

72.1931

UNIVERSITY OF LONDON

INSTITUTE OF ADVANCED
LEGAL STUDIES
17, RUSSELL SQUARE
LONDON, WC1B 5DR
TEL 0207 832 5000

PART I.
SECTION "A."

SIMON RATSHOSA

VERSUS

CHIEF TSHEKEDI KHAMA.

INTERLOCUTORY APPLICATION.

SUMMONS.

PLEA.

COUNTERCLAIM.

EVIDENCE.

JUDGMENT.

Magistrate's Court,
Interlocutory
Application.

INTERLOCUTORY APPLICATION WHICH APPLIED TO
BOTH CASES.

MAGISTRATE'S ORDER.

Mr. Advocate Lang applies for permission to appear and puts forward that Proclamation No. 2 of 1923 is *ultra vires*. Also that amounts involved are very large—a doubt as to Native Law and Custom—matter may go further and therefore desirable for legal assistance.

Court bars Counsel on each side in terms of Proclamation No. 2 of 1923. Dr. Lang states he will simply watch case for his clients. 10

Mr. Attorney Minchin puts forward that Counsel may not appear at all or act on behalf of clients.

Court decides that there is to be no intercourse or communication between lawyers and their clients and that Counsel are now no longer appearing in Court as such and are in role of ordinary lay members of public if they wish to attend Court.

Dr. Lang lodges an appeal and wishes the decision of the Resident Commissioner's Court as to the true definition of Section 4 of Proclamation No. 2 of 1923—the words “to appear, plead or act on behalf of any other person in any Court of the Bechuanaland Protectorate.” Dr. Lang contends he may sit next to clients and advise them. 20

Plaintiffs after consultation with Court agree to carry on without Counsel and not to lodge an appeal. Plaintiffs agree to an adjournment until 4.1.27.

Chief Tshekedi does not agree to such a short postponement and asks that March be set down as time.

Court adjourns cases *sine die* to be held at a place to be decided later. 30

(Signed) G. E. NETTLETON.
R.M.

Court resumes hearing 21st March, 1928,

PLAINTIFF'S SUMMONS.

Magistrate's Court,
No. 1
Summons,
5th December, 1927.

COURT of the ADDITIONAL RESIDENT MAGISTRATE
for the NGWATO DISTRICT of the Bechuanaland Protectorate.

Messenger of the Court.

SUMMON CHIEF TSHEKEDI KHAMA (hereinafter styled the Defendant) that he appear before the Court of the Additional Resident Magistrate of the said District, to be holden at Palapye Road on Monday the twelfth day of December, 1927, at nine o'clock in the Forenoon, with his witnesses (if he have any) to shew why he hath not paid to

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SIMON RATSHOSA (hereinafter styled the Plaintiff) presently of Francistown the various sums set out in Annexure " A " hereto attached and delivered the cattle claimed in Claims 4, 5, 6 and 7 of the said Annexure, which Annexure the Plaintiff prays may be considered as herein inserted, which said sums and cattle although demanded the Defendant refuses and neglects to pay and deliver, wherefore the Plaintiff prays that he may be adjudged to pay and deliver the same, with costs of suit.

AND serve on the said CHIEF TSHEKEDI KHAMA a copy of this summons and of the said Annexure " A " and return you 20 on that day, to the said Court, what you have done on this summons.

Monday, the 5th day of December, 1927.

S. LANGTON,
Clerk of the Court.

Magistrate's Court,
No. 1
Summons
Annexure.

ANNEXURE " A." S. RATSHOSA.

CLAIM 1.—The sum of £2,732 2s. 8½d. being the amount claimed by the Plaintiff in regard to the destruction of property belonging to the Plaintiff and situate at Serowe for which the said Plaintiff holds the said Defendant liable.

CLAIM 2.—The sum of £1,927 being the amount of damages sustained by the Plaintiff as a result of the loss and destruction of certain cattle being his property which said cattle were left in the charge and custody of the said Defendant.

CLAIM 3.—The sum of £30 being the value of one Scotch 10
Cart destroyed by the Chief or his duly authorised agents in or about the month of March, 1927, the said cart being property of the Plaintiff.

CLAIM 4.—The delivery of a cattle post in the district of Nata originating from eleven cows received in exchange for a mare called " Maiden Fair " and her colt from the late Chief Secgoma, which said cattle post the said Chief wrongfully and unlawfully took possession of.

CLAIM 5.—The delivery of a cattle post, the property of the Plaintiff, situate in the district of Nata originating from nine cows 20
and one bull given to the Plaintiff by the late Chief Secgoma in or about the year 1913, which said cattle post the said Chief wrongfully and unlawfully took possession of.

CLAIM 6.—The delivery of a cattle post originating from nine cows exchanged with the late Chief Secgoma for a horse in or about the year 1923, which said cattle post the said Chief wrongfully and unlawfully took possession of. The locality of this cattle post is unknown to the Plaintiff.

CLAIM 7.—The delivery of the progeny of fifteen ewes, the property of the Plaintiff, the said ewes having been purchased by 30
the Plaintiff from Mr. Royle at Nakati in or about the year 1918, which said sheep the said Chief wrongfully and unlawfully took possession of.

1/- Stamp.

MESSENGER'S RETURN.

Magistrate's Court,
No. 2
Messenger's Return,
5th December, 1927.

I hereby certify that on this fifth (5th) day of December, 1927,
I duly served a true copy of this summons* upon the within named
Chief Tshekedi Khama, at his Kgotla at Serowe, by handing the
same and explaining the nature and exigencies thereof.

A. MAHLOANE,
Deputy Messenger of Court.

Serowe,
5-12-27.

* And of particulars of claim attached thereto.

10

A.M.

Magistrate's Court,
No. 3
Defendant's
Plea.

DEFENDANT'S PLEA.

Defendant denies liability on all claims.

Magistrate's Court,
No. 4
Defendant's
Counterclaim.

DEFENDANT'S COUNTERCLAIM.

Defendant counterclaims for £4,689 2s. 8½d., the amount of Plaintiff's Claims Nos. 1, 2 and 3 plus £38 17s. 6d. medical and hospital accounts for treatment of followers wounded by Plaintiff plus all the cattle and small stock claimed by Plaintiff as damages for the injuries received by Defendant and his followers for wounds inflicted by Plaintiff and his brother Obeditse by their murderous assault with firearms upon Defendant on the 5th April, 1926. 10

Magistrate's Court,
Plaintiff's Evidence,
Simon Ratshosa,
Examination-in-Chief.

SIMON RATSHOSA, duly sworn, states:

CLAIM 1.

In regard to Claim 1, I claim for my house and property which was destroyed by the Defendant on the 5th and 6th April, 1927. I do not know what legal right he had to do this.

The property destroyed included:—

IN STUDY.

	£	s.	d.
4 Enlarged Photos from the Art Gallery, Cape Town	25	10	0
Small Pictures	5	10	0
Photo Album containing photos	5	0	0
Table Cloth	2	10	0
Duplicator from Maskew and Miller	5	10	0
1 Heating Stove from Mr. Smith	1	10	0
1 Set Books "Self Educator" from Hortors Johannesburg	15	0	0
1 Set Literature about 10 books	10	10	0
1 Bookshelf from Rev. Wilibur	5	10	0
1 Bookshelf from P. A. Mackintosh	5	0	0
1 Bookshelf from O'Reilly	3	0	0
Above 3 Bookshelves contained books to the value of	100	0	0
1 Umbrella Stand	2	10	0
2 Horse Halters	2	0	0
1 Umbrella	1	15	0
1 Walking Stick ebony	1	10	0
1 Walking Stick silver engraved	1	5	0
1 Tin Trunk from F. Jacob	15	0	0
1 Settee with 6 Chairs from F. Jacob	8	8	0
1 Madeira Chair from Dr. Mackintosh	3	10	0
1 Sewing Machine from Chief Secgoma	7	10	0
1 Waste Paper Basket	5	0	0
1 Bible	15	6	0
1 Bible	10	0	0
1 Hymn Book	10	6	0
1 Bible	5	6	0
1 New Testament	12	6	0
1 Prayer Book	1	0	0
1 Hymn Book	10	0	0
1 Linoleum Carpet from D. Isaacs	5	5	0
Old Manuscript written by old Ratshosa and Tiro	500	0	0
1 Letter Bag	1	15	0

IN DINING ROOM AND BEDROOM.

Photos	2	10	0
Plates, Dishes, etc.	6	10	0
Sickles	15	0	0
1 Bedstead Complete with Mattress, Sheets, etc.	30	0	0
1 Kaross	10	0	0
1 Kaross	7	0	0
2 Mats	2	15	0
1 Mauser Pistol with Holster and Belt	1	10	0
1 Dinner Waggon	5	10	0
1 Dinner Set	4	4	0

		SIMON RATSHOSA, duly sworn, states (<i>continued</i>):					£	s.	d.
Magistrate's Court, Plaintiff's Evidence, Simon Ratshosa, Examination-in-Chief.	1 Doz. Knives and Forks (Rodgers)	...	...	...	...	6	10	0
	2 Silver Trays	...	...	...	...	10	10	0
	3 Teapots	...	...	...	...	1	10	0
	2 Vases	...	...	...	...	1	15	0
	1 Silver Flower Stand from Garlicks	...	...	...	...	3	3	0
	1 Enlarged Photo	...	...	...	...	3	0	0
	Photos	...	...	...	...	2	15	0
	1 Washstand complete	...	...	...	...	3	10	0
	1 Tin Trunk	...	...	...	...	2	10	0
	1 Tin Trunk	...	...	...	...	1	10	0
	1 Tin Trunk	...	...	...	...	2	0	0
	1 Tin Trunk	...	...	...	...	1	10	0
	1 Suit Case	...	...	...	...	4	15	0
	1 Gents Suit	...	...	...	...	10	10	0
	1 Gents Suit	...	...	...	...	8	8	0
	1 Gents Suit	...	...	...	...	12	12	0
	1 Gents Suit	...	...	...	...	4	10	0
	1 Gents Suit	...	...	...	...	9	9	0
	1 Gents Suit	...	...	...	...	5	0	0
	1 Gents Suit	...	...	...	...	7	7	0
	2 Undershirts	...	...	...	...	1	0	0
	1 Verandah Sun Blind	...	...	...	...	1	1	0
	1 Grip	...	...	...	...	1	5	0
	1 Holdall	...	...	...	...	1	7	6
	1 Blanket Strap	...	...	...	...		12	6
	1 Blanket Strap	...	...	...	...		5	6
	1 pr. Braces	...	...	...	...		6	6
	2 Fans	...	...	...	...		5	6
	1 Doz. Soft Collars	...	...	...	...		12	0
	3 Ties	...	...	...	...		7	6
	4 Ties	...	...	...	...		10	0
	1 pr. Gents Boots	...	...	...	...	2	2	0
	1 pr. Gents Boots	...	...	...	...	1	15	0
	1 pr. Gents Boots	...	...	...	...	1	5	0
	1 pr. Leggings	...	...	...	...	1	10	0
	1 pr. Leggings	...	...	...	...	1	5	0
	2 Legging Straps	...	...	...	...		5	0
	10 yards Casement Cloth	...	...	...	...	2	10	0
	Goods bought from Delton and Reid	...	...	...	...	38	0	0
	1 Gents Watch	...	...	...	...	3	3	0
	1 18 ct. Gold Watch	...	...	...	...	12	12	0
	1 Ladies 9 ct. Gold Watch	...	...	...	...	5	5	0
	1 Ladies Silver Watch	...	...	...	...	3	10	0
	1 Ladies 18 ct. Gold Necklace	...	...	...	...	8	8	0
	1 Ladies 9 ct. Gold Necklace	...	...	...	...	3	3	0
3 Locketts	...	...	...	...	3	15	0	
1 18 ct. Gold Bracelet	...	...	...	...	21	10	0	
1 Wedding Ring 9 ct. Gold	...	...	...	...	1	10	0	
1 Diamond Ring	...	...	...	...	7	7	0	
1 Gold Ring	...	...	...	...	2	2	0	
1 Ladies Costume	...	...	...	...	6	0	0	
1 Ladies Costume	...	...	...	...	6	0	0	
1 Wedding Dress	...	...	...	...	9	9	0	
1 pr. White Shoes	...	...	...	...	1	10	0	
1 Rondavel	...	...	...	...	15	0	0	

Magistrate's Court, Plaintiff's Evidence, Simon Ratshosa, Examination-in-Chief.		SIMON RATSHOSA, duly sworn, states (<i>continued</i>):					£	s.	d.
	1 Set Cape Cart Harness	...	...	...	...	5	10	0
	1 Saddle	...	...	...	...	5	10	0
	1 Saddle	...	...	...	...	3	10	0
	4 Horse Halters	...	...	...	...	1	0	0
	1 Bridle	...	...	...	...	1	10	0
	3 Reims	...	...	...	...		3	0
	2 Knee Halters	...	...	...	...		5	0
	100 lengths Ceiling Board	...	...	...	...	15	0	0
	4 Clay Pots	...	...	...	...		6	0
	8 Empty Bags	...	...	...	...		12	0
	1 Saddle Bracket	...	...	...	...		10	0
	1 Rondavel (No. 2)	...	...	...	...	10	0	0
	3 Racing Bridles	...	...	...	...	2	15	6
	Mats	...	...	...	...	1	0	0
	1 Stool	...	...	...	...		5	0
	1 Bucksail	...	...	...	...	5	10	0
	6 Yokes	...	...	...	...	3	0	0
	1 Rondavel (No. 3)	...	...	...	...	5	0	0
	2 Clay Pots	...	...	...	...		3	0
	1 Frying Pan	...	...	...	...		3	6
	1 Pot	...	...	...	...	2	0	0
	1 Saucepan	...	...	...	...		6	6
	2 Dishes	...	...	...	...		5	0
	3 Blankets	...	...	...	...		15	0
	1 Sesigo containing 5 bags Corn	...	...	...	...	3	15	0
	1 Sesigo containing 25 bags Mealies	...	...	...	...	15	0	0
	1 Breeches Bedford	...	...	...	...	4	4	0
	1 Breeches	...	...	...	...	3	3	0
	1 Suit	...	...	...	...	7	7	0
	1 Blazer	...	...	...	...	1	10	0
	1 Uniform complete from Stuttafords	...	...	...	...	22	0	0
	1 Suit	...	...	...	...	10	10	0
	2 Top Hats	...	...	...	...	2	15	0
	1 Students Gown and Cap	...	...	...	...	5	5	0
	1 Overcoat	...	...	...	...	4	0	0
	1 pr. Trousers	...	...	...	...	2	2	0
	1 pr. Trousers	...	...	...	...	1	10	0
	1 Hat	...	...	...	...	2	2	0
	1 Hat	...	...	...	...	2	9	6
	1 Hat	...	...	...	...	2	10	0
	1 Hat	...	...	...	...	1	16	0
	1 Deck Chair	...	...	...	...	1	5	0
	1 Folding Chair	...	...	...	...		15	0
	1 Settee	...	...	...	...	3	15	0
	½ Dozen Muralo	...	...	...	...	2	5	0
	1 Ladies Coat	...	...	...	...	2	2	0
	1 Martingale	...	...	...	...	1	15	0
	1 Martingale	...	...	...	...	1	5	0
	½ bags Sugar	...	...	...	...		15	0
	2 Provision Baskets	...	...	...	...	3	10	0
	1 Linoleum Carpet	...	...	...	...	5	0	0
	1 Linoleum Carpet	...	...	...	...	5	10	0
	2 Bread Knives	...	...	...	...		12	6
	Drugs	...	...	...	...	3	10	0

Magistrate's Court,
Plaintiff's Evidence,
Simon Ratshosa,
Examination-in-Chief.

SIMON RATSHOSA, duly sworn, states (*continued*) :

	£	s.	d.
2 Bed Chambers	10 0
2 Khaki Shirts	1 5 0
1 Silk Shirt	1 1 0
2 Silk Shirts	1 4 0
3 Silk Shirts	1 5 0
4 Ladies Stockings	1 12 6
6 Ladies Undervests	1 7 6
2 Double Bedsheets	3 5 0
6 Ladies Undervest	3 12 0
1 Bedspread	1 15 0
4 Chemises	1 10 0
1 Scarf	19 6
3 Scarf	18 0
2 Scarves	17 6
1 Frock	5 5 0
2 Shirts	2 2 0
3 Blouses	2 5 0
1 Spanish Shawl	6 6 0
2 Shoes	3 15 0
4 Shoes	2 8 0
7 prs. Stockings	14 0
3 Frocks	8 0 0
$\frac{1}{2}$ Dozen Dresses	3 12 0
3 Night Dresses	1 12 6
1 Towel	1 4 0
$\frac{1}{2}$ Dozen Towels	18 0
1 Mat	5 0 0
1 Set Irons	14 0
2 pairs Scissors	10 0
1 Lamp	2 10 0
1 Stretcher	1 10 0
6 Flax Sails	15 0
1 Dozen Cups and Saucers	1 4 0
1 Table	1 15 0
1 Shaving Set	2 5 0
2 Bottles of Scent	1 2 0
Croquet Work	3 10 0
1 Balaclava Cap	2 6
2 Ground Sheets	18 6
1 Hold all	2 0 0
1 Hunting Knife	1 15 0
1 Scarf	10 6
1 Torch	10 6
50 280 Cartridges	1 10 0
6 Pairs of Socks	15 6
1 Tie-pin (gold)	2 2 0
1 Pair 9-ct. Gold Cuff-Links	1 5 0
1 Shawl	3 3 0
2 Pairs Gloves	15 0
1 Boot Last	5 6
3 Spades	15 0
1 Broom	2 6
2 Picks	10 0
2 Adzes	15 0
1 Cash Box	10 0
1 Walking Stick	1 10 0

Magistrate's Court, Plaintiff's Evidence, Simon Ratshosa, Examination-in-Chief.	SIMON RATSHOSA, duly sworn, states (<i>continued</i>):	£ s. d.
	2 Dust Bins	3 0
	2 Tins of Soft Soap	4 0
	2 Football Bladders	15 0
	3 Brooms	1 6
	6 Hoes and Handles	9 0
	3 Hair Brushes	7 6
	1 Brush	5 6
	2 Curry Combs	3 0
	1 Cash Box	2 10 0
	1 Pair of Leggings	15 0
	2 Houses (Brick with Corrugated Iron Roof and Cemented Floor)	305 0 0

MONEY LOST.

Cash in Box belonging to Oratile consisting of Notes and Gold	795 15 0
Cash in Envelope addressed to R. Symons, Waggonmakers, Grahamstown, all in mixed notes	265 0 0
Cash in Small Box	1 0 2½
Cash in Grey Flannel Jacket. Notes	2 0 0

This completes my first claim. All the above were in the houses mentioned and it is for these that I claim. As I understand the case will be tried by native custom and I shall expect the Chief to explain.

The Court here explains the Sec. 9 of Proclamation dated 10th June, 1891, and its purport.

Cross-Examination.

Defendant:

Have you any proof of these amounts in the shape of receipts?

Plaintiff:

The remains of the houses are still there. You know you have burned all documents. 10

Defendant:

Did I burn the houses?

Plaintiff:

Yes.

Examination by
Court.*Court:*

Is there anything amongst the remains to substantiate your claim?

Plaintiff:

I cannot say as I have not been there since. 20

Statement by
Defendant.

Defendant asks permission to address the Court on one point. On this being granted states that as regard to the claims for the

Magistrate's Court, Plaintiff's Evidence, SIMON RATSHOSA, duly sworn, states (*continued*):

Simon Ratshosa, Examination-in-Chief continued. burning of the houses, he understands that there are three similar claims in this respect and asks leave to reply to the three claims simultaneously as his defence and witnesses will be the same in each case.

Court rules that this matter will be considered later.

Examination by Court.

Court:

Did you notify and demand from the Plaintiff the sum which you claim?

Plaintiff:

I personally mentioned it to him. My lawyers notified the Defendant that I should make a claim. 10

CLAIM 2.

As regards my second claim, I had seven cattle posts at Shashi. My claim for £1,927 includes for my own cattle and also for cattle belonging to my brothers Johnny and Obeditse. As the Court wishes to know what I claim alone I shall have to have time so that I can adjust it.

CLAIM 3.

As regards my third claim, I had a Scotch Cart, which was 20 my own property, at my cattle post at Shashi. This was taken by the Defendant's regiment upon his instructions. I have not been able to find it again. I claim £30 for it.

Cross-Examination.

By Defendant:

I was at Francistown when it was taken away. Segoabe and Gaobotse told me that you took it away.

Examination-in-Chief continued.

CLAIM 4.

As regards my fourth claim, in 1916-17 Chief Sekgoma spoke to one Ramapulane about a certain horse and colt of his. The Chief agreed to give him 8 head cattle for the mare and 3 head 30 cattle for the colt making a total of 11 head of cattle for the mare and colt. At this time the Chief was in Serowe. He then went to Nata and sent a man Thubiso telling me to buy the horse for him and that I should pay part and tell Ramapulane that he would get the rest at Nata. Chief Khama objected to this and directed me to pay all the cattle and that Chief Sekgoma could then pay me back. I gave Ramapulane some of the cattle in Serowe and told him to take the rest from my cattle post at Macloutsi. He received the balance from Moganne who was in

Magistrate's Court,
Plaintiff's Evidence,
Simon Ratshosa,
Examination-in-Chief.

SIMON RATSHOSA, duly sworn, states (*continued*):

charge of my cattle post there. Chief Khama handed the mare and colt to a man named Mpallen and told him to take them to Chief Secgoma and tell him that I had paid the full price for them and to ask him to show him the cattle which he would hand me back in return. In 1921 Mpaleng came to Serowe from Nata and in my presence Chief Khama asked him if Chief Secgoma had handed over the cattle to me. Mpallen replied saying that the Chief Secgoma had put them on one side for me at Nata. I have thus always considered that I possessed cattle which were in charge of the Chief. 10

Examination by
Court.

By Court:

I never actually received the 11 head cattle from the Chief Sekgoma. As he was my uncle I was satisfied that they should remain in his hands. Chief Sekgoma told me that he had put them on one side for me. Ramapulane and Mpaleng are both still alive and they are the Chief's men.

Cross-Examination.

By Defendant:

I only know of one horse transaction concerning a mare and colt between Sekgoma and Khama. The mare's second colt was given to you and its name is the "Duke of Nata." 20

Defendant points out that this case was decided in 1926.

Examination by
Court.

By Court:

I admit that this claim was heard by Capt. Stigand at Palapye Road in 1926 and the Chief objected to this claim being taken then as he had not sufficient notice. The Magistrate dismissed the case. I stated that I would bring it up again because the Chief was illegally confiscating my property.

Exhibit " B. "
Exhibit " A. "

Plaintiff puts in Manifold Book (marked " B ") containing a copy of his letter (marked " A ") dated 3rd December, 1921, to Chief Sekgoma. The above letter is read out and Plaintiff requests that said letter should not be torn out as second part of letter refers to another claim. 30

Examination by
Court.

By Court:

The mare is a chestnut with a white blaze on forehead and white stockings.

Cross-Examination.

By Defendant:

When my house was burnt I was in my wagon at Palapye Station and I had the Manifold Book (marked " B ") with me.

Examination-in-Chief
continued.

Plaintiff:

CLAIM 5.

As regards my fifth claim, in 1913 I went to Nata with Japi, Kgomotse and Kefhaeng. We all went with Chief Sekgoma and

- Magistrate's Court,
Plaintiff's Evidence,
Simon Ratshosa,
Examination-in-Chief. SIMON RATSHOSA, duly sworn, states (*continued*):
- Mmele to his cattle post. The Chief pointed out 9 cows and 1 bull to me and Mmele saying "They are Simon's. I give them to him." They were a present. I left them in the Chief's charge and asked him to look after them. In 1924 the Chief brought 4 oxen, the progeny of the aforesaid cattle, to Serowe from Nata and handed them over to me so that I could sell them. They were brought in together with some sheep by Boansidiki. The Chief Sekgoma sold the oxen for me and paid me. In 1924 I requested the Chief Sekgoma to pick out 22 head mixed cattle and send them 10 to my cattle post at Shashi. In all 44 head cattle arrived but the balance were from other sources. Except for the above mentioned cattle I have never taken any out for 15 years.
- Examination by Court. *By Court:*
The 22 head included 5 old cows and 4 big oxen. I do not know what was the balance left at the cattle post in 1924. I think the progeny should amount to 100 head in 11 years. I asked the Chief and he said "a cattle post full." The Chief added that he would find out.
- Cross-Examination. *By Defendant:* 20
Chief Sekgoma's men looked after these cattle. Balate, Kefencwe and Boyosi brought the 22 head cattle from Nata to Shashi.
- Examination by Court. *By Court:*
The above three men are still alive. They are the Chief's men.
- Examination-in-Chief continued. CLAIM 6.
As regards my sixth claim, in 1923 Chief Sekgoma wanted a mule which belonged to Kaelo and told him that he would exchange a horse for it. At that time the Chief had one of my horses and he bought it from me for 9 cows. The Chief gave Kaelo 30 the horse and got the mule. To this day I have not received the 9 cows and I claim them with their progeny since 1923 from the Defendant.
- Cross-Examination. *By Defendant:*
I am sure this happened in 1923. I do not know when the discussion took place between the Chief and Kaelo but I sold my horse to the Chief in 1923. Kaelo was looking after the horse at Shoshong up till then. It was a chestnut stallion with a blaze on the forehead. I remember that this case was brought up in Palapye in 1926 but it was not heard owing to the Chief's 40 objections.
- Examination by Court. *By Court:*
I admit that before the Magistrate in September, 1926, I gave

Magistrate's Court,
Plaintiff's Evidence,
Simon Ratshosa,
Examination by
Court.

SIMON RATSHOSA, duly sworn, states (*continued*):

evidence on the subject of this claim. In September, 1926, I brought six claims against the Estate of the late Chief Sekgoma and I brought them against Defendant in his capacity as executor in the estate. The Magistrate at Palapye heard these claims on the 11th September, 1926. In my evidence on that occasion I may have stated that I sold a horse to the Chief in 1921 and if this was so I made a mistake in the year. The Defendant objected to the claim as no previous notice had been given. I admit that I heard people say that just before the Defendant's installation as Chief in January, 1921, that Gorewan had announced in Kgotla that all Bamangwato who had claims against the late Chief Sekgoma should put them in at the Kgotla. I admit that my brother Johnny in his evidence in the case in 1926 stated that I was in Serowe when Gorewan made the aforesaid announcement in Kgotla. Johnny made a mistake in this as I was at the cattle post at Tamasane. I admit that Johnny told me about this announcement which had been made in Kgotla and I told him that I would speak privately to the Chief about my claims. I do not know if my uncle Mogomotse put in his claim to the Kgotla at that time. I admit that the Defendant in the hearing in 1926 denied on oath that I had ever brought any of these claims to him privately or otherwise. My uncle Mogomotse is senior to me and my brother but he has his own village and if he filed his claim in Kgotla in January, 1926, it does not follow that I would follow his lead because we live separately. As the late Chief was our uncle it was not proper that we should file our claims with the rest of the people since it was a family matter. We told Mr. Neale that the announcement did not therefore affect us.

Examination-in-Chief
continued.

CLAIM 7.

As regards my seventh claim, in 1918 I bought 15 sheep from Mr. Royle and I left them in the charge of the late Chief Sekgoma. In 1924 Sekgoma gave me some of the progeny consisting of 4 hamels which I sold. Since then I have received nothing more. They have been increasing and I want them with their progeny. They are in Nata to-day.

Court adjourned for lunch and inspection of burnt buildings at 2.30 p.m.

Court resumes at 3.15 p.m.

Examination by
Court.

By Court:

I am not sure whether the Court gave judgment in this case in September, 1926.

Magistrate's Court, SIMON RATSHOSA, duly sworn, states (*continued*):
Plaintiff's Evidence,

Simon Ratshosa, Defendant states he has no questions as this case has already
Examination-in-Chief been judged.
continued.

Plaintiff:

My wife Oratile is the only witness who I want to call in regard to my first claim. I have no other witnesses. All my receipted bills have been destroyed.

CLAIM 2.

Application by
Plaintiff.

Plaintiff:

As regards my second claim, it would take me some time to 10
collect evidence to enable me to separate my claim from that of
my two brothers. At the present we can only ascertain the shares
in regard to these cattle as the case proceeds. If the Court allows
me to go on with this claim without at the present moment assess-
ing my own personal share, the matter could proceed now.

Court's Ruling.

Court gives leave to proceed and to separate the claims later.

Examination-in-Chief
continued.

Plaintiff:

I had 735 head mixed cattle and 188 calves jointly with my
two brothers at Shashi. They were distributed amongst seven
cattle posts at Shashi. Whilst Obeditse and I were in gaol in 20
April, 1927, we heard that the Defendant had sent regiments to
seize all these cattle. We were told by Ramorwa, Segoaabe,
Gaobotse, Mogotetse, Radikhukwane and Rasegupu, who
were herds in charge of these cattle at the said cattle posts. They
all came to Francistown in April, 1927, and told me they had to
abandon the cattle posts and also to abandon trucking the cattle.

Examination by
Court.

Court:

Are the herds mentioned here to confirm this?

Plaintiff:

Yes, some of them will arrive from Palapye Road to-night or 30
to-morrow, as they have to walk.

By Court:

We had arranged to truck some of these cattle to Johan-
nesburg. We had obtained permits from Mr. Chase to truck.
We had intended to truck all saleable cattle.

Examination-in-Chief
continued.

Plaintiff:

Johnny then came and told us that the Chief had seized all
the cattle and the trucks had to be sent back for which he had
had to pay demurrage. Johnny told me that 3 or 4 trucks had
arrived. We then wrote to the Resident Commissioner reporting 40
the Chief as having taken the cattle and our boys and we received
a reply that the Chief was going to look after the cattle and would

Magistrate's Court,
Plaintiff's Evidence,
Simon Ratshosa,
Examination-in-Chief
continued.

SIMON RATSHOSA, duly sworn, states (*continued*):

be responsible for them. This letter came through from Capt. Moseley. We again wrote pointing out that the Chief only wanted to destroy the cattle. We then heard from Dr. Lang and Mr. Smith that 500 head cattle had been sold by the Chief. Johnny and I wrote again to the Resident Commissioner telling him the cattle had been sold by the Chief.

Examination by
Court.

By Court:

Dr. Lang was our lawyer. He had entire charge of our affairs in connection with these matters. He was acting for us with regard to our claims. 10

Examination-in-Chief
continued.

By Plaintiff:

After deducting the 500 head cattle sold by the Chief we found that we should have a balance of 235 head mixed cattle and 188 calves for which we are now suing.

Examination by
Court.

By Court:

My second claim is made up by the value of the balance of 235 head mixed cattle at £7 each and 188 calves at 30s. each, making a total of £1,927. Some of these cattle we bought at £9 each from Mr. Grenfell in 1921. They were crossbred Frieslands. The bulls were thoroughbred Shorthorns imported by Mr. Grenfell. 20

Examination-in-Chief
continued.

Plaintiff:

The boys, Mogotetse, Laolan and Gaobotse, were sent back to find out what had happened to the balance of the cattle. They returned and reported that these had been destroyed by hyænas and wild dogs as there was nobody looking after them. I think all the cattle have been shot, destroyed or are running wild. One Afrikander bull belonging to Johnny was found by the Police at Ramaquabane and was brought in and had to be shot. We also heard that two of my bulls, one valued at £32 and the other at £25, are wandering in the veldt at Shashi. We put it all before His Honour. Johnny informed me that the regiments were used to drive the cattle and that they told Segoabe that it did not matter if the cattle were lost. When Johnny was at Francistown he showed me a letter which he had received from Segoabe. I saw the letter which said that the cattle were dying and that Golekanye and others, detailed by the Chief, were doing what they liked with the cattle. I then wrote another letter to His Honour whilst still in gaol and asked that the Chief should not destroy our property. I added in my letter that I had heard my man Rasiriri had been assaulted because he had tried to tell me about these cattle. I received a reply that the man who had assaulted him had been fined £15. I wrote to His Honour telling him that we were claiming from the Chief for all the cattle which he had destroyed. 30 40

Magistrate's Court,
Plaintiff's Evidence,
Simon Ratshosa,
Cross-Examination.

SIMON RATSHOSA, duly sworn, states (*continued*) :

By Defendant:

I am claiming in conjunction with my two brothers and the amount represents the three claims. I knew the number of cattle at Shashi. I counted the cattle before I was arrested and my boys also counted them. Johnny counted the cattle about January or February, 1927. I counted the cattle in September, 1924, and found that all mine at Shashi amounted to over 900 head. The claim is based on Johnny's count in February, 1927. The regiment seized the cattle in April and in March took away the people. 10 I am claiming for the cattle which I cannot find. I am not claiming for the 500 cattle sold by the Chief. I am claiming only for the balance.

Defendant:

Can you tell me the name of the men in charge of the cattle posts before the regiment seized them and also the number of cattle allotted to each of them?

Plaintiff:

The herds are coming and they can tell you. I can also tell you.

At the first cattle post there were 137 mixed cattle and 20 35 calves in the charge of Segoahe.

At the second cattle post there were 135 mixed cattle and 30 calves in the charge of Gaobotse.

At the third cattle post there were 78 mixed cattle and 20 calves in the charge of Radipuo.

At the fourth cattle post there were 95 mixed cattle and 28 calves in the charge of Setabushane.

At the fifth cattle post there were 75 mixed cattle and 20 calves in the charge of Ramoge.

This made a total of 520 head large cattle and 133 calves. 30

At the sixth cattle post there were 135 mixed cattle and 35 calves in the charge of Mogotetse. These belonged to Johnny.

At the seventh cattle post there were 80 mixed cattle and 20 calves in the charge of Radikukwane. These belonged to Obaditse.

Examination by
Court.

By Court:

I do not know whether the Chief trucked any. When Johnny counted them as above the 500 head had not been taken out by the Chief.

Cross-Examination
continued.

By Defendant:

I know of 40 head cattle which came from our lot at Shashi which were trucked by Johnny after he had left the reserve. I know 40

Magistrate's Court,
Plaintiff's Evidence,
Simon Ratshosa,
Cross-Examination.
continued.

SIMON RATSHOSA, duly sworn, states (*continued*):

of no other lot. I do not know Nkebelele and never asked him to sell any of the stock. I wrote to Segoabe saying that I knew the number of cattle which had been destroyed. This letter was taken by Johnny. I could recognise the letter again.

Exhibit "C."

Defendant hands a letter to Plaintiff which he reads and examines.

By Defendant:

I recognise the letter. It is mine.

Letter read out in Court, put in and marked "C." Defendant 10 requests that letter should be returned to him after copy has been taken.

The Court accedes but points out that in case of appeal the original will have to remain annexed to proceedings until the Resident Commissioner has finished with it.

Cross-Examination
continued.

By Defendant:

I gave the numbers of the cattle in the letter so that he (Segoabe) could check the cattle and write the figures to Johnny.

Defendant:

Did you want to teach Segoabe what the numbers were? 20

Plaintiff:

I do not teach people to tell lies. I wrote strongly to him because they had been badly treated.

Defendant:

Why did you tell him there must be no discrepancy in the figures?

Plaintiff:

I wrote all this because I thought the herds might be intimidated by your men.

Defendant:

Did Sekwabe give you the figures of the cattle destroyed? 30

Plaintiff:

Sekwabe wrote to me before, giving me the number of cattle which had been destroyed.

Defendant:

Why did you instruct him to burn it if it was a straight letter?

Magistrate's Court,
Plaintiff's Evidence,
Simon Ratshosa,
Cross-Examination
continued.

SIMON RATSHOSA, duly sworn, states (*continued*):

Plaintiff:

I told him this so that he should not be assaulted or shot with a rifle like Rasiriri.

Defendant:

You stated this morning that your natives never counted the cattle?

Plaintiff:

Modern men count cattle but not old men like Segoabe. I had to get Segoabe to count them whilst I was in gaol. I gave the numbers of the cattle in letter (" C ") from the figures given by Raditie. I made no mention of his having counted these cattle in said letter (" C ").

Defendant:

Do you know this document?

Document handed to Plaintiff from Defendant.

Plaintiff:

I know the document. I signed it in conjunction with my brothers.

Exhibit " D. "

Document read out to Court.

20

Examination by
Court.

By Court:

This is the authority signed by myself and brothers empowering Dr. Lang to receive from Chief Tshekedi the proceeds of the sale by him of the 500 head cattle from our cattle posts, sold by him to the I.C.S. and instructing him to take no further claim against the Chief in respect of these 500 head.

Court's Ruling
on Exhibit " D. "

Court orders certified copy to be made of this document to be marked " D. " Original to be returned to the Chief since it may be required by him in another matter.

Cross-Examination
continued.

By Defendant:

I make no claim against you in respect of the 500 head cattle sold by you. I do not know where the 500 head cattle came from. They may have come from Shashi or elsewhere.

30

Court adjourned to 9.30 a.m., 15th March, 1928.

Hearing resumed 9.30 a.m., 15th March, 1928.

Plaintiff reminded by the Court that he is still on oath.

Magistrate's Court, SIMON RATSHOSA, duly sworn, states (*continued*) :

Plaintiff's Evidence,
Simon Ratshosa,

Plaintiff:

In regard to my first claim my only witness is Oratile.

Statement by
Plaintiff in regard
to Witnesses to
be called.

In regard to my second claim I wish to call as witnesses
Segoabe, Rasegupu, Radikhukwane, Ramorwa, Johnny Ratshosa
and Obeditse.

Court's Ruling.

Court orders Johnny Ratshosa and Obeditse to leave Court
until called as witnesses.

Statement by
Defendant.

Defendant points out that Johnny Ratshosa and Obeditse were
present at yesterday's hearing and that Ramorwa has been present 10
all the time.

Court's Ruling.

Court informs Plaintiff that Ramorwa therefore cannot be
called as a witness.

Further Statement
by Plaintiff in
regard to Witnesses
to be called.

By Plaintiff:

In regard to my third claim I wish to call as witnesses
Radikhukwane and Rasegupo.

In regard to my fifth claim I wish to call as witnesses
Kgomotse, Yapi, Kefentswe and Kefaen.

Statement by
Defendant.

Defendant informs Court that the witnesses mentioned are not
here and states that all witnesses for whom subpoenas were received 20
were duly summoned and are here. Three of the witnesses
mentioned by the Plaintiff in regard to his fifth claim are not on
the list of witnesses.

Plaintiff's Reply.

Plaintiff informs Court that he does not know where these
three men are but states that he thought he would find them in
Serowe.

Court's Ruling.

Court calls Clerk of the Resident Magistrate's Court, Serowe.

Stanley Langton,
Examination-in-Chief.

STANLEY LANGTON, duly sworn, states :

I am Clerk to the Resident Magistrate, Serowe. I put in a
Minute received on the 24th February, 1928, from the Magistrate, 30
Francistown. The Magistrate, Francistown, was asked to find out
from the three plaintiffs the names of the witnesses which they
wished to call. The Magistrate replied giving the names (read out
in Court) in the aforesaid Minute which I put in.

Magistrate's Court, STANLEY LANGTON, duly sworn, states (*continued*):

Plaintiff's Evidence,
Stanley Langton.
Examination by
Court.

By Court:

No other names were given by the Magistrate, Francistown, regarding any other witnesses for the Plaintiff.

Exhibit " E. "

Court receives Minute. Annexed and marked " E. "

Simon Ratshosa,
Examination by
Court.

Plaintiff (recalled by Court, and still on oath):

The names on the aforesaid Minute were the only witnesses subpoenaed. I understood that all the other witnesses we wanted were in Serowe whereas those mentioned in the Minute were only those which we knew were living outside Serowe. 10

My sixth claim was heard by the Magistrate in 1926 but my seventh claim was not touched.

In regard to my seventh claim I wish to call as witnesses Leakwa, Gaelaolo and Tumiso.

CLAIM 1.

Oratile.
Examination-in-Chief.

ORATILE, duly sworn, states:

I am Plaintiff's wife. The houses burnt were our property. I do not know who burnt the houses. I was not present. The property inside was entirely destroyed and belonged partly to me and partly to my husband. When the shooting started in Serowe Stadt I and Johnny's wife and sister ran to Seretse's and while we were there a man Gasebalwe was told of our presence at Seretse's. Gasebalwe went and reported this to the Chief Tshekedi. Gasebalwe returned from the Chief and told us to go and sleep at our house. As it was night and as Gasebalwe told us that all the people were out and all avenues closed by them, we were afraid. We slept at Seretse's village. We were taken from Seretse's place next morning by the Magistrate and brought to the Camp. I did not see the burning. I only heard about it. I did not go out. 20

Examination by
Court.

By Court:

There were quite a lot of goods in Simon's houses. I cannot give the items from memory. I made a list with Simon at Francistown. I made it out shortly after the criminal trial when Simon had been removed to Francistown. I know nothing more. 30

Cross-Examination.

By Defendant:

I was in the Camp at the time when the houses were burnt. I had run away. I ran away from you because you had scattered us at a wedding. I do not know why you drove us away from the wedding. £795 cash was burnt in the house.

Statement by
Plaintiff on
Claim 1.

Plaintiff states he has no other witnesses for this claim. 40

Magistrate's Court, CLAIM 2.
 Plaintiff's Evidence, SEGOABE, duly sworn, states :
 Segoabe,
 Examination-in-Chief.

I am a Mongwato. I am one of Simon Ratshosa's people. I am one of Simon's cattle herds. I used to live here when my master was here but I followed him to Francistown when he was convicted and removed to Francistown. After the Magistrate Capt. Stigand had tried the debt claims at Palapye Road (September, 1926) I returned to my master's cattle post at Shashi. I remained at Shashi looking after cattle until I received a letter from Johnny in which he said that the Government had said we should count the cattle at Shashi. He said that he would count the cattle at Tamasane. Raditie and I counted the cattle belonging to the three Ratshosa brothers. In Simon's seven cattle posts we counted 735 head. These were all Simon's and did not include calves. The cattle were calving at the time. I and Raditie went to Tamasane and found that Johnny had left for Francistown. We arrived at Tamasane on Saturday evening and on Sunday afternoon a regiment arrived. The regiment remained at Tamasane and on Monday they began seizing and taking away the cattle. They went away on Monday with the cattle. They returned on Wednesday and took away more cattle. The regiment then went to Macloutsi. From Macloutsi they went to the cattle posts at Shashi. They came back from Shashi to Tamasane and found us still there. They brought with them all the Ratshosa brothers' herds whom they had taken from the Macloutsi and Shashi cattle posts. They also rounded us up at Tamasane and collected us at a well there. We were tied up. Some were beaten with sticks and I was hit with the fist. I was riding a donkey and carrying a child when I was hit. They drove us into Serowe. At Serowe we were taken to Ratshosa's village and we were told that none of us were to follow Johnny. After two weeks seven of the Chief's men on horseback went to Shashi and I followed them. Whilst I was at Tamasane the Chief's men brought to Tamasane all the cattle that we had left at the Shashi cattle post belonging to Simon, Johnny and Obeditse. They had been joined by a regiment with which they came back to Tamasane bringing all the Ratshosa brothers' cattle from Shashi. They kept the cattle at Tamasane until the arrival of the Chief and Mr. Smith. I then returned to Serowe. Later I followed Johnny to Francistown. That is all.

Cross-Examination, *By Defendant:*

I counted the cattle at Shashi with Raditie. There were 737 head cattle at Simon's cattle posts. These were all Simon's. I can only count what were actually in my own charge numbering 135 head. These were all Simon's and does not include calves. I counted the cattle when Johnny left for Francistown. Johnny was not present. I did not count the cattle every day but the figure

Magistrate's Court,
Plaintiff's Evidence,

Segoabe,
Cross-Examination
continued.

SEGOABE, duly sworn, states (*continued*) :

of 735 head was arrived at on the day that I counted them with Raditie. We counted the cattle at all the cattle posts on the day we received a letter from Johnny. I have forgotten the various numbers but Raditie wrote them down and he may be able to tell. We did not count the calves. Johnny did not count them before he went to Francistown. After we had counted the cattle a regiment came and took away all the people in charge of our master's cattle posts. Two weeks afterwards the Chief sent men to drive the cattle from Shashi to Tamasane. I think I was four days at Tamasane before the regiment came and found me there. I am not certain whether I stayed at Tamasane for four or five days before the regiment arrived with the cattle. I followed the men from Serowe after a few days. I got permission from the Chief. It might have been a month later. 10

Defendant:

Would it have taken my men a whole month to collect the cattle at Shashi?

Witness:

I can't say exactly how long I remained behind at Serowe after the men left. 20

After Johnny left for Francistown I was not at Shashi but at Tamasane.

Examination by
Court.

By Court:

I counted the cattle at Shashi with Raditie. It was after the receipt of the letter from Johnny. It was just after the time when the Magistrate had tried the claims at Palapye. On the first occasion at Tamasane the regiment brought in the cattle herds named Gaobotse, Radikhukwane and Mogotetse. These were Ratshosa's people. With them were also brought in the Mosarwa herdboys named Mosheu, Setaboshana, Radipuo, Ramoye and his two sons, Khunou, Thebe, Marumoapudi, Satanyane. That is all they brought. They are all Simon's herdboys and they are here to-day. When I was taken to Serowe by the regiment my master's cattle remained at Shashi in the charge of Rasiriri. He is the only one I know of who remained but there may have been others with him. I do not know. I now remember another one was Langwane. I cannot remember any other. They had no Masarwa with them. 30

Cross-Examination
through the Court.

By Defendant through the Court:

The Masarwa I have mentioned were brought to Tamasane and were also brought into Serowe with us. From Serowe they did not return to Shashi. They have not gone back to the cattle posts at Shashi up to the present. Gaobotse, Radikhukwane, Mogotetse and I were brought in to Serowe. They left the cattle at Shashi. 40

Magistrate's Court,
Plaintiff's Evidence,
Segoabe,
Cross-Examination
continued.

SEGOABE, duly sworn, states (*continued*) :

Radikhukwane and Mogotetse returned to the cattle post at Shashi on account of their wives having been confined. Gaobotsa did not return. When the cattle were taken from Shashi by the regiment Gaobotse was at Tamasane with me. Radikhukwane and Mogotetse were at the Shashi cattle posts when the cattle were seized by the regiment. At Tamasane I and Ratshosas' people were prevented from examining the cattle. At Tamasane I did not know if some of the cattle were missing or not. After the cattle had been sold to Mr. Smith I passed through Shashi and saw some of Simon's cattle straying about there. I saw four head straying. They were a tokwana cow, a chunyana cow, a chuma cow and a black and white bull. They were not Secwana cattle but well-bred white man's cattle. I did not do anything and just left them there. There was nowhere to take them to. These were the only cattle which I saw straying. 10

Rasegupo.
Examination-in-Chief.

RASEGUPO, duly sworn, states :

I am a Mokgalaka and am a servant of Simon Ratshosa. I was herd in charge of one of my master's cattle posts at Shashi. First of all a regiment came and took all my master's people. This was in the summer of last year. Lekoba was in charge of the regiment which was named Matlogela. He told us that all unpaid servants of my master had to be taken away but that all the paid servants would stay to look after their master's cattle. They took away Radikhukwane and Mogotetse who were unpaid servants and owners of stock. This was at the post at which I was. They left me behind and some others. At Simon's post under Segoabe they took all the people. Segoabe had come to Serowe. They left two boys at that post named Marumopodi and another whose name I do not know. At my master's other cattle posts there were not many cattle and they had all been collected into one post in charge of Langwane. Later another regiment comprised of two regiments named the Matlogela and the Makubomotse came and took the cattle. It was about a week after. They took all the cattle which they found present at the posts. They took them to Tamasane. When they seized the cattle a few of them were out grazing and when we offered to go and collect them they refused. After the regiment had taken the cattle I ran away. I did not remain and look after the few cattle which had been left behind. I ran away because I thought they did not want us to remain at the cattle post. 20 30 40

Cross-Examination.

By Defendant:

After the regiment had taken the people Johnny sent a message by Ramorwa instructing us to truck 20 head cattle. We trucked them and then met the regiment. These were the only cattle trucked

Magistrate's Court,
Plaintiff's Evidence,
Rsegupo.
Cross-Examination
continued.

RASEGUPO, duly sworn, states (*continued*) :

after Johnny had gone to Francistown. Radikhukwane, Ramoselekwane, Langwane, Boyosi, Gaobotse, Radipuo, Setaboshwana and Rasiriri were left behind. Also Rankuka and Polelo remained with Radikhukwane. I remained with Ramoselekwane and also Sesekwane and another whose name I do not remember. Langwane had nobody with him. I now admit there was another. Boyosi had nobody with him. Gaobotsa had no one with him and he was taken away. The cattle were taken over by Marumoapodi. Radipuo was removed and they left one boy. At Setaboshanas no one was left and the cattle here went to Langwane post. Rasiriri remained by himself. 10

Examination by
Court.

By Court:

I said in my evidence that several of the posts had very few cattle and these were collected and made into one post at Langwane. All cattle from Setaboshana's part of Gaobotse's, and the young animals from Rasiriri's were put into Langwane's and made one cattle post. There were many cattle at Boyosi's and Gaobotse's before they took them away.

Radikhukwane.
Examination-in-Chief.

RADIKHUKWANE, duly sworn, states :

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I am a Mongwato and a servant of Obeditse. I can only give evidence (re Claim 2) concerning the cattle which were actually in my own charge which belonged to Obeditse. I was not in charge of any of Simon's cattle. I was seized by the regiment at the cattle post at Shashi after Johnny had gone to Francistown. They brought me to Serowe. There remained at my post some women and one boy named Rankaka. I now admit there was another named Leaco who remained. I asked the Chief to allow me to go back to Shashi as my wife was being confined. At Shashi I was herding 89 head cattle belonging to Obeditse. The Chief allowed me to go and I went back to Shashi. The regiment found me there when they came to get the cattle. They seized and took away the 89 head cattle which I was herding. They took me with the cattle to Tamasane. I drove them with Rankaka and Leaco. They were kraaled at Tamasane and the Chief came to sell them. 30

Cross-Examination

By Defendant:

I had 27 calves at my post. I had counted them myself. All the cattle and calves under me reached Tamasane when they were driven there.

Re-Examination.

By Plaintiff:

40

I was sent by Johnny from Francistown to Shashi to see some cattle which had strayed back there. I returned to Johnny and reported to him that I had seen the red bulls there and also the

Magistrate's Court,
Plaintiff's Evidence,

Radikhukwane.
Re-Examination
continued.

RADIKHUKWANE, duly sworn, states (*continued*):

black and white bull. There were some cattle with these bulls at Shashi. I told Johnny that people were shooting the cattle. One was shot by Lekutwane at Shashi. I know it was shot by him because he admitted it. The same man tied up a calf so that its mother should come back and he could shoot her.

Examination by
Court.

By Court:

I know nothing about any other strayed or destroyed cattle.

CLAIM 2.

Johnny Ratshosa,
Examination-in-Chief

JOHNNY RATSHOSA, duly sworn, states:

10

I am Plaintiff's elder brother. On the 24th February, 1927, I was in Mafeking and interviewed the Resident Commissioner about these cattle. I asked permission to truck all the cattle to Johannesburg. I can produce permits which I got from the C.V.O. for their removal. These were granted by order of His Honour. On arrival at Francistown I detailed Ben Rose to superintend the trucking of my cattle and that of my two brothers at Shashi. I also received a telegram from the Defendant saying that I was to sell my cattle and my brothers' "otherwise I will see."

Examination by
Court.

By Court:

I have not got the telegram. I gave it to my lawyer but I showed it to Capt. Moseley at Francistown.

20

Examination-in-Chief
continued.

Witness:

I was then called to Palapye Road and before I got there I was informed that the Chief had refused to allow my cattle to be trucked. I saw Mr. Cuzen, the Magistrate, about it and complained of the Chief's action. In the meanwhile the cattle at Shashi were taken by a regiment to Tamasane. On my return to Francistown I was told by Segoabe, Rasegupu, Ramorwa, Mogotetse and Radikhukwane that the cattle had been taken away so that nothing could be trucked. I could not pay my creditors because the cattle had been taken. I thereupon complained to Colonel Daniel and Capt. Moseley and complained personally to Mr. Cuzen at Palapye Road. I had been given a promise by the Resident Commissioner that my cattle would not be interfered with and I understood that the High Commissioner had given orders that the Defendant should take care of these cattle and that they should not be destroyed. I wish to produce a letter from a Mosuto named Ben Rose who is now in the Government employ as a policeman at Francistown.

40

Court's Ruling.

(Court rules that letter cannot be accepted unless writer be called to give evidence under oath. Court suggests that his evidence

Magistrate's Court,
Plaintiff's Evidence,
Johnny Ratshosa.
Court's Ruling
continued.

JOHNNY RATSHOSA, duly sworn, states (*continued*):

could be taken on commission through the Magistrate, Francistown, if Plaintiff pays expenses of telegram. Court points out that in the case of an Interrogatory the Defendant would also have to be given an opportunity of framing his questions.)

Witness:

I require this person. He is a most important person. I require him in connection with my own claim.

Court agrees to arrange for him to be telegraphed for.

Examination-in-Chief
continued.

Witness:

Leaving out the 500 head of cattle sold by the Defendant, the balance which we three brothers claim is 235 head and 188 calves. I do not know what is Simon's share of these, but we could arrange that amongst ourselves afterwards. I asked Mr. Cuzen, the Magistrate at Serowe, whether my order of banishment included the treatment of my cattle in this fashion. This was in the presence of Mr. Poole. I was told that the Chief would be spoken to. I produce a copy of a letter which I wrote to Mr. Poole after I had discussed this point with Mr. Cuzen.

10

Exhibit F.

(Letter read, put into Court and marked "F.")

20

About February, 1927, I told Raditie at Palapye that he must go to Shashi to count my cattle and that of my brothers. He came to Francistown shortly afterwards. I have tried to find him, and he is in this Reserve, but I cannot find him. I do not know if anybody was with him when he counted the cattle.

Examination by
Court.

Court:

So the only evidence you have as to the number of cattle which you and your brothers had is the verbal report to you by Raditie?

By Witness:

Yes.

30

Court:

Can you produce Raditie?

Witness:

I have searched for him but I cannot find him.

I have no other evidence to give on the other claims by Plaintiff.

Cross-Examination.

By Defendant:

I did not count the cattle because I had been obstructed in going about freely in your country.

Magistrate's Court,
Plaintiff's Evidence,
Obeditse.
Examination-in-Chief.

CLAIM 2.

OBEDITSE, duly sworn, states:

I am the Plaintiff's brother. I heard from Johnny that the boys had reported to him that the regiments had taken the boys and cattle away. I only know about this through Johnny who also gave me the number of cattle which had been driven away. The number was 735 head and 188 calves. In 1923 I visited my cattle post at Shashi. I counted my cattle and found them to be 95 head. I have not been there since. I cannot add anything else. All I know was the number which was told me by Johnny.

10

Defendant has no questions.

CLAIM 3.

Radikhukwane
Recalled.

RADIKHUKWANE, recalled and duly sworn, states:

I know nothing about a Scotch cart belonging to Simon Ratshosa.

Rasegupu
Recalled.

RASEGUPU, duly sworn, continues:

This Scotch cart of Simon's was taken from Shashi by people whom I do not know. Radikhukwane and others had loaded up this Scotch cart with hides. Radikhukwane should be able to tell about this because he was one that was being driven along with the Scotch cart by the regiment. I cannot say who drove the Scotch cart. It broke down in the river at Macloutsi and stopped there. It was a new Scotch cart and just had its tyres shortened.

20

Cross-Examination.

By Defendant:

I was present but hiding when the Scotch cart was driven off. I saw Radikhukwane who was being driven with the cattle and Scotch cart. He was walking behind the Scotch cart.

CLAIM 5.

Kefentswe.
Examination-in-Chief.

KEFENTSWE, duly sworn, states:

I am a Mongwato. I am one of Ratshosa's people having been sent to work for them by the late Chief Sekgoma. The year after Chief Khama died (1923) Simon sent me to Nata to his own cattle post to pick out some cattle and bring them to Shashi. I brought them into Shashi. There were four oxen and I do not know how many cows and calves. They were put into the Chief Sekgoma's cattle post at Shashi. I do not know anything more except what I heard.

30

Plaintiff Simon asked by the Court says there is nothing more that this witness can be asked.

Magistrate's Court,
Plaintiff's Evidence,
Kefentswe.
Cross-Examination.

KEFENTSWE, duly sworn, states (*continued*):

By Defendant:

I got these cattle from Setong at Nata. He was Chief Sekgoma's man. I think that those cattle were Simon's cattle. Simon had told me to pick out cattle at Nata. He had told me to pick out and bring in cows with calves and some oxen. I and Setong picked them out. A man Boyosi also was with me when I picked them out. I brought them to Shashi. I do not know how many were left at Nata as they bore the same brand as Chief Sekgoma's.

10

Statements
regarding Witnesses
to be called.

Court asks Plaintiff if he has any more witnesses to call beyond the witness Ben Rose from Francistown referred to by his brother Johnny.

Plaintiff replies that in regard to his second claim he wishes to call Tantoisong, Mogotetse and Gaobotsa. Plaintiff states that these men left Francistown on donkeys before he did and expects them at any time.

Plaintiff further states that in connection with his fifth claim he wishes to call Kgomotse, Yapi and Kefaen.

Court enquires from Bamangwato present as to the whereabouts of these men and is informed that Kgomotse is at Topsis Siding and Yapi is on the other side of Palla Road, and Kefaen works in the Parr's store in Serowe.

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Court announces that Kefaen will be called but as regards the other men there is official evidence to show that Plaintiff was duly asked what witnesses he wished to call and the list does not contain these names as will be seen from Annexure "E." The Court therefore is not prepared to waste time indefinitely in having these witnesses searched for and brought in.

Kefaeng.
Examination-in-Chief.

CLAIM 5.

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KEFAENG, duly sworn, states:

I am a Mongwato. I am one of Khama's men and used to work for the Ratshosa's. I do not know anything about this claim. I once went with Simon, Yapi and Kgomotse to Nekate. Chief Sekgoma gave us a brown ox to slaughter. On completion of this journey we returned.

Examination by
Court.

By Court:

I know nothing about 9 cows and 1 bull given to the Plaintiff by the late Chief Sekgoma. I swear I know nothing about it.

Statement by
Plaintiff.

Plaintiff states he has no questions to ask because at previous hearing this witness proved a liar.

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Magistrate's Court,
Plaintiff's Evidence,
Kefaeng.
Cross-Examination.

KEFAENG, duly sworn, states (*continued*):

By Defendant:

Plaintiff never sent me with Boyosi to fetch cattle from Nata.

Statement by
Plaintiff.

Plaintiff states that with the exception of witness Ben Rose from Francistown this completes his witnesses.

Stanley Langton
Recalled.

STANLEY LANGTON, duly sworn, states (upon being recalled):

I am Clerk to the Court of the Resident Magistrate, Serowe.

By Court:

Do you know if certain claims were tried at Palapye Road by the Additional Resident Magistrate, Capt. Stigand? 10

By Witness:

Yes, the official record of the said case has been in my charge at Serowe. I produce record No. 68 of a case heard by the Additional Resident Magistrate at Serowe on the 11th September, 1926, in which the Plaintiff was Simon Ratshosa and the Defendant shown as the Estate Late Chief Sekgoma. The executor of the Estate at that time was Chief Tshekedi the Defendant in the present case. On this record six claims were heard. I herewith put it in.

Exhibit "G."

(Record read, including judgment, and put in and marked 20 "G.")

Court adjourned to 9.30 a.m., 16th March, 1928.

Hearing resumed 9.30 a.m., 16th March, 1928.

Simon Ratshosa
Recalled.

SIMON RATSHOSA recalled and warned that he is still on oath.

I admit that my present 4th and 6th claims were judged at Palapye Road. In regard to my 7th Claim, I admit this claim came before the Magistrate at Palapye Road on the 11th September, 1926, but no evidence was heard by the Magistrate but he gave judgment all the same. After the case at Palapye Road I wrote and pointed out to His Honour that the Chief had objected because we had not filed our claims and that judgment was then given for the Chief. At that time I stated I wished to bring the matter up again. 30

Observations by
Court.

(Court points out that Plaintiff should have appealed against the judgment at Palapye Road to the Resident Commissioner's Court.)

For the Defence.

Magistrate's Court,
Defendant's
Case.

Defendant asks Court for leave to take the 2nd, 3rd and 5th Claims first and then come back to the first claim.

Defendant states that he will only give evidence in regard to the 2nd Claim.

CLAIM 2.

Defendant's
Evidence,
Chief Tshekedi.
Examination-in-Chief.

CHIEF TSHEKEDI, duly sworn, states :

I am the Defendant in this case. In connection with Plaintiff's second claim *re* the cattle at Shashi, all the cattle posts at Shashi were taken away by the regiments. I sent Phutimpe to drive away all the cattle of the Ratshosas at Shashi. I should have driven all their cattle, but I heard that some were undergoing inoculation at Macloutsi. Previous to this, before I took the cattle, I had sent Lekgoba with a regiment to the Ratshosas' cattle posts to collect all my people from there who were not Plaintiff's and his brothers' paid servants. They moved these cattle from Shashi to Tamasane. When I arrived there I sold them all. They numbered 492 head. They were mixed cattle including calves. These cattle were those belonging to all three Ratshosa brothers. When these cattle were bought no value was placed on the calves. The value of the mother and calf was taken together. I brought the money into Serowe and kept it. It was a cheque. Later the lawyer of the Ratshosa brothers came and he asked me about this and I told him I had the cheque for the cattle. Subsequently the document marked " D " by the Court was handed to me by the lawyer acting for the Plaintiff and his brothers. (This document already read in Court.) This lawyer, Dr. Lang, then signed this receipt which I put in. Court received receipt, marked " G 2," and directs certified copy to be made of it.

By Defendant:

I produce letter from the Cold Storage which covered the cheque.

Exhibit " H."

(Letter put in and marked " H.")

Defendant:

I am not certain whether it was before or after I had paid the money to Dr. Lang that a man named Ramorobe brought this letter which the Court has marked " C " to me. (Letter " C " previously read and shown in Court.) The Plaintiff having been informed that Ramorobe had given me the letter then wrote me the letter which I now produce.

Exhibit " I."

Letter read, put in and marked " I."

Magistrate's Court, CHIEF TSHEKEDI, duly sworn, states (*continued*):

Defendant's
Evidence,

Chief Tshekedi.

Defendant's
Counterclaim.

Defendant continues:

With regard to these claims I have counter-claim against Plaintiff for damages resulting from his murderous assault on me on the 5th April, 1926, in the Kgotla, for damages in respect of wounds and injuries to me and my men, viz. Kgosidintsi, Gopolang and Pokoye, and also for the loss of my time in these cases. The total sum of damages which I claim in my counter-claim is the aggregate of the sums claimed from me by the Plaintiff. I claim this from the three brothers. I claim from Johnny, Simon and Obeditse an equivalent sum to that of the total sum claimed by them from me on each summons. 10

Examination by
Court.

By Court:

I counter-claim from Plaintiff the sum of £4,689 2s. 8½d. in respect of the aforesaid damages. I further claim the equivalent in cattle and small stock to those claimed by the Plaintiff in his Claims 4, 5, 6 and 7 respectively. I further claim the amount of £35 5s. being the amount of Dr. Drew's account for the treatment of my men wounded by the Plaintiff, viz. Kgosidintsi, Gopolang and Pokoye in support of which I produce receipt from Dr. Drew. 20

Exhibit " J. "

(Receipt, dated 11th June, 1926, put in and marked " J. ")

I also claim the amount of £3 12s. 6d. being the amount of the account paid by me to the Bulawayo Memorial Hospital for the treatment of Kgosidintsi for wounds received by him from the Plaintiff and his brother Obeditse. I produce receipt.

Exhibit " K. "

(Receipt put in and marked " K. ")

Cross-Examination.

By Plaintiff:

After Johnny had left I sent and had all my people taken from your cattle posts who were unpaid servants. I sent the regiment in accordance with my own law. I do it without asking the Government whether the Government knows it or not. It is my country. This is an old traditional law. Every other Chief who ruled before my time acted as I did. I am not an historian and I do not know when this Government came to this country. 30

Examination by
Court.

By Court:

This Government has been in since long ago. I admit that the first Proclamation issued by the Government was in 1891.

Cross-Examination.
continued.

By Plaintiff:

I do not ask the Government first before I act. I never sent regiments to go and destroy your cattle. If I had wanted to I would have done so but I have not done so yet. I do not know if the cattle are still there. I am not herding them. I have never discussed anything about these cattle with the Resident Commissioner in your presence. 40

Magistrate's Court, CHIEF TSHEKEDI, duly sworn, states (*continued*):

Defendant's
Evidence,
Chief Tshekedi.
Examination by
Court.

By Court:

I did not make any undertaking with the Government to take responsibility for these cattle. The Government asked me to look after these cattle but I said I could not. I received a letter from the Resident Commissioner through the Magistrate, Mr. Cuzen, asking me to look after these cattle but I replied in writing that I could not be responsible for them. My first reply was dated the 26th February, 1927. There was a lot of correspondence but I did not get any letter saying I must look after these cattle or be responsible for them. I can quote a letter from the Magistrate to me telling me that these cattle would be sold. I am not referring to those sold by writ of attachment. I object to Plaintiff and his brothers' cattle remaining in this country. From September, 1926, when the Plaintiff's claims were heard by the Magistrate at Palapye Road Johnny Ratshosa was given four months' time to dispose of his cattle and those of his brothers. Johnny was allowed to remain in the Bamangwato country during those four months to wind up his own affairs and those of his brothers Simon and Obeditse. I received a letter in March, 1927, in which it was stated that the Government had told Johnny that he must sell his cattle. Johnny did nothing in the matter and let the cattle remain at the cattle posts. Johnny left the Bamangwato country in February, 1927. After the civil case at Palapve Road in September, 1926, Johnny had the months of October, November, December and January to sell the Plaintiff's cattle and wind up their affairs.

Cross-Examination
continued.

By Plaintiff:

I had a reason for selling the cattle at Tamasane. I sold all of your cattle and your brothers' cattle that were at their posts at Shashi. I cannot say if any were left there because I am not herding them. I have told you that the cattle at Macloutsi were in quarantine otherwise I would have sold them also. I can produce the letter from Ramorobe. It was written to Segoaabe. (Letter marked "C" in possession of the Court.) I told the Court I did not counterclaim for a definite amount because the Court on this case is following native custom. Pokoye was wounded by you. He was not included in the indictment in the criminal case.

Re-Examination.

Defendant continues:

Before I leave the box I wish to mention to the Court that there are two letters which I wish to put in. The first one is dated 23rd May, 1927, from the Magistrate to me and the second is a carbon copy dated 31st May, 1927, from me to the Magistrate.

Exhibits "K2"
and "L."

(Two letters put in and marked "K 2" and "L" respectively.)

Magistrate's Court, CLAIM 2.

Defendant's

Evidence,

Ramorobe.

Examination-in-Chief.

RAMOROBE, duly sworn, states:

I am a Mongwato living in Serowe. With regard to this letter marked " C " by the Court, I recognise the letter as the one which Simon gave to me at Francistown. He told me to deliver it to Segoabe. Simon at the time told me its contents by word of mouth and said that if Segoabe could not understand it I was to read it over to him. Simon told me in his verbal instructions to collect all the Ratshosa people and tell them this letter was from Simon and that they should count the cattle in all the posts. If there was a shortage at any of the posts a hundred should be added to the figure at each post. When they finished counting the cattle they were to write giving the numbers to Johnny and not to Simon and that they should in the letter claim to be Segogotlo's people. 10

Examination by
Court.

By Court:

Segogotlo was the grandfather of Johnny Ratshosa. The Ratshosas are my masters.

Examination-in-Chief
continued.

Witness:

Simon instructed me to help Segoabe count the cattle. As the letter marked " C " itself says, Simon instructed that they were to send in the figures representing the total cattle of each post to agree with the figures given in his letter even if the cattle were in reality short of those figures. Simon instructed me verbally in the same words as the letter to tell Segoabe to burn the letter after he had read it since the Bamangwato might see it. He also instructed me that there were certain cattle in charge of the Makobamotse regiment and that I should count these. He said that I was to pick out the oxen and count them. If they came to 100 head I must say they were 200 head. I was also to pick the heifers and if I found they were 50 head I was to say there were 70 head and so on also with the cows. I left Simon and went to Johnny and told him that Simon had also instructed me to count the cattle at Tamasane. Johnny said I should not go as those cattle were in the hands of the Chief. That is all I know. 20 30

Examination by
Court.

By Court:

I left Francistown and came to Serowe before going to Segoabe and I gave the letter to the Chief. This same letter (marked " C ") Simon first sent with Rasekobu but he returned to Francistown as he was frightened to deliver it to Segoabe at Tamasane because of the regiment there. So then Simon sent me with it. After delivering this letter to the Chief I remained in Serowe. I do not know anything about the number of cattle the Ratshosas had at Shashi or Tamasane. 40

Magistrate's Court, RAMOROBE, duly sworn, states (*continued*) :

Defendant's
Evidence,
Ramorobe.

Cross-Examination.

By Plaintiff:

Yes, I am on oath. I am sure you gave me this letter marked " C " by the Court. The letter was written to Segoabe. I did not deliver this letter to Segoabe because I thought it might be an underhand letter and I might get into trouble with the Chief. The envelope was torn and I took the letter out and read it since you had said that if Segoabe could not read it then I should read it to him. I read the letter because Simon had told me to secrete it on my person in a place where the Bamangwato could not find it and I therefore read it from curiosity. I gave the letter marked " C " to the Chief in the Kgotla and the Chief received it with his own hands. Yes, I was beaten in Kgotla for a wrong which I had done at Serowe last year. I had incurred a debt in a white man's store. I had been instructed by the Chief to go and pay the account and I had said I would pay it. Instead I spent this money. Then the Chief ordered me to be flogged as he had ordered me to give the white man the money and I had spent it. This money I had obtained by selling karosses in Johannesburg at the time of your criminal trial. 10 20

(Plaintiff hands witness a letter.)

This letter is mine. I produce my travelling pass to Johannesburg.

Exhibit " M. "

(Put into Court and marked " M. ")

I made a statement before the Magistrate at Serowe about your letter marked " C " and Rasegupu also made a statement.

Chief Tshekedi
Recalled.
Examination-in-Chief.

CHIEF TSHEKEDI, Defendant, recalled at his own request, duly sworn, states :

This morning I gave evidence on the number of Plaintiff's cattle which I drove from Shashi. If there are any other cattle of the Ratshosas in this reserve over and above those which I sold I admit no liability in respect thereof. 30

Examination by
Court.

By Court:

I never interfered with the paid herds of the Ratshosas.

I put in a letter from the Magistrate, Serowe, dated 25th February, 1927.

Exhibit " N. "

(Letter read, put in and marked " N. ")

I produce copy of my reply to this letter.

Exhibit " O. "

(Copy read, put in and marked " O. ")

When writing this last letter marked " O " I was going on this letter which I now put in. 40

Exhibit " P. "

(Letter read, put in and marked " P. ")

Magistrate's Court, CHIEF TSHEKEDI, duly sworn, states (*continued*) :

Defendant's
Evidence,
Chief Tshekedi.
Exhibit " Q."

I produce a reply to my letter marked " O " dated the 26th February from the Magistrate, Serowe.

(Letter read, put in and marked " Q.")

This letter marked " Q " purports to be a copy of the Minute received by the Magistrate from the Resident Commissioner which the former handed to me.

Examination by
Court.

By Court:

After Johnny had left this Reserve in February, 1927, I removed all of my people who were at Johnny's, Simon's and Obeditse's cattle posts in my Reserve who were not paid servants because I could not have my people serving them when they had quarrelled with me. Lekgoba, who was in charge of my regiment, reported to me that he had left all the paid servants in charge of the Plaintiff's cattle posts and that at posts where there were no paid servants left they moved the cattle to posts where there were paid servants. Therefore there were people in the Ratshosas' employ left at all such posts where there were any cattle as I have stated that cattle posts where there were no paid servants the cattle were removed to posts where there were paid servants who looked after and took charge of these cattle. 10 20

Plaintiff has no questions.

CLAIM 1.

Re-Examination.

I burnt Plaintiff's houses purposely. I intended to kill the Plaintiff and his brothers and as the Government had taken them away I burnt their houses and I am going to produce witnesses to show why I had burnt the houses.

Examination by
Court.

By Court:

I cannot say whether there were goods and chattels in their houses when they were burnt by my orders. 30

Plaintiff has no questions.

Alfred Mahloane.
Examination-in-Chief.

ALFRED MAHLOANE, duly sworn, states :

I am a Native Clerk and Interpreter to the Magistrate, Serowe.

(Annexures " K," " N," " P " and " Q " handed to witness for identification.)

Examination by
Court.

By Court:

I have been in the Magistrate's Office, Serowe, since the 22nd April, 1926. I identify these letters from the Magistrate, Serowe, addressed to Chief Tshekedi marked by the Court " K," " N " 40

Magistrate's Court, Defendant's Evidence, Alfred Mahloane. Examination by Court continued.

ALFRED MAHLOANE, duly sworn, states (*continued*) :

and " P. " I remember that they were written on the date appearing on these letters. I typed them myself for the Magistrate, who was Mr. Cuzen. He handed me drafts in his own handwriting. I remember these letters being despatched to Defendant. I also remember typing the copy " Q " from the original and despatching it to the Chief.

CLAIM 2.

Putimpe. Examination-in-Chief.

PUTIMPE, duly sworn, states :

I am a Mongwato under Chief Tshekedi. I was sent by Chief Tshekedi together with Golekanye, Senamela, Nonofang, Tsiloane, Phela and Kegakanetse to remove the Ratshosas' cattle from Shashi to Tamasane. When I had made kraals for them at Tamasane I sent Golekanye and Nonofang to report to the Chief. Later the Chief came with Mr. Smith to sell these cattle. 10

Examination by Court.

By Court:

I went with a regiment of which I was in charge to do this work. This was not the regiment from Serowe but one from Madi-nare. I did not leave any of the cattle behind at the Ratshosas' cattle posts at Shashi. There were four cattle posts of Simon's that had cattle when I arrived there. There was another post said to be Johnny's and another said to be Obeditse's and I amalgamated these at Tamasane. There was another post of Simon's at Kgari's and I sent Golekanye to collect the cattle there and we made a separate post of these. Altogether we made three fresh cattle posts of Simon's cattle. These were made at Tamasane. 20

Cross-Examination.

By Plaintiff:

At Shashi I found Langwane in charge of Simon's cattle. I only know Langwane because on entering a post I always ask for who is in charge. When I asked him he said he was in charge of all Simon's cattle. There were people under Langwane herding Simon's cattle. I did not count the cattle. 30

Examination by Court.

By Court:

There was only one herd with the exception of Langwane. We found the cattle at four posts of Simon's. At the first post there was Langwane and another. At the second cattle post there was a Mosarwa called Mokapane. At the third cattle post there was a Mokuba whose name I do not know. The fourth cattle post was also in charge of Langwane. These four cattle posts were all close together.

Plaintiff has no questions.

Statement by Defendant.

Defendant states he will now call witnesses in regard to the third claim. 40

Magistrate's Court, CLAIM 3.

Defendant's
Evidence,

Rasiriri.

Examination-in-Chief.

RASIRIRI, duly sworn, states :

I am a Mopedi and I am one of Chief Tshekedi's men. Simon's scotch cart in question was at Sedimo at the junction of Ramaquabane and Shashi. One Seporo used to drive this scotch cart for Simon. I was with Seporo. I was herding the cows for Simon. These cows were milked for butter and Simon had a dairy at Khari's village at Shashi. Seporo was Simon's driver and we used to ride cream with this scotch cart from his dairy to the railway. I know this scotch cart broke down when being driven with a load of hides 10
by Seporo. I saw the cart broken down at the river near Madinare. This happened before the regiment had come to Shashi. Seporo and I left it there. It was a new scotch cart. I do not know whether it was reported to the Ratshosas. This was when the Ratshosas were at Francistown.

Cross-Examination,

By Plaintiff:

I did not see Seporo load the hides. I did not tell the regiment about the scotch cart being there.

Examination by
Court.

By Court:

I do not know where Seporo is. 20

Chief Tshekedi informs the Court that he also does not know where Seporo is.

CLAIM 5.

Tumiso.
Examination-in-Chief.

TUMISO, duly sworn, states :

I am a Mongwato. I know of 9 cows and 1 bull. They were given to Simon by Chief Sekgoma. Simon sent Kefentswe for them who took them to Mooke. This was in 1924. He drove them all to Mooke, both the original cows and bull and their progeny. Mooke is at Shashi. I cannot say what year he was given them. I do not know white men's years but it was the year after Chief Khama was 30
kicked by a horse.

Cross-Examination.

By Plaintiff:

Yes, these cattle came to Mooke in 1924. I saw them. I do not know their number. I only know their original number at Nata. They were the actual cattle given you by Sekgoma. Yes, I know that I have sworn to speak the truth. I do not know if there were any other cattle in amongst those that came in.

Examination by
Court.

By Court:

I was living with Chief Sekgoma at the Nata. The original cattle given to Simon by Chief Sekgoma were four cows from his 40
cattle post at Mavelete, two cows from his cattle post at Moiketoo, and three cows and the bull from Mogasho. At Nekati when Simon

Magistrate's Court,
Defendant's
Evidence,

Examination by
Court.

TUMISO, duly sworn, states (*continued*):

was there these cattle were brought to a well and shown to Simon. Simon said he was unable to do anything with these cattle and the Chief gave them to Setong to herd for Simon. He also gave Setong a Mosarwa as Setong was an old man. This Mosarwa who herded them was named Nenekeco. They increased there. Kefentswe came on behalf of Simon and took these cattle. He took all of them and their calves. He took everything except the kraal bushes and Setong came with these cattle to Mooke at Shashi. Setong came and delivered them to Simon in accordance with our law seeing that they had been left in his charge. Setong returned to the Nata to the Chief Sekgoma's cattle post from whence he had originally come. Setong is at Nekate to-day. I was present when Setong started with these cattle at Nata but I do not know their number after their increase. 10

Cross-Examination
through the Court.

By Plaintiff through Court:

Chief Sekgoma gave you these cattle before you married Oratile. I was present when Sekgoma gave you the cattle. I quite agree that the men who drove these cattle should be called as witnesses.

CLAIM 5.

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Utule.
Examination-in-Chief.

UTULE, duly sworn, states:

I am a Mongwato. Certain cattle were brought in from the Nata by Kefentswe. These cattle were those which Chief Sekgoma gave to Simon. Kefentswe was accompanied by Baleseng.

Examination by
Court.

By Court:

I was at Mooke when these cattle were brought in. I do not know the number but it was a "cattle post." At that time I was herding at Chief Sekgoma's cattle post at Mooke. Simon did not have any of his cattle at Mooke. The said cattle of Simon's were driven past Mooke on to Simon's cattle post at Shashi. I was present at Nekati when Chief Sekgoma gave Simon the original cattle. I do not know what was the year. It was a long time before Chief Sekgoma died and Chief Khama was still alive and it was a long time before he died. Chief Sekgoma gave Simon 9 cows and 1 bull. The Chief gave these cattle to a Mosarwa to herd for Simon. They increased. In 1924 they were brought in to Shashi. None were left with the Mosarwa. All the progeny of the 9 cows and bull were brought in. The original cows were amongst those brought in. 30

Cross Examination.

By Plaintiff:

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I had been at Mooke two years before these cattle arrived. Previous to this I had been at Nata and therefore knew the cattle. When they arrived at Mooke I went amongst them and looked at

Magistrate's Court,
Defendant's
Evidence,

UTULE, duly sworn, states (*continued*) :

Cross-Examination
continued.

them. There were no other cattle amongst them. I only saw Kefentswe once take cattle from Nata. I did not count them but they were equivalent to a "cattle post." Yes, I am a Mochweng and I ought to know the cattle. If efforts were made to trace these cattle to-day they could not be found. I did not know the white man's year when the cattle were given to Simon as I had not been to school but I knew the year 1924 as I had since been to school. I know that you have visited Nata twice. These cattle were given to you on the first occasion.

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Statement by
Defendant.

Chief Tshekedi, the Defendant, now states he will bring witnesses to prove native custom in connection with banishment.

Disang.
Examination-in-Chief.

DISANG, duly sworn, states :

I am a Mongwato Headman. I am 52 years of age. In 1895 there was a quarrel between my father Radikladi and Chief Khama. Sir Sydney Sheppard, the Administrator of Bechuanaland, had to come to settle this quarrel. My father and Chief Khama separated. My father was banished from this country and went to Rhodesia. My father and his followers left with some of his cattle. The majority of the cattle remained behind. I still remember that there were 600 head of my father's cattle still left at the Botletle River. I had counted these myself. There was no one to drive them for my father at the time. In fact these cattle were scattered there unherded and were lost and destroyed. There were herds with these cattle but they scattered as the owners were no longer with them. These cattle were destroyed by hyænas, wild dogs, etc., and taken by the people. Out of all these we did not get anything. We came and complained to Mr. Ashburnham, the Assistant Commissioner, at Palapye but we did not get any of these cattle. We did not bring a case against the Chief concerning them but we brought a charge against the men in whose charge they had been left.

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Examination by
Court.

By Court :

This case was tried at Palapye before Mr. Ashburnham. We were told some had died from rinderpest and that others had scattered as they had no herds. This is the evidence I can give as regards the property of banished people.

Cross-Examination.

By Plaintiff :

I am certain my father was banished across the Border. Sir Sydney Sheppard decided that my father should be banished. The original decision by Sir Sydney Sheppard was that my father should remain in this country but afterwards he decided that my father should leave the country. Lord Lock was the High Commissioner. I may be mistaken and it might have been somebody

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Magistrate's Court,
Defendant's
Evidence,

Cross-Examination
continued.

Statement regarding
Witnesses.

Phethu.
Examination-in-Chief.

DISANG, duly sworn, states (*continued*) :

else who was High Commissioner. I am certain that it was the High Commissioner who ordered that we should cross the Border otherwise we could not cross it without his order. Chief Khama was against the original judgment and therefore went to Capetown. Yes, I know that Dr. Jameson passed through Palapye towards Christmas in 1895 to raid the Boers. When my father was banished I was at school. Chief Khama said that all our cattle should go. As I said before, the loss of the cattle was not the fault of Chief Khama but of that of the people who looked after them. Chief Khama did not send regiments for them. 10

Chief Tshekedi, the Defendant, calls further witness to give evidence in connection with the property of banished persons.

PHETHU, duly sworn, states :

I am a Mongwato Headman. In the year 1895 my father Mpoeng had disagreements with Chief Khama. The Chief banished him together with his younger brother Radikladi and others to Rhodesia. There were a certain number of my father's cattle and small stock at Lotlhakane. The Chief told my father to take those cattle and small stock and go with them. But my father did not do this soon enough and a great number died from rinderpest. There remained some 60 head, the others having died from rinderpest. The number of sheep was probably over 800. Some time afterwards the Chief sent me to drive these cattle and sheep to the Border at Ramaquabane. They remained there because my father refused to accept them saying he could not do so as he had been chased away. When we counted the stock at Ramaquabane we found 40 head cattle and 300 sheep. The Chief sent an order saying that if he did not accept these it would be his own fault. From there my father and I went to Bulawayo. We discussed the matter there with two lawyers named Coghlan and Dyson. We collected my father's followers and came to Francistown. Our lawyers communicated with Mr. Ashburnham, the Assistant Commissioner, claiming damages from Chief Khama for our cattle and small stock. A reply was received from Mr. Ashburnham to the effect that no action could be brought against the Chief by his own subjects. We then gave up the matter and returned to Rhodesia. In 1924 I was personally banished from Serowe by Chief Sekgoma to Nekate where Sekgoma had been living in banishment himself when he was banished by Chief Khama. I went to Johannesburg and put the matter into the hands of lawyers. A reply was received from the High Commissioner that I had done no wrong but that I had been banished by the native law of the country in which I was living. On my return from the lawyers I packed up and crossed the Bamongwato Border to Nekati in accordance with the banish- 20 30 40

Magistrate's Court, PHETHU, duly sworn, states (*continued*) :
 Defendant's
 Evidence,
 Phethu.
 Examination-in-Chief
 continued.

ment order. Whilst driving my cattle they began to get scattered at Shashi as there was no rain that year. I lost more at Naitengwa and that night I lost all of them owing to the drought. In the morning we collected a few and took them along with us. Some were picked up by the wagons which were coming behind. On arrival at Nekate there was a big drought and all these cattle died from poverty. We were given orders not to cross the Nata River and we appealed to the Chief and the Government without effect. This is the damage which we sustained but we did not sue the Chief and we had not shot at the Chief with firearms nor had we wounded any of the Chief's followers with rifles. We had suffered great damage although we had committed no crime either in white or native law. We appealed to the Chief and Government for compensation but without success. 10

Court adjourned to 9.30 a.m., 17th March, 1928.

Hearing resumed 9.30 a.m., 17th March, 1928.

PHETHU, duly sworn, states (*continued*) :

In 1895 when my father was banished my father's son-in-law Nkobele accompanied him. The Chief took all Nkobele's cattle and small stock as he did not give him leave to go with my father. These were also included in our claims. There are many Bamangwato present here to-day who know that Nkobele's stock was seized by the Chief. This stock was taken although Nkobele had not shot at and wounded the Chief or any of his men. We did not recover anything from the Chief. We reported the matter to the Government. The Government said it had no power to interfere with the Chief's judgment. We personally reported this matter to Sir Sydney Sheppard at Vryburg. I was interpreting for my uncle at the time. I wish again to emphasise that Nkobele had not shot at and wounded the Chief and his followers. In regard to my own case in 1924 as I have already stated I was banished. I was Hut Tax collector to the Chief Sekgoma. When I was banished I had some Hut Tax money and some books and the custom was that the Chief should give me some bonus for all the collections I had made. When I was banished the Chief sent men to take over the Hut Tax money and the books. I did not receive any bonus although I had done good work neither had I shot at and wounded the Chief or any of his followers. 30

Magistrate's Court, PHETHU, duly sworn, states (*continued*) :
 Defendant's
 Evidence.

CLAIM 1.

Phethu.
 Examination-in-Chief
 continued.

On the morning of the 5th April, 1926, the Defendant sent for Simon and Obeditse and I think also for Johnny to come to the Kgotla in the morning. The Magistrate, Mr. Cuzen, was present to listen to the discussion. The matter to be discussed in the Kgotla was the question of certain Masarwa girls in the possession of Oratile the wife of Plaintiff. Oratile had originally taken these girls by force from Chief Sekgoma's wife and the Chief had taken them back by force. The Plaintiff and his two brothers did not come to the meeting in reply to the Chief's summons. The Chief told the Magistrate that as the Ratshosas had refused to attend the Kgotla, the Magistrate could go home. The meeting dispersed. On that day the wedding of Mogomotse took place. I went to the wedding accompanied by Senamela. A short while after our arrival we heard a commotion outside. On coming out I understood that the trouble was that the regiment to which Plaintiff belonged had come to call him to go and work in connection with the repairs of the motor road. I called to Senamela that we should go as I noticed that some fighting was going on as some people had shut Simon and Obeditse in a hut. We left the wedding. When we were at Nabe's village I heard someone shout to me to stop. I looked round and saw it was Johnny. He said that I was to go and tell the Chief's people that to-day he would kill someone. I told him that he could not kill anyone and that if he killed somebody the white people would hang him. Johnny was hurrying to his village. He challenged me to stop but I did not stop. I went along with Senamela and kept looking behind. He did not follow. I came to the Kgotla. The Chief was not there but there were a few men there. This was about noon. I told these men that we had come away from the wedding and that Johnny Ratshosa had said he was going to kill someone. I told all those present in the Kgotla. They laughed at me saying I was a coward and that he would not kill anyone. I went with Senamela to report to the Chief (Defendant) and warned him that Johnny would kill somebody that day. The Chief and those with him also ridiculed me saying that I was a coward. Late in the afternoon the Chief sent for Simon and his two brothers. It was some time before they came and when we had given up hope of their coming they arrived. They were accompanied by a Hottentot named Johnson. The Chief pointed out to them that he had called them this morning and they had refused to come. The Chief also told them that while they were in his country he would rule them as he ruled everybody else. The Chief then ordered them to lie down to be beaten. They all three stood up and insulted Bapiri and myself saying that I had persuaded the Chief to flog them. Simon and Obeditse ran away. A man named Boaletse poked Johnny with a stick. Then a fight started Johnny

Magistrate's Court,
Defendant's
Evidence.
Phethu.
Examination-in-Chief
continued.

PHETHU, duly sworn, states (*continued*) :

hitting with a stick and the people striking back at him. Johnny fell down as if in a faint. On getting up he went towards the camp shouting along the road. While still in Kgotla a man named Mokgesi said that he heard Simon and Obeditse saying "Let us go and fetch our guns." We did not take any notice of this. Shortly afterwards someone shouted that they were coming with their guns. They came and took cover behind some poles facing the Kgotla and fired. The shots did not strike where we were. I mean that the shots struck short of where we were sitting. 10
Defendant, myself, Edirile, Baipedi, Uitsile, Baisi, Kgosidintsi, Gopolang and others were all sitting. We were sitting on both sides of the Chief under a tree in the Kgotla. They fired again and then again. I did not notice where the second shots fell. They both fired the third time. I think it was Edirile who said that we should carry the Chief away. I caught hold of the Chief by one arm, Kgosidintsi took the other, and Gopolang pushed him behind. On looking back I saw Obeditse kneeling down in a firing position aiming at us. I heard the report of his rifle which was a Mauser. I felt something cold on me like blood. I looked at the Chief and 20
said they had wounded someone. I added to the Chief that they had wounded him. The Chief replied that he did not feel it. We had great difficulty in removing the Chief who said he must die in his Kgotla. When we had taken the Chief behind some huts at the back of the Kgotla, Kgosidintsi said they had also wounded him. We pulled up his jacket and found that he had been wounded. I do not remember exactly where. Then arose a big commotion. I think Gaefetoge then shouted "These people have killed us, let us call up the people and kill them." I ordered Bathuleng to go to the top of the hill and shout to the people to come armed to the 30
Kgotla. The people had collected quickly with their rifles after hearing the firing. Gopolang was also wounded. Gopolang, Kgosidintsi and the Chief were all wounded with one shot. Phokoye was also wounded, but I do not know if he was mentioned in the criminal case. I found him in the evening at the doctor's having his wound attended to. The Chief then ordered us to catch Simon and Obeditse either dead or alive. The Chief added they had wounded him and his people.

Examination by
Court.

By Court:

The Chief was wounded on his right side by Obeditse's rifle. 40
Simon was firing with what looked like a Mauser pistol. He had his right arm extended and was firing.

Examination-in-Chief
continued.

Witness continues:

When the people armed with rifles moved off from the Kgotla, Mr. Cuzen arrived in his car. In reply to the Magistrate's question the Chief said the Ratshosa brothers were murdering us. The

Magistrate's Court,
Defendant's
Evidence.
Phethu
Examination-in-Chief
continued.

PHETHU, duly sworn, states (*continued*) :

Magistrate spoke to the Chief to the effect that the people be held back so that he could go to the Ratshosas' home. Some men had already run forward and were firing at the Ratshosas' houses. Shortly afterwards I heard that Johnny and Obeditse had been captured in their houses. About dusk I heard that Simon had run away and had taken refuge in Dr. Mackintosh's house. I reported this to the Chief. I was ordered by the Chief to report to the Magistrate that Simon was at Mackintosh's. We reported to the Magistrate. The Magistrate and I went to see the wounded men and found them at Dr. Drew's. We were informed that Kgosidintsi was seriously wounded and should be removed to Bulawayo Hospital immediately. Gopolang was only wounded in the hand. It was then that I was shown that Phokoye was wounded. That night the people were very angry and excited and were all over the village. I was not present when Simon was removed from Mackintosh's to the Camp by the Magistrate. Shortly after going to bed I noticed a blaze at Ratshosas' huts. The blaze then went out. Then another blaze appeared. I think this happened three times. Next morning early I went to the Kgotla and it was then that the Chief pointed out that the Ratshosas had wounded him and his men and he had not wounded any of them and we must therefore go and burn their houses. He sent out the Maphacwa regiment. I am the head of this regiment and went with them. I did not go to Simon's houses but I noticed they had been burnt out by the fire I had seen the night before. I set fire to Johnny's largest house. Johnny's huts had been burnt down the night previous. We then went and burnt one of Obeditse's houses. We broke open the ceiling and put straw on top and set fire to it as the houses would not burn from the outside. We did Johnny's in the same way.

Examination by
Court.

By Court :

We went inside the house to break open the ceiling. I entered Johnny's book room and saw there some books, a writing table with books on it, and a rocking chair. I did not go into the other rooms as it was from this room we started the fire. We went into Obeditse's house. There we found carpentry tools and a small bed with a mattress. The room which we entered was new and unfinished. We did not enter the other rooms. Plaintiff's house and huts had fallen in and I did not go and look in them. This is what I know about the burning after the Chief had been wounded by Plaintiff and his brother.

Magistrate's Court,
Defendant's
Evidence.
Phethu
Re-Examination.

CLAIM 2.

PHETHU, duly sworn, states (*continued*):

In connection with this claim, it was some time after Johnny had left the Reserve that the regiment was sent to drive Plaintiff's cattle from Shashi to Tamasane. I cannot say exactly when the regiment left because I was at Nata.

Plaintiff has no questions.

CLAIM 2. (On the subject of Native Custom.)

Nkobela.
Examination-in-Chief.

NKOBELA, duly sworn, states:

I am a Mongwato. Obeditse is my son-in-law. A long time ago but after the Government had come to this country Mpoeng quarrelled with his elder brother Chief Khama. Mpoeng was banished and I followed him. Chief Khama did not wish me to follow Mpoeng and seeing this I took 680 head cattle into the Bakwena country. They had been at the border at Lephepe. There were also 100 head of my cattle at Nata in Khama's country and 30 head at Dinokana also in Khama's country. As Khama was very angry I left them. When I returned and tried to get them Khama refused. I returned to Mpoeng and suggested that we might try and get a lawyer to get these cattle for us from the Chief. Mpoeng obtained the assistance of a lawyer named Dyson from Bulawayo. We trekked with many waggons and with Mr. Dyson to Francistown. Mr. Dyson wrote to Khama through Mr. Ashburnham, the Magistrate, to the Chief at Palapye where the Chief had his staadt. 10 20

Examination by
Court.

By Court:

Mr. Dyson gave up our case as Mr. Ashburnham told him we had no case since the subject of the Chief could not bring a case against the Chief. I have never recovered those cattle from the Chief up to this day. 30

Cross-Examination.

By Plaintiff:

The trouble arose through Radikladi. The Chief took all the cattle which I have stated. The cattle were in charge of my people Makote and Raphuti. I did not leave any cattle with Basesyetsi. I do not know of anyone banished previous to this. Mothopitse did not go with his cattle. He remained with Chief Khama. I know that Mokwati was banished and his cattle kept by Khama as he was Khama's servant. A Headman who is found guilty by the Chief can have his cattle kept by the Chief when he goes. When these banished Headmen return the Chief can give them back their cattle if he likes but he may also keep them himself if he wants to. I am not referring here to the cases of Headmen who have shot at 40

- Magistrate's Court,
Defendant's
Evidence. NKOBELA, duly sworn, states (*continued*) :
- Cross-Examination
continued. the Chief. The Chief can act according to his own will in cases where people have broken the law but as I repeat I am not referring to cases where people have shot at and tried to kill the Chief. According to Sechwana law a man who shoots at a Chief does not have his cattle destroyed but he is killed. That is Sechwana law. By his act he is at war with the Chief. I have never seen anyone executed by the Chief for this as I have never seen anyone shoot at the Chief.
- Examination by
Court. *By Court:* 10
I do not know what my age is but I was born when Chief Sekgoma, Khama's father, was Chief. When Chief Sekgoma died I was a boy at school at Kuruman and when I returned the Chief had died. When Dr. Livingstone went up to Lake Ngami (1858) I was a small boy and I was told afterwards when I was a little older.
- Further
Cross-Examination. *By Plaintiff:* 20
The reason why you were not executed by the Chief was on account of the modern Government which is over the Chief. That is on account of the King's law over the Chief. In former days you would have been executed by the Chief and the Kgotla because you had wounded the Chief. I know that the eve of the government in Serowe is the Magistrate. The Chief can have the power to act even if the matter has been handed over to the Magistrate providing the matter is a serious one.
- Further Examination
by Court. *By Court:*
The Magistrate is here to advise the Chief as the mouthpiece of the Government.
- Further
Cross-Examination. *By Plaintiff:* 30
If the matter concerns the Chief and his country he has the right to refuse to obey the Magistrate.
- Plaintiff:*
Where does the Protectorate come in then?
- Witness:*
The Magistrate has to give way at times when the Chief wants him to. Where the Chief and the Magistrate do not agree it is the Magistrate's duty to report the matter to his Government and superior officers.

Magistrate's Court, CLAIM 1. (On Native Custom.)

Defendant's
Evidence.

MALEPE, duly sworn, states :

Malepe.

Examination-in-Chief.

I am a Mongwato Headman. I am a contemporary in age of the late Chief Khama's younger brother Kebaelele. I was born during the reign of Sekgoma I.

Examination by
Court.

By Court :

Kebaelele was very much younger than the late Chief Khama. When Sekgoma I. died I was a young man old enough to fight.

Examination-in-Chief
continued.

Witness continues :

First I will give hearsay tradition as I heard it from my father. 10
I was told that the Bakaa, who were under Chief Khama I., were
raided. They were raided by the Chief because of their refusal to
submit to his rule. He burnt their village and confiscated their
cattle. The Bakaa went to the Bakwena country. They subse-
quently returned to Chief Khama. Their property had been confis-
cated by the Chief and had been distributed to the people as they
were under his control. The Bakaa did not claim their property
when they returned, that being the custom of war. Now I come to
the reign of Sekgoma I. The same Bakaa attempted to refuse to
recognise his rule and consequently they were raided. Their cattle 20
and some of their people were seized and taken away. The remain-
der took refuge in the caves and sent for help to Chief Sechele to
intercede on their behalf with Chief Sekgoma I. Chief Sechele sent
men to plead on their behalf and they obtained permission for them
to go to the Bakwena country. When they left the Chief ate and
distributed their cattle amongst the people. These Bakaa eventu-
ally returned and their children are amongst us to-day but they
have never brought up the question of their cattle. This concludes
what I have to say about Sekgoma I. I wish to add that Sekgoma I.
had a brother Phethu who had a younger brother called Bathoñ. 30
Phethu was the same age as Sekgoma I. Bathoñ was younger
than Phethu and Sekgoma. Sekgoma was their Chief. Bathoñ
and Phethu decided to build a village outside that of Sekgoma's.
They built a village of their own. Two of their leading Headmen
were named Mashuge and Mocwete. Sekgoma raided them.
Phethu, Bathoñ and others were killed. Their cattle were seized
and distributed amongst Sekgoma's people. Mashuge and Mocwete
escaped and returned to Sekgoma and obtained his forgiveness.
All their cattle had been confiscated. The man Mocwete is the
ancestor of the Plaintiffs. The descendants of Mashuge are here 40
to-day. This concludes the hearsay tradition evidence. Now
I come to what I know myself. I remember on one occasion when
I was a boy the late Chief Khama before he was a Chief together
with my father and myself climbed up a hill to escape from Chief

Magistrate's Court, MALEPE, duly sworn, states (*continued*) :

Defendant's
Evidence.

Malepe.

Examination-in-Chief
continued.

Sekgoma, Khama's father. Chief Sekgoma's regiment came and surrounded the hill. We fought with rifles and people were killed. We could not get water to drink for many days. The only way we could get water was by squeezing the entrails of cattle which were killed. Afterwards Khama surrendered to his father. Sekgoma ordered that my father and one Chukudu should not come into his presence. On descending the hill Chukudu fled to the Bakwena country. Sekgoma sent to the Chief Sechele requesting that Chukudu should be killed. Chukudu was with Khamane when he fled to the Bakwena country. Chukudu was executed by Chief Sechele by order of Chief Sekgoma. His cattle were confiscated and distributed amongst the people. Not one was left. Macheng then arrived by order of Sekgoma and eventually chased Sekgoma out of the village. Khama and Macheng remained together in the village. Then Khama fought with Macheng and drove him out. After rifles have been fired and people killed what remains behind is set fire to. That is our custom. After these troubles Sekgoma returned to his village from the Bangwaketsi. Then there arose a dispute between Sekgoma, Khama and Khamane. Khama left the village at Shoshong and settled at Serowe. We then moved with Khama from there to the Botletle river at Mophepe. Khama left us there and returned to Shoshong to look for his cattle there. He took with him an armed force and eventually attacked Shoshong. He burnt the village and took cattle and people from his father. He drove out his father and remained at Shoshong. Later Chief Khama returned to the Botletle river and again went back and attacked Shoshong. This time he took all Khamane's cattle. When Khamane returned he made no claim as the cattle had been taken in war. We remained at Shoshong. I took part in this fighting at Shoshong. I belonged to a regiment. All that I have related happened before the Government came to this country. Now I will come to the fighting which took place after Chief Khama had come under the protection of the British Government. I took part myself in the trouble concerning the people of Seleka. These people had always been ruled by Chief Sekgoma I. and Khama. They were moved by Chief Kobe, who was their own Chief (Sekgoma was their paramount Chief) from Matlwane to Nwapa. Their trouble began by their allowing the Boers to live with them. This was after Sekgoma had died and Khama was Chief. Chief Khama ordered the Seleka people to move the Boers out as they might make trouble and claim the country. The Seleka people refused to listen. The Government was with us at the time. Chief Khama sent Mohomane and Nakodi accompanied by a white police officer named Captain Bates with a message to tell the Seleka people not to cause trouble but to obey the Chief's orders. These men were instructed to come to an understanding with them but the Seleka people refused. After

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Magistrate's Court, MALEPE, duly sworn, states (*continued*):

Defendant's
Evidence.
Malepe.

Examination-in-Chief
continued.

this the Chief ordered them not to plough as they had not obeyed him. They ignored the warning and ploughed. The Chief then sent two regiments, to one of which I belonged, with orders to pull out their crops. This we did and the Seleka people fired at us but did not kill anyone. We did not fire at them because we had no orders to that effect. We returned and reported the matter to Chief Khama. Chief Khama then detailed two regiments to again proceed to Seleka. In these regiments some people were killed by the Seleka people. The regiments also did not fire because they had no instructions. The regiments returned and the head of the regiment Npoeng reported to the Chief Khama that some of the men had been killed. Then all the Chief's regiments were turned out and went with the Chief himself and the Government officer Captain Bates mentioned before. When we arrived Chief Khama summoned Seleka, his father Kobe being an old man, to meet him at the foot of the hill. Seleka did not turn up and we slept there. We were accompanied by the Government officer. In the morning we set out to attack them. We burned their village and took all the cattle which we found in the village. We seized Kobe and he was allowed to go free by Chief Khama. We brought in the cattle we had found but the Chief refused to allow us to seize the cattle from the cattle posts. At this spot Kobe and the people we had caught were banished to Modwane in the Transvaal. According to native custom if two brothers fight for the Chieftainship of the Bamangwato and one is defeated by the other he cannot be killed by him if the fight took place in the village but he can kill him if the fight takes place in the veldt. Another custom is that if any people form a plot against the Chief they must be killed at once. They must be killed for conspiracy even if they have not reached an overt act. If a man disobeys the order of the Chief, the Chief shows his power by burning his house. 10 20 30

Cross-Examination. *By Plaintiff:*

I think the Seleka business occurred when you were very young. I do not know if this occurred in 1887. I was not present when a regiment burnt huts in the presence of Colonel Daniel. I only heard about this.

CLAIM 1. (On Native Custom.)

Keeditse.

Examination-in-Chief.

KEEDITSE, duly sworn, states:

I am a Mongwato and I am one of Chief Khama's men. In 1912 I was sent by Chief Khama to Palapye Road to burn a village there. I went with Colonel Daniel who was Magistrate at Serowe. I was sent by myself accompanied by my servant. Colonel Daniel went with me to the station. Colonel Daniel boarded the train 40

Magistrate's Court, KEEDITSE, duly sworn, states (*continued*):

Defendant's Evidence. Keeditse. Examination-in-Chief continued. and gave instructions to the Basuto Police before he left that they should help me to burn the village. I burnt the village the idea being to enforce the people to come to Serowe as the Chief had ordered them to come to Serowe and they had refused. The burning of huts is the punishment inflicted by the Chief when people refuse to come when called by him. This is what I had actually witnessed and done myself.

Cross-Examination. *By Plaintiff:*

When I left Serowe I was with Colonel Daniel.

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Plaintiff:

Did the Police go and help burn the village by orders of the Government?

Witness:

I was sent by the Chief and I heard Colonel Daniel give instructions to the Police that they should help me. The village in question was one where people employed at the station lived. They were Bamangwato people who had come into employment at Palapye Road. Before I set fire to the huts I told the inmates to remove their goods from the huts or I myself took the goods and threw them out.

Examination by Court.

By Court:

When huts are burnt by the Chief's orders as a punishment for armed rebellion the goods therein are not taken out first. But in the case I mention as regards Palapye Road these people were required by the Chief to move with their household goods to Serowe and they had ignored the Chief's orders to move. If these people had been guilty of armed rebellion I should have just burnt the houses with the goods in them.

Court adjourned to 9.30 a.m., 19th March, 1928.

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Hearing resumed 9.30 a.m., 19th March, 1928.

CLAIM 1.

Banani. Examination-in-Chief.

BANANI, duly sworn, states:

I am a Mongwato. I am related to the Ratshosas. They are my nephews being my elder brother's sons. I am not quite certain what goods were in Simon's house before they were burnt. I know that before the shooting affair Plaintiff called me and asked me to accompany him to the station. There were two motor cars standing outside Raleburu's place loaded with portmanteaus and boxes.

Magistrate's Court,
Defendant's
Evidence.
Banani.
Examination-in-Chief
continued.

BANANI, duly sworn, states (*continued*) :

Raleburu's place is close to Simon's house. This took place about three months before the shooting affair on the 5th April, 1926. Simon was by himself when he spoke to me but when we arrived at where the motor cars were standing Oratile was sitting in one of the cars. I refused to get in one of these cars because I had just obtained employment as an inoculator under the Veterinary Department and I had not yet told Simon that I had done so. Then Simon said he would hire Mr. Rundle's car and send it to fetch me in the afternoon. Both cars were loaded with goods but particularly the one I was asked to ride in. A car came in the afternoon to fetch me but I refused to go. I do not know to whom the motor cars belonged to. 10

Examination by
Court.

By Court:

After that I did not enter Simon's house again. When the shooting affair took place I was working out at the inoculation camp.

Cross-Examination.

By Plaintiff:

I do not know which Mr. Rundle you referred to. The two cars in the morning were driven by Mrs. Dodd's sons. I do not know their names. I mean that one of them was Mrs. Dodd's son and the other was Sonny Jackson's younger brother. I was not present when the goods were loaded. I know the goods were yours because there was a girl of yours in the car. I took it for granted that the goods loaded in the cars were yours because those cars had come from Palapye Road to fetch you. I particularly noticed some boxes. I saw red tin boxes. I did not count them. Yes. I know those white men who were driving the cars can be called as witnesses and I will be able to identify them. 20

CLAIM 1. (On Native Custom.) 30

Gorewang.
Examination-in-Chief.

GOREWANG, duly sworn, states :

I am a Mongwato Headman. Khama was my uncle as he was my father's elder brother. The Chief has power to burn houses. I will deal with cases in connection with the Chief's power to burn houses and huts. During the period after the Government had come into this country of ours, my father Khamane and I went with Chief Sekgoma to Lephepe. Chief Khama sent two regiments to Khamane at Shoshong. They burnt Khamane's village and two wagons of Khamane's were burnt. There was no case brought about these. Khamane had sided with Sekgoma in his dispute with Chief Khama and Chief Khama wished him to go into exile at Lephepe with Sekgoma. The Paleng village, one of Sekgoma's villages, was also burnt. I saw the regiments come and burn. At that time Chief Khama's village was at Palapye and Mr. Ashburnham was Magistrate there. 40

Magistrate's Court, GOREWANG, duly sworn, states (*continued*) :

Defendant's
Evidence.

Gorewang.

Examination by
Court.

By Court:

When Chief Khama sent to burn these villages he consulted his Kgotla. That is a native custom. The Chief should not do this without consulting his counsellors in Kgotla. The custom is that the Chief first consults his counsellors and then announces the matter to the people in Kgotla and then they are at liberty to discuss the matter if they wish. When the measure has been approved the Chief sends out the regiment to burn villages. Khamane and I and our people had guns but we never thought of firing in resistance. When the shooting affair took place here on the 5th April, 1926, I was away at Shoshong. 10

Cross-Examination.

By Plaintiff:

When the regiments burnt the villages at Shoshong the women were in the village. First the heads of the regiments came to my father and told him that they had been sent to tell him to remove. My father replied that he was not moving. Thereupon the regiment started to burn the village. The goods in the huts including the corn were burnt.

Plaintiff:

Do you know that we will show in the case you mention that the goods were not burnt? 20

Witness:

Members of these regiments are among the people here to-day and they know the goods in the huts were burnt.

Statement by
Plaintiff.

(Plaintiff states that the whole story of Sekgoma's exile was recorded in writing by the Government and that this business of burning the villages was no doubt also recorded.)

Examination by
Court.

By Court:

The regiments did not carry out the goods from the huts before burning. They only carried out a few blankets. All the household goods were burnt inside the huts. From my own knowledge these included tables, chairs, boxes, clothes, boots and all sorts of goods and chattels. My own hut was burnt. I had goods in it. They included a bedstead, boxes, pots, chairs, clothes, boots and many other articles of mine. All these were burnt. 30

CLAIM 1. (On Native Custom.)

Selela.
Examination-in-Chief.

SELELA, duly sworn, states :

I am a Mongwato. I am a petty Headman. The evidence that I am going to give concerns an incident in Serowe in 1911. Chief Khama was determined to make his law in regard to beer drinking more stringent. My uncle Reikeleseng and a man named Ramotinwa left Serowe and stayed outside in the lands. On 40

Magistrate's Court,
Defendant's
Evidence.
Selela.
Examination-in-Chief
continued.

SELELA, duly sworn, states (*continued*) :

Monday, the 10th June of that year, the Chief Khama held a meeting which had been announced the previous day. In the Kgotla he detailed the Maholola regiment and instructed them to go and burn Ramotinwa's and Reikeletseng's huts out at the lands. There was a woman in Serowe named Mabalang who ran all the way from Serowe to the lands before the regiment. One Chokologa riding in from the lands met this woman and she requested him to return and warn the people at the lands that the regiment was coming. I was at the lands at Reikeletseng's village when this man came on horseback to warn us. We thereupon worked hard to get all of our goods out of the huts and to move our wagons to a safer place. While we were carrying out our goods we looked towards Ramotinwa's village and saw that it was burning. The regiment arrived, some on horseback and some on foot. Kebailele was in command of the regiment and immediately commenced to set fire to the huts. We had by then spread our goods outside. Four huts were burnt. Kebailele then warned Reikeletseng that he could go where he wanted outside the Chief's country. After the regiment had left I accompanied Reikeletseng to Palapye Road so that I could return with the horses. Reikeletseng went by train to Sekgoma at Nekate. I returned with the horses to Serowe. The offence Reikeletseng had been guilty of was beer drinking and refusing to come to Serowe when called by the Chief. In the month of August we were called to the Magistrate's office here at Serowe—Capt. Merry was Magistrate then. Capt. Reilly was in charge of Nekate at that time. We were told that Reikeletseng had written from Nekate claiming his goods, cattle, horses, children and wives who had remained behind. We told Capt. Merry that we would not go to Reikeletseng at Nekate and with regard to the cattle and goods we refused to let them go to Nekate because Chief Khama refused to allow them to be removed. Two weeks later a fresh communication was received by the Magistrate in which Reikeletseng again claimed his property. Chief Khama said that none of his property would be allowed to go. A third letter came from Nekate repeating Reikeletseng's claim and the same reply was given. After this we heard no more. Reikeletseng is still alive to-day and up till now his belongings have not been returned to him but they remained in the possession of his children who remained behind. Reikeletseng is in this Reserve to-day. When he comes into Serowe he does not take possession of his goods. He has been separated from them and they have been divided up. This is what I saw Chief Khama do with the concurrence of the Magistrate.

Cross-Examination.

Plaintiff:

How is it that our belongings were not handed to our children seeing that we had children in this Reserve?

Magistrate's Court,
Defendant's
Evidence.
Selela.

SELELA, duly sworn, states (*continued*) :

Witness:

If your children had gone to the Chief and asked him for your property he would have given it to them.

Plaintiff:

Were these belongings of Reikeletseng's kept back by the Chief because you children had gone and claimed them?

Witness:

We did not go to the Chief and claim this property. It was only Reikeletseng who was claiming it by letters from the Chief. 10

Statement by
Plaintiff regarding
Native Custom.

Plaintiff asks permission from Court to make a remark and states that he knows what witness says is the custom with regard to burning huts at the lands but the custom only applies to burning huts at the lands outside Serowe because the huts there merely exist for the purpose of ploughing and reaping after which the people must come back to the town.

Cross-Examination
continued.

Witness continues:

The burning of Reikeletseng's huts at the lands was the same as burning of houses in the town because Reikeletseng did not get any of his property, not even the goods in Serowe. His children 20 got his property after his claim had failed.

CLAIM 1. (On Native Custom.)

Ramarula.
Examination-in-Chief.

RAMARULA, duly sworn, states :

I am a Mongwato. In 1917 I was sent towards Shashi to a Makalaka village. I was sent with a few men. These Makalaka were the Chief Khama's people. They had always been in the Shashi area but they removed from one site and built on another without the Chief's permission. The Chief Khama said in Kgotla that he had often warned these people to move from the site where they had built as it was pasture land and they had refused. The 30 Chief Khama gave me some matches and ordered me to set fire on arrival. I did so. I began at Hobane's village. While I was burning this village a policeman arrived from Francistown. The village I was burning was in Khama's country. The policeman told me to accompany him to Francistown. In reply to the questions of the Magistrate there, I told him that I had burned the village on the orders of Chief Khama. The Magistrate was Colonel Daniel [and he replied that if Chief Khama had ordered it, it was all right. Colonel Daniel also added that if a person breaks his master's law he should be dealt with in this manner]. I thereupon returned and 40 continued the burning. I burnt as far as Shashi where I had been ordered to stop. Amongst the villages I burnt was also Rawe's

[
Struck out of Record
in consequence of
receipt of Telegram
from the Resident
Commissioner, Col.
Daniel, see Annexure
" V. "

Magistrate's Court, SELELA, duly sworn, states (*continued*) :

Defendant's
Evidence.
Selela.

Examination-in-Chief
continued.

village. This was Rawe's village at his lands where he ploughed. In all the villages which I had been ordered to burn the goods in the huts were destroyed by fire. I and my men did not remove any of the goods before burning. We just burnt. I returned home to Serowe and reported to Chief Khama that I had carried out his orders.

Examination by
Court.

[Struck out
vide
Annexure " V."]

By Court:

I am certain Colonel Daniel was the Magistrate I saw at Francistown [and who told me that if it was the Chief's orders to burn it was all right]. These Makalaka did not resist the Chief with weapons neither did they bring a case against him afterwards. 10

Cross-Examination.

Plaintiff:

Were not these villages that you burnt beginning with Rawe's Makalaka at lands where the Chief had forbidden ploughing?

Witness:

From Rawe's lands onwards to Tlhalogong river on lands and villages that had settled there without the Chief's permission.

Plaintiff:

Did Chief Khama order you to burn the goods as well? 20

Witness:

The Chief ordered me to burn without reserve.

Statement by
Plaintiff regarding
Evidence.

Plaintiff stands up and states that this affair will be found in the Government correspondence between Colonel Daniel, the Assistant Commissioner, and the Resident Commissioner and the Chief Khama's reply to the Resident Commissioner. The witness is Matlhodi's son and the record is under the name of Matlhodi.

Examination by
Court.

By Court:

My father Matlhodi was with me when I burnt the villages.

CLAIM 1.

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Kefaeng
Recalled.

KEFAENG, recalled and duly sworn, states :

I was employed by Plaintiff Simon. I know that Simon removed some goods from his house in Serowe to Tamasane some time before the shooting affair. It was before the aeroplanes came. I do not know how long it was before the shooting affair that this removal took place. These goods were removed from Simon's house in a waggon. Some were taken in a motor car. When the aeroplanes arrived and the Chief had gone through the Station to see them, I was there with Simon. Simon and I were in the yard of

Magistrate's Court, KEFAENG, duly sworn, states (*continued*):
 Defendant's
 Evidence.
 Kefaeng.
 continued.

the Palapye Road Hotel. I had been to Mafeking with Simon and Oratile and had now returned. Simon's waggon was standing in the yard of the hotel. On the waggon I saw Simon's goods. I saw a table, 2 chairs, some buckets, pots, rakes, 3 lamps, 5 spades. There were blankets in the waggon on the bed. The day after Simon, Oratile, Mogatsakgari and I returned in Simon's motor car to Serowe. We had come from Serowe in Simon's motor car to see the aeroplanes. In the car were two of Simon's portmanteaus.

Plaintiff has no questions.

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Defendant's Counter-Claim.

Kgosidintsi. KGOSIDINTSI, duly sworn, states:
 Examination-in-Chief.

I am a Mongwato Headman. On the 5th April, 1926, at 5 p.m. I saw an incident for the first time in my life. It was a thing that I had never heard of even from my parents. I was sitting at the Kgotla with the Chief and many others including Gopolang and Phethu. Simon and Obeditse came with firearms. Obeditse had a rifle and Simon a pistol. They stood at Seiswana's Kgotla a little distance from the Chief's Kgotla. I heard the report of a shot. We did not think of running away as we had not expected to be fired at. 20
 A second shot rang out. We then saw that Simon and Obeditse were firing at us. We scattered. The Chief remained at the Kgotla saying he wanted to die at his father's Kgotla. I had first run away but as this was the only Chief we had I returned to him. Gopolang had taken cover behind a Mokgala tree. I caught hold of the Chief and made him stand up. He objected to stand up and I had to use strength to pull him up. Gopolang assisted me. Then another shot was fired by Obeditse. The bullet struck Gopolang on the finger, as he was behind the Chief, then grazed the Chief on the side of the stomach and as I was in front the bullet entered my hip. That was 30
 what I saw on that day.

Examination by *By Court:*
 Court.

When this happened the only guns that I saw in the Kgotla were those in the hands of Simon and Obeditse. Not one of us were armed at the time we were fired at. We had left our guns at home because no one ever dreamt there would be war. There was also a man named Phokoye wounded but I do not know much about him as he was not wounded at the same spot as we. I was quite close to the Chief and saw the Ratshosa brothers aiming at the Chief with their firearms. This business began in the morning by the Chief summon- 40
 ing the three Ratshosas to the Kgotla and their refusing to come. They were summoned again in the afternoon and a long time after they had been called by the Chief they arrived. After putting some

Magistrate's Court,
Defendant's
Evidence.
Kgosidintsi.
Examination by
Court
continued.

KGOSIDINTSI, duly sworn, states (*continued*):

questions to them the Chief ordered them to be flogged for disobedience. They refused to lie down to be flogged. There was then a row and Obeditse and Simon ran away to fetch their guns and came back and shot us. Johnny escaped to the Camp. It is certainly the Sechwana custom that the Chief should claim damages from the Plaintiff not only on behalf of himself but also on behalf of his followers who are wounded. That is myself and Gopolang. My wounds and injuries were inflicted on me by Plaintiff Simon and Obeditse whilst I was protecting the Chief from their murderous assault. According to Sechwana custom the Chief is in the position of a father who claims damages on behalf of us his children who were injured in his service. My wound was in the hip and was a very dangerous one. After being given first aid by the Rev. Lewis I was attended to by Dr. Drew. I was taken in the Chief's car to Palapye Road and there entrained for Bulawayo where I was treated in the Hospital for about a month. To-day I have lost my health and I am not the strong man I used to be. I am lame. I am very satisfied with whatever damages my Chief is claiming on my behalf and on behalf of himself and Gopolang and Phokoye for injuries received at the hands of the Plaintiff Simon and Obeditse. In 1926 Simon and Obeditse were tried criminally before Capt. Reilly at Palapye Road and I gave evidence. Simon and Obeditse were convicted of assault with intent to murder the Chief, myself and Gopolang. The sentence passed on them was ten years in gaol. Afterwards I heard that their sentences were reduced to four years' imprisonment with hard labour.

Statement by
Plaintiff.

Plaintiff has no questions but remarks that he would like to see the statement of the Doctor who treated Kgosidintsi.

CLAIM 1.

Gopolang.
Examination-in-Chief.

GOPOLANG, duly sworn, states:

I am a Mongwato and one of the Chief's men. The bullet of Obeditse's entered at my right wrist here (indicates side of right wrist). It cracked a bone there and came out through the back of my hand and took off this finger (shows right hand with the whole of the second finger missing). Rev. Lewis gave me first aid and afterwards he removed me to Dr. Drew's. I was a very long time under treatment by Dr. Drew. I was wounded at the Kgotla. On the 5th April, 1926, I was sitting in the Kgotla with the Chief and others. Then Simon and Obeditse arrived carrying guns. They stood at Seiswane's Kgotla and from there they fired at the Chief sitting in his Kgotla with us. Seiswane's Kgotla, where they stood to fire at us, is as far from the Chief's Kgotla where we and the Chief were sitting as that heap of red sand over there (indicates about 100

- Magistrate's Court, Defendant's Evidence. Gopolang. Examination-in-Chief continued. **GOPOLANG**, duly sworn, states (*continued*):
- yards). Obeditse had a rifle and Simon had a pistol. They both aimed and fired at us. The first shots struck short. I did not notice where the other shots fell as a great commotion arose. People were standing up and running away to get away from the shots. Plaintiff and his brother were aiming at the Chief. That is as I saw it. The Chief Tshekedi was wounded on his side by the same bullet that wounded me and Kgosidintsi. No one at all in the Kgotla was armed when the two Ratshosas commenced their murderous assault. The Ratshosa brothers fired at us while we were in the act of removing the Chief from his chair to a place of safety. After this they returned to their houses. Later they were tried criminally by the Magistrate at Palapye Road. I heard they were sentenced to gaol. 10
- Examination by Court. *By Court:*
- It is Sechwana custom that the Chief should claim damages from the Ratshosas for the injuries which they inflicted upon us and on him. It is our custom that whoever of us who suffers injury should go to the Chief to receive redress. Kgosidintsi and I were injured together with the Chief. The Chief is in the position of a father to his people and their complaints have got to be presented by him on their behalf and it is he only who should claim damages on our behalf. 20
- Cross-Examination. *By Plaintiff:*
- There has so far been no instance of a servant trying to kill his master and therefore I do not know of any instance to quote you of the Chief claiming compensation for injuries to his followers. I was not yet born when the case you mention of my grandfather firing at Chief Khama and wounding your grandfather Mogomotse occurred.
- Malepi. Examination-in-Chief. **MALEPI**, duly sworn, states: 30
- According to Sechwana custom as regards the counter-claim in this case, it is our custom that the Chief Tshekedi should bring his counter-claim against Plaintiff on behalf of his wounded followers as well as himself. According to our law and custom the Chief is in the position of father to his people and it is just and right that he should counter-claim on behalf of his injured followers.
- Plaintiff has no questions.
- Chief Tshekedi Recalled. **CHIEF TSHEKEDI**, recalled and duly sworn, states:
- I was wounded on the right side. It was either Simon or Obeditse who wounded me. It was not a graze but a wound and the wound had to be attended to by Dr. Drew. It was the same bullet 40

Magistrate's Court, CHIEF TSHEKEDI, duly sworn, states (*continued*) :

Defendant's
Evidence.
Chief Tshekedi.

that wounded Kgosidintsi and Gopolang. The wound bled and had to be bandaged by Dr. Drew. The bullet in question pierced through all my garments and through my shirt.

Plaintiff has no questions.

Court adjourned until 2.30 p.m., 19th March, 1928.

Hearing resumed 2.30 p.m., 19th March, 1928.

Defendant's Case
interrupted to call
Witness for
Plaintiff.

Following witness for Plaintiff re Claim 2, having only recently arrived from Francistown, is called.

CLAIM 2.

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Plaintiff's Evidence,
Ben Rose .
Examination-in-Chief.

BEN ROSE, duly sworn, states :

I am a Mosuto and a Dismounted Constable in the B.P. Service stationed at Francistown. I enrolled in the Police on the 1st January, 1928. I know the Ratshosa brothers. I entered their service on the 19th July, 1926, and left their employ in December, 1927. Johnny asked me to truck their cattle at Shashi and while with him there I was trucking his cattle for him at Shashi. I think this was at the beginning of 1927. This was before Johnny went to Francistown. I followed Johnny to Francistown and whilst we were there he sent me to truck more cattle. Johnny sent me to Shashi to truck and told me that I would find the money in the hands of his boy at Shashi, this money being the proceeds of cattle of the Ratshosas which had been sold. This was towards the end of March. When I got to Shashi I found that the Ratshosa's boys had no money. I went to the Mongwato at Tonota who issued cattle selling permits for the Bamangwato. I asked him for a permit on behalf of Johnny to sell his cattle as the trucks were waiting. I was informed that they were awaiting instructions from the Chief and could not therefore give me permission to truck. On my return to Shashi Siding I met Johnny who gave me the money for trucking. I told him that the trucks had gone and I told him to order some more. He ordered the trucks. In April, 1927, Johnny sent me again from Francistown and I did not find any cattle. I waited at the Siding for them for two days but they did not turn up. On the third day I went to Tonota and found that the Ratshosa's cattle had been seized by the regiments sent by the Chief.

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Examination by
Court.

By Court :

Yes, on one occasion when I had got trucks there was no money of Johnny's wherewith to pay for the trucks. It was then that the trucks were withdrawn by the Railway Company. Johnny ordered

Magistrate's Court,
Plaintiff's Evidence,
Ben Rose.

BEN ROSE, duly sworn, states (*continued*):

Cross-Examination.

some more trucks and produced the money for trucking and the cattle were trucked and sent off. On the next occasion after that when I got to Shashi I found that Ratshosa's cattle had been seized by the regiments sent by the Chief and taken away to Tamasane.

By Defendant:

On the occasion when I went to look for the money from the Ratshosa's boys I found them there at Shashi. As to their names I remember Ramorwa, Rasegupu and Rasiriri. I heard of the occasion when the regiment in charge of Lekgoba took away the boys from the Ratshosa's posts, but I was in Francistown. When I found the Ratshosa's herdboys at Shashi I think it was after the boys had been removed by the regiment. On the occasion that I had no money for trucking, I trucked 40 head after I had obtained the money from Johnny. We were then at Francistown with Johnny. We had then left the Bamangwato country. The day on which I trucked the cattle was on the 4th April, 1927. I think these cattle were driven into the Station by Ramorwa, Rasegupu, Rasiriri and others, whose names I do not know. I think there were five herd-boys present on that occasion driving the cattle. I do not know what post these cattle were being obtained from but I heard they came from the Shashi posts. I never went to the Shashi posts myself. From what they told me these cattle were taken from the Ratshosa's posts and not picked up in the veldt. I think these herdboys of the Ratshosas had other people with them at the cattle posts and were not just alone. I was told that these cattle came from the Ratshosa's posts and I take it for granted that these cattle could not be without herds.

Exhibit " R. "

Plaintiff, in conjunction with Johnny Ratshosa, asks leave of Court to produce letter and show it to the witness. Letter produced and shown to the witness. Letter read. put in and marked " R. "

Witness:

Yes, I wrote that letter from Palapye Road on the 3rd March, 1927, to Johnny Ratshosa at Francistown. In the said letter I simply repeated what somebody else had told me.

Plaintiff has no questions.

Magistrate's Court,
Defendant's
Evidence
Resumed.

CALLED BY THE COURT RE CLAIM 1.
CLAIM 1.

Oitsile, called
by Court.

OITSILE, duly sworn, states :

Examination by
Court.

By Court :

I am one of the leading Bamongwato Headmen and I am one of the Chief's men. I was present in the Kgotla on the 5th April, 1926, when the shooting affair took place. I remember when the orders were given by the Chief to burn the offenders houses, we counsellors and Headmen on that day were unanimous in our agreement that the culprits houses should be burnt, because the thing they had done had never happened before. All the other Bamongwato present were unanimous in their approval of the order to burn the Plaintiff's and his brothers houses, because they had seen the Chief's blood flow through the attack of the two Ratshosas. All the people outside the Kgotla were unanimous in this and in fetching their guns, wherewith they intended to kill the Ratshosas. 10

Cross-Examination.

By Plaintiff :

We were all unanimous on this measure as soon as the shooting by the Ratshosas had taken place. The Magistrate came whilst we were marching to the Ratshosas with rifles in our hands and I had myself already fired twice. When the Magistrate spoke to us you were not there, so you cannot say what the Magistrate said to us. 20

Baisi.
Examination by
Court.

BAISI, duly sworn, states :

By Court :

I am one of the Chief's men and a Headman. After the shooting at the Chief had taken place, we counsellors and Headmen were all of us unanimous in approving of the orders of the Chief to go and burn the houses of the culprits. All the Bamongwato people present that day were unanimous. 30

CLAIM 2.

G. E. Nettleton.
Examination-in-Chief.

GERALD ENRAGHT NETTLETON, duly sworn, states :

I am the Magistrate at Serowe. I have been here since 3rd August, 1927. I visited certain cattle of the Ratshosas at Maselakwana near Bobonon. This is on the Macloutsi River. My visit was in connection with a certain writ of attachment issued in the Magistrate's Court in an action brought by Magatsakgari. This was on the 19th September, 1927. I found there cattle total-ling 559 head. I relied on the herd boys as to who the owners were and I awarded Mogatsakgari 64 head. This was an interpleader action. These cattle were pointed out by herd Gabanakgosi, 40

Magistrate's Court,
Defendant's
Evidence,
G. E. Nettleton.
Examination-in-Chief
continued.

GERALD ENRAGHT NETTLETON, duly sworn, states
(continued) :

While there I took the opportunity to get the herd boys to divide these cattle. They turned out 38 head as belonging to Obeditse Ratshosa, 16 head belonging to Simon Ratshosa, 332 head as belonging to Johnny Ratshosa and 10 head as belonging to Nkwane. Many of the Ratshosas herd boys claimed cattle as being their own property. I took their names and the numbers which they claimed as follows :—Morotse 5 head, Mosuluyane 7 head, George 4 head, Zacariah 7 head, Monnathuto 5 head, Namogang 7 head, Rasinne 10
3 head, Mosaakane 3 head, Bafenye 5 head, Gabanakgosi 21 head, Mokadi 6 head, Ramogapi 3 head, Rakete 23 head. So far as I saw, all the others except Rakete were present, and Rakete's claim was made by others on his behalf. I made each herd boy turn out what he claimed from the other cattle. The list was submitted to Johnny Ratshosa through the Magistrate, Francistown. The Magistrate, Francistown, replied that Johnny was unable to confirm any except Gabanakgosi and Rakete, but he stated that some of the herd boys did own cattle. The position as regards these cattle is that some of them are still on hand in the hands of the Messenger of the Court. The majority belong to Johnny Ratshosa and a few to the other Ratshosa brothers. There were also certain cattle at Tamasane. On the 19th September, 1927, I found 95 head mixed cattle at Tamasane. These were under attachment by the Messenger of the Court in connection with certain civil actions by Europeans. I visited them in connection with a claim by Sekhutleleng, a sister of the Ratshosas, who claimed certain of these cattle on an interpleader summons. Of these 95 head. 19 head were pointed out as Johnny Ratshosa's, 70 head as Simon Ratshosa's, 4 head as Zacariah's and 1 head as Segobe's. There was a bull 30
said to be missing. It had only strayed for a day. Of these 70 head of Simon's 25 cows were awarded to Sekhutleleng. Those cattle were at Tamasane. I do not know where they originally came from. There were certain herds there. I have not got their names, as the record in this interpleader has unfortunately gone astray, but I can assert they were herds. Further, there were certain other cattle of the Ratshosas. They were at Mooke and they came from Mabeleapudi. There were 118 of these cattle and they were under attachment in connection with cases by Europeans against the Ratshosas. There was an interpleader 40
summons put in with reference to these by Nkwane, sister of the Ratshosas. She was awarded 42 head. I could give the names of the herd boys with this lot of cattle, but the names are with the record at Palapve Road. I am unable to say to which of the brothers these cattle belonged. The Clerk of the Court divided these before selling them in execution. All those not handed over to Nkwane were sold by the Messenger of the Court. That is all I

Magistrate's Court, Defendant's Evidence. GERALD ENRAGHT NETTLETON, duly sworn, states
(continued) :

G. E. Nettleton. found in regard to these cattle and I was guided mainly by the herd
Examination-in-Chief continued. boys. In this interpleader action the record shows how long each boy had been with the cattle and I took this into consideration when getting the herds to indentify the cattle.

Examination by Court. *By Court:*
As regards all the cattle left by the Ratshosas in this Reserve, so far as I know all of these are under attachment in connection with civil processes by Europeans against the several Ratshosa 10 brothers.

Plaintiff has no questions.

CLAIM 1.

Stanley Langton. STANLEY LANGTON, duly sworn, states :
Examination-in-Chief

I am Clerk to the Resident Magistrate's Court, Serowe. I held this appointment at Serowe from January, 1924 to May, 1926, and subsequently from July, 1927 to the present time.

Examination by Court. *By Court:*
I was in Serowe at the time of the burning of the Ratshosas houses. On the night of the 5th April, 1926, after the shooting had 20 taken place, Obeditse came to me at my quarters. I had been put in charge of the custody of Simon and Obeditse Ratshosa by the Magistrate that afternoon after the shooting had taken place. Obeditse asked for permission to go up to his house, accompanied by a policeman. He stated that he wished to fetch his things, because he feared that his house would be looted and burnt in the night. I reported what he had asked to the Magistrate, Mr. Cuzen, and in consequence of what the Magistrate replied, I informed Obeditse that he could not go. That is all I know, except that next morning we heard the report that the houses had been 30 burnt.

With regard to the criminal trial of Simon and Obeditse Ratshosa, it was commenced at Palapye Road on the 26th June, 1926, in the Court of the Additional Resident Magistrate, Capt. Reilly. I produce the Criminal Record Book which shows that case No. 32/79/1926, that Simon and Obeditse Ratshosa were charged with the crime of attempted murder. I produce a duplicate original copy of the indictment which shows that Simon and Obeditse Ratshosa were charged with assault in attempt to murder in that they did assault Tshekedi, Acting Chief of the Bamongwato, 40 Kgosidintsi and Gopolang, by discharging firearms at them with

Magistrate's Court,
Defendant's
Evidence.
S. Langton.
Examination by
Court continued.

STANLEY LANGTON, duly sworn, states (*continued*) :

intent to kill or murder the said persons of which said bullets discharged did wound the said Tshekedi, Kgosidintsi and Gopolang, thereby causing them injuries and hurts. The judgment was both guilty and the sentence passed by the said Court was 10 years imprisonment with hard labour. An appeal was lodged and on appeal the sentences were both reduced to 4 years by the High Commissioner (H.C. despatch 1382, dated 21st September, 1926).

CLAIM 2.

Witness continues:

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As regards cattle belonging to the Ratshosas in this Reserve, there have so far been three sales in execution in connection with claims brought by sundry European creditors as well as natives. I have a rough note here of the numbers sold in execution. The following of Johnny Ratshosa's were sold:—In April, 1927, 160 head mixed cattle. These included calves, bulls, oxen, cows and yearlings. In September, 1927, 37 head of similar cattle were sold. On the 14th December, 1927, 198 head cattle were sold. This totals 395 head.

The following of Simon Ratshosa's were sold:—In April, 1927, 20 head cattle. On the 12th September, 1927, 7 head cattle. On the 14th December, 1927, 13 head cattle. This totals 40 head.

The following of Obeditse Ratshosa's were sold:—In April, 1927, nil. On the 12th September, 1927, 30 head cattle. On the 14th December, 1927, 22 head. This makes a total of 52 head.

There are still a few cattle on hand in the hands of the Acting Messenger. The following numbers are approximate because some have died or been lost:—Johnny Ratshosa 169 head mixed cattle. Simon Ratshosa 48 head mixed cattle. Obeditse Ratshosa 16 head mixed cattle. This makes a total of 233, but from a recent advice 30 from the Acting Messenger there are only 150 head or a little over left at Palapye.

Plaintiff has no questions.

CLAIM 2.

Alfred Mahloane
Recalled.

ALFRED MAHLOANE, recalled and duly sworn, states :

I am a Native Clerk and Interpreter to the Magistrate, Serowe. I began in this office on the 22nd April, 1926.

Examination by
Court.

By Court:

Soon after September, 1926, I was present on more than one occasion as Interpreter between Mr. Cuzen, the Magistrate, and 40

Magistrate's Court,
Defendant's
Evidence.
A. Mahloane.
Examination by
Court continued.

ALFRED MAHLOANE, duly sworn, states (*continued*) :

Johnny Ratshosa. Johnny was warned through me by the Magistrate to make efforts to dispose of the cattle, that is, his cattle and those of his brothers, without delay. He was so told by the Magistrate through me more than once. Subsequently on one occasion he and Oratile were specially brought to Serowe to the Magistrate. The Magistrate warned them through me as Interpreter to dispose of their property in the Bamangwato Reserve. This I think was in November or December, 1926. He was warned again after that. He was warned nearly every time he came to Serowe by the Magistrate. He was warned at intervals by the Magistrate up to the time he left the Bamangwato Reserve. 10

Plaintiff has no questions.

CLAIM 1.

Stanley Langton
Recalled.

STANLEY LANGTON, recalled and warned by the Court that he is still on oath, states :

I am Clerk in the Magistrate's Court, Serowe. I produce a certified copy of the proceedings of the appeal in the Court of the Resident Commissioner in the case of Rex versus Simon and Obeditse Ratshosa, charged with assault with intent to murder in 20 which they were convicted and sentenced in the Court of the Additional Resident Magistrate.

Exhibit " T. "

Last page of record read. Put in and marked " T. "

Witness continues:

I also put in a statement by Mr. A. L. Cuzen, sworn before the Acting Resident Magistrate at Lobatsi on the 19th March, 1928. This was received by me this morning by post.

Exhibit " U. "

Statement read, put in and marked " U. "

W. Mackintosh,

WILLIAM MACKINTOSH, duly sworn, states :

I am a resident of Serowe. 30

Examination by
Court.

By Court:

After the shooting on the 5th April, 1926, Simon Ratshosa took refuge in my house. I sent to call Mr. Cuzen, the Magistrate, telling him that Simon was in my place as he was looking for him. A native Lesolo asked me if he could see Simon. I told him that I was frightened to allow him in. Simon said he wanted to send him to get something and I allowed him in on that condition. Simon, in my presence, told him to go and get something at his house. This was between 8 and 9 in the evening before there was any burning. This Lesolo went away and brought back a parcel wrapped up 40

Magistrate's Court,
Defendant's
Evidence.

W. Mackintosh.
Examination by
Court continued.

WILLIAM MACKINTOSH, duly sworn, states (*continued*) :

in a large handkerchief. What was inside I cannot say. Simon had told me verbally that there were a lot of valuable papers left behind at the house. This parcel was taken away with Simon and Lesolo down to the Camp. I took them myself in my own car. The Magistrate had some one else in his car and I drove the Plaintiff and Lesolo in my car following the Magistrate's car to the Camp.

Cross-Examination.

By Plaintiff:

Yes, I am sure that this parcel was brought to you and handed over to you. I do not know if the Magistrate saw this parcel. It did not concern me. Certainly Lesolo after he had found you in my house went back to your house. 10

Examination by
Court.

By Court:

When Simon came he ran through the gate to the bedroom door and then ran to the opposite door. I asked him what was up and he said that they were killing him and that Johnny was dead. He said he had a loaded revolver in his hand. I told him to unload it. He did not unload it, but in trying to he blew off the shot into my wall. The bullet is there to-day. I opened the door and he sat down in a chair. I gave him some water. Then he moved to another chair as he was frightened that the natives might fire through the window at him. I took his revolver after having got him into the spare room. I eventually handed the revolver to Mr. Cuzen. I do not think he knew what he was doing. He was crying and shouting out. It was when he was in the spare room that he told me that he had a lot of valuable papers at his home. He then sent Lesolo to his house and told him to fetch something. Lesolo returned with the parcel I have mentioned, the contents of which I am ignorant. The parcel was about 14 or 15 inches in diameter and was tied up in a handkerchief. 20 30

Chief Tshekedi
Recalled by
Court and
Examined by
Court.

CHIEF TSHEKEDI, recalled and duly sworn, states :

By Court:

On the 5th April, 1926, before the shooting, I remember that the Magistrate came about noon to the Kgotla. He brought to me a small piece of paper which I think he said came from Simon Ratshosa. I forget what the note said but it was to the effect that Simon wanted the assistance of the Magistrate. The Magistrate had come down to me to enquire as to what had happened. I explained to the Magistrate that since that morning I had had nothing to do with the Ratshosas but that I heard the regiment to which he belonged and which had to go and work on the roads had gone to fetch him and he had refused to go. In reply to the Magistrate I said that this was the only trouble that there could be in regard to the Ratshosas. I remember also that after the Plaintiff 40

Magistrate's Court,
Defendant's
Evidence.
Chief Tshekedi.
Examination by
Court continued.

CHIEF TSHEKEDI, duly sworn, states (*continued*):

and his brother had shot at us, the Magistrate came to the Kgotla. There was a lot of commotion in the Kgotla as we were arming ourselves. Some had already gone and I could hear firing outside the Kgotla. In reply to the Magistrate's questions I explained what had happened and that we had been wounded by the Plaintiff and his brother and that some of my men had already followed up the Ratshosas. In reply to his further questions I said that the Ratshosas might have returned to their houses and I detailed Baisi to accompany the Magistrate. As far as I can remember the 10
Magistrate did not ask me any other question neither did he say anything else to me or give me any instructions of any sort. All the Magistrate did was to hurry to his car and get into it with Baisi and drive off to the Ratshosas' dwellings. The next time I saw the Magistrate was late that evening. He found me and my counsellors gathered at the Kgotla. I had at that time sent out men to try and find the Ratshosas and bring them to me alive or dead. The Magistrate then informed me that he had taken 20
Obeditse and Johnny to the Camp and warned me that there should be no more shooting now that these two were in his hands. He added that if Simon could be found he should not be shot but brought to the Camp. I remember only these words of the Magistrate that day. I did not see him again until the next morning the 6th. He found me at the Kgotla with many of my people most of whom were armed. He attempted to speak to the people. This was early in the morning I think before 7 a.m. I told him that he could not manage them as they were very angry and that he must leave them to me. Mr. Cuzen then said to me that what he intended to tell the people was that they should now put away their arms and be quiet as they were frightening the white women and that the thing was 30
now over as the Ratshosas were in his charge at the camp. While we were speaking he noticed a regiment going towards the Ratshosas' buildings and he asked me where they were going. I told him that I had sent them to go and burn the Ratshosas' houses. I did not hear him say anything in reply. In fact he made no answer. At this stage the people had become quiet while I talked to the Magistrate so that we could hear each other distinctly. We had gone outside the crowd and were talking aside. Seeing that the people were quiet I then asked the Magistrate to come amongst them and speak to them. He told the people exactly 40
what he had told me that they should lay down their arms and not walk about the village armed with guns and that now the Ratshosas were in his custody things should be quiet again. Thereupon a voice amongst the people in the Kgotla angrily asked him why he asked them to lay down their arms when these people had been killing. This voice was disrespectful and I remonstrated with the owner of the voice. The Magistrate did not take any notice of

Magistrate's Court,
Defendant's
Evidence.
Chief Tshekedi.
Examination by
Court continued.

CHIEF TSHEKEDI, duly sworn, states (*continued*):

this as the people were very angry at the time. I conducted the Magistrate out of the crowd and took him to his car. At his car I told him that the Ratshosas women and children were at Edirilwe's place and that in view of the wrath of the people they should be moved to the Camp. He moved them to the Camp. When the Magistrate had gone I returned to the people and spoke to them in the same strain as the Magistrate had done and requested them to put away their arms and they obeyed my orders. I may have forgotten something as it is a very long time ago but that is what I remember. I forgot to mention that after the return of the Magistrate to the Camp I had occasion to visit the wounded at the doctor's. I met the Magistrate coming from there and he made no remark about the burning which he had seen. 10

By Court:

I am certain that Mr. Cuzen made no remark at all when I told that the regiment was going to burn the Ratshosas' houses. In fact at the time of his return from the Kgotla the flames of the houses could be seen. 20

CHIEF TSHEKEDI continues:

I heard Mr. Mackintosh the previous witness mention a native named Lesolo whom he stated had been sent by Simon from his house to fetch a parcel from Plaintiff's house. About a week ago I tried to find this witness in connection with other matters but I could not find him. I understand that he is in the Mahalapye area. I think that he is living at his cattle post there. If a telegram were sent to the Police there and my Headman Mompati assisted them they might find him. His name is Lesole. Seditsane is the name of the place where his cattle post is. It is near Kurumetse. From Mahalapye it is about a day's journey on horseback. Lesole is also known as Kewakwamodimong. 30

Statement by
Plaintiff regarding
Evidence by
Chief Tshekedi.

Plaintiff Simon has no questions, informing the Court that what the Chief has now said might be compared with what he stated in the Criminal trial and that the record should be examined to see.

Statement by
Court.
Court's Ruling.

Court reads out telegram from the Resident Commissioner with reference to statement made in Ramorobe's evidence in connection with the burning of the Makalaka huts at Shashi about 1917 in consequence of which Court announces that it will strike the hearsay portion of Ramorobe's evidence out of the record. 40

Exhibit " V. "

Telegram read, put in and marked " V. "

Magistrate's Court,
Defendant's
Evidence.
Claude C. McLaren.
Examination-in-Chief.
Exhibit " W. "

CLAUDE CAMPBELL McLAREN, duly sworn, states :

I put evidence received on commission from the Magistrate, Lobatsi, taken by him on commission from Mr. Cuzen, formerly Magistrate, Serowe.

Read, put in and marked " W. "

WITNESS CALLED BY THE COURT.

CLAIM 1.

W. Mackintosh
Recalled by
Court and
Examined by
Court.

WILLIAM MACKINTOSH, duly sworn, states :

I am a waggon builder and blacksmith residing in Serowe.

By Court :

10

I know the buildings owned by the Ratshosas that were burnt on the 5th April, 1926. I have just made an inspection of the buildings with Captain Nettleton. (Sketch made by Acting Clerk of the Court handed to witness.) I find that this sketch is not correct in regard to the position of the buildings but it serves roughly to give an idea of the sizes of the buildings.

As regards Simon Ratshosa's buildings I have carefully inspected these and I would not put the value of the two of his buildings at more than £200. I am not including the value of the brick and mortar but I am assessing the value of the material and workmanship. I reckon that I would be very well paid if I got the job to put up these buildings for £200. I would like to do it every day at that price.

Plaintiff Simon Ratshosa has no questions.

As regards Obeditse Ratshosa's building, I find that it is not completed for a start and I would put his building down at not more than £150. As regards any native huts belonging to him or to the others, I do not take these into consideration at all as I am used to putting up ordinary buildings and not huts.

Cross-Examination
by Obeditse.

By Plaintiff Obeditse Ratshosa :

30

Yes, I put your building down at £150. I have been asked and this is my estimate. I only value materials and workmanship. The brick and mortar I have not included. I have included the cement in valuing all three brothers' houses. That is imported stuff and I have allowed for it whereas the bricks and mortar are local products. In imported material I include wood, iron, cement, doors and windows.

As regards Johnny Ratshosa's buildings, he has the large house as shown in the sketch and one rondavel with an iron roof and cemented. Behind Johnny's house there is a square grass

40

Magistrate's Court,
Defendant's
Evidence.
W. Mackintosh.

WILLIAM MACKINTOSH, duly sworn, states (*continued*) :

thatched house. Concerning that I can give no valuation. That is put up in native fashion and the thatching grass by custom belongs to the Chief. The value of the two places put together I place at between £400 and £450 including the cement.

Cross-Examination
by Johnny Ratshosa.

By Plaintiff Johnny Ratshosa:

I was not asked to build your house. I do not know the builders of your house. I put on your verandah on your house. Mr. Kelsey was executing some additions and employed me to put on your verandah. I quite expect that as you say the materials were ordered by white people. They paid me £400 for my house. I am valuing the material and workmanship on your house and not the brick and mortar. I include in all my valuations the cost of building the house minus the cost of the bricks and mortar. 10

(Witness requests Court to ask Johnny if he is willing to give him a contract to rebuild that place at the price he (the witness) had given and that he would be very pleased to do so.)

I could not tell you how much I charged you to build that six-sided house for you. It was built by the old firm. Yes, we keep books and if you went and looked in my books you might find the price. I cannot remember if I charged you £68 for your roof. 20

Plaintiff's
Objection.

(Plaintiff states to Court that he objects to Mr. Mackintosh's evidence as he is not a builder but a blacksmith.)

Witness continues:

Johnny should be asked who put up the wood and iron and ceiling on the Church. All the seating in the Native Church was done by Mackintosh Bros. Johnny can go and look at my own dwelling house which was put up by W. Mackintosh, that is, by my firm and lots of other buildings in Serowe. It is all rot Johnny Ratshosa saying that I am not a builder. I am the firm of the Serowe Waggon Works, late Mackintosh Bros. I employ Mr. Meech and anybody else it suits me to. I am the Contractor and everything goes through me. In comparing my house to Johnny's I had to supply my bricks and mortar and it has steel ceilings and wooden floors throughout whereas in Johnny's house some rooms are cemented and the others just with mud floors. Yes, my house has a steel ceiling. 30

C. C. MacLaren.
Examination by
Court.

CLAUDE CAMPBELL McLAREN, duly sworn, states :

I am Acting Clerk of this Court. On the 14th March, 1928, I accompanied the Court to the Ratshosas' burnt buildings and with the Magistrate took down the rough measurements of the 40

Magistrate's Court, Defendant's Evidence.
 Claude C. MacLaren. Exhibit " S." CLAUDE CAMPBELL McLAREN, duly sworn, states (*contd.*):
 houses which I noted down on the spot. I hand in this rough sketch showing the position and dimensions of the houses.
 (Sketch handed in and marked " S.")

H. B. Poole. Examination-in-Chief. This is a Certified Copy of the Evidence given by H. B. Poole in the Case of Johnny Ratshosa and the Exhibits are marked as appearing in that Record. HENRY BRADISH POOLE, duly sworn, states:
 I am a police officer in B.P. Service at Palapye Road. I have been there since November, 1924. During the latter part of 1926 and during 1927 I acted as Messenger of the Court but not continuously in connection with cattle seized upon writs of execution issued by the Magistrate's Court, Serowe, in connection with judgments given by the Additional Magistrate, Palapye Road, in September, 1926, and subsequent judgments given by the Magistrate, Serowe, in civil claims against the Ratshosa brothers. I produce my records in connection with all cattle dealt with by me in my capacity as Acting Messenger of the Court. 10

Examination by Court.

Court:

From September, 1926, onwards please state the number of cattle belonging to Plaintiff and his two brothers that respectively passed through your hands in attachment and the places where they were found? 20

Witness:

As regards the first lot of cattle between September, 1926, and the 2nd February, 1927, I have not got the actual numbers attached but the receipt signed by the Chief's Headman Neo at Palapye Road for those cattle attached by me in execution of the judgments given by the Additional Magistrate at Palapye Road during September, 1926, was sent by me to the Magistrate's Office, Serowe, and must be filed with the writs. I have not the numbers. The Clerk of the Magistrate's Court, Serowe, should have the receipt filed with the writs in question. I have seen it there. Some of these cattle attached from the Ratshosas were cattle which had been awarded them by the Additional Magistrate, Palapye, in September, 1926. I remember this particularly because Plaintiff Johnny at the time remarked to me that if these cattle were good enough to be awarded to him as judgments in his favour against the Bamangwato they were good enough to be awarded to them for judgments against him. So far as I remember the balance of the cattle required upon the writs against Johnny and his brothers came from Tamasane and I believe that it was upon Johnny's instructions that his herd Sutu at Tamasane brought the cattle in. I do not know where Sutu is but so far as I have heard he is working for R. A. Baily, Magapinyane. None of these cattle died in my hands as they did not remain in my hands for any length of time 30 40

Magistrate's Court,
Defendant's
Evidence.
H. B. Poole.
Examination by
Court continued.

HENRY BRANDISH POOLE, duly sworn, states (*continued*):

and I got a clear receipt for them. Sutu and the Ratshosa herds brought them in to me. Certain other cattle were also brought in by Sutu. Sutu was in charge of Johnny's post at Tamasane and he also brought in another lot of cattle upon writs but these he took back since Johnny paid his judgment debts on these particular writs and I released them. Sutu and his family were dependant on Johnny's cattle for their subsistence. Before Johnny left this Reserve in February, 1927, I got this clearing receipt from him which I produce and put in.

10

Exhibit "H,"
vide
Johnny Ratshosa's
Case.

Read, put in and marked "H."

Johnny acknowledges his signature.

Up to the date of this receipt there had been no sale in execution by me.

In about April, 1927, I attached 162 head cattle belonging to Johnny at Tamasane and two horses. At the same time I attached about 70 head belonging to Simon. The 162 head were sold for £196 12s. 6d. and 20 head of Simon's were sold for £25. There were none of Obeditse's. I produce Vendue Roll of the aforesaid.

20

Exhibits
marked "I,"
vide
Johnny Ratshosa's
Case.

Put in and marked "I."

At Mooke in July or August, 1927, 40 head of Johnny's were attached, 32 head of Simon's and 7 head of Obeditse's. Three calves of Johnny's died and 2 of Obeditse's. The Chief collected these cattle at Mooke. Of Johnny's cattle 10 came from Sekhunou, 13 from Motsabi, 4 from Tabana and 10 from Shabane. Of Obeditse's 21 head came from Shabane and 9 from Sekhunou. Of Simon's 7 came from Sekhunou. These cattle were sold on the 12th September, 1927, for £84 3s. 6d.

Statement of above put in and marked "I."

30

In September, 1927, I attached cattle at Moselakwane. There were supposed to be 386 head to be attached on various writs against the three brothers. Of these were sold 198 head for £403 10s. belonging to Johnny, 13 head belonging to Simon for £16 10s. and 22 head belonging to Obeditse for £44 15s.

Statement of above put in and marked "I."

These are the only cattle sold amongst the cattle from Moselakwane. Anthrax broke out and about 6 died and their hides are at Palapye Camp. There are also roughly 35 hides which were

Magistrate's Court,
Defendant's
Evidence.
H. B. Poole.
Examination by
Court continued.

HENRY BRANDISH POOLE, duly sworn, states (*continued*):

brought in by natives sent by me belonging to Ratshosa cattle which had died at the posts and on the road coming in. There are still some cattle at Palapye Road belonging to Johnny and Simon. A telegram was sent over by Sergt. Lamb to the Magistrate, Serowe, giving the numbers as I had left the service at that time. Further according to the Police at Macloutsi there are still 25 head belonging to the Ratshosas at Maselakwane which is situated between Macloutsi and Shashi and is 16 miles from Bobonon.

I accompanied Capt. Nettelton, the Magistrate, Serowe, in 10
September, 1927, to Maselakwane and Tamasane and at Maselakwane he awarded certain cattle to the Ratshosa sisters and herds as will be explained by this Minute which I put in.

Exhibit " J,"
vide
Johnny Ratshosa's
Case.

Read, put in and marked " J."

Since then the Police have reported to me on different occasions that there are a number of Ratshosa cattle wandering about Moselakwane. About a month ago I instructed Ramagapi, who was working for the Ratshosas at Moselakwane with their cattle and seemed to have the same position as Sutu had at Tamasane, to collect the cattle. When I went to Moselakwane with Capt. Nettle- 20
ton, Ramagapi had a good deal to say on the subject and I assumed that he was a sort of head herd of the Ratshosas. Ramagapi was hanging about after bringing in one lot of cattle from Moselakwane on a writ. This was about a month ago and in reply to his questions I instructed him to go back to Moselakwane to collect all the stray cattle he could find and report to the Police at Macloutsi. So far I have had no further report from the Police on this subject. On the two occasions that I visited the Ratshosas' posts at Moselakwane and on the three occasions that I visited their posts at Tamasane I always found a number of natives round the cattle kraals. 30
They all appeared to be interested and I assume that they were looking after the Ratshosa cattle since they appeared to be under the Ratshosa men in charge, that is Ramagapi and Sutu respectively.

With regard to the receipt I obtained for cattle attached between September, 1926, and the 2nd February, 1927, I can find the receipt in the Magistrate's office.

Evidence adjourned to allow witness to find this.

Exhibit " K,"
vide
Johnny Ratshosa's
Case.

Witness continues:

I now produce this receipt.

40

Read, put in and marked " K."

Magistrate's Court, Defendant's Evidence. HENRY BRANDISH POOLE, duly sworn, states (*continued*):

H. B. Poole.
Examination by Court continued.

Besides these I know that in connection with the Palapye Road judgments of September, 1926, the Chief seized 175 head of the Ratshosha cattle to hand to Ntebogang plus 12 oxen also awarded to her by the Additional Magistrate in September, 1926. Six of these oxen came from Mooke and six from Moselakwane.

Plaintiff Simon Ratshosa has no questions and states witness has given a proper account of their cattle at Moselakwane and Tamasane.

Plaintiff Obeditse Ratshosa has no questions. 10

Cross-Examination by J. Ratshosa.

By Plaintiff Johnny Ratshosa:

Yes, I remember you writing to me from Francistown about the time when the Chief attached the cattle in the Ntebogang judgment, to the effect that the herds were deserting and that the cattle would be scattered. The Chief's regiment brought in some herds and cattle at the same time. It may have been about March, 1927. I heard that some of the herds had deserted especially round Shashi. I think this was the result of your letter to me. I never visited any of your posts at Shashi but I instructed the police by telegram at Shashi to tell your herds not to be frightened of anything but to remain with the cattle and not to run away. I subsequently heard my instructions had been carried out by the police under me at Shashi. As regards your other posts which I visited I myself saw herds there but I cannot say whether they were all your herds or loafers. So far as I remember when I started to execute writs at these posts the regiment had already been. I only know about the regiment under Lekgoba. Yes, I heard that the Chief was collecting cattle at Tamasane to keep them under control. 20

Re-Examination.

By Defendant:

Yes, it was about April that the Tamasane cattle were sold in execution. I cannot remember the date on which Lekgoba and the regiment brought in the 25 head cattle from Moselakwane to Palapye Road. Lekgoba was subsequently indicted for moving these cattle without a permit and the criminal record will show the date. Yes, possibly the case was heard about a month after Lekgoba brought in the cattle. 30

Exhibit "L,"
vide
Johnny Ratshosa's
Case.

I put in a letter from Johnny Ratshosa.

(Read, put in and marked "L.")

Exhibit "M,"
vide
Johnny Ratshosa's
Case.

I put in a letter from Johnny Ratshosa dated 17th March, 1927, in which he complains about herdboys being taken. 40

(Read, put in and marked "M.")

Magistrate's Court,
Defendant's
Evidence.
H. B. Poole.
Examination by
Court continued.

HENRY BRANDISH POOLE, duly sworn, states (*continued*):

By Defendant:

The Tamasane cattle were attached in April, 1927. Yes, it was after the receipt of Johnny's letter " M " that the cattle were attached and sold. I think the Royal Air Force flight landed at Palapye Road in April or May, 1927. Yes, these cattle were sold on the same day that the Royal Air Force flight passed over Palapye Road. I attached the cattle myself at Tamasane but I did not remove the cattle when I attached them. The previous night I had sent a policeman out to warn the Ratshosas' herds to keep the cattle close by and the next morning I went with another policeman to Tamasane. The cattle were out grazing when I arrived and the herds brought them in to the post. Yes, when I went with the Magistrate to Moselakwane (September, 1927) I found 386 head of the Ratshosa cattle available for attachment. These cattle were brought in separate lots and there are still some there. I have not got the figures of the numbers that arrived. I have only the numbers of those that were sold. The 386 head had all to come in under attachment. 10

Stanley Langton
Recalled by Court
and Examined
by Court.

STANLEY LANGTON, duly sworn, states :

20

I am Clerk to the Magistrate's Court, Serowe. I held this appointment at Serowe from January, 1924, to May, 1926, and subsequently from July, 1927, to the present time.

Court:

Please give the figures regarding all Ratshosas' cattle that were attached since September, 1926.

Witness:

The Palapye Road judgment in favour of Ntebogang stated two cattle posts and defines them as one cattle post at Tamasane in charge of Sutu and one at Moshore in charge of Mocwaneaso. The total is 176 head given to Ntebogang. 30

Defendant's
Explanation.

Defendant explains that he collected 176 head to hand over to Ntebogang upon the said judgment and that these represent the two aforesaid posts.

Ntebogang was also awarded a span of 12 oxen.

Reference to
Exhibit " K " by Defendant.

Defendant alludes to Annexure " K " in Johnny's case produced by Mr. Poole giving 84 head cattle received by Headman Neo for him in judgments given against the Ratshosas in favour of the Bamangwato.

Magistrate's Court, STANLEY LANGTON, duly sworn, states (*continued*):
 Defendant's
 Evidence.

S. Langton.
 Examination by
 Court continued.

Witness continues:

Allowing for those acquired by the Ratshosas for judgments it would leave 70 head as representing the number of head collected from the Ratshosas to satisfy the Palapye Road judgments and which passed through Mr. Poole's hands.

After these the Acting Messenger of the Court sold 395 head belonging to Johnny at three different sales and had a balance in hand belonging to Johnny of 85 head. In Simon's case I had previously said he should have had a balance of approximately 169 head. Mr. Poole has subsequently informed that Johnny has only 85 head on hand. Of Simon's 40 were sold and the balance on hand was 31. Of Obeditse's 52 were sold and there was a balance on hand of 8 head. In my evidence in Simon's case I omitted to mention that out of the balance unsold of the Ratshosa cattle 25 head should be deducted as awarded to Sekhutleng on an interpleader summons. That is all. 10

By Court:

It is within my knowledge that a herd named Sutu at one of the Ratshosa cattle posts was required by the Court. Sutu was here at the Magistrate's office and was warned that he would be wanted in the forthcoming cases. A telegram was sent to the police at Palapye Road to locate him and send him here to-day as a witness and if necessary to arrest him. He was also a witness for the Plaintiff in the Sekhutleng interpleader action and could not be found. He knows perfectly well that he is wanted and has been personally informed. He is evidently trying to evade appearing. 20

Plaintiff has no questions.

CALLED BY THE COURT.

CLAIM 1. 30

Richard H. Lewis
 called by Court.
 Examination-in-Chief.

RICHARD HAYDON LEWIS, duly sworn, states:

I am an ordained Minister of the London Missionary Society. I have lived in Serowe since 1914. On the 5th April, 1926, I saw the wounds inflicted on the Chief's followers Kgosidintsi, Gopolang and a third whose name I do not know. I was at my house at the Mission when a motor car arrived bringing Kgosidintsi. Kgosidintsi was brought to me shot through the thigh. It was a very serious wound and he was in a state of collapse. I washed his wound and bandaged him up and laid him out on a bucksail. While I was doing this the others arrived. One had a shot which had entered the wrist and come out and shattered one of his fingers. I think this was Gopolang. By the appearance of the wound it 40

Magistrate's Court,
Defendant's
Evidence.
R. H. Lewis.
Examination-in-Chief
continued.

RICHARD HAYDON LEWIS, duly sworn, states (*continued*):

looked to me that he would lose two of his fingers. I did my best to clean and put his hand as right as possible. Then I attended to the man who was shot through the scrotum and thigh. I did not consider the latter wound very serious because the bullet had evidently come out and did not seem to have touched the bone. There was a fourth man who came. I think his name is Johnson. He had bruises about the head. These I attended to and he went away. Dr. Drew was away at the time and when he returned he came over to my house and asked me to bring Kgosidintsi over in my car. That I did. After that I handed these cases over to him for treatment. 10

Kgosidintsi and Gopolang brought into Court and identified by witness.

Examination by
Court.

By Court:

That man Kgosidintsi was very dangerously wounded. If he had not received skilled attention he would probably have lost his leg. He is still lame and I think it is almost inevitable that he will be lame all his life. As to Gopolang I did not at any time have any hope for his finger and at the time I thought he might lose his whole hand. I was surprised when he returned from hospital to find that his hand had been saved. 20

In reply to the Court Defendant states Phokoye is not here.

Witness continues:

I have examined the lists of goods and chattels put in by the three Ratshosa brothers in their cases against the Defendant. I have visited the Ratshosas in their houses before the shooting affair at different times. I do not think I visited them immediately before the burning. I remember four main occasions when I went to visit them. On one occasion I went when Simon was ill and another with Dr. Mackenzie when Simon's wife was ill. The last occasion I visited the Ratshosas was to visit a man named Johnson who was finishing Johnny's house and was living in one of their rooms. It was about two years ago more or less that I visited Johnson. It could not have been very long before the fire. I think it was Johnny's house being completed. When I entered this house in which the sick builder was lying he was occupying a bed in one of the rooms and for a fortnight I visited him frequently. This was the same house I entered before when I visited Simon's wife and I saw the interior of some of the rooms. I think this must have been Simon's house and I cannot say I saw evidence of such property which I found on the list of goods and chattels in Simon's house. The bed in which Simon's wife was lying was an ordinary cheap iron bed and I saw no evidence of any furniture of any value. For 30 40

Magistrate's Court,
Defendant's
Evidence.
R. H. Lewis.
Examination by
Court continued.

RICHARD HAYDON LEWIS, duly sworn, states (*continued*) :

instance I saw no bookshelf with £100 worth of books on it. There is one item of a manuscript worth £500. I consider that is a very exaggerated value of it for I had that manuscript in my possession for several months. One of my senior missionaries looked through it and neither of us found it of any value from the point of view of publication which was the object for which it was brought to us. If this is the manuscript referred to it certainly is not worth anything at all. I think out of Simon's present list the foregoing are the main items which struck my eye as being exaggerated. I have not quite the same knowledge of Johnny's and I am not certain whether I ever went into Johnny's European house. In reading through to-day the lists of articles put in by Johnny, Obeditse and Simon respectively what struck me was that I have never seen the lino. carpets but they may have been in the rooms which I never entered. My recollection is of skins and earthen floors. I have no direct evidence but I heard at the time just before the shooting affair that Simon Ratshosa was removing his goods to the station. I cannot remember who told me. I heard that Simon was removing these goods shortly before the shooting affair. I can further remember after the burning that Mr. Wm. Mackintosh told me something in connection with Simon and goods which he wanted from his house. I think this was on the day of the trouble and must have been before the shooting. Mr. Mackintosh refused to have anything to do with this as far as I know. 10 20

Cross-Examination. *By Plaintiff Simon Ratshosa:*

I thought it was your house because your wife was in it. It may have been Johnny's. I cannot remember whether it was a thatched house with a stoep round it. At that time I only saw two rooms. I think this was the house behind Johnny's new house. 30

Cross-Examination
by Obeditse
Ratshosa.

By Plaintiff Obeditse Ratshosa:

Yes, I remember seeing you when I visited the sick man.

Court hands sketch Annexure " S " in Simon Ratshosa's case (No. 1) to witness.

I met Obeditse here and went in that direction (witness indicates on sketch direction round to the back of Johnny's house).

I hold to my statement that in the houses I entered I saw no signs of lino.

Plaintiff Obeditse informs Court that it is no use asking more questions as witness has not stated he entered all the houses. 40

Magistrate's Court, Defendant's Evidence. RICHARD HAYDON LEWIS, duly sworn, states (*continued*):
 R. H. Lewis. *By Plaintiff Johnny Ratshosa:*
 Cross-Examination by J. Ratshosa. I do not think I have entered your new house. I have never said that I entered your house. I have said that in the houses I entered.

9.30 a.m., 27th March, 1928.

Plaintiff's Address. Plaintiff addresses the Court.

Defendant's Address. Defendant addresses the Court in regard to all three cases, viz., Simon's case No. 1, Obeditse's No. 2 and Johnny's No. 3.

Defendant traces history of the British Protectorate and makes a loyal speech. As regards his power as Chief he produces Colonial Office Blue Book C 7962 of 1896 and draws attention to the letter therein to the Colonial Office from Chiefs Khama, Sebele and Bathoen, No. 22 dated the 25th September, 1895, and the Colonial Office Reply No. 50 dated the 18th November, 1895 and to paragraph 5 thereof on the second page. 10

He concludes by earnestly requesting that the Government may banish the three Ratshosa brothers outside the Protectorate, pointing out that Francistown is far too close, that otherwise they will inevitably give further trouble in the future. 20

Magistrate's Court,
No. 5.
Judgment.

JUDGMENT.

IN THE COURT OF THE ADDITIONAL MAGISTRATE
FOR THE NGWATO DISTRICT HOLDEN AT SEROWE 14th
to 29th MARCH, 1928.

in re SIMON RATSHOSA vs. CHIEF TSHEKEDI.
11 a.m., 29th March, 1928.

Judgment.

In dealing with the three cases severally brought by the three Ratshosa brothers against the Acting Chief Tshekedi in this Court, the Court has to be guided by sections 8 and 9 of Proclamation of 10th June, 1891, which read:—

“ 8. The jurisdiction of the Courts holden by Magistrates under this Proclamation shall not extend to any matter in which natives only are concerned, unless in the opinion of such Court the exercise of such jurisdiction is necessary in the interests of peace, or for the prevention or punishment of acts of violence to person or property.

“ 9. In every matter wherein jurisdiction is exercised by any such Court under the last preceding section of this Proclamation, the decision shall follow the laws and customs of the natives concerned, in so far as they are applicable: provided that if such laws or customs conflict or are not clearly proved, or if such laws or customs should be found incompatible with peace, order, and good government, the Court may decide in accordance with the law which would regulate the decision if the matter in dispute concerned persons of European birth or descent.”

In this case Simon Ratshosa brings seven separate Claims against the Defendant, the Acting Chief Tshekedi, Chief of the Bamangwato Tribe, and I will sum up and give judgment in respect of each of these seriatim.

CLAIM 1.

1. This is the most important claim of all and one in which it will take me some time to sum up.

2. Plaintiff has put in a Claim for £2,732 2s. 8½d., being amount claimed in regard to the burning by Defendant of Plaintiff's dwellings and their alleged contents at Serowe on the 5th/6th April, 1926.

Magistrate's Court, CLAIM 1 (*continued*) :
 No. 5
 Judgment.

3. Defendant admits the act which he says was committed by his orders as Chief but does not admit any liability, pleading justification and the power to do so under native custom.

4. Apart from the Criminal Trial held before the Additional Resident Magistrate at Palapye Road from the 22nd to 30th June, 1926, wherein Plaintiff and his brother Obeditse were convicted of assault with intent to murder the Defendant, Kgosidintsi and Gopolang, the latter two being two of the Chief's people, by shooting at the Chief with firearms, whereby Defendant was wounded and Kgosidintsi and Gopolang dangerously wounded and injured, this murderous assault has been fully established in this case. 10

5. It has been proved that Plaintiff together with his brother Obeditse rebelled against the authority of the Chief and the Bamangwato Kgotla, and this rebellion culminated in their shooting Defendant, their Chief, whilst he was sitting with some of his headmen unarmed in his Kgotla as stated.

6. It has been proved, and admitted by Defendant, that, after a series of rebellious acts by the Ratshosa brothers and after the final act when Plaintiff and his brother Obeditse nearly succeeded in murdering their Chief, Defendant, he as Chief, with the unanimous consent of his councillors in Kgotla and people ordered a " regiment " to burn down Plaintiff's dwellings as they stood. 20

7. I believe that in connection with the Criminal Trial in 1926 the rider was put forward by Plaintiff's legal representative that his client could not be punished both under native and European law.

8. I wish to reply to any such argument in this case.

9. It is well known to every old Mongwato here present in Court, and the evidence adduced on native law and custom bears this out, that prior to the establishment of a British Protectorate over this Territory, Plaintiff and his brother Obeditse would most certainly have been condemned to death by the Chief and people in Kgotla and executed for their attempted murder and wounding of the Chief. Also the Plaintiff's and his brothers' dwellings with their contents would certainly have been burned. All their cattle would also have been confiscated. The expert evidence of old headmen upon native custom adduced in this case describes the crime of which Plaintiff and his brother were found guilty as an Act of War on the Chief. 30 40

10. As regards the infliction of the death penalty for attempting to murder the head of the State, in answer to one of the Ratshosa brothers who pointed out in Court that such punishment was a

Magistrate's Court,
No. 5
Judgment.

CLAIM 1 (*continued*):

relic of the old dark and barbarous days of the Becwana Tribes and that such custom is now obsolete among all civilised people, I may, as a matter of interest only, state that a highly civilised European First Class Power to-day, namely Italy, where all capital punishment had been abolished for the last half-century, has quite recently, in consequence of repeated attempts to murder the present Prime Minister of that State, passed legislation imposing the death penalty for such acts.

11. But this, however, is not our British law. 10

12. The Plaintiff in this case, under the protection of British law, was extremely fortunate in getting off with four years' imprisonment with hard labour, which term is by the regulations reducible by one-fifth if he conducts himself well in gaol.

13. The original sentence passed by the Magistrate on Plaintiff and his brother was 10 years' imprisonment with hard labour each. Upon Appeal and the recommendation of the Acting Resident Commissioner that a substantial reduction of sentence might be considered "on the grounds that it was excessive and in view of the fact that the accused suffered injury to their property 20 His Excellency the High Commissioner reduced the sentence in the case of both prisoners to 4 years.

14. Now the Court feels justified in assuming that the sentences were so reduced chiefly on the ground of the losses sustained by Plaintiff and his brother through the burning of their property by the Chief.

15. This must be borne in mind.

16. As I have said, under native law and custom the Plaintiff would have been punished by death accompanied by the burning of his dwellings and all property therein and his cattle would also have 30 been confiscated.

17. I here emphasise the fact that the Chief did not confiscate Plaintiff's cattle. There is no proof whatever that he confiscated a single head as punishment for Plaintiff's act.

18. Since this Territory became a Protectorate under the British Crown the Chief's power over life and death has passed from him to the Government. But this Court is of opinion that under Order in Council of 9th May, 1891, and Proclamation of 10th June, 1891, the Chief acting with the unanimous consent of his coun- 40 cillors and people in Kgotla still has the power under native law and custom to burn the dwellings, and even so if the goods therein have not been first removed, of the ringleader and actors in what amounts to an armed rebellion wherein they, living under the

Magistrate's Court,
No. 5
Judgment.

CLAIM 1 (*continued*):

King's Peace and under the peace of the Chief, are caught red-handed by the Tribe after an attempt to murder their Chief by firing at him and wounding him and his people with firearms whilst he and his councillors are sitting unarmed in the Kgotla.

19. As the Defendant has justly pointed out in his address to the Court, the Government have no armed force in this Reserve, and it looks to the Chief to keep law and order within his boundaries and to quell any riot or rebellion among his people.

20. While still on the point of the punishments that would have been inflicted under native custom before the advent of British Protection in this Territory, it is interesting to remember that under the law of England it was only in 1870 that the confiscation of a felon's property by the Crown was abolished. 10

21. But to revert to our present-day laws.

22. The Court must here make it quite clear to the Chief and the Bamangwato Tribe that, had the Plaintiff's offence not been such a very grave crime, but had been a minor offence such as mere disobedience to or contempt of the Chief's orders, this Court would have certainly held that the Chief must pay damages to Plaintiff in compensation for the value of the property burned by him. 20

23. As regards the burning of native huts out at lands where subjects of the Chief build such huts on forbidden ground or where people refuse to move where ordered to for good reasons, I make no remarks, except to say that where this is done with just cause, this Court holds that it is the duty of the Chief to ensure that all the goods and chattels in such huts are first removed before the huts are burned.

24. A native hut is built of mud, stone or bricks from the soil of the Chief's Reserve and is roofed and thatched with timber and grass taken from the Chief's ground. According to native custom such materials may be said to belong to the Chief. 30

25. Where imported wood and iron of European make are used, the Court would class these with the aforesaid goods and chattels within a hut or building.

26. The Plaintiff possessed dwellings built in European fashion, at least two of them, and in such case the wood and iron had been imported. The bricks and mortar might perhaps be looked upon as belonging to the Chief since they came from the Chief's soil. 40

27. If the Plaintiff had only been guilty of a minor offence against the Chief this Court would have held that a fine could have been inflicted or some other punishment, but not that his property should be burned.

Magistrate's Court,
No. 5
Judgment.

CLAIM 1 (*continued*):

28. Now, as regards the ridiculous values put by Plaintiff on the goods and chattels which he alleges to have been burnt in his house and rondavels and huts, the Court does not believe that all the alleged articles, or half of them, were in Plaintiff's dwellings when they were burnt, if ever they were there, or even ever existed. The in loco inspection by the Court on the 14th instant, although of course long after the event, presented no vestige of any debris of the remains of any of the alleged numerous articles of hardware, etc. There remains no vestige of any metal or crockery debris with the exception of a couple of cheap broken iron bedsteads and a kettle or so, and some bits of glass which appear to have come from glass doors or windows. Only corrugated iron and charred timber are to be seen to-day. For all the Court knows most of Plaintiff's belongings may have been removed by him beforehand, since very probably he foresaw what might happen under native custom if the revolt of the Ratshosa brothers against the Chief proved unsuccessful. 10

29. The only evidence Plaintiff can produce is the very suspect evidence of his own family co-conspirators. 20

30. As regards the value of his buildings, an European Building Contractor, long well known in Serowe, says that excluding the value of the bricks and mortar, at very most the cost of the material and workmanship would be £200.

31. However, under the circumstances this point is quite immaterial.

Court's Finding
on
Claim 1.

32. The Court finds that the Defendant under all the circumstances of the case, and under the laws of the Bechuanaland Protectorate had the power to act as he did and is of opinion that Plaintiff only got the punishment he deserved. 30

Judgment on
Claim 1.

33. Judgment therefore will be for the Defendant.

CLAIM 2.

34. Here Plaintiff claims £1,927 being amount of damages sustained by him as result of loss of his cattle that were at his cattle posts at Shashi. He alleges that after his elder brother, Johnny Ratshosa, who had charge of Plaintiff's affairs and cattle in this Reserve ever since Plaintiff with his brother Obeditse were removed to Francistown Gaol in 1926, had been finally banished from this Reserve on 23rd February, 1927, a large number of his said cattle were lost, strayed and were destroyed by wild dogs, etc. through Defendant's fault, Defendant having sent a "regiment" in March, 1927, to remove Plaintiff's herds who were in charge of said cattle. The Court has gone most fully into all evidence 40

Magistrate's Court, CLAIM 2 (*continued*):
 No. 5
 Judgment.

procurable on this question, and it has called several Government official witnesses, to wit, Capt. Nettelton, the Magistrate at Serowe, Mr. Langton, his Clerk of the Court, and Mr. Poole, Police Officer at Palapye Road.

35. In August/September, 1926 I adjudged 78 civil claims against and by the Ratshosa brothers at Palapye Road.

36. In consequence of such judgments against Plaintiff and his two brothers subsequently many attachments of their cattle were made by Mr. Poole, Acting Messenger of the Court. The Chief's men attached 176 head and 12 trek oxen in execution of a judgment given by me against Johnny Ratshosa in favour of Ntebogang, the Kanye chieftainess, and this was done under the supervision of the Magistrate, Serowe. Later many actions were brought against Plaintiff for debt by Europeans and others. Writs were issued and the Acting Messenger of the Court attached cattle from Plaintiff's posts and from that of his brothers in connection with actions against them. It is difficult to arrive at the exact figures since the Acting Messenger of the Court can only give the Court the figures of cattle actually sold and does not appear to have kept a careful record of cattle attached. The present R.M. Serowe only took over his duties on 3rd August, 1927, and Mr. Langton, his Clerk on 27th July, 1927. They state that they could find in the Clerk of the Court's Office at Serowe no record of numbers of cattle attached but only of those sold, when they came here. Capt. Nettleton has stated that some interpleader actions were heard by him and cattle awarded to some of Plaintiff's sisters. At Macloutsi he found on his visit in September, 1927, 559 head of Ratshosa cattle. Figures are given by him but there is a discrepancy between the figures given by him as to what should now remain on hand in the hands of the Messenger and the figures given by Mr. Poole, the Acting Messenger.

37. From the evidence of these officials it has been fully proved that at all times there appeared to be a sufficiency of herds with the Ratshosa cattle.

38. It has been shown that Defendant when he removed some of his people from the Ratshosa cattle posts only removed such of his people who were unpaid retainers of the Ratshosas, but Defendant was careful to leave all their paid servants with their cattle. Capt. Nettleton and Lieut. Poole have shown that whenever they visited such cattle posts the cattle were always herded. Capt. Nettleton upon claims by Ratshosa herds awarded a number of head to individuals upon their proving their claims.

Magistrate's Court,
No. 5
Judgment.

CLAIM 2 (*continued*):

39. In the opinion of Capt. Nettleton and Lieut. Poole if there is any shortage of Ratshosa cattle it is very probable that the Ratshosas' own herds are to blame. There appears to be one of the Ratshosa leading herds, one Sutu, whom the Magistrate and Police have been trying to get to come in to Serowe as a witness, and he appears to be evading both the Chief's and the Police summons.

40. Plaintiff states that his brother Johnny counted his (Plaintiff's) cattle at Shashi before he left this Reserve in February, 1927. Johnny denies this. 10

41. Defendant has produced an intercepted letter from Plaintiff to his herd Segoaabe at Shashi sent in March, 1927, in which Plaintiff instructs the herd in charge to make the count of the cattle according to Plaintiff's figures in the letter, and ends by telling Segoaabe to burn the letter. Plaintiff had to acknowledge this letter as his when confronted. Plaintiff had not visited his posts since April, 1926.

42. In April Defendant, annoyed that Johnny Ratshosa, who had at Government request been given 4 months' grace in Defendant's Reserve wherein to wind up and dispose of the Ratshosa brothers' cattle sent a "regiment" to remove all Ratshosa cattle from Shashi to Tamasane and there sold 492 head to the Imperial Cold Storage and handed the cheque of over £1,000 to the Ratshosas' legal adviser, who procured from the three Ratshosa brothers a document, produced in Court (Annex D), indemnifying the Defendant. 20

The remaining balance after this sale have been ever since in the hands of the Ratshosas' own herds and of Mr. Poole, Acting Messenger of the Court. 30

43. Mr. Poole states that about April last year he warned the Ratshosa herds not to be afraid of anyone interfering with them but to remain with the cattle. He states that about a month ago his Police reported that a number of Ratshosa cattle were straying at Macloutsi. He instructed Police at Macloutsi to see the herds and get them to collect them, and report to him. He states that so far no report has been received.

Court's Finding
on
Claim 2.

In short, there is nothing whatever to indicate that Defendant is in any way responsible for any shortage there may be. If Plaintiff has complaint he must look to the Ratshosa herds or to the Acting Messenger of the Court. 40

Judgment on
Claim 2.

Therefore judgment for Defendant.

Magistrate's Court,
No. 5

Judgment.

CLAIM 3.

46. It has been shown to the satisfaction of the Court that Plaintiff's scotch-cart broke down whilst in the charge of his own servants who abandoned the cart and failed to account for it, and that this occurred before the Defendant sent a "regiment" to collect all of his people who were unpaid herds serving the Ratshosa brothers.

Judgment on
Claim 3.

47. Judgment for Defendant.

CLAIM 4.

Judgment on
Claim 4.

48. This is Res Judicata, judgment having been given by me 10
in this claim at Palapye Road 11 Sept., 1926. (Case No. 68,
claim I.)

CLAIM 5.

Judgment on
Claim 5.

49. Plaintiff has totally failed to prove his claim to the
cattle in question, and in view of the evidence adduced by
Defendant, the Court does not believe Plaintiff's story.

50. Judgment for Defendant.

CLAIM 6.

Judgment on
Claim 6.

51. Res Judicata. Judgment given by me at Palapye Road on 20
11 September, 1926. (Case 68, Claim II.).

CLAIM 7.

Judgment on
Claim 7.

52. Res Judicata. Judgment given by me at Palapye Road
11 Sept., 1926. (Case 68, Claim IV.).

DEFENDANT'S COUNTER-CLAIM.

53. Defendant counter-claims from Plaintiff damages for the
wounds and injuries inflicted upon him and upon his two followers
Kgosidintsi and Gopolang on the occasion of Plaintiff's and his
brother Obeditse's murderous assault upon them on 5th April, 1926,
in the Kgotla.

54. Defendant chiefly claims on behalf of his said two 30
followers, this being in accordance with native custom, the Chief
standing in the relation of a father to the two said men.

55. In addition to the other evidence the evidence of the Rev.
Haydon Lewis who gave first-aid to the two men Kgosindintsi and
Gopolang in the absence of the Serowe Medical Officer shows that

Magistrate's Court,
No. 5

Judgment.

DEFENDANT'S COUNTER-CLAIM (*continued*):

Kgosindintsi was very dangerously wounded and now, after treatment in Bulawayo Hospital, will almost inevitably be lame for life and will never be the same man again. Gopolang has been maimed for life by the loss of his finger.

56. The dastardly and murderous assault on Defendant whereby he and his two said followers were wounded and injured has been fully proved both in the Criminal Trial and in this case, and Plaintiff and his brother Obeditse jointly committed this assault. 10

57. Defendant counter-claims an amount equal to that which Plaintiff in all claims from him together with the medical charges paid by Defendant for medical treatment of his two said followers at Bulawayo Hospital and by Dr. Drew, Serowe. Annexures J, K, K2 prove that the medical accounts for £35 5s. and £3 12s. 6d. were paid by Defendant, total £38 17s. 6d.

Judgment on
Counter-claim.

58. Judgment for Defendant for £500 and for half of the £38 17s. 6d., viz., £19 8s. 9d.

A. G. STIGAND,

Additional Resident Magistrate. 20

Serowe,

29th March, 1928.

PART I.
SECTION "B."

JOHNNY RATSHOSA
VERSUS
CHIEF TSHEKEDI KHAMA.

SUMMONS.
PLEA.
EVIDENCE.
JUDGMENT.

Magistrate's Court,
No. 6.
Summons,
5.12.27.

SUMMONS.

COURT of the ADDITIONAL RESIDENT MAGISTRATE
for the NGWATO DISTRICT of the Bechuanaland Protectorate.

Messenger of the Court.

SUMMON CHIEF TSHEKEDI KHAMA (hereinafter styled the Defendant) of Serowe that he appear before the Court of the Additional Resident Magistrate of the said District, to be holden at Palapye Road on Monday the twelfth day of December, 1927, at nine o'clock in the forenoon, with his Witnesses (if he have any), to show why he hath not paid to

10

JOHN RATSHOSA (hereinafter styled the Plaintiff) presently of Francistown, the various sums set out in Annexure " A " hereto attached and delivered the cattle claimed in Claims 7 and 8 of the said Annexure, which annexure the Plaintiff prays may be considered as herein inserted, which said sums and cattle although demanded the Defendant refuses and neglects to pay and deliver wherefore the Plaintiff prays that he may be adjudged to pay and deliver the same, with costs of suit.

AND serve on the said CHIEF TSHEKEDI KHAMA a copy of this summons and the said Annexure " A " and return you on 20 that day, to the said Court, what you have done on this Summons.

Monday the 5th day of December, 1927.

S. LANGTON,
Clerk of the Court.

Magistrate's Court,
No. 6.
Summons
Annexure.

ANNEXURE " A." J. RATSHOSA.

CLAIM 1.—The sum of £3,849 18s. 9d. being the amount claimed in regard to the destruction of property belonging to the Plaintiff and situate at Serowe for which the said Plaintiff holds the said Defendant liable.

CLAIM 2.—The sum of £4,026 being the amount of damages sustained by the Plaintiff as a result of the loss and/or destruction of certain cattle being his property which said cattle were left in the charge and custody of the said Defendant.

CLAIM 3.—The sum of £200 being the value of two hundred 10
head of small stock lost and/or destroyed while they were in the charge and custody of the Defendant in whose said charge and custody they were left by the Plaintiff the said small stock being his property.

CLAIM 4.—The sum of £431 being damages sustained by the Plaintiff as a result of the wrongful and unlawful removal by the Defendant or his duly authorised agents of certain cattle from Shashi station just as the said cattle were about to be trucked to Johannesburg; the said cattle being subsequently attached in execution and sold for £150 whereas the said cattle were of the value of 20
£581. The said cattle were the property of the Plaintiff.

CLAIM 5.—The sum of £4 being the amount of railage paid by the Plaintiff for the transport of the cattle from Shashi to Johannesburg referred to in Claim 4 hereof.

CLAIM 6.—The amount of £900 being the salary earned by the Plaintiff while acting as secretary to the late Chief Khama, the late Chief Segoma and the Defendant for a total period of three years. The said salary is computed at the rate of £25 a month and is reckoned from February 1st, 1923, to January 31st, 1926. In regard to such portion of the claim which is based on services 30
rendered to the last two chiefs the said Khama and the said Segoma, the defendant is sued in his capacity as executor to the estates of the aforesaid chiefs.

CLAIM 7.—The delivery of a cattle post in charge of one Meloranyane being the property of the Plaintiff, which said cattle post the Defendant has wrongfully and unlawfully confiscated or deprived the Plaintiff of his possession thereof.

CLAIM 8.—The delivery of 3,000 head of cattle claimed by the Plaintiff from the Defendant in his capacity as executor of the estate of the late Chief Khama, the said number of cattle being the 40
amount to which the Plaintiff as one of the heirs of the said estate is entitled.

Magistrate's Court,
No. 7.
Messenger's Return,
5.12.27.

MESSENGER'S RETURN.

I hereby certify that on this Fifth (5th) day of December, 1927, I duly served a true copy of this Summons* upon the within named Chief Tshekedi Khama, at his Kgotla at Serowe, by handing the same and explaining the nature and exigencies thereof.

A. MAHLOANE,
Deputy Messenger of Court.

Serowe,
5-12-27.

* and of particulars of claim attached therto.

A.M.

10

Magistrate's Court,
No. 8.
Plea.

PLEA.

Defendant denies liability for all claims preferred.

JOHNNY RATSHOSA, duly sworn, states :

I am the Plaintiff in this case.

Magistrate's Court,
Plaintiff's Evidence.

Johnny Ratshosa.
Examination-in-Chief.

By Court:

My Claim No. 2 does not include any cattle claimed by Simon Ratshosa in his Claim No. 2.

CLAIM 1.

Plaintiff continues:

My Claim No. 1 comprises the value of my houses and the goods therein which were burnt by the Defendant. I produce my inventory of the goods and property in question which I wish read in Court and put in. 10

Exhibit " A. "

Inventory read, put in and marked " A. "

Examination by
Court.

By Court:

In this inventory I have headed each list with the words " House No. " This should really be " Room No. " I have enumerated the contents of each room separately. I have one house, one square building with thatched roof, two rondavels, two native huts and one octagonal hut.

Examination-in-Chief
continued.

Plaintiff continues:

I was called to the Kgotla and after being beaten I came to the Magistrate. Whilst still in Camp I heard sounds of rifle fire. The Magistrate told me that he was going to the Kgotla and that I should go to the doctor to have my bruises attended to. I told the Magistrate that as my children were at my house and would be killed I preferred to die with them. I went to my house. People fired at me in the street but missed me. One of the men who fired at me was Golekanye. On arrival at my house the Magistrate was already there and he told me to go inside as I would be killed. The Magistrate enquired for Simon and he then took Obeditse and I to the Camp. Before the Magistrate removed us I told him that I knew the Bamangwato and that they would burn our property. Mr. Cuzen said he had spoken to the Chief in his capacity as Government representative and nothing would happen. Upon Mr. Cuzen giving this guarantee I agreed to go with him as I felt sure that nothing would happen to my property as I had previously seen Mr. Neale quelling a disturbance of this sort on the death of Chief Sekgoma. I felt quite safe and that no one would interfere with my property as the Magistrate had taken control. At about 8 a.m. the following morning my boy came to the Camp and reported to me that my houses were burnt. I reported this to Mr. Cuzen at his house who said that I should let the matter be as the Government would know. I was surprised at the burning because I was present with Chief Khama as his Secretary when he went to Pretoria 20 30 40

Magistrate's Court,
Plaintiff's Evidence.

Johnny Ratshosa.
Examination-in-Chief
continued.

NOTE:—It is to be
remembered that the
burning of the
Mabirwa Huts took
place not in Khama's
Reserve but outside
it in the Tuli Block!
Therefore there is no
analogy.

A.G.S.,
R.M.

JOHNNY RATSHOSA, duly sworn, states (*continued*):

to discuss the matter of the burning of the Mabirwa huts with Prince Arthur the High Commissioner. At this interview Chief Khama said he had not given instructions for the Mabirwa huts to be burnt. He added that according to Bamangwato custom the people had to be removed from the houses first as also the goods therein before the huts are burnt. His Royal Highness said that Modisaotsile, who had been Chief Khama's Headman at the Mabirwa villages, should be removed from his headmanship but Chief Khama said that the matter should be allowed to stand as it was. His Royal Highness then said that if it had not been for the loyalty of Chief Khama to the Government, he would have had much more to say on this point but as things were he would let the matter drop. Chief Khama had already told the High Commissioner that Modisaotsile had been instructed to compensate the Mabirwa whose property had been destroyed. Present at this interview were Oitsile, the late Chief Sekgoma, Mr. Ellenberger the Resident Commissioner, and Mr. Drury the Magistrate of Serowe. On our return a lengthy despatch arrived for Chief Khama from the High Commissioner which went through my hands as his secretary. I will not take up any more time by describing this lengthy despatch. This occurred about 1922.

With regard to the evidence of Defendant's witness the other day in Simon Ratshosa's case as to the burning of huts at Palapye Road, Mr. Barry May, the Acting Resident Commissioner, came to hold an enquiry about this saying that the Europeans at the Station had complained about the burning as their own houses might have caught fire. Chief Khama stated to Mr. Barry May that it was the Europeans themselves who had complained to him that unemployed natives squatting at Palapye Road were stealing from them and that in consequence he had given orders that their goods were first to be removed from their huts and the huts only to be burnt so that they could not return to these huts and use them again. His Honour said that it was not right that people's huts should be burnt but that since Chief Khama had first removed their goods before burning it was all right. He emphasised the point about the Chief being careful about burning as the Government did not sanction this. With regard to the Matlhodi burning referred to in the evidence produced by Defendant in Simon Ratshosa's case, I do not remember the year of this occurrence. In that case too the Government disapproved of the burning and said that the people who did it should be punished. The matter was discussed in the Magistrate's office at Serowe between the Magistrate and Chief Khama. I was with the Chief and others. I do not remember the year but this was the last burning that occurred during the chieftainship of Khama. Chief Khama had not instructed Matlhodi to burn the

Hearsay.
The Court has no
Evidence before it
to corroborate this.
A.G.S.,
R.M.

Magistrate's Court,
Plaintiff's Evidence.

Johnny Ratshosa.
Examination-in-Chief
continued.

JOHNNY RATSHOSA, duly sworn, states (*continued*):

Makalaka villages but to remove the people. They were land villages. During my lifetime he never burnt any houses in the town but only at the lands. I am 46 years of age. Our houses are modern houses. We are advancing in progress and not going backwards. We pay the builders. It is not as in the old days when huts were built of mud with grass roofs. The Government wants us to go ahead in progress and not to retrogress. In the year 1917 the Resident Commissioner, Colonel Garroway, was present at a big meeting in the Kgotla. In that meeting Chief Khama stood up and said that at his death His Honour should not believe anyone who said he knew native custom, not even his son Sekgoma who was present. Chief Khama said that when he took over the Chieftainship he put an end to the Bogwera, Bogadi and other native customs including the praying for rain. Chief Khama said he wanted progress and if his people said they knew anything about these things they would be liars. For instance the Bogwera was a native circumcision school and from the time that Gorewang joined his regiment up to the present time no Bogwera has been held. I was bred and brought up in Chief Khama's house and he did not teach me any ancient customs. I will prove that Chief Khama disapproved of burning by referring to the present Chief. When the Defendant was at school he and others burnt down the Lovedale Institution. Chief Khama became very angry when he heard that Defendant was amongst those who burnt the school. I took a message to the Magistrate from Chief Khama requesting that a telegram should be sent to the Resident Commissioner asking that Defendant should be sent home at once from the Lovedale Mission. The Government Secretary replied that the Defendant could not be released from Lovedale and that a lawyer had been employed to defend him. After the trial in the Union was over Defendant returned and his father informed him in my presence that he did not approve of burning. He also said that he did not wish the Defendant to mix with bad characters and that he must leave them. Chief Khama punished Defendant by not sending him to school and I think it was two years before he was sent to school again. I was instructed to keep the accounts of the expense incurred in Defendant's defence in that arson case. I handed over these documents on Defendant's return from school and told him that his father wanted him to see them. In regard to the evidence of native custom produced by the Defendant in the previous case of Simon Ratshosa's, it is a shameful thing to say that Chief Khama ever confiscated anyone's property. Chief Khama's custom was to preserve the property of his people.

Examination by
Court,

By Court:

As to witnesses to prove that my goods as enumerated on my inventory were actually in my house before it was burnt, I can call

Magistrate's Court,
Plaintiff's Evidence.

Johnny Ratshosa.
Examination by
Court continued.

JOHNNY RATSHOSA, duly sworn, states (*continued*):

my wife. As to friends who visited me before the burning they cannot give evidence on my behalf as they must necessarily side with their Chief.

Court:

How can you explain the fact that there is no vestige of any remains of all these articles given by you except one or two iron bedsteads? The Court is witness to this as it inspected the remains of the buildings carefully on the 14th instant.

Plaintiff:

I can only say that I heard a report that after the buildings were burnt the Defendant sent a regiment to remove all the debris. (Defendant laughs.) About May or June, 1926, I came to Serowe and saw the Defendant who told me that the sum of 3s. in silver had been found in Obeditse Ratshosa's house. A woman named Tsadinne told me on that occasion that a regiment commanded by Nkate had been sent to our houses to collect debris and the remains of articles that had been in the houses. She said that she had seen the regiment collecting the debris but she had not been able to approach as all the Ratshosa people were driven away.

Hearsay.
A.G.S.,
R.M.

Examination-in-Chief
continued.

Plaintiff continues:

Many European friends of mine can testify that I lived like a white man and that the interior of my house is furnished like a white man's. Dr. Drew has been inside my house and he can testify.

Examination by
Court.

Court:

Why is it that you Ratshosa brothers always quote a witness who is not in this country? Cannot you quote some European witness who is here at Serowe or Palapye Road?

Plaintiff:

I had many white friends who used to visit me but I cannot remember whom I can quote. I can quote some white people who visited my house some time before the burning but I do not remember any who did so shortly before. I can only remember Dr. Drew as at that time my child was sick shortly before the burning. Perhaps my wife can remember others. I spent most of my time in the Chief's office.

Cross-Examination:

By Defendant:

When I said to the Magistrate that I preferred to go and die with my children, it was because I heard a man at the top of the hill calling to the people to bring their guns. Since they had assaulted me in the Kgotla I assumed that they had intended to kill

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Magistrate's Court,
Plaintiff's Evidence.

Johnny Ratshosa,
Cross-Examination,
continued

JOHNNY RATSHOSA, duly sworn, states (*continued*) :

my children. I went to my house as I wanted to die with my children. I did not return to my house to fight for my children as I was all alone and had nobody to help me. Yes, I remember seeing Phethu at the wedding. I remember meeting him in the road afterwards. Seeing that Phethu and I are deadly enemies and always quarrel when we meet I said to him that if he spoke to me I would kill him. I was just going to my house at this time. I remember my statement at the criminal trial but I have forgotten what I replied to Mr. Minchin when I was asked what I was going to fetch on that occasion. 10

Defendant:

Don't you remember in your evidence you told Mr. Minchin that you were going to your house to fetch guns and you added in reply to another question that you had unloaded your guns as you were a clever man?

Plaintiff:

I do not remember well.

Yes, I told the Magistrate when he removed us that I knew the Bamangwato were going to burn my property. I knew the property would be burnt [because before the shooting affair Gorewang and Mokhutsane told me that Phethu had managed to get all the Headmen to agree with him that my property should be destroyed.] 20
I knew that on that day burning could take place as there was a lot of commotion. The commotion arose after I had been assaulted at the Chief's Kgotla. I was assaulted because I had told the Chief that it was not the custom among the Bamangwato to flog them but only to fine them in cattle. I refused to be flogged because it is not our custom for Headmen to be flogged. I really do not know why I should have been flogged. You told me that I had refused to come to the Kgotla when you had called me and I said that you could 30
inquire into the matter and if I was guilty I could be fined. I had not refused to come when called neither do I ever refuse to come when called by a Chief. Yes, I would have considered myself guilty if I had not come at your call. I am the eldest of my brothers. I am master of the second village of the Ratshosas. If there is any trouble in the village and you want to make inquiries you should come to me. Yes, I know that the cause of the trouble was the removal of the two Masarwa girls from Sekgoma's wife. I do not know whether my brother's wife Oratile had taken these Masarwa girls from Sekgoma's wife. You did not send me to take these Mas- 40
arwa girls from Oratile's hut. You ordered me to call Oratile and I brought her to you. Yes, this was the occasion before the shooting affair and it was on this occasion that you adjudged that these Masarwa should be returned to Oratile except one which she said that she did not want. On the 5th April, 1926, you and Oratile

[Hearsay.]
A.G.S.,
R.M.

Magistrate's Court,
Plaintiff's Evidence.

Johnny Ratshosa.
Cross-Examination
continued.

JOHNNY RATSHOSA, duly sworn, states (*continued*) :

were talking about two Masarwa girls. When you sent to my village about this matter you always sent to Oratile and not to me. You told your men not to go to my house when they were sent to remove these girls but told them to go to Oratile. I do not remember telling you that I could not be interested in woman's talk. When you called me and my brothers to the Kgotla you told me that you wanted the Masarwa at my place. Before I could reply Baisi got up and addressing you said that unless you caused trouble you will not be Chief. I replied that I did not know much about this matter concerning the Masarwa and that I only knew that you had said that they should return to Oratile. It was my duty to inquire into this matter. On your arrival to take up the Chieftainship some of the Bamangwato wanted me removed from my secretaryship. For this reason I did not ask Oratile about the Masarwa. I was not angry with you but I could see the Bamangwato wanted trouble with me and I feared this trouble. You spoke to me and said that you could see there was going to be trouble and suggested that I should resign the secretaryship. I do not know that I made any connection with this matter and Oratile. I could see at that time that you were not friendly with me and that you wished to draw me into trouble as I was the senior of the Ratshosas. Yes, I remember His Honour holding an enquiry here upon the shooting affair. His Honour took me to your Kgotla to plead on my behalf. He said that when we were arrested no gun was found in my hands. He also said that I had rendered good services to Khama and the Government and it was difficult for the Government to banish a man who had rendered such good services. He added that if I was not wanted in Serowe I would be given a place where there would be good grazing and ploughing for myself and my people. No, His Honour did not say anything about the burning of the houses. His Honour referred to my assault saying that I should not be punished again.

The Court has not
seen the Official
Records of the
Enquiry.
A.G.S.,
R.M.

Defendant:

Are you sure His Honour said nothing about the burning of the houses?

Plaintiff:

I do not remember that His Honour said anything about the houses at the time.

After the shooting I left the Reserve in February, 1927. I stayed at Palapye Road Police Camp up to that time since you had told me the hearts of your people were very angry against me. I did not ask your permission to stay there. It is our custom that when a person is banished by the Chief he wanders about in the country until someone pleads for him on his behalf with the Chief.

Magistrate's Court,
Plaintiff's Evidence.
Johnny Ratshosa.
Cross-Examination
continued.

JOHNNY RATSHOSA, duly sworn, states (*continued*):

I had nowhere to go. I said at the criminal trial that you were no longer my Chief because you had caused me a lot of suffering. Yes, I still adhere to my statement that Chief Khama never confiscated any of the people's property. Yes, I admit that Chief Khama used to fine the people in cattle for beer drinking. He would fine them in cattle and take the cattle.

CLAIM 2.

Examination-in-Chief
continued.

Plaintiff continues:

This claim refers to my cattle at Tamasane. The cattle dealt with in Simon Ratshosa's claim No. 2 have nothing to do with these. 10

Examination by
Court.

By Court:

The cattle dealt with in Capt. Nettleton's evidence in Simon's case in regard to cattle inspected by him at Tamasane and those attached in execution have nothing to do with mine. Neither have these anything to do with the 500 head sold by the Defendant to the Cold Storage. My claim concerns my cattle at Tamasane. They were at the wells and dam. I left these cattle at Tamasane when I was banished in February, 1927. The total was 1,315 head 20 including calves. From this must be taken 91 head belonging to my uncles, 38 head belonging to my people, and 111 head belonging to my sister Sekhutleng. I was informed that the Defendant picked out 175 head and sent them to Ntebogang and that Mr. Poole has attached 168 head. This leaves a balance of 732 head which I now claim.

Statement by
Defendant.

Defendant states that he never had anything to do with these cattle at Tamasane and that these were the cattle dealt with and accounted for in Capt. Nettleton's evidence in Simon's case (No. 1).

Examination-in-Chief
continued.

Plaintiff continues: 30

I still contend that these are not the cattle I refer to in this claim. I counted them in February, 1927, in company with Ben Rose, Johnson and the herds Gaseitsiwe, Segoaabe, Matsapa and others. After I had gone to Francistown the herds scattered as they were starving. I did not pay these people as they were my own people and Headmen do not pay their people. These people wanted to go into banishment with me and I left them so that they could sell my cattle.

Court adjourned to 2.30 p.m., 21st March, 1928.

Hearing resumed 2.30 p.m., 21st March, 1928.

Magistrate's Court,
Plaintiff's Evidence.
Gerald E. Nettelton
called and
Examined by
Court.

Court decides to call Capt. Nettleton.

GERALD ENRAGHT NETTLETON, duly sworn, states :

I am the Magistrate at Serowe.

By Court :

With regard to cattle sold in execution here before my arrival on the 3rd August, 1927, in connection with judgments against the Ratshosa brothers, I am unable to give any information and suggest that the Clerk of the Court be called to produce records of the civil cases.

I put in my statement which I made in Simon's case (No. 1) 10 with regard to the Ratshosa cattle that were seized and sold on writs of attachment since my arrival here on the 3rd August, 1927.

Exhibit " B. "
Vide pages
61-63.

Statement read, put in and marked " B. "

I took no interest in what happened before my arrival. The present Clerk of the Court, Mr. Langton, may be able to get the information which you require from the civil record book and from the records in the civil cases tried at Palapye Road by the Additional Resident Magistrate in connection with claims against the Ratshosa brothers in September, 1926. Mr. Poole, the Police Officer at Palapye Road, who was Acting Messenger of the Court 20 should be able to give information in connection with the Ratshosa cattle which passed through his hands prior to my arrival.

Plaintiff has no questions.

CLAIM 3.

Johnny Ratshosa.
Examination-in-Chief
continued.

JOHNNY RATSHOSA, duly sworn, states (*continued*) :

This is in connection with small stock at Moyabana in the Kalahari. When I sent Ramorwa for the cattle I also told him to bring the small stock. They did not come as he was prevented from bringing them. There are 200 head. The last time I counted them was in 1925 and there were more than 200 then. I have reduced 30 the figure to a round 200. I have not seen them again.

Statement by
Defendant.

Defendant states that all he knows about stock belonging to the Ratshosa brothers at Movabane has been dealt with in his evidence rebutting Claim 2 in Obeditse Ratshosa's Case No. 2 and no mention was then made of small stock by Plaintiff in his evidence.

Court's Ruling
regarding Evidence
led in other
Cases.

Court decided to admit record of evidence of Plaintiff (Johnny Ratshosa) and of other witnesses given in case of " Obeditse Ratshosa versus Chief Tshekedi " (Case No. 2, Claim No. 2, pages 8 to 18) which case is now still being heard by the same Court and 40

Magistrate's Court,
Plaintiff's Evidence.
Court's Ruling
continued.

JOHNNY RATSHOSA, duly sworn, states (*continued*):

Magistrate, all parties in this case having been present throughout in this case and the cattle post in question being the same and the occasions in question the same. The stock belonging to the three Ratshosa brothers was running together and dealt with together by Johnny Ratshosa and the same evidence applies to Obeditse's Claim 2 as to Johnny's present Claim 3. Therefore the Court orders that where necessary it will use the record in the other two cases which are interrelated in regard to some claims.

CLAIM 4.

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Examination-in-Chief
continued.

Plaintiff continues:

The damages I am claiming here are based upon the fact that I was not given time by the Defendant to truck and sell some 160 head cattle of mine at Shashi and have them sold in Johannesburg thereby with the proceeds being in a position to release certain cows attached by the Messenger in writs of execution. I do not know the number of cattle attached by the Messenger. I had only heard that cattle from my posts had been attached. They were attached in April, 1927.

Examination by
Court.

By Court:

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I cannot say whether any of these cattle were attached in connection with judgments against me at Palapye Road by Capt. Stigand in September, 1926. Some of these judgments against me I settled myself. In others writs may have been issued subsequently for all I know. I admit that the said cases were finished by Capt. Stigand about the middle of September, 1926. I admit that Capt. Stigand, the present Magistrate, gave judgment against me in a certain claim against me by Ntebogang, the Chieftainess at Kanye. I admit I was given time in this Reserve from the date that the Additional Resident Magistrate (Capt. Stigand) at Palapye Road gave judgment in the above-mentioned claims against me and my brothers until the 23rd February, 1927, when I had to leave this Reserve for Francistown. I admit that two Europeans brought cases against me for debt in Mr. Cuzen's Court in Serowe before I left the Reserve. After I left for Francistown writs were issued against me in judgments obtained by Messrs. Mackintosh and Parr. After that I heard that Defendant had obtained writs from the Magistrate in respect of judgments against me in the Bamangwato cases heard at Palapye Road by Capt. Stigand.

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Examination-in-Chief
continued.

Plaintiff continues:

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As it has been said that during the period of grace allowed me in the Reserve I did nothing to settle our affairs, I produce statement showing that I sold our cattle. I put in a list of cattle sold between 21st July, 1926, and March, 1927, of 183 head. The

- Magistrate's Court,
Plaintiff's Evidence.
Johnny Ratshosa.
Examination-in-Chief
continued.
- JOHNNY RATSHOSA, duly sworn, states (*continued*) :
account sales are attached. Messrs. Shaw and Bailey's receipts are not here. I did not sell many to Mr. Shaw. I sold more than 100 to Mr. Bailey between July, 1926, and March, 1927. It is a lengthy business selling cattle by trucking because of so many formalities such as inspection by Stock Inspectors. I did not sell many to Mr. Bailey as he said his grazing was bad and he had no water. I consider four months insufficient time to truck and sell my cattle.
- Exhibit " C. " Statement with account sales attached put in and marked " C. " 10
- Plaintiff continues:*
The Government had agreed that I should sell in the best market. If I had sold them to people in this country the prices would have been very low.
- Statement by
Defendant.
- Defendant points out that the statement now made by the Plaintiff is quite irrelevant to his Claim 4 in the summons and has no questions.
- Examination-in-Chief
continued.
- Plaintiff continues:*
In Claim 4 my only witnesses are Ben Rose and Ramorwa and I think the evidence they will give will be similar to what they have given in Simon's case. 20
- Examination by
Court.
- By Court:*
I agree that the record of their evidence in Simon's case (No. 1) can be put in and accepted by the Court. I would like their statements read over to them and then I could put any further questions if necessary.
- CLAIM 5.
- Examination-in-Chief
continued.
- Plaintiff continues:*
This sum of £4 was wasted railage paid by me in respect of cattle I was going to truck under Claim 4. After the cattle had been seized by the Defendant and I had no cattle to truck the Railway Company claimed that I should pay demurrage for the trucks which I had ordered and I paid them this £4. 30
- Statement by
Defendant.
- Defendant has no questions stating that he has already cross-examined Ben Rose in Simon's claim in reference to this question of railway trucks.
- CLAIM 6.
- Examination-in-Chief
continued.
- Plaintiff continues:*
From the date of Khama's death in February, 1923, I did not receive anything up to the time when I was dismissed from the secretaryship by the Defendant on the 31st June, 1926. I claim £25 per month for this period. 40

Magistrate's Court, Plaintiff's Evidence. JOHNNY RATSHOSA, duly sworn, states (*continued*):

Johnny Ratshosa.
Cross-Examination.

By Defendant:

I do not know whether you employed me but you found me in the Secretary's office of the Chief. No, you did not discuss how much you would pay me. Yes, Chief Sekgoma had said he would pay me as his father did.

Examination by Court.

By Court:

I have no proof that Khama used to pay me £25 per month as Chiefs do not give receipts. I have no witnesses to show that Khama ever paid me. The Chief Khama did not pay me a fixed sum but used to pay me odd sums from £20 to £40 at irregular intervals. 10

Cross-Examination.

Defendant:

And if the Chief Khama had not paid you for some months did you bring an action against him?

Plaintiff:

No, I did not do so because Khama is as my father and would probably give me £100 later on.

As regards Chief Sekgoma while I was secretary to him he did not pay me anything but gave me some presents in money and cattle. I do not count that at all. 20

Defendant:

You did not bring an action against him for £25 per month salary?

Plaintiff:

No, I did not sue him as he was my father and I thought that he would pay at his convenience. Similarly if you had not banished me I would have awaited your convenience.

I did not come to any arrangement with you as to what you should pay me. There was no contract. You just found me in the office. I claim because your predecessors paid and nobody can work without payment. I have worked for you for two months only. 30

CLAIM 7.

Examination-in-Chief continued.

Plaintiff continues:

I had been given this cattle post at Tamasane by my grandfather Khama. The Defendant to-day claims it as the Chief's post. After the disturbances I spoke to the Chief about this post. Up to the present he has not replied. When this post was started there were 36 head cattle brought from Khama's cattle post and put in. 40

Magistrate's Court,
Plaintiff's Evidence.

Johnny Ratshosa.
Examination-in-Chief
continued.

JOHNNY RATSHOSA, duly sworn, states (*continued*):

Meloranyane was the man who brought the cattle. The Chief Khama told me to look after these cattle for him. Later Chief Khama sent me to buy cattle from Mr. Hoare to add to this post. When I brought these cattle Khama said they were not to be put at Tamasane but put into Tshekedi's post. I was then instructed to get boys to drive goats to Tamasane. Later Khama sent Simon to buy cattle from Mr. Grenfell and when they had been put into the post at Tamasane I accompanied the Chief to that post. Khama turned out two head and gave them to Simon and one head to Teboso. Then he turned to me and said: "Here are the cattle. You must not sell any of these cattle without my permission." He added that he did not want us to be beggars after his death and that he knew the Bamangwato would scatter us. On another occasion Khama picked out some cattle at the said post, sold them and gave me the proceeds. Some goats I also drove in from the said post to Serowe and when I had brought them in Khama sold them and gave me the money. As regards the hides of the oxen that had died or been killed I could sell these hides without his permission. When Khama died and Sekgoma succeeded he was told that these oxen were not mine and that it was the Chief's post. On one occasion some cattle died at the said post and the hides were brought in but Chief Sekgoma sent them over to me. On another occasion Sekgoma took goats from the said post without telling me but that evening he sent me the money. This is my evidence on this claim. I wish to add that the Chief Khama had said the herds at this post were not my people and that I could give them food. 10 20

The men who brought the hides to me from Chief Sekgoma are witnesses but to-day I do not think they will give evidence in my favour. The same remarks apply to the herds. 30

Examination by
Court.

Court:

Do you know the system of Kgamelolo as in use in the Batawana country by which the Chief entrusts cattle into the charge of one of his people to herd for him, the Kgamelolo holder being entitled to sell cattle from time to time when he wants a horse, waggon, rifle or food; and if he puts in his own cattle amongst these they become Kgamelolo cattle? Do you know that when a Kgamelolo holder is banished the cattle belong to the Chief?

Plaintiff:

I know that custom but it does not apply to the royal family of which I form part. It only applies to the common headmen of the Chief's people who were generally called "Chief's men." I am one of Khama's "sons" and not one of the Chief's men who are servants. Only a common headman would hold a Kgamelolo. 40

Magistrate's Court,
Plaintiff's Evidence.

Johnny Ratshosa.

Examination by
Court continued.

JOHNNY RATSHOSA, duly sworn, states (*continued*):

Defendant in reply to Court states his cross-examination will be of some length and the Court therefore decides to adjourn to 9.30 a.m. the 22nd of March, 1928, the time being 6 p.m.

Court resumes 9.15 a.m., 22nd March, 1928.

Cross-Examination.

By Defendant:

No, I cannot give you the name of the man that told me that Khama gave me the cattle post. Khama was my father and gave me presents without referring the matter to others.

Defendant:

Did your father do this without telling your younger brothers? 10

Plaintiff:

If he gave me cattle as a "Secwaela" then he should assemble the family and tell them but not so if he only made me a gift. That is the native custom.

My brothers only knew that these gift cattle were mine by seeing them come into my hands. I mean by coming into my kraal. Yes, the cattle posts are mixed, but the cattle are known. They can only be distinguished by the owners milking their different cattle. The owners can be distinguished when the cattle are milked because the owners are usually near the kraal and they can be then identified. 20

Examination by
Court.

By Court:

Even a whole cattle post can be given in this way without announcing the fact.

Cross-Examination.

By Defendant:

These are not the only cattle that Khama gave me. He gave me cattle at a cattle post near Molebo. He has given me many cattle. I cannot detail them. Molebo was a cattle post. When the Molebo cattle came to me they had the Chief's brand and I put my brand on them. I don't mean branded but earmarked. I am not the only nephew of Khama who was given cattle. Mogomotse was given some cattle. Mogomotse is my cousin and Khama was his grandfather. Also Seitamo and Mosenye were given cattle. As these were old cattle they bear the respective earmarks or brands of the person to whom they were given by the Chief. The actual handing over of these cattle in question by the Chief took place in 1922. Prior to that they had been mine nominally but the Chief had power over them. They came to my post in 1918. 30

Defendant:

Are you the only grandson of Khama who had charge of Khama's cattle? 40

Magistrate's Court,
Plaintiff's Evidence.

Johnny Ratshosa.
Cross-Examination
continued.

JOHNNY RATSHOSA, duly sworn, states (*continued*):

Plaintiff:

The only other grandson who had charge of his cattle was his grandson Seitamo.

In 1924 we accompanied Sekgoma to Bobonon with many people and when he made gifts to people there he did not take all the people there as witnesses. He only took the people to whom he was giving cattle. I only used to hear of these gifts. I heard this from Seitamo and Mahlane. He had gone to these posts on horseback. As far as I know he only went with his nephews to the posts. 10

Defendant:

Apart from Seitamo do you know of any other of Khama's grandsons who was given cattle?

Plaintiff:

I cannot remember anyone else. When Chief Khama did so he did not announce it.

Defendant:

Do you not know of cattle put in charge of Mmele?

Plaintiff:

I remember those cattle. They were in the possession of Mmele but owned by Khama. 20

Defendant:

When any of these cattle died what happened to their hides?

Plaintiff:

I do not know what happened to these hides. I only know what happened in my case.

Defendant:

Now what is the brand or earmark on the cattle now in dispute in this claim? 30

Plaintiff:

The brand and earmark are Chief Khama's. The horses he gave me also bore his brand.

Khama gave me many horses. The last was one that belonged to you. I do not know how many of these bore brands. Some bore the Chief's brand and some bore no brands. I do not brand my horses. The Chief did not brand any of the increase of these horses with his own brand but as you wish me to tell you a secret about these cattle in dispute I will do so.

Magistrate's Court,
Plaintiff's Evidence.

JOHNNY RATSHOSA, duly sworn, states (*continued*) :

Johnny Ratshosa.
Cross-Examination
continued.

By Defendant:

In the case of Khama's gift to Messrs. Garrett and Smith no one except me signed his name to the deed. That was Khama's way of doing things. Yes, Khama did make it public in Kgotla. (Laughter in Court.)

CLAIM 8.

Examination-in-Chief
continued.

Plaintiff continues:

I bring this claim because my mother Bessie was the daughter of Chief Khama and the law of Chief Khama was that at the death of the father the daughter should also receive some inheritance. 10

Examination by
Court.

By Court:

My mother did not receive anything as her share in the Estate of the late Chief Khama. My mother Bessie was the eldest daughter of Khama by his first wife Mmabessie. I heard Khama tell his son Sekgoma that he had arranged everything as regards the secwaelo of the second hut. He said that the cattle belonging to Tshekedi's mother, the fourth wife, were all those at Bobonon.

By Court:

Khama's second wife had no issue, the third wife had a daughter only and the fourth wife had as children a daughter Bonyerile and a son Tshekedi. 20

Examination-in-Chief
continued.

Plaintiff continues:

Khama said that the post in charge of Ramma at Shashani was Tshekedi's as also the one in charge of Modimoitsile and another at Bonoapitse. Another from his paternal grandparent was at Mooko. Khama said there was money in the Bank at Capetown which was Seimano's and money of Tshekedi's in the bank at Mafeking and also for Bonyerile. Khama also said that he himself had an account in the bank at Capetown, Grahamstown and Mafeking and that he had money in the bank at Mafeking which was money from the B.S.A. Company for mineral concessions granted by him. From the latter account he said that £3,000 had been drawn to pay an overdraft with Garrett and Smith. He told Sekgoma that he also had sisters and their children and he gave the right to Sekgoma to divide this inheritance amongst these children after his death. In this request he was not including the fourth hut. After this the Chief died and I went with Sekgoma to Mafeking with many others. The Resident Commissioner had a private interview with Sekgoma and showed him his father Khama's will. Sekgoma said he was new to the Chieftainship but he would do his duty in distributing the property to the children. He died before he made the distribution. 30 40

Magistrate's Court,
Plaintiff's Evidence.
Johnny Ratsnosa.
Cross-Examination
continued.

JOHNNY RATSHOSA, duly sworn, states (*continued*):

Defendant:

Do you know that the increase of these cattle have been branded and earmarked with the Chief's brand and earmark?

Plaintiff:

Yes.

With regard to the secret, when the Chief gave me these cattle he said I was to brand and earmark with his mark. He said he had children who had deserted him all except my mother and that my mother Bessie died in his arms. The Chief said he could see the Bamangwato did not like me and he added that he would try and protect me from the tribe. About these cattle so that the Bamangwato would be afraid and think they were his cattle he instructed me to continue branding with his brand. He added that he would do likewise as with Garrett and Smith who brand with his brand although the cattle are not his. I told the Chief that this might cause trouble about these cattle. He promised that he would write about these cattle and he did so. Those papers can be found in Sekgoma's house. Chief Khama put in writing all the gifts he made to the people. The original of these writings was in the hands of the Chief and I had a copy but this was burnt. In that document he gave strict instructions that Sekgoma should not interfere with his younger brothers' property. I know that Sekgoma possessed this document but whether it is in his house I do not know.

Defendant:

Is this the secret?

Plaintiff:

Yes, this is the secret.

Defendant:

Was there no witness who put his name to this document beside yourself?

Plaintiff:

No, there was no witness except myself.

By Court:

This is the way Khama did things when he made gifts.

Defendant:

Is this in accordance with native law or European law? Do you know what a deed of gift is?

Plaintiff:

Yes, I know but Khama did things in his own way.

Magistrate's Court,
Plaintiff's Evidence.

JOHNNY RATSHOSA, duly sworn, states (*continued*):

Johnny Ratshosa.
Examination by
Court.

By Court:

Chief Khama died in February, 1923. Sekgoma died in November, 1925. Sekgoma was occupied in the first year by the Mabirwa trouble and in the second year he became ill.

Statement by
Defendant.

Defendant addresses Court and states "I decline to cross-examine Plaintiff on this claim. I would like the Court to have Plaintiff's statement in this claim carefully on record because this claim of his is the origin of all the trouble."

CLAIM 1.

12

Kopano.
Examination-in-Chief.

KOPANO, duly sworn, states:

I am Plaintiff's wife. I know my house was burnt. I had run away to Edirile's before the burning. Whilst there Gasebalwe came and called us bringing a message from the Defendant saying that we should sleep at our house and that the Defendant was not fighting with women but with men. Oratile agreed to go but I refused as I had bad legs and my children were young and one was sick. In the morning Edirile came and said the Magistrate had come to fetch us to the Camp to protect us. We went to the Camp with the Magistrate, Mr. Cuzen. The houses were burning at the time. 20
Some days after the Resident Commissioner had come up to hold an enquiry in the Kgotla. I was called to the Magistrate's house where the Resident Commissioner and the Defendant were. The Defendant brought a bundle of print material. The Defendant said it was for making skirts with. I refused to take it and said I would have nothing to do with it. In reply to the Resident Commissioner I said my husband is not dead but I know he will die. In spite of what the Resident Commissioner said I still refused to accept the dress material brought by the Defendant. I have brought this up to show that the Defendant was not quarrelling 30
with the women.

Examination by
Court.

By Court:

There was a lot of stuff in my house before it was burnt. The only white people whom I remember who entered my house shortly before the burning were Dr. Drew and Mrs. Dodd. Dr. Drew entered my house just two days before the burning. Of natives Gasebalwe entered my house shortly before the burning. He visited our place quite a lot and we are related. He is in Serowe.

Defendant informs Court that he is a school teacher and that he is in Serowe.

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Magistrate's Court,
Plaintiff's Evidence.

Kopano.

Cross-Examination.

KOPANO, duly sworn, states (*continued*):

By Defendant:

Yes, when your people came to fetch the Masarwa in the possession of Oratile they took them from my hut. I do not know whether they were shut up in there. I am not sure which year it was that we had much corn but that year we had some corn. I had brought some from my home in Shoshong. I am referring to the year of the burning. I do not know how many bags I brought. I put the corn in a sesego. I also brought three large bags two of which held four ordinary bags each. I do not know the capacity 10
of the other bag. My sesego was full of corn. I remember that there was a wedding feast on the morning of the shooting. Of my property only one chair, five cups, one kettle and one table were taken to the house where the wedding feast was. I do not know whether my brothers-in-law had any property there.

CLAIM 2.

Gaseitsiwe.
Examination-in-Chief.

GASEITSIWE, duly sworn, states:

I am a Mongwato and one of Ratshosas people. I herded Johnny's cattle at Tamasane. A regiment took away 150 head. I did not know the number before the regiment took them away. 20
There were very many cattle of Johnny's there. The same regiment came again and took 26 head. The regiment then went towards Macloutsi posts and on their return took us away from Tamasane and brought us to Serowe. After we had been at Serowe some time we got permission to return to the posts. We collected the cattle there and stayed with them and the few head that were with us were taken away by white men. That is my evidence.

Cross-Examination.

By Defendant:

No one was left when the regiment took us away from Tamasane. On our return to Tamasane we found many of the cattle 30
missing besides those that had been taken by the regiment. After Johnny had left the white men came twice to seize cattle. This was after the regiment had been. When the Magistrate came I was not present. I do not refer to the Magistrate's visit when I said the white men came. The Magistrate came after the white men had seized the cattle twice. I do not know the Magistrate. When the Magistrate came I was not present and there were no cattle of the Ratshosas at Tamasane. When the Magistrate passed through was the beginning of the rainy season before Christmas. The 150 head cattle seized and taken away by the regiment are at Tamasane. 40
They are now Ntebogang's. When the Magistrate went through I was at Francistown.

Note by Court.

This witness produced a very unfavourable impression on the Court and appeared to be repeating words learnt by heart,

Magistrate's Court,
Plaintiff's Evidence.

CLAIM 2.

Segoabe.
Examination-in-Chief.

SEGOABE, duly sworn, states :

I am a Mongwato and one of Ratshosas people. After Johnny had left a regiment came to Tamasane to pick out some cattle. After having taken the cattle they went to Macloutsi. On their return they took us all away. The regiment picked out 176 head cattle which they said the Chief had ordered to be handed over to Ntebogang (Chieftainess at Kanye). These were all Johnny's cattle. We were all brought in to Serowe by this regiment. Whilst we were there the cattle being scattered were lost and destroyed and we did not find them on our return there. That is how the cattle at Tamasane were destroyed. Whilst at Serowe we heard that white people wanted cattle at Tamasane and the Chief sent a message to the Ratshosa village in Serowe saying that all Tamasane herds should return to their posts. Sutu and Kogela went. I stopped in Serowe. Sutu may be here and Kogela at Tamasane. That is all I know. I was not present when the present Serowe Magistrate passed through Macloutsi. I was at Francistown. 10

Defendant has no questions.

CLAIM 2.

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Matsapa.
Examination-in-Chief.

MATSAPA, duly sworn, states :

I am a Mongwato and one of Ratshosas people. Johnny's cattle were scattered at Tamasane by the Bamangwato. I do not know their number. I was not actually looking after Johnny's cattle. I was nearby and looking after my own. The regiment picked out some. They took away 176 head. They passed on to Macloutsi and on their return they took all the people. When they did so I was not present. I was in Francistown.

Examination by
Court.

By Court :

Johnny counted his cattle at Tamasane. I was present. This was after the burning. He counted them a few days before he left for Francistown. He did not tell me how many there were. That is all. 30

Defendant has no questions.

Segoabe Recalled
and Examined
by Court.

SEGOABE, recalled and duly sworn, states :

By Court :

I did not see Johnny count the Tamasane cattle. I was at Shashi. He has never counted Ratshosa cattle at Shashi.

Defendant has no questions.

Magistrate's Court,
Plaintiff's Evidence.

Ben Rose.

Examination-in-Chief.

CLAIM 2.

BEN ROSE, duly sworn, states :

I am a Mosuto and Dismounted Constable in the B.P. Service stationed at Francistown. Before this I was in Plaintiff's employ. I went with Plaintiff in his car to Tamasane to count the cattle. This was during the month in which Johnny left for Francistown. We counted his cattle. There were seven kraals. They totalled in all 1,315 head including calves. I counted these cattle with Plaintiff and Johnson was there too.

CLAIM 4.

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Witness continues:

Examination by
Court.

By Court:

Yes, I gave evidence in Simon Ratshosa's case but concerning Johnny's cattle at Shashi.

Exhibit " D. "
Vide pages
59-60.

Court reads over his statement in Simon Ratshosa versus Chief Tshekedi Case No. 1 on pages 82 to 85 of which a certified copy is here put in and marked " D. "

Plaintiff states that he wished witness to make a statement about the last occasion when he found that the cattle had been removed.

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Examination-in-Chief
continued.

Witness continues:

When I came from Francistown to Shashi on the second occasion in April to truck more cattle I found no cattle to truck and therefore I did not enquire about any trucks. It was on this occasion that I found the cattle had been seized by the Chief's regiment. I think this may be somewhere about the 12th April, 1927.

Plaintiff states that as regards Claim 5 witness cannot give any evidence on this.

Cross-Examination.

By Defendant:

When I was at Palapye with Johnny before I trucked the 40 head, I trucked other cattle at Shashi for him. I think the Plaintiff sent me to truck three times and I am not able to say whether this was before or after we counted the cattle at Tamasane. I trucked the cattle from Shashi. I never had any orders to truck or sell any of Johnny's cattle at Tamasane. When the regiment removed the Ratshosa boys I was at Palapye although I previously said I was at Francistown. I made a mistake. I did not visit Tamasane after the herds had been taken away.

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Magistrate's Court,
Plaintiff's Evidence.

CLAIM 4.

Johnson.

JOHNSON, duly sworn, states :

Examination-in-Chief.

I am a Cape boy. I was only living with the Ratshosas but not working for them. I accompanied Plaintiff just about a month before he left this Reserve to Tamasane with Ben, the policeman and last witness. We went in Johnny's motor car. When we got there and after I had seen my own cattle we went to Johnny's post. Plaintiff counted his cattle. There were seven kraals in all of Plaintiff's. We came to the first kraal and Johnny counted them while I only stopped the animals at the gate as they were being 10 driven through. Johnny and Ben counted them. When they had counted the cattle in all the kraals Johnny put the figures in his book. He told me there was 1,315 head altogether including calves. That is all I know.

Defendant has no questions.

CLAIM 7.

Simon Ratshosa.
Examination-in-Chief.

SIMON RATSHOSA, duly sworn, states :

I am Plaintiff's brother. Some long time ago some cattle came from Nata. There were just a few. They came to Tamasane. When they came they were the Chief's cattle. Later Chief Khama 20 said that Plaintiff and I should look after these cattle for him. It was afterwards that I heard Johnny say that these cattle were his. I saw that they were Johnny's because when they were sold the proceeds were given to Johnny and when they died the hides were also given to him. In 1921 the Chief sent me to Mr. Grenfell. I bought some oxen and at another date went with the Chief to Tamasane to see these cattle which had been taken there. I pointed them out and the Chief asked me if I wanted these cattle. I replied that I would take anything he gave me. The Chief then gave me 30 two head and pointing to the remainder he said to Johnny. "There they are. They are your cattle." He added that Johnny could divide them amongst the Masarwa to herd if he liked but that the Masarwa were his. After the Chief Khama died Sekgoma sent Bagoleng and Mpateng to fetch some four or five oxen from this post and also some goats. Johnny did not know anything about this. Later Sekgoma told me that his men had been mixing up the cattle and that the four oxen should be returned to the said post and he said also that he would pay over the proceeds of the sale of the goats to Johnny.

Cross-Examination.

By Defendant:

It is a long time since these cattle were given to Johnny. He has been eating their proceeds. It was long before the Chief's death. I do not remember the year. When I bought and brought some 40

Magistrate's Court,
Plaintiff's Evidence.

Simon Ratshosa.
Cross-Examination
continued.

SIMON RATSHOSA, duly sworn, states (*continued*) :

cattle from Francistown to the post in dispute that post already belonged to Johnny and the balance after I was given two was given to Johnny. I bought the cattle from Grenfell in 1921.

Court adjourns to 2.30 p.m.

Hearing resumed 2.30 p.m.

CLAIM 1.

Gasebalwe.
Examination-in-Chief.

GASEBALWE, duly sworn states :

I am a Mongwato and a school teacher. The Ratshosas are my cousins. When the shooting first started Plaintiff's wife, 10
Oratile and Mōatsakgari came and took refuge at my place with their children. I reported this to the Chief and the Chief said they were to sleep there. I told them this and then returned to the Kgotla. I was in Serowe when the burning took place but I was not close by when the houses were burnt.

Examination by
Court.

By Court:

I used to visit Johnny Ratshosa's house. I was there just before the burning. I used to visit them a lot. I used to see in this house just the ordinary furniture that a Mochwana would have. 20
When I visited we used to sit in any of the rooms.

Court has some of the items on Annexure " A " read out and asks witness to take note of the larger items read out.

Witness continues:

I remember seeing some of the items on this list in Plaintiff's house such as an oak bedstead, some hats, waterproof, mauser pistol, regimental sword, top hat, clock, sewing machine, small sideboard with a mirror, cupboard which he had made himself. I remember item 50 a large photo, item 55 tuckaway chairs, item 2 in Room 5 and item 10 a gramophone, item 11 records, item 9 in Room 6 remington typewriter, item 20 stretcher, item 21 revolving 30
chair, item 26 syringe, and item 3 in Room 7 a saddle and item 11 in Room 8 carpenters' tools and item 9 in Room 9. Plaintiff had donkey harness but I do not know if he sold this before the fire. That is all I can remember. I used also to visit Simon's house and his goods and chattels were less than Johnny's. Obeditse had less than either of them in his house. I remember Simon had an oak bed, a small table and some boxes. He also had many books, Johnny did not have many books.

Defendant has no questions.

Magistrate's Court,
Plaintiff's Evidence.
Ramorwa.
Examination-in-Chief.

CLAIM 3.

RAMORWA, duly sworn, states :

I am a Mongwato and one of Ratshosas people. I know that there were some goats sent from here to Moyabane. They belonged to Plaintiff. This was in addition to those that were already there. Johnny had many sheep and goats at Moyabane. Johnny sent me to go and fetch all these small stock last year and bring them to Palapye Road. I did not bring them in because the Chief said that I should return. I was at the same time going to fetch the cattle of all the Ratshosas. The Chief gave me a permit when I got there and then the Chief wanted me to return. These cattle and small stock were in the charge of Bakgalagadi at Moyabane. They were Johnny's Bakgalagadi. I heard that the Chief did not want me to move the cattle or small stock. I asked the Chief why I had been made to return and the Chief said that it was because the Bakgalagadi had said that before the stock should be moved they wanted to see Johnny. The Chief said that the Bakgalagadi had said that Plaintiff had embezzled their Hut Tax money. The Chief told me to fetch Johnny and I went and fetched him from Palapye Road. This was before he left this Reserve for Francistown. I came with him to Serowe and we met the Bakgalagadi and their complaint was discussed in the Magistrate's office, Johnny, myself and the Chief being present before the Magistrate.

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Examination by
Court.

By Court:

Monnathuto, Rasinne and 'Nannwe were also present. The last two are Bakgalagadi but the first is a Mongwato one of Ratshosas men. I did not hear the Bakgalagadi complain because they spoke inside and I remained outside. I do not know what happened to the sheep and goats. I left for Francistown.

Statement by
Defendant.

Defendant states that he has no questions as this is a question discussed in Obeditse's case and that the cattle were seized for Hut Tax but knows nothing about small stock.

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Observation by
Court.

Court here refers to Capt. Nettleton's evidence in Obeditse's case (No. 2) which refers to the stock brought in from the Ratshosas Moyabane cattle post in question. This statement only refers to Ratshosa cattle but does not include any small stock.

Defendant's
Reply.

Defendant points out that the stock mentioned by Capt. Nettleton in said evidence was brought in by the Ratshosa herd boys by his order when they were dealt with as detailed in said evidence.

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Plaintiff states he has no more witnesses on any of his claims.

Magistrate's Court,
Defendant's
Evidence.
Chief Tshekedi.
Examination-in-Chief.

For the Defence.

CLAIM 1.

CHIEF TSHEKEDI, duly sworn, states :

I am the Defendant in this case. I have already stated in the other case that I burnt their houses. I burnt them because they had shot at me but in view of the fact that Plaintiff was not tried and convicted I will give evidence on this point. Why Plaintiff was not tried by the Magistrate's Court at Serowe was because His Honour, Colonel Ellenberger, pleaded his cause at the Kgotla in accordance with native custom. This was on the occasion of the enquiry held by His Honour at Serowe in April, 1926. I merely mention this but the official records will show the whole matter. His Honour said that he had brought Plaintiff to the Kgotla in accordance with native custom whereby the man runs to the Chieftainess's house when he is flogged in the Kgotla and such a man when he is brought back to the Kgotla is always pardoned by the Chief on account of the fact that he has run to the Chieftainess's house to beg for mercy. This is a general Sechwana custom. His Honour said that Plaintiff had run to him and that we had beaten him and that his houses had been burnt and that since Plaintiff had not actually had a rifle in his hands His Honour begged us to find him a place where he could live and that we would forgive him. It was on account of this that Plaintiff was not criminally prosecuted. As regards their intention to fight against me it was the intention of the three brothers. One witness will be produced to prove this.

CLAIMS 2 AND 3.

Defendant continues:

In this case as in previous cases I have pointed out that I have never accepted responsibility for the Ratshosa cattle. If any of their property was destroyed after they left I admit no liability. As regards the Plaintiff's herds at Tamasane, I took away all the unpaid herds of the Plaintiff leaving the paid herds with the cattle. I ordered that these herds should not be removed. I could not agree that my people who were unpaid should herd cattle for people who were fighting against me. Those I took away were servants of the Ratshosa brothers who received no remuneration and herded their cattle and used the milk for food.

CLAIM 3.

Witness continues:

Examination by
Court.

By Court:

With regard to the small stock I know nothing about them. Capt. Nettleton, the Magistrate, gave evidence in Obeditse's case

Magistrate's Court,
Defendant's
Evidence.
Chief Tshekedi.
Examination by
Court continued.

CHIEF TSHEKEDI, duly sworn, states (*continued*):

about certain cattle brought in and disposed of under his control and referred to the cattle at Moyabane. These cattle were collected at Mooko. They were all dealt with by the Magistrate's Court, Serowe, in connection with writs of execution and Capt. Nettleton has accounted for all the cattle as far as I know. I did not hear him mention anything about small stock.

CLAIMS 4 AND 5.

Examination-in-Chief
continued. *Defendant continues:*

In my evidence in Simon's case (No. 1) I have already 10 explained what I did in regard to these cattle. I took all the cattle to Tamasane and sold 492 head there. I left none at Shashi.

Examination by
Court.

By Court:

Plaintiff had ample time of four months to dispose of all his cattle and that of his brothers. He should originally have left this country in October, 1926, but an extension of four months was granted to him to settle his affairs. The claims brought by the Ratshosas before yourself at Palapye Road on or about the 21st September, 1926, they were completed and Plaintiff had to leave in 20 October, 1926, but he was granted an extension on the request of the Government to the 23rd February, 1927. This was ample time to settle all his affairs. So far as I could see very little was done by the Plaintiff to dispose of the cattle. He trucked a few cattle but not in such a way as to dispose of their stocks. Before the Magistrate he said that he hoped he would be forgiven and was just wandering about the country in the meanwhile.

CLAIM 6.

Examination-in-Chief
continued. *Defendant continues:*

As far as I know all that worked for my father such as hut tax 30 collectors, teachers and the secretary had no fixed salaries. They were not people who were trying to earn their living by work but they were commanded by the Chief to do the work. All those that I know of were wealthy men and amongst them no foreigner will be found. I know that the Chief gave them money at irregular periods which was not looked upon as a salary but as a mere gift. We looked upon their work as a duty that had to be performed for the Chief and people. They were not asked to do it, they were ordered to do it. As to Plaintiff's claim I do not know whether my father paid him anything or not at his death. As regards his 40 services to Sekgoma he did not serve him until his death. He served Sekgoma but not as he had served Khama as a secretary. All the

Magistrate's Court, Defendant's Evidence.

Chief Tshekedi.
Examination-in-Chief continued.

CHIEF TSHEKEDI, duly sworn, states (*continued*):

documents that he was in charge of during Khama's reign I received from him on the death of Sekgoma. As to the Sekgoma papers I received some from Plaintiff, some from Gaafetoge and others from Nonofang. Whilst at school I received letters from Sekgoma some written by Gaafetoge, some by Plaintiff and others by Simon. When I took over the Chieftainship I looked upon him as secretary but did not have any time with him. I was installed on the 19th January, 1926, in succession to my brother Sekgoma. It was not long after this that we had a discussion about removing him from his office as secretary and after that the disturbances occurred. Therefore I do not know what bonus or gift he is entitled to from myself for services to me or Chief Sekgoma. 10

Examination by Court.

By Court:

I do not think that Plaintiff is entitled to anything. I am not aware that our orders as Chiefs should be paid for. Chief Khama could have given him presents as being his child as well as his Secretary. I do not know in what capacity he made him presents.

CLAIM 7.

Examination-in-Chief continued.

Defendant continues:

I know that the cattle at Meloranyane are Khama's cattle. The brands and earmarks on these cattle to-day are Chief Khama's and not the Plaintiff's. I do not know of any case where a chief gives cattle to a child where those cattle would still bear the Chief's earmarks and brands. It has never been done to my knowledge. Plaintiff was looking after these cattle for his grandfather Khama and he was not the only grandson who was looking after cattle for the Chief. Some were in Mmele's charge, who was the daughter of Khama and wife of Phethu. The hides of these cattle as far as I have heard she could sell as she pleased but she had to report the deaths to the Chief. Some were in the charge of Makhama, another daughter of the Chief and wife of Modisaotsile. In the same way she sold the hides of the cattle and kept the money for herself. Her son Mokomane will give evidence on this point and he is also my nephew as Plaintiff is. The cattle which were given to my sisters bear the brands and earmarks of their husbands. This is all. I will call witnesses. 20 30

CLAIM 8.

Defendant continues:

Plaintiff belongs to the Ratshosas and I do not see how he comes into any inheritance. All my sisters, Khama's daughters, were given their share (Secwaelo) and took them away with them according to well-known native custom. I think it is in accordance 40

- Magistrate's Court,
Defendant's
Evidence.
Chief Tshekedi.
Examination-in-Chief
continued.
- CHIEF TSHEKEDI, duly sworn, states (*continued*):
- with all laws that a maternal nephew has no claim out of the estate of his maternal uncle unless he has been left something by will according to European law. This applies also in native law if there was a distinct share left to him by special act in front of witnesses. The Chief acts according to his own will in this matter but as far as I know my father Khama was in the habit of declaring such gifts in the Kgotla. He never did anything of the sort as regards Plaintiff. He did so as regards Bessie, Johnny's mother. I only heard of those that were given to Bessie during the Chief's time. I do not think that she got many cattle but she got a waggon and a span of oxen. The man who took these things to Bessie is Baaipedi's father. 10
- Examination by
Court.
- By Court:*
Yes, Khama declared in Kgotla that daughters should also get something of their father's property so that they could live. Chief Khama treated all daughters in the same way whether they were born of lawful wedlock or born from marriages by native custom. Bessie died before I was born. I am 23 years of age and if there was any question of Plaintiff's mother Bessie's inheritance it should have been raised long before I was born. 20
- CLAIMS 2, 3, 4 AND 5.
- Examination-in-Chief
continued.
- Defendant continues:*
I produce a copy of a Minute handed to me by the Magistrate, Serowe. It is a copy of the Minute from the Magistrate, Francistown, to the Government Secretary, Mafeking, dated at Francistown the 12th March, 1927.
- Exhibit " F. "
- Read, put in and marked " F. "
- Defendant continues:*
It will be seen from this Minute that Johnny on that date said that if he was given a month he could dispose of the cattle. 30
- Statement by
Plaintiff regarding
this Exhibit.
- Plaintiff admits the contents of Annexure " F " to be correct and states that he did tell the Magistrate, Francistown, in accordance with that Minute and further states that he had arranged with auctioneers in Johannesburg.
- Defendant's
Reply.
- Defendant points out that Plaintiff in this Minute had mentioned nothing about auctioneers in Johannesburg but had mentioned Messrs. Smith and Baily.
- Plaintiff's Rejoinder
- Plaintiff states that by Mr. Smith he meant the Imperial Cold Storage at Serowe. 40

Magistrate's Court,
Defendant's
Evidence.
Chief Tshekedi,
Cross-Examination.

CHIEF TSHEKEDI, duly sworn, states (*continued*):

CLAIM 1.

By Plaintiff:

Yes, I said the reason why you were not prosecuted at the criminal trial was because the Resident Commissioner had pleaded your cause. I do not know that the Resident Commissioner came here to find out who should be prosecuted or not. I was explaining what His Honour said and what the native custom is as regards a man running to the Chieftainess but your case is totally different. You must remember that His Honour asked for forgiveness for 10 you after we had already burnt your houses. I did not hear His Honour say you were innocent.

Plaintiff:

If I was guilty according to law should I not have been prosecuted?

Defendant:

You would have been prosecuted if His Honour had not pleaded your cause.

Plaintiff:

Could His Honour have agreed that a man who had com- 20 mitted a crime should be released and not prosecuted?

Defendant:

His Honour said that you had been punished by flogging at the Kgotla and the burning of your houses and that you should not be prosecuted as you did not take part in the actual shooting. That is that you did not fire in the Kgotla.

You did go and complain to the Magistrate about your being assaulted in the Kgotla.

CLAIM 2.

Defendant continues:

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By Plaintiff:

Yes, I never agreed that I would herd your cattle and your brothers' cattle. I know nothing of the letter written to you by the Government. I only know of those written to me. I removed your cattle because I did not want them in my country but on this point you promised to ask no questions in a document. I don't know of any other cattle of yours that I collected. Those others that I did collect were in connection with judgments against you on the Government instructions. I did not attempt to take any cattle from Macloutsi but only some of your people and the cattle about 40 which a case had been heard and were not your property but that of others. Those cattle were the property of the people whom the

Magistrate's Court,
Defendant's
Evidence.
Chief Tshekedi.
Cross-Examination
continued.

CHIEF TSHEKEDI, duly sworn, states (*continued*):

regiment had been sent to fetch. A case was heard before the Magistrate concerning their removal without a permit. These people were brought in with the cattle and a case tried before the Magistrate here. There were only about 20 head. I do not know that you had no paid servants at Macloutsi. This is the first occasion that has ever happened that a man shoots at the Chief and then sits in the country obstinately. I do not know whether you complained or not to the Resident Commissioner that you could not get permits to sell your cattle.

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CLAIM 6.

By Plaintiff:

It would take me time to find out if you were alone responsible in the office as Secretary because there were several employed there when I became Acting Chief. Yes, Goagetoge was also Hut Tax collector at that time. I received documents from two other people who were in the office.

CLAIMS 7 AND 8.

By Plaintiff:

I do not know whether the Chief took away the cattle from Mmele because they had not been properly looked after. As regards the cattle Bonyerile had from my father as far as I know they bore the brands and earmarks of her husband. I do not know that the present of a span and oxen to Khama's daughters was a wedding gift. I told you that your mother Bessie left here with a cattle post. All these people can testify to it. Khama never said that sons and daughters were to have equal treatment in regard to inheritances. I do not know that Nkeni's sons and daughters inherited equally. I do not know that Baisi has any sisters. Bathu is Baisi's sister but I do not know what cattle she had. I do not know that Sebedi had cattle divided amongst the daughters and sons.

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Court adjourned to 9.30 a.m., 24th March, 1928.

Hearing resumed, 9.30 a.m., 24th March, 1928.

CHIEF TSHEKEDI, recalled and duly sworn, states:

Examination by
Court.

By Court:

As regards Khama's dictum in the Kgotla on the subject of the inheritance of daughters we native Chiefs do not keep written

Magistrate's Court,
Defendant's
Evidence.
Chief Tshekedi.
Examination by
Court continued.

CHIEF TSHEKEDI, duly sworn, states (*continued*):

records but this was handed down to me by the counsellors by word of mouth. As regards this dictum the counsellors not only told me when I succeeded to the Chieftainship but they quoted Khama in cases concerning inheritance which came before me in the Kgotla after I had come into the Chieftainship. The Court may know that in olden times when a daughter married a Bogadi was paid by the husband and these cattle were handed to the bride's father. No cattle were given by the bride's father to the bridegroom's father. Khama abolished Bogadi. He also directed that the bride's father should make provision for his daughter on her marriage. This could be in cattle grants or in anything the bride's father may be disposed to give. At the death of the father his property first comes into the hands of the Chief, the sons having no power to divide it without the Chief. The Chief then directs a man to divide this property amongst all the children and if it is found that a daughter whether married or single has nothing she is given something. 10

By Court:

This portion to be allotted to the daughter was intended by Khama to be sufficient to enable her to live as befitted her rank and station in the tribe so that for instance a Headman's daughter would not be compelled to live like a Mokgalahadi. According to my knowledge this dictum of Khama's did not only apply to the portion of inheritance from a deceased father but applied also to gifts made by a father to his daughter during his lifetime when she married and not to single daughters since they live with their father. Further this rule was also intended to apply to a case where a father had daughters only and no sons as the custom was for the inheritance in that case to go to the uncles. 20 30

Court produces an affidavit taken upon this same point by the present Magistrate of this Court at Molopolole on the 10th March, 1928, from Jakobe Kgari Sechele, a Mokwena.

Exhibit " G. "

Affidavit read, put in and marked " G. "

Defendant continues:

By Court:

I have heard the words read out from this affidavit by the Magistrate. I agree with the majority of the points stated by the Mokwena Headman Jakoba Kgari. The point that I do not agree with is that Khama said that daughters born of marriage by native custom were to be provided for in a lesser degree than those born from lawful wedlock. 40

Magistrate's Court,
Defendant's
Evidence.

CHIEF TSHEKEDI, duly sworn, states (*continued*):

Chief Tshekedi.
Court's
Explanation.

Court explains that when the presiding Magistrate took this affidavit from Jakoba Kgari at first he stated that both daughters of lawful wedlock and of marriage by native custom were equally included in Khama's dictum but upon being questioned further he said that he understood Khama to mean that those born from native custom might be provided for in a lesser degree.

Defendant continues:

As regards the rest of the affidavit I agree with it as far as I understood upon hearing it read.

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Plaintiff in reply to the Court states that he has no questions since what has been stated is perfectly true.

CLAIM 1.

Gaseati.
Examination-in-Chief.

GASEATI, duly sworn, states:

I am a Mongwato. I am the Defendant's uncle's son. On the 5th April, 1926, the Chief had given us some work to do. That is he had given my regiment some work to do. When the regiment had collected we found that Simon Ratshosa was an absentee. The head of the regiment sent for Simon to be found. I went with the regiment to try and find Simon at a village called Dithharapeng at the other side of Ratshosas' home. I found Simon together with his brothers Plaintiff and Obeditse in a hut there. I spoke to Plaintiff and said I wanted Simon. The Plaintiff came towards me angrily. I explained that I wanted Simon who belonged to my regiment which had been called out on the Chief's work. They were caught hold of by the people and shut in the hut. This was at the wedding feast at the Ratshosas' uncle's place. Johnny came out of the hut and said in passing me that when he came back I would know all about him. When he had left I came out of their uncle's village and stood a little way distant therefrom. Johnny returned and passed near by where I was sitting. He was on the way to his brothers who had been shut in the hut by the people. He was holding a Mauser pistol in his right hand and two small boys were walking in front of him each holding a Mauser pistol.

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Examination by
Court.

By Court:

They were his boys. I do not know their names.

Examination-in-Chief
continued.

Witness continues:

As Johnny passed I was sitting with my regiment and he looked at me and said, "Where is Gaseati. To-day I will kill you." The words he used were "Re tsile go lo bolaea gompiyeno" (We have come to kill you people to-day). As he said this he took

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Magistrate's Court, Defendant's Evidence. GASEATI, duly sworn. states (*continued*) :

Gaseati. Examination-in-Chief continued. out of his jacket pocket some cartridges and loaded his Mauser pistol. He passed on to the hut where his two brothers were shut up. Shortly afterwards while I was still sitting outside I heard a noise and saw Plaintiff, Simon and Obeditse coming towards me from the hut. The Ratshosas including Plaintiff held Mauser pistols in their right hands. All three said to me and to the men of my regiment who were sitting with me, " We have come to kill you people." They used the word " Lona " (plural, " You people "). When they approached I stood up and went towards them. I said to Plaintiff that I had not come to fight. I only wanted his brother Simon to go to work. Johnny said " I am killing you people to-day." 10

Examination by Court. *By Court:*

I and my regiment were not armed. We had not even sticks.

Examination-in-Chief continued. *Witness continues:*

My regiment stood up and I went towards Simon. Plaintiff levelled his pistol at me. He was on my left side. Obeditse also pointed his pistol at me. He was on my right. Simon also pointed his pistol at me. He was in front of me and facing me but a short distance from the others. I repeated that I was not fighting and then walked on towards Simon. At this stage the three Ratshosas stood still and my regiment rushed in and took me away. Then Johnny said that before the end of that day somebody would be killed. Plaintiff said he had nothing against the regiment. He wanted Gaseati, Phethu, Edirili, Senamela, Baisi and Golekanye. He said he wanted to kill the descendants of Sekgoma. The last mentioned three are merely Chief's men and not descendants of Sekgoma but he included them in those which he said he wished to kill. And when Simon and Obeditse shot at the Defendant that evening I remembered Plaintiff's words. 20 30

Examination by Court. *By Court:*

Plaintiff's two brothers shot at the Chief in the afternoon. I hold that they did so upon the orders and authority of Plaintiff seeing that earlier in the day he had armed them and incited them to kill us.

Cross-Examination. *By Plaintiff:*

It is not that I am inventing a serious crime against you but it is you that committed the crime. Even if you now threaten to bring a claim of damages for defamation against me you are the one who incited your brothers to do it. 40

Plaintiff:

Did you hear me say that the Chief should be killed?

Magistrate's Court, GASEATI, duly sworn, states (*continued*) :

Defendants
Evidence.

Gaseati.

Cross-Examination
continued.

Witness:

You implied it by arming your brothers. I am not giving you my mere opinion. I am stating what you actually did.

After you had approached me with your guns and made threats I went and reported to my senior Edirili. Yes, you did say that you would kill the descendants of Sekgoma.

Examination by
Court.

By Court:

By Sekgoma Plaintiff alluded to Chief Sekgoma I, the father of Chief Khama and the grandfather of the present Chief Tshekedi. 10

Cross-Examination
continued.

By Plaintiff:

If the regiment had not taken me away I would have been killed by you.

Plaintiff:

Be careful. You say I wounded the Chief?

Witness:

Yes, you did so by arming your brothers.

By Plaintiff:

Yes, I have younger brothers and if they do wrong I would stop them and punish them. I am not responsible for their crimes but I should stop them when they are trying to commit them. I can punish them if they have already committed a crime. Yes, I have said that you wanted to kill Sekgoma's descendants besides myself, Edirili and Phethu but I mentioned those whom you named. At the enquiry and criminal case I mentioned in my evidence this armed assault on me by you and your two brothers. Yes, I gave this evidence at the enquiry and at the criminal trial and this is the third Court before which I am giving it. 20

Examination by
Court.

By Court:

When Plaintiff threatened me with his pistol he said " Compi- 30
yeno ke senka lona bana ba ga Sekgoma ke batla go lo bolaea " (To-day I am looking for you people, the descendants of Sekgoma. I intend to kill you).

Cross-Examination
continued.

By Plaintiff:

I do not know why you wanted to kill us. You are the first man who has wanted to kill people for no reason. I was looking for Simon a member of my regiment and you obtained firearms and attacked us. We were not armed with sticks and if we had been there would be no reason for me to deny it. You refused to let me have Simon and I could not bring him. 40

Magistrate's Court, CLAIM 1.

Defendant's
Evidence.

Edirilwe.

Examination-in-Chief.

EDIRILWE, duly sworn, states :

I am a Mongwato Headman. On the 5th April, 1926, I was at the Kgotla during all the time of the trouble. The origin of the trouble was the Mosarwa girls of Simon's wife and when the Chief sent to fetch them they were found in one of Plaintiff's huts. Previous to all this whenever there was a case in the Kgotla against Simon or Obeditse Plaintiff always said that he would die with his brothers meaning that he would always back them up. He always agreed with whatever they said or did. Simon belonged to my regiment which is the Matlogela of which I am the head and the previous witness Gaseati is my second in command. On a previous occasion when we had some work to do on a fence and the regiment was called out by the Chief I instructed Gaseati to look for Simon as he was not present with the regiment. Nonofang and Mokgoe were detailed to find him. Nonofang reported to me that he had found all three brothers and that Plaintiff had said that Simon would not go with the regiment. I did not say anything on this occasion as I knew Plaintiff was trying to make trouble as he was well aware that the Chief had called out the regiment. On the day of the shooting affair the Matlogela regiment had been called out to repair the motor road leading to the Chief's house. Simon did not turn out and I sent Gaseati to fetch him. As Gaseati knew that these people were troublesome he went with the regiment with the idea of frightening him out.

Examination by
Court.

By Court:

No, the regiment did not carry any sticks. It is not our custom to strike one man with sticks.

Examination-in-Chief
continued.

Witness continues:

Gaseati came and reported to me that the three Ratshosas were armed with firearms with Plaintiff at their head and had threatened him and others with their pistols and that Plaintiff had said that those who had sent him should come and that he would show them what he would do to them. Plaintiff knew the order came from the Chief and he was really threatening the Chief when he said this. I was going to send the same regiment to return and fetch Simon but they said it was no playing matter and that they would be shot by the Ratshosa brothers if they did. Plaintiff made his attitude clear that evening at the Kgotla when he was called by the Chief and delayed for an hour before he turned up at the Kgotla and on being asked to explain his disobedience that morning in not coming when he was summoned to meet the Magistrate he replied that he had been to a wedding and could not come for that reason. He had been first called for 9 a.m. in the morning. The Chief then

Magistrate's Court, EDIRILWE, duly sworn, states (*continued*):

Defendant's
Evidence.

Edirilwe.

Examination-in-Chief
continued.

addressed all three Ratshosas and said that as they had refused to obey his orders they must lie down to be thrashed. First Plaintiff stood up and then his two brothers followed him. Plaintiff was very angry and said that they would never lie down. When they refused to lie down at the second command the Chief gave the order to beat them. We thought they would run away but on the contrary they fought. Simon and Obeditse escaped but Plaintiff remained behind and struck about him at the people with his stick. His younger brothers escaped before they were beaten much. It was 10 obvious that the Ratshosas had planned this fight. One of their people named Radiburu alias Johnson, a coloured man, also fought and struck a man in the Kgotla with his chair. Plaintiff would have gone to his home but on account of the bruises he had received he went to the Magistrate. We had given him a good beating and only stopped when the Chief told us to stop. I said he would fight because when Plaintiff returned from the Magistrate he joined his brothers who were firing.

Examination by
Court.

By Court:

Yes, when Plaintiff joined them they were defending themselves 20 from their houses but they had started war by firing at the Chief in the Kgotla and it was only then that the people armed themselves and attacked them. When we went and burnt the Ratshosas' houses that night when the three Ratshosas were in the hands of the Magistrate, two of their men were still at large namely Johnson and Senamela and we presumed that they were in the Ratshosa village. Subsequently when the Resident Commissioner came to the enquiry he pleaded Plaintiff's cause and he said that his houses had been burnt and he pleaded for forgiveness according to native 30 custom.

Plaintiff has no questions.

Statements
re
further Evidence.

Court asks Defendant if he has any more witnesses to corroborate Gaseati's statement and Defendant replies that all the members of Gaseati's regiment who were present and who can give evidence on this point have been present the whole time in Court with the exception of Galekhutle who can be called and perhaps others.

Court adjourned to 9.30 a.m., 26th March, 1928.

Hearing resumed 9.30, 26th March, 1928,

Magistrate's Court, CLAIM 1.
Defendant's
Evidence.

A. Y. Page Wood.
Examination-in-Chief.

ALFRED YORK PAGE WOOD, duly sworn, states :

I am a storekeeper at Serowe. I have been here 35 years. I was in Johannesburg on holiday on the Easter Monday the 5th April, 1926. I had a rifle and shotgun in my possession belonging to Plaintiff. He had lent them to me and asked me to keep them. The rifle is an express about .360 bore. I am not certain of the make. The shotgun was a double-barrelled hammerless. At the time of the disturbances these were in my possession. Three or four days after the shooting affair having heard about the matter I took the first train back. My late mother occupied the house next door to me. On my return to my house I found the disturbances to be the general subject of conversation amongst my servants. My late mother told me that when the disturbances started Plaintiff had come to my house and then to her to ask for his rifle. This rifle was not given to him. My mother refused to give it to him as it was in my house and she did not consider she had a right to take it out of my house without my consent. On my return the rifle and shotgun were still in my house where I left it. 10

Cross-Examination. *By Plaintiff:*

I do not know whether the time my mother referred to that you came for the rifle was before or after you went to the Camp. 20

CLAIM 1.

Molatlhegi.
Examination-in-Chief.

MOLATLHEGI, duly sworn, states :

I am a Mongwato and Mr. Wood's servant. I remember the shooting affair at Serowe. I was at my master's house. I remember an incident that day in connection with a rifle and Plaintiff. Plaintiff came and found me. He found me in my master's yard. This was late in the afternoon just before sunset. He had come from the Magistrate's and asked me where Mr. Wood was. I told him that Mr. Wood was away and had gone to Johannesburg. Plaintiff then asked me where Mr. Wood had put his gun. I told him that it was in my master's store. He passed on and went to the late Mrs. Wood's house, Mr. Wood's mother, to see her. He was a short while there and then went home. 30

Examination by
Court.

By Court:

I knew that Plaintiff came from the Magistrate. When the first shot was fired in the Kgotla I heard it. I was on the road to the Kgotla where I was going to listen to the news. I heard three shots fired in the Kgotla. When these shots rang out I was approaching and was a little way from the Kgotla but the spot 40

Magistrate's Court,
Defendant's
Evidence.
Molatlhegi.
Examination by
Court continued.

MOLATLHEGI, duly sworn, states (*continued*):

from which Simon and Obeditse were firing was closer to me than the Kgotla itself. I thereupon ran back to Mr. Wood's house. I stood in the yard and was not long there when Plaintiff arrived. He was coming on the road past the Post Office from the direction of the Magistrate's house. He was walking hurriedly. Just before the firing at the Kgotla while I was walking towards the Kgotla, I met Plaintiff running from the direction of the Kgotla. He passed me and was running in the direction of the Camp. He was excited and he was crying (witness shows how he was weeping). From 10 the time he passed to the time he came to Mr. Wood's house was about the same time that has elapsed since I have been in the witness box (between 10 and 15 minutes). Plaintiff's rifle was in Mr. Wood's store. I had seen it there and the store was locked on that day being a holiday.

Cross-Examination.

By Plaintiff:

When you came to Mr. Wood's yard I did not notice whether you had any blood on you. It seemed to me that you were just as you are to-day. Yes, when you came to the yard it was after the Bamangwato had been called to turn out with their arms after 20 Simon and Obeditse had fired. I heard the man calling to the people from the top of the hill to fetch their guns. At that moment I was in Mr. Wood's yard after I had returned from the direction of the Kgotla. When the man first called the people to arms from the top of the hill Plaintiff must have been on the road between the Magistrate's and Mr. Wood's. Between the time Plaintiff passed me running along the road and the time that the man called the people to arms from the hill a long time passed. I say that Plaintiff must have been on the road between the Magistrate and Mr. Wood's at the moment that the man on the hill first called the people to 30 arms because it was a very short time after that that Plaintiff arrived at Mr. Wood's. In my opinion when the Chief's man began to call the people to arm Plaintiff must have already started from the Camp. When I passed Plaintiff the people had not started to come past with arms.

Plaintiff:

When the Chief had the people called to arms was it not right that I should arm?

Witness:

Yes, it was your duty. 40

I do not remember anyone coming and picking you up at Mr. Woods. When on my way to the Kgotla I was going to listen to the news. When you came to ask for your gun you were going to fire with it otherwise you would not have required it. Yes, the people who were arming were also going to fire.

Magistrate's Court, Defendant's Evidence.

Molatlhegi.
Re-Examination.

MOLATLHEGI, duly sworn, states (*continued*):

By Defendant:

The people on being called to arms came to the Kgotla. On Plaintiff asking for his gun he went on the road and I took it he was going to his place.

CLAIMS 2, 4 AND 5.

C. C. MacLaren.
Examination-in-Chief.

CLAUDE CAMPBELL McLAREN, duly sworn, states:

I am Acting Clerk to this Court. I put in a certified copy of a certain power of attorney by the three Ratshosa brothers given to their legal adviser Dr. Lang and the certified copies of letters received by him in connection with £1,042 12s. for his clients from Defendant being proceeds of sale of Ratshosa cattle by Defendant to the Cold Storage. These original documents were put in by Defendant in Simon's case as Annexures "D," "G" and "H" in that case. 10

Exhibits
"N," "O," "P."

Read, put in and marked "N," "O" and "P."

Document "N" is an undertaking by Plaintiff and his two brothers to bring no action for damages or otherwise in regard to certain 500 odd head cattle seized and sold by Defendant from Ratshosa cattle and sold as stated. 20

CLAIM 1.

Witness continues:

I have often walked the road between the Magistrate's house at the Camp to Mr. Wood's house in Serowe referred to by witness Molatlhegi and I make the distance approximately half a mile as the crow flies.

I put in evidence on commission just received from the Magistrate, Lobatsi, taken by him on commission from Mr. Cuzen, formerly Magistrate, Serowe.

Exhibit "Q."
This is Exhibit
"W"

Read, put in and marked "Q."

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in Simon Ratshosa's case. CLAIM 1.

Matebesi.
Examination-in-Chief.

MATEBESI, duly sworn, states:

I am a Mongwato Headman. On the 5th April, 1926, in the morning at 9 a.m. I met Plaintiff, Simon and Obeditse. I was proceeding to Mogomotse's wedding. I met them at the school and Simon told me that they had been sent for by the Chief in the morn-

Magistrate's Court,
Defendant's
Evidence.
Matebesi.
Examination-in-Chief
continued.

MATEBESI, duly sworn, states (*continued*):

ing. He added that they were surprised and had told the messenger that they were going to the wedding. After the ceremony I went to Ditlharapeng to the wedding feast. I sat on the stoep of the hut where the bride was. Before long Gaseati came. He tried to enter the hut but the people inside refused to let him. There was noise inside the hut. I did not know what was going on. Afterwards Gaseati went outside the Lolwapa. Whilst I sat there Plaintiff came out of the hut and went through the back gate. When he left I asked what was going on and they told me that the Matlogela required Simon a member of their regiment. I came back and stood in the middle of the yard. Later Plaintiff entered the Lolwapa with a small boy. The small boy was walking in front of him. Plaintiff had a revolver in his hand and the boy had another. Then all three Plaintiff, Simon and Obeditse came out of the hut and then I saw that each of them had a pistol in his grip. They went out through the back gate. The regiment was standing a little way off. They stood a little way from the Regiment. Plaintiff was on the right, Simon in the middle and Obeditse on the left. I and Gasebalwe followed them through the back gates to watch what was going on. I did not hear what they said. They were talking to the regiment. They were as far from us as that stone (indicates about 20 yards). I heard Simon say to Gaseati "Come near." Afterwards we went towards Disang's well and when we returned Plaintiff and his brothers were still there with the regiment and they still had pistols. I left Gasebalwe and passed Plaintiff and his brothers on my way home. The reason why I left was because I thought there was going to be some shooting. I did not see that the regiment was armed and I did not notice that they carried sticks. I was watching the pistols of the Plaintiff and his brothers at the time and was frightened and did not notice anything else.

Adjourned at 1 p.m. _____

Resumed at 2.30 p.m. _____

Cross-Examination. *By Plaintiff:*

I do not know if my name was on the list of criminal witnesses. I did not hear it said that His Honour when he came to the enquiry wanted witnesses like me against you. I was not present at the enquiry.

Magistrate's Court, CLAIM 1.

Defendant's
Evidence.

Nonofang.

Examination-in-Chief.

NONOFANG, duly sworn, states :

I am a Mongwato. In March, 1926, I was sent out by the Matlogela regiment to get Simon who was a member of that regiment and the regiment had been called out by the Chief to do some work in accordance with the usual custom. I went with a man Mokgoe to the Ratshosas' place. We found Simon there. Plaintiff, who was at his house which is alongside Simon's, came to us. Obeditse came down from the top of the roof which he was repairing and also came to us. I told Simon we had come to call him to his regiment in accordance with native custom. Simon stood up and used abusive language and went into his house. Plaintiff then said that the sons of Sekgoma meaning Chief Sekgoma I. had not done rightly in sending us to call his brother, they should have come themselves. Plaintiff belongs to a different regiment. We returned to the Chief and reported to the regiment. We had left our regiment waiting at the Kgotla. 10

Cross-Examination. *By Plaintiff:*

Yes, that is what you said. I was surprised as I took it that you knew native law but you defied it. I do not know what plot you are referring to when you say you had obstructed my plot. This is the first time I have heard that I was in a plot to kill the late Chief Khama's wife Simane. Yes, I admit that you obstructed me when I went to get a native doctor for Sekgoma. 20

CLAIM 7.

Mokomane.
Examination-in-Chief.

MOKOMANE, duly sworn, states :

I am a Mongwato one of the Chief's men. Defendant is my maternal uncle and brother to my mother Mmakgama who was the daughter of the late Chief Khama. During the lifetime of Chief Khama he gave some cattle to my father Modisaotsile. These cattle were to remain in the charge of my father but to belong to the Chief. These cattle had their own herds who accompanied the cattle from the Chief and remained with them. If the Chief wanted to make us any present he sold some and made us presents. In 1912 the Chief turned out twelve of these cattle and gave these to Mmakhama. Those that remained belonged to the Chief. 30

Examination by
Court.

By Court:

When the Chief Khama gave these cattle to Mmakhama there were witnesses present. One of the witnesses was a woman sent by Khama to help my mother in confinement and she was also instructed to take these cattle out of the post and give them to my mother. 40

Magistrate's Court, MOKOMANE, duly sworn, states (*continued*) :

Defendant's
Evidence.

Witness continues:

Mokomane.
Examination by
Court continued.

My father called the herds and conveyed the message to them in the presence of this woman and he then with the herds picked out the cattle. When these cattle increased I earmarked them with my own earmark. Sometimes the Chief would sell oxen from this post in question and sometimes he would give us the money therefrom. From 1908 until the date of Khama's death (1923) the hides of any of these cattle that died were being sold by my father and Khama had nothing to do with them but the cattle were the Chief's. In 1923 Chief Sekgoma picked 24 head out of this post and gave these to my father. They were kraaled at Bobonon and we caught hold of them and destroyed the brand. We put on the condemning brand. The increase of these cattle were earmarked with our marks. Likewise during Chief Sekgoma's time we sold the hides of these cattle for ourselves. That same year Sekgoma picked out four oxen and gave them to my father who sold them. The cattle remained the Chief's. 10

Cross-Examination. *By Plaintiff:*

Yes, I am your aunt's son. Yes, Chief Khama made presents 20 to us out of these cattle. When the 24 head cattle were given there was a witness present and all the cattle herds of this post will corroborate. You were present at Bobonon when the 24 head were given. There were many Bamangwato present. The Chief went with my father, myself and another into the kraal and pointed out the 24 head which he gave to my father. I do not know if the Chief told the people that he had made this gift to us. I do not know whether the Chiefs when making presents of cattle out of their own private cattle announce this to the people. Those cattle we have bear the Chief's brand "S." I am referring to the Chief's cattle 30 which we hold in charge for him and they have the Chief's earmarks. These were branded "S" for the Chief Tshekedi, "S" being for Semane and not Sekgoma. All the cattle I have belonging to the Chief have the brand "S." Yes, the cattle are Semane's and I do not know if they are Semane's secwaelo or not from the Chief Khama. Those that we received I removed the marks so that they should not be mixed up with the Chief's cattle.

Statement by
Plaintiff.

Plaintiff informs the Court that he has put these questions to show that what Jakobe Kgari said in his affidavit re native custom on the point of woman's portion is correct. 40

Magistrate's Court,
Defendant's
Evidence.
Galekhutle.
Examination-in-Chief.

CLAIM 1.

GALEKHUTLE, duly sworn, states :

I am a Mongwato. I am a member of the Matlogela regiment under Gaseati who is the third in command. We went to Ditharapeng which is the place of the uncle of Plaintiff to fetch Simon who belongs to our regiment. We had been called out on that day to finish a motor road leading to the Chief's house. We tried to get Simon out of the hut where he had entered but they shut the door. We turned back and sat a little way off. That is the regiment and Gaseati. We sat down intending to get Simon when he came out of the hut. While I was sitting there with my regiment I did not see Plaintiff go to his house. He may have got out of the hut by another gate. Then I saw Plaintiff returning carrying a pistol in his hand and two small boys were carrying pistols walking behind him. Plaintiff went into the hut to give his two brothers the pistols. Then Plaintiff, Simon and Obeditse came out each carrying a pistol. When Plaintiff came out he said that he wanted to kill Sekgoma's descendants to-day. Gaseati tried to approach them but I warned him that these people had made up their minds to kill. I caught hold of him by the coat and drew him back. Plaintiff, Simon and Obeditse pointed their pistols at Gaseati who said that he had come to fetch Simon his regimental comrade. They were standing in a row in front of Gaseati. They were close to him about as far as that sail (indicates about three yards). We then returned home and reported to the head of the regiment.

Examination by
Court.

By Court:

The regiment had no arms not even a stick. We were as I am here to-day. We were a working party and as such the regiment does not carry anything.

Cross-Examination.

By Plaintiff:

Yes, I know you. You are a Mongwato. I have not given evidence that I have been told. I am certain the regiment was not carrying anything not even one had a stick or anything.

CLAIM 1.

Mokgoe.
Examination-in-Chief.

MOKGOE, duly sworn, states :

I am a Mongwato and belong to the Matlogela regiment. On the day of the disturbances I went with my regiment to Ditharapeng to fetch Simon as he belonged to our regiment. When we got there a lot of trouble arose. When we got to the stoep of the hut Plaintiff attempted to strike Gaseati with a stick but Simon got hold of Plaintiff and pulled him backwards. Lesolo shut the hut

Magistrate's Court,
Defendant's
Evidence.

MOKGOE, duly sworn, states (*continued*):

Mokgoe.
Examination-in-Chief
continued.

and Plaintiff, Simon and Obeditse remained inside. We stood there and when we had given up hope of their coming out we went out of the Lolwapa and sat under a tree. I left the regiment and went and stood behind the local Ditlharapeng kgotla which was quite close to the hut in which Simon was. I returned to where my regiment was sitting. Then Plaintiff arrived and went through the main entrance where Simon and Obeditse were. He was carrying a pistol and another was in his pocket. In the meanwhile I had left the regiment again. Then Plaintiff, Simon and Obeditse came 10 out of the Lolwapa and each carried a pistol in his hand. They stood there and said to the regiment "Come here." The regiment was afraid and retired. When the regiment went back Gaseati walked behind the regiment. We then went and sat by the dam and Gaseati sent a man to Edirilwe the head of the regiment. I saw well what was going on. I did not run away.

Cross-Examination. *By Plaintiff:*

Yes, there were two regiments. Yes, I saw you strike at Gaseati with a stick. Yes, you were carrying two pistols.

Defendant points out the men of the regiment have been present 20 and cannot be called.

CLAIM 7. (NATIVE CUSTOM.)

Oitsile.
Examination-in-Chief.

OITSILE, duly sworn, states:

I am one of the Chief's men. I had been sent by Chief Khama farther than the Meloranyane post. I had gone to pick out some cattle at the cattle post. I met Meloranyane. He told me that he had come to fetch the cattle post in which I was. I pointed out the cattle post which was herded by six herds. I left Meloranyane there. The cattle there were the Chief's cattle. Before I got to Serowe Meloranyane and they proceeded to Tamasane with the 30 cattle. They were just moving and the Chief's herds are still with them to-day.

Examination by
Court.

By Court:

In short this post was never given to the Ratshosas. I have never heard that it was even given into their charge.

I was in charge of all the Chief's cattle at Nata. The cattle at Nata were split into three posts of which Meloranyane was one. I know of all the cattle of which Khama made gifts. To my knowledge the cattle post now claimed by Plaintiff belongs to Chief Khama and I do not see how there can be any dispute about it. 40 The progeny of these cattle were sold by Khama and by Sekgoma.

Magistrate's Court, OITSILE, duly sworn, states (*continued*) :

Defendant's
Evidence.

Oitsile.

Cross-Examination.

By Plaintiff:

They left Nata for the grazing at Tamasane. In regard to the Nata cattle Khama used to deal with me direct. I do not remember coming to your house at 5 p.m. and making a complaint to you.

CLAIM 7.

Mpateng.
Examination-in-Chief. MPATENG, duly sworn, states :

I am the son of Meloranyane who was in charge of the Meloranyane cattle posts. I know these cattle belong to the Chief. The brand on them is the Chief's. They are the Chief's cattle and have always been his cattle. All I know is that the Plaintiff is the man to whom we had to report if anything went wrong at this post. Plaintiff had no cattle of his own at my father's post. He used to come and look at the cattle occasionally. When he came he used to come with messages for us from the Chief. We used to report deaths and regarding the hides to Plaintiff. The hides were sent home and I do not know whom they went to. Chief Sekgoma used to sell these cattle from time to time. I do not know to whom he gave the proceeds but when he sold them I took them to Mr. Parr's to sell.

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Plaintiff has no questions.

CLAIM 1.

Selei.
Examination-in-Chief. SELEI, duly sworn, states :

I am a member of the Matlogela regiment. On the day of the shooting affair I went with my regiment to Ditlharapeng to fetch Simon who was a member of my regiment. We had been called out by the Chief as a working party. We numbered about 40 which was not a big muster. Gaseati was in charge of us and informed us that he wanted Simon. We entered the Lolwapa and found Simon in a hut with Plaintiff and Obeditse. Gaseati peeped into the hut through the door which was half closed and the Ratshosas rushed at him. Someone pulled Gaseati back. I said to Gaseati that he should not go in because if we followed the things in the house would get broken. Somebody shut the door. We then went out of the Lolwapa about as far from here as that spruit (indicates about 250 yards). As we had moved away Plaintiff came out of the hut with two boys and went towards his home. Gaseati said that Plaintiff had gone to fetch his guns. We were sitting there for some time and later Gaseati said we should go and see if Simon was in the hut.

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Magistrate's Court,
Defendant's
Evidence.
Selei.
Examination by
Court.

SELEI, duly sworn, states (*continued*):

By Court:

The hut in question was fenced in with a bush fence.

Gaseati sent three men to reconnoitre whether Simon had gone out and they returned and reported that Simon had gone out. He then sent a few men to go to catch Simon and I was detailed with these. As we approached Simon and Obeditse went back into the hut. As we came out of the yard again Plaintiff entered and went into the hut. He had two boys with him carrying pistols and Plaintiff was carrying one in his hand. Then all three Ratshosas 10 went out of the back gate and they were followed by their sister Nkwane. I went back to my regiment. My regiment was standing up and the Ratshosas were going towards them. All three Ratshosas had pistols. Plaintiff was on this side (indicates left) Simon was in the middle and Obeditse on the right. Then they said to Gaseati "Come let us fix you up" and Plaintiff said "To-day we will fix you up. As to you people descendants of Sekgoma one of you will die to-day."

By Court:

I think he referred to Defendant when he said "One of Sekgoma's 20 descendants will die to-day." Gaseati told him that he did not want him but his brother Simon his comrade. Gaseati then walked towards Simon. The regiment were trying to hold back Simon and Obeditse and Galekhutle and I caught hold of Gaseati and told him that these people had guns and would kill him and we pulled him back. I told him that they were picking him out amongst the rest of us. Gaseati was related to Chief Khama in that his father was the younger brother of Chief Khama so therefore he was a grandson of Chief Sekgoma I. That is why Plaintiff included him when he 30 said "you descendants of Sekgoma."

Gaseati then left and we returned with the regiment and went home. Plaintiff was aiming his pistol at Gaseati whilst Simon and Obeditse were also doing the same. I think there were about 40 of us there. We had nothing in our hands not even sticks. That was because we were a working party and it is not our custom to go with sticks when we go to work.

Cross-Examination.

By Plaintiff:

I said I think we were about 40. I only know that the Matlogela were there and no others. Yes, I saw you when you went to fetch the pistols. You had not told Gaseati that you were going 40 to fetch guns. Anyway you came back with guns.

Examination by
Court.

By Court:

I am not certain whether all three Ratshosas had the same sort of pistols. Some of them were as long as this (indicates about

- Magistrate's Court, Defendant's Evidence. Selel. Examination by Court continued. SELEI, duly sworn, states (*continued*):
- 16 inches). You certainly said "Come Gaseati we will kill you." And you also said you would kill the descendants of Sekgoma. Yes, I understood that when you said one man would be killed that day of the descendants at Sekgoma, you meant Chief Tshekedi and before sunset that day you did try to kill him. You shot at him because you armed your brothers and incited them to shoot at the Chief.
- S. Langton, *vide* pages 75-76. STANLEY LANGTON, duly sworn, states:
- NOTE.—His evidence appears in Simon Ratshosa's case, 10 pages 75-76.
- H. B. Poole, *vide* pages 71-75. HENRY BRADISH POOLE, duly sworn, states:
- NOTE.—His evidence appears in Simon Ratshosa's case, pages 71-75.
- R. H. Lewis, *vide* pages 76-79. RICHARD HAYDON LEWIS, duly sworn, states:
- NOTE.—His evidence appears in Simon Ratshosa's case, pages 76-79.
- W. Mackintosh, *vide* pages 69-70. WILLIAM MACKINTOSH, duly sworn, states:
- NOTE.—His evidence appears in Simon Ratshosa's case, 20 pages 69-70.
- C. C. McLaren, *vide* page 70-71. CLAUDE CAMPBELL McLAREN, duly sworn, states:
- NOTE.—His evidence appears in Simon Ratshosa's case, pages 70-71.

9.30 a.m., 27th March, 1928.

Plaintiff's Address.

Plaintiff addresses the Court.

The only point of the address worth recording is that he refers to a certain letter from the Colonial Office in 1895 to Chief Khama, Sebele and Bathoen in which the powers of the Chief as regards punishment were limited.

Defendant states he has the Blue Book and produces it. 30

Defendant's Address.

Defendant addresses the Court in regard to all three cases viz., Simon's case No. 1, Obeditse's No. 2 and Johnny's No. 3.

Magistrate's Court,
Defendant's
Address continued.

Defendant traces history of the British Protectorate and makes a loyal speech. As regards his power as Chief he produces Colonial Office Blue Book C 7962 of 1896 and draws attention to the letter therein to the Colonial Office from Chiefs Khama, Sebele and Bathoen, No. 22 dated the 25th September, 1895, and the Colonial Office reply No. 50 dated the 18th November, 1895 and to paragraph 5 thereof, on the second page.

He concludes by earnestly requesting that the Government may banish the three Ratshosa brothers outside the Protectorate, pointing out that Francistown is far too close, that otherwise they 10 will inevitably give further trouble in the future.

Magistrate's Court,
Judgment.
Document No. 9.
29.3.1928.

JUDGMENT.

IN THE COURT OF THE ADDITIONAL MAGISTRATE FOR
THE NGWATO DISTRICT HOLDEN AT SEROWE
14th TO 29th MARCH, 1928.

In re JOHN RATSHOSA *vs.* CHIEF TSHEKEDI.
11.30 a.m., 29th March, 1928.

Judgment.

In this case as in the last two the Court has to be guided by Sections 8 and 9 of Proclamation of 10th June, 1891, which I have already read in the previous two cases. 10

Plaintiff brings 8 Claims against Defendant.

CLAIM 1.

He claims the sum of £3,849 18s. 9d. in regard to his buildings and the contents thereof, burned down by Defendant's orders on 5th/6th April, 1926.

Defendant admits the act which he says was committed by his orders as Chief but does not admit liability, pleading justification and the power to do so under native law and custom. Defendant states that although Plaintiff was not indicted in the criminal trial in 1926 when Plaintiff's two brothers Simon and Obeditse were convicted and sentenced for the attempted murder of Defendant in the Kgotla nevertheless he will show that Plaintiff was really the ringleader of the armed rebellion of the Ratshosas and incited his two said brothers to their crime of attempted murder. 20

Defendant has shown in this case that the reason why a criminal charge was not brought against Plaintiff, the eldest of the Ratshosa brothers, at that time was because, as things happened, Plaintiff was not present at the Kgotla with a rifle in his hand when Simon and Obeditse, his two brothers, fired at and wounded the Chief, Defendant; and when Colonel Ellenberger the Resident Commissioner came to Serowe a few days after this shooting affair he interceded with Defendant on behalf of Johnny on those grounds and begged Defendant to forgive him. Defendant states that the Resident Commissioner came to him in accordance with native 30

Magistrate's Court,
Judgment.
Document No. 9.

custom to plead for Plaintiff, Johnny, and that he Defendant said he was prepared to forgive him. At the time, of course, Plaintiff's dwellings had been burnt together with that of his brothers and His Honour was quite aware of this. Plaintiff, however, according to native custom should have come to the Chief and submitted himself. But Plaintiff to this day has not done so. On the contrary at the criminal trial and in this case he has admitted that he said that he did not acknowledge Defendant as his Chief.

The evidence in this case, and some of it was never produced in the criminal trial, goes to show that Plaintiff and his two afore- 10
said brothers made a point of defying the authority of the Acting Chief Tshekedi, Defendant, who was installed as Chief in January, 1926, with the support of the Government, in succession to the late Chief Sekgoma during the minority of the young Chief Seretse, a boy.

Plaintiff was clearly the ringleader in this opposition to the Defendant and it is evident that his two brothers Simon and Obeditse were led on and incited by him.

Plaintiff and his two brothers were called upon by Defendant to attend the Kgotla at 9 a.m. on the morning of 5th April, 1926, 20
to meet the Magistrate to discuss a matter in which the Ratshosa family had been obstructing and defying the Chief. Plaintiff and his brothers refused to attend and sent an impertinent message. They all three attended a wedding feast at their uncle's place. Later the Chief ordered out the "regiment" to which Simon belonged, as a working party to work on a motor road leading to the Chief's house. It appears that Simon had made a practice of refusing to join his "regiment" when ordered out for some time past. Then as Simon did not turn up Gaseati was sent down with an unarmed working party of the "regiment" numbering about 30
40 men to fetch Simon from his uncle's place where the feast was in progress. It is clear that these 40 men under Gaseati had not even sticks, as they were according to their custom not in the habit of doing so. They approached the hut where Simon and his two brothers were and Gaseati went to call Simon. The Ratshosas apparently used threatening language and barred the door. Gaseati then went and sat with his men under a tree some way off, about 200 yards to wait for Simon to come out. Plaintiff meanwhile had got out by a back way from the hut yard (Lolwapa) and went home and returned with three Mauser pistols with two of which he armed 40
his two brothers Simon and Obeditse. Plaintiff then brought his brothers out of the hut and when Gaseati told Simon in a peaceful manner that he had been sent to fetch him to join his regiment Plaintiff and his two brothers closed round Gaseati and all three levelled their Mauser pistols at him and Plaintiff said "Gaseati

Magistrate's Court,
Judgment.

Document No. 9.

we will kill you ” and “ One of the descendants of Sekgoma will die to-day,” and words to the effect that Plaintiff referred to the Defendant, grandson of Sekgoma I., and predicted that he Plaintiff and his brothers would shoot him that day. One witness refers to “ those who sent you will die to-day.” Gaseati tried to argue with them peacefully, but was pulled away by some of his men who saw that Plaintiff and his brothers meant to shoot. Gaseati being the nephew of Chief Khama, the son of Sekgoma I., was included in the “ you descendants of Sekgoma ” as was Defendant. That afternoon the Chief called the three Ratshosa brothers to the Kgotla and they evidently purposely, to show their contempt for the Chief, arrived there an hour late, and after Simon and Obeditse had run home to fetch their firearms, Plaintiff who had been kept back in the Kgotla and beaten when he defied the Chief, and showed fight, ran to the Magistrate at the Camp and showed his bruises received in the brawl in the Kgotla. He then heard the first shots ring out fired by his two brothers at the Kgotla at the Defendant. Making the excuse that he wanted to go to his house, he says, “ to die with his children,” he hurried to Mr. Wood’s house to try and get his rifle which he had lent to Mr. Wood and was locked up in the latter’s store. He failed to get the rifle. It appears to the Court to be pretty evident that Plaintiff intended to join his two brothers and support them with his rifle in shooting at the Chief and his followers. The whole thing appears to the Court to have been a preconceived plan by the Ratshosas with Plaintiff as the ringleader. It was in the opinion of the Court only accident that prevented Plaintiff from joining his brothers in the attack on the Defendant with intent to murder. It also seems to the Court that in this plot the Ratshosas counted on the support of others, supporters of theirs, against the Chief. It looks as if the plot was designed to seize the Chieftainship. At any rate, to kill the Defendant and establish their authority in his place, Simon’s wife being the eldest daughter of the late Chief Sekgoma. 10 20 30

It is clear that Plaintiff incited his two brothers to public violence and armed rebellion against the Chief since it was he who handed them Mauser pistols and would evidently have shot in the first place Gaseati who was sent to fetch Simon.

It was for this that Defendant had his dwellings burnt together with the adjoining ones of his brothers.

His buildings have been valued at not more than £450, excluding the bricks and mortar. 40

His effects alleged to have been burnt in them are put at an absurd value.

The Court here refers to its judgment in Cases 1 and 2.

Magistrate's Court,
Judgment.

Document No. 9.

Vide pages
80-84.

Court's Finding
on Claim 1.

Judgment on
Claim 1.

In Cases 1 and 2, Claim 1 therein, which deal with this incident, I have given at great length my reasons why this Court considers that the Chief has the power to act as he did. See pages 1 to 6 in those judgments.

The said two other Ratshosa cases have been heard concurrently with these and pages 1 to 6 of my Judgment in Cases 1 and 2 are to be considered as herein inserted.

The Court finds that Plaintiff incited his brothers to armed public violence against the authority of the Chief and that the Defendant had the power to act as he did.

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Judgment for Defendant.

CLAIM 2.

Plaintiff alleges that he left 732 head of cattle of his at Tamasane and Macloutsi when he left this Reserve on 23rd February, 1927, and claims £4,026 damages in respect of alleged loss of these cattle through Defendant's fault.

Vide pages
84-86.

My summing up in Case No. 1—Simon's case, Claim 2—covers all the ground. Lt. Poole, Capt. Nettleton and Mr. Langton, Government officials, in their evidence, cover these cattle as well. It would only be wasting the time of this Court to duplicate the said summing up here seeing that the evidence in question embraces the cattle of both Simon and Plaintiff that were at Shashi, Tamasane and Macloutsi, and the incident complained by Plaintiff and the time and place thereof and the parties connected therewith are the same.

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To sum up, the evidence adduced in that Claim shows that no blame attaches to Defendant. All the cattle at those places belonging to Plaintiff and his brothers were attached at different times by the Acting Messenger of the Court. It has been shown clearly that Defendant is not responsible. The aforesaid Lt. Poole and Capt. Nettleton testify to the fact that no paid herd of Plaintiff was interfered with by the Defendant and that there was always an apparent sufficiency of the Ratshosa brothers herds at all their posts. There remains a balance of Plaintiff's cattle in the hands of the Acting Messenger of the Court. If Plaintiff has any complaint about the numbers of his cattle left he should look to his own herds and the Acting Messenger of the Court. From Lt. Poole's evidence it would appear that Plaintiff's herds may be responsible for strayed cattle and possibly for cattle made away with by them.

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No liability rests with Defendant.

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Judgment on
Claim 2.

Judgment for Defendant.

Magistrate's Court,
Judgment.

Document No. 9.

CLAIM 3.

Plaintiff claims £200 in regard to 200 head of small stock alleged by him to have been at his cattle post at Moyabane where he had cattle jointly with Obeditse.

I refer to my summing up and judgment in Obeditse's case (No. 2, Claim 3). The parties, place, time and incident referred to in that claim of Obeditse's are the same as in this claim, except that Obeditse's claim deals with cattle only and not small stock. There is no mention whatever of small stock existing at that post in the evidence of the witnesses. If there had been any small stock there Plaintiff's own Bakgalagadi unpaid servants, or retainers, he had serving him for many years at that place, are responsible, and not the Defendant. 10

Judgment on
Claim 3.

Judgment for Defendant.

CLAIM 4.

Plaintiff claims damages from Defendant here on the grounds that in April, 1927, Defendant sent a "regiment" to remove all cattle from Simon's and Plaintiff's posts at Shashi from there to Tamasane where subsequently Plaintiff's cattle were attached by the Acting Messenger of the Court upon Writs of Execution in civil judgments against Plaintiff and sold for £150, whereby he suffered damage, alleging that he had arranged to truck these cattle at Shashi and sell them in Johannesburg where he could have realised £581. 20

It has been shown that Plaintiff was in September, 1926, told by the Government that he would be given a couple of months wherein to wind up his and his brothers' affairs in this Reserve and wherein to dispose of all of their cattle. Plaintiff was actually given 4 months grace for this by the Government and was during that period warned by the Government time and again to expedite this disposal of the cattle and was then by further act of grace given an extension up to 23rd February, 1927, for this purpose. It has been shown that he deliberately delayed and procrastinated, and was in fact an obstructionist doing exceedingly little in the matter of disposing of his cattle during the said period from September, 1926, to 23rd February, 1927. After that in March at intervals he trucked some 40 to 80 cattle or so. It appears that evidently he did not intend to remove all his cattle from this Reserve. 30

In view of this Defendant about the middle of April, 1927, seeing that Plaintiff was taking advantage of and abusing the Government protection that he had had, removed all Ratshosa cattle from Shashi to Tamasane and there sold 492 head to the 40

Magistrate's Court,
Judgment.
Document No. 9.

Imperial Cold Storage for £1,042 12s. and handed over the cheque to Plaintiff's legal adviser and received in return a document signed by the three Ratshosa brothers completely indemnifying Defendant for his action (See Annexure "N").

Defendant has shown that Plaintiff had previously stated that he would dispose of his cattle to Mr. R. A. Bailey Palapye Road and Mr. Smith Palapye Road of the Cold Storage and this is the first mention now to-day of his having had the intention of selling all those cattle in Johannesburg.

Defendant was perfectly justified in having those cattle removed at a date long after Plaintiff's period of grace had expired, and under the circumstances it stood to reason that these cattle would be attached by the Acting Messenger of the Court in respect of judgments given against Plaintiff before February, 1927. 10

Judgment on
Claim 4.

Judgment for Defendant.

CLAIM 5.

This follows judgment in Claim 4 since the subject matter is the same.

Judgment on
Claim 5.

Judgment for Defendant.

CLAIM 6.

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This is for £900 salary alleged to have been earned by the Plaintiff while acting as Secretary to the late Chief Khama, to the late Chief Sekgoma, and for a short period to the present Chief, calculated at the rate of £25 per month which Plaintiff claims from Defendant in his capacity as executor of the late Chief Sekgoma's estate.

Plaintiff admits that he had no agreement with Chief Khama or Sekgoma and says that Khama gave him presents of money from time to time and says that Khama was as his father in the matter of giving presents to him. 30

From the death of Chief Khama, February, 1923, up to the installation of the Chief Tshekedi as Chief in January, 1926, Plaintiff admits that he never claimed his salary.

Defendant states that the Chief Khama and Sekgoma employed as secretaries men of wealth and the work they did for the Chief and tribe as secretaries, they were ordered to do and not paid to do. They were not foreigners who expect to be paid, but were the Chief's headman who had to do this work because they were ordered to do so by the Chief.

Judgment on
Claim 6.

Judgment for Defendant.

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Magistrate's Court,
Judgment.
Document No. 9.

CLAIM 7.

Plaintiff claims one of the Chief's cattle posts which is in charge of the Chief's herd Meloranyane.

It is clear from the evidence that these are the Chief's cattle and that Plaintiff merely looked after these cattle for the Chief. According to tribal custom he was given the hides of animals that died and he Plaintiff was entitled to the proceeds thereof.

Plaintiff admits that all these cattle always had and have the Chief's brand and earmark and it has been proved that if the cattle had been given to Plaintiff by Chief Khama the Plaintiff would have put his own brand and earmark on them. 10

Plaintiff attempts to explain the absence of his brands and earmarks by saying that the Chief Khama gave these cattle to him secretly and told him that he should leave the Chief's brands and earmarks on them because the Chief Khama feared that some day the Bamangwato might confiscate these cattle from Plaintiff.

The Court does not believe this weak explanation.

Judgment for Defendant.

Judgment on
Claim 7.

CLAIM 8.

Plaintiff claims 3,000 head of cattle from the estate of the late Chief Khama alleging that he Plaintiff is one of the heirs. 20

Plaintiff, who has no proof at all, states that as his late mother Bessie was the daughter of Mmabessie Chief Khama's first wife, he is thus entitled to this inheritance.

Defendant shows that Chief Khama gave his daughters their portions (Secwaela) during his lifetime when they married and according to native custom they take this portion away with them and it comes under the control of their husbands. Defendant states that Khama was in the habit of declaring any gifts in Kgotla. That Bessie received her share during his lifetime. Bessie married Ratshosa and whatever she had came under the control of her said husband Plaintiff's father. Bessie Plaintiff's mother died before the Defendant was born viz. 23 years ago. Chief Khama died in February, 1923. 30

As Defendant points out, and this is known to the Court, neither under native law or European law has a maternal nephew (in this case grand nephew) any claim out of the estates of his maternal uncle. In this case it would be grand uncle.

This claim cannot be entertained seriously by the Court.

Judgment for Defendant.

Judgment on
Claim 8.

Serowe,
29th March, 1928.

A. G. STIGAND,
Additional Resident Magistrate. 40

PART I.
SECTION "C."

SIMON RATSHOSA

VERSUS

CHIEF TSHEKEDI KHAMA.

JOHNNY RATSHOSA

VERSUS

CHIEF TSHEKEDI KHAMA.

APPEAL TO SPECIAL COURT.

JUDGMENT OF SPECIAL COURT.

ORDER OF COURT GRANTING LEAVE TO APPEAL
TO PRIVY COUNCIL.

APPEAL TO PRIVY COUNCIL.

GROUNDS OF APPEAL.

Francistown,

22nd January, 1929.

Special Court,
Plaintiff's Grounds
of Appeal.

Document No. 10.
22.1.1929.

The Registrar,
Mafeking.

Sir,

We humbly beg Your Honour to place our notice of Appeal before the President of the Special Court to be held in February.

We are,

Your obedient Servants,

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JOHN RATSHOSA.

S. RATSHOSA.

Special Court,
Plaintiff's Grounds
of Appeal.
Document No. 10.
22.1.1929.

The GROUNDS OF APPEAL from the Court of the Additional Magistrate held in Serowe, 12th March, 1928, in the Civil Claims against the Chief Tshekedi.

REX vs. RATSHOSA BROS.

A. That the Magistrate admitted irrelevant and inadmissible evidence in allowing three Headmen Edirilwe, Baipedi and Oitsile to address the Court before he gives out judgments, and that by so doing our evidences were prejudiced and that we were disallowed to cross-examine them.

B. That the three Headmen impressed strongly to the Magistrate that the Chief's person is inviolate, he cannot be accused or held responsible for any act of violence. Should the Magistrate in his findings give judgments in favour of the Ratshosas, a serious commotion is evident. 10

C. That to our opinion the Magistrate was being dictated, and to avoid a commotion he was compelled to surrender our claims in favour of the Chief.

D. That the Chief in his evidence, his policy was to perpetuate the position of his subject as slavery, and this is a direct challenge to democracy. 20

E. That during the hearing we were in several instances muzzled and be denied privilege of severe cross-examining.

F. That the treatment meted out to us persistently by the Chief to be let loose to destroy our homes, devastate our cattle invades a sacred human right to the modern civilisation, and makes us feel bitter to say it is a direct violation of the principles of British justice.

G. That the Chief burnt our homes on the day after the firing, this being forced to the Chief by Mathiba, Phethu, Oitsile and Baipedi, Phethu the agitator heading the fanatic regiment. 30 (Malipa the Chief's law expert in his evidence said "Nothing should have been done to property after firing had ceased and malcontent had surrendered.")

H. That there is not sufficient evidence against me (John) in the shooting affair and there was no common purpose proved against me during His Honour's enquiry held in Serowe, April, 1926. I am therefore entitled to my Claim No. 1.

I. That Simon and Obeditse had already been convicted once for the offence, the Chief should have upheld his promise to His

Special Court,
Plaintiff's Grounds
of Appeal.
Document No. 10.

Honour to look after the prisoners' property effectively until their release.

J. That the Chief is liable to damages sufficient to cover the loss sustained by the prisoners whose property by law should have remained intact until their time is up.

K. That the Magistrate admitted evidences which were groundless and full of contradictions bearing no records of previous tribal riots, while our evidence was a consistent story which clearly coincide with the past tribal facts and records generally to be found in the Government records since the protection. 10

L. That according to native law and custom it is the duty of a Chief to take charge of property belonging to a banished subject. The reason for this is that it is always presumed that when a Chief banishes a subject he does so with the intention of punishing him to return to his country as soon as this meets with the pleasure of the Chief. Accordingly the Chief must retain the property of the banished subject intact so that he can hand the same back to his subject on his returning, and nobody would lay his hands on this property as long as it remains in the Chief's hands.

M. That the Chief and the Magistrate have a right to dismiss 20 the debts until a prisoner is released and a subject returns.

N. That in spite of Government Proclamation 38 of 1923 debts barred were admitted cattle attached and sold for such debts without option of any kind whatsoever but to sign out writs in execution. Judgments were also given for debts alleged to have been contracted before 1918.

O. That the Chief to make his plan a success refused to abide to His Honour requests to let me (John) return back to complete the illegal and wrongfully sacrifice of cattle enforced to me, which latter were thrown away for a pound and two pounds the highest, 30 young tollies and heifers being given away for nothing.

P. That the Chief's refusal was to keep us entirely in dark of what was happening, that we should not witness the wasting and ravaging of our property by his regiments.

Q. That the loss and damage suffered should be totally denied when it comes to law and fail to be proved.

R. That the Chief to cut us altogether from channel of life sent regiments to uproot our dairies at Shashi and Tamasane which have had a turnover of more than one hundred and fifty pounds a month, or five times as much if all the cattle posts had to be milked. 40 Had the Chief not interfered with the dairies and let them run during our imprisonment the proceeds derived out of cream were sufficient to cover all our debts and not a single ox could have been sold.

Special Court,
Plaintiff's Grounds
of Appeal.
Document No. 10.

S. That it is criminal to ravage and raid another man's property. We say criminal because one is then trying to impoverish for personal gain the condition of one's fellow man—to rule by force instead of by intelligence and lawful act.

That our property had thus been stripped from us very unlawfully.

That the law and custom find support from the following promises which were made to us at the outset by his Honour the Resident Commissioner although at the onset they were not carried out:—

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1. Serowe about the 9th April, 1926, His Honour had arranged with the Chief to undertake our property.

2. His Honour directed the Chief to send additional herd boys to our various cattle posts.

3. That a circular was sent round the Police Camps, Palapye, Macloutsi and Shashi to inform the Police to keep an eye to what might disturb our cattle and herd boys.

4. That in April, 1927, after these promises, the Chief then changed his mind and took drastic steps to impoverish us by sending his regiments to raid our cattle stations which they did very successfully to entire satisfaction of the Chief.

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That we at once reported the position to His Honour, the reply was "I am made to understand that the Chief is to put all your cattle and property intact to look after it effectively, and he has undertaken responsibility."

That although His Honour's assurances were not carried into effect, they exactly coincide with native law and custom maintained during the late Chief Khama's time.

That the Government should be aware of the fact that where a Native Chief invokes the authority of the Government he is assumed to have tacitly waived his own power possessed by him in accordance with native law and custom in favour of the law of the Government. Consequently the Chief can be held liable for serious breach of promises enumerated by him to His Honour, and for loss and destruction to our property after surrendering ourselves to Mr. Cuzen, R.M., immediately after the shooting—Mr. Cuzen having assured us that he has spoken to the Chief at the Kgotla to cease firing and that no further damage to property should be made. Therefore the Chief had no right to have destroyed our property after he told by the Magistrate.

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JOHN RATSHOSA.

S. RATSHOSA.

Special Court,
Judgment on
Appeal.
Document No. 11.
20.9.1929.

JUDGMENT ON APPEAL.

IN THE SPECIAL COURT OF THE BECHUANALAND
PROTECTORATE.

JOHN RATSHOSA v. TSHEKEDI.
SIMON RATSHOSA v. TSHEKEDI.

These are appeals against judgments of the Court of Resident Magistrate at Serowe.

The grounds of appeal as stated by the Appellants are vaguely stated and import matters which are outside the cognisance of this Court but in the circumstances of the case the Court has treated 10 the appeals, and no objection has been taken, as general appeals against the findings of fact and conclusions in law of the Court below.

The cases were heard separately in the Court below as were also the appeals. But it will be convenient here, as was done in the Court below, seeing that the facts and the general considerations of law are as regards nearly all the claims the same, to deal first with the general issues of fact and law as affecting both appeals before deciding upon the individual claims.

The jurisdiction of Magistrates' Courts in the Protectorate in 20 matters in which natives only are concerned is conferred by Sections 8 and 9 of the Proclamation of 10th June, 1891, issued under the authority of the Order in Council of 9th May, 1891. These sections provide that in cases where jurisdiction is assumed by the Magistrate's Court (under Section 8) "the decision shall follow the laws and customs of the natives concerned in so far as they are applicable."

This does not in our opinion mean that the Court in question is to sit as a Native Court or depart from its ordinary procedure, e.g., as regards admission of evidence or methods of proof. It cannot 30 divest itself of its character as a European Court. But its decision is "to follow the laws and customs of the natives concerned in so far as they are applicable." There is, however, an important proviso viz. that if such laws or customs conflict or are not clearly proved or should be found to be incompatible with peace, order, and good government then the Court may decide in accordance with the law which would apply in European cases.

By Section 10 of the Proclamation, ordinary jurisdiction in disputes between natives is to be exercised by such Chiefs as on their own request may be appointed by the Resident Commissioner, and 40

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Judgment on
Appeal.

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subject to rules to be made by him. If, as was stated in the argument, no such appointment has ever been made in the Protectorate we would commend the matter to the attention of the authorities.

The first claim in the case of both Appellants is for damages in respect of certain houses and the furniture and other articles contained therein which were burnt by order of Respondent in the circumstances set forth in the Magistrate's judgment. The Respondent admits that the houses were burnt by his orders but says that he acted in accordance with native law and custom, as the Appellants had openly defied his authority and one of them, Simon, had attempted his life by shooting at him in Kgotla whereby he and certain of his men were wounded. 10

See page 83,
paragraph 22.

The Magistrate upheld this contention of the Respondent on the ground of the gravity of the offence committed by the Appellants in the attempted murder of the Chief. He held (see page 5 of the judgment in Simon's case) that had the Appellants been guilty of "a minor offence such as mere disobedience to or contempt of the Chief's orders this Court would have certainly held that the Chief must pay damages to Plaintiff in compensation for the value of the property burned by him." He finds however that the Appellants were engaged in a plot or conspiracy in which the Appellant Johnny was the ringleader, to bring about public violence and armed rebellion against the Chief, to kill the Chief and to establish their authority in his place (see page 4 of the judgment in Johnny's case) and that this gave the Chief the necessary authority to act as he did. 20

See page 142.

We regret that we are unable to support the findings of the Magistrate in regard to the nature of the offences committed by the Appellants. There is no sufficient evidence in our opinion to establish the existence of a criminal conspiracy to murder the Chief or of a plot or plan incited by Johnny to cause armed public violence against the authority of the Chief. The evidence in our opinion does not go beyond showing that the two Appellants and Obeditse their brother objected as a family to the Chief's authority, and that they acted in common in resenting what they regarded as vexatious and humiliating orders. Things came to a head when the three were summoned to the Kgotla on the 5th April and were sentenced to be publicly beaten for their contumacy. Johnny suffered this punishment. The other two escaped, came back armed and shot at the Chief. Johnny had run away after his beating to complain to the Magistrate (Mr. Cuzen) and when he heard the firing went to try to obtain a rifle belonging to him. These facts in our opinion tend to negative rather than support the inference that the shooting was the result of a prearranged plan of which he was the ringleader. It is more reasonable to suppose that he acted in the belief that his own life was in immediate danger. We have therefore come to the con- 30 40

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Judgment on
Appeal.
Document No. 11.

clusion that the Magistrate was not justified in his finding that Johnny was the ringleader or was engaged in a conspiracy or plot to kill the Chief or to promote armed public violence against him. Johnny had already suffered for his contumacy against the punishment (humiliating to him as a royal headman) of being publicly beaten in the Kgotla and there is no sufficient evidence that he was guilty of any graver offence.

Simon was undoubtedly guilty of a most serious offence against the Chief and he and his brother Obeditse were tried in the Courts of the Administration on the charge of attempted murder and sentenced to ten years' imprisonment—which sentence was reduced by the High Commissioner to one of 4 years' imprisonment. No charge was preferred against Johnny. The question therefore in the case of Simon is whether the Respondent was justified under native law and custom in view of the serious offence committed against him and his authority, in ordering the burning of the house and property. The Magistrate holds that “ under the Order in Council of 9th May, 1891, and the Proclamation of 10th June, 1891, the Chief acting with the unanimous consent of his councillors and people in Kgotla still has the power under native law and custom to burn the dwellings even if the goods therein have not first been removed of the ringleader and actors in what amounts to an armed rebellion ” (see judgment in Simon's case, p. 4).

See page 82,
paragraph 18.

See page 44.

On this we would observe in the first place that the evidence does not show in our opinion that the burning was done with the unanimous consent of the councillors and people in Kgotla. On the contrary the evidence of Phethu (page 58 in record in Simon's case) clearly shows that Simon's houses were burned on the night of the shooting whereas the Kgotla at which the Chief ordered the regiment out to burn only took place next morning. Phethu is a man in authority and is anything but friendly to the Appellants and we think his evidence is conclusive on this point.

But apart from this we cannot accept the general principle adopted by the Magistrate in its application to this case. What would or might have been done before the establishment of the British Protectorate is not relevant to the decision of this case. What the Court has to decide is whether the action of the Chief in this case was covered by his authority as Chief now that the responsibility for the peace, order, and good government of the Territory has been assumed by His Majesty and is exercised through the High Commissioner and the Officers and Courts established under him.

We are satisfied that it has been a recognised custom for a Chief to order the destruction of huts in order to enforce the removal of members of his tribe from some place where they have settled without his authority. The materials of which the ordinary native hut

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Appeal.
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is constructed are regarded in native law as the property of the Chief, obtained as they are from the soil over which he exercises rule. It is accordingly the recognised custom when such huts are destroyed by the Chief's order that the property of the occupants is first removed. We can find no support, however, for the view that the Chief has authority to order the destruction of the house and property of an individual member of the tribe as a punishment for some offence committed by him, even after a trial in his Court. In this case there was no semblance of a trial. Nor can it be alleged that what took place amounted to a state of war. The Appellants 10 were in the hands of the Magistrate who had warned the Chief to restrain his people (Phethu's evidence in Simon's case, page 57 of record) and the Chief knew that the Government would re-establish order. By the following morning the matter was out of his hands and he had no justification in our opinion for ordering next day the destruction of Simon's house and property. If native law and custom did authorise such action (as in our opinion it did not) it would be in our opinion incompatible with the peace, order and good government of the Protectorate.

See page 44.

Judgment on
Claim 1
in both Cases.

For these reasons we have come to the conclusion that the Magistrate's judgment on the first claims of Johnny and Simon respectively cannot stand, and the Appellants are entitled to damages. 20 What amount should be awarded is a matter of very great difficulty. In regard to the houses only the value of imported material and of skilled labour employed in building should be taken into account. In so far as materials obtained from the Reserve entered into the construction these are not the property of the Appellants and did not cost them anything. As regards the property contained in the house this is set out in inventories put in by the Appellants, detailing with minute particularity the articles and their values. 30 There was no adequate debate on this point in the Court below as there would have been had the parties been professionally represented. The evidence of Mackintosh for the defence is important as to the value of the houses and the evidence of Lewis, while he cannot speak clearly as to the contents of the rooms shows that in regard to some of the items e.g. the manuscript and the books the value is greatly inflated. The evidence shows clearly that the Appellants lived in European fashion and furnished their houses in European style. The findings of the Magistrate are not satisfactory. The lists of articles and the values claimed are simply dismissed as fantastic although no 40 real criticisms of them had been put before him. He evidently regarded the point as immaterial as he was finding against them on the claim (see page 7 of judgment in Simon's case). It is impossible for this Court to come to any conclusion on the evidence on record and we should in the ordinary course have referred it to an assessor to determine the value of the houses and goods destroyed. In the circumstances of the Protectorate we think that this determination

See page 84,
paragraph 31.

Special Court,
Judgment on
Appeal.
Document No. 11.

Order on
Claim 1
in both Cases.

should be made by a Magistrate sitting with assessors under Section 11 of Proclamation of 10th June, 1891. These assessors should be men removed as far as possible from any suspicion of bias as regards either of the parties in this dispute.

The order on this claim in both appeals is that the judgment of the Magistrate's Court is set aside and judgment entered for each Appellant for damages in an amount to be determined as stated above.

Both appeals may also be dealt with together in respect of Claim No. 2 in each. These claims are founded on the failure of the Respondent to look after the stock of the Appellants while Johnny was exiled from the Reserve and Simon was serving his sentence of imprisonment. We accepted as a principle of native law and custom that when a headman is sent into exile it is incumbent on the Chief to protect and look after his stock if they are left behind so that his family may be maintained and the stock handed back to the owner on his return. 10

The Respondent contends that in this case he conferred with the Government as to the terms of Johnny's banishment and that it was arranged with the concurrence of the Respondent that Johnny should be allowed a period of grace amounting to four months in which he could dispose of his cattle before the High Commissioner's order of removal should be enforced and that it was only after the expiration of this period when practically nothing had been done by the Appellant Johnny to dispose of the cattle that he sent his men to collect these cattle at Tamasane and removed his people who had been in charge of them under the Ratshosas. In a letter dated 25th February, 1927 (Annexure " N " in Simon's case), the Chief is informed by the Resident Magistrate by direction of the Resident Commissioner that he is responsible for the cattle and the property of Johnny and also of Simon who was in gaol. The Chief however repudiated this responsibility and referred to the concession already allowed to Johnny in giving him time to dispose of the cattle (see Annexure " O " in Simon's case). This he considered (and in our opinion with justification) had absolved him from any further responsibility as the cattle should by that time have been removed from his reserve. The Government apparently let the matter rest there (see the Resident Commissioner's minute—Annexure " Q "). 20 30

A large number of the Appellants' cattle and other property were seized by the Messengers of the Court and sold in execution in satisfaction of judgments obtained against them but owing to the confused state of the official records it is impossible to say what the numbers were. It would also appear from the evidence that numbers of these cattle are still at large in the Reserve. 40

Special Court,
Judgment on
Claim 2
in both Cases.
Document No. 11.

In the circumstances we conclude that these claims by the two Appellants as against the Respondent are not established and the appeals in respect of these are dismissed.

We can now deal separately with the claims of the two Appellants.

I.—JOHNNY'S CASE.

Judgment on
Claim 3.
J. Ratshosa.

CLAIM 3.

On this claim we uphold the Magistrate's judgment and dismiss the appeal.

Judgment on
Claim 4.
J. Ratshosa.

CLAIM 4.

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The cattle the subject of this claim were seized and sold in execution under unsatisfied judgments against the Appellant and no action lies against the Respondent on account of loss incurred by reason of their being so sold. The appeal is dismissed and the Magistrate's judgment upheld.

Judgment on
Claim 5.
J. Ratshosa.

CLAIM 5.

The appeal is dismissed and the Magistrate's judgment upheld.

Judgment on
Claim 6.
J. Ratshosa.

CLAIM 6.

The appeal is dismissed and the Magistrate's judgment upheld.

Judgment on
Claim 7.
J. Ratshosa.

CLAIM 7.

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The evidence is not sufficient to show that the cattle involved in this claim ever became the property of the Appellant. The appeal is accordingly dismissed and the Magistrate's judgment upheld.

Judgment on
Claim 8.
J. Ratshosa.

CLAIM 8.

There is no sufficient evidence to show that the Appellant or his mother ever became entitled to the inheritance claimed or to any inheritance on Khama's death. The appeal is accordingly dismissed and the Magistrate's judgment upheld.

II.—SIMON'S CASE.

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Judgment on
Claim 3.
S. Ratshosa.

CLAIM 3.

We are not satisfied that Appellant has shown that the cart in respect of which this claim arises was removed by the Respondent or his men. The appeal is accordingly dismissed and the Magistrate's judgment upheld.

Special Court,
Judgment on
Appeal.
Document No. 11.

CLAIM 4.

Judgment on
Claims 4, 6, and 7.
S. Ratshosa.

This claim together with Claims 6 and 7 were the subject of an action between the Appellant and the Respondent before the Magistrate at Serowe on 11th September, 1926. Judgment was given for the defendant (Respondent in this Appeal) and there was no appeal. The Magistrate therefore in the action which is the subject of this appeal rightly upheld the Respondent's plea of *res judicata*. The Appellant stated before us that he had sent a letter to the Resident Commissioner after the hearing of the case protesting against the judgment and asking for an appeal but received no reply. 10
If this letter can now be found and the terms are, as stated, in effect a notice of appeal we consider that he might be allowed to make a special application for leave to appeal. (Note: Letter in question subsequently found and held not to constitute notice of appeal.)

Judgment on
Claim 5.
S. Ratshosa.

CLAIM 5.

The Appellant's contention that the cattle included in this claim belong to him is supported by the testimony of witnesses for the defence to the extent that nine cows and a bull belonging to this post was given to him by the late Chief Sekgoma and were allowed to remain at the late chief's post. The evidence however as to their 20
present number and as to how many were removed is vague and inconclusive. The Magistrate refused to allow the Appellant to call certain witnesses whose whereabouts were known on the ground that they were not included in the list of witnesses furnished by the Appellant. The Magistrate erred in giving judgment for the Respondent without hearing this evidence and in the circumstances the appeal must be allowed and the Magistrate's judgment altered to one of absolution for the instance.

COUNTER-CLAIM.

The Respondent (Defendant in the Court below) counter- 30
claimed for damages sustained by reason of the wounds inflicted on him and his councillors by the Appellant and his brother Obeditse. He claimed amounts of £35 5s. and £3 12s. 6d. in respect of accounts paid by him for medical treatment, and for the rest claimed by way of damages an amount equal to that claimed against him by the Appellants. No particulars of damage were given but in a case such as this conducted by natives without professional advice the Court cannot scrutinise narrowly the form in which claims are presented.

The Magistrate awarded as against Simon and Obeditse 40
damages amounting to £500 in each case and one half of the amount claimed for medical expenses. It is probable that his intention was

Special Court,
Judgment on
Appeal.
Document No. 11.

to award £1,000 plus the medical expenses against the two defendants jointly but he did not do so and Obeditse had not appealed. We consider the award of £1,000 as damages to be excessive.

Judgment on
Counter-claim.

The judgment against the Appellant Simon on the counter-claim is altered to judgment for £150 to include the amount paid as medical expenses.

PATRICK DUNCAN,

President.

E. H. MERRIVALE DRURY,

Ag. Resident Magistrate,

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C. LEDEBOER, R.M.,

Members.

Special Court,
Leave to Appeal.
Document No. 12.
22.10.1929.

IN THE SPECIAL COURT OF THE BECHUANALAND
PROTECTORATE.

In the Court of the Resident Commissioner for the Bechuana-land Protectorate, in terms of Section 28 of the Order in Council of the 16th December, 1912, the said Special Court not being in Session.

In the matter of the Application of Chief Tshekedi Khama for leave to appeal to His Majesty, the King in Council against the judgment of the said Special Court delivered on the 20th September, 1929, at Lobatsi, in the matter of the Appeal of SIMON 10
RATSHOSA versus CHIEF TSHEKEDI KHAMA, originally held in the Court of the Additional Resident Magistrate at Serowe.

Before Rowland Mortimer Daniel, Esquire, Resident Commissioner :

Upon the motion of Mr. S. A. Minchin for the Applicant, the said Respondent being in default

IT IS ORDERED

(1) That the Applicant be granted leave to appeal to His Majesty the King in Council upon the following conditions :

(a) That the Applicant within a period of three months from the date hereof enter into a Bond of Security 20
in the sum of £250 (Two hundred and fifty pounds sterling) for the due prosecution of the appeal and for the payment of all such costs as may become payable to the Respondent in the event of the appeal being dismissed for non-prosecution or if His Majesty in Council order the Appellant to pay the Respondent's costs of suit.

(b) That within two (2) months after the signing of such Bond the Appellant take the necessary steps for pro- 30
curing the preparation of the record and the dispatch thereof to England.

(2) It is further ordered that pending the appeal the execu-
tion of the judgment of the Special Court of the 20th Sep-
tember, 1929, be suspended.

The above Order was granted by the Court of the Resident Commissioner at Mafeking on the 22nd day of October, 1929.

By Order,

H. H. PRICE,
Registrar.

MEMO. OF SERVICE.

Special Court.
Service of Order.
Document No. 13.
25.10.1929.

I hereby certify that I have served a copy of this Order of the Court on Simon Ratshosa at Francistown this 25th day of October, 1929, by handing same to him personally and have explained the exigency thereof.

Service Fee
5/-

F. G. FISHER,
Messenger of the Court.

NOTE :

Similar Order,
Johnny Ratshosa's
case.

A similar order was granted and served in Johnny Ratshosa's case on the same dates above set out.

Special Court.
Appeal to Privy
Council.
Document No. 14.
6.11.1929.

IN THE SPECIAL COURT OF THE BECHUANALAND
PROTECTORATE.

In the matter of the Appeal of Chief Tshekedi Khama to His Majesty in Council against certain Judgments of the Honourable the Special Court of the Bechuanaland Protectorate delivered on the 20th September, 1929, in the cases of John Ratshosa versus the Appellant (The Chief Tshekedi Khama) and of Simon Ratshosa versus the Appellant (The Chief Tshekedi Khama) originally tried in the Court of the Additional Resident Magistrate at Serowe.

MEASURE AND EXTENT OF APPEAL.

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The Appellant, the Chief Tshekedi Khama, appeals to His Majesty in Council against certain judgments of the Honourable the Special Court of the Bechuanaland Protectorate entered on the 20th day of September, 1929, setting aside or varying certain judgments of the Additional Resident Magistrate at Serowe namely :

- (a) That portion of the said judgments dealing with the first claim of each of the Respondents and setting aside the judgments of the Court of the Additional Resident Magistrate in favour of the Appellant and entering judgment for the Respondents (the said JOHN RATSHOSA and SIMON RATSHOSA) for damages, the amount to be determined by a Magistrate with Assessors to be appointed in terms of Section 11 of the High Commissioner's Proclamation of the 10th June, 1891. 20
- (b) That portion of the said judgment dealing with the counter-claim of the Appellant (The Chief Tshekedi Khama) against the Respondent SIMON RATSHOSA reducing the amount of the award of the Additional Resident Magistrate's judgment on the counter-claim from £500 and half of certain medical and hospital expenses amounting to £38 17s. 6d. to the sum of £150. 30

Ground (a).

GROUND OF APPEAL.

1. In regard to Ground (a) the Appellant respectfully submits that under the Order in Council of the 9th May, 1891, the High Commissioner's Proclamation of the 10th June, 1891, Sections 8 and 9 the High Commissioner's Proclamation No. 2 of 1896, Section 1 (as explained by the Secretary for the Colonies to Chiefs Khama, Sebele and Bathoen in 1896 (vide the Blue Book for 1896

Special Court.
 Appeal to Privy
 Council.
 Document No. 14.
 Ground (a) continued.

containing correspondence relative to the visit to England of the Chiefs Khama, Sebele and Bathoen) the Appellant had power to deal with rebellious members of the Chief's own family in accordance with native custom apart from the ordinary powers which as Chief of the Bamangwato Nation he had over the members of his Tribe, the Respondents John Ratshosa and Simon Ratshosa being of Royal blood and as such members of the Tribal Royal Family. The Appellant respectfully submits that in burning the houses of the Respondents John Ratshosa and Simon Ratshosa after the attempt to shoot the Appellant in public Court of the Respondent Simon Ratshosa and his brother Obeditse Ratshosa with the consent and Counsel of the Respondent John Ratshosa and as the result of the incitement and abetment of the said John Ratshosa, the Appellant acted within his power and authority as Chief and Head of the Tribal Royal Family over the Respondents as members of the Royal Family and members of the Appellant's Tribe and in accordance with the traditional native customs of the Bamangwato Nation as disclosed by the evidence led before the Additional Resident Magistrate. By reason of such power and authority the Appellant submits that he is not responsible in damages to the Respondents for such administrative act, an act necessitated by the circumstances brought about by the wrongful and reprehensible conduct of the Respondents in defying the authority of the Chief and his Kgotla and in endangering the lives of the Chief and his Headmen, and an act which the maintenance of good order in the Tribe required.

2. The Appellant submits that his administrative act was in full accord with tribal custom and was justified by the action of the Respondents who had threatened his life, defied his authority and jeopardised the very existence of the Tribe of which they were members. The Appellant therefore respectfully submits that this portion of the judgment of the Honourable the Special Court is against the weight of the evidence taken in the Court of the Additional Resident Magistrate and should be set aside with costs.

3. Should the Honourable the Judicial Committee of the Privy Council not agree with the interpretation of the said Order in Council and High Commissioner's Proclamations and of the evidence led before the Court of the Additional Resident Magistrate the Appellant respectfully submits that the Honourable the Special Court did not have sufficient evidence before it to justify it in entering judgments for damages on the first claim of the two cases of the Respondents against the Appellant but should have entered judgments of absolution from the instance in each case thereon, leaving it to the Respondents to bring their actions afresh.

4. The said judgments of the said Honourable the Special Court on the said claims have gravely prejudiced the Appellant in

Special Court.
Appeal to Privy
Council.
Document No. 14.
Ground (a) continued.

his defence in the two cases in that they enable the Respondents (with the knowledge that damages were certain and that they had only to establish the amount of same) to bring fresh evidence and to supplement the insufficient evidence tendered by them before the Court of the Additional Resident Magistrate, wherefore the Appellant respectfully submits that the said judgments should be altered to judgments of absolution from the instance.

Ground (b).

5. As regards Ground (b) in the case of the counter-claim of the Appellant against the Respondent Simon Ratshosa, the Appellant submits that the reduction of the judgment of the Court of the Additional Resident Magistrate from £500 and half of certain medical and hospital expenses amounting to £38 17s. 6d. to £150 is against the weight of evidence taken in the case and is not in accordance with such evidence having regard to the nature and circumstances of the attack and the persons against whom the attack was directed, and the measure of injury, pain, suffering, indignity and affront resulting therefrom. The Appellant, therefore, respectfully submits that the said reduction of £150 should be set aside and the original judgment restored with costs. 10

DATED AT MAFEKING the sixth day of November, 1929. 20

S. A. MINCHIN,

R. KELLY,

Carrying on business as
Minchin & Kelly, Attor-
neys for the Appellant.