  
1945,  
*continued.*

**No. 10.**

**ANSWER TO INTERROGATORIES by 2nd, 3rd and 4th Defendants.**

10 IN THE SUPREME COURT OF NIGERIA.

(Title as in No. 1.)

**ANSWER TO INTERROGATORIES.**

1. There were several meetings of the Iporo Chiefs at which the Iwarefa Chiefs were present.

2. The meetings took place from December 1944 to January 1945.

3. There were several meetings of the Iporo Chiefs and the Iwarefa Chiefs were all present at the meetings.

4. The meetings took place from December 1944 to January 1945.

5. The 1st Defendant does not claim to have the prerogative of  
20 appointing the Oluwo and the Balogun of Iporo, but the appointment must receive his approval before the appointed person could undergo the ceremonies attached to his installation.

Dated at Abeokuta this 8th day of October 1945.

(Sgd.) A. A. MAJEKODUNMI,  
2nd, 3rd and 4th Defendants' Solicitor.

No. 10.  
Answer to  
Interroga-  
tories by  
2nd, 3rd  
and 4th  
Defendants,  
8th  
October  
1945.

**No. 11.**

**DEFENCE of 1st Defendant.**

IN THE SUPREME COURT OF NIGERIA.

(Title as in No. 1.)

No. 11.  
Defence of  
1st  
Defendant,  
19th  
October  
1945.

30

**DEFENCE.**

(1ST DEFENDANT.)

Save and except as are hereinafter expressly admitted the Defendants deny all the allegations of facts contained in the Plaintiffs' Statement of Claim as if each and every one of such allegations has been taken separately and specifically traversed.



*In the  
Supreme  
Court of  
Nigeria.*

No. 11.  
Defence of  
1st  
Defendant,  
19th  
October  
1945,  
*continued.*

1. The Defendant denies paragraph 1 of the Statement of Claim and say that the 3rd and 5th Plaintiffs are the only title holders of Iporo Township in Abeokuta, the first Plaintiff having been deprived of his title as Base of Iporo.

2. The Defendant admits paragraphs 2, 3, 4, 6, 7, 10, 11 of the Statement of Claim.

3. In reply to paragraph 5 Defendant says that the 4th Defendant was up to the 26th of January 1945, the Bagbimo of Iporo.

4. The Defendant denies paragraphs 8, 9, 12 and 13 of the Statement of Claim and puts Plaintiffs to the strictest proof thereof. 10

5. The Defendant does not arrogate to himself the prerogative of appointing Iwarefa and Ologun titles in Iporo Townships, but says that he has the sole right to approve a candidate and confer titles in Egbaland.

6. The Defendant says, in reply to paragraph 15 that the 3rd Defendant has been appointed and installed the Oluwo of Iporo in accordance with Native Law and Custom. The Defendant further says that it is not contrary to Native Law and Custom to make the 3rd Defendant Oluwo of Iporo as alleged.

7. The Defendant finds it difficult to plead to paragraph 16 and asks that it be struck out as embarrassing. 20

8. The Defendant says that the 4th Defendant has been appointed Balogun of Iporo according to Native Law and Custom, and although he denies that 4th Defendant is an Ikereku man, it is immaterial whether he is or not an Iporo man.

9. The Defendant admits paragraphs 17, 18 and 19 of the Statement of Claim but says that the fees are in respect of the duties which every society in the Ogboni has to perform at the funeral of every member. Furthermore the fees are incorrectly stated.

10. The Defendant denies paragraph 20 and put the Plaintiffs to the strictest proof. 30

11. In reply to paragraphs 21 and 22 the Defendant says that although fees are shared by the Ogboni Society the Plaintiffs with exception of the 3rd and 5th have no right to protest against the appointment, on behalf of themselves or on behalf of anybody or the Township of Iporo.

12. The Defendant avers that this Honourable Court has no jurisdiction in this suit, the titles of 3rd and 4th Defendants having been conferred.

13. The Defendant avers that being a Public Officer, notice should have been served on him and this suit should therefore be struck out.

Dated at Ibadan this 19th day of October 1945. 40

(Sgd.) O. A. ALAKIJA,  
1st Defendant's Solicitor.

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**PLAINTIFFS' EVIDENCE.**

IN THE SUPREME COURT OF NIGERIA.

Ibadan Judicial Division holden at Abeokuta.

Before His Honour Mr. Justice NOEL POLLARD—Acting Judge.

*In the  
Supreme  
Court of  
Nigeria.*

Monday, the 5th day of November 1945.

(Title as in No. 1.)

Cameron and Williams for Plaintiffs.

Adefolu and O. A. Alakija for 1st Defendant.

Majekodunmi for 2nd, 3rd and 4th Defendants.

10

**No. 12.****EVIDENCE of Peter Herriott Balmer.***Plaintiffs'  
Evidence.*

PETER HERRIOTT BALMER s. on Bible : European.

*Examination-in-Chief.**No. 12.  
Peter  
Herriott  
Balmer,  
5th  
November  
1945.  
Examina-  
tion.*

I am an Assistant District Officer, Egba Division. I have a copy of the Abeokuta Intelligence Report. This report was prepared and written by a District Officer in 1937 as to the political structure of the Egba Division. To make that report he had to make enquiries of the historical background since 1820. Tendered—objected to on ground it is not recognized authority. Court draws attention to S. 58 of Evidence Ordinance.

- 20 Objection upheld. I have a letter dated 10.2.45 from Irving and Bonner to the Resident Abeokuta and a copy to the Chief Commissioner Western Provinces. Tendered: Not objected to. Duplicate original put in by consent. The original to be kept with the file. PHB. 1. The Resident did not ask me to intervene in the matter. I interviewed the Alake that is the 1st Defendant on 1st February 1945. On that morning a number of Iporo chiefs came to me to protest against the installation of 4th Defendant as Balogun of Iporo. I consulted the Resident and went to the Alake to find out the facts. I explained the object of my visit and asked him why this trouble should have arisen, and whether 4th Defendant had in fact
- 30 been appointed Balogun. The Alake informed me that 4th Defendant had been appointed Balogun after the people of Iporo had been to see him and asked that 4th Defendant be made Balogun. I asked him what was occurring on the 1st February. He replied that 4th Defendant was performing the customary dances and normal festivities which had to be done and given after his appointment as Balogun. I asked the Alake if he would see the Iporo people who were waiting at my office. He said he would and I returned to the Resident. This interview with the Alake was approximately 11 a.m. I visited the Ogboni House at Iporo about 1.30 p.m. on the same day that is 1.2.45. I did not enter the Ogboni
- 40 House and did not find out if, as a fact, the 4th Defendant had been installed as the Balogun. Before I went to visit the Ogboni House, I had gone the second time to the Resident and then had gone to my office. I there explained to the people waiting there what had happened. They

Plaintiffs'  
Evidence.

refused to see the Alake. Irving and Bonnar's telegram arrived. The chiefs left my office and returned in ten minutes telling me they would not be responsible for civil disturbance. I was not present at the installation of 4th Defendant.

No. 12.  
Peter  
Herriott  
Balmer,  
5th  
November  
1945.  
Examina-  
tion,  
*continued.*

*XX-exam'd by Alakija*: On 14th April 1945, the Resident sent a reply to Irving and Bonnar. Tendered—not objected to PHB.2.

Cross-  
examina-  
tion for 1st  
Defendant.

*XX-exam'd by Majekodunmi*: Among the chiefs who interviewed me at my office on 1.2.45 was Gbadamosi Igbin. As far as I remember he is the Balogun of the Mohammedan section of the Iporo Township. I can't remember the names or titles of the others who came with them. 10 They may or may not have been Iporo Township chiefs. They represented themselves to me as being Iporo Township chiefs.

Cross-  
examina-  
tion for  
2nd, 3rd  
and 4th  
Defendants.

*Not Re-exam'd.*

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No. 13.

EVIDENCE of Josiah Akinwande Thomas.

JOSIAH AKINWANDE THOMAS s. on Bible.

No. 13.  
Josiah  
Akinwande  
Thomas,  
5th  
November  
1945.  
Examina-  
tion.

*Examination-in-Chief.*

I am an Egba man, and am a planter and trader. I belong to Iporo Sodeke Township. I hold the title of Base of Iporo. I have been Base since 1934. I am one of the Iwarefa chiefs of Iporo. There was not to my 20 knowledge any meeting of the Iwarefa chiefs at which the election of the Oluwo of Iporo was discussed. If there had been such a meeting I would have known. There was not to my knowledge any meeting of the Iwarefa at which the election of the Balogun of Iporo was discussed. If there had been such a meeting I would have known. The Iwarefas of Iporo did not to my knowledge recommend that the 3rd Defendant should be elected to be the Oluwo of Iporo, or that the 4th Defendant should be elected to be the Balogun of Iporo. For the purpose of collecting taxes there are two sections of Iporo Townships. I belong to Iporo Township No. 2. Tax receipts are issued by Native Administration in the name of both 30 sections respectively. Iporo Township No. 1 and Iporo Township No. 2 Tax Receipts for Iporo Township No. 2 tendered and put in JAT.1. These are the receipts issued in the ordinary course of the business of the Native Administration. The other Plaintiffs also belong to Iporo No. 2 Township. The 4th Defendant is the Bagbimo of Iporo. This is a title of the Agemo—a body of stewards who have certain functions to perform under the Apena of Iporo. A Bagbimo of Iporo is not a member of the Iwarefa or Ologun. When the title of Balogun of Iporo is vacant it is filled in this manner. The Iwarefa ask the Ologuns to meet and agree on the next chief in the rank to the Balogun to be elevated. Then the 40 Ologun will later inform them that the Otun who is the next in rank should be elevated and will ask for the approval of the Otun to be the Balogun. The Iwarefa sanctions the appointment. The then Otun is told what fees he has to pay for his installation. After these fees are paid to the Iwarefa, then a share is taken to the Alake. If the Alake

accepts, that signifies his approval, a report is made to the Iwarefa and then later the installation takes place. The presence of the Alake is not necessary at any installation. The Alake cannot appoint a Balogun of his own initiative because he is not a member of the Ogboni cult. The Balogunship is an Ologun title—the most senior. It is not in accordance with native law and custom for any person to be appointed Balogun who has not held a title of the Ologun Society. Only a true Iporo son can be a Balogun of Iporo according to native law and custom. The 4th Defendant is not an Iporo man. The Iwarefa shares fees paid by the Balogun-elect. In this particular case I have received no part of any fees. I can't say if 4th Defendant paid any fees to the Iwarefa. If the Oluwo of Iporo—an Iwarefa title—the most senior title—becomes vacant, the successor is always chosen from the Iwarefa or on occasions from the Iwarewa—which is a junior branch of the Iwarefa. The Iwarefa chooses the Oluwo. When he is chosen, he is told what fees he has to pay on his installation. After he pays the fees, a share is taken to the Alake. If he accepts that share, that signifies the Alake's approval. The Iwarefa are accordingly informed and later the installation takes place. This is in accordance with native law and custom. It is not in accordance with native law and custom for the Balogun of the Ologun Society to be made the Oluwo of Iporo. The Alake cannot appoint a Balogun of his own initiative because he is not a member of the cult. If the Alake does not signify his approval, the candidate elect is not installed. There has never been a case of a refusal to approve. On 26.1.45, I heard the Ogboni drum in the Ogboni House. That drum acts as a summons to the members of the cult. I did not go because the Apena has to inform the members of the cult beforehand that such and such a thing is to be done and that we will hear the drumming at such and such a time. I had had no such previous warning from the Apena. I sent to the Ogboni cult House to find out what was happening. I sent my boy—he is not a member; he stood outside. I next saw the 3rd Defendant coming from the Ogboni House in the regalia of an Oluwo and to the accompaniment of the drumming peculiar to the installation of an Oluwo. The Ogboni House is the proper place where the installation of an Oluwo should take place. The procession was formed and was proceeding according to native law and custom. The Apena was in front, then the Oluwo; then the Bagbimo—the steward of the Apena—Bamololu of Iporo followed—they are part of the Egan section of the Ogboni cult. They have certain functions to perform. There are seven sections in the Ogboni cult. According to native law and custom I should have taken part in the installation and the procession. I did not see the other senior Iwarefa chiefs at the procession. The majority are dead. The Aro, the Asalu, the Lisa, the Baala, the Odofin were all dead at that time. The 2nd Defendant is the Apena. The Aro was the first of these to die. He died in 1939—the last died on 6th January 1945 that is the Lisa.

*To the Court:* According to Native law and custom the Base is senior to the Apena. The Apena is a sort of Secretary. On that day of the installation, I (as Base) and the Apena (the 2nd Defendant) were the only two members of the Iwarefa who had to elect the Oluwo. I did not go as I had not been previously informed in advance by the Apena—the 2nd Defendant) of the drumming which was to take place, and had not

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiffs'  
Evidence.*

No. 13.  
Josiah  
Akinwande  
Thomas,  
5th  
November  
1945.  
Examina-  
tion,  
*continued.*

*In the  
Supreme  
Court of  
Nigeria.*

been summoned to the meeting. I heard the drumming at 11 a.m. The installation would last about 3 hours. I saw the procession pass about 4 p.m. I had arrived in Abeokuta the day before. I had been away three days. I did not go out on the 26th January at all.

*Plaintiffs'  
Evidence.*

No. 13.  
Josiah  
Akinwande  
Thomas,  
5th  
November  
1945.  
Examina-  
tion,  
*continued.*

*Continuing :* On 1st February 1945 : I did not go to the Ogboni Hall. I have not attended a meeting of the Iwarefa since August 1943. In December, the Lisa (one J. K. Coker), myself and the 2nd Defendant were the only members of the Iwarefa alive. J. K. Coker was on his death-bed in December 1944. He never left his bed in December—he was too ill. It was just before August 1943 that I was ever told by the Apena—the 10 same 3rd Defendant—of the time when drumming would take place in connection with any proposed meeting of the Iwarefa. I was not in Abeokuta on 1st February 1945. The Ogboni Society in Iporo owns land and collects rent. The rent amounts to £30, £50 or more. The rent is used to repair the Ogboni House ; to bury Ogboni chiefs who die without money ; and the rest is shared between the Iwarefa and the other Societies of the Ogboni cult. I know the book called “Laws and customs of Egbaland” by Adebessin Folarin. It is recognised by natives as an authority on their native laws and customs. He is alive and a lawyer and an ex-judge of the Native Court, and still lives in Abeokuta. Tendered 20 as a legal authority. Objected to by defence on ground that author is still alive ; he is not a recognised authority because his book has not been proved to be recognised by any Court or any Native Authority

The book is admitted under the provisions of s. 58 of the Evidence Ordinance 1943—it being agreed that Mr. Folarin is unable to attend Court on account of illness. JAT. 2.

Cross-  
examina-  
tion for 1st  
Defendant.

*XX-exam'd by Alakija :* I was first appointed to the Iwarefa as Base in 1934. I am the Base of Iporo still. It is not true that I am no longer the Base of Iporo. I last attended the Ogboni House in 1943, sometime before September. In 1942 I was there for the election of the member for 30 Iporo to the Central Council. That was the occasion on which the Iporo Township split into two. It is not on the question of the present appointments that the Township was split in two. This year I was, and stayed, in Abeokuta, and left for Lagos only to consult my solicitors in connection with this case. My reason for not going to Ogboni House since September 1943 is that the Apena is always adamant in not calling meetings, and he is always at loggerheads with Iwarefa chiefs. I have brought another action against certain other people in Iporo Township because my name was defamed. I have not been drummed out of the Iwarefa Society in October 1943, or at all. It was only when I went to take action against members 40 of the Iwarefa that the Alake tried to effect a settlement.

*To the Court :* The members of the Iwarefa who were alive were the Lisa, the Base and the Apena, in September 1943. There was no Asalu appointed in 1942 nor was there an Asalu functioning in September 1943. I do not know whether there was an Asalu this year. The head of all the Ogboni in Egbaland is the Oluwo of the Egbas. An Ogboni House can go into conclave without the approval of the Alake. I do not know that the Alake is the head of all Ogboni Societies. From time immemorial it is generally accepted that the Ogbonis have looked after the Iporo Township affairs—certainly from 1830. I do not know that they have gradually 50

lost their powers. Up to to-day, the Ogboni collect taxes and settle petty misunderstandings in the township. In 1926—and not before, the Alake formulated a rule that no Ogboni Society should hold any meeting without his approval or commission. There were protests and litigation; but might is right. On the advice of the then Resident in Itoku Ogboni apologised to the Alake for having held a conclave without getting his previous approval.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiffs'  
Evidence.*

10 Before that year it was not the custom for the Ogboni Societies to obtain the Alake's approval before holding a conclave. The conclaves were held every 33 days. It is not so that the Alake is the head of all the Ogboni Societies. The Alake could only close down the Ogboni meetings in the same way as the Governor could close down Freemasons' Halls. I could not be installed if the Alake did not accept the customary fee. I was approved by the Alake. It is an Ogboni title—the Base of Iporo. He gives his approval as an Oba or King; we owe allegiance to him. He does not approve as an Ogboni head. I first heard that the title of Oluwo was going to be conferred on 26.1.45 at 10 a.m. I was here in Abeokuta. The Oluwa was installed on that very day. I did not go to the District Office. On 1st February I did not go to the District Office  
20 Abeokuta I was in Lagos. In 1940 I was in Abeokuta. I am the Chief Peacemaker of the Iporo Township. I am not the trouble maker who started all the trouble in Iporo. The Alake interfered with the Iporo Townships when complaints were made about the Apena usurping all the fees.

No. 13.  
Josiah  
Akinwande  
Thomas,  
5th  
November  
1945.  
Cross-  
examina-  
tion for  
1st  
Defendant,  
*continued.*

*XX-examn'd by Majekodunmi :* I was never flogged out of the Ogboni House in 1942; never beaten out of it. I attended no meetings of the Iwarefa since September 1943. On 29.3.44 at 11 a.m. I remember a meeting at the Alake's Palace. I was present throughout that meeting. I made obeisance to the Alake. I did not apologise to the chiefs. I see  
30 Jekayinfa in Court. He is not the Asalu of Iporo as he has NOT been constitutionally elected. This man was there at the Palace. He took part in the discussion at the Palace. The man had been warned not to create unconstitutional titles. I recognised him previously as the Balogun of Iporo. That was before the present incident arose over his election to be the Asalu. Before he was elected Balogun he had been the Otun. He and I were installed on separate offices on the same day. He was called from his farm to come and be the Balogun. He had gone back to his farm after he was installed as Otun. About 40 per cent. of all Iporo and Iwarefa chiefs were present at the Alake's Palace on 29.3.44. We had written  
40 to the Alake about the unconstitutional election and appointment of Jekayinfa as Asalu in October 1942. No one objected to his speaking at the Alake's Palace. I have brought no action concerning Jekayinfa being made Asalu of Iporo. I know Aderoku—former Oluwo of Iporo. Before he was installed he was the Jaguna of Iporo; that is the Olorogun title. The Olorogun is higher than the Ologun. That is a martial title. There was no protest against Aderoku being made Oluwo of Iporo. I know Obadina—former Balogun of Iporo. Before his installation as Balogun he was a chief. I cannot tell the title now, which he had. I know Idowu Shoyoye—the Balogun of all the Egbas. Before his installation he was the  
50 Baala of Igbein that is, an Igbein Iwarefa title. I do not know of any protest to his installation as Balogun of all the Egbas. There is no

Cross-  
examina-  
tion for  
2nd, 3rd  
and 4th  
Defendants.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiffs'  
Evidence.*

No. 13.  
Josiah  
Akinwande  
Thomas,  
5th  
November  
1945.  
Cross-  
examina-  
tion for  
2nd, 3rd  
and 4th  
Defendants,  
*continued.*

connection between the Balogun of all the Egbas and the Ogboni Societies. I know Idowu Kinosi—he was an Odofin of Ijeun, an Iwarefa title. He was elected to the post of Balogun of Ijeun. Then he was elevated to be Seriki of all the Egbas. There was no protest about that elevation. The Seriki of all the Egbas is not part or parcel of the Ogboni Society Organisation. Ijeun is part of the township of Abeokuta in the Egba Alake section. This appointment to the Balogun of Ijeun was from the Iwarefa chieftancies to the Ologun Society—the higher to the lower. It was in 1939 that Aderoku was elevated to the Oluwo of Iporo from Jaguna of Iporo. I know J. A. Luwaji. He is at present the Balogun of Itoku Township 10 part of the Egba Alake Section of Abeokuta. Before his installation as Balogun, I do not know if he held a title. He was installed in 1937. I was not present at his installation. I know Emanuel Folarin. I knew he was the Adila of Ikereku Township in Abeokuta. I have heard that he has been installed as the Balogun of Ikereku. That would be about 2 years ago. An Adila is a member of the Ogboni Society. This book by Folarin is correct. A holder of a junior title in the Ogboni cannot become a senior holder all at once. Throughout all Egband the native customs are the same.

*Counsel refers to page 122 of Folarin's book JAT. 2 : I agree that what 20 the author there says is correct.*

*Counsel refers to page 113 of Folarin's book JAT. 2 : I do not know from personal experience whether an Oluwo can be appointed outside the Ogboni circle. I was the Base of Iporo Township when 4th Defendant was installed as the Bagbimo of Iporo Township. The question arose about his not being a native of Iporo. He had to borrow the title of the title holder by paying the usual fees of sheep, gin and money to the family of the title holder. He brought the money and gifts to me. I handed these things to the Apena who in turn handed them to the children of the title holder. On 26.1.45 I heard the drumming at the Ogboni House. Any 30 member of the Ogboni has a right to enter the Ogboni House. There was nothing to prevent my going there if I wanted to. I did not go, because the Apena had not done his duty towards me. I heard while the drumming was going on that the drumming was to announce the installation of a chief. I live about 300 yards away from the Ogboni House. I had not been into the Ogboni hall since September 1943. Jekayinfa was installed as Asalu after I ceased going to the Ogboni House. I did not file an action over that because I had no money to waste. I can walk to the Ogboni House now if I want to. I don't go because I wish to keep the peace—otherwise the Apena's followers might assault me. 40*

Adjourned to 9 a.m. 6.11.1945.

(Sgd.) C. N. S. POLLARD,  
Ag. Judge.

Tuesday, the 6th day of November 1945.

AKINWANDE THOMAS 2nd Witness for Plaintiff.

*Cross-examination by Majekodunmi (continued).*

Jaguna of Iporo is an Iwarefa in Iporo Township. When a post of Oluwo is vacant, we always take a man from Iwarefa or Iwarewa. I do

Cross-  
examina-  
tion for  
2nd, 3rd  
and 4th  
Defendants,  
*continued.*

not know that it is part of the native law and custom of Egbaland for an Oluwo to be chosen from outside the circle of Iwarefa or Iwarewa chiefs. Jaguna is a war title. He is entitled to be promoted to the Oluwoship. I knew J. K. Coker's father. I do not know if he had a title. My grandfather had a title ; my father did not. I do not agree that no ancestor of J. K. Coker had a title. An ancestor of mine was the Base of Iporo. No person outside my family can be the Base of Iporo unless he borrows that title with the consent of the family. Nlado was the first title I held in Iporo Township. It was created specially for me by one Shoji, a former Apena at Iporo. I was asked what title I wanted. I said Nlado. Obadina was then the Balogun of Iporo. It was not necessary for me to have been the Nlado before being created Base. I could not have been elevated to be the Base without having held a chieftain's title. If I had applied, he could have refused making me the Nlado. I never asked for it ; it was offered to me. The Apena is the messenger of the Iwarefas. He offered me the position of Nlado on behalf of the Iwarefas. Before I was elected it was not a title of Iporo Township. Logemo is a title. I first knew of it when Mr. Adeogun was created by the Christian Parakoyi Ogundeyi who died as the Bashorun of the Egbas. I don't know that he was created Logemo of Iporo Township. He was the Balogun of Iporo Township. I don't know that Ogunmefun was the Jaguna of Iporo. I heard that he became the Balogun of Iporo. I don't know that Ogundijo, the son of Shodeke was then the Otun of Iporo—that is next in rank to the Balogun. I don't know when Ogunmefun died. I knew when Obadina became the Balogun of Iporo. I do not recognise the present holder as the Asalu of Iporo. He has been installed as such. In suit 1/23/44 I was the Plaintiff *versus* 30 people in Iporo Township. The present Asalu was one of those 30 Defendants. He was sued as Asalu. He wears the regalia of an Asalu of Iporo. In January 1945, the Apena and the Asalu were functioning as such. The Asalu was installed in 1943 ; he has been functioning as such since then. As an Oba, the 1st Defendant is the head of the whole township. The Ogboni is a political society. I know this book. I see the portrait at page 104. It is that of Sokalu a former Alake of Abeokuta. This book is a History of Abeokuta. He is in the Ogboni regalia in that photograph. The present Alake could only be similarly photographed if he had been initiated as an Ogboni. I did not sign a petition dated 1.2.45 against the 3rd and 4th Defendants being appointed Oluwo and Balogun respectively. I signed a petition dated 12.3.45 addressed to the Secretary of Egba Alake Sectional Council. That is a Council composed of persons elected from different townships in the whole of Egbaland. I prepared this document. I signed it as the preparer ; I associated myself with the petition as I was an Iwarefa. I was the only Iwarefa chief present when the resolution was passed.

*Re-exam'd by Cameron :* The paragraph at page 119 of Folarin's book JAT. 2 under the sub-title "Heritable" is correct according to Native Law and Custom. Titles are created every third year. All families having the right to nominate one of their members to be an Iwarefa are notified that they should nominate a candidate. If the family has no person ready and willing, an outside person can approach the family for the loan of the title. On the death of the borrower of a title, the title reverts to the family. The election held every 3 years is for the filling of vacant titles. The man who borrows the title of a family keeps

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Thomas,  
6th  
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1945.  
Cross-  
examina-  
tion for  
2nd, 3rd  
and 4th  
Defendants,  
*continued.*

Re-exami-  
nation for  
Plaintiffs.



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Supreme  
Court of  
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Josiah  
Akinwande  
Thomas,  
6th  
November  
1945.  
Re-exami-  
nation for  
Plaintiffs,  
*continued.*

it for his life. I signed the petition of 12.3.1945 twice—once as the person who prepared and translated the petition; and also as “The Base of Iporo (Iwarefa)” under my regular signature. Put in as JAT.3—no objection.

*To the Court:* No minutes are kept of the proceedings at Ogboni House. The Apena and I are opposed to each other. We have been so opposed since 1938. The Asalu belongs to the Apena's side. The deceased Coker belonged to my side. He died on 6th January 1945. The Lisa, the Base, the Asalu and the Apena were the living members of the Iwarefa chiefs. Coker was the Lisa. He could not attend to the business of the Iwarefa chiefs as he had been bed-ridden for 4 to 6 months. Up to the installation of the 3rd Defendant I was in a minority of one at any meeting of the Iwarefa. In September 1943 the living chiefs of the Iwarefa were the Odofin, the Lisa, the Base, and the Apena. The Odofin was on my side. Then there were 3 in my favour against the Apena. But the Odofin owing to illness had not attended for over 3 years prior to September 1943. I wrote to the Alake complaining that the Apena was creating new titles without the Ogboni and keeping the fees to himself. I got no satisfaction. I left. The Odofin died in January 1944. To the best of my recollection the Asalu had not been elected to that office before I left. Of the Iwarefa chiefs, 6 of the titles are inherited. The other two i.e. Oluwo and Apena are elective. Whether the title is inherited or not, still the Iwarefa has to agree to the selection. If the Iwarefa refuse, then the family concerned will have to put up another candidate. There is no written or unwritten native law or custom which requires a minimum number to form a quorum. When the Apena was doing things in the wrong way in 1938, we all complained to the Alake. As a result of his advice a rule was drawn up and agreed upon. There is no rule which requires a particular number of chiefs to meet for Iwarefa chieftaincy business. The vacancies created within the ranks of Iwarefa chiefs should be filled quickly. If not filled, the remaining members of the Iwarefa carry on the business on hand. If the number left is reduced to three, those three can carry on the Iwarefa business. But I say only if harmony prevails. The vote of the majority carries; great deference is given to the opinion of the senior members. A majority can overrule even the Oluwo. This applies when harmony prevails. When I use the phrase “harmony prevails,” I mean harmony among the Iwarefas themselves and in the whole township. When the Asalu was installed, I say that as only the Apena was present the installation was irregular. I honestly say that I really do not know if the present Alake is or has been a member of the Ogboni Society. There is no written ritual dealing with the installation of Iwarefa chiefs. More than one person must be present for the installation of an Asalu. If one only is present he should not do it. The Alake would not know the requirements of the ritual. All he has to do is to approve. If a man is irregularly installed, that is not his business. No other Iwarefas of other Ogboni Societies has any right to be even present when the secret conclave of a particular body of Iwarefa chiefs is being held. At an installation all members of the Ogboni Societies are entitled to be present; but none of those members, and no chief of any other Iwarefa, is allowed to take part in the actual election itself. If death removes all the Iwarefa chiefs but one, then it is proposed to the members of the particular Ogboni House that the sole survivor should carry on alone. I still maintain that, in

spite of the cases cited to me by counsel for the defence, it is contrary to native law and custom for a person holding the title of Balogun of Iporo to be appointed to the title of Oluwo of Iporo. In the case of Obadina for Balogun of Iporo he was a chief of Ologun class before he was made Balogun of Iporo. In the case of Aderoku, as he was a member of the Olorogun, which is a higher class than that of Ologun, it is permissible by native law and custom for him to be made an Oluwo of Iporo. In the case of Idowu Shoyoye, the Alake himself admitted in 1942 that he made the appointment contrary to native law and custom. He said so in 1942.

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nation for  
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*continued.*

- 10 I was present as a spectator in the Egba Central Council when the Alake said so. The other cases are recent. The descending order in the Iwarefas is Oluwo, Lisa, Odofofin, Aro, Asalu, Base, Baala, Apena. The Apena holds the lowest rank among the Iwarefas. On the death of any member of the Ogboni Society each and every member of that particular Ogboni House is entitled to and receives a portion of the fees payable on the deceased's death. Some fees are paid to the chiefs direct. Some are paid for the whole Ogboni House. The Apena receives all moneys. A member of the Ogboni House who becomes an Iwarefa chief is entitled to further fees. There is a financial advantage in becoming a chief—as an
- 20 Iwarefa chief gets greater perquisites. Such an Ogboni chief has special duties to perform in connection with the funeral of a rich Ogboni chief. The fattest fee is within the Iwarefa. There are some fees which only an Iwarefa chief is entitled to be paid, and to share among the Iwarefa chiefs of the particular Ogboni House—and the proportion is that the Oluwo gets 25 per cent. and the remainder is proportionately reduced. There are at least three special sets of fees ; also cloths, gin, sheep form part of the extra perquisites.

*To Mr. Alakija (with leave of the Court) :* During the ceremony of the installation of an Iwarefa chief, the Apena performs the ceremony. If the

- 30 Apena is absent throughout, or otherwise, the second in rank to the Apena performs the ceremonies that he should have performed. That second in rank is not bound to be an Iwarefa. I agree that the promotion to be a title-holder is not governed by immutable laws.

*To Mr. Cameron (with leave of the Court) :* When the Apena dies, automatically the 1st assistant acts for him. If he is chosen by the Iwarefa chiefs to be the Apena the Alake will be informed and if the Alake approves then the Apena will be ceremoniously installed. The Iwarefa chiefs instruct the Apena when he should call a meeting. According to Native Law and Custom he cannot call a meeting without instructions.

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No. 14.

**EVIDENCE of Christopher Alphonso Titcombe.**

CHRISTOPHER ALPHONSO TITCOMBE 3rd Witness for Plaintiffs  
sworn on Bible. Yoruba.

*Examination.*

I am the Secretary to the Egba Native Administration. I produce the minutes of a meeting held on 22nd October, 1942, of the Egba Central Council. Mr. Cameron refers to page 247 and it is agreed by counsel that

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Alphonso  
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tion,  
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tion for  
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a certified true copy of the relevant part of that page should be made by the witness—the head of the department concerned with the custody of the minutes. The Court reads the original entry. CAT. 1. I produce a letter dated 13.3.45 addressed to me in which a protest is made to the installation of Sodipo and Lawani and also the copies of the resolutions attached. The Alake must have seen it. About a dozen petitions were sent to the Alake directly or indirectly concerning the installation of Sodipo and Lawani, the 4th and 3rd Defendants respectively. CAT. 2.

*XX-examn'd by Alakija :* I produce a counter-petition from the "Loyal chiefs and people of Iporo" dated 23.3.45. Objected to, copy 10 not having been signed. Not put in. I produce an original communication from the Iporo chiefs announcing the deposition by the Ogboni House of the Plaintiff as Base of Iporo. Not objected to. CAT. 3. I produce the minutes of the Egba Central Council of a meeting held on 10.6.1926. The minutes include details of a discussion concerning the right of the Alake to control meetings of the Ogboni House. CAT. 4.

*XX-examn'd by Majekodunmi :* There were many petitions sent to the District Officer about the elections of the 3rd and 4th Defendants. I have nothing to do with his office. As a rule when the District Officer replies to the petitioners he sends copies to the Alake. I am an Ogboni chief. 20 Lige gere of Ake. I am the 4th in succession. It is a family heritable title. I knew when 3rd and 4th Defendants were installed. I was not present. My title is that of an Iwarefa chief in Ake. I cannot speak of it as a fact as to whether the 3rd and 4th Defendants were presented to the Alake for approval. I was away in Lagos.

*To the Court :* The present Alake was initiated as an Ogboni in the Ake Ogboni House. That is common knowledge. He was a chief in that house. No man can become an Alake of Abeokuta unless he has been an Ogboni chief.

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*Re-examined :* I do not know the name of the Ogboni title held by the 30 Alake before he became the Alake.

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No. 15.

**EVIDENCE of Sanni Falola.**

SANNI FALOLA 4th Witness for Plaintiffs sworn on Koran. Yoruba.

*Examination.*

I am a farmer. I belong to the township of Iporo Sodeke. I hold the title of Seriki of Iporo. It is a title of the Ologun Society. The titles held at present in the Ologun Society are : the Osi, the Balogun, the Ekerin, the Areago, the Are Olibon, the Bada and minor chieftaincies which I do not remember. When an Ologun title falls vacant, the way in which 40 it is filled is as follows : The chiefs I have enumerated would select a candidate and present him to the Iwarefas. The Iwarefas then approve. The title money is then produced to the Iwarefas. The Alake's portion will be sent to him and he is later informed that the man has been installed in the particular Ologun chieftaincy. It is the duty of the Balogun to

call meetings of the Ologun chiefs. No meeting was held at which 4th Defendant was elected to be the Balogun by the Ologun chiefs. I would have known if any such meeting was held. I last went 4 years ago to a meeting of the Ologun chiefs. Iporo Township has lands at Orile Iporo. The Apena receives rents from those lands for the Iporo community. I am entitled to a share of that rent because I belong to the chieftancy of Ologun. When title fees are paid I am entitled to a share of them because I belong to the Ologun chieftancy. I got no portion of any share of any title money that may have been paid by 4th Defendant. The last call I got was 4 years ago. I do not know if there has been any meeting of the Ologun chiefs in the past 4 years.

*XX-examn'd by Alakija* : Ologun chiefs meet at the Balogun's house. For 4 years I have not attended any meeting of the Ologun chiefs. There were no meetings to which I was summoned. 4th Defendant and Gbadamosi Igbin were rival candidates for election to the Egba Central Council. I was a supporter of Gbadamosi. Before that there had been a dispute between Gbadamosi and one Delu. I was on the side of Gbadamosi then. As a result of those rivalries I ceased going to the meetings of the Ologun chiefs. That was in 1941. I am doing my duty as an Ologun chief. I go to their houses to effect the settlement of various affairs. 3rd Defendant was a Balogun, before 4th Defendant became the Balogun. I was present when he was at our meetings. In 1941 I had no quarrel with 3rd Defendant up to now we have had no quarrel. Each time I come from my farm I go to salute him ; he returns my salute ; he has never told me of a meeting of the Ologun chiefs. I never bothered to ask him if there were meetings because if there were he would have told me of them. I collect my share of the fees from 3rd Defendant when I go to see him. Moneys have been collected over chieftancies—the Ekerin ; the Ogboye ; the Osi—from which I have not received my share of the fees. The Ekerin was made a chief not quite a year ago. I am entitled to those fees even if I do not attend the installation. Money is not my sole interest in the Ologun chieftancy meetings. The share of rents I receive is sometimes £20 or more per annum. No, I do not get all of that. That sum is what is collected. I have never received any portion of that rent. I am entitled to part of that rent as it is my forefather's land. I am entitled to that rent because my forefathers owned the land and NOT because I am an Ologun chief. I know No. 1 Plaintiff is Base of Iporo. He and I were made chiefs the same day—I am Seriki. I have received, and given to the Iwarefa chiefs rents received from Iporo township lands. That is how I know that the Iwarefa chiefs get rent from these lands. The 1st Plaintiff had to share as an Iwarefa in those rents. He and other Iwarefas were therefore sharing the rents that I should have received from the lands belonging to my forefathers. Everybody in Iporo Township is entitled to a share of the rents from these lands. I have never received any portion of those rents. If I had received a portion of the fees paid by the Ekerin that would mean I had approved. I was not present when the Osi was installed. I do not approve of the appointment of those other chiefs I have named. That is so because the Balogun did not summon me. I said before, that among the titles held at present was that of Balogun. I was referring then to the 4th Defendant the present holder. I had not heard about his election. If I am offered now the fees concerning the election and installation of the Osi and Ekerin I would not accept

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tion for  
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tion for  
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tion for 1st  
Defendant,  
*continued.*

them till this case is over. I would approve of the installation of Osi. I had been summoned but I could not come as I was not well. That was about 9 or 10 months ago. I was sent for about the election of the Osi. I had not mentioned the Balogun as the one who had then sent for me 9 months ago. One Sakotu sent for me. He is a big Jaguna chief. If he is in his farm and I hear anything about chieftaincy I send to him. If there was not this case, and I had been offered the fees about the elevation of the Ekerin I would not take them.

Adjourned to 7th November 9 a.m.

Wednesday, the 7th day of November 1945.

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SANUSI FALOLA *continuing* :

*XX-examn'd by Alakija (continued)*: The chiefs of the Ologun present a candidate they have elected to be one of the chiefs to the Iwarefas. The Iwarefas then approve. The candidate then pays his fees. Then the Iwarefas present his nomination to the Alake and send the Alake his part of the fees. If the Alake accepts the fee, then he shows his approval of the candidate. Then the candidate is installed. We members of No. 2 section of the Iporo community meet at 1st Plaintiff's house. We members of No. 2 section did not secede from the main body. I have not entered into the Ogboni House for the past 4 years. The Olorogun chiefs do not meet with the Iwarefas at Ogboni House every 17 days. The Olorogun chiefs meet the Iwarefas at Ogboni House only when there is to be an installation of an important chief of the Iwarefas. The Iporo Township Council meetings do not meet in the Ogboni House. The Ogbonis meet every 17 days in the Ogboni House. The Ologuns belong to the Ogboni Society. Our forefathers had not been meeting with the other Ogboni every 17 days. The Oloroguns meet in their own meeting place. I last went to a meeting of the Ologun chiefs about one month ago at the house of the Balogun of the Egbas. I attend those meetings regularly. The Ologun chiefs who go there are all the chiefs of the Olorogun in Egba-Alake. In Iporo township there are alive to-day 4 members of the Ologun chiefs. They are members of the Balogun's side. In all there are 9 members. Of these 9 members, besides me, 2 had been attending our meetings. It is 9 months ago since either of these 2 last attended our meetings. We then met at house of 1st Plaintiff. I am the only one left of the 9 chiefs who attend the meetings at Thomas's house (1st Plaintiff). I was not present when the Iwarefas last met to consider the appointment to the Balogun title. I did not go because I was not summoned. If I had been summoned, I would have gone. As I was not summoned I did not go. I did not split with the other members. I never complained to the Balogun, who had to summon me, that he had not summoned me. Three years ago, he had told me that there was no meeting to be held. I did not know that the Ogboye and the Ekerin were installed on 16-1-45. The Osi was installed about 9 months ago.

*Not re-exam'd.*

To Court.

*To the Court*: I have never been deposed as a chief. When a chief of the Ogbonis is to be deposed and deprived of his title, the community

would be told of the Chief's offence by the Ogbonis. The Apena makes the announcement to the community outside the Ogboni House. The members of all the Ogboni Societies should be there and the Christians, and the Mohammedans. The chief to be deposed must be present and told his offence. The Ashipa is the informant. The Ologuns, the Parakoyis, the Christians and the Mohammedans are asked to state their views. The Iyalode of the female community—she is the head of the women's section is also asked her opinion. Before a chief is deposed he must be offered an opportunity of paying a fine. If he does not pay that fine, he is deposed. A peculiar type of drumming is then performed; a sheep is to be slaughtered—the symbol being that when the blood of the sheep is spilled on its being slaughtered, the particular chief is regarded as being dead. His regalia is taken from him; he is ordered NOT to wear the regalia again. There can be no deposition of any chief, if the chief does not go and attend the ceremony. The Iporo Township Council has nothing to do with the deposition of any chief.

*By leave of the Court to Cameron:* The procedure I have outlined concerning the deposition of a chief does not apply to a person enjoying an inherited title. Nothing can be done to him if he refuses to apologise. The title of Base of Iporo is a hereditary title. I know of no meeting of the Iporo Township people called for the purpose of deposing the Base of Iporo. Members of the Iporo Township Council are chosen by the Iwarefas; the Ologun, the Balogun of the Christians and the Balogun of the Mohammedans. There are now 12 members of that Council. I have been a member of the Iporo Township Council and still attend their meetings. This Council discusses and decides the collection of taxes. Any community dispute is taken up by them and discussed with the Alake, or placed before the Native Courts. This Council meets to appoint a candidate for the Central Council. This Council has no power to instal or depose any Iwarefa chief. In October 1943, I was a member of the Iporo Township Council. I was not invited to that meeting. I had heard of it subsequently. I heard of the resolutions. The Iporo Township Council had no power to make any such resolutions. This Council was first formed a long time ago—before I was born.

*To Alakija with leave of the Court:* I know of no matter affecting Iporo Township held by the Iporo Township Council at which the Ogbonis were not present.

*Witness is to stand down and will be recalled for further xx-examination.*

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No. 16.

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**EVIDENCE of Christopher Alphonso Titcombe.**

**CHRISTOPHER ALPHONSO TITCOMBE, recalled:**

I produce a letter from Irving and Bonnar dated 26.1.44. Put in as CAT. 5: Not objected to. I put in the letter written by me in reply dated 9.2.44. Put in as CAT. 6—not objected to. I don't know when the Iporo Township Council was formed. It was formed after 1937—the year

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when an Intelligence Report was prepared. It was formed by the Alake and the Government. An instrument formed both the Egba Central Council and the Advisory Council. I produce that instrument dated 5th December 1944. The Iporo Township Council is an advisory Assembly of Ogboni, Parakoyi, Olorogun, Erelu, Oshono men and women of the local Township who are old enough to take a hand in the affairs of the Township. Each section of the Township has a separate sectional council. The Iporo Township Council came into being in a reconstructed form by an order of the Egba Native Authority. An Iporo Township Council had been in existence before this order. The Egba Native Authority (appointment of Advisory Council) Order, 1944 CAT. 7. I have never attended their meetings. This Council had to report to the Sectional Council with a view to approval. That sectional Council reports to the Central Council. The Alake is the sole Native Authority here. Matters have to be submitted to him for his approval by the Central Council. Every important matter dealt with by the Iporo Township Council must reach the Alake, as the sole Native Authority, for his approval or ruling. 10

By Court.

*To the Court :* The present Native Authority Ordinance 1943 repealed the previous Native Authority Ordinance. The Iporo Township Council that existed prior to 1943 must have been working under the provisions of that repealed Ordinance. I agree that such a Council could only have functioned within the framework of that Ordinance. 20

*Q.* Is any chief of the Iwarefas *ex officio* a member of any Advisory Council in Abeokuta under the Native Authority Ordinance, 1943 ?

*A.* No. No chief of the Iwarefas can become a member of any Advisory Council unless he is appointed by the Alake.

*Q.* Has any Base of Iporo been so appointed to any Native Authority Council ?

*A.* The 1st Plaintiff, Akinwande Thomas, was at one time a member of the Alake's Advisory Council. He had already left the Council before the 1943 Native Authority Ordinance had passed. A person other than an Iwarefa chief could be made a member of the Advisory Council. It would not be in his capacity of a chief that a man would be made a member of the Advisory Council. 30

*Q.* Is the Oluwo of Iporo *ex officio* a member of any Advisory Council ?

*A.* No ; but he may by appointment to the Central Council become a member of the Advisory Council.

*Q.* Has the present Oluwo of Iporo been so appointed ?

*A.* He has not.

*Q.* Is the Balogun of Iporo *ex officio* a member of the Advisory Council ? 40

*A.* No ; but he may by appointment to the Central Council become a member of the Advisory Council.

*Q.* Has the present Balogun been so appointed ?

*A.* He has not ; but he used to be a member of the Advisory Council when he was Bagbimo of Iporo. He ceased to be a member in March of this year. He is no longer the Bagbimo of Iporo. Neither 1st Plaintiff nor Lawani—the 3rd Defendant nor Sodipo the 4th Defendant are members of any Native Authority or Advisory Council under the Native Authority Ordinance.

*Q.* Is the Abese of all the Egbas *ex officio* a member of any Advisory Council ? 50

A. Automatically, he becomes a member of the Advisory Council as soon as he is installed. There is not at present any Abese of all the Egbas. The person who is made the Abese of all the Egbas is automatically a member of the Advisory Council. He is such an *ex officio* member by virtue of the Egba Native Authority (Appointment of Advisory Council) Order 1944. The present personal and *ex officio* members are set out in the Egba Native Authority (Appointment of Advisory Council) Order 1945 dated 28.6.45. They are 4 in number CAT. 8 Representatives of Federal Councils and District Representatives become members *ex officio* of the Advisory Council if elected to the respective Councils or district first of all; those elected by the members of the respective councils or districts to be their representatives and if approved by the Native Authority (that is the Alake) and the Resident. The 1st Plaintiff, the 3rd and 4th Defendants, are not now members *ex officio* or at all, of any Advisory Council.

*XX-examn'd by Alakija*: The Township Councils have existed from the beginning of Abeokuta 300 years ago. The Ogboni chiefs are the head of the management of affairs of the Township Councils. The Ogonis make the chiefs in the Township. No one can put himself forward as the representative of a Township without the approval of the Ogonis. The Ogonis can depose a chief. Only the Ogboni can beat the Ogboni drum. There is no order governing the constitution of any township. The Township meetings are held in various places. The acclamation would be announced normally in the Ogboni House of the attainment or conferring of a chieftaincy. Going from the Ogboni House to the Alake, the installed chief would be acclaimed. The drumming out of an Ogboni chief would take place in the Ogboni House or lodge of the chief's Township. The Ogboni drummed at the celebration of the Alake's jubilee. That was part of the celebrations. The Ogonis elect the Alake. Those jubilee celebrations were held in September to November 1945. It is impossible for an Alake to be appointed without being an Ogboni.

*XX-examn'd by Majekodunmi*: I am an Iwarefa of Ake Township. When an Iwarefa chief of the Township or any other chief is to be deposed, all those composing the Ogboni in the particular township meet at the Ogboni Hall—or in the case of Ake Township in the Palace of the Alake. The intended-to-be-deposed chief must be invited. He must attend. If he does not attend after being invited by the Apena on the orders of the Oluwo the proceedings continue in his absence. If the intended-to-be-deposed chief comes the charges are formulated and read out to him. The chief then answers. If his reply is satisfactory in the opinion of the assembly he is acquitted. If not he is condemned to pay a fine which if paid ends the matter after he has apologised. If convicted he is not bound to have the option of a fine given to him. When he has been condemned to be deposed, he is there and then informed by the Oluwo that he should cease forthwith from wearing any of the regalia of office. If he does not so cease, then the drumming takes place for his disobedience to the orders of the Oluwo. When he is warned not to use the regalia, he is under suspension. During such period of suspension, he could make amends. If he makes amends, he may be reinstated. If he is drummed out, the person is deprived of all privileges in the Township. From the day he is drummed out he should not enter the Ogboni House thereafter. Any person who tried to enter would be roughly handled and put out not

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiffs'  
Evidence.*

—  
No. 16.  
Christopher  
Alphonso  
Titcombe,  
recalled,  
7th  
November  
1945.  
By Court,  
*continued.*

Cross-  
examina-  
tion for 1st  
Defendant.

Cross-  
examina-  
tion for  
2nd, 3rd  
and 4th  
Defendants.



Plaintiffs'  
Evidence.

No. 16.  
Christopher  
Alphonso  
Titcombe,  
recalled,  
7th  
November  
1945.  
Cross-  
examina-  
tion for  
2nd, 3rd  
and 4th  
Defendants,  
*continued.*

too gently. In the old days such a person would be killed if he attempted to enter the Ogboni House. Paragraph 3 of my letter CAT. 6 is correct. It states categorically that the drumming out of the 1st Plaintiff was not done with the Alake's approval and that 1st Plaintiff had not been removed from office of Base with the Alake's consent. I heard that the drum had been beaten. I did not actually hear it being beaten.

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No. 17.

**EVIDENCE of Sanni Falola.**

SANNI FALOLA recalled.

*Not further xx-exam'd by Alakija and Majekodunmi.*

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No. 18.

**EVIDENCE of Raimi Moteso Bangbola.**

RAIMI MOTESO BANGBOLA 5th Witness for Plaintiffs s. on Koran ;  
Yoruba.

No. 18.  
Raimi  
Moteso  
Bangbola,  
7th  
November  
1945.  
Examina-  
tion.

*Examination.*

I am a motor mechanic and contractor. I belong to Iporo Township. I hold the title of Osi of Iporo. I am an Ologun chief. I belong to No. 1 section. That is not the 1st Plaintiff's section. When an Ologun title is vacant and to be filled a meeting of the Ologuns has to be called. When Sodipo was to be a candidate for the Balogunship of the Ologun, no meeting was held at which his candidature was ever discussed. I would have known if there was to be such a meeting. My title is 2nd from the Balogun. The Otun comes between us. The Otun is dead. In Iporo 4th Defendant holds the title of Bagbimo ; that is an Agemo title. On 13.3.1945 there was a meeting of No. 1 section. Ologun chief in my house. At that meeting a document was signed. It was a petition to the Alake complaining about the appointment of 3rd and 4th Defendants. Up to now we have got no reply. I have received no fees as an Ologun chief in connection with Sodipo's (4th Defendant's) installation. I would be entitled by Native law and custom to a proportionate part of the fees as much as £1 sterling. The Ologun chiefs hold their meetings at the Balogun's house. I attended regularly the house of 3rd Defendant who was then the Balogun, all meetings of the Ologun chiefs. At those meetings I saw no chief from No. 2 section of Iporo. They were not summoned. Iporo Township has certain lands situate outside the township. Rents are received from those lands as there are kola trees on it. Those rents, I was informed by 3rd Defendant, I should have had a share of ; but in fact I have never received any. I became a chief of the Ologun on 25th December 1944. An Ekerin chieftaincy was filled since I became an Ologun chief. 20 days later I received 5s. as my share of the fee. My title of Osi is a family title.

30  
40

Cross-  
examina-  
tion for 1st  
Defendant.

*XX-examn'd by Alakija :* I know the witness Falola. I do not know that he objected to my being made an Osi chieftain. I would be surprised to hear him say that. About 6 or 7 of us attend No. 1 section meetings

of the Ologun. I don't know how many Ologun chiefs are in Iporo No. 2 section. When I was made chief, I did not see Falola the witness there. He never came. As the Alake has recognised my chieftaincy, it would be improper for anyone to say I was not properly a chief.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiffs'  
Evidence.*

*XX'examn'd by Majekodunmi*: I am 45 years. When as an Ologun chief I was installed, it was a New Year's Eve. After my installation I did not leave for Otta to attend to my motor transport business. I did not leave Abeokuta for 3 months. If an Ologun chief is installed, he should feast the people of his section. I have done so. Between 31.12.44 and 10 26.1.45 there were 3 meetings of the Ologun chiefs I attended at the Balogun's house (3rd Defendant). He is now installed as the Oluwo of Iporo. There was then an Otun alive. I did not see any of the chiefs you have mentioned at any Ologun chiefs' meeting. I did not go over to 1st Plaintiff's side immediately after my installation. Since 13.3.45, I am still on side of 3rd Defendant but as he has ceased to be a Balogun there are no Ologun chiefs' meetings held at his house. We Ologun chiefs receive part of the fees paid to the Iwarefa on the installation of a chief. I have received no portion of any fees alleged to have been paid by 4th Defendant on becoming Balogun or by 3rd Defendant on becoming 20 Oluwo. From the time of my installation to 26.1.45 I never heard any mention at all of the proposed appointment of 4th Defendant as Balogun. I went to the 3 meetings. I was summoned by the Balogun to attend at his house. After choosing our chief in the Ologun we present him for approval to the Iwarefas. The Alake has to approve.

No. 18.

Raimi  
Moteso  
Bangbola,  
7th  
November  
1945.

Cross-  
examina-  
tion for 1st  
Defendant,  
*continued.*

Cross-  
examina-  
tion for  
2nd, 3rd  
and 4th  
Defendants.

Case for the Plaintiffs closed.

Adjourned to 8th November 1945.

No. 19.

COURT NOTES.

Thursday, the 8th day of November 1945.

No. 19.

Court  
Notes,  
8th  
November  
1945.

Sub-  
missions of  
Alakija for  
1st  
Defendant.

30 Alakija submits that no case has been made out for his client to answer. He reads endorsement on Writ. As to 3rd paragraph of the endorsement concerning the representative action, there is no evidence to show that Plaintiffs have at any time been selected to represent anyone far less Iporo No. 2 in this suit. They may or may not belong to Iporo No. 2 but they have to show to this Court that they have the authority of Iporo No. 2 to sue on their behalf. As to 1st paragraph of indorsement, there is no evidence before the Court that the 1st Defendant took part in any installation ceremony of either 3rd or 4th Defendant. All the evidence re taking place of any installation must be treated as hearsay as far as my 40 client is concerned. All that the evidence discloses is that he approved of these men being installed as Oluwo and Balogun respectively. He took no part in the installation. The evidence shows that he in fact does not according to Native Law and Custom take part in the installation.

Majekodunmi submits that there is no case for his 3 clients to answer. The claim of the Plaintiffs is for a declaration that the installation by 1st and 2nd Defendants of the 3rd and 4th Defendants was and is contrary

Sub-  
missions of  
Majekod-  
unmi for  
2nd, 3rd  
and 4th  
Defendants.

*In the  
Supreme  
Court of  
Nigeria.*

No. 19.  
Court  
Notes,  
8th  
November  
1945.  
Sub-  
missions of  
Majeko-  
dunmi for  
2nd, 3rd  
and 4th  
Defendants,  
*continued.*

to Native Law and Custom of Abeokuta. The Assistant District Officer testified as to the interview he had with various people; the receipt of the telegram from Irving and Bonnar, that Firm's letter and the reply of the Resident. The Plaintiff outlined the procedure as to election of candidates. That was confirmed by Mr. Titcombe and the other witnesses. Plaintiff admitted he had not been to the Ogboni House; he sent his boy to find out why the drumming at Ogboni House was taking place. He did not go to the Ogboni House because he said he had refused to have any more to do with the 3rd Defendant's doings. He admitted his presence there would have availed nothing as he would have been in the minority. 10 He agreed that without Alake's approval, no installation could take place. The letter of the Resident to Irving and Bonnar showed that the installation had already taken place. He refers to Folarin's Laws and Customs of Egbaland p. 113 under title of "Iwarefa." Plaintiff's evidence of automatic successive promotion from one title to another is incorrect. His evidence that a holder of the title of Bagbimo of Ologun Council go to the office of Balogun of the Ologun is not to be accepted as it is contrary to the instance put by me to him of such a practice having been already done. If Court is satisfied as to what the procedure of creating a title of chieftaincy is according to Native Law and Custom, then 2nd part of the 20 claim re injunction is misconceived as the Court must be satisfied that that procedure has been followed. It was the duty of the Plaintiff, to show that that procedure has not been followed. It is submitted that the Plaintiffs have failed to discharge that onus. Counsel associates himself with Alakija's first submission as to the absence of any proof that the Plaintiffs are suing in a representative capacity.

Court's  
ruling.

*Court's ruling :*

The submissions of both counsel are overruled.

Sub-  
mission by  
Alakija for  
1st  
Defendant.

Alakija tenders a certificate of Dr. C. P. Murray and requests that the Court should proceed to the Council Hall in the Alake's Palace to take the 30 Alake's evidence. The Court reads the certificates and rules that it is likely to be harmful to the Alake's health to come and give evidence in open Court.

In the meantime, Alakija calls.

*Defendants'  
Evidence.*

No. 20.

**EVIDENCE of Emanuel Idowu Kinosi.**

No. 20.  
Emanuel  
Idowu  
Kinosi,  
8th  
November  
1945.  
Examina-  
tion.

EMANUEL IDOWU KINOSI, 1st witness for 1st Defendant, sworn on Bible. Yoruba.

*Examination :*

I am the Seriki of the Egbas. I am an Ogboni and I was an Iwarefa 40 Chief. I became an Ogboni over 15 years ago. I held the title of Odofin of Ijoun Township—it is one of the Egba Alake Townships ranking next to the Township of Ake. I was Odofin for about 6 years. Then I became Seriki of all the Egbas. I had been made Balogun of Ijoun Township. I was Balogun not even one month. The Alake approved the conferring of these titles on me. A Seriki of the Egbas is the title of a general chieftaincy. I am a member of the Egba Central Council. The head of all

the Ogbonis in Egbaland is the Olumo of Ijeun. The Alake is elected by the Ogbonis. If a candidate for the Alakeship of Abeokuta is of royal family he need not be an Ogboni to be eligible for that office. I do not know if the present Alake (the 1st Defendant) has been made an Ogboni. The Alake approves all titles in Egbaland. Before I was made Odofin I held the title of Nlade of Ijeun. That is an Ogboni not an Iwarefa title. It is not an Ologun title. In Ijeun we have no title as Bagbimo.

*In the Supreme Court of Nigeria.*

*Defendants' Evidence.*

*XX-exam'd by Majekodunmi and Williams reserved.*

No. 20.  
Emanuel Idowu Kinosi, 8th November 1945. Examination, *continued.*

No. 21.

**EVIDENCE of Charles Peter Murray.**

10

CHARLES PETER MURRAY, 2nd witness for 1st Defendant, s. on B. European.

No. 21.  
Charles Peter Murray, 8th November 1945.

*To the Court:* I am a Medical Officer in the Nigerian Government Service. I saw the Alake this morning. I did not take his blood pressure this morning but on Saturday last. It was 175. He is 73. The blood pressure is usually the age of the patient plus 80. It is in my opinion advisable for him to avoid undue excitement. I honestly think that it is in the interest of the Alake's health that he should avoid the excitement of giving evidence in open Court. I see no objection to the parties being present when the Alake is giving evidence at the Palace.

20

*Not examined by Counsel.*

On this evidence of Dr. Murray, the Court rules that the Alake may give evidence in the Palace, if he so desires.

No. 22.

**EVIDENCE of Emanuel Idowu Kinosi, recalled.**

EMANUEL IDOWU KINOSI, *recalled for xx-examination by Majekodunmi:*

No. 22.  
Emanuel Idowu Kinosi, recalled, 8th November 1945. Cross-examination for 2nd, 3rd and 4th Defendants.

30

I know the Native Law and Custom of Egbaland to a certain extent. It is not wrong for an Ogboni of one Society to go to another Ogboni Society. An Ologun chief can become an office holder in the Iwarefa; it is not customary for an office holder in the Iwarefa to hold a title in the Ologun. It would be a degradation. It is not in accordance with Native Law and Custom except there is good reason such as the Ologun title being a general title i.e. Balogun of the Egbas; Seriki of the Egbas. Those are Ologun titles. The Balogun of the Egbas is a higher and different title from a Balogun title of the Ologun.

40

*XX-exam'd by Williams:* It is against Native Law and Custom for an Iwarefa title holder to be nominated a title holder in the Ologun itself. If it is a general title—such as “of all the Egbas,” then it is permissible. My title of Odofin was an Iwarefa title. It was after that that I became Balogun of Ijeun—i.e. an Ologun Township title in Ijeun. I hold both titles of Balogun of Ijeun Township an Ologun title and Seriki of all the Egbas a general title. The Ijeun Township chiefs appointed me to be the

Cross-examination for Plaintiffs.

*In the  
Supreme  
Court of  
Nigeria.*

*Defendants'  
Evidence.*

No. 22.

Emanuel  
Idowu  
Kinosi,  
recalled,  
8th  
November  
1945.  
Cross-  
examina-  
tion for  
Plaintiffs,  
*continued.*

Re-exami-  
nation for  
1st  
Defendant.

Balogun of Ijeun. That was on 20.9.44. The Oluwo of Ijeun Township is the head of all the Ogbonis. That is a general title of the Ologun and one follows the other. Any Oluwo of Ijeun automatically becomes the head of all the Ogbonis. I was not present at the installation of 4th Defendant as Balogun of Iporo, or of 3rd Defendant as Oluwo of Iporo. If an Ologun chief is to be appointed, it is absolutely necessary for the Ologun and Iwarefa chiefs to be consulted.

*Re-exam'd:* Every township has a body of Ologun title chiefs. Each has a Balogun among these chiefs. The Balogun of the Egbas is the head of all the Townships Baloguns. That is a general chieftaincy title. 10  
There are very many Ologun general titles in Egbaland. They are the Otun of the Egbas, the Osi of the Egbas, the Ekerin of the Egbas, the Asipa of the Egbas, and the Abese of the Egbas.

*To the Court:* I was not present at the election or nomination of either the 3rd or 4th Defendant. As they are titles outside my township I have no right to be there.

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No. 23.

**EVIDENCE of Babalola.**

No. 23.  
Babalola,  
8th  
November  
1945.  
Examina-  
tion.

BABALOLA, 3rd witness for 1st Defendant, sworn on Iron: Yoruba  
and Egba. 20

I am the Odofin of Kesi. I am an Iwarefa of Kesi Township. I have been an Ogboni about 30 years; an Iwarefa for 6 years since I became an Odofin. I was approved as a candidate before becoming an Odofin by the Alake. That was 6 years ago. I went only once to the Alake before becoming Odofin. That was before my installation. After my installation I went to pay homage previously obtained the approval of the Alake. The supreme head of all the Ogbonis is the Alake—All the Ogbonis made him the head of all the Ogbonis. That has been so from time immemorial. The Alake made the Oluwo of Ijeun the head of all the Ogbonis. The present Alake did so. The beads I am wearing were given to the Alake 30  
by the Ogbonis on his installation when he is in the Ipebi. When the Alake goes out he must wear them. He does that to show his connection with the Ogboni.

*Not xx-exam'd by Majekodunmi.*

Cross-  
examina-  
tion for  
Plaintiffs.

*XX-exam'd by Williams:* I did not know the present title holder of the Alakeship before he became Alake. I know the Native law and custom of Egbaland. A Balogun of a Township can go direct to the Oluwoship of that Township. Before that Balogun vacates that office in these circumstances, he is bound to inform the Ologun chiefs of his town-  
ship. If the Otun of a Township is dead the next man to the Balogun is 40  
the Osi. It is not in accordance with Native law and custom for a Balogun to vacate his chieftaincy without informing the Osi. In my own township at Kesi, a Balogun called Ojo was installed Oluwo of Kesi Township. That was about 10 years ago. I have heard of no other case in Abeokuto.

*Re-exam'd*: The elevation from the Balogunship to the Oluwoship is not contrary to Native law and custom. When a person is about to relinquish the title of Balogun he must tell the Ologun chiefs and the Ogbonis. He must tell all—Alakija states that the Alake's evidence will close his case.

*Majakodunmi calls.*

*In the  
Supreme  
Court of  
Nigeria.*

*Defendants'  
Evidence.*

No. 23.  
Babalola,  
8th  
November  
1945.

Re-exami-  
nation for  
1st  
Defendant.

No. 24.  
Akisatan,  
8th  
November  
1945.  
Examina-  
tion.

No. 24.

EVIDENCE of Akisatan.

AKISATAN, 1st witness for 2nd, 3rd and 4th Defendants, sworn on Iron.

10 I am an Egba and the Apena of Iporo. I was installed about 20 years ago. The 1st Plaintiff was installed the Nlado of Iporo. I was present when he was installed as the Base of Iporo—I installed him. Then, the Balogun of Iporo was Lawani, the 3rd Defendant. When I was installed Apena, Lawani was the Balogun of Iporo Township. Lawani is no longer the Balogun; he is the Oluwo of Iporo. He came to the Olowu of Iporo in this way. I received a message from his Otun. The Otun couldn't come himself. He sent 3 people. He sent to tell me to forgive him not coming as he was unwell—unable to get up. This message was "I beg you, tell your people that Lawani should be installed the Oluwo." I asked the messengers to return the third day. On the 3rd day the same messengers came again. I told them that Lawani would be sent for. I had delivered his message to the "Ilu"—the town people. I sent for the town people and Lawani. The matter was discussed and Lawani accepted the appointment as the Oluwo. I told the messengers whom the Otun had sent that Lawani and the town people had agreed upon Lawani's appointment. The Otun sent a message to ask us to continue to help the Otun. The Otun asked my messengers to send for Bagbimo who holds the rank next to me. I sent for him. He was unwilling to come. When he did not come I put the matter before the

20 "Ilu" to get their help in sending for the Bagbimo in order that we might hear him. I then sent to the Alake that our Balogun had been appointed the Oluwo. I sent for the Asalu, the Ntoye, the Ajano, and a number of others all headed by the Asalu, so as to lay this matter before them—i.e. about the Balogun accepting the appointment of the Oluwo of Iporo. When we arrived at the Alake's house, a telephone message was sent to the Bagbimo, and he came. The Alake asked the Bagbimo what was the matter about which the Iporo put before him which he refused. The Bagbimo is in Court. He is the 4th Defendant. I know him by the name of Mulaja. The Bagbimo told the Alake that he would not accept the

40 appointment of Balogun. He told the Alake that he would accept. It is the custom in our land that if a man had been a chief for a long time—an Ologun chief—he would be elevated to a higher chieftaincy in the Ogboni cult. After that elevation he would partake of the affairs of the town, but if unable to attend he would send his son. When a man is appointed the Oluwo, if he is a lay man before his appointment, the things he will have to do will be enumerated to him. The thing the Balogun had to do to become the Oluwo is to do good for the town. I did not say just now that the Otun had sent to me to tell me that the Balogun

*In the  
Supreme  
Court of  
Nigeria.*

*Defendants'  
Evidence.*

No. 24.  
Akisatan,  
8th  
November  
1945.

Examina-  
tion,  
*continued.*

should be made Oluwo. The Otun sent 3 people to tell me that I should tell my people that Lawani should be made Oluwo. When I got that message I called the town people together. We discussed it at the meeting. Lawani 3rd Defendant himself agreed. The people said that the Otun's suggestion to make Lawani the Oluwo is good. But we cannot do anything till we have heard Lawani himself. Lawani was at the meeting. He said he would accept. After he accepted, we went 3 days later to the Alake to pay homage. We prayed for the Alake. After the prayers we did nothing. He entertained us and we went away. Other things happened.

10

*Q.* What are they ?

*A.* May God have mercy on the Ogbonis. We took the Oluwo to the Alake, first of all, after he was installed. Any one who is an Ogboni can become an Apena. Once a man becomes an Apena he remains in that title—chieftaincy—until he dies. Before Lawani was installed he would not fight ; he would do nothing. If he is lay man and is to be installed, he would be kept in a private place and the things he had to do would be enumerated to him.

*Q.* Could you tell the Court if Lawani did those things that he should have done ?

20

*A.* He has been doing great things to the community in the past. Every year the former Balogun would be doing great things for the community. We the community installed Lawani as the Oluwo.

*Q.* Who performed the ceremony ?

*A.* I did the ceremony with the community.

Cross-  
examina-  
tion for 1st  
Defendant.

*XX-exam'd by Alakija :* If a man has never been a chief and he is chosen to be one, we tell him what to do. What we tell him cannot be enumerated within one day. Those things, members of the public can hear.

*Q.* Did the Balogun do those things ?

*A.* The Balogun is different from the Oluwo. The present Oluwo was the Balogun of Iporo. We made him the Oluwo. I told the Court what he had done when he was the Balogun.

30

Court note.

*Not cross-examined by Williams.* He states that no useful purpose will be served in questioning him.

The Court agrees that evidence from an old man of this witness's present state of intelligence is of no value whatever.

No. 25.  
Jekayinfa,  
8th  
November  
1945.  
Examina-  
tion.

No. 25.

**EVIDENCE of Jekayinfa.**

JEKAYINFA, 2nd witness for 2nd, 3rd and 4th Defendants, sworn on Iron.

40

I am a Yoruba. I am at present the Asalu of Iporo. To-day is the first day on which I was not sitting in Court. I do not speak English. I am an Iwarefa. I was installed as the Asalu 4 years ago. We reckon 13 moons to a year. When I was installed as Asalu, Lawani 4th Defendant was the Balogun. He is now the Oluwo of Iporo.

*Q.* Can you tell this Court how he came to be installed the Oluwo of Iporo ?

A. One morning I received a message from the Apena inviting me to his house. The Apena told me he had a matter to discuss with me. He said I have just seen the Abese of Iporo, the Bada of Iporo, the Sarumi of Iporo. He said he came from the Otun and the Otun had sent them to tell me that their Balogun is older than they are. The Apena said he wanted to discuss the matter with me. The Otun sent a message that we should help make Balogun become another chief, because he is older than they are. I then said it would be necessary to call the other Ogbonis and inform them. The Ogbonis said it was good ; it was alright. That  
 10 was 2 days after I had got the Otun's message. The Apena sent for the Ogbonis and we met at the Apena's house. Lawani was not there ; we did not send for him. After the Ogbonis agreed to elevate Lawani to be Oluwo, we had a 2nd meeting outside the Ogboni house. Lawani was there at that meeting. At this particular meeting we told Lawani that we proposed to change his title. He told us he was not prepared to change his title as he had no money. We told him that whatever money he has he should use. He agreed to use his money. We then told the Apena to send messengers to go to the Otun and tell him that Lawani had agreed to what he, the Otun, said. Those instructions were given  
 20 to the Apena at his house after we had returned from the meeting. After that message had been sent, the 3 chiefs I have mentioned went to the Otun and returned to us. On their return they said they wanted to ask us a favour i.e. to give them the chief 2nd to our Apena. That chief is the 4th Defendant. The Apena said he could not release the chief next in rank to him. The 4th Defendant was the Bagbimo. That is the 2nd chief to the Apena. Two days later I went to the Apena to ask him to release the Bagbimo. The Apena agreed that he would release him. We, the Ogbonis, sent for the Bagbimo (4th Defendant). The Bagbimo told us he would not accept. We came to the Alake and told  
 30 him that we had chosen the Bagbimo to be our Balogun and he had refused so we wanted him the Alake to speak to the Bagbimo on our behalf. The Alake telephoned to the Bagbimo, who came. The Alake said to him that his community had come to him and expressed the desire that he should be the Balogun. The Bagbimo told the Alake he would not accept that title of Balogun. The Alake told him he must do what his community wanted him to do. The Bagbimo then agreed to become Balogun. We then went to our homes. We then sent for the Abese of Iporo and told him the Bagbimo had agreed to accept the title of Balogun. We, the Ogbonis met a second time and decided on the title money to be paid by each  
 40 candidate. We took £5 10s. 0d. from each of them. We then went to the Alake paid homage told him our chiefs had accepted the titles. The Alake sent for the newly appointed chiefs and asked if they were satisfied with their appointment, they said yes. We went with £4 8s. 0d. to the Alake—that was part of the title money—£2 4s. 0d. from each of them. The Alake said it was too little for those titles. We explained that was all they could afford. The money was left with the Alake with a promise to bring more, 1 guinea each more.

*To the Court :* The Alake got those 2 guineas the same day. I saw him receive them. The same day the Alake received the £4 8s. 0d. we went  
 50 straight to the Ogboni Hall to instal them. We made up our minds to instal them that day.

*In the  
 Supreme  
 Court of  
 Nigeria.*

*Defendants'  
 Evidence.*

*No. 25.  
 Jekayinfa,  
 8th  
 November  
 1945.  
 Examina-  
 tion,  
 continued.*



*In the  
Supreme  
Court of  
Nigeria.*

*Defendants'  
Evidence.*

No. 25.  
Jekayinfa,  
8th  
November  
1945.  
Examina-  
tion,  
*continued.*

There was no hurry about it. The Alake received the extra 2 guineas. We had the £11 in cash. We took no money to the Palace. We took £4 8s. 0d. to the Palace, nothing more. We straight away went to the Ogboni Hall and proceeded straight away with the installation. I thought the Apena might have sent the Asipa with the 2 guineas. I did not go with the Asipa when he went to the Alake. I said just now that I saw the Alake receive the 2 guineas—that was not a lie.

*Continuing in chief:* The 3rd and 4th Defendants were installed that day with the Alake's approval. After their installation we had no occasion to go to the Palace. I did not return that day. The Balogun and the Oluwo went to the Palace. I went with them that day. It was NOT the same day that I went with them to thank the Alake for the installation. 10

*To the Court:* When the installation began the sun had already begun to go down. When I left the Ogboni House after the installation the sun was almost down. I am quite certain about that. If anyone told the A.D. Officer that the installation had already taken place by 11 o'clock in the morning of the installation, that would not be correct for the A.D.O. came to the Ogboni Hall not on the same day as the installation but on the following day. I am certain that the A.D.O. came to the Ogboni Hall the day after the installation. If on the following day he had been told at 11 a.m. that the ceremony of installation was completed that would be a lie. The day the A.D.O. came was the day of Agada. That Agada day was 6 days after the installation had taken place at Ogboni House. That was the only day I had seen the A.D.O. there. 20

*Continuing:* The Agada is a piece of iron made in the shape of a fork. It is a symbol of an Ologun title—given the Jaguna and the Balogun. I was in the Ogboni cult when there was trouble between 1st Plaintiff and other chiefs. I was the only Iwarefa present when the 3rd and 4th Defendants were installed.

*Q.* Where was the Apena? 30

*A.* If you have anything to ask me, wait till to-morrow. I have a sudden stroke. I could not remember those who were installed chiefs in my presence.

Adjourned to 9th November 1945, as the witness says he wants to go home.

(Sgd.) C. N. S. POLLARD,  
Ag. Judge.

Friday, the 9th day of November 1945.

In the Council Chamber in the Afin—the Palace of the Alake.

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Examina-  
tion.

No. 26.

**EVIDENCE of Ladapo Ademola.**

40

LADAPO ADEMOLA 1st Defendant sworn on Bible.

*Examination.*

I am the Alake of Abeokuta. I am the head of all the Ogbonis in Egbaland. As far back as 1860 the Alake has been so. As he becomes the Alake, he automatically becomes the head of all the Ogbonis in Egbaland.

Formerly, the Ogbonis managed their township affairs with the approval of the Alake. They are now far less powerful than they were years ago. The Ogbonis elect the Alake—with the Ologuns and all the other people. The Ogbonis are composed of the Baloguns, Oloroguns, Parakoyis, Odes (hunters), the Erelus (the head of the women). The beads I am wearing, made of coral, show that I am connected with the Ogboni. Various chains and raiments also signify my connection with them. Before any chief can be made in Egbaland he must be a person of character in the opinion of his township chiefs and their candidate must be presented to me and the

10 matter referred to me. If I have nothing against the candidate I approve and if I consider any person of good character belonging to any township to be worthy of it, I send to that township and tell them that I consider such a person to be fit to become a chief and that I wish such and such a vacant title to be conferred upon him. I ask them if they have any objection. If they said no, then I confer the title. The Base of Ake, J. K. Coker of Iporo Township are examples of that: Adefolu was made Base of Ake. When a candidate is approved by me, he is made a chief in the Township and he is brought back to me for recognition. The Bagbimo of Iporo Township was Sodipo (the 4th Defendant). That title is next in

20 rank to the Apena—a lower rank. In a procession of the Ogboni after the Iwarefa comes the Apena who is the Secretary of the Ologuns and behind him comes the Bagbimo. The Apena is a sort of Secretary. “Bagbimo” is a contraction of Baba and Igbimo. “Baba” is father. “Igbimo” is counsellor. As Bagbimo, he has no separate office to preside over any one or thing. The duties and offices to be performed by a Bagbimo are to be with the Apena and others to consult about matters affecting general interest of the Ogboni House and that of the public also. The rank of 4th Defendant is that of Balogun of Iporo to-day. He was made Balogun as follows: The Apena and other Olorogun, Parakoyi

30 chiefs and the Asalu came to me and told me that they had considered among themselves that the vacant office of Oluwo of Iporo was to be filled up and that their candidate was the then Balogun at the time. They said the then Balogun being old they wanted to fill his position. I asked them if they considered the matter amongst themselves and if they were unanimous that the changes should take place. They said they have all agreed. I told them to go and consider the matter more, and to return another time. That was about January as I was in my country house at Idi-Aba. They returned in greater numbers this time. Some of the women—the Ilu—accompanied them and they told me they could not

40 get Sodipo to agree to become the Balogun and they asked me for my help. I had Sodipo ‘phoned for and he came. I asked him what his objection was. He said he did not want the office. I told him if your people want you, you should take the office. He told me he was contented with the office of Bagbimo and that he was a man of business and did not want to take control. He is often in Abeokuta; travels to the North and he is a transport contractor. He agreed to accept the office of Balogun. The Oluwo was amongst them so there and then I approved. They went away. This second meeting took place in Abeokuta and not at Idi-Aba. My country place is within the town. They left me to go to Ogboni

50 House to have the ceremony performed. They came for recognition a few days after. The 1st Plaintiff in this case is known to me. He is a titled man at Iporo—the Base of Iporo. Often times, he and the Apena

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usually had differences. More than 20 times I have had to effect settlement between them. I had warned them that I would have to dismiss one or other or both of them if they caused trouble. In the Ogboni, the office of Apena is the most important; he is the Secretary; he calls the meetings. At the installation of officers, the Apena is responsible. Though the Base and Asalu are his servants. The Apena actually performs all the ceremonies. Without an Apena, no ceremony can be done in an Ogboni House, except in case of illness when he deputises someone to act for him. The source of friction between the 1st Plaintiff and the Apena was about small monetary matters. All the moneys come to the Apena; he has to 10 account to the Iwarefa for all the money. The Base used to dispute and quarrel between them over 2s. or 3s. at times. I warned the Base that an educated man like him should not bother about small matters like that as the Apena and the Iwarefas perform the duties. A Christian can be an Ogboni. I am a Christian. In olden days they were all heathens. I sent warnings to the Base. My efforts to settle their differences have not been successful. They have succeeded at times but only for a short while. I remember a report being brought to me about steps taken by the Ogboni against the Base of Iporo (the 1st Plaintiff). The report was brought by the Apena and some of his party that the constant friction between them 20 has been so much that they wanted to drum him out. I counselled patience the first time. Then they came again, after the next meeting. 17 days later. I counselled more patience and they then informed me that he had been drummed out that day and that they knew how often they had come to me to complain about him. A Base of Iporo is a chief under me. The drumming out would not exclude him from being an Ogboni. The significance of the drumming out is to exclude him from attending the Ogboni meeting till the differences were settled or I had given my ruling.

I see this Exhibit CAT. 3. In it occurs the expression "ya-fun." That means "to exclude him." It also means "having nothing to do with 30 him." When I got the exhibit, I sent for the 1st Plaintiff and the Apena and his party to effect settlement and went over the matter. I told them it was more about money matters and other things. In certain cases I exonerated the Base, and told the Base that the drumming out was only temporary and that they will only require feasting and asked him if he would come the next day. I told him I would give him money to do the feasting and so finish the matter. He returned later to say that he was not satisfied. He prostrated that day and accepted the terms of the settlement i.e. he should apologise to the chiefs and feast them. This took place about 1 month after I had received CAT. 3. I remember the meeting on 40 29.3.1944 at Palace here. That is the meeting I referred to. I know the Asalu of Iporo Township—he was present at that meeting. The Apena was there also. The Lisa of Iporo (late J. K. Coker) was also there. During that meeting, a clerk of the staff in the Palace was present taking down the record of what was taking place. He did so on my instructions. I have had that report and it represents correctly what took place. A copy of that document was sent to Irving and Bonnar in their capacity as Solicitors to the 1st Plaintiff. The Base of Iporo in fact apologised before me in the Palace to the Ogbonis there and then present. They accepted his apology. All that remained for him to do 50 was to collect money from me to feast them; but he would publicly have to apologise to them in Ogboni House. I received this letter from Irving

and Bonnar dated 26.1.44 CAT. 5. I do not agree with paragraphs 1 and 3 of the particulars. I agree with paragraph 2. It is correct that I agreed with the suspension of the Base. The killing of a sheep and beating of the drum have not got the significance spoken to in that letter. Paragraph 4 of those particulars is incorrect. I did take steps to settle. I heard that the Ogboni chiefs had made efforts to effect settlement before they came to me to report. I replied through my Administrative Secretary to Irving and Bonnar. I dictated part of it CAT. 6. The letter contains my own language. I saw it in its finished form. It represents my views held at the time with regard to the Iporo Township. I add the drumming was only suspension—not removal. No chief can be removed without my consent. If he had been in fact removed, he could not have been addressed as Base on that day in my presence. After the meeting of the 29th March 1944 was over, I expected the Base to perform the ceremony and finish with the misunderstanding. He left with the chiefs on that day. I next got a summons. The next day after he left he came back to me and said he was not satisfied. I was finished. I heard that the Base did not do the feasting but that he sued the Apena and some others including the Asalu.

20 Q. In so far as the Base has not complied with the condition laid down after that meeting what is his position to-day in Iporo Township?

A. He is a suspended chief.

XX-exam'd by Majekodunmi: I remember getting this petition from the Iporo chiefs. Not objected to LA. 1 dated 23.3.45. (The weight to be attached to the evidence as to signature is a separate matter altogether C.N.S.P.) I remember this exhibit JAT. 3 dated 12.3.45. I do not agree that 4th Defendant merely came to Iporo to buy a title. 4th Defendant came to be the Bagbimo of Iporo after he held title of Sarumi of Igbore—an Ologun title. The Apena of Iporo came to me and asked my permission for the Sarumi of Igbore to hold the title of Bagbimo. I consented. Later on the Township chiefs came to me and I approved of the title. At first Sodipo was reluctant. I told him he should accept it if his people wanted it. He gave as his reason that he had no money to buy the beads and the Itagbe. (The regalia of office.) I myself gave them to him. Unless a man outside the Township is familiar with the people he cannot hold office there.

XX-exam'd by Williams: Sodipo was born at Ikereku—a township in Abeokuta. He was at one time an Odofin of Ikereku. All titles are Township titles. If a family title is vacant it can be filled by the Township with the consent of the family. No gift or consideration is to be given by that outsider to the family. He however has to pay fees. In 1908, I held a meeting at Ogboni House. I was an Ogboni for a long time ago. I received no Ogboni title because I was a Prince in my own right but I had first of all to be initiated as an Ogboni. I am the Alake by virtue of my family's status and by my election. It is not by virtue of my being an Ogboni that I am Alake. No one can become an Alake unless he has previously been initiated into the Ogboni Society. Up to now, the Base is suspended. My consent was not obtained beforehand to the drumming out of the 1st Plaintiff. It had taken place without my previous knowledge or consent. I approved it when it was reported to me. I am the fountain of all honour and title in Egbaland. It was wrong for these people

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Cross-  
examina-  
tion for  
2nd, 3rd  
and 4th  
Witness

Cross-  
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tion for  
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tion for  
Plaintiffs,  
*continued.*

to have drummed the 1st Plaintiff out without my previous consent. (Witness is referred to page 4 of Exhibit CAT. 4.) It is correct for it to be said therein that for anything to happen in this country without my knowledge it is wrong. The words in para. 3 of CAT. 6 are my own. I first heard of the drumming out the same day it had been done. I had refused my consent to order the drumming out. Their drumming him out was in direct disobedience to my instructions to keep patient. It was not right for this man to have been drummed out without my consent having been previously obtained. I signified my approval the same day I was told of the drumming. I sent for the Base for settlement. Until 10 the settlement have been effected, I conditionally approved of the drumming out so that the Base should not go to the Ogboni House. There is no such thing as death drumming of an Ogboni chief in Ogboni House. There is drumming out done at Ogboni. That only amounts to a suspension from entering Ogboni House. That is the generally accepted meaning among my people of the ceremony of drumming out. Two cases recently occurred of reinstatement after the people were feasted. I knew Taylor, the Oluwo of Oba Township. He was drummed out. Nothing happened to him. He died about 3 months after. The allegation against the Base made by the Apena is that he always considered him as a messenger and he (the 20 Base) attempts to control him (the Apena). The Base complains that the Apena does not give a correct account of moneys received. Various fees are involved—rents from Iporo lands at Orile Iporo; title fees; rates, etc. I remember a petition from the Odofin, the Base and others on 20.4.1938, complaining about the Apena and his disposal of fees collected. It is still in my files. It was investigated and the Apena accounted to me and the chiefs for every penny received. The amount alleged to have been misappropriated came to £190 odd. I know the present Asalu of Iporo. I recognised him in 1942, I think. I received the usual present in connection with his elevation. I had heard no adverse report about his 30 intended elevation. Since the split between the Apena and his party and the Base, there are two sections in Iporo Township, but I know them as one Township. That split came after the drumming out. We regard Iporo as one Township. I have no recollection of complaints being made about the way the Apena created titles. The Apena and other chiefs presented the Asalu to me for recognition. I remember CAT. 3. With regard to the last paragraph I do not agree as he was not removed from the Ogboni. I did not correct the statement that was published as I do not write to the press. I did not write to the petitioners denying the allegations in the 6th paragraph but I sent to them and told them that 1st Plaintiff 40 was not removed. All those persons who signed that petition were obviously under an entirely wrong impression as to the position of 1st Plaintiff. Section 1 of Iporo Township never complained about the intended installation of 3rd and 4th Defendants. I received a petition from a portion of that section. I remember it. CAT. 2. I know the Ologun chiefs of section 1 of Iporo Township. I know Bamgbola well. He is more at Otta than here. The Otun of Iporo is now dead; but he was alive when the present Balogun was installed. When I received this letter, Bamgbola was the most senior Ologun chief. I sent for Bamgbola several times; he was not to be found. I did not send for any of the 50 other signatories as they did not have Township titles, and consequently were not directly involved. In 1943 the leading chiefs in Iporo were the

Asalu and the Apena. The Odofin had been inactive for a number of years. On the day they were installed I gave my approval the same day. I can't remember if it was in the morning or not. I can't remember if it was in the afternoon. I remember seeing the Asst. District Officer at my country house but that was not the day of any installation; on the day the A.D.O. saw me, a ceremony of feasting was taking place. The installation has been performed days before. The ceremony may be finished in one day, that is the part that matters. The rest is feasting. Days after, the Resident phoned me. The A.D.O. came to tell me that people had come to complain about the title. If the A.D.O. says that I told him my approval had been given that morning he saw me it would be incorrect. I agree with the statement of Mr. Balmer, the A.D.O., that he interviewed me about 11 a.m. He only saw me once. I know the native customs concerning appointment of chiefs. If an Ologun title is vacant it is not compulsory for all the Ologun chiefs to meet. They must all be informed that a meeting is to be held to consider the matter. If the majority of them attend when all are informed, it is not wrong. It is the business and duty of the Apena to send out informing the chiefs of the meeting to be held. When candidate is selected, he has to pay title fees to the Apena. Those fees are fixed by the chiefs. Part of the fees are paid to the Alake and part goes to the chiefs, and the rest, if any, goes to the Township. If an Iwarefa title is vacant, the Iwarefa chiefs must all be informed that a meeting is to be held to consider who should be appointed. The chosen one pays his fees to the Apena. The fees are paid out partly to me, to the chiefs and the Township. I claim the right to inform a Township that I think such and such a person should be appointed to a vacant chieftaincy. That practice has been in force from time immemorial. It is long established that the Alake after conferring with the Township can confer titles on anyone. I did not exercise that right in connection with 3rd and 4th Defendants. The share I received from 3rd and 4th Defendants was about 3 guineas each. They brought a certain amount. I did not accept it. They kept it, went away and brought more the same day; then I accepted it, and then they went to the Ogboni House for the installation. When they came the second time with the fees they saw me personally. The Asalu and the Apena came with them. In my opinion, the Apena is entering his dotage. It can only be at the suggestion of the Township that I could remove him. If a chief has done wrong and I am so informed and satisfied I have the power to remove him. It would have to be something of a serious character. Constant bickering between 2 men would constitute something of a serious character. The Base is senior to the Apena. The Base can advise the Apena. I do not think that the Base can control the Apena. It is not contrary to Native Law and Custom for a lowly Ologun chief to become a senior Iwarefa chief. It depends on my pleasure. If I thought it necessary to alter established law and custom, I would do it.

Witness is referred to CAT. 1. That appointment was not against Native Law and Custom.

*To the Court :* The Iporo Township Council is a Council of the Township. They hold meetings concerning the affairs of the Township—such as taxes. Such a Council would have no right to deal with questions of a chieftaincy. They had no right whatever to remove Akinwande Thomas from the office

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of the Base of Iporo. The beating of the drum as a result of the resolution was worse. The statement that the removal of the 1st Plaintiff was done in full consultation and with the knowledge of myself is untrue. The statement that the "suspension" of the 1st Plaintiff was done in full consultation and with the knowledge of myself as Alake would be untrue. It was after he had been drummed out that I was informed. I approved the suspension pending enquiries. It was agreed up to the time of the 1st Plaintiff and the others I had sent for, leaving the palace that everything had been amicably arranged I make when a candidate is presented to me with the customary gift to assure myself that all the procedure leading up to that presentation has been complied with. I did so in this case. On 26.1.45 I gave directly no instructions as alleged in paragraphs 12 and 13 of the statement of claim. The persons presenting these 2 men to me gave me information as to their character, their position and their capacity to hold the position. All the Iwarefas who should have come to me did so. No other Iwarefas could have come than those who did and they assured me that the 3rd Defendant had their support. The same thing applied to the 4th Defendant. All the Olorogun chiefs who had the right to be present and show their consent to the choice of the 4th Defendant were in fact present. The 4th Defendant is a cousin of mine. I was asked by the Township to make him the Abese of all the Egbas. It was not offered to him as a reward or inducement to accept the Balogunship of Iporo. 10

Re-exami-  
nation for  
1st  
Defendant.

*Re-examin'd by Alakija*: Once a chief always a chief. When I received CAT. 5 I could not remove the Base of Iporo unless there were grounds to justify me in doing so. The conditions I imposed on the Base had not been fulfilled. The worst penalty I could impose on him for not obeying my orders is to remove him from the office of Base of Iporo. I produce a report of a meeting of the Ogonis held on 31.1.1908 at which I was present. That was a political meeting. 30

*To Williams*: It was a regular meeting of the Ogoni. Yoruba was spoken and it was interpreted into English.

Adjourned to 3 p.m.

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tion,  
*continued.*

No. 27.

**EVIDENCE of Jekayinfa, recalled.**

**JEKAYINFA** (*continuing to Majekodunmi*):

When the Oluwo and the Balogun were installed, the functionary chiefs of the Iwarefa were the Apena and I. The actual ceremonies were performed by the Apena. After these installations, nothing else was done except the feasting. The installation, the fee and the feasting are the 3 requisites. Both 3rd and 4th Defendants performed those requisites. Moneys collected from Iporo Townships are installation fees, burial fees, rent of farmlands. I last collected such rents about 3 years ago. These moneys are spent on the affairs of the Township—like making sacrifices for the Township; repairing the Ogoni Houses. About £4 10s. 0d. was brought to the Apena and me about 3 years ago. 40

*To the Court* : I know lands at Orile Iporo ; they belong to Iporo Township. That money, if any remains, is distributed among the community. The Iwarefa chiefs are entitled to receive some of those rents.

*XX-examn'd by Alakija* : The £4 10s. 0d. I have mentioned was among rents collected from Orile Iporo lands.

*XX-examn'd by Williams* : In first instance, these moneys would go to the Apena. I was present when the £4 10s. 0d. was brought to the Apena in his verandah. The Apena did not tell me that he had received  
10 any money from Orile Iporo since then. In 1943, the chiefs of Iporo did something to the Base of Iporo. They were quarrelling with him. He sued them for the trouble—he sued all of us. The first cause of the trouble was that we gave him the money to repair the Ogboni House ; the 2nd cause was that the Oluwo decided to send the Base to the Council and a paper was given to the Base to that effect which he was to take to the Alake ; he brought the paper the 2nd day and said that the Alake said he did not want anyone who could not speak English. The paper was sent to the Alake by the whole Iporo community. The Base offered to represent the township. This took place about 6 or 7 years ago—the non-completion  
20 of the fencing of the Ogboni House. The Base said that the money he had received was exhausted. This was discussed before the Iwarefa. When there was trouble about it we came to the Alake. I know about it as I was then an Iwarefa chief and Iwarefa chiefs know what goes on among Iwarefa chiefs. I am one of the defendants in a libel action brought against me and other by 1st Plaintiff. Mr. Soetan is our legal representative.

*Q.* Did you instruct Mr. Soetan to say in any case that the Plaintiff had always been recognised as the Base of Iporo except between 1943 up to March 1944 ?

*A.* I did.

30 *Q.* And that following settlement of differences by the Alake, the Plaintiff was reinstated after that short period ?

*A.* I did.

What we Iwarefas instructed the Base to bring things to effect settlement he did not bring them. We told the Base in the presence of the Alake that he should bring a sheep and some money. He said he had none. The Alake offered to give him the money. I say that if the Base had agreed to what we demanded before the Alake we would have reinstated him. The Plaintiff is still the Base as we have not elected a new Base. I know what is meant by suspending a chief. The Kemta people suspended one  
40 Ogundimu who was of the rank next to the Apena. He is the one I can remember who begged and was reinstated.

*Q.* Was the Base of Iporo ever suspended ?

*A.* We drummed him. That meant that the Iporo community has nothing more to do with the Base.

When the Base of Iporo was drummed out, we slew a sheep. Its blood flowed on the ground. To me that meant that anyone who partook of the meat should not secretly go to the Base. Before the drumming out was done, we should obtain the Alake's consent. We went and reported to him 3 days or 4 days after the drumming had taken place.

*In the  
Supreme  
Court of  
Nigeria.*

*Defendants'  
Evidence.*

No. 27.  
Jekayinfa,  
recalled,  
9th  
November  
1945.  
Examina-  
tion,  
*continued.*  
To Court.  
Cross-  
examina-  
tion for 1st  
Defendant.  
Cross-  
examina-  
tion for  
Plaintiffs.



*In the  
Supreme  
Court of  
Nigeria.*

*Defendants'  
Evidence.*

No. 27.  
Jekayinfa,  
recalled,  
9th  
November  
1945.  
Cross-  
examina-  
tion for  
Plaintiffs,  
*continued.*  
To Court.

*To the Court :* We only went to the Alake after the Base had been drummed out. The Alake was never told beforehand that we intended to drum him out and he did not beg us to have patience. We never went twice to the Alake and told him we wanted to drum out the Base and he did not tell us twice that we should be patient.

Not re-examined.

*Majekodunmi :* I close my case there.

Alakija calls before he closes his case.

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No. 28.

EVIDENCE of Josiah Olatunde Kuforiji.

10

JOSIAH OLATUNDE KUFORIFI, 4th Witness for 1st Defendant s. on B.

Egba :

*Examination.*

No. 28.  
Josiah  
Olatunde  
Kuforiji,  
9th  
November  
1945.  
Examina-  
tion.

I am clerk in the office of the Alake of Abeokuta. I remember a meeting that took place at the Palace in connection with Iporo disputes on 29th March 1944. I don't write shorthand. I wrote notes of the meeting on foolscap paper. When I had prepared the finished minutes I destroyed those foolscap sheets. These are the minutes of those proceedings. I produce a correct copy of those minutes. Put in and marked JAK. 1. Not objected to. Those minutes correctly represent what took place at that meeting. 20

*Not XX-examn'd by Majekodunmi.*

Cross-  
examina-  
tion for  
Plaintiffs.

*XX-examn'd by Williams :* I have not seen any letter from the 1st Plaintiff about these minutes. (A letter from 1st Plaintiff is put in by consent.) It relates to these minutes JAK. 2. I did not see anyone else taking notes of the meeting. I was sitting taking notes where everybody could see me and see what I was doing.

Alakija finally closes his case.

Adjourned by consent for addressing on Tuesday at 8 a.m. the 13th November 1945.

(Sgd.) C. N. S. POLLARD,  
Ag. Judge.

30

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13th  
November  
1945.  
Sub-  
missions of  
Alakija  
for 1st  
Defendant.

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No. 29.

COURT NOTES.

Tuesday, the 13th day of November 1945.

Alakija addresses on behalf of 1st Defendant and says that Majekodunmi will deal with the question of jurisdiction *in extenso*. No right of the Plaintiffs has been infringed. The offices of Oluwo and Balogun are offices of dignity and are not connected in anyway with rights in property. The only persons who can bring an action are those who feel 40

that the right to be elected Oluwo or Balogun has been infringed. Plaintiffs are not claiming any such right. They claim that the installation has not been in accordance with native law and custom and that it is their sole prerogative as representatives of the township to confer the respective titles. Unless it is shown that rights connected with property particularly family property are attached to these chieftaincy titles, the Courts have always held that there is no jurisdiction. It is conceded that Plaintiffs did get permission of Court to sue in a representative capacity. That does not confer on them a representative capacity. Defendants before

10 joining issue could not have challenged their application to sue in their representative capacity. These applications are *ex parte* and it is only when the defence is filed that the Defendants have an opportunity to challenge the grounds of the application. Iporo Township is one and undivided. Evidence before this Court has shown that it is only certain dissatisfied persons in Iporo who have banded themselves together and called themselves Iporo No. 2 for the purpose of causing trouble in the Township and making things as difficult as possible. There is evidence that Iporo Township can send a representative to the Sectional Council in Abeokuta. Iporo No. 2 is not recognised by the Native Authority. Falola's evidence

20 knocked the bottom out of their case re the representative character of the Plaintiffs. He stated that he was the only chief who was holding meetings of his own. Counsel cites *Okwara Eke Kalu and Others vs. Ijoma* heard and decided by W.A.C.A. on 31.1.44. He distinguishes that case and the present by saying that though in this case the Court did give authority to sue, such authority did not confer a representative capacity on the Plaintiffs. Defence can always challenge that representative capacity. Once that is challenged the Plaintiffs must prove to this court that they in fact have been so authorised and can sue in a representative capacity. No evidence has been given of any meeting at which it was decided to take

30 this action or as to how with exception of 3rd and 5th Plaintiffs the rest of the names of the Plaintiffs got into this case. What and who they are, nobody knows. As to the claim for an injunction, it is submitted that the very nature of the offices will make it impracticable for a Court to restrain the 2 Defendants from acting as Oluwo and Balogun and from performing the customary functions of their respective offices. The Ogboni is a secret society, the rites performed within the conclave are of such a nature that it cannot be made public. As to the manner of the performance of those rites, it is a matter for the members themselves. As the rites are to be secretly performed, no person can come forward to give evidence as to the

40 nature of these rites or the correctness or otherwise of their performance. Evidence of 1st Plaintiff, the 5th Plaintiff, and Bamgbola has not shown to this Court that 3rd and 4th Defendants have in fact acted as Oluwo and Balogun. They have to be proved that 3rd and 4th Defendants have not been properly installed. By installation I include all the requisites prior to the installation ceremony itself. Plaintiff has stated affirmatively that 3rd and 4th Defendants have not been lawfully installed. Counsel refers to para. 12 of S. of Claim. No attempt has been made to prove that at all. The same criticism applies to para. 13 of the S. of Claim. These 2 paragraphs amplify the Plaintiffs' objection to these two offices being

50 filled by 3rd and 4th Defendants. With regards to paras. 8 and 9 nothing has been proved to have been omitted which should have been done according to N.L. and custom. He refers to para. 6 of the S. of Claim and para. 7

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*continued.*

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Alakiji  
for 1st  
Defendant,  
*continued.*

also. He quotes from p. 113 (last paragraph) JAT. 2—(Folarin's Laws and customs of Egbaland). One of Plaintiffs' complaints—the chief one—is that not all the Iwarefas met before the choice of 3rd Defendant was decided on; not even all the Ologun chiefs consulted before choice fell on 4th Defendant. Court must consider evidence before court on position of 1st Plaintiff at the time the 3rd and 4th Defendants were being made chiefs Oluwo and Balogun respectively. As to the Oluwo, it is an Iwarefa title and Iwarefas should by applying common sense know that a vacancy existed to be filled. At the time of the decision being taken the Plaintiff had fallen out with the Ogboni particularly with his compeers, the 10 Iwarefas. His position was such that he could not enter the Ogboni House, the only place where decisions could be taken and meetings held. Court must decide why he did and/or could not go. Plaintiff himself says I did not go to Ogboni meetings as I did not like the way and manner in which the Apena was carrying on. On the contrary, evidence was produced by Defendants that such was the state of affairs that he could not have gone there even if he so desired. What then is his claim or right in the election of the Oluwo. Could he have properly taken part in the proceedings. Has he placed himself in a position which would enable him to take part in those proceedings? In that respect, Court must consider 20 that Plaintiff was in Abeokuta; he knew what the Apena was doing; he said he had complained of his conduct on several occasions. As to the time of installation of the Oluwo—If Court finds that either by his conduct or by other circumstances the Plaintiff could not have taken part in the ceremony he cannot be heard to complain. He has adduced one reason for having nothing to do with the Ogboni House. If the defence accepted that attitude of mind of the Plaintiff as disclosed by him, then should they have had anything to do with him? Were they to continue to consult him, or should they not have carried on to the best of their ability. The attitude of the Ogboni House towards the 1st Plaintiff would they—must they— 30 under these circumstances have had anything to do with him? A distinction is to be drawn between their refusal to have anything to do with him and he being willing to treat with them and on the other hand he not willing to treat with them and they not willing to have anything to do with him. Are they not entitled under those circumstances to carry on the business of the Ogboni House without him? It is submitted that if because of the Plaintiffs' attitude the Ogbonis could not carry on the business that had to be attended to without him, it would be contrary to natural justice equity and good conscience. Plaintiffs' attitude of mind preceded their attitude of mind as far back as 1941. Court should consider 40 the mentalities of the Apena and the Asalu and that of 1st Plaintiff—two extremes. Court may realise insurmountable difficulties which 1st Defendant has constantly to face—daily. There are 50 townships in Egba Alake and about 72 in the whole of Abeokuta. The transition from old to modern times is particularly marked in these days. The Alake called the final meeting of all meetings. The drumming out ceremony had taken place. Counsel refers to JAK. 1. The persons present whose names appear in the minutes were those assisting to effect a settlement of this most unfortunate trouble between ancient and modern civilisation. Had wise counsel prevailed in the mind of the 1st Plaintiff Court would never 50 have heard anything more of this matter. The Asalu—a senior chief to the Plaintiff—said that all that was required was for 1st Plaintiff, to perform

the customary feasting and all would have been over. The 1st Defendant himself suggested that at the conclusion of that meeting at the Palace. That is the position of 1st Defendant. Was 1st Defendant justified in approving the installation of 3rd and 4th Defendants? Was he right in recognising them as his chiefs? If evidence of 1st Plaintiff is to be believed what is its nature? He swore that the Alake is not the head of all the Ogbonis. The evidence is to the contrary—Court now knows Alake's connection with the Ogboni and his powers over them. Refers to LA. 2; the minutes of 10.6.1926 (CAT. 4). Plaintiff was seeking to show that

10 1st Defendant was arbitrarily attempting to instal 3rd and 4th Defendants that he was encouraging them to set aside N.L. and custom and wished to instal them *qua* Alake and not as Head of the Ogbonis. The Alake however states to Court that there was nothing to prevent him removing him as Base of Iporo if the occasion justifiably arose. Alake stated that when he was informed by the Iwarefas that they had beaten the drum against 1st Plaintiff he approved, but that only meant the Base was under suspension. The Base agrees that even if the Alake wants to deprive a man of his title and the man's township does not approve, nobody can take that title away. So that all the Base's negative evidence is valueless if

20 Court believes 1st Defendant, when he states that he satisfied himself that everything was done which should have been done before he signified his approval of those titles. If Court accepts that, then what is Plaintiff's complaint. As an Ogboni he would know what should have taken place. As Falola had not been to a meeting of the chiefs for 4 years, what is the ground of his complaint against the installation. The Osi swears that he should have been informed. The Otun was alive—he is more important than the Osi. The suggestion of the defence is that the Osi lives in Otta and left Abeokuta immediately after his installation. The Alake has stated that he satisfied himself that everything was done

30 as it ought to have been done. As far as the Alake is concerned, apart from making general enquiries to satisfy himself that the formalities have been observed, he should not be required to have established before him that each and every requirement of Native Law has been complied with. The Court should presume that when the Alake has approved of the title being conferred, that all things required to be done have in fact been done. Has the Alake the right to confer any title he likes, if he is satisfied that certain things have been done? If in fact, certain persons who should have been informed have not in fact been informed, then the act of the Alake having conferred that title cannot

40 be questioned. The only form of action sustainable is for damages for infringement of a right—*Ashley vs. White*. The 1st Defendant has done his part. All he had to do was to satisfy nobody but himself that the title should be conferred and was conferrable according to N. Law and custom; having so satisfied himself, he had a right to approve and if he had the right to approve that cannot be questioned by the Plaintiffs. If the Alake is right, can the Court question that right? The Court would be trying the state of his mind. The Plaintiffs have made out no case against the 1st Defendant. The claim against the 1st Defendant should be dismissed.

50 Majekodunmi addresses for 2nd, 3rd and 4th Defendants. The endorsement relates to the installation being contrary to the Native Law and Customs of the people of Abeokuta. There is no evidence of what that

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Defendants,  
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law and those customs are. Refers to Exhibit JAT. 2—p. 133—as to the choice of an Iwarefa chief. That passage contradicts 1st Plaintiff. It is established that a successor to the office of a Oluwo can be chosen from outside the circle of Iwarefa chiefs. Evidence is clear that it is permissible according to N.L. and custom for a person to be appointed Oluwo of the Iwarefas who had been merely an office holder in the Ologun. Instances were given by the witnesses. They illustrate the rule and do not furnish the exception to it. Court will remember those instances. Court has had full procedure about the election and installation of an Oluwo before it. Asalu has told Court how 3 Ologun chiefs had been sent to the Apena 10 by the Otun of Iporo to tell him (the Apena) of the decision of the meeting of the Ologun chiefs at Iporo Township i.e. that Iwarefa should consider the elevation of 3rd Defendant to any post in the Iwarefas they should consider him fit for ; at that time, the Apena and the Asalu were the only functioning Iwarefa chiefs in Iporo Township. The witness stated that after full discussion the Iwarefas sent for Otun's messengers got them to take back the reply that they agreed. Later came a request from the Ologun chiefs that 4th Defendant should be installed as Balogun. The witness said that the Apena would not agree at first but he did later. The decision having been taken was communicated to the Ologun chiefs 20 through the Otun. The consent to nomination was sought for from 4th Defendant. He refused to accept. They went in a body to the Alake—the 2 Iwarefas the Apena and the Asalu and the Ologun chiefs whose names were given by the witness. The Alake spoke to 4th Defendant and later the 4th Defendant accepted. The details are convincing. Fees were paid by 3rd and 4th Defendants. It is admitted that there was a dispute about the sum the Alake wanted to accept ; that more was brought back which the Alake accepted. It is not correct for Plaintiff to say that the next ranking officer automatically succeeds to the office next above him if and when a vacancy arises in that higher office. Instances to the 30 contrary were given. They too illustrated the rule itself and were not the exceptions thereto. Not correct for Plaintiff to say that an Iwarefa chief cannot be elected to be office holder in the Ologun. Alake did not claim the right to appoint a chief himself. He claims the right to suggest a candidate. If the candidate is accepted by the Ogboni and the town-people concerned, then he makes the person the holder of the vacant chieftaincy. If 1st Plaintiff did not go to Ogboni House on the occasion of the installations because of the exercise of his own free will, he cannot now come and complain. By that conduct of his, he is estopped from impeaching the validity of the installation. The living Iwarefas were 40 in fact the Apena, the Asalu. They only were entitled to be present. The 1st Plaintiff was under suspension. The Alake said that the sole meaning of the drumming out was suspension. The suspension became operative from time of 1st Plaintiff being drummed out. That was ratified by the Alake later. The 1st Plaintiff is still a suspended chief of the Ogboni Society. As such, he would be entitled to no notification at all. The Osi was stated by the Alake to have gone to Otta after his installation. That should be accepted, even though hearsay, against the testimony of the Osi on oath. Plaintiff himself said that no immutable laws govern the taking of titles. His evidence of the decision of the majority prevailing must be 50 remembered. It is clear that at all material times, 1st Plaintiff would have been in the minority even if he had not been suspended. Refers to

Native Authority Ordinance, 1943. Reads sec. 19. Alake swore that it is according to Native Law and Custom for him to approve the granting or conferring of titles. If Alake had exercised the powers vested in him by Native Law and Custom to approve and confer titles, this Court has no power to question his exercise of that right. This is only a Township matter. He cites *Adanji vs. Hunvoo*, 1 L.R. 75; *Okupe vs. Soyobo*, 3 W.A.C.A. 151; *Taiwo vs. Sarumi*, 3 N.L.R. 103; *Nana Obosu Enu vs. Biney*, 8 W.A.C.A. 70; *Morayo vs. Okiade*, 15 N.L.R. (3).

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Adjourned to 1 p.m.

10 Williams addresses on behalf of Plaintiffs.

As to jurisdiction of cases cited only *Adanji vs. Hunvoo* is relevant. That case decides it is in discretion of Court whether it will entertain a claim relating to mere title or dignity. Particularly refers to judgment of Griffith J. at p. 76. The Court has jurisdiction but the Judge may in his discretion elect not to exercise that jurisdiction. In this case Ogboni Society is a political Organisation, *Oke Lanipekun Laoye and others vs. Amao Oyetunde*, 1944, A.C. 170. Courts have jurisdiction over the appointment of chiefs in this country and the N.L. and Customs governing their appointments have the force of law. As to point that Alake has exercised

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- 20 his right and the Court has no jurisdiction to question the exercise of that right *Esugbayi Eleko vs. Officer Adm'g. Government of Nigeria*, 1931, A.C. 662. If the Alake had pleaded, which he has not done, that his act was an executive act, he must be prepared to justify that act in a Court of Law. Reverting to the question of jurisdiction, it has been established that chiefs in Iporo Township have the right to share certain fees and rents from Iporo Township lands. When a man assumes a title in Iporo he assumes simultaneously the right to share certain fees and rents. With regard to the exercise of the Alake's discretion on 29.3.44, there are Courts of law established in this country for settling disputes and deciding issues.
- 30 If a party is dissatisfied, he had his remedy by way of appeal. The meeting of 29.3.44 was not that of a court, the Base did inform the Alake the very next day that he was dissatisfied with the settlement and/or decision and nothing further was done about it. Is 1st Plaintiff to be deprived of his rights to bring this action because of the settlement by a body not constituted under Native Law and Custom? If Court finds as a fact that the 1st Plaintiff has been wronged as a result of this decision or that 1st Plaintiff has in fact been wronged the Court should give him his remedy by going into the matter again. There is no authority to be cited for the proposition that this Court cannot determine an issue already mooted before the Alake,
- 40 as Alake—There is no evidence of the powers of the Alake under N.L. and custom, nor is there any material on which this court could assess the legal effect of the Alake's finding. It is submitted that the decision of the Alake is arbitrary and capricious. The Alake said nothing about the Ogboni having drummed out 1st Plaintiff against his express orders: 1st Plaintiff was nevertheless made to apologise to the Ogbonis before he was informed by the Alake of the conclusion at which he had arrived. The 1st Plaintiff was tricked into making that apologetic obeisance. The over-riding question on the facts is—have the Defendants satisfied the court that all things were done that should have been done concerning
- 50 the installation of these 2 Defendants. The Asalu *qua* witness, is estopped from denying what he told his counsel to plead and what his counsel has

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pleaded in the libel action 1.23.44 on the position of the Base. No credit should be given to his testimony. The Base is alleged to have been removed from his office by the Iporo Township Council; following upon those resolutions the Ogboni acted. The evidence of the Alake disposes of that position at once and for all time. That Township Council has no right to enquire into the question of the Base's title at all. The document clearly shows, in any case, that the procedure for deposing a chief had not been followed. The deposition was unconstitutional. So was the drumming out. The Base had a right to be consulted before appointment of the 3rd Defendant. Counsel refers to CAT. 6 which is a reply to CAT. 5. 10  
That letter contains no single reference to suspension. He is on the contrary saying that the removal of Plaintiff was not with his knowledge or consent. Any approval of an alleged suspension must be considered void. The approval is unreasonable and capricious. It was a shrewd political move—that was unreasonable against the Plaintiff. It is established that member of the Ologun Society cannot become the head of the Iwarefas. See CAT. 1. That exhibit speaks for itself. This point has been established. The onus has shifted on the Defendants to show that it is not so. Neither Lawani nor Sodipo has gone into the box. The 3 messengers who were alleged to have been sent to the Apena from 20  
the Otun have not been called. Why have not the Ologun chiefs been called? How have they discharged the onus that has shifted to them? As to representation see Order IV Rule 3 Supreme Court Civil Procedure Rules 1945. Affidavit in support of application shows source of the Plaintiffs' authority. No evidence before the Court that the Plaintiffs do not represent the people that they claim they represent. The Court is asked to note that the legal arguments addressed to the Court at Ibadan in 1.45.1945 are to be considered as repeated in this case on the points there and then argued.

Adjourned to 2.30 p.m. on 15.XI.45 for judgment. 30

(Sgd.) C. N. S. POLLARD,  
Ag. Judge.

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**No. 30.**  
**COURT NOTES for Judgment.**

Thursday, the 15th day of November 1945.

Court reads its decision and gives judgment for the Plaintiffs for the declarations and injunctions asked for. The Court intimates that it proposes to offset the costs that are payable to the Defendants on the issues they have won against the Plaintiffs' general costs of the action. Counsel agree and ask Court to fix costs. 40

In opinion the bill of costs could be successfully taxed for 300 guineas : fit for 2 Counsel. The Defendants could successfully tax a bill on the issues they have won at 150 guineas. Consequently the 2nd, 3rd and 4th Defendants will pay the Plaintiffs 150 guineas costs.

No costs payable by or to the 1st Defendant.

(Sgd.) C. N. S. POLLARD,  
Ag. Judge.

No. 31.  
JUDGMENT.

15th November 1945.

JUDGMENT.

In order to determine this cause, a full survey has to be made of the entire field of the jurisdiction of the Courts of Nigeria. A review is required of all ordinances and decided cases bearing directly and indirectly upon the subject matter of this action.

The first group of cases is :—

- 10           1. *Adanji vs. Hunvoo* 1 N.L.R. 75.  
              2. *Okupe vs. Soyobo* 3 W.A.C.A. 151.  
              3. *Dick vs. Green* 1 N.L.R. 114.

In *Adanji vs. Hunvoo*, the Full Court decided *inter alia* that it should decline jurisdiction in a case where the title to a position of mere dignity or honour is involved.

- 20           In *Okupe vs. Soyobo*, the West African Court of Appeal approved the judgments in *Adanji vs. Hunvoo*. The Defendant Soyobo was exercising the office of Alaperu of Iperu ; that office was elective and the electors were the Chiefs and Elders of Iperu Town. The position of the Alaperu of Iperu was that of a minor chief in the Protectorate and owed its existence to native custom ; the holder was not a native authority appointed under the then existing Native Authority Ordinance, 1933 (No. 43 of 1933). It was clear that the Alaperu of Iperu did not hold an office created by or held under the Crown. Consequently an information in the nature of *Quo Warranto* could not be exhibited.

In *Dick vs. Green* 1 N.L.R. 114, the Court distinguished *Adanji vs. Hunvoo* and held that when pecuniary rights cognisable by the Supreme Court are involved and when those rights depend upon a question of title to a chieftaincy, that question as to title must be tried by the Court.

- 30           The next case to be noted is—

4. *Essen vs. Edick* 13 N.L.R. 99.

Mr. Justice Baker on 2nd November 1936, held that Ordinance No. 14 of 1930 had ousted whatever jurisdiction the Courts, prior to 1930, had possessed to declare a chief to be the lawful chief of a village or district. The report does not show whether any question was raised as to whether the occupier of the disputed chieftaincy was a Head Chief in the Protectorate or a chief in the Colony or as to whether any pecuniary interest cognisable by the Protectorate Courts was involved. The importance of these two factors will be manifest when the next case is considered.

- 40           5. *Oke Lanipekun Laoye and others vs. Amos Ojetunde* decided by the Privy Council in 1944.

In that case their Lordships declared that the possession of the Sohun by the Defendant was illegal ; that the 1st Plaintiff was entitled to be appointed Bale of Ogbomosho and to be given the use and occupation of a property in the town known as Sohun with its furniture, and paraphernalia. This clearly was an action involving property—the Sohun and various chattels, and also the right to the custody, possession

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and use of that property by the person who was entitled to be the Bale of Ogbomosho. In order to determine the title to that property, one of the questions that had to be decided was whether the Defendant was the proper person to be appointed Bale of Ogbomosho in accordance with native law and custom. The West African Court of Appeal had decided that it had no jurisdiction to hear the appeal on the ground that it was precluded from doing so by subsection (2) of section 2 of Ordinance No. 14 of 1930. The Privy Council decided that that subsection did not apply to the particular class of chieftaincy, the title of and appointment to which were in issue in the case, because no Bale of Ogbomosho was in fact a head- 10 chief in the Protectorate or a Chief in the Colony. The meaning of "head chief in the Protectorate and Chief in the Colony" was to be arrived at by reference to Ordinance No. 14 of 1930 and to the definition of "Chief" and "Head Chief" as set out in the Interpretation Ordinance 1939. The whole section 2 of Ordinance No. 14 of 1930 had to be read and construed together (as will be seen hereinafter, definitions of "chief" and "head chief" were introduced for the first time into Ordinance No. 14 of 1930 by an amending Ordinance No. 20 of 1945). It would appear to have been implied that the decision of the West African Court of Appeal would have been sound if the holder of the office of Bale of Ogbomosho had come 20 within the Privy Council's construction of the words "Chief" or "Head Chief." No comment was made by their Lordships on that aspect of the matter. Inasmuch as the jurisdiction of both the Court of first instance, and of the West African Court of Appeal, were issues specifically raised in the suit, it appears to be an inevitable deduction that their Lordships would have stated—if, indeed, it were so—that, whatever the technical legal meaning of the section may have been, the argument concerning the ouster of the Courts' jurisdictions could not be entertained and/or was not entertainable. The words in the subsection were then as follows—"the Governor shall be sole judge as to whether any appointment of a Chief or 30 Head Chief as the case may be has been made in accordance with native law and custom." It will be essential later on to contrast those words with the language used in other ordinances in regard to which there have been judicial pronouncements.

The next case is—

6. *Adebanjo & 2 others vs. D. R. O. Otubushin.*

It was tried by Mr. Justice Francis on 14th March 1945, that is, after the Privy Council decision in *Laoye vs. Ojetunde*. It was admitted by the parties that the title in question came within the Privy Council's interpretation of head-chief; and on the construction of Ordinance No. 14 of 1930, as it then stood, the learned judge came to the conclusion that the Protectorate Court had no jurisdiction to entertain the claim. His Honour sought however to distinguish *Adanji vs. Hunvoo* on the ground that it was decided prior to the enactment of Ordinance No. 14 of 1930 and as that Ordinance made the Governor unequivocally the sole judge of the appointment of a Head Chief in the Protectorate, no Protectorate Court had jurisdiction to decide such an issue. His Honour also referred to *Nana Obosu Enu 1 and others vs. J. B. Biney* which is reported at page 70 of 8 W.A.C.A. Reports. 40

Consideration of all these cases leads me to make the following 50 observations. The judgment in *Adanji vs. Hunvoo* was based on English

case law. None of those authorities have been or are likely to be overruled. The same point as to jurisdiction fell for decision. With the greatest deference to Mr. Justice Francis, that case is in my humble opinion still good law and should still be applied when the circumstances are similar. Subject to further comments hereinafter contained, it seems to me that if a title to a position of mere dignity and/or honour is involved, and if no pecuniary rights of a kind cognisable in the Supreme Court are involved, that decision is still binding in every case concerning all those persons who are not covered by Ordinances No. 14 of 1930 and 20 of 1945. These

10 latter Ordinances, as will be seen, only apply to questions dealing with the chiefs and head-chiefs presently defined in Ordinance No. 20 of 1945. As the exclusive power of determining the validity of the appointment of those chiefs and head chiefs as defined in these Ordinances is vested in the Governor—and I am assuming for the moment that it is exclusive, of which more, anon—then the following two questions must fall for decision :—

1. Has the Supreme Court jurisdiction to try cases concerning chieftaincies other than those therein defined which involve titles to positions of mere dignity and honour? The answer is that

20 *Adanji vs. Hunvoo* must be followed, and the Court should decline jurisdiction.

2. Has the Supreme Court jurisdiction to try a further class of cases concerning chieftaincies other than those therein defined and which involve not only a title to a position of mere dignity and/or honour but also such pecuniary rights as the Supreme Court would have original jurisdiction to take cognisance of?

The answer to that second question is that *Dick vs. Green* is still good law, and must be followed. In further regard to this question, it is clear that when pecuniary rights cognisable by the Supreme Court are involved, and where those rights depend upon a question of title to a chieftaincy

30 other than those defined in the said Ordinance, that questions of title must be tried by the Supreme Court. The Privy Council did so determine that issue, among others, in the case of *Laoye vs. Ojetunde*. It followed that *Essen vs. Edick* should now be read in the following light—that is, that if a chief is seeking only a title to a mere dignity and/or honour, and no more, and if the chieftaincy does not come within the definition of “Chief” or “Head Chief” as set out in Ordinance No. 20 of 1945, then the Supreme Court should decline jurisdiction for the same reason that appears in

40 *Adanji vs. Hunvoo*—the *ratio decidendi* whereof was approved by the West African Court of Appeal in 1937 in *Okupe vs. Soyobo*. Contrariwise, if the chief was seeking a title to a position of mere dignity and/or honour and also pecuniary rights cognisable by the Supreme Court, which rights were dependent on a question of title to that chieftaincy, and, further, if that chieftaincy did not come within the definition of Chief or Head Chief as now defined in Ordinance No. 20 of 1945, then the Supreme Court must hear and determine the suit.

It will be useful at this stage to set out the substance of the present definition of chief and head chief as enacted in Ordinance No. 20 of 1945. It is to be parenthetically observed that section 2 of the Interpretation Ordinance 1939, applies that Ordinance to all Ordinances in force on

50 9th November 1939 and to all ordinances thereafter enacted. There is not the usual proviso that the definition set out in the Interpretation Ordinance 1939 are not to be used when identical words are separately and

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specifically defined in other ordinances dealing with particular matters. By operation of law, however, those latter definitions must be followed and exclusively applied.

“Chief” and “Head Chief” mean—the verb is “mean” and not include, a material distinction—

a chief or head chief—

(a) who has been appointed to the office of Native Authority under Ordinance No. 17 of 1943 ;

or (b) who has been appointed to an office which is deemed to be constituted under that Ordinance ;

or (c) who is a member of a Native Authority constituted or deemed to be constituted under that ordinance ;

or (d) who is a member of a council in cases where the office of Native Authority is a chief with council ;

or (e) who is a member of an advisory council.

(Such advisory councils are dealt with in section 33 of the said Ordinance No. 17 of 1943). As has already been implied, the two Ordinances Nos. 14 of 1930 and 20 of 1945 apply to and are concerned with every chief who is or comes, within the framework of the Native Authority Ordinance 1943. They do not apply to a single chief or head chief who is not within that framework.

The jurisdiction conferred on Native Courts by the Native Courts Ordinance 1933—No. 44 of 1933—has now to be considered. Section 8 thereof may be summarised as follows : Every native Court shall have full civil jurisdiction and power—to the extent set forth in its warrant and subject to the Native Courts Ordinance 1933—in all cases in which all the parties belong to classes ordinarily made subject to the jurisdiction of native tribunals. That jurisdiction may be extended under section 11A.

The Governor may grade native courts and prescribe the jurisdiction and power, which are to be set forth in the warrants, of each grade of native courts. There are to be 4 grades, and the jurisdiction and power which are to be set forth in the several warrants are not to extend beyond those generally prescribed in the Schedule to the Native Courts Ordinance 1933 unless and except the Governor by order may otherwise direct.

Section 10 enacts that subject to the provisions of the Native Courts Ordinance 1933, a Native Court shall administer—

(a) the native law and custom prevailing in its area if they are not repugnant to natural justice or morality or if they are not inconsistent with any of the provisions of any other ordinance ;

(b) the provisions of any other ordinance which the Native Court is authorised to enforce by order made under section 11 ;

(c) the provisions of all rules or orders under the Native Authority Ordinance 1943 (No. 17 of 1943) and the provisions of all rules, orders, byelaws made by a Native Authority ;

or Native Administration Authority or under any other ordinance which is in force in the area of the Native Court's jurisdiction.

I take the view that in the cases which the Supreme Court will not try because they involve merely a title to a dignity or honour and nothing else, the Native Court of the area is given full jurisdiction. If the succession to a chieftaincy has to be determined according to Native Law and Custom, then the relevant Native Court is given the necessary jurisdiction provided as will be seen, no additional claim is made for, or relates to, money or

other property. In those cases which involve a title to a position of mere dignity and honour plus any additional claim for, or relating to, money or other property, no native court except a Grade A Native Court has been given any jurisdiction. According to the schedule to the Native Courts Ordinance 1933, the civil jurisdiction of each grade of Native Courts may be summarised thus—subject of course to any limitations prescribed in the warrant of the particular native court, or to any extensions made under the provisions of section 11A, or otherwise—

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10           1. Grade A Native Courts have full jurisdiction in all civil actions.

2. Grade A, B, C and D Courts have full jurisdiction in all matrimonial causes other than those connected with a Christian marriage.

3. Grade B, C and D Courts have full jurisdiction in causes relating to inheritance, testamentary dispositions, the administration of estates “*and in causes in which no claim is made for and which do not relate to money or other property.*”

20           4. Grade B, C and D Courts have jurisdiction in those civil actions in which the “debt, demand or damages” do not exceed £100, £50, and £25 respectively.

In order to avoid a seeming contradiction between the last two paragraphs, the words “debt, demand or damages” can only be construed as relating only to contract and/or tort. See *Rex vs. Cheshire County Court Judge*, 125 Law Times 588.

5. In the Southern Provinces, Grade B, C and D Courts each have jurisdiction in causes concerning land, or in which the title thereto or any interest therein comes in question, as is stated in the relevant warrant.

30           Except where circumscribed by the Native Courts Ordinance itself and/or except when limited by the warrants themselves, the jurisdiction of all native courts is unlimited in all causes concerning land or in which the title to, or any interest in land is involved, in all matrimonial causes save those concerned with Christian marriages, inheritance, the administration of estates and testamentary dispositions. Native Courts therefore have exclusive jurisdiction in the above-mentioned matters even though the particular cause may involve thousands of pounds unless an Ordinance and/or the Courts’ Warrants otherwise severally limit their jurisdiction.

40           This is now a convenient stage to examine the Supreme Court Ordinance 1943. Section 12 enacts that *subject to such jurisdiction as may for the time being be vested by Ordinance in Native Courts* the jurisdiction vested in the Supreme Court shall include all His Majesty’s civil jurisdiction which was or may be exercisable in Nigeria for the judicial hearing and determination of matters in difference, or for the administration or control of property and persons. That jurisdiction shall be exercised under and according to the Supreme Court Ordinance 1943 and not otherwise.

50           Except the Governor by Order in Council shall otherwise direct, and except when suits are transferred to the Supreme Court by section 25 of the Native Courts Ordinance 1933, the Supreme Court *shall not exercise original* jurisdiction in any suit which raises any issue as to title to land or any interest in land which is subject to the jurisdiction of a native court nor

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in any matter which is subject to the jurisdiction of a Native Court relating to marriage, family status, guardianship of children, inheritance or disposition of property on death.

Section 17 of the Supreme Court Ordinance, 1943, specifically enacts that nothing in that ordinance shall deprive the Supreme Court of the right to observe or the right to enforce the observance of any existing Native Law and Custom, and that nothing in that ordinance shall deprive any person of the benefit of any existing native law and custom if such law and/or custom is not repugnant to natural justice and morality or is not incompatible—either directly or indirectly—with any law for the time being 10 in force. Those native laws and customs shall be deemed applicable in causes and matters in which the parties are natives. That means that in those cases which can be tried in the Supreme Court, that Court shall give effect to any applicable and relevant native law and custom.

Section 19 of the Magistrates' Courts Ordinance, 1943, deals with the civil jurisdiction of Magistrates. Without particularising, it may be stated that a Magistrate has jurisdiction (a) in all personal suits, whether arising from contract or from tort, or from both, where the debt or damage claimed does not exceed certain amounts, (b) in suits between landlord and tenant for possession of lands or houses claimed under agreement or 20 refused to be delivered up, where the annual value or rent does not exceed certain sums, (c) to appoint guardians *ad litem*, (d) to grant injunctions to prevent waste or alienation, for the detention and preservation of property and to restrain breaches of contract or tort.

The proviso goes on to limit, similarly, the Magistrates' jurisdiction in the same manner and to the same extent as section 12 of the Supreme Court Ordinance, 1943, limits the jurisdiction of that Court, but also prevents any Magistrate from hearing any suit in which the validity of any devise, bequest or limitation under any will or settlement is or may be 30 disputed.

Section 33 of Ordinance No. 24 of 1943 is in its scope and effect the same as section 17 of the Supreme Court Ordinance, 1943.

The foregoing presents a rough summary of the actual state of the law as it was prior to the amending Ordinance No. 20 of 1945 being enacted—an amending ordinance, it is to be observed, which commenced on 19th April, 1945, and in regard to which His Majesty was advised that he should not exercise his power of disallowance. See Government Notice No. 1235 published in Gazette No. 65 dated 18th October, 1945.

The following are the words of sub-section (2) of section 2 of the principal ordinance No. 14 of 1930 as enacted by the amending Ordinance 40 No. 20 of 1945 :—

“(2) In the case of any dispute the Governor, after due enquiry  
“ and consultation with the persons concerned in the selection shall  
“ be the sole judge as to whether any appointment of a chief has  
“ been made in accordance with native law and custom.”

Do those words completely oust the jurisdiction of every judge or tribunal in Nigeria in matters relating to the appointment (by those entitled by Native Law and Custom to appoint) of a chief or head chief as therein defined in the said amending ordinance according to native law and 50 custom ?

Contrast those words with the language used in the wording of sub-section (1) of section 75 of the Gold Coast Ordinance No. 4. That

subsection is set out at page 274 of Vol. 8 W.A.C.A. Reports, and is practically identical with section 26 of the Gold Coast Native Administration Ordinance which is itself set out at page 42 of Vol. 2 W.A.C.A. Reports.

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“The Supreme Court and Magistrates Courts shall not have jurisdiction to entertain either as of first instance or on appeal any civil cause or matter instituted for the trial of any question relating to the election, installation, deposition or abdication of any Paramount chief, head chief, or chief.”

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- 10 Their Lordships of the Privy Council have construed those words in (a) *Kweka Bau vs. Ngarku Kweke* IV reported at Vol. 2 W.A.C.A. Reports page 40. To quote the words of Lord Atkin—“The action is undoubtedly brought to dispute the defendant’s position as Paramount Chief of the State. It is said that at Nsaba they don’t recognize him and they wish an injunction to restrain him from exercising the functions of Paramount Chief at Nsaba. The Plaintiffs are met by what appear to their Lordships to be the plain terms of section 26 of the Native Administration Ordinance. Those words appear quite plain to cover the dispute in the present case. It is a question relating to the election and installation of a Paramount
- 20 Chief. It is the election and installation which the Plaintiffs seek to dispute. It is that election and installation which the ordinance says the Court shall not have jurisdiction to entertain. That is the ground taken by the Court of Appeal in West Africa. It appears to their Lordships that it is *impossible* to say that that decision is wrong. It appears on the materials before their Lordships to be right and in accordance with the meaning of the words of the section.”

The cases of—

(b) *In re State Council of Wassaw and Kwamina Enimil* referred to at page 73 of 8 W.A.C.A. Reports.

- 30 (c) *Nanakojo Nkum & Others vs. Ahinaku Bonso idem*,  
(d) *Nana Obosu Enu I and Others vs. Biney idem* 70,

are all to the same effect. Whether the question was sought to be raised by a writ of certiorari, injunction or declaration, the jurisdiction of the Gold Coasts was held to have been ousted.

- 40 Are the words of subsection (2) set out in the amending Ordinance No. 20 of 1945 capable of a similar construction in a case where the question is whether an appointment of a Chief has been made in accordance with Native Law and Custom? What do the words “the Governor shall be the sole judge” mean? What was the intention of the Legislature? Was it intended to alter, in any way, the state of the law as it existed prior to the drafting to the Amending Ordinance? Was it intended to remedy the wording of the original subsection (2) in view of the decision of the Privy Council delivered in June 1944?

The word used is “judge.” To my mind, that has a peculiar import. The words are “the sole judge.” The phrase is “the Governor shall be the sole judge.”

- 50 Before construing that subsection, I have considered the principles set out in paragraph 1177 of the 8th Volume of the Second Edition of Halsbury’s Laws of England under the title “Courts.” I have come to the conclusion that the right of the subject to have access to the Courts

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was taken away by that subsection and that such was the intention of the Legislature if and when the question to be determined by the Governor was ripe for his consideration.

There is a further point to be decided. As will be seen, the words of the Gold Coast Ordinance are very wide—that is “any civil cause or “matter instituted for the trial of any question relating to the election, “installation, deposition or abdication of a chief.” In my opinion, the words “any question relating to the election, etc., of a chief” include in their unrestricted sweep any and everything connected therewith both before the election, as well as afterwards. It would include a question 10 as to who would have the right to elect before the election was made.

In the local subsection (2) aforesaid, the words are “the Governor shall be the sole judge as to whether any appointment *has been made* in accordance with native law and custom.”

In the Privy Council case of *Moore vs. Tayee* reported at Vol. 2 W.A.C.A. Reports 43—a case which turned on the construction of certain rules of appeal and their application to the matter in hand, Lord Atkin used these words: “It is quite true that their Lordships, as every other Court, attempt to do substantial justice and to avoid technicalities, but their Lordships, like any other Court, are bound by the Statute law, and 20 if the Statute law says there shall be no jurisdiction in a certain event, *and that event has occurred*, then it is impossible for their Lordships or for any other Court to have jurisdiction.”

Applying firstly, that principle, it is my opinion that only when the event of the appointment of a chief or head chief has, in fact, been made, that the Governor has exclusive jurisdiction. Secondly, to apply again the principles set out in the said paragraph 1177 of 8 Halsbury’s Laws of England, Second Edition, and to adopt the actual words of the context, I have watched the language of subsection (2) jealously and I am not entitled to extend that language beyond *its least onerous meaning*. These 30 are *the sign-posts* I must follow. I conclude from the wording of that section in its plain meaning that it is only when the appointment of a chief or head chief as therein defined has in fact been made that the jurisdiction of the Courts are ousted. The words of the local subsection are very far removed from those of the Gold Coast Ordinances. It follows therefore that, until an appointment of a chief or head chief, as defined in the said subsection has been made, rightly or wrongly, in accordance with the local native law and custom, the Native Court in the area or the Supreme Court, as the case may be, is vested with full jurisdiction and has the right and power to try each and every issue that can properly 40 and legally be canvassed before it. I hold that to be the law even though the intended appointment relates to a chief or head chief who in fact, comes with the wording of the definition of “chief” and “head chief” in subsection (2) aforesaid. If that subsection was intended by the legislature to give the Governor the same wide powers as have been given to the Governor of the Gold Coast by section 75 of the Gold Coast Ordinance No. 4, then my ruling is that the local legislature has not said so.

Colonial Courts must give precedence to the decisions of the Privy Council before those of any other tribunal. It is apparent that part of the judgment of the West African Court of Appeal in *Amimu Jinadu and 50 Others vs. Salami Akiyele* which was delivered in Lagos on 31st January 1944,

and which dealt with the construction of the said subsection (2) is at variance with the Privy Council's decision in *Laoye and Others vs. Amao Ojetunde*, and cannot be followed. It is to be noticed that the West African Court of Appeal did not construe the last 3 words in the phrase "whether any appointment of a chief *has been made*." There also seems to have been some discussion in that case about the Governor making the appointment. *Taiwo vs. Sarumi II* 2 N.L. Reports does not appear to have been brought to the notice of the Court. That case decided that, unless it is so enacted, the Governor's recognition is not necessary to the election  
 10 of a chief. It should also be noted that it is only after an appointment has been made *and* when a dispute has arisen that the Governor is to be the sole judge as to whether that appointment has been made in accordance with Native Law and Custom and by the persons entitled under native law and custom to make the appointment.

One further position may develop. During the time the Governor is engaged in judging the question of the appointment of a chief or head chief or after he has decided that question, what is to happen to any property or paraphernalia which may attach to the chieftaincy in question? Can that aspect of the matter be considered by the Native Court of the area or  
 20 by the Magistrate having jurisdiction in that area or by the Supreme Court, as the case may be? The answer is in my opinion as follows. Subject to my comments re *Rea vs. Cheshire County Court Judge*, the Supreme Court will certainly have jurisdiction in all those cases concerning property the value whereof is in excess of the jurisdiction of any other Court of lesser jurisdiction. A Magistrate's Court will certainly have jurisdiction concerning property the value whereof comes within the monetary limits of its jurisdiction. A Grade A Native Court has full jurisdiction. The relevant Grade B, C, or D Native Court may have  
 30 jurisdiction to award damages only in cases of the tortious detinue or conversion of that property, *if, and only if*, the words "debt, demand or damages" are capable of including personal actions of tort. If those words "debt, demand or damages" as used in the Schedule to the Native Courts Ordinance do not include personal actions for tort, then, no native court except a Grade A Court has any jurisdiction because the words common to Courts of Grades B, C, and D are: "full jurisdiction in cases in which no claim is made for and which do not relate to, money or other property." No jurisdiction to grant an injunction to stay waste or alienation or for the detention and preservation of any property is vested in any Grade B, C, or D Native Court. A Magistrate has, by section 19  
 40 of the Magistrates' Courts Ordinance, 1943, power to grant, in any suit instituted in the Magistrate's court, injunction or orders to stay waste or alienation or for the detention and preservation of any property. But that can only mean in any suit properly instituted in the Magistrate's Court, and in no other suit. Those suits are as the section says personal suits, whether arising from contract or from tort, or from both, where the debt or damage claimed does not exceed £100, £50 or £25 in first, second and third grade Magistrates' courts respectively. Unless the substantive suit is one of tort—that is, detinue or conversion—no Magistrate's court can grant an injunction concerning any property or paraphernalia attached  
 50 to a chieftaincy. There is no need to suggest the circumstances that would enable any such action to lie during the time when the Governor was considering his decision or after his decision had been signified.

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An injunction, it should be added, could always be granted by the Supreme Court under section 28 of the Supreme Court Ordinance, 1943, and Order XXI of the Supreme Court (Civil Procedure) Rules, 1945. No corresponding rule, however, to that of Order XXV rule 5 of the English "Rules of the Supreme Court, 1883" is to be found in the local rules. The pertinent part of rule 5 is: "No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby." If, and when, the effect of that omission falls for decision, the case of *Rea vs. Cheshire County Court Judge* etc. Vol. 125 Law Times Reports page 588 should afford much needed guidance; and 10 will have to be considered.

It is hardly necessary to deal with the law as to the granting of injunctions in all those causes in which the Governor is not made and is not acting as, the sole judge.

It is clear that where the Defendant in a case claims and insists upon his alleged right or gives distinct notice of his intention, or threatens, or intends to commit an act which if committed would in the opinion of the Court violate the Plaintiff's right, an injunction will be granted. Section 17 of the Supreme Court Ordinance is merely declaratory of the principles 20 summarised in the last sub-paragraph of paragraph 22 of 18 Halsbury's Laws of England Second Edition. If Plaintiffs, in cases of this type, are seeking the aid of the Supreme Court in order (*a*) to prevent their being deprived of the benefit of what they allege to be an existing native law or custom and (*b*) in order to prevent a Defendant from doing an act which a Defendant has stated that he intends to do or which he has given prior notice of his intention to do, but has not yet done, this Court has full and unfettered jurisdiction to adjudicate in the matter.

It is now a simple matter to decide the question of jurisdiction. On those facts of this case which are germane to the question of jurisdiction, 30 I am satisfied (1) that the 2 titles in question do not come within the definition of "chief" or "head chief" as set out in Ordinance No. 20 of 1945; it is abundantly clear from the evidence, and from the exhibits CAT. 7 and CAT. 8, that neither of the holders of these chieftaincies, the Oluwo of Iporo or the Balogun of Iporo, is even a member of an advisory Council to any Native Authority; and as the Alake of Abeokuta is himself the sole Native Authority for Abeokuta, it is obvious that this is not a case in which the powers given to the Governor by Ordinances No. 14 of 1930 and No. 20 of 1945 can be exercised by him; (2) that there are attached as of right to those titles according to Native Law and Custom the separate 40 enjoyment, by the title-holders, of special fees; (3) that this right to enjoy these particular fees is a thing, apart, and distinct, from the general right of enjoyment of other fees which Ogboni chiefs have in common with other members of Ogboni Societies, and with the people of the Abeokuta Townships; (4) that apart from those fees, there are further rights which these title-holders have to articles of clothing, gin, the flesh of sheep and goat, which have to be donated according to native law and custom by ascertainable persons on the installation of chiefs, and, on the death of rich subjects of the Alake or of prominent and affluent Ogboni chiefs. These rights being measurable in terms of money, are pecuniary interests. 50 This cause concerning these 2 chieftaincies involves claims which relate to money and other property. The jurisdiction therefore of every Native

Court in Abeokuta is ousted. There is no Grade A Native Court in Abeokuta. These particular perquisites attaching to the office of title holders cannot be described as "a debt" or "a demand" or "damages" and cannot come within the scope of the schedule to the Native Courts Ordinance 1933. No order of the Governor in Council has been exhibited to this Court as having been made under the provisions of Section 11A of the Native Courts Ordinance 1933, as enacted by Ordinance No. 8 of 1938. No existing Native Court in Abeokuta has statutory jurisdiction to make a declaration or grant an injunction.

- 10 Next, the cause of action in this case does not come within the jurisdiction given to a Magistrate by section 19 of the Magistrates' Courts Ordinance 1943, and consequently no claim for the type of injunction asked for can be granted by a Magistrate, nor can he make the declaration set out in the writ.

- I am satisfied that the titles to chieftaincies are involved and that pecuniary interests cognisable by the Supreme Court are also involved. In my considered opinion, a Judge of the Supreme Court is by the law of the land and on the authority of *Laoye & others vs. Ojetunde (supra)*, which included a claim to landed property and also chattels, the sole judge who has jurisdiction to hear and determine this matter, and I now propose to decide it, undeterred by the provisions of Section 39 of the Native Courts Ordinance 1933 which enacts that any person who shall exercise, or attempt to exercise, judicial powers within the area of the jurisdiction of a duly constituted native court, except in accordance with the provisions of any ordinance, shall be liable on conviction before the Supreme Court, Magistrate's Court, or Native Court of Grade A to 12 months' imprisonment or a fine of £100—or both: Section 74 of the Supreme Court Ordinance 1943, appears to be pertinent in connection with any prosecution that might be launched against a judge of the Supreme Court.

- 30 The following facts have been satisfactorily established. The Town of Abeokuta is composed of several townships. In each township, there has existed for very many years an Ogboni Society. No member of any Ogboni Society is without a title. In each Ogboni Society, there are various bodies. Only two of these bodies need be specially referred to in this judgment. They are the Iwarefa and the Ologun.

- The Iwarefa body is composed solely of chiefs and they are known as Iwarefa chiefs. Each Chief is the holder of a separate title. The titles of these Chiefs in descending rank are the Oluwo, Lisa, Odofin, Aro, Asalu, Base, Baala and Apena. As each separate Iwarefa body is composed of chiefs holding similarly intituled titles, it follows that there are as many similarly named chiefs in Abeokuta as there are townships. These chiefs are easily distinguishable by their titles because the name of the Township is added to the title, that is, the Oluwo of Iporo, the Apena of Kesi, and so forth. As will be observed, the highest ranking chief in each Iwarefa body is the Oluwo, and the lowest ranking is the Apena. This case is concerned principally with the elevation of the 3rd Defendant to the office of Oluwo of Iporo, and the elevation of the 4th Defendant to the office of Balogun of Iporo, the highest office in the Ologun body. The 2nd Defendant was at all material times the Apena of Iporo. The 1st Plaintiff was known as the Base of Iporo.

The duties of the Apena are numerous. He acts as the Secretary of his Iwarefa body; he is bound to notify all the chiefs in his Iwarefa

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body about the time, date and place of each meeting ; he is the principal office holder who functions at the installation of every other Iwarefa chief.

With two exceptions, all the Iwarefa titles are hereditary—i.e. only a person who belongs to a certain family, or group of families, can succeed, subject to what follows, to that particular title in a particular Iwarefa body. The exceptions are the Oluwo, and the Apena. I find as a fact that a family, or group of families, which has the sole right to have one of their members made a particular title holder, can for a consideration, such as the inevitable sheep or goat, gin and money, consent to a person 10 outside the family circle holding that family title in the Iwarefa body, and that his term of office is for life. On his death, the family will then have the right to put forward another candidate to hold the vacant title.

When a hereditary title has to be filled in the Iwarefa, the family concerned has to nominate a person as their candidate. Their choice is communicated to the Iwarefa chiefs through the Apena, and, after consulting their convenience, he informs them of the time, date, and place of the meeting that has to be called for considering the matter. If the candidate is acceptable to, and accepted by, that Iwarefa body, the family and the candidate are informed. Certain fees, determinable 20 according to the wealth of either the family or the candidate, or both, are fixed by the Iwarefa chiefs. This fee must be produced, and paid over in due course, to the Apena. A portion of that fee is, together with the candidate, taken by the Apena to His Highness the Alake of Abeokuta, the elected King of the people of Egbaland. If the portion of the fee tendered to the Alake is accepted by him, such act of acceptance signifies that the Alake has given his approval to the candidate being installed. If the fee is, in the Alake's opinion, inadequate, then such fee as the Alake intimates will be acceptable, must be produced. When it is so produced, 30 and accepted, that candidate is deemed to be a person of whose installation the Alake approves. The Alake may refuse to give his approval if he thinks that the proposed candidate is unfit to be a chief ; and, unless the Alake subsequently changes his mind, no such candidate can ever be installed or made an Iwarefa chief. An indispensable condition precedent to the choosing of a candidate is that each and every living chief of the particular Iwarefa body must be informed by the Apena about the impending election of a chief to their body. When the Apena has so informed all those Iwarefa Chiefs, then it is the bounden duty of each such chief to appear at the convened meeting, and to take part in the business 40 in hand. If, however, it is impossible for any such chief to attend after being summoned, I find as a fact that the other Iwarefa Chiefs who do attend are fully competent to exercise in the absence of the non-attending chiefs, their powers of election. If vacancies in the ranks of Iwarefa chiefs are caused through death, it is the rule that the remaining living chiefs, whatever the number, can legally function.

The non-hereditary titles should now be dealt with. I am satisfied that according to Native Law and Custom, any person can be put forward as a candidate for either of these offices : that any person who at the time of nomination is outside the circle of the Iwarefa body or the Ogboni Society may properly be considered for election : that if such a person is 50 adopted as the candidate of their choice by the Iwarefas and is approved by the Alake, he must be initiated into the Ogboni Society—for the rule

is that no one who is not an Ogboni can ever become an Iwarefa chief, or incidentally, the Alake. I find as a fact that it is not contrary to Native Law and Custom for a person outside the circle of Iwarefa chiefs to be appointed to either of the offices of Oluwo or Apena: I find as a fact that it is not contrary to Native Law and Custom either for an Iwarefa chief to become an office holder in the Ologun body, or for any office holder in the Ologun to become straightaway an Oluwo of the Iwarefas. I find as a fact that according to Native Law and Custom, it is not the rule that the office holder ranking next to the one immediately above him automatically succeeds to the immediately higher office when a vacancy therein occurs. This is so both as regards the Iwarefa body and the Ologun body. I find as a fact that it is not the rule, according to Native Law and Custom, that only the Apena can perform the installation ceremony or that his presence thereat is indispensable: nor is it the rule that if no other Iwarefa chief than the Apena attends, that an installation of a chief by the Apena or his substitute in those circumstances is abortive or altogether void. I find as a fact that in the cases of all non-hereditary titles, the Alake has the power to suggest the name of a candidate to any Iwarefa body or Ologun body or other Ogboni Society body for its consideration: but that he is not empowered to *command* that body to accept his particular candidate. The Alake's candidate is to be considered in exactly the same manner as any other candidate. The procedure I have outlined must be the same in all cases from the moment the name of the candidate is given to the Apena.

After a candidate is installed (and this must be done at the regular Ogboni House used by the Iwarefas) a procession is formed and the newly installed chief is presented to the members of the particular township. The ceremony of feasting the townspeople follows and the remainder, if any, of the fees paid by the candidate are together with any other sums contributed by the newly installed chief distributable among those townspeople. I repeat what I have said already—the fees which the Iwarefa chiefs divide among themselves are the exclusive perquisites of each such chief: each of them is distinctly entitled to a separate share of those fees. The proportionate part allotted to each chief was not given in evidence, but it is clear however that the Alake gets the greatest proportion, and the Oluwo follows next with 25 per cent. of what the Alake does not deign to receive.

I come now to the constitution, and the election to membership, of the Ologun body. Among the chiefs in the Ologun, there are in descending rank the Balogun, Otun, Osi, Ekerin, Seriki, Bada. It is the duty of the Balogun, the highest Ologun chief, to notify all the Ologun chiefs about an impending election to their ranks. He must inform them as to the time, date and place of the proposed meeting. Those are indispensable conditions—precedent. When these Ologun chiefs, in secret conclave assembled, agree upon a candidate, their choice is to be communicated to the Apena of the Iwarefas, and he in turn is bound to act thereafter as he must act when as previously recited he has received the name of a candidate for election to the Iwarefa body. The procedure thereafter as to compulsory attendance, compulsory summoning, adoption of choice, fixing of fees, payment to the Alake, acceptance of fee and candidate by the Alake is exactly the same as that hereinbefore outlined. A difference however is that after the Alake has received his portion of the fee, the

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Iwarefa chiefs decide what their portion shall be, and after deducting their quantum, the balance, if any, is given to the Ologun chiefs who then distribute that balance if any, among themselves. This remaining portion of the fee originally fixed by and paid to the Iwarefas by the Ologun candidate is the especial perquisite of the Ologun chiefs themselves. In the very remote possibility of there being any balance in hand after these 3 sets of claimants have exercised their rights, then the townfolk of the particular township in which the particular Ologun chiefs function will get what may be coming to them. The newly installed Ologun chief would doubtless supplement this nebulous fund. As it is admitted and 10 proved that both the 3rd and 4th Defendants were installed as the Oluwo of Iporo and the Balogun of Iporo respectively on the 26th January 1945, it is well to point out here that the 3rd Defendant was himself the Balogun of Iporo up to that date. It was therefore his duty to inform all the Ologun chiefs of the fact that the 4th Defendant's name has been submitted to him for election, to convene a meeting of the Ologun chiefs for that purpose, to be present at that meeting, and to convey to the Apena of the Iwarefas that the choice had fallen on the 4th Defendant. This 3rd Defendant has not given evidence. In my considered opinion, the Alake is 20 faulty in his recollection when he says that all the Ologun chiefs who had the right to be present and show their consent to the 4th Defendant being installed as Balogun were in fact present. His evidence as to the proceedings at the alleged meetings of the Ologun and Iwarefa bodies is hearsay and inadmissible. I have no hesitation at all in accepting the evidence of Raimi Moteso Bamgbola on this part of the case. I am satisfied and find as a fact that he was entitled as Osi of Iporo to be notified about the impending election of the 4th Defendant; that he never received any notification of any kind whatsoever on the matter; that had he been so summoned he would have gone to the secret conclave of Ologun chiefs; that he knew nothing about the 4th Defendant's election and that he 30 took no part in it. I believe this deponent to be a witness of truth. He had been a regular attendant at Ologun Chiefs' meetings which were usually held at the then Balogun's house (that is the house of the 3rd Defendant). Bamgbola's evidence stands uncontradicted. This finding, by itself, is sufficient to determine this part of the case. I have arrived at the decision that the election, appointment and installation of the 4th Defendant I. A. Sodipo as the Balogun of Iporo was and is contrary to established, effective and current native law and custom; I declare that the said election, appointment and installation of the said I. A. Sodipo as the Balogun of Iporo on the 26th day of January 1945, was and is contrary 40 to the Native Law and Customs of the people of Egbaland; and I grant the injunction prayed for and order the said I. A. Sodipo to refrain from acting as Balogun of Iporo or performing any of the offices, functions or customs, belonging or appertaining to the Balogunship of Iporo in the town of Abeokuta. There will accordingly be judgment for the Plaintiffs against the 1st, 2nd, 3rd and 4th Defendants on this part of the claim. I propose to deal with the position of the 1st Defendant, the Alake of Abeokuta, at a later stage.

In order to arrive at a decision on the other part of the claim, it is necessary first of all to consider certain important subsidiary issues and 50 to reach a conclusion about them. One of those issues is concerned with the position of the 1st Plaintiff in the Iwarefa body as far back as September

1943, with his being drummed out of the Iwarefa body at the Ogboni House in September 1943, and with his legal status after a meeting at the Palace of the Alake on 29th March 1944. The 1st Plaintiff is an Egba man, belongs to Iporo Sodeke Township, and was the holder of the Iwarefa title-chieftaincy of Base of Iporo since 1934. He is an intelligent and educated man who writes and speaks the English language fluently. He is obviously a man of strong character and personality, and is sufficiently a leader of men to have been able to form a party of his own in Iporo, to split that township in twain, and to have attracted and kept to his side a strong following. In striking contrast to this man are the majority of the Iwarefa Chiefs of Iporo who speak no English, do not read and/or write, but who nevertheless are fine representatives of their class. They belong to a Secret Society which has in bygone years powerfully ruled Egbaland with some degree of prosperity. The document LA. 2 put in by the Alake is ample evidence of the character, strength and unity of the leaders of the Ogboni Society in 1908. In succeeding years their power has been steadily whittled down, and their influence is now but a shadow of its pristine greatness. The Apena himself has entered that late stage of life when it is apparent that his mental faculties are waning. His evidence is unfortunately valueless. The other, rated, Iwarefa chief—the Asalu of Iporo who gave evidence for the defence displayed easily annoyed petulance when he was being subjected to close questioning and when he realised that his untruthfulness was plainly manifest to the crowded court. I set these things down in order to show the character of the forces that have come into conflict, time and again in the past 11 years. These Iwarefa Chiefs have been unsuccessfully fighting for some years a grim rearguard action against the irresistible forces of enlightenment. They are obviously very jealous of their rights and deeply resent not only any incursion into them, but any criticism of their exercise of those rights. After a series of differences between the 1st Plaintiff and themselves—many of which had been referred to the Alake for settlement by one side or the other—matters reached such a head in 1943 that, according to the Alake, the Iwarefa Chiefs who were then alive came to him twice, and told him that they wanted to drum out the 1st Plaintiff. The Iwarefa Chiefs then alive and capable of functioning, and including the 1st Plaintiff, were not more than half of that body. The Alake states that he advised them to be patient. The witness—the Asalu—contradicts the Alake on this point, and swears that no such communication was ever made to the Alake. Certain Iwarefa Chiefs then took matters into their own hands without informing the Alake beforehand, and solemnly and deliberately drummed the 1st Plaintiff out of their body at their Ogboni House. This act of only two of these few living members (see *infra*) was in direct opposition to the counsels of the Alake and was done in total disregard of their duty as Ogbonis to inform the Alake beforehand of what they had finally determined to do. No evidence has been given to this Court that the 1st Plaintiff had been previously informed of the charges held against him or that he was to be tried; no invitation was given to him to appear to defend himself, or to answer the charges that these two Iwarefa Chiefs (see *infra*) conceived he had committed. In his absence, and without being even notified of any enquiry into his conduct, far less being called upon, he was expelled from their Society. This method of procedure was in direct violation of the

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Native Law and Custom bearing upon the deposition and/or suspension of a chief. I find as a fact that in Ogboni Societies the sacred principle which is enshrined in the legal maxim—*audi alteram partem*—operates with full force. It has been proved to be part of the Native Law and Custom. There is a certain amount of conflict in the evidence about the significance of this drumming out. I have no doubt that in times past the ceremony amounted to a sentence of death. I also have no doubt that even to-day the death of the person drummed out is associated in the minds of some of the townsfolk with that ceremony. The evidence of Sanni Falola, and the references made by Mr. J. K. Coker to the beating 10 of the same drum for the Oluwo of Oba who died immediately and to the fact that it had pleased God to spare the Plaintiff's life—see the last part of his speech in exhibit JAK. 1—support this view. A different view is taken by Jekayinfa the Asalu of Iporo a witness for the defence. He stated that when the plaintiff was drummed out, "We slew a sheep. Its "blood flowed on the ground. To me, that meant that anyone who "partook of the meat should not secretly go to the Plaintiff." The Alake on the other hand swore under cross-examination that "there is "no such thing as death drumming of an Ogboni Chief in Ogboni House. "There is a drumming out done at Ogboni House. That only amounts to 20 "suspension from entering Ogboni House. That is the generally accepted "meaning among my people of the ceremony of drumming out. Two "cases recently occurred of reinstatement after the people were feasted. "I know Taylor, the Oluwo of Obe Township. He was drummed out. "Nothing happened to him. He died about three months after." Mr. Titcombe, an Iwarefa Chief of culture and education and who is the Secretary to the Egba Native Administration gives a further variation. He says that if an Iwarefa Chief "is drummed out, he is deprived of all privileges in the Township. From the day he is drummed out he should not enter the Ogboni House thereafter. Any person who tried to enter 30 would be roughly handled and put out not too gently. In the old days such a person would be killed if he attempted to enter the Ogboni House." Exhibit CAT. 3 speaks in the name of nearly 100 people of the drumming out as having in effect removed the 1st Plaintiff from the office of the Base of Iporo.

These versions are referred to in order to show what effects the ceremony of drumming out accompanied with the slaughtering of a sheep had or has on different minds at various stages of evolution. However well or ill founded those several impressions are or were, the outstanding facts remain that the victim—the 1st Plaintiff—had never been notified, 40 as he should have been notified according to specific Native Law and Custom on the point, of the date or place of his trial or of the substance of the charges against him, and was never given the opportunity of defending himself.

The next matter to be considered is what took place at the palace of the Alake on the 29th of March 1944. The exhibit JAK. 1 contains an account of those proceedings, and though its accuracy is impugned in parts, no evidence has been led by the Plaintiffs to prove where the alleged inaccuracies occur. A careful analysis of the various addresses delivered on that occasion discloses the following grievances held by "Iporo" and 50 the Iporo Chiefs. (1) That by a trick the 1st Plaintiff obtained from the Chiefs their signatures to a document that contained matter which had

not in fact been communicated to them. (2) That while it was agreed that their member in the Central Council should give a percentage of the member's remuneration to the Township the 1st Plaintiff only gave £2 out of the £50 he had received. (3) That as the said percentage was not paid, the township chiefs had to subscribe money to repair the walls of the Ogboni House. (4) That the 1st Plaintiff as Base of Iporo did not inform the Iporo Township Chiefs of the death of the late Odofin of Iporo—which they allege he ought to have done. (5) That the 1st Plaintiff caused the corpse of the said Odofin of Iporo to be buried according to Christian rites and with the Gumbe drum. (6) That the children of the said Odofin of Iporo had not contributed any death dues or paid any death fees which were the special perquisite of the Chiefs. (7) That the Chiefs "were fed up with 1st Plaintiff and did not want him any more." (8) That the 1st Plaintiff had received other monies which he had not delivered to the Chiefs. (9) That the 1st Plaintiff had kept an Edan (an Ogboni staff) in his house when it was unconstitutional for him so to do. (10) That the 1st Plaintiff had called the Apena names. (11) That the Plaintiff baptised the late Odofin as a Christian. (12) That as the late Odofin lived in the same house as the 1st Plaintiff and as the 1st Plaintiff knew that the late Odofin had shared clothes with the Chiefs for many years, it was the duty of the 1st Plaintiff to inform the chiefs of the death of the late Odofin in order that they could get their share of the clothes of the late Odofin. (13) That 1st Plaintiff had turned down the appointment of Olori Parakoyi in favour of one Gbadamosi Igbein.

With the exception of (1), (5), (7), (9), (11) and (13) above, all the other grievances relate directly or indirectly to money. The majority of the other items centre around the death of the late Odofin of Iporo. On that question there are pros and cons—and it appears to me that if the late Odofin had, as was alleged, been interdicted from enjoying his office for 15 years and if for 5 years the Chiefs would have nothing to do with him, those chiefs had the flimsiest of claims against the property of a man who not only had died a Christian but who had specially enjoined his children, on the pain of suffering death, to give nothing to the Iporo Township. With regard to (1), that accusation remains in the air to (5), it must be conceded that a Christian is entitled to be buried according to the rites of his church to (9) it was conceded that that had been settled previously by the Alake : to (13) there is nothing to suggest that the 1st Plaintiff was not within his rights.

With regard to the grievances over money, the 1st Plaintiff after giving his explanation concerning the application of his fees as a Councillor and the repairs to the Ogboni House stated in the presence of the Alake that when the Apena was involved in sums of £197 and £28 odd which had not been accounted for, the Alake himself ordered those debts to be waived, and further ordered that nobody should thereafter ask for them any longer. Nothing appears on the record of the minutes to show that that statement was not true. There is no denial from the Alake that such was not the case. The Alake stated in his evidence, that he had checked those minutes and that they were correct. I find it difficult to reconcile that unchallenged set of facts with the evidence of the Alake when he testified that the Apena had accounted for every penny he had received, and that the sums involved were a few shillings. A careful scrutiny of the

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summing up of the Alake shows that the 1st Plaintiff was at fault to scrutinise and to desire to share in the perquisites enjoyed by the Apena; that it was wrong of him to attempt to share what the Ogboni received; that it was regrettable that he, as an educated man, should associate or mix with "our people" and give them trouble and confusion too frequently instead of assisting them in the right way. I confess I am unable to follow this line of reasoning in relation to the matter in hand. The 1st Plaintiff as Base of Iporo was entitled according to Native Law and Custom to a share in the perquisites of the Iwarefa Chiefs; as such, he was certainly entitled to enquire into the state of the accounts in order to ensure that he should get his fair share. 10

With the greatest possible deference to His Highness—a ruler who has occupied the throne of Egbaland for 25 years and who must consequently have had a great deal of experience of human affairs, I cannot but conclude that the reasons given by him in effecting this settlement of the misunderstanding were not well founded or relevant. From the angle of pure and abstract justice, I cannot agree with his conclusions. It must be conceded that the position of the Alake was a difficult one. The remaining Chiefs of the Iwarefa were united against the 1st Plaintiff and were fed up with him; they had presented the Alake, and had done so against his advice, 20 with a fait accompli. The 1st Plaintiff had been drummed out, and that fact had been published in the press. The Chiefs had done so in violation of the elementary principles of natural justice—they had never given the 1st Plaintiff an opportunity of being heard in his own defence when in the words of J. K. Coker the result of their decision was "to beat drums to kill him." That great wrong which had been done to the 1st Plaintiff does not seem to have been weighed in the balance by the Alake. Nor did he take into account that only the Asalu and the Apena of this particular Iwarefa body had made the decision. In September 1943, the Odofin was ill and he had been ignored for 5 years; the Lisa, J. K. Coker, had stated at that 30 meeting at the Palace that he was never notified. The other living Iwarefa Chief was the 1st Plaintiff. Nothing had for 6 months been done by the Alake to compel these 2 Iwarefa Chiefs to remedy the harm they had done to the 1st Plaintiff. In the teeth of this injustice, and though the Alake had never been previously advised by these 2 men of their decision to drum out the Plaintiff, the Alake, without seeking to give the 1st Plaintiff any redress for what the 1st Plaintiff was specifically complaining about in his final remarks told him not to look at the matter from the view point of an educated man but to consider the Ogboni Society's point of view. He then invited the 1st Plaintiff, though the latter seemed 40 reluctant to comply with His Highness' wishes, to go out in the open and apologise in the customary way. The 1st Plaintiff was thus placed on the horns of dilemma—he had there and then to elect whether he should comply with the avowed wishes of his king or whether in full view of the assembly he should flout the regal will. To his everlasting credit, he spared his king a public affront to his dignity. I am not unaware that His Highness may have decided to cut the Gordian knot in the way he did in order to bring peace and harmony to a divided Township. He may have been influenced by the fact that it was easier for the 1st Plaintiff to apologise than for the Ogboni Chiefs to permit the 1st Plaintiff to re-enter 50 the Ogboni House without having previously made the customary gesture of appeasement. He may have thought that it was in the interest of the

1st Plaintiff's very existence that he should bend the knee this once rather than incur the concentrated wrath and hatred of these disappointed and thwarted chiefs. He may have reflected that there was no case on record where a drummed out chief had ever been reinstated without having first complied with what custom decreed. If, as I believe after seeing him and forming an opinion of his intelligence and character, the Alake was influenced by these obvious reflections, then I am bound to record that however much I disagree with the reasons which he gave for his method of settling the misunderstanding, I cannot say that in all the circumstances  
 10 of the case his solution was capricious or arbitrary.

The decision of the Alake was not given in his judicial capacity. He gave it as an experienced ruler who was seeking to end a feud that had disturbed one of his townships for many years. Had Mr. Thomas after bending the knee, raised himself to the height that his king had hinted he expected of him, then the decision of the Alake would have achieved the results that were earnestly and desperately to be desired.

The next morning, however, Mr. Thomas went to the Alake and informed him he would not abide by the settlement that he the Alake had attempted to make. Thereupon the Alake said "I was finished." In the  
 20 result, the 1st Plaintiff while remaining the Base of Iporo was "suspended" and he could not take part in any of the proceedings at Ogboni House. As a suspended chief, he was not entitled to receive any communication from the Apena concerning any election. I find as a fact that the real reasons why the 1st Plaintiff never returned to Ogboni House after the 29th March 1944 were because he knew that any attempt to do so would have been met by unbridled physical violence, and because, as he knew what the feeling was over this matter between the 2 divisions of the Township, he did not wish to cause public disorder.

The question that remains is—what was and is the legal position of  
 30 the 1st Plaintiff after the 29th March 1944. His non-compliance with the final orders of his king is responsible for his present position. He has questioned the settlement: He has refused to accept it; he seeks this Court's ruling as to whether that decision of the Alake was right and whether he is bound by it. The decision of the Alake was not a judicial act: it was not an executive act: it was an act done by the Alake in his character of king as a result of an endless number of petitions having been sent to him. No evidence has been led about the powers of the Alake qua Native King or Paramount Chief. No plea has been placed on the record as to the character in which he made this decision. I have found  
 40 nothing in the local legislation dealing with his powers qua King. If he has the powers to settle disputes between his subjects according to Native Law and Custom, no attempt has been made to demonstrate to the Court what those powers are. In my opinion, the onus is on the Defendants Nos. 1, 2 and 3 to prove that the Alake has those powers and what the result of the exercise of these powers is. I consider therefore that this submitting of the question to the Alake ranks no higher than a submission of outstanding differences to a third party. The parties may or may not abide by the decision of that third party. Unless it is a submission to arbitration within the framework of the Arbitration Ordinance, neither  
 50 party is bound by any decision come to. For these reasons, I am of the opinion that as the Defendants have failed to prove the binding nature of

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the decision of the Alake, and as the 1st Plaintiff has been unconstitutionally drummed out of the Ogboni House, he was not in law deprived of his rights as an Iwarefa Chief and he was entitled according to Native Law and Custom to take part in the deliberations of his Iwarefa body over these two elections.

One or two small points remain. Order iv of the Supreme Court (Civil Procedure) Rules, 1945, covers the question of the Plaintiffs suing in a representative capacity. If the present Asalu of Iporo was installed after September 1943, his election and installation were not in accordance with Native Law and Custom inasmuch as the 1st Plaintiff was entitled to receive notification of the impending selection of the Asalu and take part in the deliberations of the Iwarefa Chiefs. He was similarly entitled so to do in the case of the election of the 4th Defendant as Balogun of Iporo. Paragraphs 12 and 13 of the Statement of Claim have not been proved and no attempt has been made to prove either of them. I find as a fact that the Alake never suggested to the responsible bodies that the 3rd or 4th Defendants should be elected and installed, and he was never a party to any preconceived plan or agreement to compel their election or to instal them. I find as a fact that he only came into the picture when in accordance with Native Law and Custom the candidates and their fees were presented to him. He evidently took it for granted that the formalities had been complied with, and having regard to what had taken place in March 1944, he honestly believed that the 1st Plaintiff was not entitled to take part in the preliminary proceedings. I find as a fact that the Alake never claimed that he had any exclusive right or royal prerogative to order or compel the appointment and installation of any chief in Egbaland, and he did not exercise or attempt to exercise any such alleged right or prerogative in this case. As the Alake was not sued in his capacity of Native Authority, the provisions of subsection (2) of Section 61 of the Native Authority Ordinance 1943 do not apply to this case. As I am completely satisfied that the Alake's part in this matter was far from all criticism other than that which I have made, and that he was actuated by the highest motives for the good of his people, there will be merely nominal judgment against him with no costs either to the Plaintiffs against him personally, and with no costs in his favour against the Plaintiffs.

There will on this part of the cause relating to the Oluwo of Iporo be judgment for the Plaintiffs against the 1st, 2nd and 3rd Defendants. This Court declares that the election and installation of Lawani, the 3rd Defendant, as the Oluwo of Iporo Township is contrary to the Native Law and Customs of the people of Abeokuta and this Court grants the injunction prayed for and orders the said Lawani to refrain from acting as the Oluwo of Iporo or performing any of the offices, functions or customs belonging or appertaining to the Oluwoship of Iporo in the Town of Abeokuta.

The Court proposes to offset the costs that are payable to the Defendants on the issues they have won against the Plaintiffs' general costs of the action. Counsel agree and ask the Court to fix the costs.

In my opinion a bill of costs could be successfully taxed by the Plaintiffs for 300 guineas. This is a case fit for senior and junior counsel. The Defendants could successfully tax a bill on the issues they have won

at 150 guineas. Consequently, the 2nd, 3rd, and 4th Defendants will pay the Plaintiffs 150 guineas costs. No costs will be payable by or to the Alake.

(Sgd.) C. N. S. POLLARD  
Acting Judge.

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**No. 32.**

**ORDER Granting Final Leave to Appeal to the West African Court of Appeal.**

IN THE SUPREME COURT OF NIGERIA

10

(Title as in No. 1.)

UPON READING the affidavit of Adebisi Akikunle Majekodunmi Esq., of Ibadan, a Solicitor to the Defendants-Appellants herein, sworn and filed on the 16th day of May, 1946,

AND AFTER HEARING the said A. A. Majekodunmi Esq., in support :

IT IS THIS DAY ORDERED that Final Leave be and is hereby granted to the defendants herein to appeal to the West African Court of Appeal from the judgment of this Honourable Court dated 15th November, 1945.

20 Dated at Ibadan this 31st day of May, 1946.

(Sgd.) S. B. RHODES  
Puisne Judge.

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**No. 33.**

**FOUNDATIONS OF APPEAL.**

IN THE SUPREME COURT OF NIGERIA

(Title as in No. 1.)

30 The Appellants being dissatisfied with the judgment of the Supreme Court, Ibadan Judicial Division, delivered by His Honour Mr. Justice Noel Pollard on the 15th day of November, 1945 at Abeokuta and having obtained Final Leave to appeal therefrom dated the 31st day of May, 1946 hereby appeal to the West African Court of Appeal upon the Grounds hereinafter set forth.

**FOUNDATIONS OF APPEAL.**

1. MISDIRECTION.

(1) The Learned Trial Judge having found that :—

“ A Grade ‘ A ’ Native Court has full jurisdiction ” misdirected himself in further holding that :—

“ The Jurisdiction therefore of every Native Court in Abeokuta is ousted.”

40

“ There is no Grade ‘ A ’ Native Court in Abeokuta ” when in fact there is a Grade “ A ” Native Court in Abeokuta.

No. 32.  
Order  
granting  
final leave  
to appeal  
to the  
W.A.C.A.,  
31st May  
1946.

No. 33.  
Grounds of  
Appeal,  
6th June  
1946.

*In the  
Supreme  
Court of  
Nigeria.*

No. 33.  
Grounds of  
Appeal,  
6th June  
1946,  
*continued.*

(II) The Learned Trial Judge misdirected himself in holding: "If " the present Asalu of Iporo was installed after September 1943, his election " and installation were not in accordance with Native Law and Custom ". When the legality or not of the installation of the Asalu was not questioned or raised on the pleadings.

(III) The Learned Trial Judge misdirected himself in holding: " He " seeks this Court's ruling as to whether that decision of the Alake was right " and whether he was bound by it." When in fact there was no such prayer and the 1st Plaintiff-Respondent had, in complying with part of the terms of settlement, waived his right of objection. 10

(IV) The Learned Trial Judge misdirected himself in holding: " The " decision of the Alake was not given in his judicial capacity. I consider " therefore that their submitting of the question to the Alake ranks no " higher than a submission of outstanding differences to a third party ". When the question was submitted to the Alake in his position as the Supreme Head of the Ogbonis whose consent is necessary to drumming out and who in fact ratified the drumming out and to whom the 1st Plaintiff-Respondent submitted himself for arbitration.

## 2. ERROR IN LAW.

(I) The Learned Trial Judge erred in Law in not applying s. 39 of the 20 Native Courts Ordinance 1937 in view of the existence of a Grade " A " Native Court in Abeokuta.

(II) The Learned Trial Judge erred in Law in holding that: " Order IV of the Supreme Court (Civil Procedure) Rules 1945 covers the question of the Plaintiffs suing in a representative capacity," in so far as the order does not dispense with proof of the representative capacity which was never proved in this case.

(III) The Learned Trial Judge erred in Law in giving judgment for the Plaintiffs-Respondents representing the Iporo Community No. 2 when:—

(a) They did not prove their representative capacity and must 30 therefore be taken to be suing in their personal capacities.

(b) Even in their personal capacities they have no right of action.

(c) When the Offices in dispute viz.: the Iwarefa and Ologun are within the Ogboni Societies and the right to fill the vacancies are within the Ogboni Societies as pleaded by the Plaintiffs-Respondents.

(d) Apart from the 1st 5th and 9th Plaintiffs-Respondents there was no evidence of the identity of the other Plaintiffs-Respondents or the positions if any that they hold in the societies. 40

(IV) The 1st Defendant-Appellant having been sued as " OBA ALAIYELUWA DEMOLA II " the Learned Trial Judge erred in law by holding that he has not been sued in his official capacity as " The Alake of Abeokuta (Sole Native Authority) " and that Section 61 of the Native Authority Ordinance No. 17 of 1943 does not apply to him.

The Appellants will crave leave of the Appeal Court to add to, amend and alter the above grounds.

Dated at Ibadan this 6th day of June, 1946.

(Sgd.) A. A. MAJEKODUNMI,  
Appellants' Solicitor. 50

## No. 34.

## ADDITIONAL GROUNDS OF APPEAL.

## IN THE WEST AFRICAN COURT OF APPEAL.

(Title as in No. 1.)

1. The Learned Trial Judge Misdirected himself in finding :—  
 “ An *indispensable condition precedent* to the choosing of a  
 candidate is that each and every living chief of the particular  
 “ Iwarefa body must be informed by the Apena about the impending  
 “ election of a chief to their body.”

10

And

“ It is the duty of the Balogun, the highest Ologun Chief, to  
 “ notify all the Ologun Chiefs about an impending election to their  
 “ ranks. He must inform them as to the time, date and place of  
 “ the proposed meeting. *These are indispensable conditions—*  
 “ *precedent.*”

When there was no evidence led by the Plaintiffs-Respondents as to the  
 indispensability of these conditions.

2. The Learned Trial Judge erred in law in entertaining the action  
 when there was no consequential relief claimed on the writ of summons.

20

Dated at Lagos this 12th day of October 1946.

(Sgd.) JOHN TAYLOR,  
 Solicitor to Defendants-Appellants.

## No. 35.

## COURT NOTES of Arguments.

## IN THE WEST AFRICAN COURT OF APPEAL.

Tuesday the 29th day of October, 1946.

Adedoyin for 1st Appellant.

Majekodunmi and J. Taylor for other Appellants.

Williams and David for Respondents.

- 30 *Williams for Respondents*: preliminary objection. Appeal not  
 properly before Court. Order for Conditional Leave. Conditions to be  
 perfected within one month. Order dated 12.4.46. Notice of compliance  
 filed on 11.5.46. Final leave on 31.5.46. Grounds of appeal on 6.6.46.  
 No apparent objection—withdrawn. The Court indicates that in the first  
 place it desires to hear argument on the question of jurisdiction.

*Taylor for 2nd, 3rd and 4th Appellants*: Ground 1 (i) raises question  
 of jurisdiction. See page 71. “ Grade A Native Court has full juris-  
 diction.” Page 71 “ the jurisdiction therefore of every Native Court in  
 Abeokuta is ousted. There is no grade A Native Court in Abeokuta.”  
 40 Page 61 decision of Judge to assume jurisdiction. This was on erroneous  
 assumption no Grade A Court in Abeokuta.

*In the West  
 African  
 Court of  
 Appeal.*

No. 34.  
 Additional  
 Grounds of  
 Appeal,  
 12th  
 October  
 1946.

No. 35.  
 Court Notes  
 of  
 Arguments,  
 29th  
 October  
 1946.

*In the West  
African  
Court of  
Appeal.*

No. 35.  
Court Notes  
of  
Arguments,  
29th  
October  
1946,  
*continued.*

Schedule at page G 104 Laws of Nigeria 1937. "A (limited) Grade Court." See Laws 1933 Ordinance 44/33 page 190 Schedule Grade A. Amendment by Ordinance 18/45. Asks that Warrant of Court be taken judicial notice of. On Warrant—original warrant in hands—full judicial powers in civil cases—within its Division Egba Division. Cause of action arose in Egba Division. Jurisdiction of Supreme Court ousted by jurisdiction of Native Court.

Effect of assumption of jurisdiction by Supreme Court when Native Court has jurisdiction :

Laws 1937—Ordinance 40/37 section 27 (1).

10

Exception : "except in accordance with the provisions of any Ordinance."

Ordinance 23/43 (page 955) section 12 : jurisdiction subject to jurisdiction of Native Court. Section 74 (1) does not save the judgment but frees the Judge from liability provided he acted in good faith.

Asks that judgment be set aside on this ground.

*Adedoyin for 1st Appellant* associates himself with arguments of Taylor.

*Williams for Respondents* : sections 11 and 12 of Supreme Court Ordinance 23/43. Section 11 vests jurisdiction of His Majesty's High Court in England. 20

Limitation is proviso to section 12 :

"issue as to title to . . . land subject to jurisdiction of Native Court or relating to marriage, family status etc. . . ."

If contention of Appellants is correct as to section 12 the Supreme Court has no jurisdiction—civil or criminal. Judge cannot sit at Assizes.

But Supreme Court and Native Court have concurrent jurisdiction in all matters save those mentioned in proviso to section 12. The opening words of section 12 not intended to oust jurisdiction of Supreme Court. The words are intended to save the proviso. Or it may intend to confer jurisdiction on transfer. Or that the new subject is intended to include in the jurisdiction of the Supreme Court those matters which are in the jurisdiction of Native Court and not of High Court in England. They don't apply a prohibition—that is in the proviso. 30

As to the powers of Governor :

*Taylor for 2nd, 3rd and 4th Appellants* : Appellants are not taking point as to jurisdiction of Governor only that of Supreme Court. Not applicable in this case.

*Williams for Respondents* : Any interpretation that "subject to . . ." is prohibitive would be unreasonable. Words to oust jurisdiction must be clear and unambiguous. Ordinance 44 of 1933 8 (1)—as to jurisdiction of Native Court. The 1st Defendant is not a person "ordinarily . . . subject to jurisdiction of native tribunal"—being Oba a king of Abeokuta and so not subject to jurisdiction any more than King of England subject to jurisdiction of High Court. 40

Nature of relief : Jurisdiction set out in Native Courts' Ordinance and Warrant. Relief of injunction grown up on equity side of Court :

not according to Native Law and Custom. Is it a relief Native Court has jurisdiction to grant injunction? Under what Ordinance are they vested with jurisdiction in equity or to grant injunctions.

Even if Native Court could make order to prevent persons doing wrong, that is not granting an injunction. There is no evidence before the Court that Native Courts have any such power by Native Law and Custom.

#### Adjournment.

*Williams for Respondents resumes*: As to ouster of jurisdiction. 10 Halsbury's Volume 8 Second Edition 532 paragraph 1177 "not to be extended beyond its least onerous meaning."

*Taylor for 2nd, 3rd and 4th Appellants*: Last authority deals with ouster of jurisdiction of "Courts"—not of any particular Court when another Court has jurisdiction.

As to interpretation of word "subject to"—

(1) where necessary as in section 11;

(2) jurisdiction dependent on that of Native Court, that is, where Native Court has jurisdiction Supreme Court has none.

*Proviso*: Supreme Court not to have original jurisdiction when 20 Native Court has jurisdiction—except on transfer. This confers jurisdiction not given by substantive section.

If it means no more than that Supreme Court shall not exercise jurisdiction in same matter independently then what is the meaning of provision of section 39 Ordinance 44/33.

Section 42 Supreme Court Ordinance 1943 does not necessarily imply concurrent jurisdiction.

See also page 9—injunction asked for to prevent 3rd and 4th Defendants from receiving such rents; comes within proviso to section 12 Supreme Court Ordinance 1943—interest in land and thus oust jurisdiction 30 of Supreme Court.

*Williams for Respondents in reply to last point raised*: Injunction to restrain 3rd and 4th Defendants for action in capacity as chiefs.

Question of collection of rents purely incidental. Action as to distribution of rents not necessarily action as to title to land or interest in land. Court does not propose to give a ruling on the present issue and argument is to proceed.

*Taylor for 2nd, 3rd and 4th Appellants*: As to ground 2 additional grounds of appeal. Question of injunction said by Williams not to prevent 3rd and 4th Defendants from collecting rents but to act as chiefs. Page 9 40 Claim—no doubt that as to first part of claim Court could not exercise jurisdiction, as it is only a declaration as to election of a chief. See 1 N.L.R. page 114. On face of Writ is an issue as to a monetary right; payment of taxes. Also 13 N.L.R. page 99 Ouster by statute. Case of *Oke Lanipekun Laoye & ors. v. Amao Ojetunde* decision of Privy Council in 1944 claim then involved property; *Ononye v. Ambanye & ors.* Suit 9/44 W.A.C.A. page 71 decisions of West African Court of Appeal October 1944. Claim for declaration and injunction. West African Court of Appeal held no jurisdiction. *Adanji v. Hunvoo* 1 N.L.R. page 74 no claim for monetary rights—no jurisdiction.

*In the West African Court of Appeal.*

No. 35.  
Court Notes of Arguments, 29th October 1946, continued.



*In the West  
African  
Court of  
Appeal.*

No. 35.  
Court Notes  
of  
Arguments,  
29th  
October  
1946,  
*continued.*

In this case no claim for monetary rights and therefore no jurisdiction Statement of Claim is there but if Writ does not disclose cause of action action is dismissed and if it discloses no jurisdiction Court cannot entertain.

No injunction claimed to restrain parties from collecting moneys. Statement of Claim goes no further as to claim—merely refers back to Writ.

In cases when Court had jurisdiction there were specific monetary claims. Here none and Williams specifically argued that injunction did not refer to rents ; but was merely incidental, the claim being as to title to chieftaincy.

In *Adanji v. Hunvoo* it was stated that claim must be subject of an action at law and claim to title might have to be decided incidentally.

If there is claim for rents then there is a dispute as “ interest in land.”  
Adjourned to 30.10.46.

(Sgd.) JOHN VERITY,  
C.J.

30th  
October  
1946.

Wednesday the 30th day of October 1946.

*Taylor for 2nd, 3rd and 4th Appellants resumes :* Ground 1 (ii) (Original)  
—legality of installation of Asalu of Iporo not in issue.

Facts are that Abeokuta comprises many townships in which exist 20  
secret Ogboni Society ; in each society are several bodies ; two here  
concerned Iwarefa and Ologun ; in former 8 titles, of which Oluwo is  
highest, and Apena is Secretary ; in latter 6 titles, highest Balogun.

On 26.1.45 3rd Appellant previously Balogun was installed as  
Oluwo ; on 1.2.45 4th Appellant then Bagbimo in the Agemo body was  
installed as Balogun. Respondents allege that election and installation of  
these Appellants are contrary to native law and custom. Paragraphs 8,  
9, 15 and 16 of Statement of Claim. Appellants aver that 3rd and 4th  
Appellants were correctly elected and installed.

Trial Judge found what was Native Law and Custom as to their 30  
election and installation. Apart from that he made certain findings  
submitted to be outside Writ and Statement of Claim.

These legal issues arose :—

1. Had Judge jurisdiction ;
2. Whether Grade A Native Court existed in Abeokuta
3. Whether respondents had proved that they were authorised

to sue in representative capacity  
1 and 2 dealt with. 3 will be dealt with.

Ground 2 is a matter outside the claim and should not have been  
decided. Asalu is one of the titles held by member of Iwarefa. See 40  
page 70. Judge does not make a finding. If Asalu was duly elected  
then majority in favour of 3rd and 4th Appellants. Judge says “ if ”  
—“ then ”. It is not actually a finding. Asks this Court to rule that  
this point was not in issue. Words of Judge are not mere *obiter*.

Ground 1 (iii) and (iv)—Position of Alake. See page 69 and Exhibit  
“ JAR\* 1 ” pages 122—124. Minutes of meeting before Alake to effect  
settlement. 1st Respondent agreed to Alake’s settlement and in fact  
gave sign of apology. See Alake’s evidence (page 38)—no finding that  
Judge did not accept this. Effect of 1st Respondent accepting settlement

\* *(sic)*  
J.A.K.

will be dealt with later. Writ of Summons and Statement of Claim 2 and 7 make no claim that he seeks to set aside the Order "drumming him out" from title of Base. He had been drummed out in September, 1943. Since August 1943 he attended no meetings at Ogboni House. He says because of fear of what might happen. Since 1943 has taken no action to declare "drumming out" against Native Law and Custom. Heading to Writ of Summons and Statement of Claim he does not claim to be the Base of Iporo and nowhere in the Statement of Claim does he so claim. Nothing in pleadings to justify Judge in setting aside Alake's order. If 1st Appellant was properly drummed out no necessity to have given him notice of election of Oluwo and Balogun.

Effect of settlement : If 1st Appellant was acting as Oba, 1st Respondent is bound ; if 1st Appellant not so acting then still having accepted settlement and carried out part he is bound by the whole not having sought Order of Court to declare in his favour. Judge made such a ruling without 1st Respondent having sought it, and a misdirection that he had done so (page 69 line 32). Although Alake disapproved of drumming out beforehand he ratified it by subsequent approval conditionally. Reason for ratification is immaterial—ratification is the important thing. The drumming out becomes act of Alake. He settled the matter—Plaintiff accepted his settlement—and the conditional suspension becomes the decision of the Alake. Matter was not brought to Alake in mere position of a third party but first as Supreme Head of Ogboni whose consent is essential to a drumming out. Plaintiffs-Respondents deny that Alake is Supreme Head of the Ogbonis. Judge made no ruling save that he was Ogboni. Evidence page 32 line 27, page 36 line 44, page 22 line 26. First Respondent's evidence conflicts page 15. Judgment pages 62 and 63. Power to approve or refuse candidate and power to give or withhold consent to drumming out goes to support evidence that Alake is Supreme Head of Ogboni.

Ground 2 (ii)—as to Plaintiff's suing in representative capacity. No proof. Application under Order IV Supreme Court (Civil Procedure) Rules 1945—*ex parte* Rule 3 page 85 Record—admission of leave of Court but submitted that this does not confer a true representative capacity : see also submissions on page 86. Judgment page 143 line 17 *et seq.* Judge considered that Order IV Rule 3 dispensed with need for proof. Similar order in English Rules of Court Order 16 Rule 9. Practice in High Court of Nigeria : Motion brought, *ex parte* or on notice.

*David for Respondents* : objects to Counsel giving evidence from Bar of practice of the Court.

*Decision* : Counsel is inviting Court to take judicial notice of the practice to which he calls attention.

*Taylor for 2nd, 3rd and 4th Appellants* : Practice is new.

*McCarthy, J.* : Order IV rule 3 replaces old rule.

*Taylor for 2nd, 3rd and 4th Appellants* : New rule requires approval of Court.

Under old order authority was of other persons and authority must be proved. Under new rule authority must be approved by the Court. Court may approve of parties obtaining authority but if authority is afterwards challenged it must be proved.

*In the West African Court of Appeal.*

No. 35.  
Court Notes of Arguments, 30th October 1946, *continued.*

*In the West  
African  
Court of  
Appeal.*  
—  
No. 35.  
Court Notes  
of  
Arguments,  
30th  
October  
1946.  
*continued.*

As to need for proof. Evidence Ordinance 1943 sections 72 and 74. As to judicial notice. This would not dispense with proof of authority to sue. Appellants' motion made *ex parte*. Application is *prima facie* evidence of authority but it is challenged by defence. Application not part of the proof at the trial and trial Judge could not take judicial notice of it. West African Court of Appeal (*obiter*) that such application should be made on notice, to give other side opportunity of challenging authority before order made.

If trial Judge's view is right, then all that will happen will be that motion brought *ex parte*; application from Defendants to be served and 10  
oppose; Judge will decide; Defendant may appeal to West African Court of Appeal—then appeal to Privy Council. Only thus will original trial be able to proceed.

Not necessary for Defendants to challenge order however, it does not, according to local practice, dispense with necessity for proof of authority.

As to affidavit—motion *ex parte* page 3, affidavit page 3 nine Plaintiffs; affidavit sworn to by two only (1st and 8th); 2nd to 7th and 9th no affidavit. Page 5. No hearing. Order. All Plaintiffs should swear affidavit. As to practice. *Musa Apena v. Ajose Oniku* 18/45 W.A.C.A. 2211. Motion can be brought at any time in the proceedings. 20

#### Adjournment.

*Taylor for 2nd, 3rd and 4th Appellants resumes :—*

No evidence in whole case to show who are 2nd, 3rd, 4th, 6th, 7th and 8th Plaintiffs, whether chiefs, Ogbonis. In Statement of Claim it is alleged that parties who have right to elect chiefs are the members of Ogboni Society only. Even if application forms part of the evidence there must be affidavit showing who the parties are and what is their interest: that is, all facts necessary to ground order must be stated. *Musa Apena v. Ajose* case cited "if facts stated cover all the necessary ground." Iporo No. 2 is a section of the township. But right to elect resides in Ogboni 30  
Society and no person not a member can sue. At least they could not get judgment. Order IV rule 3—"other persons interested." Affidavit or evidence must show who other parties are and if they are interested in the action.

Ground 2 (iii) :

(a) already argued. Refers 12 N.L.R. page 18. Question if judgment could be given in personal capacity if held that representative capacity fails.

1st Plaintiff gave evidence he is Base of Iporo.

5th Plaintiff gave evidence he is Seriki. 40

(Statement in Ground 2 (iii) (d) that there was evidence as to 9th Plaintiff is an error).

No evidence as to identity or interest of 2nd to 4th and 6th to 9th Plaintiffs. Impossible measure to give judgment for 1st and 5th in their personal capacity. Right to elect is vested in the community and therefore person should bring action in representative capacity. (Page 8 Statement of Claim paragraphs 6, 7 and 8). It is necessary to know whether all Plaintiffs are Ogbonis or not.

Counsel for 1st Appellant will deal with Ground 2 (iv). Refers to Suit No. 163/46 decided in the Supreme Court (*Brown J.* in Lagos Division) 50  
as to orders made under Order IV rule 3.

Final ground: additional grounds. No. 1 Judgment pages 62 and 63. *In the West African Court of Appeal.*

When party pleads native law and custom he must establish by positive evidence what is the law or custom he pleads.

There may be evidence that the condition is a condition precedent. But nothing to show that it is indispensable and failure to notify any chief renders election invalid. Statement of Claim page 8, paragraphs 4-15. No. 35. Court Notes of Arguments, 30th October 1946, *continued.*

As to Oluwo—see paragraphs 8 and 9 of Statement of Claim. No allegation that the meeting is invalid when notice not sent to all chiefs.

10 3 W.A.C.A. 91—2.

Evidence:

Judgment found no notice sent to 1st Plaintiff or to witness Bamgbola.

Page 64 line 10 as to 4th Defendant. Judge found Bamgbola not notified.

Page 64, Finding and Order.

Page 69 line 17: as to position of 1st Respondent.

Pages 69/70: ruling as to exclusion of 1st Respondent from meeting.

Evidence as to custom:

20 Concerning 3rd Defendant; 1st Plaintiff: (Page 14 lines 20-25; page 15 lines 14-18, 25-26, 39-40; page 15 line 47; page 16 line 6; page 20 lines 11-13; page 20 lines 24-25 *et seq.*).

Concerning 4th Defendant:

Page 8 paragraph 16 (Statement of Claim) no allegation of Notice being indispensable.

*Sanni Falola*: Page 22 line 45 *et seq.*; page 23 line 3; page 24 lines 12-17; page 24 lines 36-41.

*Bamgbola*: Page 28 lines 17-21; page 29 lines 18-24. No further evidence as to Native Law and Custom led by Plaintiff.

30 Judgment page 63 lines 4-7 negatives para. 15 (b) of Statement of Claim.

Page 63 lines 7-11 negatives para. 16 (d) of Statement of Claim.

40 Page 62 lines 46-48 negatives para. 16 (c) of Statement of Claim. Leaving only grounds given in paragraphs 8 and 9 Statement of Claim which contain no allegation of customs which Judge found to be indispensable. If Plaintiff gives no evidence of custom Judge at liberty to find such evidence in Defendants' case. Refers to evidence of the Alake (page 41 line 13 *et seq.* and line 18 *et seq.*). No evidence as to what should happen if all not informed. Evidence goes to show that all parties must be informed but none that if they are not all informed the meeting is bad.

Compare Companies' Ordinance Volume 2 of Laws 1923 page 1430. It is necessary that there should be positive evidence that if any member not notified the election would be invalid.

Also—questions whether any substantial injustice was done to 1st Plaintiff or Bamgbola by non-receipt of notice. Page 16 line 6. Page 20. Clearly no injustice done to him. No attendance since 1943 and in a minority of one. Same goes for Bamgbola.

*In the West  
African  
Court of  
Appeal.*

No. 35.  
Court Notes  
of  
Arguments,  
30th  
October  
1946,  
*continued.*

31st  
October  
1946.

By leave cites authorities as to interpretation of words "subject to . . ." section 12 Supreme Court Ordinance 1943.

"Conditional upon" = Dictionary meaning.

Maxwell on Interpretation of Statutes 3rd Edition page 7.

Adjourned to 31.10.46.

(Sgd.) JOHN VERITY,  
C.J.

Thursday the 31st day of October 1946.

*Adedoyin for 1st Appellant*: Ground 2 (iv)—1st Appellant sued as "Oba Alaiyeluwa Ademola II," that is, in official capacity. Page 70 lines 28-31. 10  
Judge held that he was not sued in capacity as Native Authority and section 61 (2) of Native Authority Ordinance 1943.

Statement of Claim page 7 para. 2 "1st Defendant is . . . duly elected and installed as such under Native Law and Custom." This does not represent him as a private individual. Words "Oba Alaiyeluwa Ademola II" mean literally "His Majesty King Ademola II."

Page 36 line 44—1st Appellant's name is "Ladapo Ademola." All Respondents and Appellants are natives of Abeokuta and know his private name as distinct from official title.

How 1st Appellant came into the affair will show in what capacity. 20

*M'Carthy, J.*: "Native Authority" is creation of statute only, not necessarily native ruler.

*Adedoyin for 1st Appellant*: Evidence shows in what capacity sued.

*M'Carthy, J.*: Sued as "Oba"—native ruler according to law and custom—not as "Native Authority" statutory officer appointed by Governor.

*Adedoyin for 1st Appellant*: We say as "Oba" he is also "Native Authority." Court will take judicial notice of Gazette No. 26 Vol. XXXII of 2.5.45 page 1115. Appointment of Native Authority of Egba Division is "Alake of Abeokuta"—not the individual. Section 19 of Ordinance 30  
17/43 duties of Native Authority. As Native Authority he should have been given notice, being a public officer. Statement of Defence of 1st Defendant paragraph 13 page 12 (see section 61, Ordinance 17/43). No objection to form of plan in paragraph 13. It was argued.

*Lucie-Smith, J.*: Is the Native Authority of the Egba Division a corporate body? See section 60 Ordinance 17/43.

*Adedoyin for 1st Appellant*: Page 2 line 1. Acts alleged on 26.1.45 and 1.2.45. Writ of summons dated 21.8.45 and filed 22.8.45 contrary to section 61 of Ordinance 17/43. 1st Appellant in whole proceedings was dealt with as Alake, Oba head of State. His duty in this case to approve. 40  
Paragraph 5 line 19 page 11 as to claim of 1st Appellant. (See page 9 line 41). Evidence of 1st Respondent page 15. Alake grants or refuses his approval under powers vested in him as Native Authority to maintain order and good government under the Ordinance (section 19). If he failed to do he would be liable to be penalised (section 36 (1) see (g)). No one has suggested that Alake went beyond what he ought to have done in the

matter. He approved candidates of persons presented to him as duly elected. Not his duty to enquire into regularity of election. (Pages 20–21 evidence of 1st Respondent). Appellants were approved by the Alake and Native Authority. By native law and custom he has to approve (see section 19 Ordinance 17/43). If Native Authority were not the Alake, it would be the Alake who would approve such elections as those, not the person appointed as Native Authority under the Ordinance. But here they are the same person. See page 69—when Alake acted as found by Judge (line 11 *et seq.*) he was acting as Native Authority. There can be no distinction where Ruler by law and custom is also sole Native Authority by statutes.

*In the West African Court of Appeal.*

No. 35.  
Court Notes of Arguments, 31st October 1946,  
*continued.*

As Native Authority he is a public officer, I think that as Alake he is also a public officer. As being both he is a public officer and protected by either or both Ordinance Cap. 25 and Ordinance 17/43. Under neither has he been given notice and under neither was action brought within time and action not properly before the Court as regards 1st Appellant when tried, and procedure a nullity or judgment for 1st Defendant and in action as regards him action struck out. The Apena is purely a secret society title. He is not a public officer or Native Authority.

20 *David for Respondents*: As to 1st Appellant he claims protection of Public Officers' Protection Ordinance Cap. 25. Not so entitled. Section 2 describes public officer—duty must be in pursuance of an Ordinance. Main argument on this point. Alake's evidence (page 36) shows that Alake has performed duties as Head of Ogboni since 1860—long before Native Authority Ordinance came into being. Ogboni is a secret society and his duties analogous to say Grand Master of Mason. When an Oluwo or Balogun goes to him for approval, they go as Ogbonis to their Head. This disposes of argument of 1st Appellant. He did so not as Native Authority or as Alake but as Head of Ogbonis. Alake is title known to native law and custom. He in this case did not execute a public duty, but authority over a secret society—applicable only to persons in Egbaland who are Ogbonis.

1st Appellant not sued as Egba Division Native Authority which is a correct description of Native Authority to which Alake appointed.

Appointment of Native Authority under section 5 of Ordinance 17/43 would not make "any person" head of the Ogbonis.

40 These elections and installations concern only members of Ogboni society but once he becomes an Ogboni chief he exercises certain authority over the people of the township. Hence the interest of the township in the elections—but this does not make the duties of Head of Secret Society a public duty.

#### Adjournment.

*David for Respondents resumes*: Defence of 1st Appellant page 12. Under Public Officers' Protection Ordinance Cap. 25 no notice necessary—limitation of time only. Under Native Authority Ordinance 17/43 section 61 (2) requires notice. 1st Appellant not sued as Native Authority. He is a public officer—to get protection of Public Officers' Protection Ordinance it must be specifically pleaded. Refers to Bullen & Leake 9th Edition page 933. Must plead statute and that time has expired 29 T.L.R. 325—too late to amend.

*In the West  
African  
Court of  
Appeal.*

No. 35.  
Court Notes  
of  
Arguments,  
31st  
October  
1946,  
*continued.*

*Gregory v. Torquay Corp.* [1912] 1 K.B. 442—Special Defence Order X rule 14 County Court Rules—defence of statute of limitations.

Rules of Supreme Court Nigeria Order XXXII rules 5 and 13. In latter must plead facts showing that relief is barred. If such material facts are not pleaded then defence cannot be raised. Otherwise perhaps if facts alleged but not Statute of Limitations. Point not raised as to defence under Public Officers' Protection Ordinance until matter reached this Court. In Court below 1st Appellant depended solely on Native Authority Ordinance 1943 for protection (see page 76). Only have raised one question from the Bench. 10

As to 1st additional ground of appeal—as to “indispensable condition precedent”: Evidence even though supplied by defence must be considered by Court if in support of Plaintiffs' case. As to Iwarefa—evidence of 1st Appellant page 41 lines 23–24 Alake says “they must all be informed.” “Indispensable condition precedent” is only a form of words. Whether “condition precedent” or “indispensable condition precedent” is immaterial—“all must be informed” that a meeting is to be held “mean they must be informed that a meeting cannot be held.” Page 38 line 3—meetings to be called by the Apena. See Judgment pages 61–62. Finding of Judge supported by evidence. Page 15: 20 Evidence that Apena and Base (1st Respondent) are only two members. If Asalu included then only three members. Other offices were vacant through death. Out of six or seven members only three functioning and of the three one not notified.

No distinction between “indispensable condition precedent” and “condition precedent” as sought to be drawn by Appellants.

Exhibit JAT. 2 Laws and Customs of Egbaland. See Evidence Ordinance section 58 “book . . . recognised by natives as a legal authority.” Author at one time Judge of Grade A Court, a barrister, an Egba and formally recognised as an authority. 30

As to Ologun. Page 22 line 45 *et seq.* Balogun to call meetings. 3rd Defendant then Balogun. Page 28 line 18 and page 29 line 20 *et seq.* No meeting called at which election discussed. Page 32 lines 5–7 (witness for defence) “absolutely necessary . . . to be consulted.” Page 41 lines 15–17.

Therefore ample evidence to support Judge's finding that notice was necessary, and business could not be done without notice.

As to ground 2 :

Adjourned to 1.11.46.

(Sgd.) JOHN VERITY, 40  
C.J.

1st  
November  
1946.

Friday the 1st day of November 1946.

*David for Respondents resumes* : Additional Ground 2 : Judge erred in entertaining action 13 N.L.R. page 99—*Essen v. Edick*—dismissed purely on ground that section 4 of Ordinance 14/30 was conclusive. That section does not apply to present case.

*Adanji v. Hunvoo* 1 N.L.R. page 74 at 80 Claim to title . . . reads judgment of Packard, J. Effect is that Court will only try such a claim

as an issue of fact. *Dick v. Green* 1 N.L.R. page 115 following Packard, J. held Court could entertain. Claim in *Adanji v. Hunvoo* was a bare claim to establish title. In *Dick v. Green* claim involved rights of property. So does this case. In *Adanji v. Hunvoo* dissenting Judge since upheld in case of *Laoye v. Ojetunde* 1944 A.C. page 170. Claim before Court was for a building called Sohun etc. West African Court of Appeal held that Ordinance 14/30 ousted jurisdiction. Privy Council dealt with it and made declaration, which plaintiff had not asked for. Plaintiff had not claimed declaration because of *Adanji v. Hunvoo*—but Privy Council not only granted ruling prayed but made declaration as to his election and title. *Adanji v. Hunvoo* is good law where there is a bare claim for declaration—but other cases go further and said in any event title can only be tried as an issue of fact and no declaration can be made.

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Courts of this Colony ought therefore to make such declaration in proper cases.

Jurisdiction of Supreme Court section 11 Supreme Court Ordinance '43. Annual Practice 1943 Order XXV rule 5 as to declaration of right without claim for consequential relief.

Judgment of Griffith, J., in *Adanji v. Hunvoo* as to writ of issue and as to application of English Rules of Supreme Court Order 25 Rule 5. Also as to jurisdiction for Court to exercise discretion when to make declaration or not.

20

This case not a bare claim to title ; injunction prayed ; and Statement of Claim shows pecuniary and other advantages attached to chieftaincy. Privileges etc. of governing township in a measure and so on—fees, share of rents etc.

*Guaranty Trust Company of New York v. Hannay* (1915) 2 K.B. 536 at 572-3 as to cases in which Court will grant declaration.

*Gray v. Spyer* (1922) 2 Ch. P. 22—declaration without ancillary relief.

30

*Elsdon v. Hampstead Corporation* (1905) 2 Ch. p. 633 at 642 declaration and liberty application for injunction.

Supreme Court has jurisdiction of High Court in England and this Court will be guided though not bound thereby. No order in Supreme Court Rules Nigeria analogous to Order 25 Rule 5 but referred to by Griffith, J. in *Adanji v. Hunvoo* as declaration of power of High Court and therefore of Supreme Court.

Findings of trial Judge at page 125 as to rights of enjoyment.

No interest in land involved to oust jurisdiction of Supreme Court page 21 line 17. All fees collected by Apena who distributes and only question who is entitled to distribution. Not any issue relating to title to interest in land. Page 38 line 10, page 62 line 18. As to rents page 16 line 13. No distinction as to ownership or title to land. Interest in rent is vested in Ogboni Society—not as chiefs and this is not disputed.

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Order 39 rule 1 Rules of Supreme Court—as to trial and determination of all issues—question of fees incidental.

As to ground 1 (ii). Court made no declaration that Asalu not properly elected and duties in the sub-section has no effect.

Ground 1 (iii)—whole case to determine whether 1st Plaintiff was properly excluded from Ogboni or not—a question of fact which must arise—for if properly excluded he had no right to be summoned ; if not properly excluded then he had right to be summoned.

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That issue went right through the case.

*In the West African Court of Appeal.*

No. 35.  
Court Notes of Arguments, 1st November 1946,  
*continued.*



*In the West  
African  
Court of  
Appeal.*

No. 35.

Court Notes  
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Arguments,  
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November  
1946,  
*continued.*

As to settlement on pages 116–124 (Exhibit JAK. 1)—no concluded settlement. It is not a judicial decision—merely attempt by Oba to effect peace. Either could reject or accept. See pages 123 and 124. No settlement until 1st Plaintiff carried out details of appeasement—until he did so no settlement.

See evidence of Alake page 38 line 32—shows that 1st Respondent was satisfied with settlement. Either party may accept or reject. Even though 1st Respondent at first appeared to accept, he later rejected it and was entitled so to do. Not arbitration in any way binding upon him. Page 39—when he informed Alake he was not satisfied Alake did not attempt to confirm—he said “ he was finished ”—that is all. 1st Respondent therefore went back to his position as a “ suspended chief.” 10

But was “ drumming out ” lawful. Alake said it was wrong and had no right to do it. Subsequent approval cannot be given to an unlawful act. Alake could not ratify a wrongful appointment so he could not ratify a wrongful dismissal. Drumming not only wrongful by reason of absence of Alake’s consent (page 40) but also (page 25) by reason of absence of customary procedure—opportunity for chief to make amend by way of fine etc. and also 1st Respondent’s title as Base of Iporo being inherited cannot be taken away even by such ceremony (page 25). 20

If 1st Respondent still chief—then should have been notified of election of Oluwo and Balogun.

As to ground 1 (iii)—question of settlement not really material. Question is whether drumming out was regular or not ?

(Sgd.) JOHN VERITY,  
C.J.

2nd  
November  
1946.

Saturday the 2nd day of November 1946.

*David for Respondents resumes* : Ground 2 (i) not argued. No right of reply.

Ground 2 (ii) party cannot sue in representative capacity without sanction of Court. Sanction given (pages 3 and 5). No evidence to rebut proof by affidavit, and Respondents are the Plaintiffs and onus on Appellants to show they were wrongfully so made. As to practice see *Chief Secretary to the Government v. Musa Apena Jackson J.* granted leave when defect pointed out and application made. 30

Ground 2 (iii) (a) covered above  
(b) evidence as to Iwarefa.

Chiefs and members of township and their rights.

(c) the same  
(d) Plaintiff before Court which was satisfied as to their identity. 40

Ground 2 (iv) : the protection sought was fought right the way through on Native Authority Ordinance not Public Officers’ Protection Ordinance.

*Taylor replies on behalf of all Defendants—instructed by Adedoyin on behalf of 1st Appellant.*

As to Ground 2 (iv) Respondents admit Alake is a public officer, and acting in matter concerning the public (Iporo community). Argument in reply based upon point that Ordinance not specifically pleaded by 1st Appellant—*Gregory v. Torquay Corporation* and other English cases. Not relevant—local rules are to be applied. Rules of Supreme Court Nigeria Order 32 Rule 5. 1st Appellant put in issue by paragraph 13 Statement of Defence the fact that he is a public officer and that according to Native Authority Ordinance he is entitled to notice. Page 76 line 19. If Respondents were embarrassed by paragraph 13 Statement of Defence he could have had it struck out (Order 32 Rule 19). No such application Evidence Ordinance—section 73 (1) (a) and (b). Court must take judicial notice of Public Officers' Protection Ordinance. As to Order 32 rule 13 fact which bars claim is fact that Alake is a public officer. Public Officers' Protection Ordinance then applies and must be taken notice of. Effect of finding that action cannot be entertained against Alake : could action be entertained then against 2nd, 3rd and 4th Defendants without 1st Defendant being a party (Order IV rule 5). Claim is for declaration that "1st Appellant etc. . . ." Claim cannot be severed. Although this is new ground as to 2nd, 3rd and 4th Defendants it arises from argument adduced by Counsel for 1st Defendant. Claim against 2nd, 3rd and 4th Appellants should be also dismissed.

As to 1st additional ground : question re distinction between "condition precedent" and "indispensable condition precedent."

Compare analogy from Companies Ordinance—serving of notice is condition precedent—but by letter post if served render it not "indispensable"—because of express provision. Respondents contend no proviso that condition can be dispensed with. They have proved that there is condition precedent—Judge found this was indispensable. It is not for Appellants to prove that it is not indispensable. Page 41—as to majority.

As to second additional ground : *Adanji v. Hunvoo* still good law. Admitting judgment therein not upheld by Privy Council in *Laoye v. Ojetunde*. Judge did not so hold (page 53, line 16 *et seq.*). Privy Council does hold that every case must depend on its own facts. English cases cited by Counsel not applicable. Relevant case is *Cowley v. Cowley*, 85 L.T.R. 254. Halsbury, L.E., High Court in England no jurisdiction in case of title to dignity. Therefore this Court has none as its jurisdiction is that of the High Court in England. Judgment of Chief Justice in *Adanji v. Hunvoo* (page 797). In *Dick v. Green* specific claim for monetary rights ; in *Laoya v. Ojetunde* pecuniary claim in respect of house, etc. As to injunctions being "consequential relief" but this should be in respect of monetary claim. If Court cannot entertain claim to bare title it follows that it cannot entertain claim to restrain person from acting in that title. Compare *Cowley v. Cowley*—no claim for injunction to restrain use of title could have saved it. If injunction had been to restrain Apena from paying over fee that would have been different. Pecuniary rights must be coupled with claim. Pecuniary rights must not only be involved but must be claimed. Jurisdiction must be shown in Writ of Summons—if none it cannot be cured by evidence. If not shown in Writ of Summons then no jurisdiction and Writ of Summons must be struck out. Question

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whether Statement of Claim cures defect : Submitted that it does not. Order II, rule 2, as to what must be in Writ. It is on substantial matter and relief that Court has to decide whether there is jurisdiction or not.

Ground 1 (iii) and (iv). Alake suspended 1st Respondent to prevent breach of peace and saved 1st Respondent's life or limb. It is duty vested in him as Native Authority by statute. As suspended chief 1st Respondent not entitled to notice. If Alake acted as a public officer in ratifying the suspension then 1st Plaintiff has three months under Public Officers' Protection Ordinance and six months under Native Authority Ordinance to bring action in relation thereto. Suspension was 10 in September 1943. Plaintiff took no action. Can he in 1945 take action based upon act of Alake in 1943—or effect of which might be to set aside his act of 1943 ?

Ground 2 (ii) : Affidavit insufficient.

Ground 2 (iii) (d) : Court could not be satisfied with identity of Plaintiff only before Court in name and without their giving evidence as to who they are—chiefs, members of the community or what.

As to ground 2 (iv)—pleaded both protection of Native Authority Ordinance and Public Officers' Protection Ordinance.

*Williams, for Respondents* : In regard to position of 2nd, 3rd and 20 4th Defendants if 1st Defendant receiving protection of Public Officers' Protection Ordinance—only effect would be to dismiss him from the suit. Does not affect the declaration sought. If 1st Defendant wished to resist the declaration he could waive protection and remain a party as it is purely formal judgment against him (page 70). There was no necessity to make Alake a party in the first instance.

*Curia advisari vult.*

(Sgd.) JOHN VERITY,  
C.J.

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No. 36.  
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IN THE WEST AFRICAN COURT OF APPEAL.

Holden at Lagos in Nigeria the 12th day of November, 1946.

Before Their Honours

Sir JOHN VERITY, Chief Justice, Nigeria—Presiding Judge.

JOHN ALFRED LUCIE-SMITH, O.B.E., Chief Justice, Sierra Leone.

LESLIE ERNEST VIVIAN M'CARTHY, Puisne Judge, Gold Coast.

(Title as in No. 1.)

JUDGMENT.

This is an appeal from a judgment of the Supreme Court in an action 40 in which the Respondents sought a declaration that the installation by the 1st and 2nd Appellants of the 3rd Appellant as Olowu of Iporo Township, Abeokuta, and the 4th Appellant as Balogun of Iporo is contrary to the

Native Law and customs of the people of Abeokuta to which the Respondents and Appellants both belong, and an injunction restraining the 3rd and 4th Appellants from acting as or performing any of the customary functions of the Olowu and Balogun respectively. The learned Judge in an exhaustive judgment which covered every phase of the case with meticulous care found for the Respondents and made the declaration and granted the injunction prayed.

In the first place it was submitted by Counsel for the Appellants that the action was not properly before the Court below in that the Respondents  
 10 had adduced no proof that they were duly authorised to sue on behalf of that section of the Iporo community Abeokuta known as Iporo No. 2. We are of the opinion that the approval of the Court by its Order of the 24th August 1945, having been obtained upon an affidavit made by the 1st and 8th Respondents and the truth of the affidavit not having been challenged or contradicted, the action was properly before the Court.

It was also submitted that the Supreme Court had no jurisdiction to entertain the action by reason of the opening words of section 12 of the Supreme Court Ordinance 1945, this case being one in which a Native Court has jurisdiction. This point was raised before the learned trial Judge  
 20 who held that he had nevertheless jurisdiction. It is true that the learned Judge, as alleged by one of the grounds of appeal, appears to have made a slip in finding that there was no Native Court entitled to exercise jurisdiction in this case. Reference to the Warrant of the appropriate Grade "A" Native Court assures us that that Court has in fact such jurisdiction. The erroneous finding of the trial Judge, however, does not affect the main question for he did not base his decision as to his assumption of jurisdiction upon this finding.

Section 12 of the Ordinance referred to defines the exercise of the jurisdiction conferred upon the Supreme Court by the preceding section  
 30 and enacts that this jurisdiction shall be exercised "subject to such jurisdiction as may for the time being be vested by Ordinance in Native Courts." It is contended on behalf of the Appellants that by reason of these words the jurisdiction of the Supreme Court is ousted in every case in which jurisdiction is vested in a Native Court by any Ordinance. To this the Respondents reply that these words bear no such interpretation and do not impose any such limitation upon the exercise of the jurisdiction of the Supreme Court—a limitation which would, it is submitted, deprive the Supreme Court of much of its jurisdiction. The adoption of any such  
 40 interpretation must certainly be approached with caution and we must be at pains to construe the words used by the legislature in no other sense than that in which they express the intention of the legislature. In doing so this Court must have regard not only to the words used but also to the context in which they appear. The object of the section is patently to define the exercise of the civil jurisdiction of the Supreme Court and it provides that subject to the words under consideration this shall include the exercise of all His Majesty's civil jurisdiction which was or may be exercisable in Nigeria for the judicial hearing and determination of matters in difference or for the administration or control of property and persons. By a proviso to the section the exercise of this jurisdiction is limited, except  
 50 in certain cases, so that the Supreme Court shall not exercise its jurisdiction in cases in which an issue is raised as to the title to land or to any interest in land which is within the jurisdiction of a Native Court or in any matter

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subject to the jurisdiction of a Native Court relating to marriage, family status, guardianship of children, inheritance or disposition of property on death. As was pointed out by Counsel for the Respondents if the words "subject to such jurisdiction as may for the time being be vested by " Ordinance in Native Courts " are to bear the meaning placed upon them by counsel for the Appellants, then there would appear to be no reason for and no meaning in the proviso, for if the Supreme Court has no jurisdiction in any matter within the jurisdiction of a Native Court then it would follow that it can have no jurisdiction in the limited classes of case referred to in the proviso. The plain meaning of the proviso is that the Supreme Court shall not exercise in limited classes of case the jurisdiction which it otherwise has power to exercise. If that be so then the meaning of the opening words of the section pressed upon us by counsel for the Appellants cannot be the right meaning. So to hold would be to decide that the legislature by the proviso intended to limit a jurisdiction which the Supreme Court could not in any event exercise. Clearly there must be some other way of construing these words in order to give effect to the intention of the legislature without straining their meaning. It appears to us that no other reasonable interpretation can be given to them than that the Supreme Court shall exercise its jurisdiction subject to that of the Native Courts so that where a native court has exercised or is exercising the jurisdiction vested in it by Ordinance the jurisdiction of the Supreme Court shall not supersede it and shall not be exercised in the same matter. This is a limitation obviously desirable wheresoever there may exist courts of equal and concurrent jurisdiction within the same area and such an interpretation gives coherence to the whole section and meaning to each part thereof. We are fortified in this view by the provisions of section 42 of the Supreme Court Ordinance by which it is made clear that there is an original jurisdiction in the Supreme Court in cases in which a Native Court also has jurisdiction and which the Supreme Court may at any stage transfer to the Native Court. In our view, therefore, the first ground upon which the Appellants contest the jurisdiction of the Supreme Court must fail.

It is further submitted on behalf of the Appellants that the Supreme Court is precluded from exercising its jurisdiction in the present case on the ground that in so far as the claim relates to pecuniary advantages accruing to the 3rd and 4th Appellants by reason of their installation as Olowu and Balogun respectively these advantages include rents collected from certain properties, that this raises an issue as to the title to an interest in land within the jurisdiction of a Native Court, and the jurisdiction of the Supreme Court cannot be exercised by virtue of the proviso to section 12 of the Supreme Court Ordinance. This submission is hardly consistent with the submission following thereon in the course of Counsel's argument, but must nevertheless receive consideration. There can be no doubt that there are claims in relation to rent which do involve an issue relating to the title to an interest in the land from which the rents arise. There are also claims in regard to rent which raise no such issue and it is a question to be determined in each case as to whether or not an issue as to the title to the land or to an interest in the land is raised by the facts. In the present case it is clear that no question is raised as to the title to the land or to any interest therein from which the rent is derived. The rent is payable to a body of people and the holders of certain offices therein are entitled to a

share in the distribution thereof. This right does not give them any title to an interest in the land and no title to any such interest is in issue. On this ground also the submissions as to the jurisdiction of the Court below must fail.

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Appeal.*

The next point raised is that on the authority of *Adanji v. Hunvoo* 1 N.L.R. 75 this case is one in which the Supreme Court should have declined jurisdiction. The learned Judge gave consideration to that case and to a number of cases cited to us by counsel for the Appellants and came to the conclusion that he was, nevertheless, entitled to assume  
10 jurisdiction in the present case. In the case of *Adanji v. Hunvoo* it was held that the Supreme Court has no jurisdiction to entertain a claim merely to establish a title to a chieftaincy. The learned Judge felt himself bound by this decision but held that if the Plaintiff were seeking a title to a position of mere honour or dignity and also pecuniary rights cognisable by the Supreme Court then the court must hear and determine the suit.

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It was submitted that the case of *Adanji v. Hunvoo* was approved by this Court in the case of *Okupe v. Soyobo* 3 W.A.C.A. 151, when in the course of his judgment Kingdon C.J. said "I will only add that I entirely agree with the finding of the learned Judge in the Court below that the  
20 position of the Alaperu of Iperu is a mere dignity, a position of honour—based as that finding is upon the judgments of the Full Court in *Adanji v. Hunvoo* . . ." On the question as to whether in a case where pecuniary rights are also involved the Supreme Court can exercise jurisdiction the decision of this Court in that case is silent, and we are of the opinion that this Court should give further consideration to *Adanji v. Hunvoo* in the light of more recent cases and more especially the judgment of the Judicial Committee of the Privy Council in *Laoye & ors. v. Ojetunde*, 1944 A.C. 170. Counsel for the Appellants cited also *Dick v. Green* 1 N.L.R. 99 and *Essen v. Edick* 13 N.L.R. 99. In the former case the Supreme Court exercised  
30 its jurisdiction in a case involving a question of title to a chieftaincy, but counsel seeks to distinguish this from *Adanji v. Hunvoo* on the ground that whereas in the latter case the claim was to title to a chieftaincy only in the former the claim itself was in respect of the payment of certain taxes. In *Essen v. Edick* the Court declined to assume jurisdiction on the ground that the sole jurisdiction to determine the question of title involved was vested in the Governor by virtue of the provisions of The Appointment and Deposition of Chiefs Ordinance 1930. It is not suggested in the argument before us that the same considerations apply in the present case, the learned Judge having rightly held that the titles in question do not fall  
40 within the definition of "chief" and "head chief" as defined by the amending Ordinance of 1945.

Turning to *Laoye v. Ojetunde* it appears by reference to the record in that case that the claim was in respect of the use and occupation of certain property, the right to which was vested in the holder of a certain chieftaincy. In the High Court the trial Judge while finding that the Respondent was not chosen to succeed to the chieftaincy in accordance with native law and custom dismissed the action for reasons which this Court held did not apply. On appeal this Court held that the trial court had no jurisdiction to try the action by reason of sub-section (2) of section 2 of the Ordinance upon  
50 which the decision in *Essen v. Edick* turned. The Judicial Committee of the Privy Council allowed the appeal and not only declared that possession of the disputed property by the Respondent was illegal but also went on to

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declare that the Appellant was entitled to be appointed to the chieftaincy. Their Lordships based their opinion upon a finding that the provisions of the Ordinance referred to were not applicable to the title involved in the action.

Counsel for the Appellant submits that the cases of *Dick v. Green* and *Laoye v. Ojetunde* are to be distinguished from *Adanji v. Hunvoo* on the ground that whereas in the two former cases the claim was in respect of pecuniary rights or rights of property and the claim to a chieftaincy incidental thereto, the claim in the latter case was to a chieftaincy and the pecuniary rights (if any) are incidental thereto. It is to be observed that while in *Adanji v. Hunvoo* it was contended on behalf of the Plaintiff that it was clear from the special case that the title was no mere empty title but carried with it certain rights to land or property it appears from the judgment of Packard J., that this was uncertain. It is also to be observed that Speed C.J., said "It may be that the chieftaincy carries with it . . . some or many rights and privileges which might be made the subject of an action at law" and added "it may be that upon a claim differently stated the Court might have been forced to decide incidentally the question whether the Plaintiff had been duly elected." The view we are invited to take of the effect of all these cases is that where the claim is for a declaration of right to a title and there is no mention in the claim of consequential relief in relation to pecuniary rights attached thereto there is no jurisdiction in the Court to entertain the suit, but that where the claim is in respect of rights in property attaching to a title then the Court may enquire into the question of title as incidental to the determination of the claim to property. It was further argued that even in such case the Court will determine the issue of title merely as an issue of fact and will in no case make a declaration in regard to a title of dignity or honour. This last submission is clearly contrary to the judgment of their Lordships in *Laoye v. Ojetunde*, for although in that case the claim was in respect of property rights and no declaration as to title was prayed, nevertheless such a declaration was made. The present issue is therefore narrowed to the question as to whether where the claim is confined to a declaration of title to a chieftaincy coupled with a claim for an injunction the Court is to decline jurisdiction even though the particulars of the claim and the evidence in the case go to show that pecuniary rights are attached thereto. We think that the true distinction is rather to be found between the present case and that of *Cowley v. Cowley*, 1901, A.C. 450, in which it was held by the House of Lords not only that in England no claim can be made to a title of honour such as was involved in that case, by reason of the fact that there is a special procedure for the determining of such rights, but also that in that case no more was involved than the mere use of a bare title there being no foundation for any suggestion that the Respondent in that case laid claim to any participation or share in the earldom upon which the title used by her was founded. That is far from being the case here. The Statement of Claim alleges not only that the offices to which the 3rd and 4th Defendants were, properly or improperly, elected entitled their holders to certain fees and rents but also that these Appellants have been acting in their respective offices. From the evidence it is made equally clear that the holders of these titles are entitled to fees, rents and other pecuniary benefits and also that by reason thereof they take part in the collection of taxes, the settlement of disputes and in looking after the

Iporo township affairs. There is no question in this case of the titles claimed by the Appellants being bare titles of honour or dignity such as was the case in *Cowley v. Cowley*, nor of it being uncertain whether these titles imply some rights in property as in *Adanji v. Hunvoo*, and we do not think that this Court would be doing justice to the Respondents' claim were it to hold that because there is in the Writ of Summons no specific claim in respect of the property rights attaching to the titles in question therefore the claim was in respect of a mere title to honour or dignity and as such outside the jurisdiction of the Supreme Court. The Writ claims not only

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a declaration in regard to the title but also an injunction restraining the 3rd and 4th Appellants not from the bare use of the titles but from acting as and performing the customary functions of the holders thereof, while the Statement of Claim and the evidence alike show that by so acting and by performing such functions the holders of the titles become entitled to the pecuniary benefits and other rights and privileges flowing therefrom. We are of the opinion, therefore, that the Court has jurisdiction to entertain this suit in like manner as in the case of *Laoye v. Ojetunde* and that the learned Judge was right in proceeding to its hearing and determination.

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The next point raised by the Appellants was that the identity and interest of all the Plaintiffs as representing the Iporo Community known as Iporo 2 have not been proved and no right of action disclosed either in the Respondents personally or as representing the community. There is evidence that all the Respondents belong to Iporo No. 2 Township, in approving the authority of the Respondents to sue on behalf of that community the Judge who made the order was satisfied as to their being duly authorised, and the evidence discloses that, while the election and installation of these office holders is within the power of the Ogboni Society only, the nature of their duties as such affects the people of the township at large. We are of the opinion, therefore, that the Respondents were

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entitled to bring this action to determine whether or not these office holders had been properly installed.

We come now to the central issue in this suit: the regularity or otherwise of the installation of the 3rd and 4th Appellants as Olowu and Balogun of Iporo respectively. The Respondents contend that their installation was irregular by reason of the fact that notice was not given to all the chiefs entitled to notice of the holding of a meeting at which the choice of candidates for these offices was to be made. The 1st Respondent claims that as Base of Iporo he was entitled to such notice in regard to the choice of an Olowu and that the witness Raimi Moteso Bamgbola as Osi

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of Iporo was entitled to such notice in regard to the choice of a Balogun. The evidence shows that neither of these persons did in fact receive notice of any such meeting, and the trial Judge so found. The trial Judge also found as a fact that by native law and custom notice to each and every living chief of the Iwarefa body is an "indispensable condition precedent" to the regular choice of a candidate for a chieftaincy in that body and that notice to all Ologun chiefs is an "indispensable condition precedent" to the choice of a candidate for a chieftaincy in that body. These facts he found on the evidence of native law and custom adduced by or on behalf of both Respondents and Appellants. As a result of these findings the

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trial Judge held that the installation of the 3rd and 4th Appellants as Olowu and Balogun respectively were contrary to native law and custom and granted the declaration and injunction prayed.

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1946,  
*continued.*

It is admitted on behalf of the Appellants, as it is indeed clear from the evidence, that notice must be given to every chief of the holding of meetings to make choice of candidates for these two chieftaincies. It is argued on behalf of the Appellants, however, that while such notice must be given there is no evidence to show that according to native law and custom this condition precedent is indispensable nor is there evidence to show what is the consequence of failure to comply therewith. Counsel sought to find an analogy in those provisions of the Companies Ordinance where it is provided that although notice is to be given of certain meetings to every shareholder yet by a proviso the absence of such notice shall in certain 10 circumstances not invalidate the proceedings at the meeting. He argued that in the present case the burden lay upon the Respondents to prove by positive evidence that there was no similar provision by native law and custom in regard to notice of such meetings as those now under consideration. We are unable to accept any such proposition. If one party to a suit adduces evidence as to a certain provision of native law and custom it would be monstrous to require him to prove by positive evidence that there were no exceptions thereto. It is always open to the other party if such a general rule be established to show that there are exceptions thereto applicable to the case in point. In the present case the general 20 rule was established to the satisfaction of the trial Judge upon credible and indeed undisputed evidence. No attempt was made by the Appellants to show that there are any exceptions to that general rule or that the acts of the Appellants fell within any such exceptions. When, therefore, the learned trial Judge found that due notice was an "indispensable condition precedent" to the regular election of these office holders he meant no more than that it had been established to his satisfaction that such notice must be given and that there was no evidence to show that it might be dispensed with in any circumstances. In arriving at this conclusion we think that 30 the learned Judge was right.

In regard to the witness Bamgbola as Osi of Iporo there does not appear from the evidence to have been any reason why he should not have received notice of this meeting nor has it been argued that there was any fact disentitling him thereto.

In regard to the 1st Respondent, however, it is submitted on behalf of the Appellants that he was not entitled to notice being at the time what has been described as a "suspended chief." The evidence upon which this contention is based goes to show that by reason of disagreements between the 1st Respondent and certain other chiefs the latter decided to take steps equivalent to dismissing him from his chieftaincy by means of 40 "drumming out." It is clear in the first place that this is a customary method of dealing with a chief who has been guilty of an offence meriting deposition and deprivation of his title. There is evidence which the learned Judge accepted that in order that a chief may be deposed and deprived of his title in accordance with native law and custom there must be certain formalities, including an announcement to the community outside the Ogboni House, the presence of the chief to be deposed, who must be informed of his offence, the expression of opinion on the part of various persons present, and the offer to the chief to be deposed of an opportunity to pay a fine. Only in such case may the formal proceeding 50 known as "drumming out" be concluded and then only with the consent of the Alake of Abeokuta as Head of the Ogboni. There is no evidence to

show that these formalities were complied with by those who desired and purported to depose the 1st Respondent, although as the parties alleging that he had been deposed the burden of proof of due deposition lay upon the Appellants. It is admitted, moreover, that the Alake withheld his consent in the first instance and only after the "drumming out" had taken place did he approve in order, it is suggested, to maintain peace and quiet in the community. Although it may be that, were absence of the Alake's consent previously obtained the sole irregularity in the proceedings, he could by his subsequent approval ratify that which had been done, it has

10 not been proved that in accordance with native law and custom the approval of the Alake can cure any defect or irregularity in the proceedings leading up to the decision he is invited to approve. We are of the opinion therefore that the deposition of the 1st Respondent was not in accordance with native law and custom and did not in itself disentitle him from receiving due notice of the meeting at which the 3rd Appellant was chosen for the office of Olowu.

It was further submitted on behalf of the Appellants, however, that at a meeting convened by the Alake in order to settle these unfortunate disputes, the 1st Respondent agreed to a settlement and submitted himself

20 to deposition or suspension of his rights as a chief. It is true that the learned Judge found that at such a meeting the 1st Respondent under some pressure from the Alake made apology for his past conduct and that the Alake believed that he had by this means secured a settlement of the whole matter. There were, however, certain matters still to be performed on the part of the 1st Respondent; a public apology and the giving of a feast. With these the 1st Respondent did not comply and on the day following the supposed settlement he informed the Alake that he was not satisfied. It is submitted that in effecting this settlement the 1st Appellant was acting in pursuance of his duties as Alake of Abeokuta, as Native

30 Authority under the appropriate Ordinance, and as Head of the Ogboni and that his decision in relation thereto was final and binding upon the 1st Respondent. The learned Judge found not only that the Alake did not in the circumstances act either judicially or executively in final disposal of the matter at issue, but that there was before him no evidence that it was within the powers of the Alake so to do. The powers of the Alake as (king or) paramount chief in accordance with native law and custom are the subject of proof by positive evidence and no such evidence was adduced to the satisfaction of the trial Judge. The powers conferred upon the Alake as Native Authority for Abeokuta under the Native

40 Authority Ordinance 1943 are those vested in him by that Ordinance or by any other Ordinance or by native law and custom. The statutory powers conferred on him by the Ordinance which it is submitted that he exercised in seeking to impose terms of settlement upon the 1st Respondent are said to be those of "maintaining order and good government," as provided by section 19 of the Ordinance. The wording of the section makes it clear, however, that while it is the duty of the native authority to maintain order and good government his powers in the fulfilment of this duty are those conferred by the Ordinance or vested in him by any other Ordinance or by native law and custom. We can find nothing in

50 the Ordinance conferring upon the Native Authority the power to enforce a "settlement" such as that put forward in the present case nor is there any evidence that by native law and custom he has any such powers.

*In the West  
African  
Court of  
Appeal.*

No. 36.  
Judgment,  
12th  
November  
1946,  
*continued.*

*In the West  
African  
Court of  
Appeal.*

No. 36.  
Judgment,  
12th  
November  
1946,  
*continued.*

We are in agreement, therefore, with the trial Judge in his finding that the terms of settlement imposed by the Alake upon the 1st Respondent were in no way binding and we are unable therefore to accept the submissions of counsel that by reason thereof the 1st Respondent must be deemed to have accepted his deposition or suspension and thus to have cured those defects in the proceedings which, in our opinion, render them a nullity as being not in accordance with native law and custom.

This Court is, therefore, of the opinion that the learned trial Judge was right when he found that the installation of the 3rd and 4th Appellants as Olowu and Balogun respectively was contrary to native law and custom. 10

There is, however, one further submission with which we must deal. It was submitted on behalf of the 1st Appellant that as a public officer he is entitled to the protection of the Public Officers' Protection Ordinance Cap. 25 and that in so far as he is concerned these proceedings do not lie having been commenced more than three months after the date of the act complained of. It was further argued that as a Native Authority within the meaning of the Native Authority Ordinance 1945 he is also entitled to the protection afforded by section 61 of that Ordinance and that these proceedings do not therefore lie against him in that he received no notice of action in accordance with sub-section (2) of that section and in 20 that the action was commenced more than six months after the act complained of. It is unnecessary for this Court to decide whether the act of the 1st Appellant was done by him in his capacity as Native Authority or whether he comes within the protection afforded him as such, for we are satisfied that he is a person within the class protected by Cap. 25 and that the act done by him was done in intended execution of a public duty within the meaning of section 2 of that enactment. No action therefore lay against him in respect of the act alleged and he should have been dismissed from the suit.

In this connection it may be observed that while it is true, as contended 30 by counsel for the Appellants, that according to English practice, this defence must be specially pleaded, yet by virtue of the Rules of the Supreme Court of Nigeria, Order XXXII rule 13, it is sufficient that there should be pleaded the facts upon which it is relied to establish a special defence of this nature. These facts were sufficiently pleaded in paragraph 13 of the Statement of Defence.

It was submitted that in such case the action must be dismissed as against the other three Appellants, it being argued that the 1st Appellant was a party necessary to the proceedings and if he could not lawfully be joined then the proceedings against the others must fail. We are unable 40 to find that this submission is well founded. It would be open to the 1st Appellant if he desired to be joined as a party to waive the protection afforded him by the statute. If he did not choose to do so he could not be heard to complain that he was not made a party thereto, nor could his absence prejudice the trial of the issue in regard to the other Appellants.

We find therefore that the learned Judge was right to make the declaration and grant the injunction prayed and the appeal is dismissed. The judgment of the Court below will be varied, however, by deleting so much thereof as purports to be a judgment against the 1st Appellant and by substituting therefor judgment for the 1st Appellant as against 50 the Respondents. As regards the costs of the 1st Appellant no order was made in the Court below, and in view of the fact that this Appellant

relied upon the Native Authority Ordinance rather than upon the protection to which we have found him to be entitled we do not propose to make any order as regards his costs either here or in the Court below the sole ground upon which we have allowed his appeal not having been argued there. The Respondents are entitled to the general costs of this appeal as against the 2nd, 3rd and 4th Appellants only, such costs to be taxed.

*In the West African Court of Appeal.*

No. 36.  
Judgment,  
12th  
November  
1946.  
*continued.*

(Sgd.) JOHN VERITY,  
Chief Justice, Nigeria,  
Presiding Judge.

12th November 1946.

10

(Sgd.) J. A. LUCIE-SMITH,  
Chief Justice, Sierra Leone.

(Sgd.) L. E. V. M'CARTHY,  
Puisne Judge, Gold Coast.

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No. 37.

**COURT NOTES on Motion for Leave to Appeal to Privy Council.**

Friday, the 10th day of January 1947.

Before Their Honours

Sir JOHN VERITY, Chief Justice, Nigeria, Presiding Judge.  
OLUMUYIWA JIBOWU, Puisne Judge, Nigeria.

20 GRAHAM CALLOW, Puisne Judge, Nigeria.

No. 37.  
Court Notes  
on Motion  
for Leave to  
Appeal to  
Privy  
Council,  
10th  
January  
1947.

Motion for leave to appeal to Privy Council.

Taylor for applicant.

David (Williams with him) for Respondents on notice.

*Taylor* : Application is for leave to appeal from West African Court of Appeal to Privy Council.

No appeal as of right—no sum of £500 in issue—appeal by leave if matter of great public importance.

30 Application under article 3 (b) of West African (Appeal to Privy Council) Order in Council 1930. Case concerns Native Law and Custom ; two systems applicable in Nigeria—English law and native law and custom. Latter is of great public importance.

Decision of West African Court of Appeal also affected decision of Alake of Abeokuta ; overruling his decision. Alake is a principal native ruler in Nigeria. Decision setting aside his own as Native Ruler affects whole Western part of Nigeria.

Decision also affects Egbas and Yorubas resident and domiciled throughout Nigeria.

40 Matter is at discretion of the Court—but if held not to be a matter of great general and public importance—yet Court may still send case to Privy Council. See 3 (b) : “or otherwise ought to be submitted to” Privy Council.

Appellants also desire to appeal from decision of West African Court of Appeal as to jurisdiction of Supreme Court and Native Courts—question important throughout Nigeria.

*In the West African Court of Appeal.*

No. 37.  
Court Notes on Motion for Leave to Appeal to Privy Council, 10th January 1947, *continued.*

Leave may be conditioned to effect that Appellants shall not continue to act in their offices pending hearing of appeal. Or in alternative at account of fees etc.

*David* : What question of public importance ? Fact found by trial Judge on evidence of Alake on question of native law and custom.

Privy Council reluctant to upset judgment on question of fact.

Question of interpretation of Supreme Court Ordinance 1945 as to jurisdiction. Local Courts better judges as to question of jurisdiction knowing practice of Courts and circumstances in which Ordinance passed. Not a matter of such importance that matter should be sent to Privy Council. No hardship in West African Court of Appeal's decision ; grants Courts concurrent jurisdiction. Beneficial and no hardship. No general importance. 10

Appellants cannot now continue in office ; injunction already in force. No automatic stay of judgments of Supreme Court and West African Court of Appeal—subsist until judgment of Privy Council (if sent) sets it aside. No need for such a condition.

Privy Council Practice. *Sheffield v. Robertson* 1901 page 742—where question is of general importance leave may be granted.

It is a case that attracts public interest but only affects one section of the community ; no other Yorubas or in any part of the country. 20

*Taylor* : Motion is for leave to appeal and a stay. If granted then parties free to act unless prohibited by condition.

Agrees West African Court of Appeal better judge on questions of jurisdiction but liable to err and that is need for Privy Council.

Question as to concurrent jurisdiction or not is of great public importance.

For consideration till 11 a.m.

Decision :

The Court being of the opinion that at least one of the issues involved in this case involves a question of great public importance leave to appeal is granted. Stay of execution however is refused. Leave granted on the usual conditions. Liberty to apply. 30

(Sgd.) JOHN VERITY, C.J.

No. 38.  
Order granting conditional leave to appeal to H.M. Privy Council, 10th January 1947.

No. 38.

**ORDER Granting Conditional Leave to Appeal to His Majesty's Privy Council.**

IN THE WEST AFRICAN COURT OF APPEAL.

Holden at Lagos Nigeria.

Suit No. I/46/45.  
WAC. 2469

Between AKINWANDE THOMAS & Ors. (Plaintiffs)

Respondents 40

AND

OBA ALAIYELUWA ADEMOLA II & Others

(Defendants) - - - - Appellants.

(Sgd.) JOHN VERITY,  
Presiding Judge.

IT IS HEREBY CERTIFIED that on the 10th day of January 1947 the West African Court of Appeal sitting at Lagos, Nigeria, ordered that

leave to appeal to His Majesty's Privy Council be granted to the above-named 2nd, 3rd and 4th Defendants-Appellants upon the conditions following :—

*In the West African Court of Appeal.*

1. That the Appellants shall within three months either pay into Court the sum of £500 or enter into good and sufficient security to the satisfaction of the Court in the sum of £500 for the due prosecution of the appeal and the payment of all such costs as may become payable to the Respondents in the event of the Appellants not obtaining an Order granting them Final Leave to appeal, or of the appeal being dismissed for non-  
10 prosecution or of His Majesty in Council ordering the Appellants to pay the Respondents' costs of the appeal. The question of the security to be decided by a single Judge of the Court upon application made upon notice to the Respondents within three months.

No. 38.  
Order granting conditional leave to appeal to H.M. Privy Council, 10th January 1947, continued.

2. That the Appellants do pay into Court within three months the sum of Fifty pounds (£50) for the preparation and despatch of the records.

3. That the Appellants do give notice of the appeal to the Respondents within three months.

AND IT IS FURTHER ORDERED that stay of execution of the Judgment appealed against be refused.

20 Liberty to apply.

Given at Lagos, Nigeria, under the Seal of the Court and the hand of the Presiding Judge this 10th day of January 1947.

(Sgd.) V. R. BAIRAMIAN,  
Deputy Registrar,  
West African Court of Appeal.

No. 39.

**ORDER Granting Final Leave to Appeal to Privy Council.**

IN THE WEST AFRICAN COURT OF APPEAL.

Holden at Lagos, Nigeria.

30

WAC. 2469.

Between AKINWANDE THOMAS & Ors. etc. (Plaintiffs) Respondents  
and

OBA ALAIYELUWA ADEMOLA II & Others  
(Defendants) - - - Appellants.

No. 39.  
Order granting Final Leave to Appeal to the Privy Council, 14th April 1947.

IT IS HEREBY CERTIFIED that on the 14th day of April 1947 the West African Court of Appeal sitting at Lagos, Nigeria, ORDERED that FINAL LEAVE to appeal to His Majesty's Privy Council be granted.

Given at Lagos, Nigeria, under the Seal of the Court and the hand of the President this 14th day of April 1947.

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(Sgd.) V. R. BAIRAMIAN,  
Deputy Registrar,  
West African Court of Appeal.

(L.S.)

(Sgd.) WALTER HARRAGIN,  
President.

*Plaintiffs'*  
*Exhibit.*

“CAT. 4.”  
Extracts of  
Council  
Meeting,  
10th June  
1926.

**PLAINTIFFS' EXHIBITS.**

Exhibit “CAT. 4.”

**EXTRACTS of Council Meeting.**

MINUTES OF COUNCIL MEETING HELD ON THURSDAY, THE 10TH DAY OF  
JUNE 1926.

\* \* \* \* \*

**SEDITIONOUS MEETINGS OF THE OGBONIS.**

*The Alake*: Another reason why I have invited the Ogboni Chiefs of the Egbas to the Council meeting to-day is on account of the information that has reached me of your holding a meeting of the Ogbonis in Ogboni House at Itoku without the usual notification to me. Such meetings must be regarded with the greatest misgivings and nothing short of a seditious character. We do not want any more misunderstandings or trouble in the town. You must be fully aware that the least trouble, at the present moment, will be so grossly misrepresented and wickedly exaggerated by our enemies in places outside Abeokuta. We should therefore be very careful as to how we now conduct the affairs of our country. When we had an extraordinary meeting of Council here on the 24th of May last, you would remember that it was decided with you that you were not to hold any meeting of the Ogboni chiefs at Ogboni House, Itoku, in the absence of the Alake's representatives—the Ogboni members of Council, as was the procedure in the past. The Oluwo of Igbein appreciates the position and fully realises the responsibility resting on his shoulders as the head of the Ogboni holding seditious meetings in that house, and if anything happens there contradistinction to the orders I have given I shall hold him responsible for it. In view of the foregoing, I would like to know your reason or reasons for failing to abide by the last decision arrived at in connection with the holding of the meeting with the Ogboni members of this Council when you had your last meeting at the Ogboni House, Itoku. I must again warn you that in future no meeting of the Ogbonis should be held in the Ogboni House, Itoku, without in the presence of my representatives from this Council. If any meeting is held there again without my knowledge as the Alake, such meeting will be regarded seditious, and the leading chiefs who attend the meeting will be arrested and punished. There is no gainsaying the fact that there is a law to punish every offender. I must tell you that in this instance, I do not feel inclined to adopt any strong measure against you as I could have easily caused the arrest of the chiefs present at that meeting and got them punished. The Oluwo of Itoku in whose township the Ogboni meetings are held must be very careful also. If in future he allows any such meeting to be held there again he will be punished. The usual procedure is for the Ogboni chiefs to notify me before any meeting is held there, but now you have digressed from the usual practice in vogue. I now once more warn you that any further disregard of my orders by the Ogboni chiefs will be seriously dealt with. During the reign of my Predecessor, the holding of the general meetings of the Ogboni chiefs at the Ogboni House, Itoku, was on more than one occasion suspended when there were sufficient reasons to do so. If any chief has any grievance he can come before Council and state it. I cannot

allow you to create any trouble in the town again with your meetings in the Ogboni House. The unfortunate Ijemo tragedy and Abudi rising should be a sufficient lesson to the Ogboni chiefs especially when you consider the amount of innocent lives that were perished during those two deplorable incidents. I have always said that Abudi was only a mere figure head. His name was purposely used at the time to bring about the trouble which lead the Government to station troops in Abeokuta. But in the recent trouble, you three, the Oluwo of Igbein, the Apesi of Imo and the Jomu of Igbore were the ringleaders. Did you for a moment appreciate or realise the trouble I took before I could succeed to get the troops removed from this country and how I had to pledge myself to the Government that there would always be peace and order in the town? I say emphatically again that by God's power there will never be a necessity for the Government to station troops here again. I wish you all to know that nobody can create trouble in the town again with impunity. Anybody who creates trouble does it on his own risk and will alone stand the consequences of punishment. I reiterate my warning to you, that the Alake and Council will not tolerate any act calculated to prove inimical to the interest and general welfare of the country. Any act which does not in any way tend to promote the peace, happiness and prosperity of the country and people will be seriously dealt with. There are no other Ogboni chiefs at the bottom of the recent agitations and trouble beside the Oluwo of Igbein, the Jomu of Igbore and Apesi of Imo, and they were absolutely responsible for the present misunderstanding existing between the Otunbade of Ake, the Bantun of Ijemo and the Otunbade of Ake and other Ogboni chiefs. The five Ogboni chiefs who are ruling the Ogboni chiefs in this country to-day, are the Oluwo of Igbein, the Jomu of Igbore, the Apesi of Imo, the Bantun of Ijemo and the Otunbade of Ake. Did you not hear what the Resident said last time that any chief who is found to be of a general good character during the period of office of the present members of the new Council, will be considered fit and eligible chief for selection at the proper time? With regard to the matter of my election about which some people have been trying to make a mountain out of a mole-hill in connection with the part played by Mr. Coker at the time, it was true that Mr. Coker took up the matter very warmly when he was told that the royal family of my house had selected me as the rightful candidate in preference to any of the other two candidates suggested for election at the time when certain section of the people in the town wanted to influence the chiefs otherwise. There is no doubt that Mr. Coker stood firm and was blowing the trumpet in favour of my election. The Apesi of Imo and the Jomu of Igbore also mustered their united forces and went round the chiefs in order to get them to raise one voice to my election. But I must express my surprise at the hostile attitude the two of you have recently maintained against me and the Native Administration.

But when I cast a retrospective view on the part played by you during my election I was not inclined to inflict any punishment on you as I was convinced that the two of you are only tools in the hand of the clever malcontents. I would seriously warn you to be very careful and advise you to conduct yourselves in future in a manner worthy of your position and influence amongst your fellow Ogboni chiefs. To the best of my recollection I promised all of you financial assistance when you complained of starvation. I am prepared and still willing to do all that I

*Plaintiffs' Exhibit.*

“CAT. 4.”  
Extracts of  
Council  
Meeting,  
10th June  
1926,  
*continued.*



Plaintiffs'  
Exhibit.

“CAT. 4.”  
Extracts of  
Council  
Meeting,  
10th June,  
1926,  
*continued.*

can for you if you are prepared to co-operate with me and Council in all our endeavours and anxiety to promote the peace, prosperity and welfare of the country. Let us think every little of the interest of those in Council to-day, and co-operate for the common good of the country.

*The Apesi of Imo* : The Alake is the father of us all. We have no other masters besides him. It is our duty to co-operate and support the Alake in the maintenance of peace and order in the country. We will never in any way hold any seditious meeting or, under any circumstance whatever foment trouble in the country. I salute our Representative (Hon. S. H. Pearse) who is present at this meeting of Council to-day. When we went to Lagos last time we saw and salute him. It is true that trouble follows strife and misunderstandings in the country. May God forbid that we experience any more trouble in our country again. The Oluwo of Igbein is the present head of the Ogbonis holding meetings at Ogboni House Itoku. I can assure the Alake and Council that we have never on any occasion met for a seditious purpose. At all meetings we always pray for your long reign over us also for God's richest blessings upon you, and that God may also grant you wisdom and tact from above to be able to rule and guide your people aright. We would never join anybody holding seditious meeting or do anything against you or prejudicial to the interest and welfare of the country. We must thank God for our present position and for his mercies. We have many of the blessings and advantages of life we have children, we have built houses according to our respective means and ability. We had witnessed the unfortunate Ijemo incidents and always pray that such should never occur in this town again. We know that the Ijemo incident was also one of the causes which led to our *Deprivation of the advantage of hearing cases in all our Ogboni houses.* With regard to the suggestion for holding of meetings with the members of Council at Ogboni House, Itoku, I remember when we met here last the Bantun of Ijemo suggested the necessity for some of the Ogboni members of Council holding meetings with us in the Ogboni House at Itoku as was the practice in vogue during the time of the late Obadebo Alake, the late Adila of Erunwon, the late Apena of Erunbe, the late Apena of Oko, the Apena of Odo, and other Ogboni chiefs were the then Ogboni members of Council who always attended and reported to the then Alake proceedings of the meetings of the Ogbonis at Itoku. I am still in favour of his suggestion.

*Jemu of Igbore* : The Alake has always expressed to us that if the country is peaceful, we are responsible and, if otherwise, we are also responsible. The Otun of the Egbas has always said so ; I denied this fact as I do not wish us to be held responsible for any trouble in the town. We have no objection to members of this Council attending the meetings of the Ogbonis at Itoku always. We have no other country besides Abeokuta and anybody who acts towards its ruins by any wicked designs, will be visited by calamity in his house. The extract of minutes of Council about the Ex-Osile just read to us refers to the enemies of the Administration. I am not and will never be an enemy of the Administration. There is no necessity for me to aspire to any position beyond my right. I now assume the title enjoyed by my late father in Igbore township and that is the end of my aspiration. I can never aspire to any title higher than

this. As the last speaker has said, we shall never wish evil for this country. A native proverb says : “ Arokomaja iwo la wa njewa si lorun ”—we are only doing this through the jealousy that we have for you (the Alake). *Plaintiffs' Exhibit.*

*The Bantun of Ijemo :* We are very thankful to the Alake for the honour he has given us this morning by causing to be read to our hearing the reply of His Excellency the Governor to the petition from the Oke-Ona chiefs praying for the reinstatement of the Ex-Osile. We are also thankful to the Alake for mentioning the names of the five chiefs (my name being included) who are the leading chiefs as far as the influence of the Ogboni chiefs in this country is concerned. In the past, it was the duty of “Ajilubokun” the keeper of Ogboni House, Itoku, to remind the Oluwo of Itoku to notify the Alake at any time the meeting of the Ogbonis was to be held at that house. The late Liwoye of Itoku also used to come to announce to the Alake the time that the meeting at Ogboni House, Itoku, was fixed. We now assure you Kabiyesi, that this mistake a gross negligence of duty, will be rectified in the future. We are thankful to the Alake for having granted us an indulgence that we asked from him and that is, that the Ogboni members of Council should be meeting with us as before at the Ogboni House, Itoku. Your Highness has on more than one occasion told us that the selection of any chief to the membership of Council solely and wholly depends upon his general behaviour and good character. We are all satisfied with this understanding and would patiently await the next opportunity. *“ CAT. 4.”  
Extracts of  
Council  
Meeting,  
10th June,  
1926,  
continued.*

*The Otunbade of Ake :* Although this subject has been fully discussed to our entire satisfaction, yet I would suggest that the Oluwo of Igbein, who is the present head of the Ogboni chiefs, should always notify the Alake of any matter proposed to be discussed in the Ogboni House at Itoku as usual. This suggestion if adopted, will, I am sure, be the means of keeping the Alake always well-informed of all the movements of the Ogbonis in all matters affecting welfare of the country. This also applies to the Oluwo of Itoku who should always send to notify the Alake of any intended meeting and at the same time keep the Alake well-informed of any matter proposed to be discussed at the meeting. “Ka sotito, ka sododo, eni ba sotito ni male igbe.” If we all behave well, we shall not be the loser in the end, but on the contrary reap the necessary benefit of a good behaviour. If the Oluwo dreams a dream over night, it is advisable for him to report such a dream to the Alake the following morning. As far as we the chiefs of Ake are concerned, I have always declared that there is no cause for us to be disloyal to the Alake. We are his and we have no other lines of policy to strike besides his on line of policy. The respect given to the Balogun or any other chiefs of Ake and which is highly commended by the chiefs of the other townships, is entirely due to the respect we derive from the Alake. The site and instance ; during the time of the Adubi rising the Ake chiefs and people were saved from being murdered in cold blood together with the Alake by one Fadipe, one of the leaders of the Adubi party at Oba who staunchly refused to accede to the request and wishes of his followers to come to Abeokuta to kill the Alake and Ake Chiefs and people, some of the party, we understood, even marched as far as Mologede village before they were ordered to retrace their steps to Oba. We must not do anything contrary to what the Alake is doing.

*Plaintiffs' Exhibit.*  
 "CAT.4."  
 Extracts of Council Meeting, 10th June 1926.  
*continued.*

*The Oluwo of Itoku :* "Erin ki fi baba re soke jaso." Every Ogboni chiefs knows my character, I was bereaved of my child not long ago and in which with connection the Oluwo of Igbein came to visit me two days ago. I returned the visit yesterday and learnt to-day that a meeting was held at Itoku. I am loyal to the Alake.

*The Alake :* If anything happens in this country without my knowledge it is wrong. This was also the reason why the Ogboni House at Itoku was closed by the order of the late Alake. The closing of the Ogboni House at Itoku against the holding of the general meetings did not, of course, interfere with the holding of the usual ordinary township meetings. It 10 was through the intervention of the late Liwoye of Itoku that the holding of the general meetings of the Ogboni chiefs was resuscitated by the order of the Alake and the meetings regulated. It is therefore essentially necessary that I must be kept informed of matters for discussion in that house at all times.

*The Oluwo of Igbein :* Kabiyesi, I assure you that the Ogbonis would never do anything inimical to the interest of the country there.

*The Alake :* If they do anything against the Administration, you the Oluwo of Igbein will be held responsible for such action.

*The Oluwo of Igbein :* When the Oluwo of Itoku came to return visit 20 to me, I was with Balogun of the Egbas from where I was sent for. What the Alake said is not clearly understood by the Oluwo of Itoku. The meeting of the Ogboni at the Ogboni House, Itoku, is not a matter of recent date. The system had been in vogue for a long time. What the Alake said is that if such general meetings were to be held, it is your duty, as the Oluwo of Itoku, to notify him and keep him well informed of all discussions. He does not say he would stop the holding of the meetings there. This meeting was started at Kosefe in Itoku, when the Egbas were in their homesteads. When I was a member of Council whenever the general meeting of the Ogbonis would be held at Ogboni House, Itoku, the late 30 Alake would be previously notified. I remember I made reference to the necessity of our calling Mr. Coker home from before the Alake. The Alake is our King and he is also Mr. Coker's King. It is not too late to do this if His Highness would kindly allow us to do so. Jomu said he has put the matter before you few days ago in view of what he has heard from the Otun of the Egbas. The Alake has heard all what the Egbas said, and so far as I am personally concerned, I will do nothing calculated to work against the interest of the country or attend any meeting of a seditious character. As I have said, the matter is finished. It is true that seditious meetings can never tend to promote the peace of the country. I would 40 never join any seditious movement against the Alake or the Administration. Yesterday was the day fixed for the general meetings at the Ogboni House, Itoku. It is only fair that the Alake should be notified of the time fixed for that meeting. I cannot forget the kind and noble acts of certain Christian young men who went visiting each house of the Ogboni chiefs advising us to attend the inauguration of the new Council when the Lieut. Governor came to Abeokuta last. Their efforts in that connection were praiseworthy and commendable.

*The Alake* : I must inform you that I was responsible for their efforts as failure on your part to attend the functions especially when the Lieut. Governor was expected, notwithstanding your having sent a petition to the Resident, would render you liable to punishment.

*Plaintiffs' Exhibit.*  
 "CAT. 4."  
 Extracts of Council Meeting, 10th June 1926,  
*continued.*

*The Oluwo of Igbein* : This, of course, was due to the trend of events at that time. And as calm generally follows storm the turbulent time (the) has now been superseded by peace. It was the intrigue that brought about the Ijemo incident. The Oluwo of Ijemo would not have stoutly refused to the intervention and advice of the late Alake but for the adverse  
 10 advice and wicked incitement of the malcontents and intriguers who were then at the bottom of the whole trouble.

*The Alake* : Is not the present trouble and agitations the result of the intrigue planned by Mr. Coker when he refused to obey my call ?

*The Oluwo of Igbein* : Yes. Kabiyesi, but you made him the Lisa. He is your chief and I am begging you to kindly allow us to send for him in order to settle the matter amicably.

*Hon. S. H. Pearse* : I am pleased to meet you all here in this Council. May God forbid that we again experience any difficulty or witness a recurrence of any trouble like the past unfortunate Ijemo tragedy and  
 20 Adubi rising. It was when the Lieut. Governor saw that the Abeokuta town, or rather the Egbaland, was flourishing in peace, order and prosperity that he agreed at the express wish of the Alake to remove the troops from Abeokuta. There is no other country in Nigeria that can boast of this and we should be thankful to God. When the recent political trouble began, I write to the Alake nearly every day to give him my humble advices and I am pleased to see that what seemed to be a misunderstanding among the Ogboni chiefs in the town is now finally settled. With regard to Mr. J. K. Coker and the part he played in the drama, I can only express my surprise for I know him to be a good man and a man who has great  
 30 interest of this country at heart, but in the recent misunderstanding he seems to have misapplied such interest to the extreme. We at Lagos at times co-operate for the interest of this country. I remember he accompanied us to interview the Governor on a matter affecting the interest of the Egba people during the Oyo Durbar. I know him to be loyal to the Alake but his actions of late are inexplicable and leave much to be desired. The Alake has just told us that there was nothing wrong between him and Mr. Coker before the recent misunderstanding and that anybody who come here in the daytime or in the night would meet Mr. Coker with him at any time he came to Abeokuta. I regard the recent happenings as an  
 40 error of judgment on the part of Mr. Coker see how you (the chiefs) wrote a petition to the Governor without the knowledge of the Alake. I made an application at the Legislative Council asking the Government that a compassionate allowance may be granted to the Ex-Osile, as such I believe, the reply I received was that the matter should, in the first instance, be considered by the Alake and Council. The Alake, as far as I know, has no ill-feelings against the Ex-Osile, as such. I believe the question of the compassionate allowance will be considered at the proper time. I advise you to be careful and be always vigilant in the interest of your country. If you are any trouble brewing in a small degree, it is for you to suppress  
 50 it in time thus preventing it being wickedly enlarged upon and

*Plaintiffs' Exhibit.*  
 "CAT. 4."  
 Extracts of Council Meeting, 10th June, 1926.  
*continued.*

misrepresented at Lagos. Did you not see how our would-be friends wanted to disgrace Egbaland by an attempt to get the Balogun and the Otun in trouble? What good could come out of all these, I fail to see. With regard to the Ogboni meetings at Itoku, if you want to do anything for the good of this country, there is no reason why you should hold secret meetings. Why not discuss matters publicly if there is nothing suggestive of sedition in your meeting? I want you all to know that the eyes of the Lagos public are on you, and that whatever you do here is being grossly enlarged upon and misrepresented in other places. With regard to Mr. J. K. Coker about whom you spoke that you would like to bring before the Alake to apologise, 10 because he is one of us and etc., you are the proper person who would see to bring about reconciliation between the Alake and himself, you know the best way you can effect it without allowing the outsiders to interfere. Mr. P. C. Thomas of Sierra Leone, a resident of Lagos, I understand, called on the Alake during his recent visit to Abeokuta and said that on his return to Lagos he would settle the misunderstanding existing between Mr. Coker and the Alake. I told him to leave the matter to you chiefs to settle. What I have to say in this matter is that Mr. Coker himself was afraid to come to Abeokuta and see the Alake, hence he failed to attend to his call. You as chiefs of Abeokuta are to see the misunderstanding amicably 20 settled, and you know the best course you can take to effect this. I am sure Alake will place no obstacle in your way whenever you are prepared to do so. The whitemen are looking at the Egba Administration as the most advanced Native Administration in Nigeria. We should allow no internal strife or disaffection to retard the progress of our country. Any stranger who came to this country and see the ruins of the houses of Ijemo people which was brought about by the regrettable incident of 1914 would feel sorry for the people of Ijemo, and the Abeokuta people in general. My advice is that in anything you do, you should first and foremost consider the interest of your country and set aside whatever personal grievance you 30 may have, but stand firm to make the Egba Administration a healthy and progressive Administration.

*The Otun of the Egbas :* I thank the Hon. S. H. Pearse, our Lagos Representative, for his kind words of advice to us, as I said last time that patience conquers anything, I now say it again. The Ogboni chiefs, Mr. Coker and ourselves are the Alake's children. At the recent interview we had with certain Ogboni chiefs they remarked that they wanted the Alake to allow them to send for Mr. Coker. I told them there was no necessity for the Alake's permission to do so as Mr. Coker is at liberty to come to the Alake at any time as the Alake never drove him away 40 from him, but if they send for him and he comes, I would be the first man to join the Ogbonis to beg the Alake on his behalf. You are the Ogbonis of the Egbas, you should be true and loyal to the Alake who will see that your dignity as Ogboni chiefs is upheld. The Oluwo of Igbein expressed an opinion against Mr. Coker's action at the initial stage of this matter and used the proverb that "Orisa ti ko ba oya re, Sango ko ni ba se." We ourselves have been expressing the same opinion that we will not have any dealings with a man, who will not be loyal to the Alake. If Mr. Coker is present here, I would say to his face that he is a stubborn man. Of course, he, in another way is kind and liberal minded and always ready to assist 50 anyone in distress. If you know you will be able to persuade him to come

to Abeokuta, I will support your efforts and join you to beg the Alake. I would advise you to be true and loyal to the Alake. With regards to my remarks to Mr. Coker's stubbornness, I know that whatever side he takes to in any matter, rightly or wrongly, he would stand by that side to the very last. As you the Ogboni chiefs are now reconciled to the Alake, I would advise you to co-operate with us for the good of this country. If you have any grievances, come to the Alake and speak it out, and the Alake will always redress your grievances.

*Plaintiffs' Exhibit.*

"CAT. 4." Extracts of Council Meeting, 10th June, 1926. *continued.*

*Hon. S. H. Pearse* : I think I should say a few words in connection with Mr. Coker's matter. It is a shame for a man to keep throwing stones against his countrymen from beyond the walls. My own policy is to stand by the Administration. I had wanted to call to salute you—The Apesi of Imo, and Jomu of Igbore when you come to Lagos last, but when I heard that you were staying with Mr. Coker at Balogun Square I thought I should rather not visit you there, because I reflected on what interpretation may be applied to my motive. We cannot imagine the esteem at which we are held by Government. Yesterday I spoke to the Secretary, Southern Provinces, about the necessity of our being supplied with ample water supply. I also told the Secretary that the Government should pay us something in consideration of the stones they are removing from Abeokuta to improve the Lagos Harbours, and as we have no gold mine, coal pits or any other minerals beside the stones, the Government should consider the reasonable request of the Egbas in this respect. He replied that all these facts are quite known to him but I should remember that Abeokuta claims seniority over other countries and as such she should supply the Harbour works with the stones out of her liberal resources. Now in conclusion you know that if the Alake had not been patient and tactful, matters should have gone worse over the recent political misunderstandings. I know Mr. Coker rightly deserves all the qualifications the Otun has given him, but God will give you wisdom to settle this unfortunate misunderstanding. I salute you all.

*Jomu of Igbore* : That is what I have already said that unless the Alake assist us to call him he will not come. We would beg the Alake to kindly exercise his power and assist us to call Mr. Coker for the sake of his country. A native proverb says : Ro toke toke. Intrigues cannot anyway enhance the honour and welfare of the country but on the contrary it will mitigate against them. We would not mind if the Hon. Mr. S. H. Pearse will kindly assist us to persuade Mr. Coker to come to Abeokuta.

*The Alake* : May God be with you all. We have cause to thank God to-day that we are discussing this matter, our Representative in Lagos being among us. There was no misunderstanding between the Ogboni chiefs, Mr. Coker started his direct communications the Ogbonis in Abeokuta which he was not aware of. I have said that since I have called him (Mr. Coker) and he disobeyed my call, I will have no further dealings with him. As the Apesi Imo said the other day, the whole misunderstandings was due to the work of the devil. You, the Oluwo of Igbein, the Apesi of Imo, and the Jomu of Igbore first started to disobey and ignore my orders when you failed to attend the meeting arranged for the consideration of Mr. Coker's letter. If you all had attended that meeting the result would not have been what it is now. I agree with your suggestion to bring

*Plaintiffs' Exhibit.*

"CAT. 4." Extracts of Council Meeting, 10th June 1926, continued.

Mr. Coker to me for peace sake. With regards to those who are writing foolish and scandalous articles in the newspapers, I would not agree that they should be allowed to go scot free. I refer particularly to the articles that are being published from time to time in the Eko-Osose paper. The statement made in that paper that Mr. Coker was my benefactor and the man who installed me as the Alake is absolutely incorrect. The late Alake, who was elected by the late Ali, the Seriki of (Ijeun) Egbas and Idowu, late Apena of Iporo, had to attack the Seriki in my presence in Council and call him to order him that he had no right to say "I made you king, I made you king," and asked him why he did not make himself a king if he was entitled to the office much less my own election which was only made known by Mr. Coker after it had been decided upon by the responsible royal family. The election was so much represented by all sections in this country, that it was regarded unprecedented in this history of the country. It was true that Mr. Coker blew the trumpet as soon as he got to know that my name had been mentioned. If I were not a rightful candidate and had done a lot of good work for the country in the past, I could never have been elected the Alake. With regard to the libel action instituted by Suberu Adedamola the Ex-Osile against the Editor of Eko-Akete. I believe you would agree with me that the part played with a view to creating disturbances and unrest in the town. Intrigues of illicit acts can do no good in the country. It degrades one's honour and respectability as Jomu of Igbore has well put it (Otebuolaku). I would warn you against a recurrence of such action on your part. We had experienced a lot of trouble in the town. I was always wired for to come home on such occasions and would settle the misunderstanding or suppress the trouble before returning to Lagos. This is, however, the first trouble since my reign. I hope there will not be any recurrence of it. We are thankful to God now that the misunderstanding is settled.

*The Oluwo of Igbein :* Our surprise in this matter is that none of the members of Council has ever interfered to settle the misunderstanding before now.

*The Odofin of Kemta :* Did you show us your card ?

*The Alake :* Since I have been here, I am convinced, that there was never an Alake more friendly with the Ogboni chiefs than myself. Is this not so, Apesi of Imo ?

*The Apesi of Imo :* Yes, it is so, Kabiyesi.

*The Alake :* Don't you realise the advantage you have lost for the last three months that you had started this unnecessary trouble in the town ?

*Jomu of Igbore :* The three months were as bad as three years to us. We have misused and abused our position with you and have as a consequence lost the privileges we have always had under you.

*The Alake :* It is hard to bear on with evil things for any length of time. May God forbid a recurrence. With regard to Mr. Coker and the Ogboni chiefs, the chiefs were loyal to me until Mr. Coker started to write his inciting letters and importing wicked advices to the chiefs since the month of March last and they always brought the letters to me. It is difficult for

people outside the walls of the country to advise rightly people in the town or know what is actually going on in the town from so many miles away as it is impossible to get the correct account of affairs. It was on Saturday last that Jomu of Igbore, Apesi of Imo and the Otun of the Egbas, the Balogun of the Xtians and others spoke to me about sending for Mr. Coker. I am sure that after Mr. Coker shall have come you will see that the fault lies on him but not on me. He ought to know better. As you have advised me to be patient I will take your advice in good part.

*Plaintiffs' Exhibit.*  
 "CAT. 4."  
 Extracts of Council Meeting, 10th June 1926,  
*continued.*

10 *The Oluwo of Igbein* : The reasons why I want the Alake to interfere in the matter is because he has always expressed that Mr. Coker has love for this country. There can be nothing worse than the fight between the Egbas and Ibadan people at Kutuje war in which the Alafin sent "Laba Sango" to put up a stop to the fight and the fight was eventually settled. Hence I implore the Alake to see that Mr. Coker's matter be amicably settled.

*The Alake* : I agree with you and I have attributed all that has happened to work of devil. I think you will agree with me that anybody who seizes this opportunity to publish foolish articles in the Lagos papers should be seriously dealt with.

20 *The Councillors and Chiefs* : We all agree.

ABIRONGUN DESTROYED.

30 In accordance with the advice given to the Alake by the Judge of Supreme Court, Sir Frederick Vander-Meulen—during his last visit to Abeokuta to take the Alake's evidence in connection with the libel action against the Editor of the *Eko-Akete* "that the fetish Abirogu of Oko: used by Suberu Adedamola and the Oko chiefs in swearing his brother, ought to have been destroyed by the Alake as Paramount chief of Abeokuta, the Alake, in consultation with the Council, decided that the Seriki of the Egbas, the Secretary Mr. Adegbite Sobo, and the Oga Olopa should proceed to the Obgoni House Oko with the Oluwo and other chiefs of Oko, and in the presence of the Oko chiefs destroy and reduce to ashes the Fetish Abirongu of Oko. The deputation went to Oko and after carrying out the Alake's orders, returned and reported to the Alake and Council.

Council adjourned.

(Sgd.) W. FOLARIN SOSAN,  
 Clerk of Council.  
 July 5, 1926.

Read and confirmed on the 14th day of June, 1926.

40

(Sgd.) ADEMOLA II,  
 Alake,  
 President of Council.

Witness to the Alake's signature,

(Sgd.) ADEGBITE SOBE,  
 Asoju Oba.

Certified true extract.

(Sgd.) C. A. TITCOMBE,  
 Secretary, Egba Native Administration.



*Plaintiffs' Exhibit.*

**PLAINTIFFS' EXHIBIT.**

**Exhibit "CAT. 1."**

**EXTRACTS of Egba Central Council Meeting's Minutes.**

"CAT. 1."  
Extracts  
of Egba  
Central  
Council  
Meeting's  
Minutes,  
22nd  
October  
1942.

MINUTES OF EGBA CENTRAL COUNCIL MEETING HELD ON THURSDAY,  
22ND OCTOBER 1942.

\* \* \* \* \*  
GENERAL TITLE CHIEFTAINCIES.  
\* \* \* \* \*

*The Alake* supported the District Officer on point of order and said that the Council had not been asked to discuss any particular General or Minor Title. He remarked that he heard a lot of foolish talks particularly regarding Balogun Egba Chieftaincy and enlightened the Council that when the post of the Balogun of the Egbas was vacant for sometime and someone who was incapable was aspiring to it against his desire he (Alake) sent for the late Odofo of Igbein, Chief Kotoye, who was the head of the township then, and offered him the title, but the Odofo declined on the ground that he was the head of the township. Then Oba Alaiyeluwa said that he would offer the post to the present Balogun who was then the Bala of Igbein. The Odofo said that it was against custom, because he was an Ogboni. He (Alake) replied that Oba Alaiyeluwa was a fountain of honour and could give honour to anyone he desired. He accordingly sent a policeman in a car for the present Balogun, who was surprised when he was offered the title. The Balogun said that as an Ogboni Chief it was against custom for him to hold an Olorogun title. He told him that it was an honour from the Alake and that failing to accept it he might leave the town. He then prostrated and said that he was prepared for the title as the Alake ordered it. He asked for assistance from the Alake, which was readily given to him. In the evening of the next day he sent for Igbein Chiefs and informed them. They all expressed their gratefulness to the Alake and then arrangements were made for his installation as the Balogun of the Egbas.

\* \* \* \* \*

Certified a true and correct extract.

(Sgd.) C. A. TITCOMBE,  
Secretary,  
Egba Native Administration.

*Plaintiffs' Exhibit.*

**PLAINTIFFS' EXHIBIT.**

**Exhibit "CAT. 3."**

**RESOLUTION at a General Meeting of Iporo Township Council.**

"CAT. 3."  
Resolution  
at a  
General  
Meeting of  
Iporo  
Township  
Council,  
6th  
October  
1943.

At a General Meeting of Iporo Township Council held on Wednesday the 6th October 1943, the following resolutions were unanimously carried.

(1) That the Meeting re-affirmed its decision to remove Akinwande Thomas from the Office of the Base of Iporo as a result of which the Customary Drum has been beaten and the Chiefs had already parted with him (Ya fun).

(2) That a Disclaimer published in the issue of the Nigerian *Daily Times* of September 29th, 1943 was not Constitutional as it did not emanate from the Constituted Council of Iporo Township Chiefs and people, it having been done by a Coterie of disgruntled few patched together by Akinwande Thomas.

*Plaintiffs' Exhibit.*  
 "CAT. 3."  
 Resolution at a General Meeting of Iporo Township Council, 6th October 1943, continued.

(3) That the present Iporo Township Council recognised Akisatan the Apena as the present leading Chief of Iporo Township and a recognised Chairman of Iporo Township Council and that for failing to obtain the approval of the Council, it was decided that the Signatories to the Disclaimer complained of who are Chiefs should be suspended from their respective Offices and that pending satisfactory explanations from them, Iporo Township Council would withdraw its recognition from them.

(4) That the Majority of the Signatories are not recognised Chiefs and some are even Chiefs of Religion (Class) with no Status such as the Chairman of Iporo Descendants Union who appended his signature with that of his august father Mr. J. K. Coker.

(5) That the said Akinwande Thomas be no longer entitled to wear Ogboni regalia or Paraphernalia of Office or enjoy any Privilege of an Ogboni Chief.

(6) That the removal of Akinwande Thomas was done in full consultation and with the knowledge of Oba Alaiyeluwa the Alake and that copies of this resolution should be forwarded to the Alake, the Sectional Councils. The Egba Ogboni's Meeting Itoku, the Balogun of Xtians, Chief Imam of the Egbas, the Balogun of Muslims and to the Press.

Dated at Abeokuta this 6th day of October 1943.

his left thumb

O his X mark Akisatan, the Apena of Iporo & Chairman of Iporo Township Council  
 impression

his left thumb

30 O his X mark Jekayinfa, the Asalu of Iporo  
 impression

(Sgd.) I. A. Sodipo Bagbimo of Iporo.

left thumb

O his X mark Lawani, the Balogun of Iporo.  
 impression

left thumb

O his X mark Yesufu, the Basala of Iporo.  
 impression

left thumb

40 O his X mark Ogundele, The Asipa of Ogboni Iporo.  
 impression

left thumb

O his X mark Owolabi, The Baloye of Iporo (Ifa).  
 impression

left thumb

O his X mark Sogbanmu, The Ojibona of Ifa (Iporo).  
 impression

<i>Plaintiffs' Exhibit.</i>	left thumb			
	O	his X mark	Ogunsola, The Olori-Egan of Iporo.	
"CAT. 3."	impression			
Resolution at a General Meeting of Iporo Township Council, 6th October 1943, <i>continued.</i>	left thumb			
	O	his X mark	Adenekan, The Alase of Iporo.	
	impression			
	left thumb			
	O	his X mark	Sodolamu, The Ntowa of Iporo.	
	impression			
	left thumb			10
	O	his X mark	Soremi, The Eta of Iporo.	
	impression			
	left thumb			
	O	his X mark	Ojerinde, The Ntoye of Iporo.	
	impression			
	left thumb			
	O	his X mark	Amusan, The Otunbade of Iporo.	
	impression			
	left thumb			20
	O	his X mark	Ajayi, The Ajana of Iporo.	
	impression			
	left thumb			
	O	his X mark	Akidipe.	
	impression			
	left thumb			
	O	his X mark	Idowu.	
	impression			
	left thumb			
	O	his X mark	Adeaga, Atoku Egu of Iporo.	
	impression			30
	left thumb			
	O	his X mark	Ogundimu, Olori Osona of Iporo.	
	impression			
	left thumb			
	O	his X mark	Ogubayo, Asipa of Osona	
	impression			
	left thumb			
	O	his X mark	Jimo, Asipa Parakoyi.	
	impression			
	left thumb			40
	O	his X mark	Mesioye, Otun Babalawo.	
	impression			
	left thumb			
	O	her X mark	Latumi, Apena Obinrin Erelu.	
	impression			

- left thumb  
O her X mark Efundunke 2nd rank.  
impression
- left thumb  
O her X mark Jojolola, Erelu.  
impression
- left thumb  
O her X mark Sangodimu ,,  
impression
- 10 left thumb  
O her X mark Efubowale ,,  
impression
- left thumb  
O her X mark Towobola ,,  
impression
- left thumb  
O her X mark Ayawo .  
impression
- 20 left thumb  
O his X mark Adeoso.  
impression
- left thumb  
O his X mark Salako.  
impression
- left thumb  
O his X mark Ewoso.  
impression
- left thumb  
O his X mark Salako Asawo.  
30 impression
- left thumb  
O his X mark Ewoso Fatena.  
impression
- left thumb  
O his X mark Akisanya.  
impression
- (Sgd.) Ade Tinney Somoye Bale of Iporo Xtians.  
(Sgd.) J. O. Sodeke Otun of Iporo Xtians.  
(Sgd.) J. L. Aderoku.
- 40 (Sgd.) E. Oye Somoye the Otun of Xtian Itesi Meth. Church.  
(Sgd.) E. P. Aderoku.  
(Sgd.) J. K. Shobande.  
(Sgd.) M. S. Sodeinde.  
(Sgd.) Ogunji.  
(Sgd.) Daniel S. Akinsonya.  
(Sgd.) ? Mogaji.

*Plaintiffs'*  
*Exhibit.*

“CAT. 3.”  
Resolution  
at a  
General  
Meeting of  
Iporo  
Township  
Council,  
6th  
October  
1943,  
*continued.*

<i>Plaintiffs' Exhibit.</i>	(Sgd.) D. O. Shotun.	
	Oke his O thumb impression.	
"CAT. 3,"	Isikiel Taiwo his O thumb impression.	
Resolution	Amos Taiwo his O thumb impression.	
at a	Eman Taiwo his O thumb impression.	
General	Michael Oso his O thumb impression.	
Meeting of	Buari his O thumb impression.	
Iporo	(Sgd.) Lawani The Otun of Imale.	
Township	B. Adegbite his O thumb impression.	
Council,	(Sgd.) Jinadu Olimole.	10
6th	Asimi Giwa his O thumb impression.	
October	Bello his O thumb impression.	
1943,	Saka Abese his O thumb impression.	
<i>continued.</i>	Situ his O thumb impression.	
	Belo Ekerin Imale Iporo his O thumb impression.	
	Kasunmu Idowu his O thumb impression	
	Sunmola his O thumb impression.	
	Yesufu his O thumb impression.	
	Sani Sopenu his O thumb impression.	
	Oseni Afolabi his O thumb impression.	20
	Badaru Ogudeyi his O thumb impression.	
	Salami his O thumb impression.	
	Fatoki Omolufarin of Iporo his O thumb impression.	
	Taiwo his O thumb impression.	
	Joseph Oladipo his O thumb impression.	
	Oga his thumb O impression.	
	Adebayo Lukosi Olori of Olorogun his O thumb impression.	
	Lawani ? his O thumb impression.	
	Kotoye the Baraleye his O thumb impression.	
	Olaogun Lukosi ode his O thumb impression.	30
	Sotunde his O thumb impression.	
	Ogunleye Olowo lagba his O thumb impression.	
	Folarin his O thumb impression.	
	Ogudipe Olori Odo his O thumb impression.	
	Idowu Ntabo Iporo his O thumb impression.	
	Sonde Lisemo of Iporo his O thumb impression.	
	Sunmonu Sanusi Omi lamabuwe his O thumb impression.	
	Humuani Yoriola her O thumb impression.	
	Adenekan Omo Bagbumo his O thumb impression.	
	Tiamiyu Oligbinde his O thumb impression.	40
	Badamosi the Asiwaju Imale of Iporo his O thumb impression.	
	Oguyomi the Luwoye of Agemo his O thumb impression.	
	Oyegeke the Basigu of Iporo his O thumb impression.	
	Yesufu Koleoso his O thumb impression.	
	Situ his O thumb impression.	
	Fasanya his O thumb impression.	
	Dekolu the Bayanbi Iporo his O thumb impression.	
	Ramotu Oredola her O thumb impression.	
	Rabiatu Akanke her O thumb impression.	
	Asunowu Wuraola the Otun Imale her O thumb impression.	50
	Sabitiyu Adekubi her O thumb impression.	
	Wulenotu Medandola her O thumb impression.	

- Animotu Jadesola her O thumb impression.  
 Muniratu Ayoola her O thumb impression.  
 Sadatu Molake her O thumb impression.  
 Rabiatsu Folahan her O thumb impression.  
 Aminotu Seyinsola her O thumb impression.  
 Rekiatu Oyinsola her O thumb impression.  
 Aminu Somoye his O thumb impression.  
 Salami Somoye his O thumb impression.  
 Jinadu Somoye his O thumb impression.
- 10 (Sgd.) M. B. Shomoye.  
 (Sgd.) Gbadamosi Somoye.  
 Surakatu Somoye his O thumb impression.  
 Aminatu Buari her O thumb impression.  
 (Sgd.) E. Moje Somoye Otun Iporo 6.10.43.  
 Lasisi Asipa Imale his O thumb impression.  
 Asani his O thumb impression.  
 Amusa his O thumb impression.  
 Joseph Idowu his O thumb impression.  
 Tijani Sopein his O thumb impression.
- 20 Sobayo his O thumb impression.  
 Salami Aiyedun his O thumb impression.  
 (Sgd.) A. R. Buari the Captain of Binukonu Com.  
 (Sgd.) S. Ojebiyi Onigbagbo.  
 (Sgd.) Augustus Orisamuyiwa.  
 C. Taiwo Adeshina Christian O thumb impression.  
 Ayisatu Segilola her O thumb impression.
- Men
- Akinshola Esipa Jagunna his O thumb impression.  
 Shoetan Idowu, Babalawo his left O thumb impression.
- 30 Women  
 Awanatu Aderoku her left O thumb impression.  
 Sanu Aderoku her left O thumb impression.

*Plaintiffs'  
Exhibit.*

“ CAT. 3.”  
Resolution  
at a  
General  
Meeting of  
Iporo  
Township  
Council,  
6th  
October  
1943,  
*continued.*

**PLAINTIFFS' EXHIBIT.**

Exhibit “ CAT. 5.”

LETTER, Irving & Bonnar to Alake of Abeokuta.

Registered.

- IRVING & BONNAR  
 J. Stanley Hughes B.L. (ABDN)  
 F. Cameron, Solicitor  
 40 Telegrams : Irving, Lagos.  
 Telephone No. 18/9.  
 Code Bentley's.  
 The Alake of Abeokuta,  
 Afin, Ake, Abeokuta.
- Barclays Bank Chambers,  
 Lagos,  
 Nigeria.  
 P.O. Box 289.  
 26th January 1944.
- Received 29 Jan. 1944 9.45 a.m.

*Plaintiffs'  
Exhibit.*

“ CAT. 5.”  
Letter,  
Irving &  
Bonnar to  
Alake of  
Abeokuta,  
26th  
January  
1944.

Sir,

Chief Akinwande Thomas—Base of Iporo

We have been consulted by the above with regard to certain matters seriously affecting his position as Base of Iporo which we set out below.

*Plaintiffs' Exhibit.*

"CAT. 5."  
Letter,  
Irving &  
Bonnar to  
Alake of  
Abeokuta,  
26th  
January  
1944,  
*continued.*

This is a matter which could we think be easily settled out of Court through your good offices and we think it right to give you an opportunity of settling the matter or at least of expressing your views before we take any steps to obtain justice and redress for our client.

The complaints of our client are as follows :—

A certain section of Iporo people, led by the Apena of Iporo, Akisatan, caused to be maliciously published in the "Daily Service" of 22nd September 1943, that our client had been removed from office as the Base of Iporo. In serious violation of the Ogboni custom and tradition, they caused to be beaten on the 15th idem 10 the death drum in the Iporo Ogboni House and by it announced the impending demise of our client. This practice of beating the death drum, we are informed, is reminiscent of those days in Egbaland when it was beaten as a signal to the party concerned to either commit suicide or expect to be secretly murdered. On the 18th day of October, 1943, the malicious publication was confirmed in the "Daily Service" of that date and it was even alleged therein that the removal of our client from office was with your knowledge and full consent.

At the time the death drum was beaten in the Iporo Ogboni 20 House, a sheep was also slaughtered and funeral dirges were sung for our client's impending demise.

We understand that several serious representations, written and verbal, relating to the foregoing were made to you by our client or on his behalf for investigation and settlement, but you have taken no active or constructive steps to investigate the matter and obtain a redress for our client. We also believe that efforts were made by the senior members of the Ogboni Cult to settle the matter amicably, but that the Apena of Iporo and his followers 30 openly defied them and flout their decision.

Will you be good enough to go thoroughly into the matter and let us know, as soon as possible, what you have done or intend to do.

Yours faithfully,

(Sgd.) IRVING AND BONNAR.

## PLAINTIFFS' EXHIBIT.

Exhibit "CAT. 6."

LETTER, Administrative Secretary Afin Oba Alake to Irving &amp; Bonnar.

(Crest)

No. E.N.A. 832/4.  
 Afin Oba Alake,  
 Ake, Abeokuta.  
 9th February 1944.

*Plaintiffs' Exhibit.*

"CAT. 6."  
 Letter,  
 Administra-  
 tive  
 Secretary  
 Afin Oba  
 Alake to  
 Irving &  
 Bonnar,  
 9th  
 February  
 1944.

Messrs. Irving & Bonnar,  
 10 Barclays Bank Chambers,  
 P.O. Box 289,  
 Lagos, Nigeria.

Sir,

Chief Akinwande Thomas—Base of Iporo.

With reference to your letter dated the 26th of January 1944, I am directed by Oba Alaiyeluwa The Alake to inform you that the matter is one which might have been amicably settled if both parties had been inclined to be reasonable in-as-much as no one has anything to gain by resorting to litigation in this purely township dispute.

20        2. On more than three occasions Oba Alaiyeluwa The Alake had all the parties to the quarrel between The Base and The Apena before him for settlement and each time The Base was counselled against countenancing petty annoyances and was asked to close the ranks by co-operating with The Apena. It was all to no purpose. Both seem to be alleging some fault or other against each other perpetually and each has a number of supporters which makes a thorough settlement a most difficult matter.

3. It is untrue the suggestion that the Ogboni drum had been beaten against Chief Akinwande Thomas with the approval of Oba Alaiyeluwa nor has The Base been removed from office with Oba Alaiyeluwa's consent.  
 30 Contestants on both sides always resort to what they believed would give them satisfaction rather than bide their time until matters had been fully and constitutionally represented to, and taken in hand by, Oba Alaiyeluwa The Alake. That is precisely what has happened in this case.

4. A hurried or unconstitutional interference in township matters far from mending things might very well throw them into confusion worse than the first stage.

Chief J. K. Coker's suggestion that the matter should be settled by the Ogbonis had Oba Alaiyeluwa's sanction, but the Ogbonis failed in the attempt, whereas if it had been brought before the Alake it might have  
 40 had a chance of being more effectively and finally disposed of.

5. Oba Alaiyeluwa is most willing to use his good offices but it must be in the traditional way and in the direction of effecting a settlement at the earliest possible date. He is, naturally, not inclined to do anything



*Plaintiffs' Exhibit.*  
 "CAT. 6."  
 Letter,  
 Administrative Secretary  
 Afin Oba Alake to Irving & Bonnar,  
 9th February 1944,  
*continued.*

which might suggest that he is offering mediation only when the parties had been to the Court or are threatening litigation. Oba Alaiyeluwa is of the opinion that if all the parties and their advisers had confidence in their ruler they ought to observe the formalities which tradition and usage sanction in composing township and political disputes.

I have the honour to be,

Sir,

Your obedient Servant,

(Sgd.) C. A. TITCOMBE,  
 Administrative Secretary. 10

*Defendants' Exhibit.*

**DEFENDANTS' EXHIBIT.**

**Exhibit "JAK 1."**

**PROCEEDINGS OF MEETING for a Settlement.**

"JAK. 1."  
 Proceedings of Meeting for a settlement,  
 29th March 1944.

Proceedings at a meeting for the settlement of misunderstanding between Iporo Chiefs and Chief J. A. Akinwande Thomas, the Base of Iporo at the Afin, Ake, on Wednesday, the 29th of March 1944, at 11 a.m.

Present :—

Oba Alaiyeluwa the Alake	:	Ademola II, C.B.E.	
The Balogun of the Egbas	:	Olola Idowu Soyoye.	
The Otun of the Egbas	:	„ J. B. Majekodunmi.	20
The Ashipa of the Egbas	:	„ Adeliyi.	
The Oluwo of Ake	:	„ Kusimo.	
The Odofi of Kemta	:	„ George Obadimu.	
The Bagbimo of Iporo	:	„ I. A. Sodipo.	
The Apena of Iporo	:	Chief Akisatan.	
The Lisa of Iporo	:	„ J. K. Coker.	
The Base of Iporo	:	„ J. Akinwande Thomas.	
The Laruwa of Iporo	:	„	
The Asalu of Iporo	:	„	
Mr. Tinney Somoye and many others.			30

Oba Alaiyeluwa the Alake saluted the assembly and said that there had always been misunderstandings in the Iporo township, many of which had been settled in the Afin and since it had not been possible for them to settle the one at issue among themselves it had become incumbent upon him to summon the parties concerned and to settle whatever differences there had been so that peace might return to Iporo Township. Oba Alaiyeluwa then called upon the Base of Iporo to speak.

The Base of Iporo saluted Oba Alaiyeluwa and the assembly. He said he had not much to say but would request that his accusers should state what offence alleged on his part made them beat the Parting Drum, and slaughter sheep in the Ogboni House in respect of the alleged misunderstanding with him and also publication of the scandalous article in the newspapers to defame him. 40

The Apena of Iporo, after salutations, said that Mr. Thomas was not the first Base of Oporo. He (Apena) had contributed largely to his selection as Base. They (Iporo) would not tolerate what their predecessors did not. The matter originated when the Iporo township was requested to recommend a member for the Central Council. At that time Mr. Thomas convened a meeting in the house of Jaguna Aderoku to which he invited township Chiefs; amongst the invitees he (Apena) was one. The Oluwo was not pleased but he persuaded the Oluwo to attend. Mr. Thomas, at that meeting, said that he had invited them to discuss membership to the Central Council and drew out a paper, asked them to hold the pen and they ignorantly did as he directed without knowing what was written in the paper. After that Mr. Thomas said that it had been stipulated that if a person had served on the Council for a term he should not be re-elected. The paper was sent to the Alake and to their surprise he (Thomas) was appointed a member of the Central Council.

Secondly, it had been agreed upon that a certain percentage of the remuneration paid to a member of Council should be given to the township. That, he said, Mr. Thomas did not give and out of a sum of about £50 in the aggregate which should have been so paid to the township they received only £2.

*The Alake* : Did you ask him for the money at the end of each month ?

*The Apena* : No Kabiyesi, but when I called him to question later, he said that he was not paid regularly. At a time they wanted to repair the walls of the Ogboni House the township chiefs had to subscribe money.

The Apena continuing said that, thirdly, the Base had taken upon himself to order burial of dead chiefs which he had no right to do. As an instance : when the Odofi of Iporo died the Base did not inform the Iporo Township Chiefs. He caused the corpse to be buried according to Christian rites and with the " Gumbe " drum. The children of the Odofi were sent for but instead of obeying the call of the Ogboni they (the Iporo chiefs) got a message from the Alake that they should come ; and on reaching the Afin, they met the Base with the children of the Odofi. When they were questioned as to the township portion of the burial fees payable for their departed father they said that when they were about to come they were sent back by one Oke.

The Apena concluded by saying that they were fed up and did not want Mr. Thomas any more hence they beat the Parting Drum.

*The Base of Iporo* said that the Alake knew everything about the matter in relation to Council. The Apena served a term in Council and was succeeded by the Asalu. At the expiration of the Asalu's term they were asked to select a successor. (Here the Base tendered in evidence copy of a petition dated April 2, 1938, which was read to the assembly.) The Apena was involved in sums of £197 and £28 15s. respectively alleged to have been misappropriated. The matter was decided by the Alake when he waived the debts and ordered that no body should ask for them any longer. In the matter of a successor to the Asalu, they held a meeting in the house of Oluwo Adroku when it was suggested that he, the Base, should succeed the Asalu in Council. He refused the offer and suggested the Oluwo Ifa, Sotunde, who accepted. A day before the Council meeting

*Defendants' Exhibit.*

" JAK. 1." Proceedings of Meeting for a settlement, 29th March 1944, continued.

*Defendants' Exhibit.*

“JAK. 1.”  
Proceedings  
of Meeting  
for a settle-  
ment,  
29th March  
1944,  
*continued.*

he was sent for by the Alake and was appointed. He was afraid of the sudden turn of event and begged the Alake kindly to save his life because it would be a sad disappointment to Sotunde who had made every preparation against that occasion. The Alake consented and appointed Sotunde as member of Court.

The Base here tendered in evidence also copy of another petition dated the 12th of April, 1936, when on account of stubbornness the Iporo Township rejected the Apena. The Alake interfered and the matter was again settled.

The Base, continuing, said that it was not true that he did not give 10 them portion of Council remuneration. The Apena on one occasion received £15 which he expended in connection with funeral obsequies of his father-in-law. Over £30 was spent for the repairs of the walls of the Ogboni House. Of that sum only £12 was subscribed and he was requested to devote the amount due to the township to the repairs and he did so. That he received Burial Fees was untrue and reference to the matter of Oke had nothing to do with him because he did not send Oke neither did he know anything about it. Oke was present and could testify to that.

On being questioned by Oba Alaiyeluwa, Oke said that he received 11/-. It was township money but the young Ogbonis usually demanded 20 such moneys when any chief died and was buried in the district. They never used to bring it to the notice of any chief.

Yesufu of Iporo next came out and testified to the fact that the sum of 11/- was received and that such moneys were shared in his house. It was the usual custom.

Resuming his statement, the Base said that the Odofo had been interdicted from enjoying his office by the Iporo Township Chiefs 15 years before his death. He, the Base, entreated the Alake to intercede but the township persisted. Five years before his death no Iporo chief had anything to do with him and no share of township fees &c. were paid to 30 him. He and the late Odofo lived in the same house and when the Odofo expressed a desire to be baptised in the Chirstian Faith he helped him to do so and when he died his children caused him to be buried according to Christian rites. The Base said he did not advise the Odofo's children and he had never been appointed Executor. The Laruwa was the Executor. He was not responsible for any maladministration of the Estate of the Odofo.

*The Laruwa of Iporo next spoke:* He prayed for Oba Alaiyeluwa The Alake and saluted the assembly. He said “aso ti afinju ba da, obun ni a ma lo gbehin” meaning “A clean man's clothes may eventually be 40 found on the person of a dirty man.” The quarrel with the Odofo began from the day on which he said that he (Odofo) made the Apena what he (Apena) was, and that the Apena was nothing but the head messenger of the township. Since the misunderstanding began all township relations with the Odofo were cut off. No message from the town was brought to his notice and no share of township fees was given him. He was accorded no recognition. When he was about to die he asked to be baptised and on his dying bed he warned his children that they should give nothing to Iporo township and any one who disregarded that warning would suffer early death.

Saka, The Abese of Iporo, rose and contradicted the statements of Laruwa. He said that the cause of the quarrel was the misbehaviour of the Odofo in contradicting the Base who was then the Nlago, in open Council.

The matter aroused the indignation of Iporo Chiefs who assembled and denounced the Odofo. The Base was a good man but he was being instigated by the Laruwa. He was a follower of the Base and knew his temperaments. The Laruwa should be warned to desist from relating to the Base stories tending to arouse indignation.

*Defendants' Exhibit.*

“ JAK. 1.”  
Proceedings  
of Meeting  
for a settle-  
ment,  
29th March  
1944,  
*continued.*

- 10 The Laruwa rejoined by saying that what the Abese had said was untrue. The quarrel, as he said, at first originated from the Apena and after all endeavours for 4 years to settle it proved abortive. He reported the matter to the Alake. He shared nothing with him and had no axe to grind in the matter.

*Jekayinfa, The Asalu, now rose and said:* Everybody is trying to make a good case. It is true every member sent to represent them in Council pays a certain percentage of the salary to the township chiefs and reports the proceedings in the Central Council to his constituents. Second—Thomas received other moneys which he did not deliver to us.

- 20 There was indeed a quarrel with the Odofo but it had been settled. The quarrel arose from the dispute over the burial fees of his brother. It was the Alake who settled it. Any person who whispers to his companion's ears past evil occurrences does not expect him to be happy. That is the Laruwa's position in the matter. Thomas states that he paid the money for the repair of the walls of the Ogboni House. That is untrue and I would request the Alake to send someone to verify. Money had to be borrowed to complete the work. On one occasion, you, Laruwa, borrowed an Edan (Ogboni staff) and put it in the house of the Base. Is it constitutional for a Base to have an Edan? It is very strange. The matter was reported to the Alake who received the Edan. In the matter of the Death of Jibulu, the 11/- given was not township fees. During the altercation which ensued between Mr. Thomas and the Apena Mr. Thomas called the Apena names, I ventured to settle the misunderstanding but Mr. Thomas did not allow me. Oke's part in the matter was that he asked the children of the Apena to return to farm; they confirmed this before the Alake. That is bad, Kabiyesi. The Odofo held his title for 24 years. When Mr. Thomas became the Base he had the privilege to share out of the clothes kept with the Oluwo and shared annually. The Odofo had share of this for many years. Before he died Mr. Thomas baptised him and when he died he Mr. Thomas did not inform Iporo Chiefs. Since the Odofo has shared clothes with them for many years it behoved the Base who knew about it to notify us. If the Laruwa is sure the Odofo did not share public clothes with us he may come out and say publicly. Thomas did not do any of these. That is our grievance.
- 30
- 40

- In regard to Council, our illiteracy was responsible for the affair. After we had reasoned together and decided on The Oluwo Ifa's being appointed as member of Council and the matter changed suddenly the next morning we were not satisfied but acquiesced. Another matter was that of the appointment of the Olori Parakoyi which Mr. Thomas turned down in favour of Gbadamosi Igbin. The remarks by the Laruwa that “ Aso ti afinju ba da obun ni o ma lo gbehin ” is irritating. We are clean people.
- 50

*Defendants' Exhibit.*

“ JAK. 1.”  
Proceedings  
of Meeting  
for a settle-  
ment,  
29th March  
1944,  
*continued.*

He said that the Bagbimo Iporo was not related to us at Iporo and I want to reply publicly here that Mr. Thomas is not more related to us than Molaja. Thomas knows us as his father but for the bad advice of his instigator, the Laruwa. He should be seriously warned to desist from telling bad tales to Mr. Thomas who is himself not a bad man.

*Ogunye—The Baroko*—said that the township was better in the time of their fathers. When the quarrel arose he went round to the Obgonis in Egbaland soliciting their interference so that the Alake could kindly help them to settle it so that the township might be peaceful. He testified to the £6 received from the Orile as contribution towards the repair of the walls of the Ogboni House. If the matter of the burial of the Odofo alone had been stated, Mr. Thomas could find no way out. That if even the Odofo made his children to swear, he had died and gone but they who lived as surviving children could manage their own affairs. This unpleasant matter had its real origin in the selection of a candidate to the Central Council. When the matter was to be settled by the Egba Ogbonis, he advised that it could not be settled by the in the absence of the supporters of the Apena. When he (speaker) refused to sign the document referred to he was suspended. He however remained adamant. The Iporo chiefs and people should be entreated to allow settlement of the existing difference.

*Garuba Adegbite* likened the circumstance to a song usually sung during the Ferewa Festival the chorus of which was much longer than the solo. The solo consisted of two words but the chorus, of more than 30 words. There was no particular cause for the quarrel than avarice for money. Thomas had offended no one he was not a bad man. On the day that Thomas said what was displeasing in Council and the Odofo contradicted him, but for the Apena, the matter would have worried him. On the day that the Political Officer accompanied by the Alake visited Iporo township, he asked whether Mr. Thomas reported the proceedings of the Council to them, but for the Alake's presence on that day, they would have replied in the negative. Thomas had no bad mind but his advisers were misleading him.

*Mr. Tinney Somoye* said he had come out to make clear the statement of Mr. Thomas that he did not crave for membership of Council. He was his staunch supporter on the occasion. When the Oluwo Ifa was appointed by the Township he asked Mr. Thomas whether he wanted the position and he replied in the positive hence he contrived to get him the chance. He had been created the Baloye of Iporo for some years before he had occasion to leave the town. It was the custom whenever an Ogboni committed an offence and refused to apologise in the proper way, the Parting Drum was beaten for him. The title of Base conferred on Mr. Thomas was by privilege. If he knew he was really a full blooded Iporo man he would have implored the Alake to unnecessary trouble.

*Aiye*, the Sakotun of Iporo made a statement to the effect that it was true Mr. Thomas was requested to utilise the percentage of Council remuneration for the repair of the Iporo Township Ogboni House.

*Mr. J. K. Coker*, the Lisa of Iporo: I am glad to be here to-day. It is a long time that I asked for the intercession of the Alake in this matter but it was then suggested that the matter should first be tackled

by the Ogbonis themselves. No one is better born at Iporo than I. The late Somoye was my cousin. When I was given title I told you clearly that I would not be able to stay with you but whenever anything occurred in which you wanted my interference and assistance I would attend to you immediately. True to my word I have always come up to settle your difference for you. I reasoned with you to find suitable person for the vacant chieftaincies at Iporo. I must express my great displeasure at your conduct for not informing me when this quarrel arose. To my knowledge, the Base and the Apena were friends. The late Odofo Otunlape and the Apena were not friendly. I knew this because I had to come from Lagos several times to settle their difference but they would not agree. When the Odofo was to be baptised we discussed the matter at the Itoku Ogboni House and agreed that whenever he died you will get your dues or the fees for funeral obsequies. And when he died and you were not given the fees as agreed upon why did you not communicate me to that effect? That is not the cause of the quarrel. Appointment to Council is the cause of this trouble. The new Government ruling (Constitution) also brings about revolution different from the old order of things in that the choice of member for Council which formerly belonged to chiefs should now be made by the township Council consisting of old and young by majority vote. There is nothing hidden from about the quarrels with the Apena. Why did you not inform me before you beat the drum for the Base—the same kind of drum which was beaten for the Oluwo of Oba and he died immediately. When I heard it—I wrote but you did not take any notice of my letter. I investigated the matter when you spoke about Oke who confessed that he received money but Mr. Thomas knew nothing of it; but you published Mr. Thomas' name and defamed him. You should allow this matter to be settled. Though it has been made public it can still be settled for no one can be friendly with another after a litigation. Defamation of Character can be mended, and the beating of drums is nothing since it has pleased God to spare the Base's life. There was a time when Somoye had a quarrel with the Apena and he came to me and complained that the Apena was only a messenger. I settled it for them.

In regard to Council Remuneration, since you had agreed that certain portion should be paid to you and it was not paid you rather should have complained to the Alake than beat drums to kill him and publish damaging articles about him.

*The Odofo of Kesi* saluted Oba Alaiyeluwa, the Egbas and the Iporo Chiefs. He said, the cause of the misunderstanding was not far to seek. The Ogboni was a political body. Since the Ogboni alleged that Mr. Thomas offended them, the right thing for him to do was to have approached the Alake and the matter would long have been settled. Addressing the Laruwa, the Odofo said that the Laruwa knew perfectly well that the ceremonies might be performed. He (Laruwa) should direct the Base aright. When the Iporo chiefs complained that the Base offended them, that was usual with the Ogbonis the right thing for him to do was to apologise. He should let the Alake help him to entreat the Iporo chiefs and should apologise.

*The Odofo of Kemta* This matter has been discussed once here. When the Apena of Iporo was rebuked. To-day the Apena has no fault. It is not a good practice for a person to commit an offence and refuse to apologise.

*Defendants' Exhibit.*

“ JAK. 1.”  
Proceedings  
of Meeting  
for a settle-  
ment,  
29th March  
1944,  
*continued.*

The Base did not act well in Iporo township. The Odofi had been having his own share of clothes and moneys received at the burial of other chiefs and when he died it is not good to conceal his own clothes. The Lisa has not adopted a proper method to settle the matter. The Base should be warned in this case. The matter should end so far. The Alake should help put an end to all misunderstanding.

*The Oluwo of Ake*: The Iporo chiefs have offended all the Egbas and not Mr. Thomas. Ogunye first informed me of the misunderstanding and I sent round to the Apena of the Egbas and other important chiefs. Later, the Lisa of Iporo approached me with a view to settling the quarrel, 10 Mr. Thomas also came to me and I told him he was not doing well at Iporo and should apologise to his fathers. The Ogboni Drum was beaten on account of a person who was offended and refused to apologise. It does not necessarily mean beating to kill. Laruwa is much responsible for this state of affairs. He is not a minor chief at Iporo and if he proves ignorant of everything that was going on in Iporo township it must be due to his character. The Iporo township has offended us. We fixed a date of meeting over this matter and when we got to the meeting place no one turned up from Iporo township. That is bad. You have no right to reject anybody if the Alake asks you to accept him you should do so. 20

*The Balogun of the Christians*, after the usual salutation, said that he warned Mr. J. K. Coker from taking the title of Lisa because he loved him and that was the trouble he foresaw. The Christians had a different custom, and mixing up with the Ogbonis was spoiling their traditional custom. When Mr. Coker came his duty was to entreat the Ogbonis. He would warn the Egbas against giving Ogboni titles to Christians. It was wrong to allow the Odofi's corpse to be buried without the knowledge and sanction of the Iporo chiefs. In regard to the beating of drum, the Ogboni drum was beaten for the Oluwo and he apologised and paid the necessary sum for the propitiary sacrifice. The drum did not kill him. 30 The Base should do likewise.

*The Otun of the Egbas* said that he knew the late Odofi, they had always met in the Afin. He was very serviceable. In his time no one was greater than he at Iporo. When such a person died it should be reported to the township. It was not a bad thing to have educated men among the Ogboni chiefs but Christians would not sacrifice to idols among the Ogboni chiefs but Christians would not sacrifice to idols with them. Education was one thing and Christianity was another. The Township chiefs could beat the drum for anybody but such person should go to the Alake who would help him. He gave instance of one Sambo who rode his (Otun's) 40 father's horse and killed one Efuji. His father (Mr. Majekodunmi) came to the Alake for protection and asked for his help which was duly rendered. If anybody offended and the Ogboni Drum was beaten and he refused to apologise he would be left alone and disregarded. Mr. Thomas should prostrate and humbly apologise to his township and they would pardon him. The Alake should kindly pacify the Iporo chiefs.

*The Balogun of the Egbas*: The previous speakers have spoken so well that they leave me very little to add. Mr. Thomas was asked to beg the Iporo chiefs. I do not agree with that. If he thinks it necessary to beg them the Iporo chiefs will listen and the Alake would join to beg 50

them. If he did not like it was left to him. In regard to the speech of the Lisa about Ogboni drum, all the Egbas would reply to that. The beating of the Ogboni drum, for an offender was their native custom. If any Christian was eligible for any title he might be given it. If any Ogboni wanted to become Christian, he should be allowed because he was an Ogboni chief when he received baptism.

*The Alake* : I thank you all for your good speeches. Now, Mr. Thomas are you prepared to beg the Iporo chiefs or not ?

10 *Mr. Thomas* : Kabiyesi, if they make good my name which they have spoilt, I shall beg them. But they have defamed me.

*The Alake* : That is the idea of educated people. The Ogboni do not view matters in that line. If you know you are prepared to beg them you should go out into the open and apologise in the customary way.

Mr. Thomas went out and prostrated (as a sign that he apologised.)

*The Alake* : Now that Mr. Thomas has begged you I shall proceed to deal with the matter :—

1. Council fees—Township portion unpaid.
2. 11/- funeral fees received by Oke.
3. Odofo funeral fees unpaid.

20 The Odofo funeral fees should have been paid. You Laruwa, you say you love Mr. Thomas. All you have said was too bad. The quarrel originated with the selection of a candidate to Council and not on account of 11/-. Mr. Thomas you seemed to be reluctant when I asked you to beg the Iporo Township I have my reasons because I am conscious of the many good things that you have done for Iporo township. If you will continue to scrutinise and wish to share in the perquisites enjoyed by the Apena you can never be friendly with him. You should take your eyes off all that. If you attempt to share what the Ogboni received, and share between themselves you can never be happy with them. The Apena would

30 have been forgotten that he ever held the title Apena but for my assistance. Very often the people would come and complain of his attitude and action. Your obstinacy, Mr. Thomas, has brought about all this trouble. If you had followed my advice all these would have been averted. Consulting lawyers on purely native customary matters is useless. Our custom must be upheld and respected. They, Iporo chiefs are your fathers. You—Iporo chiefs, let us not make a mountain of a molehill. Appointment to Council has brought about this misunderstanding. Europeans do not act in the way we do. Persons keeping malice with themselves after a case had been settled are useless people. Election to Council has brought

40 about the trouble. I. A. Sodipo and Thomas were friends but they were divided into two separate camps during the election ; Sodipo succeeded after great struggle. That matter should have been finished immediately. Sodipo succeeded but both parties began nursing evil thought that brought confusion into the township ; it is much regretted where you educated people are with our people, you give them trouble and confusion too often instead of assisting them in the right way. You should not mix with them, be content with the honour of the title accorded you and assist them, you will be happy. Iporo, you are divided into different parties. This case of Mr. Thomas is one such instance. I warn you to put a stop to it.

*Defendants' Exhibit.*

“ JAK. 1.”  
Proceedings  
of Meeting  
for a settle-  
ment,  
29th March  
1944,  
*continued.*



*Defendants' Exhibit.*

"JAK. 1." Proceedings of Meeting for a settlement, 29th March 1944, *continued.*

If other townships in Egband behave in that way what would happen? You are not united, you can never be peaceful. Anyone who go beyond bounds will be censured. The case of 11/- has been proved. Thomas was at fault. The Odofi had received shares of other people's funeral fees and he had enjoyed those fees in the case of others. His relatives must disgorge a portion at least.

I implore you, Iporo chiefs, to overlook the matter and seek for peace in your township. Here Oba Alaiyeluwa called out The Asipa Egba and make him carry out the customary symbolic handshake and re-union amidst loud applause.

"Thomas, Thomas," the Alake said "you should arrange to discuss the details of the appeasement. Whatever should be paid by a person for whom the Ogboni drum had been beaten should be done according to your means and custom. I settle the matter. May peace abide with you all."

10

*Plaintiffs' Exhibit.*

"JAK. 2." Letter, Base of Iporo to Alake of Abeokuta, 26th April 1944.

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**PLAINTIFFS' EXHIBIT.**

**Exhibit "JAK. 2."**

**LETTER, Base of Iporo to Alake of Abeokuta.**

Iporo Sodeke,  
Abeokuta.

26th April, 1944.

20

Oba Alaiyeluwa,  
Ademola II (C.B.E.),  
The Alake of Abeokuta,  
Abeokuta.

Kabiyesi !

Base of Iporo Matter.

I beg very respectfully to confirm my conversation with Your Highness on the 30th ultimo when I informed Your Highness that I was not satisfied with the settlement of the misunderstanding between certain Iporo Chiefs and myself at the meeting held at the Afin, Ake on Wednesday the 20th of March 1944. The proceedings of the said meeting as recorded by Mr. Kuforiji are not accurate in some parts.

Kabiyesi,

BASE OF IPORO.

*Exhibit.*

"CAT. 7." Native Authority Ordinance 1943 put in at request of Court, 5th December 1944.

---

**EXHIBIT.**

**Exhibit "CAT. 7."**

**NATIVE AUTHORITY ORDINANCE 1943 put in at request of Court.**

**THE NATIVE AUTHORITY ORDINANCE 1943.**

**No. 17 of 1943.**

In exercise of the powers conferred upon Native Authorities by Section 35 of the Native Authority Ordinance 1943 the following rules have been made by the Egba Native Authority with the approval of the Resident, Abeokuta Province.

40

1. These rules may be cited as the Egba Native Authority (Procedure of Egba Central Council) Rules 1944 and shall apply to the Egba Central Council as constituted an advisory council by the Egba Native Authority (Appointment of Advisory Council) Order 1944.
2. Definitions :—
  - “ Council ” means the Egba Central Council.
  - “ Member ” means a member of the Egba Central Council.
3. The Council shall meet at least bi-monthly in the Centenary Hall, Abeokuta. The date of the next ordinary meeting shall be decided at  
10 each meeting.
4. A clerk of the Council shall be appointed by the Council.
5. On receipt of a request to summon a special meeting of the Council delivered in writing to the Clerk of the Council, signed by any twenty members and approved of by the Native Authority the Clerk of the Council shall summon a meeting within ten days thereof.
6. The Chairman of the Council shall be the Alake of Abeokuta or in his absence the Senior Chief in the Egba Alake Section. At any meeting the Chairman shall have a deliberate and a casting vote.
7. A quorum shall consist of forty members of whom not less than  
20 ten shall come from the Oke-Ona, Gbagura and Owu section. All resolutions shall be signified by a show of hands and no resolution shall be adopted unless it is agreed to by a majority of the members present.
8. Before proceeding to a vote a resolution must be moved and seconded by two different members.
9. If one or more amending resolutions are moved and seconded members shall vote on the amendment first and if an amendment is adopted by the majority it shall be embodied in the original resolution.
10. Immediately before proceeding to a vote the Clerk of the Council shall read to the Council the resolution upon which a vote is to be taken.
- 30 11. Any member has full right to speak his mind on all matters before the Council.
12. Before a Council meeting is held agenda shall be prepared and every member shall have access to the agenda in advance.
13. Any member has the right to include items in the agenda and such items must be included provided they have been received by the Clerk of the Council not later than one week before a meeting of the Council.  
The proviso to this rule shall not apply in the case of an Extraordinary or Emergent meeting.
- 40 14. Members who fail to attend council meetings on three successive occasions without sufficiently strong and accepted reason shall be suspended.
15. No member may be represented at Council meetings.
16. Members who misbehave in their official capacity either at meetings of Council or at any other time may, for the first offence be warned and for subsequent offence suspended or recommended for dismissal by resolution.
17. The Clerk of the Council shall record full minutes of every meeting of Council. The minutes shall be open to inspection by any

*Exhibit.*  
 “ CAT. 7.”  
 Native  
 Authority  
 Ordinance  
 1943 put  
 in at  
 request of  
 Court,  
 5th  
 December  
 1944,  
*continued.*

*Exhibit.*  
 "CAT. 7."  
 Native  
 Authority  
 Ordinance  
 1943 put  
 in at  
 request of  
 Court,  
 5th  
 December  
 1944,  
*continued.*

member, but it shall be sufficient for the purpose of reading the minutes at the next succeeding Council meeting for the Clerk of the Council to read a summary prepared by him from the full record.

18. The Council shall by resolution elect members to serve on any Committees appointed by Council. The Council may by resolution give any such committee full powers to act on behalf of the Council within the general terms of reference laid down when appointing the committee. If a committee has not been specifically given full powers, that committee shall submit to the Council in writing a report of its activities. Any action arising from such report shall only be taken on resolution of the Council. 10

19. Any committee appointed by the Council shall arrive at its decisions by majority vote of the committee members. The Chairman of a committee shall have a deliberative and a casting vote.

20. The Council may authorise a committee to co-opt any persons not being members. Such co-opted persons shall have full powers of voting in committee.

21. Committees appointed under rule 18 may continue to exist for one month after the dissolution of the Council or until such time as the newly elected council meets whichever is the shorter.

(Sgd.) ADEMOLA II, 20  
 The Alake of Abeokuta,  
 Egba Native Authority,  
 Abeokuta.

Approved by me at Abeokuta this twelfth day of December 1944.

(Sgd.) A. R. A. DICKINS,  
 Resident,  
 Abeokuta Province.

Certified a true & correct copy,  
 (Sgd.)

Secretary.  
 Egba Native Administration.  
 7-11-45.

30

THE NATIVE AUTHORITY ORDINANCE 1943.

No. 17 of 1943.

In exercise of the powers conferred upon Native Authorities by Section 33 of the Native Authority Ordinance 1943 the Egba Native Authority with the approval of the Chief Commissioner to whom the Governor has delegated powers of approval hereby appoints the Egba Central Council to be an advisory council.

1. This order may be cited as the Egba Native Authority 40  
 (Appointment of Advisory Council) Order 1944.

2. Definitions :—

" Council " means the Egba Central Council.

" Member " means a member of the Egba Central Council.

" Sectional Council " means the Egba Alake, Egba Oke-Ona,  
 Egba Gbagura or Egba Owu Sectional Council.

" Resident " means the Resident, Abeokuta Province.

3. The Council shall consist of the following members :—

*Exhibit.*

(i) *ex-officio members*

Osile of Oke-Ona.  
 Agura of Gbagura.  
 Olowu of Owu.  
 Olotta of Otta.  
 Amala of Imala.  
 Balogun of the Egbas.  
 Otun of the Egbas.  
 Osi of the Egbas.  
 Ekerin of the Egbas.  
 Seriki of the Egbas.  
 Ashipa of the Egbas.  
 Abese of the Egbas.  
 Olori Parakoyi of the Egbas.  
 Apena of the Egbas.

“CAT. 7.”  
 Native  
 Authority  
 Ordinance  
 1943 put  
 in at  
 request of  
 Court,  
 5th  
 December  
 1944,  
*continued.*

10

(ii) *Personal members.*

D. Sowemimo, C. A. A. Titcombe, Abudu Folami,  
 A. S. Coker.

20

(iii) *Representatives of Sectional Councils.*

Egba Alake	29 members.
Oke-Ona	9     ”
Gbagura	9     ”
Owu	4     ”

(iv) *District representatives.*

Otta district                   2 members.

4. Each Sectional Council shall elect by a majority vote from among its own members the representatives shown in paragraph 3 (iii).

30 Such representatives shall be subject to the approval of the Native Authority and the Resident.

5. The district representatives shall be selected by the local Council and shall be subject to the approval of the Native Authority and the Resident.

6. Subject to the approval of the Native Authority and the Resident, the Sectional Council shall have power to remove a member on the grounds of a serious offence or of misbehaviour and to replace him by another member whose selection shall be in accordance with paragraph 4 of this order.

40 7. At least once in every three years the Council shall be dissolved and a new election shall be made as provided in Section 4 and 5.

(Sgd.) ADEMOLA II,  
 Alake of Abeokuta,  
 Native Authority.

Approved this 5th day of December 1944.

(Sgd.) G. C. WHITELEY,  
 Chief Commissioner,  
 Western Provinces.

Certified a true and correct copy,

(Sgd.) C. A. A. TITCOMBE,  
 Secretary,

50

Egba Native Administration.

7-11-45.

*Exhibit.***EXHIBIT.**

“ CAT. 8.”  
Native  
Authority  
Ordinance  
1943 put  
in at  
request of  
Court,  
5th  
December  
1944.

**Exhibit “ CAT. 8.”****NATIVE AUTHORITY ORDINANCE 1943 put in at request of Court.****THE NATIVE AUTHORITY ORDINANCE 1943.**

In exercise of the powers conferred upon Native Authorities by Section 33 of the Native Authority Ordinance 1943 the Egba Native Authority with the approval of the Chief Commissioner to whom the Governor has delegated powers of approval hereby appoints the Egba Central Council to be an advisory council.

1. This order may be cited as the Egba Native Authority 10 (Appointment of Advisory Council) Order 1945.

2. Definitions :—

“ Council ” means the Egba Central Council.

“ Member ” means a member of the Egba Central Council.

“ Sectional Council ” means the Egba Alake, Egba Oke-Ona, Egba Gbagura or Egba Owu Sectional Council.

“ Resident ” means the Resident, Abeokuta Province.

3. The Council shall consist of the following members :—

(i) *ex-officio members.*

Osile of Oke-Ona. 20

Agura of Gbagura.

Olowu of Owu.

Olotta of Otta.

Amala of Imala.

Balogun of the Egbas.

Otun of the Egbas.

Osi of the Egbas.

Ekerin of the Egbas.

Seriki of the Egbas.

Ashipa of the Egbas. 30

Abese of the Egbas.

Olori Parakoyi of the Egbas.

Apena of the Egbas.

The Member of the Legislative Council for the Egba Division.

(ii) *Personal members.*

D. Sowemimo.

C. A. A. Titcombe.

Abudu Folami.

A. S. Coker. 40

(iii) *Representatives of Sectional Councils.*

Egba Alake 29 members.

Oke-Ona 9 ”

Gbagura 9 ”

Owu 4 ”

(iv) *District Representatives.*

Otta District 2 members.

Ilogbo (Otta area) 1 member.

	Ifo and Sunren	1 member.	<i>Exhibit.</i>
	Papalanto and Sojublu	1 "	" CAT. 8."
	Mosan and Itori	1 "	Native
	Isaga and Ibara	1 "	Authority
	Imala	1 "	Ordinance
	Opeji	1 "	1943 put
	Ilugun	1 "	in at
	Alabata	1 "	request of
	Osiele and Odeda	1 "	Court,
10	Asa	1 "	5th
	Oba and Aiyedere	1 "	December
	Egbeda	1 "	1944,
	Owode	1 "	<i>continued.</i>
	Ajura	1 "	
	Ofada & Pakuro	1 "	
	Nokoloki & Iro	1 "	
	Iganun	1 "	
	Isheri	1 "	
	Iju and Agbado	1 "	

20 4. Each Sectional Council shall elect by a majority vote from among its own members the representatives shown in paragraph 3 (iii).

Such representatives shall be subject to the approval of the Native Authority and the Resident.

5. The district representatives shall be selected by the local council, or, in the absence of a formally constituted local council, by a meeting of the village chiefs and elders of the district, and shall be subject to the approval of the Native Authority and the Resident.

30 6. Subject to the approval of the Native Authority and the Resident, a Sectional Council shall have power to remove a member whom it has elected on the grounds of a serious offence or of misbehaviour and to replace him by another member whose election shall be in accordance with paragraph 4 of this order.

7. At least once in every three years the Council shall be dissolved and a new election shall be made as provided in Sections 4 and 5.

8. The Egba Native Authority (Appointment of Advisory Council) Order 1944, is hereby revoked.

(Sgd.) ADEMOLA II,  
Alake of Abeokuta,  
Native Authority.  
4-6-45.

40 Approved this 28th day of June 1945.

(Sgd.) T. HOSKYNS-ABRAHALL,  
Ag. Chief Commissioner,  
Western Provinces.

Certified a true and correct copy,

(Sgd.) C. A. TITCOMBE,  
Secretary,  
Egba Native Administration.

7-11-45.

*Exhibit.*

## THE NATIVE AUTHORITY ORDINANCE 1943.

“ CAT. 8.”  
 Native  
 Authority  
 Ordinance  
 1943 put  
 in at  
 request of  
 Court,  
 5th  
 December  
 1944,  
*continued.*

## No. 17 of 1943.

In exercise of the powers conferred upon Native Authorities by Section 33 of the Native Authority Ordinance 1943 the Egba Native Authority with the approval of the Chief Commissioner to whom the Governor has delegated powers of approval hereby appoints the Egba Central Council to be an advisory council.

1. This order may be cited as the Egba Native Authority (Appointment of Advisory Council) Order 1944.

2. Definitions:—

10

“ Council ” means a member of the Egba Central Council.

“ Sectional Council ” means the Egba Alake, Egba Oke-Ona, Egba Gbagura or Egba Owu Sectional Council.

“ Resident ” means the Resident, Abeokuta Province.

3. The Council shall consist of the following members :—

(i) *ex-officio members.*

Osile of Oke-Ona.

Agura of Gbagura.

Olowu of Owu.

Olotta of Otta.

20

Amala of Imala.

Balogun of the Egbas.

Otun of the Egbas.

Osi of the Egbas.

Ekerin of the Egbas.

Seriki of the Egbas.

Ashipa of the Egbas.

Abese of the Egbas.

Olori Parakoyi of the Egbas.

Apena of the Egbas.

30

(ii) *Personal members.*

D. Sowemimo.

C. A. A. Titcombe.

Abudu Folami.

A. S. Coker.

(iii) *Representatives of Sectional Councils.*

Egba Alake 29 members.

Oke-Ona 9 ”

Gbagura 9 ”

Owu 4 ”

40

(iv) *District Representatives.*

Otta district 2 members.

4. Each Sectional Council shall elect by a majority vote from among its own members the representatives shown in paragraph 3 (iii).

Such representatives shall be subject to the approval of the Native Authority and the Resident.

5. The district representatives shall be selected by the local Council and shall be subject to the approval of the Native Authority and the Resident.

6. Subject to the approval of the Native Authority and the Resident, the Sectional Council shall have power to remove a member on the grounds of a serious offence or of misbehaviour and to replace him by another member whose selection shall be in accordance with paragraph 4 of this order.

7. At least once in every three years the Council shall be dissolved and a new election shall be made as provided in Section 4 and 5.

(Sgd.) ADEMOLA II,  
Alake of Abeokuta,  
Native Authority.

Approved this 5th day of December 1944.

(Sgd.) G. C. WHITELEY,  
Chief Commissioner,  
Western Provinces.

Certified true copy.

(Sgd.) C. A. TITCOMBE,  
Secretary,  
Egba Native Administration.

7-11-45.

**PLAINTIFFS' EXHIBIT.**

Exhibit "PHB. 1."

LETTER, Messrs. Irving & Bonnar to Resident Abeokuta.

10th February 1945.

The Resident,  
Abeokuta.

Copy to His Honour The Chief Commissioner,  
Ibadan.

Sir,

*re* Iporo Ogboni Chieftaincy Incident.

We have the honour to confirm, as under, our telegram of the 1st instant, and your reply thereto also our further telegram of the 2nd instant.

"Resident Abeokuta

Been consulted *re* installation new Oluwo and Balogun Iporo proposed take place this morning ten clients representing majority leading Ogboni Chiefs Mohammedans and Christians of Iporo allege selection unconstitutional and most unpopular crave your kind and timely intervention avoid unpleasantness and to enable full enquiry and amicable settlement letter follows—Irving and Bonnar."

*Exhibit.*  
"CAT. 8."  
Native Authority Ordinance 1943 put in at request of Court, 5th December 1944, *continued.*

*Plaintiffs' Exhibit.*  
"PHB. 1."  
Letter, Messrs. Irving & Bonnar, 10th February 1945.

20

30

40



*Plaintiffs'*  
*Exhibit.*

“ PHB. 1.”  
Letter,  
Messrs.  
Irving &  
Bonnar,  
10th  
February  
1945,  
*continued.*

“ Irving and Bonnar Lagos  
1290 reference your telegram of to-day further enquiries being  
instituted—Resident ”

“ Resident Abeokuta

Reference your telegram 1290 first instant we are informed that  
unconstitutional appointment of Balogun was made with view to  
subsequent appointment as Abese of the Egbas due to take place  
on or about Wednesday seventh instant stop Clients exceedingly  
apprehensive as to consequences and we consider immediate action  
imperative—Irving and Bonnar.”

10

We are acting for Chief Akinwande Thomas, The Base of Iporo, Gbadamosi Igbin, Balogun Imale Iporo, J. A. Shoyoye, Balogun of the Christians of Iporo and M. J. Bamgbola, Chief Oke Olori Omode Osugbo of Iporo, all on behalf of Iporo No. 2 representing the majority of the leading Ogboni Chiefs and of the leading Mohammedan and Christian element of Iporo Township, Abeokuta.

From information supplied to us by our clients their grievance may be summarised as follows:—

1. There is a serious split among the Ogboni Chiefs of Iporo which started as far back as October 1942 (vide copies of letters 20 forwarded to the Resident dated 20th and 21st October 1942 respectively) and has culminated in a libel action instituted by Chief Akinwande Thomas against Akisatan, Apeno of Iporo and 29 Others Suit No. 1/23/44 now pending in the High Court of the Protectorate in Ibadan.

2. On 26th day of January 1945, news reached our clients that the Alake, without having first consulted them had selected Lawani, the present Balogun of Iporo to be elevated to the Oluwoship of Iporo, the highest rank in the Ogboni cult, and I. A. Sodipo, the present Bagbimo, to be elevated to the Balogunship. 30

3. Under the laws and customs of Egbaland, the Ogboni cult is a sacred institution of the people striking at the root of their very existence, and selection of candidates for office in the cult is invariably made by popular vote of members of the Cult, for the subsequent formal approval of the Alake.

4. In this case, particularly with regard to the selection and installation of Shodipo, the Alake has acted in an arbitrary and unconstitutional manner. Sodipo, quite apart from the fact that he is a junior and very unpopular with the majority whom our clients represent, is alleged to be morally unsuitable. 40

5. It is also an open secret that he is the mouthpiece and a relative of the Alake and that his elevation to such a high position as that of Balogun, is obviously designed further to irritate and oppress our clients.

6. Lawani, the present Balogun, holds his present position at the pleasure of the other members of the Ogboni Cult and neither can he relinquish it at the order of the Alake or of a small wide\* of Ogboni Chiefs nor can he be elevated without consultation with and the approval of our clients.

\* (*sic*).

7. We need not point out the obsequious and almost extravagant allegiance which our clients as well as all other Egbas have always borne towards the Alake as their ruler, but the part played by him in this case as described in the cutting from the *Daily Times* of the 5th February enclosed, has taxed our clients' patience almost to a breaking point because they feel it has been deliberately done without the slightest scruple of conscience or honour and with a clear disregard of the sanctity of their institutions and of their ancient customs.

*Plaintiffs' Exhibit.*  
 "PHB. 1."  
 Letter,  
 Messrs.  
 Irving &  
 Bonnar.  
 10th  
 February  
 1945.  
*continued.*

10 8. At this most critical time in the history of the British Empire, the Alake's action is bound to dampen loyal feeling, worsen internecine discord and possibly develop into civil disruption.

9. The town of Iporo, owing to the split and the Court action, is at present divided into two sections, numbered 1 and 2 for purposes of tax. Our clients are the predominant section numbered 2, as reference to records will show.

10. Our clients view with the utmost resentment and irritation this unjust overriding of their civil rights designed to destroy their age-long native law and customs.

20 11. We are instructed to stress the deliberate misrepresentation alleged to have been made by the Alake to the Assistant District officer, Mr. P. H. Balmer when, upon the receipt of our first telegram you instructed the latter to intervene in the arrangements for the installation. It is reported that the Alake informed the Assistant District Officer that the installation had already taken place at 9 a.m. whilst in fact it had not taken place when the Assistant District Officer called at the Iporo Ogboni House at 1.30 p.m. that day to verify the Alake's statement.

30 12. It is further alleged that Sodipo has been thus arbitrarily installed as Balogun as a stepping stone to his being elevated to the superior rank of Abese—a rank which will give him the controlling power over all the other Ogboni Chiefs in the administration not only of the township of Iporo but of the whole of Abeokuta, and that the Alake contemplated consummating this design on Wednesday the 7th instant. Hence our telegram of the 2nd instant reproduced above.

40 We therefore crave on behalf of our clients and in the interest of peace and justice, that your Honour should intervene in time to stop this most irritating and perplexing business and cause to be made a full investigation into the circumstances.

May we suggest, as a preliminary step towards an amicable settlement of this matter and in order to prevent serious friction between the parties, that the Iporo Ogboni House be temporarily closed. At present, our clients who are in the majority find it dangerous to continue to use the building in spite of the fact that it is the common property of all the members of the Cult.

We have the honour to be,  
 Sir,

Your obedient Servant.

*Plaintiffs' Exhibit.*

**PLAINTIFFS' EXHIBIT.**

Exhibit "JAT. 3."

**RESOLUTION of Base of Iporo and Others.**

"JAT. 3."  
Resolution  
of Base of  
Iporo and  
Others,  
12th March  
1945.

Copy addressed to the Alake and Council.

Base's Compound,  
Iporo Sodeke,  
Abeokuta,  
12th March 1945.

The Secretary,  
Egba-Alake Sectional Council,  
Afin Ake,  
Abeokuta.

10

Sir,

Resolution of Protest against the Title of Lawani as the Oluwo of Iporo, and I. A. Sodipo as Balogun of Iporo, as a stepping stone to the title of Abese of the Egbas.

We the undersigned representing Chief Akinwande Thomas' party, otherwise known as No. 2 Iporo Township Party, beg to submit hereunder a Resolution, passed at a meeting held at the residence of the Base of Iporo on the 12th day of March 1945 :—

20

BE IT RESOLVED THAT :—At Iporo Township Council Meeting held on Monday, the 12th day of March 1945, at Chief Akinwande Thomas' residence, the Base of Iporo, being the present leading Iwarefa Class Chiefs of Iporo Ogboni, the following Resolutions were unanimously moved and passed, in the presence of the following persons :—

- (1) The Iwarefas. (2) The Iwarewa. (3) The Ologun.
- (4) The Olorogun. (5) The Parakoyis. (6) Mohammedans.
- (7) Christians and other tax and rate payers of Iporo.

"(1) That by virtue of our Fatherlands traditional customs, 30 we have been constitutionally elected and installed as Chiefs and recognised as such, but since the political crisis existing at Iporo Township in 1941, Chief Akinwande Thomas' party has been known and recognised as No. 2 Iporo Township party.

"(2) That we have been protesting strongly against the unconstitutional and autocratic action of Akisatan, the Apena of Iporo, and the irregular support of the Alake to this unconstitutional procedure, but all has fallen to deaf ears.

"(3) That in October 1942, when Akisatan the Apena and Yesufu the drummer were planning to sow seed of discord at 40 Iporo Township, the Iwarefa Chiefs being the leading Chiefs existing then sent a letter to the Alake to nip in the bud their unconstitutional act of creating new titles, making unauthorised changes in titles and arrogantly bragging about the Township that they have the Alake's sanction to their unprecedented behaviour.

"(4) That from 1942 to January 1945 these two men Akisatan the Apena and Yesufu the drummer had made not

less than 30 (thirty) chiefs of all sorts and condition of men as a result of which abusive and irritating drum beatings with insulting songs are not uncommon in every 17 days Ogboni assembly.

“ (5) That this sort of drumming is responsible for the law suit now pending in the Protectorate High Court.

“ (6) That since 1942 rebate on taxes and water rates paid to the Apena for Iporo Township are not shared to Base’s party. This caused the Base’s party to collect their taxes and water rates separately in 1944 and the result shows that Base’s party collection was in the majority.

“ (7) That suddenly on the 26th January 1945, without the knowledge and consent of the leading Chiefs of Iporo Township, Akisatan the Apena installed one Lawani Balogun as the Oluwo, and on the 1st of February 1945, also installed I. A. Sodipo, the Bagbimo of Iporo to the Balogun of Iporo. Although these installations are quite unconstitutional and contrary to the tradition of our Fatherland, the Alake has sanctioned such installations.

“ (8) That as the Iporo Township has been divided into two since 1942, to the knowledge of the Alake, we view the action of the Alake in sanctioning these installations as irregular, unconstitutional, vexatious and as such dissociate ourselves entirely from recognising these two men Lawani Balogun as the Oluwo and I. A. Sodipo, the Bagbimo as the Balogun, and strongly register our protest against their functioning in these capacities.

“ (9) That the title of Abese of the Egba assigned by the Alake to Iporo Township as their share of the general titled chieftaincy of Egbaland, which has been accepted by the Apena alone, without our knowledge and consent is contrary to the ancient tradition of our Fatherland, in that it is an uncontrollable fact that our revered and respected Father Chief Sokeke (an Iporo man) was the great leader who lead the Egbas to the present site of Abeokuta, otherwise known as Oka Adagba. Therefore it is a disgrace and a great insult to all sons of Iporo to accept such assignment being the lowest of the general titled chieftaincy in Egbaland, in view of Iporo’s position both historically and traditionally.

“ (10) That on the face of the foregoing, we the undersigned unanimously register our protest against (a) The appointment of Lawani Balogun as the Oluwo of Iporo. (b) The appointment of I. A. Sodipo, the Bagbimo as the Balogun of Iporo and (c) the assignment of Abese Chieftaincy to Iporo on the grounds that they were not unanimously and constitutionally elected in accordance with the traditions and custom of Egbaland.”

“ (11) That this Resolution be submitted for acceptance as a definite protest of those who attended the Meeting held on the 12th day of March 1945, at the residence of Chief Akinwande Thomas, the Base of Iporo, is the humble prayer of the undersigned :—

“ (12) That copies of these Resolutions be forwarded to :—

(a) The Egba-Alake Sectional Council.

(b) The Alake and Council.

*Plaintiffs’ Exhibit.*

“ JAT.3.”  
Resolution of Base of Iporo and Others, 12th March 1945, continued.

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*Plaintiffs' Exhibit.*

“ JAT. 3.”  
Resolution  
of Base of  
Iporo and  
Others,  
12th March  
1945,  
*continued.*

- (c) The District Officer, Egba Division.
- (d) The Resident, Abeokuta Province.
- (e) His Honour, the Chief Commissioner, Western Province.
- (f) The Egba Ogboni Assembly at Itoku Ogboni House.
- (g) The Press.
- (h) The Chief Akisatan the Apena of Iporo.
- (i) Lawani the Balogun of Iporo.
- (j) I. A. Sodipo, the Bagbimo of Iporo.
- (k) The Balogun of the Egbas.
- (l) The Otun of Egbas. 10
- (m) The Balogun of Christians, Abeokuta.

Dated at Abeokuta, this 12th day of March 1945.

1. (Sgd.) Akinwande Thomas The Base of Iporo (Iwarefa).
2. Chief Aye Sakotun Olorogun. His Mark.
3. Chief Oke The Nlado Parakoyi. His Mark.
4. Ben Dada The Sarumi Onigbagbo.
5. Abudu Lasisi Kobiti.
6. Belo Ajobo. His Mark.
7. Ola Badamosi.
8. J. B. Sanni. 20
9. Jafaru Igbin.
10. A. O. Akilola The Assistant Sec.
11. Chief Gbadamosi Igbin The Balogun Imale. His Mark.
12. Chief Gbadamosi Alufa Iporo.
13. Sani Bakare.
14. Sanni Falola The Seriki Iporo. His x Mark.
15. D. M. Sowunmi.
16. J. A. Sodipo.
17. Bakare Shoremekun. His x Mark.
18. E. A. Olaseiyinde The Asipe Onigbagbo. 30
19. D. A. Sonde.
20. J. A. Soyoooye The Balogun Onigbagbo.
21. Badamosi Belo.
22. Abudu Lasisi Aye. His Mark.
23. O. Basesan. His Mark.
24. Ganiyu Are. His Mark.
25. Salisu Lafa. His Mark.
26. Kasim Bamigbose. His Mark.
27. K. Lemomu. His Mark.
28. Jinodu Romodi. His Mark. 40
29. J. Erinoso.
30. Badaru. His Mark.
31. James Sokunbi.
32. James Ladipo. His Mark.
33. Julius Sodipo.
34. Lasisi Olori. His Mark.
35. Joseph Tona.
36. T. S. Akitola.
37. M. B. Somoye.
38. Gbadamosi. 50
39. M. J. Bamigbola.

40. S. Oyenakan The Chief Akogu Onigbagbo.
41. Sanusi Sodeke. His Mark.
42. Sadiku Ajala. His Mark.
43. Salami Ogungbe. His Mark.
44. Salami Somoye. His Mark.
45. M. O. Soweimo.
46. Karim Bamigbose. His Mark.
47. J. S. Belo.
48. T. Oyemole.

*Plaintiffs' Exhibit.*

“ JAT. 3.”  
Resolution  
of Base of  
Iporo and  
Others,  
12th March  
1945,  
*continued.*

10 For ourselves and on behalf of majority of Iporo people.

The foregoing Resolution is prepared by me under the instructions of the within mentioned signatories, i.e. Chiefs and people of Iporo, to protest in terms as contained in this document, and prior to their signatures and thumb impressions, same was read and translated into Yoruba Language by me.

(Sgd.) AKINWANDE THOMAS.

12-3-45.

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**PLAINTIFFS' EXHIBIT.**

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Exhibit “ CAT. 2.”

**RESOLUTION.**

*Plaintiffs' Exhibit.*

“ CAT. 2.”  
Resolution,  
13th March  
1945.

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Iporo Sodeke,  
Abeokuta,  
13th March, 1945.

Alake and Council.

At a meeting of the leading Ologun Chiefs of Iporo Township held on Saturday, the 10th of March 1945, at Sodeke's Compound, the following resolutions were unanimously passed :—

30

1. That whereas by virtue of our installation, we are the Ologun Chiefs within the division of Akisatan, the Apena, known as Iporo No. 1 Party since the political imbroglio has caused a split.

2. That we regard as most unconstitutional the method adopted in the installations of I. A. Sodipo, Bagbimo, as Balogun of Iporo and Lawani, Balogun, as Oluwo of Iporo by allowing the chieftaincies to be ordered at Afin Ake by the Alake without the consent of the Ologuns of Iporo who are directly concerned in the matter of conferment of titles in their Section.

40

3. That the chieftaincies have been forced upon us by the Alake and Akisatan, the Apena, and that our consent has not been sought and obtained before the installation which we maintain is most unconstitutional.

4. That in view of this, we refuse to recognise the said I. A. Sodipo as the Balogun and the said Lawani as the Oluwo, and that we still maintain that Lawani is our accredited Balogun and Sodipo, the Bagbimo.

Plaintiffs'  
Exhibit.

"CAT. 2."  
Resolution,  
13th March  
1945,  
continued.

5. That we further refuse absolutely to accept the title of Abese of Egbas which the Apena of Iporo alleged to have accepted as Iporo township's assignment in the general chieftaincies in Egbaland on the ground that this Abese chieftaincy was one out of the general chieftaincies conferred on various townships by our great and respected father, Sodeke (an Iporo man) of the blessed memory and the undisputable leader of the Egbas to this settlement—Abeokuta—otherwise called Oko Adagba. Therefore it is a disgrace and insult to Iporo township to be assigned the lowest of the general chieftaincies in view of its position both historically and traditionally. 10

6. That as Akisatan, the Apena of Iporo, did not consult and obtain the consent of Iporo people, particularly, the Ologun Section, before accepting such assignment—Abese chieftaincy and by refusing to listen to advice when approached to convene a meeting of the Iporo Township Council to discuss the matter publicly, but vigorously maintained that he had alone accepted the Abese of Egbas chieftaincy for Iporo, we totally dissociate ourselves from such assignment and conclude that his conduct with attitude, which is beyond the powers of his office, is autocratic and therefore 20 questionable.

7. That these resolutions should be regarded as definite protest from those who attended the meeting known as Iporo No. 1 Party, and that copies be forwarded to :—

- (a) The Alake and Council,
- (b) The Egba Alake Sectional Council,
- (c) The District Officer, Egba Division.
- (d) His Honour, The Chief Commissioner, Western Provinces,
- (e) The Egba Ogboni Assembly at Itoku Ogboni House,
- (f) The Press, 30
- (g) Chief Akisatan, the Apena of Iporo,
- (h) Chief Lawani, the Balogun of Iporo,
- (i) Chief I. A. Sodipo, the Bagbimo of Iporo,
- (j) The Balogun of the Egbas,
- (k) The Otun of the Egbas,
- (l) The Balogun of Xtians.

Dated this 13th day of March 1945.

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Protest against the unconstitutional installation of Lawani Balogun and  
I. A. Sodipo Balogun.

For and on behalf of ourselves and our people. 40

- 1. (Sgd.) G. Adeluola Shomoye (Chief Olori Parakoyi)  
Iporo Town.
- 2. " R. M. Bamgbola Chief Osin of Iporo.
- 3. " J. O. Shodeke, the Otun of Iporo Xtians. O
- 4. (Sgd.) F. Oye Shomoye, the Areago of Iporo.
- 5. " Yesufu Adebesein the Logomo of Iporo.
- 6. " Aje Tincy Somoye Bale of Iporo Xtians.
- 7. " Nola Kolade.

8. Rufai Toki. left O thumb.  
 9. Salu Tailor. right O thumb.  
 10. Nafiu Ayoola. left O thumb.  
 11. (Sgd.) N. O. Mogaji.  
 12. " ? Kogbodoku.  
 13. Tijani Somoye. left O thumb.  
 14. (Sgd.) Salisu Jinodu.  
 15. Gbadamosi Lisa. left O thumb.  
 16. (Sgd.) J. O. Sodeke.  
 10 17. " Taliatu Alao.  
 18. " Sadiku.  
 19. Baki. O.

*Plaintiffs' Exhibit.*  
 " CAT. 2." Resolution, 13th March 1945, continued.

I was instructed by the within signatories chiefs and people to prepare this protest, and same contained their full instructions and prior to their signatories and thumb impressions same read and interpreted into Yoruba language by me.

Writer : (Sgd.) F. OYE SHOMOYE,  
 Public Letter Writer,  
 Oke Owu,  
 Abeokuta.

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(Fee paid 30/- R. No. OS. 35/45)  
 (10 copies)

Certified true copy.

(Sgd.) C. A. TITCOMBE,  
 Secretary,  
 Egba Native Administration.

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**DEFENDANTS' EXHIBIT**

**Exhibit " LA. 1."**

**PETITION to the Alake.**

*Defendants' Exhibit.*

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Iporo,  
 Abeokuta.  
 23rd March 1945.

" LA. 1." Petition to the Alake, 23rd March 1945.

To Oba Alaiyeluwa,  
 The Alake and Council,  
 Abeokuta.  
 Kabiyesi,

Pursuant to the so-called Resolution dated the 13th of March 1945 said to be unanimously passed by a meeting of Ologun Chiefs of the Iporo Township held on the 10th of March 1945 in Sodeke's Compound a copy  
 40 of which has been served on us the undersigned we submit the following answer to the allegations, misrepresentations and deliberate falsehoods which the self-styled Ologun Chiefs have submitted.

2. We propose as a convenient form to make answer item for item of the contents of the so-called Resolution :—

1. The persons who signed the Resolution with the exception of two, namely, Osi and Are are not Ologun Chiefs. G. Adeluola Shomoye the first signatory, is an Olori-Parakoyi. J. O. Sodeke



*Defendants' Exhibit.*

“ LA. 1.”  
Petition to  
the Alake  
23rd March  
1945,  
*continued.*

and Ade Tinney Somoye who sign as Otun Iporo and Bale of Iporo respectively are as clearly indicated by themselves holders of Christian titles of no importance in the township masquerading as War Chiefs on the Christian side.

The rest are nonentities or township irresponsible persons who are mainly motor drivers and lazy men-about-town.

2. We attach hereto and desire that Oba Alaiyeluwa should study the enclosed document representing copy of a protest made against Lawani The Balogun (now Oluwo Iporo) wherein it was suggested to Oba Alaiyeluwa that he Lawani should revert to his Osugbo title and so leave the office of Balogun vacant for purpose of elevating someone thereto “ who will be able to use the good office of the Balogun to elevate the position and awakening our weak Ologun section ” to use their own language. 10

Precisely what was wanted and had been done is what a section now turn round and protest against. It proves in any event that Oba Alaiyeluwa the Alake has every right and authority to help regulating township affairs when there has been a confusion.

3. Their own action as explained in 2 clearly shows that those irresponsible persons knew that their statement is false. As customary we the Chiefs of all the appropriate sections of the township after agreeing between ourselves and have nominated a suitable candidate to fill a vacant township title do approach and usually obtain the approval of the Alake who readily grants the request. This procedure was adopted in the cases of the Oluwo and the Balogun. 20

4. This is a puerile effort to confuse the issues and may be likened to locking the stable after the horse is gone. In any event Iporo people would like to know which is greater. Township Authorities and/or that of Oba Alaiyeluwa or the effort of irresponsible persons such as the people who sign the resolution has been shown to be. 30

5. We do not propose, nor is it necessary in such simple issues as are involved in this matter, to delve into history in order to waste time and teach our father the Alake what constitutes his own prerogatives whether handed down by Sodeke or his Kingly predecessors. We Iporo Chiefs are not only astounded and greatly taken aback but feel that the statement in para. 5 is base effrontery and one which should not be allowed to go unpunished because it directly challenges the Authority of the Alake not to speak of our own. 40

6. The undersigned, are the recognised Chiefs of Iporo as opposed to the rabble (with only very few exceptions as analysed in paragraph one) and we vigorously and with all the emphasis at our command characterise this assertion as a wicked lie and an effort to nullify the allotment of the title of Abese to Iporo the whole of which acclaimed the assignment as very welcome when Oba Alaiyeluwa the Alake made it publicly.

We are, Your Loyal Chiefs and People of Iporo.

Copy to :—The Resident, Abeokuta Province.

„ District Officer, Egba Division.

„ Egba Alake Sectional Council.

## AWON OLOGBONI NI AWON YI ILU IPORO.

	1. Lawani Oluwo Iporo	O
	2. Akisatan Apena Iporo	O
	3. Jekayinfa Asalu Iporo Somoye	O
	4. Yusufu Basala Iporo	O
	5. Adeogun Bariyo Iporo	O
	6. Sounmi Lemo Iporo	O
10	7. Sonde Lusemi Arosi Iporo	O
	8. Idowu Nfabo Iporo	O
	9. Ojeyinde Ntøye Iporo	O
	10. Amuson Ottonbade Iporo	O
	11.	
	12. Allen Baloye Iporo Ake	?
	13. Ogundele Asipa Ogboni Iporo	O

“LA. 1.”  
Petition to  
the Alake,  
23rd March  
1945,  
*continued.*

## AWON PARAKOYI NI YI.

	1. Songo Ntanwa Iporo	O
	2. Oguntade Asero Iporo	O
20	3. Sodimu Baye Iporo	O
	4. Ogunsola Glori awon Idiri Iporo	O
	5. Jimo Asipa Parakoyi Iporo	O
	6. Odeyinde Agbopa Parakoyi Iporo	O

## AWON OLOROGUN NI YI.

	1. Soboyejo Ajaguna Iporo	O
	2. Adebayo Sodeke Lukosi Iporo	O
	3. Ogundimu Somoye Eleragun Iporo	O
	4. Akisola Asipa Olorugun Iporo	O
	5. Amidu Ogboye Aripa masa Iporo	O

## AWON OLOGUN NI YI.

30	1. (Sgd.) I. A. Sodipo Balogun of Iporo	
	2. Maje Somoye Ottun Iporo	O
	3. Sanni Igbin Ekerin Iporo	O
	4. Saka Abese Iporo	O
	5. Sodiya Bada Iporo	O
	6. Yesufu Adenjin Sarumi Iporo	O
	7. Ewemoje Are Onibon Iporo	O
	8. Ogundare Are Ago Iporo	O
	9. Jinodu Asipa Iporo	O

## AWON OSONO OGBONI IPORO.

40	1. Ogundimu Olori Osono Iporo	O
	2. Mamowolo Lowa Iporo	O
	3. Lasisi Lisa Iporo	O
	4. Ogunbayo Asipa Iporo	O
	5. Ogunye Baroko Iporo	O

## AWON ERELU NI YI.

	1. Latumi Apena Erelu Iporo	O
	2. Efunduke Erelu Iporo	O

*Defendants'*  
*Exhibit.*

“LA. 1.”  
Petition to  
the Alake,  
23rd March  
1945,  
*continued.*

3.	Towobola Asipa Erelu Iporo	O
4.	Molajo Erelu Iporo	O
5.	Ojeneyen Erelu Iporo	O
6.	Taiwo Erelu Iporo	O
7.	Jawe Erelu Iporo	O
8.	Ayawo Erelu Iporo	O
9.	Efubowale Erelu Iporo	O
10.	Jojolola Erelu Iporo	O
11.	Faneyeye Iyagan Iporo	O

AWON ONIFA NI WON YI.

10

1.	Sogbamu Ojubono Iporo	O
2.	Owolabi Baloye fa Iporo	O
3.	Salaki Asawo fa Iporo	O
4.	Salako Agbusi Iporo	O
5.	Mesioye Ottun fa Iporo	O
6.	Akisanya Omoleyin Apena Iporo	O
7.	Ogunyomi Luwoye Iporo	O
8.	Adenekan Alase Iporo Alagemo Iporo	O

AWON OLOSONYIN NI YI.

20

1.	Oyegeke Basigun Iporo	O
2.	Ladipo Lisa Osonyin Iporo	O
3.	Adebaki Olosonyin Iporo	O
4.	Fayomi Asipa Olosonyin Iporo	O

AWON OLORO NI YI.

1.	Ajayi Ajana Iporo	O
2.	Songo Abore Iporo	O
3.	Ogundipe Oloro Iporo	O

15-3-45.

AWON ELEGUN NI WON YI.

1.	Popoola Alagba Iporo	O
2.	Amuson Olotu Iporo	O
3.	Adeaga Atoku Iporo	O
4.	Ogga Ile Agada Osono Iporo	O
5.	Fakorede Akere Oje Iporo	O
6.	Folarin Omode Osugbo Iporo	O
7.	Oke Alase Alogemo Iporo	O
8.	Daniel Soemi Olosoyin Iporo	O
9.	Ogundele Asalu Iporo	O
10.	Adekunle Osono Iporo	O
11.	Ogunseson Osono Iporo	O

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15-3-45.

AWON ONIGBAGBO IPORO NI YI.

1.	J. L. Aderokun (Sgd.) Iporo
2.	(Sgd.) Jacob Sodiya Iporo
3.	M. S. Sodeyinde (Sgd.) Iporo
4.	(Sgd.) T. A. Bioaku Iporo

	5. Joseph Bankole Iporo	O	<i>Defendants' Exhibit.</i> "LA. 1." Petition to the Alake, 23rd March 1945, <i>continued.</i>
	6. (Sgd.) T. O. Seremi Iporo		
	7. Thormos Oddi Iporo	O	
	8. J. K. Sobande Iporo	O	
	9. G. S. Asero Iporo	O	
	10. Augustors (Intd.) S. M. A. Iporo		
	11. Joseph Matanmi Iporo	O	
	12. Isakel Apesin Iporo	O	
	13. Solom. A. Ojebiyi Iporo	O	
10	14. (Sgd.) J. L. Sodiya of Iporo		

15-3-45.

## AWON IMALE IPORO NI YI.

	1. Buari Lemomu Iporo	O
	2. Asimi Olori Omo Kewu Iporo	O
	3. Sittu Diko Iporo	O
	4. Saka Ajanosi Iporo	O
	5. Lawani Ottun Imale Iporo Somoye	O
	6. Bello Ekerin Imole Iporo	O
	7. Sunmonu Sarumi Imole Iporo	O
20	8. Gbadamosi Asiwaju male Iporo	O
	9. Abudu Lasisi Asipa male Iporo	O
	10. Jinodu Baba sale male Iporo	O
	11. Garuba Adegbite Baba sale Iporo	O
	12. Kasunmu Somoye Iporo	O
	13. Yesufu Oguntade meroyis Iporo	O
	14. Sanni Sopeyin Iporo	O
	15. Amidu Iporo	O
	16. Badaru Ogundeyi Basorun Iporo	O
	17. Kasunmi Agbademo Iporo	O
30	18. Sunmonu Ogundare Iporo	O
	19. Abudu Raimi Balogun Iporo	O
	20. Alli Oyedele Iporo	O
	21. Sunmola Oluwo Iporo	O
	22. Abudu Lamidi Diko Iporo	O
	23. Asani Aromokola Iporo	O
	24. Oseni Aromokola Iporo	O
	25. S. O. Salami Iporo	O
	26. Gbadamosi Sofalahan Iporo	O
	27. Bakare R. Yusufu Iporo	O
40	28. Raimi Meroyi Iporo	O
	29. Lasisi Daodu Iporo	O
	30. Lasisi Ogundeyi Iporo	O
	31. Aminu Somoye Iporo	O
	32. Kelani Iporo	O
	33. Raimi Soremekun Iporo	O
	34. B. S. S. Iporo	O
	35. Lasisi Omo Basola Iporo	O
	36. Sanni " " "	O
	37. Asani Iporo	O
50	38. Kasunmu Lawani Iporo	O
	39. Sunmonu Kasunmu Iporo	O

*Defendants' Exhibit.*

“LA. 1.”  
Petition to  
the Alake,  
23rd March  
1945,  
*continued.*

40.	Sanusi S. Sobola Iporo	0	
41.	Rabiyu Oye Iporo	0	
42.	Sanni Ewumi Iporo	0	
43.	Yusufu Olayiwola Iporo	0	
44.	Sulemonu Somoye Iporo	0	
45.	Amusa Atiko Iporo	0	
46.	(Sgd.) Y. A. Busari Iporo	0	
47.	Sunmola Meroyi Iporo	0	
48.	(Sgd.) Y. S. Diko Iporo	0	
49.	Buari Diko Iporo	0	10
50.	Alli Ogundeyi Iporo	0	
51.	Kasunmu Afape Iporo	0	
52.	Sofaru Omo Oluwo Iporo	0	
53.	Sittu Adenekan Iporo	0	
54.	Jimo Badiru Iporo	0	
55.	Jinodu Asalu Iporo	0	
56.	Amodu Onilu Iporo	0	
57.	Yusufu S. Koleoso Iporo	0	
58.	Jimo Alli Iporo	0	
59.	Sunmonu Omiwale Iporo	0	20
60.	Salami Ayedun Iporo	0	
61.	Tjani Iporo	0	
62.	Sulemonu S. Layinka Iporo	0	
63.	Salami Lisa Iporo	0	
64.	Rufayi Giwa Iporo	0	
65.	Salami Popoola Sodeke Iporo	0	
66.	Abudu Lasisi Lesude Iporo	0	
67.	Tiamiyi Lesude Iporo	0	

15-3-45.

AWON OBINRIN IMALE IPORO.

			30
1.	Ramotu Oredola Iporo	0	
2.	Asia Diko Iporo	0	
3.	Sabitiyu Diko Iporo	0	
4.	Juwe Sittu Iporo	0	
5.	Memuna Iporo	0	
6.	Asinmowu Yusufu Iporo	0	
7.	Tayibatu Alao Iporo	0	
8.	Siwatu Abegbe Iporo	0	
9.	Siwatu Aduke Iporo	0	
10.	Hunmuani Ajike Iporo	0	40
11.	Asinmowu Diko Ottun male Iporo	0	
12.	Falilatu Agbeke Iporo	0	
13.	Sidikatu Abike Iporo	0	
14.	Simiatu Ajoke Iporo	0	
15.	Nuratu Abike Iporo	0	
16.	Muniratu Abeke Iporo	0	
17.	Animotu Iporo	0	
18.	Hunmuani Yoriola Iporo	0	
19.	Sariyu Segilola Iporo	0	
20.	Moriyamo Lawani Iporo	0	50
21.	Nuratu Alaba Iporo	0	

	22. Sadatu Agbeke Iporo	O	<i>Defendants' Exhibit.</i> "LA. 1." Petition to the Alake. 23rd March 1945, <i>continued.</i>
	23. Raliatu Abeke Iporo	O	
	24. Jarinatu Akonke Iporo	O	
	25. Juweratu Adetutu Iporo	O	
	26. Safuratu Ayinke Iporo	O	
	27. Nusiratu Alake Iporo	O	
	28. Aminotu Sadiya Iporo	O	
	29. Nimota Aduke Iporo	O	
	30. Nofisatu Asabi Iporo	O	
10	31. Abibatu Amosa Iporo	O	
	32. Wulemotu Subuola Iporo	O	
	33. Awanotu Subulade Iporo	O	
	34. Moriyamo Ajike Iporo	O	
	35. Sinotu Aduke Iporo	O	
	36. Abusatu Iporo	O	
	37. Raliatu Alake Iporo	O	
	38. Sadatu Rike Iporo	O	
	39. Moriyamo Abiola Iporo	O	
	40. Salamotu Joko Iporo	O	
20	41. Salamotu Oyolola Iporo	O	
	42. Moriyamo Ayobado Iporo	O	
	43. Alimotu Bolaji Diko Iporo	O	
	44. Osenotu Awunnibi Diko	O	
	45. Alice Gbadebo Aromo Kala Iporo	O	
	46. Sumiatu Egun " " "	O	
	47. Wulemotu Sunmola Lesude Iporo	O	
	48. Isun Noila Folahan Lesude Iporo	O	

Read and interpreted from the English language to Yoruba language  
to the Signatories by me the undersigned writer to the best of my knowledge  
30 and ability and they all do understand same before putting their Marks  
and Thumbs and Signatures thereto.

(Sgd.) SEGUN ADE ABRIO,  
Writer.

Fee paid 20/- R. No. 28/45.

*Plaintiffs'*  
*Exhibit.*

**PLAINTIFFS' EXHIBIT.**

“ PHB. 2.”  
Letter,  
Resident,  
Abeokuta  
to Messrs.  
Irving &  
Bonnar,  
14th April  
1945.

**Exhibit “ PHB. 2.”**

**LETTER, Resident, Abeokuta to Messrs. Irving & Bonnar.**

Provincial Office,  
Abeokuta.

14 April 1945.

Gentlemen,

With reference to your letter dated 15th March, and to your letter dated 10th February, the affairs of Iporo township have been discussed at a full meeting of the Sectional Council when it was decided that, since the Alake had approved of the installations of I. A. Sodipo as the Balogun and of Lawani as the Oluwo, the Council had no contrary views to express. This decision accords with the majority view and your clients would be well advised to accept it as such, and cease to disturb the peaceful development of the township. 10

I have the honour to be,

Gentlemen,

Your obedient Servant,

?

Resident, 20  
Abeokuta Province.

Messrs. Irving & Bonnar,  
P. O. Box 289.  
Lagos.