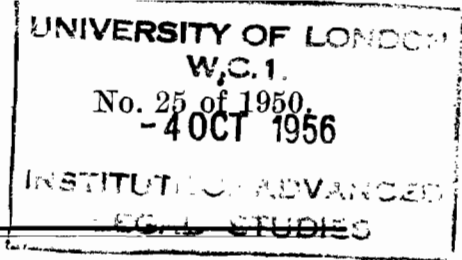


10, 1952



In the Privy Council.

ON APPEAL  
FROM THE WEST AFRICAN COURT OF APPEAL.

14266

BETWEEN

MEMUDU LAGUNJU (Plaintiff) - - - Appellant

AND

- 1. OLUBADAN-IN-COUNCIL
- 2. J. ADETOYESE LAOYE (Defendants) - - - Respondents.

RECORD OF PROCEEDINGS

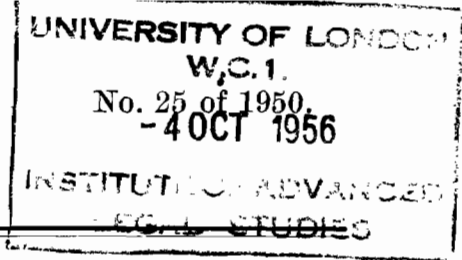
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10, 1952



In the Privy Council.

ON APPEAL  
FROM THE WEST AFRICAN COURT OF APPEAL.

14266

BETWEEN

MEMUDU LAGUNJU (Plaintiff) - - - Appellant

AND

- 1. OLUBADAN-IN-COUNCIL
- 2. J. ADETOYESE LAOYE (Defendants) - - - Respondents.

RECORD OF PROCEEDINGS

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# In the Privy Council.

## ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL.

BETWEEN

MEMUDU LAGUNJU (Plaintiff) - - - - *Appellant*

AND

1. OLUBADAN-IN-COUNCIL
2. J. ADETOYESE LAOYE (Defendants) *Respondents.*

# 10 RECORD OF PROCEEDINGS

## PROCEEDINGS ON PRELIMINARY POINT OF JURISDICTION

No. 1.

### APPLICATION FOR SUMMONS.

IN THE SUPREME COURT OF NIGERIA.  
 In the Supreme Court of the Ibadan Judicial Division.  
 Holden at Ibadan.

Suit No. I/14 of 1947.

Between MEMUDU LAGUNJU - - - - Plaintiff

and

- 20 1. OLUBADAN-IN-COUNCIL
2. J. ADETOYESE LAOYE Defendants.

Filed on 19 3/45 at 12.45 (Intd.) S. A. S. Regr.

The Plaintiff's claim against the Defendants is for an injunction to restrain the second Defendant from performing the duties of the Timi of Ede, and from receiving the salary or stipend attached to the office of Timi of Ede.

2. The Plaintiff also seeks as against the Defendants a declaration—

- (a) That the Ibadan Native Authority otherwise known as Olubadan-in-Council is not by native law and custom or by any other law qualified or entitled to override the choice or decision of the Ede Kingmakers in the selection of the Timi of Ede;

30

*In the  
Supreme  
Court of  
Nigeria.*

No. 1.  
Applica-  
tion for  
Summons,  
30th  
January  
1947.

*In the  
Supreme  
Court of  
Nigeria.*

No. 1.  
Applica-  
tion for  
Summons,  
30th  
January  
1947,  
*continued.*

(b) That the selection of J. A. Laoye Esq. (second Defendant), and his subsequent installation, on the 13th November, 1946, as Timi of Ede, by the Ibadan Native Authority otherwise known as Olubadan-in-Council is contrary to native law and custom governing the selection of a Timi of Ede, is therefore null and void, and must be set aside ;

(c) That the Plaintiff is the person qualified and entitled by native law and custom to hold the post and enjoy the title of Timi of Ede which became vacant on 24th January, 1946 ;

(d) That the Plaintiff, sometime in April or May 1946, was 10 duly selected by the Ede Kingmakers as Timi of Ede and that that selection was in accordance with native law and custom.

(Sgd.) OBAFEMI AWOLOWO,  
Plaintiff's Solicitor.

Plaintiff's Address :—c/o His Solicitor, Ijebu Bye Pass, Oke Bola, Ibadan.

Defendants' Address :—1. Olubadan-in-Council, c/o Mapo Hall, Ibadan.  
2. J. A. Laoye, Esq., Ile Laoye, Apaso, Ede.

(Intd.) S. A. S. 19/3/47.

Summons £6.

Service 2/-

Mileage 4/-

£6 6/-

20

C.R. No. B547110 of 19/3/47 (Intd.) E. S. C.

To :—

- (1) Olubadan-in-Council,  
c/o Mapo Hall, Ibadan.
- (2) J. Adetoyese Laoye, Esq.,  
Ile Laoye, Apaso, Ede.

I, OBAFEMI AWOLOWO, B.Com., LL.B. (Lond.), Barrister-at-Law and Solicitor of the Supreme Court of Nigeria at present residing at Ijebu 30 Bye Pass, Ibadan in the Province of Oyo, Nigeria, DO HEREBY GIVE NOTICE of my intention to institute civil proceedings after thirty days from the date hereof, on behalf of my client, Memudu Lagunju, Esq., of Ile Dawodu, Oke Agbala, Ede, against (1) The Ibadan Native Authority otherwise known as Olubadan-in-Council care Mapo Hall Ibadan and (2) J. Adetoyese Laoye Esq., the newly appointed Timi of Ede, of Ile Laoye, Apaso, Ede, for the claim particulars of which are attached herewith.

Dated at Ibadan this 30th day of January, 1947.

(Sgd.) OBAFEMI AWOLOWO,  
Solicitor for Memudu Lagunju.

40



## PARTICULARS OF CLAIM.

1. In January 1946, Akangbe of Ruling House of Ajenju, Timi of Ede, died leaving the office of the Timi of Ede vacant.

2. By the native custom and tradition of Ede and by the establishment mode of rotation, it became the turn of the Ruling House of Oduniyi to present a candidate to fill the vacancy.

3. The Ruling House of Oduniyi duly presented Memudu Lagunju as a candidate to fill the vacant office of Timi of Ede.

4. Those Chiefs who are by native custom and tradition entitled to select the Timi of Ede did unanimously select and recommend for approval to the Government through the Olubadan-in-Council the said Memudu Lagunju.

5. Contrary to native custom and tradition of Ede and the established mode of rotation, the Olubadan-in-Council, acting beyond its power in this matter, did override the recommendation of those who are entitled to select the Timi of Ede, and did appoint one J. A. Laoye, Esq., of the Ruling House of Ajenju to fill the vacant office of Timi.

6. Civil proceedings will therefore be instituted, as notified in the Supreme Court of Nigeria, for a declaration :—

20 (i) That the Ibadan Native Authority otherwise known as Olubadan-in-Council is not by native custom and tradition or by any law qualified to override the choice or decision of the Ede Kingmakers in the selection of the Timi of Ede.

(ii) That the selection of J. A. Laoye, Esq., as Timi of Ede by the Ibadan Native Authority otherwise known as Olubadan-in-Council is contrary to native custom and tradition governing the selection of a Timi of Ede and therefore null and void.

30 (iii) That Memudu Lagunju aforesaid is the person qualified and entitled by native custom and tradition to the post of Timi of Ede which became vacant in January 1946 as mentioned in paragraph (1) above.

(Sgd.) OBAFEMI AWOLowo,  
Solicitor for Memudu Lagunju.

*In the  
Supreme  
Court of  
Nigeria.*

No. 1.  
Applica-  
tion for  
Summons,  
30th  
January  
1947,  
*continued.*

*In the  
Supreme  
Court of  
Nigeria.*

No. 2.  
Civil  
Summons,  
15th April  
1947.

No. 2.

CIVIL SUMMONS.

Judicial Bk. A1

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Ibadan Judicial Division.

No. 20—A 463.

Between MEMUDU LAGUNJU - - - Plaintiff

and

1. OLUBADAN-IN-COUNCIL
2. J. ADETOYESE LAOYE - - - Defendants. 10

To :—1. Olubadan-in-Council of Mapo Hall, Ibadan

2. J. Adetoyese Laoye of Ile Laoye, Apaso, Ede.

You are hereby commanded in His Majesty's name to attend this Court at Ibadan on Monday the 21st day of April, 1947, at nine o'clock in the forenoon to answer a suit by Memudu Lagunju c/o of His Solicitor, Ijebu Bye Pass, Oke Bola, Ibadan against you.

The Plaintiff's claim against the Defendants is for an injunction restraining the second Defendant from performing the duties of the Timi of Ede and from receiving the salary or stipend attached to the office of Timi of Ede. 20

2. The Plaintiff also seeks as against the Defendants a declaration (as per particulars attached overleaf).

Issued at Ibadan the 15th day of April, 1947.

	£	s.	d.	
Summons	6	0	0	(Sgd.) O. JIBOWU, Puisne Judge.
Service		2	0	
mileage		4	0	
	<hr/>			
	£6	6	0	
	<hr/>			

£6.6/- C.R. No. B547110 of 19/3/47 (Intd.) E.S.C.

TAKE NOTICE : That if you fail to attend at the hearing of the suit 30 or at any continuation or adjournment thereof, the Court may allow the Plaintiff to proceed to Judgment and Execution.

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**No. 3.**  
**PROCEEDINGS.**

*In the  
Supreme  
Court of  
Nigeria.*

IN THE SUPREME COURT OF NIGERIA.

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

No. 3.  
Proceed-  
ings,  
21st April  
1947.

Before His Honour Mr. Justice OLUMIYIWA JIBOWU, Puisne Judge.  
Monday, the 21st day of April, 1947.

Suit No. I/14/47.

MEMUDU LAGUNJU *v.* 1. OLUBADAN-IN-COUNCIL.

2. J. ADETOYESE LAOYE.

10

Claim :

1. The Plaintiff's claim against the Defendants is for an injunction to restrain the second Defendant from performing the duties of the Timi of Ede, and from receiving the salary or stipend attached to the office of Timi of Ede.

20 2. The Plaintiff also seeks as against the Defendants a declaration (A) that the Ibadan Native Authority otherwise known as Olubadan-in-Council is not by native law and custom or by any other law qualified or entitled to override the choice or decision of the Ede Kingmakers in the selection of the Timi of Ede ; (B) that the selection of J. A. Laoye Esq. (second Defendant), and his subsequent installation, on 13th November, 1946, as Timi of Ede, by the Ibadan Native Authority otherwise known as Olubadan-in-Council is contrary to native law and custom governing the selection of a Timi of Ede, is therefore null and void, and must be set aside ; (C) that the Plaintiff is the person qualified and entitled by native law and custom to hold the post and enjoy the title of Timi of Ede which became vacant on 24th January 1946 ; (D) that the Plaintiff, sometime in April, or May 1946, was duly selected by the Ede Kingmakers as Timi of Ede and that that selection was in accordance with native law and  
30 custom.

Awolowo for Plaintiff.

Doherty, Ag. Senior Crown Counsel, for Defendants.

Pleadings ordered : 30 days to each side.

(Sgd.) O. JIBOWU,

21/4/47.

*In the  
Supreme  
Court of  
Nigeria.*

No. 4.  
Statement  
of Claim,  
6th May  
1947.

No. 4.

STATEMENT OF CLAIM.

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Ibadan Judicial Division.

Holden at Ibadan.

Suit No. I/14/47.

Between MEMUDU LAGUNJU - - - - Plaintiff

and

1. OLUBADAN-IN-COUNCIL

2. J. ADETOYESE LAOYE - - - - Defendants. 10

STATEMENT OF CLAIM.

1. The Plaintiff is a native of Ede and a member of the Ruling House of Lagunju in Ede, Ibadan District, Oyo Province, Nigeria.

2. On 24th January, 1946, upon the death of one Akangbe of the Ruling House of Ajenju in Ede, who occupied the office up to that date, the office of the Timi of Ede became vacant.

3. Shortly after 24th January, 1946, the other members of the Ruling House of Lagunju duly and properly presented the Plaintiff as candidate for selection to the office of Timi of Ede.

4. On 17th April, 1946, those who are entitled by Native Law and Custom to make the selection in accordance with Native Law and Custom, did unanimously select the Plaintiff to succeed the said Akangbe as Timi of Ede. 20

5. The second Defendant is a member of the Ruling House of Ajenju.

6. The second Defendant was never presented by the other members of the Ruling House of Ajenju, or by any of them, as candidate for selection to the office of Timi of Ede.

7. The second Defendant was not at any time selected as Timi of Ede by those who are entitled by Native Law and Custom to make such selection in accordance with Native Law and Custom. 30

8. The first Defendants were fully aware of the facts alleged in paragraphs 3, 4, 5, 6 and 7 herein above. Yet, in bad faith, and acting unfairly and contrary to Native Law and Custom, the first Defendants did override and set aside the selection of the Plaintiff, and selected the second Defendant as Timi of Ede in succession to the said Akangbe.

9. The Plaintiff avers that the act of the first Defendants as alleged in paragraph 8 above, is *ultra vires* and done *mala fide*.

10. The Resident of Oyo Province or the Chief Commissioner Western Provinces or some other Government Official whose designation the Plaintiff does not know purporting to act on behalf of the Governor or otherwise did in bad faith, improperly, and with full knowledge that the 40

selection was contrary to Native Law and Custom and was not made *bona fide*, approve the selection of the second Defendant by the first Defendants.

*In the  
Supreme  
Court of  
Nigeria.*

11. In consequence of the wrongful selection and official approval, the second Defendant was installed as Timi of Ede on 13th November, 1946, or thereabouts.

No. 4.  
Statement  
of Claim,  
6th May  
1947,  
*continued.*

12. The Plaintiff has therefore been unjustly and unlawfully deprived of his right of succession to the office of Timi of Ede.

13. The second Defendant, with the aid of the first Defendants, 10 has unjustly and unlawfully usurped the Plaintiff's right of succession, and has thereby been performing the duties of the office of Timi of Ede and receiving the salary or stipend attached to that office.

Wherefore the Plaintiff claims as per his writ of summons.

Dated at Ibadan this 6th day of May, 1947.

(Sgd.) OBAFEMI AWOLowo,  
Plaintiff's Solicitor.

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No. 5.

**DEFENCE of 1st Defendant : Olubadan-in-Council.**

IN THE SUPREME COURT OF NIGERIA.

20 In the Supreme Court of the Ibadan Judicial Division.

**THE DEFENCE OF 1ST DEFENDANT.**

No. 5.  
Defence of  
1st Defen-  
dant :  
Olubadan-  
in-Council,  
16th June  
1947

1. Save and except as is hereinafter expressly admitted the Defendants deny each and every allegation of fact contained in the Plaintiff's Statement of Claim as if each and every such allegation were separately taken and specifically traversed.

2. The Defendants admit paragraphs 1, 2 and 5 of the Statement of Claim.

3. With regard to paragraphs 8, 9, 10 and 13 of the Statement of Claim the Defendants aver that the Ede native authority is subordinate 30 to the Defendants and that the latter have the right to approve or reject any candidate who was not properly selected according to native law and custom.

4. The Defendants further aver that their approval and recommendation of the second Defendant to Government as Timi of Ede was based on the result of a public enquiry held at Ede sometime in May 1946 where and when the claims of the rival candidates were fully explored. The enquiry, which was conducted strictly in accordance with native law and custom, revealed convincingly that the majority of the Chiefs and people of Ede were strongly in favour of the appointment of the second Defendant 40 as Timi in preference to the Plaintiff.

5. Jurisdiction.

Delivered at Ibadan this 16th day of June, 1947.

(Sgd.) R. A. DOHERTY,  
Solicitor for the 1st Defendant.

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*In the  
Supreme  
Court of  
Nigeria.*

**No. 6.**

**DEFENCE of the 2nd Defendant : J. Adetoyese Laoye.**

**IN THE SUPREME COURT OF NIGERIA.**

In the Supreme Court of the Ibadan Judicial Division.

Suit No. I/14/47.

No. 6.  
Defence of  
2nd Defen-  
dant :  
J. Adetoye-  
ese Laoye,  
16th June  
1947.

**THE DEFENCE OF THE 2ND DEFENDANT.**

1. Save and except as is hereinafter expressly admitted the Defendant denies each and every allegation of fact contained in the Plaintiff's Statement of Claim as if each and every such allegation were separately taken and specifically traversed. 10

2. The Defendant admits paragraphs 1, 2 and 5 of the Statement of Claim.

3. The Defendant denies paragraphs 3, 4, 6, 7, 8, 9, 10, 11, 12 and 13 of the Statement of Claim.

4. With regard to paragraphs 3, 4 and 6 of the Statement of Claim the Defendant says that the selection of Timi of Ede rests solely with the Chiefs of Ede, that the Defendant was selected by the majority of the Chiefs of Ede in accordance with native law and custom, and that his selection was approved by the 1st Defendants.

5. The Defendant avers that the approval of his appointment as 20 Timi by the 1st Defendants was the outcome of a public enquiry held by the 1st Defendants at Ede sometime in May 1946 where and when it was discovered that an overwhelming majority of the Chiefs and people of Ede supported the selection of the Defendant as Timi of Ede.

6. Jurisdiction.

Delivered at Ibadan this 16th day of June, 1947.

(Sgd.) R. A. DOHERTY,  
Solicitor for the 2nd Defendant.

16/6/47.

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## No. 7.

## PROCEEDINGS : Plea of lack of Jurisdiction.

*In the  
Supreme  
Court of  
Nigeria.*

## IN THE SUPREME COURT OF NIGERIA.

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

No. 7.  
Proceed-  
ings : Plea  
of Lack of  
Jurisdic-  
tion, 14th  
August  
1947.

Before His Honour Mr. Justice OLUMUYIWA JIBOWU, Puisne Judge.  
Thursday the 14th day of August, 1947.

Suit No. I/14/1947.

MEMUDU LAGUNJU *versus* 1. OLUBADAN-IN-COUNCIL

10

2. J. ADETOYESE LAOYE.

Awolowo for Plaintiff.

Doherty, Ag. Senior Crown Counsel, for Defendants.

Doherty submits that this Court has no jurisdiction to try this case as the jurisdiction of the Court has been ousted by Ordinance No. 14 of 1930 as amended by Ordinance No. 20 of 1945 in that the 2nd Defendant is a Chief appointed under the Native Authority Ordinance and holds office as the Timi of Ede and his appointment has been approved by the Resident ; he is a member of a Sub Native Authority appointed under the Native Authority Ordinance.

20 Awolowo replies and refers to Bullen and Leake on Pleadings, 8th Edition, pages 307, 309, 311 and 814, 880, says the facts constituting ouster of jurisdiction should have been pleaded. Submits that the defence of jurisdiction has not been fully pleaded.

Doherty says that he is not bound to plead facts as stated at page 70 of the same Edition of Bullen and Leake referred to by Counsel for the Plaintiff.

The Court is of the opinion that the defence has clearly indicated on the Statements of Defence that the question of the jurisdiction of the Court to try the case would be raised at trial.

30 The point raised by the learned Crown Counsel will dispose of the case if successful and the Court therefore rules that necessary evidence to prove the point raised be led.

FITZGERALD HADOKÉ, Male, Irish, sworn on the Bible, states in English language as follows :—

40 *Xd. by Doherty* : I am the District Officer, Ibadan. I live at Ibadan. I know the District of Ede. There is a Head Chief at Ede, he is known as the Timi of Ede. Adetoyese Laoye is the present Timi of Ede. He was appointed Timi of Ede under the Native Authority Ordinance. His appointment has been approved by the Senior Resident of Oyo Province. I tender the letter of approval, marked Ex. "A." The Timi of Ede is a member of Ede District Council and also of Ibadan Division Native Authority. The Councils were constituted under the Native Authority Ordinance.

This Ex. "A"  
is the Exhibit  
shown in the  
Index as  
Exhibit "G"

*In the  
Supreme  
Court of  
Nigeria.*

I tender the Nigerian Gazette No. 2 of 2nd January, 1947, showing the Timi of Ede as a member of Ede District Council, marked Ex. "B."

No. 7.  
Proceed-  
ings: Plea  
of Lack of  
Jurisdic-  
tion, 14th  
August  
1947,  
*continued.*

This Ex. "B"  
is the Exhibit  
shown in the  
Index as  
Exhibit "K"

*Xd. by Awolowo*: I don't know the Plaintiff. I was not in charge of Ede District, probably that is why I don't know him. I have read files about Plaintiff. I was not in charge of Oshogbo District. My knowledge of the chieftaincy disputes in Oshogbo is from the files of the district.

Awolowo submits that the 1945 Ordinance No. 20 does not oust the jurisdiction of the Court in all circumstances but in certain cases in which this case is not one. Says the whole point depends on the interpretation 10 or construction of the 1945 Ordinance.

Submits that *Laoye vs. Oyetunde* does not apply. Refers to Vol. 31 Halsbury's Laws of England 2nd Edition sec. 626. Refers to 2 (2) of Ordinance No. 14 of 1930. Submits that in the 1945 Ordinance the use of the words "After due enquiry and consultation with the persons concerned in the selection" show the Legislature had a different intention in passing the Ordinance and that the Court is not bound by the decision in *Laoye vs. Oyetunde* according to the citation from Halsbury Vol. 31. He submits that in this case *mala fide* is attributed to the persons concerned in the selection and that the Court should therefore enquire into the 20 circumstances of the appointment. Refers to Maxwell on Legal Interpretation 8th Edition, p. 115 also to Halsbury's Laws of England, Vol. 31 2nd Edition, p. 637, 640 also to Vol. 8 Halsbury p. 1177. Submits that there is no ouster of the jurisdiction of the Court under the 1945 Ordinance. Refers to 2 W.A.C.A. 42 and submits that the Legislature should have definitely stated that the "Court shall have no jurisdiction." Refers to Cap. 80 Laws of Nigeria Section 7 submits that if the Court comes to the conclusion that the case of *Laoye vs. Oyetunde* applies the Court would have jurisdiction to try the question of *mala fides* raised in this case.

Cites 68 L.T.R. 472—74 *Jackson v. Bonny Rl. Co.*; also *Liversidge vs. 30 Anderson*, 1941 3 All E.R., ;343—8. *Local Govt. Board v. Arlidge*, 111 L.T.R. 908, submits that the Court must be satisfied that the Governor has acted *bona fide* and judicially.

Cites also *Franklin v. The Minister of Town and Country Planning*, 176 L.T.R. 200—1 and p. 316—7, 1947 All E.R. p. 613. *Robinson & others v. Minister of Town and Country Planning*, p. 852, 7 & 861 of 1947 1 All E.R., submits that power given to the Governor under 1945 Ordinance is a *quasi* judicial one and he must conduct the inquiry with a judicial mind.

Refers to Maxwell on Interpretation, 8th Edition, p. 111 & 3; also to Bannerds Words and Phrases judicially defined Vol. 3 page 443. 40

Conditions precedent to statutory power taking effect—(1) Someone must conduct enquiry and consultation with persons concerned. Non-compliance with this condition invalidates the selection.

Refers to sec. 28 Interpretation Ordinance 1939. No evidence Governor conducted enquiry or that he delegated his power to some other person. Refers to *Akinwande Thomas & ors. v. Ademola II & ors.*, 31 Halsbury 2nd Edition 639, 657.



Refers to Odgers on Pleading and Practice 10th Edition, p. 77— submits that it is a common law right of every one to refer his grievance to the Court.

*In the  
Supreme  
Court of  
Nigeria.*

Doherty replies :—

Submits that the learned Counsel for the Plaintiff wrongly takes the Ordinance to be two separate ones. Says reference to 31 Halsbury does not arise ; refers to section 11 of the Interpretation Ordinance of 1939. Ordinances of 1930 and 1945 are one. Case still governed by *Laoye v. Oyetunde*.

No. 7.  
Proceed-  
ings : Plea  
of Lack of  
Jurisdic-  
tion, 14th  
August  
1947,  
*continued.*

- 10 Submits that the Governor and not the Court is the sole Judge of whether due enquiry had been made about any chieftaincy dispute. Refers to bottom of 1935 supplement showing delegation of Governor's power to L.G. and Residents. Refers also to F59 of 1940 Legislation. Ex. "A" fulfils the requirement of section 2 (2) and shows necessary enquiries had been made. Submits that sub-section 2 (1) and 2 (2) must be read together—Governor does not appoint but approves.

Submits that duty of sitting down as a judge over inquiry is not imposed on the Governor but on the people to make selection. Refers 3 & 4 of 1st Defendant's defence and 4 & 5 of the 2nd Defendant's defence.

- 20 Says cases cited in support of quotation from Vol. 31 Halsbury don't apply. Submits cases cited as restoration of Court jurisdiction are cases of contract which is not the case here.

Adjourned to 28th instant.

(Sgd.) O. JIBOWU,  
Judge.

14/8/47.

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No. 8.

## COURT'S Ruling on Counsel's Submissions.

*In the  
Supreme  
Court of  
Nigeria.*

No. 8.  
Court's  
Ruling on  
Counsel's  
submissions,  
28th  
August  
1947.

IN THE SUPREME COURT OF NIGERIA.  
In the Supreme Court of the Ibadan Judicial Division.  
Holden at Ibadan.

Before His Honour Mr. Justice JIBOWU—Puisne Judge.  
Thursday the 28th day of August, 1947.

Suit No. I/14/1947.

Between MEMUDU LAGUNJU - - Plaintiff  
and 10  
1. OLUBADAN-IN-COUNCIL  
2. J. ADETOYESE LAOYE - Defendants.

## RULING ON COUNSEL'S SUBMISSIONS.

In this case the Plaintiff's claim is as follows :—

“The Plaintiff's claim against the Defendants is for an Injunction to restrain the second Defendant from performing the duties of the Timi of Ede, and from receiving the salary or stipend attached to the office of Timi of Ede.

The Plaintiff also seeks as against the Defendants a declaration :—

(A) That the Ibadan Native Authority otherwise known as Olubadan-in-Council is not by native law and custom or by any other law qualified or entitled to override the choice or decision of the Ede Kingmakers in the selection of the Timi of Ede.

(B) That the selection of J. A. Laoye Esq. (second deft.) and his subsequent installation, on 13th November, 1946, as Timi of Ede, by the Ibadan Native Authority otherwise known as Olubadan-in-Council is contrary to native law and custom governing the selection of a Timi of Ede, is therefore null and void, and must be set aside ;

(C) That the Plaintiff is the person qualified and entitled by native law and custom to hold the post and enjoy the title of Timi of Ede which became vacant on 24th January 1946 ;

(D) That the Plaintiff, sometime in April or May 1946, was duly selected by the Ede Kingmakers as Timi of Ede and that that selection was in accordance with native law and custom.”

Pleadings were ordered and filed.

Paragraph 5 of 1st Defendant's Defence is “Jurisdiction” and paragraph 6 of the 2nd Defendant's Defence is also “Jurisdiction.” When the case came on for trial on the 14th August, 1947, Doherty, Acting Senior Crown Counsel, who appeared for the 1st Defendant raised a preliminary objection in point of law that this Court has no jurisdiction

to try this case in view of the provisions of section 2 (2) of Ordinance No. 14 of 1930 as amended by Ordinance No. 20 of 1945 which has ousted the jurisdiction of the Court as the 2nd Defendant has been appointed to the office of Timi of Ede under the Native Authority Ordinance and is by virtue of the appointment which has been approved by the Resident a member of a Sub-Native Authority created under the Native Authority Ordinance.

*In the  
Supreme  
Court of  
Nigeria.*

No. 8.  
Court's  
Ruling on  
Counsel's  
submissions,  
28th  
August  
1947,  
*continued.*

Awolowo, Counsel for the Plaintiff, submitted that the defence of jurisdiction has not been fully pleaded and that the facts constituting the  
10 ouster of jurisdiction should have been pleaded. He referred to pages 307, 309, 311, 814 and 880 of Bullen and Leake on Pleadings, 8th Edition.

Doherty in reply referred to page 70 of the same edition of Bullen and Leake and stated that he was not bound to place on his pleadings an objection in point of law.

The Court ruled that the Defence filed gave a clear indication that the question of jurisdiction would be raised at trial and, as the case would be disposed of if the point is successful, the Court ruled that evidence be called on the point, which was done.

If the learned Counsel for the Plaintiff had raised an objection to  
20 paragraph 5 of the 1st Defendant's Defence, and to paragraph 6 of the 2nd Defendant's Defence, before the Defendants' Counsel brought up the question of jurisdiction, the Court would have ordered that the particular paragraphs of the Defences be amended by particulars being furnished. This was no longer necessary as the particulars had been furnished to the Court before any objection was raised to the insufficiency of the pleadings.

Although Order 25 rule 2 merely provides that "any party shall be entitled to raise by his pleadings any point of law" and does not make it compulsory that he must, yet points of law which will necessitate legal argument which should be disposed of before trial should be pleaded and  
30 the question of jurisdiction is one of such points of law. The defence of want of jurisdiction should state facts to show that the Court has no jurisdiction.

Merely pleading "Jurisdiction" is not sufficient; particulars showing want of jurisdiction should therefore be pleaded. The evidence of Mr. Fitzgerald Hadoke, District Officer, Ibadan, proves that the 2nd Defendant has been appointed the Timi of Ede, which is the head chieftaincy in Ede, that his appointment has been approved by the Senior Resident of Oyo Province, that he is a member of Ede District Council of the Ibadan Division Native Authority, both of which were constituted  
40 under the Native Authority Ordinance.

The Senior Resident's letter of approval Ex. "A" reads:—

*"Timi of Ede: Appointment of.*

"With reference to the special meeting of the Ibadan Inner Council on Thursday, December 5th, I am entirely satisfied that by Native Law and Custom Mr. Adetoyese Laoye is eligible to succeed to the stool of the Timi of Ede and that he is a fit and proper person by past record to assume the office of the Head of the Ede and Ede District Subordinate Native Authority and to

*In the  
Supreme  
Court of  
Nigeria.*

No. 8.  
Court's  
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*continued.*

take his seat on the Bench of the Native Court. I am also entirely satisfied that the large majority of the Chiefs of Ede eligible to take part in the selection of a Timi of Ede support the candidature of Mr. Adetoyese Laoye. That being so, I convey approval of the recommendation submitted by the Ibadan Inner Council that the selection of Mr. Adetoyese Laoye as the new Timi of Ede should be recognised.

(Sgd.) J. G. PYKE-NOTT,  
Senior Resident : Oyo Province."

Gazette No. 2 of 2nd January, 1947, Ex. " B " tendered shows the Timi 10  
of Ede as a member of Ede and Ede District Native Authority which is  
subordinate to Ibadan Division Native Authority and that he is a member  
of Ede and Ede District Council.

Section 2 (2) of Ordinance No. 14 of 1930 as amended by Ordinance  
No. 20 of 1945 reads :—

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

The definitions of " Chief " and " Head Chief " are given by the 20  
amending Ordinance No. 20 of 1945 as follows :—

" Chief " and " Head Chief " mean a chief or head chief

(A) who has been appointed to the office of native authority  
under the provisions of the Native Authority Ordinance 1943,

(B) who has been appointed to an office which is deemed to  
be constituted under the Native Authority Ordinance 1943,

(C) who is a member of a Native Authority constituted or  
deemed to be constituted under the provisions of Native Authority  
Ordinance 1943,

(D) who is a member of Council in cases where the office of 30  
Native Authority is a chief associated with a Council,

(E) who is a member of an Advisory Council."

Section 33 of the Native Authority Ordinance, 1943, deals with the  
appointment and duties of Advisory Councils.

Section 28 of the Interpretation Ordinance gives the Governor power  
to delegate certain powers or duties conferred on him to other officers.

Under section 2 (1) of Ordinance No. 14 of 1930, as amended by  
Ordinance No. 20 of 1945, the Governor has power (1) to approve as successor  
of a deceased chief or head chief, any person appointed by those entitled  
by native law and custom to make the appointment according to native 40  
law and custom, and (2) to appoint any person he may deem fit and proper  
to carry out the duties incidental to the chieftaincy as it may be necessary  
to perform, if no appointment is made within such time as is usual under  
native law and custom.

The powers of the Governor under section 2 (1) and (2) were delegated by the Governor in 1930 to Lieutenant Governors and Residents in charge of Provinces as per Notice No. 142 of 1930 in Nigeria Gazette of the 2nd October, 1930.

*In the  
Supreme  
Court of  
Nigeria.*

By Public Notices Nos. 47 and 69 of 1940 the Governor delegated his powers under various Ordinances to various officers named in the schedule thereto attached and at page F 59 of the Laws of Nigeria, 1940 Legislation, will be found the delegation of the Governor's powers under sections 2 and 4 of Ordinance No. 14 of 1930 to Chief Commissioners and Residents  
10 in charge of Provinces.

No. 8.  
Court's  
Ruling on  
Counsel's  
submissions,  
28th  
August  
1947,  
*continued.*

Awolowo for the Plaintiff submitted that Ordinance No. 20 of 1945 does not oust the jurisdiction of the Court in all cases and that the present case is not one of those cases in which the jurisdiction of the Court will be ousted. I agree with the first part of the submission because the jurisdiction of the Court is ousted only in case of chiefs or head chiefs who come within the definition of Chief or Head as defined by Ordinance No. 14 of 1930 as amended by No. 20 of 1945, and it is a question of fact whether a chief or head chief comes within the definition.

I agree with the learned Counsel for the Plaintiff also that the case of  
20 *Laoye vs. Oyetunde* does not apply to this case not on account of the citation he made from Vol. 31 Halsbury's Laws of England 2nd edition, section 626, but because that case was decided on the interpretation of "Chief" or "Head Chief" as contained in Ordinance No. 14 of 1930. It was no doubt due to that decision that we owe the amending Ordinance No. 20 of 1945. If the definition of "Chief" or "Head Chief" had been what it is now under the amending Ordinance and the other amendments made had been enacted before *Laoye vs. Oyetunde* came up, it appears to me that the result would have been different in the Privy Council.

Section 626 of Vol. 31 Halsbury's Laws of England, 2nd edition, reads  
30 as follows :—

40 "These amending provisions should not be interpreted so as to alter completely the character of the principal law, unless clear language is found indicating such an intention, and where a statute of limited operation is repealed by one which re-enacts its provisions in an amended form, it need not be presumed that its operation was to be extended to classes of people hitherto not subject to them. Where, however, expressions of larger meaning are used in an amending Statute than in the principal Act, it must be taken that they are used intentionally. If the words of a later Statute differs from those of an earlier Statute, the Court, in construing the later Statute, is not bound by a decision under the earlier one, even though it relates to the same matter."

This is only a rule for construing an amending Statute or Ordinance. There can be no doubt that the legislature had reasons for substituting a new section 2 subsection (2) for the old one which was deleted and it will be the duty of the Court to construe the meaning of the subsection as amended. The old subsection reads: "The Governor shall be the sole Judge as to whether any appointment of a Chief or Head Chief, as the case may be, has been made in accordance with the native law and custom."

*In the  
Supreme  
Court of  
Nigeria.*

No. 8.  
Court's  
Ruling on  
Counsel's  
submissions,  
28th  
August  
1947,  
*continued.*

Although it does not say in express terms that the Courts shall not have jurisdiction in cases where the question whether the appointment of a chief or head chief, as the case may be, has been made in accordance with native law and custom is raised, yet it can be implied from the language of the subsection which made the Governor the sole Judge of that question ; it means, in other words, that no other Judge but the Governor shall try such issue.

It is quite correct that the Gold Coast Law is more direct on the point as shown at page 42 of 2 W.A.C.A. in the case of *Eweku Bon v. Nyarku Eweku IV* referred to by the learned Counsel for the Plaintiff, but it is an 10  
accepted Canon of construction that the jurisdiction of the Supreme or Superior Court may be taken away by express words or by necessary implication and the whole question will depend on the interpretation on construction of the words of a particular statute or ordinance. It appears to me that an intention to oust the jurisdiction of the Courts was evident in the wording of the old subsection 2 of section 2 of Ordinance No. 14 of 1930. I am, with respect to the learned Counsel to the Plaintiff, unable to agree with him that because the new subsection (2) has the words "After due enquiry and consultation with the persons concerned in the selection" added, therefore the intention of the legislature had undergone 20  
a change. It is to be observed that in spite of the addition the Governor still remains the sole judge as to whether the appointment has been made in accordance with the native law and custom, but conditions under which the power of the Governor will take effect are added. This is the difference between the two subsections. Under the new subsection, when an appointment of a chief has been made and there is a dispute about the appointment, after enquiry and consultation with the persons concerned in the selection, the Governor shall be the sole judge as to whether the appointment of the chief has been made in accordance with native law and custom.

This Court agrees that it is the common law right of everyone to 30  
refer his grievance to the Court but that does not prevent legislation being made to curtail that right. We find Friendly Societies, Trade Unions, Building Societies, and private individuals limiting their right to refer their disputes to Court and such limitation has always been upheld. Statute Laws are made to be obeyed and I may refer to Lord Atkin's remarks in the Privy Council case of *Ohene Moore vs. Akenseh Tayee* at page 45 of 2 W.A.C.A. on the point. Says he : "It is quite true that their Lordships, as every other Court, attempt to do substantial justice and to avoid technicalities, but their Lordships, like any other Court, are bound by the statute law, and if the statute law says there shall be no jurisdiction in a 40  
certain event, and that event has occurred, then it is impossible for their Lordships or for any other Court to have jurisdiction."

The learned Counsel for the Plaintiff submitted that because he alleged *mala fides* in the selectors, the Court therefore can assume jurisdiction in order to enquire into the circumstances of the appointment. The circumstances of the appointment are the very matter reserved for the Governor as sole Judge ; it is for him or for officers to whom he delegated his powers to enquire into the question whether the appointment has been properly made and not for the Court whose jurisdiction is ousted when circumstances have occurred which invest the Governor with the power of a sole 50

judge. I am in full agreement with the learned Crown Counsel that the Governor personally is not called upon to sit down as a judge to enquire into chieftaincy disputes but that he has to satisfy himself that due inquiry has been made according to native law and custom by men who make the selection. The Senior Resident's letter shows that the persons eligible by native law and custom to take part in the selection have by a majority selected the 2nd Defendant at Ede, that the Ibadan Inner Council have recommended him and that he was entirely satisfied that he was a fit and proper person eligible to be appointed: he approved of the appointment  
 10 obviously as the Governor's delegate.

*In the  
Supreme  
Court of  
Nigeria.*

No. 8.  
Court's  
Ruling on  
Counsel's  
submissions,  
28th  
August  
1947,  
*continued.*

The case of *Local Government Board v. Arlidge*, reported in 111 L.T.R. 905, does not appear to be relevant as provision was made in the Housing and Town Planning Act, 1909, that recourse may be had on appeal by way of stated case to the High Court, so when the case found its way to the Court from a decision of the Local Board it was in accordance with the Law.

The case of *Jackson v. Barry Railway Company*, reported at page 476 of 68 L.T.R., is a case where the parties by contract agreed that their dispute should be referred to the Company's Engineer as Arbitrator. Plaintiff not being satisfied with the Arbitrator, moved the High Court  
 20 for injunction to stop the arbitration proceedings and got a decision which was reversed by the Appeal Court. The question of jurisdiction to grant the injunction was not decided, so the case does not help Plaintiff's case.

*Liversidge v. Anderson and another*, reported at page 338 of 1941, 3 All E.R., also does not support Plaintiff's case. It is the case of a man who sued the Secretary of State for Home Affairs and his predecessor in office for false imprisonment for detaining him under regulations made under the Emergency Powers Defence Act. The Plaintiff lost his case in all Courts including the House of Lords which held that where Regulations were made for the defence of the realm and the administrative plenary  
 30 discretion is vested in the Secretary of State, it is for him to decide whether he has reasonable grounds and to act accordingly, and that public policy and war-time safety require that he shall not disclose facts on which he acted.

Since the Governor has been made the sole judge in chieftaincy cases in cases of chiefs coming within the provisions of section 5 of Ordinance 14 of 1930, as amended by section 7 of Ordinance No. 20 of 1945, his certificate showing approval of the appointment after due enquiry has been made precludes the Court from exercising jurisdiction in the matter and in my view the effect to be given to section 2 (2) of Ordinance No. 14  
 40 of 1930 as amended by Ordinance No. 20 of 1945 is not affected by the Town Planning cases *Franklin v. The Minister of Town and Country Planning*, 176 L.T.R. 200 and 312, *Robinson and Others v. Minister of Town and Country Planning*, 1947 1 All E.R., as the same effect should be given to the section when construed in its ordinary meaning as if it expressly states that the Courts shall have no jurisdiction in such cases.

I consider it unreasonable to hold that where the law definitely says that the Court shall have no jurisdiction in effect jurisdiction can be conferred on the Court by a litigant by alleging *mala fides*.

*In the  
Supreme  
Court of  
Nigeria.*

No. 8.  
Court's  
Ruling on  
Counsel's  
submissions,  
28th  
August  
1947,  
*continued.*

The Town Planning cases come within section 1177, Vol. 8, Halsbury's Laws of England which reads: "The jurisdiction of the Courts to entertain any question as to the validity of an order made under the Authority of a Statute is ousted if the order is not inconsistent with the terms of the Statute. The jurisdiction of the Courts is ousted where a tribunal is specified by Statute to deal with claims arising under the Statute, but it is otherwise if a non-exclusive tribunal is indicated."

I therefore hold that the jurisdiction of this Court has been ousted.

Plaintiff's action is therefore dismissed with costs assessed at 20 guineas.

(Sgd.) O. JIBOWU,  
Judge.

10

No. 9.  
[*Not  
printed.*]

No. 9.

**MOTION for Conditional Leave to Appeal, 29th August, 1947.**

[*Not printed.*]

No. 10.  
Affidavit  
in support  
of Motion  
for Con-  
ditional  
Leave to  
Appeal,  
29th  
August  
1947.

No. 10.

**AFFIDAVIT in Support of Motion for Conditional Leave to Appeal.**

**IN THE SUPREME COURT OF NIGERIA.**

In the Supreme Court of the Ibadan Judicial Division.

Holden at Ibadan.

Suit No. I/14/47.

20

Filed 1.53 p.m. 29/8/47 (Intd.) O.S. for Regr.

**AFFIDAVIT.**

I, MEMUDU LAGUNJU, Trader of Ede, Yoruba, make oath and say as follows:—

1. That I am the Plaintiff in the above action.
2. That the claim is—

(i) For an injunction to restrain the 2nd Defendant from performing the duties of the Timi of Ede and from receiving the salary or stipend attached to the office of Timi of Ede.

30

(ii) For a declaration—

(A) that the Ibadan Native Authority otherwise known as Olubadan-in-Council is not by any native law and custom or by



any other law qualified or entitled to override the choice or decision of the Ede Kingmakers in the selection of the Timi of Ede.

*In the Supreme Court of Nigeria.*

(B) That the selection of J. A. Laoye Esq. (second Defendant), and his subsequent installation on 13th November, 1946, as Timi of Ede by the Ibadan Native Authority otherwise known as Olubadan-in-Council is contrary to native law and custom governing the selection of a Timi of Ede, is therefore null and void and must be set aside ;

No. 10.  
Affidavit  
in Support  
of Motion  
for Con-  
ditional  
Leave to  
Appeal,  
29th  
August  
1947,  
*continued.*

10 (c) That the Plaintiff is the person qualified and entitled by native law and custom to hold the post and enjoy the title of Timi of Ede which became vacant on 24th January, 1946 ;

(D) That the Plaintiff, sometime in April or May 1946 was duly selected by the Ede Kingmakers as Timi of Ede and that that selection was in accordance with native law and custom.

3. That judgment was given against me on the 28th August 1947, on point of jurisdiction.

4. That I am dissatisfied with this judgment and desire to appeal to the West African Court of Appeal.

20 5. That it may please this Honourable Court to grant the Conditional Leave to Appeal to the West African Court of Appeal.

MEMUDU LAGUNJU His right thumb  
print.  
Deponent.

Sworn to at the Supreme Court Registry, Ibadan, after the contents have been duly interpreted into Yoruba language to the Deponent by S. A. Samuel Registrar, this 29th day of August, 1947, when he seems perfectly to understand the contents before affixing his mark thereto.

Before me,

30 (Sgd.) S. A. SAMUEL,  
Commissioner for Oaths.

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No. 11.

PROCEEDINGS : Ex parte Motion for Conditional Leave to Appeal, 30th August, 1947.

No. 11.  
[Not  
printed.]

[Not printed.]

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*In the  
Supreme  
Court of  
Nigeria.*

**No. 12.**

**ORDER Granting Conditional Leave to Appeal.**

**IN THE SUPREME COURT OF NIGERIA.**

In the Supreme Court of the Ibadan Judicial Division.

Holden at Ibadan.

Suit No. I/14 of 1947.

No. 12.  
Order  
Granting  
Conditional  
Leave to  
Appeal,  
30th  
August  
1947.

UPON READING the Affidavit of Memudu Lagunju of Ede, sworn and filed on the 29th day of August, 1947 :

AND AFTER HEARING Obafemi Awolowo Esq., Solicitor to the said Memudu Lagunju :

10

IT IS THIS DAY ORDERED that leave be and is hereby granted to the said Memudu Lagunju to appeal to the West African Court of Appeal from the Judgment of this Court dated the 28th day of August, 1947, PROVIDED that the following conditions are perfected within one month from the date hereof :—

1. The Plaintiff-Appellant shall pay into Court the sum of £10 to cover the cost of preparation and transmission of the record of appeal.

2. The Plaintiff-Appellant shall give security in the sum of £21 by a bond with a surety to be approved by the Registrar of this Court as security for costs that may be awarded against him in the Appeal Court. 20

3. The Plaintiff-Appellant shall give notice of his appeal to all parties concerned.

Dated at Ibadan this 30th day of August, 1947.

(Sgd.) O. JIBOWU,  
Judge.

No. 13.  
[Not  
printed.]

**No. 13.**

**BOND FOR COSTS, dated 5th September, 1947.**

[Not printed.]

No. 14.  
[Not  
printed.]

**No. 14.**

**NOTICE OF APPEAL, dated 5th September, 1947.**

30

[Not printed.]

No. 15.

MOTION for Final Leave to Appeal, dated 17th September, 1947.

[Not printed.]

*In the  
Supreme  
Court of  
Nigeria.*

No. 15.  
[Not  
printed.]

No. 16.

AFFIDAVIT AND NOTICE in Support of Final Leave to Appeal,  
dated 18th September, 1947.

[Not printed.]

No. 16.  
[Not  
printed.]

No. 17.

PROCEEDINGS : Ex parte Motion for Final Leave to Appeal, 22nd September, 1947.

[Not printed.]

No. 17.  
[Not  
printed.]

10

No. 18.

ORDER granting Final Leave to Appeal.

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Ibadan Judicial Division.

Suit No. I/14/1947.

Between MEMUDU LAGUNJU

Plaintiff

and

1. OLUBADAN-IN-COUNCIL

2. J. ADETOYESE LAOYE

Defendants.

No. 18.  
Order  
Granting  
Final Leave  
to Appeal,  
22nd  
September  
1947.

20 UPON READING the Affidavit of Isaac Akintayo Aina, Law Clerk,  
Yoruba, of Oke Ado, Ibadan, Nigeria, sworn to and filed the 18th day of  
September, 1947 :

AND HAVING HEARD Obefemi Awolowo Esquire, Barrister-at-  
Law, of Oke Ado, Ibandan, in support :

IT IS ORDERED that Final Leave be, and is hereby granted, to  
Memudu Lagunju, the Plaintiff-Appellant herein-named, to appeal to  
the West African Court of Appeal.

Dated at Abeokuta, the 22nd day of September, 1947.

(Sgd.) O. JIBOWU,  
Puisne Judge.

30

**GROUNDS OF APPEAL.**

**IN THE WEST AFRICAN COURT OF APPEAL.**

No. 19.  
Grounds of  
Appeal,  
27th  
September  
1947.

Filed 11.05 a.m. 29/9/47 (Intd.) O.S. for Regr.

The Appellant being dissatisfied with the judgment of the Supreme Court of Ibadan Judicial Division holden at Ibadan delivered on the 28th day of August, 1947, and having obtained Final Leave to Appeal therefrom dated the 22nd day of September, 1947, hereby appeals to the West African Court of Appeal upon the grounds hereinafter set forth :—

**GROUNDS OF APPEAL.**

10

1. The learned Judge is wrong in law in holding :—

This Exhibit  
"A" is the  
Exhibit  
shown in the  
Index as  
Exhibit "G"

(i) that the facts disclosed by the Resident's letter exhibit " A " are sufficient to constitute the due enquiry and consultation with the persons concerned in the selection stipulated in Section 2 (2) of Ordinance No. 14 of 1930, as amended by Ordinance No. 20 of 1945 :

(ii) that the intention of the Legislature has not undergone a change by the introduction of the phrase " after due enquiry and due consultation with the persons concerned in the selection " into the amending Ordinance No. 20 of 1945 :

20

(iii) that the allegation of *mala fides* on the part of the Governor in the exercise of the jurisdiction vested in him by Ordinance No. 14 of 1930 as amended by Ordinance No. 20 of 1945, does not restore the jurisdiction of the Court ; and that *mala fides* on the part of the Governor in the exercise of his jurisdiction is one of the circumstances of the selection, of which the Governor is sole judge :

(iv) that the Governor is the person to decide whether or not the appointment has been made properly or *bona fide* as it is contrary to natural justice so to hold :

(v) that Counsel for defendants should lead evidence purporting to prove facts which constituted ouster of jurisdiction of the Court, even though these facts were not pleaded in the Statement of Defence. 30

2. Misdirection on points of Law :—

(i) Even though the learned Judge held that the phrase " after due enquiry and consultation with the persons concerned in the selection " imposed conditions which must be fulfilled before the Governor's power would take effect, yet he failed to consider whether in this case the conditions have been performed, and whether the facts disclosed by the Resident's letter constituted sufficient performance of these conditions as required by the amending Ordinance No. 20 of 1945 : 40

(ii) the learned Judge misdirected himself on the true interpretation and construction of the following words which occur in the amending Ordinance No. 20 of 1945 namely :—

“ In the case of any dispute the Governor, after due enquiry and consultation with the persons concerned in the selection, shall be the sole Judge as to whether any appointment of a Chief has been made in accordance with Native Law and Custom.”

3. The learned Judge misdirected himself in holding that the Resident's letter shows that “ the persons eligible by native law and custom to take part in the selection have by a majority selected the 2nd defendant at Ede.”

*In the  
West  
African  
Court of  
Appeal.*

No. 19.  
Grounds of  
Appeal,  
27th  
September  
1947,  
*continued.*

(Sgd.) OBAFEMI AWOLowo,  
Solicitor for Plaintiff-Appellant.

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No. 20.

**STATEMENT.**

No. 20.  
Statement

Plaintiff's action was dismissed with costs assessed at 20 guineas on the 28th day of August, 1947.

20 Motion and Affidavit for Conditional Leave to appeal filed on the 29th day of August, 1947, and on the 30th day of August, 1947, the Court granted Conditional Leave to appeal.

Motion and Affidavit for Final Leave to appeal filed on the 18th day of September, 1947, and on the 22nd day of September, 1947, the Court granted Final Leave to appeal.

Grounds of Appeal were filed on the 29th day of September, 1947.

FEES PAYABLE.

*(Not printed.)*

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**PROCEEDINGS ON APPEAL.**

IN THE WEST AFRICAN COURT OF APPEAL.

Holden at Lagos, Nigeria.

No. 21.  
Proceed-  
ings on  
Appeal,  
4th  
November  
1947.

Tuesday the 4th day of November, 1947.

Before their Honours SIR WALTER HARRAGIN, Kt., C.M.G., Chief Justice, Gold Coast, President; SIR JOHN VERITY, Kt., Chief Justice, Nigeria; JOHN ALFRED LUCIE-SMITH, O.B.E., Chief Justice, Sierra Leone.

Civil Appeal.

WAC. 2713. 10

MEMUDU LAGUNJU - - - - Plaintiff-Appellant

*vs.*

OLUBADAN-IN-COUNCIL & ANOR.

Mr. Awolowo for Appellant.

Mr. Briggs for Respondent.

Mr. Awolowo :

Abandons Ground 1 (1) and (5) and Ground 3.

Argues Ground 2, pages 21, 22 Ordinance 20/45 Ground 3 (B).

What is due enquiry. Burrow's words and phrases judicially defined  
Vol. 2 page 146, Vol. 3 page 443. 20

Admitted there was a dispute.

1942 2 K.B. page 261, 1943 All England Report Vol. 2 page 337.  
Halsbury Vol. 31 page 500 pages 639, 619, *Beesling v. King* 9 Halsbury  
pages 499 and 522.

Conditions must be performed.

An enquiry was made but not by the Resident.

*Liversidge v. Anderson* 1941 All England Report Vol. 3, page 343  
Halsbury Vol. 26 page 285 pages 606.

8th Edition Maxwell on Interpretation of Statutes pages 111, 113. 111  
Law Times Report page 908. 30

Mr. Briggs :

Must consult and enquire. Nothing formal.

No reply.

Judgment reserved.

(Sgd.) WALTER HARRAGIN,

No. 22.

**JUDGMENT and Reasons for Judgment.**

IN THE WEST AFRICAN COURT OF APPEAL.

Holden at Lagos, Nigeria.

WAC. 2713.

MEMUDU LAGUNJU - - Plaintiff-Appellant

(L.S.) and

1. OLUBADAN-IN-COUNCIL

2. J. ADETOYESE LAOYE Defendants-Respondents.

10 (Sgd.) WALTER HARRAGIN,  
President.

It is hereby certified that on the 10th day of November, 1947, the West African Court of Appeal sitting at Lagos, Nigeria, gave judgment to the effect following :—

20 " The appeal is allowed and the case returned to the trial  
 " Court to determine the issues before it after hearing evidence  
 " tendered by both parties in the light of the interpretation placed  
 " by this Court upon section 2 (2) of Ordinance 14 of 1930 as  
 " amended by Ordinance 20 of 1945. The appellant is allowed  
 " the costs of this appeal assessed at £36.9.6d. and his costs in  
 " the Court below assessed at £10. 10/-. Any costs already paid  
 " to the respondents to be refunded by them to the appellant."

The Court below to give effect to this Order.

Given at Lagos, Nigeria, under the Seal of the Court and the hand of the President this 10th day of November, 1947.

(Sgd.) J. A. SMITH,

Acting Deputy Registrar of  
the Court.

*In the  
West  
African  
Court of  
Appeal.*

No. 22.  
Judgment  
and  
Reasons for  
Judgment,  
10th  
November  
1947.

*In the  
West  
African  
Court of  
Appeal.*

IN THE WEST AFRICAN COURT OF APPEAL  
Holden at Lagos, Nigeria

Monday the 10th day of November 1947

No. 22.  
Judgment  
and  
Reasons for  
Judgment,  
10th  
November  
1947,  
*continued.*

Before Their Honours SIR WALTER HARRAGIN, Kt., C.M.G., Chief Justice, Gold Coast, President ; SIR JOHN VERITY, Kt., Chief Justice, Nigeria ; JOHN ALFRED LUCIE-SMITH, O.B.E., Chief Justice, Sierra Leone.

WAC.2713.

Between MEMUDU LAGUNJU - - - Plaintiff-Appellant 10  
and

1. OLUBADAN-IN-COUNCIL
2. J. ADETOYESE LAOYE - - - Defendants-Respondents

Obafemi Awolowo for Appellant.

G. G. Briggs, Crown Counsel for Respondents.

*Read by the President.*

In this case the writ of the Plaintiff-Appellant reads as follows :—

“ The Plaintiff’s claim against the Defendants is for an  
“ injunction to restrain the second Defendant from performing the 20  
“ duties of the Timi of Ede, and from receiving the salary or stipend  
“ attached to the office of Timi of Ede.

“ 2. The Plaintiff also seeks as against the Defendants a  
“ declaration—

“ (A) that the Ibadan Native Authority otherwise known  
“ as Olubadan-in-Council is not by native law and custom or  
“ by any other law qualified or entitled to override the choice  
“ or decision of the Ede Kingmakers in the selection of the Timi  
“ of Ede.

“ (B) that the selection of J. A. Laoye Esq. (second defen- 30  
“ dant) and his subsequent installation, on the 13th November,  
“ 1946, as Timi of Ede, by the Ibadan Native Authority otherwise  
“ known as Olubadan-in-Council is contrary to native law and  
“ custom governing the selection of a Timi of Ede, is therefore  
“ null and void, and must be set aside ;

“ (C) that the Plaintiff is the person qualified and entitled  
“ by native law and custom to hold the post and enjoy the title  
“ of Timi of Ede which became vacant on 24th January, 1946 ;

“ (D) that the Plaintiff, sometime in April or May, 1946, was  
“ duly selected by the Ede Kingmakers as Timi of Ede and that 40  
“ that selection was in accordance with native law and custom.”



Pleadings were ordered and in the Statement of Claim the Plaintiff-Appellant averred that the 1st Defendant-Respondent had acted unfairly, contrary to native law and custom, and *mala fide* in selecting the 2nd Defendant-Respondent as Timi of Ede and that the 2nd Defendant-Respondent had unjustly and unlawfully usurped the Plaintiff-Appellant's right of succession.

The Statement of Defence denied the allegations and raised the question of the jurisdiction of the Court to hear the action.

The question of jurisdiction was taken *in limine* and the case was dismissed for want of jurisdiction. It is against this judgment that the Appellant appeals to this Court.

Only one witness was called before the trial Court and his evidence reads as follows :—

“Fitzgerald Hadoke, Mate, Irish, sworn on the Bible, states in English language as follows :—

“I am the District Officer, Ibadan. I live at Ibadan. I know the district of Ede. There is a Head Chief at Ede. He is known as the Timi of Ede. Adetoyese Laoye is the present Timi of Ede. He was appointed Timi of Ede under the Native Authority Ordinance. His appointment has been approved by the Senior Resident of Oyo Province. I tender the letter of approval, marked Ex. ‘A.’ The Timi of Ede is a member of Ede District Council and also of Ibadan Division Native Authority. The Councils were constituted under the Native Authority Ordinance.

“I tender the Nigerian Gazette No. 2 of 2nd January, 1947, showing the Timi of Ede as a member of the Ede District Council marked Ex. ‘B’.

“Cross-examined by Awolowo: I don't know the Plaintiff. I was not in charge of Ede District, probably that is why I don't know him. I have read files about Plaintiff. I was not in charge of Oshogbo District. My knowledge of the chieftancy disputes in Oshogbo is from the files of the district.”

“Ex. ‘A’

No. 1179/361.

“Provincial Office,

“Oyo, Nigeria,

“7th December, 1946.

“The Senior District Officer,

“Ibadan.

“*Timi of Ede : Appointment of.*

“With reference to the special meeting of the Ibadan Inner Council on Thursday December 5th, I am entirely satisfied that by native law and custom Mr. Adetoyese Laoye is eligible to succeed to the stool of the Timi of Ede and that he is a fit and proper person by past record to assume the office of the Head

*In the  
West  
African  
Court of  
Appeal.*

—  
No. 22.  
Judgment  
and  
Reasons for  
Judgment,  
10th  
November  
1947,  
*continued.*

Exhibit “B”  
is the Exhibit  
shown in the  
Index as  
Exhibit “K”

This Exhibit  
“A” is the  
Exhibit  
shown in the  
Index as  
Exhibit “G”

*In the  
West  
African  
Court of  
Appeal.*

No. 22.  
Judgment  
and  
Reasons for  
Judgment,  
10th  
November  
1947,  
*continued.*

“ of the Ede and Ede District Subordinate Native Authority and  
“ to take his seat on the bench of the Native Court. I am also  
“ entirely satisfied that the large majority of the Chiefs of Ede  
“ eligible to take part in the selection of a Timi of Ede support the  
“ candidature of Mr. Adetoyese Laoye. That being so, I convey  
“ approval of the recommendation submitted by the Ibadan Inner  
“ Council that the selection of Mr. Adetoyese Laoye as the new  
“ Timi of Ede should be recognised.

“ (Sgd.) J. G. PYKE-NOTT,  
Senior Resident : Oyo Province.” 10

At the conclusion of this evidence Counsel addressed the Court quoting numerous authorities and at a later date the judgment appealed against was delivered by the learned Judge.

Stated very shortly the Appellant alleges in his pleading that the 2nd Defendant-Respondent has been elected as chief improperly contrary to native law and custom and *mala fide* by the 1st Defendants-Respondents and that the election was improperly confirmed by the Resident acting for and on behalf of the Governor. It should be noted that the Resident was not joined as a Defendant in the case.

This case turns in the main on the interpretation of section 2 (2) of 20 Ordinance No. 14/30 as amended by Ordinance 20/45. The subsection originally read as follows :—

“ The Governor shall be the sole Judge as to whether any  
“ appointment of a chief or head-chief, as the case may be, has  
“ been made in accordance with native law and custom,”

but in 1945 this subsection was repealed and replaced by the following :—

“ In the case of any dispute the Governor, after due enquiry  
“ and consultation with the persons concerned in the selection,  
“ shall be the sole judge as to whether any appointment of a chief  
“ has been made in accordance with native law and custom.” 30

It is agreed that the Governor duly delegated his powers under this subsection to (in this case) the Resident in charge of the Province.

The learned trial Judge has ruled that the effect of the amendment, in so far as the jurisdiction of the Court is concerned, is to leave the Governor as sole Judge in the matter and that in no circumstances can the matter be brought under the review of the Courts and quotes in support of this ruling the dictum of Lord Atkin in *Ohene Moore v. Akesseh Tayee* 2 W.A.C.A. page 45 which reads as follows :—

“ It is quite true that their Lordships, as every other Court,  
“ attempt to do substantial justice and to avoid technicalities ; 40  
“ but their Lordships, as every other Court are bound by the statute  
“ law, and if the statute law says there shall be no jurisdiction in a  
“ certain event, and that event has occurred, then it is impossible  
“ for their Lordships or for any other Court to have jurisdiction.”

With this statement of the law we respectfully agree and if there had been no amendment to the law as enacted in 1930 the matter might

well have there ended, but in view of the amendment further consideration is necessary, for it would now appear that the Governor (or in this case his delegate) only becomes the sole arbiter in this matter after certain events have taken place. The Appellant alleges that these events have not taken place. He alleges rightly or wrongly that there has been no due enquiry into the matter and that there has been no consultation with the people concerned in the selection. He further alleges that such enquiry and consultation if ever made was made *mala fide*.

10 One of the first points if not the sole point for consideration by this Court at this stage is therefore to decide whether the evidence of Hadoke furnishes the necessary proof of the enquiry and consultation, so as to oust the inherent jurisdiction of the Court.

An examination of this evidence discloses that the witness knows little or nothing of the facts in issue. In fact his evidence is entirely formal and amounts to no more than the production of Ex. "A," a letter from the Senior Resident approving the appointment of 2nd Defendant-Respondent. It is true that in this letter to the Senior District Officer the Resident states that he is "entirely satisfied that the large majority of the Chiefs of Ede eligible to take part in the selection of a Timi of Ede support the candidature of Mr. Adetoyese Laoye," but does this sufficiently indicate a due enquiry and a consultation with the persons concerned. It clearly does not. *General Medical Council v. Spackman*, 1943 2 All E.R. 337, and *Robinson & others v. Minister of Town and Country Planning* 1947 1 All E.R. 867.

30 The learned trial Judge has held that "since the Governor has been made the sole Judge in chieftaincy cases in cases of chiefs coming within the provisions of section 5 of Ordinance 14/30 as amended by section 7 of Ordinance No. 20/45, his certificate showing approval of the appointment after due enquiry has been made precludes the Court from exercising jurisdiction in the matter and in my view the effect to be given to section 2 (2) of Ordinance 14 of 1930 as amended by Ordinance No. 20 of 1945 is not affected by the Town Planning cases . . . as the same effect should be given to the section when construed in its ordinary meaning as if it expressly stated that the Courts shall have no jurisdiction in such cases."

40 If this is intended to mean that under no circumstances can the Court have jurisdiction we think that the learned Judge has overstated the case. Clearly if it could be shown that no due enquiry or consultation had taken place then the condition precedent to the Governor being vested with the powers of "sole Judge" has not been fulfilled and the Courts would certainly have the power to set aside the order.

At this point it might be convenient to dispose of the question of *mala fide* which have been alleged in this case. The Plaintiff-Appellant alleges *mala fides* against both Respondents and a third party the Resident who is not before the Court and with whose *mala fides* therefore we are not at the moment concerned.

Now if due enquiry has been held it is obvious that one of the first matters to be investigated would be the alleged *mala fides* of the 1st Defendant-Respondent, and if the Governor's delegate had decided

*In the  
West  
African  
Court of  
Appeal.*

No. 22.  
Judgment  
and  
Reasons for  
Judgment,  
10th  
November  
1947,  
*continued.*

This Exhibit  
"A" is the  
Exhibit  
shown in the  
Index as  
Exhibit "G"

*In the  
West  
African  
Court of  
Appeal.*

against this allegation there the matter would end. It is obvious that one of the objects of directing that due enquiry be made must be to enable any such allegations to be investigated. It cannot be seriously suggested that any persons aggrieved by the result of the enquiry has a right of appeal to the Courts.

No. 22.

Judgment  
and  
Reasons for  
Judgment,  
10th  
November  
1947,  
*continued.*

Many authorities have been quoted before this Court, but in the main they are not relevant to the issue at this stage, for the matter for decision can be compressed into a very small compass, namely the proper interpretation of the above-mentioned subsection of Ordinance 14/30 as amended.

We have already indicated that the learned Judge has placed too wide an interpretation upon it by holding that in no circumstances can the matter be adjudicated upon by the Courts. The jurisdiction of the Courts is only ousted after due enquiry has been made and consultation with the persons concerned in the selection has been held. 10

The Court is not concerned with the evidence given at the enquiry, the exact manner in which it was given, or the deductions therefrom (*Reg. v. The Staines Local Board* LXIX L.T.R. 715) but there must be evidence that the enquiry has been held and there is no satisfactory evidence on this point. It may well be that these conditions have been observed and that the witness called could have given the necessary evidence but the fact remains that he did not and the trial Court assumed that once the certificate had been given by the Resident the matter was a closed book so far as the Courts were concerned. 20

This might well have been true had the law not been amended but in the words of Halsbury's Laws of England Second Edition Vol. XXI pages 501-2 :—

“ It may be presumed : (1) that words are not used in a statute  
“ without a meaning and so effect must be given, if possible, to  
“ all the words used, for the legislature is deemed not to waste its  
“ words or say anything in vain.” 30

In 1945 the legislature laid down that there should be enquiry and consultation before the Governor assumed the role of “ sole Judge ” and it is for the Courts to see that these conditions have not been laid down in vain.

Counsel for the Appellant has addressed us at length on the meaning of the words “ due enquiry ” and the manner in which ministers should exercise an absolute discretion vested in them by the legislature and we have been invited to consider such authorities as *Liversedge v. Anderson* All England Law Reports 1941 Vol. 3 page 338, *General Medical Council v. Spackman* 1943 2 All E.R. 337, Maxwell on the Interpretation of Statutes 8th Edition pages 111, 113, *Robinson and others v. Minister of Town and Country Planning* 1947 1 All Eng. R. page 851, *Franklin v. Minister of Town and Country Planning* 1947 1 All E.R. page 612, 31 Hals. pages 501, 502 ; *Local Government Board v. Arlidge* CXI L.T.R. Vol. 111, page 905. 40

In view however of our conclusion that the evidence so far does not disclose that due enquiry has taken place, it is unnecessary to consider the matter further.

The appeal is allowed and the case returned to the trial Court to determine the issues before it after hearing evidence tendered by both parties in the light of the interpretation placed by this Court upon section 2 (2) of Ordinance 14 of 1930 as amended by Ordinance 20 of 1945. The Appellant is allowed the costs of this appeal assessed at £36 9s. 6d. and his costs in the Court below assessed at £10 10s. any costs already paid to the Respondents to be refunded by them to the Appellant.

(Sgd.) WALTER HARRAGIN,  
Chief Justice, Gold Coast,  
President.

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

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

*In the  
West  
African  
Court of  
Appeal.*

No. 22.  
Judgment  
and  
Reasons for  
Judgment,  
10th  
November  
1947,  
*continued.*

*In the  
Supreme  
Court of  
Nigeria.*

No. 23.  
[*Not  
reprinted.*]

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**PROCEEDINGS ON HEARING OF ACTION.**

**No. 23.**

**APPLICATION FOR SUMMONS.**

30th January 1947 (see p. 1.)

[*Not reprinted.*]

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**No. 24.**

**CIVIL SUMMONS.**

15th April 1947 (see p. 4).

[*Not reprinted.*]

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**No. 25.**

**PROCEEDINGS.**

21st April 1947 (see p. 5).

[*Not reprinted.*]

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**No. 26.**

**STATEMENT OF CLAIM.**

6th May 1947 (see p. 6).

[*Not reprinted.*]

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**No. 27.**

**DEFENCE of the 1st Defendant.**

16th June 1947 (see p. 7).

[*Not reprinted.*]

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No. 24.  
[*Not  
reprinted.*]

No. 25.  
[*Not  
reprinted.*]

No. 26.  
[*Not  
reprinted.*]

No. 27.  
[*Not  
reprinted.*]

10

20

30

*In the  
Supreme  
Court of  
Nigeria.*

No. 28.  
[*Not  
reprinted.*]

No. 29.  
Motion for  
an  
Injunction  
to Restrain  
2nd  
Defendant  
from  
performing  
duties of  
Timi of  
Ede, 20th  
November  
1947.

No. 28  
**DEFENCE of the 2nd Defendant.**  
16th June 1947 (see p. 8).  
[*Not reprinted.*]

No. 29.  
**MOTION for an Injunction to restrain 2nd Defendant from performing duties of Timi of Ede.**

**MOTION.**

TAKE NOTICE that this Honourable Court will be moved on the 26th day of November, 1947 at the hour nine o'clock in the forenoon 10 or so soon thereafter as Counsel can be heard on behalf of the Plaintiff for an order restraining the 2nd Defendant in the above suit from performing the duties of the office of Timi of Ede and from receiving the stipend or salary attached thereto, pending the determination of the above suit.

Dated at Ibadan this 20th day of November, 1947.

(Sgd.) OBAFEMI AWOLowo,  
Plaintiff's Solicitor.

No. 30.  
Affidavit  
of Plaintiff  
in support  
of Motion  
for  
Injunction.  
20th  
November  
1947.

No. 30.  
**AFFIDAVIT of Plaintiff in support of Motion for Injunction.**

20

**AFFIDAVIT.**

I, MEMUDU LAGUNJU, Yoruba, Gentleman, of Lagunju's Compound, Ede, Oyo Province, Nigeria, make oath and say as follows :—

1. That I am the Plaintiff in the above suit.
2. That one of my claims against the Defendants is "for an injunction to restrain the 2nd Defendant from performing the duties of the Timi of Ede and from receiving the salary or stipend attached to the office of Timi of Ede."
3. That since the institution of this action the 2nd Defendant has been and is still performing the duties of the said office of Timi of Ede 30 and has been and is still receiving the stipend or salary attached thereto.
4. That paragraph 13 of my Statement of Claim reads *inter alia* as follows :—  
"The second defendant, with the aid of the first defendant, has unjustly and unlawfully usurped the plaintiff's right of succession . . ."
5. That the second defendant's continuance in the office of Timi of Ede will be to the utter prejudice of my ultimate success in the above suit.

6. That the second Defendant has used his position of authority to persecute and oppress me in the manner following :—

*In the  
Supreme  
Court of  
Nigeria.*

(A) Shortly after the inception of the above action, the second Defendant without just cause or lawful excuse removed me from the office of Judge of Ede Native Court ;

No. 30.  
Affidavit  
of Plaintiff  
in support  
of Motion  
for  
Injunction,  
20th  
November  
1947,  
*continued.*

10 (B) Not long after this the 2nd Defendant without just cause or lawful excuse, and contrary to native law and custom deprived me of some of my rights as the head of Lagunju's house ; that is to say he deprived me of the duties which I hitherto performed of collecting tribute taxes from members of Lagunju Family and stopped the payment to me of the commissions which accrued due to me on tribute taxes previously collected ;

(c) From time to time the 2nd Defendant permitted his drummers and palace musicians to stand around my premises to drum and sing in a manner which is abusive of, and annoying to me.

7. That the 2nd Defendant is, by threats of persecution, oppression and victimization, using his position of authority to suborn persons who are favourably disposed towards me and who are in a position to bear  
20 evidence of truth on the matter in issue.

8. That as an instance of the allegation in paragraph 7 above, the 2nd Defendant not long ago by threat and force, compelled (1) Opayemi the Balogun, (2) Sunmola the Jagun, (3) Makanju the Areago and (4) Raji the Babasanya to execute a document purporting to be a declaration that the said Opeyemi the Balogun, Sunmola the Jagun, Makanju the Areago and Raji the Babasanya are not my supporters ; whereas these persons are among those who staunchly supported my candidature for the office of Timi of Ede.

9. That in the interests of justice it is necessary that as far as possible  
30 the 2nd Defendant should be in the same position as he was before he unlawfully usurped my right of succession, so that the present contest may be fought between the 2nd Defendant and me on more or less equal footing.

10. That unless my present prayer is granted, persons who are in a position to give evidence of truth in this matter, and who are natives of Ede, might easily be suborned, or be frightened into utter silence.

Sworn to at the Supreme Court Registry, Ibadan, after the Contents have been duly interpreted into Yoruba to the  
40 Deponent by me Interpreter, this 20th day of November, 1947, when he seems perfectly to understand the contents before affixing his mark hereto.

(Signed in Arabic)

MEMUDU LAGUNJU

X

His Right Thumb Impression.  
Deponent.

Before me,

(Sgd.) E. ADE. BAMGBOYE,  
Commissioner for Oaths.

## PROCEEDINGS AND RULING OF COURT.

*In the  
Supreme  
Court of  
Nigeria.*

IN THE SUPREME COURT OF NIGERIA.

The Ibadan Judicial Division.

Holden at Ibadan.

Before His Honour OLUMUYIWA JIBOWU—Judge.

No. 31.  
Proceed-  
ings and  
Ruling of  
Court,  
26th  
November  
1947.

Wednesday the 26th day of November 1947.

MEMUDU LAGUNJU

V.

I/14/1947. OLUBADAN-IN-COUNCIL & ANOR.

10

Motion *on notice* for an Order restraining the 2nd Defendant in the above suit from performing the duties of the office of Timi of Ede and from receiving the stipend or salary attached thereto, pending the determination of the above suit.

Awolowo moves.

Hay, Ag. Senior Crown Counsel, opposes.

Awolowo refers to para. 6 of the affidavit filed, refers to Hanbury on Equity, 4th edit. p. 591 *et seq.* Says no counter-affidavit has been filed ; refers to 18 Halsbury, 2nd edition, sec. 160.

Hay replies—refers to Order 21 of the Supreme Court Rules.

20

With regard to para. 6, he says he has his remedies not in injunction but by action, civil and criminal. He says he received motion papers on the 22nd instant and had no time to communicate with 2nd Defendant through the Resident.

Submits that the 2nd Defendant is a Native Authority and that the grant of the application will dislocate local government.

He is willing to file a counter-affidavit if so ordered by the Court.

RULING.

This is a motion by the Plaintiff asking the Court to restrain the 2nd Defendant from performing the duties of the Timi of Ede and from receiving the stipend or salary attached thereto pending the determination of this suit. 30

The grounds for the application are—

(1) that the 2nd Defendant has wrongfully removed him from the office of a judge ;

(2) deprived him of his rights of collecting tax and receiving a commission thereon as the head of Lagunju's house ;



(3) that he had allowed his drummers to sing abusive songs in front of his house ;

(4) that he had by threat of persecution, oppression and victimisation been suborning witnesses.

The Court is conversant with the principles of law with regard to the grant of interlocutory injunction pending the trial of an issue but the question is whether or not an interim injunction should be granted on the grounds submitted.

10 The issue before the Court includes an application to restrain the 2nd Defendant from performing the duties of the Timi of Ede and receiving the stipend attached to that office. This application the Court cannot grant until evidence has been led to show that the appointment and installation of the 2nd Defendant as the Timi of Ede was wrongful and that he is therefore not entitled to hold the office and receive the salary or stipend thereto attached.

20 Now without any evidence having been led and without any proof that the 2nd Defendant is wrongfully holding the post of the Timi of Ede and receiving the stipend thereto attached, this application is made to stop him from acting in his office and receiving his stipend, this step this Court will not take unless for grave reasons and unless the course is absolutely justified.

The Plaintiff has his remedy if he has, as he alleged, been wrongfully removed from his office as judge and deprived of other rights to which he is entitled ; he has a remedy also for scurrilous and abusive songs sung against him ; he has also a remedy at law against any person interfering with his witnesses either under section 121 of the Criminal Code or by motion for committal for contempt of Court. All these remedies do not lie in Injunction.

30 Apart from the above the 2nd Defendant's position as the Timi of Ede is not a private one and the grant of an injunction without hearing evidence that he has no right to occupy the position will throw the public administration of the town of Ede into disorder.

In the circumstances, I hold that the Plaintiff has not made out a case for an interim injunction sought for to be granted and his motion is therefore dismissed with 2 guineas costs.

(Sgd.) O. JIBOWU,  
J.

26/11/47.

*In the  
Supreme  
Court of  
Nigeria.*

— —  
No. 31.

Proceed-  
ings and  
Ruling of  
Court,  
26th

November  
1947,  
*continued.*

*In the  
Supreme  
Court of  
Nigeria.*

No. 32.

**EX PARTE MOTION AND AFFIDAVIT for disclosing documents  
in Defendants' possession.**

No. 32. Filed 9.45 a.m. 17 Dec. 1947.

*Ex parte*  
Motion and (Intd.) E.S.S./Cashier.

Affidavit  
for  
disclosing  
Documents  
in  
Defendants'  
possession,  
17th  
December  
1947.

**EX PARTE MOTION.**

TAKE NOTICE that this Honourable Court will be moved on the 23rd day of December, 1947, at the hour of nine in the forenoon or so soon thereafter as Counsel on behalf of the above-named Plaintiff can be heard for an Order (i) directing the above-named Defendants to disclose on oath all documents which are or have been in their possession or power relating to all the points in issue in the above matter, and (ii) requiring the above-named Defendants to allow the Plaintiff to inspect, and to take examined copies of all the documents that may be disclosed on oath and for such further or other Orders as this Honourable Court may deem fit to make. 10

Dated this 15th day of December, 1947.

(Sgd.) OBAFEMI AWOLowo,  
Plaintiff's Solicitor.

**AFFIDAVIT.**

I, OBAFEMI AWOLowo, Solicitor and Advocate of the Supreme Court of Nigeria, Yoruba, of Ijebu Bye-Pass, Ibadan, Nigeria, make oath and say as follows :— 20

1. That I am Solicitor for the Plaintiff in the above matter.

2. That my Client the Plaintiff tells me and I believe him that there are many documents in the possession and power of the Defendants, the dates, correct description and contents of which the Plaintiff does not know.

3. That I am therefore humbly of opinion that application for discovery and inspection of documents should be made, and that I hereby make such an application. 30

Dated this 15th day of December, 1947.

(Sgd.) OBAFEMI AWOLowo,  
Deponent.

Sworn to at the Supreme Court Registry, Ibadan, this 17th day of December, 1947.

Before me,  
(Sgd.) E. ADE. BAMGBOYE,  
Commissioner for Oaths.

4/- pd. C.R. No. B589445/17/12/47.  
(Intd.) E.S.S./Cashier.

No. 33.

**PROCEEDINGS : Ex parte Motion for Disclosure.**

IN THE SUPREME COURT OF NIGERIA.

The Ibadan Judicial Division.

Holden at Ibadan.

Before His Honour OLUMUYIWA JIBOWU—Judge.

Tuesday the 23rd day of December, 1947.

I/14/47.

Title as No. 1.

*Ex parte Motion by Plaintiff* for order on the Defendants to—

10

- (1) disclose on oath all documents relating to this matter,
- (2) to allow Plaintiff herein to inspect such documents disclosed.

Awolowo moves under Order 29 rules 5, 6 and 7.

It is ordered that notice of this motion be served on the other side and motion is adjourned to 29th inst.

(Sgd.) O. JIBOWU,  
J.  
23/12/47.

*In the  
Supreme  
Court of  
Nigeria.*

No. 33.  
Proceed-  
ings :  
*Ex parte*  
Motion for  
Disclosure,  
23rd  
December  
1947.

No. 34.

**PROCEEDINGS : Ex parte Motion for Disclosure.****MOTION.**

20

Awolowo moves.

Hay, Ag. Senior Crown Counsel, for Defendants.

Awolowo moves under Order 29 rules 5 and 7. Says letters passed between the Resident and the Ede Council and between the Resident and the Olubadan-in-Council regarding the succession to Ede Stool. The dates of the letters are unknown so it is not possible to ask that they should be produced. Hence application for affidavit of document and for order to enable Plaintiff to inspect and make examined copies of the documents.

30 Hay says he has no objection as the Rules of Court provide for the application, but says that order may be made for affidavit of Files and Documents.

ORDER.

That the Defendants do file, within 10 days, affidavits of files and documents relating to the matter in issue in this action which are in their possession and power or have been in their possession, and that such files and documents be made available for the inspection of the Plaintiff's Counsel who may, should he so desire, make examined copies thereof.

(Sgd.) O. JIBOWU,  
J.  
29/12/47.

40

*In the  
Supreme  
Court of  
Nigeria.*

**No. 35.**

**ORDER for disclosure of documents by the Defendants.**

IN THE SUPREME COURT OF NIGERIA.

The Ibadan Judicial Division.

No. 35.  
Order of  
the Court :  
For  
Disclosure  
of  
Documents  
by the  
Defendants,  
29th  
December  
1947.

(L.S.)

Suit No. I/14/1947.

UPON READING the Affidavit of Obafemi Awolowo, Esquire, Barrister-at-Law, Solicitor to the Plaintiff herein of Ijebu Bye-Pass, sworn to and filed the 17th day of December, 1947 ;

AND HAVING HEARD the said Obafemi Awolowo, Esquire, and Noel G. Hay, Esquire, the Acting Senior Crown Counsel, Solicitor to the 10 Defendants herein, respectively in support :

IT IS ORDERED that the Defendants do file within 10 days affidavits of files and documents relating to the matter in issue in this action which are in their possession and power or have been in their possession and that such files and documents be made available for the inspection of the Plaintiff's Counsel who may, should he so desire, make examined copies thereof.

Dated at Ibadan the 29th day of December, 1947.

(Sgd.) O. JIBOWU,

Judge. 20

25/- pd. for sealing Order.

C.R. No. B593987/29/12/47.

(Intd.) E.S.S./Cashier.

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## No. 36.

**PROCEEDINGS : Submission on directions of W.A.C.A.**

Awolowo for Plaintiff.

Briggs for Defendants.

Briggs submits that the issue now to be tried is whether due enquiry had been made in the light of the interpretation placed on section 2 (2) of Ordinance No. 14 of 1930 as amended by Ordinance No. 20/1945.

Awolowo replies that the Crown Counsel has placed a wrong interpretation on the judgment of the W.A.C.A. Says issues before the Court are to be found in the Statement of Claim. Refers to page 8 of the Judgment which reads: "The appeal is allowed and case returned to the trial Court to determine the issues before it after hearing evidence tendered by both parties in the light of the interpretation placed by this Court upon section 2 (2) of Ordinance No. 14/1930 as amended by Ordinance 20 of 1945." He submits that the W.A.C.A. would not have used the word "Issues" but "issue" if the Court was returning the case to this Court to retry the issue of Jurisdiction only.

Submits that the issues involved are more than that of Jurisdiction and that the Plaintiff has the right to begin. He submits further that question of Jurisdiction is *Res judicata* as it has been tried by this Court and a decision given on it which went to the W.A.C.A.

Briggs replies that the question of jurisdiction is not *res judicata* as the W.A.C.A. has sent the case back for the issue of jurisdiction among others to be tried in the light of the interpretation placed on the Ordinance by the W.A.C.A.

## No. 37.

**RULING on Submission as to directions of W.A.C.A.****RULING.**

In sending this case back the W.A.C.A. directed that this Court should determine the issues before it. It is therefore clear from the use of the word "Issues" that all the facts put in issue are meant. The "issues" in this case are set out in the summons and Statement of Claim.

In the issues to be tried therefore is included the question of jurisdiction on which evidence may be led. If on hearing evidence the Court is satisfied that enquiry had been made in the light of the interpretation placed on section 2 (2) of Ordinance No. 14 of 1930 as amended by Ordinance No. 20 of 1945, the Court will then dismiss Plaintiff's action on the ground that the jurisdiction of the Court has been ousted, and if not, the Court will give a decision on the merits. It is for the Plaintiff to begin as he alleges that no enquiry had been made, and that if one was made, it was done *mala fides*.

The Court therefore orders the Plaintiff to begin.

(Sgd.) O. JIBOWU.

In the  
Supreme  
Court of  
Nigeria.

No. 36.

Pro-  
ceedings :  
Submission  
on  
Directions of  
W.A.C.A.,  
12th  
January  
1948.

No. 37.

Ruling on  
Submission  
as to  
Directions of  
W.A.C.A.,  
12th  
January  
1948.

*In the  
Supreme  
Court of  
Nigeria.*

**PLAINTIFF'S EVIDENCE.**

**No. 38.**

**EVIDENCE of the 1st Witness, Memudu Lagunju.**

*Plaintiff's  
Evidence.*

Awolowo asks for leave to amend " November " in para. 11 of the Statement of Claim to " December."

No. 38.

Evidence of  
1st Witness:  
Memudu  
Lagunju,  
12th  
January  
1948.

Briggs, Crown Counsel, has no objection.

It is amended accordingly.

By consent of both Counsel letters dated 4th February, 1946, 19th February, 1946, 9th April, 1946, 30th April, 1946, 7th May, 1946, 15th May, 1946, 29th June, 1946, 7th July, 1946, 9th July, 1946, 16th July, 1946, 26th July, 1946, 10th August, 1946, 30th August, 1946, 31st August, 1946, are tendered and marked Exs. " A "—" A.13."

*Xd. by Awolowo :*

1st. Witness. MEMUDU LAGUNJU, Male, Yoruba, sworn on Koran, states in Yoruba language as follows :—

I am a member of the ruling house of Lagunju at Ede, otherwise known as the ruling house of Oduniyi. I live at Ede in Lagunju compound. I knew Sanusi Akangbe, the late Timi of Ede. He died about two years ago. After his death another person was selected to take his place. I was selected to take his place.

I know the procedure to be adopted in making the selection. The Balogun of Ede, the Jagun and the Ikolaba of Ede are the people to make the selection ; they are the Kingmakers and are the persons who have to appoint the Timi. The three chiefs have been selecting the Timi since the foundation of Ede Town.

The ruling houses at Ede are Agbonron, Arohanran, Ajenju and Lagunju or Oduniyi.

The Kingmakers have first to decide the ruling house from which a Timi has to be chosen.

After deciding on the ruling house from which a candidate is to be selected the Kingmakers then send to the ruling house to inform them that it is their turn to present a candidate and to ask them to send them the name of a candidate selected by them. The Ikolaba is the chief charged with the duty of sending the message to the ruling house entitled to select a candidate for the vacant post of Timi.

The ruling house then meets and selects a candidate.

The name of the candidate is then forwarded to the Kingmakers.

The Kingmakers then send the Jagun to Oluawo to consult the Ifa oracle about the candidate selected.

If the Ifa oracle is not favourable to the selected candidate, the ruling house is asked to send the name of another candidate. If the Ifa oracle favours the selected candidate, the Jagun will make a report to the Kingmakers as to the sacrifices to be made.

The Kingmakers then perform the sacrifices required.

The selected candidate bears the cost of the sacrifices.

The ruling house supplying a selected candidate is always informed of the result of the consultation of the Ifa oracle.

The three Kingmakers then inform their respective junior chiefs of the selection. The three Kingmakers then send to the Bale of Ibadan, now Olubadan, to inform him of the name of the candidate selected to fill the vacant stool of the Timi of Ede. Forty bags of cowries £10 are sent to the Olubadan and 10 bags of cowries (£2.10.0) to Olubadan's  
10 eldest son or whoever acts as prime minister, 10 bags of cowries to the wives and dependants of the Olubadan.

Two persons used to carry a bag of cowries.

On receipt of the message and presents the Olubadan sends a representative to witness to the installation. He approves of the selected candidate and blesses him. On the date fixed for installation by the three Kingmakers, the selected candidate is then installed.

It is not customary for the Bale or Olubadan to reject a selected candidate. No selected candidate has ever been rejected by the Bale or Olubadan.

20 It is not customary for the junior chiefs of Ede to reject any candidate selected by the three Kingmakers and favoured by Ifa oracle.

It is not customary for the townspeople or any group of them to oppose or reject any candidate favoured by Ifa oracle after being duly selected.

It is not customary for the Kingmakers to select a candidate from the ruling house to which the last Timi belonged. The last Timi was from Ajenju house that was Samusi Akangbe.

The Timi before him was Ipinoye from Arohanran House. The Timi before him was Oyeneken who was from Agbonran House. The Ruling Houses select the Timi in rotation. When Sanusi Akangbe died, the  
30 Kingmakers sent to Oduniyi House to inform them it was their turn to present a candidate. Shobalaju Ojedokun brought the message. Shobalaju is his title. My name was sent to the Kingmakers. I gave them a she-goat and £2.10.0 for the necessary sacrifices.

I was presented to the Administrative Officer, Mr. Mac Giffin, when he came to Ede. I was taken to him by the three Kingmakers and the other chiefs. The Balogun, the Jagun and the Ikolobas are the three heads of the different lines of chieftaincies in Ede.

Some of the chiefs junior to the Balogun were present when I was presented to the A.D.O. The Jagun and the Ikoloba were present with  
40 some of their junior chiefs.

A message was sent to the Olubadan through the Areago of Ede, who is the junior chief under the Ikoloba.

According to custom I sent presents to the Olubadan, his prime minister, wives and members of his household.

The Areago returned to report that the Olubadan approved of my candidature. The Olubadan then was Alesinloye Abasi ; he is now dead.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 38.  
Evidence of  
1st Witness:  
Memudu  
Lagunju,  
12th  
January  
1948,  
*continued.*

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 38.  
Evidence of  
1st Witness:  
Memudu  
Lagunju,  
12th  
January  
1948,  
*continued.*

I was not installed hence this action. The 2nd Defendant was installed in my stead. I did not know of his ambition to become the Timi. About nine other people were aspiring to be the Timi. I got to know the 2nd Defendant wanted to become the Timi when the A.D.O. sent to the chiefs. The Resident did not send for me about the chieftaincy dispute. I was never invited to any meeting where the chieftaincy dispute was gone into. The Olubadan also did not invite me to be present at any enquiry made into the chieftaincy dispute. All I saw was the installation of the 2nd Defendant. I know the 2nd Defendant very well; he belongs to Ajenju Ruling House. I should have been installed according to our native law and custom. The 2nd Defendant belongs to the same ruling house as the last Timi. 10

It is not our custom for a Timi to have a living father. I know 2nd Defendant's father, Lawani Oyebisi, he is still living. I therefore ask the Court to set aside the installation of the 2nd Defendant and declare that I am the person lawfully selected by the Kingmakers and that it was wrong of the Olubadan-in-Council to appoint 2nd Defendant as the Timi. The 2nd Defendant is functioning as the Timi of Ede. I want the Court to stop him from acting as the Timi and drawing the salaries attached to the post. I claim as per my writ of summons. 20

*Xcd. by Briggs :*

I embroider cloths. I am not one of Kingmakers at Ede. I was properly selected. I have told the Court the correct procedure in making the selection. I have given evidence of our customary law. There are five Kingmakers and not three as I told the Court. The three I have told the Court used to inform the remaining two of what they had decided upon. The other two have to agree to the selection before the selected candidate is brought to the notice of other people. Only the Kingmakers were to make the selection. There were originally only three Kingmakers but the number was increased to five in the time of Timi Ipinoye. There have been two Timis since Ipinoye's time. The Kingmakers only report to the junior chiefs what selection they have made. They do not sit down in consultation with the junior chiefs before making the selection. The townspeople are only informed of the selection. The five Kingmakers make the selection irrespective of the wishes of the junior chiefs and the townspeople. 30

Other candidates aspired to the stool, including some candidates from my own house.

The rotation is strict with regard to the ruling houses. The Kingmakers have to decide the ruling house entitled. The Kingmakers announce their decision after they have agreed on their decision. There are five Kingmakers now. If four agree and one disagrees on a candidate, the majority carries. If three agree as against two others, the wishes of the three are to be respected. 40

The Olubadan is informed of the selection. The Olubadan has never rejected a selected candidate before. The Olubadan is not a petty chief. I don't know if the Olubadan has the right to reject a selected candidate.



Everybody in our town knows that the matter was referred to the Olubadan-in-Council.

I was certain of the 2nd Defendant's ambition two days before he was brought to Ede for installation.

10 Akangbe and I contested the stool and I lost. Ede people supported him against me and sent his name to Ibadan. By Ede people I mean the five Kingmakers. I was then promised that I would succeed Akangbe if I was still alive. The promise was in accordance with our custom. A similar case had happened before. The promise was verbal but I understand it was also reduced into writing. It was not the Kingmakers who made the promise but the then Olubadan who is superior to the Kingmakers. The promise can be carried out if the Kingmakers agree. The Kingmakers may agree. The 2nd Defendant has a father living at Ede. There is no secret about it. The Kingmakers live at Ede and know 2nd Defendant has a father alive. The Ede stool is a valuable one. This is the second time I made a bid for it. The junior chiefs and the townspeople have no say in the matter after the five Kingmakers have made their selection. No dispute has ever been referred to the Olubadan, although such dispute may be referred to him.

20 *Red. by Awolowo :*

The number of Kingmakers was increased to five about 20 years ago. There were only three Kingmakers up to that time. In the olden days when the Kingmakers have made their selection which is favoured by the Ifa oracle, other people bowed to that decision.

Members of the Oduniyi family did not support any other member of that family who contested the stool with me.

The Balogun, Jagun and Ikolaba were the principal chiefs who supported Akangbe's candidature. The Areago and Ayope were made to join them in making selection.

30 The Ayope is under the Jagun and they did not support me against Akangbe.

*Xrd. by Court :*

The five chiefs selected me.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence*

No. 38.  
Evidence of  
1st Witness:  
Memudu  
Lagunju,  
12th  
January  
1948,  
*continued.*

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*In the  
Supreme  
Court of  
Nigeria.*

**No. 39.**

**EVIDENCE of 2nd Witness, Adefajo.**

*Xd. by Awolowo :*

*Plaintiff's  
Evidence.*

No. 39.  
Evidence  
of 2nd  
Witness :  
Adefajo,  
12th  
January  
1948.

2nd Witness. ADEFAJO, male, Yoruba, sworn on cutlass, states in Yoruba language as follows :—

I am an Ifa Priest. I am the Oluawo of Ede. I am the head of the Ifa priests at Ede. I know the Plaintiff. I know the Jagun of Ede, Oyedunmola. After the death of the last Timi the Jagun came to ask me to consult Ifa oracle. He spoke quietly to a cowry and a bone used in divining. I consulted the oracle and told him Ifa was favourable. He did not tell me what he spoke quietly to the cowry and the bone. £2 10s. and a she-goat were brought as sacrifice to the Ifa oracle. There are other Ifa Priests at Ede as well as Muslims and Christians. Jagun told me certain things when he came to make the consultation. 10

*Xd. by Briggs :*

Jagun had come to me before the time in question. He has not been to me since. He did not tell me the nature of the consultation he wanted to make. He came about 15 months ago.

*Rxd. by Awolowo :*

The first time Jagun came to me was when he came about 15 months ago to consult me about a matter affecting the town. He later gave me a she-goat and 50/- for sacrifice. 20

*Xd. by Court :*

Jagun has only been once to me to consult Ifa oracle.

No. 40.  
Evidence  
of 3rd  
Witness :  
Raji  
Akinloye,  
12th  
January  
1948.

**No. 40.**

**EVIDENCE of 3rd Witness, Raji Akinloye.**

*Xd. by Awolowo :*

3rd Witness. RAJI AKINLOYE, male, Yoruba, sworn on Koran, states in Yoruba language as follows :—

I am a native of Ede. I know Chief Ikolaba of Ede ; he is now sick ; he has been ill for over a year now. I know the time Timi Akangbe died. Chief Ikolaba was ill when the Timi died. He cannot walk ; the illness is due to old age. He cannot attend the Town Council meetings. I act as his representative. After the death of Timi Akangbe, the Plaintiff was selected to succeed him. I put my mark on some letters written about the Plaintiff as representative of Ikolaba ; the Balogun, Opayemi, Jagun Oyedunmola, Makanjuola the Areago, Adedayo the Ayope and the Alajuwo also put their marks on the letter. (Ex. " A 2 " is read out to the witness.) I put my thumb impression on this letter. That was the first letter I thumb printed. (Ex. " A 3 " is read out to him.) I also thumb printed this letter. I represented the Ikolaba by signing these letters. I am a first cousin of the Ikolaba. 30 40

*Exd. by Briggs :*

I put my marks on the letters for the Ikolaba. The Ikolaba's house is about 150 yards from the palace. The letters were signed in the Balogun's house. His house is very far from Ikolaba's house. I was not asked to take the letters to Ikolaba to put his thumb impression on it. I am not a Kingmaker. I don't know that the name of the Ikolaba was put against my thumb impression. The Ikolaba sent me there as his representative. I know Olayiwola. I had no quarrel or misunderstanding with Ikolaba. I still act as his representative. I told Olayiwola's father  
10 what I had done after putting my thumb impression on Exs. " A 2 " and " A 3."

*Exd. by Awolowo :*

I cannot read or write. Ex. " A 2 " was read to me in the Balogun's house before I put my thumb impression on it. The Ikolaba is paralysed and cannot use his hand.

Adjourned till to-morrow.

(Sgd.) O. JIBOWU,  
J.

12/1/48.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 40.  
Evidence  
of 3rd  
Witness :  
Raji  
Akinloye,  
12th  
January  
1948,  
*continued.*

20

No. 41.

**EVIDENCE of 4th Witness, Opayemi**

No. 41.  
Evidence  
of 4th  
Witness :  
Opayemi,  
13th  
January  
1948.

*Exd. by Awolowo :*

4th Witness. OPAYEMI, male, Yoruba, sworn on cutlass, states in Yoruba Language as follows :—

I am the Balogun of Ede. There are four lines of chieftaincies in Ede. By the four lines of chieftaincies I mean that there are four ruling houses, viz. : Arohanran, Ajeniju, Bamgboye and Oduniyi. I have heard of Agbonran ; Agbonran was a Timi. There is a ruling house known as Agbonran House. Bamgboye belongs to Arohanran Ruling House. I know  
30 our native law and custom regarding the appointment of a Timi.

On the death of a Timi, Ikolaba, Jagun and Balogun and Babasanya used to meet to consider the selection of a new Timi. We consider the house to present the candidate. We then consult Ifa oracle. We choose a man from a ruling house and submit his name to the Ifa oracle. When Timi Akangbe died four of us, namely, myself, Jagun, Ikolaba and Ayope met. Ikolaba could not attend but sent Raji Akinloye to represent him. Areago also came to our meeting. Five and not four of us met. We discussed about the person we were to select as Timi and a dispute arose between the five of us. I know the Oluawo ; I don't know his name. He  
40 is an Ifa Priest. He consulted Ifa oracle after the death of Timi Akangbe. Oyedunmola, the Jagun, went to consult him. He went to submit the name of the Plaintiff to Ifa oracle. He reported the result of the consultation. Plaintiff's name was submitted to us by his house. It is our custom that a ruling house entitled to present a candidate should

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 41.  
Evidence  
of 4th  
Witness :  
Opayemi,  
13th  
January  
1948,  
*continued.*

submit the name of the candidate to the Kingmakers. The other Kingmakers and I met with our followers seven times. It was at the 7th meeting that we came to a settlement of our dispute. We decided on the Plaintiff at our 7th meeting. All the chiefs of Ede were in complete agreement. We later met the D.O. at Oshogbo in our Native Court to inform him we had selected the Plaintiff. All the chiefs were then present. The D.O. asked if we had all considered the question well. Some of us told him "no" and we were told to go back and reconsider the matter until we all came to agreement. We all came to an agreement and took the Plaintiff to the Rest House at Ede to see the D.O. All the chiefs of Ede 10  
went on the occasion. We presented the Plaintiff to him as the man we had selected as the Timi. After this we wrote a letter to the D.O. and to the Olubadan. The Areago returned from Ibadan to meet us at the Rest House on the occasion of our second visit to the Rest House.

We usually send presents to the Olubadan after a new Timi has been selected. The Areago came to Ibadan on the occasion to bring the presents we sent to the Olubadan. The minor chiefs had nothing to do with the sending of the presents. Jagun, myself and Areago were responsible for this. The Ikolaba should have been with us but for his indisposition and the Areago acted for him. 20

The Areago is next in rank to the Ikolaba in their own line. I put my thumb impression on the letter written to the D.O. and the Olubadan. Jagun, Areago, Ikolaba's representative, Ayope, Lemomu and Iyalode also put their thumb impressions on it. Some people other than chiefs went with me to the D.O. at the Rest House.

(Ex. "A2" is read out to him). That's the letter we wrote. When there was no reply to Ex. "A2" we wrote Ex. "A3" now read out to me. S.O. Longe wrote for us another letter; Ex. "A4" read out to me is the letter. We wrote also letter Ex. "A5" now read out to me; also Ex. "A9" now read to me. I wrote letter Ex. "A7" now read out to me. 30  
I wrote also letter Ex. "A13" now read out to me.

Memudu, the Plaintiff, was not installed as the Timi as the 2nd Defendant was installed the Timi in his stead. The 2nd Defendant was not selected by the Kingmakers. He belongs to Ajeniju House. He and the late Timi belonged to the same house. It is not customary with us to appoint a Timi from the same house as the last one. The Kingmakers did not decide that the new Timi should be from Ajeniju House. I know the 2nd Defendant very well and I know his father who is still living at Ede. It is not customary for a man with a father living to be appointed a Timi. Such a thing has never happened in our history. 40  
Ifa oracle was not consulted in respect of the 2nd Defendant but in respect of the Plaintiff. The 2nd Defendant did not send the customary presents through the Kingmakers to the Olubadan. As the town was divided the 2nd Defendant was installed Timi. The Olubadan sent to us two days before the installation of the 2nd Defendant that the 2nd Defendant would be installed. I was not pleased. It is not customary for the Olubadan to set aside the selection made by the Ede Kingmakers; it has never happened before in the history of our Town; he has not got the right to do so.

The members of Ajeniju House did not at any time present the 2nd Defendant to us Kingmakers for selection as Timi. The Olubadan 50

invited us, the Kingmakers, to Ibadan. The Plaintiff did not come to Ibadan with us; he was not invited to Ibadan.

I know the Resident of Oyo Province at Oyo. I cannot say if he was present at the meeting we had at Ibadan. The Ikolaba is not well but he was kept informed of the proceedings and he agreed with our choice of the Plaintiff. A she-goat and 50/- cash were given for sacrifice to Ifa.

*Xrd. by Briggs :*

The Timi is not a war chief. In the olden days the Timis were war chiefs. Ede was not a war camp. It was not a camp for Ibadan fighters.  
10 We used to accompany Ibadan to war.

When a war chief was to be appointed all the minor chiefs should be informed and after the appointment the populace would be notified. A man appointed by the elders would be approved by the populace. The Elders of the Town in those days were Balogun, Jagun, Ikolaba, Ayope and Babasanya. The minor or junior chiefs were then informed. It was usual for the minor chiefs and the populace to accept the decision of the elders. Only God could guarantee long life to a person appointed Timi if the minor chiefs and the populace did not approve of his appointment.

To my knowledge there has never been an occasion on which the  
20 elders have disagreed.

I attended a special meeting at Ede Council Hall about 18 months ago at which the Resident was present. The Resident asked me what would have happened about 100 years ago if there was a chieftancy dispute I told him the Olubadan and his people used to settle our disputes for us.

In the olden days there were five Kingmakers; the number still remains the same.

I remember the special meeting held at Mapo Hall, Ibadan, attended by me and other Kingmakers. I gave evidence at the meeting. I stated then that four or five chiefs were responsible for the appointment. I  
30 said so then as I could not easily remember the number. I stated then that all the chiefs met and gave a mandate to the four or five Kingmakers when Timi Akande was appointed.

The chiefs did not give the Kingmakers a mandate in this case in respect of Memudu.

The Kingmakers have to choose the ruling house from which the candidate is to be selected. The Kingmakers cannot reject a candidate submitted by his ruling house. The Plaintiff was submitted by his house. Belo Ajagbe's name was not submitted to us by his house. I was asked why we did not select Belo Ajagbe and I stated that the Plaintiff's name  
40 had been spotlighted before Timi Akangbe died.

Belo Ajagbe is Plaintiff's elder brother by the same father. It is true that the Plaintiff had been spotlighted for the stool. It is not in accordance with our native law and custom to spotlight a candidate for the stool in the lifetime of a Timi, but that was done to settle palaver between Memudu and the late Timi. I remember the letters read to me this morning. The Ikolaba himself did not thumb impress any of the letters but his representative did. We wrote Ex. "A 2" in my house. The Court scribe wrote it for us in my house. I told the Ikolaba about the

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*Plaintiff's  
Evidence.*

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of 4th

Witness :

Opayemi,

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*continued.*

*In the  
Supreme  
Court of  
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*Plaintiff's  
Evidence.*

No. 41.  
Evidence  
of 4th  
Witness :  
Opayemi,  
13th  
January  
1948,  
*continued.*

letter. As he was ill and could not get up so he sent a representative. The contents were explained to him. It was read to his hearing. The representative is not a chief but an ordinary man. Raji Akinloye made his thumb impression on Ex. " A 2 " for the Ikolaba.

The whole town supported the candidature of the Plaintiff at first. It was a popular choice until a dispute arose. So far as I know there has never been a case in which a man is appointed Timi with his father living. I have never heard of a Timi by name of Lasi. I have heard of Timi Mosunloye. I don't know how he became a Timi ; he was a Timi a long time ago. I heard that Timi Lagunju was expelled from the throne ; 10 he was Plaintiff's grandfather. Another Timi was appointed in his place. I don't know if there was dispute about the appointment of Mosunloye. I don't know Olubadan-in-Council settled the dispute. I don't know Ede put forward two candidates and that the Olubadan appointed a third man.

Agbakin is not a Kingmaker at Ede ; he is a chief at Ede ; he became a Kingmaker in this case. His grandfather became a Kingmaker when he became an important chief. The Agbakin is now a Kingmaker ; he did not sign any of the letters. He did not sign any of the letters because there was a dispute between us. The Kingmakers deliberated for 6 days on the selection ; the Agbakin then attended our meetings ; he did not 20 agree with our decision.

*Rxd. by Awolowo :*

The Timi was the commander of our army in the olden days. My title is a war chief title.

*Xrd. by Court :*

The Balogun is the head war chief. The number of the Kingmakers is 6. I told them at Mapo Hall that the number was 4 or 5 ; the Babasanya was then left out. Jagun, myself, Ikolaba, Ayope, Areago are the Kingmakers. Babasanya was one of us and he withdrew when a dispute arose between us. The Agbakin is not the Babasanya. 30

When Timi Akangbe was appointed the Balogun and 13 other chiefs made the appointment. The 14 chiefs were not all Kingmakers ; they were chiefs who signed papers for the Timi's appointment when a dispute arose. We referred this case to the Olubadan when a dispute arose. The dispute was between us Kingmakers. Some of us were for the Plaintiff and the others for the 2nd Defendant. My side asked the Olubadan to install the Plaintiff for us as the Timi and the other side asked that he should install the 2nd Defendant. We were told to go and settle our differences and agree on a candidate. We held a meeting and could not agree. We went back to him and he gave against my side. 40

*Read by Briggs :*

I put my marks on the letters for the Ikolaba. The Ikolaba's house is about 150 yards from the palace. The letters were signed in the Balogun's house. His house is very far from Ikolaba's house. I was not asked to take the letters to Ikolaba to put his thumb impression on it. I am not a Kingmaker. I don't know that the name of the Ikolaba was put against my thumb impression. The Ikolaba sent me there as his representative. I know Olayiwola. I had no quarrel or misunderstanding with Ikolaba. I still act as his representative. I told Olayiwola's father  
10 what I had done after putting my thumb impression on Exs. "A 2" and "A 3."

*Read by Awolowo :*

I cannot read or write. Ex. "A 2" was read to me in the Balogun's house before I put my thumb impression on it. The Ikolaba is paralysed and cannot use his hand.

Adjourned till to-morrow.

(Sgd.) O. JIBOWU,  
J.

12/1/48.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 40.  
Evidence  
of 3rd  
Witness :  
Raji  
Akinloye,  
12th  
January  
1948,  
*continued.*

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No. 41.

**EVIDENCE of 4th Witness, Opayemi**

*Read by Awolowo :*

4th Witness. OPAYEMI, male, Yoruba, sworn on cutlass, states in Yoruba Language as follows :—

I am the Balogun of Ede. There are four lines of chieftaincies in Ede. By the four lines of chieftaincies I mean that there are four ruling houses, viz. : Arohanran, Ajeniju, Bamgboye and Oduniyi. I have heard of Agbonran ; Agbonran was a Timi. There is a ruling house known as Agbonran House. Bamgboye belongs to Arohanran Ruling House. I know  
30 our native law and custom regarding the appointment of a Timi.

On the death of a Timi, Ikolaba, Jagun and Balogun and Babasanya used to meet to consider the selection of a new Timi. We consider the house to present the candidate. We then consult Ifa oracle. We choose a man from a ruling house and submit his name to the Ifa oracle. When Timi Akangbe died four of us, namely, myself, Jagun, Ikolaba and Ayope met. Ikolaba could not attend but sent Raji Akinloye to represent him. Areago also came to our meeting. Five and not four of us met. We discussed about the person we were to select as Timi and a dispute arose between the five of us. I know the Oluawo ; I don't know his name. He  
40 is an Ifa Priest. He consulted Ifa oracle after the death of Timi Akangbe. Oyedunmola, the Jagun, went to consult him. He went to submit the name of the Plaintiff to Ifa oracle. He reported the result of the consultation. Plaintiff's name was submitted to us by his house. It is our custom that a ruling house entitled to present a candidate should

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Opayemi,  
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Evidence.*

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Evidence  
of 4th  
Witness :  
Opayemi,  
13th  
January  
1948,  
*continued.*

submit the name of the candidate to the Kingmakers. The other Kingmakers and I met with our followers seven times. It was at the 7th meeting that we came to a settlement of our dispute. We decided on the Plaintiff at our 7th meeting. All the chiefs of Ede were in complete agreement. We later met the D.O. at Oshogbo in our Native Court to inform him we had selected the Plaintiff. All the chiefs were then present. The D.O. asked if we had all considered the question well. Some of us told him "no" and we were told to go back and reconsider the matter until we all came to agreement. We all came to an agreement and took the Plaintiff to the Rest House at Ede to see the D.O. All the chiefs of Ede 10  
went on the occasion. We presented the Plaintiff to him as the man we had selected as the Timi. After this we wrote a letter to the D.O. and to the Olubadan. The Areago returned from Ibadan to meet us at the Rest House on the occasion of our second visit to the Rest House.

We usually send presents to the Olubadan after a new Timi has been selected. The Areago came to Ibadan on the occasion to bring the presents we sent to the Olubadan. The minor chiefs had nothing to do with the sending of the presents. Jagun, myself and Areago were responsible for this. The Ikolaba should have been with us but for his indisposition and the Areago acted for him. 20

The Areago is next in rank to the Ikolaba in their own line. I put my thumb impression on the letter written to the D.O. and the Olubadan. Jagun, Areago, Ikolaba's representative, Ayope, Lemomu and Iyalode also put their thumb impressions on it. Some people other than chiefs went with me to the D.O. at the Rest House.

(Ex. "A2" is read out to him). That's the letter we wrote. When there was no reply to Ex. "A2" we wrote Ex. "A3" now read out to me. S.O. Longe wrote for us another letter; Ex. "A4" read out to me is the letter. We wrote also letter Ex. "A5" now read out to me; also Ex. "A9" now read to me. I wrote letter Ex. "A7" now read out to me. 30  
I wrote also letter Ex. "A13" now read out to me.

Memudu, the Plaintiff, was not installed as the Timi as the 2nd Defendant was installed the Timi in his stead. The 2nd Defendant was not selected by the Kingmakers. He belongs to Ajeniju House. He and the late Timi belonged to the same house. It is not customary with us to appoint a Timi from the same house as the last one. The Kingmakers did not decide that the new Timi should be from Ajeniju House. I know the 2nd Defendant very well and I know his father who is still living at Ede. It is not customary for a man with a father living to be appointed a Timi. Such a thing has never happened in our history. 40  
Ifa oracle was not consulted in respect of the 2nd Defendant but in respect of the Plaintiff. The 2nd Defendant did not send the customary presents through the Kingmakers to the Olubadan. As the town was divided the 2nd Defendant was installed Timi. The Olubadan sent to us two days before the installation of the 2nd Defendant that the 2nd Defendant would be installed. I was not pleased. It is not customary for the Olubadan to set aside the selection made by the Ede Kingmakers; it has never happened before in the history of our Town; he has not got the right to do so.

The members of Ajeniju House did not at any time present the 2nd Defendant to us Kingmakers for selection as Timi. The Olubadan 50



invited us, the Kingmakers, to Ibadan. The Plaintiff did not come to Ibadan with us; he was not invited to Ibadan.

I know the Resident of Oyo Province at Oyo. I cannot say if he was present at the meeting we had at Ibadan. The Ikolaba is not well but he was kept informed of the proceedings and he agreed with our choice of the Plaintiff. A she-goat and 50/- cash were given for sacrifice to Ifa.

*Xrd. by Briggs :*

The Timi is not a war chief. In the olden days the Timis were war chiefs. Ede was not a war camp. It was not a camp for Ibadan fighters.  
10 We used to accompany Ibadan to war.

When a war chief was to be appointed all the minor chiefs should be informed and after the appointment the populace would be notified. A man appointed by the elders would be approved by the populace. The Elders of the Town in those days were Balogun, Jagun, Ikolaba, Ayope and Babasanya. The minor or junior chiefs were then informed. It was usual for the minor chiefs and the populace to accept the decision of the elders. Only God could guarantee long life to a person appointed Timi if the minor chiefs and the populace did not approve of his appointment.

To my knowledge there has never been an occasion on which the  
20 elders have disagreed.

I attended a special meeting at Ede Council Hall about 18 months ago at which the Resident was present. The Resident asked me what would have happened about 100 years ago if there was a chieftancy dispute I told him the Olubadan and his people used to settle our disputes for us.

In the olden days there were five Kingmakers; the number still remains the same.

I remember the special meeting held at Mapo Hall, Ibadan, attended by me and other Kingmakers. I gave evidence at the meeting. I stated then that four or five chiefs were responsible for the appointment. I  
30 said so then as I could not easily remember the number. I stated then that all the chiefs met and gave a mandate to the four or five Kingmakers when Timi Akande was appointed.

The chiefs did not give the Kingmakers a mandate in this case in respect of Memudu.

The Kingmakers have to choose the ruling house from which the candidate is to be selected. The Kingmakers cannot reject a candidate submitted by his ruling house. The Plaintiff was submitted by his house. Belo Ajagbe's name was not submitted to us by his house. I was asked why we did not select Belo Ajagbe and I stated that the Plaintiff's name  
40 had been spotlighted before Timi Akangbe died.

Belo Ajagbe is Plaintiff's elder brother by the same father. It is true that the Plaintiff had been spotlighted for the stool. It is not in accordance with our native law and custom to spotlight a candidate for the stool in the lifetime of a Timi, but that was done to settle palaver between Memudu and the late Timi. I remember the letters read to me this morning. The Ikolaba himself did not thumb impress any of the letters but his representative did. We wrote Ex. "A 2" in my house. The Court scribe wrote it for us in my house. I told the Ikolaba about the

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 41.  
Evidence  
of 4th  
Witness :  
Opayemi,  
13th  
January  
1948,  
*continued.*

*In the  
Supreme  
Court of  
Nigeria.*

letter. As he was ill and could not get up so he sent a representative. The contents were explained to him. It was read to his hearing. The representative is not a chief but an ordinary man. Raji Akinloye made his thumb impression on Ex. "A 2" for the Ikolaba.

*Plaintiff's  
Evidence.*

No. 41.  
Evidence  
of 4th  
Witness :  
Opayemi,  
13th  
January  
1948,  
*continued.*

The whole town supported the candidature of the Plaintiff at first. It was a popular choice until a dispute arose. So far as I know there has never been a case in which a man is appointed Timi with his father living. I have never heard of a Timi by name of Lasi. I have heard of Timi Mosunloye. I don't know how he became a Timi ; he was a Timi a long time ago. I heard that Timi Lagunju was expelled from the throne ; 10 he was Plaintiff's grandfather. Another Timi was appointed in his place. I don't know if there was dispute about the appointment of Mosunloye. I don't know Olubadan-in-Council settled the dispute. I don't know Ede put forward two candidates and that the Olubadan appointed a third man.

Agbakin is not a Kingmaker at Ede ; he is a chief at Ede ; he became a Kingmaker in this case. His grandfather became a Kingmaker when he became an important chief. The Agbakin is now a Kingmaker ; he did not sign any of the letters. He did not sign any of the letters because there was a dispute between us. The Kingmakers deliberated for 6 days on the selection ; the Agbakin then attended our meetings ; he did not 20 agree with our decision.

*Rxd. by Awolowo :*

The Timi was the commander of our army in the olden days. My title is a war chief title.

*Xxd. by Court :*

The Balogun is the head war chief. The number of the Kingmakers is 6. I told them at Mapo Hall that the number was 4 or 5 ; the Babasanya was then left out. Jagun, myself, Ikolaba, Ayope, Areago are the Kingmakers. Babasanya was one of us and he withdrew when a dispute 30 arose between us. The Agbakin is not the Babasanya.

When Timi Akangbe was appointed the Balogun and 13 other chiefs made the appointment. The 14 chiefs were not all Kingmakers ; they were chiefs who signed papers for the Timi's appointment when a dispute arose. We referred this case to the Olubadan when a dispute arose. The dispute was between us Kingmakers. Some of us were for the Plaintiff and the others for the 2nd Defendant. My side asked the Olubadan to install the Plaintiff for us as the Timi and the other side asked that he should install the 2nd Defendant. We were told to go and settle our differences and agree on a candidate. We held a meeting and could not agree. We went back to him and he gave against my side. 40

No. 42.

**EVIDENCE of 5th Witness, Aninu Mobolaji.***Xd. by Awolowo :*

5th witness. ANINU MOBOLAJI, male, Yoruba, sworn on Koran, states in Yoruba Language as follows :—

I live at Ede. I am a member of Oduniyi Ruling House which is otherwise known as Lagunju Ruling House. I know the Plaintiff. I knew the late Timi Sanusi Akangbe. The Balogun sent Oyetunde, the Areago, to us to forward the name of the person we wanted appointed as the Timi. 10 My people and I gave him the name of the Plaintiff. All the members of our house agreed to the selection. I know Belo Ajagbe. I don't know he aspired to the stool. My family did not support any candidate besides the Plaintiff.

The Plaintiff performed sacrifices directed by Ifa. He also sent presents through the Chiefs to the Olubadan.

*Xxd. by Briggs :*

I did not know other members of our family contested the stool. I know S. O. Longe. I don't know he also aspired to the stool. I don't know Layi Lagunju. I only know of Memudu and we all approved of 20 his candidature.

*No Ræn.*

No. 43.

**EVIDENCE of 6th Witness, Oyedunmola Odudele.***Xd. by Awolowo :*

6th witness. OYEDUNMOLA ODUDELE, male, Yoruba, sworn on cutlass, states in Yoruba Language as follows :—

I live at Ede. I am the Jagun of Ede and it is my duty to see about the sacrifices to be performed by the Timi. I have chiefs under me. I know the Balogun ; he is also the head of his own branch of chiefs. 30 The Balogun is the next in rank to the Timi and he is head of the war chiefs. The Ikolaba is the head of another line of chiefs ; he is a sort of messenger to the Timi.

There are four Ruling Houses at Ede, namely, Agbonran, Arohanran, Ajeniju and Oduniyi. Oduniyi House is otherwise known as Lagunju House. The late Timi, Sanusi Akangbe belonged to Ajeniju House. The 2nd Defendant belongs to Ajeniju House like the late Timi, Sanusi Akangbe.

Areago is next in rank to Ikolaba. Babasanya is next in rank to me ; next to him is Ayope. I have been the Jagun for about 11 years. I was the Oganla before I became the Jagun. I was Oganla for 42 years. I am 40 quite familiar with the working of Ede Town.

Adjourned till the 14th instant.

(Sgd.) O. JIBOWU,  
J.

13/1/48.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 42.  
Evidence  
of 5th  
Witness :  
Aninu  
Mobolaji,  
13th  
January  
1948.

No. 43.  
Evidence  
of 6th  
Witness :  
Oyedun-  
mola  
Odudele,  
13th and  
14th  
January  
1948.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 43.  
Evidence  
of 6th  
Witness :  
Oyedun-  
mola  
Odudele,  
13th and  
14th  
January  
1948,  
*continued.*

Resumed: Wednesday the 14th day of January 1948.

*Xn. by Awolowo continues :*

OYEDUNMOLA ODUDELE, warned that he is still on his oath,  
continues :—

The Timi is the head of Ede Town. When the Timi gives presents to the chiefs, the presents are usually divided into three parts. If the sum of £2. 10. 0 is given us, £1 will go to the Balogun, £1 to me, the Jagun, and 10/- to the Ikolaba. If the Timi requires us to make any contribution, the Balogun, the Jagun and the Ikolaba have to collect the contribution to hand over to the Timi. There is no other chief at Ede who has been a chief longer than I. 10

When a chief is to be installed, the Ikolaba brings the leaf of title and I have to place the leaf on his head. I performed the installation ceremonies of all the chiefs at Ede, including the Timi, by placing the leaf of title on their heads.

In the olden days the Kingmakers were the Balogun, the Jagun and the Ikolaba. When a Timi dies the three Kingmakers have to see about his funeral. After the funeral ceremonies, the Kingmakers meet to consider about the succession. We first consider the house then eligible to present a candidate. The house that has not presented a candidate for a long time is usually considered eligible to present a candidate. 20

After we have decided which house to present a candidate, the Kingmakers then send the Ikolaba to the House to ask them to present a candidate. The house has then to send the name of their candidate to the Ikolaba who has to inform the Balogun about it.

The Kingmakers then consult Ifa oracle about the selected candidate. The Jagun is the chief to make the consultation with Ifa Priest known as Oluawo. The procedure is to hold a cowry in one hand and a piece of bone in the other. If the Ifa oracle is unfavourable, the Kingmakers then ask the house to send the name of another candidate. If, on the other hand, Ifa is favourable to the selected candidate, we then perform necessary sacrifice for him. After the sacrifices have been performed the Kingmakers meet and then inform their junior chiefs that Ifa oracle was favourable to the candidate selected. 30

It is not customary for the junior chiefs to reject a candidate duly selected and favoured by Ifa.

A meeting is usually held in the house of the Balogun to inform the minor chiefs of the selected candidate. After this meeting, a message is then sent to the Bale of Ibadan, now known as the Olubadan, about the person selected and the messenger takes customary presents to him. 40

The presents used to consist of 40 bags of cowries (£10) for the Bale, 10 bags for the prime minister and 10 bags for members of the household of the Bale. Two people carry a bag of cowries.

On receiving the presents, the Bale offers prayers for the selected candidate. It is not customary for the Bale to reject the candidate selected by the Kingmakers of Ede. He used to send a messenger to Ede to know the selected candidate. The Bale has no right to reject the selected candidate.

The Balogun, the Jagun and the Ikolaba were the members of the cabinet or inner council of the Timi.

The number of the Kingmakers has been increased to five. The increase was made when Ipinoye was being selected. I was then the Oganla under the Jagun. After the five Kingmakers had approved of the selection of Ipinoye, the other chiefs joined them in writing to recommend him. The five Kingmakers then were the Balogun, Jagun, Ikolaba, Ayope and Areago.

10 Sanusi Akangbe succeeded Ipinoye as Timi. Oyelekan was the Timi before Ipinoye. Only three Kingmakers made Oyelekan Timi. I was then the Oganla.

It is not customary for two Timis from the same house to be appointed consecutively.

It is not customary for a Timi to reign in the lifetime of his father. I know the father of the 2nd Defendant ; he is still living.

After the death of Timi Sanusi Akangbe we sent to the Oduniyi House to forward the name of a candidate for the vacant stool. The late Balogun left word that it was the turn of that house before he died.

20 We, the Kingmakers, knew that Oduniyi House was the next to present a candidate. We instructed the Ikolaba to send a message to Oduniyi House. Shobalaju was accordingly sent to the house with Ogunbode and Oyetunde. I sent Ogunbode and the Balogun sent Oyetunde with Shobalaju. The message sent is that it was the turn of their house to present a candidate for the stool of the Timi and that they should send us the name of their candidate. They later on sent us the name of the Plaintiff. Ifa oracle was consulted about him. I went to make the consultation. I consulted Oluawo. Ifa was favourable to Plaintiff. A she-goat and 50/- were sent to the Oluawo—the goat for Ifa and the money for the priest. We went to inform the D.O. about the selection and  
30 he asked us to go and put it in writing.

After Ifa had been consulted, it was decided by the Kingmakers that the Balogun, Jagun and Ikolaba should inform their junior chiefs of the selection ; and it was done. We then sent a message to the Olubadan through Areago Makanjuola with customary presents of £100 for the Olubadan, £10 for the prime minister and £5 for the household of the Olubadan.

40 The Areago returned from Ibadan to meet us at the Rest House at Ede where we went to present the Plaintiff to the D.O. All Ede chiefs were there with important members of the town including representatives of the Iyalode and the Imam of the Mohamedan elements of the Town. The D.O. was informed that the Plaintiff was the unanimous choice of the Townspeople. As requested by the D.O. we wrote to the D.O. and the letter was signed by the Kingmakers.

The Ayope is a junior chief under me. The Areago is a junior chief under the Ikolaba. These two chiefs were added to the list of Kingmakers because the then three Kingmakers were young men. No one would dare to go against the decision of Ifa oracle. There are Mohammedans and Christians now in Ede who do not believe in Ifa oracle. Ex. "A2"

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 43.  
Evidence  
of 6th  
Witness :  
Oyedun-  
mola  
Odudele,  
13th and  
14th  
January  
1948,  
*continued.*

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 43.  
Evidence  
of 6th  
Witness :  
Oyedun-  
mola  
Odudele,  
13th and  
14th  
January  
1948,  
*continued.*

read out to me is the letter we wrote. The Bale, now Olubadan, was the only Chief at Ibadan to whom the Kingmakers used to send in the olden days.

After presenting the Plaintiff to the D.O., we all went home with him ; all the chiefs did, as from that day, regard him as our Timi. He gave us £5 present. The Balogun took £2, I £2 and the Ikolaba £1. The monies were for the head chiefs and their juniors. From the Plaintiff's house I went home with the Balogun. Besides the £5 the Plaintiff gave us 4 bottles gin—we drank three of them in the house and took the 4th to the Balogun's house. 10

We wrote letter " A3 " now read out to me. The letter was read over to me before I put my mark on it. The Ikolaba is ill, and has been indisposed for about 3 years ; he cannot get up or walk. He cannot make use of his hand ; he has to be fed. He could not attend our meetings but sent Akinloye to represent him. Akinloye has been his representative for about 5 years he has been representing him since he took ill ; even before his illness Akinloye was accompanying him to our meetings. We wrote also letter Ex. " A4 " read out to me ; one Longe wrote it for us. We wrote also Ex. " A5 " now read out to me. It was read to us before we made our marks on it. We wrote also letter Ex. " A9 " now read out 20 to me. It was read out to us before we signed it.

There are 12 chiefs under me. They all supported me in the choice of the Plaintiff and they are still with me. We, the Kingmakers, did not decide that it was Ajeniju's turn to present a candidate for the vacant stool. We would not have considered that house as the last Timi was from that house.

Ajeniju house never presented the 2nd Defendant for appointment ; we did not consult Ifa oracle about his candidature. We did not send presents to the Olubadan on his behalf.

We received a message from the Olubadan that we should meet 30 him at the market place at Ede two days later. We went there accordingly with our minor chiefs. When we got to the market place I saw the D.O. Oshogbo and another European, some people from Ibadan and some Nigeria Police. One of the children of the then Olubadan who died before the present Olubadan was installed spoke. The Olubadan to whom we sent presents was Aleshinloye Abasi ; he was succeeded by Fagbinrin. It was the son of Fagbinrin's successor who came to install the 2nd Defendant.

The son of the then Olubadan stated that he had been sent by the Olubadan to install the 2nd Defendant as the Timi. We were not pleased. 40

I was a grown up man with a wife at home when Mosunloye was installed as Timi. I witnessed his installation and that of Oyelekan, Ipinoye and Akangbe. When they were installed there were no Nigeria Police present. The policemen came with the D.O. ; they were about four.

We have N.A. police and no Nigeria Police at Ede.

*XXd. by Briggs.*

The Balogun and I are of equal rank.

The Balogun knows the custom about the appointment of a Timi. He is wrong if he told the Court there are 7 Kingmakers. He was made a chief only recently ; he was the Balogun who appointed Memudu. Agbakin is one of the Kingmakers. The Babasanya is also one of the Kingmakers ; there are therefore 7 Kingmakers. Babasanya is replaced by the Ayope. The Agbakin was with the Kingmakers during their deliberations ; he agreed with all we discussed.

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Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

10 When we returned from the Rest House, the Agbakin complained that the Balogun did not tell him about the selection of Memudu ; that was why he did not join us to sign letters forwarded. The junior chiefs under the Balogun did not go with him to the Rest House as they did not agree with him.

Ayope was with us when we wrote the first two letters.

He later said he was not in agreement with us. The Ikolaba did not attend our meetings personally. We did not go to his house. We asked the Areago to keep him informed of what was going on.

There never used to be a disagreement between the Kingmakers ; this is the first time I know of disagreement between Kingmakers.

There was no disagreement in the case of Mosunloye.

20 My father was then the Jagun and he was sent to the Bale of Ibadan to inform him the Kingmakers had selected him.

I was present at the meeting held at Mapo Hall about 18 months ago at which I gave evidence that a written agreement was made that the Plaintiff would be the next Timi. It is true an agreement was made. That was not our custom. If two people contest the stool, it is our custom to promise the next vacancy to the house of the loser. More people than one aspire to the stool for Lagunju house. The Plaintiff is my son-in-law.

My daughter does not now live in his house ; she lives now in my house.

30 I was asked about the rotation of the houses. Timi Lagunju reigned for a long time hence he was the only one who reigned for his house. There have been three Timis from Agbonran House—they are Agbonran, Lansebe and Oyelekan. Agbonran House is otherwise called Oyefi House. The houses appoint Timis in strict rotation. Lagunju House is the same as Oduniyi House. Lagunju was followed by Olunloye from Ajeniju House. Olunloye was followed by Lagunju (who was recalled), Lagunju was followed by Mosunloye. Mosunloye belonged to the same house as Olunloye. I stated at the Mapo Hall meeting that during the inter tribal wars the powerful and warlike man was the one who became Timi hence appoint-  
40 ments were not made in strict rotation. Warriors were men appointed to the post.

We held a meeting at Ede about 18 months ago at which all Ede men were present. I was there too. No one raised any objection to the Plaintiff when he was presented to the D.O. Agbakin raised no objection. Rev. Taiwo also raised no objection. The D.O. told us to go and agree between ourselves about the candidate. He said so because the chiefs under the Balogun were not in agreement. We had about three meetings with the D.O. On the first occasion he asked us to reduce our claim into writing. We did so and sent it to him.

No. 43.  
Evidence  
of 6th  
Witness :  
Oyedun-  
mola  
Odudele,  
13th and  
14th  
January  
1948,  
*continued.*

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 43.  
Evidence  
of 6th  
Witness :  
Oyedun-  
mola  
Odudele,  
13th and  
14th  
January  
1948,  
*continued.*

The Balogun's chiefs disagreed with the Balogun after our first meeting with the D.O.

It was the day we first went to meet the D.O. that the townspeople got to know of the selection. That was why there was objection.

The Agbakin did not agree with us. He agreed with us at first. He did not sign our letters. Babasanya signed our letters.

The Iyalode is the head of the women in town. She is one of the Kingmakers. I installed the 2nd Defendant as Timi; there was a big crowd. There were Nigeria Police also present. We get afraid when we see a white man. I willingly installed the 2nd Defendant. 10

We did not consult Ifa about him. We sent money to the Olubadan; in the olden days we would have sent cowries.

I admit customs vary. I don't know if he had gone to Church to give thanks after his installation.

*Rcd. by Awolowo.*

The D.O. asked us to go and agree among ourselves about the candidate. We all agreed and went back to him. The chiefs under the Balogun did not agree with us. We eventually agreed. We sent a message to the D.O. at Oshogbo that we had agreed. We met him afterwards at Ede and we took the Plaintiff with us. We all agreed that he should be our Timi. 20

Otun is next in rank to the Balogun, then come the Osin, the Ashipa, Ekerin and Seriki. The Agbakin is not in the Balogun line. He is under the Balogun.

Ikolaba, Jagun, Balogun, Ayope, Areago were the five Kingmakers in the line of Ipinoye.

Agbakin was not one of them. I have many followers; they are not Kingmakers. The Balogun have followers; they are not all Kingmakers. The Balogun has to report our doings to his junior chiefs. Agbakin is one of the followers of the Balogun to whom he had to report our doings. 30 In the olden days the Iyalode used to have hands in public affairs. In the past the Jagun used to report to the Iyalode what was going on in town. I used to report to her as Jagun what was going on.

Babasanya is next in rank to me and Ayope came next to him. The Babasanya disagreed with the townspeople and he was removed from office. Ayope then replaced him. The title of Babasanya was then abolished. The title has since been resuscitated. The present Babasanya Oyediran supports the Plaintiff and joined in the letters written about him.

I was not pleased on the day the 2nd Defendant was installed. I am a salaried chief and a native court judge. I was present at the Mapo Hall meeting. 40

An Ibadan man questioned me. I cannot say if he is a chief. The only person I knew in the assembly is the Olubadan. I told them that the Kingmakers were five in number. I said that about 20 chiefs signed the recommendation of the last Timi and that then the junior chiefs always adopted what the senior chiefs did. It is not so now. I told them also that the Kingmakers are the persons to appoint a new Timi and not all the chiefs.

Adjourned till the 15th instant.

(Sgd.) O. JIBOWU. 50

14/1/48



## No. 44.

## EVIDENCE of 7th Witness, Alfred Des Dokubo.

Resumed : Thursday the 15th day of January, 1948.

*Ad. by Awolowo :*

7th witness. ALFRED DES DOKUBO, male, Ijaw, sworn on the Bible, states in English Language as follows :—

I am a journalist and live at Ibadan. I am the Editor of "The Southern Nigeria Defender." The paper was published on the 23rd September, 1946. I have a copy of the publication here which contains a Release by  
10 Olubadan Suberu Fagbirin. The original manuscript has been burnt with other papers as we burn papers yearly. (The Crown Counsel has no objection.) I tender the paper, marked Ex. "B." The Release is at page 3 of Ex. "B."

*Ad. by Briggs :*

Ex. "B" was given wide publicity at the time. The 2nd Defendant is now the Timi of Ede ; he is the man referred to in Ex. "B." I was not here in December, 1946. By the time the Defendant was installed the Olubadan who issued Ex. "B" had died. The Olubadan who approved of the installation of the 2nd Defendant should have known about  
20 Ex. "B" which was given a wide publicity at the time.

*No Rrn.*

## DEFENDANTS' EVIDENCE.

## No. 45.

## EVIDENCE of 1st Witness, Samuel Olajumoke.

Briggs opens his case and calls his witnesses.

*Ad. by Briggs :*

1st witness for defence. SAMUEL OLAJUMOKE, male, Yoruba, sworn on the Bible, states in English Language as follows :—

I am the Clerk of the Ibadan Native Authority Inner Council. As  
30 such it is my duty to keep minutes of meetings of the Council. The Olubadan and other chiefs used to put their marks on them and I used to sign them.

I have an assistant by the name of Victor Lajide who used to act in my absence. I tender the minutes of the meeting of the 29th April, 1946, marked Ex. "C." I tender a letter written on the same date to the D.O. Oshogbo, marked Ex. "C1" ; the minutes of the 9th May, 1946, marked Ex. "C2," the minutes of the 26th August, 1946, marked Ex. "C3" ; the minutes of the 2nd Sept., 1946, marked Ex. "C4" ; the minutes of the 28th October, 1946, marked Ex. "C5" ; the minutes of the  
40 27th Nov., 1946, marked Ex. "C6." The Olubadan then was Oyetunde ; he is now dead.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 44.  
Evidence  
of 7th  
Witness :  
Alfred Des  
Dokubo,  
15th  
January  
1948.

*Defendants'  
Evidence*

No. 45.  
Evidence  
of 1st  
Witness :  
Samuel  
Olajumoke  
15th  
January  
1948

*In the Supreme Court of Nigeria.*  
 ---  
*Defendants' Evidence.*  
 ---  
 No. 45.  
 Evidence of 1st Witness :  
 Samuel Olajumoke,  
 15th January 1948,  
*continued.*

*Xcd. by Awolowo :*

I have been the Council Clerk long before 1946. I wrote the minutes of the Council held on 18th February, 1946, now tendered and marked Ex. "C7." I wrote also the minutes of the Council held on the 17th April, 1946, tendered and marked Ex. "C8."

Three Olubadanas dealt with this Ede Chieftaincy Dispute. The first Olubadan was Okunola Aleshinloye Abasi ; he died on a date I cannot now remember. He was succeeded by Suberu Fagbirin. Oyetunde succeeded Fagbirin.

(He reads p. 4 para. 20 of Ex. "C7" to witness.) That is quite correct. (Para. 7 is also read.) What you read is quite correct. (He reads page 5, paras. 30 and 31.) That is quite correct. I did not know Memudu consulted the Alafin. I did not read the Daily Service of the 15th February, 1946, to the Council. I knew afterwards that it was Chief Memudu who approached the Alafin when it became a matter of general discussion among the Council members shortly after the meeting of the 18th February, 1946. It was some days after the meeting.

*Rcd. by Briggs :*

The new Olubadan was a member of the Council when the matter was discussed about Memudu's approaching the Alafin.

*XXcd. by Court :*

I see Ex. "B." I did not write it for the Olubadan. It was written by his private clerk. The letter did not appear in the minutes book. Ibadan chiefs did not agree with the Olubadan and wrote to the Olubadan about it. I tender the letter marked Ex. "D." I tender the letter which called for Ex. "D," marked Ex. "D1."

No. 46.  
 Evidence of 2nd Witness :  
 Victor Olayide,  
 15th January 1948

No. 46.

**EVIDENCE of 2nd Witness, Victor Olayide.**

*Xcd. by Briggs :*

2nd witness for Defence. VICTOR OLAYIDE, male, Yoruba, sworn on 30 the Bible, states in English Language as follows :—

I am Asst. Clerk to the Ibadan Native Authority Council. It is my duty when the 1st witness is not present to take minutes of the Council. I take minutes accurately and sign them. I tender the minutes of the 5th December, 1946, marked Ex. "E." Oyetunde was then the Olubadan.

*Xcd. by Awolowo :*

I knew the Plaintiff had approached the Alafin while the matter was being discussed in the Council. This was during discussion on the 18th February, 1946, after the Council Meeting. The Council members were not pleased that the Plaintiff had approached the Alafin as it was thought that would cause unrest in town. No Ibadan man likes anything connected with the appointment of chiefs to go to the Alafin. I did not hear the Council members swear that the Plaintiff would not get the post he applied for. The whole staff at Mapo Hall also discussed the matter.

*No Rcn.*

## No. 47.

## EVIDENCE of 3rd Witness, John Adetoyese Olaoye.

*In the  
Supreme  
Court of  
Nigeria.*

*Ad. by Briggs :*

3rd witness for Defence. JOHN ADETOYESE OLAOYE, male, Yoruba, sworn on the Bible, states in English Language as follows :—

*Defendants'  
Evidence.*

I am the present Timi of Ede. I was installed on the 19th December, 1946. I paid the customary dues of £100 to the Olubadan after my selection. I paid in coins and notes.

No. 47.  
Evidence  
of 3rd  
Witness :  
John  
Adetoyese  
Olaoye,  
15th  
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10 There was a public meeting at Ede on the 19th July, 1946 ; it was convened by the Chiefs of Ede. The Resident and I were there. The Plaintiff was there too. The Ifa oracle was consulted after my installation. The Oluawo assisted by Jagun made the consultation. I attended Divine Service and Thanksgiving in all the Churches at Ede. My father is alive ; he is not my father by blood but my step-father. He inherited my mother and I was born six months after he inherited my mother. It is not correct that Ajeniju family did not submit my name. Some members of the family submitted my name.

*Xcd. by Awolowo :*

20 I was told many years ago when I was old enough to know that my mother was inherited by the man known as my father. I was then literate in English. I knew the difference between a father and a step-father. I knew that the man regarded as my father was only a step-father. I regarded him as my father. I wrote letter Ex. "A" dated 4th February, 1946, to the D.O., who is an English man. I copied the S.D.O. and others. I described myself as the eldest son of Omoba Lawani Oyebisi Laoye ; that is the man regarded as my father. I knew I was his step-son when I wrote the letter. I represented him in Ex. "A" as my father. I am not now denying my father in order to retain the stool of the Timi of Ede. I don't invent the story of Lawani Laoye being my  
30 step-father after this dispute has arisen. I knew who were the selectors at the time I wrote the letter. I did not write to them direct because an application had been sent direct to them by my family. It was signed by my father and by about five of his sons. It was written on or about the 28th January, 1946. The dead Timi had been buried then ; he was buried on the very day of his death as he was a Muslim. I did not then live at Ede. I don't know if the chiefs of the town performed the funeral ceremonies of the dead Timi. There are other important members of Ajeniju House besides my father and his children. It was not necessary for them to join in presenting me. It was not the custom for a house to present  
40 a candidate for appointment as Timi as all warriors are eligible to apply. I am quite serious in this. My father knew that to be the custom. He wrote to recommend me because I was not staying at Ede ; he wanted me to contest the stool. He did not forward his application until after the death of the late Timi. I don't know whether he wanted me to be the Timi after the death of Timi Akangbe. He informed me he wanted me to be the Timi on the day he wrote the application. I went to Ede that day. I went to see my people. I did not go to see them so that they might recommend me for the stool. I went to see the family of the deceased

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Timi. I asked for casual leave to go home. I spent only one night at Ede and returned to Ibadan the following day. I did not go there purposely to ask my father to write to recommend me for the stool. I did not instruct my father to write that he was stepping down for me as a Timi must not have a father.

My step father has three children literate in English ; these three include me. One was in the Army and the other at Jos. I don't know who wrote for my step father. I did not see a copy of the letter. I did not ask for it. I was not pleased at first when he told me he had recommended me. I told him to withdraw the recommendation. Ifa 10 oracle was consulted after my installation to know if there would be prosperity during my reign. I don't know what would have happened if the Ifa had been unfavourable. I don't know if it was necessary for Ifa to be consulted before my installation.

I was asked to perform sacrifices by Ifa. The townspeople gave a she goat, rats, pigeons, fowls, palm oil and food for Ifa worshippers.

The Jagun told me it was necessary to consult Ifa. Oluawo consulted Ifa on my behalf. Late Sanusi Akangbe was a member of Ajeniju Ruling House.

I attended a meeting at Ede on 19th July, 1946. I was asked by the 20 selectors to be present with all my supporters. An enquiry was to be held that day. I did not take part in the proceedings of that meeting ; it was not necessary. I don't know if I had been unnecessarily taken to the meeting. I sat outside and was not in the hall where the meeting was held. I went because I was curious to know what was going on. I paid my customary dues to the Olubadan several days before my installation. I cannot remember how many days before. I paid one to Fagbirin and another to Oyetunde. I paid £50 to each of them. That was all I paid. The first Olubadan to whom I paid died, hence I had to pay to the new one. I don't know if I paid more than the customary dues. I did not pay any 30 customary dues to Aleshinoye Abasi. He did not ask me for it. The others asked me for it. It is the custom for them to demand the customary dues if they were not paid in time. I do know the customary laws relating to the selection of the Timi of Ede. I know it thoroughly. It was customary for Ifa oracle to be consulted after installation and for the Olubadan to demand payment of customary dues before they are paid. It is not necessary for a ruling house to present a candidate for appointment. The Kingmakers at Ede are the Balogun, the Jagun, the Babasanya, the Agbakin, the Ikolaba, and the Otun Balogun. They have to decide who should be Timi. After deciding they report to their followers the 40 decision they have taken.

Those are the Kingmakers I know ; they have been functioning from the reign of Ipinoye. I understand there were no specific Kingmakers before them. There used to be disputes sometimes in the appointment of a Timi. There were disputes in the cases of Lansebe and Olunloye.

In the olden days the minor chiefs were to sound the townspeople as to who was to be selected and report their findings to the senior chiefs. Several names might be suggested and it would be for the senior chiefs, supposed Kingmakers, to select the most popular. The supposed Kingmakers are the senior chiefs ; there were six of them. They were the 50

same people as I have mentioned. It is surprising that the chiefs now select and report to the people after. My evidence as to what obtained in the olden days is correct.

I know the Ayope. I think he knows the method of selecting a Timi at Ede and so is the Agbakin. They know the Kingmakers at Ede. Sanusi Adeniji is the present Agbakin. It will surprise me to know that Agbakin did not regard himself as a Kingmaker in July, 1946.

(Ex. "A8" is read over to the witness.) It is surprising that Agbakin did not regard himself as a Kingmaker. I shall be surprised if anyone were to say that the Jagun is not a Kingmaker. (Ex. "A11" is read out to witness.) It is astonishing to hear this. Babasanya is not in the line of the Jagun; he is in his own line. The Ayope, Esa, Bara, Ejemu and Alajue are under Babasanya. Oganla is under the Jagun. Olukotun is under the Jagun too. Olukotun is next in rank to Jagun; this has always been so. I heard Jagun say Babasanya is next in rank to him and that Ayope is next to Babasanya but made to supersede him. I don't know why his evidence on the point was not challenged. Babasanya is not the next in rank to the Jagun.

The Timi sometimes gives presents to the chiefs. The presents are handed to the Balogun. They should be divided into four. One to Balogun section, one to Jagun section, one to Ikolaba section and the 4th to Babasanya section.

The Agbakin is under the Balogun from whom he gets his share. I was a Dispenser for 22 years before I became the Timi. I worked outside Ede but used to visit Ede during my leave. I was not living at Ede before I became a Dispenser for 10 years when I was attending school outside Ede.

*Read by Briggs :*

I heard the Jagun say that Agbakin and the Iyalode were Kingmakers; that surprised me. I heard the Balogun say that the Kingmakers were three in number but later stated they were five. I heard Memudu give evidence that the Kingmakers were three at first and later five. Members of every ruling house could make a verbal application to the chiefs concerned on the death of a Timi.

*Xrd. by Court :*

I rested my claim to the stool as the son of Laoye. He recommended me on the basis that I was his son. My supporters selected me on the understanding that Laoye my supposed father was standing down for me. The Resident did not know that Laoye is not my real father.

Oyekole was my real father; he is dead; he died before I was born. My mother is also dead; she died on the 6th August, 1945. Oyekole was the father of Oyebisi Laoye. Oyebisi Laoye inherited his father's wife according to Native Law and Custom.

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**EVIDENCE of 4th Witness, James Grenvile Pyke-Nott.**

*Xd. by Briggs :*

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4th witness. JAMES GRENVILE PYKE-NOTT, male, English, sworn on the Bible, states in English Language as follows :—

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I am the Senior Resident, Oyo. I took over Oyo Province as Acting Resident on May the 12th, 1946, and became substantive Resident in Sept., 1946 ; but it was dated back to March, 1945. In November, 1946, I became Senior Resident. Before I became Resident Oyo, I was S.D.O. Ibadan. As such I attended many meetings of Ibadan Native Authority 10  
Inner Council. I held the post from 20th January '46 – May, 1946. It was part of my duty to make myself conversant with Native Law and Custom of the Province. I have studied the Native Law and Custom of Ede.

The framework of the custom in appointing a new Timi exists but the details in connection with the custom have never been clear to me. For instance, the Timi comes from five families—one is believed to have died out leaving only four. These families represent the descendants of the children of the first Timi. The date of the first Timi is some considerable time ago, may be 150 years. The four families have become very extended. 20  
There are consequently sub-families of the original families.

There is no regular record of the Timis having been appointed in regular rotation. It is up to the families to present a candidate to the Kingmakers. The details of the identity and number of the Kingmakers is obscure. Lack of conformity to details is probably due to influence exercised by powerful people in Ede. It resulted in a tradition in the details being broken. There is one important qualification after the candidate has been put up to the Kingmakers and that is the popularity of the candidate with all the people in Ede. That has often been overlooked and ignored. The selection, in fact, to the stool of an Oba depends in 30  
final phase on his popularity with the people. The system of selection and the ways by custom of seeking information concerning popularity is again somewhat obscure. Ede is in Ibadan Division. Ede submitted to the military power of Ibadan in approximately 1870. Ibadan left their representatives in Ede who assisted in advising the Timi and his Council and conveying the instructions of the Olubadan in Council. He was known as "Ajele" which is the same Yoruba Term used for a D.O. or a Resident.

From that time the Olubadan in Council, i.e., Olubadan and the Inner Council, had, as far as I know, exercised the right of approving or rejecting any candidate put forward for the stool of the Timi. Likewise, the 40  
Olubadan-in-Council exercise the same right in respect of other Towns which submitted to their military power between 1865 and 1875 approximately.

(N.B.—At this stage the Crown Counsel seeks to put in Ede Intelligence Report on the ground that it is a public document within secs. 108 and 119 of the Evidence Act.

Awolowo objects.

The Crown Counsel withdraws his application to put the document in.)

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I have read the Intelligence Report on Ede District by Dickinson and the Oshogbo Gazette by Wilkes. They have helped me in forming my opinion about Ede matters. They are more or less Standard Works. I have read also Johnson's History of the Yorubas. I see Ex. "C 1" para. 14. The outcome of sec. 1 of the minutes was that the Ede chiefs and all persons concerned in the dispute were invited to come to Ibadan for necessary enquiry. I see Ex. "C 2." I was present at the Enquiry; the Ede chiefs and people were also present. The Olubadan presided. 10 I sat on his right to assist in conducting the meeting. The Administrative Officer or Officers present at such meetings are not mere spectators. I therefore took part in the meeting. Various people gave evidence before the Enquiry. There was difference of opinion between the people who gave evidence. (He is asked to read para. 9 of Ex. "C 2." He does so.) There was a District Council Meeting at Ede in July, 1946. I convened the meeting because I wanted to satisfy myself what final remedy was available in the event of the dispute continuing for all time. I also wished to satisfy myself that the dispute still raged and that there was no likelihood of any early settlement. All the chiefs were present. A great number of 20 them spoke at this meeting. I enquired as to the custom and heard men from both sides. The 2nd Defendant did not speak. I believe the Plaintiff was there as I understood he expected me to instal him that morning. The 2nd Defendant was not there. I enquired into the machinery available for the selecting of a Timi and not into the personal qualifications of the candidates.

The Balogun was present at the meeting. He told me if there was a dispute which they could not settle, it would be referred to the Olubadan-in-Council. I always receive copies of the minutes of Ibadan Council if I do not attend. I have read Ex. "C 3" before. (His attention is drawn 30 to para. 35 of page 9. He reads it out.) The result of that meeting was that the Olubadan and Council said they would give the Ede chiefs and people a final opportunity of getting together to put forward a candidate; that was agreed. Chief Fagbirin was then the Olubadan.

I have read Ex. "C 4" before. (He is referred to page 8.) A large number of Ede Chiefs appeared before the Olubadan and Council and stated that they had not been able to reach any agreement.

I see Ex. "C 5." At this meeting I advised that as the Olubadan-in-Council had accepted the responsibility of making a decision, they must implement their responsibility. I made four suggestions for bridging the 40 dispute that had arisen in the Ibadan Inner Council. I stressed that the Council's first consideration must be the welfare of the people of Ede. The dispute arose out of the fact that Fagbirin, the Olubadan, favoured Memudu and the other members of his Council favoured 2nd Defendant.

I am familiar with Ex. "C 6." This was after the death of Fagbirin. On or about the 28th November, 1946, the 2nd Defendant was selected.

I see Ex. "E"; this was after the 2nd Defendant had been selected. The purpose of the meeting was for the Ede chiefs and people to hear the decision from the mouths of the Olubadan and Council themselves.

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(Referred to para. 6 at page 3.) There was a sharp discussion between the Ede Chiefs. It was pointed out to the Chiefs who were objecting that they had referred the matter to Olubadan-in-Council and the decision of the Council in favour of the 2nd Defendant was made known to them. They asked the Olubadan and Council to appoint a Timi for them and that was publicised throughout the Division in Oyo Province and, in fact, throughout the Western Provinces. No one in Ede, chiefs or commoners objected to the matter being referred to Olubadan-in-Council and that it was too late for them to withdraw after a decision had been made.

During the dispute, I received petitions in respect of the matter from 10 all over Nigeria. The word "mass" will not describe their number.

I did not act in bad faith in the matter. I was guided by the principle that customs of Ede, as they still exist should not be violated; by the welfare of the people of Ede; to use all possible means to bring the dispute to an end so that Ede might be in peace and achieve progress.

I know the Appointment and Deposition of Chiefs Ordinance. I was satisfied that this appointment was in accordance with Native Law and Custom.

I consulted the people responsible for the appointment of the Timi at Ede on the 19th July, 1946. 20

I was not present at the 2nd Defendant's installation. It does not matter to me which of the candidates was selected so far as the candidate is eligible according to Native Law and Custom and by his past record.

Adjourned till the 16th instant.

(Sgd.) O. JIBOWU,  
J.

15/1/48.

Resumed Friday the 16th day of January, 1948, at 9 a.m.

*Xcd. by Awolowo :*

JAMES GRENVILLE PYKE-NOTT, warned that he is still on his oath, 30  
continues :—

I told the Court yesterday that it did not matter to me which of the two candidates was selected provided he was satisfactory. It is not a matter of concern to me that the Defendant should not be removed from office since I approved of his appointment. So long as native law and custom is preserved and the welfare of the people of Ede is preserved and the rejected candidate is not forced on the people of Ede; it does not matter whether the present Timi is removed or not.

I gave the Court yesterday my view of the Native Law and Custom at Ede. I formed that view from the time the dispute started. It is 40 part of my duty to be versed in the Native Law and Custom of the Province in which I serve. I have served in Benin and Abeokuta Provinces before coming to Oyo Province. I am versed in the Native Law and Custom of Abeokuta Province.



There is no considerable variation in the principle of native and law and custom in the selection of an Oba. The general principles are (1) selection from a specific family the candidates being blood descendants of the founder of the family ; (2) acceptance of the people ; (3) announcement by the Kingmakers ; (4) acceptance or rejection in the case of any Oba whose town or District owes allegiance to a superior Oba ; (5) there must be Kingmakers.

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10 There is variation in the identity and number of the Kingmakers (2) the ceremonies in connection with installation and (3) number and the extent of the number of the families said to be descended from the founder.

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In the past it was an essential part of the ceremonies for Ifa oracle to be consulted as to whether the reign of a particular candidate would be peaceful and prosperous but to-day Christianity has resulted in the introduction of modifications in some of the ceremonial.

20 Besides the books I referred to yesterday I gained my knowledge of the Native Law and Custom of Ede from official documents which had passed through my hands. Johnson's History refers to Kingmakers at Oyo and not specifically to those at Ede. There are Kingmakers at Ede. By the people of Ede I mean the populace. I formed the opinion that the Timi to be appointed must be popular with people of Ede during the dispute.

(Para. 19 of Ex. "C 8" is read to witness.) I was correctly reported. I still hold the same opinion. It is for the Kingmakers to find out if the selected candidate is popular with the populace.

30 (Reads para. 20 of Ex. "C 8.") I still hold the opinion therein expressed. I consider the Plaintiff to be a fit and proper person to hold the office of the Timi. I do not know as a fact that many people during the dispute were trying to influence the Kingmakers. I know as a matter of fact that in most of the vexatious disputes there is a lot of presents and reward going on.

(Ex. "C 5" reads paras. 5-15.) The majority cannot override the decision of the Olubadan. The Olubadan cannot override the two thirds majority of the Council.

At the time I did hold that the Olubadan alone had the prerogative of approving of the selection of the Timi without the Councillors but I now think I was wrong in that view.

I did not then think that political expediency should outweigh the legal aspect of the case. I did not hold that the justice of selecting the proper man should be sacrificed on the altar of vanity of Ibadan people.

40 I don't now remember the arguments contained in Ex. "B." (The exhibit is read out to the witness.) I still hold the opinion expressed in Exhibit "C 5."

The decision in the matter was left in the hands of the Olubadan and Council after I had advised them as to what they should do as the dispute was referred to the Olubadan and Council and not to me.

They eventually took a decision. I gave them a week to take a decision but they did not.

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Shortly after the death of Timi Akangbe I knew there was a dispute as to his successor. I was then an S.D.O. under a Resident. The Resident then knew there was a dispute. The Resident then decided that we should not interfere but leave the matter with the Olubadan and Council. I was anxious that the matter be settled as quickly as possible in the interest of Ede as the protraction of the matter was doing harm not only to the people of Ede but also to the people of Ibadan Division. It was no concern of the Government to interfere in making a decision for them as it was for them to refer their dispute to the Olubadan-in-Council if they could not settle it for themselves. After the matter was referred to the Olubadan-in-Council, I still hold that it was not the concern of Government to interfere although I gave advice to the Olubadan-in-Council. 10

As Resident I did conduct an enquiry before 5th December 1946. I conducted an enquiry on the 19th July 1946, at Ede. I convened and presided over the meeting. I conducted the meeting and personally held an enquiry.

I also held an enquiry with the Ibadan Inner Council. I did not preside over the Inner Council meeting: the Olubadan did. It was jointly conducted by me and the Olubadan. I sat with the Olubadan with the purpose of joining in the enquiry. I did not join in the decision. 20  
The Resident was not present at the enquiry of 9th May, 1946, Ex. "C 2." There was a Resident then in the Division. I did not ask a single question regarding the enquiry. I was not present at the meeting reported in Ex. "C 3." I was then the Resident. (He reads para. 18.) The instructions given were that the policy of the Government was not to interfere.

I was Resident when minutes reported in Ex. "C 4" were taken. The D.O.'s were carrying out instructions given to them by the Resident. (Reads para. 28.) What the S.D.O. said was correct.

I attended the meeting of the 23rd September, 1946, and tender the 30 minutes of the meeting marked Ex. "F." (Para. 2 of Ex. "F" read out.) That is correct.

I was present at the meeting reported in Ex. "C 7." I see decision taken in para. 31 at page. 5. This is a correct exposition of the Native Law and Custom. No candidate can be installed without the formal approval of the Olubadan-in-Council.

The Olubadan-in-Council is a separate body from the machinery for selecting a Timi but in it rests the right of approving of the candidate selected and the right of approval includes the right of rejecting, and, in case of dispute, the right of enquiry before conveying approval. 40

This is my present opinion. I have held this opinion for some considerable time.

The Counsel put in a reply to Ex. "B" which I found satisfactory. I believe the Plaintiff was present at the enquiry at Ede on the 19th July, 1946. I did not hold any enquiry to which I invited the Plaintiff to attend to state his claim. He was invited by the Olubadan-in-Council. I was not present when the Olubadan-in-Council decided in 2nd Defendant's favour.

Ex. "C6" was forwarded to me.

Three Olubadans died during the dispute—the first Olubadan was Okunola Abasi. No recorded decision was made in his lifetime. I don't know if any decision unrecorded was made.

No decision was made in the time of Olubadan Fagbirin (Ex. "C6" para. 9 was read). The minutes are correct.

The chiefs of Ede were asked to come and hear the decision according to Ex. "E." The Ede chiefs did not all agree with the decision of the Olubadan-in-Council. It was the last flash in the pan.

10 I said that everybody knew the facts and that no further enquiry was needed. I tender my letter of approval dated the 7th December, 1946, marked Ex. "G." The telegram at the back was addressed to the District Officer Ibadan, tendered and marked Ex. "H."

It is not contrary to custom to appoint two obas consecutively from the house. I believe this has happened before at Ede. I am not certain of the house. I see no reason why it should not happen if the candidate is acceptable to the people. I believe it can happen and that it has happened. I cannot give any specific instances.

20 I said the majority of the chiefs entitled to select supported the 2nd Defendant's candidature. Their names are in the Minutes of Ibadan Inner Council. The views expressed in Ex. "H" are right.

I did not know when I wrote Ex. "G" that 2nd Defendant was not selected according to Native Law and Custom. It was not the Plaintiff who was entitled to be selected as against the 2nd Defendant.

In May '46 the Ibadan Council found that Memudu had not been properly selected. I accepted their finding as being correct.

I suggested that Memudu should be appointed in October probably because the Olubadan himself was supporting him. I was not influenced by the views of a particular Olubadan.

30 The Olubadan-in-Council refused to accept Memudu because they found out that his candidature did not represent the feeling of Ede people; it was suggested that the people should become more unanimous. The Kingmakers did not come into agreement about him. I don't think the Kingmakers did reach any unanimity before the 2nd Defendant was selected. No, they did not reach unanimity. I was present at the meeting of the Inner Council of Ibadan at which the question of one of the contestants having sought the assistance of the Alafin came up for discussion. All the members of Council were indignant about such a procedure. It was discovered that Memudu was the contestant who  
40 approached the Alafin (para. 27 of Ex. "C7" was read out). I remember the Members saying what is reported. Oyatunde who became the Olubadan when the decision was taken was present at the meeting as the Osin Balogun. Oyewusi was also present when the decision was taken.

Memudu was also present when the decision was taken; he had then become the Otun Balogun. Amodu also was present when the decision was made.

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Pyke-Nott,  
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All the Councillors who were indignant at Memudu's approaching the Alafin were also present when the decision was taken. They conducted the enquiry. I am unable to say how the Olubadan and Council approached the question. I certainly did not approach it with any bias. No interference by the Alafin made any difference to my views at any time.

*No Exam.*

*Exam. by Court :*

Ex. " B " contains the views of Olubadan Fagbirin conveyed to me Ex. " B1 " is a letter from the Olubadan to the Senior chiefs of his Council attaching a copy of letter Ex. " B." The chiefs replied by Ex. " D." 10  
I have seen Ex. " C6." I see paras. 7 and 9 of the exhibit. There are no minutes recorded in support of this paragraph.

I see para. 18 of Ex. " C5 "; that was what the chief said. In para. 22 of Ex. " C5 " the Olubadan denied that they had ever reached any agreement in favour of the 2nd Defendant.

The original title of the head of Ibadan is the Bale. The title was changed to Olubadan approximately about 1935. The Bale had a Council. When the title was changed to that of Olubadan, the Olubadan also had a Council. I have seen the minutes of the Council of the 15th April, 1946, now tendered and marked Ex. " J." I was present at that meeting. 20  
Para. 25 appears to have been badly worded. At the time the only paper that was through was about Memudu. At the time I believed Memudu was the only person whose approval or rejection then came before the Council.

The question of enquiry between him and the 2nd Defendant had not then arisen.

I don't know the grounds of the decision of the Olubadan and Council in favour of the 2nd Defendant.

With consent of Awolowo—Briggs tenders Public Notice No. 10 of 1947 in Gazette No. 2 of 2nd January, 1947, marked Ex. " K." 30

## EVIDENCE of 5th Witness, Isaac Babalola Akinyele.

*In the  
Supreme  
Court of  
Nigeria.*

*Defendants'  
Evidence.*

*Xd. by Briggs :*

5th witness for defence. ISAAC BABALOLA AKINYELE, sworn on the Bible, states in English language as follows :—

I am the author of The History of Ibadan.

I have studied Native Law and Custom of Ibadan people.

I know the town of Ede ; it is subordinate to Ibadan.

10 The town is ruled by a Timi. If the town cannot agree on the selection of their head they refer the matter to Ibadan Inner Council.

It sometimes happens that a ruler has a father living. The present Awujale of Ijebu Ode had a father living when he came to the throne. The Iyalode at Ibadan has a voice in the political matters affecting Ibadan. I was one of the signatories to Ex. "D." Olubadan Fagbirin in a meeting agreed to the appointment of 2nd Defendant. A letter of recommendation was prepared and he refused to sign a letter to that effect. He later stated that he was no longer in favour of 2nd Defendant. Then we wrote Ex. "D." The position then was that Olubadan was on one side and the Council on the other.

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Babalola  
Akinyele,  
16th  
January  
1948.

20 *Xrd. by Awolowo :*

I have been in the Court since morning. It is not repugnant to Native Law and Custom for a King to have a father living. There is a saying "A ki mo baba oba" which means in English "It is not proper to know the father of an Oba." That means an Oba must not have a living father.

I don't know what happens in other places besides Ibadan what happens when an Oba dies and another is to be selected in his place.

I am not versed in the Native Law and Custom governing the appointment of a Timi of Ede.

30 The Olubadan denied that the Council and himself had agreed on the 2nd Defendant. We were not influenced to change our mind.

I was not a member of the Inner Council in May 1946 but in October.

*No Rcn.*

*Xrd. by Court :*

Whenever the Council met to discuss important matters we used to have the minutes of the proceedings taken. I don't know if the minutes of the proceedings at which Olubadan Fagbirin and his Council agreed on the selection of the 2nd Defendant were taken.

40 Besides the case of the Awujale, I cannot tell the Court the name of any other Oba who reigned in the lifetime of his father.

I know the Awujale got to the throne through his mother line and not the father. The Yoruba saying applies to the case of an Oba who claims or gets to the throne through his father.

Adjourned till the 17th instant.

(Sgd.) O. JIBOWU.  
J.

**EVIDENCE of 6th Witness, Obadamosi Adedayo.**

Resumed Saturday the 17th day of January, 1948.

*Defendants'  
Evidence.*

*Ad. by Briggs :*

No. 50.  
Evidence  
of 6th  
Witness :  
Obadamosi  
Adedayo,  
17th  
January  
1948.

6th witness for defence. OBADAMOSI ADEDAYO, male, Yoruba, sworn on Koran, states in Yoruba language as follows :—

I am the Ayope of Ede. I am one of the Kingmakers at Ede. I am under the Babasanya.

There are 6 Kingmakers at Ede, namely, Jagun Babasanya, replaced by me, Ikolaba, Balogun, Agbakin and Otun Balogun. There are four lines of chiefs. The heads are Balogun, Jagun, Babasanya, Ikolaba. 10

There is a Babasanya now ; he is not a Kingmaker now. I have taken his place. I know when the last Timi died.

After his death four of us went to meet the D.O. viz :—Balogun, Jagun, Areago and myself. Areago is not a Kingmaker. The D.O. asked us to bring the man to succeed the late Timi. He asked us to see him two days later and we returned home.

On the appointed day the four of us again went to the D.O. The D.O. asked us for the man selected. Jagun turned to the Balogun and said " There you are." 20

The Balogun said we would go and consider about it.

Jagun there and then nominated Memudu. The Balogun said he had no hands in their choice. I said the same.

Two days later we went again to the D.O. without the Kingmakers meeting by themselves. The D.O. asked us what we had decided. The Balogun told him that he had not yet consulted with his chiefs and therefore was not in a position to nominate any one. We returned home and returned to the D.O. the third day without holding a meeting.

The D.O. gave us five days to hold our meeting and select a candidate ; he threatened to quarrel with us if we did not make a selection before then. 30

Four days later I went to the Balogun on his invitation.

The Balogun told me it was necessary for us to write a letter to recommend our candidate. The Jagun, Balogun, myself and Areago were present.

The Iyalode and the Lemomu were not present. Agbakin and the Otun Balogun were not present. Ikolaba also was not there. I thumb printed the letter Ex. " A 2 " now read over to me.

He did not get a reply and so wrote a reminder to which I affixed my thumb print. 40

The day I executed Ex. " A 2 " was the first time I met with the others. I put my thumb impression on Ex. " A 2 " because the Balogun asked me to. The Balogun and the Jagun are my seniors in rank. I put my thumb impression on another paper recommending Memudu besides Ex. " A 2."

I know the Ikolaba. As far as I know he was not consulted.

The six Kingmakers were not unanimous about the selection of Memudu because the Otun Balogun, Ikolaba and Agbakin did not meet with us.

There was no unanimity between the Kingmakers before the 2nd Defendant was installed. We all supported him after he was selected for us.

I was one of the people who wrote recommending 2nd Defendant to the Resident, D.O. and the Olubadan. The 2nd Defendant is a member  
10 of the same family as the last Timi.

I gave evidence at the enquiry in Ibadan. I told the Council exactly what I have now told the Court.

I did not attend a meeting and my name is not on letter Ex. "A 5." I did not agree with the others on account of their inconsistency. When the Kingmakers cannot agree, each section goes his own way and the matter is referred to Ibadan. It was done in this case, I remember the meeting held in Ede Council Hall about 18 months ago.

I know Timi Mosunloye, Oyelakin, Ipinnoye and Akangbe.

The Kingmakers did not agree in the case of Mosunloye and the  
20 dispute was referred to Ibadan. Then two men were selected for the stool of the Timi.

Mosunloye succeeded.

*Xrd. by Awolowo.*

I have not told lies to the Court. I joined other people in writing letters in support of the 2nd Defendant. The letters were read over to us and we understood the contents before we made our marks on them.

(Ex. "A 8" is read out to the witness.) We wrote the letter. I told the Court this morning that I replaced the Babasanya.

My father as Ayope was a Kingmaker.

30 I replaced the Babasanya as Kingmaker.

The Agbakin also made his mark on Ex. "A 8"; he also appeared to understand it before he made his mark on it. We believe the contents to be true.

I was told that a former Agbakin was one of the Kingmakers. The elders told me this about three years ago. I understand that Agbakin Ayankunle was one of the Kingmakers.

I don't know if the present Agbakin is one of the Kingmakers.

When the present Timi was to be selected I learnt that the present Agbakin is one of the Kingmakers. I knew this before we wrote  
40 Ex. "A 8." Sanusi Adeniji was Agbakin before Timi Akangbe died. I was referring to the old Agbakin when I told the Court that Agbakin

*In the  
Supreme  
Court of  
Nigeria.*

*Defendants'  
Evidence.*

*No. 50.  
Evidence  
of 6th  
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Obadamosi  
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17th  
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1948,  
continued.*

*In the  
Supreme  
Court of  
Nigeria.*

is a Kingmaker. When I mentioned Agbakin as a Kingmaker I mean the present Agbakin Sanusi Adeniji. We mentioned his name in Ex. "A 8"; if his name is not there, then the writer has made a mistake.

*Defendants'  
Evidence.*

I have known for a long time that the Jagun is one of the Kingmakers. I knew this from my youth.

No. 50.  
Evidence  
of 6th  
Witness :  
Obadamosi  
Adedayo,  
17th  
January  
1948,  
*continued.*

Rev. Taiwo did not write a letter for us. We wrote a letter about 17 months ago. I joined in writing him letters to recommend Memudu. I later joined others to write to recommend 2nd Defendant. (Ex. "A 11" is read out to witness.) We did not say that the Jagun is not one of the Kingmakers. 10

The junior chiefs cannot change the decisions of the Kingmakers provided they are informed of them.

I was not informed of the selection of Memudu. The minor chiefs under the Balogun were not informed.

The Areago is not one of the Kingmakers. He is a minor chief under the Ikolaba who sends him on errands.

I was present when the Balogun spoke at Mapo Hall. I heard him mention Areago among the Kingmakers.

Agbakin stated that Areago is not one of the Kingmakers.

It is true the Agbakin did not speak on the day in question. 20

*Xxd. by Court :*

I was not forced to put my thumb impression on Exs. "A 2" and "A 3". The 2nd letter was written about 21 days after the first. I am not a slave to either the Balogun or the Jagun. I was in possession of my senses when I put my thumb impressions on the two letters.

When I learnt that the chiefs under the Balogun were not told of the selection, I then went over to the other side. It is not true that I was threatened with arrest by the D.O. if I did not sign the papers.

*No Rxn.*

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## No. 51.

## EVIDENCE of 7th Witness, Sule Olatejo Longe.

*In the  
Supreme  
Court of  
Nigeria.*

*Xd. by Briggs :*

7th Witness for Defence. SULE OLATEJO LONGE, male, Yoruba, sworn on Koran, states in English language as follows :—

*Defendants'  
Evidence.*

I am a Councillor in the Ede Council. I am one of the chiefs of Ede. I am a member of Lagunju family from which the Plaintiff comes. He is my first cousin. I live at Ede. I am collecting the history of Ede.

No. 51.

Evidence  
of 7th

Witness :

Sule

Olatejo

Longe, 17th

and 19th

January

1948.

10 I wrote the death of the late Timi. I contested the seat and was unsuccessful. I have studied our native law and custom. On the death of a Timi, the Kingmakers meet with all the chiefs and after the burial, the Kingmakers with the junior chief who is the popular man for selection. The selection is made from eligible candidates. Eligible candidates must be men. There are ruling houses. The rotation was at first strict until the reign of Timi Lagunju. There was civil war after he had reigned for seven years. Olunloyo was then installed in his stead. Since, the rotation has not been strict.

On this occasion about 3-6 of us contested the stool. It is for the Kingmakers to choose the house and choose the candidate.

20 The number of the Kingmakers varied from time to time. Before the advent of the British Government, there were only four Kingmakers consisting of the Headchiefs, viz.: Babasanya, Jagun, Balogun and Ikolaba.

Two more men had been added, viz., the Otun Balogun and the Agbakin.

30 According to our custom the Kingmakers must agree, otherwise there would be a deadlock when it should be referred to our overlord, the Olubadan. This happened once to my knowledge when the father of Songodipe whose name I don't now remember and Abidogun father of Timi Ipinloye were contestants. The Kingmakers could not agree and Timi Mosunloye, a third candidate, was selected. Timi Akangbe died in my presence. We had a meeting about March, 1946, with the Acting Resident, Mr. Matthews, at the Rest House. He asked for the procedure in selecting a new Timi and I believe the Balogun told him there were six Kingmakers. I took minutes of the meeting. I tender it, marked Ex. "L." I took minutes as Council Clerk.

40 I was present when the name of Memudu was given out to the D.O. as the man selected. The Balogun was reluctant at first to make the announcement. When he made the announcement, Rev. Taiwo objected. I expected that I would be nominated but when I was not nominated I promised to support Plaintiff. There was no other objection. At the next meeting the D.O. complained that he had received letters complaining about him.

I later attended the meeting held at Ibadan. All Kingmakers and contestants were invited to attend Ex. "C 1" is a copy of the letter. I received it as Council Clerk. I sent to all the Kingmakers and the contestants.

*In the  
Supreme  
Court of  
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The 2nd Defendant attended the meeting. The Plaintiff did not but asked me to represent him. I tender the minutes of Ede Council Meeting held on the 19th July, 1946, marked Ex. "M."

*Defendants'  
Evidence.*

The D.O. asked me to convene the meeting. The Resident attended the meeting.

No. 51.

*Xrd. by Awolowo :*

*Evidence  
of 7th*

*Witness :*

*Sule*

*Olatejo*

*Longe, 17th*

*and 19th*

*January*

*1948,*

*continued.*

I started to study the history of Ede nine years ago when I returned to Ede. I discovered about seven years ago that Agbakin and Otun Balogun were also Kingmakers. I was also a Councillor in March, 1946, as a Councillor I had the right to take part in the proceedings of the Council. I felt I should not join in the discussion about the succession as I was a contestant. 10

(Reads page 2 Ex. "L.") He replied in the affirmative that the Kingmakers were well known. The Balogun gave the names of the Kingmakers. It is correct that a candidate should not be selected from the same House as the last Timi. I helped the supporters of the Plaintiff to write certain letters. Ex. "A 4" is one of them. I witnessed Ex. "A 5" as Councillor. I saw Ex. "A 2" only a few days ago. I see Ex. "A 3" for the first time. I wrote Ex. "A 5" on instruction of the signatories. The recommendation referred to is the previous letters written. I did not see the letters written after the announcement. I don't know that Kingmakers were referred to. 20

*Xrd. by Court :*

The Kingmakers referred to are those whose names had been disclosed to the Resident.

I was present at the enquiry at Ibadan on the 9th May, 1946. I did not hear the Balogun and the Jagun speak as they were called to give evidence before me.

Oloro is the other name for Lagunju House. I did not tell the meeting that there were six and not five Kingmakers. I did not because Resident wanted the Plaintiff to lose his candidature. 30

The minutes at pages 10 and 11 of Ex. "C 2" read to me are accurate.

I don't know whether the chiefs accompanied the Plaintiff home after being presented to the D.O. as I left with the D.O.

After the name of a man has been submitted to the Kingmakers, it is the custom for the Kingmakers to submit the name to Ifa oracle.

It is the custom of Ede that two consecutive Timis must not be chosen from the same house.

It is not the custom that all Timis must be descended from a previous Timi on the male side. Timi Lasiyi, the eleventh Timi at the Orile or homestead did not. I am not surprised that the Agbakin signed a letter excluding himself from the list of Kingmakers. 40

The Jagun has ever been a Kingmaker and any evidence to the contrary is untrue.

There were three Kingmakers originally. They were the Jagun, the Ikolaba and the Balogun.

*No Rxn.*

*Xcd by Court :*

2nd Defendant's father, Lawani Oyebisi, is at Ede. The only other Timi who had a father living was Timi Lasiyi who got to the throne through the female line.

Adjourned till the 19th instant.

(Sgd.) O. JIBOWU,  
J.  
17/1/48.

10

*In the  
Supreme  
Court of  
Nigeria.*

*Defendants'  
Evidence.*

No. 51.  
Evidence  
of 7th  
Witness :  
Sule  
Olatejo  
Longe, 17th  
and 19th  
January  
1948,  
*continued.*

Resumed Monday the 19th day of January, 1948.

7th Witness SULE OLATEJO LONGE, recalled by Court, sworn, states as follows :—

I signed Ex "A 4" as witness to mark. There was a huge crowd that day at the Balogun's compound. Most of the men who signed Ex "A 4" were present. Olu Iyalode was not present but she was represented by Asiwaju Iyalode. The thumb impression on Ex "A 4" is that of Asiwaju Iyalode. She made her thumb impression against Iyalode's name. That is the only person who was not present that I can remember.

20

I witnessed the thumb impressions to show that I was present when the marks were made. The others whose thumb impressions I witnessed were present and made their marks in my presence.

I also witnessed the marks on Ex. "A 5."

I did not witness all the signatories. I witnessed some and the N.C.C. the others.

I witnessed 1, 14, 8, 9, 10, 11, 12, 13 and 5.

I know the other signatories Nos. 2, 3, 6, 7, 15, 16, 17, 18, 19—23, 24, 27, 28, 29, 30, 31, 32, 33, 35, 36 and 37. I saw them all there save No. 6 who sent a representative, also Nos. 18 and 15.

30

The N.C.C. and I were together when the people came. I left him to attend to the call of nature and later to attend to the telephone call. Ibitoye is the N.C.C. he is not here.

Both Counsel are asked if they wish to ask the witness any question and they say they don't wish to.

**CROWN COUNSEL'S ADDRESS TO COURT.**

No. 52.

Crown  
Counsel's  
Address to  
Court, 19th  
January  
1948.

The Crown Counsel addresses the Court.

The jurisdiction of this Court is vested by the Supreme Court Ordinance. Refers to section 17 (1). Says mass of evidence on native law and custom is antique and out of date. It is not for Defendants to set up native law and custom as regards the Kingmakers. Many discrepancies in the evidence on both sides.

Candidates presented to Kingmakers—many contestants.

Longe to be believed that candidate to be selected from any princes 10 and that all princes eligible to contest.

Who are the Kingmakers? Memudu started with 3 and ended at 5. Balogun started with 3 and rose to 6, added 1 and took it away. Jagun started with 5 and increased to 6.

Timi of Ede, Ayope and Longe say 6. Balogun did not include Areago. Jagun included Areago and Agbakin.

Evidence that Agbakin signed a letter which shows he was not a Kingmaker.

The Iyalode said to be a Kingmaker. Refers to "C 2" and "C 4." 20 This is echoed by other people.

Recommendation for last Timi did not include only 7 names but 15.

Findings in "C 1"—body of Kingmakers admitted number unknown agreed on the ancient line there were three.

*Unanimity.* Alleged that Kingmakers must be unanimous before a man can be properly selected.

Kingmakers not unanimous in the case of Plaintiff's candidature.

Ikolaba, an old man, not too old to talk. Representative attended certain meetings—Raji Akinloye's evidence not to be believed that the Ikolaba had anything to do with the selection. Ayope said he signed because he was prevailed upon by the Balogun and Jagun. Told same 30 story in "C 2."

Agbakin never agreed.

Balogun admitted that some Kingmakers were for Plaintiff and others for 2nd Defendant.

Should there be consultation with other chief?

Defence stated it was necessary. Necessary that chief should be popular with junior chiefs. Alleged Balogun did not consult his junior chiefs. Exhibit "C 2" Balogun admitted it is necessary for them to be consulted—Ayope said he did not.

Refers to para. 31 of "C 4." 40

*Rotation.* Alleged to be strict—but it has not been for many years. It was strict until there was a Timi who was expelled and later reinstated.

Might be the custom in the past but not now. Evidence of this custom depends on witnesses and documents in evidence. All custom in this country is variable and loose.

No evidence of custom of which the Court cannot enforce observance. Exhibits "A 4" and "A 5," "A 2" and "A 3"—not reliable.

A great number of people served present; some sent representatives others not. Such documents are to be suspected. Theory that seems to fit is that it is the majority of chiefs that matter and if the chiefs cannot agree, dispute is to be referred to their overlord—the Olubadan-in-Council.

Refers to Ex. "M"—Balogun's statement supported this. Akinyele, Timi also referred to it. Case of Mosunloye was referred to the Bale-in-Council. Bale put in a third man.

- 10 Refers to Ex. "C 8" para. 27, Ex. "C 3" para. 33.  
Plaintiff stated he had not heard of it before.

The Olubadan by himself cannot approve. Most of the trouble in this case was due to dispute between the Olubadan and his Council.

See "C 5" para. 8—evidence of Resident and Akinyele. Two-thirds majority with Council. Olubadan cannot act without his Council (Native Authority Ordce. sec. 19). Asks the Court to hold that dispute arose when Ede people went downwards and forwards to the D.O., Oshogbo. See para. 25 of "C 3."

- 20 *Ifa Oracle*. Suggests that it should be consulted before installation.  
Consulted by Kingmakers badly constituted.

Not consulted in case of 2nd Defendant before installation as the circumstances did not permit of it. It is not an essential custom to invalidate 2nd Defendant's selection by the Olubadan. It was the duty of the Jagun to see about the consultation.

*Two Timis from same House in succession*. Rotation not strict, hence it might happen that two Timis might follow each other from the same House.

*Father of present Timi*. Asks Court to believe 2nd Defendant that he is a posthumous son. Natural for him to think of stepfather as father.

- 30 Ede is not large. Other Kingmakers must know of the house from which the last Timi came. With their eyes wide open 2nd Defendant was put forward—*vide* "C 3." Majority of chiefs at Ede support him.

*Written Agreement re Memudu*—in the lifetime of the last Timi—agreed not good native law and custom.

Hasty way in which Memudu's name was put forward due to the fact they thought they should implement their promise.

Majority of chiefs put 2nd Defendant's name forward and their overlord gave in their favour.

- 40 Refers to "C 3" and "C 4." They came four times to Ibadan Council ("C 2," "C 3," "C 4" and E).

*Jurisdiction*. No reported cases under the A. and D. of chiefs Ordinance as amended—section 2 (2) of the Ordinance relevant. Every word to be interpreted and words given their ordinary meaning.

The Ordinance seeks to avoid what has now happened.

*In the  
Supreme  
Court of  
Nigeria.*

—  
No. 52.  
Crown  
Counsel's  
Address to  
Court, 19th  
January  
1948,  
*continued.*

*In the  
Supreme  
Court of  
Nigeria.*

No. 52.  
Crown  
Counsel's  
Address to  
Court, 19th  
January  
1948,  
*continued.*

Facts to be proved :—

(1) Dispute.

(2) Due enquiry and consultation with persons making the selection.

The Resident acted *bona fide* and listened to both sides.

Unnecessary for the contestants to be present—enquiry to be made from persons to make the selection—interested contestants will probably be excluded.

Enquiry is into the machinery of selection. Enquiry 19th July, 1946—Ex. "M"—disposes of the point. 10

Resident presided—immaterial that Resident came by coincidence.

Exhibit "F," (28/10/46), "C 5" and "E." Resident presided, took active part in the proceedings. The approving body also present.

Cases not available in point. Nearest are cases dealing with the Medical Council.

Refers *G. Medical Council v. Spackman*, 1943, A.C. 627.

Enquiry and consultation broader than enquiry under the Medical Act. The Doctor had to be present as his conduct was in question—So Selectors have to be present to be consulted.

*Lord Simon* states the Medical Council themselves must make enquiry. 20

We don't rely on "C 2," had enquiry on 19th July, Ex. "M."

In this case no man is accused and there is no necessity for the Plaintiff to be present at the enquiry.

Refers *Labouchere v. Lord Wharncliffe*, vol. 13 Ch. D. 346.

*Club Case*—Refers dictum of Lord Jessell. Says that it is not necessary under the Ordinance to hold a public enquiry at all as long as enquiry had been made from persons who were to select.

Refers to *Robinson v. Minister of Town and Country Planning* 177 L.T. 376—This is only a parallel—Wording of the Act is different from that of the Ordinance in point. 30

The Minister could not on knowledge obtained in any way. See judgment of M.R.

Resident could act on the knowledge he had obtained in this matter.

When can the enquiry be held? Answer—the enquiry may be held at any time—Resident need not wait until after the appointment has been made.

W.A.C.A. in its judgment says that it is not open to Plaintiff to appeal from the decision of the enquiry.

Refers to *Leeson v. G. Council of Medical Education* vol. 43 Ch. D. 366—How should enquiry be conducted? 40

Refers to *Maclean v. The Workers Union* 1929 1 Ch. D. 602, Justice Mann's judgment.

*Hawkins v. Antrobus* 17 Ch. D. 615 reads from page 631—Lord Jessell's judgment—decision cannot be attacked for being unreasonable.

Also to *Liversidge v. Anderson*, 1942 A.C. 206—Court cannot ask for reasonable grounds on which the Minister acted.

Unless *mala fides* is proved against the Governor in this case the Court has no jurisdiction if it is satisfied that enquiries had been held.

P. 6 judgment W.A.C.A.—*Mala fides*—The Resident is not before the Court.

No *mala fides* proved against Olubadan and Council. See “C 7,” “C 8,” “C,” “C 4.”

10 All evidence shows that no *mala fides* can be imputed to 1st Defendant —they avoided making up Ede’s Kingmakers’ minds for them. Almost bullied them into making up their minds. No proof of bribery or corruption. There is no evidence on which the Court can find that they acted dishonestly.

Refers to “C 8” para. 19, “C,” “F,” “C 5” and “E,” also to “M” and the conduct of the Resident in the box.

Submits that if a majority of chiefs agreed to submit their dispute to the Olubadan, that is the end of the matter as whatever native law there was was rejected.

*In the  
Supreme  
Court of  
Nigeria.*

No. 52.  
Crown  
Counsel’s  
Address to  
Court, 19th  
January  
1948,  
*continued.*

No. 53.

**PLAINTIFF’S COUNSEL’S REPLY TO COURT.**

20 *Jurisdiction.*

Crown Counsel has told the Court that statutes are to be construed in their ordinary meaning—that is correct—but submits that when words have received judicial interpretation, they thereafter bear the meanings ascribed to them.

Submits that the words “Due enquiry” have been judicially interpreted in many cases including *Spackman* case. Submits that “due enquiry” implies that all those persons whose interests are likely to be affected ought to be invited to the enquiry. In chieftaincy disputes the interests of the contestants are affected by the enquiry to be held.

30 Many contestants at first but reduced to two eventually.

Refers to Ex. “C 5” and Ex. “J” and *Robinson* case. In that case there need not be an enquiry at all.

Refers *B. Johnson and Co. (Builders Ltd.) v. Minister of Health* 1947 2 A.E.R. 395 and 396 material facts at enquiry should be conveyed to the parties interested in case they wished to contradict them. The enquiry consists of administrative and quasi judicial phases. The quasi judicial phase starts when objection is raised.

40 Submits that when Plaintiff and the 2nd Defendant entered into the contest, *quasi lis* arose and they are *quasi* parties and the Resident became the *quasi* judge under the A and D of Chiefs Ordinance of 1930 as amended by the Ordinance of 1945. Submits they are the persons to be invited to the enquiry before the Resident so that they may give evidence as to their qualifications, eligibility etc. Intention of Ordinance to settle the dispute expeditiously. Governor or his deputy, the Resident, can only intervene when dispute has arisen.

No. 53.  
Plaintiff’s  
Counsel’s  
Reply to  
Court, 19th  
January  
1948.

*In the  
Supreme  
Court of  
Nigeria.*

No. 53.  
Plaintiff's  
Counsel's  
Reply to  
Court, 19th  
January  
1948,  
*continued.*

Resident must first acquaint himself with the Native Law and Custom involved. Then he should make enquiry and consultation. Question of Law is involved and the Resident therefore must hear both sides.

Refers to pp. 396, 401 and 404 of 1947 2 A.E.R.

Refers to *Franklin v. Minister of Town and Country Planning*, reported in 176 L.T.R. p. 316.

Refers words and phrases judicially defined by Burrows vol. 2 page 146 *re* "Due Enquiry." Submits that the points in issue are (1) Title of the ruling House which prevents a fresh candidate. (2) The eligibility of the candidate. (3) The number and identity of the Kingmakers. 10  
(4) The procedure to be followed in making the selection.

Submits that the enquiry must be independent of consultation with persons concerned in the selection. If they are meant to be from the same persons the word "from" would have been put after "enquiry."

Submits that the meeting at Ede Council is not an enquiry within the meaning of that word in Sec. 2 (2).

The Resident there gave a lecture—no enquiry as to the number and identity of the Kingmakers, whether the Plaintiff has or has not a better title than the 2nd Defendant. Reads Ex. "M"—Resident emphasises that Government was not to interfere in the selection. He submits that 20  
A and D of Chiefs Ordinance has abrogated the Native Law and Custom of referring their decision to the Olubadan-in-Council for decision.

It is for the Resident to investigate and not the Olubadan-in-Council. He is the sole judge without a jury or assessor. The Olubadan-in-Council is not part of the machinery of selecting a Timi at Ede but a separate body. Says reference to the Olubadan-in-Council in case of dispute is setting up another tribunal besides the Governor.

Submits further that if Olubadan-in-Council is held to be a part of the machinery of selection at Ede, when the Olubadan and Council gave their decision, to which the chiefs did not all agree, it was incumbent on the 30  
Governor then to hold an enquiry.

On his own showing, Ex. "E," the Senior Resident said no further enquiry was necessary.

*Quasi lis* arose and he declined to exercise his power of enquiry.

Submits it was necessary for the Resident as Governor's delegate to hold an enquiry to which the Plaintiff and 2nd Defendant should have been invited to consider the eligibility of the houses and of the candidate. After this the Resident was to consult with the persons who made the selection. After consulting the selectors in each case and finding out which person was entitled to be selected, he should then decide. He 40  
agrees that from such a decision there would be no right of appeal.

Refers to vol. 31 Halsbury's Laws, 2nd Edition para. 366 at page 498 ; also to Sec. 645 *ibid.* Ordinance to be construed strictly against the legislature when object is to oust the jurisdiction of the Court. Refers also to para. 657. Says procedure laid down by the Ordinance has not been strictly followed.



The Resident admitted in the box that he was not concerned with the qualification of the contestants. It was improper for him to base his decision on the result of an enquiry held by the Olubadan-in-Council.

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Refers to Ex. "C5"—He gave four alternatives to the Olubadan-in-Council. He obviously had not decided in favour of the 2nd Defendant then. He left everything in the hands of the Olubadan-in-Council.

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At the time he was only threatening to use his power under the A and D of Chief Ordinance. His presence in the Ede Council was casual and coincidental.

- 10 The Resident saw Ex. "C2" in May, Exs. "B" and "D1" yet in October he found it difficult to refute the arguments of the Olubadan.

(The date in Defence—para. 4 of the first and para. 5 of the 2nd Defendants' should read July instead of May.)

The Defence relies on the enquiry held by the Olubadan and not by the Resident.

*Mala fides.* Says in spite of the fact that the Resident has not been joined as a party, if the Court found he did not act honestly but from bias, the Court can so find.

- 20 Ex. "C7," after they had made up their minds to rule out the candidate who appealed to the Alafin. Only Fagbinrin was honest enough to deal with Plaintiff's claim honestly and without bias. All what happened afterwards was a smoke screen. Ex. "C6" page 9 suggests a decision in favour of 2nd Defendant in the time of Okunola Olubadan. Okunola Abasi died in June, 1946. It is not known when the decision was made. The Olubadan and Council only carried out their vow to rule out Plaintiff.

- 30 *Native Law and Custom.* Has the Plaintiff been properly selected and is the 2nd Defendant's selection proper? Question of fact based on what is native law and custom at Ede. What obtains from time immemorial will be evidence of custom. Is the custom reasonable? Is the custom certain? Has the custom been continuous? With regard to continuity—Has there been an interruption or modification—Custom to present gifts to Olubadan on selection of a Timi, the presents may be in cowries, cash or cheque.

If custom proved, it will have the force of law and cannot be revoked. Vol. 10 Halsbury's Laws pages 1, 6, 7, 8, 9, 11, 12, 14, 19, 21, 23, 25, 28 and 30 pp. 2-22.

Reasonableness referable to the inception.

- 40 Refers to Browns Legal Maxims 10th Edition p. 624 and 627 in *Eshugbayi Eleko v. Nigerian Government* 1931 A.C. 662. Agrees onus of proof on him to prove that Custom complied with in case of Plaintiff and not in case of the 2nd Defendant.

Custom is proved that there has been a body of people known as Kingmakers since foundation.

No interruption or cessation—although the number varied—mere fluctuation does not matter.

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Olden times Kingmakers only 3—Longe subscribed to this—Balogun, Jagun and Ikelaba. These three invariably included.

Proved also that Ifa oracle had to be consulted before installation—Senseless to consult after installation—purpose to ascertain whether the reign of the candidate would be peaceful and prosperous.

Proved presents were to be sent to the Olubadan or Bale in the past. Laoye admits the custom.

*Rotation.* Strict up to a time—then interruption ; fact remains no two Timis from same house in succession. Never happened in history. *vide* Ex. " L " p.6. 10

*Presentation of candidate.* Kingmakers decide on house, said to have to present name of candidate and consult Ifa. If accepted by Ifa then minor chiefs informed. This was the custom. Court to hold the custom proved. Popularity not test but acceptance by Ifa oracle.

Timi must be a warrior—all kings were powerful and strong men—but they were not the commander as Balogun is the commander.

*No. of Kingmakers.* Is it 5 or 6 ? Court to hold only 5—Balogun, Jagun, Ikolaba, Areago and Ayope (replacing Babasanya). Babasanya no longer a kingmaker—A new one installed but has not been restored. Agbakin and Iyalode no kingmakers—Jagun was too exhausted with 20 grumbling—Xtian—after 2 hours cross-examination was too anxious to shorten his time in the box.

Adjourned to 20th instant.

(Sgd.) O. JIBOWU  
J.

19/1/48.

Counsel's address continues : Tuesday the 20th January 1948.

*Awolowo* continues—

There is sufficient evidence before the Court that at the time material the Balogun, Jagun, Ikolaba, Ayope and Areago were the Kingmakers. 30 Ask Court to accept the evidence of Jagun. He was a chief, Oganla, in the time of Mosunloye. Defendant also admitted 5—refers to Exs. " A8 " and " A11." Agbakin and Otun Balogun not mentioned in the letters.

Tactics of supporters of 2nd Defendant was to manipulate the number of kingmakers to give themselves a majority. In Ex. " A11 " they contradicted their previous letter. In evidence they went up to 6 to make 4 supporters against 2 for Plaintiff. Asks Court to reject their evidence.

Refers to Ex. " L "—Agbakin and Otun Balogun were present. Longe was present also—Court to disbelieve him on the point. There was no dispute then and no one had then been selected. 40

Refers to Ex. " C2 "—Longe again did not connect the fact that 5 did not correctly represent the number of the kingmakers.

*Should kingmakers consult with junior chiefs or only report ?* Asks Court not to believe the populace had to be consulted before selection—

custom left this in the hands of only a few. The house to select and the oracle to decide the selection. This was the custom which has not been broken.

After Ifa has decided, the junior chiefs and others are informed.

Refers to Ex. "C8" paras. 21, 19, 20.

Views expressed by the S.D.O. as to Native Law and Custom correct—Although he as Resident seems to have changed his mind for reasons best known to him. Not native law and custom for the whole country to be sounded before selection.

10 The 2nd Defendant's selection did not satisfy native law and custom.

Writing of letters and recommending selected candidate are not part of native law and custom—this is an innovation introduced by the white rule.

Not being part of custom, it is immaterial how many people sign the letters—Iyalode and Imam are not Kingmakers—Iyalode represents the women and Imam represents the Mohammedan elements—this goes to show the community behind the Kingmakers—"A 2" addressed to the District Officer. Informing D.O. is not part of custom—done with a view to getting recognition for the selected candidate. No contradiction that

20 Areago brought gifts to Olubadan and met the Kingmakers and others with the D.O. After the Olubadan had received gifts and blessed the selected candidate, custom had been satisfied.

*Validity of signature* of Ikolaba on letters of recommendation—Court to find customary that an old sick chief usually send representative. Raji Akinloye—well-known accredited representative of Ikolaba—He had authority to represent Ikolaba and he in fact did.

If an oracle is an essential and indispensable part of the process of selection—to act otherwise is to incur the ire of the gods.

30 Submits *ultra vires* of 1st Defendant to override the decision of the Ede Kingmakers. The Bale or Olubadan alone is the person to approve of selection. Vide para. 9 of Ex. "C5." Submits Olubadan alone was the person to receive gifts, bless the selection and approve of the selection. His successor blessed the selection and challenged opposers to refute his arguments which were not done.

2nd Defendant was improperly selected—his house not eligible as the late Timi was from that house.

(2) He has a father living—native has to prostrate to his father—a king must not prostrate to anybody hence rule that he must not have a living father.

40 (3) Not presented by members of Ajeniju house.

(4) Ifa oracle not consulted before installation.

(5) He was not selected by Ede chief makers or a majority of them.

Ayope supported Plaintiff at first and signed two letters in support—Court not to believe second Defendant that Lawani Oyebisi Laoye is not his father. Court not to believe he gave gifts to Fagbirin; if he gave presents must be to his crooked supporters—no recorded minutes of selection of the 2nd Defendant in the time of Okunola Abasi—Court not to believe such decision was in fact taken.

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Plaintiff from Oduniyi house which is eligible. Kingmakers decided it was the turn of that house to select a Timi; the house according to custom sent Plaintiff's name. Ifa consulted and was propitious; sacrifices performed; customary gifts sent and selection blessed. Selection complete and irrevocable.

Plaintiff presented to D.O. after the people had smoothed their difference—Ayope not to be believed that they went four times. Longe stated only Rev. Taiwo raised a dissentient voice. No one else spoke—After this the Christian friends of the 2nd Defendant stepped in to upset what had been done. Ten thousand pounds spent, who by and to whom 10 were they given? Court not to accept Resident's evidence as regards Native Law and Custom at Ede—If he did not know the number and identity how was he able to decide the question of majority.

Resident never intended to hold an enquiry and did not hold one—his speeches show it is no intention of Govt. to interfere.

Refers to p. 385 of *Johnson's* case.

Ex. "A 13" *contra* to provision of A and D of Chiefs Ordinance and no effect in Law—refers to para. 31 of Ex. "C 7" Ex. "A 13" asks the Olubadan-in-Council to make the junior chiefs obey him.

"C 7" shows *mala fides* in the Olubadan and Council. 20

Asks for judgment.

Adjourned to 7th February for judgment.

(Sgd.) O. JIBOWU,  
J.

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before  
Judgment,  
7th  
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No. 54.

**PROCEEDINGS before Judgment.**

IN THE SUPREME COURT OF NIGERIA.

The Ibadan Judicial Division.

Holden at Ibadan. 30

Before His Honour OLUMUYIWA JIBOWU, Judge.

Saturday the 7th day of February, 1948.

I/14/47.

The Court recalls the Jagun to clear a point.

*Xd. by Court :*

OYEDUNMOLA sworn on cutlass, states as follows :—

When the dispute arose we had an Areago called Belo Makanjuola. He is here outside the Court. Areago Obadamosi is the same person as Belo Makanjuola. He was one of the signatories to the letters the Kingmakers wrote to recommend the Plaintiff. He is still on our side. 40

No Xxn. by the Crown Counsel or by Awolowo.

The Court rises a few minutes to come back to deliver its judgment.

(Sgd.) O. JIBOWU,  
J.

7/2/48.

No. 55.

## JUDGMENT.

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IN THE SUPREME COURT OF NIGERIA.

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

Before His Honour Mr. Justice OLUMUYIWA JIBOWU, Puisne Judge.

Saturday the 7th day of February, 1948.

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Jibowu, J.,  
7th  
February  
1948,

Suit No. I/14/1947.

Between MEMUDU LAGUNJU - - - Plaintiff

10

and

1. OLUBADAN-IN-COUNCIL

2. J. ADETOYESE LAOYE - Defendants.

## JUDGMENT.

The Plaintiff's claim in this action is as follows :—

“ The Plaintiff's claim against the Defendants is for an injunction to restrain the 2nd Defendant from performing the duties of the Timi of Ede, and from receiving the salary or stipend attached to the office of Timi of Ede.

20

2. The Plaintiff also seeks as against the Defendants a declaration—

(A) That the Ibadan Native Authority otherwise known as Olubadan-in-Council is not by native law and custom or by any other law qualified or entitled to override the choice or decision of the Ede Kingmakers in the selection of the Timi of Ede :

30

(B) that the selection of J. A. Laoye, Esq. (2nd Defendant), and his subsequent installation on 13th November, 1946, as Timi of Ede, by the Native Authority otherwise known as Olubadan-in-Council is contrary to native law and custom governing the selection of a Timi of Ede, is therefore null and void and must be set aside :

(c) that the Plaintiff is the person qualified and entitled by native law and custom to hold the post of Timi of Ede which became vacant on 24th January 1946 :

(D) that the Plaintiff, sometime in April or May, 1946, was duly selected by the Ede Kingmakers as Timi of Ede and that that selection was in accordance with native law and custom.”

Pleadings were ordered and filed.

The town of Ede is in Ibadan District in the Province of Oyo. The head chief at Ede is known as the Timi, who recognises the Olubadan as his overlord as a result of Ede town having been subjugated by the Ibadan people in the 19th century before the advent of the British Government.

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The Olubadan-in-Council is the Native Authority for Ibadan and District under the Native Authority Ordinance No. 17 of 1943, and the Timi of Ede and the Ede District Council have been created a Native Authority for Ede and District under the same ordinance but made subordinate to the Ibadan Division Native Authority.

The original title of the head of Ibadan was "the Bale," which was changed about 1935 to "the Olubadan."

Before the advent of the British Government a man selected for the post of the Timi of Ede must receive the approval of the Bale before he could be installed.

10

When the British Government took up the administration of the country the Bale had a Council and the approval of the Bale-in-Council had to be sought and obtained before a selected candidate for the stool of the Timi of Ede could be installed.

Now the appointment of a Timi has to receive the approval not only of the Olubadan-in-Council but also of Government as the Native Authorities and the Sub-Native Authorities have been made an integral part of the machinery of Government.

On the 24th January, 1946, Sanusi Akangbe, who was the Timi of Ede up to that date, paid the debt of nature, and his stool therefore became vacant. It became necessary for a successor to be appointed. There are four ruling houses namely, Arohanran, Agbonran, Ajeniju and Lagunju or Oduniyi Houses, from which the Timis have been appointed in the past.

The Plaintiff belongs to Lagunju or Oduniyi or Oloro House, and the 2nd Defendant is from Ajeniju House to which the late Timi, Sanusi Akengbe, also belonged.

The 2nd Defendant has been appointed the Timi of Ede and his appointment has been approved by Government; but the Plaintiff challenges the appointment on the ground that it has not been made in accordance with native law and custom and alleges that the Olubadan-in-Council and Government have acted *mala fide* in approving of the selection of the 2nd Defendant in preference to himself.

The 1st Defendant claims the right to approve or reject any candidate not properly selected according to native law and custom and alleges that they approved of the appointment of the 2nd Defendant and recommended it to Government as a result of public enquiry held at Ede in May, 1946, strictly in accordance with native law and custom which revealed that the majority of the chiefs and people of Ede were strongly in favour of the appointment of the 2nd Defendant in preference to the Plaintiff.

The 2nd Defendant alleges that the selection of the Timi rests solely with the Ede chiefs and that he was selected by the majority of the chiefs according to native law and custom. He claims that his selection by the majority of the chiefs of Ede was approved by the 1st Defendant.

The two Defendants deny *mala fides* alleged and state that the jurisdiction of the Court to hear the case has been ousted by the provision of Section 2 (2) of the Appointment and Deposition of Chiefs Ordinance No. 14 of 1930 as amended by Ordinance No. 20 of 1945.

The question of jurisdiction was once taken as a preliminary issue which I decided against the Plaintiff but, on appeal to the West African Court of Appeal, my judgment was reversed and the case was sent back for me to try the issues raised in the case.

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On the 4th February, 1946, the 2nd Defendant wrote a letter, Exhibit "A," to the District Officer i/c Ibadan Northern District, Oshogbo, with copies to the Senior District Officer, Ibadan, the Olubadan-in-Council, Ibadan and the Balogun and Council, Ede, applying to be made the Timi.

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10 On the 19th February, 1946, the members of Oduniyi House wrote letter Ex. "A1" to the Kingmakers of Ede with copies to the Olubadan-in-Council, the District Officers, Oshogbo and Ibadan, and to the Senior Resident, Oyo, recommending the Plaintiff for appointment as the Timi.

Curiously enough Ede affairs had become a matter for discussion on the 18th February, 1946, in the Ibadan Native Authority Inner Council Meeting even before the formal recommendation of the Plaintiff by Ex. "A1" was written. Paragraphs 20-31 of the Minutes of the Council Meeting Ex. "C7" show that an article had appeared in the Daily Service of the 14th February, 1946, charging the Alafin of Oyo and the Olubadan with interfering unduly in the Ede chieftaincy dispute.

20 It was disclosed that it was a fact the Alafin had written a letter to the Olubadan soliciting his support for one of the contestants. The Council members were indignant at the interference of the Alafin in such a matter. Chief Memudu, the Osi Balogun, stated that he was of opinion that the candidature of the contestant who approached the Alafin should be ruled out, if his identity was discovered, and Chief Oyewusi, the Osi Olubadan, and Amodu, the Ashipa Balogun, supported his views.

30 An extraordinary meeting of the Ede District Council was held at Ede, on the 1st March, 1946, and presided over by the Resident, Oyo Province. The minutes of the meeting were tendered in evidence and marked Ex. "L." After expressing sympathy with the Ede people on the death of the Timi, the Resident is reported to have stated; "There were in every town and village certain people who were Kingmakers. Their work was to appoint a successor to the vacant stool. These people were known by everybody. The Council replied in the affirmative." The Resident then asked the Balogun to give the names of the Kingmakers at Ede and he gave the names of five chiefs, namely, Balogun, Jagun, Ayope, Areago and Ikolaba. Of the five, four attended the meeting and the absent one was Ikolaba, who was shown to be sick and old. The other chiefs who attended the meeting were Babasanya, Otun Balogun,  
40 Seriki and Agbakin besides Councillor Longe and Taiwo.

The Resident asked from how many families the Timi was generally chosen and the Kingmakers replied "Five." The Kingmakers further told him that they always chose the best man from the next family concerned by rotation and that it was not their custom to choose two Timis from the same house consecutively. The Resident then advised the Kingmakers not to communicate their decision by letter to the Assistant District Officer so that unnecessary agitation before their recommendation reached the proper quarters should be avoided if possible. The Council agreed and he prayed for God's guidance for the Kingmakers.

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On the 9th April, 1946, a letter Ex. "A2," thumb impressed by the Balogun, Jagun, Areago, Ayope and Ikolaba and by the Iyalode and Lemomu, was addressed to the District Officer, Northern District, with copies to Olubadan and Council and the District Officer, Ibadan, recommending the Plaintiff for appointment to the vacant stool of the Timi.

On the 15th April, 1946, a meeting of the Ibadan Native Authority Inner Council was held and the minutes of the meeting tendered in evidence were marked Ex. "J." Paragraphs 23-31 refer to the discussion about the vacant stool of the Timi of Ede. 10

The Senior District Officer, Mr. Pyke Nott, wanted the Council to discuss the matter that morning and come to a decision which he might communicate to the Resident for the Government's approval but the Council would not be rushed and asked for time to consider the matter in view of protests they had received.

On the 17th April, 1946, the Ibadan Native Authority held an emergency meeting, the minutes of which were marked Ex. "C8"; paragraphs 19 and 20 of the exhibit show that the Senior District Officer, Mr. Pyke Nott, considered it improper for the Council to send representatives to Ede to enquire into what the Kingmakers had done as that 20 would undermine their authority. It was not necessary, according to him, that the candidate should be a Christian, Mohamedan or Pagan and the duty of the Council he thought should be to find out whether (a) the selection was made unanimously by the Kingmakers, (b) custom was followed during selection, (c) the Kingmakers were not influenced by outside interference, and (d) the candidate was in all respects a fit and proper person to fill the office. In paragraph 21 he said that the Ede Kingmakers *had already made their choice* and therefore, in his opinion, sending to Ede for further enquiries was unnecessary as it would only create unrest which might result in political trouble and prevent a decision 30 for years. He thought the Kingmakers had done their work and that it was the duty of the Council to consider it on the lines he had indicated and to afford recognition if satisfied.

Views of the Council members are expressed in paragraphs 22-33 and, in spite of the fact that the Senior District Officer was anxious for an early decision, the members asked for time to consider the matter.

On the 30th April, 1946, a reminder, Ex. "A3," thumb impressed by the Balogun, Jagun, Ikolaba, Ayope and Areago, was sent to the Olubadan and Council, Ibadan, requesting that the approval of their recommendation of the Plaintiff made in Ex. "A2" should be expedited. 40

On the 7th May, 1946, a letter Ex. "A4" signed and thumb impressed by 34 Ede chiefs, was written to the Olubadan-in-Council supporting the candidature of the Plaintiff and endorsing the recommendation of the Kingmakers.

On the 15th May, 1946, a letter, Ex. "A5," thumb impressed and signed by 40 Ede chiefs, was addressed to the Olubadan-in-Council, District Officers, Ibadan and Oshogbo, referring to letter Ex. "A2" and requesting that the Plaintiff be approved as the new Timi without further delay. Paragraphs 3-15 of the Minutes of Ibadan Native Authority Inner Council Meeting held on the 29th April, 1946, Ex. "C," shows that 50



the Council, which had decided to send delegates to Ede to enquire into the chieftancy dispute, had unanimously agreed that the Ede chiefs, the contestants and all the people concerned in the chieftancy dispute should come to Ibadan for necessary enquiries. The Senior District Officer, Mr. Pyke Nott, impressed on the Council the necessity for an early action.

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10 On the same day the Olubadan and Council wrote letter Ex. "C1" to the Senior District Officer, Ibadan, to inform him that it has been decided to hold an enquiry into Ede chieftancy matter on the 9th May, 1946, when the Ede chiefs, the contestants and the people concerned in the chieftancy dispute should be present with the Assistant District Officer, Ibadan Northern District.

On the 9th May, 1946, a special enquiry meeting into the appointment of a new Timi of Ede was held at Mapo Hall, Ibadan, by the Olubadan and Council at which the Senior District Officer, Mr. Pyke Nott, and the District Officer, Mr. Wilkes, were present. The minutes of the enquiry were tendered in evidence and marked Ex. "C2."

20 At this enquiry the Balogun gave the number of Kingmakers as four or five, the Jagun and Areago gave the number as five, the Ayope was not asked about the number of Kingmakers but he stated that it was the duty of the Kingmakers to select the right man from the right family. Councillor Longe also stated that it was for the Kingmakers to appoint and that the next house was Oloro house. He, however, contradicted himself when he stated that it was the duty of the junior chiefs to present the right candidate from the right family to the Kingmakers for approval. He stated also that the recommendation of the Kingmakers should be approved. He was asked whether the five Kingmakers held executive sway over the other chiefs and his reply was: "Most assuredly." He told the Council there was no precedent for junior chiefs presenting their own candidate.

30 Rev. Taiwo who represented Ede Progressive Union wanted a literate Timi. Adelu, the Osi Balogun, stated that all the chiefs irrespective of rank must be in the know when the new Timi is to be appointed and that he and eight other chiefs on the Balogun's side were ignored on this occasion. Laitan of Kubolaje House wanted to be appointed. Belo Ajagbe, Plaintiff's elder brother, also wanted to be considered.

Sumonu Odediran represented Oyeweso Alade, head of Ajeniju house, a contestant, and asked that another Timi be appointed from their house. Lawani Ajala, younger brother of the late Timi, asked that he should be considered.

40 The Council:—

(1) accepted the existence of a body known to Ede custom as Kingmakers but said that it was difficult to ascertain their effective number;

(2) found that when a Timi is to be appointed all the influential chiefs of the day—whatever their number or titles—would meet, summon all other chiefs to exchange views and opinions as to the best selection, and after agreement has been reached amongst the chiefs, the recommendation and announcement are made;

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(3) found appointment from the different houses was not made by strict rotation ;

(4) found that the document alleged to have been made in the lifetime of the late Timi that a particular ruling house would present the next Timi was against native law and custom as it tended to abolish the constitution of Kingmakers or to make a Timi one of them ;

(5) found that the Kingmakers had acted rashly and unconstitutionally as they were not unanimous amongst themselves nor in full consultation with other chiefs before making their recommendation. 10

The Council recommended that the Ede chiefs should go home and meet to recommend any suitable candidate from any of the four ruling houses.

On the 29th June, 1946, the Ikolaba, Ayope, Agbakin, Iyalode, Rev. Taiwo and eight other chiefs wrote letter Ex. " A6 " to the Olubadan-in-Council, Resident, Oyo Province, Senior District Officer, Ibadan, and the Assistant District Officer, Oshogbo, supporting and recommending 2nd Defendant, for appointment.

On the 7th July, 1946, the Balogun of Ede wrote letter Ex. " A7 " 20 to the Olubadan-in-Council to complain about the conduct of Councillor Longe.

On the 9th July, 1946, the Ikolaba, Ayope, Agbakin, eight other chiefs and Rev. Taiwo, wrote letter Ex. " A8 " to the Olubadan and Council, to say that the number of Kingmakers had been reduced from five to four and the four being the Balogun, Ikolaba, Ayope and Jagun since Babasanya was removed from office and that Areago's name should be deleted from the list of Kingmakers. They claimed that it was the junior chiefs under the Balogun who had to select a suitable candidate after listening to the wish of the public and sorting out the most popular candidate. 30

On the 16th July, 1946, the Balogun, Jagun, Babasanya, Areago and 36 chiefs wrote letter Ex. " A9," to the Olubadan-in-Council, the District Officer, Ibadan, and the Resident, Oyo, through the District Officer, Oshogbo, to the effect that they had no other man to recommend besides the Plaintiff who had been recommended after careful investigation. They alleged that they were unanimous in the selection and that the Ibadan people sowed seeds of discord among them. They insisted that the Plaintiff had been constitutionally elected and recommended because (A) it was the turn of Lagunju house to rule and the Plaintiff belonged to that house, (B) he was presented for election by members of Lagunju 40 house, (C) he was approved by Ifa oracle, (D) the Kingmakers selected him.

On the 19th July, 1946, a meeting of Ede District Council was held at which the Resident, Mr. Pyke Nott, and the District Officer, Mr. Wilkes, were present, the Minutes of the meeting are in evidence and marked Ex. " M ".

After exchange of formal greetings, the Resident addressed the Council on the appointment of a new Timi and advised the Kingmakers to unite in making the appointment of a fit and proper person in accordance with local custom : he explained why Government reserves to itself the right of

approval and promised the Kingmakers that as soon as they made the selection there would be no delay in according recognition to the man selected.

The Balogun thanked him for his advice and stated that the Kingmakers had already made their recommendation and that it was up to the Government to give recognition. He told the Resident further that it was usual for the local chiefs not to be unanimous until a candidate succeeded and that if the Government decided there and then all the chiefs would become united again.

- 10 The Jagun supported the Balogun and stated that the Administrative Officers alone could unite the chiefs as the chiefs never agreed until a new Head was installed.

The Resident then enquired what would have happened in a similar situation about a century ago, and the Balogun replied that Ibadan chiefs usually settled such matters for them and united the chiefs once again.

The other chiefs did not approve of this and the Agbakin, while objecting to what the Balogun and the Jagun had said, admitted that there was a limited number of chiefs known as Kingmakers and that they were responsible for the selection of a new Timi.

- 20 He, however, went further to allege that it was the duty of the Balogun section to look for a suitable candidate among contestants and present him to the senior chiefs known as Kingmakers for approval which was usually given. A controversy then took place between him, the Balogun and the Jagun as to what had happened.

The Resident told them he and the District Officer could only advise them whenever required but not in the actual selection. He again advised them to get together, sink their personal differences for the good of Ede and reach a unanimous decision.

- 30 Chief Jagun then charged Agbakin with making untrue statements but the Resident told him he had given his advice.

He thanked them for listening to him and stated that he looked forward to his next visit to Ede by which time he hoped the chiefs would have made "large strides" towards selection of a new Timi. He prayed for God's guidance for the Kingmakers and then took leave of the Council which continued the session.

- 40 On the 26th July, 1946, the Ikolaba, Ayope, Agbakin, eight other chiefs and Rev. Taiwo, wrote letter Ex. "A.10" to the Olubadan-in-Council, begging that as the Balogun had agreed that the matter be settled by Olubadan-in-Council on the advice of the Resident at a meeting held on the 19th July, 1946, at Ede, the Olubadan-in-Council might be pleased to approve of their own candidate, the 2nd Defendant, who was alleged to be the popular choice.

On the 10th August, 1946, the Ikolaba, Ayope, Agbakin, eight other chiefs and Rev. Taiwo wrote letter Ex. "A.11", to the Olubadan-in-Council, with the copies to the Asst. District Officer, Oshogbo, Senior District Officer, Ibadan, and the Resident, Oyo Province, to the effect that Chief Jagun and his adherents had nothing to do with the selection of a Timi as they were mere fetish Chiefs. They claimed that the chiefs under the Balogun had to select the Timi and alleged that the Balogun and his

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junior chiefs with Chief Ikolaba and Ayope had at first selected the first Defendant before the Balogun disappointed them. They therefore requested that the installation of the 2nd Defendant might be expedited.

On the 26th August, 1946, the Ibadan Native Authority Inner Council held a meeting, the minutes of which were tendered in evidence and marked Ex. "C3". Paragraph 18 of Ex. "C3" shows that the District Officer would not wait to hear Ede chieftaincy matter discussed in his presence because the Resident had instructed him that the matter was not the concern of the Government. Paragraphs 25-43 of the Exhibit show that some Ede Chiefs appeared before the Council and the Balogun 10 with eight chiefs stuck up for the Plaintiff while the Otun Balogun and nine other chiefs supported the 2nd Defendant.

The chiefs could or could not agree and it was ordered that the Chiefs should return to Ede to reason together and decide unanimously on a candidate and come back on 2nd September, 1946, to present the selected candidate; they were told that if they failed to do so, the Council would approve of one of the two candidates.

Paragraph 39 shows that the District Officer was present throughout the discussion in spite of his instructions referred to in paragraph 18.

On the 30th August, 1946, the Ikolaba, Ayope, Agbakin and eleven 20 others wrote letter Ex. "A12" to the Olubadan and Council to reaffirm and recommend 2nd Defendant for appointment.

On the 31st August, 1946, the Balogun wrote letter Ex. "A13" to the District Officers, Oshogbo and Ibadan and to the Olubadan to the effect that efforts to settle had failed in spite of the intervention by chiefs Olofa, Onido and representatives of Alawo because the minor chiefs would not yield. He therefore asked the Olubadan and Council to decide the matter "according to right" because the minor chiefs should obey his instructions as he could not disobey those of the Olubadan and Council.

On the 2nd September, 1946, according to paragraphs 28-33 of 30 Ex. "C4", the Chiefs supporting the 2nd Defendant appeared before the Ibadan Native Authority Inner Council and reported that the two sides could not agree and requested the Council to recommend a candidate for appointment. The Senior District Officer, Major Blair, reiterated Government policy not to interfere but was prevailed upon to watch the proceedings.

A dispute then arose between the Olubadan and his Council as the Olubadan favoured the appointment of the Plaintiff and the Council supported the 2nd Defendant.

On the 21st September, 1946, the Olubadan prepared a memorandum 40 about the appointment of the Timi and forwarded it to the District Officer, Ibadan, copying the Resident, Oyo Province. He released a copy of the memorandum for the Press and it was published at page 3 of the Southern Nigeria Defender published at Ibadan on the 23rd September, 1946, Ex. "B".

A Council meeting was held on the 23rd September, 1946, the Minutes of which make Ex. "F" in this action. Paragraphs 2-25 of Ex. "F" deal with the discussion on the dispute between the Olubadan and his Council. It was alleged by the Council members that they came into

agreement about the appointment of the 2nd Defendant and the Olubadan denied it. The Acting Resident Mr. Pyke Nott, spoke to them on the evil of disunity and non-cooperation between the Olubadan and his Council; he reminded the Council of the reputation the Olubadan had built up for honesty and integrity. He reminded them that the issue before them was not a matter of politics in which there needed be no honesty, but one for administrative decision, which should be entirely honest, and that their first consideration should be the welfare of the people of Ede.

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10 On the 7th October, 1946, the Olubadan wrote letter Ex. "D1" to the Senior chiefs of the Ibadan Executive Council attaching a copy of the memorandum. The memorandum reads as follows:—

"The following are my considered views, in regard to the appointment of a new Timi for Ede:

(1) In approaching a subject of this nature, one must avoid coming under (i) undue influence and (ii) be guided strictly by custom and tradition.

(2) The two contestants are (i) Memudu and (ii) Laoye. Memudu belongs to Oduniyi branch of Ede ruling family. Laoye belongs to Ajenju branch of Ede ruling family.

20 In this respect, it must be remembered, that the Ede Stool is common property of all the four branches of the family, and that whereas the Ajenju branch, to which Laoye belongs, has had four Timis, the Oduniyi branch to which Memudu belongs, has had only one Timi, since the beginning.

On the score of justice and fairness alone, therefore, Oduniyi's branch must be given its due, i.e. the present vacancy.

30 (3) The family of Oduniyi presented Memudu, according to customs, and it was after such representation that the Senior Chiefs of Ede (Kingmakers), again according to custom, recommended Memudu.

(4) One important point which appears to have been overlooked by Laoye's supporters is that the Ajenju branch did not present Laoye to the Kingmakers; and they dare not do so because the late Timi of Ede (Akangbe) came from that branch and to appoint two Timis, one after the other, from the same branch, would be, quite clearly, an injustice.

(5) Apart from the foregoing, these further points are prominently in favour of Memudu namely:

40 That in 1934, Memudu was actually recommended for the Timi Ede Stool, by the Olubadan and Council; that recommendation must be on file in the District Officer's Office, Ibadan.

Memudu was good enough in the eyes of the Olubadan and Council in 1934, to be the Timi of Ede; important members of that same Council are still there today.

After the 1934 Inner Council have recommended Memudu, this same sort of under-currents came into play, and the late Timi Akangbe was thereby made to oust Memudu, who bore the disappointment calmly, and continued faithfully in the service of the

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Ede Native Administration, as a Court Judge, which post he has been holding satisfactorily and continuously, since the establishment of Ede Native Court in 1916 (30 years).

Memudu has been part of the Ede Native Administration for over 30 years.

(6) It should, therefore, be easy for any person with an open mind, to choose between Memudu, with over 30 years connection with Ede affairs, and Laoye, a Dispenser who hardly lived in Ede, even though he is supported more strongly by money, propaganda, and the influence of his Christian friends. 10

(7) Memudu has the support of forty-two out of the fifty chiefs of Ede, he has the support also of all Muslims of Ede, headed by the Chief Imam, also of Olode the head of all pagans of Ede.

Now if it is taken into consideration that Ede consists of a high preponderance of Muslims and pagans, with only about two per cent. of Christians who are the main supporters of Laoye, Memudu's overwhelming popularity over Laoye's will be readily conceded.

(8) Further, Timi's satisfactory and efficient administration can be the result of only one thing, and that is, co-operation of his chiefs; and with these chiefs, Memudu has been co-operating 20 smoothly and satisfactorily, for over thirty years.

In this regard, therefore, however literate Laoye may be, his appointment as Timi would, in the present circumstances at any rate, be a matter of satisfaction and of value, only to himself and his friends, and not for the town and the common people of Ede.

Laoye has had no experience of native or any administration at all.

(9) It is against Native Law and Custom in this part to appoint any man as a chief, whose father is alive, but Laoye's father is not only alive but has actually contested this stool himself at the start, 30 until he was prevailed upon to step down for his son. This is definitely against our custom.

(10) I therefore must disagree with any one who still persists in supporting the wrong candidate.

I support the decision of Ede senior chiefs and maintain, as the Olubadan of Ibadan, conscientiously, that Memudu is the right and proper person to succeed now to the Stool of Timi of Ede, and further say that I arrived at that decision after deep consideration of all the facts in the matter as known to me, without prejudice, without fear or favour; and further, that all those facts are clearly known to all who now support 40 Laoye, and I challenge them to disprove any of the facts.

Finally I stand by my decision until the pro-Laoye party shall have proved to the satisfaction of the District Officer, and the Resident that the facts upon which my decision rests, are untrue.

Salutations, your good friend, Suberu Fagbinrin." On the 13th October, 1946, the Senior Chiefs of Ibadan wrote Ex. " D " in reply to the Olubadan's letter Ex. " D1 " and sent a copy of the letter to the Resident, Oyo Province, and to the Senior District Officer, Ibadan.

In Ex. "D" the chiefs stated that the Olubadan's arguments in favour of the plaintiff were contradictory to the findings of the Council reported in Ex. "C2" in which he concurred as the then Balogun; they further alleged that he, as the Olubadan agreed with them that 2nd defendant should be recommended and later refused to stamp the recommendation.

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They declared his action in the matter to be unconstitutional and assured him of their legal support and co-operation if he would co-operate with them, but made it clear that they would strongly oppose an attempt by him, threatened in his letter, to act without his Council.

10 On the 28th October, 1946, there was another Council meeting, the minutes of which are in evidence and marked Ex. "C5", which shows that the difference between the Olubadan and his Council had not been resolved and the Resident, Mr. Pyke Nott, again advised the Olubadan and Council and made the following suggestions for settling the Ede dispute easily :—

(1) That the Council should appoint plaintiff, promise the 2nd defendant the next vacancy, rule that nobody should contest the next vacancy, and that such ruling should be recorded.

20 His reasons for this suggestion are that he had studied the Olubadan's memorandum and found his arguments irrefutable and because the plaintiff is an old man with past good record of service to Ede and the 2nd defendant is a young man.

(2) That the Council should reject both the plaintiff and the 2nd defendant and ask Ede people to submit another person.

He, however, showed that to reject the two would be an admission of their failure to discharge their responsibility and that a third candidate whose name had not been previously put forward could not have a better right than the two before them.

30 (3) That he would inform Ede people in honest terms that they could not reach a decision and that he would therefore appoint Ede District Council to be Native Authority for Ede District, subordinate to the Olubadan-in-Council until Ede could choose a Timi for themselves.

(4) That he would use the power vested in the Resident by the Appointment and Deposition of Chiefs Ordinance to appoint a person to act as Timi until a Timi was appointed.

He pointed out that suggestions 3 and 4 were not satisfactory as they would be evidence of their failure and he did not wish to draw attention to their failure.

40 Paragraph 22 shows that the Olubadan denied the allegation of the Council members that the Council had ever taken a decision to support the 2nd Defendant.

Before the next Council meeting was held on the 27th November, 1946, Olubadan Fagbinrin died and Oyetunde, who was Otun Olubadan, took his place, so that Oyetunde was the new Olubadan who presided at the Council meeting of the 27th November, 1946, minutes of which meeting are in evidence and marked Ex. "C6." At this meeting it was alleged

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that the 2nd Defendant has been the choice of the Council since the time of Olubadan Okunola Abasi, who was the Olubadan before Fagbinrin, and it was decided that 2nd Defendant be recommended for appointment.

Ex. " E " are the minutes of the Council held on the 5th December, 1946, to which Ede chiefs were invited to hear the decision of the Council which was published in the Press before the Resident, the District Officer and Ede people were informed of it.

Paragraphs 2-14 of Ex. " E " relate to Ede matters.

When the Ede chiefs were asked whether it was not true that they implored the Council to choose one of two rivals and that whomsoever the Council chose would be accepted, there was a sharp division between the Ede chiefs and some said " Yes " while others said " No. " They were told that they referred the matter to the Council and had to abide by the decision of the Council. 10

Mr. Pyke Nott, who had then become the Senior Resident, Oyo Province, said that the Olubadan-in-Council had made its decision and that the final say rested with him. He further stated that everybody knew the facts from the start and that no further enquiry was needed. He promised to communicate his decision in due course.

On the 7th December, 1946, he wrote letter Ex. " G " to the Senior 20 District Officer, Ibadan, as follows :—

" With reference to the special meeting of the Ibadan Council on Thursday December 5th, I am entirely satisfied that by Native Law and Custom Mr. Adetoyese Laoye is eligible to succeed to the Stool of the Timi of Ede and that he is a fit and proper person by past record to assume the office of the Head of the Ede and Ede District Subordinate Native Authority and to take his seat on the bench of the Native Court. I am also entirely satisfied that the large majority of the Chiefs of Ede eligible to take part in the selection of a Timi of Ede support the candidature of Mr. Adetoyese 30 Laoye. That being so, I convey approval of the recommendation submitted by the Ibadan Inner Council that the selection of Mr. Adetoyese Laoye as the new Timi of Ede should be recognised."

On the 10th December, 1946, the Balogun and Senior Chiefs of Ede sent telegram Ex. " H " to the Senior District Officer, Ibadan, to inform him that they still backed the Plaintiff.

On the 19th December, 1946, the 2nd Defendant was installed as the Timi of Ede and this action was commenced after necessary notice has been given under Section 61 (2) of the Native Authority Ordinance No. 17 of 1943. 40

At the trial voluminous evidence was given on both sides. The Plaintiff gave evidence on his own behalf and Adefajo, the Oluawo of Ede, Raji Akinloye, the Balogun, the Jagun, Aminu Mobolaji and Des Dokubo gave evidence for him.

Samuel Olajumoke, Victor Olajide, the 2nd Defendant himself, Mr. Pyke Nott, Senior Resident, Oyo Province, Chief Isaac Babalola Akinyele, the Ayope of Ede and Sule Olateju Longe gave evidence for the defence.



It is for the Court to determine (1) What is the Native Law and Custom of Ede with regard to the selection of a Timi, (2) whether the appointment of the 2nd Defendant as Timi is in accordance with the Native Law and Custom, (3) whether the Plaintiff had been properly selected in accordance with the Native Law and Custom and (4) whether the jurisdiction of the Court has been ousted by section 2 (2) of the Appointment and Deposition of Chiefs Ordinance No. 14 of 1930 as amended by No. 20 of 1945.

I shall first deal with the issue about jurisdiction, because it will not  
10 be necessary to deal with the other issues should I find that the jurisdiction of the Court has been ousted.

It is claimed by Mr. Pyke Nott, the Senior Resident, Oyo Province, who gave evidence for the Defendants, that he held an enquiry into this chieftaincy dispute at Ede on the 19th July, 1946, and that he jointly held an enquiry and consultation with the Olubadan-in-Council and denied that he acted *mala fide*. Section 2 (2) of Ordinance No. 14/30 as amended by 20/45 on which the whole question turns reads as follows :—

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

It is therefore obvious that the intention of the Legislature is to withdraw the cases of Chiefs who come within the meaning of “ Chief ” in section 5 of the Appointment and Deposition of Chiefs Ordinance from the cognisance of the Law Courts and to make the Governor the sole judge as to whether a chief has been appointed in accordance with native law and custom ; but some conditions must be fulfilled before the Governor can assume the position of a sole judge.

It must be shown (1) that there is a dispute, (2) that an appointment  
30 of a Chief has been made, and (3) that due enquiries and consultation with the persons concerned in the selection has been made.

It was submitted for the Defendants that the enquiry was to be made from the persons connected with the selection and the Plaintiff’s Counsel submitted that the enquiry must be independent of the consultation and that if it had been intended that the enquiry should be made from the persons connected with the selection the word “ from ” would have been inserted after the word “ enquiry.”

It appears to me that the Plaintiff’s Counsel’s contention is the right  
40 one. The provision of a statute which is not ambiguous must be construed in its ordinary meaning.

The Legislature must be given credit for a sound knowledge of the English Grammar and it must be assumed that they must have known that the word “ from ” should have been inserted after the word “ enquiry ” if the due enquiry is to be made from the same persons as are to be consulted. As they have not thought fit to insert “ from ” after “ enquiry,” I therefore hold that it is not intended that the enquiry should be made from the persons connected with the selection. The “ due enquiry ” must be an independent action from the act of consultation.

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I uphold also the submission of the learned Counsel for the Plaintiff that the words "due enquiry" have been judicially interpreted and that they must therefore bear the meaning judicially ascribed to them in the section of the Ordinance under construction.

The power of a club to expel a member according to their rules "after enquiry" was held in *Labouchere v. Wharnccliffe*, 41 L.T. 638, to mean "after a fair inquiry into the truth of the alleged facts by giving due notice to the accused and by taking and fairly considering the evidence; in other words, that such enquiry shall be a substantial one in accordance with the ordinary principles of justice." 10

Under section 29 of the Medical Act, 1858, the expression "due enquiry" has been held to mean "an enquiry in which the accused is given the opportunity of being heard in his defence." This implies that the charge must be known to the accused and evidence must be called on both sides for the decision of the tribunal: *Allbutt v. General Medical Council*, 61 L.T. 585; *Leeson v. General Medical Council*, 61 L.T. 849; and *General Medical Council v. Spackman* 1943 2 All E.R. 337, are authorities on this point.

It is for the tribunal to make its own rules as to the form in which its duty will be discharged. It is for the tribunal to decide whether the hearing will be by hearing evidence *viva voce* or otherwise. All that matters is that a fair hearing is given before the tribunal gives its verdict from which there is no appeal. 20

It is quite correct that there are no accused persons as in the General Medical Council cases under the Appointment and Deposition of Chiefs Ordinance, but as the principle underlying the idea of "due enquiry" is the giving of opportunity of hearing to the persons concerned, the same idea must be imported into the enquiry to be held under the Appointment and Deposition of Chiefs Ordinance.

In my view, there will be no occasion for the Governor to intervene under section 2 (2) until an appointment of a chief has been made which brings about a dispute as to the validity of the appointment under native law and custom. When the appointment has been made and a dispute has arisen it will be the duty of the Governor or the officer to whom he has delegated the powers to hold a "due enquiry" into the dispute, consult the persons who made the selection and then decide whether the appointment has been made in accordance with Native Law and Custom. 30

When once the conditions have been fulfilled honestly, fairly and without malice, and the Governor or his delegate had given his decision, that decision cannot be questioned in any Court of Law: *Macleane v. Workers Union and others*, 141 L.T. 83, and *Hawkins v. Antrobus*, 44 L.T. 557. 40

The Governor or his delegate is not under section 2 (2) called upon to hold a "due enquiry" into the dispute between persons concerned in making the selection, but it is the duty of the Governor or of the Resident to whom his powers have been delegated to hold a due enquiry to which the parties to the dispute are to be invited to lay their case before him for decision, and he should decide on the evidence before him after consulting the persons concerned in the selection.

The dispute in this case is as to who should have been appointed Timi between the Plaintiff and the 2nd Defendant, and, in my view, they are the people who should be invited to the "due enquiry" to be held into their dispute, and their supporters should be witnesses in support of their respective claims.

In my view, section 2 (2) of Appointment and Deposition of Chiefs Ordinance purports to substitute another Tribunal for the Law Courts, and the persons who, if the matter had gone to Court, would have been parties as plaintiff and defendant, are the parties to be invited before the  
10 Tribunal substituted for the Courts.

I, therefore, hold that the proper parties to be invited to the "due enquiry" to be held are the Plaintiff and the 2nd Defendant.

At the enquiry the Governor or his delegate should hear the claims of the parties and their witnesses and, after consulting with the persons concerned in the selection, he should give his decision as the sole judge. The "due enquiry" must be an independent enquiry by the Governor or his delegate who is responsible for his own decision.

On this point I shall quote the observation of the Earl of Selborne in *Spackman v. Plumstead Board of Works* at page 160 of 53 L.T., which  
20 is cited at page 343 of 1943 2 All E.R. in *General Medical Council v. Spackman*, to show the duty of a tribunal empowered to hold enquiry by Statute from whose decision there is no appeal. Says he, "No doubt in the absence of special provisions, as to how the person who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him, and stating their case and their view. He must give notice when he will proceed with the matter, and he must act honestly and impartially, and not under the dictation of some other person or  
30 persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice."

I shall therefore examine Ex. "M" which is the minutes of the Ede District Council held on the 19th July, 1946, which the Senior Resident, Mr. Pyke Nott, and the District Officer, Mr. Wilkes, attended, to see if it reports any proceedings which could be considered as "due enquiry" within the meaning judicially acquired by that expression.

Ex. "M" shows by its head note that it was just an ordinary or  
40 usual District Council meeting of Ede District attended by the Chiefs who were Council members and by the Councillors.

Councillor Longe, who was, and still is, the Clerk of Council, stated that he convened the meeting on the instructions of the District Officer. It is quite possible that the Senior Resident requested the District Officer to convene the meeting to enable him to meet with the Council members for the first time after his promotion then to the grade of Resident as his speech, after the welcome address by Councillor Longe, shows. There is nothing in the Resident's speech on the occasion that he caused the

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meeting to be convened to enable him to enquire as Governor's delegate into the dispute about the appointment of a Timi. He is reported to have closed his first speech in the following terms: "It remained with the Kingmakers to come to agreement to choose a person who by custom and tradition is a right person for the office of the Timi. He hoped in the interest of the people of Ede they would be able to agree without further delay. His advice and that of the District Officer are at the service of the Council and they will gladly give it. That is, advice on any question other than the actual selection itself."

After this, the Balogun and Jagun made speeches and the Resident 10 then "enquired what would (have) happened in a similar situation say a century ago": to which the Balogun replied that Ibadan chiefs always settled their differences for them and united them once again. This was followed by heated arguments between Agbakin, Balogun and Jagun and the Resident after listening to both sides said "he would like to repeat what he said earlier. Himself and the District Officer were only too ready to help with advice whenever it was required, but this is advice on other matters rather than in actual selection which was the business of the chiefs and the Kingmakers and must be carried out according to local custom. From what had been said he might be able to give an advice that 20 might be of some help. He appealed to the good sense of the people of Ede, a town renowned for its progress and the sense of the people. He asked the people to use that to the greatest advantage of the town. So far as the selection procedure might (be) concerned up to date, they might have some defects. There was no reason why they should not be corrected now. His advice to the chiefs was to get together, meet and discuss it properly among themselves and in doing so submerge(d) their personal desire and think only of the good of Ede. If this advice is followed it will not take the chiefs any time to reach a unanimous decision." Then the Jagun spoke again. In reply the Resident said he had already given his 30 advice asked the chiefs to "eliminate bad effects," thanked them for listening to him, expressed the hope that they would have taken steps towards selecting a new Timi before his next visit to which he looked forward, prayed for God's guidance for the Kingmakers and left the meeting which continued its sitting under the guidance of the District Officer. It is impossible to construe this meeting to be a meeting of enquiry and I therefore hold that there was no "due enquiry" held at that meeting.

The Senior Resident also claimed that he held a joint enquiry with the Olubadan-in-Council. Ex. "C 1" shows beyond possibility of doubt that the Olubadan and Council instituted the enquiry which took place at Mapo Hall, 40 Ibadan, on 9th May, 1946. If the Resident attended the enquiry meeting so held by the Olubadan-in-Council, he did so as an Administrative Officer, and not as Governor's delegate under the Appointment and Deposition of Chiefs Ordinance. He admitted he did not take part in the decision of the enquiry.

The Enquiry held by the Olubadan-in-Council was not held under the Appointment and Deposition of Chiefs Ordinance and nothing done there could be said to have been done by the Governor or his delegate under that Ordinance.

When the Olubadan-in-Council had selected the 2nd Defendant for appointment, according to Ex. "E," the Senior Resident admitted that he said that there was no further enquiry needed as the facts of the case were well known although the selection did not meet with the approval of the Senior Chiefs of Ede, who later sent in telegram Ex "H." As the Olubadan in-Council happened to be the selectors in this case, it was the duty of the Senior Resident to have held a "due enquiry" into the matter and to have held a consultation with the Olubadan-in-Council before approving of the appointment by Ex. "G." He based his decision on the findings of the  
 10 Olubadan and Council instead of coming to his own decision after holding a "due enquiry." This is improper as it is not in accordance with the provision of section 2 (2) of the Appointment and Deposition of Chiefs Ordinance.

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As there has been no "due enquiry" held in this matter, the Governor cannot claim to be the sole judge as one of the conditions precedent to his assuming the role of a sole judge has not been fulfilled, and the jurisdiction of the Court is, therefore, not ousted.

Having found that the jurisdiction of the Court is not ousted by the provisions of the Appointment and Deposition of Chiefs Ordinance, it is  
 20 my duty now to consider the evidence and decide the other issues raised.

The first question is, what is the native law and custom with regard to the selection of a Timi ?

It is common ground between both parties that a body of chiefs known as Kingmakers have from time immemorial been entrusted with the duty of appointing the Timi.

It is not disputed that although there were five ruling houses at first as stated by Mr. Pyke Nott, one of the houses has become extinct, and that for many years back only members of the four ruling houses, Agboran or Oyefi, Ajeniju, Arohanran, Oduniyi, Lagunju or Oloro are eligible for  
 30 appointment. Agbonran or Oyefi House has had three Timis, Ajeniju four, Arohanran two, Oduniyi, Lagunju or Oloro one. From this it is clear that although selection was made in rotation from the four houses, the rotation has not been strict.

However the evidence discloses that Timi Oyelekan from Agbonran House was followed by Ipinloye from Arohanran House, and he was followed by Sanusi Akangbe from Ajeniju House. Normally one would expect the next Timi to come from the fourth house which is Oduniyi, Lagunju or Oloro House.

Although the rotation has not been strict there has not been a case  
 40 in the history of Ede Town in which two Timis have been appointed successively from the same house.

Now with regard to the number and identity of the Kingmakers, it appears from the evidence of the Plaintiff and that of the Jagun that they were originally three in number, namely, the Balogun, the Jagun and the Ikolaba. I prefer their evidence on the point to that of Councillor Longe who made them four. I accept the evidence of the Jagun the oldest Chief in Ede, confirmed by the evidence of the Plaintiff, that the number was increased to five when Timi Ipinloye was to be appointed and that the two additions were the Babasanya and the Areago.

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According to the evidence of Jagun, the title of Babasanya was abolished when the holder was removed from office and the Ayope took his place as a Kingmaker, so that the Kingmakers were the Balogun, Jagun, Ikolaba, Ayope and Areago.

Before any dispute had arisen in this case an extraordinary meeting of the Ede District Council was held at which Resident Mr. Mathews was present. All the members of the Council, save the Ikolaba, were present as shown by the minutes of the proceedings Ex. "L."

At page 2 of Ex. "L," the Resident is reported to have stated that in every town and village certain people were Kingmakers; that their work was to appoint a successor to the vacant stool and that the people were known to everybody, to which the Council replied in the affirmative. The Balogun was asked to give the names of the Kingmakers which he did and the names given are the Balogun, Jagun, Ikolaba, Ayope and Areago. There is no record that any one then questioned the number or the identity of the Kingmakers and the number and identity then disclosed were therefore accepted by the Council to be correct. It is interesting to note that the Babasanya, Areago, Otun Balogun, Seriki, Ayope, Agbakin, Councillor Longe and Rev. and Councillor Taiwo were present at this meeting besides the Balogun and the Jagun. The Agbakin did not then claim to be a Kingmaker. 10 20

At the enquiry held at Ibadan on the 9th May, 1946, according to Ex. "C2," the Balogun gave the number of the Kingmakers as being four or five and their identity was not asked to be disclosed. He has explained in his evidence that he could not then readily remember the number. The Jagun told the Council that the number was five and not four. The Areago also stated that the number of Kingmakers were five. No one then questioned the correctness of the number which the Council obviously accepted as being correct because in examining Councillor Longe one of the questions put to him was: "Does the five Kingmakers hold executive sway over the chiefs?" To which the answer was "most assuredly." Again, while questioning the Areago, the Counsel asked: "Does it mean that the five Kingmakers are the right body to select a candidate and only convey the information to the remaining chiefs?" To which the answer was "Yes." No one at the enquiry suggested that the number of the Kingmakers was more than five. 30

On the 9th July, 1946, the supporters of the 2nd Defendant including the Ikolaba, Ayope, Agbakin and Otun Balogun, wrote letter Ex. "A8" admitting that there were five Kingmakers but tried to show that their number had been reduced to four, namely, the Balogun, Jagun, Ikolaba and Ayope. They asked that the name of Areago be taken off the list of Kingmakers because he represented Babasanya. 40

Ayope's evidence confirms the evidence of the Plaintiff's witnesses that Ayope, and not Areago, took the place of Babasanya in the rank of Kingmakers. The letter is a confirmation of the number of the Kingmakers and of their identity as stated by the Balogun at the meeting of the 1st March, 1946, and disclosed in Ex. "L."

It is to be observed that the signatories to Ex. "A8" include the Otun Balogun, the Agbakin, the Ayope, the Seriki and Rev. Taiwo who were all present at the Ede District Council Meeting of the 1st March, 1946, according to Ex. "L."

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It is further to be noted that neither the Otun Balogun nor the Agbakin claimed in Ex. "A8" to be a Kingmaker.

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10 It is remarkable that at the Ede District Council Meeting of the 19th July, 1946, reported in Ex. "M," the Agbakin told the Resident that when the Balogun gave the names of the Kingmakers at the Council Meeting of the 1st March, 1946, he asked why he did not include the name of any chief in his section, and that he was told to keep quiet. This is obviously untrue in the face of Ex. "L."

It is astounding that the same persons who wrote Ex. "A8," admitting that Jagun was one of the Kingmakers, wrote letter Ex. "A11" just about a month later to suggest that the Jagun was not a Kingmaker.

It is clear that they, the writers of Exhibits "A8" and "A11," are not honest people, but a body of men who have no regard for truth and are prepared to distort facts without scruple in order to gain their objective.

20 There can be no doubt whatever that the Agbakin and the Otun Balogun were never at any time in the rank of Kingmakers. I therefore reject the evidence of the 2nd Defendant, Ayope, and of Councillor Longe classifying the two chiefs among Kingmakers. I reject also the evidence of the 2nd Defendant that Babasanya is now a Kingmaker in view of the evidence of his witness, the Ayope, which confirmed Jagun's evidence that Ayope took the place of Babasanya as a Kingmaker.

30 It is true there is a discrepancy in the evidence of the Balogun and Jagun with regard to who and who are the Kingmakers, due no doubt to the fact that these old men got confused in the witness box which each occupied for quite a long time.

But after giving due weight to all the evidence, I have come to the conclusion that the number and identity of the Kingmakers are not doubtful or unknown and that they are the Balogun, Jagun, Ikolaba, Ayope and Areago.

I am satisfied further that the Iyalode who is a representative of the women in town and that the Imam or Lemomu who represents the Muslim elements in town are not Kingmakers.

40 Now, how do the Kingmakers do their work? The Plaintiff, Jagun and the Balogun all agree that when a Timi dies, the Kingmakers decide the house from which the new Timi is to be selected, inform the ruling house to present a candidate and that the house then selects a candidate and sends up his name.

The Kingmakers then consult Ifa oracle to see whether there will be peace and prosperity if the selected candidate is accepted.

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If Ifa is favourable, the ruling house is informed and the selected candidate sends up to the Kingmakers whatever may be required by Ifa for sacrifice. If Ifa is unfavourable, the ruling house is informed and asked to send up the name of another candidate which is then tested by Ifa.

After the sacrifice has been made, the Kingmakers then meet with the minor chiefs and inform them of the selection which Ifa has approved and townspeople are then informed of the selection of the new Timi.

Arrangements are then made by the Kingmakers to send customary gifts to the Olubadan, his son or Prime Minister and his household to inform him of the man selected for appointment as the new Timi. 10

After accepting the gifts the Olubadan approves of the selection and sends a representative to witness the installation of the selected candidate which is performed by the Ikolaba and the Jagun in the market place.

It appears to me that the evidence of the Plaintiff, the Balogun and the Jagun is to be accepted that the rule is that the Kingmakers should decide which ruling house to select a Timi and to notify such house of their decision. There has obviously been a great irregularity on the part of members of ruling houses who used to apply to be appointed although the Kingmakers had not decided that their house should submit their names.

Councillor Longe agreed that it was for the Kingmakers to choose 20 the house from which the Timi is to be appointed and there can therefore be no doubt that after the house has been chosen, the house is invited to select its candidate. I am satisfied from the evidence in this case that even after the Kingmakers had requested Lagunju house to present a candidate, other members of that house presented themselves for appointment, without doubt, irregularly.

I don't accept the evidence of the 2nd Defendant that it is not customary for a house to present a candidate for the appointment after he had alleged that Ajeniju House consisting of his father and five of his sons presented him to the Kingmakers, a fact denied by the Balogun and the Jagun. 30

He, no doubt, made this allegation because he knew that a candidate should be presented by his ruling house.

In spite of the fact that Plaintiff's case was that the 2nd Defendant was never presented by the Ajeniju house, there was no proof that he was in fact presented apart from his mere assertion. Surely his father and his five sons don't make Ajeniju House, and I am certain that if the whole family had met to put him up more men than his father and his brothers would have put him up for appointment, I don't believe he was put up by his house as he alleged.

It is agreed on both sides that after a candidate has been selected, 40 Ifa oracle is consulted. The 2nd Defendant even suggested that Ifa oracle was consulted in his own case, though after his installation.

The object of consulting Ifa oracle is to find out if the selected candidate is suitable and his appointment depends on whether or not Ifa is favourable. If Ifa gives an unfavourable answer, the candidate is at once discarded and another candidate selected to whom Ifa may be favourable.



I have been asked to say that the consultation of Ifa is not essential, but I regret I am unable to accept that submission in view of the fact that the natives do believe in the infallibility of Ifa in forecasting future events and the fact that a new candidate is asked for if Ifa does not give a favourable answer is sufficient proof of the importance attached to the declaration of Ifa by those who consult it.

The fact that sacrifices have to be performed and customary gifts sent to the Olubadan by the selected candidate is confirmed by the 2nd Defendant himself.

10 It is suggested by the Plaintiff and his witnesses that it is not in accordance with native law and custom to appoint a man as Timi who has a father living.

Councillor Longe supports the allegation of the Plaintiff and of his witnesses and Chief Isaac Akinyele, a recognised historian, who gave evidence for the Defendants, had to admit that the saying in Yorubaland is "a ki mo Baba Oba" which literally means in English "It is not proper to know the father of an Oba" and means that an Oba must not have a father living. The idea behind the saying is that the Oba should be the highest personage in his dominion and that there should  
20 not be any person to whom he would have to prostrate to as it is customary of the Yorubas to prostrate in saluting their father.

The case of the Awujale of Ijebu-Ode is cited to show that an Oba may sometimes have a living father but that is the solitary case of its kind and it is admitted that it is a case of a man who ascended the throne through the female line. It is therefore an exception which proves the rule.

The 2nd Defendant has alleged that his putative father, Lawani Oyebisi, is not his real father, but I regret I find it difficult to accept his evidence on that point. It appears to me, in view of his letter Ex. "A," that he is just trying to find a way of getting out of one of the points  
30 raised against his appointment by his opponents.

It is suggested in paragraph 3 of Ex. "A8" that the junior chiefs in the Balogun line are the persons according to Ede custom, responsible to the Kingmakers for selecting a suitable candidate after carefully listening to the wish of the general public of the town and sorting out the most popular Omo Oba among the several contesting candidates. If this is correct, then the persons who select the Timi are the minor chiefs and not the Kingmakers who only approve of the selection made; but it is obviously untrue as the originators of the allegation are the very people present at the Ede District Council who agreed that the Kingmakers  
40 whose names were given were the persons to appoint the Timi.

The Resident, Mr. Matthews, was no doubt conversant with the native law and custom of the town hence he asked the Kingmakers to convey their selection to him in a way that agitation might be avoided.

Furthermore, as the contestants usually apply to the Kingmakers and not to the minor chiefs in the Balogun line, it cannot be true that the minor chiefs are the persons to make the selection. Kingmakers are surely not mere figureheads and are so called on account of their functions when an Oba has to be appointed.

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At the meeting of enquiry, Ex. "C2," Councillor Longe alleged that it was the duty of the junior chiefs to present the right candidate from the right family to the Kingmakers for approval and yet he later stated that the proper body to appoint the Timi is the body of the Kingmakers.

Rev. Taiwo alleged at the same meeting of enquiry that all the chiefs usually confer and after careful deliberation and enquiry into each contestant's suitability, three or four of the Senior Chiefs will announce the decision publicly. If this is correct, why do they have a body of men known as Kingmakers ?

The Ayope who gave evidence for the Defendants was, and still is, 10 one of the Kingmakers, and he did not subscribe to the allegation that junior chiefs selected the Timi. He confirmed the Plaintiff's evidence as confirmed by his witnesses that the Kingmakers are the people to make the selection or appointment. I entirely reject the evidence which suggests that the junior chiefs are the men to select the Timi and then report their selection for approval as being an attempt to subvert the custom of Ede town, and I am satisfied on the evidence that after the name of the selected candidate has reached the Kingmakers, they allow Ifa oracle to decide whether he would make a good Timi. I am therefore inclined to accept the submission of the learned Counsel for the Plaintiff 20 that popularity among the townsmen is not the test but acceptance by Ifa.

I am satisfied further on the evidence that when once Ifa oracle has been favourable to a candidate and the Kingmakers have appointed him, all the minor chiefs and townspeople need to accept the appointment without question as it was backed by Ifa.

On the question what is the native law at Ede as to the selection of a Timi I find the following facts proved : (1) That there is a body of chiefs known as Kingmakers who meet and decide which ruling house should be called upon to recommend a candidate for appointment to the stool of the Timi when vacant. (2) That selection of the candidate is 30 made by his ruling house which forwards his name to the Kingmakers. (3) That Kingmakers then consult Ifa oracle to see if he is acceptable. (4) If acceptable to Ifa, sacrifice has to be performed. (5) The Kingmakers then appoint him and inform the minor chiefs and the townspeople, but there must be unanimity among the Kingmakers in making the appointment. (6) The approval of the Olubadan is then sought and customary gifts sent to the Olubadan for himself, his son or Prime Minister and his household. (7) The selected candidate is installed when approval of the Olubadan is received. (8) The Timis are not appointed from the same house. (9) A man with a living father through whom he claims a right 40 to the stool is not appointed a Timi.

I now come to the question whether the appointment of the 2nd Defendant is in accordance with native law and custom.

In the ordinary course of things the appointment should be made by the Kingmakers of Ede, but as a division took place in the rank of the Kingmakers after the Plaintiff had been selected and recommended for approval and the approval of the Olubadan, Aleshinloye Okunola Abasi, had been given, the matter was referred by both sides to the Olubadan-in-Council for decision.

Jagun and the Balogun for Plaintiff told the Court that this was in accordance with their custom and the Ayope for Defendants supported it; so did the 2nd Defendant and Councillor Longe. The reference is therefore proper. Olubadan-in-Council held an enquiry reported in Ex. "C2." It was the duty of Olubadan and Council to enquire whether all the Kingmakers were unanimous in appointing the Plaintiff before recommending his appointment for approval by Ex. "A2." If it was discovered that the Kingmakers unanimously appointed the Plaintiff, Plaintiff's appointment should have been approved and the 2nd Defendant should have been told to go and bide his time.

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Letter Ex. "A2" bears the names of all the five Kingmakers of Ede and the names of the Iyalode and the Lemomu in addition. The Balogun, the Jagun and the Areago still remain in the Plaintiff's camp while the Ayope and the Ikolaba have gone over to the 2nd Defendant's camp.

The Ayope told the Council he was forced to sign Exhibits "A2" and "A3" recommending Plaintiff's appointment for approval. He is an able-bodied man, much younger in age than the Jagun or the Balogun. Although he suggested he was forced to sign Ex. "A2" on the 9th April, 1946, yet he went 21 days later to execute Ex. "A3"; he executed both with full knowledge of the contents. The force which, he alleged, made him sign Ex. "A2," was that he was told the Assistant District Officer, Oshogbo, wanted it in time. What a ridiculous reason? If the Assistant District Officer wanted a document and he was not willing to be a party to it, why did he not refuse to append his thumb impression? When asked who forced him to sign Ex. "A2," he said, "After the Balogun was got round then Jagun and Areago begged me to join them." If he signed the document because he was begged to do so, then it is not true that he was forced. He told this Court on cross-examination by the Court that he signed Exs. "A2" and "A3" without being forced and that he was in full possession of his senses when he did so. It is therefore obvious that after he had agreed on Plaintiff's selection, he and other Kingmakers joined in writing letters Exs. "A2" and "A3."

Obviously 2nd Defendant's supporters managed to get him to their side and, to save his face, he started to tell lies that he was forced to sign Exs. "A2" and "A3."

With regard to the Ikolaba, he has been an invalid for several years through paralysis which had rendered him incapable of any movement, he has been rendered so helpless that he had to be fed. He had an accredited representative in Raji Akinloye who transacted business for him. Raji Akinloye was with the other Kingmakers as Ikolaba's representative and he thumb impressed Exs. "A2" and "A3" as such although the name of Ikolaba was written against his thumb impression. This was, no doubt, irregular, but it was thoroughly honest; and the fact that through ignorance it was not shown that he thumb impressed the document for the Ikolaba does not render the transaction bad, because he did, in fact, then represent the Ikolaba, so that all the five Kingmakers did sign Exs. "A2" and "A3" and that is definite evidence of their unanimity at the time.

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It is correct that the Kingmakers did not at first agree, but the evidence of Balogun, Jagun and the Plaintiff is true that they reached unanimity, signed Exs. "A2" and "A3" and presented the Plaintiff to the Assistant District Officer. This is confirmed by Councillor Longe who testified that at the presentation the only person who raised objection to the Plaintiff was Rev. Taiwo.

It was alleged by the Plaintiff, Balogun and Jagun that the Areago came back from Ibadan on the day Plaintiff was presented to the Assistant District Officer, to report the approval of Olubadan, Aleshinloye Okunola Abasi, so that all that remained then was for the Plaintiff to be installed. 10

The Plaintiff, no doubt, would have been installed if there had not been any backsliding among the Kingmakers who joined forces with some minor chiefs under the Balogun to support the 2nd Defendant. The 2nd Defendant cannot claim that he has had the unanimous support of the Kingmakers. This is a fact the very Senior Resident, Mr. Pyke Nott, who approved of his appointment, had to admit in the witness box. If native law and custom required unanimity in the Kingmakers then his appointment did not satisfy that test.

I have already found that the minor chiefs could not appoint the 2nd Defendant as they had no such right given them by native law and custom, so that it was worthless to have had the support of minor chiefs who were not Kingmakers, and the evidence is clear that it is the privilege of the Kingmakers to present a candidate appointed by them for approval. The minor chiefs, not being Kingmakers, have no active part to play in the appointment of the Timi of Ede and Ex. "G" is misleading and wrong in stating that the 2nd Defendant had the support of a "majority of Chiefs of Ede eligible to take part in the selection of a Timi of Ede." 20

Councillor Longe witnessed the marks on Exs. "A4" and "A5" and it is impossible to hold that the recommendation of the Plaintiff did not meet with the approval of very many chiefs at Ede. His selection could not therefore be considered unpopular. 30

Coming back to the findings of the Olubadan-in-Council, paragraphs 8-11 of Ex. "C2," it is difficult to see how any tribunal with an open mind could have come to the conclusion they come to in paragraph 8 in view of the evidence. The number of the Kingmakers was not in dispute and it was for them alone to recommend a selected candidate for approval. Iyalode and the Imam or Lemomu joined in signing Ex. "A2" only to show that the women and the Muslim support the selection. Letters Exs. "A4" and "A5" certainly contain the names of more chiefs than signed Sanusi Akangbe's recommendation which was put at about twenty at page 3 of Ex. "C2." 40

If the Council accepted that there were Kingmakers at Ede, then their conclusion in paragraph 9 is unwarranted and absurd, as all the chiefs of the town—whatever their number or titles—could not be the Kingmakers.

I agree with paragraph 10 that the appointment from the ruling houses had not been rotationally strict.

With regard to paragraph 11, there was no evidence before the Council that the Timi of Ede made the paper promising the next vacancy to Lagunju House. The person who referred to the paper is Councillor Longe, and at page 10 of Ex. "C2" is his statement that a written document was made before the death of the late Timi and that the Balogun, the late Timi and the Assistant District Officer Heylat had copies of it.

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The Plaintiff has told the Court that it was the then Olubadan who made the document. The effusions in paragraph 11 are therefore unwarranted, unjustified and unsupported. Unfortunately, the paper was  
10 not produced in evidence; but it would appear that the making of the document was an attempt to do justice to Lagunju house for having been unfairly treated in the past. It is remarkable that Mr. Pyke Nott in Ex. "C5," made a suggestion that a similar promise should be given to the 2nd Defendant and that the Plaintiff should be appointed.

Mr. Pyke Nott from February, 1946, was anxious for the Olubadan-in-Council to settle the matter with quick despatch but the matter dragged on for months on the pretext that the Olubadan and Council wished to make inquiries because they had received protests until a disagreement arose between the Olubadan and his Council. Ex. "B" is Olubadan  
20 Fagbinrin's memorandum as to which of the two should be appointed. He challenged the Council to refute his statements, but I cannot see anywhere in the evidence before me where they were subsequently refuted as alleged by Mr. Pyke Nott. It must be admitted that Olubadan Fagbinrin, as the Balogun which he then was, concurred to the iniquitous findings of the Council as reported in the "C2" but being an honest man and a man of integrity as described by Mr. Pyke Nott in paragraph 6 of Ex. "F," his tender conscience, no doubt, would not give him rest when he became the Olubadan until he took steps by writing Ex. "B" to see justice done.

The Council members alleged that, quite apart from taking part in  
30 the findings in Ex. "C2," he had since he became the Olubadan agreed with them that the 2nd Defendant should be appointed in preference to the Plaintiff, but he denied that the Council had ever reached any decision on the matter in paragraph 22 of Ex. "C5." The Council has failed even now to produce any evidence to show that the Olubadan and Council in fact came to the decision they alleged. Minutes of so many meetings held in connection with this Timi of Ede's dispute are in evidence but the Defendants cannot produce any minutes to show that, in fact, the matter had been discussed and a decision reached in favour of the  
40 2nd Defendant. This can leave only one impression on the Court, and that is, that the allegation of the Council Chiefs was not true. Furthermore sections 7 and 9 of Ex. "C6" suggest that a decision had been reached by the Council during the lifetime of Olubadan Aleshinloye Okunola Abasi, that the 2nd Defendant should be appointed, but no record of that decision could be produced in evidence. If such a decision had, in fact, been taken, why was the 2nd Defendant not appointed during the lifetime of that Olubadan? Why did the matter drag on in the Council in the time of Olubadan Fagbinrin on the 26th August, 1946, as reported in paragraphs 18, 25-44 of Ex. "C3"?

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Why again were paragraphs 28-33 of Ex. "C4," minutes of Council meeting of the 2nd September, 1946, devoted to this same dispute and why was it necessary again to discuss the matter at the meeting held on the 23rd September, 1946, as shown by paragraphs 2-25 of Ex. "F"? I don't believe there was any decision reached as regards the appointment of the 2nd Defendant in the lifetime of Olubadan Aleshinloye Okunola Abasi as alleged, and reference to such a non-existent decision on which the 2nd Defendant's appointment was based reflects no credit on the Olubadan and Council for honesty and truthfulness. If, on the other hand, it has been possible for me to believe that a decision was in fact taken 10 as alleged in paragraphs 7 and 9 of Ex. "C6," the Olubadan and Council cannot escape the charge of downright dishonesty and disgraceful conduct in pretending for months to investigate a case the result of which they had already decided secretly, and the truth, therefore, is that the enquiries and meetings held were mere shams and smoke-screens.

In any case, in view of my findings above, I cannot help feeling that the Olubadan and Council were not out to do justice in the matter and that their guiding principle in the matter has been a desire to carry out the suggestion of Memudu Osi Balogun, supported by Chief Oyewusi, the Osi Olubadan and by Amodu, Ashipa Balogun, that the Plaintiff who 20 appealed to the Alafin, be ruled out as a candidate for appointment as contained in paragraph 27 of Ex. "C7."

In my view, the charge of *mala fides* levelled against the 1st Defendant has been substantiated.

With regard to Mr. Pyke Nott, the Senior Resident, Oyo Province, he appears to have been anxious to see that justice was done and that quickly, but the 1st Defendant would not follow his advice as shown by Exs. "J," "C8" and "C." If his advice as contained in paragraph 7 of Ex. "C5" had been heeded, the Plaintiff should have been approved. He was honest enough to tell the Olubadan and Council that the more 30 he studied Olubadan's memorandum Ex. "B," the more difficult he found it to refute the arguments it contained, yet the Council rose that day without a decision being taken. The Council later on decided in favour of the 2nd Defendant but Mr. Pyke Nott did not know and could not say on what the decision was based. However, the decision was not acceptable to the supporters of the Plaintiff. Mr. Pyke Nott well realised that a due enquiry under the Appointment and Deposition of Chiefs Ordinance was called for, but he thought, quite wrongly, that no further enquiry was needed as the facts were known to everybody from the start.

I am satisfied that Mr. Pyke Nott acted quite honestly up to the time 40 the Olubadan and Council made their decision known, but the question is whether he acted *bona fide* in approving of the decision as being in accordance with native law and custom.

Unfortunately the letter written by the 1st Defendant to the Senior Resident, Oyo Province, to recommend the 2nd Defendant has not been produced in evidence and such a letter should show on what the recommendation was based. Mr. Pyke Nott stated that he did not know their reason for the decision in favour of the 2nd Defendant.

Ex. " C5 " definitely shows that he fully realised that the decision should be for the Plaintiff and the last sentence at page 4 of Ex. " C5 " contains the expression which he had used once before that after studying the question day and night, he had led them to the water again and again, but they refused to drink. Yet, when they decided contrary to his suggestion or advice, he confirmed the decision as being in accordance with native law and custom. It appears to me that he was tired of the prolonged dispute and thought the best thing was to accept the decision without question.

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- 10 He accepted the theory of Kingmakers and knew they must unanimously appoint the candidate. He knew or must have known that the decision of the 1st Defendant according to Ex. " C2 " that all the chiefs of the town irrespective of their number or titles must meet to appoint the Timi certainly could not have been in accordance with native law and custom which required Kingmakers to make the appointment, and that it must be preposterous for anyone to suggest that all the chiefs of the town are Kingmakers. Such a decision could not have been an honest one, and the writers of Ex. " A8 " who later claimed that they and not the five Kingmakers were to appoint the Timi were not worthy of
- 20 credit. I regret I am unable to accept the evidence of Mr. Pyke Nott that he honestly believed that the minor chiefs who appeared at Mapo Hall on the 5th December, 1946, to support the 2nd Defendant were the persons eligible to take part in the selection of a Timi. If, according to him, Plaintiff's selection was bad because the Kingmakers were not unanimous, the 2nd Defendant's cannot be good for the same reason even if it is accepted, which I don't do, that all the chiefs are Kingmakers.

In view of the foregoing I cannot but come to the conclusion that the appointment of the 2nd Defendant was not in accordance with native law and custom because—

- 30 (1) The Kingmakers did not decide that it was the turn of Ajeniju ruling house to present a candidate.
- (2) He was not presented by Ajeniju ruling house to the Kingmakers.
- (3) Ifa oracle was not consulted about him by the Kingmakers before his installation.
- (4) The Kingmakers did not unanimously appoint him and recommend his appointment to the Olubadan-in-Council.
- (5) He has a father living.
- 40 (6) He belongs to Ajeniju House like the last Timi, Sanusi Akangbe, his immediate predecessor.

With regard to the Plaintiff, I am satisfied that—

- (1) The Kingmakers decided that Oduniyi, Lagunju or Oloro House should present a candidate for appointment.
- (2) He was presented by Oduniyi, Lagunju or Oloro house to the Kingmakers for appointment.
- (3) The Kingmakers consulted Ifa oracle about him and he was accepted.

*In the  
Supreme  
Court of  
Nigeria.*

No. 55.  
Judgment  
delivered  
by  
Jibowu, J.,  
7th  
February  
1948,  
*continued.*

(4) The Kingmakers unanimously appointed him and recommended his appointment for approval.

(5) He sent the customary gifts to the Olubadan, his son or Prime Minister and his household through the Kingmakers.

(6) The Olubadan approved of his appointment.

It was submitted by Plaintiff's counsel that the Appointment and Deposition of Chiefs Ordinance has destroyed the right of the Ede Kingmakers and chiefs to refer their dispute to the Olubadan-in-Council, but I respectfully disagree with that view as it does not appear to me that the Ordinance has that effect. The Ordinance does not purport to annul 10  
Native Law and Custom but is intended to see it supported and maintained, hence it is made the duty of the Governor or his delegate to make "due enquiry," consult the people concerned in making the selection of an appointed Chief to satisfy himself that native law and custom has been complied with and to rule accordingly. If, as in this case, the recognised Kingmakers make their selection and other chiefs did not approve but put up another candidate, when the matter is referred to Olubadan and Council, it is for the Olubadan and Council to see which of the candidates has been properly selected and to approve of the right candidate accordingly. 20  
After approving the candidate, it is for the Olubadan and Council to obtain 20  
Government recognition for such a candidate. Should there be any dispute about the validity of the appointment of the candidate, the Governor or his delegate should hold the necessary enquiry and after making necessary consultation, he should decide whether the appointment is in accordance with native law and custom.

This brings me to the question whether the Olubadan and Council can override the decision of the Kingmakers. It appears to me that in the past the approval of the Bale and Council, the predecessors of Olubadan and Council, was given as a matter of course as in those days no one dared to question the powers of the Kingmakers. But since the Olubadan and 30  
Council themselves have after approving of a selected candidate to recommend him for Government recognition, it therefore became imperative for them to investigate whether the selection was made in accordance with native law and custom.

It follows, therefore, that a selection which passed the test of native law and custom is passed, and the one that does not is rejected. When rejected it appears to me that the Kingmakers have to make another selection which complies with customary laws.

In the circumstances, I think there is justification for the 1st Defendant's claim to approve or reject a candidate. 40

The rejection of a candidate is tantamount to overriding the decision of the Kingmakers but the right of rejection cannot be exercised capriciously or arbitrarily.

I am quite willing to accept the evidence that no candidate had in the past been rejected but the Native Authority Ordinance of 1943 is responsible for the various changes in the relationship between the parties concerned.



This brings us to an interesting point raised in paragraph 9 of Ex. " C5 " as to whether the Olubadan alone is not the proper person to accord recognition in the first instance to a candidate selected by the Kingmakers and recommended for approval.

*In the  
Supreme  
Court of  
Nigeria.*

The evidence of the Plaintiff, confirmed by that of the Balogun, Jagun and even of the 2nd Defendant shows that customary gifts were sent only to the Olubadan representing the old Bale and not to Olubadan and Council, so that it appears that, according to the strict native law, the Olubadan who receives the gifts and is supposed to bless and approve, should be the person to approve.

No. 55.  
Judgment  
delivered  
by  
Jibowu, J.,  
7th  
February  
1948,  
*continued.*

The evidence also shows that Olubadan Aleshinloye Okunola Abasi received gifts from the Plaintiff through the Areago, blessed the selected candidate and approved of his candidature.

Paragraph 19 of Ex. " C5," however shows that although gifts are received by the Olubadan, he does share them with his Council chiefs.

The Olubadan not being a Sole Native Authority under the Native Authority Ordinance cannot act without his Council in public affairs.

This fact seems to have been clear to the writers of Exs. " A " and " A13 " in which the letters were either addressed to the Olubadan and Council or to the Olubadan-in-Council but not to the Olubadan.

Olubadan-in-Council and Olubadan and Council are the creation of an Ordinance and not the result of evolution of customary laws.

In the circumstances, it appears correct that the Olubadan should under native law and custom receive gifts from the Kingmakers on behalf of the candidate recommended for approval and that the question of approval of the candidate who will become a sort of cog in the machinery of Government, if approved, should be dealt with by the Native Authority, i.e. by the Olubadan-in-Council.

I don't therefore think that the Olubadan has a prerogative which he can exercise in the matter.

The 2nd Defendant was installed as the Timi on the 19th December, 1946, and not on the 13th November, 1946, as appears on the writ of summons. I therefore amend the date to read 19th December, 1946.

The month in paragraph 4 of 1st Defendant's Defence and in paragraph 5 of 2nd Defendant's Defence is wrong and should read July instead of May, 1946, and I amend them accordingly.

In view of the findings above, I cannot make the declaration sought in 2 (A) of the writ of summons that the 1st Defendant is not by native law and custom or by any other law qualified or entitled to override the choice or decision of the Ede Kingmakers in the selection of the 2nd Defendant and his subsequent installation on the 19th December, 1946, as Timi of Ede, is contrary to native law and custom governing the selection of a Timi of Ede, and is therefore null and void and is hereby set aside.

I also declare that the Plaintiff is the person qualified and entitled by native law and custom to hold the post and enjoy the title of the Timi of Ede which became vacant on the 24th January, 1946.

*In the  
Supreme  
Court of  
Nigeria.*

I declare also that the Plaintiff was duly selected by the Ede King-makers as Timi of Ede in April, 1946, and that the selection was in accordance with the native law and custom.

The Court therefore grants the injunction sought and hereby orders the 2nd Defendant to cease from henceforth to perform the duties of the Timi of Ede and from receiving the salary or stipend attached to the office of Timi of Ede.

The Plaintiff is granted agreed costs of two hundred guineas.

Mr. Briggs, Crown Counsel, asks for stay of execution pending the result of an appeal he is bringing in the matter. The reason is that there would be a big disturbance in Town if execution is not stayed and that there would be another disturbance should the judgment be reversed by the West African Court of Appeal. 10

Mr. Awolowo opposes the application.

Both Counsel consult and agree on the order hereby made as follows :

No stay of execution as to costs. Stay of execution of the other orders of the Court is granted on the conditions that the 2nd Defendant shall

- (1) leave Ede within 48 hours 20
- (2) reside in a place not less than 100 miles from Ede
- (3) not exercise the functions of the Timi of Ede wherever he may be

pending the determination of the appeal to be brought in the matter.

(Sgd.) O. JIBOWU,  
Judge.

No. 56.  
[*Not  
printed*]

**No. 56.**

**MOTION for Conditional Leave to Appeal to the W.A.C.A., 3rd March 1948.**

[*Not printed.*] 30

No. 57.  
[*Not  
printed*].

**No. 57.**

**AFFIDAVITS in support of Motion for Conditional leave, 2nd and 5th March 1948.**

[*Not printed.*]

No. 58.

**PROCEEDINGS: Application for Adjournment and other matters, 20th and 30th March and 3rd April 1948.**

*In the  
Supreme  
Court of  
Nigeria.*

[*Not printed.*]

No. 58.  
[*Not  
printed.*]

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No. 59.

**MOTION AND AFFIDAVIT for conditional leave to appeal, 7th April 1948.**

No. 59.  
[*Not  
printed.*]

[*Not printed.*]

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No. 60.

10 **MOTION AND AFFIDAVIT by Plaintiff, dated 22nd and 24th April 1948, to discharge Court Order of 7th February 1948.**

No. 60.  
[*Not  
printed.*]

[*Not printed.*]

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No. 61.

**MOTION AND AFFIDAVIT, dated 3rd and 4th May 1948, for leave to appeal and for stay of execution.**

No. 61.  
[*Not  
printed.*]

[*Not printed.*]

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*In the  
Supreme  
Court of  
Nigeria.*

No. 62.

**PROCEEDINGS : Motions for Discharge of Order and leave to appeal.**

IN THE SUPREME COURT OF NIGERIA

THE IBADAN JUDICIAL DIVISION

Holden at Ibadan.

No. 62.  
Proceed-  
ings :  
Motions for  
Discharge  
of Order  
and Leave  
to Appeal,  
17th May  
1948.

Before HIS HONOUR OLUMUYIWA JIBOWU, Ag. Senior Puisne Judge.

Monday the 17th day of May, 1948.

(1) Motion by Plaintiff for order discharging the order made by this Court on the 7th February, 1948.

(2) Motion by 1st Defendant for conditional leave to appeal against 10 judgment of this Court dated the 7th February, 1948, and for stay of execution.

(3) Motion by 2nd Defendant for conditional leave to appeal against judgment of this Court dated the 7th February, 1948, and for stay of execution.

Awolowo for Plaintiff-Respondent.

Agbaje for 1st Defendant-Appellant.

A. O. Thomas for 2nd Defendant-Appellant.

A. O. Thomas asks Court not to discharge the order made on 7/2/48 but to vary it. 20

Awolowo replies that the Court had the power to discharge an order previously made by it. Refers to page 401 Order 24 Rule 5 of County Court Practice, 1947. Refers also to the White Book 1947 Order 28 Rule 11.

Agbaje asks Court to grant stay of execution with regard to the injunction.

Leave to appeal is granted to the 1st Defendant on condition that they give notice of the appeal to the other side within a month.

Leave to appeal is granted to the 2nd Defendant in the following conditions :— 30

He shall within a month

- (1) pay into Court £100 to cover the costs of appeal Records
- (2) give security for costs of appeal for Bond of 100 guineas with a Surety to be approved by the Registrar of this Court
- (3) give notice of appeal to the other side.

No stay of execution is granted to the 1st and 2nd Defendants and the order granting stay of execution made by this Court on the 7th February, 1948, is hereby discharged.

(Sgd.) O. JIBOWU,  
J.

17/5/48. 40

No. 63.

ORDER re 1st Defendant.

IN THE SUPREME COURT OF NIGERIA  
THE IBADAN JUDICIAL DIVISION.

*In the  
Supreme  
Court of  
Nigeria.*

No. 63.  
Order of  
Court :  
Re 1st  
Defendant,  
17th May  
1948.

Suit No. I/14/1947.

Between MEMUDU LAGUNJU

Plaintiff

and

1. OLUBADAN-IN-COUNCIL

2. J. ADETOYESE LAOYE

Defendants.

10 UPON READING the affidavit of Samuel Oladapo Lajumoke of Bere, Ibadan, Council Clerk to the Olubadan-in-Council, 1st Defendants herein, sworn and filed the 4th day of May, 1948 ;

AND after hearing Mojid Fola Agbaje, Esquire, Barrister-at-Law and Solicitor to the 1st Defendants herein in support ;

IT IS ORDERED that leave be, and is hereby granted to the Olubadan-in-Council to appeal to the West African Court of Appeal on condition that they give notice of appeal to the other side within a month.

Given at Ibadan the 17th day of May, 1948.

(Sgd.) O. JIBOWU,

Ag. Senior Puisne Judge.

20

No. 64.

ORDER re 2nd Defendant.

IN THE SUPREME COURT OF NIGERIA  
THE IBADAN JUDICIAL DIVISION.

No. 64.  
Order of  
Court :  
Re 2nd  
Defendant,  
17th May  
1948.

Suit No. I/14/1947.

Between MEMUDU LAGUNJU

Plaintiff

and

1. OLUBADAN-IN-COUNCIL

2. J. ADETOYESE LAOYE

- - Defendants.

30 UPON READING the affidavit of John Adatoyese Laoye, Dispenser, Yoruba, of 43 Simpson Street, Ebute Metta, hereinafter called the Second Defendant, sworn to at Lagos the 7th day of April, 1948, and filed at Ibadan the 9th day of April, 1948 ;

AND AFTER HEARING Olabode Thomas, Esquire, Barrister-at-Law, Solicitor to the said Second Defendant herein in support ;

*In the  
Supreme  
Court of  
Nigeria.*

No. 64.  
Order of  
Court :  
Re 2nd  
Defendant,  
17th May  
1948,  
*continued.*

IT IS ORDERED that leave be, and is hereby granted to the said John Adetoyese Laoye, Second Defendant in this matter to appeal to the West African Court of Appeal upon the following conditions being fulfilled within a month hereof :—

1. Pay into Court £100 to cover the costs of Appeal Records ;
2. Give security for costs of appeal by a Bond of 100 Guineas with a surety to be approved by the Registrar of this Court ;
3. Give notice of appeal to the other side.

FURTHER ORDERED that no stay of execution is granted to the 1st and 2nd Defendants and the Order granting Stay of Execution made 10 by this Court on the 7th February, 1948, is hereby discharged.

Given at Ibadan the 17th day of May, 1948.

(Sgd.) O. JIBOWU,  
Ag. Senior Puisne Judge.

No. 65.  
Order of  
Court : Re  
Plaintiff,  
17th May  
1948.

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**No. 65.**  
**ORDER re Plaintiff.**

IN THE SUPREME COURT OF NIGERIA.  
The Ibadan Judicial Division.

Suit No. I/14/1947.

L.S.

20

Between MEMUDU LAGUNJU - - - - Plaintiff  
and

1. OLUBADAN-IN-COUNCIL
2. J. ADETOYESE LAOYE - - Defendants.

UPON READING the affidavit of Memudu Lagunju of Lagunju's Compound, Ede, Oyo Province, Plaintiff in this matter, sworn to and filed the 24th day of April, 1948 ;

AND AFTER HEARING Obafemi Awolowo, Esquire, Barrister-at-Law and Solicitor to the Plaintiff herein, in support ;

IT IS ORDERED as follows :—

30

“ No stay of execution is granted to the 1st and 2nd Defendants and the order granting stay of execution made by this Court on the 7th February, 1948, is hereby discharged.”

Given at Ibadan the 17th day of May, 1948.

(Sgd.) O. JIBOWU,  
Ag. Senior Puisne Judge.

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No. 66.

**BOND FOR COSTS, dated 21st May 1948.**

[ *Not printed.* ]

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*In the  
West  
African  
Court of  
Appeal.*

No. 66.  
[ *Not  
printed.* ]

No. 67.

**NOTICE OF APPEAL by 2nd Defendant, dated 21st May 1948.**

[ *Not printed.* ]

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No. 67.  
[ *Not  
printed.* ]

No. 68.

**MOTION AND AFFIDAVIT by 2nd Defendant for final leave to appeal, dated 12th June 1948.**

[ *Not printed.* ]

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*In the  
Supreme  
Court of  
Nigeria.*

No. 68.  
[ *Not  
printed.* ]

10

No. 69.

**NOTICE OF APPEAL by 1st Defendant, 14th June 1948.**

[ *Not printed.* ]

---

No. 69  
[ *Not  
printed.* ]

No. 70.

**MOTION AND AFFIDAVIT by 1st Defendant for final leave to appeal, 22nd June 1948.**

[ *Not printed.* ]

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No. 70.  
[ *Not  
printed.* ]

*In the  
Supreme  
Court of  
Nigeria.*

No. 71.

**PROCEEDINGS : Ex parte Motion for final leave to appeal.**

IN THE SUPREME COURT OF NIGERIA.

The Ibadan Judicial Division.  
Holden at Ibadan.

Before—

HIS HONOUR OLUMUYIWA JIBOWU, Ag. Senior Puisne Judge.

Wednesday the 30th day of June, 1948.

No. 71.  
Pro-  
ceedings :  
*Ex parte*  
Motion for  
Final Leave  
to Appeal,  
30th June  
1948.

I/14/47

*Ex parte* Motion for final leave to appeal to the W.A.C.A. by the 10  
1st and 2nd Defendants.

Agbaje for 1st Defendant.

A. C. Thomas (Junior) for 2nd Defendant.

Final Leave granted.

(Sgd.) O. JIBOWU,  
Ag. Senior Puisne Judge.

30/6/48.

No. 72.

Order of  
Court :  
Re 1st  
Defendant,  
30th June  
1948.

No. 72.

**ORDER re 1st Defendant.**

IN THE SUPREME COURT OF NIGERIA.

The Ibadan Judicial Division.

20

Suit No. I/14/1947.

Between MEMUDU LAGUNJU - - - Plaintiff/Respondent

and

1. OLUBADAN-IN-COUNCIL

2. J. ADETOYESE LAOYE - - Defendants/Appellants.

UPON READING the Affidavit of S. Lajumoke, Yoruba, Clerk to the  
Olubadan-in-Council, sworn to and filed on the 22nd day of June, 1948 ;

AND AFTER HEARING A. M. F. M. Agbaje, Esquire, Barrister-at-  
Law, for the 1st Defendants Appellants ;

30

IT IS THIS DAY ORDERED that Final Leave be, and is hereby,  
granted to the 1st Defendants Appellants to appeal to the West African  
Court of Appeal from the judgment of this Honourable Court dated the  
7th day of February, 1948.

Dated at Ibadan this 30th day of June, 1948.

(Sgd.) O. JIBOWU,  
Ag. Senior Puisne Judge.

Official.

(Sgd.) O. SODEINDE,  
Cashier 30/6/48.

40



No. 73.

ORDER re 2nd Defendant.

IN THE SUPREME COURT OF NIGERIA.

The Ibadan Judicial Division.

Suit No. I/14/1947.

Between MEMUDU LAGUNJU

- Plaintiff/Respondent

and

1. OLUBADAN-IN-COUNCIL

2. J. ADETOYESE LAOYE - - Defendants/Appellants.

10 UPON READING the Affidavit of John Adetoyese Laoye, Yoruba, Dispenser, sworn to and filed at Ibadan on the 14th day of June, 1948 ;

AND AFTER HEARING A. M. F. M. Agbaje, Esquire, Barrister-at-Law, holding the brief of Mr. A. O. Thomas (Junior) for the 2nd Defendant-Appellant ;

IT IS THIS DAY ORDERED that Final Leave be, and is hereby granted to the 2nd Defendant-Appellant to appeal to the West African Court of Appeal from the judgment of this Honourable Court dated the 7th day of February, 1948.

Dated at Ibadan this 30th day of June, 1948.

20

(Sgd.) O. JIBOWU,

Ag. Senior Puisne Judge.

*In the  
Supreme  
Court of  
Nigeria.*

—  
No. 73.  
Order of  
Court :  
Re 2nd  
Defendant,  
30th June  
1948.

**FOUNDATIONS OF APPEAL of 1st Defendant.**

No. 74.  
Grounds of  
Appeal  
of 1st  
Defendant,  
6th July  
1948.

The Appellant being dissatisfied with the Judgment of the Supreme Court at Ibadan, delivered by His Honour Justice O. Jibowu on the 7th day of February, 1948, and having obtained Final Leave to Appeal therefrom on the 30th day of June, 1948, hereby appeal to the West African Court of Appeal upon the Grounds hereinafter set forth.

**FOUNDATIONS OF APPEAL.**

1. The Learned Trial Judge erred in Law in holding that there was no due enquiry which would have ousted the Jurisdiction of the Court. 10

2. The Learned Trial Judge was wrong in reviewing and setting aside the decision of the Olubadan-in-Council having recognised the right of the said Olubadan-in-Council to override the decision of the Kingmakers and the Ede District Council.

3. The Learned Trial Judge misdirected himself as to the facts and came to the wrong conclusion that the Olubadan-in-Council acted *mala fides* in deciding that the 2nd Defendant was properly selected and entitled to be made the Timi of Ede.

4. The Learned Trial Judge misdirected himself as to the facts and Law, Native Custom and practice and came to the wrong conclusion that 20 after accepting the gifts the Olubadan approves of the selection and sends a representative to witness the installation of the selected candidate.

5. The Learned Trial Judge misdirected himself as to the facts and Native Law and Custom and came to the wrong conclusion that the selected candidate as Timi of Ede installed when approval of the Olubadan is received.

6. The Learned Trial Judge erred in Law in declaring—

(A) that the Plaintiff is the person qualified and entitled by Native Law and Custom to hold the post and enjoy the title of the Timi of Ede which became vacant on the 24th January, 1946. 30

(B) That the selection of the 2nd Defendant and his subsequent installation on 19th December, 1946, as Timi of Ede, is contrary to Native Law and Custom governing the selection of a Timi of Ede, and is therefore null and void and is hereby set aside.

7. The Learned Trial Judge was wrong in granting an injunction in the following words :—

“ The Court therefore grants the injunction sought and hereby orders the 1st Defendant to cease from henceforth to perform the

duties of the Timi of Ede and from receiving the salary or stipend attached to the Office of Timi of Ede.”

Dated at Ibadan this 6th day of July 1948.

(Sgd.) MOJID FOLA AGBAJE

A. M. F. M. AGBAJE

1st Defendant/Appellant's Solicitor.

Official

(Sgd.) O. Sodeinde  
Cashier.

*In the  
West  
African  
Court of  
Appeal.*

No. 74.  
Grounds of  
Appeal  
of 1st  
Defendant,  
6th July  
1948,  
*continued.*

10

No. 75.

**GROUND OF APPEAL of 2nd Defendant.**

The Appellant being dissatisfied with the Judgment of the Supreme Court at Ibadan, delivered by his honour Mr. Justice O. Jibowu on the 7th day of February, 1948, and having obtained Final Leave to Appeal therefrom on the 30th day of June 1948, hereby appeal to the West African Court of Appeal upon the Grounds hereinafter set forth.

No. 75.  
Grounds of  
Appeal  
of 2nd  
Defendant,  
6th July  
1948.

**GROUND OF APPEAL**

1. The Learned Trial Judge erred in law in holding that there was no due enquiry which would have ousted the Jurisdiction of the Court.

20 2. The Learned Trial Judge was wrong in reviewing and setting aside the decision of the Olubadan-in-Council to override the decision of the Kingmakers and the Ede District Council.

3. The Learned Trial Judge misdirected himself as to the facts and came to the wrong conclusion that the Olubadan-in-Council acted *mala fides* in deciding that the 2nd Defendant was properly selected and entitled to be made the Timi of Ede.

30 4. The Learned Trial Judge misdirected himself as to the facts and Law, Native Customs and practice and came to the wrong conclusion that after accepting the gifts the Olubadan approves of the selection and sends a representative to witness the installation of the selected candidate.

*In the  
West  
African  
Court of  
Appeal.*

5. The Learned Trial Judge misdirected himself as to the facts and Native Law and Custom and came to the wrong conclusion that the selected candidate as Timi of Ede installed when approval of the Olubadan is received.

No. 75.  
Grounds of  
Appeal  
of 2nd  
Defendant,  
6th July  
1948,  
*continued.*

6. The Learned Trial Judge erred in Law in declaring (a) That the Plaintiff is the person qualified and entitled by Native Law and Custom to hold the post and enjoy the title of the Timi of Ede which became vacant on the 24th January 1946 (b) That the selection of the 2nd Defendant and his subsequent installation on 19th December, 1946 as Timi of Ede, is contrary to Native Law and Custom governing the selection of a Timi of Ede and is therefore null and void and is hereby set aside.

10

7. The Learned Trial Judge was wrong in granting an Injunction in the following words :—

“ The Court therefore grants the injunction sought and hereby Orders the 2nd Defendant to cease from henceforth to perform the duties of the Timi of Ede and from receiving the salary or stipend attached to the Office of Timi of Ede.”

Dated at Lagos this 6th day of July, 1948.

(Sgd.) MOJID FOLA AGBAJE  
2nd Defendant/Appellant's Solicitor.

No. 76.  
Statement.  
[*Not  
printed.*]

No. 76.  
STATEMENT.

20

[*Not printed.*]

## PROCEEDINGS : Defendants-Appellants' Case.

IN THE WEST AFRICAN COURT OF APPEAL.  
Holden at Lagos Nigeria.

Thursday the 11th day of November, 1948.

Before Their Honours

Sir HENRY WILLIAM BUTLER BLACKHALL, K.C., President.

Sir JOHN VERITY, Chief Justice, Nigeria.

ARTHUR WERNER LEWEY, K.C., Justice of Appeal.

*In the  
West  
African  
Court of  
Appeal.*

No. 77.  
Proceedings  
Defendants-  
Appellants'  
Case, 11th  
November  
1948.

10

WAC. 2925.

MEMUDU LAGUNJU - - - - - Plaintiff-Respondent

*v.*

OLUBADAN-IN-COUNCIL and Another - - - - - Defendants-Appellants.  
Thomas (Agbaje with him) for Appellants.

Awolowo for Respondent.

President informs Counsel that argument should be confined to Ground 1 as Court will decide on that point before proceeding further (if at all).

20 *Thomas* : Ordinance 21 of 1945 Section 3. W.A.C. Judgment July, 1947 in present case. *L.G.B. v. Slames Union* 49 L.T.R. 714 at 716. Evidence re enquiry page 61 line 12, page 61 line 20 page 64 line 13, page 64 line 19-21 (Resident present not page 64 line 21). Dates of P. Nott's tenure page 60 line 6. Points relied on by trial Judge for finding that no due enquiry.

(1) Enquiry did not take place after 2nd Appellant's appointment as it should have done page 99 line 3.

(2) Proper parties not incited to state their case page 97 line 6 lines 6-12.

30 (3) Decision of tribunal (Resident) based on findings of Olubadan-in-Council page 99 line 9.

(4) That the enquiry (on consult) Resident with Olubadan-in-Council was not an enquiry. It should be held separately page 98 line 38 line 46.

(5) Procedure wrong as not in keeping with procedure of Courts page 97 line 6 etc. page 99 line 14.

40 Submit Governor a ministerial or administrative tribunal. Housing Act 1936. *Johnson & Co. v. Minister of Health* 1947 2 All England 395. I adopt arguments in Law Journal 1 October 1948 page 546. *L.G.B. v. Arlidge* 1915 A.C. 120 (Act provides for rules re holding enquiry) page 132-3. Minister may obtain material vicariously *Miller v. Minister of Health*

*In the  
West  
African  
Court of  
Appeal.*

No. 77.  
Proceedings:  
Defendants-  
Appellants'  
Case, 11th  
November  
1948,  
*continued.*

1946 L.R. K.B. 626. 628 can use extra . Minister owes duty to King not to Courts (Law Journal Act *re Johnson and Cole* page 399). Cases upon which Judge relied were mostly disciplinary tribunals (all but one), e.g. Medical Council See Judgment page 96 line 5 a club case. Judgment line 11 *et seq.* Medical Council case of discipline. Page 96 line 24 Judge's wrongly applied principle of both parties appearing to non-disciplinary tribunals. Page 96 line 40 Maclean is re expulsion of a member 50 disciplinary English rules applies. Hawkins a club case. Judgment page 96 line 41 to end. Spackman cases. *Franklin v. Minister, Town & Country Planning* 1947 1 All England Reports 396 cited to trial 10 Judge has been reversed see 1947 2 All England Reports 289. re Judge's ground (1) enquiry affording basis of Resident's decision. Date of appointment 5th December 1946 (Ex. E page 207). Resident's decision 7th December. Dispute arose when King makers disagreed. It was on in May 1946 (page 173). No need for Governor to wait for appointment : he can start as soon as there is a dispute. Petitions A1-13 poured in from both sides. Resident entitled to consider them and formed part of enquiry. *Miller v. Minister of Health* page 69. re Judge's ground (2) Judge misconceived who are proper parties. At page 91 line 17 " parties to be invited before tribunals " contrary to Arlidge page 120 party not 20 entitled to give oral evidence. Judge wrong in holding that plaintiff and defendants parties to dispute. Submit King makers were the parties. Page 99 line 23. Answer is that Resident may rely on opinion of Council. Arlidge at page 113 " Minister may obtain materials vicariously " so may Resident as head of Administrative and the Olubadan his body assisting him : they are his officials. Resident was present at deliberations of Olubadan-in-Council and was entitled to form his views on theirs though I don't admit he did so.

Everyone concerned in dispute was invited to come forward C1 page 173 line 14. Meeting was held on 9 May and invitation repeated page 182 30 line 10.

No. 78.  
Proceedings:  
Plaintiff-  
Respon-  
dent's Case,  
11th, 15th  
and 16th  
November  
1948.

No. 78.

**PROCEEDINGS : Plaintiff-Respondent's Case.**

*Awolowo :*

English decisions under Town Planning only analogous. Minister may judge on grounds of expediency therefore distinguishable from powers of Governor under local Ordinances. Ordinance 14 of 1930. Submit Governor not to intervene until appointment has been made. He may appoint only if no appointment made. P refers to last part of sub-section (1) which deals with no appointment. page 214 line 43 page 200-1. 40 The plaintiff and 2nd defendant are the parties. *Johnson & Co. v. Minister of Health* page 399 A & B.

*By President :* A new Resident would be entitled to read the minutes of Olubadan meeting.

*By C.S.N. :* There should be a formal enquiry after 5 December i.e. date of appointment.

Monday the 15th day of November, 1948.

Parties as before.

*Awolowo* : Distinction between disciplinary and arbitration tribunals is merely verbal 1943 2 All England Reports *Spackman v. G. M. Co.* at 343 "tribunal" not happy (it misled Jibowu J.).

*In the  
West  
African  
Court of  
Appeal.*

Town Planning cases not applicable because principles and facts different. The function of Minister purely executive or administrative while functions of Governor *quasi* judicial. Minister must appoint someone else to hold public enquiry but Governor or delegate must hold it himself. Under Acts Minister has discretion to consider public expediency but Governor limited to deciding re native law and custom. Arlidge 10 111 Law Times 905 page 914. "After due enquiry" means that anyone interested may attend. *Franklin v. Minister of Town Planning* 1947 2 All England Reports 289 refers to section Act pages 295-6. *Miller v. Minister of Health* 1946 1 K.B. 626. *Johnson & Co.* 1947 2 All England Reports 395. Medical Act 1858 section 29 "after due enquiry." The enquiry by the Resident up to 5 December merely related to machinery of election and not to the suitability of the candidate. At first enquiry he was merely ascertaining what was the proper machinery for election. The second should be to find out whether the person elected had been properly elected.

No. 78.  
Proceedings:  
Plaintiff-  
Respon-  
dent's Case,  
11th, 15th  
and 16th  
November  
1948,  
*continued.*

20 Governor's powers under section 2 (2) do not arise until election made. Page 196 line 14 Resident wrong in saying it was impossible to go back : he should have heard objections against Olubadan-in-Council. 31 Halsbury p. 502 para. 645 Laws limiting jurisdiction High Court to be strictly construed. A person who was previously entitled to come to Court cannot be shut out from being heard by the Governor unless expressly provided page 477 Para. page 532 para. 1177 31 Halsbury page 508 para. 656-7 procedure prescribed must be strictly construed. Resident should have made petitions available to other side. Record page 145, 147. Resident based his finding on these letters.

30 P. 150 Ex. A 10.  
P. 160.  
P. 201 line 25 Resident was at one time impressed by Memudu's claim.  
P. 210, p. 211 line 27.  
P. 147 p. 148 A8 line 9.

(Adjourned.)

Tuesday the 16th day of November, 1948.

Parties as before.

40 *Awolowo* : Certain communications to Resident not disclosed to Kingmakers, approval by chiefs was not brought to Resident's notice at enquiry of 15 July. Ex A11 page 151 should be brought to Appellant's notice to enable him to contradict it.

*Board of Education v. Rice & Ors.* 1911 A.C. 179 at 182 need not hear evidence can obtain information from any source provided they give opportunity to either party to contradict prejudiced status. 1942 2 All England Reports 150 *R. v. Medical Council—Spackman*. Due enquiry does involve full hearing of evidence accused desires to offer and his witnesses if tendered.

50 1943 2 All England Reports 337 H. of L. (*Spackman*). 339 H 340 A, 341 D, 344 E, F.

*In the  
West  
African  
Court of  
Appeal.*

No. 78.  
Proceedings:  
Plaintiff-  
Respon-  
dent's Case,  
11th, 15th  
and 16th  
November  
1948,  
*continued.*

Johnson 1947 2 All England Reports 395, 403 H, 405 D when he starts he must not hear one side and not the other documents—should give parties opportunity of commenting 406 E. Respondent was a party because rights and interests affected by Resident's decision. *Board of Education v. Rice* page 181 last paragraph. Johnson 399 C Manifest. *L.G.B. v. Arlidge* 111 Law Times 905 at 911. Record page 64 line 45 "I did not hold enquiry," Resident bound to hold enquiry personally Inter Ordinance 27 of 1939 Sections 22, 28 1942 1 All England Reports (*Spackman*) 568 at 573 E "Council cannot delegate duty of making due enquiry." 1943 2 All England Reports (*Spackman*) 337 at 341 *C. Laoye & Others v. Oyatunde* 1944 Privy Council. "Sole Judge" makes him only person who can go into the issue. 5 Nigerian Law Reports page 99 *Essiene v. Ediok* "sole Judge" ousted jurisdiction of Court. 10

No. 79.  
Proceedings:  
Defendants-  
Appellants'  
Case, 17th  
November  
1948.

No. 79.

**PROCEEDINGS : Defendants-Appellants' Case.**

*Agbaje :*

Distinction between ministerial and disciplinary tribunals. *Arlidge* at page 132, 133. See page 61 line 2 Ex. C2 page 174. Page 207. Date of Appointment was 27 November (page 206 line. 10). All points in petitions were enquired into at meeting with both parties. 20

Wednesday the 17th day of November, 1948.

Parties as before.

*Thomas (in absence of Agbaje) :* Governor sole Judge. Even if he does not make due enquiry, this will not give power to Court to deal with matter "after due enquiry" a mere direction. Court can only decide whether there was due enquiry. Person dissatisfied his remedy is certiorari. Court can never decide the merits. All cases re Minister certiorari adopted. Also Mandamus. Governor's delegate was not a party to action. The Governor's decision still stands : it was not set aside or quashed in Court below. This Court has no power to send back case to Governor. 30

Re time when enquiry should take place. Section 2 (2) Governor's enquiry divided into 2 heads (a) what is the native custom (b) was the appointment made in accordance with it. Submit (a) may take place at any time. The Governor's decision must be after due enquiry but the enquiry may begin at any stage of the dispute even before the appointment is made. It would probably be limited to enquiring &c. what the native custom is. When appointment actually made it is enough for him to enquire whether appointment made according to the native law and custom.

There are no parties.

There was evidence that in case of dispute Olubadan would decide. 40 Therefore Governor entitled to adopt their decision.

*Spackman* distinguishable because he was accused of offence and natural justice requires he should have opportunity of defending himself.

In Ministerial cases there are objections. "hold public enquiry" stronger than "after due enquiry" re certiorari *R. v. Minister of Health ex parte Yaffe* 1930 2 K.B. 98.

Decision reserved.



No. 80.

## JUDGMENT.

IN THE WEST AFRICAN COURT OF APPEAL.

Holden at Lagos, Nigeria.

Saturday the 4th day of December, 1948.

Before Their Honours

SIR HENRY WILLIAM BUTLER BLACKHALL, K.C., President

SIR JOHN VERITY, Chief Justice, Nigeria

ARTHUR WERNER LEWEY, K.C., Justice of Appeal.

*In the  
West  
African  
Court of  
Appeal.*No. 80.  
Judgment,  
Delivered  
by Lewey,  
J.A., 4th  
December  
1948.

10

WAC. 2925.

Between MEMUDU LAGUNJU

*Plaintiff-  
Respondent*

and

1. OLUBADAN-IN-COUNCIL

*Defendants-*

2. J. ADETOYESE LAOYE

*Appellants*

## JUDGMENT.

(Delivered by LEWEY, J.A.)

This case is concerned with a dispute as to the person entitled by native law and custom to fill the office of Timi of Ede.

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The relevant statutory provision dealing with such disputes is subsection (2) of section 2 of the Appointment and Deposition of Chiefs Ordinance, 1930, as amended by the Appointment and Deposition of Chiefs (Amendment) Ordinance, 1945 (No. 20 of 1945) and it would appear obvious that the true purpose of that subsection was to establish the Governor as the "sole Judge" in such disputes. In this case, however, doubts have arisen as to the construction of parts of the subsection, and as to the precise meaning and true effect of the words "after due enquiry and consultation with the persons concerned in the selection" which occur in the subsection. More particularly it has become necessary to consider

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these words in relation to the question as to whether, or in what circumstances, the jurisdiction of the Courts can be said to be ousted by the provisions of the subsection.

It has been argued that the words to which I have referred can be construed in two markedly different ways—

(A) as constituting conditions precedent which the Governor must fulfil before he can act as "sole Judge," so that the jurisdiction of the Court is not ousted unless and until these conditions have been fulfilled; or

40

(B) as being merely directions as to the manner in which the Governor is to proceed in such matters, the unconditional ouster of the Court's jurisdiction having followed *ipso facto* from the enactment of the subsection.

*In the  
West  
African  
Court of  
Appeal.*

No. 80.  
Judgment,  
Delivered  
by Lewey,  
J.A., 4th  
December  
1948,  
*continued.*

When this action originally came before the trial Judge, the question of want of jurisdiction was raised as a preliminary point, and the learned Judge accepted construction (B) above and dismissed the case on that ground. Against that decision there was an appeal to this Court in November, 1947, when this Court (on which I was not then sitting) took the view that the learned Judge had placed too wide a construction on subsection (2) of section 2 of the Ordinance, allowed the appeal on the preliminary point, and sent the case back for the Judge to determine the issues, after hearing evidence.

The learned trial Judge then proceeded on the footing that (A) was the correct interpretation and, having found as a fact that there had been no "due enquiry," he assumed that the requisite jurisdiction still remained with the Court and proceeded to adjudicate upon the merits of the action which had been brought before him.

With that interpretation by the learned Judge I am unable to agree, and I am of the opinion that construction (B) is the correct one and that the Courts have been deprived by the subsection of any power to entertain actions of this kind. It seems to me from the language of the subsection that the intention of the legislature was clearly to remove, once and for all, chieftaincy disputes of a certain class from the ordinary course of litigation in the Courts, and to entrust their adjudication to the Governor as the head of the administration. That procedure, which is by no means uncommon in other colonies, was no doubt designed to free the settlement of such disputes from the delays and complexities—and possible appeals—which are attendant on an ordinary civil trial in the Courts. It would appear to have been adopted in order to facilitate the expeditious and simple determination of matters which are not, in the strict sense, questions of law or fact but which call rather for a practical knowledge of native law and custom.

Once (B) is accepted as the true construction of the subsection, it necessarily follows that no proceedings such as the present action can be entertained by the Courts, since the Courts are precluded, not only from determining the issues set out in the pleadings, but also from considering, for the purposes of the action, whether there has or has not been an enquiry within the meaning of the subsection. If it is held the effect of the subsection was to transfer jurisdiction unconditionally from the Courts to the Governor, there is an end of the matter.

That is not to say that there remains in the Courts no power to intervene whether by the prerogative writs or otherwise, in circumstances where application is made to them for relief, as for example, where there has been an alleged refusal or failure to carry out the statutory duties provided for by the subsection. But such eventualities are far removed from the present case, where the Court has purported to assume jurisdiction in a formal action with pleadings in a matter which is admittedly a "dispute" within the meaning of the subsection.

In the present case, the learned trial Judge was wrong, in my judgment, in his construction of the relevant provision of the Ordinance and in purporting to adjudicate in an action where he had no jurisdiction.

It follows that this Court cannot consider—and in fact it has not considered—the merits of this case, and that the evidence and arguments

before the learned trial Judge as to the merits, as to what is necessary to constitute "due enquiry" and as to whether there has been an enquiry at all are now beside the point.

In these circumstances, the Appellant could not succeed on those of his Grounds of Appeal which related to the merits of the case. Certain of these Grounds, however, definitely raised the question of jurisdiction on which this appeal is now being decided, and it is as a result of his appeal that the proceedings in the Court below are being set aside.

The appeal, therefore, must be allowed, The judgment of the Court below is set aside and the order for the injunction discharged.

(Sgd.) ARTHUR LEWEY,  
Justice of Appeal.

VERITY, C.J.

I have had the advantage of reading the judgment written by my brother Lewey and am in agreement with his conclusions subject to the following observations. I am not of the opinion that subsection (2) of section 2 of the Ordinance unconditionally ousts the jurisdiction of the Supreme Court so that in no circumstances can proceedings be taken therein relating to the appointment of Chiefs. A comparison of the terms of this section with the provisions of the later Ordinance of 1948 which expressly deprives the Supreme Court of all jurisdiction in such matters in my view makes clear the distinction which this Court sought to draw between the view of the learned Judge who in the first instance dismissed the action for lack of jurisdiction and the view held by this Court on appeal from that dismissal. In the earlier judgment of this Court it was pointed out that the trial Judge had ruled that the effect of subsection (2) was

"to leave the Governor as sole judge in the matter and that in no circumstances can the matter be brought under review of the Courts"

and this Court then indicated that the learned Judge had

"placed too wide an interpretation upon it by holding that in no circumstances can the matter be adjudicated upon by the Courts"

and added

"The jurisdiction of the Courts is only ousted after due enquiry has been made and consultation with the persons concerned in the selection has been held."

It is clear that after such due enquiry and consultation the Governor is to be the "sole Judge" and no proceedings of any kind will lie in the Courts to question his decision. In its earlier judgment this Court expressed its opinion that had the law remained as it stood prior to the enactment of the amendment of 1945 the view first expressed by the trial Judge would have been right but that effect must be given to that amendment and that by the enactment of the qualifying words of the 1945 amendment the Legislature intended that there should be placed upon the Governor's powers as "sole Judge" from which is to be inferred ouster of the jurisdiction of the Courts, a limitation which this Court described, perhaps

*In the  
West  
African  
Court of  
Appeal.*

No. 80.  
Judgment,  
Delivered  
by Lewey,  
J.A., 4th  
December  
1948,  
*continued.*

Judgment,  
Delivered  
by Verity,  
C.J.

*In the  
West  
African  
Court of  
Appeal.*

No. 80.  
Judgment,  
Delivered  
by Verity,  
C.J., 4th  
December  
1948,  
*continued.*

with no very great felicity, as a "condition precedent." The question is, therefore, in the event of this condition not having been fulfilled what is the position? Have the Courts then no jurisdiction to entertain proceedings of any kind by means of which the public or persons interested may seek to ensure that the intentions of the Legislature are carried out by the Executive? The Courts have at all times leaned against the ouster of their jurisdiction unless the Legislature has expressly or by necessary implication deprived them thereof. In a case such as the present where the ouster of jurisdiction is not express, but is by necessary implication, the Court will interpret that ouster as going no further than the words of the enactment necessarily imply. From that it follows, in my opinion, that when the Governor has not complied with the conditions prescribed by the Legislature, it is open to the proper party to come to the Courts and seek the appropriate relief. As to what would be the form of action or what would be the appropriate form of relief it would be for the Court to determine. Where, therefore, as in the present case, it is alleged that no due enquiry had been held it is open to the proper party to come to the Court and, as was held by this Court in its earlier judgment, it is not enough for the Court below to have said "the Governor is the sole Judge and this Court has no jurisdiction." It is for the Court in such circumstances to enquire into the circumstances to ascertain in the first instance whether the conditions necessary in order to enable the Governor to exercise his function of the sole Judge have been complied with, if so to decline jurisdiction, and if not to determine whether the particular proceedings then before it are the right proceedings and whether it can grant the relief sought. These were the issues which were before the Court below and these are the issues which this Court remitted for determination. I speak as one who was a party to the earlier judgment of this Court and responsible in part for the terms thereof when I say that I think it is unfortunate that it has proved possible without unreason to read that judgment as implying that if the Court below should find that no due enquiry had been held it should forthwith proceed to make such enquiry itself, to investigate the merits of the Plaintiff's claim and, if it decided in favour of the Plaintiff on these merits, to grant the relief sought.

The only point discussed by this Court on the previous occasion was whether or not the learned Judge had been right to decline jurisdiction altogether upon the evidence then before him. Whether or not the form of action was appropriate or whether or not the remedy sought had been misconceived did not arise either on the grounds of appeal or the argument then before us. This Court did not then consider it necessary to decide a point which had not at that stage been raised. It intended to do no more, and in my view did no more, than hold that the learned Judge had declined jurisdiction on a wrong view of the relevant statute and directed that the case should be remitted for further consideration on the basis that only if the terms of the section had been complied with by the Governor were the proper parties deprived of coming to the Courts for relief. In this circumstance, I must acknowledge that it is not surprising that the learned trial Judge may have felt that he was free to exercise jurisdiction in dealing with the Plaintiff's claim on its merits and that having found in his favour granted the relief sought. In so doing I am in agreement with my learned brothers that he erred, for although the

Supreme Court has in the circumstances jurisdiction to enquire into the matter, the form of action was inappropriate and the remedy sought was misconceived. The writ should therefore have been dismissed and this appeal, I agree, should be allowed.

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

*In the  
West  
African  
Court of  
Appeal.*

No. 80.  
Judgment,  
Delivered  
by  
Blackhall,  
P., 4th  
December  
1948,  
*continued.*

BLACKHALL, P.

I have had the opportunity of reading the two judgments that have  
10 just been delivered. Now section 2 (2) of the Appointment and Deposition  
of Chiefs Ordinance, 1930, in my view merely amplifies the former  
subsection by enjoining upon the Governor that in discharging his functions  
under it he shall make due enquiry and consult those concerned in the  
election. But the Governor remains the sole Judge and I agree with  
my brother Lewey that even if he should not comply with the requirements  
of the subsection this does not confer jurisdiction upon the Courts to  
decide whether the appointment of a chief has been made in accordance  
with native law and custom.

It may be that if the Governor does not fulfil the requirements of  
20 the section a Prerogative Writ might issue but even then if it were held  
that the Governor had not made due enquiry this would not empower  
the Court to assume the powers vested in the Governor.

In my opinion the present proceedings are misconceived and I agree  
that the appeal should be allowed.

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

*Order* : Appeal allowed. Judgment in the Court below set aside and  
judgment entered therein for the Defendants with costs fixed at  
200 guineas. Appellants to have costs of this appeal assessed  
at £155 16s. 0d.

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

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*In the  
West  
African  
Court of  
Appeal.*

No. 81.

**MOTION AND AFFIDAVIT for conditional leave to appeal to the Privy Council.**

IN THE WEST AFRICAN COURT OF APPEAL.

Holden at Lagos Nigeria.

W.A.C. 2925.

No. 81.  
Motion and  
Affidavit  
for Con-  
ditional  
Leave to  
Appeal to  
the Privy  
Council,  
13th  
December  
1948.

TAKE NOTICE that this Honourable Court will be moved on Monday the 21st day of March, 1949, at the hour of nine o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the Plaintiff-respondent for an Order for Conditional Leave to appeal to the Privy Council against the judgment of this Honourable Court dated 10 4th December 1948, and for such further or other orders as to this Honourable Court may seem fit.

This application is made under Article 5 of the " West African (Appeal to Privy Council) Order in Council, 1930."

Dated this 13th day of December 1948.

(Sgd.) OBAFEMI AWOLOWO,  
Solicitor for Memudu Lagunju.

IN THE WEST AFRICAN COURT OF APPEAL.

Holden at Lagos Nigeria.

WAC/2925. 20

I, MEMUDU LAGUNJU, Yoruba, Embroiderer and Ex-Timi of Ede, of Lagunju's Compound, Ede, Nigeria, make oath and say as follows:—

1. That I am the Respondent in the above case.
2. That Judgment was given in favour of the Appellants by this Honourable Court on Saturday 4th December 1948.
3. That I am dissatisfied by the said judgment and desire to appeal to the Privy Council.
4. That the stipend of a Timi of Ede is about £500 per annum.
5. That I verily believe that the question involved on this appeal is of great public importance and ought to be submitted to His Majesty 30 in Council for decision.

Dated this 13th day of December 1948.

Deponent                      His Right  
(Sgd.) In Arabic.          Thumb Impression.

Sworn to at the Supreme Court Registry Ibadan, after the contents have been duly interpreted into Yoruba language to the Deponent by me S. D. Imoukhuede Qualified Sworn Interpreter, this 13th day of December 1948, when he seems perfectly to understand the contents before affixing his mark thereto.

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Before me,  
(Sgd.) A. A. OTUYALO,  
Commissioner for Oaths.

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**PROCEEDINGS : Leave to amend Plaintiff-Appellant's Affidavit.**

IN THE WEST AFRICAN COURT OF APPEAL.

Holden at Lagos Nigeria.

Wednesday the 20th day of April 1949.

Before Their Honours

Sir HENRY WILLIAM BUTLER BLACKHALL K.C. President

Sir JOHN VERITY, Chief Justice, Nigeria

MARK WILSON, Chief Justice, Gold Coast.

*In the  
West  
African  
Court of  
Appeal.*

No. 82.  
Proceedings:  
Leave to  
Amend  
Plaintiff-  
Appellant's  
Affidavit,  
20th April  
1949.

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WAC 2925

Awolowo for Appellant.

Thomas (Agbaje with him) for Respondents.

*Awolowo* asks to amend approval by substituting £600 for £500.

*Court* : Refused. A fresh Affidavit should be sworn if required.

*Thomas* : I oppose. No appeal lies *vide* Ordinance 30 of 1948 Section 5. The saving is only for appeals from such Court i.e. the Supreme Court or Magistrate's Court. But not an appeal from W.A.C.A.

*Awolowo* : Saving clause covers appeals from any pending suit or any appeal from any pending suit.

20

Decision reserved.

**DECISION of W.A.C.A. on Motion for conditional leave to appeal.**

**IN THE WEST AFRICAN COURT OF APPEAL.**

Holden at Lagos Nigeria.

Friday the 29th day of April 1949.

No. 83.  
Decision of  
W.A.C.A.  
on Motion  
for Con-  
ditional  
Leave to  
Appeal,  
29th April  
1949.

This motion for conditional leave to appeal to the Privy Council from a Judgment of this Court in a suit relating to a chieftaincy dispute was opposed on the ground that since the coming into operation of the Chieftaincy Dispute (Preclusion of the Courts) Ordinance 1948 (No. 30 of 1948) no Court has jurisdiction, either original or appellate to entertain 10 any civil cause or matter relating to the determination of any such question. Further that section 5 merely saves appeals from the decision of the Supreme Court or a Magistrate's Court in pending causes. It was argued therefore that as the section did not make any mention of any appeal from a Judgment of the West African Court of Appeal, appeals in pending actions can be taken no further than this Court.

But the right of appeal to the Judicial Committee of the Privy Council from a decision of this Court conferred by Article 3 of the West African (Appeal to Privy Council) Order in Council, 1930, provides that an appeal lies to the Privy Council as of right from any final judgment of the West 20 African Court of Appeal and local legislation cannot override the provisions of an Order of His Majesty in Council. So long therefore as an appeal lies to this Court under section 5 of Ordinance 30 of 1948, there is a further right of appeal to the Privy Council. As then there has been a final judgment of this Court in the present case, and as the appeal involves a claim to an annual salary of about £500, it comes in our opinion within the terms of article 3. Conditional leave to appeal is therefore granted on the conditions set out in the formal Order now to be made.

(Sgd.) H. W. B. BLACKHALL,  
President,  
West African Court of Appeal.

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(Sgd.) MARK WILSON,  
Chief Justice,  
Gold Coast.

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

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**No. 84.**  
**ORDER OF COURT granting conditional leave to appeal.**

IN WEST AFRICAN COURT OF APPEAL.  
Holden at Lagos Nigeria.

L.S.

(Sgd.) H. W. B. BLACKHALL.  
President.

It is hereby certified that on the 29th day of April 1949, the West African Court of Appeal sitting at Lagos Nigeria ORDERED that leave to  
10 appeal to His Majesty's Privy Council be granted to the above-named Plaintiff-Respondent (now Appellant) upon the conditions following :—

1. That the Appellant do pay into Court within three months a sum of £60 for the preparation and dispatch of records.

2. That the Appellant shall within three months enter into a bond for £500 with two sureties to be approved by the Solicitors for both Respondents for the due prosecution of the appeal and the payment of all such costs as may become payable to the Respondents in the event of the Appellant not obtaining an Order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution or of His Majesty in Council ordering  
20 the Appellant to pay the Respondents' costs of the Appeal.

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

4. Appellant to have 3 guineas costs of motion for leave to appeal.

No order for stay of execution.

Given at Lagos, Nigeria, under the  
Seal of the Court and the hand of  
the President this 29th day of April,  
1949

(Sgd.) J. A. SMITH,  
Acting Deputy Registrar,  
West African Court of Appeal.

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**No. 85.**

**BOND for Costs on Appeal, 29th June, 1949**

[Not printed.]

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*In the  
West  
African  
Court of  
Appeal.*

No. 84.  
Order of  
Court  
granting  
Conditional  
Leave to  
Appeal,  
29th April  
1949.

No. 85.  
[Not  
printed].

*In the  
West  
African  
Court of  
Appeal.*

**No. 86.**

**NOTICE OF APPEAL by Plaintiff-Appellant.**

**NOTICE OF APPEAL.**

No. 86.  
Notice of  
Appeal by  
Plaintiff-  
Appellant,  
2nd July  
1949.

**TAKE NOTICE** that the above-named Plaintiff-Appellant obtained conditional Leave on the 29th April 1949 to Appeal to the Privy Council against the judgment delivered in the above action on the 4th day of December 1948 ; and that the conditions imposed have been perfected.

Dated this 2nd day of July 1949.

(Sgd.) **OBAFEMI OWOLOWO,**  
Solicitor for MEMUDU LAGUNJU.

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No. 87.  
[*Not  
printed*].

**No. 87.**

**MOTION AND AFFIDAVIT for final leave to appeal, lodged 7th July, 1949.**

[*Not printed.*]



No. 88.  
[*Not  
printed*].

**No. 88.**

**PROCEEDINGS, 13th and 20th July, 1949.**

[*Not printed.*]



No. 89.

**ORDER granting final leave to appeal.**

*In the  
West  
African  
Court of  
Appeal.*

IN WEST AFRICAN COURT OF APPEAL.

Holden at Lagos Nigeria.

No. 89.  
Order  
Granting  
Final Leave  
to Appeal,  
20th July  
1949.

L.S.

(Sgd.) JOHN VERITY,  
Presiding Judge.

MEMUDU LAGUNJU - - Plaintiff/Respondent/Appellant

and

- 10 1. OLUBADAN IN COUNCIL -
- 2. J. ADETOYESE LAOYE Defendants/Appellants/Respondents.

IT IS HEREBY CERTIFIED that on Wednesday the 20th day of July 1949, the West African Court of Appeal sitting at Lagos Nigeria ORDERED that FINAL LEAVE to appeal to His Majesty's Privy Council be granted.

Given at Lagos, Nigeria under the Seal of the Court and the hand of the Presiding Judge this 20th day of July 1949.

20

(Sgd.) W. H. HURLEY,  
Acting Deputy Registrar,  
West African Court of Appeal.

*Plaintiff's  
Exhibits.*

**PLAINTIFF'S EXHIBITS.**

“ A ”

**LETTER by 2nd Defendant.**

“ A.”  
Letter  
by 2nd  
Defendant,  
4th  
February  
1946.

Ex. “ A ” tendered by Plaintiff in 2/14/47 : *Lagunju vs. Olubadan-in-Council and another.*

(Intl.) F.A.S.O. 12/1/47.

c/o African Hospital,  
Ibadan.  
4th February, 1946.

The District Officer,  
i/c Ibadan Northern District,  
Oshogbo.

10

Copy : The Senior District Officer, Ibadan.  
The Olubadan-in-Council, Mapo Hall, Ibadan.  
The Balogun and Council, Ede.

Sir,

I have the honour most humbly and respectfully to approach you through the medium of this petition, praying to submit to you an important fact regarding to the filling of the post of Timi which is now vacant.

20

That my name is John Adetoyese 'Laoye, eldest son of Omo Oba Lawani Oyebisi 'Laoye and that I am at present attached to the African Hospital, Ibadan, as a first class dispenser.

That the present ruling houses in Ede hailed from one great genealogical tree which later grew to so many branches now existing and that there has been no strict rules of rotation observed in appointing Timis, public opinion being the prevailing factor in the choice of any candidate who may be popular at each time.

That on the death of Timi Oyelekan in 1924, my father, Omo-Oba Lawani Oyebisi 'Laoye put in his claim to succeed, but the then Balogun Obe made pressure to bear upon him that, as the other candidate, Ipinoye was very old, my father should step down for him.

In 1933, when the Timi Ipinoye died and Balogun Obe no longer living, the public opinion swerved to the side of late Timi Sanusi Akangbe on account of his popularity and my father lost the contest.

That, now that the stool is again vacant by the sudden death of Timi Akangbe an illustrious and intrepid prince of Nigeria (may his soul rest in peace) my father, being much advanced in age pointed out to the chiefs and people of Ede that, as he is not fit to render any active service as an Oba at such a time as this to be able to cope with the present trend of civilisation, he surrendered the chance of contesting the stool to me. This selfless act of the old man meets with the approbation of the chiefs and the general public of Ede, Christians and Mohammedan alike.

40

That, after investigation of your worship on this important matter will have been made and my candidature is approved, I pledge myself to my people to be loyal, sympathetic and kind ; to serve them in all capacities tending to the progress of Ede and its suburbs, to assist in mass education among my people and to use my present experience to advantage by helping to establish welfare clinics for the health of my people. That I am prepared to help the Administrative Officers and see that no impediments come in their ways in the proper discharges of their duties and that I will seek the interest of the chiefs in all matters connected with the administration of Ede and their personal welfare and progress. That I will not be autocratic in my dealings with both the chiefs and the people and that I will, to the best of my ability, observe and strictly adhere to the divine attributes of Justice, Mercy and Truth.

*Plaintiff's Exhibits.*

“ A. ”

Letter  
by 2nd  
Defendant,  
4th  
February  
1946,  
*continued.*

I have the honour to be,

Sir,

Your most humble servant,  
(Sgd.) J. A. 'LAOYE.

“ A 1. ”

**LETTER by Members of the House of Lagunju.**

20 Ex. “ A1 ” tendered by Plaintiff in 1/14/47 : *Lagunju vs. Olubadan-in-Council and another.*

(Intl.) F.A.S.O. 12/1/48.

Oduniyi's Compound,  
Ede.

19th February, 1946.

The Kingmakers of Ede.

Copy : The Olubadan-in-Council, Ibadan.

The District Officer, Oshogbo.

The District Officer, Ibadan.

30 The Hon. The Senior Resident, Oyo.

Sirs,

Your humble petitioners are members of the House of Oduniyi of Ede, and our prayer in this petition is as follows :—

1. That our House is one of the Branches of the Ruling Family at Ede ; and that sometime after the unfortunate death of the late Timi, all members of this branch of the family met, and after mature deliberation, decided to put in our claim to succession to the vacant stool.

2. That all members of our family agreed unanimously to put forward and recommend to the Chiefs, Momudu Ashiru Olagunju, as the person  
40 chosen and selected by the family.

“ A1. ”  
Letter by  
Members  
of the  
House of  
Lagunju,  
19th  
February  
1946.

*Plaintiff's Exhibits.*

" A1."

Letter by Members of the House of Lagunju, 19th February 1946, *continued.*

3. That Momudu Ashiru Olangunju, is a member of the Ede Court, where he has been serving for many years without any complaint against him.

4. That succession to the stool of Timi of Ede, is by rotation among the various branches of the family entitled thereto ; and that Olagunju's House contested the stool in 1934, but was assured that after the late Timi, the House of Lagunju will take the turn.

5. That now the time for that turn has now arrived and Momudu Ashiru Olagunju, is now willing and prepared to serve his country.

That he is a fit and proper person to succeed to the stool, and that although he is an illiterate, he has been in the management of the Administration for many years, and is of unquestionably good character, and the people of the town are really fond of him, because of his good behaviour. 10

6. That much as education in itself is very good and desirable, a person being chosen to succeed to a stool, particularly in an entirely native surroundings, purely on grounds of being literate, will not necessarily succeed therefore.

7. That Olagunju's family had to step down during the last contest, and was appeased with the promise that the next chance will be given to that family ; to depart from that promise, or without that promise to give this chance to another branch of the family, is to make unfair distribution of the family honour, to which each branch is equally entitled. 20

8. That this family earnestly pray that God may direct those whose duty is to deal with the matter, the Grace to do the right thing.

9. That since the death of the late Timi, members of other branches of the family, and even those who know quite clearly that this turn belongs to Lagunju's House are still contesting ; this method must cause unnecessary embarrassment to all concerned. Your petitioners are confident however that the Chiefs who are the Elders and whose responsibility it is to direct things fairly and justly, will not allow to be affected by any outside influence, and that they will not by themselves out of deference to superstition or authority, do anything which they may know to be wrong. 30

10. Your petitioners do assert that this turn belongs to their House, and will continue to remind you of their right until you give it to them.

11. It is the hope and belief of your petitioners, that the District Officer and others in authority will probe into the matter of succession to this stool and enquire into the arrangement made and promise given to this House, and that this House will not be overlooked. 40

Your most humble petitioners,  
MEMBERS OF THE HOUSE OF LAGUNJU OF EDE.

Witness to mark  
(Sgd.) M. T. OLAGUNJU

1. Alufa Tijani Lagunju	X	2. Jafaru Lagunju	X
3. Disu Lagunju	X	4. Alufa Musa Lagunju	X

5. Sulu Lagunju	X	6. Kasumu Lagunju	X	<i>Plaintiff's</i>
7. Buraimoh Lagunju	X	8. Bello Lagunju	X	<i>Exhibits.</i>
9. Yakubu Lagunju	X	10. Atanda Lagunju	X	" A 1."
11. Bushura Lagunju	X	12. Bakare Lagunju	X	Letter by
13. Karimu Lagunju	X	14. Buarawu Lagunju	X	Members
15. Salu Lagunju	X	16. Amodu Lagunju	X	of the
17. (Sgd.) Raji Giwa Lagunju		18. (Sgd.) Yusufu Giwa Lagunju		House of
19. " Mustafa T. Lagunju		20. " Buraimoh L. Lagunju		Lagunju,
21. Aminu Lagunju	X	22. " A. Adeleke Lagunju		19th
10 23. (Sgd.) Ladimeji Lagunju		24. Ajani Lagunju	X	February
25. " Sanusi Afasegbejo		26. Lajide Lagunju	X	1946,
27. Sulu Keji Lagunju	X	28. Shewu Lagunju	X	<i>continued.</i>
29. Abimbola Lagunju	X	30. (Sgd.) Dauda Lagunju		
31. Lamidi Lagunju	X	32. Musa Lagunju	X	
33. (Sgd.) Sule Lagunju		34. Saka Lagunju	X	
35. Raufu Lagunju	X			marks
	marks			

## " A 2."

LETTER signed by Balogun and Jagun of Ede.

20 Ex. " A2 " tendered by Plaintiff in I/14/47 *Lagunju vs. Olubadan-in-Council and another.*

Council Hall, Ede.  
9/4/46.

" A2."  
Letter  
signed by  
Balogun  
and Jagun  
of Ede,  
9th April  
1946.

The District Officer Ibadan N.D.  
Copy Olubadan and Council.  
District Officer, Ibadan.

Our Good Friend,  
Greetings.

Timi of Ede Appointment of :—

30 We the undersigned beg to forward the following recommendation to the essential.

Since the death of our Father Sanusi Akangbe late Timi of Ede ; We have been gathering ourselves day and night considering a man to be selected as our father among the Royal families Ede, as it is always the custom, any town like this could not stand without a head and at the same time, our forwarding this early would release you of some counterfeit politicians who always like to take up chieftaincy as trade.

40 We unanimously select Memudu son of Lagunju as he is of good outstanding character, very kind, humble, promising to both his family and the town people of Ede.

He is however strongly recommended to occupy the vacant stool of Timi.

Salutation

Your good Friends

Their right thumb imp.

Witness  
(Sgd.)

Opayemi X Balogun  
Oyedunmola X Jagun

*Plaintiff's  
Exhibits.*

“ A 3.”

**LETTER signed by 5 Ede Kingmakers.**

“ A3.”

Letter  
signed by  
five Ede  
King-  
makers,  
30th April  
1946.

Ex. “ A3 ” tendered by Plaintiff in 2/14/47 *Lagunju vs. Olubadan-in-Council and another.*

(Intl.) F. A. S. O. 12/1/48.

Balogun and Council  
Ede, Nigeria

30/4/46.

The Olubadan and Council, Ibadan.

Our good father,

10

We respectfully and humbly beg to forward your honour these few lines just to remind you, (our father) of our letter dated 9/4/46 in which we recommended Mr. Memudu to be the Timi of Ede. And as a son to his father we cannot do anything for ourselves because we are your little ones ; and looking to your honour's assistance.

Since the dead of our beloved father (Timi) we are unrest. Therefore we shall be much thankful if your honour can expedite our request for approval. Waiting for your kind reply.

We have the honour to be

Sirs,

20

Your obedient sons

Opayemi Balogun	X	their mark
Oyedunmola Jagun	X	
Opayemi Ikolaba	X	
Gbadamosi Ayope	X	
Makanjuola Arinago	X	

Writer

(Sgd.) O. SHIYANBADE

Chief Abese

Gratis.

30



" A 4."

## LETTER by various Ede Chiefs.

Ex. " A4 " tendered by Plaintiff in 2/14/47 : *Lagunju v. Olubadan-in-Council and another.*

(Intl.) F. A. S. O. 12/1/48.

Council Hall, Ede.

7th May, 1946.

The Olubadan-in-Council,  
Mapo Hall, Ibadan.

*Plaintiff's  
Exhibits.*

" A4."

Letter by  
various  
Ede Chiefs,  
7th May  
1946.

10 Our Good Father,  
Greetings.

## Timi of Ede

We the undersigned, recognised chiefs of Ede hereby declared that we unanimously supported and endorsed the recommendation of the Ede Kingmakers about Memudu to fill the vacant stool of the Timi of Ede.

2. We also declared that to the best of our knowledge there are today four ruling houses recognised by us at Ede. The following are their names :—

1. Agboran Oyefi ; 2. Ajeniju ; 3. Arohanran ; 4. Oduniyi Lagunju.

20 The first house had 3 chances, the second had 4, the third had 2 and the fourth only 1, and that it is the turn of Oduniyi Lagunju house to submit a candidate according to our custom of succession also that Memudu is eligible in all respects. Salutation.

Your Good Children

*Balogun Section—*

1. Opayemi Balogun  
2. Shiyabade Abese  
3. Amodu Maye

4. Gbeun Ekefa  
5. Lawani Asaju  
6. Lawani Iyanda Bale Agbe

*Jagun Section—*

30 1. Oyedunmola Jagun  
2. Raji Oyedele Babasanya  
3. Gbadamosi Dada Ayope  
4. Akingbade Ejemu  
5. Odunewu Alajue  
6. Koleoso Olukotun  
7. Adesunbo Ogala  
8. Oyewale Esa

9. Adenekan Majeobaje  
10. Amusan Alagba  
11. Ojewale Olukolo  
12. Adefaju Oluawo  
13. Ogunjimi Asawo  
14. Osadiya Oluwin  
15. Oyekemi Ajagemo  
16. Faniyi Olumofa

*Ikolaba Section*

40 1. Opayemi Ikolaba  
2. Makanjuola Areago  
3. Ojedokun Sobalaju  
4. Amodu Oloba

5. Oyelola Atapera  
6. Lawani Ado Aregba  
7. Lawani Otunba Olosipa

*Plaintiff's Exhibits.* *Olode Section—*

“ A4.”  
Letter by various Ede Chiefs, 7th May 1946, *continued.*

1. Ogundiji Olode  
on behalf of 7 others

2. Ogundiwin Osade

*Iyalode Section—*

1. Ola Iyalode  
on behalf of 7 others.

2. Abolade Otun Iyalode

*Parakoyi Section—*1. Payida Parakoyi

Witness to marks

(Sgd.) S. O. LONGE,  
Councillor, Ede.

10

“ A5.”

Letter signed by 40 Ede Chiefs, 15th May 1946.

“ A 5.”

**LETTER signed by 40 Ede Chiefs.**

EX. “ A5 ” tendered by Plaintiff in 2/14/47: *Lagunju vs. Olubadan-in-Council and another.*

(Intl.) F. A. S. O. 12/1/48.

Council Hall, Ede.  
15/5/46.

The Olubadan-in-Council, Ibadan,  
District Officer, Ibadan,  
The District Officer, Osbogbo.

20

Our Good Friend,  
Greetings.

Timi of Ede Appointment of :—

We beg to remind you of our last letter dated 9th April 1946 in which we recommended one Memudu for your approval to fill the vacant stool of Timi Ede.

We beg to point out that a town of this kind without a Head Chief is not always in a peaceful state.

We shall deem it a great favour if you will please approve same without a further delay.

30

Awaiting for your immediate approval.

We are,

Your Good Friends,

1. Opayemi Balogun	X	2. Oyedunmola Jagun	X
3. Oyediran Babasanya	X	4. Makanjuola Areago	X
5. Kadiri Lemomu	X	6. Ola Iyalode	X

7. Amodu Maye	X	8. (Sgd.) Oshiyabade Abese	X	<i>Plaintiff's Exhibits.</i> "A5." Letter signed by 40 Ede Chiefs, 15th May 1946, <i>continued.</i>
9. Adekola Ekerin	X	10. Gbenro Ekefa	X	
11. Lawani Asaju	X	12. Lawani Iyanda Bale Agba	X	
13. Belo Pakoyi	X	14. Lawani Aregba	X	
15. Akingbade Ejemu	X	16. Akinsumbo Ogala	X	
17. Koleosho Olukotun	X	18. Odekunle Alajue	X	
19. Adelakun Majeobaje	X	20. Amusan Alagba	X	
21. Ojewale Obikolo	X	22. Ogunjimi Asawo	X	
23. Adefayo Oluawo	X	24. Oyewole Esa	X	
10 25. Oyekemi Ajagemo	X	26. Faniyi Olumofe	X	
27. Ojedokun Sobaloju	X	28. Ayanjimi Oloba	X	
29. Oyebola Alapara	X	30. Lawani Baba Ga	X	
31. Akanke Otun Iyalode	X	32. Abadatu Iyaloja	X	
33. Oyinlolo Iyalaje	X	34. Olaito Iyaniso	X	
35. Alimi Otun Lemomu	X	36. Abibu Belogun	X	
37. Sulu Osi	X	38. Jinadu Ekerin	X	
39. Idowu Gkoda	X	40. Lajire Balogun Iyalode	X	

Witnesses to marks

(Sgd.) N. C. C. EDE.

20

„ S. O. LONGE, Councillor.

“ A 6.”

LETTER signed by 11 Ede Chiefs and Rev. Taiwo.

Ex. “ A6 ” tendered by Plaintiff in 2/14/47: *Lagunju vs. Olubadan-in-Council and another.*

(Intl.) F.A.S.O. 12/1/48.

Ede Town.

29th June, 1946.

The Olubadan and Council, Mapo Hall, Ibadan.

The Resident, Oyo, Oyo Province.

30 The Senior District Officer, Agodi, Ibadan.

The Assistant District Officer, Northern Area, Oshogbo.

*Subject* :—Reminder and Affirmation of Recommendation.

Sir,

We humbly beg to submit this our humble recommendation, re-affirming our support of Omo-Oba Adetoyese Laoye to be the Timi elect. Since the demise of the late Timi, the Balogun has not made clear his mind to us, his subordinate chiefs and the general public of Ede.

*Plaintiff's  
Exhibits.*

"A6."

Letter  
signed by  
11 Ede  
Chiefs and  
Rev. Taiwo,  
29th June  
1946,  
*continued.*

2. In spite of the fact that our energetic District Officer Oshogbo, has sent a letter from Olubadan and Council to be read to our hearing, a couple of weeks ago, that the former nomination has been null and void ; and that all the chiefs should put on a united front to select a candidate. We the undersigned, for the purpose of unanimity have been to Balogun as undermentioned :—

(1) The Chief Ikolaba (the oldest and one of the Senior chiefs) sent to him for personal interview on the 18/6/46, he (Balogun) ignored the invitation.

(2) The Chief Ayope (another Senior Chief) went personally to 10 him on the 20/6/46 and 22/6/46 and no definite reply.

(3) All the 9 chiefs behind him as a body, went to him on 24/6/46 and 27/6/46 but after all said and done the Balogun remained adamant in his opinion on all these our efforts for unity we have been turned down and the Balogun could not pronounce any certain decision.

3. As all the townsmen are very anxious for a new Timi to be installed as early as possible, the town with a population of over 53,000 has been without a Head for the six months past, cannot likely run her special tremendous administrative works successfully in this condition. 20 We should be grateful if the Omo-Oba Adetoyese Laoye, who is the most popular choice of the people be installed sooner. His cool-headed and good natured actions to all the Edes who have come in contact with him and his patriotism for the good of his town are sufficient reasons to believe that he will make a good ruler.

We have the honour to be,

Sir,

Your Loyal Children.

X Chief Opayemi—Ikolaba.	X Chief Adedayo—Ayope.	
X Chief Araoye—Otun Balogun.	X Chief Adelu—Osi Balogun.	30
X Chief Sule Omolade—Ashipa Balogun.	X Chief Olopade—Seriki	
X Chief Adenji—Agba—Akin Balogun.	Balogun.	
X Chief Lawale—Ekarun Balogun.	X Chief Owolabi—Are Onibon	
Chief Adedigba Bada Balogun.	Balogun.	
X Chief Akande—Otun Seriki.	X Chief Ola—Iyalode.	

(Sgd.) (Rev.) T. A. Taiwo—Councillor.

" A 7."

**LETTER signed by Balogun Opayemi of Ede.**

Ex. " A7 " tendered by Plaintiff in 2/14/47 : *Lagunju vs. Olubadan-in-Council and another.*

(Intl.) F.A.S.O. 12/1/48.

Ede Town.

7th of July 1946.

*Plaintiff's Exhibits.*

" A7."

Letter signed by Balogun Opayemi of Ede, 7th July 1946.

Olubadan-in-Council, Mapo Hall, Ibadan.

Sirs,

10 I the Balogun Opayemi of Ede with my rest chiefs have rejected Mr. S. O. Longe from the Councillor of Ede being he is not a steady man and he is always causing confusion in the town, therefore such man it is not good for a Councillor at all. Even this very Mr. Longe has come to myself (Balogun) for the same Timi's stool, and I have told him that it is not your right, and even we have selected a candidate through Ifa oracle (which is called Memudu). Since then Longe has been trying to spoil the whole arrangement.

Therefore we do not want him to be our Councillor.

Your obedient servant

20

OPAYEMI BALOGUN.

" A 8."

**LETTER from 11 Chiefs and Rev. Taiwo.**

Ex. " A8 ", tendered by Plaintiff in 1/14/47 : *Lagunju vs. Olubadan-in-Council and another.*

(Intl.) F.A.S.O. 12/1/48.

Ede Town.

9th July, 1946.

" A8."

Letter from 11 Chiefs and Rev. Taiwo, 9th July 1946.

*Subject :—Petition—Re Facts About Kingmakers of Ede.*

The Olubadan and Council, Mapo Hall, Ibadan, Nigeria.

30 Sir,

Referring to the speech made at Ede on the 2nd inst. by the Assistant District Officer, Ibadan Northern District, that the 5 Kingmakers should come to a unanimous decision. We humbly beg to point out that there are only 4 Kingmakers remaining :—

1. The Balogun. 2. The Ikolaba. 3. The Ayope. 4. The Jagun.

*Plaintiff's  
Exhibits.*

"A8."

Letter  
from  
11 Chiefs  
and Rev.  
Taiwo,  
9th July  
1946,  
*continued.*

Since the Babasanya has been deprived of his office as the President of Ede Native Court on ascension of the late Timi Sanusi Akangbe in 1934 no other Chief has been appointed to fill his post in the role of Kingmakers. The Areago has been representing the Ikolaba who is, on account of illness confined to his bed, but on the last Commission of Enquiry, he wrote that as the Areago had failed to represent his correct views in regard to the present chieftaincy dispute he should no longer deputise him.

2. He has however authorised one of his own children to represent him in all matters. We therefore humbly beg to request that the Areago's name be deleted from the present list of Kingmakers. 10

3. As the Ikolaba and Ayope are with us, it is evident that we are in the majority as it is the junior chiefs in the Balogun line who, according to the custom are responsible to the "Kingmakers" in the selection of a suitable candidate after carefully listening to the wish of the general public of the town and sorting out the most popular Omo-Oba among the several contesting candidates.

X Chief Opayemi-Ikolaba.      X Chief Adedayo—Ayope.  
X Chief Araoye—Otun Balogun.      X Chief Adelu—Osi Balogun.  
X Chief Sule Omolade-Ashipa Balogun.  
X Chief Adeniji—Agba-Akin, Balogun. 20  
X Chief Olopede—Seriki Balogun.      X Chief Lawale—Ekarun  
Balogun.

X Chief Owolabi—Are Onibon Balogun.  
X Chief Adedigba—Bada Balogun.  
X Chief Akande—Otun Seriki.  
(Sgd.) Rev. T. A. Taiwo—Councillor.

We have the honour to be,

Sir,

Your Loyal Children.

(as per above impressions and signature) 30

“ A 9.”

LETTER signed by 40 Ede Chiefs.

Plaintiff's Exhibits.

“ A9.”

Ex. “ A9 ” tendered by Plaintiff in I/14/47 : *Lagunju vs. Olubadan-in-Council and another.*

(Intl.) F.A.S.O. 12/1/48.

Ede Town.

16th of July, 1946.

Letter signed by 40 Ede Chiefs, 16th July 1946.

Through the District Officer, Oshogbo.  
The Olubadan-in-Council, Mapo Hall, Ibadan.

- 10 The District Officer, Ibadan.
- The Hon. The Senior Resident, Oyo.

Sirs,

Timi Chieftaincy.

In accordance with the Order of the Ibadan Council in respect of the selection of Timi of Ede we beg to say that we cannot recommend a new man to the stool of Timi beside Memudu for we are fully united in his election before we were asked to come to Ibadan, and after our return from Ibadan we divided, because the Ibadan people only sow the seed of discord amongst us. When we were at Ibadan and that was why we are asked to come. We have not known of the History of any town that when the position of head-chief is vacant, all the minor chiefs used to unite to elect one without any dissention. In Ede this election is not the first of its kind, the late Timi was elected by the Balogun with thirteen other chiefs, and his election was passed. Why in this particular case we were ordered to make another recommendation when we had made one very carefully. Memudu was constitutionally recommended and elected by us. Once for the following reasons (a) Presently is the turn of Timi Lagunju's house to rule, and he belongs to this house. (b) He was presented in writing by the members of Lagunju house for election. (c) He was tried by the Ifa oracle, and Ifa approved his candidature. (d) The Kingmakers therefore elected him with Balogun at their heads with many minor chiefs.

We therefore solemnly assert that our choice falls on Memudu, and so we recommend him. We pray give us our king in time, because we do not want to see our town downfall and impediment.

We beg to remain,

Your obedient Servant.

We are the members of Chiefs of Ede with our marks :—

- |                       |   |                     |   |
|-----------------------|---|---------------------|---|
| 1. Opayemi Balogun    | X | 2. Oyedunmola Jagun | X |
| 3. Oyediran Babasanya | X | 4. Makenju Are-ago  | X |
| 5. Kadiri Lemomu      | X | 6. Ola Iyalode      | X |
| 7. Amedu Maye         | X | 8. Adekola Ekerin   | X |

<i>Plaintiff's Exhibits.</i> "A9." Letter signed by 40 Ede Chiefs, 16th July 1946, <i>continued.</i>	9. Shiyanbola Abese	X	10. Bello Ekefa	X
	11. Lawani Ashaju	X	12. Iyanda Baba Agbe	X
	13. Akingbade Ejemu	X	14. Odukunle Alajue	X
	15. Adelekan Majeobaje	X	16. Sunbo Ogala	X
	17. Ojewale Olukolo	X	18. Amusan Alagba	X
	19. Adefajo Oluawo	X	20. Ogunjimi Ashawo	X
	21. Faniyi Olumofa	X	22. Oyekemi Ajagemo	X
	23. Idowu Akoda	X	24. Alimi Otun Lemomu	X
	25. Sulu Osin Lemomu	X	26. Abibu Balogun Imale	X
	27. Jinadu Ekerin Imale	X	28. Lawani Oyebola Atapara	X 10
	29. Ayanjimi Oloba	X	30. Ojedokun Sobalaju	X
	31. Lawani Baba Ga	X	32. Lawani Aregba	X
	33. Akanke Otun Iyalode	X	34. Laito Iyaniso	X
	35. Abadatu Iyalaja	X	36. Oyinlola Iyalaje	X
	37. Koleoso Olakotun	X	38. Bello Parakoyi	X
	39. Lajire Balogun Iyalode	X	40. Oyewale Osa	X

"A10."

Letter signed by 11 Chiefs and Rev. Taiwo, 26th July 1946.

"A 10."

**LETTER signed by 11 Chiefs and Rev. Taiwo.**

Ex. "A10" tendered by Plaintiff in I/14/47 : *Lagunju vs. Olubadan-in-Council and another.* 20

(Intl.) F.A.S.O. 12/1/48.

Ede Town.

26th July, 1946.

*Subject* :—Petition to hasten installation of Timi.

The Olubadan and Council, Mapo Hall, Ibadan, Nigeria.

Our Dear Fathers,

We the undersigned on behalf of ourselves and general public of Ede send greetings to your Highness and Council, praying that your Highness may be spared long life of useful service and that your Highness' reign may be one of peace and harmony. 30

2. On the 19th inst., the Resident with the District Officer, Ibadan, met with us in Council and the question of our electing a Timi was discussed. The Resident gave us a very good advice. The Balogun agreed that the matter be referred to your Highness and Council for an arbitrary settlement as he could not agree.



3. The whole question is now in your Highness and Council's hand and as able fathers and overlords we trust that you will go into it and give us the most popular choice of the people Adetoyese Laoye as our Timi. The Balogun is Jagun's relative and they both will not agree to give up their candidate and unite with us who are in the majority.

*Plaintiff's Exhibits.*

“ A10.”

Letter signed by 11 Chiefs and Rev. Taiwo, 26th July 1946, continued.

Adetoyese Laoye was introduced to us first and foremost by the Balogun and in finding out that majority of the Tax-Payers of Ede acclaim him as a popular choice, in accordance with our custom we humbly beg to submit his name as the rightful candidate. The choice of a Timi has been by popularity. The collection of annual Tax is now nearly due and as then will be chaos and disorder without a Ruler we humbly beg that your Highness and Council will go into the matter early and give us the people's choice.

We have the honour to be,

Sir,

Your obedient and Loyal Children

X Chief Opayemi—Ikolaba. X Chief Adedayo—Ayope.  
 X Chief Araoye—Otun Balogun. X Chief Adelu—Osi Balogun.  
 X Chief Sule Omolade—Ashipa Balogun.  
 10 X Chief Adeniji—Agba-Akin Balogun.  
 X Chief Olopade—Seriki Balogun. X Chief Lawale—Ekarun Balogun.  
 X Chief Owolabi—Are-Onibon Balogun.  
 X Chief Adedigba—Bada Balogun. X Chief Akande—Otun Seriki.  
 (Sgd.) Rev. J. A. Taiwo—Councillor.

“ A 11.”

**LETTER signed by 11 Chiefs and Rev. Taiwo.**

Ex. “ A11 ” tendered by Plaintiff in 2/14/47 : *Lagunju vs. Olubadan-in-Council and another.*

30 (Intl.) F.A.S.O. 12/1/48.

Ede Town.  
10/8/46.

“ A11.”

Letter signed by 11 Chiefs and Rev. Taiwo, 10th August 1946.

*Subject :—Petition—To Hasten Installation of Timi of Ede.*

The Olubadan and Council, Mapo Hall, Ibadan, Nigeria.

Copy to : The Assistant District Officer, Northern District, Oshogbo.  
 The Senior District Officer, Agodi, Ibadan.  
 The Resident, Oyo Province, Oyo.

Our Dear Fathers,

40 With further reference to our letter dated 26th July, 1946, and in corroboration of what the Chief Agba-Akin said before His Honour The Resident, Oyo Province, and the Senior District Officer, Ibadan Division, on the 19/7/46, we have the honour very respectfully to comment as follows for Your Highness and Council's fatherly consideration.

Plaintiff's  
Exhibits.  
" All."

Letter  
signed by  
11 Chiefs  
and Rev.  
Taiwo,  
10th  
August  
1946,  
*continued.*

1. That the Chief Jagun and his adherents have nothing practically in the selection of a TIMI in EDE. That Jagun and the Chiefs behind him are only FETISH CHIEFS. And his main duties in the town are :—

(a) Sacrificing to idols in the town as (Ibo Odi Ilu) atonement of Town Forts yearly.

(b) Atonement of new crops in the open market (Oja Lila).

(c) He (Jagun) is the head of all Masquerade Worshipper (Olori Elegun).

(d) If any seller of Palm Oil, Locust, Kernel Oil and the Native Soap fall in the Town, he (Jagun) goes there and make 10 necessary atonement for clearance.

(e) If any person hangs himself or herself, he is the person to make atonement for loosing (On ni ma tu enia to ba so).

(f) And on the day of installation of any Chief, the Chief Ikolaba will give him a leaf and command him to put the leaf on the Chief to be so installed etc. etc.

2. The selection of a TIMI in EDE is usually performed by the Chiefs behind Balogun, and in this instance, the Chief Balogun and his junior Chiefs and the Chiefs Ikolaba and Ayope have first and foremost selected Omo-Oba Adetoyese Laoye the most popular choice of the community 20 as their TIMI Elect. But with no definite reasons, the Chief Balogun disappointed the rest Chiefs.

3. We the undersigned Chiefs, therefore humbly crave for Your Highness and Council's indulgence, to please hasten the installation of the most popular choice of the Tax-Payers, to prevent corruptions in the annual "Tax" (Owo Ori) which is now due and its collection threatening the poor tax-payers without having a Ruler.

We have the honour to be,

Sirs,

Your obedient and Loyal Children, 30

X Chief Opayemi—Ikolaba.      X Chief Adedayo—Ayope.  
X Chief Araoye—Otun Balogun.      X Chief Adolu—Osi Balogun.  
X Chief Sule Omolade—Ashipa Balogun.  
X Chief Olopade—Seriki Balogun. Chief Adeniyi Agba-Akin Balogun.  
X Chief Lawale—Ekarun Balogun.      X Chief Owolabi—Are—  
Onibon Balogun.  
X Chief Adedigba—Beda Balogun.      X Chief Akande—Otun Seriki.  
(Sgd.) (Rev.) T. A. Taiwo—Councillor.

" A 12."

LETTER signed by 13 Chiefs and Rev. Taiwo.

Plaintiff's  
Exhibits.Ex. " A12 " tendered by Plaintiff in 2/14/47 : *Lagunju v. Olubadan-  
in-Council and anor.*

(Intl.) F. A. S. O. 12/1/48.

Ede Town,

Date 30th August, 1946.

" A12."  
Letter  
signed by  
13 Chiefs  
and Rev.  
Taiwo,  
30th  
August  
1946.Subject :—Reaffirmation and Recommendation of Omo-Oba  
Adetoyese Laoye :

10 The Olubadan and Council, Mapo Hall, Ibadan ;

Dear Fathers/

Reference to our previous petitions, we the undersigned Chiefs of Ede, recognised by the Native Authority, do hereby reaffirm our support of and recommend, after careful consideration, Omo Oba Adetoyese Laoye to be the Timi Elect ;

We have the honour to be,

Sirs,

Your Loyal Children.

- |    |     |                                    |                                    |    |                      |                          |
|----|-----|------------------------------------|------------------------------------|----|----------------------|--------------------------|
| 1. | X   | Chief Opayemi—Ikolaba.             | X                                  | 3. | Chief Adedayo—Ayope. |                          |
| 20 | 2.  | X                                  | Chief Araoye—Otun Balogun.         | X  | 4.                   | Chief Adelu—Osi Balogun. |
|    | 5.  | X                                  | Chief Sule Omolade—Ashipa Balogun. |    |                      |                          |
|    | 6.  | X                                  | Chief Adeiyi—Agba—Akin.            |    |                      |                          |
|    | 7.  | X                                  | Chief Olopade—Seriki Balogun.      |    |                      |                          |
|    | 8.  | (Sgd.) A. Shiyabade—Abese Balogun. |                                    |    |                      |                          |
|    | 9.  | X                                  | Chief Lawale—Ekarun Balogun.       |    |                      |                          |
|    | 10. | X                                  | Chief Adedigba—Bada Balogun.       |    |                      |                          |
|    | 11. | X                                  | Chief Owolabi—Are—Onibon Balogun.  |    |                      |                          |
|    | 12. | X                                  | Chief Akande—Otun Seriki.          |    |                      |                          |
|    | 13. | X                                  | Chief Ola—Iyalode.                 |    |                      |                          |
| 30 | 14. | (Sgd.) T. A. Taiwo—Councillor.     |                                    |    |                      |                          |

Plaintiff's  
Exhibits.

“ A 13.”

LETTER signed by Opayemi Balogun.

“ A13.”

Letter  
signed by  
Opayemi  
Balogun,  
31st  
August  
1946.

Ex. “ A13 ” tendered by Plaintiff in 2/14/47 : *Lagunju v. Olubadan-in-Council and anor.*

(Intl.) F. A. S. O. 12/1/48.

Ede Town

31.8.46.

The District Officer, Oshogbo.

The District Officer, Ibadan.

The Olubadan-in-Council, Mapo Hall, Ibadan.

10

Sirs,

According to your instruction given to us on the 26th of August at Mapo Hall Ibadan, that we should go back to Ede and make the amicable settlement among some of my minor chiefs. The meeting was called at Ede Hall on Friday the 30th of August including the chiefs Olofa, Onido, and the representatives of Alawo for the witness of the settlement, but when we met on that day all the minor chiefs does not pay any attention to agree, and they are saying that the matter cannot be settled until the decision of Olubadan. Even, all those districts chiefs have tried their possible best to settle the matter, but still those people 20 refused to agree. Now, so long I cannot disobey the Olubadan and Council, then, these lowest chiefs ought to follow my own instruction being they are under myself. Therefore I like the Olubadan and Council to make the necessary decision according to the right.

I have the honour to be, Sirs,

Your obedient Servant,

OPAYEMI BALOGUN.

Writer  
(Sgd.)

## DEFENDANTS' EXHIBITS.

" D. "

LETTER to Olubadan from Ibadan Chiefs.

Ex. " D " tendered by Defence in I/14/47 : *Lagunju v. Olubadan-in-Council and anor.*

(Intld.) F.A.S.O. 15/1/48.

No. 99 Vol. 2/295.

*Defendants'*  
*Exhibits.*

" D. "

Letter to  
Olubadan  
from  
Ibadan  
Chiefs,  
13th  
October  
1946.

Olubadan's Office, Ibadan.

13th October, 1946.

10 Our Dear Father,

The Olubadan of Ibadan, Ibadan.

Copy : The Senior District Officer, i/c Ibadan Division, Ibadan.

Copy : The Resident, Oyo Province, Oyo.

Timi of Ede Appointment in Re :

We have to acknowledge receipt of your letter of the 7th October, 1946, and the attachment thereto.

2. We notice that in your letter under acknowledgment you expressed concern about the delay in appointment of a new Timi of Ede, and also threatened us by an ultimatum at the expiration of which you would act  
20 independently of your Council, by recommending Memudu for appointment.

Your Reason for Supporting Memudu :

3. We must here express a surprise at the argument advanced by you which are exact denials of the points in the findings of the Ibadan Council at an open enquiry held on the 9th of May, 1946, and at which you sat as the then Balogun of Ibadan ; and to which findings, you entirely agreed. It is, indeed, disgraceful to see that the Head Ruler of Ibadan agreed to one thing one day and denied the same thing another day ; without good and sound reasons.

4. We also observe that your so called reasons for changing side were  
30 never discussed with us either in private or open Council, before they were communicated to the Senior District Officer, Ibadan and the Resident, Oyo Province ; and also before they appeared in the Local Press ; we need hardly point out to you that the steps you have taken in this respect are definitely contrary to our age long custom.

5. You will well remember the proceedings of the last meeting held on this matter in your house at 10 a.m. on Tuesday 3rd September, 1946, when you led us to agree on the recommendation of Laoye to the Government to be the new Timi of Ede. You also remember that you and we ordered the Councillors and the Council Clerk to go to Mapo Hall  
40 immediately to prepare a letter of recommendation of Laoye, which they

*Defendants' Exhibits.*

"D."

Letter to  
Olubadan  
from  
Ibadan  
Chiefs,  
13th  
October  
1946,  
*continued.*

did. You will remember that we all came with the letter for your Official Stamp and then we were informed that the Stamp was with your Son Abioye who was away from the house. You will also remember that we all came to you the following day and were told the same story that the Official Stamp was with the absent Abioye. This led us to address a personal letter to you and protesting against that unconstitutional way of doing things. You will again remember that after the Senior District Officer's departure from the Council meeting held on the 9th September, 1946, we all asked you what was the position of Ede affairs, and you replied us in an angry tone that we should not ask you anything about the matter again. You will also remember that we all came to you in your house on the same matter on Friday and Saturday the 20th and 21st of September 1946, and you told us that you were prepared to stamp the letter of recommendation but that the Official Stamp was still with your son. During this time of our going up and down you were addressing letters against our joint decision to the Administrative Officers and the Press without our knowledge. You will finally remember that that was the state of affairs up to the time the Resident attended our Council meeting held in your house on 23rd September, 1946. 10

#### Unconstitutional Acts :

20

6. We deeply regret to see that less than three months of your becoming our Head Ruler, you thought it fit to throw away your Council, who are your traditional and customary official advisers, and put yourself under bad private influence. We as your loyal Chiefs and Advisers strongly advise you to be at one with us, your Council, as that is the only way you can always secure our full co-operation in the Administration of Ibadan and its Division.

#### Your Ultimatum :

7. We would observe that by your threat to act independently of your Council, in recommending Memudu you are trying to assume the role of a "Sole Native Authority" which had never been, is not, and will never be in Ibadan. It will be a sorry day when this town Ibadan—citadel of democracy will have a Head who will have the power of an absolute Ruler and Dictator. So far as we know, no Head of Ibadan since its foundation had been allowed such power. And all those who attempted to have it shared such fates which we do not pray for you. 30

8. Finally, we assure you of our loyalty and co-operation ; but must at once make it plain to you that as long as Ibadan Administration lasts we shall strongly oppose by every constitutional means in our power, any attempt by any body or bodies of persons to make *you* or any future Olubadan an absolute Ruler of Ibadan. We are only to add that we still stand by the decision arrived at by you and ourselves in your house on the 3rd of September 1946 about the appointment of a new Timi of Ede. 40

We are, Your Good Sons,

Their

Akintunde	X	Balogun
Memudu	X	Otun Balogun

	Oyewusi	X	Osi Olubadan	
	Amodu	X	Osi Balogun	
	Oko	X	Ashipa Olubadan	
10	(Sgd.) S. Agbaje		Ashipa Balogun	
	Igbintade	X	Ekerin Olubadan	
	„ I. B. Akinyele		Ekerin Balogun	
	Alli	X	Seriki	
	Odeniren	X	Rep. of the Otun Olubadan.	
			marks	

*Defendants' Exhibits.*

“ D.”

Letter to Olubadan from Ibadan Chiefs, 13th October 1946, *continued.*

10 Witness to marks :—

(Sgd.) LAJUMOKE,  
Council Clerk.

“ D 1.”

**LETTER to Ibadan Chiefs from Olubadan.**

Ex. “ D1 ” tendered from defence custody in I/14/47 ; *Lagunju v. Olubadan-in-Council and anor.*

(Intld.) F.A.S.O. 15/1/48.

Olubadan Private Office,  
Akere Compound, Ibadan.

“ D1.”

Letter to Ibadan Chiefs from Olubadan, 7th October 1946.

20

The Senior Chiefs, Ibadan Executive Council,  
Mapo Hall, Ibadan.

My Dear Chiefs,

Appointment of Timi of Ede—re.

You are all aware that we have accepted the responsibility from Ede Chiefs, since they have failed to appoint for themselves a Timi, since then it has been my greatest concern to see that the appointment is made as early as possible for the smooth running of Ede Native Administration. For this reason, I send you herewith the attach letter as my decision on the matter.

30

2. I will be glad if you will consider the points therein carefully and give your views accepting, or refuting my reasons within a week from today, i.e. 7th to 14th instant.

3. If you fail to give me satisfactory reply, I shall be compelled to recommend the appointment of Memudu as the Timi of Ede.

I am,

Your Father,

SUBERU FAGBINRIN X

(Sgd.) S. A. ADEYEMI,

40

Olubadan Private Secretary,  
Witness to mark.

Olubadan's Private Office,  
Ibadan. 21st September, 1946.

*Defendants' Exhibits.*

"D1."  
Letter to  
Ibadan  
Chiefs  
from  
Olubadan,  
7th  
October  
1946,  
*continued.*

The District Officer,  
Ibadan.

Copy The Hon. The Resident, Oyo Province.

My Good Friend,

Appointment of Timi, Ede—Re.

The following are my considered views in regard to the appointment of a new Timi for Ede :—

In approaching a subject of the nature, one must avoid coming under (1) undue influence and (2) be strictly guided by custom and tradition.

The two contestants are (1) Memudu and (2) Laoye. Memudu belongs to ODUNIYI branch of the Ede ruling family. Laoye belongs to AJENIJU branch of the Ede ruling family. In this respect, it must be remembered that the Ede Stool is common property of all the 4 branches of the family, and that whereas the AJENIJU branch to which Laoye belongs, has had FOUR Timis, the ODUNIYI branch, to which Memudu belongs, has had only ONE Timi, since the beginning.

On the score of Justice and Fairness alone therefore, ODUNIYI branch must be given its due, i.e., the present vacancy. 20

The Family of Oduniyi presented Memudu, according to custom, and it was after such presentation, that the senior chiefs of Ede (Kingmakers) again according to custom, recommended Memudu.

One important point which appears to have been overlooked by Laoye's supporters is, that the Ajeniju family did not present Laoye, to the Kingmakers; and they dare not do so, because the late Timi Akangbe, came from that branch, and to appoint 2 Timis, one after the other, from the same branch, would be quite clearly, an injustice.

Apart from the foregoing, these further points are prominently in favour of Memudu, namely :— 30

That in 1934, Memudu was actually recommended for the Timi Ede stool, by the Olubadan and Council; that recommendation must be on file in the District Office, Ibadan.

Memudu was good enough in the eyes of the Olubadan and Council in 1934, to be the Timi of Ede; important members of that same Council of 1934 are still there today.

After the 1934 Inner Council have recommended Memudu, this same sort of under-currents came into play, and the late Timi Akangbe, was made to oust Memudu, who bore the disappointment calmly, and continued faithfully in the service of the Ede Native Administration as a Court Judge, 40 which post he has been holding satisfactorily and continuously, since the establishment of Ede Court in 1916 (30 years). Memudu has been part of the machinery of Ede Native Administration for over 30 years.



It should therefore be easy for any person with an open mind, to choose between Memudu, with over 30 years' connection with Ede affairs, and Laoye, a Dispenser, who hardly lived in Ede, even though he is supported more strongly by money, propaganda, and the influence of his Christian friends.

*Defendants' Exhibits.*

"D1."

Letter to Ibadan Chiefs from Olubadan, 7th October 1946, *continued.*

10 Memudu has the support of 42 out of 50 Ede Chiefs ; he has the support also of all Muslims of Ede, headed by the Chief Imam, also of Olode, head of all the pagans of Ede. Now if it is taken into consideration that Ede consists of a high preponderance of Muslims and Pagans, with only about 2% Christian (who are the main supporters of Laoye) Memudu's overwhelming popularity over Laoye's will be readily conceded.

Further a Timi's satisfactory and efficient administration can be the result of only one thing, and that is, co-operation of his chiefs ; and with these chiefs, Memudu has been co-operating smoothly and satisfactorily, for over 30 years. In this regard, therefore, however literate Laoye may be, his appointment as Timi would, in the present circumstances at any rate, be a matter of satisfaction and of value, only to himself and his friends, and not for the town and the common people of Ede. Laoye has had no experience of native or any administration at all.

20 It is against Native Law and Custom in this part to appoint any man as a Chief, whose father is alive ; Laoye's father is not only alive, but has actually contested this stool himself at the start, until he was prevailed upon to step down for his son. This is definitely against our custom.

I, therefore, must disagree with any one who, in the face of such glaring facts as given above, still persist in supporting the wrong candidate.

30 I support the decision of the Ede Senior Chiefs and maintain, as the Olubadan of Ibadan, conscientiously, that Memudu is the right and proper person to succeed now to the Timi Ede stool, and further say that, I arrived at this decision, after deep consideration of all the facts in the matter as known to me, without prejudice, without fear or favour ; and further say that all these facts are clearly known to all who now support Laoye and I challenge them to disprove any of the facts.

Finally, I stand by my decision until the pro-Laoye party shall have proved to the satisfaction of the District Officer, and the Honourable The Resident, that the facts upon which my decision rests are untrue.

Salutations, Your Good Friend,

X

---

*Plaintiff's  
Exhibits.*

**PLAINTIFF'S EXHIBITS.**

**" G. "**

**SENIOR RESIDENT'S LETTER.**

" G. "  
Senior  
Resident's  
Letter  
7th  
December  
1946,

Ex. " G " tendered by Pltf. in I/14/47 ; *Lagunju v. Olubadan-in-Council and anor.*

F.A.S.O. 16/1/48.

No. 1179/361

Provincial Office, Oyo, Nigeria.

7th December, 1946.

The Senior District Officer,  
Ibadan.

10

Timi of Ede : Appointment of.

With reference to the special meeting of the Ibadan Inner Council on Thursday December 5th, I am entirely satisfied that by Native Law and Custom Mr. Adetoyese Laoye is eligible to succeed to the stool of the Timi of Ede and that he is a fit and proper person by past record to assume the office of the Head of the Ede and Ede District Subordinate Native Authority and to take his seat on the bench of the Native Court. I am also entirely satisfied that the large majority of the Chiefs of Ede eligible to take part in the selection of a Timi of Ede support the candidature of Mr. Adetoyese 20 Laoye. That being so, I convey approval of the recommendation submitted by the Ibadan Inner Council that the Selection of Mr. Adetoyese Laoye as the new Timi of Ede should be recognised.

(Sgd.) J. G. PYKE NOTT,

Senior Resident : Oyo Province.

Copy to :—

The Olubadan-in-Council, Ibadan,  
for information and necessary action.

(Sgd) J. H. BLAIR,

Senior District Officer,  
Ibadan Division.

30

“ H.”

**TELEGRAM from Balogun and Senior Ede Chiefs.**

Ex. “ H ” Telegram tendered by Pltf. in I/14/47 ; *Lagunju v. Olubadan in-Council and anor.*

(Intld.) F.A.S.O. 16/1/48.

Senior District Officer, Ibadan.

Probably you may be hearing another rumour after our departure last Thursday at Mapo all liars we still with out choice Memudu.

Balogun and Senior Chiefs Ede.

*Plaintiff's Exhibits.*

“ H.”  
Telegram from Balogun and Senior Ede Chiefs 10th December 1946.

10

“ C7.”

**MINUTES of Ibadan N.A. Inner Council.**

Ex. “ C7 ” tendered by Plaintiff in I/14/47 ; *Lagunju v. Olubadan-in-Council and Anor.*

Minutes of the Ibadan Native Authority Inner Council Meeting held at the Chamber, Mapo Hall, on Monday, the 18th February, 1946.

Present :—

OKUNOLA	OLUBADAN
Commander J. G. Pyke-Nott	Senior District Officer
Fagbinrin	Balogun
20 Akintande	Otun Balogun
Oyowusi	Osi Olubadan
Memudu	Osi Balogun
Oke	Ashipa Olubadan
Amodu	Ashipa Balogun
Igbintade	Ekerin Olubadan
Salami Agbaje	Ekerin Balogun
Alli	Seriki
J. L. Ogunsola, Esqr.	Councillor
E. A. Akinwale ”	”
30 E. A. Sanda ”	”
Y. S. Ola Ishola ”	”
The Hon'ble Mr. Akinpelu Obisesan	

“ C7.”  
Minutes of Ibadan N.A. Inner Council, 18th February 1946.

Absent :—

Oyetunde Otun Olubadan

The Meeting opened at 11 a.m.

The minutes of the Council meeting of the 11th February, 1946, passed.

I. *Matters arising* :—

\* \* \* \* \*

40 II. *Bus Services* :—

\* \* \* \* \*

*Plaintiff's Exhibits.* III. *Ede Affairs* :—

“ C7.”  
Minutes of Ibadan N.A. Inner Council, 18th February 1946, continued.

20. Councillor Ogunsola, drawing the Council's attention to an article published in the Daily Service on the 14th February, 1946, regarding the appointment of a successor to the stool of the Timi, in which it was stated that the Alafin and the Olubadan were interfering unduly in the Ede Chieftaincy dispute, said the matter was a serious one, and they wished all necessary steps be taken to go into it and found out whether it was a fact the Alafin interfered into Ibadan internal affairs. It was further stated that the Olubadan wrote a letter to the Alafin in favour of the appointment of one of the contestants. All Ibadan people were against the procedure. It was not according to their constitution for the Olubadan-in-Council to select a candidate for the people, it was the duty of the ruling family, the Chiefs and the people of the particular town. 10

21. The Hon. Mr. Obisesan expressed that he read the paper and on enquiry he was told by a reliable person who saw the letter from the Olubadan to the Alafin. It was hand-written and there was the Olubadan's official stamp on it. That morning when he came to the Hall, he enquired from the Council Clerk whether he wrote any letter to the Alafin on the subject and he replied in the negative. It was a serious matter and it should be carefully gone into. They would be pleased if the Senior District Officer could ask the District Officer Oyo to find out about the letter from the Alafin and if possible to produce same before the Council for certification. 20

22. Chief Oke, the Ashipa Olubadan, said they considered the matter to be untrue for in his view the Olubadan would never ask the Alafin to interfere in Ibadan affairs. The Alafin should not interfere with their territory and therefore, they wished the Senior District Officer to enquire into the matter very carefully for them. Chief Oyewusi the Osi Olubadan supported and said that succession to the post of Timi had not been once discussed in that Council and it would not be proper for the Olubadan to write anything about it without consulting his Council. 30

23. Chief Agbaje said it might be necessary to accept the information to be untrue, but it was their wish that the Senior District Officer should please help find out whether it was a fact the Olubadan wrote a letter to the Alafin ; and if possible to produce it.

24. Councillor Ishola enlightened the Council that on Friday the 15th February, 1946, at a special meeting held in the Olubadan's House, he enquired from the Olubadan what he knew about it. The Olubadan said it was a fact the Alafin wrote him a letter in favour of a candidate to the stool of the Timiship, that he should assist him so that the person might be appointed, and he told the messenger that brought the letter from the Alafin that he could not do so, it was the family of the Timi, the Chiefs and the people of Ede to select any candidate they wished for his approval only. He could not interfere and he never gave any written reply. 40

25. If that were so, they would be pleased if the Senior District officer could ask the District Officer, Oyo, to warn the Alafin not to interfere in the Ibadan affairs. The Alafin had no right to write or ask

for support of any candidate to any chieftaincy appointments in Ibadan Division. He would also add that the Assistant District Officer in charge Ibadan Northern District should be told not to allow such practice in his area. All Ibadans at home and abroad were not pleased about that affair of interference by the Alafin of Oyo.

*Plaintiff's  
Exhibits.*

“C7.”

Minutes of  
Ibadan  
N.A. Inner  
Council,  
18th  
February  
1946,  
*continued.*

26. The Olabadan stated that the position of the matter was as explained by Councillor Ishola and nothing more.

27. Chief Memudu the Osi Balegun said since the article had been out on Thursday last, all Ibadan people were not pleased because the procedure was quite unconstitutional and they were against it. If they could know the real contestant who approached the Alafin for help, he was of the opinion that his candidature should be ruled out because he wanted to create another great misunderstanding between Oyo and Ibadan. Chief Oyewusi the Osi Olobadan and Amodu the Ashipa Balogun favoured the views of the last speaker.

28. Councillor Sanda attaching much importance to the matter, pointed out that all the sons of Ibadan who read the article on Thursday the 15th February, 1946, were displeased with the procedure for they did not want the Alafin to interfere in the Ibadan affairs any more. All the unpleasantness they had experienced in connection with Oyo in the years past was quite enough and they did not want such a thing to occur again. It would be of great interest if they could know the exact position of the matter. All that were published in the paper were annoying and they wished the Senior District Officer to enquire into it. If the letter alleged to have been written by the Olubadan could be produced there was much more to be said on it. Councillor Ogunsola supported.

29. The Senior District Officer said he was impressed by the discussion. The Resident would come to Ibadan that day and he intended to discuss the matter with him.

30. The Council considered it unwise to publish the full discussion on the matter, but as the matter arose from an article in the Press they decided to record the following in the minutes and give it to the press for publication.

31. “After discussing the Ede succession dispute in Council, the Olubadan-in-Council record that the article in the Daily Service of the 15th February, 1946, about the Timi of Ede Chieftaincy Dispute, has been read by the Council with considerable concern.

The selection of a candidate to the stool of the Timi, rests entirely in the hands of the family of the Timi, and the Chiefs and the people of Ede.

It is the prerogative of the Olubadan-in-Council to give formal approval after a candidate has been selected according to custom. It is neither the duty nor the privilege of the Olubadan-in-Council to influence or interfere in any way with the rights connected with the selection.

Plaintiff's  
Exhibits.  
"C7."  
Minutes of  
Ibadan  
N.A. Inner  
Council,  
18th  
February  
1946,  
continued.

It was further decided that a copy of this decision be transmitted through the Senior District Officer, Ibadan, to the Assistant District Officer, Ibadan Northern District, for announcement to the Timi's family, the Chiefs and the people of Ede generally."

IV. *Station Car—Purchase of* :—

\* \* \* \* \*

V. *Death of an Elephant at Ijaiye Forest Reserve and Removal of its Tusks to N.A. Forest Office* :—

\* \* \* \* \*

VI. *The Iyalode of Ibadan—Petition from* :—

\* \* \* \* \*

VII. *Rubber* :—

\* \* \* \* \*

VIII. *Cotton Goods* :—

\* \* \* \* \*

IX. *Teachers' Allowance* :—

\* \* \* \* \*

The meeting rose at 1.10 p.m.

His  
Okunola X  
mark  
Olubadan of Ibadan.

Witness to mark,  
(Sgd.) LAYIWOLA,  
Council Clerk.

10

"J."

Minutes of  
Ibadan  
N.A. Inner  
Council,  
15th  
April 1946.

"J."

20

MINUTES of Ibadan N.A. Inner Council.

Ex. "J" tendered from custody of defence in I/14/47 : *Lagunju v. Olubadan-in-Council and anor.*

(Intld.) F. A. S. O. 16/1/48.

Minutes of the Ibadan Native Authority Inner Council Meeting held at the Chamber, Mapo Hall, on Monday the 15th April 1946.

Present :—

OKUNOLA

Commander J. G. Pyke-Nott  
Fagbinrin  
Oyetunde  
Akintunde  
Oyewusi  
Memudu  
Oke  
Amodu  
Igbintade  
Salami Agbaje  
Alli

OLUBADAN

Senior District Officer  
Balogun  
Otun Olubadan  
Otun Balogun  
Osi Olubadan  
Osi Balogun  
Ashipa Olubadan  
Ashipa Balogun  
Ekerin Olubadan  
Ekerin Balogun  
Seriki

30

J. L. Ogunsola Esqr.	Councillor
E. A. Akinwale „	„
E. A. Sanda „	„
Y. S. Ola Ishola „	„
The Hon'ble Mr. Akinpelu Obisesan	

*Plaintiff's  
Exhibits.*

“ J.”

Minutes of  
Ibadan  
N.A. Inner  
Council,  
15th  
April 1946,  
*continued.*

The meeting started at 11.15 a.m.

Minutes of the last meeting were read and confirmed.

*I. Native Administration Prison Staff :—*

\* \* \* \* \*

*II. Elephant Tusks :—*

\* \* \* \* \*

10 *III. Survey of Disputed Lands :—*

\* \* \* \* \*

*IV. Grant to African Club :—*

\* \* \* \* \*

*VI. Tour of His Honour the Chief Commissioner :—*

22. The Senior District Officer said His Honour the Chief Commissioner, Western Provinces, would visit Oshogbo on the 23rd instant, Ogbomosho on the 27th and on the 23rd Ede. He would be accompanied by the Assistant District Officer, Oshogbo.

23. He referred to the vacant stool of Timi of Ede and asked whether the Council had considered anything about it if not the Council should do so that morning so that he might communicate their decision to the  
20 Resident for the Government's approval.

24. The Olubadan replied that the matter was not a thing to consider in haste and decide anyhow, because they did not want it to turn out like the Ogbomosho case.

25. The Hon. Obisesan said he learnt there were about 36 contestants then reduced to 30. He asked whether that was so. The Senior District Officer answered that at present the whole number had been reduced to one and that was Memudu the man selected by the Ede Kingmakers.

26. Councillor Ishola said that His Honour frequently toured and held Council meetings in the different Provinces but he regretted to say  
30 that His Honour had not found it possible to visit the Ibadan Council for the past 2½ years. They knew he was interested in Ibadan affairs but yet he should not forget his seat. Councillor Ishola humorously concluded that “Charity begins at home.” The Council supported and hoped that whenever His Honour was back at home, he should try to visit them as often as possible.

27. Councillor Ogunsola said that it might surprise the Senior District Officer when the Olubadan said the Timi stool question should not be hastened over but investigated into, that might also puzzle the man in the street that so long only one contestant was spotlighted what  
40 was the further need for investigation. Councillor Ogunsola then explained

*Plaintiff's Exhibits.* that the reason was because there were many protests by petitions and telegrams from different parts of Nigeria on the matter, that was why it needed careful enquiry. Chief Oyewusi, the Osi Olubadan supported.  
 " J."

Minutes of  
Ibadan  
N.A. Inner  
Council,  
15th  
April 1946,  
*continued.*

28. The Hon. Obisesan referred to the Ogbomosho case when the Ex-Bale was supported by the Ogbomosho Chiefs and the Administrative Officers. It was then referred to Ibadan Council for approval. The Ibadan Council asked whether the selection was right and constitutional and the Ogbomosho Chiefs said yes but after all it resulted into a mish-mash of long drawn litigation with the consequent distoolment of Amao Oyetunde the Ex-Bale Ogbomosho. He continued that whenever a stool became vacant in Yorubaland, the usual practice was that every member of the Royal Family contested whether genuinely eligible or not. He was in favour that enquiry should be made into the matter by the Council before decision. 10

29. The Senior District Officer said the Council's duty was to assure that the traditional law and ancient custom of the people was not abused in regard to the selection.

30. Councillor Sanda said it seemed to them that Government was in hurry to approve the installation. That should not be because Ibadan Council did not want to get involved in chieftaincy mess again. He continued that in the Ogbomosho case, all the Administrative Officers approved it but when it turned to a total failure the general public threw the blame on the Ibadan Council; hence they should be circumspect. He suggested that the Olubadan's advice for careful investigation should be followed. Chiefs Fagbinrin the Balogun and Salami Agbaje the Ekerin Balogun supported strongly. 20

31. Councillor Akinwale suggested that when the Chief Commissioner visited Ede, the matter should not be touched. Chief Oyetunde the Oban Olubadan supported.

32. The meeting rose at 1.55 p.m. 30

Okanola  
His  
X  
mark

Olubadan of Ibadan

Witness to mark

(Sgd.)

LAJUMOKE

Council Clerk.



"C 8."

## MINUTES of Ibadan N.A.

Plaintiff's  
Exhibits.

Ex. "C 8" tendered by Plaintiff through defence in I/14/47 : *Lagunju v. Olubadan-in-Council and Anor.*

"C 8."  
Minutes of  
the Ibadan  
N.A., 17th  
April 1946.

Minutes of the Ibadan Native Authority Emergency Inner Council Meeting held in the Olubadan's House, on Wednesday, the 17th April, 1946.

Present :—

	OKUNOLA	OLUBADAN
	Commander J. G. Pyke-Nott	Senior District Officer
10	Fagbinrin	Balogun
	Oyetunde	Otun Olubadan
	Akintunde	Otun Balogun
	Oyewusi	Osi Olubadan
	Oke	Ashipa Olubadan
	Amodu	Ashipa Balogun
	Igbintade	Ekerin Olubadan
	Salami Agbaje	Ekerin Balogun
	Alli	Seriki
	J. L. Ogunsola, Esqr.	Councillor
20	E. A. Akinwale ,,	,,
	E. A. Sanda ,,	,,
	Y. S. Ola Ishola ,,	,,

Absent :—

Memudu

Osi Balogun

The meeting commenced at 10.25 a.m.

The Senior District Officer informed the Council that as there would be no meeting on Monday the 22nd instant owing to Easter Festival, hence he summoned that day's meeting so that he might discuss with them two subjects of vital importance. The Council concurred.

30 *I. Cocoa Disease* :—

\* \* \* \* \*

*II. Timi of Ede—Appointment of* :—

19. The Senior District Officer said that since that subject had been discussed at the last meeting of the 15th April, 1946, he had thought it over and considered it to be improper if the Council sent representatives to Ede again to enquire into what the Kingmakers had done. According to custom he could be corrected if he was wrong, the Kingmakers had thought over and over before they arrived at their decision. It was not proper to consult public opinion on such matters, but the Chiefs who were the Kingmakers. Otherwise the authority of the Kingmakers' was undermined.

20. It was not necessary that the candidate should be a Christian, a Mohammedan or a Pagan, the duty of the Council only was to find out whether (A) the selection was made unanimously by the Kingmakers (B) custom was followed during selection (C) the Kingmakers were not influenced by outside interference and (D) the candidate was in all respects a fit and proper person to fill the office.

Plaintiff's  
Exhibits.  
"C8,"  
Minutes of  
the Ibadan  
N.A., 17th  
April 1946,  
continued.

21. He remembered the Council quoted the question of *Ogbomosho* case as an instance, he would point out that the present case was quite different from that. The Ede Kingmakers had already made their choice and therefore in his opinion, sending to Ede for further enquiries was unnecessary, it would merely create unrest which might result in political trouble and prevent a decision for years. The Kingmakers appeared to have done their work well, the duty of the Council was to consider it on the lines he said and afford recognition if satisfied. He asked for the Council's views.

22. Councillor Akinwale explained that when the Kingmakers had made their selection, there should have been no alternative by the Council than to give approval, but as a contestant, the real elder brother of Mr. Memudu (the Kingmakers' choice) sent several petitions and telegrams to the Council against the latter. In accordance with native custom, it would be unfair on the part of the Council to give approval without enquiring into such case. 10

23. Councillor Ogunsola expressed surprise that a matter discussed at the last meeting, and the Senior District Officer as had been decided, could not give them time to consider and then brought it forward again that morning. They knew that there were a certain set of people coming to the Senior District Officer to worry him. He would advise him not to listen to such irresponsible persons until he was given definite decision by the Council. When there are rivals on chieftaincy dispute, it was customary enquiries should be carefully made to find out the legitimate candidate. There are records of similar cases in the Senior District Officer's office. 20

24. During the appointment of the Ex-Bale *Ogbomosho*, all the Kingmakers were unanimous and it had the support of Mr. Cox, the then District Officer Northern District, but it was the family that opposed it. They wanted the Senior District Officer not to listen to the set of people coming to him, telling lies about so that he might not be misled. They could not agree that the appointment should be approved until enquiries were carefully made. 30

25. Chief Salami Agbaje supporting the previous speaker, said it was of necessity according to Native law and Custom to find out whether all the four points referred to by the Senior District Officer were correctly covered by the Kingmakers during the election before the Council could approve because the responsibility was on them all.

26. If it was considered necessary the Council could send their deputation to Ede to enquire into the matter or to call them to Ibadan. He was in favour the Council made thorough enquiries before given approval. 40

27. Councillor Sanda said when the late Chief S. O. Latona was about to be appointed as the *Ataoja*, he was at *Oshogbo*, there were many contestants the then District Officer in charge Ibadan Northern District held several meetings with the Chiefs and people, *Oshogbo*, but in conclusion all were invited to Ibadan by the *Olubadan-in-Council* after which the rightful candidate in person of the late Chief S. O. Latona was nominated. It was the same thing done when the late Chief Sanusi Akangbe was appointed as the *Timi* of Ede, the present *Akirun* of *Ikirun* and the *Olufon*

of Ifon. When the Council conducted their enquiries, no trouble arose in any of the towns. It was their custom, they could not therefore change it in that case, so long there were contestants.

*Plaintiff's Exhibits.*

“ C8.”  
Minutes of the Ibadan N.A., 17th April 1946, *continued.*

28. The Senior District Officer should realise that the responsibility of the whole matter was on the Council, if it was wrongly done. When the case of Ogbomosho came, it was the recommendation of the Kingmakers of Ogbomosho and the former District Officer in charge the Northern District they endorsed, but when the family were not satisfied, they took up the matter the result of which was against the Council's decision. The Ogbomosho people, since they found that the Council's decision was upset began to put the whole blame on the Olubadan and Council, and not the Kingmakers or the then District Officer. The kind of that case was a delicate one and it was advisable the Senior District Officer took patience until enquiry was made into it before arriving at a decision.

29. Since the arrival of the Senior District Officer to Ibadan, Councillor Sanda continued, they had known him to be a patient Official but it surprised them greatly that a matter was discussed with him at a Council meeting few days previous, he could not await the Council's reply, but following the information giving him by some irresponsible people, to change his mind and he brought the matter up again that morning.

30. He strongly advised the Senior District Officer to allow the Council to enquire into it carefully and when they were satisfied, he would be informed of their decision. All members of the Council supported and the Olubadan endorsed.

31. The Senior District Officer asked how long would it take the Council to consider the matter. Were they going to send representatives to Ede for the enquiries or they would ask the Kingmakers to come to Ibadan ? The Council replied that they would consider it notify the Senior District Officer of any decision arrived at shortly.

32. The Senior District Officer said he had listened carefully to their arguments, but as it was a matter of vital importance, he wanted it to be treated urgently, otherwise it might result in a protracted political dispute and that did nobody any good. He understood the views expressed by the Council. He would not press his objection so long as it was the custom that the Kingmakers should come before the Council to explain whether the four points referred to were fully satisfied during the election.

33. The Council promised to consider over it and inform the Senior District Officer of their decision as early as possible.

*III. Taxation—Increase of :—*

\* \* \* \* \*

35. The meeting rose at 12.5 p.m.

His  
X  
Mark.  
Olubadan of Ibadan.

Witness to mark—

(Sgd.) LAYIWOLA,  
Council Clerk.

*Defendants' Exhibits.*

**DEFENDANTS' EXHIBITS.**

" C. "

" C. "

Minutes of  
Ibadan  
N.A. Inner  
Council,  
29th April  
1946.

**MINUTES of Ibadan N.A. Inner Council.**

Ex. " C " tendered by Defence in I/14/47 : *Lagunju v. Olubadan-in-Council and anor.*

Minutes of the Ibadan Native Authority Inner Council Meeting held in the Chamber, Mapo Hall, on Monday, the 29th April, 1946.

Present :—

OKUNOLA	OLUBADAN	
Commander J. G. Pyke-Nott	Senior District Officer	10
Oyetunde	Otun Olubadan	
Akintunde	Otun Balogun	
Oyewusi	Osi Olubadan	
Memudu	Osi Balogun	
Amodu	Ashipa Balogun	
Igbintade	Ekerin Olubadan	
Salami Agbaje	Ekerin Balogun	
Alli	Seriki	
E. A. Akinwale, Esq.	Councillor	
Y. S. Ola Ishola, Esq.	"	20
The Honourable Mr. Akinpelu Obisesan		

Absent :—

Fagbinrin	Balogun
Oke	Ashipa Olubadan
J. L. Ogunsola, Esq.	Councillor
E. A. Sanda, Esq.	"
The meeting commences at 11.5 a.m.	

*Confirmation of the minutes of the previous Council Meetings :—*

2. The minutes of the Council Meetings of the 15th and 17th April, 1946, respectively, were approved. 30

*I. Matters arising :*

3. The Senior District Officer said he wanted to refer to Councillor Ogunsola's statements on that subject in paragraph 23 of the minutes of the Emergency Inner Council meeting of the 17th April, 1946, which were as follows :—

" Councillor Ogunsola expressed a surprise that a matter discussed at the last meeting, and the Senior District Officer, as had been decided, could not give them time to consider it and then brought it forward again that morning. They knew that there were certain set of people coming to the Senior District Officer to worry him. He would advise him not to listen to such irresponsible persons until he was given definite decision by the Council." 40

4. Councillor Sanda also spoke on the same topic in paragraph 29 of the same minutes thus :—

*Defendants' Exhibits.*

“ Since the arrival of the Senior of the Senior District Officer to Ibadan,” Councillor Sanda continued, “ they had known him to be a patient official but it surprised them greatly that a matter was discussed with him at a Council Meeting few days previous, he could not await the Council’s reply, but following the information given him by some irresponsible people, he had to change his mind and he brought the matter up again that morning.”

“ C.”  
Minutes of  
Ibadan  
N.A. Inner  
Council,  
29th April  
1946,  
*continued.*

10 5. He was sorry the Senior District Officer went on to say that both Councillor Ogunsola and Sanda were not present but he could not leave the points without challenge. As it stood, those remarks meant that the Council did not repose confidence in the Senior District Officer and did not wish the Senior District Officer to place matters before the Council which he, the Senior District Officer, considered should be openly discussed.

6. He would like the Council to know that he was not prepared to accept that situation. If a matter was re-discussed in the light of new events it did not mean that the Senior District Officer was changing his mind. On the other hand, he was obliged to point out that the Council  
20 had changed their minds because the decision at the last meeting was that the chiefs of Ede should be called to Ibadan to explain the procedure taken in selecting the Memudu as the successor of the Timi Ede. After all, the Council had written him a letter that they were sending a deputation to Ede to enquire into the Chieftaincy dispute there and that he should inform the Assistant District Officer, Oshogbo, accordingly. He wished to know if that last decision was unanimous before informing the Assistant District Officer, Oshogbo.

7. Chief Salami Agbaje, the Ekerin Balogun replied that it was a fact it was unanimously decided by the Council that the deputation be  
30 sent to Ede to conduct enquiries into the chieftaincy dispute, but since that decision had been made, he received several calls on telephone and information that when would the deputation proceed to Ede for the enquiry. Considering that he changed his opinion that it was quite unnecessary to send delegates to Ede at that stage as if that was done, it might create unrest there. In his opinion it would be honourable if the Council, instead of sending delegates to Ede asked the Ede chiefs, contestants and all people concerned to come to Ibadan for the enquiry and he therefore suggested it.

8. The Hon. Obisesan supporting the last speaker, said that the case was not the first, he remembered when the former and the present Ataojas  
40 and other Chiefs in Ibadan Division were about to be appointed, being there were similar agitations, the Chiefs, contestants and the people of the respective towns were called to Ibadan and after careful enquiries, the appointments of the rightful persons were approved. He advised the Council to give the matter careful consideration.

9. Councillor Ishola said in reply to the remarks made on the statements of Councillors Ogunsola and Sanda at the meeting of the

*Defendants' Exhibits.*

"C."

Minutes of Ibadan N.A. Inner Council, 29th April 1946, *continued.*

17th April, 1946, he requested the Senior District Officer not to put those in mind for the people had nothing in their minds against him, but for the interest they had in the matter moved them to voice out the statements. They had heard good work the Senior District Officer had done while he was at Abeokuta and on the known that they had nothing whatever against him therefore requested him to eradicate the whole thing from his mind and to take it with a good will.

10. In regard to the question of the last decision of the Council, he wanted to point out that the Councillors were not in the meeting when the decision was made that delegates should be sent to Ede ; they were in the Lands Committee meeting but when they came they were told of the decision and as it was not customary that they should change any decision made by their fathers, the Council Chiefs, they agreed to the decision. As the Senior District Officer had brought up the matter again for the Council's consideration, he would, in his view, say that the proposal of sending delegates to Ede was unnecessary and he supported the suggestion that the Chiefs, the contestants and all the people concerned should come to Ibadan for the enquiry. 10

11. Councillor Akinwale supported the last speaker, and requested the Senior District Officer to overlook all that the two Councillors had said. They had no any different opinion against him. It was only the interest they had in the matter that moved them to say so. The Council were grateful to the Senior District Officer for not keeping the two Councillors in mind. 20

12. Chief Salami Agbaje said as the Council on behalf of the two Councillors had tendered apology, he hoped the Senior District Officer had taken off the matter from his mind.

13. The Senior District Officer in reply, said the matter was entirely erased from his mind. The only thing he desired was to have the confidence of the Council in all matters in the same way as he reposed confidence in them. 30

14. In conclusion the Council decided that the previous decision that delegates be sent to Ede should be changed, and they unanimously agreed that the Ede Chiefs, the contestants and all the people concerned in the chieftaincy dispute should come to Ibadan for necessary enquiries. The Council promised to write a letter to the Senior District Officer to the effect.

15. The Senior District Officer advised the Council to give the matter immediate attention for leaving it unnecessarily would bring unrest to Ede people because continuation of articles in the Press and Telegrams could only result in political agitation. The Council assuring the Senior District Officer of early action, promised to inform him of the date the enquiry would take place at Ibadan. 40

“ C 1.”

LETTER signed by Ibadan Chiefs and Councillors.

*Defendants Exhibits.*

“ C1.”

Ex. “ C1 ” tendered by Defence in I/14/47 : *Lagunju v. Olubadan-in-Council and Anor.*

No. 99 Vol 2/86

Olubadan’s Office,  
Ibadan,

Letter signed by Ibadan Chiefs and Councillors, 20th April 1946.

20th April 1946.

10 Our Good Friend,  
Greetings.

Timi of Ede Appointment of.

Referring to our discussion at the meeting of today, we have to inform you that it has been unanimously decided that all the Ede Chiefs, the contestants and the people concerned in the Timi Chieftancy dispute should come to Ibadan and enquiries into the dispute would take place on Thursday the 9th May, 1946, at 10 a.m. The people should therefore arrive Ibadan on Wednesday the 8th prox.

2. It was also decided that the Asst. District Officer, Ibadan Northern District, should be present at the enquiry and we should be grateful for 20 necessary arrangement to this effect. Salutations.

Your Good Friends,

Their

Okunola	X	Olubadan
Fagbinrin	X	Balogun
Oyetunde	X	Otun Olubadan
Akintunde	X	Otun Balogun
Oyewusi	X	Osi Olubadan

marks

Witness to marks

30 (Sgd.)

Council Clerk

(Intld.).....

.....  
.....  
.....

Councillors.

The Senior District Officer,  
Ibadan.

Confidential

*Defendants'*  
*Exhibits.*

“ C 2.”

MINUTES of a Special Enquiry Council.

“ C2.”  
Minutes of  
a Special  
Enquiry  
Council,  
9th May  
1946.

Ex. “ C2 ” tendered by Defence in I/14/47 : *Lagungu v. Olubadan-in-Council and Anor.*

Minutes of a Special Enquiry Council into the Appointment of a New Timi of Ede at Mapo Hall, Ibadan on Thursday the 9th May, 1946.

Before :—

OKUNOLA	OLUBADAN	
Commander J. G. Pyke-Nott	Senior District Officer	
R. S. V. Wilkes, Esqr.	District Officer	10
Fagbinrin	Balogun	
Oyetunde	Otun Olubadan	
Akintunde	Otun Balogun	
Oyewusi	Osi Olubadan	
Memudu	Osi Balogun	
Oke	Ashipa Olubadan	
Amoda	Ashipa Balogun	
Igbintade	Ekerin Olubadan	
Salami Agbaje	Ekerin Balogun	
Alli	Seriki	20
J. L. Ogunsola, Esqr.	Councillor	
E. A. Akinwale, Esqr.	Councillor	
Y. S. Ola Ishola, Esqr.	Councillor	
The Hon'ble Mr. Akinpelu Obisesan		

The enquiry started at 11 a.m.

*Mr. Wilkes the New District Officer—Introduction of :—*

2. Commander Pyke-Nott the Senior District Officer introduced Mr. Wilkes, his relief, to the Council. He stated that Mr. Wilkes was not a new man to them as he had been working in Ibadan some years ago.

3. Councillor Ogunsola, on behalf of the Council, welcomed Mr. Wilkes and expressed their pleasure to see that he would then work in closer touch with them. He wished his tenure of office in Ibadan every success. Councillor Ogunsola in concluding regretted the Senior District Officer's short stay with them but as he was only going to Oyo as Acting Resident, he hoped he would continue his interest in Ibadan affairs. 30

4. Mr. Wilkes in response thanked the Olubadan-in-Council and expressed his great pleasure to meet them. He said it was then 18 years that he had been in Nigeria and all of that he spent in the Yoruba country. He hoped the Council would give him every co-operation as they had done to his predecessor. 40

5. At that juncture the Council proceeded to business.



BALOGUN EDE :—

Address by Council to Chief Opayemi the Balogun Ede :

Every member of this Council knows that your position is pre-eminent and your rank senior to other Chiefs in Ede and by virtue of that position we charge you to tell us the whole truth and in no way should you directly or indirectly mislead this Council.

*Defendants' Exhibits.*

“ C2.”

Minutes of  
a Special  
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1946,

*continued.*

*Q.* by Council : After the demise of a Timi what is your customary method in selecting a new one ?

*A.* When a Timi dies, the Kingmakers would meet and decide the next ruling family from where the new Timi should be chosen. It is a selection by strict rotation.

*Q.* Did you follow that when the late Timi died ?

*A.* Yes we endeavoured to do so and would have been successful but for the great number of contestants with little or no claim. Some houses have ruled once, others twice or more.

*Q.* Is there a special body that selects the new Timi or is a duty of the whole Chiefs ?

*A.* There is a special body consisting of 4 or 5 Chiefs called the Kingmakers.

20 *Q.* Is it that very body that selected the late Timi ?

*A.* Yes, all the Chiefs met and gave mandate to the 4 Chiefs.

*Q.* Have you selected somebody now ?

*A.* Yes, we have selected Memudu.

*Q.* Supposing one of the other contestants opposed you that what you have done is unconstitutional, what will you say ?

*A.* I do not think anyone can do so. All I know is that everyone of the Royal family wants to succeed to the throne.

*Q.* According to your custom who are the Kingmakers ?

*A.* The Balogun, Jagun, Ayope, Areago and Ikolaba.

30 *Q.* Is it the whole five that selected Memudu ?

*A.* Yes.

*Q.* How do the other Chiefs hear about such a selection ?

*A.* We used to assemble them and discuss such matters with them.

*Q.* Do they agree to the selection of Memudu ?

*A.* Yes.

*Q.* Could anybody oppose your decision ?

*A.* Nobody, save those who fail to get the throne and that is usual anywhere.

40 *Q.* You stated that all Chiefs met but some Chiefs petitioned that they were not called. Are you not wrong in that ?

*A.* If they say so you can call all the Ede people and ask them.

*Defendants' Exhibits.*

"C2."  
Minutes of  
a Special  
Enquiry  
Council,  
9th May  
1946,  
*continued.*

*Q.* How long are you made Chief ?

*A.* About a year ago.

*Q.* You said the selection of Timi is strictly in rotation. Do you remember the Ede Intelligence Report by Mr. E. N. C. Dickinson in which Ede Chiefs stated that a Timi could be appointed from any house—remote or recent. Is it you that was wrong or your elders ?

*A.* My elders will not say such.

*Q.* That is not our question ; who was wrong, yourself or your elders ?

*A.* I cannot answer that.

*Q.* How many ruling families do you have ?

10

*A.* Four.

*Q.* Who presents somebody, the people or Chiefs ?

*A.* The Chiefs select for the people.

*Q.* Are you one of the Kingmakers ?

*A.* Yes.

*Q.* Are all of you present here ?

*A.* We all, save one who is sick, are here.

*Q.* After the Kingmakers how many are the rest immediate Senior Chiefs ?

*A.* About 13.

20

*Q.* The late Timi's recommendation was signed by several Chiefs why should this one bear 5 signatories only ?

*A.* It's because of unwarranted rivalry. The Lamowo and the Iyalode used to sign such recommendations and they do so at this occasion.

*Q.* Do all the Chiefs approve of your choice ?

*A.* If they are dissatisfied they could state so before you.

#### OYEDUNMOLA THE JAGUN OF EDE :

*Q.* Jagun Ede, we want the fact from you. When a Timi dies, what's your custom ?

*A.* Our custom is to select the Timi from the four ruling houses in rotation. We do not choose from any family that has just stepped down. A written agreement was made before the death of the late Timi Akangbe that the next Timi will be selected from the Oloro's family, i.e. Lagunju.

*Q.* Which is the next right family and whom do you choose there ?

*A.* Lagunju Family ; we choose Memudu.

*Q.* Do you not hear that people say it about that you have chosen Memudu because he is your son-in-law ?

*A.* No, I espoused my daughter to another man before Memudu picked and married her without my consent.

*Q.* Are the other Kingmakers present ?

40

*A.* Yes.

Q. Can anybody oppose and defeat your recommendation ?

A. Not possible.

Q. Are the Kingmakers 4 or 5 ?

A. They are five.

Q. Did you convey your decision to the other Chiefs ?

A. Yes.

Q. Were they pleased ?

A. Yes, even the Assistant District Officer asked them of the same.

Q. Are the townspeople satisfied with your choice ?

10 A. Yes.

Q. You stated that selection of a Timi is made strictly in rotation. If that is correct why do some houses get 3 or 4 Timis elected while others once only ?

A. It was after Lagunju's long reign that the custom started.

Q. That's not our question, we refer you to strict rotation only ?

A. During the inter-tribal wars only the warriors and the powerful could get the title ; that may be the cause why some houses had many chances.

Q. How long have you been Jagun ?

20 A. Since 1918.

Q. Do you remember that about 20 Chiefs signed the late Timi's recommendation ?

A. Yes.

Q. Why not so in this case ; only 5 of you signed the letter ?

A. In olden days whatever the Seniors did the Junior must support but now disunity and self-importance prevails.

Q. Do you remember the Ede Intelligence Report in which the Ede Chiefs stated that after the demise of a Timi, the new one could be chosen from any family and not in strict rotation ?

30 A. I don't know about that.

Q. Who chooses the new Timi, the Kingmakers or the Chiefs ?

A. The Kingmakers.

Q. Do the other Chiefs agree to Memudu's selection ?

A. Yes, and if not we are not aware of any dissatisfaction.

At this juncture the next Chief called was Opayemi the Akolaba Ede, he was absent because of illness.

#### ADEDAYO THE AYOPE OF EDE :

Q. Can you tell us your custom in respect of the appointment of a new Timi ?

40 A. When a Timi dies, the Kingmakers select the right man from the right family.

*Defendants' Exhibits.*

“ C2.”  
Minutes of  
a Special  
Enquiry  
Council,  
9th May  
1946,  
*continued.*

*Defendants' Exhibits.*

"C2."  
Minutes of  
a Special  
Enquiry  
Council,  
9th May  
1946,  
*continued.*

Q. Was that done in the case of the late Timi Akangbe ?

A. Yes.

Q. You are one of the Kingmakers. Supposing you are not pleased with anything done, can you oppose or remonstrate ?

A. I can oppose only my voice may be drowned. I was forced to sign the first recommendation and they have boycotted me since. I never heard nor attended the meeting of 3 days ago when a petition was signed and my name was appended as being present.

Q. So there is disunity among the rank of the Kingmakers on the selection of Memudu ?

10

A. Yes ; I signed the first recommendation by force because they said the Assistant District Officer, Oshogbo wanted it in time.

Q. Is it true that you signed the petition of 3 days ago ?

A. I was never present nor informed.

Q. As one of the Kingmakers, do you agree with the others ?

A. I do not because of their inconsistency.

Q. Who forced to sign the first recommendation ?

A. After the Balogun was got round then Jagun and Areago begged me to join them.

Q. Do you know the reason why Jagun was so over-anxious ?

20

A. I don't know.

Q. When you went before the Assistant District Officer, Oshogbo why didn't you report that you were forced by some people ?

A. I cannot because I am junior among the rank ; others of course can.

Q. Does it mean that whatever your elders do, you in particular cannot oppose ?

A. Yes.

#### MAKANJUOLA THE AREAGO EDE :

Q. When Timi dies, what is your custom in selecting a new one ?

30

A. The five Kingmakers confer and then select the right man from the right family.

Q. Can people oppose what the Kingmakers have done ?

A. We never heard of such opposition in history.

Q. Whom do you select ?

A. Memudu from Lagunju's family.

Q. Can an unsuccessful contestant oppose and nullify your recommendation ?

A. Nobody can do that. It is usual for over 20 members of different ruling houses to contest the stool but once one is chosen the matter ends.

40

*Q.* Do the Iyalode and the Lomomu have a say in the late Timi's appointment and also in the present case ? *Defendants' Exhibits.*

*A.* Yes.

*Q.* Are you one of the Kingmakers and are all of you unanimous over the selection ?

*A.* I am ; we are.

*Q.* Whom do you choose ?

*A.* We choose Memudu.

*Q.* Why ?

10 *A.* Because it is the turn of Oloro's House, i.e. Lagunju.

*Q.* Is it because it is Memudu's turn or because you think he will enhance the progress of the town that you choose him ?

*A.* Because of both. He has been a member of the Court for several years past and there is no complaint against him. He is popular in the town.

*Q.* Have you discussed it with your Chiefs and do they agree ?

*A.* Yes, we do and nobody objected, but some Balogun Chiefs seem dissatisfied.

*Q.* Do you think that all the townspeople approve ?

20 *A.* There may be opposers but I don't know them.

*Q.* Can it affect the chieftaincy if there are such people ?

*A.* Not in the least.

*Q.* What is the criterion of selection when, according to you, 20 can contest ?

*A.* Suitability by right and the candidate's character.

*Q.* Were you a Chief before the death of the late Timi ?

*A.* I have been Areago for 3 past Timis.

*Q.* Do you remember that all the Chiefs signed the late Timi's recommendation ?

30 *A.* Yes.

*Q.* Why not so in this case ?

*A.* We heard of no dissent from any quarter.

*Q.* Is it true that some Chiefs on the Balogun line objected to your choice ?

*A.* That is a minor case because from time, whatever the Balogun does, his followers must support.

*Q.* Does it mean that the five Kingmakers are the right body to select a candidate and only convey the information to the remaining Chiefs ?

*A.* Yes.

40 *Q.* Do your own Chiefs approve the petition submitted by you three days ago ?

*A.* Yes.

“ C2.”  
Minutes of  
a Special  
Enquiry  
Council,  
9th May  
1946,  
*continued.*

*Defendants' Exhibits.*

“ C2.”  
Minutes of  
a Special  
Enquiry  
Council,  
9th May  
1946,  
*continued.*

*Q.* Is it true that matters are final in the Kingmakers' hands ?

*A.* Yes because they represent all classes of the whole Chiefs in Ede.

*Q.* Can anybody oppose your choice ?

*A.* I never heard of such an opposition in history.

*Q.* Do you nominate the candidate yourself ?

*A.* No, the next ruling family whose turn it is presents the candidate whom the Kingmakers can approve or reject.

*Q.* Does that apply in Memudu's case ?

*A.* Yes, his family presented him to us with a letter of recommendation.

*Q.* Supposing one Opayemi the Ikolaba says he has no hands in what 10 you did, is that correct ?

*A.* Yesterday when we were preparing to come to Ibadan, I went to him and to my greatest surprise he said he was no more with us and is in favour of Laoye's candidature.

*Q.* Was the Ayope present in the meeting you held day before yesterday ?

*A.* He was present in the evening but not in the morning when the petition was signed.

*Q.* Do you tell the Ayope of the petition and also that you have put his name ? 20

*A.* The Jagun ought to have told him.

*Q.* As you have chosen your candidate, can any prince, body of people or Society nullify your decision ?

*A.* Impossible.

S. O. LONGE. Councillor Ede :

*Council to Mr. Longe :* We all know that you are a contestant but forget everything about that ; you are now appearing before the Council by virtue of your office as a Councillor ; it is therefore your duty to tell us the truth as exactly as you can.

*Q.* Will you be pleased if anybody is chosen Timi ? 30

*A.* Yes, if he has the right.

*Q.* How long since you have become domiciled in Ede ?

*A.* Seven years ago.

*Q.* Do you know the history of the town ?

*A.* Yes, certainly, as a prince I ought to.

*Q.* Were you at Ede during the chieftaincy dispute of the late Timi and who contested the title with the late Timi ?

*A.* I was at Ede ; Memudu contested the title with the late Timi.

*Q.* Who is now chosen by the Kingmakers ?

*A.* Memudu, a relative of mine. 40

- Defendants' Exhibits.*
- Q. You are a Councillor and eligible prince to the title. Do you sign the recommendation of the Kingmakers ?
- A. As a contestant I did not.
- Q. Was your custom fully and closely followed during the selection ?
- A. Custom was not perfectly followed because there are some discrepancies.
- Q. Are there any misunderstandings between the Chiefs over the same ?
- A. Yes, on the part of some Balogun Chiefs.
- 10 Q. Why ?
- A. Because the Junior Chiefs are not fully kept in the know. It is their duty according to custom to present the right candidate from the right family to the Kingmakers for approval. Unanimity over a candidate is essential.
- Q. Can you tell if such misunderstanding can spoil matters ?
- A. Naturally, because a trifle may develop into a riot.
- Q. Its a pity you are one of the contestants but yet you must be accurate because your evidence is weighty. Is it true that whatever the Kingmakers do is final ?
- 20 A. It is ; an example of this is the Inner Council of the Olubadan-in-Council. The Ede Junior Chiefs like those at Ibadan are not executive but yet they must be fully informed of whatever is going on.
- Q. Is it right to listen to the remonstrations of the Junior Chiefs ?
- A. Quite necessary.
- Q. Supposing this Council approve of the recommendation, is custom followed ?
- A. Complaints and grievances ought to be enquired into first.
- Q. Which do you think is right for the Council to listen to the noise of a handful few or approve the recommendation of the Kingmakers ?
- 30 A. The recommendations of the Kingmakers ought to be approved because the Olubadan-in-Council have delegated to them a power similar to theirs.
- Q. Which is the proper body to appoint a Timi ?
- A. The Kingmakers not the Mobebis.
- Q. Which is the next House ?
- A. Everybody knows that it is the Oloro's turn. This has even been written in a document before the death of the late Timi. The Balogun Ede, the late Timi and Asst. District Officer, Hayley, had copies.
- Q. Does the five Kingmakers hold executive sway over the other
- 40 Chiefs ?
- A. Most assuredly.

Minutes of  
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*continued.*

Defendants'  
Exhibits.

Q. Can the body of Junior Chiefs independently present their own candidate ?

“ C2.”

A. No precedent of such action.

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a Special  
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continued.

Q. Can some Societies or the people themselves, by consensus of opinion, select a candidate ?

A. Never. The Chiefs represent the people ; what matters mostly is that public opinion must be respected before the Kingmakers determine the candidate. The Resident even advised this. The people can suggest any persons they like but they cannot select him—that is *ultra vires*.

At this juncture anybody who has something to say was asked to 10  
come before the Council.

REVD. T. A. TAIWO :

Q. Are you a native of Ede ?

A. I was born and bred there.

Q. Are you conversant with native law and custom ?

A. Yes.

Q. What is your *locus standi* before this Council ?

A. I appear before you now to represent the Ede Progressive Union of which I am the President and also the following Unions and Societies whose petitions I tender herewith :—

1. Oba Bi Olorun Kosi
2. Egbe Omo Ibile
3. Etc. Etc.

20

Q. What is the function of the Ede Progressive Union ?

A. To discuss and advise the Timi and Council on all matters of public interest affecting the Town.

Q. Supposing you advised the Chiefs and they refused advice what will your Union do ?

A. We shall continue advising them.

Q. What's your Union's wish re the new Timi ?

30

A. We have approached and begged the Chiefs for a literate Ruler, quoting the examples of progressive towns like Ile-Ife, Oshogbo, Ondo, etc.

Q. Do you mention to them that such and such a person is good and will improve the town ?

A. Yes, we have done so and they agreed.

Q. Do they still agree to your advice ?

A. I cannot say but if they do, the better it will be.

Q. Supposing the Chiefs reject an enlightened or literate ruler, what will happen ?

A. Dissatisfaction ; although we have no power over them.

40

Q. Is the recommendation forwarded by the Kingmakers acceptable to your people ?

A. Not in the least ; 60 per cent. of the people vehemently oppose it.



Q. But if the die is cast can you support what the Kingmakers have done ?

A. I cannot answer that question.

Q. Do you know if the Kingmakers have satisfied native law and custom ?

A. They have not.

Q. What is then your custom after the demise of a Timi ?

A. All the Chiefs usually confer and after careful deliberation and enquiry into each contestant's suitability, 3 or 4 of the Senior Chiefs will  
10 announce the decision, publicly.

Q. Can the Junior Chiefs oppose what is done ?

A. Yes, if they are not consulted.

Q. It is understood that you are a Councillor at Ede, do you appear under that capacity or representing a Union ?

A. I represent all Ede Unions both at home and abroad.

ARAOYE THE OTUN BALOGUN EDE :

ADELU THE OSI BALOGUN EDE :

Q. If a Timi dies what is your custom ?

A. All the Chiefs irrespective of rank must be in the know when the  
20 new Timi is to be appointed.

Q. Are you informed of the present case ?

A. Immediately the late Timi died we approached the Balogun and he favoured the candidate of one Labode but to our utter disgust he changed sides without telling us. He mentioned Memudu in the presence of the Assistant District Officer ; we are 9 Chiefs on the Balogun's sides but he ignored all of us.

Q. Other Senior Chiefs have similar followers, do you know if they consulted their own Chiefs ?

A. We do not know of that.

30 Q. When the Kingmakers chose Memudu did you go to the Assistant District Officer and inform him of your protest ?

A. On the day the Assistant District Officer came to Ede, we were all driven away.

Q. Are you pleased with what they have done ?

A. Not in the least ; there is no precedent for such a high-handed action.

Q. Had you been informed would you support ?

A. We would have all done it together.

*Defendants' Exhibits.*

" C2."

Minutes of  
a Special  
Enquiry  
Council,  
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1946,  
*continued.*

*Defendants' Exhibits.* LAITAN OF KUBOLAJE IKOBE (the Founder of Ede) :—

“ C2.”  
Minutes of  
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1946,  
*continued.*

My Grand-father was the founder of Ede ruling families.  
Other houses have several turns and it is now my father's turn.

*Q.* Did you ever contest the title ?

*A.* No, I never but my Senior brother Ibiloye did.

*Q.* Supposing you are chosen Timi, will you be pleased ?

*A.* I shall be very pleased.

*Q.* Your own opposition is that you are not chosen ?

*A.* Yes, and I solicit for your fatherly assistance.

BELLO AJAGBE OF LAGUNJU'S HOUSE :

10

I am the petitioner whose petition was forwarded to the Olubadan-in-Council. I also sent a Telegram. I am the Senior brother to Memudu I do not know why Ede Chiefs cast aside my claim and supported a junior brother.

*Q.* Are you senior to Memudu ?

*A.* Yes.

*Q.* Do you know that Memudu notably contested the stool with the late Timi ?

*A.* I also did.

*Q.* Why was your name not heard then and by what proof can you 20 convince us that you did ?

*A.* Memudu was more noted because he is a Court Member.

*Q.* Why was he made a Court Member and you a Senior brother set aside ?

*A.* Because his father was Senior to my father.

*Q.* Did you make any representations to retrieve your right ?

*A.* I did but to no avail.

OPAYEMI BALOGUN EDE (Called in again) :

*Q.* Do you know this man, Bello ? Who is he ?

*A.* Yes, I know him, he is one of the grandsons of Lagunju.

30

*Q.* Can you tell us why you appointed Memudu a Court Member and his Senior brother ignored ?

*A.* I was not a Chief then.

*Q.* Why is he not chosen as Timi ?

*A.* Before the death of Timi Akangbe, Memudu has been spot-lighted : nobody ever mentioned Bello's name.

*Q.* Did he contest the stool before ?

*A.* I never heard it.

SUNMONU ODEDIRAN :—

I represent Oyowoso Alade one of the contestants who petitioned the Council ; he is the head of the Ajeniju's house from which the late Timi Akangbe sprang. The late Timi died on a Commission appointed by the Native Authority it will therefore be highly appreciated if a new Timi is selected from his family to console them.

*Defendants' Exhibits.*

—  
" C2. "  
Minutes of  
a Special  
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9th May  
1946,  
*continued.*

LAWANI AJALA :—

10 I am the younger brother to the late Timi and as he died in harness, I humbly beg that our House is considered and I am made Timi.

6. Here the Council informed the Administrative Officers that the enquiry closed.

*Senior D.O.* : Does the Council agree that Ede Chiefs should return home ?

*Council* : There is no objection.

*S.D.O.* : When will action be completed ?

*Council* : Immediately the minutes are prepared.

The Enquiry closed at 2 p.m.

20 7. We have gone carefully into the evidence before us and, for convenience, feel that this matter be dealt with under two heads :—

(A) The Constitution of the Kingmakers and method of Selection of a new Timi and

(B) Our findings and recommendations.

*The Constitution of Kingmakers and Method of Selection :—*

30 8. We are willing to accept the existence of a body known to Ede custom as Kingmakers, but it is difficult from facts to ascertain the effective number of such a body. Neither the past history of Ede nor the Intelligence Report compiled by the then District Officer Mr. Dickinson on Ede Town affairs could lend any assistance in this direction. Also the number and the titles of the signatories to the recommendation for appointment of the late Timi (Sanusi Akangbe) in comparison with those of the present so-called Kingmakers afford no enlightenment on the issue.

9. Our own conclusion, therefore, based on facts before us, is that when a new Timi is to be appointed, all the influential Chiefs of the day—whatever their number or titles—would meet, summon all the other Chiefs to exchange views and opinions as to the best selection, and after agreement has been reached amongst the Chiefs, the recommendation and announcement is made.

*Defendants' Exhibits.*

"C2."

Minutes of  
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*continued.*

10. There is evidence by the signatories to the recommendation of Memudu that Timis have always been selected in strict rotation from the four branches of the ancestral Timi's family. This argument is as unconvincing as it is contradictory to fact because if it was so, certain branches of the family in default of dearth of suitable candidates from any side, would not have had two, three and even four chances while another had only one.

11. There is evidence also that a certain document was prepared during the lifetime of the late Timi to the effect that it would be the turn of a particular branch from which to select the next Timi. This evidence is as unnecessary as it is unacceptable—not only would the existence of such a document, if found to be genuine, be a violation of custom by reason of the fact that it gives to a *ruling* Timi the right to appoint his successor, but it would, in a nutshell, in our opinion, also tend to abolish the very existence and constitution of the Kingmakers; it will tend, in like manner, to constitute a ruling Timi a member of the Kingmakers. This idea must be against native law and custom of Ede. In our opinion this piece of evidence should be given little or no weight and should therefore be discountenanced. 10

*Our Findings and Recommendations :—*

20

It is the general opinion of this Council that the so-called Kingmakers in this case have acted rashly and unconstitutionally as they were neither unanimous amongst themselves nor were they in full consultation with the other Chiefs before making their recommendation and for these reasons we are constrained to recommend that all the Chiefs in Ede should first be asked to come together, and then make their recommendation of any popular and suitable candidate from any of the four branches of the Ruling Houses to the present vacant stool of Timi.

	Their mark	
Okunola	X	Olubadan
Fagbinrin	X	Balogun
Oyetunde	X	Otun Olubadan
Akintunde	X	Otun Balogun
Oyewusi	X	Osi Olubadan

30

Witness to marks

(Sgd.) ? ?

Council Clerk.

(Sgd.) J. L. Ogunsola

„ E. A. Akinwale

„ A. Sanda

„ O. Ishola

} Councillors.

" C 3."

## MINUTES of Ibadan N.A. Inner Council.

Defendants'  
Exhibits.

" C3."

Ex. " C3 " tendered by defence in I/14/47 : *Lagunju v. Olubadan-in-Council and Anor.*

(Intlld.) F. A. S. O. 15/1/48.

Minutes of the Ibadan Native Authority Inner Council Meeting held in the Chamber, Mapo Hall, on Monday the 26th August, 1946.

Minutes of  
Ibadan  
N.A. Inner  
Council,  
26th  
August  
1946.

Present :—

	FAGBINRIN	OLUBADAN
10	R. L. V. Wilkes, Esqr.	District Officer.
	Major J. H. Blair	Senior District Officer
	Oyotunde	Otun Olubadan
	Akintunde	Balogun
	Memudu	Otun Balogun
	Oyewusi	Osi Olubadan
	Amodu	Osi Balogun
	Oke	Ashipa Olubadan
	Salami Agbaje	Ashipa Balogun
	Igbintade	Ekerin Olubadan
20	I. B. Akinyele	Ekerin Balogun
	Alli	Seriki
	J. L. Ogunsola, Esqr.	Councillor.
	E. A. Akinwale "	"
	E. A. Sanda "	"
	Y. S. Ola Ishola "	"
	The Hon'ble Mr. Akinpalu Obisesan.	

The meeting opened at 11 a.m.

I. Major J. H. Blair, Senior District Officer—Introduction of and Mr. R. L. V. Wilkes—Departure of :—

\* \* \* \* \*

30 II. Confirmation of the previous Minutes :—

\* \* \* \* \*

III. Olubadan of Ibadan : Official Recognition of :—

\* \* \* \* \*

IV. Quarter Representatives—Election of :—

\* \* \* \* \*

V. Drainage Rules :—

\* \* \* \* \*

VI. Timi of Ede—Appointment of :—

18. The Council informed the District Officer that the Ede Chiefs had come and they would like the subject to be discussed in his presence. The District Officer replied that he received instructions from the Resident

*Defendants' Exhibits.*  
 "C3."  
 Minutes of Ibadan N.A. Inner Council, 26th August 1946, continued.

that the matter was not the concern of Government and therefore he must leave them to settle it themselves. Councillor Ogunsola asked why the District Officer could not wait to listen to the discussion as a safeguard against unnecessary complaints. The District Officer said he could not violate the Resident's instructions. The Council agreed.

*VII. Chief Adeoye Omiyale the Asaju Balogun—Petition against for removal from his office as the head of the Opoagbe Family :—*

\* \* \* \* \*

*VIII. Northern District Chiefs Meeting at Gbongan :—*

\* \* \* \* \*

*IX. Timi of Ede, Appointment of :—*

25. The Ede Chiefs, namely, Opayemi the Balogun, Oyedunmola the Jagun, Oyediran the Babasanya, Belo Makanju the Areago, Gbadamosi Adedayo the Ayope, Areoye the Otun Balogun, Adalu the Osi Balogun, Sula Omolade Ashipa Balogun, Olopade the Seriki, Senusi Adeniji the Agbakin Balogun, Lawale Akarun Balogun, Owolabi Areonibon Balogun, Adedidgba Bada Balogun, Akande the Otun Seriki, Amodu the Laye Balogun, Akingbade the Ejemu, Mobolaji the Otun Iyalode, Sadatu Ayoka the Iyelode's representative, Layiwola the Ikolaba's Representative and Shinyanbade the Abese Balogan's Representative, appeared before the Council and they were asked what they had considered about the appointment of a new Timi of Ede and whether they were unanimous on a candidate. 10 20

26. Chief Opayemi the Balogun replied that they had considered the matter among them, and decided that Memudu should be appointed the Timi of Ede. Eight Chiefs supported.

27. Chief Araoye the Otun Balogun opposed and said that the statements of the Balogun were incorrect because the majority did not support Memudu but Adetoyese Laoye. Nine other Chiefs said that they supported Laoye.

28. The Hon. Mr. Obisesan said, it would be necessary to ask who were the Kingmakers in Ede and if that was known it would help the Council to decide the issue. Councillor Ogunsola explained that according to the Council's previous letter on that question, there were no actual Kingmakers in Ede; they had looked into the Ede Intelligence Report but it did not establish that particular point. It was for that reason, the Council asked all the Ede Chiefs whose appointments were recognised by the Government to come before them, therefore the question raised by the Hon. Obisesan did not arise. 30

29. Chief Memudu the Otun Balogun said the opinion of the Ede Chiefs had been divided into two sides. Some Chiefs supported the candidature of Memudu and the others Adetoyese Laoye, it would be advisable if they all came to a decision so that the matter might be settled once and for all. Chief Oyewusi the Osi Olubadan supported. 40

30. Chief Salami Agbaje the Ashipa Balogun suggested that the Council should send for both Memudu and Adetoyese Laoye, pointing out to them that if they refused to compromise together, the Council would select another person in their stead.

*Defendants' Exhibits.*

“ C3.”

Minutes of  
Ibadan  
N.A. Inner  
Council,  
26th  
August  
1946,  
*continued.*

31. The Olubadan said there was no hope of either side giving way. The Council must decide at once who should be appointed the Timi of Ede. Chiefs Akintunde the Balogun and Alli the Seriki agreed. Chief Oke the Ashipa Olubadan pointed out that it was the Balogun Ede who was responsible for the trouble by failing to confer with the Chiefs on his side  
10 before announcing his own decision, which was entirely contrary to native law and custom. He was of the opinion that the Council should decide on a candidate that day to settle the whole matter.

32. Councillor Ogunsola said he agreed that the matter had long been pending but he suggested that the Ede Chiefs be given a last chance, by allowing them more time to discuss the matter, but that if they failed to come to a unanimous decision, the Council should decide for them.

33. Chief Oyedunmola the Jagun Ede indicated that they could not come to a decision, but as soon as the appointment of a candidate was approved the trouble would cease and they would all co-operate with him.  
20 Chief Opayeni the Balogun corroborating the statement of the last speaker, said Ibadan Chiefs were their fathers from time immemorial and therefore he appealed for their aid that they should decide for them.

34. Chief Sanusi Adeniji the Agbakin Balogun said that he had never met a man like Chief Opayemi the Balogun Ede; he was a real confusionist. He generally did things without consulting the Chiefs on his side. He was alone responsible for the present agitation. When the Resident came to Ede immediately after the death of the late Timi, he advised them to confer carefully among themselves and not to delay too long before making their selection. He had further advised the Chiefs  
30 to listen carefully to the words of the townspeople to know who was the popular choice. A few days later, all the Chiefs met together and the Balogun asked who they considered suitable to be the Timi Ede. They replied that Adetoyese Laoye was the popular choice of the townspeople, and they too supported his candidature. The Balogun then said that so long as the candidature of Adetoyese Laoye had the full support of the townspeople he too had no objection. The Balogun then took it upon himself to send for Mr. Adetoyese Laoye from Ibadan and after telling him of their decision, advised him to go round all the Chiefs' houses and express thanks to them—which Mr. Laoye did.

40 35. According to custom, it was the duty of the Chiefs on the side of the Balogun, to select a candidate to be appointed as Timi and present him to the Balogun, Ikobata and Ayope and the custom was properly followed in the selection of Adetoyese Laoye. The Jagun and Areago were not concerned in the selection because they are not Kingmakers. To his utter surprise, the Agbakin Balogun continued, when the Assistant District Officer came and asked who was their choice, the Balogun instead

*Defendants' Exhibits.*

" C3."

Minutes of  
Ibadan  
N.A. Inner  
Council,  
26th  
August  
1946,  
*continued.*

of telling him of what they had decided replied that they had not arrived at any decision and the Jagun said they had made a decision. After some discussions between the Balogun and the Jagun on the spot the Balogun yielded to the wish of the Jagun and said that Memudu was their choice. The Assistant District Officer then asked all the other Chiefs whether that was their opinion but he, the Agbakin replied that no one had ever discussed the question of Memudu among them. The matter became a riot in the presence of the Assistant District Officer and they all left the place angrily.

36. A few days later, continued the Agbakin, he was told that the Balogun was recommending privately the appointment of Memudu and when he came to the Balogun to ask whether the information was true, he said it was the Assistant District Officer who sent to him to make the recommendation. He pointed out to the Balogun that he was quite wrong to do so because Adetoyese Laoye was the choice of all the townspeople and whose candidature had already been previously supported by himself the Balogun. 10

37. Arising from that he wanted the Council to know that the Balogun was creating the same kind of confusion as the Babesanya had caused during the appointment of the late Sanusi Akangbe, and he asked that he should be checked otherwise the trouble would continue at Ede. The candidature of Adetoyese Laoye had their full support and they asked for the Council's approval. The Jagun had nothing to do in the selection of a Timi Ede; his duty was a fetish worshipper and also the head of all masquerader worshippers; he had no right to interfere in the appointment. 20

38. Chief Oyedunmola the Jagun said all the statements made by the Agbakin Balogun were untrue; it was about three Timis that his father, as Jagun had selected with the Chiefs, without complaint. As the Jagun he had some Chiefs on his side and none of them complained against him. It was the Chiefs on the side of the Balogun who had grievances and he appealed to the Council to beg them. 30

39. The District Officer, Mr. Wilkes, said he had listened carefully to the statements of the Ede Chiefs and they were the same stories he had heard when he visited Ede, and he had also read the same in their petition. He advised the Ede Chiefs to listen to the advice to be given by the Olubadan and his Council members. Their experience in such matters was wide but the Ede Chiefs were not as ripe in experience. He also advised the Council to deliberate carefully on the matter and then inform him of their decision later and to that the Council agreed. 40

40. Both the District Officer and Major Blair, the Senior District Officer, asked leave of the Council at 12.45 p.m.

41. A letter dated the 23rd August, 1946, from Chief Opayemi the Ikolaba Ede was submitted, stating that owing to illness he was unable to



answer the call of the Council and that he sent his son Layiwola to represent him. That as he was one of the Kingmakers, he re-affirmed his full support of the appointment of Adetoyese Laoye as the Timi Ede.

*Defendants' Exhibits.*

“ C3.”

Minutes of Ibadan N.A. Inner Council, 26th August 1946, *continued.*

42. Chief Ola the Iyalode Ede also sent a letter to the Council expressing her inability to attend the Council personally owing to old age and that she sent her real daughter Ayoka to represent her. That as one of the Kingmakers, she supported the candidature of Adetoyese Laoye.

43. The Council, in conclusion, further advised the Ede Chiefs to return to their town to reason together, unanimously decide on a candidate and then come back on Monday the 2nd September 1946, and present the candidate before them ; but if they failed to do so, they, the Council would approve one of the two candidates as the new Timi of Ede.

44. The Ede Chiefs left the meeting at 1 p.m.

*X. Aragberi of Irageri—Appointment of :—*

45. \* \* \* \* \*

46. The meeting rose at 1.10 p.m.

Fagbinrin  
His  
X  
mark

Olubadan of Ibadan.

20 Witness to mark

(Sgd.) LAJUMOKE,  
Council Clerk.



*Defendants' Exhibits.*

"C4."  
Minutes of Ibadan N.A. Inner Council, 2nd September 1946.

"C4."

**MINUTES of Ibadan N.A. Inner Council.**

Ex. "C4" tendered by defence in I/14/47; *Lagunju v. Olubadan-in-Council and anor.*

(Intld.) F.A.S.O. 15/1/48.

Minutes of the Native Authority Inner Council Meeting held at the Chamber, Mapo Hall, on Monday the 2nd of September, 1946.

Present :—

FAGBINRIN	OLUBADAN	
Major J. H. Blair	Senior District Officer	10
Oyetunde	Otun Olubadan	
Akintunde	Balogun	
Memudu	Otun Balogun	
Oyewusi	Osi Olubadan	
Amodu	Osi Balogun	
Oke	Ashipa Olubadan	
Salami Agbaje	Ashipa Balogun	
Igbintade	Ekerin Olubadan	
Alli	Seriki	
J. I. Ogunsola Esqr.	Councillor	20
E. A. Akinwale "	"	
E. A. Sanda "	"	
Y. S. Ola Ishola "	"	
The Hon'ble Mr. Akinpalu Obisesan	"	
Salawu Aminu Ekarun Balogun	Advisory Committee Member	
Buraimoh Irafin Ashaju Olubadan	do.	
Babalola Kofo Lagunna Olubadan	do.	
Solagbada Areago Balogun	do.	
Sule Ladipo Aragbeomo Balogun	do.	
Yesufu Dele Bada Olubadan	do.	30
Emanuel Ladapo Maye Seriki	do.	
Ayuba Mogaji Iyaotun	do.	
Revd. Canon Peter V. Adobiyi	do.	
E. O. Akinyele Esqr.	do.	
A. J. Ikumoguniyi Esqr.	do.	
T. L. Oyosina "	do.	
S. T. Omikunle "	do.	
Peluola Ajagbe "	do.	
S. A. Sunmola "	do.	
S. O. Babalola Esqr.	do.	40
J. F. Onifade "	do.	
T. A. Latinwo "	do.	
D. O. Lawayi "	do.	

Absent :—

I. B. Akimyele	Ekerin Balogun
Salami Olugbode	Arealasa Olubadan
O. E. Adetoun	Aregbeome Olubadan
D. T. Akinbiyi Esqr.	do.
S. A. Akinfenwa "	do.

The Senior District Officer having greeted the Olubadan, Chiefs and members of the Advisory Committee, the Olubadan then declared the meeting opened at 11 a.m.

*Defendants' Exhibits.*

“ C1.”

Minutes of  
Ibadan  
N.A. Inner  
Council,  
2nd  
September  
1946,  
*continued.*

*I. Previous Minutes :—*

\* \* \* \* \*

*II. New Senior District Officer :—*

\* \* \* \* \*

*III. Ibadan District Road Committee Members :—*

\* \* \* \* \*

*IV. Native Administrative Police Band :—*

\* \* \* \* \*

*V. Council Minutes :—*

\* \* \* \* \*

*VI. Mr. Amao Oyatunde, the Ex-Bale of Ogbomoso : In Re :—*

\* \* \* \* \*

10 *VII. Otun Olubadan's Salary :—*

\* \* \* \* \*

*VIII. New Timi of Ede—Appointment of :—*

28. The Senior District Officer said he had received a complaint from the Assistant District Officer Oshogbo that the Balogun and Ede Chiefs were sent for by the Council without the message being conveyed through him, in accordance with the agreed procedure.

29. The Council explained that when the Ede Chiefs appeared before them on Monday the 27th August, 1946, they were giving one week ultimatum to be unanimous and to come back to Ibadan to inform them of their decision. There was no new message sent to them. It was the  
20 continuation of the last.

30. Councillor Ogunsola informed the Senior District Officer that the Ede Chiefs were then in the Hall and requested that the enquiry should take place in his presence. The Council supported. The Senior District Officer said it was not Government's policy to interfere in such matters but as they had insisted, he would sit and watch the proceedings but would not join in the discussions. Councillor Ogunsola thanking him, stated that the Council wanted him to stay and see the true position of things because otherwise people would petition the next day and misrepresent them.

30 31. The following Ede Chiefs appeared before the Council: Gbadamosi the Areago, Amoda the Maye Balogun, Adekola the Ekerin Balogun, Bello the Ekefa Balogun, Kadiri the Lemumu, Alimi the Otan Lemumu, Alabi representative of the Obade, Molade the Ashipa Balogun, Shiyabade the Abese Balogun, Adedayo the Ayope, Sanusi the Agbakin, Akande the Otun Seriki, Layiwola representative of the Ikolaba, Olopade the Seriki, Salawu the Bada Balogun, Adelu the Osi Balogun, Lawale the Ekarun Balogun, Araoye the Otun Balogun, Sadatu representative of the Iyalode, Ogundiji representative of the Areonibon Balogun.



## PLAINTIFF'S EXHIBITS.

Plaintiff's  
Exhibits.

" F. "

" F. "

## MINUTES of the Ibadan N.A. Inner Council.

Minutes of  
the Ibadan  
N.A. Inner  
Council,  
23rd  
September  
1946.

Ex. " F " tendered by Plaintiff thro' defence in I/14/47 ; *Lagunju v. Olubadan-in-Council and Anor.*

Minutes of the Ibadan N.A. Inner Council meeting held at the Olubadan's House on Monday the 23rd September 1946.

	Fagbinrin	Olubadan
	Commander J. G. Pyke-Nott	Acting Resident
10	Major J. H. Blair	Senior District Officer
	Akintunde	Balogun
	Memudu	Otun Balogun
	Oyewusi	Osi Olubadan
	Amodi	Osi Balogun
	Oke	Ashipa Olubadan
	Salami Agbaje	Ashipa Balogun
	Igbintade	Ekerin Olubadan
	I. B. Akinyale	Ekerin Balogun
	J. L. Ogunsola Esq.	Councillor
20	A. A. Akinwale "	"
	E. A. Sanda	"
	Y. S. Ola Ishola	"

Absent :—

Oyetunde	Otun Olubadan
----------	---------------

The meeting started at 10.30 a.m.

The minutes of the previous meeting of the 16th September, 1946, were read and confirmed.

*I. Timi of Ede Appointment of :—*

2. The Acting Resident saluted the Olubadan and Council. He stated that he had purposely come to that Council meeting that morning because there was a matter which had risen between the Olubadan and the members of the Council, which he, as Resident, viewed with serious concern. He came to give them such advice as might be within his power ; and that he was always ready to help them. What he viewed as serious was the selection of a new Timi of Ede.

3. First and foremost, he had to remind the Council that the policy of Government was not in any way to interfere in the selection of the Timi ; that policy he had explained previously to the Council and at Ede. He had repeated that hundreds of times ; that policy was still the same as before. Now that Ede people had not been able to come to any agreement themselves, they came to the Ibadan Council and they had asked the Ibadan Council to settle the matter for them. Throughout the dispute the Ibadan Inner Council had taken an active interest and the various

*Plaintiff's  
Exhibits.*

" F. "

Minutes of  
the Ibadan  
N.A. Inner  
Council,  
23rd  
September  
1946,  
*continued.*

contestants, the Kingmakers and the important people of Ede had appeared before that Council. Throughout, the people of Ede were made to believe that the Council would help them and truly that responsibility rested with the Ibadan Inner Council.

4. Nobody else but the Council had the responsibility in the matter and the eyes of the whole Division and further than that, the Oyo Province, were on the Ibadan Inner Council. The decision which they had got to make was theirs and they would be judged by their decision. There was no escape from that. The facts and circumstances of the Timi dispute were well known to every man throughout Ibadan Division ; they were 10 well known to every man throughout the Northern Districts. All men knew the facts on which to judge the decision of the Council ; he was therefore endeavouring in the interest of the Inner Council to advise them to make a good decision. They could not back out of making the decision they had accepted. They must ensure that the decision was a right and true one.

5. He understood that there was a dispute between the Olubadan and his Council. He was very surprised that a dispute of that nature should have arisen so early in the time of the Olubadan. He understood the Inner Council refused to go to the Olubadan. That he did not 20 understand. If there was a dispute the only way of getting it settled was to consult and re-consult together.

6. The Ibadan Chiefs had written a petition through him to the Governor requesting the Governor to come and recognise the Olubadan. They rightly held him in high regard ; but at the same time, they refused to attend him because his opinion was not theirs. Likewise he understood that they pressed that the Olubadan should accept their advice. There was one further consideration in his mind to a matter of that nature. The Olubadan held a very high reputation in Ibadan and throughout the Ibadan Division for honesty and integrity in all his Court 30 work, and he had been pleased to have that reputation confirmed in all cases which came on appeal to his Court. The Olubadan's views, with such a reputation behind him, meant a great deal. There needed be no honesty in politics but the question now at issue was not politic—it was an Administrative decision by the Olubadan-in-Council and as such it should be entirely honest and the first consideration should be the welfare of the people of Ede.

7. As he said at the start the selection had nothing to do with the Government, it was in the Olubadan-in-Council's hands. He prayed that God might guide them in coming to a fair and right decision, which 40 should not be delayed. It was not in the interest of Ede to continue that dispute any longer.

8. Chief Akintunde thanked the Resident for his interest in their affairs. He explained that on the day the Ede Chiefs and people came the Olubadan called them together and asked the Ede people to be unanimous over a candidate. The people returned to Ede but came again to say that they were unable to agree and requested that one of the two

contestants should be chosen for them. That was twenty-two days ago. On the following day, the Olubadan invited them (the Chiefs) to his house ; there he asked for their views and they told him that he should decide as the Ede Chiefs and people were prepared to accept whoever was chosen for them out of the two candidates.

*Plaintiff's  
Exhibits.*

“ F. ”

Minutes of  
the Ibadan  
N.A. Inner  
Council,  
23rd  
September  
1946,  
*continued.*

9. The Olubadan then mentioned a candidate's name and they all agreed and the Councillors were asked to write the recommendation which was accordingly done. It was then submitted for stamping and they (the Senior Chiefs) brought their own stamps but to their great surprise  
10 the Olubadan refused to produce his. The stamp, it was said, was taken somewhere by his son. They returned to him the second day but the same story was told them. That disrespectful treatment did not stop them from going to his house to pay him the customary respect. The other Chiefs confirmed.

10. Chief Agbaje said he was sorry to hear from the Resident that they the Chiefs, refused to go to the Olubadan. They used to meet in his house always. The decision the Council arrived at was made with the Olubadan's entire approval. The other Chiefs stamped it but the Olubadan's stamp was not seen, it was said to have been kept by his son.  
20 They then petitioned the Olubadan, laying bare their grievances. They had since transacted several official businesses in his house but the recommendation in question was not touched because the Olubadan's son never surrendered the stamp. That of course did not prevent them from going to the Olubadan's house. As the Resident had advised them to decide on the Timi question, they had done so, all that remained was the Olubadan's stamp.

11. Chief Akinyolo the Ekerin Balogun, after thanking the Resident, stated that he wanted the Resident to realise that they loved the Olubadan. It would be a shame to do otherwise because they chose him ; they even  
30 wanted him to be higher than any other ruler in Nigeria. What pained them most was that the decision arrived at was announced by the Olubadan himself and he expressly named the candidate and they at once agreed with him, but an outside influence changed his mind later without any justifiable reason. They had sadly suffered in Ibadan from such outside influences during the last regime when after a decision was taken in the Council the late Olubadan's mind would be changed by some members of his household ; when things were becoming too much they (the Chiefs) rose and fought it out. It was a part of their unwritten constitution that the Olubadan should respect the Council by not changing their common  
40 decision at will.

12. Chiefs Oke the Ashipa Olubadan, Igbintade the Ekerin Olubadan and other Council Chiefs confirmed what the previous speakers has expressed.

13. The Olubadan said what he wanted he had told his Chiefs and he had nothing to detract therefrom or add thereto ; they were his advisers.

*Plaintiff's  
Exhibits.*

"F."

Minutes of  
the Ibadan  
N.A. Inner  
Council,  
23rd  
September  
1946,  
*continued.*

14. The Resident pointed out that from what the Chiefs had said, there appeared to be no obstacle to a common decision ; he was extremely delighted to hear that the Chiefs never refused going to the Olubadan's. "Unity is strength." Nothing could be worse for Ibadan and the Division than that there should be a dispute between the Olubadan and Council for it would soon be known to all. They should therefore maintain unity. He trusted the Olubadan would not permit himself to be influenced by outside people.

15. The Olubadan answered that from the beginning he had never heeded the advice of anybody from any quarter save that of his Council, 10 and that he would continue to do so.

16. The Resident referred to the question of stamp and suggested that it could be kept by his Private Clerk ; if not the Council should decide who should keep it. The Olubadan replied that every Senior chief had a stamp and kept it by himself ; so he too should hold his.

17. The Resident asked whether the Olubadan knew by whom his stamp was being used. The latter answered in the affirmative.

18. Councillor Ogunsola expressed that, the Councillors had nothing to say in the chieftaincy tangle because it was beyond them to interfere. He would speak on the Official stamp only. He begged Chiefs on both 20 sides to decide on the custody of the Stamp because it could in future cause great confusion. Ede matter was little. When there was a similar trouble, the late Olubadan devised a method ; he made a small box in which he kept the Stamp and hung it near his bed. It was not kept by any of his relatives. If things continued in that way very great and regrettable confusion might be caused. Ede affair was but a small problem.

19. Councillor Sanda also re-iterated that Ede affair was a side issue, they felt reluctant to continue to discuss Ede chieftaincy question. What horrified them most was that a matter discussed and settled by the Council should change dramatically within two hours. If the Olubadan 30 could alone change the whole Council's decision after he had been privately influenced, the Administrative Officers must envisage a difficult future, and the whole Council should not be blamed when such an unpleasant occasion arose. That was unconstitutional. What the Senior Chiefs had stated were all facts. But he was pleased to notice that they were not bitter in their hearts against the Olubadan. They only wanted their democratic constitution to remain unviolated and that the Olubadan should yield to no outside or domestic influence after the Council had taken a decision. He implored the Resident that he should try and speak to the Olubadan and the Senior Chiefs again. 40

20. The Resident said the question of the Official Stamp and its custody was important. He would like the Council to discuss it with the Olubadan. The Olubadan-in-Council should agree to some form of rules concerning its custody. Decisions, when made should not be altered.



21. As for the Ede chieftaincy, he felt quite certain that the Olubadan and Council would decide and that within a week.

*Plaintiff's Exhibits.*

22. Chief Akintunde the Balogun stated that they had decided the matter; it only remained the Olubadan's stamp.

“ F.”  
Minutes of  
the Ibadan  
N.A. Inner  
Council,  
23rd  
September  
1946,  
*continued.*

23. The Olubadan asserted that that was not so, if he were brought from the War Camp to be the ruler of the town, should he not have a prerogative ?

24. The Resident advised again that the matter should be discussed : the interest of the Ibadan Division was at stake. If the dispute continued, 10 capital would be made out of it and he believed they realised that point.

25. Councillor Ogunsola said as the Resident had referred to their petition to the Governor, they still wanted the Governor to come and recognise the Olubadan. That had nothing to do with the present internal dispute.

*II. Selection of the New Councillors :—*

\* \* \* \* \*

*III. Ibadan Town Estimates :—*

\* \* \* \* \*

*IV. Chief Adeoye Omiyale, Ashaju Balogun—Petition against :—*

\* \* \* \* \*

35. The meeting rose at 12.25 p.m.

20

His  
Fagbinrin X  
mark  
Olubadan of Ibadan.

Witness to mark

(Sgd) LAYIWOLA  
Council Clerk.

*Defendants' Exhibits.*

**DEFENDANTS' EXHIBITS.**

" C 5."

" C5."  
Minutes of  
Ibadan  
N.A. Inner  
Council,  
28th  
October  
1946.

**MINUTES of Ibadan N.A. Inner Council.**

Ex. " C5 " tendered by defence in I/14/47 ; *Lagunju v. Olubadan-in-Council and anor.*

(Intld.) F.A.S.O. 15/1/48.

Minutes of the Ibadan Native Authority Inner Council Meeting held at the Chamber, Mapo Hall, on Monday the 28th October, 1946.

Present :—

FAGBINRIN	OLUBADAN	10
Commander J. G. Pyke-Nott, R.N.	Resident, Oyo Province	
Major J. H. Blair	Senior District Officer	
Oyetunde	Otun Olubadan	
Akintunde	Balogun	
Memudu	Otun Balogun	
Oyewusi	Osi Olubadan	
Amodu	Osi Balogun	
Salami Agbaje	Ashipa Balogun	
I. B. Akinyele	Ekerin Balogun	
Alli	Seriki	20
J. L. Ogunsola Esqr.	Councillor	
E. A. Akinwale "	"	
E. A. Sanda "	"	
Y. S. Ola Ishola "	"	
Absent :—		
Oke	Ashipa Olubadan	

The meeting opened at 11 a.m.

*I. Commander J. G. Pyke-Nott, Resident Oyo Province : Promotion of :*

\* \* \* \* \*

*II. Timi of Ede—Appointment of :—*

7. Another matter he wished to refer to was the appointment of 30 Timi of Ede. It was a very old matter and he hoped everybody was tired of it. He was told during his recent tour in the Northern District that the Ede people themselves were tired of it. He would stress the necessity of arriving at a decision promptly. One could take a horse to the water but could not make him drink ; it was the duty of the groom to take it to the water again and again, or else it would die of thirst. So it was his duty to keep reminding the Council of its obligation.

8. The most important thing was the constitution of the Ibadan Native Authority Council. In October 1945 they passed the Standing Rules that any decision in the Council should be passed by two-thirds of 40

the members. He had made enquiries from the Law Authorities and was assured that the Rule was in accordance with law and was in force until revoked. That standing rule represented their constitution and in his view rules should not be violated. In addition to the vote of two-thirds of the Council, the Olubadan's assent was required: the majority could not legally override the Olubadan.

*Defendants' Exhibits.*

“ C5.”  
Minutes of  
Ibadan  
N.A. Inner  
Council,  
28th  
October  
1946,  
*continued.*

9. So far as the appointment of Chiefs in the Northern District was concerned, the Councillors had no say, because in the past they were not members of the Council. Councillors were a modern institution; an  
10 institution, albeit of course good in itself. To his mind it was also doubtful whether the prerogative of approval did not rest with the Olubadan alone. That was a point of interest but probably it need not be pressed. As he had said so often, “Unity is strength”; he would like the Council to take decision that would make for the cohesion of the Division.

10. He was told that that vexatious dispute had cost the Ede people more than £10,000. Whether that was true or not he could not say, but he knew that such disputes did cost vast sums. It appeared to him that four courses of action were open to the Council amongst which they should choose one.

20 11. *First*: That the Council should agree to the appointment of Memudu and at the same time to promise Laoye that he should succeed after Memudu's death. That could be done by the Council stating in definite terms that nobody should contest the stool after Memudu's death. The decision could be recorded by the Council for future reference.

30 That action would stop all future trouble and rivalry. Memudu was an old man with past good records of service to Ede. Laoye was a young man. The reasons that the Olubadan had put forward in favour of Memudu had been submitted to him in the form of a memorandum. He had since studied that memorandum; the more he studied it the more difficult he found it to refute the arguments which it contained. As he said, the decision was in their hands and the responsibility on their shoulders. As Resident, it was his duty to advise them and to see that justice was done.

12. *Second*: That Council should reject both candidates, Memudu and Laoye, and ask the Ede people to submit a third person. They should not however forget that the first two candidates were agreed by all to be the ones with the best claim. If they rejected the two and asked for another, they were admitting failure in their responsibility.

40 A new candidate could have no good claim for if he had, he would have been put forward at first with the first two.

13. *Third*: That the Resident should inform the Ede people in honest terms that the Olubadan-in-Council was unable to reach a decision, and that therefore he would appoint the Ede District Council to be the Native Authority for Ede District Subordinate to the Olubadan-in-Council and thus it would continue until Ede was able to choose a Timi.

*Defendants' Exhibits.*

" C5."

Minutes of  
Ibadan  
N.A. Inner  
Council,  
28th  
October  
1946,  
*continued.*

14. *Fourth.* That, in view of the length of time that the dispute had continued, and in view of the fact that the Ibadan Inner Council was unable to arrive at a decision, the Resident should use the powers vested in him by the Appointment and Deposition of Chiefs Ordinance to appoint a person to act as Timi until a Timi was appointed.

In his opinion the 3rd and 4th methods were not satisfactory because the Resident's intervention would be evidence of their failure, and he did not wish to draw attention to their failure. The Council should consider the welfare of the people of Ede, the administration of the town and the tax collection ; it was those factors that would constrain him to act if the Council did not act. It would not be good if he acted in that manner without warning the Council, because the people of the Northern District would not fail to observe whatever was done. He had studied the question day and night, and he had led them to the water again and again, but they had refused to drink. 10

15. Within a week the Council must decide which of the four courses to follow. In his interest for Ibadan Division he had expressed his opinion fully because he was conscious of the results that might ensue.

16. Chief Oyetunde the Otun Olubadan thanked the Resident greatly for his deep interest in them. He said it would be foolish and wicked to cast aside such fatherly advice ; they understood what the Resident had said. 20

17. There were many officials in the country and the Governor was their head. Supposing something happened and the Governor sent for them all, and after long and deep deliberations in which the Chief Commissioners and Residents, all took part, a decision was taken, would the Governor be right to change that unanimous decision alone and without further consultation with those Officers who were his advisers ? That was what had happened in the Ede dispute. Laoye had been supported ever before the death of the late Olubadan. When the new one was installed, their support of Laoye was re-affirmed at an important Council meeting. But to their surprise an ordinary Councillor, Mr. Ishola, persuaded the Olubadan alone to alter a decision which the whole Council, led by the Olubadan himself had made. That Councillor opposed them in the open Council and stated in definite terms that their decision would come to nothing. We went so far as to exchange sharp words with the Osi Olubadan. That was unprecedented in the history of Ibadan Council. 30

18. Councillors who did well were given titles so that they might continue their usefulness to the Administration ; examples were Chiefs Akinyele, Adetoun and the late Aboderin. Had the Olubadan told them in a meeting that he had changed his mind, the Council Chiefs would have raised no objection and would have yielded to him, but to do it all alone and through outside interference was intolerable. 40

19. It was Okunola, the Olubadan's messenger that the Olubadan had sent to him on the matter. The Resident mentioned that the Ede people had spent thousands, but that was not their concern ; the people

of Ede know to whom they gave their money. It was not to the Council ; they did not support Laoye for the sake of money. What gifts he brought were shared by the Olubadan and themselves, in accordance with their ancient custom.

*Defendants' Exhibits.*

“ C5.”

Minutes of  
Ibadan  
N.A. Inner  
Council,  
28th  
October  
1946,  
*continued.*

20. Mr. Okunola Olokoba, stood before the Council and confirmed that the Olubadan had sent him to call the Chiefs when the Ede affairs was to be discussed.

21. Chief Akintunde the Balogun on behalf of the other Chiefs strongly supported the Otun Olubadan and added that they objected to the Olubadan changing the Council's decision at will and through outside interference. After Laoye's recommendation had been typed the Olubadan refused to stamp it, alleging that his son (Dawodu) had gone out of town with the official stamp. It was while waiting for his son's return that he told them that he had changed his mind and was opposed to Laoye's appointment.

22. The Olubadan replied that all the accusations were wrong and groundless. The Council had on no occasion made such a decision. He had submitted his own recommendations on the matter and that was all.

23. Chief Agbaje the Ashipa Balogun said sometime ago he had been privileged to speak to the Olubadan personally on the matter. He had advised him as a son to his father, to be patient and to reconcile himself with his chiefs. The Olubadan, he had said, could appoint one of the two contestants and then prevail upon the other to bide his time. But the second day he received a message from the Olubadan that he could not take his advice.

24. The Olubadan said that was true, but he did not know why he should go about apologising to people when he had committed no offence and was guilty of no fault.

25. Councillor Ogunsola said that one Resident, many years ago, had advised that the Inner Council should include Councillors, to avoid misinterpretation and misrepresentation by Clerks and interpreters. Happily one of the first was Chief I. B. Akinyele who was now a member of the Native Authority Council. When he (Ogunsola) was appointed Councillor he asked Mr. Abell the District Officer what his duties were and he replied that he should take part in all Council matters. So that they might not inadvertently interfere in matters outside their duty, he would like the Resident to define the Councillors' duties. They would then know where they stand and no one of them would outstep his place.

26. The Resident answered that the Councillors could handle conjointly with the Chiefs all matters affecting the administration of Ibadan Division by virtue of their being members of the Inner Council and of the Divisional Council. But that did not entitle them to take part in the appointment of Chiefs ; that was the prerogative of the Chiefs by virtue of their title as Chiefs. It was neither prescribed by law nor was it customary for Councillors or representatives to interfere in such matters.

*Defendants' Exhibits.*

" C5."

Minutes of Ibadan N.A. Inner Council, 28th October 1946, *continued.*

27. Returning to the question of the dispute, the Resident advised the Council to take every care in the matter because if they went wrong, there might be legal actions taken, that was not only enormously expensive but always ruined the town involved.

28. Chief Memudu the Otun Balogun supported what the previous Chiefs had said. He pointed out that Councillor Ishola was the cause of the whole trouble because he vehemently opposed them to their faces in the Council ; in future people like him should not be appointed.

29. At this juncture, Councillor Ishola wanted to speak but the Chiefs refused to hear his voice. Chief Memudu the Otun Balogun said their 10  
ancestors were the people who made Ibadan with their blood and sweat and they—the sons—continued in the same vein. He asked where and who was Councillor Ishola's father. Their own fathers administered Ibadan town. Councillor Ishola's father was unknown and the Councillor himself was a spoiler of things.

30. Councillor Ishola exclaimed " Otun Balogun, you insulted my father." The Otun Balogun answered " yes, I maintain what I say." Councillor Ishola : " Council Clerk, please record that."

31. The Resident said so far as he could see there were no agreement 20  
between the Chiefs and the Olubadan. If they failed to arrive at a conclusion, he would appoint the Ede Chiefs to be the Subordinate Native Authority until a Timi was selected. The Council should decide on one of the four points he had given them. To him and according to what he saw neither the Olubadan nor the Chiefs was prepared to agree, but if they could compromise within the week so much the better.

32. Chief Oyetunde the Otun Olubadan thanked the Resident again, and said they had heard all that he had said and was sure that the Resident had heard their own side of the case also. They would think over all the points raised as gentlemen who were conscious of their responsibilities and who had respect for the Office they held. 30

33. The meeting rose at 1.10 p.m.

His  
FAGBINRIN X  
mark  
Olubadan of Ibadan.

Witness to mark

(Sgd.) LAYIWOLA,  
Council Clerk.

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## MINUTES of Ibadan N.A. Inner Council.

" C6."

Exhibit " C6 " tendered by Defence in I/14/47 : *Lagunju v. Olubadan-in-Council and Anor.*

Minutes of  
Ibadan  
N.A. Inner  
Council,  
27th  
November  
1946.

Minutes of the Ibadan Native Authority Special Inner Council Meeting held at the Olubadan's House, Eletu Street, on Wednesday the 27th November, 1946.

Present :—

## OYETUNDE

## OLUBADAN

10	Akintunde	Balogun
	Memudu	Otun Balogun
	Oyewusi	Osi Olubadan
	Amodu	Osi Balogun
	Oke	Ashipa Olubadan
	Salami Agbaje	Ashipa Balogun
	Igbintade	Ekerin Olubadan
	I. B. Akinyele	Ekerin Balogun
	Alli	Seriki
	J. I. Ogunsola, Esqr.	Councillor
20	E. A. Akinwale ,,	,,
	E. A. Sanda ,,	,,

Absent :—

Y. S. Ola Ishola ,,

The meeting opened at 9.40 a.m.

I. *Ibadan Native Administration Electricity Undertaking* :—

\* \* \* \* \*

II. *New Timi of Ede : Appointment of* :—

6. The Olubadan asked his Chiefs what they considered about the appointment of a new Timi of Ede. He said as he was a new man to the Office—the Olubadan of Ibadan, he could not do anything without their  
30 consultation.

7. Chief Memudu, the Otun Balogun said that there was no need of prolonging the matter, what the Olubadan had put forward at the beginning, viz., the recommendation of Adetoyese Laoye would not be altered, and all of them were on the same line. Chief Oke the Ashipa Olubadan corroborated.

8. Chief Oyewusi, the Osi Olubadan said that the Olubadan should be asked what he had considered because he was the Head, i.e., the Native Authority for Ibadan Town and Division in general.

*Defendants'*  
*Exhibits.*

“ C6.”  
Minutes of  
Ibadan  
N.A. Inner  
Council,  
27th  
November  
1946,  
*continued.*

9. The Olubadan informed the Council that the Chiefs and the Councillors were his advisers, whose advice and decision he must never ignore. Anywhere his Chiefs went he would follow them. So he strongly favoured that Mr. Adetoyese Laoye should be appointed as the New Timi of Ede and the usual recommendation should be put forward to the Government for approval. He added that during the regime of the late Okunola Abasi, the former Olubadan of Ibadan every one of them was in favour of Mr. Adetoyese Laoye, he could not therefore see any reason or reasons for a change.

10. The Council then unanimously decided that the Councillors and 10 the Council Clerk should prepare a letter of recommendation of Mr. Adetoyese Laoye as the new Timi of Ede and bring to them to stamp, sign and despatch to the Senior District Officer that day.

The meeting rose at 12.15 p.m.

His  
X  
mark  
  
Olubadan of Ibadan.

Witness to mark

(Sgd.) LAYIWOLA,  
Council Clerk.

20



" E."

Defendants'  
Exhibits.

## MINUTES of Ibadan N.A. Inner Council.

" E."

Ex. " E " tendered by defence in 2/14/47 ; *Lagunju v. Olubadan-in-Council*  
*and anor.*Minutes of  
Ibadan  
N.A. Inner  
Council, 5th  
December,  
1946.Minutes of the Ibadan Native Authority Emergency Inner Council Meeting  
held at Mapo Hall, on Thursday the 5th December, 1946.

Present :—

## OYETUNDE

## OLUBADAN

	Commander J. G. Pyke-Nott R.N.	Senior Resident
10	Major J. H. Blair	Senior District Officer
	Akintunde	Balogun
	Memudu	Otun Balogun
	Oyewusi	Osi Olubadan
	Amodu	Osi Balogun
	Oke	Ashipa Olubadan
	Salami Agbaje	Ashipa Balogun
	Igbintade	Ekerin Olubadan
	I. B. Akinyele	Ekerin Balogun
	Alli	Seriki
20	J. L. Ogunsola Esqr.	Councillor
	E. A. Akinwale "	"
	E. A. Sanda	"
	Y. S. Ola Ishola	"

The meeting started at 11 a.m.

The Resident greeted the Olubadan and Council. He congratulated the Olubadan on his appointment and prayed that God might spare him long to enjoy his exalted office. He hoped his regime would bring progress and many blessings to the Native Administration. Chief Agbaje, responding on behalf of the Council, thanked the Senior Resident for his kind  
30 expression.

I. *Timi of Ede* :—

2. The Senior Resident said the purpose of that day's meeting was to obtain final agreement of the Ede Kingmakers on the long drawn subject of the appointment of Timi of Ede. The Ede Chiefs having failed to reach a decision, had submitted the dispute to the Ibadan Inner Council for decision, and the Inner Council had accepted the responsibility. The Inner Council had recently forwarded its recommendation to him and the final step was his approval. In giving that, he must be satisfied that it was in accordance to the custom and tradition of the Ede people and was  
40 accepted by the Kingmakers. The reason for that was that there might be no further agitation and litigation.

3. The Council's decision has been made ; it is necessary for that decision to be accepted by the Kingmakers in the Council's presence. He felt that another political blunder had been committed by the Council for

*Defendants' Exhibits.*

“ E. ”

Minutes of Ibadan N.A. Inner Council, 5th December, 1946, *continued.*

publishing its decision in the Press, before the Ede Kingmakers or the Senior District Officer or Senior Resident had been informed. That ought to have been done before the public heard of it. To ignore the Kingmakers was quite unconstitutional; that was the reason why he had requested that the Ede Chiefs should attend that day's meeting. He hoped the Council's decision would meet with the Kingmakers' approval.

4. Chief Agbaje the Ashipa Balogun referred to the Press publication and stated that it was most unwelcome and did not emanate from the Council. It pained them very much to read it. They did not like their discussions or decisions in Council to be made public without authority, 10 more especially when it was least desired. He was sure that such would not occur again.

5. At that juncture, the following 25 Ede Chiefs and Representatives appeared before the Council. Gbadamosi Areago, Opayemi Balogun, Oyedunmola Jagun, Oyediran Babasanya, Amodu Maye Balogun, Akingbade Ejemu, Lawani Ekerin Balogun, Akinsumbo Ogala, Bello Gbenro Ekefa Balogun, Koleoso Olukotun, Oyeleke—representative of Bale Ilajie, Senusi Agbakin Balogun, Olopade Seriki, Adelu Osi Balogun, Adedayo Ayope, Sule Ashipa Balogun, Araoye Otun Balogun, A. Shiyabade Abese Balogun, Layiwola representative of Ikolaba Balogun, Sadatu 20 representative of Iyalode, Akande Otun Seriki, S. Olatoye representative Ekerun Balogun, Salawu Bada Balogun, Owolabi Areonibon Balogun and Salami representative of Oloba. Chief Agbaje greeted them and informed them that the Council had carefully gone over the selection of the new Timi. He expressed their regret that the matter had remained so long unsettled. The object of that day's meeting was to settle it once for all. Times had come and past but the two factions remained intransigent. Eventually the Ede Chiefs came before the Council and implored them to choose one of the two rivals, and that whomsoever the Council chose would be accepted. He asked whether that was so or not ? 30

6. A sharp division arose amongst the Ede Chiefs—one party answering Yes and the other shouting No.

7. Sanusi, Agbakin of Ede stated that the Balogun was the instrument of confusion. He was as inconstant as the moon. In Ede the Kingmakers were the Chiefs on the Balogun side with the Seriki, it was the Balogun's duty to approve whomever they brought forward as new Timi. In the early stages of the matter they were advised by the Administrative Officers to consult their public opinion. Their choice, Laoye, was in accordance with public opinion, and the Balogun sent for him to come home and consult the Chiefs; which Laoye did. It was at the time of 40 signing the recommendation that the Balogun began to change sides. He (Balogun) was inept and useless. Jagun, the supporter of Memudu was related to the Balogun; hence his present attitude, supporting a relative's cause, forgetting his primary duty of the people's welfare.

8. Jagun was only a fetish chief and commanded limitless influence in that respect; they wondered why Balogun had become his puppet.

Every Ede chief knew that only the Chiefs on the Balogun side constituted the Kingmakers. The Ayope and the representatives of the Ikolaba and others were present to confirm or refute all that he had said.

*Defendants' Exhibits.*

“ E. ”

Minutes of Ibadan N.A. Inner Council, 5th December 1946, *continued.*

9. Chief Agbaje pointed out that if the Council spent the morning on similar arguments to those they had heard before, their objective of settlement would be defeated and the position would remain as it was. The Ede Chiefs, finding themselves unable to make a decision, had requested the Inner Council to appoint a Timi for them. The Council had carried out their request and submitted their recommendation, all that remained was for the Senior Resident to approve or disapprove it; all they knew was that once a Timi was appointed, the matter was settled.

10. At this juncture the list of the Chiefs who had authorised the Council to choose a Timi for Ede were read as given in paragraphs 31 and 32 of the Council minutes of 2nd September, 1946, viz. :—Gbadamosi the Areago, Amodu the Maye Balogun, Adekola the Ekerin Balogun, Bello the Ekefa Balogun, Kadiri the Lomomu, Alimi the Otun Lomomu, Alabi representative of the Obado, Molade the Ashipa Balogun, Shoyanbade the Abese Balogun, Adedayo the Ayope, Sanusi the Agbakin, Akande the Otun Seriki, Layiwola representative of the Ikolaba, Olopade the Seriki, Salawu the Bada Balogun, Adelu the Osi Balogun, Lawale the Ekarun Balogun, Araoye the Otun Balogun, Sadatu representative of the Iyalode, Ogundiji representative of the Areonibon Balogun.

11. Chief Akinyele stated that it was certain that those Ede Chiefs had asked them to choose a Timi for them. It was the advent of British Government that lessened Ibadan's power; formerly no district chiefs could change a decision made for them. They had even removed chiefs from their seats and a Timi died in exile under similar circumstances. There was nothing further for the Council to do because they had submitted their decision.

12. The Senior Resident told the Balogun Ede that it was the Ede Chiefs who asked the Council to appoint a Timi for them and that was publicised throughout Ibadan Division. Nobody at Ede, either Chief or Commoner, had even denied it or objected to it. Having referred it to the Olubadan-in-Council, it was impossible to go back on what they had done; they could have withdrawn their authority before the decision had been made, but not after. He had personally made enquiries whether it would serve any good purpose to return the matter to Ede but he was convinced to the contrary.

13. The Olubadan-in-Council had made its decision and as Chief Agbaje had said, the final say rested with him (the Senior Resident). Everybody knew the facts from the start and no further enquiry was needed. In due course, he would communicate his decision.

14. The Ede Chiefs left the Council at 12.10 p.m.

*Defendants' Exhibits.* II. *Commander J. G. Pyke Nott : Promotion of :—*  
\* \* \* \* \*

“ E ”  
Minutes of  
Ibadan  
N.A. Inner  
Council, 5th  
December  
1946,  
*continued.*

III. *The Family of Chief Suberu Fagbinrin, the late Olubadan of Ibadan—*  
*Petition from* \* \* \* \* \*

The meeting rose at 12.20 p.m.

Oyetunde  
His  
X  
Mark  
Olubadan of Ibadan

Witness to mark  
(Sgd.) VICTOR L. LAJIDE  
for Council Clerk.

10

*Exhibits.*

“ Ex. B. ”

**PRESS RELEASE by Olubadan Suberu Fagbinrin in the issue of  
the Defender.**

“ Ex. B. ”  
Press  
release by  
Olubadan  
Suberu  
Fagbinrin  
in the issue  
of the  
Defender,  
23rd  
September  
1946.

In view of the recent publication in a Lagos contemporary concerning the alleged dramatic behaviour of His Highness the Olubadan of Ibadan in connection with the visit of Ede chiefs for the purpose of deciding on the protracted Ede Chieftaincy dispute, His Highness has forwarded the communication, reproduced below, to the Senior District Officer, Ibadan Division, and the Resident of Oyo Province, stating his grounds for preferring Memudu to Laoye as Timi of Ede : 20

Sir,

The following are my considered views, in regard to the appointment of a new Timi of Ede :

1. In approaching a subject of this nature, one must avoid coming under (1) Undue influence and (2) be guided strictly by custom and tradition.

2. The two contestants are (1) Memudu and (2) Laoye. Memudu belongs to Oduniyi branch of Ede ruling family. Laoye belongs to Ajeniju branch of Ede ruling family. 30

In this respect, it must be remembered, that the Ede stool is common property of all the four branches of the family, and that whereas the Ajeniju branch, to which Laoye belongs, has had four Timis, the Oduniyi branch to which Memudu belongs, has had only one Timi, since the beginning.

On the score of justice and fairness alone, therefore, Oduniyi's branch must be given its due, i.e. the present vacancy.

3. The family of Oduniyi presented Memudu, according to customs, and it was after such representation, that the Senior Chiefs of Ede (Kingmakers) again according to custom, recommended Memudu. 40

4. One important point which appears to have been overlooked by Laoye's supporters is, that the Ajeniju branch did not present Laoye to the Kingmakers; and they dare not do so, because the late Timi of Ede (Akangbe) came from that branch, and to appoint two Timis, one after the other, from the same branch, would be, quite clearly, an injustice.

5. Apart from the foregoing, these further points are prominently in favour of Memudu, namely :

That in 1934 Memudu was actually recommended for the Timi Ede Stool, by the Olubadan and Council; that recommendation must be on file in the District Officer's Office, Ibadan.

Memudu was good enough in the eyes of the Olubadan and Council in 1934, to be the Timi of Ede; important members of that same Council are still there to-day.

After the 1934 Inner Council have recommended Memudu, this same sort of under-currents came into play, and the late Timi Akangbe was thereby made to oust Memudu, who bore the disappointment calmly, and continued faithfully in the service of the Ede Native Administration, as a Court Judge, which post he has been holding satisfactorily and continuously, since the establishment of Ede Native Court in 1916 (30 years). Memudu has been part of the Ede Native Administration for over 30 years.

6. It should, therefore, be easy for any person with an open mind, to choose between Memudu, with over 30 years connection with Ede affairs, and Laoye, a Dispenser who hardly lived in Ede, even though he is supported more strongly by money, propaganda, and the influence of his Christian friends.

7. Memudu has the support of forty-two out of the fifty chiefs of Ede, he has the support also of all Muslims of Ede, headed by the Chief Imam, also of Olode, the head of all pagans of Ede.

Now if it is taken into consideration that Ede consists of a high preponderance of Muslims and pagans, with only about two per cent. of Christians (who are the main supporters of Laoye), Memudu's overwhelming popularity over Laoye's will be readily conceded.

8. Further, Timi's satisfactory and efficient administration can be the result of only one thing, and that is, co-operation of his chiefs; and with these chiefs, Memudu has been co-operating smoothly and satisfactorily for over thirty years.

In this regard, therefore, however literate Laoye may be, his appointment as Timi would, in the present circumstance at any rate, be a matter of satisfaction and of value, only to himself and his friends, and not for the town and the common people of Ede.

Laoye has had no experience of native or any administration at all.

9. It is against Native Law and Custom in this part to appoint any man as a chief, whose father is alive; Laoye's father is not only alive, but has actually contested this stool himself at the start, until he was prevailed upon, to step down for his son. This is definitely against our custom.

*Exhibits.*

“ Ex. B.”  
Press  
release by  
Olubadan  
Suberu  
Fagbinrin  
in the issue  
of the  
Defender,  
23rd  
September  
1946,  
*continued.*

*Exhibits.*  
 " Ex. B." Press  
 release by  
 Olubadan  
 Suberu  
 Fagbinrin  
 in the issue  
 of the  
 Defender,  
 23rd  
 September  
 1946,  
*continued.*

10. I therefore must disagree with any one who, still persists, in supporting the wrong candidate.

I support the decision of the Ede Senior Chiefs and maintain as the Olubadan of Ibadan, conscientiously, that Memudu is the right and proper person to succeed now, to the Stool of Timi of Ede, and further say that, I arrived at that decision after deep consideration of all the facts in the matter as known to me, without prejudice, without fear or favour; and further, that all those facts are clearly known to all who now support Laoye, and I challenge them to disprove any of the facts. Finally, I stand by my decision until the pro-Laoye party shall have proved to the satisfaction of the District Officer, and the Resident, that the facts upon which my decision rests, are untrue.

Salutations, your good friend, Suberu Fagbinrin.

*Defendants' Exhibits.*

" Ex. K."

**GOVERNMENT GAZETTE No. 2 of 2nd January 1947 re Appointment of Native Authorities.**

" Ex. K." Government  
 Gazette  
 No. 2 of  
 2nd Jan-  
 uary 1947,  
*re Appoint-  
 ment of  
 Native  
 Authorities.*

Ex. " K " tendered by defence in I/14/47; *Lagunju v. Olubadan-in-Council and anor.*

(Intld.) F.A.S.O. 16/1/48.

*Gazette No. 2 of 2nd January, 1947.*

20

Public Notice No. 10 of 1947.

The Native Authority Ordinance, 1943  
 (No. 17 of 1943).

**ESTABLISHMENT AND APPOINTMENT OF NATIVE AUTHORITIES**

In exercise of the powers conferred upon the Governor by sections 3 and 5 of the Native Authority Ordinance, 1943, the following notice is hereby given :—

1. This notice may be cited as the Native Authorities (Establishment and Appointment) (Amendment) Notice, 1947.

2. The Native Authorities (Establishment and Appointment) Public Notice, 1945, is hereby amended by deleting all that part of the Schedule relating to the Western Provinces and substituting the following :—

**NATIVE AUTHORITIES—WESTERN PROVINCES.**

Province	Division	Designation	Subordinate to	Members of Native Authority	Area
*		*	*		*
Oyo	Ibadan	Ede & Ede District Native Authority	Ibadan Division Native Authority	The Timi of Ede & the Ede District Council	Ede and Ede District

40

" Ex. L."

## MINUTES of Extraordinary Meeting of Ede District Council.

Ex. " L " tendered by defence in I/14/47 ; *Lagunju v. Olubadan-in-Council and anor.*

(Intld.) F.A.S.O. 17/1/48.

No. 752/14.

District Office,  
Oshogbo.

29th March, 1946.

*Defendants' Exhibits.*

" Ex. L." Minutes of Extraordinary Meeting of Ede District Council, dated 1st March 1946.

10 The Resident, Oyo Province, Oyo.

Ede District Council.

With reference to my letter No. 752/11 of the 6th of March, 1946, and your minute dated 22nd March, 1946, I forward herewith a faired copy of Minutes of Extraordinary Meeting of Ede District Council held at Ede Rest House on Friday, the 1st of March, 1946, for your record.

(Sgd.) J. H. F. MACGIFFIN,  
Assistant District Officer,  
Ibadan Northern District.

20 Minutes of an Extraordinary Meeting of Ede District Council held at the Rest House, Ede, on Friday 1st of March, 1946.

Present :—

B. J. A. Matthews, Esqr., Resident Oyo Province—Presiding.

J. H. F. MacGiffin, Esqr., A.D.O., i/c Ibadan N.D.

Opayemi, Balogun

Oyedunmola, Jagun

Raji Oyediran, Babasanya

Makanjuola, Areago

Areoye, Otun Balogun

Olopade, Seriki

30 Raji Dayo, Ayope

Sanusi, Agbakin

Councillor S. O. Longe, Council Clerk

,, Rev. T. A. Taiwo.

Absent : Opayemi, Ikolaba (sick and old).

The meeting was declared opened at 11 a.m. by the Resident.

The Resident exchanged greetings with the Balogun, Chiefs and Councillors. He said he was extremely distressed when he heard of the death of the Timi and hoped the Council received the message of sympathy he sent to them immediately. The late Timi, the Resident continued, was a very good man and a very good Chief also. He was one of the leading rulers of this Division. His good work was recognised by the Government when he was awarded the Certificate of Honour by His Excellency the Governor. His death was a great shock. He asked the Council to convey his sympathy to the Chiefs and the family of the late Timi. He then asked

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 "Ex. L."  
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the Council to rise for one minute in memory of the late Timi. The Council did so. Continuing, the Resident said he came to see the Council about the vital work it was doing in considering a successor to the title. He asked specially to meet the Council at the Rest House so that it might meet in quiet.

There were in every town and village certain people who were Kingmakers. Their work was to appoint a successor to the vacant stool. Those people were known by everybody. The Council replied in the affirmative. The Resident then asked the Balogun to give the names of the Kingmakers at Ede and he gave the following Chiefs as Kingmakers of Ede :—

Balogun, Jagun, Ayope, Areago, Ikolaba.

Four of them attended the Council that day.

The Resident, continuing, said the future of Ede depended on the work of the Kingmakers and it was not an easy work at all. This was particularly so today when there were old conservatives and progressive youths. This was why the work was very difficult and the reason why the Kingmakers should be strict in their dealing and should not be turned aside by anybody whatsoever.

The first absolute essential was that the candidate must be eligible to the post in all respects. Nothing can change that. By eligibility, he meant the candidate must be a member of the family who by native laws and customs had right to the stool. There cannot be any argument about this. In selecting this man from one of the families you must be guided by customs and not be influenced by outsiders. A literate person did not have a greater advantage in seeing the District Officer than an illiterate. This impression must be corrected now.

Continuing, the Resident said he had told the Assistant District Officer that he should ignore completely all letters or petitions sent to him on this matter. (No letter from private individual or Society should be taken notice of altogether.) The Kingmakers only were concerned. Even the Native Authority at Ibadan could not interfere at that moment and no person outside Ede was concerned. Therefore any messages the Kingmakers might receive from anybody should be completely ignored provided they were straight in their work. Referring to the old conservatives and the young progressives he mentioned earlier in his speech the Resident said the Kingmakers must remember that we are now in 1946. Times had changed and customs had changed also. Public opinion must be given its due respect in this connection. This was always so even 100 years ago and it was probably more so today. The people of today will like a young man with energy and vigour who might have more years to live than an old man. But the most important question was eligibility. These were the important points he liked to stress to Kingmakers. The Jagun said that morning he saw the children of the late Balogun Amusan and they handed a document which he gave to the Resident to him. The Resident enquired whether the note frightened them and that it was useless, being not signed by anybody. On the Resident inviting the views of the Kingmakers, the Balogun said all the Chiefs were greatly shocked at the sudden death of the Timi. If he had been sick death might be expected. The Kingmakers had been thinking of choosing a successor and they were getting ready.



The Resident said that the Balogun did not give an answer to the question. What he wanted to know was whether the Kingmakers were not being pushed along and whether any ceremonies in connection with the funeral of the late Timi had been completed. The Balogun replied that only one ceremony remained and that will be done immediately. The Resident then advised them to settle the matter once for all as early as possible. The Balogun said the Timi was an able ruler and the public wanted a man of his type. Their decision will be made within eight days. On being asked whether the Kingmakers were in touch with the Ikolaba, the Balogun said "yes." The Resident then asked from how many families the Timi was generally chosen. The Kingmakers replied there were five, on the question whether there was any law by which the title was by rotation or that the best man from all the families was to be chosen, the Kingmakers replied that they always choose the best man from the next family concerned by rotation.

Asked whether was any native law and custom by which the Timi was chosen from the same house twice, the Kingmakers said that it was not the custom of their forefathers to choose two Timis from the same house consecutively. The Resident then advised the Kingmakers not to communicate their decision by letter to the Assistant District Officer so that unnecessary agitation before their recommendation reached the proper quarters should be avoided if possible. The Council agreed and prayed for God's guidance for the Kingmakers.

*Agberi Chieftaincy Dispute :—*

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*Land Required by Baptist Mission :—*

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The meeting closed at 12.00.

Opayemi      His  
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                         mark

30 (Sgd.) S. O. LONGE,  
Councillor and Council Clerk.

*Defendants' Exhibits.*

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Minutes of  
Extra-  
ordinary  
Meeting of  
Ede  
District  
Council,  
dated 1st  
March  
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*continued.*

*Defendants'*  
*Exhibits.*

“ Ex. M.”

**MINUTES of Ede District Council Meeting.**

“ Ex. M.”  
Minutes of  
Ede  
District  
Council  
Meeting of  
19th July  
1946.

Ex. “ M ” tendered by defence in I/14/47; *Lagunju v. Olubadan-in-Council and anor.*

(Intld.) F.A.S.O. 17/1/48.

Minutes of a meeting of Ede District Council held in the Council Hall, Ede, on Friday, 19th July, 1946.

Present :

Commander Pyke-Nott, Resident	
H. V. E. Wilkes, Esq., D.O., Division	10
Opayemi, Balogun	
Oyedunmola, Jagun	
Raji Oyediran, Babasanya	
Gbadamosi Dayo, Ayope	
Makanjuola, Areago	
Araoye, Otun Balogun	
Olopade, Seriki	
Sanni, Agbakin	
Joketola, Onide of Iddo	
? Alara of Ara	20
The Oyo of Iwoye	
The Alaro of Aro	
The Olokinni of Okiani	
The Olofa of Ofatedo	

Representatives of Agberi, Awo, Ojo and other Districts.

Councillors S. O. Longe and Rev. T. A. Taiwo.

The meeting was declared opened at 10.30 a.m. on the arrival of the Resident.

Before the business of the day commenced Councillor Longe welcomed both the Resident and the D.O. i/c Ibadan Division to the Council on behalf of other members and the people of Ede District. In reply the Resident saluted the Chiefs, councillors and people of Ede. He said as Mr. Longe had told the Council he was D.O. Ibadan before going to Oyo to become Resident, as therefore he knew quite a lot about Ede affairs and hoped he would be able to know much more as time goes on. He was very pleased to come that day and looked forward to many further visits and meetings. He hoped he will always meet Ede in peace and that in due course he will be able to meet a new Timi. It was in the interest of Ede to be able to produce a new Timi very soon without unnecessary delay.

One thing he wanted to make clear, continued the Resident, and that was the fact that in all question of succession to the headship of the town, there must be many candidates and it was a matter of great importance for the town. There must also be a certain amount of election fever. This is natural. But what he wanted to make clear was the Government policy in this matter and this is not to interfere in any way in the selection

of the head chief. There were native customs and traditions which was known to the people than the Government could know them. The selection of the Timi or any head chief was bound up in those customs. So far as he was able to give any advice he would advise the Kingmakers to preserve those traditions. They were very easy to break but once broken you destroyed them for ever. He then gave the Council an assurance that the Olubadan would not delay recognition of your selection when one was chosen neither will the Government delay it.

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10 The reason why the Government retained the right of approval was because the new ruler will be a member of the Sub-Native Authority and will have his seat at the Divisional Council. Both Councils are an integral part of the Government and therefore the Government must be certain that such a person is fit and proper to govern the people under his charge by his past records. But as he had stated there would be no delay in giving recognition and approval by the Government. It remained with the Kingmakers to come to agreement to choose a person who by custom and tradition is a right person for the office of the Timi. He hoped in the interest of the people of Ede they would be able to agree without further delay. His advice and that of the D.O. are at the service of the Council and they will gladly give it. That is advice on any question other than the actual selection itself.

30 The Balogun thanked the Resident for what he had said so far. The Kingmakers had already given their recommendation and it was left with the Government to give recognition. It was customary for the local chiefs not to be unanimous on such issues in the past, unanimity comes after a candidate had succeeded. If the Government settled the matter there and then the chiefs would unite once again. The town was suffering and implored the Resident to help to unite the chiefs by according recognition to their recommendation as the time to collect taxes was fast approaching.

Chief Jagun supported the Balogun and said it was the Administrative Officers who alone could help to unite the chiefs as the chiefs never agreed until a new head was installed. The town was not settled at all.

The Resident at this juncture enquired what would happen in a similar situation say a century ago. The Balogun said the Ibadan chiefs always settled the matter for them and unite the chiefs once again. There was a general disapproval of this statement by the remaining chiefs and the people.

40 Chief Agbakin objecting to all what the Balogun and Jagun said this was not the first time they had been selecting a new Timi neither was Opayemi the first Balogun of Ede. No previous Balogun would dare take his method of selection. The custom, he said, was that there were a limited number of chiefs known as Kingmakers and these people were responsible for the selection of a new Timi.

50 When a Timi dies, the Balogun section of chiefs looked for a suitable person among the contestants in the first instance and presented him to other senior chiefs known as Kingmakers for approval which was usually given. In this case the Balogun never consulted all the chiefs in his section, despite several warnings and enquiries from us. He just told us to hold on. We reminded him of the Resident's advice to us at the Council

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meeting on 1st March, 1946, that we should give public opinion its due weight and that the new Timi must be popular with all sections of the people because Ede had earned a very good reputation therefore the new Timi must be a person who should be able to maintain such reputation and the great responsibility attached to the office.

Five days later Agbakin said they (Balogun section of chiefs) went to the Balogun when he told them that the people wanted Laoye and we agreed that since the people wanted a literate ruler Laoye was not a bad candidate but he belonged to the same house as the late Timi. The Balogun then asked Laoye to come and see us which he did. But to our 10 surprise the Balogun again turned back and said that Jagun was begging him to allow him to choose the new Timi which was contrary to our custom. We objected and the Balogun said we would hear his decision very soon and we still wait for that decision up till this day.

At the meeting of 1st March, 1946, the Resident asked the Balogun for names of the Kingmakers and to our surprise he mentioned the names of only four chiefs i.e. Balogun, Jagun, Ikolaba and Ayope and at the instigation of Chief Jagun he added Chief Areago. We called him to order and enquired why he never named any of us (his own section of chiefs), but he asked us to keep quiet. 20

The next intimation we then got that any one had been appointed a new Timi was when the A.D.O. had a meeting with the whole chiefs and the Officer asked the Balogun to announce the name of the successful candidate and the Balogun, after some embarrassment said Memudu.

When we, his own section of chiefs got home we questioned him about the unconstitutional procedure taken but the Balogun said he was forced to agree to Memudu's candidature. He also added that both Chiefs Jagun and Areago were begging him and the Interpreter also. He was also threatened. We therefore decided not to allow our constitutional rights to be so lost as neither Chief Jagun nor Chief Areago had 30 any right to override the wishes of the majority of chiefs.

At this stage the Balogun got up and said all what Chief Areago said was a lie. He questioned Chief Agbakin at what place they had such a meeting where he told them that Laoye was the popular candidate. He further asked the Agbakin if he had ever knew Laoye before or immediately the Timi died and emphasized that Laoye was a complete stranger to him and all the chiefs for that matter as he had never lived in the town before.

Continuing the Balogun said at the only meeting the chiefs had together the decision of the chiefs was that the question of final decision 40 of candidate was left in the hand of Chief Jagun and myself. He immediately objected to this decision because Jagun was his relative and family tie should not be taken into consideration in such a big issue. The reply of all the chiefs was that as the Jagun was an elderly chief and the most senior of the Kingmakers in point of date of appointment the matter should not be left in their hands. This also was quite in order according to our custom and traditions. All the chiefs unanimously

selected Memudu. There was also a document prepared during the lifetime of the late Timi to the effect that the next Timi should come from Lagunju House whose turn it is to submit a candidate.

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*continued.*

At the meeting with the A.D.O. to which the Agbakin referred, that Officer made it abundantly clear that it was not his duty to select a Timi. All the chiefs then unanimously selected Memudu. It was after this that some of the chiefs withdrew their support. It was not true that Chief Jagun selected Memudu alone. After listening to both sides, the Resident said he would like to repeat what he said earlier. Himself and the D.O. were only too ready to help with advice whenever it was required, but this is advice on other matters rather than in actual selection which was the business of the chiefs and Kingmakers and must be carried out according to local customs. From what had been said he might be able to give an advice that might be of some help. He appealed to the good sense of the people of Ede, a town renowned for its progress and the sense of the people. He asked the people to use that sense to the greatest advantage of the town. So far as the selection procedures might concerned up to date, they might have some defects. There was no reason why they should not be corrected now. His advice to the chiefs was to get together, meet and discussed it properly among themselves and in doing so submerged their personal desire and think only of the good of Ede. If this advice is followed it will not take the chiefs any time to reach a unanimous decision.

Chief Jagun speaking the second time said that he would like to correct a wilful misrepresentation of facts contained in Chief Agbakin's statement to the effect that Jagun had never been known to select a Timi. He said his father was the Jagun who selected Timis Mosunloye and Oyelekan. The chiefs in both Balogun and Jagun lines were always co-operating together whenever such an occasion arose. This was the custom as laid down by our forefathers.

In reply the Resident said he had already given his advice and asked the chiefs to eliminate bad effects.

In conclusion the Resident thanked the Council for listening to him and that he looked forward to his next visit to Ede by which time he hoped the chiefs would have made large stride towards selection of a new Timi. He prayed for God's guidance for the Kingmakers.

The Resident took leave of the Council at 11.30 a.m. when the Senior D.O. took charge of the conduction of the meeting.

The D.O. i/c Ibadan Division saluted the chiefs and Councillors. He said he was very pleased to see them again after an absence of 13 years since he was last here as A.D.O. He wanted to say one word more to what the Resident said. The people had been told by the Chief Commissioner and two different Residents that this matter only concerned Ede chiefs and people, therefore when someone handed over to me this morning a Petition about this matter, he never took any trouble to read it. If he was in his office he would have thrown it to the Waste Paper Basket but as the petitioner was then present at the meeting he would returned

*Defendants' Exhibits.* it to him. He wanted to make it quite clear to all the people of Ede that the D.O. was not going to read any letter at all on this subject. They were a waste of time, paper and energy.

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*continued.*

*Decentralisation of Sub-Treasury Account—*

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The Council adjourned at 12.13.

Opayemi      His  
                    X      Balogun  
                    mark

Witness to mark

(Sgd.) S. O. LONGE  
Councillor.

