

In the Privy Council.

No. 48 of 1950.

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

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.*

RECORD OF PROCEEDINGS

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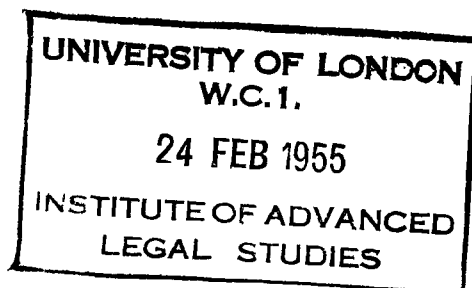
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" 1 "	Letter, Consolidated African Selection Trust, Ltd., to Ohene of Asamankese	9th July 1922
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In the Privy Council.

No. 48 of 1950.

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL

(GOLD COAST SESSION—ACCRA)

=====

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.*

=====

RECORD OF PROCEEDINGS

=====

No. 1.

Writ of Summons.

IN THE SUPREME COURT OF THE GOLD COAST.

EASTERN JUDICIAL DIVISION, DIVISIONAL COURT HOLDEN AT ACCRA.

Between

JOHN EDMUND TURKSON *Plaintiff*
and

1. BARIMAH KWEKU AMOAH II, Ohene of Asamankese
representing the Stool of Asamankese
- 10 2. KOFI ADU, Odikro of Akwatia representing the Stool of
Akwatia *Defendants.*

To 1. Barimah Kweku Amoah II, Ohene of Asamankese representing the
Stool of Asamankese.

2. Kofi Adu, Odikro of Akwatia representing the Stool of Akwatia.

YOU ARE HEREBY COMMANDED in His Majesty's name to
attend before this Court at Accra on Tuesday the 17th day of September,
1946, at 8.30 o'clock in the forenoon, then and there to answer a Suit by
John Edmund Turkson of Asamankese against you.

In the
Supreme
Court of the
Gold Coast.

No. 1.
Writ of
Summons.
29th
August,
1946.

In the
Supreme
Court of the
Gold Coast.
—
No. 1.
Writ of
Summons.
29th
August,
1946.—
continued.

The Plaintiff claims :

In or about August 1921 it was agreed between the Plaintiff and the Defendants

1. That if the Plaintiff introduced to the Defendants a Company or Companies who would enter into Mining Leases with the Defendants in respect of Minerals on the Defendants' Stool Lands, and
2. Financed the prospecting of the said Stool Lands for Minerals

The Defendants would pay to the Plaintiff a commission of 5% or 1/- in the pound on all moneys paid by the said Company or Companies to the Defendants by way of Rents and or Royalties during the continuance of a Mining Lease or Leases entered into between the Defendants and the said Company or Companies.

10

In consequence of the said agreement the Defendants' Stool Lands were prospected at the expense of the Plaintiff and on the discovery of diamonds thereon the Plaintiff introduced to the Defendants the Consolidated African Selection Trust Limited and the West African Diamond Syndicate who entered into Mining Leases with the Defendants in respect of the said Stool Lands.

The Defendants in pursuance of the said agreement paid to Plaintiff the aforesaid commission of 5% or 1/- in the pound as from 1921 to 1935.

The Plaintiff is not aware of what sums of money the Defendants have received from the Consolidated African Selection Trust Limited and the West African Diamond Syndicate since 1935 and the Defendants have not paid to Plaintiff any money or commission or rendered him any account of moneys received by them from the Companies introduced although the Plaintiff had orally and by letters requested them so to do.

20

The Plaintiff therefore claims :

1. That an account be taken of all moneys by way of Rents and Royalties received by the Defendants or their agents from the Consolidated African Selection Trust Limited and the West African Diamond Syndicate introduced by the Plaintiff, and of the amount of commission due to the Plaintiff in respect thereof.
2. Payment of the amount found due to the Plaintiff on the taking of such account.

Sum claimed	...	Judicial Relief	
Court fees	...	6	- -
Bailiff's fees	...	-	12 -
		<hr/>	
Total	...	£6	12 -
		<hr/> <hr/>	

30

Issued at Accra the 29th day of August, 1946.

(Sgd.) K. O. QUANSAH,
Registrar, Divisional Court, Accra.

No. 2.
Order for Pleadings.

In the
Supreme
Court of the
Gold Coast.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION,
held at VICTORIABORG, ACCRA, on Tuesday, the 17th day of September,
1946, before M'CARNEY, Ag. C.J.

No. 2.
Order for
Pleadings.
17th
September,
1946.

J. E. TURKSON

v.

BARIMAH KWAKU AMOAH II Ohene of Asamankese & Anor.

HEWARD-MILLS for Plaintiff.

10 BOSSMAN for Defendants.

Pleadings ordered, the writ to be taken as Statement of Claim.
Statement of Defence within 21 days.
Reply (if any) within 7 days.

Heward-Mills agrees to supply the full particulars :

- (1) Whether alleged agreement in writing or oral
- (2) Whether the agreement was made in accordance with English law or Native Customary Law.

To be supplied within 7 days.

L.M.

20

No. 3.

Further Particulars of Plaintiff's Claim.

No. 3.
Further
Particulars
of
Plaintiff's
Claim.
19th
September,
1946.

FURTHER PARTICULARS OF PLAINTIFF'S CLAIM HEREIN.

PURSUANT to an Order of this Honourable Court made on the 17th day of September, 1946, the Plaintiff hereby furnishes you with the fore-going further particulars :—

- 1. The Agreement was oral and subsequently confirmed in writing.
- 2. The Agreement was in accordance with Native Customary Law and English Law.

Dated at Agbado Chambers, Accra, this 19th day of September, 1946.

30

(Sgd.) A. G. HEWARD-MILLS,
Solicitor for Plaintiff.

The Registrar, Divisional Court, Accra, and
to the above-named Defendants, Barimah
Kwaku Amoah II, and Kofi Adu, Their
Solicitor or Agent, Accra.

In the
Supreme
Court of the
Gold Coast.

No. 4.
Defence.
16th
October,
1946.

No. 4.
Defence.

STATEMENT OF DEFENCE delivered on behalf of the Defendants
this 16th day of October, 1946.

1.—Save as hereinafter expressly admitted the Defendants deny all
the allegations in the Plaintiff's Writ and Particulars of Claim.

2.—The Defendants expressly deny that in or about August 1921 or
at an other time they the Defendants or either of them entered into any
agreement written or oral or both in accordance with Native Customary
Law or English Law or both in the terms set out in the Plaintiff's Writ of
Summons and Particulars herein. 10

3.—The Defendants in further denial of the alleged Agreement, say
that the same is unknown to and could be validly entered into by Native
Customary Law, nor if entered into, legally enforced.

4.—In further denial of the alleged agreement, the Defendants say
that the same if purporting to be made in accordance with English Law
must be in writing in accordance with the statute of Frauds, and that no
such written agreement complying with the requirements of the said
statute has ever been made between the parties.

5.—The Defendants emphatically deny the allegation in the Plaintiff's 20
Writ that *that* Stool lands of the Defendants were prospected at the
expense of the Plaintiff or by him—and the Defendants say that neither
the Plaintiff himself nor any person on his behalf ever carried on prospecting
work on the Defendants' Stool Lands at the expense of the said Plaintiff
or upon his instructions or otherwise. *sic*

6.—In further denial of the allegation that prospecting on the
Defendants' Stool lands was done at the expense of the Plaintiff—the
Defendants say that the person who did prospecting work on their Stool
Land and discovered Minerals which were subsequently sent to European
Concessionaires resulting in the taking of Concession Leases by the
Consolidated African Selection Trust and West African Diamond Mining
Syndicate was one Ahyia of Pramkese who was employed by the Chiefs
of Akwatia and Asamankese. 30

7.—The Defendants emphatically deny that the two mining companies
The Consolidated African Selection Trust and West African Diamond Mining
Syndicate were both or either of them at any time introduced to the
representatives of the Asamankese or Akwatia Stools by the Plaintiff or
any person acting on behalf of the said Plaintiff—and the Defendants say
the said firms came and introduced themselves about June 1922—upon the
invitation of the Defendants. 40

8.—The Defendants deny that in pursuance of any Agreement they
paid Plaintiff commission of 5% or 1/- in the pound from 1921–1935, but
admit that during the period aforesaid whilst the Plaintiff and one Mr. Kofi
Ampofu were acting as Clerks to the two Stools and were assisting the
Elders in their litigation with the Omanhene of Akyem Abuakwa—they
were paid certain monies from time to time as and when the Stools had

moneys through payment to them of Concession Rents or Royalties, and the Defendants say that the like payments were made during the same period to several others Elders, Stool Functionaries, and others in the service of the two Stools—and the Defendants say the payments were “ Ex Gratia ” and ceased at the discretion of the Stools.

9.—The Defendants deny the allegation that Plaintiff is not aware of what sums of money have been received by the Defendants from the Consolidated African Selection Trust and West African Diamond Mining Syndicate and the Defendants say that the Plaintiff should know of the amounts payable to the two Stools under the Concession Leases which are registered, and that in any case he could have easily ascertained and that his conduct in not making any claim since 1935 when his connection with the two Stools came to an end is consistent only with the Defendants' case that he knew that he was receiving only “ Ex Gratia ” payments only while he was connected with the Stools and was entitled to nothing more when that connection had ceased, and Defendants say this claim is an after-thought.

10.—The Defendants further say that whether the Plaintiff be aware of the Amounts received as from 1935 up to date or not, upon his own case that he is entitled to a share of commission as and when each payment is made under and by virtue of an Agreement made according to Native and English Law, the said Plaintiff would be barred by the operation of The Statute of Limitation 1766 from all claims except perhaps that arising within the past six (6) years i.e. 1940.

11.—The Defendants deny any demand either orally or by letter, prior to demand made sometime in 1940 when the Defendant made an oral demand.

12.—The Defendants deny that Plaintiff is entitled to the Relief claimed or to any other Relief.

30 Dated at Azinyo Chambers, Accra, this 12th day of October, 1946.

(Sgd.) K. ADUMUA-BOSSMAN,
Solicitor for Defendants.

To The Registrar, Divisional Court, Accra,
and to the above-named Plaintiff, John
Edmund Turkson, His Solicitor or Agent,
Accra.

No. 5.
Plaintiff's Reply.

40 **REPLY TO THE DEFENDANTS' STATEMENT OF DEFENCE**
delivered on the 5th day of November, 1946, by A. G. HEWARD-MILLS,
Solicitor for Plaintiff.

1.—The Plaintiff joins issue with the Defendants on their Statement of Defence.

In the
Supreme
Court of the
Gold Coast.

—
No. 4.
Defence.
16th
October,
1946—
continued.

No. 5.
Plaintiff's
Reply.
5th
November,
1946.

In the
Supreme
Court of the
Gold Coast.

2.—In further reply to paragraph 2 of the Statement of Defence, Plaintiff says that the Agreement was entered into between the Plaintiff and the Defendants in 1921—and not in 1929 as alleged by the Defendants in their Statement of Defence.

No. 5.
Plaintiff's
Reply.
5th
November,
1946
—continued.

3.—In further reply to paragraph 8 of the Statement of Defence, Plaintiff says that he was not a clerk to the two Stools in 1929 as alleged nor was he paid any money Ex-Gratia or otherwise for service rendered in the Defendants' litigation with Akyem-Abuakwa.

Dated at Agbado Chambers, Accra, this 5th day of November, 1946.

(Sgd.) A. G. HEWARD-MILLS, 10
Solicitor for Plaintiff.

The Registrar, Divisional Court, Accra, and
To the above-named Defendants, Their
Solicitor or Agent, Accra.

No. 6.
Plaintiff's
Notice of
Amend-
ment to
Reply.
19th
August,
1947.

No. 6.

Plaintiff's Notice of Amendment to Reply.

NOTICE OF AMENDMENT.

TAKE NOTICE that at the trial of the above named case the Plaintiff herein intends to ask the leave of the Court to amend his reply to the Defendants' Statement of Defence by adding the following:— 20

" 2a. In further reply to paragraph 4 of Statement of Defence, the
" Plaintiff says that there has been performance by the parties
" sufficient to take the case out of the operation of the Statute of
" Frauds."

Dated at Agbado Chambers, Accra, this 19th day of August, 1947.

(Sgd.) A. G. HEWARD-MILLS,
Solicitor for Plaintiff.

The Registrar, Divisional Court, Accra, and
to K. A. Bossman, Esquire, Solicitor for
Defendants herein, Accra. 30

No. 7.
Granting of
Amend-
ment to
Reply.
21st
August,
1947.

No. 7.

Granting of Amendment to Reply.

Mr. HEWARD-MILLS (WHITAKER with him) for Plaintiff.

Mr. BOSSMAN (ADJEI with him) for Defendants.

Mr. OLLENNU also for Plaintiff.

Mr. DANQUAH also for Defendants.

Mr. HEWARD-MILLS applies in terms of Notice filed to amend Plaintiff's

Reply filed on 9/11/46.

No objection.

BY COURT :

Amendment granted. 40

No. 8.
Judgment.

In the
Supreme
Court of the
Gold Coast.

1st October, 1947.

No. 8.
Judgment.
1st October,
1947.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION
OF THE GOLD COAST COLONY, held at VICTORIABORG, ACCRA, on
Wednesday the 1st day of October, 1947, before COUSSEY, J.

Suit No. 144/46.

JOHN EDMUND TURKSON Plaintiff

v.

- 10 1. BARIMA KWEKU AMOAH II, Ohene of Asamangkese representing the Stool of Asamangkese,
- 2. KOFI ADU, Odikro of Akwatia representing the Stool of Akwatia Defendants.

By his Writ of Summons, which, as amended, has been accepted as a Statement of Claim, the Plaintiff claims that in or about August, 1921, the predecessors of the present Defendants on the Stools of Asamangkese and Akwatia entered into an oral agreement with him in due form according to native custom, (a) that if the Plaintiff financed the prospecting of the lands of the two stools for minerals and (b) if the Plaintiff introduced to the Defendants a company or companies who would enter into mining leases with the stools in respect of minerals on the Defendants' stool lands, the Defendant stools would pay to the Plaintiff a commission of 5% i.e. 1/- in the £ on all moneys paid to the Defendants by way of rents and royalties during the continuance of a mining lease or leases entered into between the company or companies and the Defendants.

20 The Plaintiff avers that in consequence of the said agreement the Defendants' stool lands were prospected at the expense of the Plaintiff and on the discovery of diamonds on the land, the Plaintiff introduced to the Defendants, two companies, the African Selection Trust, whose assignees are the Consolidated African Selection Trust, and the West African Diamond Company, who entered into mining leases with the Defendant stools in respect of the stool lands.

30 From 1921 to 1935 the Plaintiff says he received the agreed commission on mining rents and royalties but since the latter year no commission has been paid to him.

He therefore claims an account of moneys received by the Defendants by way of rents and royalties since 1935 and of the commission due to him at 5% and payment thereof.

In the
Supreme
Court of the
Gold Coast.

No. 8.

Judgment.
1st October,
1947—
continued.

The Plaintiff alleges that the Defendants subsequently confirmed in writing, the said agreement.

The Defendants deny the agreement alleged by the Plaintiff or that they at any time, either orally in accordance with native custom or in writing entered into such a contract.

They contend, as to a written agreement, that there was no agreement made to comply with the Statute of Frauds. They deny that their stool lands were prospected by the Plaintiff or at his expense as alleged and they aver that lands were prospected at the expense of the stools by one Ahia and that when he discovered diamonds on the stool land of Akwatia the Defendants' predecessors sent the samples to European Concessionaires, and this led to the two Companies referred to, taking up Concessions with the Defendants. The Defendants further deny that the Plaintiff introduced these Companies to them or that it was upon his introduction that the Concessions were entered into, but that representatives of the two companies introduced themselves upon the invitation of the Defendants. 10

The Defendants deny that between the years 1921 and 1935 the alleged commission of 5% was paid to the Plaintiff pursuant to the agreement he alleges but they admit that over the said period, during which the Plaintiff acted as their clerk with another clerk named Kofi Ampofu, and both of whom assisted the then occupants of the stools and their elders in litigation with the Omanhene of Akyem Abuakwa, certain moneys were paid to the Plaintiff and Ampofo from time to time when the stools received concession moneys, but that the said payments were ex gratia and were made not only to the Plaintiff and Ampofo but to several other elders, stool functionaries and others and that the payments ceased at the discretion of the stools. As to any claim for the years, six years prior to the issue of the writ of summons, which was on the 3rd September, 1946, the Defendants also plead the Statute of Limitations. 20

The Plaintiff, according to his evidence, was a Government School teacher from 1906 to 1910, when he resigned in order to reside at Asamangkese so that he could assist his uncle, Nana Kwaku Amoah I who was then Ohene of Asamangkese. For two years he was the Ohene's clerk at a monthly salary of £12. 10/-. In 1915 he became a Councillor of the Stool and he remained a Councillor from 1915 to at least, 1935. During this period he seems to have been employed as a storekeeper or factor for a trading Company, receiving good wages and commission and, in later years, an annual bonus, whilst taking part in the affairs of the stool in his spare time. An educated man, he had considerable influence as a Councillor in the conduct of Stool matters. 30 40

Although he was a man of influence, I have no difficulty on the evidence in coming to the conclusion that the agreement he sets up and the consideration for it, was never entered into.

In his petition of the 26th March, 1940, by which this claim was formulated, the Plaintiff refers to the fact that in 1921 prospecting for diamonds engaged the attention of various concerns in the Colony who were largely influenced by the findings of Sir Arthur Kitson, the Government Geologist.

On the evidence it is clear that by 1922 (not 1921 as the Plaintiff alleges in his Writ) when diamonds were first found on Akwatia land, there were European prospectors already at Pusupusu, Abomosu and Pramkese on Akyem Abuakwa lands, and at Aboabo on Akyem Kotoku lands. The stool lands of Pramkese and Abomosu are not far from Akwatia.

The Plaintiff's story is that at his first meeting with the chiefs and Elders he prevailed upon them to permit him, as a citizen anxious to further the interests of the stools, to prospect their stool lands. He says he had to overcome the opposition of the Elders who feared that the sacred
10 places on the lands might be spoilt by Europeans.

Considering that gold mining had been carried on for many years and that Europeans had already prospected for diamonds at Abomosu, Pramkese and Pusupusu, all neighbouring lands and at Aboabo, the probabilities are that the Elders of Akwatia and Asamankese, alive to their own interests, would not allow the existence of a fetish or two to deter them from the prospect of riches.

In cross-examination the Plaintiff admitted the important fact in the Defendants' case that the discovery of diamonds on Akwatia land was made by Ahia. In his evidence in chief, however, he did not refer to Ahia.
20 He said that after difficulties he obtained the consent of the Chiefs and got into touch with one Morgan who was working at Abomosu for a diamond Company, and through Morgan he got the African Selection Trust to prospect the Akwatia and Asamankese stool lands.

In his evidence in chief the Plaintiff says that the agreement sued upon was made before the lands were prospected by the Company. In cross-examination he said the agreement was made when the white men were on the land prospecting and before the concession leases were made.

The Plaintiff was positive that the agreement was made in the year 1921, the year in which, according to him, diamonds were found at Akwatia.
30 This is in conflict with all the other evidence in the case which fixes the time as in July, 1922. See the letter from Ohene Kwaku Amoah to Kwabena of Akwatia dated 30th August, 1922, informing him that the samples taken had been pronounced good diamonds and asking Nketia to come to Accra with the European in order to get a good arrangement. I am unable to believe the evidence of any of the Plaintiff's witnesses as to the making of the agreement alleged nor do I believe him or his witness Dardom that £5 was handed over to Morgan in order to finance Ahia's work on the land. If he paid £4 to Linguist Appiah for his journey to Aboabo it was clearly paid on the Ohene's account. As I have already mentioned the Plaintiff
40 did not refer to Ahia during his examination in chief. The Plaintiff is under an obligation to prove a consideration for the agreement he sues on. His evidence in cross-examination, particularly in respect to Ahia and Morgan was given in a halting, calculated manner as if he was feeling his way to build up a case to support the moneys which admittedly the stools paid to him later.

The evidence of Ahia impressed me. Fortunately he is alive to tell the story. His evidence and that of other witnesses for the defence, who

In the
Supreme
Court of the
Gold Coast.

No. 8.
Judgment.
1st October,
1947—
continued.

In the
Supreme
Court of the
Gold Coast.

No. 8.
Judgment.
1st October,
1947—
continued.

I believe, leaves no doubt in my mind that the Plaintiff took no part, other than was to be expected of an educated Councillor of the Asamangkese Stool, in the negotiations for Concessions and that he was neither instrumental in the first discovery of diamonds at Akwatia nor in the introduction of the African Selection Trust to the Defendant stools. As to the West African Diamond Syndicate the Plaintiff is strangely silent upon his negotiations with them, confining himself to the statement that the West African Diamond Syndicate followed and took Concessions from the two stools.

I find that it was on the initiative of the Elders of Akwatia that Ahia 10 was invited from Pramkese to prospect their land for diamonds; that the first samples were sent by them to Mr. Bissell Thomas, Manager of the African Selection Trust who was then conducting mining or prospecting operations on Akyem Kotoku land; that Bissell Thomas went to the Defendants predecessors without any inducement or introduction on the Plaintiff's part and that Bissell Thomas and his employees prospected the Defendants' lands without the intervention of the Plaintiff. This is borne out by Exhibit 2, a letter written by Bissell Thomas to the Ohene of Akwatia.

The stool of Asamangkese is subordinate to the Paramount Stool of 20 Akyem Abuakwa. The stool of Akwatia in turn serves the paramount stool through Asamangkese. In October, 1921, the stools of Akwatia and Asamangkese petitioned the Governor to be independent of Akyem Abuakwa. With the discovery of diamonds on the lands in the following year there was a large inflow of moneys to the Akwatia stool. In the set up of the community at that time, it was perhaps natural that to ensure cohesion and support for the case against the Omanhene of Akyem Abuakwa, distribution of the mining rents and consideration moneys should be made to people on a large scale. According to the evidence of K. Antwi Darkwa, Oman Secretary for many years—Chiefs, Elders, Councillors, 30 women and boys (i.e. youngmen) all got their share of the concession moneys; educated people got their share. Darkwa says of the Plaintiff "He was something like principal councillor at the time. No meeting was held without him and no decision was taken without him. This was because of his long connection with the stool." I think this accurately states the Plaintiff's position. A shrewd man, he asked for more out of the rents than other subjects of the stool and the Chiefs and elders of the time promised to give him as much as the legal advisers of the stool were promised out of the Concession rents and royalties.

I have come to the conclusion that this promise was made sometime 40 after the first lease had been entered into. If it had been before the first lease, the Plaintiff would not have fallen into the gross error of stating that the first consideration money was about £5,000 and that he received as commission about £250. The first consideration money paid was in fact £1,300.

I am satisfied that the promise, for which the Plaintiff gave drinks as thanks, was for gifts to be made to the Plaintiff out of the rents, not on account of any specific past, present or future services of the Plaintiff, but

that the Chiefs, desirous to retain the good office of the Plaintiff, felt obliged to give the principal councillor, who in all probability would be present when all leases would be executed and moneys paid, a share on a more liberal and regular scale than might be given to other subjects about the stools.

On the 10th March, 1930, the Chiefs of Asamangkese and Akwatia addressed the following letter to the Plaintiff :—

“ Dear Sir,

10 “ Following your request that our discussion with you
 “ yesterday re the joint stools decision to pay to you in full, all
 “ your commission in arrears and your request that the said
 “ discussion or decision should be put into writing, We the under-
 “ signed Chiefs Elders and Councillors of the joint stools of
 “ Asamangkese and Akwatia do hereby on behalf of our Stools
 “ confirm to you in writing that we agree to pay to you all arrears
 “ of rents and royalties due to you by us and also all arrears of
 “ rents and royalties that may be due to you hereafter until the
 “ Kibi-Asamangkese controversy has been prosecuted to a final
 “ end when rents and royalties shall be paid regularly and in
 20 “ full.”

I observe for the moment that all the persons who purport to sign this letter or to witness it, are illiterate marksmen. The writer K. Antwi Darkwa is the only signatory. The note above the address, “ Similar letter addressed to Mr. M. H. Ampofu of Akwatia ” is peculiar. Presumably this is the letter upon which the Plaintiff relies as confirming the agreement sued upon. I consider it strange that at the Enquiry held by the Prescribed Officer, which will be referred to later, this letter was not put to either of the stool holders of Asamangkese and Akwatia when they repudiated the arrangement to pay commission to the Plaintiff. Owing
 30 to the improvident disposal of their wealth—on the 30th March 1935 the Asamangkese Division Regulation came into force—an Ordinance to provide for the control and regulation of the property, revenues and expenditure of the stools in the Asamangkese Division, a stool treasury was established. An officer was prescribed as the Treasurer of the Stool Treasuries of the division. All rents, royalties, &c., from stool lands were to be paid to the prescribed officer.

The Plaintiff says that his commission, which had been paid up to 1935, ceased when, by virtue of this Ordinance, the Prescribed Officer took control of the revenues and expenditure of the Defendant stools.

40 The Plaintiff made demands for his commission. In 1938 the stools recommended the Prescribed Officer to pay the Plaintiff and Ampofu £100 each on the condition that they abandoned all claims. The Plaintiff refused. Ampofu accepted later. In 1940 the Plaintiff petitioned the Secretary for Native Affairs and, as a result, an Enquiry was opened on the 13th August 1940 under regulation 11 (1) of the Asamangkese Division Regulations, into the claims of the Plaintiff and Ampofu to 1/- in the £ and 6d. in the £ respectively of mining rents and royalties of the Stools.

In the
Supreme
Court of the
Gold Coast.

—
No. 8.
Judgment.
1st October,
1947—
continued.

In the
Supreme
Court of the
Gold Coast.

No. 8.
Judgment.
1st October,
1947—
continued.

In reviewing what happened at this enquiry I think two facts should be borne in mind :

- (a) The actual occupants of the stools of both Akwatia and Asamangkese at the time when payment of moneys to the Plaintiff was introduced, had both died.
- (b) Prior to 1935 the payments had been made over a number of years but the reason for the payment had not been recorded.

The probabilities are that by continued statement when they received moneys from time to time, the Plaintiff and Ampofu themselves created the impression that they were the pioneers in the diamond industry and that they had, to use a commonly current expression in the Gold Coast “brought out the business.” And so the legend in succeeding years would grow whilst its authenticity would tend to go unchallenged. 10

It is not surprising therefore to find in the evidence of the Defendants’ witness K. Antwi Darkwa, the following passage : ‘ The Plaintiff said he “was entitled to his commission because he introduced an African who “discovered diamonds and this satisfied the Chiefs. The Plaintiff has “been saying that diamonds were first found by him. He said it was so “and the Chiefs accepted his statement and paid.” Examining the statement at the Enquiry of Yaw Ewua who was Mankralo in 1922 it is clear however that he speaks of past services of the Plaintiff and Ampofu. 20
“We decided ” he states “to pay the two clerks this amount because we “realised they were the pioneers and were largely responsible for the “Europeans being interested in the diamonds whereby wealth came to our “division.” Kofi Mensah Linquist of Akwatia in 1922 and 1923 also speaks of past services.

The present occupants of the stools only received the oral narrative of this matter when they came to office. They have wavered ; at one time supporting the claim, at other times repudiating it. In this Court they both repudiate it in clear terms and maintain that they are at liberty to revise the arrangement made by their predecessors with the Plaintiff. 30

As to the agreement of August 1921, the consideration for which is alleged to be prospecting and introduction of concessionaires, I have already found there was no such contract. Strictly that disposes of the Plaintiff’s case. A Plaintiff should be limited to the case which he puts forward in his writ.

As to the subsequent arrangement, which was probably made sometime between the 6th September, 1922, the date of the first concession and the date of the second or third concession (the date, however, is immaterial in view of my conclusions) to pay the Plaintiff 5% of rents and royalties, which the Plaintiff, I think, contends is supported by Exhibit “D,” I can find no contract with the Plaintiff which is binding in point of law upon the Defendants. There was no consideration for a binding promise on the Defendants’ part to pay him a commission. Reviewing the evidence I can find no request in respect of any past services. 40

Any services rendered by the Plaintiff before the Defendants' promise, and I can find none outside his duty as a Councillor or clerk, were not rendered for any payment stipulated to be made if mining leases were taken up.

Exhibit " D " is silent as to consideration. It is evidence of a promise to pay for which there is no consideration, and this, in my view distinguishes it from the case of *In re Casey's Patents*, 1892, 1 Ch. 104 at page 115, which, however, was not cited by Plaintiff's Counsel. In that case it was held that the fact that there has been past service raises an implication that it was to be paid for at the time it was rendered, and if in a subsequent document a promise to pay is made that promise may amount to either an admission which is evidence of, or as a positive bargain which fixes the remuneration on the faith of which the service was rendered.

Again, forbearance until the conclusion of the political dispute referred to in Exhibit " B " is not, in the circumstances, consideration, where no consideration existed originally.

The mere expectation in 1922 or 1923 that the Plaintiff might as a Councillor continue to render service to the stools in matters affecting their concessions or in the affairs of the stools in general would not be a valid consideration.

I think the concluding paragraph of the Judgment of Russell, J. in *Mortimer v. Beckett* 1920, 1 Ch. 571 at page 582 is in point :

" There is another ground on which I think I should be exercising a wise discretion in refusing an injunction. The contract is very peculiar in form. It is impossible to put one's finger on anything which the Plaintiff is bound to do. The only consideration is 10s., past services and a vague reference to future services, which are in no way defined so that it is impossible to predicate what would be a breach by the Plaintiff of the contract. It is therefore lacking in mutuality and on that ground also I think I should be unwise to grant an injunction pending trial."

I find that the arrangement in this case conferred a mere bounty on the Plaintiff. The elements of a valid contract founded on good consideration are entirely wanting and I think the Defendants and the prescribed officer had clearly the power to discontinue the payments as they did when they chose. It is unnecessary to consider the other defences.

It has been submitted to me that by the terms of the Certificate of the Governor in Council issued under Section 6 of the Asamangkese Division Regulation Ordinance this Court is precluded from finding that no binding contract exists between the Plaintiff and the Defendants because the Governor in Council must be deemed to be satisfied as to the existence of such a contract and that the Court in this action, is called upon to adjudicate only as to the amount which ought to be paid to the Plaintiff. I am unable to accept this limitation of the Court's duty.

In the
Supreme
Court of the
Gold Coast.

No. 8.
Judgment.
1st October,
1947—
continued.

In the
Supreme
Court of the
Gold Coast.

No. 8.
Judgment.
1st October,
1947—
continued.

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.

There will therefore be judgment for the Defendants.
Counsel's cost on brief allowed at Seventy Guineas.

(Sgd.) J. HENLEY COUSSEY,
Judge.

Counsel :

Mr. A. G. HEWARD-MILLS (with him Mr. T. J. WHITAKER) for Plaintiff.
Mr. K. A. BOSSMAN (with him Dr. J. B. DANQUAH) for Defendants.

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In the West
African
Court of
Appeal.

No. 9.
Grounds of
Appeal.
28th
November,
1947.

No. 9.
Grounds of Appeal.

IN THE WEST AFRICAN COURT OF APPEAL.
GOLD COAST SESSION, ACCRA.

Between

JOHN EDMUND TURKSON *Appellant*
and

1. BARIMA KWEKU AMOAH II, Ohene of Asamangkese, representing the Stool of Asamangkese 20
2. KOFI ADU, Odikro of Akwatia representing the Stool of Akwatia *Respondents.*

The Appellant, being dissatisfied with the judgment of the Court Accra, delivered on the 1st day of October, 1947, and having obtained final leave to appeal therefrom dated the 22nd day of November, 1947, hereby appeals to the West African Court of Appeal upon the grounds hereinafter set forth.

1.—The Judgment was against the weight of evidence.

2.—The learned trial Judge was wrong in reopening and trying the whole case in the face of the Governor's Certificate issued under Section 6 of the Asamangkese Division Regulation Ordinance. 30

3.—The learned trial Judge was wrong in giving judgment for the Defendants after holding that payments had been made to Plaintiff and that the Defendants had at times admitted the agreement with Plaintiff.

4.—The learned trial Judge was wrong in holding that an agreement solemnly entered into in accordance with native custom by the occupant of a stool during his life time could be, at will repudiated by a successor.

In the West African Court of Appeal.

5.—The learned trial Judge was wrong in holding that at the time the agreement was entered into between the Plaintiff and the two Stools he was serving one of the Stools as a clerk.

No. 9, Grounds of Appeal, 28th

6.—The Plaintiff's case having been based under the provisions of a Statute provisions of the Statute of Limitation did not apply to it.

November, 1947.

continued.—

7.—There was ample proof of consideration for the enforcement of the contract which was ignored by the learned trial Judge.

8.—The findings of the learned trial Judge were influenced by matters imported by him into the case which were not on record (e.g.) reference to Pusupusu, reference to letter of the 10/3/30 and holding that it was not produced at the Enquiry the whole proceedings of which were not in evidence.

“Satisfied that the promise for which Plaintiff gave drinks as thanks was for gifts to be made to Plaintiff out of the rents not on account of any specific past, present or future services of Plaintiff.”

20

“In reviewing what happened at this Enquiry I think two facts should be borne in mind (a) Actual occupants of the Stools both Akwatia and Asamankese at the time when payment of moneys to Plaintiff was introduced had both died. (b) Prior to 1935 payments had been made a number of years and the reason for the payment had not been recorded.

“Probabilities are that by continued statement when they received money from time to time Plaintiff and Ampofo themselves created the impression that they were the pioneers of the diamond industry.”

30

“I find that the arrangement in this case conferred a mere bounty on the Plaintiff.”

9.—The learned trial Judge's interpretation of the law on Exhibit “ B ” and “ D ” was wrong.

Dated this 28th day of November, 1947.

(Sgd.) A. G. HEWARD-MILLS,
Counsel for Appellant.

The Registrar, Divisional Court, Accra, and to Barima Kweku Amoah II, Ohene of Asamankese representing the Stool of Asamankese and Kofi Adu, Odikro of Akwatia representing the Stool of Akwatia, Defendants-Respondents herein, their Solicitor or Agent of Accra.

40

In the West African Court of Appeal.

No. 10. Order of Court (Substitution).

No. 10. Order of Court (Substitution). 15th June, 1948.

IN THE WEST AFRICAN COURT OF APPEAL. GOLD COAST SESSION, ACCRA.

(L.S.)

(Sgd.) J. LUCIE-SMITH Presiding Judge.

Civil Appeal No. 103/1947.

J. E. TURKSON Plaintiff-Appellant v.

- 1. BARIMAH KWAKU AMOAH II, Ohene of Asamankese, representing the Stool of Asamankese, and 10
2. KOFI ADU, Odikro of Akwatia representing the Stool of Akwatia Defendants-Respondents.

WHEREAS the above-named appeal is now pending in the West African Court of Appeal, Gold Coast Session, Accra wherein J. E. Turkson, is the Appellant and (1) Barimah Kwaku Amoah II, Ohene of Asamankese representing the Stool of Asamankese and (2) Kofi Adu, Odikro of Akwatia representing the Stool of Akwatia, are the Respondents :

AND WHEREAS the record has since become defective by reason of the destoolment of the said Respondents. 20

AND WHEREAS application has this day been made to this Court by the Plaintiff-Appellant, J. E. Turkson for (1) Bafo Adu-Brako II (Mankralo), now acting as Ohene of Asamankese and (2) Bafo Kofi Bempon Odikro of Akwatia to be substituted or entered on the record in place of the said (1) Barimah Kwaku Amoah II, Ohene of Asamankese, representing the Stool of Asamankese and (2) Kofi Adu, Odikro of Akwatia representing the Stool of Akwatia, since destooled :

NOW THEREFORE IT IS HEREBY ORDERED that the said (1) Bafo Adu-Brako II (Mankralo), Acting as the Ohene of Asamankese and (2) Bafo Kofi Bempon, Odikro of Akwatia be substituted or entered on the record 30 in place of the said (1) Barimah Kwaku Amoah II, Ohene of Asamankese, representing the Stool of Asamankese and (2) Kofi Adu, Odikro of Akwatia representing the Stool of Akwatia now destooled and they are hereby substituted or entered therefore accordingly.

AND IT IS FURTHER ORDERED that copies of this Order be served on the said (1) Bafo Adu-Brako II (Mankralo), now acting as the Ohene of Asamankese and (2) Bafo Kofi Bempon, Odikro of Akwatia.

Dated at Victoriaborg, Accra, this 15th day of June, 1948.

(Sgd.) D. H. SHACKLES, Registrar, 40 West African Court of Appeal.

No. 11.

Order of the Court (Substitution).

In the West African Court of Appeal.

IN THE WEST AFRICAN COURT OF APPEAL.
GOLD COAST SESSION, ACCRA.

No. 11.
Order of the Court (Substitution).
8th December, 1948.

(L.S.)

(Sgd.) A. C. SMITH,
Ag. Chief Justice.

Civil Appeal.
No. 103/1947.

J. E. TURKSON *Plaintiff-Appellant*

v.

- 10 1. BAFO ADU-BRAKO II (Mankralo) acting as Ohene of Asamankese, representing the Stool of Asamankese, and
- 2. BAFO KOFI BEMPON, Odikro of Akwatia representing the Stool of Akwatia *Defendants-Respondents.*

WHEREAS the above-named appeal is now pending in the West African Court of Appeal :

AND WHEREAS the record has since become defective by reason of the election and installation of Amoah Ababio as Ohene of Asamankese in place of the above-named Bafo Adu-Brako II, Mankralo, acting Ohene of Asamankese :

- 20 AND WHEREAS application has this day been made to this Court by the Plaintiff-Appellant herein for the substitution in the record of the said Amoah Ababio in place of the said Bafo Adu-Brako II, Mankralo, acting Ohene of Asamankese :

NOW THEREFORE IT IS HEREBY ORDERED that the said Amoah Ababio, Ohene of Asamankese representing the stool of Asamankese be substituted or entered on the record in place of the said Bafo Adu-Brako II accordingly :

AND IT IS FURTHER ORDERED that a copy of this Order be served on the said Amoah Ababio, Ohene of Asamankese forthwith.

Given under my hand and the Seal of this Court this 8th day of 30 December, 1948.

(Sgd.) D. H. SHACKLES,
Registrar,
West African Court of Appeal.

In the West African Court of Appeal.

No. 12.

Appeal Court Notes on Arguments.

No. 12. Appeal Court Notes on Arguments. 18th January, 1949.

18.1.49.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at VICTORIABORG, ACCRA, on Tuesday, the 18th day of January, 1949 : before Their Honours SIR HENRY WILLIAM BUTLER BLACKALL, P., ALLAN CHALMERS SMITH, Ag. C.J., Gold Coast, and ARTHUR WERNER LEWEY, J.A.

103/47.

TURKSON

10

v.

ABABIO OHENE of Asamankese
BAFO KOFI BEMPON Odikro of Akwatia.

HEWARD-MILLS (WHITAKER and BENJAMIN with him) for Appellant.
BOSSMAN for both Respondents.

Submission of Heward-Mills for Appellants.

HEWARD-MILLS : Ground (2) Apart from Certificate Court had no jurisdiction therefore its jurisdiction was confined to matters set out in Certificate refers to preamble to Cap. 78 shows intention to vest control of Stool property in Governor. *R. v. Bottril Ex Parte* 1946 All E.R. K.B. Ap. 1946.

20

Submission of Bossman for Respondents.

BOSSMAN : Governor-in-Council's Certificate should be specially pleaded.
The terms of reference in Certificate need not necessarily exclude consideration of whole of circumstances and whether anything is due at all. If the only matter Governor-in-Council was doubt was actual amount he would have referred matter to Accountant or Clerk of Council. Intention must therefore have been for Court to go into whole circumstances.

HEWARD-MILLS : Even question of amount would have to go to Court because of paragraph (iii) of the proviso. There could not be execution if an ordinary clerk went into the matter.

30

Judgment reserved on this ground.



No. 13.

Judgment.

In the West African Court of Appeal.

9th February, 1949.

No. 13.
Judgment.
9th
February,
1949.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at VICTORIABORG, ACCRA, on Wednesday, the 9th day of February, 1949 : before Their Honours SIR HENRY WILLIAM BUTLER BLACKALL, President, ALLAN CHALMERS SMITH acting Chief Justice, Gold Coast, and ARTHUR WERNER LEWEY, Justice of Appeal.

Civil Appeal

No. 103/1947.

10

JOHN EDMUND TURKSON *Plaintiff-Appellant*
and

1. AMOAH ABABIO, Ohene of Asamankese representing the Stool of Asamankese
2. BAFO KOFI BEMPON, Odikro of Akwatia representing the Stool of Akwatia *Defendants-Respondents.*

20

A. W. LEWEY, Justice of Appeal: In this appeal, the Appellant, in paragraph 2 of his Grounds of Appeal, questions the jurisdiction of the trial Judge to determine certain issues upon which the Judge found against the Appellant on his claim. That is a point of fundamental importance which this Court has thought it best to decide before dealing with the remaining grounds of appeal, for if the Appellant succeeds on that ground, the judgment of the Court below cannot stand.

Judgment
of Justice
of Appeal,
A. W.
Lewey.

The Appellant's claim was for an account of certain mining rents and royalties received by the Respondents and of the commission payable to the Appellant in respect thereof, and for payment of the amount found to be due to him on the taking of such account. He founded his claim upon an agreement alleged to have been entered into between the Appellant and the Respondents in or about the month of August, 1921.

30

The Writ of Summons (which was ordered to be taken as the Statement of Claim) did not indicate the existence of any statutory restriction as to the issues for determination by the Court, but the first witness called for the Appellant produced a Certificate of the Governor-in-Council which related to the Appellant's claim, and which had been made by virtue of the provisions of Section 6 of the Asamankese Division Regulation Ordinance (Cap. 78). Thereafter the hearing proceeded as though the merits of the claim were proper to be dealt with, and evidence in great detail was heard as to the history and validity of the agreement upon which the Appellant based his claim. In his final address, however,

40

Counsel for the Appellant submitted that the effect of the Certificate

In the West African Court of Appeal.

No. 13.
Judgment.
9th
February,
1949.—
continued.

was to restrict the issues at the trial to the matter referred to in the Certificate, namely the ascertainment of the amount due to the Appellant on his claim, and that the Court therefore had no jurisdiction to conduct a mere extended inquiry into the claim itself.

The learned trial Judge did not accept that contention, and he was of the opinion that the jurisdiction of the Court was not so limited by the Certificate or by the provisions of Cap. 78 under which it was issued. In the result, the learned Judge found that the Appellant had failed in his claim, and that no money was due to him in respect thereto.

I desire to say at once that, in my view, the learned Judge was wrong 10
in rejecting the contention of the Appellant as to the effect of the Certificate of the Governor-in-Council, and in his construction of the amended Section 6 of Cap. 78.

What was the purpose and effect of Section 6 of Cap. 78 before it was amended by the Asamankese Division Regulation (Amendment) Ordinance, 1945 (No. 5 of 1945) ? The purpose of the section was clearly to protect the revenues of the Stools in the Asamankese Division by barring the recovery of existing debts and by prohibiting unauthorized expenditure in the future. Those objects were achieved by providing that no action should lie against a Stool or the officer responsible for the Stool revenue. 20
The effect of that was to deprive the Courts of jurisdiction to entertain any such action.

The amending Ordinance 5 of 1945 added a proviso to Section 6 of the principal Ordinance. It modified the operation of the section in the case of old standing claims which had been the subject of a statutory enquiry and which the Governor had thought fit to refer to the Executive Council for consideration as to whether the claim, or some particular aspect of it, should be adjudicated upon by the Courts. The proviso, therefore, modified the previous absolute ouster of the Courts' jurisdiction by allowing the Courts to adjudicate where the Governor-in-Council 30
considered such a course to be desirable and issued his Certificate to that effect. Furthermore, the proviso refers in detail to three aspects of such a claim, any one of which may, by the terms and the authority of a Certificate be made the subject of an action against the Stool. Those three aspects are—

- (a) the claim itself ; or
- (b) any part of the claim ; or
- (c) the amount which ought to be paid on the claim.

It seems to me clear therefore, that the effect of the 1945 amendment was to restore to the Courts, in cases where the statutory requirements 40
are satisfied, a measure of the jurisdiction of which they had been deprived by the original provisions of Section 6 of Cap. 78. The jurisdiction so restored is however, in my view, strictly limited to that particular aspect of the matter which, by the terms of the Certificate, is expressly left to the Courts for adjudication.

In the case to which this appeal relates, it is plain from the evidence that the Appellant had submitted a claim founded upon an alleged arrangement entered into at a date which brought it within the ambit of the 1945 amendment, that his claim became the subject of a statutory enquiry, and that the Governor-in-Council subsequently issued the Certificate which was put in evidence at the trial. The Certificate reads as follows :—

In the West African Court of Appeal.

No. 13.
Judgment.
9th
February,
1949—
continued

10 “ WHEREAS a claim by John Edmund Turkson against the
“ Asamangkese and Akwatia Stools for moneys alleged to be due
“ to him from the said Stools under an agreement made in or
“ about the year 1921, whereby the said Stools agreed to pay to
“ the said John Edmund Turkson 1/- in the £ of all moneys
“ received by the said Stools in respect of certain concession
“ granted to the Consolidated African Selection Trust Limited
“ and the West African Diamond Syndicate, has been referred for
“ consideration to the Executive Council pursuant to the terms
“ of the proviso to subsection (2) of Section 6 of the Asamangkese
“ Division Regulation Ordinance (Cap 78).

20 “ AND WHEREAS the Governor-in-Council considers it desirable
“ that the amount which ought to be paid in respect to the said
“ claim should be adjudicated upon in an action against the said
“ Stools :

 “ NOW THEREFORE pursuant to the terms of paragraph (ii)
“ of the proviso to subsection (2) of section 6 aforesaid, 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 said John Edmund
“ Turkson against the said Stools.”

30 It is to be observed that the matter to be adjudicated upon by the
Court is simply “ the amount which ought to be paid in respect to the said
“ claim ” and not the validity of the claim itself.

The learned Judge however, as I have already indicated, was not prepared to interpret the Ordinance and the Certificate in that way, and proceeded to inquire into the claim itself and the agreement upon which the Appellant relied.

40 It is true that the learned Judge concluded his judgment with the
following words “ I find that no money is due to the Plaintiff in respect
“ of his claim in this suit,” and that if one took those words out of their
context it might appear that the finding of the Judge was within the terms
of the Certificate. Moreover, the mere fact that the Judge examined the
agreement upon which the claim was based would not of itself lead to the
conclusion that he exceeded his jurisdiction, since it was inevitable that
he should have examined the nature of the claim in order to ascertain
the amount due. But a study of the judgment is fatal to any such line of

In the West African Court of Appeal.

No. 13.
Judgment
9th
February,
1949—
continued.

argument, since it is apparent that the learned Judge went farther than this, for he made it plain that he considered he had jurisdiction to adjudicate in detail upon the claim and to examine the legal effect of the contract relied on by the Appellant, and that he rejected the contention that he should proceed on the basis that the claim had already been admitted by the Governor-in-Council.

As the learned Judge was, in my view wrong in arriving at that conclusion, it follows that he acted in excess of the jurisdiction conferred upon him. I have considered whether it would be possible for this Court to deal with the judgment so that the part which relates to the validity of the agreement could be severed from the finding that no money was due on the claim. But I have come to the conclusion that it is not possible to follow such a course, not only because the judgment must be read as a whole, but also because it is beyond question that the Judge's findings were based on the assumption that he had full jurisdiction to try the whole claim upon its merits and to adjudicate upon its validity, and that his finding that no money was due was the direct consequence of his finding that the claim itself had not been established. 10

In my view, therefore, the appeal must be allowed, the order of the trial Judge set aside and the case should be remitted to the Court below to determine the sole issue which has been left to the Court by the Certificate of the Governor-in-Council, namely, the amount which ought to be paid in respect to the Appellant's claim. 20

(Sgd.) ARTHUR W. LEWEY,
Justice of Appeal.

Judgment
of President
Sir H. W. B
Blackall.

Sir H. W. B. BLACKALL, President: I have read the judgment of my brother Lewey and I agree with his interpretation of the Certificate of the Governor-in-Council. I do so with some reluctance for I doubt if members of the Executive Council, when issuing the Certificate, fully realised that they were tying the hands of the Asamankese and Akwatia Stools by precluding them from contesting the Appellant's claim on the merits, or impugning the validity of the agreement upon which it is based. Moreover, it seems somewhat Gilbertian for Coussey, J., to be directed to ascertain how much ought to be paid to the Appellant seeing that the learned Judge, after a full consideration of the whole matter, came to the conclusion that nothing was due to him. 30

If then the Certificate were susceptible of two interpretations I would adopt that of the Court below, for where the language admits of two constructions one of which would lead to injustice or absurdity, the Courts act upon the view that such a result could not have been intended, unless the intention had been manifest in express words. Further, "if the words are ambiguous and one construction leads to enormous inconvenience and another construction does not, the one that leads to least inconvenience is to be preferred" (*Reid v. Reid* 1886 31 Ch. D., 402). 40

But the argument "*ab inconvenienti*" is only admissible in construction where the meaning of the instrument is obscure. "If" as Jervis, C.J., said in *Abley v. Dale* (1851 20 L.J.C. p. 233) "the precise words used are plain and unambiguous, we are bound to construe them in their ordinary sense, even though it does lead to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure, but we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning."

In the West African Court of Appeal. —
No. 13.
Judgment.
9th
February,
1949—
continued.

Now in my view there is no ambiguity in the proviso to Section 6 of the Asamankese Division Regulation Ordinance. It envisages that the Governor may entertain doubts on all or any of the points mentioned in the first paragraph and if he does, it empowers him to refer them to the Executive Council for consideration. If that body is of opinion that it is desirable in the interests of Justice that any of those points should be adjudicated upon in an action against the Stool, the Governor-in-Council issues a Certificate specifying the matter upon which a Court may adjudicate. The effect of the Certificate, in my opinion, is to lift the ban upon legal proceedings imposed by Section 6 to the extent mentioned in the Certificate but no further. If the Certificate sets out that the claim or any part of it, may be adjudicated upon in an action, the Court hearing it may enquire into and decide upon the validity of the claim or of the part specified, as fully and freely as it would deal with any other claim coming before the Court. But if (as in the present case) the terms of the Certificate restrict the adjudication to the question of the amount to be paid to the claimant, the Court is placed in a position more analogous to that of an arbitrator, who must not purport to determine matters not comprised in the submission. In my view then the trial Judge in the present case had only a limited authority viz. to adjudicate upon the matter set out in the Certificate, and it was not competent for him to enquire into the validity of the claim itself. I agree therefore that the appeal should be allowed.

(Sgd.) H. W. B. BLACKALL.
P.

A. C. SMITH, Acting Chief Justice : I concur.

(Sgd.) A. C. SMITH.
Ag. C.J. Judgment
of Acting
Chief
Justice

Counsel—

Mr. A. G. HEWARD-MILLS (WHITAKER and BENJAMIN with him)
40 for Appellant.

Mr. K. A. BOSSMAN for Respondents.

In the West
African
Court of
Appeal.

No. 14.

Certificate of Judgment.

No. 14.
Certificate
of
Judgment.
9th
February,
1949.

IN THE WEST AFRICAN COURT OF APPEAL.

Appeal from the Judgment of COUSSEY, J., of the Divisional Court,
Eastern Judicial Division, Accra, dated the 1st day of October, 1947.

JOHN EDMUND TURKSON *Plaintiff-Appellant*

v.

1. AMOAH ABABIO, Ohene of Asamankese representing the stool of Asamankese
2. BAFO KOFI BEMPON, Odikro of Akwatia representing the Stool of Akwatia *Defendants-Respondents.* 10

This appeal coming on for hearing on the 18th day of January, 1949, before Blackall, P., Smith, Ag. C.J., Gold Coast, and Lewey, J.A., in the presence of Heward-Mills (Whitaker and Benjamin with him) for the Appellant and Bossman for the Respondents.

I HEREBY CERTIFY that a Judgment was given as follows:—

The appeal is allowed, the order of the trial Judge is set aside and it is ordered that the case be remitted to the Court below to determine the sole issue which has been left to the Court by the Certificate of the Governor-in-Council, namely, 20 the amount which ought to be paid in respect of the Appellant's claim.

The Appellant is awarded costs in this Court assessed at £65.15.2 and in the Court below half costs, i.e. Counsel's fee 35 guineas plus half taxed costs.

The Court below to carry out.

Given under my hand and the Seal of the Court this 9th day of February, 1949.

(Sgd.) H. W. B. BLACKALL,
President. 30

(L.S.)

No. 15.
Court Notes on Costs of Appeal.

In the West
African
Court of
Appeal.

9th February, 1949.

Parties as before.

Judgment read by members of Court.
Appeal allowed.

No. 15.
Court
Notes on
Costs of
Appeal.
9th
February,
1949.

Re Costs :

10 **BOSSMAN** : Cannot resist costs to Appellant in this Court. But in
view of the way Appellant claimed and conducted his case in Court below
i.e. went into the whole claim there should be no order for costs in Court
below. He should have relied only on the Statutory Certificate.

Submission
by Bossman
for Re-
spondents.

HEWARD-MILLS : Our claim was for an account record.

We produced Certificate at outset other side objected.

20 Appellant's costs in this Court assessed at £65. 15. 2 and in Court
below Appellant awarded half costs i.e. Counsel's fee 35 guineas plus half
taxed costs.

Submission
by Heward-
Mills for
Appellants.

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

P.

No. 16.

30 Order allowing final leave to Appeal to His Majesty in Council.

13th June 1950.

Motion.

App. 103/47.

No. 16.
Order
allowing
final leave
to Appeal.
13th
June,
1950.

TURKSON

v.

ABABIO & BEMPON.

BOSSMAN for Appellants.

Final leave granted.

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

President.

Exhibits.

EXHIBITS.

“ B.”
Letter,
Com-
missioner
for the
Eastern
Province to
J. E.
Turkson.
29th July.
1940.

**Plaintiff's Exhibit “ B.”—Letter, Commissioner Eastern Province to
J. E. Turkson.**

No. 3343/1724/40/S.F.J.

Provincial Commissioner's Office,
Koforidua.

29 July, 1940.

Sir,

Petition by J. E. Turkson.

In reply to your petition dated 26th March, 1940, I have the honour **10**
to request you to place your claim under Regulation 11 (1) of the
Asamangese Division Treasuries Regulations (Chapter 78) formally before
the Prescribed Officer (the District Commissioner, Kibi), whom I am
instructing to hold an enquiry at his earliest convenience.

I have the honour to be,

Sir,

Your obedient Servant,

(Sgd.) W. R. GOSLING,
Acting Commissioner Eastern Province.

Mr. J. E. Turkson,
Asamangese,
Thro' The District Commissioner,
Birim (Akim Abuakwa) District,
Kibi.

20

A.” **Plaintiff's Exhibit “ A.”—Governor's Certificate for leave to Commence
Proceedings.**

Governor's
Certificate
for leave to
commence
proceedings.
22nd
October,
1945.

THE ASAMANGKESE DIVISION REGULATION ORDINANCE

(Cap. 78).

CERTIFICATE

(under section 6 of the Ordinance).

30

WHEREAS a claim by John Edmund Turkson against the Asamangese
and Akwatia Stools for moneys alleged to be due to him from the said

Stools under an agreement made in or about the year 1921, whereby the said Stools agreed to pay to the said John Edmund Turkson 1/- in the £1 of all moneys received by the said Stools in respect of certain concession granted to the Consolidated African Selection Trust Limited and the West African Diamond Syndicate, has been referred for consideration to the Executive Council pursuant to the terms of the proviso to subsection (2) of section 6 of the Asamangkese Division Regulation Ordinance (Cap. 78) :

Exhibits.
 —
 A.”
 Governor’s
 Certificate
 for leave to
 commence
 proceedings.
 22nd
 October,
 1945—
continued.

10 AND WHEREAS the Governor in Council considers it desirable that the amount which ought to be paid in respect to the said claim should be adjudicated upon in an action against the said Stools :

NOW THEREFORE pursuant to the terms of paragraph (ii) of the proviso to subsection (2) of section 6 aforesaid, 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 said John Edmund Turkson against the said Stools.

Issued by the Governor in Council this 22nd day of October, 1945.

(Sgd.) M. E. THOMPSON,
Clerk of Executive Council.

20 Certified true copy :

(Sgd.) ? ? ?

Clerk of the Executive Council.

17th March, 1947.

In the Privy Council.

No. 48 of 1950.

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

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.

RECORD OF PROCEEDINGS

SOLE, SAWBRIDGE & CO.,
54-62, New Broad Street,
London, E.C.2,
Solicitors for the Appellants.

A. L. BRYDEN & WILLIAMS,
53, Victoria Street,
Westminster, S.W.1,
Solicitors for the Respondent.