

IN THE PRIVY COUNCIL

No. 11 of 1960

ON APPEAL

FROM THE COURT OF APPEAL FOR EASTERN AFRICA

B E T W E E N :

THE KATI KIRO OF BUGANDA (Plaintiff) .. Appellant

- and -

THE ATTORNEY GENERAL (Defendant) .. .. Respondent

---

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No. 1181/1958

UNIVERSITY OF LONDON  
W.C.I.L.

- 7 FEB 1961

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ON APPEAL  
FROM THE COURT OF APPEAL FOR EASTERN AFRICAB E T W E E N :THE KATIKIRO OF BUGANDA (Plaintiff) .. Appellant

- and -

THE ATTORNEY GENERAL (Defendant) .. .. RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE

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IN THE PRIVY COUNCIL

No. 11 of 1960

ON APPEAL  
FROM THE COURT OF APPEAL FOR EASTERN AFRICA

B E T W E E N :

THE KATI KI RO OF BUGANDA (Plaintiff) .. Appellant

- and -

THE ATTORNEY GENERAL (Defendant) .. .. Respondent

RECORD OF PROCEEDINGS

No. 1

P L A I N T

IN HER MAJESTY'S HIGH COURT OF UGANDA AT KAMPALA  
CIVIL CASE NO.446 OF 1958

KATI KI RO OF BUGANDA .. .. PLAINTIFF  
versus  
ATTORNEY GENERAL .. .. DEFENDANT

P L A I N T

1. The Plaintiff is the Katikiro of Buganda, and his address for the purposes of this suit is C/o G. Lukongwa Binaisa, Advocate, Kampala.
2. The Defendant is the Attorney-General of Uganda Protectorate with a postal address at P.O. Box 50, Entebbe.
3. The Buganda Agreement, 1955 which came into force on the 18th October, 1955, made provision by Section 7, subject to certain conditions in sub-section (1) thereof referred to (which conditions were at all material times duly satisfied), for the representation of Buganda in the Legislative Council of the Uganda Protectorate and provided by sub-section 2 as follows:-

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- continued.

"The Katikiro shall submit to Her Majesty's Representatives, that is to say the Governor, the names of the candidates for appointment as the Representative Members of the Legislative Council to represent Buganda, that is to say the persons who have been elected for that purpose in accordance with the provisions of the Second Schedule to this Agreement."

4. The Buganda Agreement, 1955, Order in Council, 1955 (S.I.1955 No.1221) provided that it should come into operation on a day to be appointed by the Governor by notice in the Gazette and by Section 2 sub-section (2) thereof that: 10

"The Governor may declare by Proclamation that any part of the Buganda Agreement, 1955, shall have the force of law and, upon the making of the Proclamation, that part of the Agreement shall have force of law from the date upon which the Agreement comes into force or such later date as may be specified in the Proclamation." 20

5. By Notice of the 18th October, 1955, the Governor appointed that day to be the day when the said Order in Council came into operation.
6. By Proclamation of the 18th October, 1955, the Governor proclaimed and declared that the First and Second Schedules of the said Agreement should have the force of law from the date upon which the said Agreement came into force. 30
7. The said Second Schedule consists of Regulations for the Election of persons for recommendation to the Governor for appointment as Representative Members from Buganda of the Legislative Council, of the Uganda Protectorate.
8. Regulation 5 of the said Schedule provides that:- 40

"Whenever there is occasion to appoint a Representative Member or Members to represent Buganda in the Legislative Council of the Protectorate the Governor shall by notice in writing request the Katikiro to submit names

to him for that purpose and the Katikiro shall submit to him the names of persons who have been elected in that behalf by the Electoral College in accordance with these Regulations."

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9. Regulation 6(1) of the said Schedule provides that :-

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- continued.

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"There shall be established an electoral College for Buganda (herein referred to as the Electoral College) which shall consist of three persons elected in accordance with the provisions of these Regulations from each Saza in Buganda."

The said Electoral College has been duly established.

10. Regulation 18 of the said Schedule provides that:-

20

"So soon as the Governor requests the Katikiro to submit a name or names for the appointment of a person or persons as a Representative Member or Members of the Legislative Council the Katikiro shall summon the Electoral College to meet on a convenient date ...."

11. The Legislative Council of the Uganda Protectorate came into being by virtue of the Uganda Order in Council, 1920, which by Section 7 thereof provided as follows :-

30

"There shall be a Legislative Council in and for the Protectorate, and the said Council shall consist of the Governor and such persons, not being less than two at any time, as His Majesty may direct by any Instructions under His Sign Manual and Signet ...."

12. On the 18th October, 1955 the Legislative Council of the Uganda Protectorate pursuant to Royal Instructions passed from time to time consisted of the following :-

(a) The Governor;

(b) Three Ex-Officio Members, namely;  
The Chief Secretary of the Protectorate,  
The Attorney-General of the Uganda Protectorate

40

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Court of Uganda

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- continued.

and the Financial Secretary of the Pro-  
tectorate.

(c) Nominated Members; and

(d) Representative Members.

And the voting thereby prescribed was as fol-  
lows :-

"All questions proposed for debate in the  
Legislative Council shall be decided by the  
majority of votes, and the Governor or the  
member presiding shall have an original vote 10  
in common with the other members of the Council,  
as also a casting vote if upon any question the  
votes shall be equal."

13. The Legislative Council of the Uganda Protec-  
torate is now differently constituted and the  
voting changed, by virtue of Royal Instruc-  
tions dated the 17th December, 1957, to which  
the plaintiff will refer for their full scope  
and effect. These Instructions provide for 20  
the appointment of a Speaker and deprive the  
Governor both of an original and of a casting  
vote.

14. The plaintiff submits that the Legislative  
Council as at present constituted is not the  
Legislative Council referred to in the said  
Second Schedule or contemplated at the time  
it came into force, but is a body fundamentally  
different from it in its character and opera-  
tion.

And the plaintiff claims:- 30

- (1) A declaration that the Legislative Council of  
the Uganda Protectorate as at present con-  
stituted is not the Legislative Council re-  
ferred to in the Second Schedule to the Buganda  
Agreement, 1955.
- (2) A declaration that the Katikiro is not bound  
or entitled to take the steps laid down in the  
said Schedule for the purpose of electing  
Representative Members to represent Buganda in  
the Legislative Council of the Uganda Protec- 40  
torate as at present constituted.
- (3) A declaration that unless and until the

Legislative Council of the Uganda Protectorate is reconstituted so as to be the same as the Legislative Council referred to in the Buganda Agreement, 1955 and contemplated at the time thereof there is no procedure for electing Representative Members thereto.

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- continued.

(4) Costs.

(5) Further or other relief.

Dated at Kampala this 25th day of June, 1958.

G.L. BINAISA  
COUNSEL FOR PLAINTIFF.

10

FILED BY:

G. Lukongwa Binaiisa, Esq.,  
Advocate,  
Kampala.

No. 2

PROCEEDINGS ON APPLICATION  
FOR REJECTION OF PLAINT

IN HER MAJESTY'S HIGH COURT OF UGANDA AT KAMPALA

CIVIL CASE NO.446 of 1958

20

KATI KIRO OF BUGANDA .. .. PLAINTIFF  
versus  
ATTORNEY GENERAL .. .. DEFENDANT

No. 2

Proceedings on application for rejection of  
Plaint,

5th August  
1958.

PROCEEDINGS.

25.6.58. Plaintiff filed. Summons issued.  
(Sgd.) J. Herchenroder.  
8.7.58. Appearance entered by Ag. Attorney General.  
Defendant's attention drawn to Order 8,  
Rule 1 for filing defence.  
(Sgd.) R.W. Cannon.  
Dy. Registrar.  
22.3.58 Application for rejection of Plaintiff filed  
and listed for 5.8.58.  
(Sgd.) R.W. Cannon.  
Dy. Registrar.

30



In the High  
Court of Uganda

No. 2

Proceedings on  
application for  
rejection of  
Plaint,

5th August  
1958 -  
continued.

Before - The Honourable Mr. Justice SHERIDAN

5.8.58.

Starforth & Maloney for applicant.  
Quass Q.C. and Binaisa for respondents.  
References to Chamber Summons in Notice of  
Motion deleted by consent.

Starforth reads plaint.

Three submissions:-

- (1) Cap. 7 is comprehensive code. Suit must conform to it. 10
- (2) s.3 of Cap.7. Action must be founded on contract or tort. Plaint discloses no cause of action.
- (3) s.4 requires notice of intention to sue. Does Cap.7 refer to this suit?

(1) Wording of Ordinance itself. ss.2(1) (5), 3, 4, 5, 6, 10 "suit unlimited. 5 A.C.A. 63 distinguishable.

(1) Obiter - appeal withdrawn by consent.

(2) Different Ordinance. Fiat not given in Court of 1st instance. Judgment not support by S.G. S.G. submitted to judgment. 20

Arguments recited not adopted. Decides nothing. Why reported? Cap.5 of Tanganyika Laws ss. 2 (1) (3). Refers to Petition of Right. Dyson v. A.G. (1911) 1 K.B. 414 (1912) 1 Ch.158. Declaratory order separate. Is it binding authority?

Judgment by consent. Reasons not given. A.G. applied to be joined. He shouldn't have been as other respondents not members of Government. Doesn't answer question "Is it only under Cap.5 that declaration can be sought:-" It can under our Ordinance. 30

The claim must be one which could be brought in respect of a private matter. Burghes v. A.G. (1911) 2 Ch. 139 (1912) 1 Ch.173.

Dyson sought declaration that not bound to fill in form. Case struck out. Sui generis.

Even if notice given suit couldn't be brought. Vol. 6 of Laws. P.86 Article 15(2) of O. in C. 1902. 40

1882 Indian Code of Civil Procedure. Cap.27.

ss.416 - 429 s.424 analogous to s.4. Apply it mutatis mutandis.

Vol. 1. U.L.R. 54.

Did article 15 oust Common Law Rights of subject against the crown? They did. Robertson (1908) Ed.s.65 of Govt. of India Act, 1858.

1912 Ordinance goes further than Indian Act. s.3 deals with positive jurisdiction. Original Ordinance s.12 repealed Cap.27.

10 (2). s.3 excludes public official coming to Court to ask Court to define his duties. Confined to private rights. A private cause of action must lie. No private action against the Katikiro alleged. Limited to contracts and torts of that kind "whether".

Proviso shows that it is comprehensive.

2 (7) of First Schedule of Buganda Agreement, 1955, is confined to constitution. Doesn't refer to Legislative Council. Doesn't apply (Quass agrees).

20 (3) Suit is against Government s.2 (1). s.4. Limiting words only apply in the case of a suit against a public officer. Requirement of notice applies to any suit against the Government. Suit barred by a law.

Wallace - Johnson (1940) 1 A.E.R. 241. "glosses of English law", p.244.C. Slow to say that Ordinance not full exposition of law - from structure.

30 s.43 of Cap.1 (not in existence in 1912). Cap.1. must be read subject to it. Preliminary point of notice.

Vachers case (1913) A.C.107. White Book (1957) 422. O.25 r.5. All cases deal with private matters except Dyson and Burghes, and 1937, Ch.72 - Camarvon case.

40 In Dyson action had been taken against him. There was a question of penalty. Here plaint merely recites legal provisions and says that they impose an obligation on the Katikiro. No action or movement by the Government alleged. Goes far beyond Dyson. Mandamus? No allegation of liability. Unfair to be left to defy form. Here no disagreeable consequences alleged. Limits reached in Carnarvon case. Private acts p.77. "Declaratory judgment". Test validity of notice. p.80 "There ...? demand a decision." Plaintiff in position of trustee. No evidence that potential dispute has

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Proceedings on  
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rejection of  
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manifested itself in any way. No mention of declarations in Code. Indian Specific Relief Act dealt with it. Declarations can be granted under O. in C.1902 pari passu with English Courts.

Quass. Action in 1954 was for a declaration. A.G. applied to be joined. Declaration was binding on him. No objection to proceedings. This Court has exercised jurisdiction. Summary procedure in Chambers. Action was dismissed on ground that agreement had not been made part of municipal law. Court had no jurisdiction to inquire into Acts of State. Appeal entered but new Agreement made - First Schedule - very narrow jurisdiction. Technical points. Absence of notice. O.7. r.11 (a) and (d). Plaintiff didn't allege notice. Taking point in two different ways. Notice can be waived. No provision for this procedure and defendant relies on English procedure. O.7. r.11 - a matter for the Court. Should only be adopted in the plainest cases. Serious question of law. 10

5 E.A.C.A. 63. It was a decision. Could be dismissed without argument. Appeal not allowed by default. Must be satisfied that no merits in application. "Is there an arguable point of law?" That is all I have to satisfy you on. Only if no merits. Matter so plain that action should not continue. Defendant has no authority.

Dysons case. O.25 r.4. "Question of general importance." 1 Ch.pp.166, 167 "The point of law. In my view ..... summarily stopping action before trial." 30

Matter not so plain as unarguable. Ss.63 and 64 of Ordinances - s.5. Declarations common and useful. p.570, 580, 1958 White Book. O. in C. gave right to bring action for declaration. Cap. 7 is procedural. It has cut down rights of citizen. It didn't deprive him of right to get declaration. "Claim" in s.3 not synonymous with "suit". Stroud - definition of claim. "Assertion of a right." Not asking for assertion of right. 40

2nd Schedule deals with Leg. Co. Mukweba & Others v. Mukulira & Others and the A.G. No.50 of 1954. Question of convenience. S.4, comma after "Government," s.11. Can't apply to this suit. No comma in s.429. Mulla has a comma in s.429 which is now s.82. Ignore punctuation. 24 Q.B.D. 468 at 478 "To my mind." (1917) 1 K.B.98 at 123. Only when you are complaining of an act or default of public officer or Government through him that notice

is necessary. 'Or' should be 'nor' if notice always necessary. Object of statute - to avoid litigation. A.G. v. Hackney Local Board 20, Equity Cases 626, 628. "No proceedings" very wide purpose to give defendant an opportunity of putting the matter right. Doesn't exclude injunction. p.629. Speedy remedy. Rights for declaration. First look at nature of suit. You must complain of an act: Flower v Local Board of Low Leyton L.R. 5 Ch.d.347, 348. Injunction to restrain immediate injury. Act applies to action at law for damages. Indian cases.

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application for  
rejection of  
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10 Bhagchand 54 Indian Appeals 338 - conceded that s. applied - protection to officials in precise terms against personal responsibility for official actions. Chitaly note 11 on s.80.615 Mandatory. "An act done by the public officer." Other conditions must be satisfied. There must be an act done. Uganda section wider and more comprehensive. S.4 doesn't obviously refer to case of contract.  
20 p.617. Waiver of notice permissible. First Schedule is additional safeguard because of 1954 case. Second Schedule is part of the law of Uganda - para 4 of plaint. S.2 (7) sets out particular process. Second Schedule concerns Uganda as a whole.

#### Submissions.

(1) Application should not have been made. Other so plain as not to require argument. White Book 1958, 578. 1899 1 QB.86,90. "Argument needed - plain and obvious cases." Not obvious under O.7  
30 r.11 that plaint can be rejected for want of jurisdiction. O.5 r.5 - objection should be in pleading.

(2) If Attorney General right Court cannot entertain or draw constitutional matter. A.G. conceded that it is arguable that but for Cap.7 action maintainable under s.15 (2) of O. in C. Cap.7 cut down rights of citizens. Point not to be taken at this stage. 1938 decision not queried. No decision in A.G.'s favour. Here not concerned with  
40 form of declaration. Carnarvon case. Vachers case doesn't assist. A.G. blowing hot and cold.

#### Starforth in reply.

S.3 a positive enactment - narrow compass. Matter of discretion. (1957) 422 White Book (1957). In 1954 case declarations here asked for, was not taken (Quass. He applied to be made a party). The A.G. said it concerned him but point not taken.

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Suit doesn't conform with ss.3 or 4. 'Comma' Mulla, 306. There must be an act. Threatened acts. Apply 3 and not 4. No actions against Crown. Bhagchands case. Plain words of section.

Proceedings on application for rejection of Plaintiff,

C.A.V. to 8.8.58.  
(Sgd.) D.J. Sheridan.  
J.

5th August 1958 - continued.

8.8.58. Quass and Binaisa.

Starforth.

Order read.

10

Order, by consent W.S.D. in 15 days.

(Sgd.) D.J. Sheridan.  
J.

No. 3

No. 3

Order on Application,

ORDER ON APPLICATION

8th August 1958.

IN HER MAJESTY'S HIGH COURT OF UGANDA AT KAMPALA  
CIVIL CASE NO.446 of 1958

KATI KI RO OF BUGANDA .. .. PLAINTIFF/  
RESPONDENT.

versus

ATTORNEY GENERAL .. .. DEFENDANT/  
APPLICANT. 20

Before - The Honourable Mr. Justice SHERIDAN.

O R D E R.

This is an application under the Civil Procedure Rules O.7 r.11(a) and (d), for the rejection of a plaint on the grounds (1) that it does not disclose a cause of action and (2) that the suit appears from the plaint to be barred by s.4 of the Suits by or against the Government Ordinance (Cap. 7).

30

On this application all that it is necessary or desirable for me to say on the facts is that the respondent, who is the Katikiro of Buganda, by the plaint, asks for declarations (1) that the Legis-

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No. 3

Order on  
Application,

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continued.

10 relative Council of the Uganda Protectorate as at present constituted is not the Legislative Council referred to in the Second Schedule to the Buganda Agreement 1955 (2) that he is not bound or entitled to take the steps laid down in the said Schedule for the purpose of electing Representative members to represent Buganda in the Legislative Council as at present constituted and (3) that until the Legis-

10 same as the Legislative Council referred to in the Buganda Agreement 1955 there is no procedure for electing Representative members thereto. By s.2(2) of the Buganda Agreement 1955 Order in Council 1955 the Governor was empowered by Proclamation to provide that any part of the Agreement should have the force of law. By a Proclamation dated 18th October 1955, the Governor declared that the First and

20 Second Schedule to the Agreement should have the force of law. The First Schedule sets out the Constitution of Buganda and it contains a special provision of para.2(7) for referring any question relating to the interpretation of the Constitution to the High Court for determination. I am informed that one of the reasons for the insertion of this provision was to overcome the difficulty that arose in the case of Mukwaba & Others v. Mukubira & Others & the Attorney General (Uganda High Court Civil Case No.50 of 1954) (unreported) which concerned constitutional matters. There the suit was

30 dismissed on the ground that the Buganda Agreement then in existence had not been made part of the municipal law and so the Court had no jurisdiction to inquire into Acts of State. This special procedure does not apply to the Second Schedule which regulates the election of persons for recommendation to the Governor for appointment as representative members from Buganda of the Legislative Council of the Uganda Protectorate. Mr. Quass, for the respondent, argues that the provision in the First

40 Schedule is an additional safeguard which was inserted because of the 1954 case.

The first submission on behalf of the applicant is that Cap.7 is a comprehensive Code and that unless a suit conforms to its provisions it is not maintainable. Section 3 of the Ordinance provides "3. Any claim against the Government which would if such claim had arisen against a subject be the ground of an action in any competent court shall be cognizable by the said court whether such claim

50 shall arise or shall have arisen out of any contract

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lawfully entered into on behalf of the Government or out of any wrong committed by any servant of the Government acting in his capacity and within the scope of his authority as such servant.

Provided that nothing herein contained shall be construed as affecting the provisions of any law which limits the liability of the Government or any department thereof in respect of any act or omission of its servants or which prescribes specified periods within which a claim shall be made in respect of any such liability or imposes conditions on the institution of any action." 10

Prior to the enactment of Cap.7 in 1912 the Indian Code of Civil Procedure Act XIV of 1882 applied to Uganda by virtue of section 15(2) of the Uganda Order in Council 1902. Chapter XXVII of that Act set out the procedure for bringing suits by or against the Government or Public Officers. These provisions were reproduced in Cap.7 with the important addition of s.3 which deals with positive jurisdiction and confines liability to contract or tort. Clearly the present suit does not fall within the ambit of this section but does that mean that it cannot be brought apart from the Ordinance? Mr. Starforth, for the applicant, relies on the wording of the Ordinance itself which in ss.2, 4, 5; 6 and 10, refers to "suit" without any limitation, as indicating that the Ordinance was comprehensive. He concedes, so I understand, that it would be competent for the Court to grant a declaration under the Ordinance in matters relating to contract or tort. The Civil Procedure Code contains no general provision for the grant of declarations but they are frequently and increasingly asked for and granted and no objection is taken. That relief can be granted in East Africa by claiming a declaration is acknowledged in Saint Benoist Plantations Ltd. v. Jean Emile Adrien Felix 21 E.A.C.A.105 at P.109. Some support for the view that a declaratory order might be obtained apart from Cap.7 is lent by the decision of the East African Court of Appeal in Ngilisho Gadi Msue v. The Council of Chassa Chiefs, as the N.A. for Moshi District and Others & the Attorney General (Tanganyika) 5 E.A.C.A.63. The facts are not material save that in the Court of first instance a suit was dismissed on the ground that the suit being against the Government could not be instituted without the written consent of the Governor which could not be 20 30 40

waived. On appeal the acting Solicitor-General stated that he was unable to support the judgment on the ground that a declaratory order did not fall within the scope of the Government Suits Ordinance which substantially enacted the Petition of Rights Act and that a suit in such a case came within the provisions of Article 17 of the Order in Council and consequently no fiat was necessary. Article 17 is on similar lines to S.15(2) of the Uganda Order in Council. The appeal was allowed and judgment was entered in terms of these submissions. This decision can be distinguished on the ground that it was based on the construction of a different Ordinance which referred to petitions of right. Also it is argued that the submissions were recited and not adopted in the judgment of the Court. This is a very fine distinction which I'm not sure that I appreciate. The Court did not express any disapproval of the submissions and although it did not give reasons of its own it embodied those submissions in a judgment which I cannot ignore. The appeal was not allowed by default. Nor do I know of any adverse comment on that judgment since it was pronounced in 1938. That case does at least show that the submission that Cap.7 is all embracing is not too plain for argument and that is an important factor at this stage of the proceedings. I observe that the Tanganyika Ordinance refers to "suit" in the same wide terms as does Cap.7. The point has also been made that the Attorney-General of Uganda appeared to share this view when he applied to be joined as a party in the 1954 action. It was conceded on behalf of the applicant that it was arguable that but for Cap.7 the suit might be maintainable under s.15 (2) of the Order in Council.

Reference was made to Dyson v. Attorney-General (1911) 1 K.B.D.410 (1912) 1 Ch.D.158, where it was held that a declaratory judgment could be made against the Attorney-General, as defendant representing the Crown, and the plaintiff was not bound in such a case to proceed by petition of right. It is distinguished on the ground that there the plaintiff had laid himself open to a penalty but that in the instant suit the plaint does not allege any disagreeable consequences for the plaintiff if the declaration asked for is not made. It is conceded that there is the possibility of an order of mandamus being made against him. But this case is relevant for the statement that O.XXV r.4 of the Rules of the Supreme Court, which corresponds to

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the Uganda O.7 r.11, was never intended to apply to any pleading which raises a question of general importance, or serious question of law. On appeal at p.167 of the Chancery Report the Court approved of the refusal of the lower court to dismiss the action in a summary way. Fletcher Moulton L.J. said "It is not in accordance with the practice of the Court, nor is it desirable, to refuse to allow cases raising points which involve serious argument to go to trial so that the parties may have then decided in the ordinary way at the trial and may enjoy the rights of appeal following from their being so decided." In re Carnarvon Harbour Acts 1793 to 1903 Thomas v. Attorney-General (1937) Ch. D.72, the Court referred to the limits it would observe in granting declarations. I regard that case as more suitable for quotation at the hearing of the action than on this application.

10

Finally on his first submission Mr. Starforth relies on the decision of the House of Lords in Vacher & Sons v. London Society of Compositors (1913) A.C.107. In that case it was held that the defendant trades union had been rightly struck out as being improperly joined on the ground that the language of the Trades Dispute Act 1906, which conferred an immunity in tort on trades unions, was so precise and unambiguous that the contention that in certain circumstances they could be made liable was unarguable. I am unable to go as far as that in regard to Cap.7.

20

30

The question of notice under s.4 of the Ordinance is closely linked with the question of jurisdiction under s.3, because if I am not satisfied at this stage that there is virtually no doubt about the correctness of the first submission, it becomes unnecessary to consider the second submission in any detail or to make a positive finding on it.

Section 4 reads:-

"4. No suit shall be instituted against the Government, or against a public officer in respect of any act done in pursuance, or execution, or intended execution of any Ordinance or other law, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Ordinance, duty or authority, until the expiration of two months next after notice in writing

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has been, in the case of the Government, delivered to or left at the office of the Chief Secretary, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left."

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No. 3

Order on  
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continued.

10 Mr. Quass referred me to English cases on ana-  
logous Acts which establish that notice is not al-  
ways necessary, the main purpose of those Acts being  
to avoid litigation and give the defendant an oppor-  
tunity of putting right the matter complained of.  
He will pardon me if I come straight to the consider-  
ation of the Privy Council case of Bhagchand Dagadusa  
& Others v. Secretary of State for India in Council  
& Others 54 I.R.338, which is more in point. Section  
424 of Cap.XXVII, of the Indian Code of Civil Pro-  
cedure has been replaced by s.80 of the 1908 Code  
20 which reads "no suit shall be instituted against  
the Secretary of State for India in Council, or  
against a public officer, for any act purporting to  
be done by such officer in his official capacity,  
until the expiration of two months next after notice  
in writing." In that case it was held that the  
language of the section was mandatory and admitted  
of no implications or exceptions, that the section  
was applicable to all forms of action and all kinds  
of relief. "But" says Chitalys Code of Civil Pro-  
cedure (4th Ed.) Vol.1 at p.764 "the decision of the  
30 Privy Council cannot be taken to mean that notice  
is necessary in every suit for injunction against  
the Secretary of State or a Public Officer, without  
regard to the fact whether the other conditions  
necessary to the applicability of the section are  
satisfied. Thus, the section will only apply when  
the suit is in respect of an act done by the public  
officer." Mr. Starforth has argued that the pres-  
ence of a comma after the word Government in s.4  
40 means that the words must be read disjunctively  
until you reach the words "until the expiration of  
two months." My present view is that he is pro-  
bably correct and that the words "such officer" in  
line 3 of s.80 of the Indian Code make this clearer  
but this is difficult to reconcile with the passage  
I have quoted from Chitaly. Does "the act done"  
only refer to a suit brought against a public offi-  
cer or does it also qualify a suit brought against  
the Secretary of State - or Government in Uganda --  
50 or in any event, must there be an act done by the

In the High Court of Uganda

Secretary of State - or Government of Uganda as Mr. Quass appears to contend?

No. 3

Order on Application, 8th August 1958 - continued.

I hope I have said enough to indicate that I do not consider this to be a plain and obvious case which ought to be disposed of in a summary way without requiring the applicant to plead in the manner provided for by O.6 r.5 of the Rules. The scope of the English rule corresponding to O.7 r.11 and the cases on it are set out at p.574 of the Annual Practise 1958. Having listened to the exhaustive and interesting arguments of Counsel on both sides, I am of the opinion that there is a point of law which requires serious discussion and to which objection should be taken on the pleadings. As at present advised I cannot say that the case is beyond doubt. This Rule "ought not to be applied to an action involving serious investigations of ancient law and general importance." Dyson v. Attorney-General (1911) 1 K.B.414.

10

In conclusion and in order to avoid any misunderstanding, I would like to state that I was prepared to give my decision on the correctness of the applicant's submissions but in view of the respondent's submissions and on the authorities, I feel I must refrain from doing so at this stage, because the question whether or not Cap.7 is a comprehensive Code raises a serious and important point of law which is not suitable for determination on this application. I am not concerned with the possibility of further delay or the possible repetition on a future occasion of at least some of the weighty arguments which have already been addressed to me. The application is dismissed with costs.

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(Sgd.) D.J. SHERIDAN. JUDGE 8.8.58.

No. 4

Defence, 19th August 1958.

No. 4

DEFENCE

IN HER MAJESTY'S HIGH COURT OF UGANDA AT KAMPALA  
CIVIL CASE NO.446 OF 1958

40

KATI KIRO OF BUGANDA c/o G.Lukongwa) Plaintiff  
Binaisa, Advocate, Kampala )  
versus )  
ATTORNEY GENERAL, ) Defendant  
P.O. Box 50, Entebbe )

In the High  
Court of Uganda

No. 4

Defence,

19th August  
1958 -

continued.

1. Paragraphs 1 to 12 of the Plaintiff, in so far as they consist of statements of fact, are admitted, except that the Defendant makes no admission in respect of the establishment of the Electoral College referred to in paragraph 9 thereof.

10 2. The Defendant admits that Royal Instructions dated the 17th December 1957 provided for the appointment of a Speaker to the Legislative Council of the Uganda Protectorate and further provided that the Governor should have neither an original nor a casting vote, but save as aforesaid makes no admission in respect of paragraph 13 of the Plaintiff.

20 3. The correctness of the submission contained in paragraph 14 of the Plaintiff is denied. The defendant contends that the Legislative Council as at present constituted is the Legislative Council referred to in the said Second Schedule and contemplated at the time the said Second Schedule came into force, and denies that the Legislative Council as at present constituted is a body fundamentally different from that referred to and contemplated as aforesaid, either in its character and operation or otherwise.

30 4. Further, or in the alternative, the Defendant will refer to the fact, which is alleged in paragraph 3 of the Plaintiff, and which is admitted, that certain conditions contained in subsection (1) of section 7 of the Buganda Agreement, 1955, were at all material times duly satisfied, and will contend that so long as the said conditions are duly satisfied the Plaintiff is bound or entitled to take the steps mentioned in the second declaration claimed, even if (which is denied) the Plaintiff's submission in paragraph 14 of the Plaintiff is correct.

5. The Defendant will further contend that the declarations claimed should not be granted, on the grounds that -

40 (a) the court, if (which is not admitted) it has a discretion to grant the said declarations or any of them, should not in the premises exercise that discretion;

(b) the court has no jurisdiction to hear this suit in view of the provisions of the Suits by or against the Government Ordinance;

In the High  
Court of Uganda

No. 4

Defence,

19th August  
1958 -  
continued.

(c) the Plaintiff has failed to comply with the provisions of section 4 of the said Ordinance regarding notice.

6. In the premises the Defendant denies that the Plaintiff is entitled to the declarations claimed or any of them, for the reasons alleged or at all.

Dated this 19th day of August 1958.

(Sgd.) ?

ACTING ATTORNEY GENERAL  
Defendant

10

No. 5

Proceedings in  
Suit,

12th November  
1958.

No. 8

PROCEEDINGS IN SUIT

Before - The Honourable Mr. Justice BENNETT

12.11.58. Quass and Binaisa for plaintiff.

MacKenna and Starforth for defendant.

Quass.

Plaintiff says changes in Leg.Co. since 1955 have been so fundamental that clauses in this agreement relating to Leg.Co. one no longer applicable. Defendant has taken point this Court has no jurisdiction to hear suit. Defence raise subsidiary point that this was an action, which could not be brought without notice under sec. 4 of Cap. 7. That point has gone following correspondence between Binaisa and defendant. Defendant agreed to waive notice if court itself does not take the point. Authorities show the point is one which Court will not take if point waived by defendant.

20

On pleadings two points arise, namely:-

(a) jurisdiction.

30

(b) the main question on which declarations are sought.

MacKenna.

I take no point that Court has no jurisdiction. I accept contention that defendant can waive the point of notice and it has been waived. Defendant abandons paras. (b) and (c) of S.5 of defence.

Court.

I am satisfied that Court has jurisdiction to hear suit and to grant relief prayed.

Quass.

Facts not in dispute.

MacKenna.

I admit for purpose of these proceedings that an electoral college has been established as alleged in para.9 of plaint.

In the High  
Court of Uganda

No. 5

Proceedings in  
Suit,

12th November  
1958 -  
continued.

10 Quass.

Buganda being asked to send representatives to a different body to that contemplated by the Buganda Agreement of 1955. Paras. 1 to 12 of plaint now admitted by defendant. Relations between Buganda and Crown set out in three agreements of 1894, 1900 and 1955. Under the agreements protected persons give up certain of their powers to Crown in exchange for protection. I refer to the 1894 treaty - under which Buganda became a protected state.

20 I refer to Uganda Agreement 1900, article 5. I refer to Buganda Agreement 1955 which was made by Governor and Kabaka; in particular to the recitals and to section 7. I concede that the conditions laid down in sec.7 for the representation of Buganda in Legislative Council have been satisfied. Second Schedule to 1955 Agreement has been made part of municipal law of Protectorate.

First Schedule to 1955 agreement has also been made part of municipal law.

30 I refer to section 11 of 1955 Agreement. No changes to be made to Constitution of Buganda for six years. First Schedule contains no reference to Legislative Council and can be ignored apart from reference to position of Governor, vis a vis Buganda in sec.2 (2). Governor is direct link between people of Buganda and the Crown. Uganda a Protectorate not a colony. There is a difference. When Uganda first became a Protectorate law making power was in the Governor. I refer to last recital in Uganda Order in Council, 1920, Vol. VI.p.97 of laws. Article 7 creates for first time the Legislative Council.

40

Sect.15 of Royal Instructions, Vol.VI. p.108 of laws, sets out constitution of Legislative Council.

In the High  
Court of Uganda

No. 5

Proceedings in  
Suit,

12th November  
1958 -  
continued.

Sec.25 requires Governor to preside over Legislative Council and sec.26 gives him a casting vote. Those two sections are in my submission fundamental.

In 1953 Crown withdrew recognition of the Kabaka. Kabaka was out of the country till October 1955.

Royal Instructions amended by Additional Instructions, 1953 (1953 laws, p.513) varies composition of Council vide sec.3.

Uganda (Amendment) Order in Council 1953 (1953 laws p.518) articles 5 and 6. Article 5 confers reserved powers of legislation on Governor. 10

Up till 1953 no provision regarding length of time in Legislative Council shall remain in being before being dissolved. In 1953 Legislative Council was given a life of four years. In February, 1954, the new Council met and was the Council in being in 1955 when Buganda Agreement 1955 was signed. Life of the Council, which met in 1954, was extended beyond the four years by some document which I cannot trace. 20

Alterations to Leg. Co. made in 1957 not contemplated in 1955 when Buganda agreement signed. Defendant has put this in issue. A Government white paper incorporating Namirembe agreement was issued in November, 1954, to which I will refer. The paper is C.M.D. 9320. I refer to paragraphs 3 and 6 and to appendix A, article 54. Parties had in mind the Legislative Council then in being. Article 48 is important - no major changes in Constitution. I refer to appendix B.8, paragraphs 4, 5, 6, 7 and 8. 30

I shall seek to lead evidence to identify the subject matter of clause 7 of Buganda Agreement, 1955. I refer to appendix C. paragraphs 15, 16, 22, 26, 28, 30 and 34. Also to paragraph 37.

Before 1955 Agreement was made there was a transitional Agreement dated 15th August, 1955. In 1955 it was intended that the Governor should be president of Legislative Council. There was an alteration in Royal Instructions dealing with who should preside over Council in 1956, i.e. Legal Notice 88 of 1956. No objection is taken to this. Then in 1957 come changes to which my clients take 40

gravest objection. I refer to Additional Instructions, 1957, Legal No.272 of 1957, which come into force by virtue of Proclamation (Legal No.271 of 1957) on 1.1.58. Clause 2 replaces clause 15 of 1920 Royal Instructions as revoked and replaced by clause 3 of 1953 Instructions (Legal No.314 of 1953). A speaker is introduced for the first time. He is to be from outside the Council, vide new clause XVA. Clause 5 of 1957 Instructions replaces clauses 24, 25 and 26 of the 1920 Instructions. Speaker is not a member of the Council. See clause 7 of 1957 instructions. Two new members appointed in to replace Governor's casting vote. This upsets balance. Uganda (Electoral Provisions) Order in Council, 1957, Legal No.174 of 1957, shows that the Crown is saying that the present Leg. Co. is coming to an end and a new Council is to take it's place. I refer to the recitals. Note use of words "proposed Leg. Co." in section 3 (1) of 1957 Order in Council.

In the High  
Court of Uganda  
            
No. 5

Proceedings in  
Suit,  
12th November  
1958 -  
continued.

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20

On 27.9.58 a new Order in Council entitled the Uganda (Amendment) Order in Council, 1958 (Statutory instrument 15 of 1958). Legal No.246 of 1958, was made. From 1920 there had been a Leg. Co. with Governor as it's head. Section 7 of 1920 order in council. In 1958 Order-in-Council gives speaker new powers to suspend members. See Section 4. It may be argued that when suit was filed the 1958 Order in Council had not come into force. Don't know if this argument will be relied on by defendant. Fact that two bodies are called by same name does not mean that they are the same. Crown recognises that in its 1958 Order in Council.

30

Some of the changes made since 1955 were envisaged by Namirembe conference. Others were not. Major changes in Council have been made which were not envisaged by either party to the Buganda Agreement, 1955. Buganda Government not a party to these changes. They are major changes.

40

By Governor's disappearance from Leg. Co. Buganda have partially lost protection of Crown which Treaties gave them. Governor's casting vote was of very greatest importance. If he did not use his vote he came to a policy decision not to do so. Buganda gave up their powers to make laws over many matters to the Crown by the 1900 Buganda Agreement. Character of an Assembly can be completely changed by change in personality of its President. In U.K. there was a fundamental change in cabinet system



In the High  
Court of Uganda

No. 5

Proceedings in  
Suit,

12th November  
1958 -  
continued.

when Sovereign ceased to preside. Governor is Sovereign's representative in Uganda. Fact that Governor has reserved powers to legislate without consent of Leg. Co. does not affect the matter. Governor who takes active part in local politics does so as Queen's representative. A member of Leg. Co. has opportunity of speaking before and convincing Governor - if Governor presides over Leg. Co. How can the member win over the Governor in a Leg. Co. debate if Governor is not present?

10

Hearing adjourned till 13.11.58.

(Sgd.) K.G. Bennett.

13th November  
1958.

13.11.58. Counsel as before.

Quass (Continuing)

Protectorate Government must tread warily in developing native institutions. That was recognised by Governor in 1954 when he recommended no major political changes before 1961. The Buganda rely on protection of the Crown and presence of Crown's representative in Leg. Co. is a matter to which Buganda attach greatest importance.

20

From 1902 Governor was law making authority till 1920. From 1920 till 1957 Governor was assisted by Leg. Co. In 1957 comes a break in continuity. Protection of Crown in Leg. Co. has gone since 1957. Governor no longer plays any real part in lawmaking. Constitution of Leg. Co. since 1957 envisages that he shall play no part. If he does appear in Leg. Co. he has no vote. One must look at the reality of situation. To all intents and purposes the Governor has gone from Leg. Co.

30

The 1958 Order in Council (Legal No.246 of 1958) does not mention the Governor at all.

Previously a Governor's casting vote could be used to break a deadlock. Now there is no way of breaking a deadlock. If votes are equal the motion is lost. Two new members have been added to Government side of house. They are required to vote for Government. The changes brought about by the 1957 Royal Instructions prepared the ground for the new "proposed Leg. Co." envisaged by the 1957 Order in Council.

40

I rely on the fundamental changes that have already taken place in constitution of Leg.Co. not

on changes which will be brought about as a result of the 1957 and 1958 orders in Council (Legal Notices 174 of 1957 and 246 of 1958). Governor as mouth-piece of Crown has been silenced in Leg. Co. as result of 1957 Royal Instructions.

In the High Court of Uganda

No. 5

Proceedings in Suit,

13th November 1958 - continued.

PLAINTIFF'S EVIDENCE

No. 6

EVIDENCE OF A.C. SEMPA

Plaintiff's Evidence.

No. 5

A.C. Sempa, Examination.

Quass calls:-

10 AMOS COROLI SEMPA, Buganda, sworn.

XD. I am Minister of Health in Buganda Government and Chairman of Buganda Constitutional Committee. I took part in negotiations leading to Buganda Agreement, 1955.

Q. During these negotiations was the question of Uganda's representation in Leg. Co. discussed?

MacKenna.

I object to question; oral evidence of negotiations which lead up to agreement is inadmissible.

20 Quass.

Agreement of 1955 is concerned with representation of Buganda in Leg. Co. I submit I am entitled to call evidence as to meaning of words "Leg. Co." as used in agreement to show what parties had in mind. Evidence may be called to identify subject matter of a contract. I rely on sec.9 of Evidence Ord. Cap. 9. I am entitled to give evidence to establish the identity of the Legislative Council which is subject matter of the 1955 Agreement. I also rely on sec.91, Proviso 6, of Evidence Ord. Secs.94 and 95 are also helpful. If I am entitled to bring this suit at all, I am entitled to call evidence to show what was within the contemplation of the parties when they used the expression "Legislative Council" in the Buganda Agreement.

30

MacKenna.

Quass wishes to call evidence to prove that parties did not intend there should be any changes

In the High  
Court of Uganda

Plaintiff's  
Evidence.

No. 6  
A.C. Sempa,  
Examination -  
continued.

in Constitution of Legislative Council. I think it might be more convenient if the evidence is received de bene esse and allow me to argue afterwards whether it is admissible or not.

Quass. I agree.

Witness. Yes. Question of Buganda's representation was discussed. I did not sit on Namirembe Conference. In London I attended as a member on Drafting Committee. We did not discuss this constitution of Legislative Council or the appointment of a Speaker at the meetings of the Committee. I did not contemplate appointment of a Speaker at that time.

10

XXD. Nil.

(Sgd.) K.G. Bennett, J.  
13.11.58.

Close of Plaintiff's case.

No. 7  
Proceedings,  
13th November  
1958.

No. 7

PROCEEDINGS

MacKenna.

20

H.M.G. attaches great importance to representation of Buganda in Legislative Council. Clause 7 of Buganda Agreement 1955. To declare that these provisions are no longer effective would be a serious matter for protectorate. No argument before Court to justify declaration sought by plaintiff or the bringing of suit. Plaintiff's point is a short one and a bad one. Sub-para. (1) of prayer in Plaint raises a pure question of interpretation. Plaintiff argues that because Royal instructions have altered constitution of Legislative Council since 1955 there has ceased to be a Legislative Council within meaning of Second Schedule to 1955 Agreement.

30

Alterations relied on are :-

- (a) Appointment of a Speaker who will normally preside.
- (b) Fact that Governor has lost his original and casting vote and two additional Government back benchers appointed.

40

In the High  
Court of Uganda

No. 7

Proceedings,  
13th November  
1958 -  
continued.

10 Only reason given by Quass for second declaration is alteration in Royal Instructions. It is the same reason as that given for asking for first declaration. The third declaration sought to raise same question. Question is one of interpretation. What is meant by words "Legislative Council"? It is surely irrelevant that the changes of 1955 were not contemplated. If plaintiff fails to satisfy Court that the present Legislative Council is not that referred to in 1955 Agreement, it won't help him to prove the changes which have taken place since they were not contemplated. I stress words "at all time" in article 7 of the Buganda Agreement, 1955. Provisions of Article 7 are permanent, not temporary provisions. No question of article 7 being limited in its operation to unexpired period for which the then members had been appointed. In 1955 no provision that Legislative Council should have a life of four years. Nominated and represented members appointed for limited periods. Article 7 and Second Schedule cannot be constructed as limited in operation to period during which the then members shall remain members. Article 7 and Second Schedule are referring to Legislative Council of Uganda as a body which has a permanent existence. "Legislative Council" must have same meaning in Second Schedule as in article 7. Order in Council of 1920 constituted Legislative Council but reserved Crown's right to issue Royal Instructions altering Constitution.

20

30

"Legislative Council" referred to in article 7 was a body which was capable of being altered and whose constitution has been altered on several occasions in past, e.g. Legal No.317 of 1953. In 1954 another alteration was made in Constitution of Legislative Council, namely Legal No.302 of 1954. In 1955, before the execution of Buganda Agreement, there were other changes in constitution of Legislative Council, namely Legal No.123 of 1955 and Legal No.122 of 1955 "Legislative Council" in article 7 was not used as referring to a body which was incapable of alteration. If effect was to be given to sub-para (3) of article 7 future changes in the Constitution of Legislative Council were inevitable. The Legislative Council referred to in article 7 was not a body which could not be changed after signing of agreement. Not possible to extract from agreement a term forbidding changes in Constitution of Legislative Council, other than those contemplated by article 7.

40

50

In the High  
Court of Uganda

No. 7

Proceedings,

13th November  
1958 -  
continued.

Conceded by plaintiff that some changes can be made to Constitution of Legislative Council. Other changes, it is agreed, cannot be made. No condition of that kind is expressed in the Agreement. There are two express conditions in article 7, namely:-

- (a)  $\frac{3}{5}$  of all representative members to be Africans;
- (b)  $\frac{1}{2}$  of all members must be Africans.

Can one imply a condition that there must be no changes in functions of Governor in relation to Legislative Council? I submit not. I rely on maxim expressio unius, etc. Two conditions have been expressed.

10

Secondly I submit you cannot imply a term in an agreement unless it is necessary to the efficacy of the express terms. No such implied term is necessary to give efficacy to the Agreement. Before term can be implied it must be apparent that parties were really agreed on the implied term and forebore to express it because it went without saying. Can Court say without doubt that if during negotiations a Speaker had been mooted parties would have agreed that Agreement would have provided for its own termination if such a change was made. Luxor Cinema Case (1941) A.C.144. Speech of Lord Wright. I submit that recommendations of Namirembe conference are irrelevant to construction of 1955 Agreement. I did not accept the putting in evidence of the White Paper. I submit that provisions of that document are irrelevant to the construction of the 1955 Agreement.

20

30

Quass not entitled to rely on evidence of previous negotiations leading to the 1955 Agreement. Sec.9 of Evidence Ord. does not help. No question as to identity. Case does not fall within secs.94 or 95. 1955 Agreement not meaningless without reference to existing facts. Re sec.95, there were not two Legislative Councils in existence in 1955, so no doubt could arise as to which Legislative Council was meant. Sec.91 does not help Mr.Quass. The Namirembe recommendation is not a document which shows in what manner the language of the 1955 Agreement is related to existing facts. Quass is saying that there is a condition subsequent to the 1955 Agreement, namely, that no major changes shall be made to constitution and that if they are that

40

brings the agreement to an end. There is a distinction between a condition precedent and a condition subsequent. The former can be proved but not the latter.

In the High  
Court of Uganda

No. 7

Proceedings,  
13th November  
1958 -  
continued.

10 Both Namirembe conference and Governor recommended there should be no major constitutional changes for six years. In 1955 Governor and Kabaka did make an agreement for representation of Buganda on Legislative Council. It does not follow from  
20 Governor's speech that Lukiko agreed to representation in Legislative Council only on condition that there should be no major constitutional changes in Protectorate Government. If there was to be a condition against Constitutional changes that should have been stated in the agreement itself. There is no implied condition in Buganda Agreement, 1955, that there shall be no major constitutional changes in Protectorate Government for six years. Major changes in constitution of Buganda are not to be  
30 made for six years by article 11. I cite this by way of contrast. Even if it is conceded that Court can consider recommendations of Namirembe conference, I submit that appointment of Speaker and taking away of Governor's casting vote is not a major constitutional change. Whether Speaker or Governor presides over Legislative Council, the president has same duties. Governor is not silenced by the 1957 Royal Instructions. He can attend and make a speech whenever he wants to. He can also  
40 preside when he wants to. The effect of 1957 Instructions is that Governor will preside less often than he used to. 1958 Royal Instructions does not replace the old Legislative Council by a new one. It is still same Council although differently constituted. The 1957 Order in Council, Legal No. 174 of 1957, merely enables representative members to be elected. It does not create a new body. Duties of Speaker as presiding officer will be same as those of the Governor.

40 It is not true that replacement of Governor's original and casting vote by that of two Government back-benchers, will upset balance of Council. Balance has been maintained. Governor's two votes have been replaced by that of the two Government back-benchers: 1953 Royal Instructions (Legal Notice 314 of 1953), clause XV.B, provides that Government back benchers shall be persons who can be relied on to support Government policy. How can it be said  
50 that a vote which was hardly ever used was of importance. This is a matter of common knowledge.

In the High  
Court of Uganda

No. 7

Proceedings,  
13th November  
1958 -  
continued.

Another point made by Quass was that members would be deprived of opportunity of speaking in presence of Governor and winning him over. Governor has ample opportunity of reading proceedings of Legislative Council, which are reported in Hansard. Governor can still refuse his consent to a Bill or reserve it for H.M.'s pleasure. Article 10 of 1920 Order in Council. Article 8A gives him reserved powers to pass bills. A.G. v. Rennie (1896) A.C. 376. p.379. Would decision have been any different if constitution of the N.S.W. assembly had been changed after the passing of the act giving allowances to members?

10

Craies on Statute Law, 5th Ed.539 (1892) A.C. 498 Herron v. Rathmines; Speech of Lord Halsbury at p.502. No evidence of prior negotiations admissible to vary written contract. Jacobs v. Batavia and G.P. Trust Ltd. (1924) 1 Ch.287 at p.295. Parol evidence cannot be admitted to prove that a term which had been verbally agreed upon had been omitted. Evidence Ord. of Uganda makes no change in English law on this point.

20

Hearing adjourned till 14.11.58.

(Sgd.) K.G. Bennett.

14th November  
1958.

14.11.58. Counsel as before.

Quass.

Protectorate Government guilty of breach of faith if it seeks to exclude Namirembe recommendations in construing 1955 Agreement. I submit there is nothing in A.G. v. Rennie which assists defendant. In this case there was no change in the constitution of the N.S.W. Legislative Assembly. Privy Council merely interpreting words of a particular statute. The question in this case is whether present Legislative Council is one which parties had in mind when 1955 agreement was signed.

30

Heron v. Rathmines helps me rather than defendant. Jacobs v. Batavia and G.P. Trust states law in narrower terms than does Evidence Ord. of Uganda. Secs. 9 and 91 of Evidence Ord. seems to allow evidence of matters which might not be admissible in England. Provisoes 1, 3 and 6 go beyond English decisions. I am not seeking to ask the Court to imply any term in the Buganda Agreement, 1955. Nor am I relying on a Condition subsequent. I am relying rather on a Condition precedent. Not possible

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for Government to make any unilateral alterations it likes in constitution of Legislative Council. I concede that article 7 of 1955 Agreement contemplates some changes in constitution but not changes made in 1957.

In the High  
Court of Uganda

No. 7

Proceedings,

14th November  
1958 -  
continued.

10 If MacKenna's argument is right, it would be open to Protectorate Government to take away votes of all members of Legislative Council while still holding Buganda to be bound by article 7 of the 1955 Agreement. I never argued that article 7 operated only so long as the then members of the Legislative Council continued to be members. 5.Hals. 111 Edition 560. Reserved powers of legislation, nothing new. Article 5 of Legal No.317 of 1953 does not affect constitution of Legislative Council. Article 8B of Legal No.302 of 1954 does not help Court to deal with the issues in this case.

20 The point at issue is which is the Legislative Council the parties had in mind when they used that term in the Buganda Agreement, 1955? I submit I am entitled to base arguments on recommendations of Namirembe Conference by virtue of sec.91 of Evidence Ord. Parties were negotiating on the basis that there would be no major changes in Protectorate constitution before 1961. No question of this recommendation having been waived before signing of 1955 Agreement. The answer is in Hansard. MacKenna anxious Government should not be accused of breach of faith. It will be accused of breach of faith if  
30 Government argues that although parties negotiated on the basis of no major constitutional changes, the plaintiff has no remedy.

40 The only point the defendant should have taken is "has there been a major change in the constitution of Legislative Council." 6. Hals. 2nd Ed.627 contains passage showing how Sovereign disappeared from the Cabinet. Speaker has no political obligations. A Governor has. He ought to be present at debates and to intervene to sway policy. A Speaker must not do that. It is absurd to suggest that it would make no difference to a Parliament whether the Sovereign was or was not present.

Is Legislative Council of first importance in constitution of Uganda or is it not? If it is, then the disappearance of Governor from Legislative Council is a major constitutional change. I do not agree that the "proposed" Legislative Council which



In the High  
Court of Uganda

No. 7

Proceedings,

14th November  
1958 -  
continued.

has been set up by virtue of Legal Nos.174 of 1957 and 246 of 1958 is the same Legislative Council as body which it will replace. The two back-bench members appointed to replace Governor's casting vote may be called on to vote on matters other than those in which Government policy is involved and vote differently to the way in which Governor would have voted had he been present.

I now turn to costs. Defendant did everything he could to obstruct this suit. Application to strike out plaint dismissed. A defence was delivered in which objections raised before Sheridan J. were pursued. Point of jurisdiction not abandoned till opening of trial. I came here prepared to argue point of jurisdiction. Even if defendant succeeds, I submit he should have no costs.

10

MacKenna.

I ask that costs follow event. No grounds for making a special order for costs if I succeed. Plaintiff has had costs of unsuccessful application before Sheridan J. The point of notice was waived at request of Plaintiff. As regards withdrawal of objection to jurisdiction, I know of no authority for giving unsuccessful party costs in such circumstances. Fact that objection not withdrawn till outset of trial has not added to length of trial. Plea of jurisdiction cannot have added to costs. Quass must have prepared his argument on question of jurisdiction prior to hearing of application to strike out.

20

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Quass.

My complaint is that having made an unsuccessful application for dismissal of suit they persisted in raising the same points in their defence.

Judgment reserved.

(Sgd.) K.G. Bennet.

14.11.58.

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No. 8

J U D G M E N T

IN HER MAJESTY'S HIGH COURT OF UGANDA AT KAMPALA  
CIVIL CASE NO.446 of 1958

KATI KI RO OF BUGANDA .. .. PLAINTIFF  
 versus  
 ATTORNEY GENERAL .. .. DEFENDANT

In the High  
 Court of Uganda

No. 8

Judgment,  
 25th November  
 1958.

Before - The Honourable Mr. Justice Bennett.

J U D G M E N T

10 In this suit the Katikiro of Buganda, as plain-  
 tiff, seeks three declarations, namely :-

- (1) A declaration that the Legislative Council of the Uganda Protectorate as at present constituted is not the Legislative Council referred to in the Second Schedule to the Buganda Agreement, 1955.
- 20 (2) A declaration that the Katikiro is not bound or entitled to take the steps laid down in the said Schedule for the purpose of electing Representative Members to represent Buganda in the Legislative Council of the Uganda Protectorate as at present constituted.
- (3) A declaration that unless and until the Legislative Council of the Uganda Protectorate is reconstituted so as to be the same as the Legislative Council referred to in the Buganda Agreement, 1955, and contemplated at the time thereof there is no procedure for electing Representative Members thereto.

30 The matter arises in this way. Article 7 (1) of the Buganda Agreement, 1955 (Legal Notice No.190 of 1955) provides for the representation of Buganda in the Legislative Council of the Protectorate subject to certain conditions therein contained. The Article reads as follows:-

"7(1) At all times when provision has been made for at least three-fifths of all the Representative Members of the Legislative Council of the Uganda Protectorate to be Africans and for

In the High  
Court of Uganda

No. 8

Judgment,

25th November  
1958--  
continued.

such number of Africans to be appointed as Nominated Members of the Council as will bring the total number of Africans who are members of the Council up to at least one half of all the members of the Council, excluding the President of the Council, then Buganda shall be represented in the Legislative Council of the Uganda Protectorate, and for that purpose at least one quarter of the Representative Members of the Council who are Africans shall be persons who represent Buganda."

10

The Second Schedule to the Buganda Agreement, 1955, which has been given the force of law by a proclamation (Legal Notice No.188 of 1955) made under Section 2(2) of the Buganda Agreement, 1955, Order in Council, 1955 (Legal Notice No.140 of 1955), is ancillary to Article 7 of the Buganda Agreement, 1955, and contains regulations for the election of persons for recommendation to the Governor for appointment as representative members from Buganda of the Legislative Council of the Uganda Protectorate. These Regulations provide for the setting up of an electoral college, and require the Katikiro to submit to the Governor the names of persons who have been elected by the electoral college whenever there is occasion to appoint a representative member or members to represent Buganda in the Legislative Council.

20

At the time when the Buganda Agreement, 1955, was executed, namely, on the 18th October, 1955, the Legislative Council consisted of the following: (a) the Governor; (b) three ex-officio members; namely, the Chief Secretary of the Protectorate, the Attorney General of the Protectorate, and the Financial Secretary of the Protectorate; (c) the nominated members; and (d) the representative members. See Clause 4 of the Additional Royal Instructions dated 19th May, 1955 (Legal Notice No. 122 of 1955).

30

By Clause 25 of the Royal Instructions of 1920 (Vol.VI of the Laws, 111) the Governor was required to attend and preside at all meetings of the Legislative Council unless prevented by illness or other grave cause; and by Clause 26 he was given an original and a casting vote in the Council.

40

On the 17th December, 1957, additional Royal

Instructions were promulgated (Legal Notice 272 of 1957) which provide for the appointment of a Speaker who is to be a person who is not an ex-officio, nominated, or representative member of the Council. The speaker is to preside at sittings of the Legislative Council unless the Governor has occasion to be present in which case the Governor is to preside. The Governor's original and casting vote is taken away and the Speaker is to have no vote.

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10           However, to compensate for the loss of the Governor's original and casting vote two new Back-bench members were appointed to the Government side of the house whose votes would, presumably, be available to support Government policy.

          It is contended by Mr. Quass, who appeared for the Plaintiff, that the changes in the constitution of the Legislative Council effected by the additional Royal Instructions of 1957 are so fundamental that the Council as at present constituted is not the  
20           same body as that referred to in the Buganda Agreement, 1955.

          It is said that by the virtual disappearance of the Governor from the Legislative Council the Buganda have lost the protection of the Crown in the Council which previous treaties and agreements had given them. It is said that the Governor's disappearance had deprived members of the Council of the opportunity of giving voice to their views in the actual presence of the Governor, and that  
30           the whole character of the Council has been changed. It is further contended that the disappearance of the Governor's original and casting vote has upset the balance in the Chamber and that this is not compensated for by the appointment of two Backbench members who can be relied upon to support Government policy. According to Mr. Quass the Plaintiff takes the gravest exception to these changes.

          In support of his contention that the Legislative Council existing at the date of the institution of the suit is not the Legislative Council referred to in the Buganda Agreement, Mr. Quass has sought to introduce extrinsic Evidence for the purpose of identifying the subject-matter of Article 7 and of the Second Schedule. He relies upon the general principle that extrinsic evidence of surrounding circumstances is admissible to identify the subject-matter of an agreement and he has cited  
40

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Sections 9, 91, 94 and 95 of the Evidence Ordinance in support of his argument. He called as a witness Mr. Sempa, Minister of Health in the Buganda Government whose evidence was taken de bene esse subject to any objections which might be taken to it at a later stage. Mr. Sempa said that he took part in negotiations leading up to the making of the Buganda Agreement, 1955, and that he was a member of a Drafting Committee which sat in London. Mr. Sempa said that at no time did the Committee discuss the constitution of the Legislative Council or the appointment of a Speaker and that he, the witness, did not at that time contemplate the possibility that a Speaker might be appointed. Mr. Quass also sought to rely upon a White Paper published by Her Majesty's Stationery Office in the United Kingdom (CMD.9320) which contains recommendations by the then Governor of Uganda concerning the future constitution of Buganda, the recommendations of a Constitutional Committee (known as the Namirembe Conference) presided over by Sir Keith Hancock, and a policy pronouncement by Her Majesty's Government in the United Kingdom.

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20

One of the Governor's recommendations, which was approved and adopted by the Hancock committee, was a recommendation that there should be no major constitutional changes in the Protectorate before 1961. Mr. Quass places great reliance on this recommendation as showing that the Legislative Council which was contemplated by the signatories of the Buganda Agreement, 1955, was a Council to which no major or fundamental changes were to be made prior to 1961.

30

On behalf of the Attorney-General, who is the defendant to this suit, it is submitted that the expression "The Legislative Council of the Uganda Protectorate" must bear the same meaning in Article 7 of the Buganda Agreement, 1955, as it does in the Second Schedule thereto, a submission with which I entirely agree.

40

Mr. MacKenna, who appeared for the defendant, contends that the recommendations of the Governor and of the Hancock Committee are irrelevant to the construction of the Buganda Agreement, 1955, and consequently inadmissible for that purpose. Mr. MacKenna also contends that the White Paper is not a document which shows in what manner the language of the Buganda Agreement is related to existing

facts within the meaning of Proviso 6 to Section 91 of the Evidence Ordinance, and that no question as to the identity of the subject-matter of Article 7 of the Agreement arises.

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10 Section 91 of the Evidence Ordinance of Uganda is identical with Section 92 of the Indian Evidence Act. According to Woodroffe on the Law of Evidence, 9th Edition, page 638, Section 92 of the Indian Act was framed in accordance with the current English  
20 decisions on the question of how far parol evidence can be admitted to affect a written contract. Sections 9, 94 and 95 of the Evidence Ordinance of Uganda seem to me to add nothing to the English law. It can therefore be taken that there is no substantial difference between the law of England and the law of Uganda regarding the circumstances in which parol evidence can be admitted for the purposes of identifying the subject-matter of a written contract. The English law is succinctly stated in  
the speech of Viscount Haldane L.C. in *Charrington & Co. Limited v. Wooder*, (1914) A.C. 71, at page 77, in a passage which appears to me to set out exactly the effect of Proviso 6 to section 91 of the Uganda Evidence Ordinance:

30 "My Lords, we have to construe the covenant in the present case, not abstractly, but in the light of the circumstances to which it applied. If the language of a written contract has a definite and unambiguous meaning, parol evidence is not admissible to show that the parties meant something different from what they have said. But if the description of the subject-matter is susceptible of more than one interpretation, evidence is admissible to show what were the facts to which the contract relates. If there are circumstances which the parties must be taken to have had in view when entering into the contract, it is  
40 necessary that the Court which construes the contract should have these circumstances before it."

As was said by Lord Wrenbury in *G.W.R. & M.R. v. Bristol Corporation*, 87 L.J. Ch. (1918) 414 at page 429:

"Evidence is not admissible to put a particular meaning upon plain and unambiguous words."

Turning to the facts of the instant case, I

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fail to see any ambiguity in the expression "The Legislative Council of the Uganda Protectorate." There were not two or more Legislative Councils in existence when the Buganda Agreement was signed, nor were there two or more Legislative Councils in existence at the date of the institution of the suit, and there have never been two or more Legislative Councils in existence at any time between the signing of the Buganda Agreement and the filing of the suit. How then can extrinsic evidence be admissible to identify the subject-matter of Article 7 and of the Second Schedule when there is and has, at all material times, been only one Legislative Council to which the Article and Second Schedule could possibly refer. In my judgment, extrinsic evidence is not admissible, and Article 7 and the Second Schedule must be construed free from glosses and interpolations derived from sources outside the four corners of the Agreement.

10

What Mr. Quass is really seeking to do - although he does not admit it - is to import into Article 7(1) of the Buganda Agreement, 1955, a stipulation to the effect that there shall be no major changes in the constitution of the Legislative Council prior to 1961. The circumstances in which it is proper for the Court to read into a contract an implied term are set out in the speech of Lord Wright in Luxor (Eastbourne) Ltd. v. Cooper, (1941) A.C. 108 at page 144, who cites with approval the following passage from the judgment of Scrutton L.J. in Reigate v. Union Manufacturing Co. (Ramsbottom) Ltd. (1918) 1 K.B. 592:

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"The first thing is to see what the parties have expressed in the contract; and then an implied term is not to be added because the Court thinks it would have been reasonable to have inserted it in the contract. A term can only be implied if it is necessary in the business sense to give efficacy to the contract; that is, if it is such a term that it can confidently be said that if at the time the contract was being negotiated someone had said to the parties 'What will happen in such a case,' they would both have replied, 'Of course, so and so will happen; we did not trouble to say that; it is too clear.' Unless the Court comes to some such conclusion as that, it ought not to imply a term which the parties have not expressed."

40

One of the matters to be weighed in considering whether or not a term can be implied in an agreement is the nature of the agreement. Courts will more readily import an implied stipulation or warranty into an informal document than into a formal document by which the parties have sought to express all the terms of their contract. It is difficult to conceive of any more solemn and formal document than the Buganda Agreement, 1955, and I cannot believe that the signatories to that Agreement left anything unsaid. Moreover, the importation into Article 7 of a stipulation that there shall be no major changes in the constitution of the Legislative Council prior to 1961 appears to me to be excluded by the principle expressio unius est exclusio alterius. Article 7 prescribes two conditions for the representation of Buganda in the Legislative Council. Those conditions are (a) that at least three-fifths of all representative members of Legislative Council are Africans, and (b) that one half of the membership of the Council is African. It is conceded by the Plaintiff that these two conditions have been satisfied. It would be wrong for the Court to imply a third condition as to which Article 7 and the Agreement as a whole is silent.

That there have been changes in the constitution of the Legislative Council since the Buganda Agreement, 1955, was signed is common ground. Whether or not those changes are fundamental is a matter upon which I find it unnecessary to express any opinion since, however far reaching they may be, they do not, in my judgment, affect the identity of the Legislative Council as a body having a permanent existence. A legislative body may undergo fundamental changes in its constitution without losing its identity. One illustration which springs readily to mind is the curtailment of the powers of the House of Lords which was effected by the Parliament Act of 1911. The House of Lords did not lose its identity, but survived the operation in a somewhat emasculated form. A more recent change in the constitution of the Upper House was the introduction of Peeresses, a change which many of their Lordships must have regarded as fundamental. I have never heard it suggested that this latest reform has changed the identity of the Upper House, although it may have changed its character.

Some colour is lent to Mr. Quass's argument that the Legislative Council now in existence is not

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that referred to in the Buganda Agreement, 1955, by the language of two recent Orders in Council. The Uganda (Electoral Provisions) Order in Council, 1957 (Legal Notice No.174 of 1957) mentions, in a recital, the proposed establishment of a Legislative Council referred to therein as "the proposed Legislative Council." The Uganda (Amendment) Order in Council, 1958 (Legal Notice No.246 of 1958) provides, in Section 3, that "there shall be a Legislative Council in and for the Protectorate." I find it unnecessary, however, to consider whether or not these two Instruments have created a new Legislative Council for the reason that I am asked for a "declaration that the Legislative Council of the Uganda Protectorate as at present constituted is not the Council referred to in the Second Schedule to the Buganda Agreement, 1955." The words "as at present constituted" can only refer to the Legislative Council in existence, at the date of the filing of the suit, and not to any Legislative body which may have been established after the suit was filed by the Uganda (Amendment) Order in Council, 1958.

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In my judgment, the Legislative Council in existence at the date of the filing of the suit is the Council referred to in the Second Schedule to the Buganda Agreement, 1955, and is the Council which was within the contemplation of the parties at the time when the Agreement was signed.

I also find that the Katikiro is under a legal duty to take the steps required of him by the Second Schedule to the Agreement.

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The three declarations sought by the Plaintiff are, accordingly, refused and the Plaintiff's suit is dismissed.

With regard to the question of costs, notwithstanding that certain objections to the Court's jurisdiction and to the powers of the Court to grant the relief prayed were not abandoned until the commencement of the hearing, I can see no reason for depriving the successful party of his costs.

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The Plaintiff will therefore pay the defendant's costs of this suit.

(Sgd.) J. BENNETT  
Judge.

25.11.58

25.11.58. Binaisa for Plaintiff.  
Few for Defendant.  
Judgment read.

(Sgd.) K.G. Bennett, J.  
25.11.58.

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25th November  
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continued.

25.11.58. Binaisa for Plaintiff.  
Few for Defendant.

Binaisa. I ask for leave to appeal to E.A.C.A.

10 Few. I do not oppose. I ask for a certificate  
that costs of two counsel be allowed.

Binaisa. I oppose costs of two counsel. Not neces-  
sary for A.G. to employ two counsel.

Court.

Leave to appeal to E.A.C.A. is granted (if such  
leave is necessary). I certify that the defendant  
be allowed the costs of two counsel this being a  
proper case in which to allow such additional costs.

(Sgd.) K.G. Bennett, J.  
25.11.58.

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No. 9

No. 9

DECREE

Decree,  
25th November  
1958.

IN HER MAJESTY'S HIGH COURT OF UGANDA AT KAMPALA  
CIVIL CASE NO.446 OF 1958

KATI KIRO OF BUGANDA .. .. PLAINTIFF  
versus  
ATTORNEY GENERAL .. .. DEFENDANT

DECREE

Claim for:-

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- (1) A declaration that the Legislative Council of  
the Uganda Protectorate as at present consti-  
tuted is not the Legislative Council referred  
to in the Second Schedule to the Buganda  
Agreement, 1955.

In the High Court of Uganda

No. 9

Decree,

25th November 1958 - continued.

(2) A declaration that the Katikiro is not bound or entitled to take the steps laid down in the said Schedule for the purpose of electing Representative Members to represent Buganda in the Legislative Council of the Uganda Protectorate as at present constituted.

(3) A declaration that unless and until the Legislative Council of the Uganda Protectorate is reconstituted so as to be the same as the Legislative Council referred to in the Buganda Agreement, 1955 and contemplated at the time thereof there is no procedure for electing Representative Members thereto.

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(4) Costs.

(5) Further or other relief.

This suit coming on this day for final disposal before the Honourable Mr. Justice Bennett in the presence of Mr. Quass and Mr. Binaisa, advocates for the plaintiff and Mr. MacKenna and Mr. Starforth, advocates for the defendant, IT IS ORDERED AND DECREED that the plaintiffs suit be dismissed and the plaintiff DO PAY defendant's costs of this suit.

20

GIVEN under my hand and the Seal of the Court this 25th day of November, 1958.

(Sgd.) K.G. BENNETT  
Judge.

In the Court of Appeal for Eastern Africa

No.10

Memorandum of Appeal,

26th January 1959.

No.10

MEMORANDUM OF APPEAL

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA  
HOLDEN AT KAMPALA

30

CIVIL APPEAL NO. 11 OF 1959

BETWEEN

KATI KI RO OF BUGANDA .. .. APPELLANT

AND

ATTORNEY GENERAL .. .. RESPONDENT

Appeal from a judgment of the High Court of Uganda at Kampala (Mr. Justice K.G. Bennett) dated 25th November, 1958.

The Appellant above-named hereby appeals against the judgment delivered on the 25th November, 1958,

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by the Honourable Mr. Justice K.G. Bennett, of the High Court of Uganda, at Kampala, and sets forth the following grounds of appeal, among others, to the judgment (a certified copy whereof accompanies this memorandum) appealed from namely:-

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of Appeal for  
Eastern Africa

—————  
No.10

Memorandum of  
Appeal,

26th January  
1959 -  
continued.

10 1. The Legislative Council of the Uganda Protectorate, as constituted at the material time, was not the Legislative Council referred to in the Second Schedule to the Buganda Agreement.

2. The Changes in the constitution of the said Legislative Council since the making of the Buganda Agreement, 1955, were so fundamental that the provisions in the said Agreement and the Second Schedule thereof relating thereto were no longer applicable.

20 3. It was a condition precedent to the making of the said Agreement with its accompanying Schedules that there should be no major changes in the constitution of the Legislative Council (beyond those expressly provided for in the said Agreement) prior to 1961.

30 4. The Agreement of the Baganda to send representatives to the Legislative Council, as provided for in the said Agreement and the Second Schedule thereof, was on the basis that there should be no major changes in the constitution of the Legislative Council prior to 1961, and the learned Judge was wrong in holding that the said Agreement and Schedule should be construed without regard to this consideration.

5. The learned Judge was wrong in holding that extrinsic evidence was not admissible to interpret

In the Court  
of Appeal for  
Eastern Africa

No.10

Memorandum of  
Appeal,  
26th January  
1959 -  
continued.

the material provisions of the said Agreement and Schedule and in excluding Command Paper 9320 as such inadmissible extrinsic evidence.

6. The learned Judge was wrong in holding that the identity of the Legislative Council was not effected by changes, however far reaching, in the constitution thereof.

7. The learned judge was wrong in finding that the Legislative Council at the time of the suit was the Legislative Council within the contemplation of the parties at the time of the making of the said Agreement. 10

8. The learned Judge was wrong in failing to consider whether the changes in the constitution of the Legislative Council since 1955 were fundamental.

9. That major changes in the constitution of the Legislative Council had been made since the making of the said Agreement.

10. The changes complained of by the Appellant in the constitution of the Legislative Council have resulted in the loss to the Baganda of the protection of the Crown in the Legislative Council. 20

11. The learned Judge was wrong in finding that the Appellant was under a legal duty to take the steps required of him by the said Second Schedule.

12. In so finding the learned Judge was pronouncing on a matter not raised by the pleadings and not in issue in the suit.

13. There was no material before the learned Judge which justified his making the said finding. 30

14. That by his use of the phrase "the steps required of him" the learned Judge was posing the question in a manner which necessarily pre-supposed the answer given by him.

15. The requirement that the Appellant should submit the names of candidates for appointment as the Representative Members of the Legislative Council to represent Buganda is conditional on the election of persons for that purpose in accordance with the provisions of the said Schedule and such provisions are unworkable. 40

16. In view of the provisions of the Uganda (Electoral Provisions) Order in Council, 1957, the Appellant will submit that the Respondent cannot contend that the Legislative Council in existence at the time of the hearing of this suit was the same as the Legislative Council in existence at the time of the making of the said Agreement.

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No.10

Memorandum of Appeal,

26th January 1959 -

continued.

17. The Appellant is entitled to the declarations claimed by him in the plaintherein.

10 18. In any event, in view of the issues raised by the Respondent in this suit, the Order made by the learned Judge as to costs was wrong and should be set aside.

WHEREFORE the Appellant prays that this appeal be allowed with costs here and in the Court below.

DATED this 26th day of January, 1959.

(Sgd.) G.L. BINAISA  
COUNSEL FOR APPELLANT.

FILED BY:

20 G. Lukongwa Binaiisa, Esq.,  
Advocate,  
KAMPALA.

No.11

J U D G M E N T

IN HER MAJESTY'S COURT OF APPEAL  
FOR EASTERN AFRICA  
AT KAMPALA.

CIVIL APPEAL NO.11 OF 1959

No.11

Judgment,  
9th May 1959.

BETWEEN:

30 KATIKIRO OF BUGANDA .. .. APPELLANT  
AND  
ATTORNEY GENERAL .. .. RESPONDENT

(Appeal from a judgment of the High Court of Uganda at Kampala (Mr. Justice K.G. Bennett) dated 25th November, 1958)

JUDGMENT OF O'CONNOR P.

This is an appeal from a decree of the High

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of Appeal for  
Eastern Africa

No.11

Judgment,  
9th May 1959  
- continued.

Court of Uganda dated 25th November, 1958, dismissing with costs a suit by the Katikiro (Chief Minister) of the Kingdom of Buganda against the Attorney-General of the Uganda Protectorate of which Buganda forms a part. The suit, which was commenced in June 1958, prayed for three declarations which will be referred to later. In July 1958, an application was made by motion by the defendant that the plaint be rejected on the grounds (1) that it disclosed no cause of action; and (2) that the suit was barred by section 4 of the Suits against the Government Ordinance. That section requires notice to be given two months before a suit against the Government is instituted. The motion came on for argument under Order 7 rule 11(a) and (d) of the Uganda Civil Procedure Rules. On 6th May, 1958, Sheridan J. ruled that the motion raised points of law which should not be decided in a summary way but should be pleaded and dealt with at the trial and he dismissed the motion with costs. Pleas that the court had no jurisdiction to hear the suit in view of the provisions of the Suits against the Government Ordinance and that the plaintiff had failed to comply with the provisions of section 4 of that Ordinance were made in the Defence which was filed in August, 1958.

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At the hearing of the suit before the trial Judge, learned Counsel for the defendant said: "I take no point that the Court has no jurisdiction. I accept the contention that defendant can waive the point of notice and it had been waived." He expressly abandoned the relevant pleas in the Defence. The learned trial Judge then recorded: "Am satisfied that the Court has jurisdiction to hear suit and to grant relief prayed." Against that finding there is no appeal. On the contrary, learned Counsel for the respondent stated categorically before us: "There remains no point of jurisdiction with which the Court need deal. All such

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points are abandoned." Since, however, neither acquiescence nor express consent of the parties could confer jurisdiction on the Court, if, by reason of any limitation imposed by statute, it was without jurisdiction, I must briefly examine the provisions of the Suits against the Government Ordinance. Without going into the matter in detail, I am of opinion that the notice required by section 4 can be waived, and that there is nothing in the Ordinance which would prevent the Attorney-General on behalf of the Government being sued for a declaration. Such a suit would, in my opinion lie apart from section 3 of the Ordinance, and it is not rendered incompetent by that section. Notwithstanding that there seems to be nothing in the Uganda Civil Procedure Rules corresponding to Order 25 rule 5 of the Rules of the Supreme Court in England and Order 2 rule 7 of the Kenya Civil Procedure Code (Revised) Rules, 1948, it was stated by the learned Judge who heard the motion that declaratory judgments are frequently asked for and made in Uganda. Before Order 25 rule 5 of the English Rules of the Supreme Court was made, the Court of Chancery had a limited jurisdiction under section 50 of 15 and 16 Vict. c.86 to grant declaratory decrees: A.G. v. Dyson (1911) 1 K.B.410,417; and the practice of the Chancery Division in this respect would have been imported into Uganda by section 15(2) of the Uganda Order in Council, 1902. It seems that, apart from section 3 of the Suits against the Government Ordinance, there would have been power under the Chancery practice before 1902 to make a declaration in a suit against the Attorney-General as representing the Crown: A.G. v. Dyson supra at p.417 Prima facie, therefore, but subject to what is said later as to acts of state, there would be jurisdiction in the Court below and in this Court to grant the relief claimed, if the Court were to reach a conclusion that it should be granted. In view of this and of the facts that the finding of the learned Judge that he has jurisdiction is not challenged and that the parties have clearly submitted to the jurisdiction, I will not pursue the question of jurisdiction further except in regard to acts of state.

The declarations which the Katikiro sought were as follows:

- "(1) A declaration that the Legislative Council of the Uganda Protectorate as at present

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constituted is not the Legislative Council referred to in the Second Schedule to the Buganda Agreement, 1955.

(2) A declaration that the Katikiro is not bound or entitled to take the steps laid down in the said Schedule for the purpose of electing Representative Members to represent Buganda in the Legislative Council of the Uganda Protectorate as at present constituted.

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(3) A declaration that unless and until the Legislative Council of the Uganda Protectorate is reconstituted so as to be the same as the Legislative Council referred to in the Buganda Agreement, 1955, and contemplated at the time thereof there is no procedure for electing Representative Members thereto."

In this judgment I will refer to the Buganda Agreement, 1955 (Legal Notice No.190 of 1955) as "the 1955 Agreement" and to its Second Schedule as "the Second Schedule".

20

The First and Second Schedules to the 1955 Agreement were given the force of law by a proclamation (Legal Notice No.188 of 1955) made under section 2(2) of the Buganda Agreement, 1955, Order in Council, 1955 (Legal Notice No.140 of 1955). The Second Schedule is ancillary to Article 7 of the 1955 Agreement, and contains regulations for the election of persons for recommendation to the Governor for appointment as representative members from Buganda of the Legislative Council of the Uganda Protectorate. These Regulations provide for the setting up of an electoral college, and require the Katikiro to submit to the Governor the names of persons who have been elected to the Electoral College whenever there is occasion to appoint a representative member or members to represent Buganda in the Legislative Council.

30

As the Second Schedule has been given the force of law, the Court is entitled to look at, and to construe, that Schedule. If authority is needed for this proposition, it will be found in Stoeck v. Public Trustee (1921) 2 Ch. 63, 71.

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Paragraph 5 of the Second Schedule is as follows:

"5. Whenever there is occasion to appoint a Representative Member or Members to represent Buganda in the Legislative Council of the Protectorate the Governor shall by notice in writing request the Katikiro to submit names to him for that purpose and the Katikiro shall submit to him the names of persons who have been elected in that behalf by the Electoral College in accordance with these Regulations."

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Judgment, . . .  
9th May 1959  
- continued.

10 In brief, Counsel for the Katikiro contended  
in the court below and here that "the Legislative  
Council of the Protectorate" in the Second Schedule  
is the same as "the Legislative Council" referred  
to in the body of the 1955 Agreement and means the  
Legislative Council as it was constituted when the  
1955 Agreement was signed. The appellant says that  
that was the Legislative Council contemplated by the  
parties to the 1955 Agreement and not the Legis-  
lative Council as constituted when the Plaint was  
20 filed. He says that major changes were effected  
in the constitution of the Legislative Council since  
the 1955 Agreement was signed, so that it became a  
fundamentally different body and he asks for the  
above-mentioned declarations. The 1955 Agreement  
itself has not been given the force of law and  
whether the court can take it into consideration or  
not when construing its Second Schedule will be dis-  
cussed later.

30 The Second Schedule is legislation and must be  
construed. If the words of an enactment are clear,  
effect must be given to them according to their  
ordinary and grammatical meaning. If, however,  
there is ambiguity, it is permissible for the Court,  
for the purpose of ascertaining the intention of  
the legislative authority, to consider the history  
of the enactment and the surrounding circumstances  
when it was passed. I return to this subject  
later.

40 The history of the legislation, so far as  
material, is as follows:

In June 1894 (following an agreement made in  
1893) Uganda was placed "under the Protectorate of  
H.M. Queen Victoria" and, by the Buganda Agreement,  
1894, made on behalf of Her Majesty and the then  
Kabaka, the Kabaka pledged himself to certain con-  
ditions.

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- continued.

By the Buganda Agreement, 1900 (Laws Vol. VI p. 12) made on behalf of Her Majesty and on behalf of the Kabaka, the relationship between Her Majesty's Government and the Kabaka, Chiefs and people of Buganda was further defined. This Agreement was extended by various supplementary agreements.

By the Uganda Order in Council, 1902 section 12, the Governor was made the Legislative authority for the Uganda Protectorate. By section 15 the High Court of the Uganda Protectorate was constituted. 10

By section 7 of the Uganda Order in Council, 1920 (Vol. VI p. 99) a Legislative Council was constituted for the Protectorate consisting of the Governor and such persons as His Majesty might direct by any Instructions under His Sign Manual and Signet. Legislative powers (subject to veto by the Governor and assent by the Governor on behalf of His Majesty to Bills) were given to the Legislative Council (Section 8), without prejudice to the power of the Crown to disallow Ordinances and to legislate by Order in Council (Section 9). By section 13, the Legislative Council was bound to observe Royal Instructions. 20

Royal Instructions were issued in 1920 (Vol. VI P. 104). Under clause XV, the Legislative Council was to consist of the Governor, ex officio Members, and such official and unofficial Members as the Governor might from time to time appoint pursuant to Royal Instructions. By clause XXV the Governor was required to attend and preside at all meetings unless prevented by illness or other grave cause. By clause XXVI, all questions were to be decided by majority vote, and the Governor or Member presiding was given an original vote and a casting vote if upon any question the votes should be equal. 30

Thus the position was that from 1902 to 1920 the Governor was the legislative authority for the Protectorate. In 1920 a Legislative Council was constituted, presided over by the Governor and in which he was given an original and a casting vote. 40

In December 1953 (L.N. 314 of 1953) the Royal Instructions of 1920 were amended. A new clause was substituted for clause XV which provided that the Legislative Council of the Protectorate should

consist of (i) the Governor (ii) ex officio Members (iii) Nominated Members; and (iv) Representative Members. A new clause XVA set out who the ex officio Members were to be. By a new clause XVB the Nominated Members were to be (a) such persons holding office in the public service; and (b) such persons not holding such office "who the Governor is satisfied will support Government policy in the Legislative Council when called upon to do so"; as the Governor in pursuance of Royal Instructions might appoint. The Representative Members were to be such persons (not Official Members and not Nominated Members) as the Governor might in pursuance of Royal Instructions from time to time appoint.

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In December 1953, by section 4 of the Uganda (Amendment) Order in Council, 1953 (L.N.317 of 1953), section 8 of the Uganda Order in Council, 1920, was replaced, the Legislative Authority now being made "the Governor with the advice and consent of the said Legislative Council."

We were informed from the Bar that the Representative Members were not appointed to represent geographical constituencies but were appointed on a racial or community basis, as follows:- 14 Africans, 6 Europeans and 8 Asians, a total of 28 Representative Members - the Africans being balanced by the Europeans and Asians.

We were also informed from the Bar that it was stated by the Governor in opening the Legislative Council thus constituted that the life of each Legislative would be four years.

The Uganda (Amendment) Order in Council, 1953, also introduced a new section VIIIA in the Uganda Order in Council, 1920 (in the usual form of such sections) giving the Governor reserved powers to legislative in the interests of public order, public faith or good Government, notwithstanding failure by the Legislative Council to pass the relevant Bill or motion, subject to report to, and revocation by, the Secretary of State.

I think that we can take judicial notice of the facts that before November, 1954 (which is the next material date) H.M. Government had withdrawn recognition from H.H. the Kabaka and he had left Uganda. A suit had been filed Government, judgment had been given and an appeal was pending. A conference presided over by a constitutional expert

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from England had deliberated at Namirembe near Kampala and had made constitutional proposals relating inter alia to the continued participation of Buganda in the Protectorate, a constitution for Buganda and the representation of Buganda in the Legislative Council of the Protectorate. Most of these matters, apart from being matters of notoriety in Uganda, are set out in a White Paper (Cmd. 9320) presented by the Secretary of State for the Colonies to Parliament by command of Her Majesty in November, 1954. (I will refer to this hereinafter as "the White Paper"). The White Paper was by consent made part of the record in the present case. Mr. MacKenna for the respondent said that he had no objection to the Court seeing it, though he contended that it was irrelevant to the decision of the case. The question of its relevance will be considered later. Mr. Quass for the Appellant relied on the White Paper. He pointed to inter alia (i) a recommendation by the Governor (paragraph 7 of Appendix B) to the effect that provided that the Great Lukiko (the Legislative body of Buganda) agreed to participate fully in the Legislative Council of the Protectorate through members elected by whatever method should be decided to be appropriate, he would recommend that the number of Buganda representative members in the Legislative Council should be increased; (ii) a statement by the Governor in paragraph 8 of Appendix B: "In order that a period of stability may be secured for the country, I would propose that no major changes in the above constitutional arrangements should be made for six years from the date of the introduction of these arrangements if approved by H.M. Government; and that assuming that these arrangements are introduced in 1955, the position should be reviewed early in 1961, with a view to introducing any changes that are then agreed at the beginning of the life of the new Legislative Council which will come into being early in 1962"; (iii) a recommendation by the Namirembe Conference (art. 48 of Appendix A) that there should be no major changes in the recommended constitutional arrangements for Buganda (which included the representation of Buganda on the Legislative Council of the Protectorate) for a period of six years after their introduction; and (i) acceptance of these recommendations by Her Majesty's Government (paragraph 6 of the White Paper); and Mr. Quass cited paragraph 4: "In the light of the Governor's recommendations the Buganda Constitutional Committee have agreed to

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recommend to the Lukiko that Baganda members should be elected to the Protectorate Legislative Council by the Lukiko"; and paragraph 16 which made the return of H.H. the Kabaka (should this be the choice of the Lukiko) conditional upon inter alia the agreed recommendations of the Namirembe Conference being "accepted as a whole" by the Great Lukiko. Mr. Quass contended that, after the Great Lukiko and Her Majesty's Government had accepted the recommendations as a whole, to fail to observe an important recommendation of the Governor that there should be no major change in the constitutional arrangements for a period of six years would be a breach of faith. He complained that a major change in the Legislative Council (introduction of a Speaker to preside and the loss of the Governor's votes) had been made within that period, that is on the 1st January, 1958. This will be referred to later.

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I should here observe that the recommendation of the Governor was that there should be "no major changes in the above constitutional arrangements" that is to say in his new proposals set out in Appendix B to the White Paper. These included the introduction of a ministerial system and re-organisation of the Executive Council. The Governor's proposals for the Legislative Council of the Protectorate were concerned with increased representation and re-allocation of seats. Nothing was said as to the Governor continuing to preside in the Legislative Council or as to the Governor's votes. On a strict construction, it was only to the arrangements set out in his statement that his proposal of no major change for six years applied. Since, however, the object was to secure a period of stability, there may be an implication that he was proposing no major change of any kind for that period.

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The following steps were taken to implement the recommendations of the Namirembe Conference and the Governor's constitutional recommendations.

On 19th May, 1955 (L.N.122 of 1955) the Royal Instructions of 1920 (as amended in 1953) were again amended. A new Clause was substituted for Clause XV under which the Members of the Legislative Council were to be (a) the Governor; (b) three ex officio Members; (c) the Nominated Members; and (d) the Representative Members. A new Clause was substituted for Clause XXV which provided inter

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alia: "The Governor shall, so far as is practicable, preside at meetings of the Legislative Council."

There followed certain transitional instruments covering the period until H.H. the Kabaka should have returned to Buganda and should execute a further agreement.

On the 29th July, 1955, the Buganda Agreement, 1955, Order in Council, 1955, (L.N.140/55) was made. This was to come into force on a day to be appointed by the Governor. It recited that it was proposed that an Agreement to be entitled the Buganda Agreement, 1955 should be made between Her Majesty and the Kabaka, Chiefs and people of Buganda for a new constitution for Buganda and for certain other matters, and provided that when the 1955 Agreement had been executed it should be published in the Gazette and it empowered the Governor to give the force of law to any part of the 1955 Agreement. 10

On the 18th October, 1955 (L.N. 190 of 1955) the 1955 Agreement was entered into between the Governor on behalf of Her Majesty the Queen and the Kabaka on behalf of the Kabaka, Chiefs and people of Buganda. This provided inter alia for the administration of Buganda in accordance with the constitution set out in the First Schedule and that those provisions should have effect from the date when the Agreement was executed. Article 7 of the 1955 Agreement reads as follows: 20

"Representation of Buganda in Legislative Council. 7(1) At all times when provision has been made for at least three fifths of all the Representative Members of the Legislative Council of the Uganda Protectorate to be Africans and for such number of Africans to be appointed as Nominated Members of the Council as will bring the total number of Africans who are members of the Council up to at least one half of all the members of the council, excluding the President of the Council, then Buganda shall be represented in the Legislative Council of the Uganda Protectorate, and for that purpose at least one quarter of the Representative Members of the Council who are Africans shall be persons who represent Buganda. 40

(2) The Katikiro shall submit to Her Majesty's Representative, that is to say the Governor, the names of the candidates for appointment as the Representative Members of the Legislative Council to represent Buganda, that is to say the persons who have been elected for that purpose in accordance with the provisions of the Second Schedule to this Agreement.

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(3) Notwithstanding the provisions of paragraph (2) of this article a system of direct elections for the Representative Members of the Legislative Council who represent Buganda shall be introduced in the year 1961 if such system has not been introduced earlier.

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(4) Her Majesty's Government shall during the year 1957 arrange for a review by representatives of the Protectorate Government and of the Kabaka's Government of the system of election of Representative Members of the Legislative Council who represent Buganda. In such review consideration will be given to any scheme submitted by the Kabaka's Government for the election of such Representative Members based upon the recommendation contained in the Sixth Schedule to this Agreement. Every effort will be made to give effect to the recommendations resulting from such review in time for the election of the Representative Members of the Legislative Council who represent Buganda when the Legislative Council is generally reconstituted after the general vacation of seats in the Council next following the coming into force of this Agreement."

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Article 11 reads:

"Review of  
Constitu-  
tion.

11. No major changes shall be made to the Constitution set out in the First Schedule to this Agreement for a period of six years after the coming into force of this Agreement, but at the end of that period the provisions of the said Constitution shall be reviewed."



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The "Constitution set out in the First Schedule to this Agreement" is the constitution of Buganda, not the constitution of the Uganda Protectorate.

The Second Schedule consists (as already mentioned) of Regulations for the Elections of Persons for recommendation to the Governor for appointment as Representative Members from Buganda of the Legislative Council of the Uganda Protectorate. It provides for the establishment of an electoral college for the election of Representative Members to represent Buganda in the Protectorate Legislative Council. Paragraph 5 of this Schedule has already been cited. 10

The Sixth Schedule to the 1955 Agreement (referred to in Article 7 supra) reads:

#### "SIXTH SCHEDULE

Extract from the Report of the Sub-Committee of the Lukiko set up to examine the recommendations made by the Hancock Committee. 20

'The Hancock Committee' (i.e. the Namirembe Committee) 'proposed that the Baganda representatives should be elected by the Lukiko itself. We think, after very careful consideration that they should be directly elected by the people - whom they will represent' ".

By Proclamation dated 18th October, 1955 (L.N. 188 of 1955) the Governor, in exercise of the powers conferred on him by the Buganda Agreement, 1955, Order in Council, 1955, declared that the First and Second Schedules of the 1955 Agreement should have the force of law. 30

A further amendment to the Royal Instructions was made on the 13th April, 1956 (L.N.88 of 1956). Clause XXV was again replaced and it was provided that the Governor should preside at the sittings of the Legislative Council and, in his absence, a Member appointed as indicated.

On the 23rd August 1957 (L.N.174 of 1957) the Uganda (Electoral Provisions) Order in Council was made apparently in order to implement Article 7 and the Sixth Schedule to the 1955 Agreement. This came into force on the 30th August, 1957, and recited among other things that "there is established and 40

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constituted a Legislative Council for the Uganda Protectorate, consisting of the Governor, ex officio Members, Nominated Members and appointed Representative Members", and that it was proposed that certain of the appointed Representative Members should be replaced by elected Representative Members "and that there should be established for the Protectorate a Legislative Council (hereinafter referred to as 'the proposed Legislative Council') which shall be so constituted as to give effect to such proposals" and it was further recited that it was expedient that the "existing legislature of the Protectorate should be empowered to make provision for the election of members to the proposed Legislative Council notwithstanding that the same has not yet been established by order of Her Majesty in Council or constituted in pursuance of Instructions under Her Majesty's Sign Manual and Signet." It was provided inter alia that provision might be made by any law enacted under the existing Orders and in pursuance of the existing Instructions for the Governor to declare electoral districts for the purpose of returning members of the proposed Legislative Council to represent such districts; but that no election of Members to the proposed Legislative Council should be held until provision should have been made by Order in Council and Royal Instructions "for the establishment and constitution of the proposed Legislative Council." It is plain that the establishment of a new Legislative Council for the Protectorate was then contemplated.

On the 17th December, 1957, changes were foreshadowed which Mr. Quass alleges to have been major changes and of which he complains. On this date Additional Royal Instructions were issued (L.N.272 of 1957). These came into operation on 1st January 1958 (L.N.271 of 1957). By these, Clause XV of the Royal Instructions was amended by providing that the Legislative Council should consist of a Speaker, as well as the Governor and the ex officio, Nominated and Representative Members. A new clause XVA was inserted reading as follows:

"The Speaker. XVA(1) The Speaker shall be a person who is not an ex officio, Nominated or Representative Member of the Legislative Council and shall be appointed by the Governor by Instrument under the Public Seal.

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(2) The Speaker shall hold office during Her Majesty's pleasure, and, subject thereto, for such period as may be specified in the Instrument by which he is appointed, and shall not vacate his office by reason of a dissolution of the Legislative Council."

There follow provisos which are not material to the present case.

Clauses XXV and XXVI of the Royal Instructions were revoked and new clauses substituted which, so far as material, read:

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"Pre-  
siding  
in the  
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lative  
Council.

XXV.(1) The Speaker shall preside at the sittings of the Legislative Council, and in the absence of the Speaker such Member of the Council as the Governor may appoint, or if there is no member so appointed, or the Member so appointed is absent, the senior ex officio Member present shall preside:

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Provided that if the Governor should have occasion to be present at any sitting he shall preside at such sitting.

\* \* \* \* \*

Voting.

XXVI.(1) All questions proposed for decision in the Legislative Council shall be determined by a majority of the votes of the Members present and voting, and if upon any question before the Legislative Council the votes of the Members are equally divided, the motion shall be lost.

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(2) (a) Neither the Governor nor the Speaker shall have an original or casting vote;

(b) any other person shall, when presiding in the Legislative Council, have an original vote but no casting vote."

It seems to have been the intention that the Legislative Council should normally be presided over by a Speaker who had no vote instead of by the Governor who also now had no vote but who had previously had an original and a casting vote. Mr.

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Quass contended that the practical effect of this was that the Crown withdrew from the Legislative Council of the Protectorate and he said that this was a major change in the constitutional arrangements for the Protectorate. Mr. Quass argued that Protected persons are not subjects of the Crown and do not owe allegiance to the Crown: the Crown extends protection in exchange for those persons giving up some of their independence: if that protection goes they are entitled to say that the treaty has gone: the presence of the Crown's representative in the law-making Authority for the Protectorate is the visible embodiment of the protection which the Crown has contracted to give; and that had now been withdrawn - a matter which the people of Buganda regarded as of first rate importance; a Speaker, he said, was quite a different person from the Governor; he could not give the Crown's protection. Moreover, by the withdrawal of the Governor from the Legislature Members had lost the opportunity of convincing the Crown's representative in debate, so that Bills and motions might be amended before they are passed. Power to refuse assent was not equivalent: that could only be exercised ex post facto. Reserved powers to legislate were not a substitute: the exercise of these was hedged about with restrictions. On the question of voting, Mr. Quass pointed out that whereas previously the Governor had had an original and a casting vote, now neither he nor the Speaker had a vote: the fact that there were two more Nominated Members with votes was not equivalent: the fact that the Governor might have been satisfied when these Members were appointed "that they would support Government policy in the Legislative Council when requested by him to do so" (Clause XV B of the Royal Instructions, 1953 Laws p.514 referred to above) would not ensure that they would support, or be requested to support, the Government's policy on all occasions: the balance of voting in the Legislative Council had gone. Accordingly, so Mr. Quass argued, the Legislative Council after the January 1958 changes was not the same body as was contemplated by the 1955 Agreement, and he was entitled to the declarations sought.

The plaint in the present suit was filed on the 25th June, 1958, and we must look at the constitutional position as at that date. I should, however, mention that before the suit was decided, that is on the 11th September, 1958, there was made

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and issued a further Order in Council - the Uganda (Amendment) Order in Council, 1958 (L.N.246 of 1958) - and Royal Instructions (L.N.247 of 1958). This Order in Council (which came into operation on 27th September, 1958 (L.N.245/58) revoked Article VII of the Uganda Order in Council, 1920 and established a Legislative Council for the Protectorate which was to be constituted and to perform its functions in accordance with Royal Instructions. The Royal Instructions then issued, which replaced previous Royal Instructions, contained in Clause 17(1) provisions for Representative Members of the Legislative Council to be (a) persons appointed by the Governor, and (b) persons directly elected to represent electoral districts.

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I have traced the history of the matter in some detail in order that it should not be thought that any aspect of it has been overlooked. The Constitution of the Uganda Protectorate has advanced along the now stereotyped lines for British Colonial and Protected Territories. Since 1920 the Legislative Council has changed from a small body consisting of ex officio and official members appointed by the Governor to a much larger body including some representative members directly elected to represent constituencies. On 1st January 1958, the (by no means unusual) step of virtually removing the Governor from the Legislative Council (while retaining his right to attend on occasion and preside) and of putting in a Speaker who would normally preside was put into force. That this was not an unusual step may be seen from the fact that a Speaker now normally presides over the Legislatures (to mention some only) of Tanganyika, Kenya, Northern Rhodesia, Trinidad, and the Federation of Malaya. Halsbury 3rd edn. Vol. 5 p.603 et seq. At the same time the Governor's two votes were removed and two Government back-bench members appointed in lieu. The short point in this case is whether these changes (which I will call "the January 1958 changes") so altered the Legislative Council as to make it no longer "the Legislative Council of the Protectorate" referred to in paragraph 5 and other paragraphs of the Second Schedule, and to absolve the Katikiro from any obligations under that Schedule.

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In the court below the matter seems to have been treated by the learned Judge, (and by learned Counsel on both sides) as a matter sounding on contract. A considerable part of the argument and the

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10 judgment was taken up with a discussion whether the evidence of a Mr. Sempa, who took part in the negotiations which led up to the signing of the 1955 Agreement in London and was a member of the drafting committee, and the White Paper already referred to could be admitted for the purpose of establishing under section 9 of the Uganda Evidence Ordinance, the identity of the "Legislative Council" referred to in section 5 of the Second Schedule, or whether such evidence would be excluded by sections 90 and 91 of the Evidence Ordinance. The learned Judge held that sections 9, 94 and 95 of the Evidence Ordinance added nothing to the English law on the subject. Relying on a passage from Charrington & Co. Ltd. v. Wooder (1914) A.C. 71, 77, to the effect that if a contract has a plain and unambiguous meaning, parol evidence is not admissible to show that the parties meant something different from what they have said; a passage from G.W.R. & M.R. v. Bristol Corporation (1918) 87 L.J. 414, 429 to the effect that evidence is not admissible to put a particular meaning upon plain and unambiguous words; and the well-known passage from Reigate v. Union Manufacturing Co. (Ramsbottom) Ltd. (1918) 1 K.B. 592 as to when a term can be implied into a contract, the learned Judge rejected the proffered evidence. With respect, I think that this was a wrong approach. The matter did not sound in contract and sections 90 and 91 of the Evidence Ordinance and the English law relied upon had no application to the matter in hand.

40 I will return to this subject later. The learned Judge saw no ambiguity in the expression "the Legislative Council of the Uganda Protectorate" because at no time had there been more than one Legislative Council in existence. He felt it unnecessary to express an opinion as to whether or not the January 1958 changes were major changes since "however far-reaching they may be, they do not, in my judgment, affect the identity of the Legislative Council as a body having a permanent existence."

In this Court Mr. Quass summarised his case in the following seven propositions:

- (1) Major changes have been made in the Legislative Council since 1955.
- (2) The basis for there being any Agreement at all in 1955 was that there should be no major

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changes in the Legislative Council before 1961.

- (3) The Agreement of the Baganda having been obtained on that basis, the Protectorate Government cannot now ignore it.
- (4) The Court will not lend its assistance to such a breach of faith.
- (5) In any event, it was a condition precedent to there being any duties put upon the Katikiro that there should be no such changes. 10
- (6) Where a provision, obligation or promise is either expressly or by implication conditional, if the condition is not fulfilled, the promisor will be excused.
- (7) In the light of the circumstances which the parties must have had in mind when the treaty of 1955 was signed, the term "Legislative Council" must be construed as being a legislative council substantially the same as that then existing, subject to the qualifications expressly set out in section 7(1) of the Buganda Agreement 1955. 20

If the matter were treated simply as a matter of contract, Mr. Quass said that he would rely upon there being an implied term as well as a condition precedent that there should be no major changes before 1961 other than those mentioned in the White Paper. He pointed out, however, that the treatment of the matter in the Court below as purely a matter of contract was erroneous, and with this Mr. MacKenna for the respondent agreed. Mr. Quass submitted that the 1955 Agreement was a treaty and he asked us to apply the canons of construction adopted by international tribunals in the construction of treaties. He relied upon a passage in Oppenheim 7th edn. Vol. 1 pp.862 and 863 and in particular upon a statement in note 1 on page 863: "English, and in particular, American courts do not hesitate to resort to preparatory work for the purpose of interpreting treaties. See Lauterpacht in H.L.R. 48 (1935) pp.562-571." He urged us to treat the White Paper as relevant, as being part of the "preparatory work" leading up to a treaty, namely the 1955 Agreement. He challenged the learned Judge's finding that the provisions of the 30 40

Evidence Ordinance relating to the exclusion of oral, by written evidence, had the same effect as in English law, and pointed to section 98 of the Evidence Ordinance; arguing that the Katikiro was not a party to the document in question or a representative in interest of a party.

What has to be decided in this appeal is whether or not the Katikiro was entitled to the declarations which he sought or any of them.

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10           The first declaration sought is a declaration  
that the Legislative Council of the Uganda Protec-  
torate as at present constituted (that is to say as  
constituted on 25th June, 1958, the date of filing  
the Plaint) is not the Legislative Council referred  
to in the Second Schedule to the Buganda Agreement,  
1955. The Legislative Council as constituted on  
the 18th October, 1955; consisted, as has been  
shown, of the Governor, ex officio Members, Nomi-  
nated and Representative Members. It was presided  
20 over by the Governor who had an original and a cas-  
ting vote. The Legislative Council as constituted  
on the 25th June, 1958, consisted of the Governor  
(who had no vote), a Speaker who had no vote, ex  
officio, Nominated and Representative Members and  
was presided over by the Speaker. I agree with  
Mr. MacKenna who argued for the respondent that the  
first declaration asked for raises a pure question  
of construction - whether the words "the Legislative  
30 Council of the Protectorate" in the Second Schedule  
include a Legislative Council presided over by a  
Speaker in which neither the Governor nor the  
Speaker has a vote.

40           What has to be construed are the words of a  
Schedule which has been given the force of law and  
the rules of construction applicable to it are the  
rules for construction of general public enactments  
and not the rules which merely apply to contract or  
to private Acts or Ordinances which may be analogous  
to contracts. Accordingly, sections 90 and 91 of  
the Uganda Evidence Ordinance, which apply to con-  
tracts, grants or other dispositions of property,  
have no application. Neither have the rules for  
implying terms in contracts. Nor, in my opinion,  
are the rules of construction employed by inter-  
national tribunals in the interpretation of trea-  
ties, applicable. It is correct that the 1955  
Agreement is a treaty; but this Court is not an  
international tribunal and the part of the treaty



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which we are interpreting has been given the force of law and must be construed according to the rules for the construction of laws. The rest of the 1955 Agreement only falls to be construed to the extent that it would be admissible to consider it under the rules for the construction of laws. I cannot agree with Mr. MacKenna's proposition that the Uganda Evidence Ordinance is an exhaustive statement of what is admissible. The Uganda Evidence Ordinance is taken from the Indian Evidence Act and that is not exhaustive. It binds all courts so far as it goes and in questions relating to matters expressly provided for in the Ordinance it is intended to be a complete Code of the Law of Evidence: Sarkar 9th edn. p.2; but "evidence" as defined by section 3 is not exhaustive of matters which a Court may have before it and take into consideration: see e.g. Sarkar 9th edn. p.24; Woodroffe & Amir Ali 9th edn. p.113, 114; Reg. v. Raojibhai Patel, Kenya Crim. App. 2 of 1956. So far as I am aware, there is no provision in the Uganda Evidence Ordinance expressly dealing with construction of statutes or Ordinances and what may or may not be taken into consideration for that purpose. Some of the general provisions of the Evidence Ordinance may be applicable, but, in the main, construction of legislation is a matter which is governed by the English common law and the practice of the English Courts applied to Uganda by section 15(2) of the Uganda Order in Council 1902. "The legislation of Colonies and other territories where the English common law in whole or part prevails is governed by the same rules of construction as apply in England." Halsbury 3rd edn. Vol.5 p.585; Catterall v. Sweetman (1845) 163 E.R. 1052; And see Railton v. Wood (1890) 15 A.C. 363. 10 20 30

It is trite law that if the words of an enactment are themselves precise and unambiguous, then no more is necessary than to expound those words in their ordinary and natural sense. "The words themselves alone do, in such a case, best declare the intention of the lawgiver": Sussex Peerage Claim (1844) 11 Cl. & F.85, 143 accepted by the Judicial Committee in Cargo ex Argos (1872) L.R.5 P.C.134, 153. But where the meaning is not plain, a court of justice is still bound to construe it and, as far as it can, make it available for carrying out the objects of the Legislature, and for doing justice between the parties: Phillips v. Phillips (1866) L.R. 1 P. & D. 169, 173, cited in Craies on Statute Law 5th edn. at p.90. The words 40 50

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10 of section 5 of the Second Schedule appear, at first sight, to be plain; but there is a latent ambiguity in that "Legislative Council of the Protectorate" may mean the Legislative Council of the Protectorate as then constituted, or the Legislative Council of the Protectorate as established or constituted for the time being. When the words of an enactment are not clear, it is permissible to go to certain sources of information outside the enactment for the purpose of throwing light upon its meaning. "In construing Acts of Parliament", said Turner L.J. in Hawkins v. Gathercole (1855) 6 Do G. M & G. 1 at pages 20 and 21 citing Stradling v. Morgan (1560) Plowd. 204, "the words which are used are not alone to be regarded. Regard must also be had to the intent and meaning of the Legislature... In determining the question before us we have therefore to consider not merely the words of this Act of Parliament but the intent of the Legislature, to be collected from the cause and necessity of the Act being made, from a comparison of its several parts and from foreign (meaning extraneous) circumstances so far as they can justly be considered to throw light upon the subject." This passage was cited with approval by Lord Birkenhead L.C. in Viscountess Rhondda's Claim (1922) A.C.339, 370. Lord Blackburn said in River Wear Commissioners v. Adamson (1877) 2 A.C. 743, 763, "In all cases the object is to say what is the intention expressed by the words used. But from the imperfection of language it is impossible to know what that intention is without inquiring further and seeing what the circumstances were with reference to which the words were used and what was the object appearing from those circumstances which the person using them had in view. For the meaning of words varies according to the circumstances with respect to which they are used." In Thomson v. Clanmorris (1900) 1 Ch. 718, 725, Lord Lindley M.R. said "In construing any enactment regard must be had not only to the words used but to the history of the Act and the reasons which led to its being passed. You must look at the mischief which had to be cured as well as to the cure provided." This rule was followed and approved by a strong Divisional Court in R. v Paddington & St. Marylebone Rent Tribunal (1900) 1 Ch. 718, 725. And see Powell v. Kempton Park Racecourse Co. (1899) A.C.143 at p.157.

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50 We are here dealing with a Schedule, which has been given the force of law, to an Agreement which

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has not been given the force of law. I think that for the purpose of construing and resolving an ambiguity in the Schedule we must be entitled to endeavour to ascertain the meaning of the words used by considering the surrounding circumstances, including the whole Agreement. The Second Schedule depends upon section 7(2) of the 1955 Agreement and that must be relevant. Mr. MacKenna submitted that we were entitled to look only at section 7. It would not be in accordance with ordinary canons of constructions to take into consideration one section only of a document while ignoring other portions which might assist the interpretation - the document should be considered as a whole. I think that the Court is entitled to look at the whole Agreement. Moreover, the 1955 Agreement was directed, by section 2(1) of the Buganda Agreement Order in Council, 1955, to be published in the Uganda Gazette and it was so published. I think that on that ground we could take judicial notice of it: see the commentary on section 57 of the Indian Evidence Act (from which section 55 of the Uganda Evidence Ordinance is taken) in Woodroffe & Amir Ali 9th edn. at p.489 and Phipson on Evidence 9th edn. at pp.23 and 349. Moreover, the 1955 Agreement was an act of state on a constitutional matter. In Rustomji v. The Queen (1876) 2 Q.B.D. 69 a petition of right was brought by a British subject to obtain payment of monies due to him by a Chinese merchant, out of a sum of 3,000,000 dollars paid by the Emperor of China to the British Government in pursuance of a treaty to defray debts due to British subjects from Chinese merchants. The treaty, being an act of state, was referred to, both in the Court below and in the Court of Appeal, to ascertain the exact words upon which the supposed obligation had arisen. In Salaman v. Secretary of State for India (1906) 1 K.B. 613, 616, the whole of the treaty under which the alleged obligation arose was referred to. In Reg. v. Governor of Brixton Prison, ex. p. Minervini (1958) 1 Q.B. 155 the Court referred to and construed a treaty to which the provisions of the Extradition Act, 1860 had been applied by Order in Council. For all these reasons, I think that we are entitled to refer to the whole of the 1955 Agreement for the purpose of assisting in the construction of ambiguous words in its Second Schedule to which the force of law has been given.

As to the White Paper, I have not been able

to find, and Mr. Quass did not cite, any judicial authority for his proposition (supported by the above-mentioned note in Oppenheim) that for the purpose of interpreting treaties English Courts do not hesitate to resort to preparatory work. In any event, what we are here interpreting is legislation. Under the ordinary rules for the construction of statutes the reports of Commissioners are not admissible for the purposes of directly ascertaining the intention of the Legislature, though they may perhaps be looked at as part of the surrounding circumstances for the purpose of seeing what was the evil or defect which the Act under construction was designed to remedy: see the speech of Lord Halsbury L.C. in Eastman Photographic Co. v. Controller General of Patents (1898) A.C.571, 573-576; as explained by Lord Wright in Assam Railways & Trading Co. Ltd. v. Inland Revenue Commissioners (1935) A.C.445, 458 (P.C.). I assume that this rule would apply also to the report and recommendations of a Conference such as the Namir-  
ombe Conference.

The statement of the Objects and Reasons for a Bill is not admissible to aid in its construction; neither may reference be made to the proceedings of the Legislature which resulted in its passing. By analogy it would seem that H.M. Government's statement of intended policy presented to Parliament in the form of a White Paper would be equally inadmissible as an aid to construction of the resulting legislation.

Lord Wright said in Assam Railways & Trading Co. Ltd. v. Inland Revenue Commissioners supra: "It is clear that the language of a Minister of the Crown in proposing in Parliament a measure which eventually becomes law is inadmissible and the report of commissioners is even more removed from value as evidence of intention, because it does not follow that their recommendations were accepted." By analogy, although the recommendations of the Namirembe Conference and of the Governor as set out in the Appendices to the White Paper were accepted by H.M. Government in, or prior to, November, 1954 when the White Paper was presented to Parliament, there is no evidence to show whether the Governor's proposal that there should be no major changes in his recommended constitutional arrangements for six years was accepted by Parliament and, if so, whether the proposal remained unchanged during the eleven months which

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elapsed before the 1955 Agreement was made and the Second Schedule given the force of law. Since, during that time, there was the change mentioned in the Sixth Schedule, it is clear that the recommendations contained in the White Paper were not immutable. I incline to the view that the White Paper is inadmissible for the purpose of construing the Second Schedule to the 1955 Agreement.

I proceed, therefore, to construe the words "Legislative Council of the Protectorate" in paragraph 5 and elsewhere in the Second Schedule taking into consideration the 1955 Agreement, but not the White Paper. On this basis I think that the meaning of the expression "the Legislative Council of the Protectorate" would not be confined to the Legislative Council of the Protectorate as constituted at the date that the Second Schedule was given the force of law or the date when the 1955 Agreement was signed. Article 7 (3) of the 1955 Agreement shows that the expression "Legislative Council" in section 7 included the Legislative Council before and after 1961, notwithstanding that a major change - direct election of Representative Members - would be inaugurated in 1961 and might be inaugurated sooner, a change which, as we have seen, involved the establishment of a new Legislative Council. I think that "the Legislative Council of the Uganda Protectorate" in section 7 means the Legislative Council as established and constituted at the relevant time. There is nothing in the 1955 Agreement or the Schedule which lays down that no major change in the constitution of the Legislative Council of the Protectorate (other than that mentioned) shall be made before 1961. One would expect that if that had been the intention it would have been stated, particularly having regard to the fact that there was such a statement relating to Buganda (Art.11). The expression "the Legislative Council" in the Second Schedule must bear the same meaning as in section 7 upon which that Schedule depends. In my opinion, as a matter of construction, the words "the Legislative Council of the Protectorate" in paragraph 5 of the Second Schedule and the words "the Legislative Council" elsewhere in that Schedule include the Legislative Council of the Protectorate after the January 1958 changes, notwithstanding that such changes were made within six years.

I should have come to the same conclusion, as a matter of construction, if I had confined myself

to the Second Schedule and had not taken the 1955 Agreement itself into consideration. If I had been construing paragraph 5 and other paragraphs of the Second Schedule without reference to the rest of the 1955 Agreement, I should have construed "the Legislative Council of the Protectorate" as the Legislative Council of the Protectorate for the time being however it might be constituted. I think this would be the ordinary meaning. For instance, a provision in an Act that Rules made by a Minister are to be laid before 'Parliament' would not be held to refer only to Parliament as then constituted, but would continue to be operative if that Parliament had since been dissolved or had undergone some major constitutional change. The point was not taken, but it seems that the definition of 'Legislative Council' in section 2(1) of the Interpretation and General Clauses Ordinance may apply to the regulations constituting the Second Schedule and would support the same view.

In case I am wrong in excluding consideration of the White Paper when construing the words "Legislative Council of the Protectorate" in the Second Schedule, I had better state what my conclusions would be if I felt at liberty to take it into consideration for that purpose. It does appear that there was a recommendation, agreed to by all parties before November, 1954, when the White Paper was presented to Parliament, that there should be no major changes in the Constitutional arrangements then proposed for Uganda (which proposals did not include the January 1958 changes) for six years from 1955. But, as already stated, even if it be assumed that that recommendation applied to the January 1958 changes (a doubtful assumption), there is no evidence to show whether that recommendation was endorsed by Parliament, or whether it was or was not varied or abandoned by consent of the high-contracting parties in the eleven months which elapsed before the 1955 Agreement was signed. Accordingly, the White Paper, even if admissible, would be of little or no assistance in construing the meaning of "the Legislative Council of the Protectorate" in the Second Schedule. The fact that in such a formal document as the 1955 Agreement, there is no stipulation precluding major changes to the Constitution of Uganda for six years, whereas there is such a stipulation relating to the Constitution of Buganda, does not support the contention that there was any such agreement remaining at

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the date of the treaty with regard to the Legislative Council of the Protectorate.

In my opinion the appellant is not entitled to the first of the declarations claimed.

The second declaration asked for is (as already stated) a declaration that the Katikiro is not bound or entitled to take the steps laid down in the Second Schedule for the purpose of electing Representative Members to represent Buganda in the Legislative Council of the Uganda Protectorate as at present constituted. The argument in favour of this declaration also depends to a great extent on the proposition that the Legislative Council after the January 1958 changes was not the Legislative Council referred to in the Second Schedule. To that proposition I am not prepared to accede. As already stated, Mr. Quass also argued that the stipulation that there should be no major changes (other than those then agreed to) in the Uganda constitutional arrangements before 1961 was a condition precedent to there being any duties for the Katikiro to perform, and he contended that, the condition not having been fulfilled, the Katikiro was discharged from his obligations under paragraph 5 and other paragraphs of the Second Schedule, and that the Court should so declare. Mr. Quass argued that the stipulation was an implied term.

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Since the obligations attached in 1955, I cannot see how the condition alleged could be a condition precedent, though, if the matter sounded in contract and if it were proved, it might be a condition subsequent. As to the alleged implied term, terms can only be implied in contracts, if they are necessary in the business sense to give efficacy to the contract and are such as would certainly have been accepted by all parties as a matter of course. Reigate v. Manufacturing Co. (Ramsbottom) Ltd. supra. Neither circumstance obtains here. As already pointed out, the Governor's proposal read strictly referred only to the recommendations which he was then making. There is no evidence, and it seems inherently improbable, that had the question been then raised, either H.M. Government or the Protectorate Government would have agreed as a matter of course to restrict themselves from introducing the January 1958 changes.

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10 But I believe the whole argument based on contract to be a misconception of the position and of the Court's powers. That argument treats the matter as though the 1955 Agreement were a contract between subjects capable of being discharged by non-performance of a condition precedent or subsequent upon which the Court would have jurisdiction to pronounce. But the 1955 Agreement and the Additional Royal Instructions of the 17th December, 1957, were acts of state. In Rustomji v. the Queen supra Lord Coleridge C.J. said at page 74:

"She" (Her Majesty Queen Victoria) "acted throughout the making of the treaty and in relation to each and every of its stipulations in her sovereign character, and by her own inherent authority; and, as in making the treaty, so in performing the treaty, she is beyond control of municipal law and her acts are not to be examined in her own Court."

20 It is true that the plaintiff in that case was a British subject, but the fact that a plaintiff might not be a British subject would not enable a municipal court constituted in a British Protectorate by an Order in Council of the Sovereign to pronounce upon the performance of a treaty by Her Majesty or her representatives or to say that changes in the Legislative Council of the Protectorate effected by Royal Instructions from Her Majesty did or did not constitute a breach of faith. Even if I felt that  
30 an allegation of breach of faith could be supported (which I do not) that matter is quite outside the purview of the High Court, or this Court which only has the jurisdiction conferred upon it by section 16 of the Eastern African Court of Appeal Order in Council, 1950.

40 I do not say that municipal courts may not in certain circumstances adjudicate upon the rights of individuals accruing from an act of state: Salaman v. Secretary of State for India (1906) 1 K.B. 613 at p.640; but where the Crown has done an act of state in such circumstances as to negative any intention to give contractual rights, municipal courts have no jurisdiction to question the validity of those acts or to entertain any claim in respect thereof by an individual against the Crown: Salaman's case supra. To my mind Article 7 (2) of the 1955 Agreement did not confer upon the Katikiro any contractual right and the obligations which are

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laid upon him by paragraphs 5 and other paragraphs of the Second Schedule were obligations laid upon him by law which would not be discharged, whether the 1955 Agreement was performed according to its tenor or not. For these reasons, I think that the claim for the second declaration fails.

It follows that the prayer for the third declaration must also be refused.

In the view which I take it is unnecessary to decide whether the January 1958 changes were major changes or not. In constitutional theory they might be, but the question does not arise.

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The learned Judge, besides refusing the declarations asked for, found that the Katikiro was under a legal duty to take the steps required of him by the Second Schedule. Mr. Quass attacked this finding strongly on the grounds that such a finding was not asked for, and that it was not correct, because the provisions of the Second Schedule were unworkable and, at the date when the Judgment was delivered (though not at the date when the suit was filed), other provisions for the election of representative members had been brought into force. I think it is not to be wondered at that the learned Judge, having found himself unable to declare as prayed that the Katikiro was not under a legal duty to take the steps laid down in the Second Schedule, should find the converse. Nevertheless, the converse was not necessarily correct. I think that this finding was superfluous and the decision should have been confined to refusing the declarations claimed.

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I would dismiss the appeal. The decree of the High Court should be affirmed. The appellant should pay the respondent's costs of the appeal.

Dated at Kampala this 9th day of May 1959.

K.K. O'CONNOR.  
PRESIDENT.

JUDGMENT OF FORBES V-P.

I agree and have nothing to add.

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A.G. FORBES.  
VICE-PRESIDENT.

JUDGMENT OF GOULD J.A.

I concur in the reasoning and conclusions expressed in the judgment of the learned President and have nothing to add. I agree that the appeal should be dismissed with costs.

T.J. GOULD.  
JUSTICE OF APPEAL.

Delivered by the Deputy Registrar at Kampala.

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O R D E R

Order, . . .

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IN HER MAJESTY'S COURT OF APPEAL  
FOR EASTERN AFRICA AT KAMPALA

CIVIL APPEAL NO.11 OF 1959

BETWEEN

KATI KI RO OF BUGANDA .. .. Appellant  
and

ATTORNEY GENERAL .. .. Respondent

Appeal from a decree of the High Court of  
Uganda at Kampala (Mr. Justice Bennett)  
dated 25th November, 1958

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in

Civil Case No.446 of 1958

Between

KATI KI RO OF BUGANDA .. .. Plaintiff  
and

ATTORNEY GENERAL .. .. Defendant

In Court:

Before the Honourable the President (Sir Kenneth  
O'Connor)

the Honourable the Vice President (Mr.  
Justice Forbes)

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and the Honourable Mr. Justice Gould, a Justice  
of Appeal.

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This Appeal coming on for hearing on the 6th and 7th days of April 1959 in the presence of Mr. Phineas Quass, and Mr. G.L. Binaiisa counsel for the appellant and Mr. B.J.M. MacKenna, and Mr. M.J. Starforth counsel for the respondent when the appeal was stood over for judgment and this appeal standing for judgment this day IT IS ORDERED that this appeal be dismissed AND IT IS ORDERED that the appellant do pay the respondent's costs of the appeal.

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Dated this 9th day of May, 1959.

Approved - (Sgd.) G.L. BINAISA  
Advocate for the appellant.

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Order granting  
Final Leave to  
Appeal to  
Privy Council,  
29th February  
1960.

No.13

ORDER GRANTING FINAL LEAVE TO APPEAL  
TO PRIVY COUNCIL

IN HER MAJESTY'S HIGH COURT OF APPEAL  
FOR EASTERN AFRICA AT KAMPALA

CIVIL APPLICATION NO.8 OF 1959

IN THE MATTER OF AN INTENDED APPEAL TO HER MAJESTY  
IN COUNCIL.

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BETWEEN

THE KATI KIRO OF BUGANDA .. .. Appellant  
(Applicant)

and

THE ATTORNEY-GENERAL .. .. Respondent

(Application for final leave to appeal to Her Majesty in Council from a judgment and order of Her Majesty's Court of Appeal for Eastern Africa at Kampala dated the 9th May, 1959, in Civil Appeal No.11 of 1959)

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BETWEEN

THE KATI KIRO OF BUGANDA .. .. Appellant  
(Applicant)

and

THE ATTORNEY-GENERAL .. .. Respondent

O R D E R

UPON APPLICATION made to this Court by Counsel for the above named Applicant on 29th day of February, 1960 for final leave to appeal to Her Majesty in Council after conditional leave to appeal having been granted on the 14th day of September, 1959 as a matter of discretion under sub-section (b) of Section 3 of the East African (Appeal to Privy Council) Order in Council 1951 AND UPON HEARING Counsel for the Applicant and Counsel for the Respondent AND UPON being satisfied that all conditions subject to which conditional leave to appeal was granted have been complied with by the Applicant AND ALSO UPON being satisfied that Notice for final leave to appeal has been given to the Respondent as required under Section 12(1) of the said Order in Council THIS COURT DOETH ORDER that the Applicant/ Appellant do have final leave to enter and prosecute their appeal to Her Majesty in Council from the judgment and Order above mentioned AND it is further ordered that the costs and incidental to this application be costs in the intended Appeal.

DATED at Kampala this 29th day of February, One thousand nine hundred and sixty.

(Sgd.) J.M. MCWHINNIE,  
DEPUTY REGISTRAR.

H.M. COURT OF APPEAL FOR EASTERN AFRICA.

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