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Judgment

Gold Coast

1956

UNIVERSITY OF LONDON
W.C.1.

20 FEB 1957

RECEIVED
LEG

In the Privy Council

No. 24 of 1953.

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL

(GOLD COAST SESSION).

BETWEEN

NANA OWUDU ASEKU BREMPONG III,
OHENE OF AMANFUPONG (substituted
for NANA OWUDU ASEKU BREMPONG II
alias ALBERT ROBERTSON MICAH KOR-
SAH (since deceased)) and NANA OTSIBU
ABABIO II, OHENE OF APERADE (sub-
stituted for NANA AGYEIKU AFARI,
OHENE OF APERADE (abdicated)) for
themselves and on behalf of their respective
Stools (Plaintiffs) Appellants

AND

NANA DARKU FREMPONG II, OHENE
OF TARKWA ACHIASE IN THE AKIM
ABUAKWA STATE for himself and on
behalf of the Stool of TARKWA ACHIASE
AND PEOPLE (Defendant) Respondent.

RECORD OF PROCEEDINGS

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INSTITUTE OF ADVANCED
LEGAL STUDIES,
25, RUSSELL SQUARE,
LONDON,
W.C.1*i*

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UNIVERSITY OF LONDON
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20 FEB 1967
INSTITUTE OF ADVANCED
LEGAL STUDIES

In the Privy Council

No. 24 of 1953. 16023

ON APPEAL FROM THE WEST AFRICAN
COURT OF APPEAL

(GOLD COAST SESSION).

BETWEEN

NANA OWUDU ASEKU BREMPONG III,
OHENE OF AMANFUPONG (substituted
for NANA OWUDU ASEKU BREMPONG II
10 *alias* ALBERT ROBERTSON MICAH KOR-
SAH (since deceased)) and NANA OTSIBU
ABABIO II, OHENE OF APERADE (sub-
stituted for NANA AGYEIKU AFARI,
OHENE OF APERADE (abdicated)) for
themselves and on behalf of their respective
Stools (Plaintiffs) Appellants

AND

NANA DARKU FREMPONG II, OHENE
OF TARKWA ACHIASE IN THE AKIM
20 ABUAKWA STATE for himself and on
behalf of the Stool of TARKWA ACHIASE
AND PEOPLE (Defendant) Respondent.

RECORD OF PROCEEDINGS

No. 1.
Civil Summons.

Suit No. 39/49.

IN THE NATIVE COURT " B " OF ASIKUMA ASIKUMA BREMAN STATE
GOLD COAST.

To CHIEF KOBINA AMOO OF TARKWA ACHIASE.

30 YOU ARE HEREBY COMMANDED to attend this Native Court
at Asikuma on Friday the 22nd day of April, 1949 at 8.30 o'clock a.m.
to answer a suit by Plaintiff of Amanfupong against you.

In the
Native
Court " B "
of
Asikuma.
No. 1
Civil
Summons.
26th
March,
1949.

In the
Native
Court "B"
of
Asikuma.

No. 1
Civil
Summons.
26th
March,
1949—
continued

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

2. Five hundred pounds damages as for mesne profits.

Issued at Asikuma the 26th day of March, 1949.

10

Sum claimed	£500 0 0
Court fee	2 0 0
Mileage and Service.. .. .	0 10 0
Adosum	0 5 0
	£502 15 0

Witness to mark :

(Mkd.) ESUAKO YEBUA II,

(Sgd.) K. A. DADSON,
Registrar, N.C.

President of Native Court.
His X Mark. 20

TAKE NOTICE that if you do not attend the Native Court may give judgment in your absence.

No. 2.

Order directing transfer of Suit.

In the
Supreme
Court.

Lands
Division.

No. 2
Order
directing
transfer
of suit.
22nd
June,
1949.

IN THE SUPREME COURT OF THE GOLD COAST LANDS DIVISION, CAPE COAST.

Directions made under Section 54(1) (c) of the Native Courts (Colony) Ordinance, 1944.

(L.S.)

(Sgd.) L. G. LINGLEY,
Ag. Judge.

30

In accordance with the provisions of Section 54(1) (c) of the Native Courts (Colony) Ordinance, 1944, I do direct that the cause as shewn in the Schedule hereunder shall be transferred to the Lands Division of the Supreme Court of the Gold Coast for hearing.

And that the Magistrate at Cape Coast do transfer the said cause to this Court. In the
Supreme
Court.

And that the original Writ of Summons and any proceedings in the said cause now pending in the Native Court of Asikuma shall be forwarded to this Court. Lands
Division.

SCHEDULE :

- Plaintiffs* : Nana Owudu Asoku Brempong II alias Albert Robertson Micah Korsah and Nana Agyeiku Afare Ohene of Aperade for themselves and on behalf of their respective Stools. No. 2
Order
directing
transfer
of suit.
22nd
June,
1949—
continued
- 10 *Defendants* : Ohene Kobina Amoo, Ohene of Tarkwa Achiasi in the Akim Abuakwa State for himself and on behalf of the Stool of Tarkwa Achiasi and people.

Dated at Cape Coast this 22nd day of June, 1949.

(Sgd.) J. T. ODAMETEY,
Registrar.

No. 3.

Motion for substitution of Defendant.

- PLEASE TAKE NOTICE that this Honourable Court will be moved by Mr. C. F. Hayfron-Benjamin of Counsel on behalf of the Defendant herein for an Order of this Honourable Court substituting the name of Nana Darku Frempong II for that of Chief Kobina Amoo and for a further Order restraining the Plaintiffs and/or their Agents workmen and Servants from obstructing the Surveyor in the execution of his duties and/or for Police protection in the circumstances and for such further or other Order as to this Honourable Court may seem meet in the premises. No. 3
Motion
for sub-
stitution of
Defendant.
1st
March,
1950.

Court to be moved on Monday the 20th day of March 1950 at the hour of 8.30 a.m. of the clock or so soon thereafter as Counsel on behalf of the Defendant or Applicant may be heard.

- 30 Dated at Cape Coast this 1st day of March, 1950.

(Sgd.) C. F. HAYFRON-BENJAMIN,
Solicitor for Defendant.

To the Registrar, Lands Court, Cape Coast.

And to the above-named Plaintiffs Nana Owudu Aseku Brempong and Nana Agyeiku Afari, their Agent and Solicitor, Cape Coast.

In the
Supreme
Court.

Lands
Division.

No. 4
Order for
Substitu-
tion of
Defendant
and
appoint-
ment of
Surveyor.
21st
March,
1950.

No. 5
Statement
of Claim.
11th
April,
1950.

No. 4.

Order for substitution of Defendant and appointment of Surveyor.

21st March 1950.

Hyde for Plaintiffs (absent)—does not oppose.

Benjamin for Defendant—Applicant.

Application for substituting party granted.

Order of appointment of Odonkor Surveyor to make plan.

(Sgd.) H. M. WINDSOR-AUBREY,
Judge.

No. 5.

10

Statement of Claim.

1. The first Plaintiff Nana Owudu Aseku Brempong II alias Albert Robertson Micah Korsah is the Ohene of Amanfupong and the second Plaintiff Nana Agyeiku Afari is the Ohene of Aperade under the Omanhene of Akim Bosome State in the Western Province.

2. The Defendant Chief Kobina Amoo is the Ohene of Tarkwa Achiase under the Omanhene of Akim Abuakwa State in the Eastern Province.

3. The land in respect of which a declaration of title is sought is a large tract of land attached to the respective Stools of Amanfupong and Aperade and the Plaintiffs are joint owners thereof. 20

4. In ancient times, that is to say, before the year 1700 the Plaintiffs and their peoples were the only people known as Akims living on that part of the land, whose lands have boundaries with the adjoining land owners described in the writ of summons herein.

5. During the years 1700—1731 Intim Gyakari an Ohene of Denkyira in Ashanti waged wars against many neighbouring States in Akim and elsewhere, and among the towns invaded and destroyed were Nyawam and Eno the ancient towns of the Plaintiffs which were subsequently named Amanfupong and Aperade respectively when new townships were founded after cessation of hostilities. 30

6. A long period after the said wars the Achiase people whose Headman or Chief at that time was Tandoh Frimpong a predecessor of

the Defendant, migrated from Dwaso in Ashanti and applied to the Ohene of Aperade, through the Ohene of Eduasa, for permission to live on a portion of Plaintiffs' land. This request was granted and an area within the Plaintiffs' land near the boundary between the Plaintiffs' land and Surasi land, where a large Akyi tree stood, was allocated to the Defendant's said predecessor and his people conditionally upon their providing at the annual celebration of the Stool festival of the Plaintiffs rum and a sheep, and also that any treasure trove recovered or found on the land be produced to the Plaintiffs for their customary share thereof.

In the
Supreme
Court.

Lands
Division.

No. 5
Statement
of Claim.
11th
April,
1950—

continued

7. In terms of the said grant the Defendant's predecessor regularly made the annual presentation to the predecessors of the Plaintiffs as their Landlords, until about 1879 when one Kwesi Anani, son of a Chief of Achiase, instituted an action at the Divisional Court Cape Coast against Ohene Agyeiku Afari VII of Aperade and a predecessor of the 2nd Plaintiff in an effort to establish ownership over a portion of the land near Achiase village but the action failed.

8. Sometime in 1948 the 1st Plaintiff discovered that the Defendant had clandestinely sold to certain Sawyers a cedar tree growing on a portion of the Plaintiffs' land at a place between Dawumarkur and Essuanso village, from which boards had been manufactured and a quantity stacked up on the land. The 1st Plaintiff thereupon caused the said boards to be removed to Amanfupong. Thereafter a complaint was lodged with the Police at Akim Oda by one Donkor of Achiase and one Yaaku of Kokoso against the first Plaintiff in consequence of which the said boards were removed from the custody of the 1st Plaintiff to the Police Station at Oda. At an investigation which followed at the Police Station at which the Defendant was present, he admitted having sold cedar tree to the sawyers and that the land was his. The Police therefore stopped the Criminal investigation and referred the parties to the Land Court. The said boards are still in the custody of the Police at Oda pending the result of this case.

9. The Plaintiffs aver that by a Judgment of the Divisional Court, Cape Coast, dated the 19th day of December, 1926 in the suit entitled Ohimba Abina Egyie etc. of Aperade and Robert Marmadula Korsah of Saltpond versus Odikro Kojo Dufoh &c. a sub-chief of the Defendant, the identical land, subject of the dispute herein was declared to be the property of the Plaintiffs and the Plan indicating the limits of the area claimed by the Plaintiffs therein bear the initials of the trial Judge.

10. The Plaintiffs further aver that at the trial of the said suit referred to in the preceding paragraph hereof the predecessor of the

In the
Supreme
Court.

Defendant, one Kofi Odami of Achiase gave evidence against the Plaintiffs in the said suit, while at the same time other witnesses who were subjects of the Defendant herein supported the Plaintiffs in the said suit.

Lands
Division.

No. 5
Statement
of Claim.
11th
April,
1950—
continued

11. The Plaintiffs will at the trial of this suit contend that the Defendant is estopped by conduct and by the acts of his predecessors from disputing the title of Plaintiffs to the land described in the writ of summons herein. And the Plaintiffs' claim is for a declaration of Title to all that piece or parcel of land commonly known and called Amanfupong and Aperade Stool land situate in the Western Akim District and bounded on the North by lands belonging to the Stools of Eduasa and Ewisa respectively on the South by lands belonging to the Stools of Wurakessi, Jamra and Asentem respectively, on the East by lands belonging to the Plaintiffs' Stool and Surasi Stool respectively and on the West by Akenkensu Stream and Wurakessi Stool land. 10

Five hundred pounds (£500) Damages as for Mesne Profits.

(Added by
amend-
ment
pursuant
to leave
granted
20th June,
1951. See
page 20)

The plaintiffs had long before and after the date of the said Judgment granted to various tenants portions of the said land on the Abusa or Tribute system who are in possession thereof and have been paying tribute to the Plaintiffs.

Dated at Marmon Chambers, Cape Coast this 11th day of April, 1950. 20

(Sgd.) J. BANNERMAN-HYDE,
Solicitor for Plaintiffs.

To the Registrar, Land Court, Cape Coast

And to the above-named Defendant Chief Kobina Amoo, Tarkwa-Achiase, his Solicitor or Agent.

No. 6
Defence.
26th June,
1950.

No. 6.

Defence.

1. SAVE as hereinafter admitted the Defendant joins issue with the Plaintiffs in their Statement of Claim and states that the land hereinafter described and falling within the boundaries of the land claimed by the Plaintiffs is Achiase Stool land and has been such Stool land from time immemorial. 30

2. The Achiase Stool and People originally came from Juaso (Dwaso) under the former Denkyira kingdom, but now within the Ashanti protectorate and confederacy. The Juaso settlement in the Achiase area took place about six generations before the army of the King of Denkyira came to wage war upon the people in that area. During

those wars the king of Denkyira's war commanders made Achiase their headquarters. It was from Tarkwa-Achiase that Denkyira's commanders, namely, Ananse, Ofetu and Amankwa-Nwoma, invaded the territories and peoples around and conquered and destroyed their towns and settlements.

In the
Supreme
Court. .

Lands
Division.

No. 6
Defence.
26th June,
1950—
continued

3. The Achiase people who came from Juaso first settled at Koransan ("Not returning"). The Achiase Royal Cemetery is situate on this first settlement. Three Achiase kings died and were buried at Koransan before a new settlement was made at Beposo ("Upon the Hill"). After the death of their Ohene Tewa Yeboa at Beposo the Defendant's ancestors and people moved to the present site of Achiase which had been discovered by the Chief's hunter, Okyere Attah, near a stream flowing from a rock, the Ahontan Stream. Twelve *Akye* trees stood on the site and the place was therefore called Akyiase ("Under the Akye trees").

10

4. The settlement of the Juaso Stool and people in the Achiase area (Koransan-Beposo-Akyease) was not by means of acquisition from any other Stool. The land so occupied was vacant and empty ("kwa") and the settlement ("tra") was therefore named "Tra-kwa," now corrupted to "Tar-kwas" or "Ta-kwa."

20

5. Other persons settled at Adakuma, Asanteman, Osoroase (a small hamlet at a place called Oponasewa) and Nyanwan or Nyanwane, the ruins of which are now called Amanfupong in the Asikuma Bremang State. The last-named people, namely, the settlers of Nyanwan, including a small village called Eno, originally migrated from Asamang near Kokofu, i.e., "By the Water," viz., lake Bosumtwi.

6. In the reign of Aforo Awuakye, sixth Achiase Ohene after the settlement at Tarkwa (Koransan-Beposo-Akyease), the Denkyirahene's army came to Tarkwa as aforesaid and invaded and conquered the surrounding peoples, bringing them under the Denkyira King.

30

7. The Tarkwahene of Achiase took part in the war against the surrounding tribes on the side of the Denkyirahene whose headquarters were at Tarkwa-Achiase. Upon the conquest of the tribes around, the Denkyirahene raised the Ohene of Achiase to a higher rank of overlord or superior chief and placed all the conquered lands under him and the conquered people under his rule.

8. As symbol of authority of Achiase over the conquered lands and peoples the Denkyirahene gave the Achiasehene the insignia of a chief-paramount or overlord, namely, the war sword ("Akofra") which is now very old but is still kept with the Achiase Stool. A monument

In the
Supreme
Court.

Lands
Division.

No. 6
Defence.
26th June,
1950—
continued

of a big stone was also fixed by the Denkyirahene at Achiase in front of the Achiasehene's house. That stone is still at Achiase. Sacrifices are made upon it, is considered sacred and is held in high veneration.

9. After the Denkyira conquest in the 17th century (not in the 18th century as alleged by the Plaintiffs), the people now inhabiting Aperade (whose settlements at Nyawan and Eno, as admitted by the Plaintiffs in their paragraph 6, had been invaded and destroyed by the Denkyirahene), came to the Ohene of Achiase to submit to his authority and to ask to be given a place to make a new settlement. Some of the Nyanwan people and others whose settlements had been destroyed escaped from the Denkyira armies and made their way to different parts of the country, some going to Fanti land on the coast, where they settled. 10

10. The Tarkwahene, Aforo Owuakye, received the Nyanwan-Eno people and gave them a place to stay on the Asin road. The place was called Kyekyebon Kwaem ("Forest of the Iguana's Den"). Just after their arrival in this new settlement the Nyanwan-Eno people killed a Siade-boa ("Good-luck animal"), called Epra (Armadillo), and so they called the place Apra-de ("Place of the Good-luck Armadillo").

11. The Nyanwan-Eno settlement at Aperade prospered and the Achiasehene made its Chief the Gyasehene of Tarkwa-Achiase. ("Gyasehene," is Chief or Captain of the Household). The Aperade Chief, Stool and people, served the Achiasehene as his Gyase till the reign of Nana Dokuwa, Queen of Akim Abuakwa (1817—1866). The lands of Aperade were under the Achiase as members of his chiefdom. Aperade paid no special tribute except that of annual service, feudal or customary due. 20

12. Some of the Nyanwan-Eno people who came to Achiase to submit to the Achiasehene's authority stayed on at Achiase and their descendants are still at Achiase town, direct relations of the Aperade people. The head-of-family of the Nyanwan-Eno people at Achiase at present is Kwabena Owusu. 30

13. Other tribes conquered by the Denkyirahene came to Achiase and were given lands on which to settle or were permitted to settle in their former habitations. The Adakuma people however were allowed to stay at Achiase until recent years when some of them have, with the Achiasehene's consent, returned to settle on the site of ancient Adakuma. The Adakumas have some of their people still settled at Achiase with Yao Ben, Kwadjo Nkromah, Kwaku Anim, Korankye and others as their elders.

14. From the Denkyira war of the 17th century to the time of the Ashanti rise to the front rank as the great power in the land (18th century), the tribes and territories in the Tarkwa-Achiase area, those originally 40

conquered by Denkyira remained a conquered people under the power of the Denkyirahene with the Tarkwahene as their immediate overlord in that area.

15. In the 19th century, the Denkyira power being completely broken, and the Akim Abuakwa dynasty being powerful in Akim all along the River Birim, the Tarkwahene of Achiase transferred his allegiance from Denkyira to the Paramount Stool of Akim Abuakwa. The people of Aperade declined to join Tarkwa-Achiase in this transfer of allegiance, but the following towns and their sub-chiefs went with the Tarkwahene of Achiase to seek and attorn allegiance to the Paramount Stool of Akim Abuakwa, namely, Aduasa, Gyadam, Batabi and Adakuma. The town and Chief of Osoroase also went to serve the Paramount Stool of Akim Abuakwa through the Oseawuohene of Wenchi. Achiase was placed in the Nifa (Right) Wing of Akim Abuakwa as Chief of the Tarkwa-Achiase Division.

16. Later to arrive on these Akim Lands was a Paramount Stool, the Omanhene of Akim Busume. He acquired land for settlement from the Paramount Chief of Akim Abuakwa, and a portion of the Aduasa lands was given to Busume to settle on. At the time the Achiase-hene transferred his allegiance to Akim Abuakwa, the Ohene of Aperade also sought a new protection. He transferred his allegiance to Akim Busume and became a Chief under the Omanhene of Akim Busume. The latest to arrive in the area, in the 19th century, was the Omanhene of Akim Kotoku. He, too, acquired his land from an Akim Abuakwa Chief, namely, the Oseawuohene of Wenchi.

17. The allegation by the Plaintiffs in paragraph 4 of their Statement of Claim that before 1700 the Plaintiffs and their people "were the only people known as Akims on that part of the land" is quite untrue. The principal Akim tribes are the Ashanti-Akims, the Akim Abuakwas, the Akim Kotokus and the Akim Busumes. Asuohu, in Kokofu, where the Aperades originally came from was not known as Akim.

18. The allegation in paragraph 5 of the Plaintiffs' Statement of Claim that "during the years 1700—1731 Intim Gyakari an Ohene of Denkyira in Ashanti [*sic*], waged wars against many neighbouring states in Akim and elsewhere" is a gross and palpable anachronism. Intim Gyakari died in the Feyiase War of 1699—1700, having been captured by the Ashantis. From 1700 to 1731 the Denkyira kingdom was being so harassed by the new Ashanti power, the Denkyirahene was not himself in a position to embark upon a war of conquest in the Birim area beyond the Prah River. Denkyira was not originally "in Ashanti" as alleged by the Plaintiffs. When Denkyira was the power, there was no territorial Ashanti as it is known to-day.

In the
Supreme
Court.

Lands
Division.

No. 6
Defence.
26th June,
1950—
continued

In the
Supreme
Court.
—
Lands
Division.
—
No. 6
Defence.
26th June,
1950—
continued

19. The allegation in paragraph 6 of the Plaintiffs' Statement of Claim that a long period after the alleged wars of 1700—1731 "the Achiase people whose Headman or Chief at that time was Tandoh Frimpong a predecessor of the Defendant, migrated from Dwaso in Ashanti and applied to the Ohene of Aperade, through the Ohene of Eduasa, for permission to live on a portion of the Plaintiffs' land" is a hopeless invention.

20. There never has been a Chief of Tarkwa-Achiase called Tandoh Frimpong, and the Achiase people from Juaso settled on the Tarkwa-Achiase lands a century or more before 1700. No land was ever acquired 10 by Achiase from Aperade through Eduase or any other Stool.

21. The Achiase Stool has had only one Frimpong but he was not called Tandoh but Darku Frimpong, and he reigned in the 19th century, not in the 18th century. He was the third Chief to reign after the transfer of allegiance by Achiase to Akim Afuakwa. The next Chief of Achiase after Atta Kwasi who transferred allegiance was Otutu Aban, and next to Otutu Aban was Darku Frimpeng, after whom came Akyem, and next to Akyem came Darku Ababio (Darku II). It was in the time of Darku II that the Jukwa War (Sir Garnet Wolseley, 1873—1874) was fought and the Tarkwahene fought in the army of the Omanhene 20 of Akim Abuakwa.

22. The allegations in paragraphs 6 and 7 of the Plaintiffs' Statement of Claim that the Defendant's predecessor agreed to provide rum and sheep annually to Aperade and to produce treasure trove to Aperade are utterly false. No tribute has ever been paid or given to Aperade by Achiase.

23. The allegation in paragraph 7 of the Plaintiffs' Statement of Claim is not in accord with fact. The Chief of Achiase has not a son by name of Kwasi Anani, and the Defendant's Stool has not been a party in any action against Aperade in 1879 in the Divisional Court, at Cape 30 Coast.

24. The allegation of clandestine sale of cedar trees to certain sawyers in 1948 is denied. The Defendant, in the ordinary course of the exercise of rights of ownership, granted a licence to Mr. Donkor, a timber contractor, to cut timber at Dawumarkur. The Plaintiff, Nana Owudu Aseku Brempong II, alias Albert Micah Korsah sought to appropriate the said trees but after Police enquiry the boards were returned to Mr. Donkor by the Police. Dawumarkur is an old Achiase village originally built by Darku Panin and was for some time occupied by Kwasi Amaning and is not the property of the Plaintiffs. 40

25. The Defendant has at all times granted concessions, leases and other rights of land to other people on the land in dispute, without any interference, by either of the two Plaintiffs. The futile attempt of 1948 was the first on the part of the 1st Plaintiff.

In the
Supreme
Court.

Lands
Division.

26. In reply to paragraph 9 of the Plaintiffs' Statement of Claim, the Defendant states that the Judgment of the Divisional Court of Cape Coast of 19th December, 1926, is a Judgment which does not affect the Stool of Achiase in regard to the Achiase title to the land in dispute.

No. 6
Defence.
26th June,
1950—

continued

27. Whilst that case was going on in 1926 the Stool of Achiase applied to be made a Co-Defendant but it was not so joined. The Judge in the course of his Judgment said " I don't want to say too much about the position of the Achiases at present, for after this case they may be going to take a line of their own, but it seems to me that the position of Defendant in the present case is hopeless ". The Plaintiffs in that case obtained Judgment against Kojo Dufo of Kokobeng, but that Judgment was not a Judgment against the Achiasehene, in that he was not a party nor was he a privy to Kojo Dufoh, the Defendant.

28. In answer to paragraph 10 of the Plaintiffs' Statement of Claim, the Defendant states that Kofi Odame was not a Chief of Achiase in 1926. He had been deposed about 20 years before 1926. The evidence given in the 1926 case in relation to Achiase was conflicting arising from a suggested collusion which was referred to by the Judge in his Judgment. Such conflict of evidence does not affect the title of Achiase. It was shown in the evidence of Yaw Ewua that Aperade went to Achiase in search of evidence to support his case against Kojo Dufo, and Aperade admitted at the time that Achiase was his superior Chief in ancient times.

29. In further answer to paragraphs 8, 9 and 10 of the Plaintiffs' Statement of Claim the Defendant states that until the case of 1926 between Aperade and Kokobeng, the name Korsah was unknown in the Achiase area as owner or Ohene of Amanfupong. Albert Robertson Micah Korsah alias Nana Owudu Aseku Brempong II, first Plaintiff in the present case is the Tufuhene of Saltpound in Fantiland, in the Nkusunkum State, and is neither a Paramount Chief of a State nor the Sub-Chief of any Paramount Chief in any State in the Achiase area.

30. The Defendant will contend that the Ohene of Aperade and his people of Nyanwan and Eno, having been invaded and their towns destroyed and their people driven away by a superior power, cannot, two to three hundred years after such conquest return under the new British peace and claim land of which they had been anciently dis- possessed by war and which land had, after the conquest, been granted by their conqueror to another chief.

In the
Supreme
Court.

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Division.

No. 6
Defence.
26th June,
1950—
continued

31. The Defendant will contend that he owns the land in dispute by original settlement and/or conquest. Aperades and Amanfupongs have never granted any land to Achiase nor has Achiase ever paid any tribute to Aperade or Amanfupong in respect of this or any other land.

32. The Defendant will contend that he has continuously lived on this land and exercised rights of ownership from time immemorial to date and that the land in dispute does not belong to the Plaintiffs either by settlement or by conquest except in so far as the Defendant granted certain lands to the Nyanwan-Eno people at Kyekyebon Kwaem' after the Denkyira conquest. 10

33. The Defendant will contend that the following towns and the lands around them were among those granted by the Denkyirahene to the Defendant: Adakuma, Asanteman, Nyanwane and Eno, and that about a hundred years ago when land acquired new value and settlements became permanent customary boundaries grew up between the neighbouring towns and that the boundaries of Achiase lands are the following: On the South with Kokoso by the Asuakwa (Asiakwa) Stream, on the South-East with Brakwa Stool land up to Duodukrom, at the source of the Bonwora Stream which flows into the Okyi, on the North-East with Osoroase on the Awora River, on the North with Awusa by the Asuakyere 20 Stream flowing into the Kosiko River, on the West with the Aperade Stool at Nkukuoso and on the South-West to join the Asuakwa Stream.

Dated at Yiadom Chambers, Accra, this 26th day of June, 1950.

(Sgd.) J. B. DANQUAH,
Solicitor for Defendant.

The Registrar, Land Court, Cape Coast

And to the Plaintiffs herein, their Agent or Solicitor, Cape Coast.

Plaintiffs' Evidence.**No. 7.****Owudu Aseku Brempong.**

Monday the 18th June 1951.

HYDE for Plaintiffs.

BENJAMIN and DANQUAH and ALAKIJA for Defendant.

OKYEAME KWADJO PONG—chosen as Assessor.

HYDE opens.

- After opening Defendant's Counsel state they object to the Assessor.
- 10 Another Assessor, NANA KWEKU EGYIR GYEPI II chosen as Assessor—
case opened to him.

HYDE calls :

P.I. OWUDU ASEKU BREMPONG—s.o.B. (English)

- I live at Saltpond and Amanfupong. I do not do any work I am the Ohene of Amanfupong. The second Plaintiff and I have brought this action because we are joint owners of the land in dispute. We are the original settlers on this land. The second Plaintiff is on the North and I am on the South. We have boundaries with Ewusa, Surasi, Asantem, Jambra, Wurakessi and Eduasa. Ewusa is within the Akim
- 20 Kotoku State, and Eduasa in the Akim Abuakwa ; Surasi also is in this latter State. Asantem is in the Asikuma State as is Jambra, Wurakessi is in the Asin-Apimanim State. These are all ancient boundaries. The Defendants came from Ashanti. I belong to the Konna Family and the 2nd Plaintiff belongs to the Yoko Family. The Defendants also belong to the Yoko Family. According to the tradition when the Defendants came from Ashanti they applied to the Chief of Nyankumasi and asked him for land and he said he had no land to give them and he took them to the Chief of Aperade and he gave them land near a big tree called
- 30 Akyi and this became known as Achiase, this was the only land they obtained. About 1879 an Achiase man trespassed on our land, this went to Court and it was settled ; he was given permission to stay on this land. I am aged 77 years. I remember the case of Egyei and Korsah v. Dufoh. Dufoh is a sub-chief of the Defendants. A plan was made in respect of this latter case by Mr. Hagan, this is the plan (tendered— Benjamin I object parties different. Hyde same land.

COURT : If the Defendants had any interest in this land in 1926 they could have been made parties to the suit and I consider therefore that this plan should be admitted in evidence and it is so admitted and marked " A."

(HYDE : I tender a certified copy of the Judgment in 1926.

In the
Supreme
Court.

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Lands
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Plaintiffs'
Evidence.

—
No. 7
Owudu
Aseku
Brempong.
18th June,
1951.
Examina-
tion.

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Supreme
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Division.

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Evidence.

No. 7
Owudu
Aseku
Brempong.
18th June,
1951.
Examina-
tion—
continued

BENJAMIN : I object on same grounds, as I did regarding the plan.

COURT : I consider this Judgment is admissible as it deals with the land the subject matter of this dispute—admitted as Exhibit “ B ”).

BENJAMIN : I now wish to refer to authority for my previous submissions.

COURT : I will hear you but it would tend to help the Court if authorities were quoted at the proper time. *Kwow Koom v. Kojo Awortwi*—1926—9 Full Court cases pages 409 and 414. Paragraph 27 of Statement of Defence.

HYDE : Case can be distinguished because the land is the same. Concede parties different—will not press for these two exhibits to be admitted. 10

COURT : I consider Mr. Benjamin's contention is supported by the case he has referred me to and the Exhibits “ A ” and “ B ” are included for the present. The Achiase people have not taken any action to establish a title to the land on the West side of the motor road. Nyan-kumasi was founded by permission of the Ohene of Aperade, the Achiase people lived there and they paid £1 4s. per annum to the Ohene as rent. Nyankumasi people are subjects of the Defendant. The Defendants have allowed sawyers to cut timber on this land and to make boards and that is why we have brought this action. I took away the boards to Amanfupong, this was reported to the Oda Police. The Achiase 20 have some villages on the land in dispute ; one is called Nkran. I asked the Ohene of Achiase about the founding of these villages and he admitted he had given permission for these villages to be built, this was about 5 years ago. I have about 30 tenants on this land.

(BENJAMIN : Possession not pleaded purely for a declaration of title).

COURT : Counsel must keep to their pleadings but mesne profits claimed in respect of the Defendants giving permission to others to cut trees I have lost £400. The Defendants said that the trees were cut on Achiase land but they were not, it was on my land.

Cross-
examina-
tion.

XX. I live at Amanfupong. I am not under any chief. I am 30 not a Paramount Chief. Aperade is under Akim Swedru, but I do not serve Akim Swedru. Amanfupong was conquered by the Denkyira, but the people were not driven from the land. Amanfupong was also known as Nyanwa, there was also a village known as Eno-Nyanwa which was destroyed but not completely by the Denkyiras. Amanfupong means “ Great Ruins.” When the Denkyiras conquered us we dispersed to all over the place including Saltpond. The Denkyira General was called Anansi. It is not correct to say that this General had his head-quarters at Achiase, nor is it correct to say that the Achiase were under the Denkyiras. The Achiase fought against the Amanfupongs. Before 40

the Denkyira War my predecessors were at Amanfupong. After the Denkyira War the Amanfupong people did not go to live at Achiase. I don't know if three of the Amanfupong Stools are at present at Achiase. It is not correct to say that the Eno people were given a place called Aperade to live.

In the
Supreme
Court.
—
Lands
Division.
—

At this time Aperade was not called Kyekyebu Kwaem. It is not correct to say that the Aperade people called a village Epra. Achiase is also called Tarkwa. I can't say if Tarkwa means "Free." The Aperade people did not become subject to the Achiase people. The Paramount Chief of Akim-Swedru came on the land after the Denkyira conquest. About 100 years ago Aperade went to serve Akim-Swedru. Aperade is an ancient village. The first inhabitants of Aperade were of my own family, fresh emigrants from Ashanti also settled there, they were Oyoku. The present Chief of Aperade is Oyoku. I know that the Achiase people are trying to rob me by farming on my land. The cocoa trees have been bearing for many years. I do not know that the District Commissioner has ordered the Police to hand the boards back to the Defendants. There are three types of trees on the land. Cedar, Odum and Betso. I still say that the trees removed are worth £400. I know that in Achiase Town, the U.T.C. and U.A.C. have acquired land through Government. In 1949 the Achiase sold a plot to the U.T.C. I do not know if the strangers on the land pay tolls to the Defendants. The Government Experimental Farm at Achiase was not granted by me. Part of Achiase village was given by my ancestors to the Defendant at a rental of £1 4s. per annum. The Achiase have never paid the £1 4s. to me.

Plaintiffs'
Evidence.
—
No. 7
Owudu
Aseku
Brempong.
18th June,
1951.
Cross-
examina-
tion—
continued

RE-X. Nil.

Assessor : The Achiase have been on the land which I am claiming for a very long time.

Adjourned to 19th instant at 9 a.m.

30

(Intd.) T. A. D.
J.



In the
Supreme
Court.

No. 8.

Atta Karikari.

Lands
Division.

19th June, 1951.

Plaintiffs'
Evidence.

Coram as before : Parties present.

P.2. ATTA KARIKARI—s.a.r.b. (Fanti).

No. 8
Atta
Karikari.
19th June,
1951.
Examina-
tion.

I live at Ewusa and am the Odikro there. I know the Plaintiffs in this case and also the Defendants. I have land attached to my Stool. My land bounds with the Plaintiffs on the South of my land. With the Defendants I have no boundary. My ancestors were original settlers of the land we now occupy and I understand that the Plaintiffs were in the same position. The first natural feature marking the boundary between my land and the Plaintiffs is a rock called Abuosu and a stream called Esuakyire running hard by this rock, from there the boundary runs to another stream called Amiyansu and thence to another stream called Kwesitso and from there to a village called Aiyinabrim from there to a village called Abuasa which has a small pond and here my boundary ends with the Plaintiffs. According to tradition my predecessors and the Plaintiffs fixed their boundaries by agreement. There is no existing boundary between my land and that of the Defendants who came to this part of the country after my predecessors. I remember in 1926 the case of *Egyir and Korsah v. Dufoh*. I was a witness in that case and gave evidence for the present Plaintiff. I did not see Mr. Justice Hall inspect the land. The Defendant's people migrated from Juaso in Ashanti after wars had devastated their land. The Defendant in the 1926 case was a sub-chief of the present Defendant, he was my step-father and was claiming this land for himself. 10

To COURT : By himself I mean that Dufoh was claiming the land for himself and his subjects the Achiase as they had no land of their own. I know Kofi Odami he had occupied the Stool of Achiase and I had stayed with him. He left the Achiase Stool because he became ill. In the 1926 case Odami gave evidence but about what I don't know. I knew Kweku Nkrumah he is dead I think. At the moment I am taking an action against the present Defendants for trespass, two actions in fact. I had no boundary quarrel with the Eduasa. 20 30

Cross-
examina-
tion.

XX. Eduasa is in the Akim-Abuakwa. As stated I am also under this latter State. I understand that the Akim Abuakwa came to this place about 100 years ago. My predecessors belonged to the same clan as the Akim Abuakwa and it was on account of us they moved to Ashanti to join us, my people did not give them any land when they arrived. The Akim Koto-Koto bought land from the Omanhene of Wireki who also belongs to the Akim Abuakwa State. My ancestors did not come 40

- from Bogoyisango in Anansi State and I have no relations there. We did not obtain land from Akim Abuakwa I have heard of a Chief called Akesetintu he is of Eduasa and I have a boundary with the Eduasa Chief, this Chief did not give my predecessors the land which I now occupy. The source of the Esuakyire stream is new to Surasi. I can't say if the Defendants draw water from this stream. Nana Kobina Amo had occupied the Defendant's Stool at one time. The village of Anyinabrim was founded by Amo a long time ago. Abuasa (small pond) is a triple boundary between my Stool, the Plaintiffs' and Eduasa.
- 10 The Defendants have farms around Abuasa. Mienso is on Achiase village. Kwami Sifaha has a farm there but it is on my land. Kobina Ahuma and Kojo Kurma have villages on my land. There is an old pagan cemetery near to the Railway line and a village called Mankradzi. Kwami Wiakrom is situated on my land, lower down is the village of Kwesi Kodia it is on my land also, Kwesi Kodia is not an Achiase man. The Denkyiras destroyed the Amanfupongs who were dispersed and the town of Amanfupong became ruin. The Achiases migrated from Ashanti. I can't say if they were under Denkyira. I do know that at one time the whole of Ashanti came under the Denkyiras.

In the
Supreme
Court.

Lands
Division.

Plaintiffs'
Evidence.

No. 8

Atta
Karikari.
19th June,
1951.
Cross-
examina-
tion—
continued

20 RE-X. Nil.

ASSESSOR : Nil.

No. 9.

Kweku Effah.

P.3. KWEKU EFFAH—s.a.r.b. (Fanti).

No. 9
Kweku
Effah.
19th June,
1951.
Examina-
tion.

- I live at Aperade and am the Mankrado. I know the 1st Plaintiff. I have land and the 1st Plaintiff and I are joint owners of this land. I know the Defendants. No part of our land forms a boundary with the Achiase. The people with whom we have boundaries are the Eduasa, Ewusa, Surasi, Asantem and the Wurakessi. This land was originally
- 30 settled on by us. The Plaintiffs gave the Defendants permission to live on the land they at present occupy. According to tradition my predecessors were on the land before those of the Defendant. The people of Nyankumasi received permission from my predecessors to settle there and they paid £1 4s. for drink according to tradition, also they must pay this amount to my Stool every year and this they do. The people of Nyankumasi are subjects of Akim Abuakwas as are the Defendants. I remember the 1926 case, I was the Plaintiff and I saw Mr. Justice Hall inspect the land, this took one day. Kofi Odami gave evidence in the case, he was then the occupant of the Defendants' Stool ;

In the
Supreme
Court.

Lands
Division.

Plaintiffs'
Evidence.

No. 9
Kweku
Effah.
19th June,
1951.
Examina-
tion—
continued
Cross-
examina-
tion.

he gave evidence for the Defendant, Dufoh. I knew Kwesi Nkrumah he also gave evidence for the Defendant in 1926. Since the 1926 case the Achiase people laid claim to our land and that is the reason for this action. My eastern boundary is with Akim Abuakwa.

XX. The Plaintiffs granted the Defendants their land this was a long time ago, at that time my people lived at Endo. After the Denkyira War we moved out of this village but later we moved back to it and that is where we now live. But we have cleared a new site and called it Aperade. It was after our return according to tradition that the Achiase came to live in our country. It is not true that the Defendants granted us the place where Aperade is situated. I am a subject of Asin Busume. The Asin Busume have been on this land for some time but I can't say for how long; they came after we did and they were given land by someone but who I can't say. I can't say if it was the Eduasas. We did not give any land to the Akim Busume. I can't say who gave land to my Paramount Stool. When the Achiase went to set up a new village I did not go with them as I was not one of them. It is not correct that the Chief of Aperade was an Achiase at the time of the move. I know a man called Kobina Owusu who belongs to the Konna Family; he is the head of that family. The Konna Family originally came from Aperade. It is not correct that some of the Konna Family went to Aperade after the Denkyira War. From the time of the 1926 Judgment until now we have had tribute paid to us by some people; but not the Defendants and that is why we brought this action. However some of the Defendants' people have agreed to pay tribute to us. When Kofi Odami gave evidence in 1926 he had abdicated from the Stool on account of his illness.

RE-X. Nil.

ASSESSOR : Nil.

No. 10
Koko
Eduwa.
19th June,
1951.
Examina-
tion.

Cross-
examina-
tion.

No. 10.

Koko Eduwa.

P.4. KOKO EDUWA—s.a.r.b. (Fanti).

Odikro of Wurakessi and live there. I have been Odikro for 12 years. I know both Plaintiffs and Defendants. My land has a boundary with the Plaintiffs it is an ancient boundary. I remember the 1926 case I showed my boundaries to the Surveyor.

XX. I do not know the Nkuakuso ruins.

RE-X. Nil.

ASSESSOR :

30

No. 11.
Yaw Duro.

In the
Supreme
Court.

P.5. YAW DURO—s.o.B. (Fanti).

—
Lands
Division.

Farmer, Nyankumasi. I belong to the Konna clan. I used to be an Elder of the Company but now I am a Christian and have no position. I have lived at Nyankumasi all my life. I gave evidence in the 1926 case where Dufoh was the Defendant. I gave evidence for the Plaintiffs. Nyankumasi was founded by my predecessors. I serve the Defendants. We pay tribute to the Plaintiffs for living at Nyankumasi. I have filed
10 an action against the Defendant it arises out of this case. Since the 1926 case I have not been disturbed on the land.

Plaintiffs'
Evidence.

—
No. 11
Yaw Duro.
19th June,
1951.
Examina-
tion.

XX. I know the last witness he is also a Konna. My people originally did not come from Achiase. I know Kobina Nduro he is not my nephew, he is not a blood relative but a member of my clan. He sits on the Konna Stool of Achiase, I am entitled to sit on that Stool but I don't want to sit on it as I didn't want it. The Achiase people and the Aperade are connected with the Konna. If the Plaintiff win this case the Konna people will benefit.

Cross-
examina-
tion.

RE-X. Nil.

20 ASSESSOR : Nil.

HYDE : Witnesses have not answered summons—asks for adjournment until to-morrow.

COURT : Adjourned to 9 a.m. to-morrow.

(Intd.) T. A. D.
Judge.

In the
Supreme
Court.

Lands
Division.

No. 12
Notice of
application
to amend
Statement
of Claim.
19th June,
1951.

No. 12.

Notice of Application to Amend Statement of Claim.

PLEASE TAKE NOTICE that the Plaintiffs herein will ask the leave of the Court to amend the Statement of Claim by adding immediately after paragraph 11, the following :—

“ The Plaintiffs had long before and after the date of the said Judgment granted to various tenants portions of the said land on the Abusa or Tribute system who are in possession thereof and have been paying tribute to the Plaintiffs.”

Dated at Marmon Chambers, Cape Coast this 19th day of June, 1951. 10

(Sgd.) J. BANNERMAN-HYDE.
Solicitor for Plaintiffs.

To the Registrar, Land Court, Cape Coast

And to the Defendant Nana Darko Frimpong, Cape Coast.

No. 13
Court
Notes on
application
for leave
to amend
Statement
of Claim.
20th June,
1951.

No. 13.

Court Notes on application for leave to amend Statement of Claim.

HYDE for Plaintiffs.

BENJAMIN, DANQUAH and ALAKIJA for Defendants.

NANA KWEKU EGIR GYEPI II—Assessor.

COURT : Hyde wishes to amend his Statement of Claim. 20

DANQUAH : Amendment introduces a new issue and would embarrass the Defence. Changes—basis of claim.

HYDE : Will not in any way embarrass the Defence ; because another action pending for trespass. This was an oversight and it is regretted.

DANQUAH : If amendment granted must be given an opportunity to reply, and will ask for an adjournment with costs to the Plaintiffs.

COURT : Amendment permitted on the Defendants paying agreed costs to the Plaintiffs. Defendants given until 25th instant to amend Statement of Defence. Plaintiffs to continue with witnesses available to-day as Statement of Claim not amended. Agreed costs to be announced on 30 25th instant.

No. 14.

Kojo Nkrumah.

In the
Supreme
Court.Lands
Division.

P.6. KOJO NKROMAH—s.a.r.b. (Fanti).

- I am a very old man and can't say my age. (By means of questioning the Assessor fixes his age at about 85 years). I live at Eduasa. My family is called Yoko of which I am the head but there is no chief at the moment. I know the Plaintiffs and the Defendants. There is land attached to my Stool and has boundaries with various people including that of the 2nd Plaintiff whose land bounds with that of 1st Plaintiff.
- 10 I remember the case against Dufoh in 1926 I was a witness for the Plaintiffs in that case. Dufoh and I are under Akim Abuakwa as are the Achiase. My people emigrated from Adansi in Ashanti. The Defendants the Achiase, migrated from Juaso in Ashanti. We the Eduasa came from Ashanti before the Achiase did so. According to tradition when the Defendants arrived at Eduasa they told my predecessor they had found land suitable for settling and they asked my predecessor for permission to settle on this land, but as this land belonged to the 2nd Plaintiff's predecessor my predecessor went to the said Plaintiff's predecessor and sought permission for the Defendants, to settle on this land and he
- 20 agreed and granted this land to my predecessor so that he could grant it to the Defendants. The Defendant settled at this place and have not been disturbed but my predecessor gave customary thanks to the 2nd Plaintiff's predecessor for granting this land and he did so as a recognition of the grant so that no trouble would occur in the future, this grant was a free gift. The Achiase and the Aperade and the Eduasa are all part of the same family. I also have a boundary with Ewusa. I have no boundary with the Defendants.

Plaintiffs'
Evidence.No. 14
Kojo
Nkrumah.
20th June,
1951.
Examina-
tion.

- XX. Koko Kurachi has been elected head of my family because I am old. The subpoena I received for this case was addressed to me
- 30 personally. Kurachi is at present in Kibi. As I am so old the whole people of Eduasa have agreed that I should represent our Stool when any case arises in Court, in which we are interested and I have been given a paper to that effect. When we went to Kibi to acknowledge the Paramountcy of Akim Abuakwa we were placed under the Achiase, this was in Nana Dakua, Ohene of Akim Abuakwa (1826—30). Before we went to Kibi it is not correct to say that the 2nd Plaintiff was the Gyasi of Achiase. When we went to Kibi we had the choice of three Paramount Stools and we chose Akim Abuakwa.

Cross-
examina-
tion.

- Q. When the Achiase and the Eduasas went to Kibi did the
- 40 Aperades also go to join the Akim Swedru Paramount Stool ?

In the
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Court.

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Division.

Plaintiffs'
Evidence.

No. 14
Kojo
Nkrumah.
20th June,
1951.
Cross-
examina-
tion—
continued

A. I am unable to answer this question. All our complaints go to Achiase and if we were not satisfied we appeal to Kibi. I know the present Chief of Achiase, the 1st Defendant; he was made Chief about 2 years ago. The Ohene of Eduasa took my letter of authority from me in order to obtain some money from Kibi for me and he refused to return the paper but later he gave it back to me and I have it now. It is not true that the Defendant asked me to give evidence and I refused because they had taken this letter of authority from me. The Defendants did not subpoena me for this case. The Defendants subpoenaed the Stool of Eduasa without consulting me and as the Plaintiff sent me his subpoena I have come here to give evidence. I am annoyed at the Chief of Eduasa for not consulting me when the Defendants sent me a subpoena. I cannot say whether or not the Defendants went to Aperade before they settled at Achiase. It was not the people from Nyankumasi who obtained land for the Achiase. I do not know that the Denkyira conquered the land in this area at one time. I can't say where the Aperades came from.

RE-X. Nil.

ASSESSOR : Nil.

No. 15.

Andoh Benin.

20

No. 15
Andoh
Benin.
20th June,
1951.
Examina-
tion.

P.7. ANDOH BENIN—s.a.r.b. (Fanti).

I live at Nyankumasi, I am the deposed Odikro, I was deposed by the Defendants. I was Odikro for 11 years. I was destooled because of this case; I refused to give evidence for the Defendant. The 2nd Plaintiff owns the land on which Nyankumasi is situated and we pay tribute of £1 4s. per annum to the 2nd Plaintiff. I serve the Omanhene of Akim Abuakwa through the Defendant. I was not deposed because I made certain stool articles in gold and to which I was not entitled to do. At one time I had a gold linguist stick. I made a Court crier's cap but it was not made of gold. The Omanhene took the linguist stick the cap and a gold sword from me, but this was not why I was deposed.

Q. Do you know that the Achiase got this land free and that is why it is called Tarkwa or Tinankwa ?

A. I do not. The Achiase got their land according to tradition, from the 2nd Plaintiff. My predecessor sent a messenger to the 2nd Plaintiff asking him for land for the Defendants. According to tradition the Eduasas and Nyankumasis introduced the Defendants to the 2nd Plaintiff's predecessor.

RE-X. Nil.

ASSESSOR : Nil.

40

No. 16.

Ekow Selby.

In the
Supreme
Court.Lands
Division.Plaintiffs'
Evidence.No. 16
Ekow
Selby.
20th June,
1951.
Examina-
tion.

P.8. EKOW SELBY—s.o.b. (English).

Licensed Surveyor, Cape Coast. I was instructed by Counsel for Plaintiffs to make a copy of a map made in 1925 by Mr. Hagan for the case of *Abinagyaye v. Dufoh*. I went on the land and the Plaintiffs pointed out certain boundaries to me. I was instructed to locate some trees on the land. Both parties had representatives on the spot when I locate the trees. As a result of my visit to the land and the map made
10 by Mr. Hagan I made this map (tendered—Danquah—I object as plan was made in another case in which Defendants were not a party. *Res inter alios acta* and cannot be accepted).

HYDE : Plaintiffs in this case have pleaded this map and other Judgment. Not *res inter alios* action—land subject matter of case in 1926—same identical land.

COURT : The Plaintiffs have pleaded in paragraph 9 of their Statement of Claim that this identical land was declared to be the property of the Plaintiffs and the plan indicated limits of the area claimed by the Plaintiffs as initialled by the trial Judge. I had previously ruled on the authority
20 referred to by Mr. Benjamin that this said Judgment was not admissible. Since that ruling the evidence of P.2 Ata Karikari has established that Dufoh was claiming the land for himself and his subjects the Achiasse. The 1926 Judgment was a Judgment in personam and a reference to page 53 of the 3rd Edition of Everest and Strode on the law of estoppel satisfies me that this Judgment can be admitted in evidence in the present case for what it is worth, when it is proved. Also that this map of Mr. Selby's may be admitted subject to the map made by Mr. Hagan being proved in due course. This is the map I made (marked
" 1 " for identification).

30 This is the plan made by Mr. Hagan which I used when making " 1 " for identification (admitted as " 2 " for identification).

DANQUAH asks leave to reserve cross-examination until Hagan has proved " 2 " for identification.

HYDE : Hagan not available until Monday.

Adjourned until 25th instant.

(Intd.) T. A. D.
Judge.

In the
Supreme
Court.

No. 17.

Reply to Amended Statement of Claim.

Lands
Division.

No. 17
Reply to
Amended
Statement
of Claim.
21st June,
1951.

In reply to the Plaintiffs' amended Statement of Claim of 19th June, 1951 the Defendant states that neither before nor after the said Judgment of 1926 did the Plaintiff grant to various tenants portions of the land in dispute on the Abusa or tribute system who are in possession thereof and have been paying tributes to the Plaintiff.

2. After the case of 1926 the Plaintiff attempted to levy tribute on certain members of the family of Chief Kojo Dufoh who had farms on the land but the said farmers have resisted the claim and do not pay 10 tribute to the Plaintiff as alleged.

3. The Defendant has been in effective and undisturbed occupation of the land in dispute for over 300 years. During those years the Defendant and his people have farmed extensively on the said land and have built villages thereon and enjoyed the fruits of the land without question by the Plaintiff in over 300 years.

4. The Defendants have tenants on the land who have been paying Abusa or tribute to them for several years without question by the Plaintiff.

Dated at Yiadom Chambers, Accra, this 21st day of June, 1951. 20

(Sgd.) J. B. DANQUAH,
Solicitor for Defendant.

The Registrar, Land Court, Cape Coast

And to the above-named Plaintiff Nana Owudu Aseku Brempong II,
Cape Coast.

No. 18
Court
Notes.
25th June,
1951.

No. 18.

Court Notes.

Counsel :

HYDE for Plaintiffs.

DANQUAH for Defendant.

NANA KWEKU EGYIR-GYEPI II—Assessor.

Amended Statement of Claim and reply thereto filed.

30

No. 19.
Henry Hagan.

In the
Supreme
Court.

P.9. HENRY HAGAN—s.o.B. (English).

—
Lands
Division.

Licensed Surveyor, Cape Coast. I have practised since 1921. In 1925 I surveyed land that was in dispute between the Stool of Aperade and Kodjo Dufoh ; I received instructions from both sides and made one plan. This is the plan—identification “ 1 ” (tendered—Dr. Danquah—I still object to it on grounds already argued).

—
Plaintiffs'
Evidence.

—
No. 19

Henry
Hagan.
25th June,
1951.

10 COURT : In view of my second ruling on this point the plan is admitted as Exhibit “ A.” The land claimed by the Stool of Aperade is bordered in red and that of Dufoh in green. On “ A ” the motor road which goes through Achiasse was pointed out to me as the boundary between the stools of Aperade and Surasi.

Examina-
tion.

20 XX. The Stool of Achiasse were not parties to the 1926 case but they objected to my making a survey of the land in dispute. In 1926 the Stool of Aperade claimed part of the Town of Achiasse, they claimed a part of the land to the west of the motor road, but they did not point out any particular spot where they have made a grant of land to anyone. In 1925 there were European owned stores in Achiasse. At that time the land had been extensively cultivated.

Cross-
examina-
tion.

RE-X. Nil.

ASSESSOR : Nil.

HYDE : I now ask that “ 2 ” for identification be admitted in evidence.
DANQUAH : I don't know whether “ 2 ” for identification is a true copy of “ A.”

P.9. Recalled by COURT :

30 The Plan “ 2 ” for identification is a true copy of Exhibit “ A.” I have examined both carefully, the spelling of villages is different in some cases. The *house* [*sic*] Zongo is not shown on “ 2 ” for identification and there are various other discrepancies. I now say I did not compare the two plans very carefully.

Examina-
tion by
the Court.

COURT : Plan Exhibit “ 2 ” for identification admitted as Exhibit “ B.”



In the
Supreme
Court.

No. 20.

Adua Nua Ofori.

Lands
Division.

P.10. ADUA NUA OFORI—s.a.r.b. (Fanti).

Plaintiffs'
Evidence.

Odikro of Asentem. I know the Plaintiffs in this case. I have a boundary with the Plaintiffs, the first boundary starts with the River Esuadai and the River Baymu and thence to a hill called Mboatsi. The stream Apropon is also one of my boundaries. These boundaries were made a very long time ago.

No. 20
Adua Nua
Ofori.
25th June,
1951.
Examina-
tion.
Cross-
examina-
tion.

XX. I know a village called Kokoso. I can't say whether or not there is a chief of that village. I know the town of Amanfupong, there is a Chief there; my land bounds with his. Kokoso is the next village to Amanfupong as one travels along the motor road. From Kokoso the road goes to Ofosuansa, this latter place is under me. The people of Kokoso are not my subjects. I do not know Asiadua. I know the stream Ochi. It goes through my town. I do not know the stream Esuakwo. 10

RE-X. Nil.

ASSESSOR : Nil.

No. 21
Owudu
Aseku
Brempong.
(recalled).
25th June,
1951.
Examina-
tion.

No. 21.

Owudu Aseku Brempong—recalled.

. 20

HYDE : In view of my amended Statement of Claim I wish to recall the 1st Plaintiff.

COURT : Permission granted.

P.1. Recalled—Re-sworn.

I have granted land to various tenants on the Ebusa or Tribute system. This is all part of the lands in dispute, these tenants have paid tribute to me for a very long time, since before the 1926 Judgment. Before 1926 I had six tenants but since then another 20 tenants have settled on the land. The tenants before 1926 were called, Aboa, Tei, Ninsin, Budu, Yamikye and Kobina Adu. Of the tenants taken on since 1926 I can only remember the names of seven, they are Kapen, Carpenter, Abokyi, Manso, Kwa Tawiah, Munko and Edumadzi. The first four tenants I mentioned are here to give evidence. Kokoso land belongs to my Stool. 30

XX. I first received tribute from the six people I first mentioned in 1924. I put these people on the land about 1922. No tribute is ever paid until the cocoa starts to bear. I can't say if any of these six people come from Achiase. These people were not put on the land by the Stool of Achiase. Carpenter is also called Egyir has not paid any tribute because his cocoa has not reached the harvesting stage. It was not on account of the Dufoh Judgment that I started to collect tribute. I have receipts for the tribute money I have received. This land is heavily timbered. This is the first time I have complained in Court about timber being taken from the land. I know the Achiase have been cutting timber for a number of years.

RE-X. I have given timber concessions to George Grant and Company and J. B. Apprey and M. R. Stein.

ASSESSOR : Nil.

No. 22.

Kweku Effah—recalled.

P.3. **KWEKU EFFAH.** Recalled—Re-sworn.

Before 1926 there were tenants on this land they were permitted to live there by the Chief of Aperade ; there were even 20 tenants on the land before 1926. I know Kwesi Kwakyi he is a tenant on this land he is here (this is he—man brought into Court and who gives his name as Kwesi Kwakyi). The Railway which passes through the land is on Aperade land.

XX. I have been sitting in Court since I last gave evidence, I was not here on the third day, the Wednesday.

RE-X. Nil.

ASSESSOR : Nil.

In the
Supreme
Court.

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Division.

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Evidence.

No. 21
Owudu
Aseku
Brempong
(recalled).
25th June,
1951.
continued

Cross-
examina-
tion—
Re-
examina-
tion.

No. 22
Kweku
Effah.
(recalled).
25th June,
1951.
Examina-
tion.

Cross-
examina-
tion.

In the
Supreme
Court.

Lands
Division.

Plaintiffs'
Evidence.

No. 23
Kwesi
Kwakyi.
25th June,
1951.
Examina-
tion.

Cross-
examina-
tion.

No. 24
Kofi Budu.
25th June,
1951.
Examina-
tion.

Cross-
examina-
tion.

No. 23.

Kwesi Kwakyi.

P.11. KWESI KWAKYI—s.a.r.b. (Fanti).

I live at Akim Swedru and am a Farmer. I farm on land belonging to the last witness who gave me permission about 23 years ago to farm on the land. I have eight farms. I pay tribute to the last witness. I have 20 sub-tenants. I have not been disturbed by anyone and have not paid tribute to the Defendant.

XX. I don't know all the land in dispute in this case.

RE-X. Nil.

ASSESSOR : Nil.

10

No. 24.

Kofi Budu.

P.12. KOFI BUDU—s.o.B. (Fanti).

Cocoa farmer living at Nsansa. I got my land from the 1st Plaintiff about 24 years ago. I have six farms on the land. About 2 years ago I received a letter from the Defendant's Solicitors and I gave you the letter to answer (this is the letter—tendered—no objection—admitted as Exhibit "C"). Before receiving "C" no one had questioned my right to be on the land. No action has been taken to eject me from the land. I pay tribute to the 1st Plaintiff.

XX. I am a native of Esiam. When the railway was started the Chief of Esiam obtained land for me. I can't say when the railway was built. I cannot say whether or not my Ohene went to the Chief of Achiasse to get this land for me. It is not correct that I was to rent free until the cocoa started to bear fruit. I now admit that I had not to pay tribute until the cocoa started to bear. It is not correct that I only started to pay tribute to the 1st Plaintiff 2 years ago, it was over 10 years ago. I do not know Baka (Baka brought into Court) no I don't know this man. Baka did not show me this land. My cocoa did not die at first. I have no tenancy with the Defendant. I started to harvest my cocoa after ten years. I am Plaintiff in a case against the Defendant.

RE-X. Nil.

ASSESSOR : I pay 1/3 of the crop to the 1st Plaintiff.

30

No. 25.**Kojo Aboa.**

P.13. KOJO ABOA—s.a.r.b. (Fanti).

Cocoa farmer living at Amanfupong. I am a tenant of the 1st Plaintiff and I pay tribute to him and have done so for 30 years. I have never been disturbed in my occupation of this land.

XX. I do not live in the village Nyanmakrom but my farm is near to Asrekwa. Nyamekrom is occupied by Achiase people. I was there before the railway was made. Achiase did not give me this land, but I have boundaries with Achiase people.

RE-X. Nil.

ASSESSOR : Nil.

In the
Supreme
Court.

Lands
Division.
Plaintiffs'
Evidence.

No. 25
Kojo Aboa.
25th June,
1951.
Examina-
tion.

Cross-
examina-
tion.

No. 26.**Kofi Otodor.**

P.14. KOFI OTODOR—s.o.B. (Fanti).

I live at Amanfupong and farm cocoa. I got my land from the 1st Plaintiff and I pay tribute to him. I have been on this land for 27 years, without anyone interfering with me until 2 years ago when the Defendants came and removed my cocoa. I have taken action against the Defendants.

XX. My farm is not near to Nyankrom but is near to Asiakwa. I know Ochi stream, my farm is not at the upper end of this stream. I do not know Ama Awotwi. Tentrí only farms near to me, no Achiase. Nyakrom I do not know, I have only heard the name. Asiakwa is in ruins and has been so for three years. My farm bounds with certain Achiase people, but I did not obtain the land from the Defendants. It was the first Plaintiff who gave it to me.

RE-X. Nil.

ASSESSOR : Nil.

30 HYDE : One remaining witness who is not available until to-morrow.
Adjourned to 9 a.m. 26th instant.

No. 26
Kofi
Otodor.
25th June,
1951.
Examina-
tion.

Cross-
examina-
tion.

(Intd.) T. A. D.
Judge.

In the
Supreme
Court.

No. 27.

Roger Van der Puije.

Lands
Division.

9th day of July, 1951.

Plaintiffs'
Evidence.

HYDE for Plaintiffs.

BENJAMIN, DANQUAH and ALAKIJA for Defendants.

No. 27
Roger
Van der
Puije.
9th July,
1951.
Examina-
tion.

NANA KWEKU EGYIR-GYEPI II—Assessor.

P.15. ROGER VAN DER PUIJE—s.o.B. (English).

Registrar, Land Court, Cape Coast. I produce a certified copy of the Judgment in the case Ohimba Abeina Egyai and another v. Odikro Dufoh—dated 19.12.26 (tendered—Benjamin I object again—9th Edition 10 Powell page 65—*Clifford v. Timms*).

COURT : For the reasons given previously I will admit this Judgment in evidence—marked Exhibit “D.”

XX. Nil.

PLAINTIFFS' CASE.

Defen-
dant's
Evidence.

Defendant's Evidence.

No. 28
Kojo
Amoafu.
9th July,
1951.
Examina-
tion.

No. 28.

Kojo Amoafu.

D.1. KOJO AMOAFU—s.o.B. (Fanti).

I am the Head of the Oyoko Family at Achiase and I am in charge 20 of all Achiase land. In this case I represent the Stool of Achiase. The land at Achiase belongs to the Defendant. Our people originally came from Juaso in Ashanti a long time ago when Owusu Boye was the Omanehene of Denkyira and first settled at Koransan ; later we moved to Beposo as there were so many deaths at Koransan. At Koransan three of our Chiefs died and were buried there. The first Chief at Beposo was Afori Awuakye. Tepa Yeboa was also a Chief of ours at Beposo. Later we moved from Beposo because of water shortage to “Tra-kwa,” there was an Akyiase tree there and a stream called Ahonton. This place was founded by a hunter called Okyere Attah. We did not obtain this place 30 from anyone, Tra-kwa means a free settlement. There were other settlements ; Eno, Nyanwan, Adakuma, Asantem, a small village called Oponsawa which is also called Osoroase. Amanfupong I also know

but it was destroyed before we arrived as the result of war, it means a place in ruins, its old name was Nyanwan. The people of Nyanwan originally came from Tekyiman in Ashanti. I know Kokofu it is near to Lake Bosumtwi and it was from there that the Aperades originally came. Kokofu means by the water. Nyanwan was destroyed by the Denkyiras' armies led by Ananse, Ofetu and Amankwa-Nwoma. Afori Awuakye was the Chief at Tra-kwa when the Denkyiras invaded the land. Tra-kwa is now known as Tarkwa. The Denkyira Army stayed at Tarkway-Achiase. The Denkyirahene was our overlord. Our people fought for the Denkyira and we won and as a consequence of this victory the Ohene of Achiase was given a war sword and some head gear as a special honour, a big stone was also placed in front of the Achiasehene's house, this stone is called Deebo. After the Denkyira war the people of Aperade were scattered. (The witness produce a very old sword which he states is the war sword he has referred to but as it is of importance to the Stool the sword is not tendered in evidence. The witness also produce a leopard skin cap which he states was given to his people by the Denkyira.) Some of the Aperade people settled at Achiase, they were all of the same clan so they asked the Ohene of Achiase for some place to settle and they were given land at Kyekyebon Kwam, forest land. The Aperades when clearing the virgin forest killed a big animal called "Siadeboa" so the place was called Aprede (meaning place of good luck as the siade boa is a good luck animal. It is not correct that this place is called Aperade because they swept there. When these people left Achiase they left behind two Stools. The present head of the Nyanwan-Eno Stool is Debra, the Head of the other Stool, Owusu is dead and no successor has been appointed. In the old days the Aperade Chief was made Gyasehene. Adukuma people also came to Achiase and settled there, later they returned to Adakuma; at Achiase now there are some Adakuma people such as Korankye he is the only important one of the Adakumas. It is not correct that Intim Jakari waged war against the Akim States in 1700. Intim Gyarkari waged the Feyiase war against the Ashantis because the Ashantis refused to serve Gyarkari, this was about 1700. The Ashantis won this Feyiase war and became a great power. Intim Gyarkari was captured and killed in this war. The Denkyiras had waged war in this place long before the Feyiase war, this war ruined the Denkyiras and made the Ashantis. My people fought the Ashantis several times but did not move from our land to seek shelter from them. At the moment Achiase serves the Paramount Stool of Akim Abuakwa. At the time we went to serve Akim Abuakwa the Ohene was a woman called Dokuwa, when we went to Akim Abuakwa the Aduasas who were under us went with us. The Aperades did not go with us to Akim Abuakwa but to Akim Swedru. The Akim Swedrus got their land from the Aduasas. The State is called Akim-Busume. The latest to arrive on the land was the Omanhene of Akim Kotoku,

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dant's
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tion—
continued

he was given land by the Osawuahene of Wenchi in Akim. It is not true to say that the Plaintiffs are the only Akims on the land. When the Aperades came on the land they came under the Stool of Busume and now claim to be Akims. Asesaku in Kokofu where the Aperades originally came from was not Akim land. It is not correct to say that the Achiase people migrated from Dwaso in Ashanti and applied to the Ohene of Eduasa for permission to live on a portion of the Plaintiffs' land. Tandoh Frempong was never a Chief of the Achiase. We were on this land long before the Feyiase War. We never acquired any land through Eduasa nor Nyankumasi. We had a chief called Darku Frem- 10
pong not Tandoh Frempong. We served the Omanhene of Akim Abuakwa when Darku Frempong was our Chief, this was about 100 years ago. Next Chief after Atta Kwesi was Otutu Aban; Darku Frempong succeeded this Otutu Aban. We had a Chief called Abadri, also called Darku II he was in the Jukwa War, under the Omanhene of Akim Abuakwa. I was born just after this war in 1874. My ancestors never agreed to pay an annual tribute to Aperade and we have never paid any such tribute. It is not correct to say that a Chief of Achiase had a son called Kwasi Annan who had dispute with the Plaintiff in 1879. At 20
Achiase there is a Basel Mission Church. In 1889 we granted land to this Mission and that is where the Church is now situate, this Mission is now known as a Presbyterian Mission. We have not secretly sold cedar trees or any other trees to one Donkor a Sawyer. It is true that we gave Donkor timber rights at a place called Dawumarkur. There is a lot of timber on this land and we have been cutting it for years. Dawumarkur was founded by an Achiase Chief, Darku Panin whose son was called Kwasi Amaning the latter is dead but his successor is still at this village. The first Plaintiff Korsah seized the trees cut by Donkor but the Police intervened and returned the boards to us. We have never paid to 30
Aperade in any shape or form, we pay tribute to the Omanhene of Akim Abuakwa. The Achiases were not a party to the 1926 case in which Dufoh was the Defendant; we applied to be made party but this application was refused by the Court. I know Kofi Odame an Achiase Chief, but on account of leprosy he was destooled some years before the 1926 case, over 20 years before the 1926 case. Odame gave evidence in the 1926 case but he was not authorised to do so by the Achiase people. Until the 1926 case I did not hear of the Plaintiff Korsah owning land in the area, he was Tufuhene at Saltpond in a different State from mine. According to Akim Abuakwa law that if a man is conquered and driven 40
from his land and cannot return and claim his land, it belongs to the conqueror. I contend that we have lived on this land from time immemorial. Where the 2nd Plaintiffs are now settled is land granted to them by us after the Denkyira War. We have also granted land to the U.A.C., about 30 years ago to build a store. Where the railway now runs the land was granted by the Omanhene of Akim Abuakwa as a free

grant. We have also granted land to the U.T.C. many years ago and also to the Agricultural Department in 1938, also to James Colledge, Cocoa Ltd., in order to build a saw-mill. I have many tenants who pay ebusa or tribute to me for using my land. I know Nyankumasi it is an Achiase town and was founded by an Achiase man called Annor Benin and his father was Koko Mase, who also came from Achiase. It is not true that the Achiases begged the Aperades for land on which to settle. Nyankumasi is now occupied by Achiases and is under that Stool. The Stool of Nyankumasi is at present kept at Achiase. Debra I know he is 10 from Nyankumasi but is at present at Achiase, he is the occupant of the Stool of Nyankumasi. Apart from the villages of Abrabo, Domiabra and Obuanfio the Plaintiffs have no villages on the land in dispute and these were all made after the 1926 Dufoh case. We had an old village at Obunpia before the Aperades came to the place. I accompanied the surveyor to this land and pointed out the boundaries to him, also Opanin Asanti a Stool Elder. The Achiase boundaries are as follows—Nkukuoso is the boundary with the Aperades; we told them they were not to go beyond the place, our boundary on the North is Eduasa lands on the South with Kokoso and Brakwa land. From Brakwa up to Achiase 20 town is all our land. We have a boundary with the Ewisa also on the North, at the moment we have a boundary dispute with them.

XX. I remember the Prempeh War I was grown up and was at the war as a carrier. I was then married and had four children. I am the caretaker of Achiase lands and the Head of the Stool family and I nominate the Chief for the Stool. I know the Achiase traditional history and what I have told the Court is correct. Before Odame the Chief was Darku II. Odame was on the Stool for a long time about 20 years. I instructed my Counsel regarding the traditional history of my Stool. From about the age of 10 years old you are instructed in the traditional 30 history if you are at all likely to ever occupy the Stool. Odame had reached full age when he was put on the Stool. Tradition never changes. Odame knew the family history. I heard of the 1926 case but I was not a party nor interested in the case. I can't say which land was then in dispute. I knew Anofi a linguist to the Stool of Achiase but he is now dead. I can't say if he swore to an affidavit in 1926 asking for the Defendants to be joined as a party to the proceedings. My evidence is correct as to the traditional history of the Achiases. I know Yoo Ewua, Mankrado of Achiase, I can't say whether or not he gave evidence in 1926 in the Dufoh case nor can I say whether or not Odame gave evidence 40 in the case, he was not a Chief at the time. I can't say whether or not Judge Hall heard evidence at Achiase village in 1926, the case was no concern of mine. The traditional history I have told you was not made up to deceive this Court. I knew a Kwesi Ampofo as sub-chief of Achiase and I can't say if he gave evidence in the 1926 case. There was a chief

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tion—
continued.

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Examina-
tion—
continued.

of Achiase in 1926 and was called Kwesi Darku. I don't know what the 1926 case decided. I do not know that certain inhabitants in this Colony are known as "Etsis" or original settlers and I can't say if the Plaintiffs are Etsis. I can only say that the Plaintiffs got scattered a long time ago when there was a war. When the Achiases migrated it is not true that they came to Eduasa first. The people of Nyankumasi do not pay tribute to the Plaintiffs. I know Yaw Duro he is from Achiase, he is now living at Nyankumasi. I know Kobina Ewusa, his mother married an Achiase man and bore a son. The Achiases are not claiming what doesn't belong to them, this is our property which we are claiming. It is true that the Plaintiffs are opposing the issue of a Con- 10
cession to James Colledge. When the Railway was constructed I can't say whether or not the Plaintiffs received compensation. The bound-
aries I have described are very ancient. The sword I produced in Court did not come from a refuse dump; the hat I produced was not made in England it is a leopard skin hat from this country.

RE-X. Nil.

ASSESSOR : Nil.

Adjourned to 9 a.m. 10th instant.

(Intd.) T. A. D. 20
J.

No. 29
Kojo
Boapim
10th July,
1951.
Examina-
tion.

No. 29.
Kojo Boapim.

10.7.51.

D.2. KOJO BOAPIM—s.a.r.b. (Fanti).

Ohene of Sawsi but I live near to Dunkwa in the Denkerahene State. My predecessor was Anansi who was the Twafohene of the Denkerahene State, in time of war he used to lead the Army, the Captain of the vanguard. I know that according to tradition Anansi used to fight in the Denkerahene Army, he fought 29 battles for the Denkerahene State, one of the battles 30
he fought was at Nyanwan. The history of this battle is that there was a chief called Otibrakese, the Denkerahene was the overlord and my predecessor sent two of his servants to see if any of the people in the Denkerahene State were posing as Chiefs. One of the servants was called Batamimonsaa and the other Okrakosi, they went to Nyawan and when the people of this place saw them their presence was reported to the Ohene of Otikroase and according to tradition one of these messengers was killed by the people of Nyanwan it was Batamimonsaa and this the other reported to my predecessor and in consequence of this report my

- predecessor got his men together and waged battle against the people of Nyanwan. This army made Achiase their headquarters, before this Achiase had been founded and the inhabitants were serving the Stool of Denkyira. Our people won the war and Otibrakese was captured and beheaded, and his skull is one of my stool ornaments. My predecessor sought and destroyed any of the Nyanwan's he could find, there were other battles at Asanteman, Eno, Dakuma and other places whose names I can't remember. The town of Nyanwan was utterly destroyed. The Achiase people took part in the war against the people of Nyanwan and as a result they were given as a reward a sword and a cap and made the Chief overlord of the villages in the vicinity of Nyanwan. A lucky stone, Dabon, was planted in front of the Achiase Chief's house as a monument and at which sacrifices were made during the annual festival. I have never seen this sword. I have one which is alleged to be similar to the Achiase sword. (Achiase sword produced in Court as before.) This sword is similar to mine except that the hook at the end of the blade has been eaten away with rust. (Cap also shown to witness.) This cap is a war cap and is similar to one which I have, it is made of leopard skin. I do not know where the Achiase people originally came from.
- 20 The Nyanwan war was fought at the time of Nana Owusu Bori I, I can't say when he reigned. This war was not fought in the *town* [*sic*] of the reign of Intim Gyakari, this latter was Boa Amponsam who had succeeded Owusu Bori I. It was Intim Gyakari who fought the Ashantis in the Feyiase war in which he was killed. The Feyiase war was in 1731 and the Achiases had settled where they are now long before the Nyanwan War, they assisted in the war. Nyanwan is now known as Amanfupong.

In the
Supreme
Court.

Lands
Division.

Defen-
dant's
Evidence.

No. 29
Kojo
Boapim.
10th July,
1951.
Examina-
tion—
continued

- XX. I know Aperade and Amanfupong. The present inhabitants of these two places migrated to these places from the Northern Territories where the Fantis migrated from, they were not original settlers, this tradition was given to me by my predecessor. What I mean is that the people of Nyanwan, now Amanfupong, migrated from Takyiman near to the Northern Territories and the Aperades from Kokofu in Ashanti. The war which destroyed Nyanwan was not waged by Intim Gyakari. I was subpoenaed to give evidence about one month ago, I have not refreshed my memory particularly but we are always reciting the old traditional history. I have been a chief for five years. I have not been told the name of the predecessor of the 1st Plaintiff, nor have I heard of Twum Amanfupong but I know the 1st Plaintiff. I know the Ewisa lands but I do not know their history and I do not know that they have a boundary with the 1st Plaintiff.

Cross-
examina-
tion.

RE-X. Nil.

ASSESSOR : Nil.

In the
Supreme
Court.

No. 30.

Okyir Mensah.

Lands
Division.

Defen-
dant's
Evidence.

No. 30
Okyir
Mensah.
10th July,
1951.

Examina-
tion.

Cross-
examina-
tion.

D.3. OKYIR MENSAH—s.o.B. (Fanti).

I live at Kokoso where I am Ohene. Attached to my Stool are the Kokoso lands, we form a boundary with Brokwa, Fosuansa and the 1st Plaintiff's land, Amanfupong and also the 2nd Plaintiff's. I know Achiase and the Chief, the Defendant, and I have a boundary with him also. My boundary with the Achiases is the stream called Ochi. The Defendant's land is on the main road from Saltpond towards the Akim side that is to say North of my land.

10

XX. It is not correct to say that we were given Kokoso land by the predecessor of the 1st Plaintiff. My people did not come from Eduboku we are original settlers of Kokoso lands and have been there since time immemorial. Our first Chief was Tufu Aban, he was not under Amanfupong. My town was not affected by the Denkyira War. From Saltpond you pass Kokoso village before reaching Amanfupong. After the Denkyira war the Amanfupong scattered and that is how I came to form a boundary with the Achiases.

RE-X. Nil.

ASSESSOR : Nil.

20

No. 31
Yaw Ofori.
10th July,
1951.
Examina-
tion.

No. 31.

Yaw Ofori.

D.4. YAW OFORI—s.o.B. (Fanti).

Ohene of Brakwa in Ajumaku State. I know the Defendant in this case, my Stool lands form a boundary with his lands at the Stream Bonwura (not in plan). I do not know a stream called Esuokow. This boundary I have mentioned is an ancient boundary. It was made in these circumstances—my Stool had a hunter who hunted at certain places, the Achiase also has a hunter and where they met formed the agreed boundary between the two Stools. I form a boundary with the Osurasu as well as the Achiase, the Osurasu is in the State of Akim Abuakwa as are the Defendants. I also have a boundary with the Kokoso a division in the Asikuma State. The present Ohene of Kokoso I do not know by name but I know him to see he was the last witness. I know the 1st Plaintiff and the 2nd Plaintiff; my Stool land does not form a boundary with the Plaintiff.

30

XX. I am a Fanti. My predecessors did not migrate from Akwamu. I am not living on a part of Amanfupong lands. It is not correct that Atta Bucku predecessor Bucku (identified in Court) granted land to my predecessors, the man I have just identified in Court is from Brakwa and is my subject. The ancestor of the 1st Plaintiff did not receive tribute from me in respect of our land. I know the Defendant has had a plan of the land made but I was not present at the survey and the boundary between me and the Defendants has not been demarcated, it is an indefinite boundary. This is not a fabrication that I have a
 10 boundary with the Defendants. The Stream I have mentioned is beyond the stream Ochi to the North of it but not beyond Amanfupong.

RE-X. My land is in the Ajumako State.

ASSESSOR : Nil.

In the
Supreme
Court.
—
Lands
Division.
—
Defen-
dant's
Evidence.
—
No. 31
Yaw
Ofori.
10th July,
1951—
continued
Cross-
examina-
tion.

No. 32.

Kojo Debra.

D.5. KOJO DEBRA—s.a.r.b. (Fanti).

Safuhene of Achiase and also the head of the Kono family. I know Nyankumasi it was founded according to tradition by Annor Benin, it was founded a long time ago but not so long ago as Achiase. Annor
 20 Benin was my predecessor and he went from Achiase and Nyankumasi. At the present time the inhabitants of Nyankumasi all come from Achiase and all farm cocoa and pay tribute to the Defendants.

XX. I do not know of any case over this land in 1926. I have heard of Dufoh a sub-chief of my Chief. I have lived at Achiase all my life but I never heard of the Dufoh case. I did not see any surveyor come to Achiase in 1925, I know Yaw Ewua Mankrado of Achiasi and I can't say if he gave evidence in the Dufoh case for Dufoh as I have never heard of this case. Nyankumasi is not on the 2nd Plaintiff's land but on the Defendants and the people do not pay tribute to Plaintiffs. I knew
 30 Chief Odami of Achiasi but I don't know of him giving evidence in 1926 at the Achiasi Rest House. I know Yaw Duro of Achiasi.

RE-X. Nil.

ASSESSOR : Nil.

No. 32
Kojo
Debra.
10th July,
1951.
Examina-
tion.

Cross-
examina-
tion.

In the
Supreme
Court.

No. 33.

Kwesi Bakaa.

Lands
Division.

D.6. KWESI BAKAA—s.a.r.b. (Fanti).

Defen-
dant's
Evidence.

Farmer living at Achiasi. I know the village of Domoako and that is where Donkor cut timber. I have a cocoa farm also at Domoako, this village belongs to Achiasi as someone from there founded the village. There are several farmers at this village, all belong to Achiasse; there are strangers with farms, people who farm for the Defendants on the tribute system; one is called Buanin, another Asumana and another called Nyamikye. I took the last two witnesses to the Defendants in order to get permission to work on this land, and I collect tribute from these two people for the Achiassehene. No one has disturbed these people on the land. I have been at my land at Domoako about 25—26 years. I was first on this land, I cleared the virgin forest. 10

No. 33
Kwesi
Bakaa:
10th July,
1951.
Examina-
tion.

Cross-
examina-
tion.

XX. Domoako was not founded by a man from Brakwa, I have never heard this. I heard of the Dufoh case in 1926, I was on the land before that case was heard. I know the 1st Plaintiff because he sent certain people to remove my cocoa. There are people at Domoako who are paying tribute to the Achiassehene.

RE-X. Nil.

20

ASSESSOR : Nil.

XX. By permission—

I have not a case in which the 1st Plaintiff is claiming £2,000 from me.

Adjourned to 11th instant at 9 a.m.

(Intd.) T. A. D.
J.

No. 34
Kwesi
Nduro.
11th July,
1951.
Examina-
tion.

No. 34.

Kwesi Nduro.

11.7.51.

As Before.

30

D.7. KWESI NDURO—s.o.k. (Fanti).

Cocoa farmer living at Achiasse and a native of Maadu in Ajumako State. My farm is at Jerusalem near to the source of the Subri River. Jerusalem belongs to the Defendant. I was the first person to make a farm there, I succeeded an uncle of mine who had cleared the virgin forest, his name was Kofi Ayipai. This forest was cleared about 40 years ago. No one has ever disturbed my occupation of this land. All this time I have been paying tribute to the Defendant. There are other

villages on the way to Achiase from Jerusalem and they all belong to the Defendant. I know the village of Kwesi Boadu it also belongs to the Defendant. Surapin village also belongs to the Defendant. I know the village of Oyame or Fawomaye it also belongs to the Defendant. In all these villages there are tenants who pay tribute to the Defendant.

In the
Supreme
Court.
—
Lands
Division.

XX. Maadu is my home town. I have been on this farm for 36 years. In 1926 I heard of the litigation in which Dufoh was the Defendant and I know that the case went against Dufoh. Jerusalem is not a recent village. I can't say why it is not marked on the plan made in 1926. I have farms at Jerusalem. I did not accompany the surveyor when he made his plan for the Defendant. There are four swish huts at Jerusalem. Members of my family live with me. I was at Maadu when the surveyor made his plan this year. There are four swish huts at Jerusalem, but we only go there for farming. I pass Ogomaa before I get to my farm at this village there are more than 30 houses and people are living there now, more than 40 people. I was at this village about 3 days ago. There is only one village known as Ogomaa and it was in existence 30 years ago.

Defen-
dant's
Evidence.
—
No. 34
Kwesi
Nduro.
11th July,
1951.
Examina-
tion—
continued.
Cross-
examina-
tion.

RE-X. Nil.

20 ASSESSOR : Nil.

To COURT : My uncle was a Christian.

No. 35.

Theophilus Mensah.

D.8. THEOPHILUS MENSAH—s.o.B. (English).

30 Licensed Surveyor, Cape Coast. I have made a survey of the land in dispute and have made this plan (tendered—no objection, plan admitted Exhibit "E"). This man (Kojo Amoafu—D.1 identified) and others accompanied me when I surveyed the land and they pointed out the boundaries and natural features all of which are shown on the plan. I notified both Plaintiffs that I was going to survey the land but neither of them attended the survey. The portion edged in red shows the land in dispute. I see Exhibit "A" Oguni village is shown there this is the small village which is shown on my plan "E" as Ogomaa.

No. 35
Theophilus
Mensah.
11th July,
1951.
Examina-
tion.

XX. Kofi Amoafu pointed out the villages to me and gave me the names of the villages, there was another man with him called Opanin. I went to the village of Jerusalem, it had three huts two swish and one bamboo. I did not see any people at this village. Ogomaa village

Cross-
examina-
tion.

In the
Supreme
Court.

Lands
Division.

Defen-
dant's
Evidence.

No. 35
Theophilus
Mensah.
11th July,
1951.
Cross-
examina-
tion—
continued.

had about ten huts, I can't remember exactly. I did not see people living at this village but I saw signs of habitation. I also see Ogomaa in ruins on my plan, I can't say which of the Ogomaa shown on "E" approximates to Oguni shown on "A." I did notify the Plaintiff to attend the survey but the Plaintiffs said they had no boundary with the Defendants and they would not therefore appear. I received this information in writing from you, the letter was addressed to Donkor who is my partner. The Brakwas were not present at the survey nor the Kokoso people, nor did the Ewusa nor the Eduasa people appear. Nyan-kumasi is a modern big sized village.

10

RE-X. Nil.

ASSESSOR : Nil.

DEFENDANT'S CASE.

No. 36
Closing
Speech for
Defence.
11th July,
1951.

No. 36.

Closing Speech for Defence.

BENJAMIN : Main legal point—paragraphs 9 and 10 Statement of Claim estoppel by law and by conduct. 1926 Judgment does not operate as estoppel—Defendants, Achiasas, never slept on their rights applied to be made parties but over-ruled—Hall, J. said his Judgment did not affect rights of Defendants page 172 Judgment. No evidence to show 20 Achiasas and Dufoh had community of interests, in fact they were not identical interests. Page 409 Selected Judgments 1926—9 and page 414. Judgment in personam. Clifford v. Timms—Powel—Evidence page 65. Plaintiffs claim land but not same claim as in 1926. Defendant claims only a small portion of the land—rem. not the same. Merits of case—Co-Plaintiff must show that they have a community of interest. Sarbah—2nd Edition page 33. Plaintiffs claiming as Stool land and therefore come from a family—If two Stools not the same no community of interest no allegation common grant or common source—claims from remote 30 ancestors. Form in which action brought Plaintiffs claim £500 damages for mesne profits and that means the Defendants are in possession and Plaintiffs have not pleaded possession nor acts of ownership. Proper action if any one for ejection according to native customary law—page 74 Sarbah. Grantees as their successors. No evidence produced by Plaintiffs whereby Court could hold in their favour. *Facts* : Plaintiffs can only succeed on their own case and burden of proof lies on Plaintiff. Must prove boundaries, acts of ownership and original title. Tradition

supports case for Defendants. Tradition must be supported by acts of ownership—Plaintiffs in possession of 3 small villages only on western boundary and this is an encroachment on Achiase lands. As Defendant in possession a superior title must be proved. Plaintiffs have not proved boundaries. No Chief called from Akim Abuakwa to show the boundaries between Plaintiff and this State. Brakwa and Kokoso—boundaries with Defendants and not with the Plaintiffs. Neither belong to Achiase different states. Kokoso same state as 1st Plaintiff. Privy Council Judgment 1874—1928 page 109. Defendants long undisputed possession and have granted lands to Basel Mission, U.T.C. etc. and collecting tribute from people on the land—this destroys the Plaintiffs' history of tradition by these acts of ownership and tradition. Paragraph 7 Statement of Claim not proved.

In the
Supreme
Court.

Lands
Division.

No. 36
Closing
Speech for
Defence.
11th July,
1951—
continued

No. 37.

Plaintiffs' Reply.

HYDE: Estoppel—paragraph 9 Statement of Claim, Dufoh a sub-chief of the Defendant in present case. Conduct of Defendants page 936—Halsbury's Laws—Vol. 13 para. 560—"acquiescence inferred from Silence." Odami Chief of Achiase tried to help Dufoh to succeed—
20 Dufoh really fighting for Stool of Achiase. Achiases conduct such in 1926 that whatever the fate of Dufoh they shared his fate. Achiases did not institute any action to claim the land, sleeping on their rights, if any all these years, and using land they had no right to use. Interest of Plaintiffs identical—both own land together and action properly brought therefor. Sarbah not in point in this case. Powell page 65—not same—as local case. Full Court 1926—9. Mesne profits—always claimed in an action for declaration of title. Boundaries proved by Plaintiffs' adjoining land owners—Eduasa and Ewusa, etc. Can't expect a man who owns a lot of land to discover all the trespasses taking
30 place. Plan Exhibit "A"—Plaintiffs been in possession without any disturbance until 1926—Dufoh. Akim Abuakwa not necessary to call because boundaries with Surassi and this subservient to Abuakwa and therefore whatever Surassi owns is also owned by Akim Abuakwa. Surassi not called by Defendants. Plan of Defendants not of any help. Defendants trying to grab as much land as possible. Amended Statement of Claim—Plaintiffs have exercised acts of ownership—small villages hidden in forest. Why do Nyankumasi pay tribute to Plaintiffs? Such damages as Court thinks fit.

No. 37
Plaintiffs'
Reply.
11th July,
1951.

Assessor asks for time to consider the matter.

40 COURT: Assessor given until 18th instant to express his opinion.

(Intd.) T. A. D.

J.

In the
Supreme
Court.

Lands
Division.

No. 38
Judgment.
11th
August,
1951.
Dennison
J.

No. 38.
Judgment.

11th August 1951.

IN THE SUPREME COURT OF THE GOLD COAST, LANDS DIVISION, CAPE
COAST.

Saturday, the 11th day of August, 1951.

Before Mr. Justice DENNISON.

Transferred Suit No. 12/1949.

NANA OWUDU ASEKU BREMPONG II, alias
ALBERT ROBERTSON MICAH KORSAH, and
NANA AGYEIKU AFARI, Ohene of Aperade for
themselves and on behalf of their respective Stools ... *Plaintiffs*

10

v.
NANA DARKU FREMPONG II, Ohene of Tarkwa
Achiase in the Akim Abuakwa State for himself and on
behalf of the Stool of Tarkwa Achiase and people... ... *Defendant.*

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

“ The Plaintiffs’ claim is for a Declaration of Title to all
that piece or parcel of land commonly known and called Aman-
fupong and Aperade Stool land situate in the Western Akim 20
District and bounded on the North by lands belonging to the
Stools of Eduasa Ewisa respectively on the South by lands
belonging to the Stools of Wurakessi Jambra and Asantem
respectively on the East by lands belonging to the Plaintiffs’
Stools and Surassi Stool respectively and on the West by
Akenkensu Stream and Wurakessi Stool land.

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

The land claimed is the same as that the same Plaintiffs claimed
from Odikro Kojo Dufoh in a case tried and determined in 1926 by, as
he then was, Hall, J. The Plaintiffs in paragraph 9 of their Statement 30
of Claim have pleaded that the present Defendants are estopped by reason
of the judgment of this said case from contesting the Plaintiffs’ title,
especially having regard to the fact that Dufoh was a sub-chief of the
present Defendants. After argument I admitted this judgment in
evidence, my reasons for doing so were that the said judgment being a
judgment in personam would, on the disclosed facts, bind the Defendants
if they had not taken part in the proceedings as it affected their interests,
and they were aware of the suit. However in 1926 the Defendants did
endeavour to be joined as Co-Defendants, their application was refused
on the grounds that they were tardy in making the application. In his 40
Judgment Hall, J. was at pains to point out that the Achiases, the
Defendants, were in a position to take action if they so desired—*vide*

pages 169 and 172 of the said judgment in the Record of Appeal in the 1926 case—in view of the Defendants' attempted joinder and this latter dictum I agree that this judgment does not in itself act as an estoppel against the Defendants.

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

20 The Assessor gave the following considered opinion :—

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

My opinion in this case is that according to the Plaintiffs' claim it has been proved by the Defendant that his predecessors came and settled at the place called Komisa but owing to ravaging deaths removed to a place called Beposu and from there they moved to Okyi tree, which was named Trakwa Achiase.

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

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

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

I refer to page 57 of Sarbah 2nd Edition clauses 1 and 2.

Therefore Plaintiffs have no claim whatsoever against the Defendants.”

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Supreme
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continued

In the
Supreme
Court.

Lands
Division.

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Judgment.
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August,
1951.
Dennison
J.—
continued

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

From a careful consideration of the evidence as a whole it has been established that both parties are in actual possession of parts of the area in dispute. The Plaintiffs in fact admit this by claiming mesne profits from the Defendants. Also in this regard the Defendants have proved to my satisfaction that they have, and I consider in good faith whether 10 rightly or wrongly, made grants of land to various concerns, including the Basel Mission, in the past, I accept the evidence of the 1st witness for the Defence, Kojo Amofu with regard to these grants. The only opposition made by the Plaintiffs in respect of these various grants is that which concerns the issue of a Concession to Messrs. James Colledge & Co. Ltd., but as against this the 1st Plaintiff, when recalled, admitted that the Defendants had been cutting timber on this land for a number of years ; this supports the evidence for the Defendant when he stated they had been cutting timber for a number of years on the land. This evidence standing alone would tend to support the Defendant's case— 20 see *Rosa Anna Miller v. Kwadjoe Kwayisi* 1 W.A.C.A. at page 7—there are, however, other matters to be taken into consideration and with which I will deal later.

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

The Plaintiffs gave as a reason for not attending the survey made by Mr. Mensah that as they had no boundary with the Defendants it was not necessary for them to attend ; as this is the very point in issue 30 I find the Plaintiffs attitude unreasonable on this point, but no doubt they acted upon advice which I can only say I consider was ill advised. It is of the greatest assistance to the Court trying these cases if both parties are present when a Surveyor is making a plan of the area in dispute, if the claims of all interested parties appear on the same plan it makes the issue simpler inasmuch as it can be seen at a glance what is claimed by each party to the suit. In this suit three plans are in evidence and somewhat difficult to reconcile in various matters such as the manner in which various place names are spelt, the addition of villages and the omission of others. 40

In all suits similar to this a lot of evidence of traditional history is led by both parties, most of this is of necessity hearsay and I would not care to have to decide a case on such evidence. For example a witness for the Plaintiffs, P 6—Kojo Nkrumah, who was aged about

85 years old, stated that this land was given to the Defendants as a free gift, were this to be accepted on its face value it would weaken, if not destroy, the Plaintiffs' case; again the 5th witness for the Plaintiffs stated he "served the Defendants." Cases such as this have long been a bone of contention in this Province, and with the upward trend in the price of cocoa and timber they are increasing in numbers at a rapid rate. Since this suit started other parties have filed a suit which affects part of this same land. In the absence of any law relating to Prescription or Limitation there appears to be no finality to this type
 10 of litigation.

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

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

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

The Assessor has based his opinion principally on the evidence of traditional history and the rights of the Conquerors. My disagreement with his views in no way reflects on his appreciation of this history. It is not to be expected that the Assessor would be aware of the decisions of the West African Court of Appeal regarding people with rights to land acting timeously. By reason of the two cases filed by the Plaintiffs in respect of this land, and having regard to the fact that the Defendants have never sought a declaration of title, I am satisfied that of the two parties it is the Plaintiff only who can be said to have acted timeously
 40 in asserting their rights, this being so the Plaintiffs are entitled to the declaration sought and I so order.

The evidence as to loss of mesne profits is not supported by any independent evidence, where a large amount of money is claimed I consider the claim should be supported by such evidence, no such evidence

In the
 Supreme
 Court.
 ———
 Lands
 Division.
 ———
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continued

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Supreme
Court.

Lands
Division.

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J.—
continued

In the
West
African
Court of
Appeal.

No. 39
Notice of
Appeal.
15th
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1951.

having been produced I award the Plaintiffs the nominal sum of £5. Plaintiffs to have the costs of this action, Counsel's costs assessed at 60 guineas remaining costs to be taxed.

(Sgd.) T. A. DENNISON,
Judge.

IN THE WEST AFRICAN COURT OF APPEAL.

No. 39.

Notice of Appeal.

TAKE NOTICE that the Defendant being dissatisfied with the Decision of the Land Court, Cape Coast dated the 11th day of August, 1951 doth hereby appeal to the West African Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

And the Appellant further states that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

2. The Appeal is against the whole decision.
3. Grounds of Appeal.

(1) Because the Judgment is against the weight of evidence.

(2) Because the trial Judge was wrong in holding as he did, that the Plaintiffs were and are in effective possession of the land in dispute herein. 20

(3) Because the trial Judge wrongly disregarded or ignored the evidence of tradition adduced on behalf of the Defendant herein and also wrongly ignored the findings of the Assessor in favour of the Defendant herein in respect of the traditional evidence as to how the Defendant and/or his predecessors came on the land in dispute herein.

(4) Because the trial Judge erred in law in not directing his mind to the evidence of tradition adduced by the parties herein. 30

(5) Because the Assessor having found in favour of the Defendant as to tradition and the trial Judge having also found that the Defendant and/or his predecessors and people had been in effective and long undisturbed possession of the land in dispute herein, judgment ought to have been entered in favour of the Defendant.

(6) Because the learned trial Judge did not give due consideration to the principle of law that in an action for a declaration of title a Plaintiff could only succeed on the strength of his own case and not on the weakness of the case of the Defence.

In the
West
African
Court of
Appeal.

(7) Because the Plaintiffs failed to prove their boundaries to the land in dispute or establish acts of ownership in respect thereto.

No. 39
Notice of
Appeal.

10 (8) Because the Judgment of His Honour Mr. Justice Hall delivered on or about the 19th day of December, 1926 in the suit entitled *Ohimba Abina Egyir etc. of Aperade and R. M. Korsah of Saltpond* versus *Odikro Kojo Dufoh* is *res inter alios acta* and does not bind the Defendant and/or his predecessors who were no parties to it.

15th
August,
1951.
continued

(9) Because the trial Judge having found as a fact that the Defendant, his predecessors and people had been in effective possession of the land in dispute was wrong in applying the principle of laches or delay in respect to their claim to the land in dispute herein.

20 (10) Because the trial Judge without any accountable reasons ignored and/or differed from the opinion of the Assessor who is acquainted with and well versed in matters affecting Native Customary law and usage.

(11) Because the trial Judge having found that the Plaintiffs are also guilty of laches should not have made the declaration of title as he did in their favour.

4. Relief Sought :

The Judgment to be set aside or reversed.

5. Persons to be served :

30 Nana Owudu Aseku Berempong II alias Albert Robertson Micah Korsah, Ohene of Amanfupong and Nana Agyeiku Afari, Ohene of Aperade for themselves and on behalf of their respective Stools.

Dated at Cape Coast this 15th day of August, 1951.

(Sgd.) C. F. HAYFRON BENJAMIN,
Solicitor for Defendant.

To the Registrar, West African Court of Appeal, Accra,
And to the Plaintiffs-Respondents, Nana Owudu Aseku Brempong II
alias Albert Robertson Micah Korsah, Ohene of Amanfupong and Nana
40 Agyeiku Afari, Ohene of Aperade their Agent or Solicitor.

In the
West
African
Court
of Appeal.

No. 40.

Arguments of Counsel on Appeal.

3.1.52.

No. 40
Argument
of
Counsel.
Mr.
Bossman
for
Appellant.
3rd
January,
1952.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION.

CORAM FOSTER SUTTON, P., COUSSEY and MANYO PLANGE, JJ.

39/51.

NANA OWUDU ASEKU BREMPONG II
etc. and another *Plaintiffs-Respondents*

v.

NANA DARKU FREMPONG II etc. .. *Defendant-Appellant.* 10

Mr. BENJAMIN, Dr. DANQUAH and Mr. BOSSMAN for Defendant-Appellant.

Mr. BANNERMAN-HYDE for Plaintiffs-Respondents.

BENJAMIN : Bossman is going to open the appeal.

BOSSMAN : Deals with facts—refers to Plan—Exhibit “ B ”—page 43 of Record—page 44 of Record—paragraph 3.

Pleadings pages 6—12—The effect was that appellants say that they were on land long before invasion—and they were overlords over Plaintiffs Respondents for a number of years—It is untrue that we occupied land with permission of Respondents—They occupied it with our permission. 20

The learned trial Judge does not in so many words reject the traditional evidence of either side.

N.B.—The Assessor who sat with him accepted our evidence and expressed the opinion that judgment should be given in our favour.

Approach of Judge as indicated on page 45—shows that he approached position on wrong basis. Question here is not whether party acted timeously—but has he discharged onus of proof.

Judge—Should have said burden is on Plaintiff has he in fact discharged it.

Ado v. Wusu W.A.C.A. Volume 4—page 96—at page 100—Judge was wrong in holding that those principles apply. The law is—I submit correctly stated in *J. M. Kodilinye v. Mbanefo Odu*, W.A.C.A. Volume 2 page 336—reads from foot of page 337.

In the West African Court of Appeal.

N.B.—Reads from last paragraph on page 67—Judge finds that they have been in possession and made grants.

No. 40 Arguments of Counsel Mr.

Submit—Judge approached case from completely wrong angle.

Bossman for Appellant.

We call upon Bannerman-Hyde.

10 BANNERMAN-HYDE : What weighed with Judge was the action instituted in 1925.

3rd January, 1952—continued.

Note—See second paragraph of Judgment.

COURT : Does principle of acting timeously apply in a case such as this—when they are not claiming from the same *root of title*.

Mr. Bannerman-Hyde for Respondents.

Kuma v. Kuma—W.A.C.A. Volume 5 page 4.

3rd January, 1952.

3.1.52.

C. A. V.
S. F. S.
P.

We desire to hear Counsel on question as to whether in this case a new trial should be ordered.

20 3.1.52.

S. F. S.
P.

Court resumes 2 p.m., 3.1.52.

BANNERMAN-HYDE : Submits there was evidence in Plaintiffs' case upon which trial Judge could have made a declaration as to his ownership of the land in dispute.

COURT refers him to paragraph 7 of Statement of Claim pages 4—6.

We do not call upon Benjamin.

30 3.1.52.

C. A. V.
S. F. S.
P.

In the
West
African
Court of
Appeal.

No. 41.
Judgment.

11th January, 1952.

CORAM FOSTER-SUTTON, P., COUSSEY and MANYO-PLANGE, JJ.

No. 41
Judgment.
11th
January,
1952.

Civil Appeal
No. 39/51.

NANA OWUDU ASEKU BREMPONG II,
alias ALBERT ROBERTSON MICAH KOR-
SAH, and NANA AGYEIKU AFARI, Ohene
of Aperade for themselves and on behalf of
their respective Stools.. .. *Plaintiffs-Respondents*

10

v.

NANA DARKU FREMPONG II, Ohene
of Tarkwa Achiase in the Akim Abuakwa
State for himself and on behalf of the Stool of
Tarkwa Achiase and people *Defendant-Appellant.*

JUDGMENT.

Foster-
Sutton, P.

FOSTER-SUTTON, P. : The plaintiffs-respondents in this case claimed for a " Declaration of Title " to land which is commonly known as Aman-fupong and Aperade Stool land, situated in the Western Akim District, 20 Cape Coast, and £500 0s. 0d. damages for mesne profits.

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

30

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

" The Court of Appeal for Western Africa have in many cases laid it down that a person with a right or interest in land must act timeously ; I refer especially to the case of *Nchirahene Kojo Addo v. Buoyemhene Kwadwo Wusu* in 4 W.A.C.A., page 96 and the case therein referred to at page

“ 100. I intend to approach this case, as I have done in other similar cases, from this very equitable proposition of the law. Litigants who let others occupy and improve their land and take no account until the value of the produce of the land has risen, as have the prices of cocoa and timber in this Colony, can expect no sympathy from this Court.

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

He concluded his Judgment by saying :

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

And he awarded the respondents a nominal sum of £5 in respect of their claim for mesne profits.

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

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

40 “ The onus lies on the plaintiff to satisfy the Court that he is entitled on the evidence brought by him to a declaration of title. The plaintiff in this case must rely on the strength of his own case and not on the weakness of the defendant’s case. If this onus is not discharged, the weakness of the defendant’s case will not help him and the proper judgment is for the defendant. Such a judgment decrees no title to the defendant, he not having sought the declaration. So if the whole evidence in the case be conflicting and somewhat confused, and there

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continued.

“ is little to choose between the rival traditional stories the
“ plaintiff fails in the decree he seeks, and judgment must be
“ entered for the defendant.”

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

10

I agree with the submission made by Counsel for the appellants that the proper test to apply in a case such as this is that laid down in the Judgment of Webber, C. J., to which I have already referred. Applying that test I am of the opinion that the respondents signally failed to discharge the onus which was upon them. That being so it follows that, in my view, this appeal should be allowed and the Judgment of the Court below be set aside. I would fix the costs of the appeal at £42 7s. 6d.

(Sgd.) S. FOSTER SUTTON.

Coussey J. COUSSEY, J. : I concur.

(Sgd.) J. HENLEY COUSSEY. 20

Manyo-
Plange J. MANYO-PLANGE, J. : I concur.

(Sgd.) MANYO-PLANGE.

No. 42.

No. 42
Court
Notes of
Order
granting
final
leave to
appeal
to Her
Majesty
in Council.
26th
June,
1952.

Court Notes of Order granting final leave to appeal to Her Majesty in Council.

26th June, 1952.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION.

CORAM FOSTER SUTTON, P., COUSSEY, J. A., and WINDSOR-AUBREY, J.

Motion :

(12) NANA OWUDU ASEKU BREMPONG II &c.

30

v.

NANA DARKU FREMPONG &c.

Motion for final leave to appeal to Privy Council.

Mr. BANNERMAN-HYDE and Mr. LOKKO for Appellants.

BANNERMAN-HYDE moves.

Order in terms of motion.

(Intd.) S. F. S.
P.

26.6.52.

No. 43.

Order of Her Majesty in Council reviving the proceedings.

L S.

AT THE COURT AT BUCKINGHAM PALACE.

The 1st day of February, 1955

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT
 LORD PRIVY SEAL
 MARQUESS OF READING
 MR. PEAKE

MR. SELWYN LLOYD
 MR. MILLIGAN
 MR. BIRCH

10

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 11th day of January 1955 in the words following, viz. :—

20

“ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Nana Owudu Aseku Brempong III Ohene of Amanfupong and Nana Otsibu Ababio II Ohene of Aperade in the matter of an Appeal from the West African Court of Appeal (Gold Coast Session) between Nana Owudu Aseku Brempong II alias Albert Robertson Micah Korsah (since deceased) and Nana Agyeiku Afari Ohene of Aperade for themselves and on behalf of their respective Stools (Plaintiffs) Appellants and Nana Darku Frempong II Ohene of Tarkwa Achiase in the Akim Abuakwa State for himself and on behalf of the Stool of Tarkwa Achiase and people (Defendant) Respondent (Privy Council Appeal No. 24 of 1953) setting forth : that the above Appeal is pending before Your Majesty in Council : that the first above named Appellant has died as appears from a Supplementary Record which has arrived at the Privy Council Office from which it also appears that by an Order of the said Court of Appeal dated the 15th March 1954 it was declared that Linguist Kofi Nyarko was the proper person to be substituted on the Record in the place of the deceased first Appellant : that from a further Supplementary Record which has arrived at the Privy Council Office it appears that by a further Order of the said Court of Appeal dated the 8th November 1954 it was further declared that by reason of a change of status of the Linguist Kofi Nyarko

30

In the
 Privy
 Council.

—
 No. 43
 Order
 of Her
 Majesty
 in Council
 reviving
 the pro-
 ceedings
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Order
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Majesty
in Council
reviving
the pro-
ceedings
1st
February,
1955—
continued.

and the second Appellant Nana Agyeiku Afari (namely the election and installation of Nana Owudu Aseku Brempong III as Ohene of Amanfupong in place of the original first Appellant and of Nana Otsibu Ababio II as Ohene of Aperade in place of the second Appellant who has abdicated) the said Nana Owudu Aseku Brempong III and Nana Otsibu Ababio II were the proper persons to be substituted on the Record in their place : And humbly praying that Nana Owudu Aseku Brempong III Ohene of Amanfupong may be substituted for the first deceased Appellant and Nana Otsibu Ababio II Ohene of 10 Aperade may be substituted for the second Appellant who has abdicated and that the Appeal may be revived accordingly :

“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty’s said Order in Council have taken the humble Petition into consideration and the Solicitors for the Respondent having signified in writing their consent to the prayer thereof Their Lordships do this day agree humbly to report to Your Majesty as their opinion that Nana Owudu Aseku Brempong III Ohene of Amanfupong ought to be substituted in place of Nana Owudu Aseku Brempong II alias Albert Robertson Micah Korsah and 20 Nana Otsibu Ababio II Ohene of Aperade in place of Nana Agyeiku Afari Ohene of Aperade and that this Appeal ought to stand revived accordingly.”

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of the Gold Coast for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly. 30

W. G. AGNEW.

EXHIBITS.

“ D ”. Judgment in Action Egyir and Another v. Dufoh.
(Plaintiffs' Document.)

AT A DIVISIONAL COURT HELD AT CAPE COAST ON MONDAY THE 19TH
DAY OF NOVEMBER 1926 Before His Honour Mr. Justice ROGER EVANS
HALL, Senior Puisne Judge.

10 BETWEEN OHIMBA ABINA EGYIR of Aprade and
ROBERT MARMADUKE KORSAH of
Saltpond for themselves and on behalf of the
Oman of Aprade and other descendants of the
former Oman of Amanfupong *Plaintiffs*

AND

ODIKRO KODJO DUFOH for and on behalf
of himself and the members of his family .. *Defendant.*

JUDGMENT.

The Writ of Summons in this case originally reads as follows :—

“ OHIMBA ABINA EGYIR of Aprade for herself and
on behalf of the Oman of Aprade *Plaintiff*

v.

20 “ ODIKRO KODJO DUFOH *Defendant.*

“ The Plaintiff as the Ohinba of Aprade for herself and on
“ behalf of the Oman of Aprade aforesaid claims a declaration
“ of title to all that piece or parcel of land situate in Western
“ Akim and bounded on the North by lands belonging to the
“ Stools of Eduasa and Ewusa on the South by lands belonging
“ to the Stools of Wurakessi, Jambra and Asentem on the East
“ by lands belonging to the Stools of Amanfupong and Surasi
“ and on the West by Akinkwasu stream and Wurakessi Stool
“ lands.”

30 At the outset of the case the words “ for and on behalf of himself
and the members of his family ” were added after the words “ Odikro
Kodjo Dufoh ” in the Title on application by Counsel for Plaintiff, Counsel
for Defendant not objecting.

Plaintiffs'
Exhibits.
Exhibit
“ D.”
Judgment
in Action
Egyir and
Another v.
Dufoh.
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1926.

Plaintiffs' Exhibits.
 Exhibit "D."
 Judgment in Action . Egyir and Another v. Dufoh. 19th November, 1926—
continued.

At a later stage Mr. R. M. Korsah was joined as Co-Plaintiff (I will deal with the question of joinder later) and the Writ of Summons accordingly amended to read as follows :—

“ OHINBA ABINA EGYIR of Aprade and ROBERT
 “ MARMADUKE KORSAH of Saltpond for them-
 “ selves and on behalf of the Oman of Aprade and
 “ other descendants of the former Oman of Aman-
 “ fupong *Plaintiffs*

v.

“ ODIKRO KODJO DUFOH for and on behalf of
 “ himself and the members of his family *Defendant.*” 10

The Plaintiffs the Ohimba of Aprade and Robert Marmaduke Korsah of Saltpond for themselves and on behalf of the Oman of Aprade aforesaid and other descendants of the former Oman of Amanfupong claim a declaration of title to all that piece or parcel of land situate in Western Akim commonly known as Aprade lands and bounded on the North by lands belonging to the Stools of Eduasa, and Ewusas on the South by lands belonging to the Stools of Wurakessi, Jambra and Asentem and on the East bylands belonging to the Plaintiffs and the Stool of Surasi and on the West by Akinkawsu Stream and Wurakessi Stool lands. 20

This case was retained by me inasmuch as the judgment herein will decide the boundaries between two paramount Stools namely, that of Omanhin of Akim Busumi and the Omanhin of Akim Abuakwa. This being so there was no Native Tribunal competent to hear the case.

I should state here for the sake of clarity that there was a previous case between the original parties with respect to the same subject matter but inasmuch as a certain step had been taken in the action prior to retention by the Court which was of doubtful legality owing to the fact of non-retention, it was thought advisable to discontinue that action with liberty to bring a fresh action which said action is now being dealt with. 30

The Court spent two days in inspecting the area in dispute and has taken a mass of evidence.

Before however I deal with the evidence I will deal with the question of Joinder above referred to and also the position of the Akyeases in this case.

Ewusu was the Representative of the Ohinba in this case and he at once said the land belonged to the Ohin of Aprade and the Ohin of

Amanfupong, that Ampah Korsah was Ohin of Amanfupong and that in the old days Aprade was under Amanfupong. In cross-examination he said: "Aprade land belongs to Aprade and Amanfupong . . . This land about which I am fighting belongs to Amanfupong and me. I've informed Amanfupong of this Action and if I claim it, I claim it for the two of us. He is with me in fighting this case. . . . I say I own Aprade land with Ampah Korsah, i.e. area in dispute is part of land owned by Aprade and Amanfupong (Ampah Korsah's ancestors)" etc., etc.

Plaintiffs' Exhibits.

Exhibit "D."

Judgment in Action Egyir and Another v. Dufoh.

19th November, 1926—*continued.*

10 Now prior to Joinder Mr. Korsah was called as a witness and it was during his evidence that the question of joinder actually cropped up. He said that Aprade lands were not separate from Amanfupong and that the actual ownership of all the land in dispute is vested in him as Head of the Kwana Family, that at the time of the Jakari War about 1700—1731 Aprade was under Amanfupong and that after that War Aprade became caretakers of the land in the North, the Royal family of Amanfupong having settled at Saltpond. He went on, "Land in South including village of Amanfupong is in my hands as head of Family. Since I am Head of family Aprades consult me re this land . . . Where Akyeases live now is *owned* by Aprade—Aprade lands are not separate
20 from Amanfupong. In ancient times when there was an Omanhin land belonged to Omanhin and royal family." After this evidence he was joined as Co-Plaintiff and then the Court found it necessary to call expert evidence on the question how far it was necessary for consent to be obtained from the members of the family before a Head of family sued. The expert evidence, I think, made it quite clear that the family could ratify the Head's act subsequently and I am satisfied with Mr. Korsah's evidence on the point and further as a matter of fact I don't quite see how in any case native law could come in on a question of joinder in view of the English rules on the subject.

30 On the question of the position of the two Plaintiffs in this case, Counsel for Defendant has argued strenuously but I agree with Counsel for Plaintiffs that the evidence of Ewusu and Mr. Korsah must be read generally together and not too closely. I also think that the following from the mouths of the experts clears the position.

Chief Yebua was asked:—

40 "Supposing an Omanhin e.g. of Mansu owned whole of Mansu Division and his sub-chief who also had interest lived in place e.g. Assuantsi the sub-chief belonging to different family to Omanhin but whole Oman *owing* [*sic*] land in common, could not sub-chief and Omanhin bring action together to protect the land?"

To which he answered in the affirmative.

Plaintiffs' Exhibits. Mr. Biney also was asked :—

Exhibit
" D. "
Judgment
in Action
Egyir and
Another
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continued.

" Supposing there is an Omanhin of a Division who has sub-chief under him whole land being Oman land and somebody is interfering with one of sub-chiefs being on portion of land, can the sub-chief and Omanhin join to bring action to protect the land ? "

To which Mr. Biney replied " They are rightly joined, land belongs to whole of them. "

Now to turn to the question of the Akyeases. As will be seen from the plan Akyease is a big town on the Saltpond—Oda road. There cannot be the slightest doubt but that these people were aware of this action going on and not only this one but also the former one which was commenced in 1923. At one time I considered the question of joining them, but on consideration, I came to the conclusion that it was their own business and if they did not want to claim any of the land it was no affair of mine. Now after inspection when the case was all but completed they applied to be joined as Co-Defendants. I firmly refused this. They had sat by for years and they seemed to expect me after days and days and days of toil over the case to practically start all over again for this is what it would come to. If they had a claim to the land why on earth did not they apply before during all these years ? This leaves me to the extraordinary position of the Defendant in this case. He claimed the land almost to the end of the case for himself, and his family and even went so far to say that the Akyeases were against him in the case yet lo and behold, on the very last day of the trial he amends his plea by saying " 1. Akyease land is attached to the Stool of Akyease including Dawumaku as Defendant's ancestor originally gave them the land to settle on ; 2. Nyankumasi land is *owned jointly* by Defendant and Defendant and Ohin of Akyease in *equal moiety*. 3. Following villages with lands attached thereto are owned by Defendant and his people (here follow the names of the villages) —also that other lands known as (here names are set out) at present occupied by Chief Kwesi Amporful and his people with permission of Defendant's ancestor called Nso are attached to Defendant's stool and the stool of the Ohin of Akyease and *owned by them as common property*." The plea was amended on 11th October yet as late as 30th September which was the hearing day next previous to the 11th October. Defendant's final words in answer to the Court on his recall after inspection were :—

" Land in dispute is mine and I make farms on it with the Akyeases. "

I would also like in view of the amended plea to call attention to another definite statement of Defendant when he said Nyankumasis have no land—land on which they are *belonged to my ancestors*.

Plaintiffs' Exhibits.

Exhibit "D."

This amendment of plea was a somewhat annoying proposition coming as it did at the last moment and it is obvious that Defendant was driven to this position by the evidence given by his own witnesses from Akyease. As usual in such cases there has been a mass of tradition and if I had to decide on tradition alone I would have no hesitation in accepting the evidence from the Plaintiffs as to that backed as it is by the evidence of Mr. Korsah about whose truthfulness I have no shadow of doubt but there is an extraordinary point in the case which carries weight with me. Defendant is under Nana Ofori Atta and so is Akyease and the village of Nyankumasi is under Akyease and therefore under the said Omanhin ; so if Defendant were successful the land would come within the Division of Akim Abuakwa—yet the Representative of Nyankumasi which is a large village consisting of about 40—45 Ashanti compounds (I am very glad I saw this village) came to Court and said the Nyankumasis were on Aprade land and paid tribute to Aprade—thereby handing over to the enemy (Akim Busumi) the land in question. Of course there is the possibility of collusion between Aprade and Nyankumasi but there is no evidence of such collusion and I cannot but attach great weight to this evidence in the entire absence of any evidence showing deceit by the Nyankumasis though one is naturally suspicious on such occasions. Besides this we have the evidence from Ewusa and Eduasa which said places will be *soon sic* to the North on the map. Eduasa is under Omanhin Ofori Atta and the Eduasa say they have no boundary with Defendant but with Aprade. Ewusa is under Omanhin Atta Fua of Akim Kotoku and they say the same as Eduasas. I was inclined for various reasons amongst others, the fact that Defendant was trying to get some of their lands to view the Ewusas and Eduasas' evidence with some suspicion but in view of the Nyankumasi evidence I am induced to think that they were speaking the truth. It must be remembered also that Eduasa was deliberately handing over the land in question to another Division. Surely it would have been possible for Defendant and Eduasa to have first defeated the common enemy and then adjusted matters within their own division. What is more I most emphatically did not like the way the Chief of Surasi who supported Defendant as to having boundary with him on the Saltpond—Oda road, gave his evidence and he seemed to me when in the box to have every appearance of lying.

Judgment in Action Egyir and Another v. Dufoh. 19th November, 1926—*continued.*

40 As regards Defendant's position I believe the truth or part thereof came out in the evidence of Kweku Nkrumah, Asafoakyer at Akyease and who gave evidence for the Defendant. He said "Defendant has something to do with land because he is sub-chief under chief of Takwa

Plaintiffs' Exhibits.
 Exhibit "D."
 Judgment in Action Egyir and Another v. Dufoh. 19th November, 1926—
continued.

(this is the same as Chief of Akyiase) and if his senior chief has some property isn't it Defendant's? Any land which Defendant owns in the area Defendant owns it in his capacity as sub-chief to Takwahin. Defendant is sub-chief sitting on Kokoben Stool but he was taken from Akyease. Kokoben serves Akyease. I can't say if Defendant is connected in any way with land from Esu Akyire to Egyina on to Okyire" (the land in dispute). I have little doubt but that Defendant who is apparently a professional litigant has been trying to do a little "land grabbing" on his own but he has got submerged by the evidence of his own witnesses from Akyease.

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I don't want to say too much about the position of the Akyeases at present for after this case they may be going to take a line of their own, but it seems to me that the position of Defendant in the present case is hopeless.

There is the question of tolls. It is possible though the evidence on the point is very confused, that Defendant has received some legs of game etc. by way of tribute but I can't see that this is inconsistent with Plaintiffs' position. It is part of their case that the land was given to the Akyeases to live on and if as the Asafoakyir said Defendant has something to do with the land in his capacity as sub-chief why shouldn't he collect tolls? As far as Plaintiffs' case is concerned, it would seem they are merely fighting for the sake of "honour and glory" if I may use the expression as there is and can be no question of turning anybody off the land. Naturally they would object to one of their own people (kutruka) being called on to pay tolls on their own land by a descendant of the people to whom the land was originally given but this is a different thing from that descendant collecting tolls from strangers on the land which had been so given.

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It will have been observed that I have not set forth in this Judgment the tradition as to ownership as alleged by each side but from my experience in cases such as these I am not at all enamoured of such evidence and I much prefer to seek for other evidence to guide me in coming to a conclusion. I had hoped that the acquisition of land for the Central Province Railway would have helped me but it is clear from the evidence of Captain West that no assistance is to be got there and I must put all the evidence on that point on one side.

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The eleventh hour evidence about the gold shall I call it concession? granted by Defendant must be absolutely discarded as not a word was heard about it prior to the witnesses who gave evidence relating thereto entering the box. Surely when this matter had been pending since 1923 it would have been possible to have evidence of such importance in time to have put it to Plaintiffs and their witnesses if it were true.

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I have had some vague evidence about attempted collusion between the Aprades and Akyeases with reference to this case but I am not at all clear as to what happened as Yaw Ewua formerly Mankrado of Akyease left the alleged meeting between the two parties in the middle to go on some business of his own about a debt which struck me as rather curious. This alleged meeting is connected with the destoolment of the former Chief of Akyease and here again I am rather in the dark and I don't think the darkness is due to my stupidity but rather to the nature of the evidence on the point.

Plaintiffs' Exhibits.
 Exhibit "D."
 Judgment in Action Egyir and Another v. Dufoh.
 19th November, 1926—
continued.

- 10 Apart from any question of tradition undoubtedly the strong points in the case for the Plaintiffs are the Nyankumasi evidence backed by the Eduasa and Ewusa evidence and the breakdown of Defendant's case necessitating the amendment of his plea.

I do not think it necessary to labour this case unduly and there must be a declaration of title in favour of the Plaintiffs to the land which I have marked "R.E.H." at various points on the plan in evidence. Plaintiffs to have the costs of this action to be taxed.

Mr. J. BANNERMAN-HYDE, Mr. K. A. KORSAH with him for the Plaintiffs.

- 20 Honourable E. J. P. BROWN, Mr. D. MYLES ABADOO Jnr. with him for the Defendant.

(Sgd.) R. E. HALL,
Judge.

EXHIBIT "C."Plaintiffs'
Exhibits.Exhibit
"C."
Letter
J. B.
Danquah
to
Kwaku
Budu.
25th
October,
1949.**Letter J. B. Danquah to Kwaku Budu.**J. B. DANQUAH,
Barrister-at-Law
and
Solicitor of the
Supreme Court.Yiadom Chambers,
P.O. Box 15,
Accra, Gold Coast.
25th October, 1949.*No. 101/JBD/BA/49.**Telephone No. 423.*

Dear Sir,

10

I am instructed by the Tarkwahene of Achiase to request you to see him at Achiase on Friday morning the 28th of October 1949 in connection with the land at Nsuansa granted to you and others for an Abusa, the said Abusa to be paid when the cocoa farms made by you begin to yield.

It has come to the Tarkwahene's notice recently that cocoa farms made by you on the Achiase forest land have been yielding but that instead of paying one-third share to the Stool of Achiase you have been paying the same to the Ohene of Amanfupong.

This is a clear breach of contract and unless you come to effective 20 arrangements with the Tarkwahene as to the future and make amends for the past the Tarkwahene will have no alternative but to eject you from the land.

Your early attention will be greatly appreciated.

Yours faithfully,

(Sgd.) J. B. DANQUAH,
Solicitor for the Tarkwahene.

KWAKU BUDU, Esq.
Achiase.

In the Privy Council

No. 24 of 1953.

ON APPEAL FROM THE WEST AFRICAN COURT OF
APPEAL.

BETWEEN

NANA OWUDU ASEKU BREMPONG III
and Another (Plaintiffs) Appellants

AND

NANA DARKU FREMPONG II
(Defendant) Respondent.

Record of Proceedings

LINKLATERS & PAINES,
Austin Friars' House,
6, Austin Friars,
London, E.C.2,
Solicitors for the Appellants.

A. L. BRYDEN & WILLIAMS,
53, Victoria Street,
Westminster,
London, S.W.1,
Solicitors for the Respondent.