

34, 1952

In the Privy Council.

No. 41 of 1950.

31373

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

UNIVERSITY OF LONDON
W.C.1.
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INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

NANA OSEI ASSIBEY III, Kokofuhene, substituted by
Order in Council, dated 30th January, 1952, in place of
NANA KOFI ADU, Kokofuhene, Destooled (*Defendant*) *Appellant*

AND

NANA KWASI AGYEMAN, Boagyaahene . (*Plaintiff*) *Respondent.*

RECORD OF PROCEEDINGS

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

BETWEEN

NANA KOFI ADU, Kokofuhene (Defendant) *Appellant*
AND
NANA KWASI AGYEMAN, Boagyaahene ... (Plaintiff) *Respondent.*

10

RECORD OF PROCEEDINGS

No. 1.

Civil Summons.

In the
Asante-
hene's "A"
Court.

IN THE NATIVE COURT OF ASANTEHENE (GRADE A).

NANA KWASI AGYEMAN (Boagyaahene) *Plaintiff*
vs.
NANA KOFI ADU (Kokofuhene) *Defendant.*

No. 1.
Civil
Summons,
19th Aug-
ust, 1946.

To: NANA KOFI ADU OF KOKOFU.

YOU ARE HEREBY COMMANDED to attend this Court at
Kumasi, on the 3rd day of September, 1946, at 9 o'clock a.m. to answer
20 a suit against you by the plaintiff herein.

The Plaintiff's claim:

PARTICULARS OF SUMMONS HEREIN.

Plaintiff sues the defendant herein for satisfactory and reasonable
explanation as to why the latter's Akwamuhene and subjects do pay
tribute to the BoagyaStool as far back as the reign of the then Boagyaahene

In the
Asante-
hene's "A"
Court.

Nana Asamoah Kenin by virtue of their occupation on the Boagyaa Stool land known as "Dwoamin," and now the Defendant has ordered his subjects on the said land not to pay the tribute to the Boagyaa Stool.

Issued at Kumasi, Ashanti on this 19th August, 1946.

No. 1
Civil
Summons,
19th Aug-
ust, 1946—
—continued.

Sum Claimed :	£-	-	-
Summons Fees :	1.	-	-
Service :	-	1.	-
Adasuum :	-	-	-
Mileage	-	-	-
	£1.	1.	-

10

(Sgd.) BARINA TWENEBOA KODIA IV,
President.

Witness to signature :

(Sgd.) J. W. K. APPIAH,
Registrar.

In the
Chief Com-
missioner's
Court.

No. 2.

Judgment remitting Case back for Re-hearing.

No. 2.
Judgment
Remitting
Case Back
for re-
hearing,
5th August,
1947.

IN THE CHIEF COMMISSIONER'S COURT OF ASHANTI, held at Kumasi on Tuesday, the 5th day of August, 1947, before His Worship A. C. SPOONER, Esquire, Acting Assistant Chief Commissioner appointed 20 to preside over the Chief Commissioner's Court.

NANA KWASI AGYEMAN (Boagyaahene) *Plaintiff-Respondent*

vs. ...

NANA KOFI ADU (Kokofuhene) per Okyeame Kwasi
Yeboah *Defendant-Appellant.*

Parties present.

JUDGMENT :

In this case the Boagyaahene instituted action against the Omanhene of Kokofu calling upon him to explain why he the Omanhene of Kokofu had ordered his subjects who are living on a piece of land called "Dwoamin" 30 to refrain from paying tribute to the Boagyaa Stool.

The case was heard by the Asantehene's "A" Court, the disputing parties coming from different Division of the Ashanti Confederacy.

The Asantehene's "A" Court for the purpose of this case was conducted by the Omanhene of Kumawu, the President, the Oyokohene of Kumasi and Gyasehene of Kumasi.

In the Chief Commissioner's Court.

These Chiefs were unable to reach agreement and two judgments have been delivered one by the Kumawuhene and a joint one by the Oyokohene and Gyasehene. It is left to this Court to assume that the joint judgment of Oyokohene and Gyasehene is the prevailing judgment and in his fourth Ground of Appeal the Defendant-Appellant draws attention to the point that the judgment of the Court should be signed by the President.

No. 2. Judgment Remitting Case Back for re-hearing, 5th August, 1947—*continued.*

10 This is a technicality which might be rectified but both judgments seek to grant the ownership of land to one or other of the parties.

The viewers report further makes it clear that the definition of the land in question is confused.

The appeal is therefore allowed and both judgments are set aside. The Asantehene's "A" Court is to hear the case *de novo*. The Court will no doubt empanel Chiefs other than those who have sat on this case and if the ownership of the land is in issue the Court may consider that a survey is necessary.

20 Costs in this Court are awarded to the Defendant-Appellant. The costs in the Asantehene's Court will be decided when the case is heard *de novo*. Meanwhile, the costs deposited by Defendant-Appellant to remain on deposit.

(Sgd.) A. C. SPOONER,
Acting Asst. C.C.A.

No. 3.

Notes setting out the issue, and ordering survey of disputed land.

In the Asantehene's "A" Court.

THE ASANTEHENE'S "A" COURT held at Kumasi on the 2nd day of September, 1947, before THE NSUTAHENE, Presiding, THE KRONTIHENE, THE AKWAMUHENE and THE AKYEMPIMHENE.

No. 3. Notes setting out the issue and ordering survey of disputed land, 2nd September, 1947.

A.R.B. No. 8.

30 Folio 592.

NANA AKWASI AGYEMAN, Boagyaahene ... *Plaintiff-Respondent*

vs.

NANA KOFI ADU, Kokofuhene *Defendant-Appellant.*

This is a case which went on appeal before the Chief Commissioner's Court and which has been remitted back to this Court to be heard *de novo*.

Chief Commissioner's Court order dated 5th August, 1947, read to the Court.

In the
Asante-
hene's "A"
Court.

No. 3.
Notes
setting
out the
issue and
ordering
survey of
disputed
land,
2nd
September,
1947—
continued.

CLAIM :

The Plaintiff sues the Defendant herein for satisfactory and reasonable explanation as to why the latter's Akwamuhene and subjects do pay tribute to the Boagyaa Stool as far back as the reign of the then Boagyaahene Nana Asamoah Kenin by virtue of their occupation on the Boagyaa Stool land known as Dwoamin and now the Defendant has ordered his subjects on the said land not to pay the tribute to the Boagyaa Stool.

Plaintiff-Respondent present.

Defendant-Appellant represented by OKYEAME KWASI YEBOAH.

BY COURT :

It is considered advisable that as suggested by the Chief Commissioner's Court, the land in dispute be surveyed and it orders accordingly.

Parties to furnish the Registrar with details of their claims and to deposit into Court the sum of £30 each towards the cost of the survey. Two weeks allowed to pay the deposit and to furnish the particulars. Mr. E. A. Kufuor is hereby appointed to undertake the survey.

Case adjourned *sine die.*

(Sgd.) O. Y. AKOTO,
Nsutahene.
P.

10

20

No. 4.
Description
of the
Boundaries
by the
Plaintiff,
15th
September,
1947.

No. 4.

Description of the Boundaries by the Plaintiff in respect of the Land in dispute known as "Dwuamen."

My boundary with the Ahurenhene starts from 8 miles and 60 yards from Bekwai from a place called Ananse Beposo-Ayaasi, it then extends to a silk cotton tree (Onyina) and thence to trees Wawapupuo and Amandedua joined together to where streams known as Asamoasu and Busumprah joined together, it then passes the down stream of Busumprah stream as far as to a stream called Subin where Ahrenhene's land is on the right and my land on the left side, then it passes through the down stream of Subin until it reaches the tributaries of Subin and Supama streams, then it passes down stream of Supama until it reaches where some Big Odum tree is situated where the Supama stream remains on the left in my land and the Ahurenhene's land is still on the right side, from thence to another Odum Tree and thence to the place known as Asumenso which forms the boundary pillar of Ahurenhene, myself and Asachirihene respectively.

Ahurenhene's land ends here.

Then continuing from Asumenso with Assachirihene's land on the right and mine on the left, the boundary extends to an Asia Tree thence to

Okyereye tree, thence to Odum tree, where my son's called Kwabena Kunto's cocoa farm is situated, and thence to another silk cotton tree (onyina) thence to three (3) date palm trees underneath lying three (3) big rocks, thence to a stream called Bukruwa and thence Sinubunum in the stream called Subin and walking down stream of Subin it extends as far as stream called Bonkron where both streams joined, and still my land is on the left.

In the
Asante-
hene's " A " Court.

No. 4.
Description
of the
Boundaries
by the
Plaintiff,
15th
September,
1947—
continued.

REMARKS: Being as there is a case now pending before the Assantehene's " A " Court between Ahurenhene and Assachirihene over the ownership
10 of a piece from Bukruwa to Sinubunum, I am not in a position now to say who form boundary with me in this particular area.

Thence starting from downwards upwards to the stream known as Bonkron to its head (or source) it reaches to a bent kola tree (besekontonye), this also forms the boundaries between Ahurenhene, Asamanghene and myself, and the Ahurenhene's land ends here. Then continuing with the Asamanghene's land from the Besekontonoye it passes right down to a stream called Akosua it traversed down stream of Akosua until it crosses the Bekwai-Morontuo Motor Road, where my land is still on the left and Asamanghene's on the right. After arriving at Akosua there is a portion
20 of my land called " Ampabami " and the caretaker is Kwabena Anto who collects tributes of any kind and send same to me. It passes down stream of Akosua and joins a stream known as Bobi, and then my land and that of Assamanghene's still go farther on.

REMARK : The caretaker of this Dwuamin land is Okyeame Yaa Baayin and that nobody has any right to fall a palm tree without the consent and knowledge of this caretaker who sees and collects any tributes on that land. This same bearer Okyeame Yaa Baayim is the person who collects tributes with Otumfuo's bearer Kofi Kuma during the cocoa seasons, and after collection, the value of amount obtained given or shown to me before
30 sending same to deposit at the Asantehene's Treasury. The said Dwuamen belongs to me, and it was Nana Gyaami who begged same for his Akwamuhene for a mere occupation. The name of his Akwamuhene was Akwaboah and Nana Gyaame begged same from my ancestor Asamoah Kanin. Secondly after his occupation, Akwaboah also begged that his sister who was the wife Nana Kokofuhene should be given a portion for a mere occupation, and my ancestor agreed and offered a portion called " Praa " was given her for a mere occupation. In conclusion, I have no boundary at all with Kokofuhene (Defendant-Respondent) at all on Dwoamen land.

Dated at Kumasi this 15th day of September, 1947.

40

KWASI AGYEMAN,
Boagyehene.

His
X
mark.

In the
Asante-
hene's " A "
Court.

No. 5.

Description of the Boundaries by the Defendant.

No. 5.
Description
of the
Boundaries
by the
Defendant,
18th
September,
1947.

The hetiri of Kokofu and Ahurene land starts from the bent kola tree i.e. Bese Kontonye, thence crossing the Abandoned Dwoamen-Kusiase path to Okyenkyen tree, and along the Akosua stream in a semi circular direction through the motor road, with Assamang land on the right hand side of the stream Akosua and Kokofu on the left crossing the said motor road, the boundary continues along the Akosua Stream to Odupon tree on a hill where the alleged Odupon constitutes the boundary head (Hyetiri) of Assaman, Boagyaa and Kokofu lands from the Odupon (cedar tree) the boundary between Kokofu and Boagyaa lands continues to Hyedua (Gum copal tree) thence to twin " Wawa " trees thence to Onyina tree and thence to Pra Nkwanta crossing the Bekwai-Boamen-Besease main lorry road. Then to the source of Bosompra stream ; i.e. (Bosompra Atifi) the old Praa village lies on the left of stream, thence along to the Bosompra stream to the confluence of Bosompra and Assamoasu i.e. (Bosompra and Assamoasu Aboye) Walking or starting a long track from the Odupon to the Bosompra and Assamoasu confluence (Aboye) Boagyaa lands lie on the right hand side and Kokofu on the left hand side. The last Hatiri i.e. Boundary Head between Boagyaa and Kokofu stops at the confluence of these streams. 20
Bosompra and Assamoasu.

BOUNDARY BETWEEN KOKOFU AND AHURENE LANDS.

Walking along or through Bosompra stream, the boundary between the Kokofu and Ahurene lands continues to Subeng River. And thence along the Subeng River to its source. The Subeng River is then left on the right hand side ; thence to a small hill on the bank of the Subeng River, thence to a footpath of Ahurene to the ruined village Dwoamen thence to the cemetery of the old Dwoamen village walking along this point thence crossing the foot path of Ahurene and old Dwoamen village, leaving the old Dwoamen village at the point on the left hand side and Ahurene land on the right hand side. Thence walking along to Supan Mma stream and walking along the Supan-Mma stream to its source, the boundary continues crossing the old Dwoamen village and Ahurene foot-path that leads the old Konkromasi village and thence along the Supan-Mma stream to its mouth. Thence to a hill which Supan-Mma and Bokruwa streams take their source, walking down or along the Bokruwa stream from the hill, the boundary continues to Sunubunuso with Sunuro tree standing on the bank of Suben River. Thence to the Suben River walking along the Suben River to its mouth, thence to Kwabirifa (name given to a big rock). At this point recognised as Fetish and one of the symbolical emblems on the Dwoamen lands. And along the Kwabirifa the boundary continues through the Suben River, and thence to Bonkuruwa and Suben confluence 40

(Aboye). Walking along the Bonkruwa stream thence to the mouth or source of Bonkuruwa stream, the Bonkuruwa stream is on the left hand side. Thence to a hill from which the stream Bonkuruwa takes its origin and taking a direction at the right hand side. From the hill the boundary takes its last point at the same bent kola tree, the original He-tiri of Ahurene and Kokofu lands. The boundaries described herein comprise the three old villages of Dwoamen, Praa and Ampebame who now inhabit at the present Dwoamen village. (Gyahene Mmmuor) another symbolical emblem within the Dwoamen lands now in dispute and is the property of the Kokofu Stool.

Particulars recorded and taken by the State Secretary.

Date : 18th September, 1947.

(Sgd.) ADU,
State Secretary.

In the
Asante-
hene's " A " Court.

No. 5.
Description
of the
Boundaries
by the
Defendant,
18th
September,
1947—
continued.

PLAINTIFF'S EVIDENCE.

No. 6.

Evidence of Nana Kwasi Agyeman, Boagyaahene, Plaintiff.

Plaintiff present in person.

Defendant represented by OKYEAME KWASI YEBOAH.

20 PLAINTIFF, s.a.r.b. and states :

My name is Kwasi Agyeman. I am the Ohene of Boagyaahene, Kumasi Division. The Dwoamin land which is now in dispute was given to my stool by the Asantehene Nana Opoku Wari. The then occupant of my stool was one Asamoah Kenin. One Akwaboah, Akwamuhene of Kokofu, saw this land and wished to live on it. He informed the then Kokofuhene Gyami to beg for the land for him to live on. The Kokofuhene through the Akwamuhene put the matter before the Boagyaahene who granted the required permission. The following arrangements were made: That at every Afahye i.e. every year the Akwamuhene should pay 13/- 14 tubers of yam and one bottle palm oil as a token of my ownership. It happened that one Nyidua, a head stool wife to the Kokofuhene, and a sister to the Akwamuhene also approached the Boagyaahene through her brother to be allotted a separate piece of land as she as a Chief's wife should not stay together with men. Nana Asamoah Kenin agreed and allotted a piece of land named Praa to her. As Nana Nyidua was the Boagyaahene's daughter in law (the Kokofuhene being his nephew by relation) he decided not to charge any tribute from the wife. The Akwamuhene continued to pay the agreed tribute until cocoa came into being. The then Boagyaahene Kwabena Dapaah demanded a larger tribute and a written agreement was made whereby the Akwamuhene and his subjects at Dwoamin paid an

Plaintiff's
Evidence.
No. 6.

Nana
Kwasi
Agyeman,
Boagyaahene,
Plaintiff,
1st
December,
1947.

In the
Asante-
hene's " A ",
Court.
—
Plaintiff's
Evidence.
—
No. 6.
Nana
Kwasi
Agyeman,
Boagyaa-
hene,
Plaintiff,
1st
December,
1947—
continued.

annual tribute of £50. The Akwamuhene at this time was one Kwaku Abroneh who was at the same time the Odikro of Dwoamin. When the price of cocoa fell, the Akwamuhene apologised through the Assacherehene for a reduction of the £50 annual tribute. The Boagyaa-hene reduced the amount by £15 and demanded a fresh written agreement giving him the first one for £50. The agreement was written by the Kokofuhene (Defendant's-clerk) Mr. Ampoful. This is the agreement which I tender in evidence. (Defendant objects to the document being admitted in evidence on the grounds that the agreement was entered into without the knowledge and consent of the Kokofuhene who is alleged to have begged for the land.) 10

(Objection over-ruled on the ground that the document has some bearing on the disputed land.) Agreement accepted in evidence and marked Exhibit " A." About the year 1944, I received a letter from one Kwame Asare of Dwoamin addressed to me through the Defendant applying for a physician Licence to practise at Dwoamin Kokofu Dabihene Katawire accompanied Kwame Asare. This is a certified copy of the letter with minutes thereon. I tender it in evidence. (Defendant objects to this document being produced in evidence on the ground that the letter was not endorsed by the Defendant.) (Objection over-ruled by Court.) 20 Document accepted in evidence and marked Exhibit " B."

In the year 1940, when I was occupying the Boagyaa Stool, the Asantehene's Messenger named Kofi Kuma came to Boagyaa to collect tribute from Dwoamin. I deputed my Okyeame Yaw Bayin who went with the Otumfuo's messenger to Dwoamin and the tribute of £24 was paid. From time to time the tribute has been paid in varying amounts of £24-£27 for which I have been giving individual receipts as per N.A. Receipt Book which I tender in evidence N.A. Receipt Book No. B284 01-500 tendered in evidence accepted and marked Exhibit " C." I have also from time to time collected legs of game from Dwoamin hunters. Palm wine Tappers of Dwoamin have always obtained permission from Bayim my Okyeame and caretaker who always collects tribute on my behalf for palm trees felled. Recently, the Forestry Department purchased some timber from my Dwoamin land. The timber was sawn and I was paid the value of the trees. The Dwoamins when they were building a school house approached me for permission to fell one Odum tree. I charged them £3 the value thereof. On intervention of Roman Catholic Father, the £3 was reduced by 5/- before the Odum was felled. When Boagyaa was added to the Amansie Area Court and Treasury all revenue from Dwoamin has been accounted for by the said Amansie Treasury. In 1945, part of the people of Dwoamin paid their tribute. Others refused to pay and so I took action against the defaulters before the Amansie Area Court, when after two adjournments at the request of Defendants (i.e. the Dwoamin farmers) judgment was given in my favour and against them in default. I applied for a decree which was served. The tribute were not paid till I received a letter from the Defendant stating that I had no right to collect tributes from Dwoamin as the land belonged to the Kokofu Stool 40

and that if my elders had not told me my history I should enquire. That he had boundaries with certain Chiefs over the Dwoamin lands. The Defendant further stated that he would ask me to refund all tributes I had previously collected from his Dwoamin subjects. On the advice of my elders I referred this letter to the Asantehene my overlord. The Otumfuou promised to see the Defendant. I had no reply for some time and so I took this present action. My boundaries are as follows :—

With Ahurehene by the Ananse Bepoayasi, thence to an Onyina tree, thence to a Wawapupo tree, thence to Asamoasu stream where it joins the
 10 Pra River. The Ahurehene owns the land on the right of the Pra River and I own the left, thence to the junction of the Subin and Supama streams. The Supama then forms the Boagyaa Supama boundary till we reach a large Odum tree the Ahuren lands lying on the right of the Odum and my land on the left. Thence to another Odum thence to Asumenso. The Asumenso is the head boundary between Ahuren, Boagyaa and Assachere. My boundary with Assachiri then starts from this point to a large Osie tree, the Assacherehene owning the right as Ahuren and I owning the left. Thence to Okyireye tree, thence to Odum tree, near the Odum tree is a farm of my stool son Kobina Kuntoh. Thence to an Onyina
 20 tree. Thence to three rocks where stand three date palms. We then enter the Buokruwa stream up to the junction of the Buokruwa and Subin Streams. We then walk through the Subin stream up to its junction with the Bonkron stream. We now walk through the Bonkron up to its source. Thence to a Besekuntonye (a bent kola tree). The Bisikuntonye is the head boundary between Boagyaa, Assamang and Ahuren. My boundary with Assamang now starts from this point to Kusiasi village path and from there to Akosua stream thence to the Morontuo-Bekwai motor road, thence to the junction of the Babi and Akosua streams. I have no boundary at all with the Defendant. The matter was first heard before this Court
 30 which after inspecting the land gave 2 judgments. The President, deciding for the Defendant, and the members for me. The Defendant appealed to the Chief Commissioner's Court which referred the case back for rehearing by this Court and the land to be surveyed. The Court accordingly ordered the survey which has now been completed. This is my case.

PLAINTIFF CROSS-EXAMINED BY DEFENDANT.

Q. Do you know of a village named Ampabami ?—*A.* Ampabami is part of Dwoamin land. It is a small village built by people of Dwoamin.

Q. Do you know the inhabitants of Ampabami are the Kokofuhene's Gyasefuo ?—*A.* I do not know. Whoever lives at Ampabami lives there by
 40 permission of the Kokofu Akwamuhene who was originally given the land by me.

Q. Why did the Akwamuhene not ask your permission before building Ampabami but did so when building Praa ?—*A.* Ampabami is a very small village of no importance.

Q. Do you know Ampabami was first built before Dwoamin ?—*A.* No.

Q. I put it to you that during the reign of the Asantehene Nana Opoku

In the Asantehene's "A" Court.

Plaintiff's Evidence. No. 6.

Nana Kwasi Agyeman, Boagyaa-hene, Plaintiff, 1st December, 1947—*continued.*

Cross-examination.

In the
Asante-
hene's "A"
Court.

Plaintiff's
Evidence.
No. 6.

Nana
Kwasi
Agyeman,
Boagyaa-
hene,
Plaintiff,
1st
December,
1947—

Cross-exam-
ination.
continued.

Wari Kokofuhene Gyami was not alive?—*A.* He was alive and it was in his time that this land was begged for by the Akwamuhene.

Q. Do you not admit that Kokofuhene Osei Amprofi assisted Nana Poku Wari to fight the Bodwesangos?—*A.* I do not know.

Q. Who was the Kokofuhene's messenger who accompanied Akwaboa the Akwamuhene to ask for the land?—*A.* The Akwamuhene came alone.

Q. Do you think this is customary?—*A.* I cannot say.

Q. How can you tell that the Kokofuhene sent to beg for the land?—*A.* Because the Akwamuhene told me he had informed the Kokofuhene who had said I was his uncle and so he should come and beg me. 10

Q. Did you send to inform the Kokofuhene after your arrangement with Akwaboa the Akwamuhene?—*A.* No.

Q. Did the Kokofuhene know when you gave a portion of the land to his wife?—*A.* No. The Akwamuhene begged for the land for her, and I know she was his sister.

Q. Why did you not inform the Kokofuhene before giving a place to his wife?—*A.* Because her brother begged for the land for her and no male person or animal was allowed to go there.

Q. Did Boagyaa take part in the Bodwesango war?—*A.* I did not take part. The land in dispute was not Bodwesango land. 20

Q. How came you by this land?—*A.* The Boagyaa formerly lived on land belonging to Odwawire a powerful Chief. This Chief pestered the lives of the Boagyaa who reported to the Asantehene through the Gyasehene. Odwawiri was subsequently chased and he fled to Akim Swedru.

Q. What is the name of Odwawiri's deserted village?—*A.* I cannot tell.

Q. Through which Okyeame was this land presented to your stool by the Asantehene?—*A.* Through the Gyasehene, my immediate overlord.

Q. Why did you not subpoenae the Gyasehene to give evidence on your behalf?—*A.* Because I have been in undisturbed possession of the land for many years. 30

Q. You and Ahurehene who first went on the land?—*A.* The Ahurehene met me.

Q. Have you heard of the name of one Owusu Akyim Tenteng?—*A.* No.

Q. Do you know that the Ahurehene, the father of the Kokofuhene, presented the land in dispute to his son as "Abadie"?—*A.* No. I collect tribute even from the Abontendomhene of Ahuren in respect of a certain portion of my land. One Kofi Painyah of Ahuren also pays me tribute in respect of his farm on the same land in dispute.

Q. Do you not admit that your own town was given you by the Ahurehene?—*A.* No. 40

Q. Do you know the Akwamuhene who entered into agreement with you had at that time rebelled against the Kokofuhene?—*A.* I do not know. Abroneh's successor Asamoah continued to pay the tribute.

By Court. BY COURT.

Q. How long since the Kokofu-Akwamuhene occupied this land with your permission?—*A.* During the reign of Nana Poku Wari, Asantehene.

- Q. What is the distance from Dwoamin to Ampabami ?—A. The two villages have now joined.
- Q. Do the Ampabami people also pay you tribute ?—A. Yes, through the Dwoamin Dikro.
- Q. Did you collect rubber tribute on the land ?—A. Yes.
- Q. Who paid you rubber tribute ?—A. Recently one Buamah from Dwoamin paid me tribute in rubber.
- Q. Who pays you tribute in games—strangers or Kokofu subjects ?—A. The Kokofu subjects at Dwoamin and strangers.
- 10 Q. Who was the Gyasehene of Kumasi in whose time the land was given to your Stool ?—A. Nana Damte.
- Q. Has nobody disturbed you about this land before ?—A. Except the Ahurenhene who lost his case at both the Kokofu Native Court and before the P.C., Mr. Philbrick at Obuasi.
- Q. Have you any previous judgments in evidence ?—A. I have endeavoured to collect these judgments but they cannot be traced.
- Q. Are there any other persons apart from the Dwoamins who farm on this land ?—A. There are Bekwai subjects, but they pay tribute through the Dwoamin Dikro to me.
- 20 Q. Where were you residing before Nana Opoku Wari gave this land ?—A. I was living at Maasi near Kumasi.
- Q. Did you give the land to the Kokofu Akwamuhene up to a certain mark ?—A. Yes, I showed him the extent of my lands.
- Q. Is Asare the fetish Priest a Kokofu subject ?—A. Yes, he is the nephew to the Kokofu Dabihene.
- Q. Is he still residing at Dwoamin ?—A. Yes.
- Q. In the time of what Boagyaahene did the Kokofuhene's wife come to settle at Praa ?—A. Asamoah Kenin.

In the Asante-hene's "A" Court.

Plaintiff's Evidence.

No. 6. Nana

Kwasi Agyeman, Boagyaahene, Plaintiff, 1st December, 1947. By Court—continued.

EVIDENCE CALLED BY COURT.

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No. 7.

Evidence called by Court.

Evidence of Emmanuel Adjaye Kufuor, Licensed Surveyor.

No. 7. Emmanuel Adjaye Kufuor, Licensed Surveyor

EMMANUEL ADJAYE KUFUOR, LICENSED SURVEYOR, s.a.r.b.

On the instructions of this Court I undertook a survey of the land in dispute between the parties herein. I made a Plan of the area in dispute. Both parties supplied me with particulars and also accompanied me to the disputed land. The plaintiff in person and the defendant by proxy. I inserted on the Plan all what was shown to me. This is the Plan which I tender in evidence.

1st December, 1947.

In the Asantehene's "A" Court. (No objection by parties.) Plan tendered accepted in evidence and marked Exhibit "D".

Evidence called by Court.

WITNESS EXAMINED BY PLAINTIFF.

No question.

No. 7.

WITNESS EXAMINED BY DEFENDANT.

No question.

Emmanuel Adjaye Kufuor, Licensed Surveyor, 1st December, 1947—*continued.*

WITNESS EXAMINED BY COURT.

Q. Was the plan checked by the Provincial Surveyor?—A. No, but I have signed it personally. I have such authority.

Q. Did the Ahuren and Assachere people come to the area when you 10 were surveying?—A. Yes, Ahuren, Assachere and Assamang.

Q. Did any of them dispute about the boundaries?—A. Yes, Ahuren said he gave the disputed land to Kokofu while Assamang said he had no boundary with Kokofu.

Examination by Plaintiff.

Case adjourned till tomorrow 2/12/47.

Examination by Defendant.

(Sgd.) WIAFE AKENTEN II,
OFFINSUHENE,
P.

Examination by Court.

Plaintiff's Evidence—*continued.*

PLAINTIFF'S EVIDENCE—continued.

No. 8.

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No. 8. Kwaku Abroneh, 2nd December, 1947.

Evidence of Kwaku Abroneh.

Parties present.

Statement.

1ST WITNESS FOR PLAINTIFF, KWAKU ABRONEH, s.a.r.b. AND STATES.

I am a native of Kokofu now living at Kobrisu in the Offinsu Division. I used to be the Akwamuhene of Kokofu and the Odikro of Dwoamin. My ancestors came to Ashanti from Denkyira. We met the then Kokofuhene Nana Gyami. My great ancestor was named Akwaboah. My ancestor went to the then Boagyaahene Asamoah Kenin and begged for land to live on. The arrangement by which the land was given to my ancestor was that every year at the " Afahye " my ancestor should pay 13/- cash, 14 tubers of 30 yam and one bottle of palm oil as tribute to the landlord, viz. Boagyaahene. This tribute was paid from time to time. When Nana Essibey, Kokofuhene, migrated to Akim we stopped paying the tribute. We later returned from Akim and decided to rebuild our village Dwoamin. Before this, we informed

the then Boagyaahene Osei Nyame. He deputed his elder Kwaku Adai who went with our representatives to the land and offered a libation and we re-built the Dwoamin village. During the Yaa Asantewaa War we migrated to Akim again. On our return, we overtook the then Boagyaahene Kwaku Du. We approached him also for permission to rebuild our village which were in ruins. He granted permission and this time sent his elder Kobina Kuntor to offer libation for us. This time there was no more " Afahye " and so we did not pay the agreed tribute. When cocoa came into being the then Boagyaahene Kwaku Dapaah decided to collect tribute from the
 10 Dwoamin settlers of 1d. per tree. We told him we could not pay the 1d. per tree tribute but that we would give him sheep money. He said he would charge £100. We begged and he agreed to accept £50. We paid this £50 for 4 years in succession. Later, the price of cocoa went low and we approached the Boagyaahene to reduce the £50. We apologised through the Assacherehene who deputed his Okyeame Yaw Kwanin. The Boagyaahene reduced the tribute of £50 to £35. The Boagyaahene demanded for a written agreement. We went to Kokofu where the Kokofuhene's clerk Ampoful drew up a document for us. We paid the £35 yearly for so many years. Lest I should forget, when my ancestor came from Denkyira and begged for
 20 the land, he had a sister by name Ampomaa Assamoah alias Nyidana who was married to the Kokofuhene Nana Gyami. My ancestor Akwaboa said Ampoma Assamoah was the wife of the Kokofuhene and so he begged for a place for her to reside. The Boagyaahene Assamoah Kenin allotted her a place near the Pra River and a village was built named Praa where the woman used to reside when she came from Kokofu for a few days' rest—To continue from the payment of the £35 tribute. I abdicated when the tribute was still being paid. This is all I know about this case.

In the Asantehene's " A " Court.

Plaintiff's Evidence

No. 8.

Kwaku Abroneh, 2nd

December, 1947.

State-ment—*continued.*

EXAMINED BY PLAINTIFF.

Q. Do you remember you built a Market at Dwoamin?—A. Yes,
 30 before doing so I informed the Kokofuhene. We slaughtered a bullock and the Ahurenhene demanded its thigh. I refused to give to him saying that the Boagyaahene was the right man to claim it. The Ahurenhene exchanged oaths with me and the case was heard by the Kokofu Native Court which gave judgment for me.

Q. Do you remember the Ahurenhene Kofi Amoah and the Boagyaahene Kwaku Du litigated over the ownership of the land in dispute before the Kokofu Native Court where judgment was given for the Boagyaahene?—A. Yes, I know about this but I was then a young man.

Q. Do you know your late uncle, Eduasa, who was then Akwamuhene
 40 gave evidence for me?—A. Yes.

Examina-tion.

CROSS-EXAMINED BY DEFENDANT.

Q. Who was the Asantehene at the time your Nana Akwaboa arrived in Kokofu?—A. I cannot say.

Q. Did your ancestor bring a black stool with him?—A. Yes.

Cross-exam-ination.

In the
Asante-
hene's "A"
Court.

Q. How was your ancestor made Akwamuhene of Kokofu?—*A.* He was so created by the Kokofuhene Nana Gyami.

Q. Where did you first settle when you came from Denkyira before you moved to Dwoamin?—*A.* We first settled at Kokofu.

Plaintiff's
Evidence.

Q. Why did you go to beg for land from Boagyaahene?—*A.* Kokofu was not suitable for them. My ancestor's hunters went round and discovered a place which they learnt belonged to the Boagyaahene so they begged to stay there.

No. 8.

Kwaku
Abroneh,
2nd
December,
1947.

Q. Did you consult the Kokofuhene for whom you were Akwamuhene?—*A.* My ancestor informed him after he had been given the land and the Kokofuhene said he had no objection because the Boagyaahene was his uncle. 10

Cross-exam-
ination—
continued.

Q. Why did you not inform the Kokofuhene before you went to settle at Dwoamin?—*A.* We did not first inform him and there is no reason.

Q. Did you meet the Ahurenene when you arrived from Denkyira?—*A.* Yes.

Q. Do you know the plaintiff has stated that the land in dispute was given him by the Asantehene Nana Poku Wari?—*A.* I do not know.

Q. When the Asantehene Nana Poku Wari reigned who was the Kokofuhene, you being the Kokofu Akwamuhene?—*A.* Nana Gyami was Kokofuhene. 20

Q. Have you heard of the name of one Osei Ampomfi, Kokofuhene?—*A.* Yes, he reigned when my ancestor Kyei Bekoe was Akwamuhene.

Q. Do you not admit that Nana Gyami died during Nana Osei Tutu, Asantehene's time?—*A.* Yes.

Q. Why did you say Nana Gyami lived in Asantehene Nana Poku Wari's time?—*A.* I did not fully understand your last question.

Q. Is it true then that Nana Gyami begged for this land on behalf of your Nana Akwaboah?—*A.* Yes, it is true.

Q. Do you admit you rebelled against the present Kokofuhene about twice when you were Akwamuhene?—*A.* Yes, it was so many years before I abdicated. The matter was settled. 30

Q. Do you remember Exhibit "A" was prepared when you had rebelled?—*A.* No, otherwise I could not have asked the Kokofuhene's clerk to write the document.

Q. Do you remember you have rendered apology to the defendant for having made this document, exhibit "A" without his knowledge and consent?—*A.* No. I have never apologised.

Q. Was Ampomfi the Kokofuhene's clerk when he wrote exhibit "A"?—*A.* Yes, he was Assistant to Mr. Dofa, the senior clerk. 40

Q. Did you tell the Kokofuhene before engaging his clerk?—*A.* No, it was not necessary.

Q. Do you know Ampabam?—*A.* Yes, it is in the middle of the disputed land.

Q. Who built that village?—*A.* One Dwumaa Muni a son to the Kokofuhene built it.

Q. From whom did he beg for the land ?—A. I do not know. He met us already settled at Dwoamin.

Q. Do you wish the Court to believe that Ampabam is not part of the Dwoamin land ?—A. It is part of the land, because we all pay tribute to Boagyaa.

10 Q. Why did you find it necessary to build Praa village for your sister and by whom was the village built ?—A. As a head stool wife, she had her male and female servants who attended her. The male servants built the village and apart from them no other man was permitted to go into that village.

Q. Did you inform the Kokofuhene before you built a village for his wife ?—A. Yes, and the husband agreed.

Q. What is the distance from Dwoamin to Praa ?—A. Not quite half a mile.

Q. What is the distance from Dwoamin to Ampabam ?—A. It is a stone throw. The old deserted Ampabam was about a mile from Dwoamin.

Q. Why did the Ampabami Dikro not sign the Agreement you entered into with Boagyaa as he also pays tribute ?—A. At the time I wrote the document the then Odikro Kofi Mensah had no cocoa farm.

20 Q. Had his subjects no cocoa farms ?—A. The whole land is Dwoamin land and as Odikro of Dwoamin I represented the whole people.

Q. Did the other Adikrofu give any written authority ?—A. They gave no written authority.

Q. Had you elders attached to your stool ?—A. Yes, but they do not live at Dwoamin.

EXAMINED BY COURT.

Q. Do some Boagyaa subjects farm on the disputed land ?—A. Yes, but they do not stay at Dwoamin.

30 Q. Do you know their number ?—A. About five people.

Q. For how long have you paid cocoa tribute ?—A. More than 10 years ago.

Q. Are the other villages i.e. Praa and Ampabami aware of the existence of Exhibit " A " ?—A. Yes, the young men are.

Q. Since when were you first made Odikro of Dwoamin ?—A. 20 years ago.

Q. Do you pay game tribute, if so to whom ?—A. Yes, to the Plaintiff.

Q. Has anybody ever queried you for giving legs of game to Plaintiff ?—A. No.

40 Q. Did the Boagyaahene define to you his boundaries when you came to beg for land ?—A. Yes.

Q. What are the boundaries he told you ?—A. He said his land extended to the Pra River, thence to Subin stream, thence to Asamuaso, this was his boundary with Ahuren, thence from Asumenso (boundary with

In the Asante-hene's " A " Court.

Plaintiff's Evidence.

No. 8. Kwaku Abroneh, 2nd December, 1947.

Cross-examination—*continued.*

Examined by Court.

In the Assachere) to Kobina Kunto's farm, thence to the source of Bokruwa, thence to source of Subin thence to Bonkruwa Aboye thence through Court. "A" Bonkruwa waters to its source, uphill to Bisikuntunye (bent kola tree) thence to Akosua stream.

Plaintiff's *Q.* How many miles is it from Boagyaa to Kokofu?—*A.* Three miles Evidence. more or less, foot path.

No. 8. *Q.* Has the Defendant any boundaries with the Plaintiff?—*A.* Not to my knowledge.

Kwaku *Q.* Has any timber been sawn on the land?—*A.* Not while I was a Abroneh, 2nd chief.

December, 1947.

10

Examined
by Court—
continued.

No. 9.

No. 9.

Evidence of Solomon Adarkwah, Okyeame.

Solomon
Adarkwah,
Okyeame,
2nd
December,
1947.

2ND WITNESS FOR PLAINTIFF :

Statement. SOLOMON ADARKWAH—Okyeame—Representing the Assacherehene, s.o.b. States :

The Assacherehene has a boundary with the Plaintiff on the Dwoamin lands. Our head boundary with Ahuren is Asumenso where we meet the Boagyaa lands. The Ahurehene's lands end at Asumensu and the Boagyaaahene now has boundary with Assachere. We then go till we meet three rocks and some date palms where the Boagyaa land ends. The boundary is now between Ahuren and Assachere (now disputed). We walk along till we reach Ahyiam our head boundary with Kokofu. We have also a boundary in Assachere village with Kokofu. Some years ago the Odikro of Dwoamin—Akwamuhene of Kokofu, approached the Assacherehene to intercede with the Boagyaaahene for a reduction of £50 cocoa tribute he was paying owing to the fall in cocoa price. Okyeame Yaw Kwanin was deputed to Boagyaa. The Boagyaaahene accepted the apology and reduced the tribute by £15.

Examina-
tion.

EXAMINED BY PLAINTIFF :

Q. Do you know the three rocks is the source of a Stream Buokruwa ? 40
—*A.* Yes.

Q. Have I any boundary with the Defendant on Dwoamin land?—*A.* No, I have never heard Defendant has laid any such a claim before.

Q. How many miles is it from Dwoamin to where you Assachere have a boundary with Defendant?—*A.* About 17 miles to Ahyirem and 8 miles to Kwaku Twia.

CROSS-EXAMINED BY DEFENDANT :

Q. How did the Plaintiff come to own the land in dispute ?—*A.* I cannot say. We were given Bodwesangu lands and Plaintiff was given Owusu Akyem Tenteng's lands.

Q. Did you ever hear the Plaintiff's predecessor fight Owusu Akyim Tenteng?—*A.* I do not know—what I know is that Owusu Akyem Tenteng was driven away by Nana Poku Wari.

Q. Would you know if Ahurehene gave away a portion of his land to his son ?—*A.* No.

In the Asante-hene's " A " Court.

No. 9. Plaintiff's Evidence.

Solomon Adarkwah, Okyeame, 2nd

December, 1947—*continued.*

Cross-examination.

Examined by Court.

10 EXAMINED BY COURT.

Q. Was there any document prepared after the tribute was reduced to £35 ?—*A.* The Plaintiff demanded for one but it was not prepared in my presence.

Q. Who asked you to render an apology to Plaintiff ?—*A.* The Akwamuhene and several young men.

Q. Did you know whether he was accompanied by any young men from Ampabami or Praa ?—*A.* I cannot say.

No. 10.

Kwaku Abroneh—1st Witness for Plaintiff—Recalled.

20 KWAKU ABRONEH—1ST WITNESS FOR PLAINTIFF—Recalled :

EXAMINED BY COURT.

Q. Could you recognize the document for £35 which you made for the Boagyaahene ?—*A.* I cannot, but I will remember the contents if read to me.

Note : Exhibit " A " read to witness. He agrees that the contents are what he dictated.

Case adjourned till the 3rd December, 1947.

No. 10. Kwaku Abroneh recalled 2nd December, 1947.

Examined by Court—

(Sgd.) WIAFE AKENTEN II,
Offinsuhene,
P.

In the
Asante-
hene's "A"
Court.

No. 11.

Evidence of Adomako Ansa II

No. 11.
Plaintiff's
Evidence.

Parties present.

3RD WITNESS FOR PLAINTIFF :

Adomako
Ansa II
3rd
December,
1947.
Statement.

ADOMAKO ANSAH II, s.a.r.b. and states :

I am the Assamanghene. My land starts from Ejupu to Krosua stream thence to Bisikuntunye. I have a head boundary with Boagyaa and Ahuren at the Krosua Bisikuntunye. The Boagyaa lands lie in front, Ehuren on the left and the right belongs to both Boagyaa and Assamang and the rear belongs to Assamang. After crossing the head boundary (Bisikuntunye) and after passing the Assamang village, I have a boundary with Kokofu at a place known as Kyinaman. From the disputed area to Kyinaman is about 6 miles. 10

Examina-
tion.

EXAMINED BY PLAINTIFF :

Q. From the Bisikuntunye to the Akosua stream to its junction with the Buobi stream, have I any boundary with the Defendant ?—A. No.

Cross-exam-
ination

CROSS-EXAMINED BY DEFENDANT :

Q. Where does the Akosua lie ?—A. To reach the Bisikuntunye one has to tread through the Akosua stream.

Q. Do you not admit that one has to cross the stream before one reaches the Bisikuntunye ?—A. Yes, after walking through the Akosua.

Q. Do you not admit that your boundary with Ahuren is the Akosua ?—A. I do not admit. Our head boundary is the Bisikuntunye.

Q. How did the Boagyaahene come to own the land in dispute ?—A. According to history that I know the Assamanghene owned all the land and the then Asantehene gave portions to Boagyaa and Ahuren, the latter was a stool son to Assamanghene.

Q. Did the Assamanghene present the land ?—A. The Asantehene.

Q. Which Asantehene ?—A. Nana Poku Wari.

Q. Do you know the Boagyaahene fought many Chiefs in that area ?—A. I have no idea. 30

Q. Do you know the Dwoamin land ?—A. Yes, otherwise I cannot give this evidence.

Q. Are you aware that the Ahurenhene presented a certain portion of land to the Kokofuhene ?—A. I am not aware.

Case for the Plaintiff closed.

DEFENDANT'S EVIDENCE.

No. 12.

Evidence of Kyeame Akwasi Yeboah.

KYEAME AKWASI YEBOAH s.a.r.b.

I am representing the Defendant in this case. The Ahurenhene is the father of the Kokofuhene Gyami. The Kokofuhene approached him for a portion of land on which to make farms. The Ahurenhene said he had fought Owusu Akyim Tenten whose land he had taken and so the Kokofuhene should take a portion of that conquered land. The Ahurenhene said he had a boundary with the Assamanghene. He said the Kokofuhene should start from Bisikuntunye to the Akosua stream where the Assamanghene's lands lie, thence to a Dupon tree which is the boundary with Boagyaa. Thence to Hyedua to twin Wawa trees, thence to Onyine tree, thence to Bisiyasi-Dwoamin motor road, thence to Praa Nkwanta, thence to the source of the Praa, thence through River Praa, with the old deserted Praa village on the left, thence to Assamuasu Aboye. This is the end of Boagyaa lands. My boundary with Ahuren now starts from the Praa River you go to the Subin Stream. Crossing the Subin stream, Kokofu lands lie on the left and Ahuren on the right. Thence to Dwoamin old village path to Dwoamin old cemetery, thence to Supama stream with Dwoamin old deserted village on the left. Thence to the source of Supama stream. Thence up hill to Bokruwa stream, thence through Bokruwa to Sumubunsu, thence back to Subin stream. Thence to Kobrifa fetish pool, thence to Bonkruwa and subin junction, thence to the junction of Bonkruwa and Esikasu. Esikasu is on Ahuren stool land. Thence to Bisikuntunye, the starting point. There are five deserted villages on the disputed land. There is a fetish rock named Gyabimbuor on which we offer sacrifice. The deserted villages are Ampabam, Praa, Dwoamin, Yaa Asantewa, Odumasi. This is the land which the Ahurenhene gave to his son the Kokofuhene. The present Akwamuhene Assamoah of Kokofu told us something about 2 years ago. He told the Kokofuhene that the Plaintiff had been collecting some tributes from his subjects but he did not know in respect of which land the tribute was collected. The Defendant wrote to the Plaintiff asking to be informed in respect of which land he had been collecting tributes. The Plaintiff sent a reply to say he has not trespassed on Defendant's land. Later, the Plaintiff took action in the Amansie Area Court against certain subjects of the Defendant claiming tribute. The summons were referred to Defendant who sent a message to Plaintiff to the effect that he would not permit his subjects to pay if the claim was in respect of Dwoamin land. Later, the Defendant received Civil Summons from this Court. This Court went into the case, and found against us. However, the President of the Court, the Kumawuhene, gave a dissenting judgment in our favour. On appeal to the Chief Commissioner's Court the case was referred back to be reheard, hence this re-hearing.

In the
Asante-
hene's "A"
Court.

Defendant's
Evidence.

No. 12.

Kyeame
Akwasi
Yeboah,
3rd and 4th
December,
1947.

Statement.

In the
Asante-
hene's "A"
Court.

CROSS-EXAMINED BY PLAINTIFF.

Defendant's
Evidence.

No. 12.
Kyeame
Akwasii
Yeboah,
3rd and 4th
December,
1947—
continued.

Cross-exam-
ination.

Q. Was it the Ahurenhene who fought Owusu Akyim Tenten and wrested his lands from him?—*A.* The Ahurenhene fought him at the Asantehene's request.

Q. Was the Ahurenhene appointed head of the Army (Sahene)?—*A.* I cannot tell.

Q. What was the Ahurenhene's office to the Asantehene at the time?—*A.* He was his Safohene. I do not know what specific duties he performed for the Otumfuo.

Q. Do you not admit that the Ahurenhene was subservient to the Asokori-Mamponghe?—*A.* I do not know. 10

Q. Do you not agree that the Asantehene Nana Poku Wari waged war against Owusu Akyim Tenten and drove the latter away?—*A.* I do not know.

Q. Were the Kokofu elders aware of the alleged Ahuren gift to his son the Kokofuhene?—*A.* Yes.

Q. How many years since the Defendant occupied the Kokofu Stool?—*A.* Over 30 years ago.

Q. Was the Dwoamin land included in the Stool properties handed over to him?—*A.* Yes. 20

Q. Is the Defendant aware that Boagyaa subjects farm on the Dwoamin land?—*A.* No, till the last survey.

Q. Do you know the Defendant has been collecting tribute since 1940 from those of my subjects who farm at Dababrunsu on Kokofu land?—*A.* Yes, but they made a report to the Defendant.

Q. Why is your Akwamuhene not aware that the Dwoamin land has been presented to Defendant by the Ahurenhene?—*A.* You have concocted with him to make use of the profits from this land.

Q. Has the present Ahurenhene Asamoah also rebelled against the Defendant?—*A.* No, because he first reported your actions to us. 30

Q. Why did he (Asamoah) as Akwamuhene pay the tribute demanded before reporting to Defendant?—*A.* He thought the tribute was in respect of another land apart from Dwoamin.

Q. Do you not know the present Akwamuhene paid 3 years' tribute before the Defendant wrote to me?—*A.* Defendant only got to know when a report was made to him 2 years ago.

Q. Do you remember that the Ahurenhene and the Boagyaahe my predecessor litigated over the ownership of Dwoamin land and that the Kokofu Court which heard the case found for Boagyaa?—*A.* Your dispute was over the Besiase and Twireso lands. 40

Q. Who obtained judgment?—*A.* You.

Q. Do you remember the dispute between the Ahurenhene and Akwamuhene Abroneh litigated over the ownership of a thigh of a bullock which also the Kokofu Court decided for the Akwamuhene to the effect that the Boagyaahe should collect the thigh?—*A.* The Ahurenhene charged the Akwamuhene for being a "liar" and that was the cause of the action.

Q. What was the reasons why he charged him as a liar?—*A.* The Akwamuhene promised to give the thigh of the bullock to the Ahurenhene but failed to do so afterwards. In the Asantehene's "A" Court.

Q. To whom was the thigh given then?—*A.* The Defendant.

Q. Do you not remember that it was because of Abroneh the Akwamuhene's admission that he paid tribute to me, that the Court gave judgment for me?—*A.* It is not true. Defendant's Evidence.

Q. You say my land ends at Bosumpra and Asamuasu Aboye, do you not admit that I collect tribute from Opanin Kwakyi the Ahuren 10 Abontendomhene?—*A.* I am not aware Kwakyi pays tribute to you. No. 12. Kyeame Akwasi Yeboah, 3rd and 4th December, 1947—

Q. Do you know Kofi Penyah, Bamuhene of Ahuren, pays me tribute for farming on the Dwoamin land?—*A.* No. Cross-examination. continued.

Q. Do you know Akwasi Akora of Ahuren also pays tribute to me?—*A.* No.

Q. Why did the Dwoamin people buy an Odum tree from me during the time of the present Akwamuhene, to build a School house if the land is the Defendant's?—*A.* I do not know anything about this.

Q. Do you remember you subpoenaed the Assamanghene as your witness during the first hearing of this case?—*A.* Yes, but I did not like 20 to subpoena him this time.

Q. Do you remember he gave evidence to the effect that he had no boundary with you at Dwoamin?—*A.* Yes, he has even said so today.

Q. Do you remember that when Kwame Asare a Kokofu subject, residing at Dwoamin brought a fetish "Bresan" he applied to me through Defendant for a Physician Licence and the Defendant's Dabihene came with him?—*A.* I do not know anything about this.

Adjourned till tomorrow 4.12.47.

(Sgd.) WIAFE AKENTEN II,
Offinsuhene,
P.

30 DEFENDANT EXAMINED BY COURT.

Q. Do you affirm that you allotted the land in dispute to the Dwoamin people?—*A.* Yes. Examined by Court.

Q. How many years ago?—*A.* It was during Nana Gyami's time (about 1700).

Q. Who was the Asantehene?—*A.* Nana Osei Tutu.

Q. Since cocoa came into being, have never heard that your subjects at Dwoamin have been paying tribute?—*A.* No, till the Akwamuhene reported recently.

40 *Q.* When the Ahurenhene gave the land to his son as you allege, did the latter perform any native custom?—*A.* Yes, the Kokofuhene thanked his father with 2 bottles gin.

Q. Has the Akwamuhene never informed you that some Boagyaa subjects farm on the land?—*A.* No.

Q. Who is the Defendant's caretaker over this land?—*A.* The Odikro of Dwoamin who is subservient to the Akwamuhene.

In the
Asante-
hene's "A"
Court.

Q. Do you want the Court to believe that none of your subjects has ever hinted you that Boagyaa subjects farm on the disputed land?—
A. Nobody has ever informed Defendant.

Defendant's
Evidence.

Q. Have you ever questioned the Dwoamin Dikro why he pays tribute to Boagyaa?—A. No.

No. 12.

Q. Has the Defendant any other lands besides the Dwoamin lands?
—A. Yes, he has.

Kyeame
Akwasi
Yeboah,

Q. Has he caretakers over those lands also?—A. Yes.

3rd and 4th
December,
1947.

Q. Are there any existing arrangements between the caretakers and strangers farming on those lands?—A. The caretakers have no power to make agreements without the Defendant's knowledge. 10

Examined
by Court—
continued.

Q. Do the strangers on those lands pay game tribute to Defendant?
—A. They pay to Defendant.

Q. What happens if they fail to pay to him?—A. If they pay the tribute to another Chief the Defendant has right to question them.

Q. How many times has the Defendant received any game tribute from Dwoamin land?—A. Always, since the time of Nana Gyami.

Q. Can you name any hunter who has paid game tribute to Defendant in respect of Dwoamin land?—A. One Kwame Kodja from Ampabam.

Q. What is the distance from Kokofu town to the land in dispute?—
A. Six miles. 20

Q. Is the land in dispute a forest?—A. It used to be but it is now secondary forest.

Q. Has any body taken out any timber concession on the disputed land?—A. There are no timber trees thereon.

Q. Who first settled in this area, Ahuren or Boagyaa?—A. The former.

Q. How long after the settlement of Ahuren did Boagyaa follow?
A. I cannot say.

Q. Are you aware of the existence of the fetish Bresan at Dwoamin?
A. Never. 03

Q. Whom did the present Dwoamin Dikro succeed?—A. One Ekua Naa (a woman).

Q. How long ago did the present Odikro occupy the stool?—A. About 2 years ago.

Q. How long has the present Akwamuhene been on the stool?—A. About four years ago.

Q. Do friendly relations exist between the present Akwamuhene and the Defendant?—A. Certainly yes.

Q. Did the new Akwamuhene pay any tribute to Boagyaa before he made a report to you?—A. Yes, once, and he refused when a second demand was made. 40

Q. Do any Kokofu subjects farm on Boagyaa lands?—A. Yes, at Twereso.

Q. Have you subpoenaed the Dwoamin Dikro as a witness in this case?
—A. No.

No. 13.

Evidence of Atta Gyamfi II, Ahurenhene.

4.12.47.

DEFENDANT'S WITNESS, ATTA GYAMFI II, s.a.r.b.

I am the Ahurenhene. My ancestor was Amofa who married a Kokofu Royal named Abena Agyapoh. They bore Nana Brayieh, Nana Manu Ama and Nana Gyami. Nana Gyami became Kokofuhene. Nana Gyami asked his father for a portion of land for his wife to farm on. The Ahurenhene presented the Dwoamin land to the Kokofuhene. The Kokofuhene caused
 10 a village to be built on the land for his wife named Praa. The Kokofuhene's wife was named Nyidana. The Ahuren Elders decided upon certain terms, in connection with the gift and that is, on every Akwasiadai the Kokofuhene used to send drink for libation on the Ahuren stool and a sheep for sacrifice every year. The Kokofuhene gave 2 bottles of gin as "Aseda." This custom has been observed till now. My ancestor Nyina Eduenin married an Obaa Panin (Queen-Mother) of Boagyaa named Aboagyiwaa Simpai Aboagyiwa Simpahi's brother Asamoa Kenin who was the Boagyaahene also asked to be allotted a piece of land as he had emigrated from Mbaasi. The Ahurenhene requested the Boagyaahene to see his Safohene Twum
 20 Barima of Esiesi to show him some where to settle. The Boagyaahene was shown a place where abound several kola trees and so the place was named Besiase (lit—under the kola tree). The Ahurenhene and the Obaa Panin had one daughter named Ama Tia Gyasi who survived. The land was given to the Kokofuhene during Nana Osei Tutu, Asantehene's time and that to Boagyaahene in Nana Poku Wari's time. The boundary between the two Chiefs starts from a Dupon near the stream Akrosua, thence to Shedua, thence to twin Wawa trees, thence to an Onyina tree, thence to Ahuren-Murontuo motor road, i.e. between Besiasi and Dwoamin, thence to Praa Nkwanta thence to Busumpra River thence to Pra and Asamuasu Aboye
 30 which is the head boundary between Ahuren, Boagyaa and Kokofu.

EXAMINED BY DEFENDANT.

No question.

CROSS-EXAMINED BY PLAINTIFF.

Q. Do you remember I have litigated with you yourself over the ownership of this land in dispute which was settled by the Kokofu Court in my favour?—A. The dispute was about Besiase and Twereso land, which my ancestors presented to your ancestors.

Q. Where lies the land where your Safohene Twum resided?—A. Akotochiamu or Twumkrom.

40 Q. Do you know a boundary has been demarcated between my stool and your stool during your immediate predecessor Amponsem's time the boundary being from Ananse Bepoyasi to Asumenso?—A. I do not know.

In the
Asante-
hene's "A"
Court.Defendant's
Evidence.No. 13.
Atta
Gyamfi II,
Ahuren-
hene,
4th
December,
1947.

Statement.

Examina-
tionCross-exam-
ination.

In the Asante-hene's "A" Court. *Q.* Do you remember a dispute over a hind leg of a cow between you and one Abroneh, Kokofu Akwamuhene?—*A.* The dispute was over an insult which I offered against him because he refused to give the leg to me.

Defendant's Evidence. *Q.* Why did you claim the leg if as alleged you had given the land to Koko-fu?—*A.* I can claim. I have always done so and informed the Kokofuhene afterwards.

No. 13. Atta Gyamfi II, Ahuren-hene, 4th December, 1947. *Q.* You stated before this Court that the head boundary between my stool, your stool and the Kokofu Stool is Asamoasu and Praa Aboye, but would you be surprised, that the Kokofuhene has gone beyond this boundary right up to Besikuntunye?—*A.* You have no land beyond the Asamuasu-Praa Aboye. 10

Q. Do you know I collect tribute from your Abontendomhene Kwakyi in respect of his cocoa farm beyond Asamuasu stream and Praa Aboye?—*A.* I have never heard he has been paying tribute to you.

Cross-examination—continued. Kwakyi's farm is on my land (now corrects himself) Kwakyi's farm is on my boundary with Kokofu.

Q. Do you know I collect tribute from Kofi Penyah, your Bamuhene, for his cocoa farm near old Dwoamin cemetery?—*A.* I do not know.

Q. Do you know Kwasi Akora who is now here with you pays me tribute in respect of his farm near Dwoamin deserted village?—*A.* I do not know. 20

EVIDENCE CALLED BY COURT.

No. 14.

Evidence of Kwasi Akora.

Evidence called By the Court.

No. 14. Kwasi Akora, 4th December, 1947.

Note: KWASI AKORA who was in Court called, and questioned by Court.

BY COURT TO KWASI AKORA :

Q. Do you pay tribute to the Plaintiff?—*A.* Yes, I have paid only once but I was made to understand it was being sent to Kokofuhene. 30

DEFENDANT'S EVIDENCE (continued).

No. 15.

Evidence of Atta Gyamfi II, Ahurenhene (continued).

In the
Asante-
hene's "A"
Court.

BY COURT TO ATTA GYAMFI II, continued :

Q. How did you come by the land which you allege you share amongst me and Kokofu?—*A.* I fought Owusu Akyem Tenten, captured his land sword, and his Dwira.

Q. Did you fight him on your own accord?—*A.* I headed the Asantehene's army.

10 *Q.* How many times have you headed an Ashanti army?—*A.* Only this one.

Q. How many Chiefs did the Asantehene send to help you?—*A.* Three Chiefs, namely Asokori, Asokori-Mampong and Dadiase.

Q. What shares did you give to these Chiefs who were sent to assist you?—*A.* I have a boundary with Dadiase at Ahyrem but the other 2 Chiefs were not given portions.

Q. Should this Court therefore believe that you gave Dadiase its lands?—*A.* The Asantehene gave the land to Dadiase.

Q. Who was the Asantehene at the time?—*A.* Otumfuo Nana Osei Tutu.

20 *Q.* Do you not admit that Owusu Akyem Tenten was driven away by Asantehene Nana Poku Wari?—*A.* No, it was Nana Osei Tutu. Nana Poku Wari fought Bodwesango.

Q. What arrangement did you enter into with me also when you gave me part of your land as alleged?—*A.* You were charged with building one room (Pato) in my Court yard and you always spent the Adai in my Town. You paid nothing in kind. You have stopped building the room since the Yaa Asantewa War.

Q. What have you done since I stopped building the room?—*A.* I endeavoured to take the land back from you but I failed both in

30 Kokofu and Obuasi Courts?

Q. Do you know Nana Abboagyiwa Simpahi of Boagya never had a child at all?—*A.* I know my ancestor Nyina Eduenin had one child by her.

EXAMINED BY COURT.

Q. Why do you call the land "Dwoamin"?—*A.* Because of the fact that yam takes a long time to bake.

Q. How many of your subjects farm on this land?—*A.* I cannot say.

Q. Do those of your subjects who farm there pay tribute? If so to whom?—*A.* I do not know they pay any tribute.

40 *Q.* Did they inform you before they made farms there?—*A.* No.

Q. Do you affirm that the Chiefs you named were the only Chiefs who assisted you to fight Owusu Akyem Tenten?—*A.* I cannot remember if there were other Chiefs.

Defendant's case closed.

Judgment reserved till Saturday, 6th December, 1947, at 11 a.m.

(Sgd.) WIAFE AKENTEN II, *Offinsuhene*,
P.

Defendant's
Evidence—
continued.

No. 15.
Atta
Gyamfi II,
Ahuren-
hene,
4th
December,
1947—
continued.

Examined
by Court

In the
Asante-
hene's " A " Court.

No. 16.
Judgment.

No. 16.
Judgment
6th
December,
1947.

THE ASANTEHENE'S COURT " A " held at Kumasi on the 6th day of December, 1947, before THE OFFINSUHEHE, Presiding, THE KRONTIHENE, THE AKWAMUHEHE and THE AKYEMPIMHENE.

NANA KWASI AGYEMAN, Boagyaahene Plaintiff

v.

NANA KOFI ADU, Kokofuhene Defendant.

Parties present.

JUDGMENT :

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This is a dispute over the ownership of certain lands situate within the Bekwai district of Ashanti known as " Dwoamin." The case first came before this Court, which after inspecting the *locus in quo* gave two different judgments, the President, the Kumawuhene, giving one judgment in favour of the Defendant and the members namely the Oyokohene and the Gyasehene of Kumasi giving a dissenting judgment in favour of the Plaintiff. The majority judgment, however, carried more weight and consequently the Defendant appealed to the Chief Commissioner's Court which Court referred the case back for rehearing by a new panel of Chiefs other than those who originally heard it.

20

When the second hearing commenced it was considered advisable to have a survey of the land made, and an order to this effect was made accordingly. The Plan of the Survey is Exhibit " D."

The Plaintiff claims ownership in that the land was given him by the Asantehene Nana Poku Wari. That he has been in undisturbed possession for a good many years. That he has been collecting cocoa and game tribute from Defendant's subjects and other tenants who farm on the land. That nobody has ever questioned his rights in doing so. In support of his case he produced an agreement (Exhibit " A ") which shows that the former Akwamuhene of Kokofu (his first witness) agreed to pay an annual tribute of £35 to Plaintiff in respect of the Plaintiff's land on which his subjects farm. He also produced a book of Native Administration Receipts in which he has given several individual receipts to certain farmers of Dwoamin village. He further produced in evidence a certified copy of an application from one Kwame Asare—a Kokofu subject (but who lives at Dwoamin village) for a Physician Licence. The Plaintiff's case was supported by the evidence of three Witnesses, namely the ex-Akwamuhene of Kokofu, who was *ipso facto* the Odikro of Dwoamin, the Assacherehene and the Assamanghene two neighbouring Chiefs who have boundaries with him.

30

The Defendant on the other hand claims that the disputed land was given him by the Ahurehene as a gift, the Defendant being the

40

Ahurenhene's stools on. He admits that he had never collected tribute of any kind from any of the Plaintiff's subjects who farm on the land. That he was ignorant until 2 years ago that his subjects on Dwoamin land had entered into any agreement with the Plaintiff whereby they pay cocoa tribute to Plaintiff. That he knows nothing of Kwame Asare's application for a Physician Licence (Exhibit " B ") as he never endorsed it. That Plaintiff's 1st witness, Abroneh, the ex-Akwamuhene of Kokofu rebelled against him and that owing to his disloyalty he made that agreement (Exhibit " A ") without his knowledge and consent.

In the
Asante-
hene's " A "
Court.

No. 16.
Judgment,
6th
December,
1947—
continued.

- 10 Now, having patiently listened to the evidence of the parties and their witnesses we are convinced that the weight of evidence is in favour of the Plaintiff. There is no doubt that the Plaintiff has been in an undisturbed possession of the disputed land for many years and we cannot believe the story of the Defendant that he was not aware, that his subjects had been paying tribute to Plaintiff's stool for so many years past. Defendant's argument that Plaintiff's 1st witness, the ex-Akwamuhene of Kokofu, rebelled against him and made that agreement during the period of his rebellion cannot also be believed, because it is proved that the successor of the said ex-Akwamuhene has also paid the tribute more than
20 once to the Plaintiff (Defendant himself admits once). If Abroneh was a rebel, Assamoah, his successor, is not.

We fail to understand why the Defendant does not collect tribute from Plaintiff's subjects who farm on the disputed land, if, as alleged by Defendant the land is his. If he is not aware that Plaintiff's subjects farm on the land why has his caretaker, the Odikro of Dwoamin, not reported this fact to him ?

- 30 Exhibit " B " is also clear. It is admitted that Kwame Asare is a Kokofu subject. Why did he not apply for a Physician Licence at Kokofu but from Kumasi ? because he knew that the land on which he lived belonged to Plaintiff.

It was revealed at the hearing in cross-examination that both parties subpoenaed the Assamanghene (3rd witness for Plaintiff) as a common witness during the 1st hearing of the case, but as the Assamanghene gave evidence against the Defendant, the Defendant deliberately did not subpoena him again at this second hearing. This makes the Court to believe that the Assamanghene's evidence is true.

- 40 Now, turning to Exhibit " D," the Plan, and considering the evidence of the Ahurenhene, the only witness for the Defendant, it will be observed that three subjects of the Ahurenhene, namely Panin Kwakyi, Kofi Penya and Kwasi Akora pay cocoa tribute to the Plaintiff. One of these three persons, Kwasi Akora, who happened to be in Court and who was questioned by the Court admitted that he has paid tribute once to the Plaintiff, but adds that he was made to understand that it was being sent to the Kokofuhene (Defendant).

It is hard to believe how the Ahurenhene does not know if any of his subjects pay tribute to a neighbouring Chief in respect of land on which they farm. If the evidence of the Ahurenhene to the effect that his

In the
Asante-
hene's "A"
Court.

No. 16.
Judgment,
6th
December,
1947—
continued.

predecessor presented the land in dispute to the Defendant is to be believed, why should his subjects who farm on this very land which he has presented occupy the land free of any rent or without any arrangement with the Defendant who is the present landlord ?

We therefore come to the conclusion that the Plaintiff has proved his case beyond all reasonable doubt, and we are satisfied that he owns the Dwoamin lands and we accordingly enter judgment for him and against the Defendant with costs both at the first hearing before this Court and at this second hearing. Costs of the second hearing to be taxed ; the costs of the first hearing having already been taxed there is no necessity to tax 10 that again.

(Sgd.) WIAFE AKENTEN II,
Offinsuhene,
President.

Witness to Signature :

(Sgd.) JNO. W. POKU,
Registrar,
Asantehene's Court "A."

No. 17.

Grant of Final Leave to Appeal.

In the
Chief Com-
missioner's
Court.

No. 17.
Grant of
Final
Leave to
Appeal,
13th
February,
1948.

IN THE CHIEF COMMISSIONER'S COURT OF ASHANTI held at Kumasi on 20 Friday, the 13th day of February, 1948, before His Honour W. H. BEETON, Esq., Assistant Chief Commissioner Appointed to Preside Over the Chief Commissioner's Court.

NANA KWASI AGYEMAN, Boagyaahene *Plaintiff-Respondent*
v.
NANA KOFI ADU, Kokofuhene *Defendant-Appellant.*

Ex-parte Motion by Okyeame Kwasi Yeboah for and on behalf of Nana Kofi Adu Kokofuhene—Defendant-Appellant in the above cited case, praying for grant of Final Leave to appeal against the decision of the Asantehene's Court "A" in the above case as the conditions imposed on 30 Defendant-Appellant have been duly fulfilled.

Motion and Affidavit in support filed on 26/1/48.

Mover in person.

COURT.

The Registrar reports that the conditions imposed by this Court have all been fulfilled within the prescribed period. Final leave to appeal is therefore granted. Grounds of appeal to be filed within seven days and a copy thereof served on the Respondent.

(Intd.) W. H. B.
A.C.C. 40
13/2.

No. 18.
Grounds of Appeal.

In the
Chief Com-
missioner's
Court.

GROUND 1.

Judgment was wrong in law : Because Kwaku Abroneh Ex-Akwamuhene of Kokofu, who negotiated on an Agreement with the Plaintiff Respondent as to terms of an Annual Rental of £35 payable to Plaintiff Respondent never consulted the Defendant Appellant who is the sole owner of Dwoamin Lands. That without the Defendant Appellant's consent, knowledge or confirmation and his name as a signatory to any Document as to payment
10 of Annual Rental in respect of Dwoamin Lands, that Document or Agreement cannot be accepted as valid.

No. 18.
Grounds
of Appeal,
19th
February,
1948.

GROUND 2.

That the village of "Dwoamin" which is situated on the Dwoamin Lands now in dispute consists of three (3) Sections or Groups : namely, Dwoamin, Ampabami and Praah which form the nucleus of Dwoamin Lands. Each of these groups or sections has its own tutelage Head or an Odikro. That no one of these Heads or Adikrofo can *clandestinely* negotiate or enter into any privity of Agreement with any other individual outside—
20 ant Appellant or without the unanimous agreement of the Heads of the Groups or Sections as mentioned herein who form the nucleus of Dwoamin Village.

GROUND 3.

JUDGMENT IS AGAINST WEIGHT OF EVIDENCE : Because there is no evidence on Record that the application (Exhibit ' B ') of Kwame Asare for Native *Physicians* Licence, alleged to have been addressed through the Defendant Appellant did ever come to his (Defendant Appellant's) knowledge and that he the Defendant Appellant referred it to the Plaintiff Respondent to issue it.

30

KYEAME KWASI YEBOAH His
(KYEAME) X
Representative of Appellant. Mark

W/W to mark.

(Sgd.) J. ADU,
Secretary, Kokofu Divisional Council.

To The Registrar,
Chief Commissioner's Court, Kumasi.

Additional Grounds of Appeal.

No. 19.
Additional
Grounds
of Appeal,
12th March,
1948.

1.—The suit herein can not be determined and decided solely and simply by evidence of recent acts of occupation, but by evidence of original root of title. The Plaintiff failed to produce any evidence as to his root of title but depended solely upon his occupation. Asked why he did not subpoena the Gyasehene of Kumasi if it was indeed true that he originally acquired the land from him, the Plaintiff evaded the issue and said: "Because I have been in undisturbed possession of the land for many years." It is a well known and settled principle of law that long possession or occupation cannot, according to the customary law, ripen into or confer title of ownership. The Asantehene's Court "A" was therefore wrong in finding for the Plaintiff upon evidence of recent acts of occupation (Exhibit "A", 1935 and Exhibit "B", 1944). The declaration, based upon acts of recent occupation, that the Plaintiff "owns the Dwoamin lands" cannot therefore stand. Plaintiff had collected cocoa tributes for only a little more than 10 years. 10

2.—Incontrovertible evidence or ownership of land in Ashanti custom is the ownership of cemeteries, ancient settlements and villages on the land. The Plaintiff, claiming that the original owner of the land in dispute had been Odwawire, "a powerful chief," who, being subsequently chased "fled to Akim Swedru," when he the Plaintiff took his place, was nevertheless unable to point to a single landmark or ancient settlement as Odwawire's deserted village, or village ruins. The Defendant, on the other hand, proved beyond any reasonable doubt, including admissions by Plaintiff and his witnesses, that he owns five deserted villages on the land, has a fetish rock named Gyabimbuor on the land on which to this day they offer sacrifice, and that the modern occupants of the new settlements in the deserted villages listed at page of the Record are his subjects. The Odikro of Dwoamin, the largest of the villages, is, in fact, the Akwamuhene of Kokofu. It is inconceivable and incredible that so many ancient settlements and fetish landmark could have been in the ownership of Kokofuhene if in fact he was not also the owner of the land. On Exhibit "D", plan of the land in dispute, Ampabim is shown as a cemetery. In cross-examination Plaintiff's principal witness Kwaku Abroneh admitted that Ampabam was built by Kokofuhene's son that it is a stone thrown from Dwoamin and that Praa was a village built specially for Kokofuhene's senior wife. This steady accumulation of settlements is cumulative evidence of the rooted title of the Defendant. 30

3.—The allegation by the Plaintiff's principal witness Kwaku Abroneh that his ancestors obtained the land in dispute from the Boagyaahene can not be true because it is impossible that the Akwamuhene of Kokofu, arriving from Denkyira and accorded high rank at Kokofu, could have acquired 40

and for settlement without the previous knowledge of the Kokofuhene. It is in fact the first point made by the Plaintiff himself that it was the Kokofuhene (Defendant) who begged for the land from Boagyaa for his Akwamuhene. The two statements being however inconsistent, the straight forward and reliable evidence of the Ahurenhene that it was the Ahuren Stool that gave land to both Kokofu at Dwoamin and Boagyaa at Besiase ; that the Ahurenhene had previously become the occupant of all those lands after the conquest of Owusu Akyem Tenten ; and that the Boagyaahene, up to the Yaa Asantewa war, acknowledge the overlordship of Ahuren by annual services performed by Boagyaahene at Ahuren, disposes of the main issue in this case, viz., the original root of title was in Ahuren, and it was Ahuren who gave the Dwoamin land to Kokofu, by reason of which the Dwoamin lands were placed under the occupation of the Akwamuhene of Kokofu, namely, the Odikro of Dwoamin.

4.—Plaintiff and his principal witness, not telling a truthful story, confused Ashanti history for the purpose. Whilst admitting that Kokofuhene Nana Gyami died in the reign of Nana Osei Tutu (1700), they nevertheless assert that Gyami was active and alive in the reign of Osei Tutu's successor Nana Opoku Wari. Hence Kwaku Abroneh says in one part that Kokofuhene was informed after the gift was complete, and in another part he and the Plaintiff state that it was Nana Gyami who begged this land in the reign of Nana Poku Wari. Nana Gyami, the first king of Kokofu, was dead before Nana Poku Wari ascended the Gold Stool.

5.—All the acts of pretended exercise of ownership were such as could be performed by the Plaintiff without the Kokofuhene becoming easily aware of them. To pay tribute in respect of a piece of land does not involve doing any material act to the land itself.

6.—That Exhibit " A " was not signed or witnessed by any of the chiefs or headmen of the Dwoamin villages, nor by any elder, is conclusive that it cannot bind any Stool. No Stool can be bound where a Chief only signs a paper without at least a linguist or an elder testifying to the same. (*Quarm v. Yankah* I. W.A.C.A. 80.)

7.—There is a strong presumption in favour of the view that the ex-Akwamuhene of Kokofu, Kwaku Abroneh, principal witness for Plaintiff, who, during his tenure of the Stool, was in embittered relationship with the Kokofuhene, made Exhibit " A " with deliberate intent to prejudice the interests of the Kokofuhene. But the Defendant cannot for that reason be said to have slept on his rights, for as soon as the new Akwamuhene became aware of the fraud he brought same to the notice of the Defendant who thereupon effectively challenged the Boagyaahene's right to levy tribute in respect of Dwoamin lands.

8.—The Kokofuhene, Defendant herein, at all times exercised the customary and traditional right of overlord or owner in respect of the

In the
Chief Com-
missioner's
Court.

No. 19.
Additional
Grounds
of Appeal,
12th March,
1948—
continued.

In the
Chief Com-
missioner's
Court.

No. 19.
Additional
Grounds
of Appeal,
12th March,
1948—
continued.

Dwoamin lands, and the hind leg of the bullock killed as a sacrifice for the Dwoamin new market was given to the Kokofuhene as tribute. This was made openly at a time when the Boagyaahene and the Ahurenhene were both aware of the fact, and this public tribute is an indefeasible acknowledgment of the Defendant's title to the land in dispute.

9.—References to disputes between the Boagyaahene and other persons or to annual tribute paid by other persons to Boagyaahene in respect of this land, are explainable from the fact that those disputes did not put the question of ownership of the Dwoamin lands in direct issue, and those farmers paid tribute in their individual capacities and not such as to bind 10 or estop the Stool of Kokofuhene, Defendant herein.

Dated at Kumasi, this 12th day of March, 1948.

KYEAME KWASI YEBOAH,
for Defendant.

His
X
Mark

Witness to mark.
(Sgd.) J. ADU,
State Sec.

To the Registrar,
Chief Commissioner's Court of
Ashanti, Kumasi.

20

And to
The Above-named Plaintiff-Respondent,
Boagyaahene or Kumasi.

No. 20.
Reply to
Grounds
and
Additional
Grounds
of Appeal,
22nd March
1948.

No. 20.

Plaintiff-Respondent's Reply to Defendant-Appellant's Grounds of Appeal and Additional Grounds of Appeal.

1.—Defendant Appellant in his ground one argues that the evidence 30 of Ex-Akwamuhene Kwaku Abroneh of Kokofu (Plaintiff's 1st witness) who negotiated Tenancy Agreement with the Plaintiff Respondent by which the Ex-Akwamuhene and other Kokofu subjects pay him (Plaintiff Respondent) an annual tribute of £50 later reduced to £35 on the disputed land could not be admissible on vague ground that he (Defendant Appellant) did not endorse the Agreement (Exhibit "A"). In reply to this, the Plaintiff Respondent also maintains that the evidence of Ex-Akwamuhene Kwaku Abroneh which could be read from pages 12—16 of the Record is valid and impartial, Exhibit "A" prepared by the Ex-Akwamuhene is also valid and the Defendant Appellant's argument that he did not sign 40

it or give his consent to it does not in any way invalidate it. It is not imperative or a practice that when a subject of an Omanhene or a Chief acquires land from another Omanhene or Chief the Tenancy Agreement must necessarily be signed by the Omanhene or Chief to whom that Tenant owes allegiance. The only procedure is for the Landlord to require a Tenancy Agreement from the tenant stating or showing an annual tribute payable by him or her as a token of ownership of the land and nothing more.

To substantiate this argument, it is worth while to mention here that some of Plaintiff Respondent's subjects farm on the Defendant Appellant's Stool land for which they pay him tribute under an Agreement made between Defendant Appellant and Plaintiff Respondent's subjects and these Agreements or arrangements were not signed or endorsed by the Plaintiff Respondent herein and that would not mean that such arrangements are invalid : so that in the same way Respondent's subjects having farms on Appellant's Stool land negotiated with Appellant and paying him tribute without Appellant requesting Respondent to give his consent thereto, the same way it did not become necessary for Appellant to sign or give his consent to Exhibit " A " executed by his own Akwamuhene. Plaintiff Respondent has in hand to show to this Honourable Court a number of receipts issued to Plaintiff Respondent's subjects farming on Defendant Appellant's land.

(b) Defendant Appellant's allegation to the effect that his then Akwamuhene Kwaku Abroneh (Plaintiff Respondent's 1st witness) had rebelled against him when Exhibit " A " was prepared cannot also be accepted as true by any Court of Justice. The Ex-Akwamuhene Kwaku Abronen in his answers to cross-examination page 14 of the Record clarified any doubt in this argument and made it clear that he had not rebelled against the Defendant Appellant when Exhibit " A " was prepared otherwise he would not have allowed the Defendant Appellant's own Clerk (Mr. Ampoful) to prepare that document. His argument is logical for if the Akwamuhene (now ex-Akwamuhene Kwaku Abroneh) was a rebel at the time Exhibit " A " was prepared, how would he have allowed Defendant Appellant's Clerk Mr. Ampoful to prepare Exhibit " A " at Kokofu where Defendant Appellant lives.

Further it has been proved on record that Asamoah—successor of the Ex-Akwamuhene Kwaku Abroneh had also paid the tribute more than once to Plaintiff Respondent as admitted by Defendant Appellant in his answers to cross-examinations. If Kwaku Abroneh the then Akwamuhene was a rebel when Exhibit " A " was prepared as alleged by Defendant Appellant why should Assamoah—his successor in Office on the Akwamu Stool of Kokofu who is not a rebel pay the tribute for two times to Plaintiff Respondent on the disputed land before making the report to Defendant Appellant. The Ex-Akwamuhene's evidence is correct in every detail and the Appellant finding that such evidence is strongly against him hence he is feverishly making all these unbelievable allegations against him.

In the
Chief Com-
missioner's
Court.

No. 20.
Reply to
Grounds
and
Additional
Grounds
of Appeal,
22nd March,
1948—
continued.

In the
Chief Com-
missioner's
Court.

No. 20.
Reply to
Grounds
and
Additional
Grounds
of Appeal,
22nd March,
1948—
continued.

2.—Defendant Appellant argues in his main grounds that the Judgment of the Court is against the weight of evidence. This is simply ridiculous. In scrutinizing the evidence on Record, Your Worship will doubtless find out that the weight of evidence on Record is overwhelmingly in favour of Plaintiff Respondent herein. In every land case the evidence of the neighbouring Chiefs having boundaries with the disputed land is indispensable. In order to prove his case beyond every reasonable doubt, the Plaintiff Respondent subpoenaed and called the Assamanghene and the Assacherhene—two neighbouring Chiefs who have boundaries with him on the disputed land. Their evidence could be read from pages 16—18 of the Record and has made matters clear as to how the disputed land belongs to Plaintiff Respondent herein and how they have no boundaries with the Defendant Appellant on the disputed land. The evidence of Assacherehene (Plaintiff Respondent's 2nd witness) has further confirmed Plaintiff Respondent's evidence as to how some years ago the Odikro of Dwoamin—Akwamuhene of Kokofu, approached the Assacherehene to intercede with the Boagyaahene (Plaintiff) for a reduction of the £50 cocoa tribute he was paying on the disputed land owing to the fall in cocoa price and how the Boagyaahene (Plaintiff) reduced it by £15.

Another significant point is that Defendant Appellant admitted in his answer to cross-examination page 21 of the Record that both parties subpoenaed the Assamanghene (Plaintiff Respondent's 3rd witness) as a common witness during the 1st hearing of this case, but as this witness testified impartially against Defendant Appellant, he did not subpoena him again at the 2nd hearing: all these facts go to show the futility in Defendant Appellant's appeal.

3.—Exhibit " B " page 45 of the Record supports Plaintiff Respondent's title to the disputed land. It is admitted that Kwame Asare is Defendant Appellant's own subject and if the disputed land is not for Plaintiff Respondent, why should Kwame Asare apply to Plaintiff Respondent for a Physician Licence in respect of his fetish practised on the disputed land and not from the Defendant Appellant. Kwame Asare did this because he recognized Plaintiff Respondent to be the owner of the disputed land.

Further, Exhibit " C " supports Plaintiff Respondent's title to the disputed land. This Exhibit " C " is the Native Administration Receipt Book numbered B28401/500 tendered by Plaintiff Respondent herein. It is a testimony of how it is the Plaintiff Respondent herein who collects tribute from the various tenants other than Plaintiff Respondent's subjects who farm on the disputed land. Defendant Appellant admits that he has never collected tribute on the disputed land before. Apart from the Defendant Appellant's subjects and other strangers farming on the land and paying tribute to Plaintiff Respondent since many years ago, Plaintiff Respondent's own subjects have many farms on the disputed land as could be found from the " Plan " Exhibit " D " and if the disputed land is for Defendant Appellant as he is alleging, why shouldn't he have collected tribute from Plaintiff Respondent's many subjects farming on the disputed

land since a good many years. The allegation by Defendant Appellant to the effect that he did not know that Plaintiff Respondent's subjects farm on the disputed land or that his subjects squatting on the land pay tribute to Plaintiff Respondent cannot in any way be believed by any Court of Justice. If he (Defendant Appellant) is not aware of this, why has his alleged Caretaker, the Odikro of Dwoamin who himself pays tribute to Plaintiff Respondent not reported this to him. On page 22 of the Record, the Defendant Appellant in his answer to cross examination stated that the distance between Kokofu town and the disputed land is only six miles and
 10 further stated on page 20 of the Record that it is over 30 years when he occupied the Kokofu Stool. If it were true that the disputed land was among the Kokofu Stool properties handed over to Defendant Appellant some 30 years ago, why only for a distance of six miles the Defendant Appellant would not have known that Plaintiff Respondent's subjects farm on the disputed land or that Plaintiff Respondent collects tribute of every kind from the tenants squatting on the disputed land among whom are the Defendant Appellant's own subjects. The allegation is nothing but a tissue of blatant lies.

In the Chief Commissioner's Court.

No. 20.
 Reply to Grounds and Additional Grounds of Appeal, 22nd March, 1948—
continued.

4.—The only witness called by the Defendant Appellant is the Ahuren-
 20 hene who was alleged to have given the disputed land to Defendant Appellant herein. This witness (Ahurenhene's) evidence does not support Defendant Appellant's case at all. On page 23 the Ahurenhene (Defendant's only witness) admitted in cross examination that sometime ago he endeavoured to take the disputed land from Plaintiff Respondent but his attempt proved abortive as both the Kokofu Native Court and the Court at Obuasi entered Judgment against him (Ahurenhene). If Ahurenhene who is alleged to have given the disputed land to the Defendant Appellant had himself admitted of having failed in his endeavour to wrest the disputed land from Plaintiff Respondent then what is the use of his evidence? It is also
 30 incontrovertible fact that three subjects of the Ahurenhene (the only witness for Defendant Appellant) namely Panin Kwakyi, Kwasi Akora and Kofi Penya farm on the disputed land since many years ago and pay annual cocoa tribute to Plaintiff Respondent herein. Fortunately Kwasi Akora was in Court when the case was in progress at the Court Below and he frankly admitted of paying tribute to Plaintiff Respondent herein. If it is true that it was the Ahurenhene (Defendant's only witness) who dashed out the disputed land to Defendant Appellant as alleged, why shouldn't have Ahurenhene's 3 subjects farming on the land not have negotiated with Defendant Appellant to pay him any nominal tribute as a token of the
 40 ownership of the land, but rather pays tribute to the Plaintiff Respondent herein. The evidence of Defendant Appellant's only witness (Ahurenhene) is not in any way true and should be discredited.

5.—It is not true that Plaintiff Respondent collected tribute a little more than ten years ago as contended by Appellant. The evidence of Plaintiff Respondent confirmed by the Ex-Akwamuhene has shown how the ancestor

In the
Chief Com-
missioner's
Court.

No. 20.
Reply to
Grounds
and
Additional
Grounds
of Appeal,
22nd March,
1948—
continued.

of the Ex-Akwamuhene Kwaku Abroneh was paying the following tribute yearly to Plaintiff Respondent's ancestors namely, 13/- cash, 14 tubers of yam and one bottle palm-oil in token of ownership of the disputed land. It is further explained and confirmed as to how when cocoa came to being in the Gold Coast this arrangement was cancelled and substituted by payment of £50 annual tribute which the Ex-Akwamuhene and the other Kokofu Subjects, were paying until 1935 when Exhibit " A " was prepared reducing the tribute to £35. Defendant Appellant's allegation has no foundation of truth whatsoever. It is also not true that the thigh of the bullock slaughtered when the Dwoamin market was built was given to Defendant Appellant. The evidence of Ex-Akwamuhene, page 13 of the Record has clarified this argument and has shown how the thigh of the bullock was given to Plaintiff Respondent as lawful owner of the land. 10

Plaintiff Respondent has been in undisturbed possession of the land in dispute since the days of Asantehene Nana Opoku Wari—a period of about 200 years more or less, collecting tribute of all kinds, selling and receiving proceeds of timbers felled on the land in dispute as unveiled on page 8 of the Record without any opposition from any quarter: a conclusive proof of evidence of title to the disputed land. Doubtless, the Plaintiff Respondent has proved his case beyond every reasonable doubt and that the balance of 20 evidence is apparently and overwhelmingly in favour of Plaintiff Respondent herein. The Asantehene's " A " Court heard the case with elaborate pains and came to the only just conclusion that any other Court of Justice could have come to. There is not a particle of substance in any of Appellant's grounds of appeal and that it is therefore submitted that it should be dismissed and the Court Below's impartial and sound Judgment upheld with costs for Plaintiff Respondent herein throughout in the interest of Justice.

Dated at Kumasi, this 22nd day of March, 1948.

NANA KWASI AGYEMAN
Plaintiff-Respondent herein

His 30
X
Mark

The Registrar,
Chief Commissioner's Court,
Kumasi, Ashanti.

And to
Defendant Appellant herein at Kokofu.

W/W to mark.

(Sgd.) ? Darkoh.

Lic. No. 23987/48/Ksi.

40

Manhyia, Kumasi.

Fee 20/- for Original and Copies.

No. 21.

Court Notes of submission by Defendant-Appellant.

In the
Chief Com-
missioner's
Court.

Appellant in person—speaks through Okyeame Kwasi Yeboah.

The Boagyaahene said in the Lower Court:—It was Nana Gyami previous Kokofuhene who asked for permission from Boagyaahene for the Akwamuhene of Kokofuhene to live on the land.

In cross-examination I asked Boagyaahene whom he got the land from. He replied that it was Nana Opoku Ware who gave him the land.

I asked if Nana Gyami was alive during Opoku Ware's lifetime. He was 10 unable to answer. The Boagyaahene said he had an agreement between himself and Abroneh, Akwamuhene of Kokofu in respect of yearly tribute.

I asked him whether Abroneh made the agreement jointly with the three villages, Dwoamin, Praah and Ampabami because these three villages each had an Odikro. The Respondent was unable to explain this.

The Plaintiff Respondent Boagyaahene has said that it was Kokofuhene who had asked permission from the Boagyaahene for the use of the land by the Akwamuhene of Kokofu. Yet when the agreement in respect of tribute was being drawn up the Kokofuhene had no hand in it.

Nothing further.

No. 21.
Court
Notes of
submission
by the
Defendant-
Appellant,
2nd April,
1948.

20

No. 22.

Court Notes of submission by the Plaintiff-Respondent.

No. 22.
Court
Notes of
submission
by the
Plaintiff-
Respondent
2nd April,
1948.

RESPONDENT NANA KWASI AGYEMAN.

RESPONDENT.

Akwaboa was Nana Kokofuhene's Akwamuhene and he saw my land and informed the Kokofuhene.

The yearly tribute was £50.

Nana Kokofuhene receives tribute from some of my subjects farming on his land and does not consult me before entering into agreement with them.

My subjects are farming on the lands in dispute and if the land belonged 30 to Kokofu why are they not paying tribute.

Gyahunboa, the rock is not a fetish. A leopard used to live in the cave and bask in the sun on the top of the rock during the day time—hence the name.

In the
Chief Com-
missioner's
Court.

No. 23.
Judgment.

No. 23.
Judgment,
2nd April,
1948.

JUDGMENT.

Having read the record of the Lower Court together with grounds of appeal and reply, I can see no reason to interfere with the judgment given by the Asantehene's "Al" Court on the 6th December, 1947.

Appeal is therefore dismissed.
Costs to be taxed and paid by Appellant.

(Intd.) H.V.W.
Ag. : A.C.C.A. 10

No. 24.
Grant of
Leave to
Appeal,
28th May,
1948.

No. 24.
Grant of Leave to Appeal.

IN THE CHIEF COMMISSIONER'S COURT OF ASHANTI, held at Kumasi on Friday the 28th day of May, 1948, before His Worship H. V. WIMSHURST, Esquire, acting assistant Chief Commissioner, appointed to preside over the Chief Commissioner's Court.

NANA KWASI AGYEMAN *Plaintiff-Respondent-Respondent*
v.
NANA KOFI ADU *Defendant-Appellant-Appellant.*

Ex-parte Motion by Kyeame Kwasi Yeboah for and on behalf of 20 Nana Kofi Adu, Kokofuhene Defendant-Appellant in the above cited case, praying for grant of Final leave to appeal against the decision of the Chief Commissioner's Court Kumasi in the above case as the conditions imposed on Defendant-Appellant have been duly fulfilled.

Motion filed on 11/5/48.
Affidavit in support filed on 11/5/48.
Mover in person.

COURT :

The Registrar reports that the conditions imposed by this Court on the 16th April, 1948, have all been fulfilled within the prescribed period. 30 Final leave to appeal is therefore granted. Appeal and Grounds of Appeal to be filed within seven days from the date hereof and a copy thereof served on the Respondent.

(Sgd.) H.V.W.
Ag. : A.C.C.

No. 25.
Grounds of Appeal.

In the
West
African
Court of
Appeal

IN THE WEST AFRICAN COURT OF APPEAL.

BETWEEN

NANA KWASI AGYEMAN, Boagyaahene *Plaintiff-Respondent*
and
NANA KOFI ADU, Kokofuhene *Defendant-Appellant.*

No. 25.
Grounds
of Appeal,
filed
28th May,
1948.

10 The Appellant, being dissatisfied with the judgment of the Chief Commissioner's Court, Ashanti delivered on the 2nd day of April, 1948, and having obtained final leave to appeal therefrom dated the 28th day of May, 1948, hereby appeals to the West African Court of Appeal upon the grounds hereinafter set forth.

GROUNDS OF APPEAL.

1.—Long occupation or possession cannot, according to the customary law, ripen into ownership. The Asantehene's Court "A," in view of the evidence of original and continuous ownership in the Appellant, was wrong in making a *declaration* of ownership in favour of the Respondent upon the sole evidence of recent acts of occupation.

20 2.—The Respondent was unable to lay claim to any ancient settlements or landmarks of long occupation. The Appellant's Stool and people proved their prior and continuous occupation of the land by their possession of ancient landmarks, fetish rocks, villages and cemeteries. The Court below should have so found.

3.—It is compatible and consistent with the customary practice for the Respondent's principal witness Kwaku Abroneh who lives on the land in dispute as a sub-Chief under the Appellant's paramount Stool to have been granted that land at the time he, Abroneh, was made a sub-Chief (Akwamuhene) by the Appellant. It is palpably inconsistent with custom, and with the evidence on record, for a sub-Chief to have obtained the land he
30 lives on independently and without the knowledge of, his overlord or Paramount Stool.

4.—There is no validity in Exhibit "A" upon which the Respondent and the Court below relied. Exhibit "A" cannot in law bind the Appellant's Stool or any Stool interested in the land as against the Respondent because it was not executed on the authority of a Stool.

5.—The judgment is against the weight of the evidence.

Dated this 11th day of May, 1948.

(Sgd.) J. B. DANQUAH,
Appellant's Solicitor.

40 To the Registrar, West African Court of Appeal Accra and to the above-named Plaintiff-Respondent, Boagyaahene or Kumasi.

In the
West
African
Court of
Appeal.

No. 26.
Court Notes of Argument.

27th January, 1949.

No. 26.
Court
Notes of
Argument,
27th & 28th
January,
1949.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Victoriaborg, Accra, on Thursday the 27th day of January 1949: before Their Honours Sir HENRY WILLIAM BUTLER BLACKALL, P., ALLAN CHALMERS SMITH, Ag. C.J., Gold Coast and ARTHUR WERNER LEWEY J.A.

73/48.

AGYEMAN *v.* KOFI ADU.

10

DANQUAH for Appellant (Defendant).

ADJAYE (KESSIE with him) for Respondent (Plaintiff).

Ground 3 " palpably " struck out.

DANQUAH. Case depends on tradition and recent acts. Court " A1 " relied wholly on recent acts and did not consider tradition.

Defendant's main town 3 miles away which explained how he did not hear about his subjects paying tribute to Plaintiff.

Exhibit " A " is not witnessed by linguist. Akwamuhene Kwaku Abroneh cannot bind his superior Chief the Defendant. Exhibit " A " was signed by Akwamuhene alone therefore can't bind his subjects. 20 Akwamuhene did not inform his Chief.

Page Caretaker can't bind superior without latter's knowledge.

Page 14 rebelling admitted.

Quarm v. Yankah 1 W.A.C.A. 80 at 83-4.

Exhibit " B " what Appellant for licence thought should not bind Defendant.

SMITH C.J. : points out that Exhibit " B " was addressed through the Defendant.

Submit Exhibit " B " purely administrative act : nothing to do with land. It would go to head fetish priest. Exhibit " B " was addressed to 30 Defendant for information of Plaintiff.

Re Exhibit " C " tax or tribute was collected for Asantehene by local chief.

As soon as Defendant heard that Plaintiff was collecting from his subjects he took action—the present one.

Page events leading to present case.

Recent acts cannot oust true owner.

Opanin K. Adu v. Kuma 3 W.A.C.A. 240.

Dadzie v. Kojo 6 W.A.C.A. 139.

Akessie v. Ababio &c. 2 W.A.C.A. at 265.

Tenant's acts do not bind landlord in native as well as in English law. 40 Sarbah Fanti Customary Law 2nd Edition p. 68.

Re tradition.

Page Plaintiff c/f p. 45 Defendant. Plaintiff's 3rd witness p 18 says that he himself was original owner and that Asantehene gave parts to Plaintiff and part to person (Ahurenhene) through whom Defendant claims.

This does not support Plaintiff's case.

Plaintiff did not call Gyasehene through whom he claims. Page . No. 26. Knows meaning of Dwoamin. Court

Land in dispute has Ahurenhene's land on East and West which supports tradition that it was Ahurenhene's land.

10 Only 5 Boagyaas have farms on the land and don't live there. All the rest are Defendant's subjects—Kokofus.

All the old villages are Kokofu. Odumasi fetish rock is Kokofu therefore owners of land *Renner v. Fanti Mines* P.C. 1874-1928 page 53 possession only safe guide.

ADJAYE.

Privy Council Judgments page 110 tradition less consequence if opposed inexplicable facts. 2 W.A.C.A. page 1 at page 2 last paragraph.

Kokofu Division is different from Kumasi Division (see Vol. III page 376-8 Boagyaas is part of Kumasi Division.

20 Kumasi and Kokofu each have a Native Treasury. The receipts are for land tribute which is only payable by strangers who might belong to different chiefs.

Exhibit "A" is merely tendered in support of the oral evidence. Arrangement had already (been) made. For Native Court to determine weight of evidence.

If they were Kokofu subjects on Kokofu land why penalise themselves agree to pay £35 for which they were not liable, merely to spite their master.

30 Exhibit "B" was through Defendant to Plaintiff because applicant was a Kokofu so it would have to go through his own chief although the application had to be made to the owner of the land.

No Head Fetish Priest for all Ashanti Kumasi and Kokofu.

Adjourned to 28.1.49.

28th January, 1949.

IN THE WEST AFRICAN COURT OF APPEAL GOLD COAST SESSION, held at Victoriaborg, Accra, on Friday the 28th day of January, 1949: before Their Honours Sir HENRY WILLIAM BUTLER BLACKALL, P., ALLAN CHALMERS SMITH, Ag. C.J., Gold Coast and ARTHUR WERNER LEWEY, J.A.

40 73/48.

AGYEMAN v. KOFI ADU.

Parties as before.

ADJAYE (Resumes).

Page . Even if Kokofuhene lived 6 miles away he would know of tribute being collected by plaintiff.

In the West African Court of Appeal.

Notes of Argument, 27th & 28th January, 1949- continued.

In the
West
African
Court of
Appeal

No. 26.
Court
Notes of
Argument,
27th & 28th
January,
1949—
continued.

Exhibit " B " has a fee of £4 13. 0. why did Defendant allow this to go to Kumasi Treasury if he was entitled as Native Authority. He had a Treasury.

Page 21 Defendant does not deny last question re Defendant Dabihene accompanying the physician. He merely said he did not know.

There are 3 boundary owners—vital witnesses in land dispute. 2 of them gave evidence for Plaintiff. Pages 16 and 18.

Page 27 Asamanghene called by both at first hearing but Defendant left him out at second hearing. Native Court commented.

If Ahuren gave land to Kokofu his subjects would pay tribute to 10 Kokofuhene but they don't. They pay it to Plaintiff. Page

See Ahurenhene Cross-Examination. Pages 20-21.

See Appeal Court's comment at X page .

Submit specific findings of Native Court with knowledge of native tenure.

Roman Catholic Mission. Plaintiff demanded £3 for Odum tree. Why didn't Kokofu object page 8 at X also paid by Forestry Department same page.

Page 11 Plaintiff cross-examined re game tribute.

Page 20 Ahurenhene unsuccessfully sued for the land in dispute as 20 his own land. Now he says he gave it to Kokofu.

2 W.A.C.A. page 2 last paragraph and page 3.

DANQUAH in reply.

Page at X Ahurenhene's action was different land.

Every one hunting for tribute.

No. 27.
Judgment,
28th
January,
1949.

No. 27.

Judgment.

Appeal dismissed with costs assessed at £26. 1. 0.

(Sgd.) H. W. B. BLACKALL,
President.

30

No. 28.

Order Granting Final Leave to Appeal.

19th July, 1949.

In the WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Accra, on Tuesday, the 19th day of July, 1949, before His Honour HENRY MILES WINDSOR-AUBREY, J., Gold Coast, sitting as a Single Judge of Appeal.

CIVIL MOTION.

10 NANA KWASI AGYEMAN (*Plaintiff*) *Respondent to Privy Council.*
v.
 NANA KOFI ADU (*Defendant*) *Appellant to Privy Council.*

Motion on Notice on behalf of the Appellant for Final Leave to Appeal.
 Danquah for Appellant.

Final Leave to Appeal granted.

(Sgd.) W. M. WINDSOR-AUBREY
Judge.

19/7/49.

In the
 West
 African
 Court of
 Appeal.

— —
 No. 28.
 Order
 granting
 Final
 Leave to
 Appeal,
 19th July,
 1949.

In the
Asante-
hene's "A"
Court.

PLAINTIFF'S EXHIBITS.

Exhibit "A"—Promissory Note by Akwamuhene of Kokofu.

Plaintiff's
Exhibits.
"A"
Promissory
Note by
Akwamu-
hene of
Kokofu,
24th
January,
1935.

THIS IS TO CERTIFY that I the undersigned Chief Kwaku Abronkeh (Akwamuhene) of Kokofu faithfully promise to pay to Chief Kwabena Dapaa (Boagyaahene) cash the sum of £35 0s. 0d. Thirty-five pounds being cocoa tribute paid annually by my subjects of Dwoamin to the said Boagyaahene in respect of his land on which their cocoa trees situates. Payment to be made exactly the first day of January every year.

2.—In default of payment at the expiration of the time specified herein, the said Chief Kwabena Dapaa has the right and power to take action against me to recover the above stated amount subject to the provisions of this agreement. 10

Dated at Kokofu this 24th day of January, 1935.

KWAKU ABRONEH,
Akwamuhene of Kokofu.

His
X
Mark

W/W to mark :
(Sgd.) JOHN ? AMPOFUL.
Gratis. 24/1/35.

I hereby certify that this document has been read and explained by me to the above signatory in the Twi Language, who seems perfectly to understand the meaning before making his mark in my presence. 20

(Sgd.) JOHN ? AMPOFUL,
Gratis.

)))))))))
(((((((((((
R.T.P.



Exhibit " B "—Application by Kwame Asare for Physician's Licence.

Through NANA KOFI ADU,
Omanhene of Kokofu, Kokofu, Ashanti.

To : NANA BUAGYAAHENE,
Buagyaa.

Nana,

10 I have the honour most respectfully beg to apply through you for the information of Buagyaaahene to grant me a Native Physician Licence to carry on the duties of a Fetish Bresan on his land " Joamin."

1.—That the said Fetish is able to cure diseases and to look after wombs and prevent witches from causing damages to human beings, etc., etc.

2.—Nana, I trust the tone of this my humble application will be mercifully entertained.

I have the honour to be,

Sir,

Your obedient Servant,

20

(Sgd.) KWAME ASARE,
(*Applicant*).

His
X
Mark

W/W to mark :
(Sgd.) JOHN ASSAMOAH,
Liced. No. 19809/44/Bki.
Nkwadum lane,
Kokofu, Ashanti.

TO THE ASUMANKWAHENE,
Kumasi.

30 I certified that the said Kwame Asari the Applicant has brought such Fetish on my land which can be able to cure and to drive witches from causing dangers to human being.

KWASI AGYEMAN,
Boagyaaahene.

His
X
Mark

W/W to mark :
(Sgd.) G. GAMBRAH,
Teacher.
F. O. C.

In the
Asane-
hene's " A " Court.

Plaintiff's
Exhibits.
" B "

Application
by Kwame
Asare for
Physician's
Licence,
1944.

KUMASI,
5th Sept., 1944.

In the
Asante-
hene's "A"
Court.

Plaintiff's
Exhibits.
"B"

To OTUMFUO,
The Asantehene,
Kumasi.

Nana,

Application
by Kwame
Asare for
Physician's
Licence,
1944—
continued.

The overleaf is referred, Nana, for your approval as greatly recommended, by me.

I have the honour to be,
Sir, 10
Your obedient Servant,

(Signed) KWASI DUMFE, His
The Nsumankwahene. X
Mark

))))))
(((((((
L. T. P.

W/W to mark :
Gratis.

I. C., 02
Issue,

F.P.P.A. is £4 13/-

(Sgd.) J.W.K.A. Sec.
5/9/44.

C.R.,
Issued please.
Licence No. 596.

(Sgd.) F. ARTHUR.

R. 5872. 30
Certified True Copy,

(Sgd.) J. W. K. APPIAH,
Secretary,

Kumasi Divisional Council.
12/9/46.
Certified True Copy from Copy,

(Sgd.) JNO. W. POKU,
Registrar,
Asantehene's "A" Court.

In the Privy Council.

No. 41 of 1950.

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

BETWEEN

NANA OSEI ASSIBEY III, Kokofuhene,
substituted by Order in Council, dated
30th January, 1952, in place of NANA
KOFI ADU, Kokofuhene, Destooled

(Defendant) Appellant

AND

NANA KWASI AGYEMAN, Boagyaahene

(Plaintiff) Respondent.

RECORD OF PROCEEDINGS

BURCHELLS,

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