

G.H.G.3.

1071954

No. 48 of 1950.

# In the Privy Council

## ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL  
(GOLD COAST SESSION—ACCRA)

37717

BETWEEN

- 1. AMOAH ABABIO, Ohene of Asamankese representing the STOOL OF ASAMANKESE
- 2. BAFO KOFI BEMPON, Odikro of Akwatia representing the STOOL OF AKWATIA . . . . .

*Defendants-Appellants*

AND

JOHN EDMUND TURKSON . . . *Plaintiff-Respondent.*

UNIVERSITY OF LONDON  
W.C.1.  
24 FEB 1955  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

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## Case for the Respondent

RECORD.

- 1. This is an appeal from the Judgment and Order of the West African Court of Appeal dated the 9th February, 1949 (Their Honours Sir Henry William Butler Blackall, President, Allan Chalmers Smith, Acting Chief Justice, Gold Coast, and Arthur Werner Lewey, Justice of Appeal), whereby the appeal of the Respondent from the Judgment of Coussey, J., dated the 1st October, 1947, given in the Supreme Court of the Gold Coast, Eastern Judicial Division of the Gold Coast Colony, Holden at Accra, in an action brought by the Respondent, as Plaintiff, against the Appellants, as Defendants, was allowed and the order of the said learned trial Judge (Coussey, J.) giving judgment in favour of the Appellants with certain costs was set aside and it was ordered that the case be remitted to the Court below to determine the sole issue which had been left to the said Court by the Certificate of the Governor-in-Council, namely, the amount which ought to be paid in respect of the Respondent's claim and the Respondent was awarded costs in the said Court of Appeal assessed at £65 15s. 2d., and in the Court below half costs, i.e., Counsel's fees 35 guineas plus half taxed costs.

pp. 19-23.

p. 24.

pp. 7-14.

Exh. "A." pp. 26-27.

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2. The question which arises for determination in this appeal is as to the extent of the jurisdiction of, and the limitation with respect to the issues to be tried and decided in the aforesaid action by, the learned trial Judge by reason of the operation and application of the provisions of subsection (2) of section 6 of the Asamankese Division Regulation Ordinance (Laws of Gold Coast 1936 Revision, chapter 78) (hereinafter referred to as "the Ordinance") as amended by section 2 (a) of the

Asamankese Division Regulation (Amendment) Ordinance, 1945 (Gold Coast Colony, No. 5 of 1945) (hereinafter referred to as "the Amending Ordinance"), and the Certificate dated the 22nd October, 1945, issued by the Governor-in-Council, pursuant to the provisions of paragraph (ii) of the proviso to the said subsection (2) of section 6 of the Ordinance as amended by 2 (b) of the Amending Ordinance.

3. By subsection (2) of section 6 of the Ordinance, as amended by sections 2 (a) and 2 (b) of the Amending Ordinance, it is provided as follows :—

"(2) From and after the date of the commencement of this  
 " Ordinance no action save as is hereinafter provided shall lie 10  
 " against a Stool or against any officer appointed under section 8 (e)  
 " for the collecting, safe custody, and management of the revenue  
 " of a Stool and no execution shall issue or be enforceable against  
 " the revenues of the Stool or any Stool property in respect of any  
 " debt or liability incurred whether before or after the commence-  
 " ment of this Ordinance by a person on behalf of the Stool, unless  
 " such debt or liability if incurred after the commencement of this  
 " Ordinance was incurred with the consent of the prescribed  
 " officer ; 20

" Provided that in any case where a claim in respect to a debt  
 " or liability alleged to have been incurred by or on behalf of the  
 " Stool before commencement of this Ordinance has been the  
 " subject of the enquiry in accordance with any regulations made  
 " under this Ordinance, and the Governor, upon consideration of  
 " the record of the enquiry and of any recommendation trans-  
 " mitted to him in connection therewith is in doubt as to whether  
 " or not any payment ought to be made in respect to the claim or  
 " any part thereof, or as to the amount which ought to be paid,  
 " the following provisions shall have effect :— 30

" (i) The Governor, if he thinks fit, may refer the matter to  
 " the Executive Council for consideration as to whether  
 " or not it is desirable, in the interests of justice, that the  
 " claim or any part thereof, or the amount which ought  
 " to be paid, should be adjudicated upon in an action  
 " against the Stool ;

" (ii) Where, upon any such reference, the Governor-in-Council  
 " considers it desirable that there should be any such  
 " adjudication, he may, in his absolute discretion and  
 " without assigning any reason, certify that in his opinion 40  
 " the circumstances are such that, notwithstanding  
 " anything in this Ordinance, the matter may properly  
 " be the subject of legal proceedings ;

" (iii) In any case where the Governor-in-Council has so  
 " certified, nothing in this subsection shall be deemed to  
 " preclude any court of competent jurisdiction from  
 " adjudicating upon the matter to which the certificate

“relates or to prohibit the issue or enforcement, after  
 “judgment, of execution against the Stool property or  
 “revenues.”

4. In the said Certificate issued by the Governor-in-Council as aforesaid it is therein, as regards the operative and effective part thereof, set out as follows :—

p. 27, ll. 11-16.

\* \* \* \* \*

10 “NOW THEREFORE pursuant to the terms of paragraph (ii) of the  
 “proviso to subsection (2) of section 6” (as herein above set  
 “forth) “the Governor-in-Council, hereby certifies that in his  
 “opinion the circumstances are such that the matter, to wit, the  
 “amount which ought to be paid in respect to the said claim,  
 “may properly be the subject of legal proceedings by the  
 “(Respondent) against the (Appellants).”

The “said claim” referred to is set forth in a recital in the said Certificate.

Exh. “A” p. 26 ;  
 l. 31-p. 27,  
 ll. 1-7.

5. The learned trial Judge regarded the jurisdiction conferred upon him by the Ordinance as amended by the Amending Ordinance and the said Certificate as extending to the determination of the question as to  
 20 whether the Respondent was entitled to claim any sum against the Appellants, and as not being restricted to determining merely the amount to be paid by them to the Respondent in respect of his claim. Accordingly the learned trial Judge held that the Respondent could not claim, and that the Appellants were not liable to the Respondent in respect of his claim and gave judgment for the Appellants with Counsel’s costs on brief allowed at 70 guineas.

6. In regard to the Ordinance as amended by the Amending Ordinance and the said Certificate issued pursuant thereto as aforesaid, and his reasons for so regarding his jurisdiction as being to the extent  
 30 as aforesaid he said :—

“ My construction of the Ordinance and Certificate is that the  
 “ Court adjudicates upon the Plaintiff’s claim as brought and  
 “ determines whether any money is due to the Plaintiff and if so  
 “ the amount. This I have done to the best of my ability and  
 “ I find that no money is due to the Plaintiff in respect of his  
 “ claim in this suit.”

p. 14, ll. 1-7.

7. The said judgment of the learned trial Judge was as aforesaid unanimously set aside by the West African Court of Appeal upon the ground that the jurisdiction of the learned trial Judge in accordance with  
 40 the said provisions of the Ordinance as amended by the Amending Ordinance and the said Certificate was restricted and limited to the determination by him solely of the amount to be paid to the Respondent and that in purporting, as he did, to determine the validity or right of the Respondent to be paid he had no jurisdiction and he acted in excess of and went beyond the jurisdiction conferred as aforesaid and the West African Court of Appeal ordered as aforesaid.

8. It is submitted that the said Judgment and Order of the West African Court of Appeal was clearly right and ought to be upheld and affirmed for the following among other reasons :—

### REASONS

- (1) BECAUSE apart from such jurisdiction as might be conferred by the provisions of the Ordinance as amended by the Amending Ordinance there would be no jurisdiction in, and the Courts would have no power to try, any action against a Stool such as was brought by the Respondent against the Appellants. 10
- (2) BECAUSE the said Certificate issued by the Governor-in-Council pursuant to and in terms of the proviso to subsection (2) of section 6 of the Ordinance as amended by the Amending Ordinance in clear and express terms gave a jurisdiction to the learned trial Judge as the judge trying the action as brought by the Respondent against the Appellants for the determination solely of the amount to be paid to the Respondent in respect to his said claim and any jurisdiction or power to determine the question of the validity of, or the right to, his claim, or whether any liability existed thereunder such as the learned trial Judge purported to do or any other question was excluded. 20
- (3) BECAUSE the learned trial Judge in purporting, as he did, to determine the validity or right of the Respondent to his said claim or the liability of the Appellants thereunder had no jurisdiction and acted in excess of the jurisdiction conferred upon him by the provisions of the Ordinance as amended by the Amending Ordinance and the said Certificate issued pursuant thereto as aforesaid. 30
- (4) BECAUSE for the reasons given in the said Judgment of the West African Court of Appeal and for other good and sufficient reasons the said Judgment is right and ought to be upheld and affirmed.

S. N. BERNSTEIN.

In the Privy Council

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ON APPEAL

*from the West African Court of Appeal  
(Gold Coast Session—Accra)*

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Case for the Respondent

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*Solicitors for the Respondent.*