

Ernest Prempeh and others - - - - - *Appellants*

v.

The King - - - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 26TH JUNE, 1947

Present at the Hearing:

LORD DU PARCQ
LORD NORMAND
LORD OAKSEY
LORD MORTON OF HENRYTON

[*Delivered by* LORD OAKSEY]

This is an appeal from a judgment of the West African Court of Appeal (Criminal Jurisdiction) affirming the conviction of the four appellants on the first count and quashing it on the second count of the information preferred against them in the Supreme Court of the Gold Coast.

On the 28th February, 1944, a man named Akyea Mensah, the father of one Ohemeng and the brother-in-law of one Yaa Amponsah was reported missing and was still missing at the date of the trial in December, 1944. In July, 1944, 8 persons including 4 brothers of the 3rd accused were arrested and charged with the murder of Akyea Mensah.

On the 4th December, 1944, the 4 appellants were charged on information on the following counts:—

First Count:

Conspiracy to abet Perjury.

Contrary to sections 49 (1), 46 (1) and 359 of the Criminal Code.

Particulars of Offence:

Ernest Prempeh, Kenyon Vincent Daley, Yaw Boakye *alias* Eric Ofori Atta and Maria Smith, on divers days in the month of July, 1944, in Ashanti, agreed together with a common purpose for abetting perjury, by instigating such persons as they might thereafter induce to give evidence to make knowingly false verbal statements upon oath before a Court to the effect that the said persons had seen Akyea Mensah alive at Kete Krachi.

Second Count:

Abetment of Perjury.

Contrary to sections 46 (1) and 359 of the Criminal Code.

Particulars of Offence:

Ernest Prempeh, Kenyon Vincent Daley, Yaw Boakye *alias* Eric Ofori Atta and Maria Smith on a day in July, 1944, in Ashanti, instigated Emmanuel Kwadjo Ohemeng to commit perjury by making knowingly a false verbal statement upon oath before a Court to the effect that he the said Emmanuel Kwadjo Ohemeng had seen his father Akyea Mensah alive at Kete Krachi.

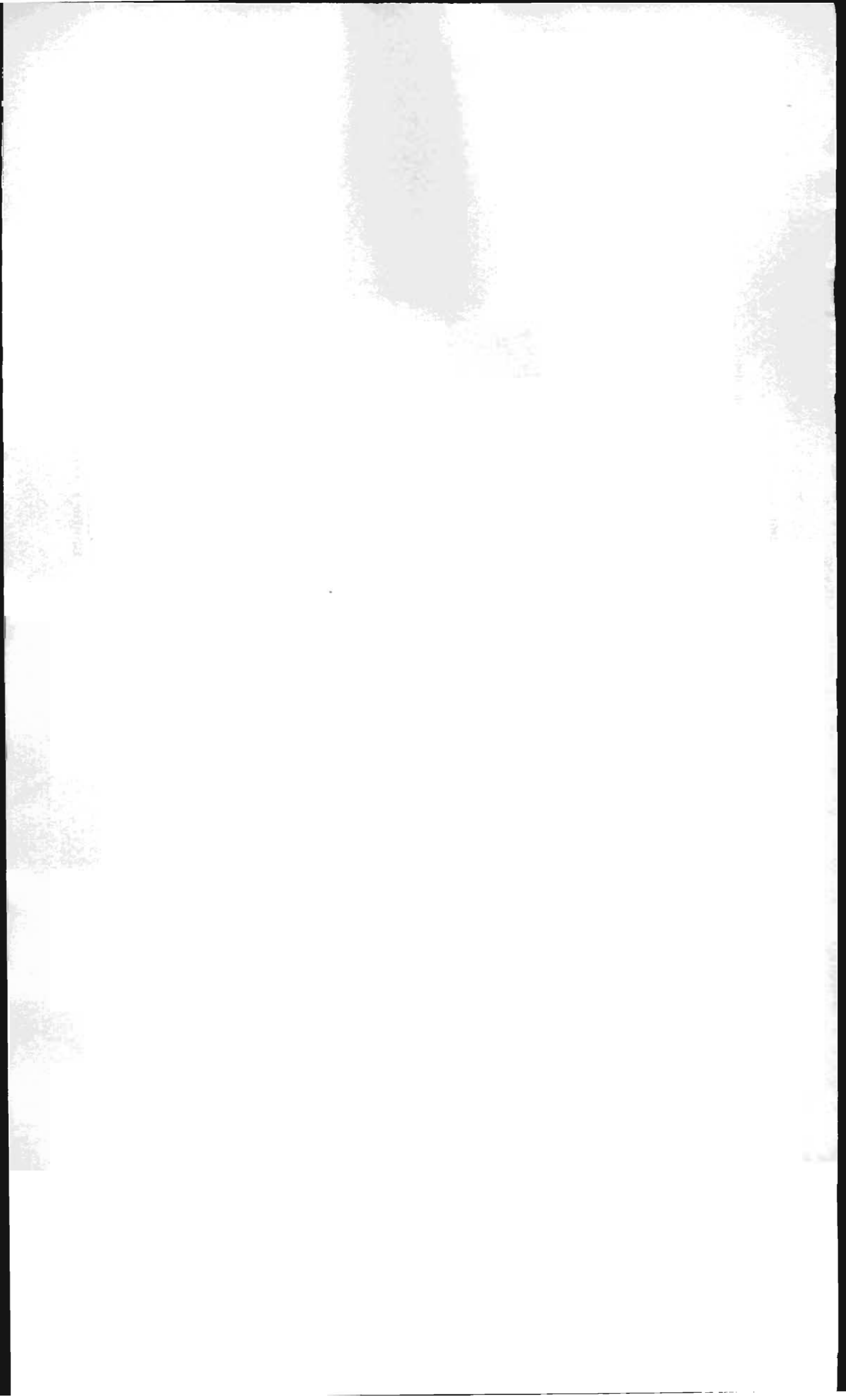
Mr. Justice Smith who tried the case without a jury reviewed the evidence and found on the first count that the accused were guilty on the ground that the evidence of the prosecution was to be believed and that the four accused were all of them working in concert in pursuance of an agreement between them to persuade, if possible, Yaa Browa, Yaa Amponsah and particularly Ohemeng to give perjured evidence in the case in which the 3rd accused's four brothers were involved and that the money and employment offered were offered as bribes and not as rewards, and that he did not believe that the accused were merely trying to obtain confirmation or otherwise of a rumour that Akyea Mensah was alive. On the second count the learned judge held that although in his view the evidence for the prosecution was that Ohemeng was pressed to give "a statement" and not to give "evidence" the proper inference was that the accused were actually trying to persuade Ohemeng to give false evidence, and he therefore convicted them and sentenced them to various terms of imprisonment to run concurrently on the two counts. The Court of Appeal adopting the same view of the evidence given held that the accused could not be convicted on such evidence on count 2, but that the trial judge's judgment on the first count was amply supported by the evidence.

The evidence has been reviewed before their Lordships in detail by counsel for the appellants, and it has been contended that there was no evidence to support a conviction on either count, that the trial judge had not properly considered the evidence against each appellant separately, that the counts were bad for duplicity, and that the true effect of the Court of Appeal's judgment must be that the convictions on the first count ought to be quashed as well.

Their Lordships are not a Court of Criminal Appeal and the only question which they have to consider is whether in accordance with the principles restated in *Muhammad Nawaz alias Naza v. The King Emperor* (1941) L.R. 68 I.A. 126, there has been any miscarriage of justice. In their opinion no injustice has been done. The trial judge who saw the witnesses and who knows the local conditions believed the evidence for the prosecution which conflicted on essential points with that of the appellants. In their Lordships' opinion if the evidence of Yaa Browa Ohemeng Addai and Asiedu was accepted it was amply sufficient to support a conviction on count 1; the trial judge's judgment dealt with the evidence thoroughly and with the case for each of the defendants; and even if there were any substance in the point that count 1 is bad for duplicity which in their Lordships' opinion there is not, no injustice has been occasioned thereby.

There was ample evidence to support the finding that the four appellants were guilty of a conspiracy within the meaning of Article 49 of the Criminal Code to persuade Yaa Browa and Yaa Amponsah to commit perjury.

Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed and that the convictions of all four appellants on count 1 of the information should stand.



In the Privy Council

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DELIVERED BY LORD OAKSEY

Printed by His Majesty's Stationery Office Press,
DRURY LANE, W.C.2.

1947