

~~G.H.G.3.~~

JUDGEMENT 5, 1949

5, 1949

1954  
and 5, 1949

In the Privy Council.

No. 24 of 1944.

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

BETWEEN

CHIEF KWAME ASANTE, Tredehene for and on behalf  
of his Stool ... .. *Defendant-Appellant*

AND

CHIEF KWAME TAWIA, for and on behalf of the Asafu  
(otherwise Akwamu) Stool of Kumasi (substituted for  
Chief Asafu Boakyi II, Akwamuhene) ... .. *Plaintiff-Respondent.*

RECORD OF PROCEEDINGS.

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LEGAL STUDIES

37731

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ON APPEAL FROM THE WEST AFRICAN  
COURT OF APPEAL.

(GOLD COAST SESSION.)

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BETWEEN

CHIEF KWAME ASANTE, Tredehene for and on behalf  
of his Stool ... .. *Defendant-Appellant*

AND

CHIEF KWAME TAWIA, for and on behalf of the Asafu  
(otherwise Akwamu) Stool of Kumasi (substituted for  
Chief Asafu Boakye II, Akwamuhene) ... *P'aintiff-Respondent.*

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RECORD OF PROCEEDINGS.

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No. 1.

Court Notes.

IN THE ASANTEHENE'S DIVISIONAL NATIVE COURT " B " held at KUMASI  
on Thursday, the 4th February, 1937.

Present :—

ADONTENHENE J. K. FRIMPONG (President),  
TOASEHENE KOFI WUSU,  
DADIASUABAHENE AKWASI EDUSEI,  
HIAHENE BOAKYE ADADE II.,  
KYEAME KOFI AWUAH.

In the  
Asante-  
hene's  
Divisional  
(" B ")  
Court.

No. 1.  
Court  
Notes,  
4th  
February,  
1937.

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The issue hereunder is a case which has been once heard by the Asantehene's Divisional Native Court " B " and judgment was entered against the Defendant herein on the 1st April, 1936.

The Defendant subsequently appealed to the Asantehene's Court " A " where he failed.

Thence the Defendant appealed further to the Chief Commissioner's Court, and by an Order of the Acting Chief Commissioner of Ashanti, who presided over the Chief Commissioner's Court dated the 17th December, 1936, this case has been referred back to the Asantehene's Divisional  
20 Native Court " B " to be heard and determined *de novo*.

In the  
Asante-  
hene's  
Divisional  
(" B ")  
Court.

**No. 2.**  
**Issue (Claim and Defence).**

CHIEF ASAFU BOAKYI II ... .. *Plaintiff*  
v.  
CHIEF KWAME ASANTE ... .. *Defendant.*

No. 2.  
Issue  
(Claim and  
Defence),  
4th  
February,  
1937.

**ISSUE.**

Plaintiff swore the Great Oath to the effect that he as Akwamhuhene of Kumasi is the owner of all the land situate at Tredeh and Winisu and occupied by the Defendant and his people; and that even in respect of Tredeh village itself the Defendant pays him yearly tribute of £4. 13/- 10 and the Defendant responded to the effect that the said land was presented to his Defendant's predecessor called Nuben Sra by Nana Asantehene, Osei Tutu, and that it is not the property of the Plaintiff as alleged.

PLEA.—Defendant pleads not liable.

Plaintiff's  
Evidence.

**PLAINTIFF'S EVIDENCE.**

No. 3.  
Chief  
Asafu  
Boakyi  
(plaintiff),  
4th, 11th  
and 18th  
February,  
and 3rd  
March,  
1937.

**No. 3.**

**Chief Asafu-Boakyi (Plaintiff).**

CHIEF ASAFU BOAKYI, Plaintiff. Sworn on Great Oath.

**Examination-in-Chief.**

Evidence-  
in-chief,  
4th  
February,  
1937.

Tredeh land now in dispute once belonged to the Denkyirahene. 20  
During that time, the Ashantis were serving the Denkyiras. The Ashantis fought the Denkyiras. The Denkyirahene was having a firewood cutter who lived at Ayinasu village about 5 miles from Tredeh. His name was Kyiribin Asare. That Kyiribin Asare led the Denkyirahene's expedition at that part of Ashanti, and my predecessor Nana Awidi met him during a fight and drove him away to Denkyira. My predecessor then occupied Ayinam. He then deputed out scouts to look at the road in front. They were Boaten Akoamo and Bofuo Bi. The road onward was clear as far as to a place called Kotwi. My predecessor took all those Denkyiras who could not run away as prisoners. Another village along the path cut by our scouts was 30  
Nkoranza which also belonged to Denkyirahene. When my predecessor reached there, it was almost deserted, yet he occupied it. My predecessor commanded a few of the prisoners that were caught there to lead the path and show to our two above mentioned scouts the exact place where the Denkyirahene had pitched his battle camp. They went along. On their way, they came across a village called Pekyi Akrofusu which belonged to

Denkyirahene. That village had been deserted. The scouts went forward, and met the Asumejahene's soldiers just by a stream called Abisu. They complimented themselves. My predecessor and the Asumejahene pitched a temporary camp there. Thence they used to send out scouts about. One day, my predecessor's scout called Bofuo Bi met one of Denkyirahene's scout at a nebulous section of the village of Pekyi Akrofusu. My scout asked him what he wanted there. His reply was that the Denkyirahene had despatched an Elder of his called Bambori with soldiers and with 1,000 guns to come to fight the Asantehene, and that he was a scout attached to

10 Bambori's company. He explained further that on their way they laid ambush in a certain forest which was not far away from where their camp was ; and that a few days previous to their meeting him, Bambori and a large number of his soldiers had been crushed to death by a huge thunderstorm. That scout was arrested. Before long upon the Asantehene's instructions, my predecessor went to the place where the unfortunate scene had happened, and truly, Bambori was found lying dead. His head was cut off, and brought to Kumasi. The head was given to my predecessor. During that time, the Defendant's predecessor had immigrated from Denkyira to Kumasi through ill-treatment of the Denkyirahene. They

20 were then under me. His name was Nuben Asare ; he came with his sister Adjubi Kete. They first came through Kokofu, and when they came to Kumasi, the Asantehene gave them in my care, and I stationed them at a place called Santaasi. When Nuben Asare heard that I had got the head of his fellow country man Bambori in my possession, he approached me. When I showed him the head, he gave the head a sharp cut with a knife that he was holding as symbol of vengeance over one who once pested his life. When he had done that he begged me to give the skull to him to put on his Gwira, so that he might ever remember the maltreatment that the said Bambori meted out to him when at Denkyira. I acquiesced to his

30 request, and gave him Bambori's head.

Now, I go back to my story. When along with Asumejahene, my predecessor Awidi had cleared that path, we heard that one of Denkyirahene's lieutenants called Febi Kropua had marched right from Denkyira and had reached a place called Apimanim. My predecessor pitched out a battle against him, and drove him off all those villages. Off Techiman, Apimanim, and others. Later on, the Denkyirahene marched as far up as Feyease with his soldiers, and there one of the greatest battles ever fought on Ashanti land was arrayed. The Denkyirehene was totally routed. After that battle the Asantehene took over Defendant's

40 predecessor Nuben Asare from me and handed him over to Kronti clan. After the war, Bantamahene's subjects went to make villages on the lands that I secured through the war with Denkyirahene. Some of those villages are Apimanim, Tredah, Kokobin, Techiman, etc., all what I have narrated above in ancient history. When the British Government occupied Ashanti, late Osei Mampon was occupying the Pudio Stool and my predecessor Kwakyi Kofi was occupying the Awidi Stool. There arose a struggle between them as to title of some lands including Tredah and Winisu lands. The

In the  
Asante-  
hene's  
Divisional  
(" B ")  
Court.

Plaintiff's  
Evidence.

No. 3.

Chief  
Asafu  
Boakyi  
(plaintiff),  
4th, 11th  
and 18th  
February,  
and 3rd  
March,  
1937—  
*continued*

Evidence-  
in-Chief,  
4th  
February,  
1937.



In the  
Asante-  
hene's  
Divisional  
(" B ")  
Court.

Plaintiffs'  
Evidence.

No. 3.  
Chief  
Asafu  
Boakyi  
(plaintiff),  
4th, 11th  
and 18th  
February,  
and 3rd  
March,  
1937—  
*continued.*

Evidence-  
in-Chief,  
4th  
February,  
1937.

action was brought before the Chief Commissioner, Mr. Fuller, then Chief Commissioner of Ashanti. I obtained judgment in that case. The subsequent order of that Court was that if any valuable thing was obtained on the land, it should be sent to me as owner of the land. That if on the other hand the Bantamahene's subjects who were then living on my land did not condescend to abide by that arrangement, they were allowed seven years time to remove entirely from my land. There was a time that Defendant's subject tapped rubber on my land. My predecessor then Kwakyi Kofi called on Defendant to have his share sent to him. The Defendant refused to do so. My predecessor instituted action against Defendant in the British Court for £25 damages. At the first calling, Kwakyi Kofi my predecessor failed to attend Court at the proper time, and the case was struck out. Upon application, the case was re-enlisted, and because my predecessor could not produce certain documents to prove his case, he was non-suited. Later on, my predecessor applied for a review in the case. This time, he was able to procure copy of Sir Fuller's judgment and upon production the very District Commissioner reversed his former judgment. He then ordered Defendant to see my predecessor in the house to make the necessary arrangements. When he went home, Defendant besought late and Ex-Chief Kwabena Kufuor Nkawehene, Tarbuomhene, Apimanihene, Techimanhene and Linguist Yaw Mensah to plead with my predecessor to forgive him for the troubles that he had given to him. They met and when my predecessor had heard their message, he consented to the Defendant's apology, and for the various and diverse previous troubles that he had given him. He accepted a pacification of £12, a live sheep, and two flasks of rum. When these formalities were over, the Defendant submitted to the assembly that to allay any future troubles about the land, he desired to enter into an agreement with my predecessor. This suggestion was very welcome to him, and an agreement was thereupon drawn between Defendant and my predecessor. It was prepared by one clerk called Asante. It was stipulated in the agreement that the Defendant was to pay an annual tribute of £4. 13/- to my predecessor. That my predecessor was entitled to the leg of any game that may be killed on his land. That if any rubber was tapped my predecessor was entitled to a third portion. That if Defendant heard any case, and collected any money he was entitled to half its total—the other half was to be sent to my predecessor and the Bantamahene so that they should divide same equally. After that agreement had been drawn, and each party, my predecessor and Defendant had had his copy, the assembly dispersed. When that year expired, Defendant sent payment of the alleged tribute of £4. 13/- to my predecessor per his bearer Akowuah. The following year, the same was paid to my predecessor per his bearer Yaw Adjaye. After a time Kwame Kyem came to occupy the Bantama Stool. Kwakye Kofi had then died, and had been succeeded by Ex-Chief Kwame Akowuah. The Bantamahene Kwame Kyem litigated with him over title of ownership and some six villages on my land, and the land on which those villages situated. Those villages were Apimanim, Kokobin, Techiman, Gyakyi,

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Wamasi, Tarbuom. That litigation according to the statement of the then Bantamahene in Court did not include the Tredeh land in so far as he was satisfied that his predecessor Osei Mampon had litigated over Tredeh and Winisu lands with my predecessor Kwakyi Kofi, and by Sir Francis Fuller's Chief Commissioner's judgment, it had been made clear that the said lands were my property. In that case, too, I won him, i.e., Ex-Chief Kwame Akowuah obtained judgment. When I succeeded to the Akwamu Stool, I sent to remind Defendant of payment of the yearly tribute, and to send me any valuable thing that he had had on the land in accordance with the agreement which was drawn between himself and my predecessor. He sent me reply that he had no agreement with me concerning the Tredeh land, and that Tredeh land was not my property. Thereupon I swore the

10 Oath to the effect that the Tredeh and Winisu land was my property, and he responded to the contrary. I have in my possession all those documents about which I have made references. I swear upon the Great Oath that they are true documents and that I did not make them when I came to this Stool.

Further hearing in this case is adjourned to Thursday the 11th day of February, 1937.

(Sgd.) CHIEF J. K. FRIMPONG,  
*President.*

Witness to Signature :  
(Sgd.) HENRY PREMPEH,  
*Recorder—4/2/37.*

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IN THE ASANTEHENE'S DIVISIONAL NATIVE COURT "B," held at KUMASI, on Thursday, the 11th February, 1937.

Present :—

ADONTENHENE J. K. FRIMPONG (President),  
TOASEHENE KOFI WUSU,  
DADIASUABAHENE AKWASI EDUSEI,  
KYEAME KOFI AWUAH.

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CHIEF ASAFU BOAKYI II.

v.

CHIEF KWAME ASANTE.

Both parties present.

CHIEF ASAFU BOAKYI, Plaintiff, *continued.*

Cross-examined by DEFENDANT.

Q. Are you positive that your predecessor made a path from Subin Stream to Abisu Stream and that you have a boundary with the Asumejahene there?—A. In the former days, I was having a boundary with the Asumejahene at Abisu, but since the occupation of the British in Ashanti that portion of land you are referring to has been given to the Pakyihene who serves somewhere in Obuasi.

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In the Asante-hene's Divisional ("B") Court.

Plaintiff's Evidence.

No. 3.

Chief Asafu Boakyi (plaintiff), 4th, 11th and 18th February, and 3rd March, 1937—*continued.*

Evidence-in-Chief, 4th February, 1937.

11th February, 1937.

Cross-examination.

In the  
Asante  
hene's  
Divisional  
(" B ")  
Court.

No. 3.  
Chief  
Asafu  
Boakyi  
(plaintiff),  
4th, 11th  
and 18th  
February,  
and 3rd  
March,  
1937—  
*continued.*  
11th  
February,  
1937  
Cross-  
examina-  
tion.

*Q.* Is it not true that I have once litigated over the Tredah lands with the Pakyihene, and I won him?—*A.* I do not know anything about this. What I know is that my predecessor has litigated with your master Bantamahene who goes by the name of Osei Mampon, over Tredah and Winisu lands, and judgment was returned in my favour.

*Q.* Is it not true that after your predecessor Kwakyi Kofi and Osei Mampon litigated over the said lands and obtained judgment he Kwakyi Kofi sued the Pakyihene 4 years later over the same lands and judgment was tendered against him?—*A.* We are not now litigating about the Pakyi lands.

*Q.* Is the land upon which the village called Twindurase yours?—*A.* Twindurase land is not mine, it is quite far away from the land over which we are disputing.

*Q.* You say these lands belong to you on the strength of Sir Fuller's judgment, you say also that some of the Bantamahene's subjects are staying thereon; would it be right for them to send to Bantamahene and not to you if those subjects collect any valuable thing therefrom?—*A.* It should be most unlawful for any subject to send any valuable he might collect on the land to Bantamahene without my knowledge.

*Q.* How far is Twindurase village from my Tredah village?—*A.* I cannot tell. There is no motor road there.

Owing to a grand palaver held on the Ahinfié grounds, further hearing in the case adjourned to Thursday the 18th February, 1937.

(Sgd.) CHIEF J. K. FRIMPONG,  
*President.*

(Sgd.) HENRY PREMPEH,  
*for Recorder " B."*  
11/2/37.

18th February, 1937.

18th  
February,  
1937.

Present : -

ADONTENHENE J. K. FRIMPONG (President),  
TOASEHENE KOFI WUSU,  
DADIASOABAHENE AKWASI EDUSEI,  
HIAHENE BOAKYE ADADE,  
KYEAME KOFI AWUAH.

CHIEF ASAFU BOAKYE II.

*v.*

CHIEF KWAME ASANTE.

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Both parties present.

CHIEF ASAFU BOAKYE, Plaintiff, *continued.*

DEFENDANT continues cross-examination.

Cross  
examina-  
tion—  
*continued.*

*Q.* Whom does Akyina Esuowihene serve?—*A.* He serves the Kronti Clan.

*Q.* You claim from the back of the Subin to Bekwai all the lands on the

left side, don't you?—A. I don't own all the lands, and I emphasize the fact that from Nkoranza village right through Tredeh thence to Winisu, I own both the lands on the left and the right.

Q. Have you ever litigated with me over these lands which you are now claiming from me?—A. (a) I have once litigated with your master late Osei Mampon over a large portion of land including your Tredeh and Winisu lands, wherein judgment was entered in favour of my predecessor. I mean that my predecessor Kwakyi Kofi litigated with Osei Mampon. I use the first person "I" because I now occupy his Stool. (b) My predecessor who goes by the name of Akowuah Kwame has also once litigated with you about the same Tredeh lands before District Commissioner, Mr. Wheatley, and he won the upper hand.

Q. Was my name included in the summons which your predecessor Kwakyi Kofi instituted against late Osei Mampon?—A. My predecessor  
10 litigated with late Osei Mampon over all those lands including your Tredeh lands. In that action, he Osei Mampon represented all of you, and so it was not necessary for me to take a separate action against you—I mention now, that seven years later, you violated one of the rules of the Commissioner's Order of the judgment which was pronounced against late Osei Mampon, and my predecessor sued you and won you in the case.

Q. Is it not true that Bekwainin which lies between Nkoranza and Tredeh villages belongs to the Kronti Stool?—A. The people who inhabit that village Bekwainin are subjects of the Bantamahene but own a portion of land there. Bekwainin is about 5 miles off Tredeh.

20 Q. I put to you that Bekwainin village is only two miles off from the main road between Nkoranza and Tredeh villages?—A. This may be so, but that way, my land extends only one mile away from the main road.

Q. Is it not true that the litigation which your predecessor Kwame Akowuah commenced against Ex-Chief Kwame Kyem for ownership of only six villages, exclusive of the Tredeh village?—A. My predecessor Kwame Akowuah sued Ex-Chief Kwame Kyem for title of ownership of only six villages which you refer to. He did not include Tredeh village because Ex-Chief Kwame Kyem himself in a statement before the presiding Commissioner alluded to the fact that he was aware that Tredeh village was my Stool property, and it would be idle to make further comments on that.

30 Q. Is it not true that it was the Commissioner, Mr. Bartlett, who sat over the case which you are alluding to, and that he inserted in his judgment among other things that Tredeh was not your village nor does it situate on your land, and that therefore you had no title to it?—A. He made that allusion because I knew Tredeh belonged to me, and therefore I did not include it in my action.

Further hearing is adjourned to Tuesday 23/2/37.

(Sgd.) J. K. FRIMPONG,  
President.

40 (Sgd.) HENRY PREMPEH,  
for Recorder "B."  
18/2/37.

In the  
Asante-  
hene's  
Divisional  
("B")  
Court.

Plaintiff's  
Evidence.

No. 3.

Chief  
Asafu  
Boakyi  
(plaintiff),  
4th, 11th  
and 18th  
February,  
and 3rd  
March,  
1937—  
continued.

Evidence-  
in-Chief,  
18th  
February,  
1937

Cross-  
examina-  
tion—  
continued.

In the  
Asante-  
hene's  
Divisional  
(" B ")  
Court.

8

3rd March. 1937.

Present :—

ADONTENHENE J. K. FRIMPONG (President,  
TOASEHENE KOFI WUSU,  
DADIESUABAHENE AKWASI EDUSEI.  
HIAHENE BOAKYI ADADE,  
KYEAME KOFI AWUAH.

Plaintiff's  
Evidence.

No. 3.  
Chief  
Asafu  
Boakyi  
(plaintiff),  
4th, 11th  
and 18th  
February,  
and 3rd  
March,  
1937—  
*continued.*

CHIEF ASAFU BOAKYE II

v.

CHIEF KWAME ASANTE.

10

Both parties present.

CHIEF ASAFU BOAKYE Plaintiff. *Continued.*

DEFENDANT continues cross-examination.

3rd March,  
1937.  
Cross-  
examina-  
tion—  
*continued.*

Q. Was the agreement you refer to to be existing between us prepared and drawn before any Government official?—A. It was not prepared before any Government official; you besought late and Ex-Chief Kwabena Kufuor and others to plead with my predecessor to forgive you for all the trouble that you had given him about his Tredah land, and after you had pacified him, this document I refer to was prepared. This was done before a large assembly including most of the Kronti Elders. 20

Q. I put to you that the agreement was prepared as between you and five of my subjects who farm on your land at a place called Abobosu and near Krafua Stream, and near Ndam Stream?—A. The agreement was prepared between you yourself and my predecessor Kwakye Kofi in respect of my Tredah land. It was stipulated in the agreement that you were to pay me annual tribute of £4. 13/-. 30

Q. Is it not true that it was one clerk Kobina Awuah who was then a clerk to your predecessor who prepared this agreement we are referring to, and is it not true also that when the agreement had been read over to us 2d. stamp was affixed thereon?—A. It was not Awuah but one Asante who prepared the deed between you and my predecessor.

Q. Was the agreement typewritten, or was it written by the hand?—A. During the sitting of the assembly, clerk Asante took out a mere draft; later when we had dispersed, he sent me my copy which had been typewritten.

Q. Did I make my mark on the document you have in your possession?—A. Yes, you did it.

Q. Did any of my Tredah Elders append their signatures also?—A. Your Elder Aguboni made his mark, again all the other Elders who signed are of your Kronti clan. 40

Q. I put to you that my people who contributed to the signing of the deed were my five subjects who farm on your land by name, Yaw Dadja,

Kwame Donkor, Kofi Dabanka, Yaw Asante and Kwabena Fosuhene?—  
*A.* I deny this. These people did not sign the document at all.

*Q.* To whom belong the villages: Winisu Nos. 1 and 2, and the lands on which they situate?—*A.* The people who live at Winisu 1 & 2 are your subjects, but my say is that the land is mine.

*Q.* Do you remember your predecessor once instituted an action against the Pakyihene Kojo Adai claiming title to ownership of the Pakyi lands?—*A.* Yes.

*Q.* When the Commissioner delivered judgment in that case, do you  
 10 remember he asked and it was told him that the little deserted villages in the suburbs of my village were mine?—*A.* They are mine, you too are the caretaker of them and you pay tributes to me.

*Q.* What valuable products have I ever sent to you or to your predecessor as bounty in connection with these villages?—*A.* You have tapped rubber on my said land, and you have sent my share to me. A third is usually given to the tapper, the remainder is sent to me, and I gave you a third. Snails collected on the land is divided in the same way. When you decide cases, and you collect any fees, you are entitled to one-half. The other  
 20 half is sent to me and I in turn give half of it to the Bantamahene your master. I have been having the leg of games from your subjects Winisu Dikro called Kojo Sekyi. Krampa, the Odikro of Winisu 1 had paid homage to me in the same way.

*Q.* I put to you that after year 1900, rubber has been tapped in any parts of Ashanti?—*A.* That is not true. Rubber has been tapped all through the years 1904/7.

*Q.* Has it been you who have been sending to me for your share of the alleged rubber tapped on my land, or has it been myself who have been sending you your due share as contained in the alleged agreement between us?—*A.* I have a subject by name Appiah Osei whom I usually despatch  
 30 to you to collect my share of the said rubber from your Tredeh land. From the Odikro of Winisu, I obtain my share through another Kojo Pong.

*Q.* Whom is it that I use to send to you to come and collect your share of rubber tapped on my land?—*A.* One Aguboni has done that.

*Q.* Who did that piece of work when Aguboni died?—*A.* When he died, we had commenced this litigation which we are after now.

*Q.* There was a time that I was called on by Government to send some sample of rubber tapped on my land to be sent to England to be tested, and for my trouble I obtained a sum of 30/-; do you remember your predecessor Kwakyi Kofi asked me to give him a share and I refused?—*A.* It is about  
 40 this very share which you refused to give to him that prompted my predecessor to sue you before Commissioner Wheatley and he returned judgment in his favour.

*Q.* I put to you that Commissioner Wheatley returned judgment in my favour?—*A.* My predecessor sued you and because he could not satisfactorily discharge the *onus probandi* on him, judgment was returned in your favour. Later, the case was reviewed, and after the very Commissioner had seen Sir Fuller's judgment which entitled my predecessor

In the Asantehene's Divisional ("B") Court.

Plaintiff's Evidence.

No. 3.

Chief Asafu-Boakyi (plaintiff), 4th, 11th and 18th February, and 3rd March, 1937—*continued.*

Cross-examination—*continued.* 3rd March, 1937.

In the Asante-hene's Divisional ("B") Court.

Plaintiff's Evidence.

No. 3. Chief Asafu Boakyi (plaintiff), 4th, 11th and 18th February, and 3rd March, 1937—*continued.*

Cross-examination—*continued.* 3rd March, 1937.

to ownership of Tredeh land, he reversed his judgment in behalf of my predecessor.

Q. I put to you that I was not present when the Commissioner heard the review case?—A. You were present throughout.

Q. Do you remember time was when I litigated with the Pakyihene over the same Tredeh land now in dispute?—A. You litigated about farms; the land is mine.

Q. Supposing I did abide by the Commissioner's Order that I was to pay 1/- per head of every farm to the Pakyihene, would it have been right for you to say that the land is yours?—A. The land would have been meant to be the Pakyihene's, but I would not have allowed it to go to him in that manner. 10

Q. The Pakyihene litigated with me about the Tredeh land and I won him—do you know that?—A. Yes.

Q. Did I obtain this judgment before you say you litigated with me and you won, or was it after?—A. I litigated with you and I won you before you commenced litigation with Pakyihene.

Q. At that time, was I paying the annual tribute of £4. 13/- to you?—A. Yes.

Q. I put to you that my subjects pay the alleged £4. 13/- to you and that it is not my Tredeh village as a whole that is responsible for such payment to you?—A. You pay the £4. 13/- to me as annual tribute for the Tredeh village as a whole. 20

Q. I put to you that according to a Sir Francis Fuller's Order which I possess, I am not entitled to a cent to anybody in respect of my Tredeh?—A. I don't know of any such authority you possess. No more questions.

PLAINTIFF is examined by Court.

Examination by Court.

Q. Where is the document which you alleged was drawn between your predecessor and Defendant, wherein the Defendant stipulated that he bound himself in behalf of the Tredeh villagers as a whole to pay an annual tribute of £4. 13/- to you?—A. I tender it in evidence now. 30

Exh. "A"

Document tendered in evidence and marked Exhibit "A."

Objection by Defendant.

NOTE :—The Defendant objects to this document alleging that this is not the document which was drawn between himself and the Plaintiff's predecessor. That the writer was one Awuah and not Sam Asante.

2. That the document was written by the hand, and not typewritten.

3. That two pence stamp was affixed on the alleged document.

Defendant adds further that he has already sworn to an affidavit to disclose the invalidity of this document. 40

Examination by Court, *continued.*

Re by Court to PLAINTIFF.

Q. Where is it you obtained this document?—A. I obtained it from the Registrar of the District Commissioner's Office in Kumasi. It is a

document which had been tendered in evidence by my predecessor in the District Commissioner's Court.

Q. Why is it this document was not stamped till after a lapse of ten years after its preparation ?—A. I don't know why my predecessor thus delayed, but he obviously paid a penalty of £5 before same was allowed in evidence in the District Commissioner's Court.

Q. Have you subpoenaed any of the Elders who appended their signatures to the document to give evidence in your instance ?—A. I have subpoenaed one Kyeame Yaw Mensah.

10 Q. How many times has the amount of £4. 13/- annual tribute been paid to you ?—A. I know of about two occasions. I cannot be too certain because I was not then on the Stool.

Q. Where is the Chief Commissioner's Sir Fuller's copy of judgment which entitled you to ownership of the Tredeh land ?—A. I tender it in evidence.

Document tendered in evidence, accepted and marked Exhibit " B. "

Q. And where could this Court find Commissioner Wheatley's judgment in the case which you alleged he reviewed and returned judgment in your behalf ?—A. I tender it in evidence.

20 Document tendered in evidence, accepted and marked Exhibit " C. "

Q. Have you any other documents in your possession which go to prove that the Tredeh disputed land is your Stool property ?—A. I have none more, except a plan drawn on Winisu 1 and 2 lands.

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**No. 4.**

**Kojo Akowuah.**

KOJO AKOWUAH, 1st Witness for Plaintiff.

Examination-in-Chief.

30 I am called Kojo Akowuah. I am a cocoa broker in Kumasi. Plaintiff is my master. I know the Defendant well. I have been serving the Asafu Stool for a very long time. One Ex-Chief Kwame Akowuah about 15 years ago (of Asafu) sent me to Defendant. He asked me to claim from him the sum of £4. 13/-. He explained to me that it was annual land tribute due by Defendant to him for his Plaintiff's Tredeh land on which Defendant

In the Asante-hene's Divisional (" B ") Court.

Plaintiff's Evidence.

No. 3.

Chief Asafu Boakyi (plaintiff), 4th, 11th and 18th February, and 3rd March, 1937—

*continued.* Examination by Court—*continued.*

Exhibit " B. "

Exhibit " C. "

No. 4.  
Kojo Akowuah,  
3rd March, 1937.  
Evidence-in-Chief.



In the  
Asante-  
hene's  
Divisional  
(" B ")  
Court.

Plaintiff's  
Evidence.

No. 4.

Kojo  
Akowuah,  
3rd March,  
1937—  
*continued.*  
Examina-  
tion in-  
Chief.

Cross-  
examina-  
tion.

Examina-  
tion by  
Court.

lives and farms. When I went, the Defendant paid the amount to me. The following year, I was again sent by my master the Asafuhene to demand the same sum from Defendant. The latter paid it to me without any objections. I have never been sent by any other person. That is all I know in this case.

Examined by PLAINTIFF.

*Q.* Do you know whether it is true that my Akwamu Stool owns the Tredah and Winisu lands?—*A.* I know it so, hence you sent me to go and claim the annual tribute.

*No more questions.*

10

Examined by DEFENDANT.

*Q.* Is it not true that when you came to collect that amount from me I told you that the five subjects of mine who farm on Plaintiff's land had gone to Obuasi, and that I would send for them, and in case they came and paid I would send up the amount to Plaintiff?—*A.* You did not explain the matter to me in this manner; you simply put me off to a week on the understanding that your Queen-Mother had travelled to Winisu. When I returned to you after the lapse of the week, you paid the amount to me.

*Q.* Do you know whether the name of my Queen-Mother was included in the document?—*A.* I don't.

20

*Q.* Is it not true that when you came I sent for the five people who farm on Plaintiff's land and in your presence I demanded them of the amount and they paid it through me to you?—*A.* I deny this. You paid the money to me as soon as I demanded you of it.

*Q.* Do you know Fosuhene?—*A.* No.

*Q.* Did I call you in conclave and paid the amount to you, or was it paid to you in the presence of my Elders?—*A.* Some of your Elders were present—I know of one Agoboni.

*By Court.*

*Q.* Did you give receipts to Defendant for the various monies that he paid to you?—*A.* No.

*No more questions.*

Further hearing in the case is adjourned to Wednesday the 10/3/1937.

(Sgd.) J. K. FRIMPONG,  
*President.*

(Sgd.) HENRY PREMPEH,  
*for Registrar " B. "*  
3/3/1937.

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No. 5.

Yaw Mensah.

17th March, 1937.

Present :—

ADONTENHENE J. K. FRIMPONG (President),  
 TOASEHENE KOFI WUSU,  
 DADIESUABAHENE AKWASI EDUSEI,  
 HIAHENE KOFI AWUAH.

CHIEF ASAFU BOAKYE II

v.

CHIEF KWAME ASANTE.

10

Both parties present.

YAW MENSAH, 2nd Witness for Plaintiff. Sworn.

Examination-in-Chief.

I am called Yaw Mensah, the Asantehene's linguist. I live in Kumasi. I know one Kwakye Kofi, the Plaintiff's predecessor (deceased). I know both the Plaintiff and the Defendant. Over 20 years ago, I was in my house at Asafu. The Plaintiff's predecessor Kwakye Kofi (deceased) sent for me. When I went, I met a gathering including the following Chiefs, late Kwabena Kufuor, Nkwaiehene, Panin Yaw Nkroma of Apimanim, Dontor, Ohene of Tarbuom. The Plaintiff's predecessor told me that the Kronti Elders had visited him that morning to talk over a certain matter, so he requested me to be present. The Defendant was also present. When we had properly met Kwabena Kufuor the late and Ex-Nkawiehene, rose up and told Plaintiff's predecessor of their mission. He narrated that Defendant had besought him to plead with Plaintiff's predecessor over the troubles that he Defendant had given to Plaintiff in the litigation between them. His apology was mainly based on the fact that Plaintiff's predecessor should forgive him, and to allow him to stay on the land despite the District Commissioner's judgment that Defendant was to remove from the Plaintiff's predecessor's land after the lapse of 7 years. Plaintiff's predecessor in reply told Kwabena Kufuor that he had considered the situation and had accepted the apology, but that he would claim pacification of £25. The Elders begged for a reduction and was reduced to £12. The Defendant paid same at the very moment. That done, the Plaintiff's predecessor then declared that he desired an agreement to be entered into between himself and Defendant. That was discussed. We arrived at a conclusion that Defendant was to pay an annual tribute of £4. 13/- to Plaintiff's predecessor in respect of the latter's land on which Defendant and his subjects dwelt. The Defendant consented to the figure. It was further agreed upon that in case any game was killed on the land, the Plaintiff's predecessor was entitled to a leg. Snails collected on the land was to be divided into 3 parts, two-thirds share for Plaintiff. That rubber tapped on the land was to be shared in the same way as the division of snail. Money realised from petty cases that Defendant and his Elders decided was to be divided in this way.

In the  
 Asante-  
 hene's  
 Divisional  
 (" B ")  
 Court.

Plaintiff's  
 Evidence.

No. 5.

Yaw  
 Mensah,  
 17th March,  
 1937.

Evidence-  
 in-Chief.

In the  
Asante-  
hene's  
Divisional  
(" B ")  
Court.

Plaintiff's  
Evidence.

No. 5.

Yaw  
Mensah,  
17th March,  
1937.

Evidence-  
in-Chief—  
*continued.*

Cross-  
examina-  
tion,

Defendant and his Elders to retain half the proceeds, the other half was to be sent to Plaintiff's predecessor, and he in turn was to serve the Krontihene with half of his portion. When parties had satisfied themselves with all these clauses, the clerk of Kwabene Kufuor, Nkwaiehene was called in. His name is Asante. He prepared the document in our presence. I was made to sign the document as witness to these presents. I accordingly appended my signature. This is all I know in this case.

Examined by PLAINTIFF.

No questions by Plaintiff.

Examined by DEFENDANT.

10

*Q.* The agreement which was prepared by Asante, was it written by his hand or was it typewritten?—*A.* Asante prepared the document with his hand. With pen and ink.

*Q.* Was the document prepared on a white paper or on a blue one?—*A.* He made the agreement on a white paper—Document, Exhibit " A," identified—This is not it.

*Q.* Did I come alone to make this agreement, or did any of my Elders follow me?—*A.* I did not see any of your Elders. I don't know them. I saw only one Aguboni.

*Q.* Did Aguboni sign as witness, or did he sign as a joint party with me in making the agreement?—*A.* He signed along with you as a joint party. 20

*Q.* I put to you that the agreement which was made in your presence was between Plaintiff's predecessor and my five subjects, Dabanka, Asante, Donkor, Fosuhene, and Yaw Deija, who farm on Plaintiff's land?—*A.* It is not true. The agreement was made between you on behalf of all your Elders and subjects on the one part, and Plaintiff's predecessor on the other part.

*Q.* Apart from this agreement which you are referring to binding myself to Plaintiff do I reserve the right to make a separate agreement with anybody in respect of the same land by way of sub-letting any portion thereof?—*A.* If Plaintiff's predecessor would allow you to do that, that is his own affair. 30

Examined by COURT.

Examina-  
tion by  
Court.

*Q.* How long ago was this matter talked over according to you?—*A.* It is a little over 20 years ago.

*Q.* Where was Plaintiff's predecessor staying then?—*A.* He was staying at Old Asafu.

*Q.* Can you name any of his linguists?—*A.* I know of one Kwakye Framu, and also one Aninkura.

*Q.* Did you see one Kwabena Awuah, the Ex-Bantamahene there?—*A.* Yes. 40

*Q.* Are you positive that in his apology, the Nkawiehene mentioned that their apology was mainly based on the fact that District Commissioner Wheatley had ruled in his judgment that the Defendant and his people were to remove from Plaintiff's land after 7 years?—*A.* Yes, and they added that it was because Defendant further insulted Plaintiff's predecessor hence their apology.

## No. 6.

## Yaw Adjaye.

YAW ADJAYE, 3rd Witness for Plaintiff. Sworn.

## Examination-in-Chief.

I am called Yaw Adjaye. I am the Odikro of Satiase. I know Plaintiff's predecessor late Kwakyi Kofi (deceased). I know Plaintiff now as well as Defendant. I served the Akwamu Stool. Some long time ago, Plaintiff's predecessor sent for me. He commissioned me to go to Tredeh, and to collect from Defendant the sum of £4. 13/-, being annual tribute due to him by Defendant for his Tredeh land on which Defendant and his subjects live and farm. When I went, the Defendant said the same to me and I conveyed same to him. I was not sent to collect that money any more. This is all I know.

## Examined by PLAINTIFF.

Q. How far is Tredeh village from Kumasi?—A. About 10 miles from Kumasi along the Bekwai road.

## By DEFENDANT.

Defendant alleges he will not put any questions to witness because witness has never been to him to demand any money.

*Plaintiff's Case Closed.*

Further hearing in the case is adjourned to Wednesday, the 24th March, 1937.

(Sgd.) J. K. FRIMPONG,  
*President.*

Witness to Signature :—  
(Sgd.) HENRY PREMPEH,  
*Recorder.*  
17/3/37.

In the  
Asante-  
hene's  
Divisional  
(" B ")  
Court.

Plaintiff's  
Evidence.

No. 6.  
Yaw  
Adjaye,  
17th March,  
1937.  
Evidence-  
in-Chief.

Examina-  
tion in  
Chief.

Cross-  
examina-  
tion,

**DEFENDANT'S EVIDENCE.**

No. 7.

**Chief Kwame Asante (Defendant)**

13th April, 1937.

In the  
Asante-  
hene's  
Divisional  
(" B ")  
Court.

Defendant's  
Evidence.

No. 7.  
Chief  
Kwame  
Asante  
(Defendant).  
13th and  
21st April,  
1937.

Present :—

ADONTENHENE J. K. FRIMPONG (President),  
TOASEHENE KOFI WUSU,  
DADIESUABAHENE AKWASI EDUSEI,  
HIAHENE BOAKYE ADADE,  
KYEAME KOFI AWUAH.

10

CHIEF ASAFU BOAKYE II.

v.

CHIEF KWAME ASANTE.

Both parties present.

*Defence Starts.*

CHIEF KWAME ASANTE, Defendant. Sworn.

Evidence-  
in-Chief.

Examination-in-Chief.

My name is Chief Kwame Asante. I am Odikro of Tredah Village. My grand-uncle (deceased) was called Nuben Sra. He hailed from Denkyera-Ntuam. He lived at Denkyera during the reign of Ntim Jakari, 20 the Denkyerahene. Ntim Jakari was a very hard and wicked man; because of his evil practices, my grand-uncle decided to migrate from Denkyera to come and serve Nana Asantehene King Osei Tutu. He left the place. On his way to Asante land he stopped at Adansi. The Ohene of Adansi then was called Bonsra. Two Chiefs accompanied my grand-uncle in his journey i.e. they emigrated too. One goes by the name of Gyetuanpane Yeboa, the other was called Peki Buoina. When my ancestors reached Adansi, a man belong to the Royal Family of Adansi Stool had sexual intercourse with the wife of my Nana Nuben Sra. My Nana claimed as satisfaction the head of the offender. The Adansihene objected 30 and as a result of the dispute which eventually ensued my grand-uncle and the Adansihene fought. The battle was indecisive. My grand-uncle retreated and found himself on Kokofuhene's land. He and his companions after having complimented the Kokofuhene in the usual manner settled there for a time.

During the interregnum, the Kokofuhene had deputed bearers to inform the Asantehene of some strangers (meaning my Nana and his compiers) who had gone to settle on his land. The Asantehene being overlord of all lands in Asante—in turn deputed the Asuowinhene, one of his principal Chiefs to fetch my grand pa and his fellows. Before they 40 left, the Kokofuhene suggested to my grand-uncle Nuben Sra of his intention to marry his sister called Adjua Bintia as a token of remembrance

of their meeting. My Nana consented, and the Kokofuhene married her. They had an issue named Adjisibi Kete. In compliance with Asantehene's call my grand pa followed his bearer the Asuowinhene to Kumasi. They were handed in the care of the Beremhene under Asantehene's instructions. Later they were separated in this manner. My grand-uncle Nuben Sra, and Peki Buonina remained with Beremhene, and Yeboa was handed under the care of the Achempimhene. The Asantehene directed that my Nana Nuben Sra should dwell and farm on a portion of land called Asuo Bantama. This is just about 2 miles from Bantama. A short time afterwards, the first Dormaa War broke out. My grand-uncle accompanied the Asantehene's army in raging that war. He fought under the Kronti Clan. That war was over, all was well with Asantehene. A few years later a soothsayer by name Komfuo Anokye prophesied that Asantehene would be attacked by an enemy who would march against him from the Bekwai Division. During the period, all that long stretch of land lying south of Kumasi via Bekwai belonged to the Denkyerahene. In preparation against that war so prophesied, the Asantehene deputed the Asuowinhene Akyina to allot us a portion of land within that area, so that we would serve as scouts and forefront advance guard, against the foe that would march towards Kumasi. On our way, we reached a village Nkoranza belonging to Denkyirahene. The buildings there were almost demolished, and the town or village deserted—but for three people of Denkyira extract who as old men could not run away. The company to which my Nana was attached beheaded those three persons. We marched forward till we reached a muddy place which extended very widely both on the left and on the right sides. The march was named Tredeh because of its wonderful width. The literal translation of a wide thing in Twi means "Tre." My grand-uncle decided to stay there. The Asuowinhene prepared to march forward. After they had gone a few miles off they met another deserted village which was named Denkyira Akrofusu. One man alone was seen there. He mentioned his name as Krotwi Krotuam. Report was sent to Asantehene about him. The latter instructed that if the prisoner would condescend to show us the private path and avenues of Denkyerahene, my Nana should not kill him. However, Buoyina alleged he desired to stay there, and he settled there. They founded another place called Twinduase. The Asuowinhene settled there temporarily. My Nana Nuben Sra finally settled at Tredeh. He enjoys freely any products that he amasses on the land. He only sends a share to the Asantehene who allotted the land to him and not to anyone else. A fetish which was founded during my grand pa's journey was called Numafua Piania. It belonged to my grand-uncle who founded the Tredeh village, and Pekiuhene who founded Denkyera Akrofusu, and later changed its name into Peki Akrofusu. The fetish even now belongs to the Pekiuhene and myself. After my grand pa had spent peaceful time for a period of few months, my grand-uncle was surprised by a detachment of the Denkyerahene's army headed by one Kwaku Bambori. Kwaku Bambori raged a war against us. The Pekiuhene my ancestor Nuben Sra, and the Asuowinhene of Twindurase, all of them

In the  
Asante-  
hene's  
Divisional  
(" B ")  
Court.

Defendant's  
Evidence.

No. 7.

Chief  
Kwame  
Asante  
(Defendant).  
13th and  
21st April,  
1937—

*continued.*

Evidence-  
in-Chief—  
*continued.*

In the Asantehene's Divisional ("B") Court. —  
 Defendant's Evidence.  
 No. 7.  
 Chief Kwame Asante (Defendant).  
 13th and 21st April, 1937—  
*continued.*  
 Evidence-in-Chief—  
*continued.*

together with their men made a defence. A battle was pitched at Anomafua and Piamina. In it, the leader of the enemy's army fell. My ancestor and his companions beheaded him. They the enemy as a result dispersed away. My Nana and the companions informed Asantehene of their work together with Bambori's head. Nana Asantehene presented my Nana Nuben Sra with the head of Bambori, and presented Pekyihene with his jaws. The remains of the head of Bambori's head is on my important drum, and I celebrate the Dwira festival with it always. Later, Ntim Jakari the Denkyerahene headed his own army, and waged war against Asantehene. At Feyease where Asantehene met him, the victory was decided in the latter's favour, and the Denkyerahene was beheaded. After that war, the Asantehene confirmed my grand pa's position as Tradehene with authority to dwell and farm on that land without interruption by anybody. All my ancestors who succeeded my great grand-uncle consecutively have served Asantehene with unswerving loyalty. They attend calls for war as promptly as any loyal subject of Ashanti extraction. Time went on, and Nana Prempeh I. ascended the Golden Stool. He was banished to the Seychelles Islands. The British people then occupied Ashanti. I lived peacefully. One day, the Chief Commissioner Fuller passed an open Order to all Chiefs who possessed lands in Ashanti. That an English representative of a certain firm wanted to test the juice of the rubber that are produced in Ashanti. That if they were genuine, he would introduce his company to purchase as many loads as this country supply. I had then succeeded to the Tredeh Stool. So I ordered some of the rubber on my land to be tapped. I had two buckets full of the juices. I sent mine to the authority who needed them. I was given 30/- for my trouble. After I had obtained that amount one Kwakye Kofi whose Stool Plaintiff now occupies asked me to give him a share out of the 30/-. I denied him the share he asked for, alleging that it was only the Asantehene who was entitled to any product or valuable that is obtained on my land. He threatened proceedings. I challenged him. He instituted an action against me in the District Commissioner's Court. In the action, he claimed a share of the cash of 30/- I had received. The District Commissioner by name Mr. Wheatley who presided over that Court returned judgment in my favour. When we left the precincts of that Court, I insulted Plaintiff's predecessor Kwakye Kofi that he was a greedy and envious person. He lodged a complaint to the Chief Commissioner Sir Fuller. The Chief Commissioner sent a Bailiff, Kwaku Donkor, to call me. When I went the Chief Commissioner enquired as to why I insulted Plaintiff's predecessor. I confessed that I had committed the act. After the Chief Commissioner had reprimanded me in the proper manner, he commanded me to go pacify Plaintiff's predecessor with a sum of £12 plus one sheep and two flasks of rum. I reported the matter to my immediate master the Bantamahene Osei Mampong. The latter deputed some of his Elders to accompany me to Plaintiff's predecessor's house to discuss the matter and to obey the bidding of the Chief Commissioner. The bearers deputed were Ex and late Chief Kwabena Kufuor, Kwasi Gyao, Tossihene, Dontor of Tarbuom,

- Yaw Nkroma of Apimanim, Chumahene Antwi Adjaye also accompanied us, but he was not one of the deputees I was among. We went to Plaintiff's predecessor and the deputees told him of the Bantamahene's message, adding that according to the Chief Commissioner's order I was prepared to pacify him with £12, a sheep, and 2 flasks of rum. The Plaintiff's predecessor after a very short complimentary lecture accepted the amount. That done, my Elder Fosuhene told the assembly that he had something to say. He alleged four other inhabitants of my Tredeh land including himself had encroached on the Plaintiff's predecessor's land and had made farms thereon. That they wanted terms or agreement to be drawn between them on the one side, and Plaintiff's predecessor on the other. Ofosuhene mentioned that the respective farms situated and lied at places near streams called Kra-agyar stream named Nuam, another stream Abobosu. The people who farmed went by the names of Fosuhene, Kwame Donkor, Yaw Dagyar, Yaw Asante, and Dabanka. When the matter was placed before the Plaintiff's predecessor he endorsed the idea, and called on his Stool clerk Awuah to make the necessary documents. The document was prepared by Awuah in ink, and after all the Chiefs present had appended their signatures or marks thereto, a two-penny stamps was affixed thereon.
- 20 The terms of the agreement was made thus : Plaintiff's predecessor on the one side, and my five subjects on the other. Plaintiff's predecessor agreeing to let out his land to my subjects to farm thereon, and my (5) five subjects agreeing to farm on Plaintiff's land. That Plaintiff's predecessor was entitled to collect from my subjects jointly and severally an annual tribute of £4. 13/-. That if any game was killed on the Plaintiff's land referred to, a leg was to be sent to Plaintiff's predecessor. They agreed that my subjects could either send the yearly tribute themselves, or could pass the deal through my medium. I appended my signature to that document as witness to those presents. Some other people subsequently farmed on Plaintiff's
- 30 land. He has had private agreement made with them. I remember my subjects have made two payments of the said annual tribute through me. I paid them to one Kojo Akowuah. After that we dispersed to our respective houses. I lived on my land peacefully. After a time, the Pekyihene put a claim against my Tredeh land. He took an action against me in the District Commissioner's Court at Obuasi. The District Commissioner, Obuasi, returned his judgment against me and gave my land to him. I appealed to the Chief Commissioner. He confirmed the District Commissioner's judgment, and further ruled that for every farm that exist on my Tredeh land the farmers should pay 1/- yearly tribute to the
- 40 Pekyihene. I was dissatisfied with the Chief Commissioner's judgment. I appealed to all the principal 12 Chiefs in Kumasi to interview the Chief Commissioner. They did so. The Chief Commissioner refused and Plaintiff's predecessor was present. I protested and three days after the interview of the Chiefs with the Chief Commissioner I dictated a very strong letter to the Chief Commissioner registering my vehement protest to his judgment. When he received my letter, he adjudged best to view the land himself. Before he did so, he warned me that if he found I had no villages

In the  
Asante-  
hene's  
Divisional  
(" B ")  
Court.

Defendant's  
Evidence.

No. 7.

Chief  
Kwame  
Asante  
(Defendant),  
13th and  
21st April,  
1937—

*continued.*

Evidence-  
in-Chief—  
*continued.*



In the Asantehene's Divisional (" B ") Court.

on the land as my affidavit shows, he would punish me properly. I agreed to his warning.

At this stage, the Court adjourned further hearing in the case owing to the poor health of the President. Adjourned to 21/4/37.

Defendant's Evidence.

(Sgd.) J. K. FRIMPONG, President.

No. 7. Chief Kwame Asante (Defendant). 13th and 21st April, 1937—continued.

Witness to Signature :— (Sgd.) HENRY PREMPEH, Recorder. 13/4/37.

21st April, 1937. 10

Present :—

ADONTENHENE J. K. FRIMPONG (President), TOASEHENE KOFI WUSU, DADIESUABAHENE AKWASI EDUSEI, HIAHENE BOAKYE ADADE, KYEAME KOFI AWUAH.

21st April, 1937.

CHIEF ASAFU BOAKYE II v. CHIEF KWAME ASANTE.

20

Both parties present.

DEFENDANT continues his statement.

CHIEF KWAME ASANTE, Defendant, continued.

Examination-in-chief, continued.

Evidence-in-Chief—continued.

The Chief Commissioner visited Tredeh as he promised. On his arrival there, he asked me to accompany him and his suite including District Commissioner Wheatley to Peki. He made his Court at Peki, and he re-investigated or reviewed his judgment. When he reached a certain stage, the Chief Commissioner decided to view the disputed land personally. Both the Pekiyehene and myself and the Akrofusuhene accompanied. We walked as far as to Winisu through waste and very dense forest. On our journey to Winisu, the Chief Commissioner observed all the twelve villages on my land which I mentioned to him in my petition. After the land had been thoroughly viewed, the Chief Commissioner and suite returned to Peki. The next day, the Chief Commissioner held his Court there again. Then the Chief Commissioner reversed his former judgment in my favour. I have a copy of his judgment.

Exhibit " D "

(Copy of Judgment tendered in evidence and marked Exhibit " D. ")

I then lived in uninterrupted possession on my land. I tender in evidence another judgment of Chief Commissioner Fuller after he had inspected 40 the disputed land between myself and Pekiyehene.

Exhibit " E. "

(Tendered and marked Exhibit " E. ")

In my litigation with the Pekihiene I incurred a debt of £1,700 (One thousand seven hundred pounds). The Plaintiff did not pay a share of that debt. Chief Yaw Bremah, Chief Osei Yaw, Pampasuhene and Adumhene all of them have subjects who farmed on my land. When I incurred that debt, I called on them to pay a share. They refused to do so. That prompted me to collect 1d. ahead of every cocoa tree in their farms. I have an agreement with them to that effect.

(Copy of Agreement tendered in evidence and marked Exhibit "F.")

- 10 A few years ago, Plaintiff's predecessor commenced litigation with Ex-Krontihene Kwame Kyem over Kyikyibon and Tarbuom lands and four other villages. Plaintiff's predecessor after he had had judgment to hold title of ownership of these six villages and the lands surrounding them, was trying to claim Tredeh lands also as his Plaintiff's predecessor said that in the Court. The Commissioner who presided over the case ruled out that his judgment did not affect Tredeh lands, as I have a copy of the Commissioner's judgment.

(Commissioner Bartlett's judgment—copy of—tendered in evidence and marked Exhibit "G.")

- 20 In the year 1911, the Plaintiff's predecessor took the Pekihiene to Court claiming all the Peki lands including Winisu lands which belong to me. Plaintiff's predecessor's claim failed utterly, and the District Commissioner, Pott, returned his judgment against him.

(Copy of his Judgment tendered in evidence and marked Exhibit "H.")

- 30 My predecessors have never at any time paid any tribute to the Plaintiff's predecessors. Quite recently, the Plaintiff swore upon the Great Oath that my Tredeh and Winisu lands all belonged to him, and I responded to the contrary. I mentioned in the response of my oath that I had boundary with Plaintiff at a place called Krafua, on along the stream to meet the confluence of another stream called Ndaam. Thence from the Ndaam, another stream meets Brapom. Thence from the Brapom across the Mpatasie road to a stream called Nanawim. Thence the Nanawim flows along to a stream called Anansu. Thence through grass-lands to a place called Gyasom. There are native old shafts there. Thence to the Winisu Stream. This crosses Awini to the source of Asikasu stream. Thence to the source of the Muramura stream. At Muramura, I have a boundary with Abrensi Odikro. I hold the left hand side of the boundary and he the right. This is my case.

- 40 DEFENDANT is examined by PLAINTIFF.

Q. Was that Tredeh land allotted to you by the Asantehene before the Feyease War was fought or after that?—A. The land was given my predecessor by the Asantehene before the Feyease battle was fought.

Q. You alleged that on your way with Anowinhene to found the Tredeh village, your predecessor killed three men, the subjects of the

In the Asantehene's Divisional ("B") Court.

Defendant's Evidence.

No. 7. Chief Kwame Asante (Defendant). 13th and 21st April, 1937—

*continued.*

Evidence-in-Chief—*continued.*

Exhibit "F"

Exhibit "G."

Exhibit "H."

Cross-examination.

In the  
Asante-  
hene's  
Divisional  
(" B ")  
Court.

Defendant's  
Evidence.

No. 7.  
Chief  
Kwame  
Asane  
(Defendant)  
13th and  
21st April,  
1937—  
*continued.*  
Cross-  
examina-  
tion,  
*continued.*

Denkyirahene at a village called Nkoranza. Do you mean to tell this Court that the village Nkoranza belongs to you even now?—*A.* No Asantehene allotted me the Tredeh land to settle upon.

*Q.* Do not you remember that it was after the Feyease battle wherein Ntim Jakari was killed that the Asantehene shared all the lands belonging to the Denkyirahene among his Chiefs who helped him win the victory?—

*A.* It is true. When my predecessor founded Tredeh lands, they settled there temporarily under Asantehene's instructions to serve as scouts against any surprise visits of the Denkyirahene. After the Feyease battle, the Asantehene confirmed my staying there, and he allotted the place to my ancestor. 10

*Q.* I put to you that before the Denkyirahene was totally routed at the Feyease war, he reigned supreme over the King of Ashanti, and that he owned lands all about and within the suburbs of Kumasi?—*A.* Yes, it belonged to him, but during that very time, the Denkyirahene had rallied round all his men to form his army to wage war against the Asantehene.

*Q.* My predecessor took an action against the Ex-Bantamahene your master claiming title of ownership of certain lands. Was not your land Tredeh included?—*A.* I was not co-respondent and my land was not included. 20

*Q.* Do not you remember when the Pekyihene litigated with you over the Tredeh lands, you came to inform me of it?—*A.* No.

*Q.* I put to you that because you did not inform me of it hence I did not pay a share of the debt you incurred?—*A.* You have no concern on my land.

*Q.* Is the Tredeh land divided into two parts?—*A.* No.

*Q.* Do not you know that Sir Fuller has once adjudged over the Tredeh land in dispute, and he returned his judgment in favour of my predecessor?—*A.* I don't know.

*Q.* In the litigation which my predecessor commenced with your master Bantamahene Osei Mampon over some lands, did not your master allege in the open Court and before Sir Fuller that the Tredeh land was mine?—*A.* I was not concerned in that litigation. I was not present. I have not been paying tolls to you. My master may have said anything he desired. 30

*Q.* Have you not once met with my predecessor Kwakye Kofi before District Commissioner Wheatley in respect of your Tredeh land?—*A.* Yes.

*Q.* Did not District Commissioner Wheatley first return judgment in your favour?—*A.* Yes.

*Q.* Did not my predecessor file an application for a review, and after the same District Commissioner had reviewed his judgment he reversed same?—*A.* I do not remember this. I do not know anything about this. 40

*Q.* Did my predecessor pay your costs?—*A.* Certainly.

*Q.* Have you not made an agreement with my predecessor Kwakye Kofi wherein you agreed to pay annual tribute of £4. 13/- to him for his land Tredeh on which you live and farm?—*A.* I flatly deny this. I have said that five of my subjects farm on your land, and they made an agreement

with you agreeing to pay you annual tribute of £4. 13/-. I witnessed to those presents.

Q. I have submitted the agreement Exhibit "A" to this Court. Do you find the signatures or marks of your five subjects appended or made thereto?—A. I have sworn to an affidavit to condemn this agreement. All my reasons are embodied in the said affidavit.

No more questions.

By Court.

10 Q. You condemn this copy of agreement. Have you a copy for yourself?—A. No.

Q. How do you know that this agreement, Exhibit "A," is not the particular one made between your alleged five subjects and the Plaintiff's predecessor?—A. Because primarily their names are not in, and secondly the stamps which were affixed thereon in my presence are not on.

NOTE—District Commissioner Wheatley's proceedings and judgment is read:—

At the request of the Defendant he is allowed to re-examine Plaintiff.

Q. Was I present when District Commissioner Wheatley reviewed his judgment and reversed his previous judgment?—A. You were.

20 I put to the Court that I was not present at the hearing of the review, and the Court will find out that I have made no statement at the recording of the District Commissioner's review-case.

No. 8.

Kwabena Awuah.

KWABENA AWUAH, Witness for Defendant. Sworn.

Examination-in-Chief.

30 I am called Kwabena Awuah. I am the Ex-Bantamahene. I am a produce buyer now. I know both the Plaintiff and the Defendant. I used to be the clerk of one Kwakye Kofi, ex and late Akwamuhene. During the year 1912, I was employed by Kwakye Kofi, Plaintiff's predecessor as his clerk. One day the said Kwakye Kofi commenced litigation with Defendant before the British Court. The case was heard. After hearing of same, Defendant abused Plaintiff's predecessor. The Chief Commissioner Sir Fuller before whom the case eventually went told Defendant that he was in the wrong, and so he was to pacify him. As a result, Defendant apologised through late Toasehene Gyawu, Kwaku Donkor Tarbuom, late and Ex-chief Kufuor of Nkawie, Yaw Nkroma of Apimanim, to beseech Plaintiff's predecessor for the abuses so administered on him. The Asafuhene Kwakye Kofi accepted the apology. As a result, Defendant 40 pacified Plaintiff's predecessor with £12 and 2 flasks of rum. All was over. Then the Defendant and those who accompanied him rose up and said

In the Asante-hene's Divisional ("B") Court.

Defendant's Evidence.

No. 7. Chief Kwame Asante (Defendant). 13th and 21st April, 1937.

continued.

Cross-examination, continued.

Examination by Court.

No. 8. Kwabena Awuah, 21st April, 1937. Evidence-in-Chief.

In the  
Asante-  
hene's  
Divisional  
[" B "]  
Court.

Defendant's  
Evidence.

No. 8.  
Kwabena  
Awuah,  
21st April,  
1937—  
*continued.*  
Evidence-  
in-Chief,  
*continued*—

something. The Defendant, the principal speaker, alleged that some of his subjects farmed on the Plaintiff's predecessor's lands, and so he desired that an agreement be entered into. His subjects on the one side, and Plaintiff's predecessor complimented the idea, and I, as the clerk of Plaintiff's predecessor, was called in. I prepared the agreement. The agreement referred to was in respect of Plaintiff's land situating and lying at places called Krafua. I can remember the name of one of the five people. He was called Yaw Dagya, and four others. The stipulation of the agreement was that Plaintiff's predecessor agreed to accept and the Defendant's five subjects agreed to pay annual tribute of £4. 13/- in respect of Plaintiff's predecessor's land on which they farm. The paper or document was in handwriting and not typewritten. I wrote it myself. A two-penny stamp was affixed thereon. During that time, typewriter had not been introduced in this country. 10

Witness examined by DEFENDANT.

Examina-  
tion-in-  
Chief.

Q. Can you identify the document which you yourself prepared if you see it?—A. Yes.

Q. Is it this one, Exhibit " A " indentified?—A. It is not this one. I wrote mine in ink, and it bears my signature.

*No more questions.*

20

Cross-  
examina-  
tion,

Examined by PLAINTIFF.

Q. In what Court did Defendant insult my predecessor?—A. I did not go to the Court.

Q. Did you ever hear that my predecessor ever stood before District Commissioner Wheatley?—A. No.

Q. In the document which you alleged you prepared, did you get in the names of the five people who farmed on my land?—A. Decidedly.

Q. Have you a copy of the document which you alleged you made?—A. No, if there existed any copy at all, it should not be in my possession.

*By Court.*

30

Examina-  
tion by  
Court.

Q. Over what land did Plaintiff's predecessor dispute with Defendant?—A. About Winisu lands.

Q. About what particular land did Plaintiff's predecessor sue Defendant in which he won judgment?—A. It is called Krafua land.

Q. When you prepared that document, was Linguist Yaw Mensah present?—A. Yes, but I did not see Asante (clerk).

Q. You were employed by Plaintiff's predecessor in 1912, how many years did you remain in his employ?—A. For pretty near 10 years.

Final hearing and judgment in this case is reserved to the 19th day of May, 1937.

40

(Sgd.) J. K. FRIMPONG,  
*President.*

Witness to Signature :—

(Sgd.) HENRY PREMPEH,  
*Recorder.*

21/4/1937.

**No. 9.**  
**Court Notes.**

1st July, 1937.

In the  
Asante  
hene's  
Divisional  
(" B ")  
Court.

Present :—

ADONTENHENE J. K. FRIMPONG (President)  
TOASEHENE KOFI WUSU,  
DADIESUABAHENE AKWASI EDUSEI,  
HIAHENE BOAKYE ADADE,  
KYEAME KOFI AWUAH.

No. 9.  
Court  
Notes,  
1st July,  
1937.

10

CHIEF ASAFU BOAKYE II

v.

CHIEF KWAME ASANTE.

*Defendant* in person.

*Plaintiff* is represented by his Chief KOFI KUSI, ABIRAMHENE and JASEHENE upon Power of Attorney marked Exhibit " I " on account of the fact that he is ill—lying in the Agogo Hospital.

Exh. "I."  
(This  
Exhibit was  
not trans-  
mitted and  
is not the  
Exhibit " I " specified in  
the Index of  
Reference)

NOTE—The Defendant suggested to the Court to have the land in dispute inspected and surveyed before delivering judgment.

*By Court* :—In so far as parties are not litigating over boundaries of  
20 their lands, there is no necessity to have the land inspected.

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**No. 10.**

**Judgment.**

JUDGMENT.

No. 10.  
Judgment,  
1st July,  
1937.

This is a case in which Plaintiff Chief Asafu Boakye II, Akwamuhene of Kumasi, swore to the Great Oath to the effect that the whole of Tredeh and Winisu Nos. 1 and 2 lands belonged to him in his position as the Akwamuhene, and the Defendant Chief Kwame Asante, Tredehene under the Kronti Clan, Kumasi, swore in response to the effect that the said lands did not belong to the Plaintiff, and that the same was presented to  
30 his ancestor and great grand-uncle Nuben Sra in time immemorial by Otumfuo, Asantehene, Nana Osei Tutu.

The Defendant added that the land was also presented to his said ancestor as special recompense for the assistance which his ancestor contributed towards the Asantehene's army in defeating Ntim Jakari, the King of Denkyira, and that it was after that battle that Otumfuo commissioned Assuowinhene Framu to find him a place to inhabit, and thus Tredeh was chosen, and his ancestor settled there.

Traditional narratives have been adduced by both sides relative to their respective claims, but since they are based on no material proof,  
40 and considering the so many reforms that have taken place since the British occupation in Ashanti, this Court decided to attach more importance to

In the  
Asante-  
hene's  
Divisional  
(" B ")  
Court.

—  
No. 10.  
Judgment,  
1st July,  
1937—  
*continued.*

copies of judgments of previous Commissioners, and other documents which have been tendered in evidence by both sides.

In opening his case, the Plaintiff deposed that in an agreement dated the 28th July, 1914—entered into by his predecessor ex-and-late Chief Kwakye Kofi on the one side, and the Defendant on the other, the Defendant bound himself in payment of annual tribute of £4. 13/- to his predecessor in respect of his land on which Defendant and his Tredeh subjects live, and also that shares of rubber tapped, snails or games collected and or hunted, and money realised on the Tredeh land should be given to his predecessor.

10

That time was when his predecessor litigated with late Osei Mampong one of the former occupants of the Kronti Stool over ownership of some villages in the Chief Commissioner of Ashanti's Court—and that the then Chief Commissioner, Sir Fuller, in the year 1907, returned judgment in favour of his predecessor, and ruled that all the tract of land on the left side of the main road leading from Kumasi to Nkwanta should belong to the Stool of Asafo which he Plaintiff occupies.

Plaintiff deposed further that his predecessor Kwakye Kofi, erstwhile Chief of Asafo, once instituted action against Defendant before District Commissioner's Court presided by Mr. Wheatley for £25 damages for that Defendant had tapped rubber on his Tredeh land and had refused to send him his due portion, and the Commissioner returned his judgment in favour of Defendant in February 1914; but in May of the same year, the case was reviewed, and after the Commissioner had been satisfied with copy of a judgment put forward in respect of land claimed given in the Chief Commissioner of Ashanti's Court in favour of Plaintiff's predecessor, he reversed his judgment in favour of his (Plaintiff's) predecessor, and allowed him costs.

In support of his allegation as above enumerated, Plaintiff has submitted three *respect* documents, which have been marked Exhibits " A," " B," and " C " respectively.

In setting up a rebuttal to the Plaintiff's case, Defendant challenges the genuineness of Exhibit " A " on the ground that it was not certified copy of a document of an original document; and contends that in an assembly in the premises of Plaintiff's predecessor, Kwakye Kofi, he appended his signature to a document—but as witness to an agreement made by five of his subjects who farm on the Plaintiff's land on the one side, and Plaintiff's predecessor on the other.

Defendant went on to say that Exhibit " C " should not bind him on the understanding that he was not present when District Commissioner Wheatley reviewed and reversed his former judgment in favour of Plaintiff's predecessor; and he vehemently protested that no consideration should be given to the Plaintiff's case as his ancestors as well as himself had been in uninterrupted possession of the Tredeh land since the same was presented to his ancestor by the Otumfuo in time immemorial. Defendant argued in support of his contention that in view of the fact that the land in dispute was his property, he had litigated with Pekyihene as to ownership of some

40

portions of same, and if Plaintiff or his predecessor knew he had a prior right, he should have stepped in in the usual manner (*vide* copies of judgment in *re* himself *versus* Pekiyehe, marked Exhibits "D" and "F").

Defendant argued further that on account of the fact that he owned exclusive right over the disputed land, he had let out portions of his land to several people for farming purposes. Copies of their agreements—all taken as one—tendered and marked Exhibit "F."

10 Copy of Judgment in a case Chief Kwame Akowuah *versus* Chief Kwame Kyem, held by Commissioner H. E. G. Bartlett, presiding over the Chief Commissioner of Ashanti's Court in 1927, is also tendered in evidence by Defendant, and is marked Exhibit "G."

In summing up the case of both parties, the Court arrives at the following conclusions:—

Although Exhibit "A" appears somewhat invalid because it is typed throughout, and not certified copy of a document of an original document, yet on account of the fact that it was accepted in evidence in the District Commissioner's Court in the case Plaintiff's predecessor Ex-Chief Kwame Akowua *versus* the Defendant in August 1925, this Court considers it too late now to test its validity, and to dispute its genuineness.

20 In the judgment returned by Sir Fuller marked Exhibit "B" of a case Plaintiff's predecessor *versus* late Osei Mampon the Defendant's master, wherein Osei Mampon and his linguist admitted the fact that the Tredeh and Winisu lands belonged to Plaintiff's predecessor—the ruling of Sir Fuller the Chief Commissioner was that all the lands on the left side of the main road leading from Kumasi to Nkwanta thereby embracing Tredeh should belong to the Plaintiff's predecessor's stool.

30 In 1914, Plaintiff's predecessor recovered judgment against the Defendant the issue arising out of the fact that the Defendant had refused to give Plaintiff's predecessor a share of proceeds realised out of rubber tapped on Tredeh land, and whether that judgment satisfied Defendant or not, he did not appeal. See Exhibit "C."

It is worthy of note that the existence of that judgment even renders the present issue one *res judicata*.

Careful examination has been made on document "D," "E" and "F" tendered by the Defendant herein, but this Court does not consider that they have any bearing on this case nor does Commissioner Bartlett's judgment tendered as Exhibit "G" disturb Commissioner Wheatley's judgment against Defendant on the 7th May, 1914, and Sir Fuller's decision and ruling in 1907.

40 In the light of the facts enumerated *supra*, this Court finds for the Plaintiff, and enters its judgment for him accordingly with costs to be taxed.

(Sgd.) J. K. FRIMPONG,  
*President.*

Witness to Signature:—

(Sgd.) HENRY PREMPEH,  
*Recorder.*

In the  
Asante-  
hene's  
Divisional  
("B")  
Court.

—  
No. 10.  
Judgment,  
1st July,  
1937—  
*continued.*



In the  
Asante-  
hene's  
"A" Court.

**No. 11.**  
**Grounds of Appeal.**

No. 11.  
Grounds of  
Appeal,  
7th  
September,  
1937.

IN THE ASANTEHENE'S DIVISIONAL NATIVE COURT "A," EASTERN PROVINCE,  
KUMASI.

	Between	
CHIEF ASAFO BOAKYE II ... ..		<i>Plaintiff-Respondent</i>
	and	
CHIEF KWAME ASANTE ... ..		<i>Defendant-Appellant.</i>

GROUNDS OF APPEAL.

1.—The Divisional Court "B" is wrong in admitting or accepting 10  
Exhibit "A" purporting to be copy of a document the existence of which  
is denied by the Defendant-Appellant. Defendant-Appellant admitted  
signing an Agreement written by one Kwabena Awuah, different to  
Exhibit "A" in respect of a portion of Tredah land, and not the one in dispute.

2.—The Court is wrong in holding Exhibit "A" to be valid simply  
because it was once admitted in evidence before the District Commissioner  
in spite of its being discredited by the Court—*vide* page 27 of the Record.  
The Court says Exhibit "A" appears somewhat invalid because it is typed  
through.

3.—The Court is wrong in not directing itself on the evidence of 20  
Kwabena Ewuah, Plaintiff-Respondent predecessor's clerk in respect to  
Exhibit "A." The proper person who could speak of the genuineness of  
Exhibit "A" or of the alleged Agreement of which Exhibit "A" is supposed  
to be a copy. See page 24 of Record.

4.—The Court in considering Exhibit "B" is wrong in including  
Tredah in the boundary given in that judgment—that judgment being  
indefinite and not clear in its expression.

5.—In considering Exhibit "C," the Court was wrong in not taking  
into account that portion of judgment in Exhibit "G" the case of Chief  
Kwame Akowuah *versus* Chief Kwami Kyem where it is mentioned that 30  
Tredah is outside the disputed boundary. See page 81 of Record.

6.—The Court is wrong in not giving full effect to the decision of  
F. C. Fuller's judgment of the 23rd day of September, 1916, Exhibit "A"—  
a subsequent judgment after viewing the land in question and binding the  
parties in spite of Exhibit "C."

7.—The Plaintiff-Respondent is estopped by Exhibit "E," a case  
between Peki *versus* Tredah in which Plaintiff-Respondent stood by.  
Plaintiff-Respondent should have applied to be joined as Co-Defendant  
in that case.

8.—The Court is wrong in not directing itself on Exhibit "H." 40  
Pages 67-9 of Record. A Report of District Commissioner Pott in *re* Chief  
Kwachi's claim over Pekki and Tredah lands.

Dated at Kumasi this 7th day of September, 1937.

W/W to Mark :—

J. M. BREFO,  
*Stool Clerk.*

His  
CHIEF KWAME ASSANTE, X  
*The Defendant-Appellant.* Mark.

## No. 12.

## Court Notes granting Injunction and appointing Receiver.

4th October, 1937.

IN THE ASANTEHENE'S "A," held at KUMASI, on Monday, 4th October, 1937,  
before the following :—

THE ASANTEHENE (President,  
THE OFFINSOHENE,  
THE OYOKOHENE,  
THE KYIDOMHENE.

In the  
Asante-  
hene's  
"A" Court.

No. 12.  
Court  
Notes  
granting  
Injunction  
and  
appointing  
Receiver,  
4th  
October,  
1937.

			Between		
10	CHIEF ASAFU BOAKYI II	...	...	...	<i>Plaintiff-Respondent</i>
			<i>v.</i>		
	CHIEF KWAME ASANTE	...	...	...	<i>Defendant-Appellant.</i>

Motion on notice by Chief Kwame Asante for an Injunction Order in the above cited case restraining the Respondent or his agent, or subjects, or any persons from entering into the disputed land between Appellant and Respondent ; and making farms, felling trees, or timber, and ordering Respondent or his agent to account for the proceeds in cash of the palm wine one Kojo Nkromah of Mpatasie has hired or sold to certain Antoa  
20 people to tap and be deposited at the Court pending the determination of the appeal case.

Affidavit filed on 17/9/37 in support read.

Parties present—

## ORDER.

The Court having read the affidavit of the Respondent considers it advisable in the interest of justice and fairplay to grant the injunction sought, and it is hereby granted under Order 14 of the Courts' Ordinance.

Both parties or their agents or servants or subjects are hereby restrained  
30 from making new farms, or tapping palm wine, or cutting timber on the disputed land for sale or collecting tributes from the tenants thereon pending the determination of the appeal.

Any oath case arising on the land should be referred to the Kumasi Divisional Court " B " for hearing.

The Head Bailiff J. A. Kesi, of the Asantehene's Court is hereby appointed a Receiver by consent of both parties.

The Receiver shall be entitled to  $7\frac{1}{2}\%$  commission on all monies collected by him.

(Sgd.) OSEI A. PREMPEH II,  
Asantehene,

40 (Sgd.) J. W. K. APPIAH,  
*Registrar.*

(*President.*)

In the  
Asante-  
hene's  
" A " Court.

**No. 13.**  
**Court Notes.**

No. 13.  
Court  
Notes  
29th  
November  
and 16th  
December,  
1937.

IN THE ASANTEHENE'S COURT " A " held at KUMASI on Monday,  
29th November, 1937, before the following :—

OTUMFUO SIR OSEI AGYEMAN PREMPEH II, Asantehene (President),  
THE AGONAHENE KWADJO APPAW,  
THE KYIDOMHENE OWUSU AFRIYIE II,  
THE OYOKOHENE KWADJO AGYEKUM.

		Between		
CHIEF ASAFU BOAKYE II	...	...	...	<i>Plaintiff-Respondent</i> 10
		v.		
CHIEF KWAME ASANTE	...	...	...	<i>Defendant-Appellant.</i>

29th  
November,  
1937.

Appeal from the Judgment of the Kumasi Divisional Court " B "

ISSUE.

Plaintiff swore the Great Oath to the effect that he as Akwamuhene of Kumasi is the owner of all the land situate at Tredah and Winisu and occupied by the Defendant and his people, and that even in respect of Tredah village itself the Defendant pays him yearly tribute of £4. 13/—, and the Defendant responded to the effect that the said land was presented to his Defendant's predecessor called Nuben Sra by Nana Asantehene Osei Tutu and that it is not the property of the Plaintiff as alleged. 20

Parties present.

CHIEF KWAME ASANTE, s.a.r.b.

I rely on my grounds of Appeal and the Exhibits which I tendered in evidence in the Court below. I have no additional statement to make to the statement I made in the Court below.

Grounds of appeal read.

The copy of Proceedings read.

Original exhibits tendered in evidence also read to the Court by the Registrar. 30

Further hearing adjourned to 9/12/37.

(Sgd.) OSEI A. PREMPEH II,  
Asantehene.  
*(President).*

(Sgd.) J. W. K. APPIAH,  
*Registrar.*

**No. 14.**  
**Judgment.**

16th December, 1937.

Present :—

Same members as before, excepting the AGONAHENE who is absent.

CHIEF ASAFU BOAKYE II

v.

CHIEF KWAME ASANTE.

In the  
Asante-  
hene's  
" A " Court

—  
No. 14.  
Judgment,  
16th  
December,  
1937.

Parties present.

- 10 The whole proceedings and the Grounds of Appeal as well as all the original exhibits in the case were read to the members of the Court.

JUDGMENT.

- 20 This is an appeal from the judgment of the Kumasi Divisional Native Court of the Asantehene. The parties herein exchanged the Great Oath as to the ownership of Tredeh and Winisu land on which the Appellant and his people live. This case was heard by the Kumasi Divisional Court and on April 1, 1936, gave judgment against the Appellant who appealed from the judgment to this Court " A " which having read the appeal record and cross-examined both sides on certain knotty points, confirmed the judgment of the Court below. The Appellant appealed against the judgment to the Chief Commissioner's Court which referred the case back to the Court " B " to be heard *de novo* on the ground that the Appellant alleged that the Krontihene who was the President of the Court " B " did not agree with the judgment. In obedience to the order of the Chief Commissioner's Court, and in fairness to both parties, special Chiefs were appointed under the presidency of the Chief J. K. Frimpong, the Adontehene of Kumasi, to hear the case.

- 30 The hearing started on February 4, and on July 1, 1937, judgment was again delivered against the Appellant who has appealed here. This Court having read the Appeal Record along with the Appellant's Grounds of Appeal is satisfied that the judgment of the Court below is in order and must be upheld. It must be remarked here that the story of the Appellant can only be believed by a person who does not know the history of the Denkyira War. The Appellant contended that the disputed land was granted to his Stool by the Asantehene long before the Denkyira War. How on earth could the Asantehene give away a parcel of land which was then outside his jurisdiction. The land in question did not come within the sphere of influence of the Asantehene until after the conquest of Denkyira by the Asantehene. The claim of the Appellant is as groundless as it is
- 40 unsustainable. The appeal will therefore be dismissed with costs to be taxed.

Witness to Signature :—

.(Sgd.) OSEI A. PREMPEH II,

(Sgd.) J. W. K. APPIAH,

Asantehene.

*Registrar.*

**No. 15.**  
**Grounds of Appeal.**

In the  
Chief  
Com-  
missioner's  
Court,  
Ashanti.

IN THE CHIEF COMMISSIONER'S COURT, KUMASI—ASHANTI.

No. 15.  
Grounds  
of Appeal,  
12th May,  
1938.

	Between	
CHIEF ASAFU BUAKYE II	... ..	<i>Plaintiff-Respondent</i>
	and	
CHIEF KWAME ASANTE	... ..	<i>Defendant-Appellant.</i>

GROUNDS OF APPEAL.

1.—The Divisional Court “ B ” is wrong in admitting or accepting Exhibit “ A ” purporting to be copy of a document the existence of which is denied by the Defendant-Appellant. Defendant-Appellant admitted signing an Agreement written by one Kwabena Amuah different to Exhibit “ A ” in respect of a portion of Tredeh land and not the one in dispute. Yaw Mensa, Plaintiff’s 2nd witness, at page 10 says Exhibit “ A ” is not the Agreement—that the Agreement was not typewritten. 10

2.—The Court is wrong in holding Exhibit “ A ” to be valid simply because it was once admitted in evidence before the District Commissioner in spite of its being discredited by the Court—*vide* page 27 of the Record. The Court says Exhibit “ A ” appears somewhat invalid because it is typed through. And in spite of Plaintiff’s witness, Yaw Mensah, saying 20 it was not the Agreement—see page 10 of Record.

3.—The Court is wrong in not directing itself on the evidence of Kwabena Awuah, Plaintiff-Respondent’s predecessor’s clerk, in respect of Exhibit “ A ”—The proper person who could speak to the genuineness of Exhibit “ A ” or of the alleged Agreement of which Exhibit “ A ” is supposed to be a copy. See pages 23–24 of Record.

4.—The Court in considering Exhibit “ B,” is wrong in including Tredeh in the boundary given in that judgment—that judgment being indefinite and not clear in its expression.

5.—In considering Exhibit “ C ” the Court was wrong in not taking into account that portion of judgment in Exhibit “ G,” the case of Chief Kwami Akowuah *versus* Chief Kwami Kyem where it is mentioned that Tredeh is outside the disputed boundary. See page 81 of Record. “ Further complaints arose relating to Tredeh Kukubin, Apimanim, and Gyachi of those Tredeh is not shown on the Plan in Exhibit ‘ A ’ and would appear from the general map to be outside the boundary of the lands claimed by Plaintiff in this action.” 30

6.—The Court was wrong in not giving full effect to the decision of F. C. Fuller’s judgment of the 23rd day of September 1916, Exhibit “ A ”—a subsequent judgment after viewing the land in question and binding the parties in spite of Exhibit “ C.” 40

7.—The Plaintiff-Respondent is estopped by Exhibit “ E,” a case between Pekyi *versus* Tredeh in which Plaintiff-Respondent stood by.

Plaintiff-Respondent should have applied to be joined as Co-Defendant in that case.

8.—The Court is wrong in not directing itself on Exhibit “H”—pages 67–9 of Record. A Report of District Commissioner Pott in *re* Chief Kwatchie’s claim over Peki and Tredeh lands.

10 9.—Asantehene’s Court “A” misdirected itself in holding that the Defendant-Appellant stated that the disputed land was granted to him long before the Denkyira war. The evidence according with the finding of Court “B” is that the land was presented to Appellant’s ancestor as special recompense for the assistance which his ancestor contributed towards the Asantehene’s army in defeating Ntim Jakari the King of Denkyira and that it was after that battle that Otumfuo commissioned Asuowinhene Fram to find him a place to inhabit and thus Tredeh was chosen and his ancestor settled there: See pages of Record. No evidence of granting the land long before the Denkyira war.

10.—Asantehene Court “A” is wrong in that it did not base its decision on the evidence before the Court.

Dated at Kumasi this 12th day of May, 1938.

20 Filed on 12/5/38.  
A.P.,  
Registrar.

CHIEF KWAME ASANTE,  
*Defendant-Appellant.*

His  
X  
Mark

In the  
Chief  
Com-  
missioner’s  
Court,  
Ashanti.

—  
No. 15.  
Grounds  
of Appeal,  
12th May,  
1938—  
*continued.*

**No. 16.**

**Court Notes ordering Plan of Land in dispute to be made.**

24th June, 1938.

IN THE CHIEF COMMISSIONER’S COURT OF ASHANTI, held at KUMASI on the 24th day of June, 1938, before His Worship G. P. H. BEWES, Esquire, Acting Assistant Chief Commissioner, appointed to preside over the Chief Commissioner’s Court.

30 Between  
CHIEF ASAFO BUAKYI II ... .. *Respondent*  
v.  
CHIEF KWAME ASANTE ... .. *Appellant.*

No. 16.  
Court  
Notes  
Ordering  
Plan of  
Land in  
Dispute  
to be  
made,  
24th June,  
1938.

An Appeal from the Asantehene’s “A” Court in respect of Tredeh land.

Parties present—

40 Court orders that a Plan of land in dispute be made, showing boundaries and villages and all boundaries laid down by previous decisions, which were put in evidence in the Court below. Each party to deposit £25 against cost of survey.

Adjourned to 19th August, 1938.

G. P. H. BEWES,  
*Ag. A.C.C.A.*

In the  
Chief  
Com-  
missioner's  
Court,  
Ashanti.

No. 17.  
Court  
Notes,  
29th June,  
1939.

**No. 17.**  
**Court Notes.**

29th June, 1939.

IN THE CHIEF COMMISSIONER'S COURT OF ASHANTI, held at KUMASI on the 29th day of June, 1939, before His Worship G. P. H. BEWES, Esquire, Acting Assistant Chief Commissioner, appointed to preside over the Chief Commissioner's Court.

Between

CHIEF ASAFU BUAKYI ... .. *Respondent*  
*v.*  
CHIEF KWAME ASANTE ... .. *Appellant.*

10

Parties absent—

**ORDER BY THE COURT.**

The sum of £25 deposited into this Court by each of the above parties against costs of survey in compliance with the Order of this Court dated 24th June, 1938, has proved inadequate for the required service and this Court hereby orders that a further sum of £170. 14s. 6d. be deposited into this Court on or before the 22nd July, 1939, by both parties, i.e. each party should pay £85. 7s. 3d.

A copy of this Order to be served free of service and mileage fees on 20 Chief Asafu Buakyi II in Agogo Hospital and Chief Kwame Asante of Tredah by the Bailiffs of the Magistrate's Court, Juaso and this Court respectively.

G. P. H. BEWES,  
*Ag. A.C.C.A.*

Certified True Copy.  
A. PREMPEH,  
*Registrar,*  
Chief Comm.'s Court.

No. 18.  
Power of  
Attorney,  
28th  
August,  
1939.

**No. 18.**  
**Power of Attorney.**

30

**POWER OF ATTORNEY.**

To all to whom these Presents shall come :

We, the Chiefs and Elders of Akwamu, New Asafo, Kumasi, Ashanti send Greetings :

Know all men by these presents that we, the under-marked, Chiefs and Elders of Akwamu, New Asafo, Kumasi-Ashanti have made, ordained, constituted, and appointed Opanyin Kwame Tawia, the Akwamu Nkonguasoafuchene of Akwamu New Asafo, Kumasi, to be our TRUE AND

LAWFUL ATTORNEY, and so, the Power is vested in him to represent in our interest and on behalf of Akwamu Stool in any case, Civil or Criminal, appertaining to in any Native or British Court to determine our cause. By virtue of these presents to pay any Stool debt, or deposit, invest the same or part thereof in such funds, shares, or securities as he, our said Attorney shall think fit and for the purpose aforesaid or any of them, to sign our names, to make execute and do on our behalf agreements, deeds and all things whatever as ourselves could do.

10 We hereby undertake to allow, ratify and confirm everything which our said Attorney shall do or suffer by virtue of these presents and we declare that this Power shall be in force at the date of execution of this Power of Attorney.

In witness whereof we have hereunto set out hands and marks on the 28th day of August, 1939.

		Their
	CHIEF KWAME AGYEBEN,	X
	<i>Akwamu Atufuohene.</i>	
	AKUA AFRIYIE,	X
	<i>Obas Panyin of Akwamu.</i>	
20	YAW AKYEAMPONG,	X
	<i>1st Mmamahene of Akwamu.</i>	
	KWAME AWERE,	X
	<i>2nd Mmamahene of Akwamu.</i>	
	KOFI SEFA,	X
	<i>Sanahene.</i>	
	ODIKRO KOFI TAWIA,	X
	<i>Dedeasua Odikro.</i>	
	YAW BIRIKORANG,	X
	<i>Dwirahene.</i>	
30	YAW AMOAH,	X
	<i>Okyeame.</i>	
	KWADJO GYAMFI,	X
	<i>Okyeame.</i>	
		Marks

Prepared by :—

B. K. NKANSA,  
Public Letter Writer,  
Licence No. 14627/39/Ksi,  
New Asafo Junction, B.H. 126,  
Kumasi.  
(Gratis).

40

This is the Power of Attorney marked " A " referred to in the Oath of Chief Kwame Agyeben, sworn before me this 2nd day of September, 1939.

N. O'BADDOO,  
*Commissioner for Oaths.*



In the  
Chief  
Com-  
missioner's  
Court,  
Ashanti.

36

**No. 19.**

**Motion for Substitution of Chief Kwame Tawia in place of Plaintiff.**

No. 19.  
Motion for  
Substitu-  
tion of  
Chief  
Kwame  
Tawia in  
place of  
Plaintiff,  
26th  
September,  
1939.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.

IN THE CHIEF COMMISSIONER'S COURT, KUMASI-ASHANTI.

In the Matter of—

NANA ASAFO BOAKYI (Akwamuhene)... .. *Plaintiff-Respondent*

*v.*

CHIEF KWAME ASANTE (Tredene) ... .. *Defendant-Appellant.*

*Ex-Parte* Motion by CHIEF KWAME AGYEBEN of New Asafo, Kumasi,  
acting for and on behalf of himself, other Chiefs and Elders of Kwamu. 10

Motion *Ex-parte* by Chief Kwame Agyeben of New Asafo, Kumasi, the  
Atufuhene of Akwamu, praying this Honourable Court for an Order to  
be made for Chief Kwame Tawia, the Nkonguasoafuhene of Akwamu,  
New Asafo, Kumasi, to represent the Plaintiff-Respondent herein in the  
above-named case as per facts set forth in the affidavit hereto attached.

To be moved at 26th day of September, 1939, at 9.30 a.m. forenoon  
or so soon thereafter as Chief Kwame Agyeben can be heard.

Filed on 26th day of September, 1939.

CHIEF KWAME AGYEBEN, <sup>His</sup> X 20  
*(Applicant).* mark

No. 20.  
Affidavit in  
Support  
of Motion  
for Sub-  
stitution,  
26th  
September,  
1939.

**No. 20.**

**Affidavit in support of Motion for Substitution.**

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.

IN THE CHIEF COMMISSIONER'S COURT, KUMASI.

In the Matter of—

NANA ASAFO BOAKYI II, Akwamuhene ... .. *Plaintiff-Respondent*

*v.*

CHIEF KWAME ASANTE, Tredene ... .. *Defendant-Appellant.*

Affidavit of the Chiefs and Elders of Akwamu in support of Power of  
Attorney granted to KWAME TAWIA to represent the Plaintiff-Respondent 30  
herein.

I, KWAME AGYEBIN, the Atofuhene of Akwamu for myself and on  
behalf of all the Chiefs and Elders of Akwamu, Kumasi, make oath  
and say as follows :—

1.—That it is with the entire consent and concurrence of myself and  
all the Chiefs and Elders of Akwamu that Chief Kwame Tawia,

Nkonguasoafuohene of Akwamu has been duly appointed by us to represent the Plaintiff-Respondent herein and that Power of Attorney to this effect has been duly granted him. The said Power of Attorney is now produced and shewn to me marked "A."

In the  
Chief  
Com-  
missioner's  
Court,  
Ashanti.

2.—That the Plaintiff-Respondent herein cannot, owing to the charge of maim to his ear (which according to the local custom) is a taboo to the Stool of Akwamu, I and the other Chiefs and Elders of Akwamu obviously consider that the Plaintiff-Respondent herein, in the eyes of the local law and installation, is not eligible to act for or represent the Stool of Akwamu in any matter or matters, wherein the interest of the Akwamu Clan is directly affected or concerned.

No. 20.  
Affidavit in  
Support  
of Motion  
for Sub-  
stitution,  
26th  
September,  
1939—  
*continued.*

3.—That for myself and the other Chiefs and Elders of Akwamu do hereby declare that the contents of the Power of Attorney invested in the said Chief Kwame Tawia were dictated by us, and that the said Kwame Tawia is therefore empowered with all plenary rights to represent the Stool of Akwamu, as under paragraph 2 of this affidavit it is clear that the Plaintiff-Respondent herein according to the facts herein expressed, is wholly debarred of all rights to represent the Stool as the Headchief of the Akwamu Clan in a matter such as the above cited case.

20 Sworn at Kumasi this 2nd day of  
September, 1939, after the con-  
tents of this Affidavit had been  
read over, explained in the Twi  
language by Joseph E. Hansen to  
the within-named deponent when  
he seemed perfectly to understand  
the contents of same before  
making his mark thereto in my  
presence and

CHIEF KWAME AGYEBIN, His  
(Deponent) X  
mark

30 Before me,  
N. O'BADDOO,  
*Commissioner for Oaths.*

Prepared by :—  
B. K. NKANSA,  
Lic. No. 14627/39/Kumasi.  
New Asafo Junction, B.H. 126.  
Fee Charged 5/- with Copies.

J. E. HANSEN,  
*Interpreter and Witness to Mark.*

In the  
Chief  
Com-  
missioner's  
Court,  
Ashanti.

No. 21.  
Court  
Notes,  
26th  
September,  
1939.

**No. 21.**  
**Court Notes.**

26th September, 1939.

IN THE CHIEF COMMISSIONER'S COURT OF ASHANTI, held at KUMASI, on the 26th day of September, 1939, before His Worship G. P. H. BEWES, Esquire, Acting Assistant Chief Commissioner, appointed to preside over the Chief Commissioner's Court.

	Between		
CHIEF ASAFU BUAKYI II	... ..	<i>Plaintiff-Respondent</i>	
	<i>v.</i>		
CHIEF KWAME ASANTE	... ..	<i>Defendant-Appellant.</i>	10

*Defendant-Appellant* present.  
*Plaintiff-Respondent* absent.

Motion *ex-parte* by Chief Kwame Agyeben of New Asafu for Chief Kwame Tawia to be substituted for Chief Asafu Buakyi II and application supported signed by Akwamu Stool Elders.

*By Court*—Let Chief Kwame Tawia be substituted for Chief Asafu Buakyi II.

Adjourned for one week.

G. P. H. BEWES, 20  
*Ag. A.C.C.A.*

Evidence  
of Survey.

No. 22.  
Edward  
S. S. Wood,  
Surveyor,  
10th  
October,  
1939.

**No. 22.**  
**Evidence of Survey.**

IN THE CHIEF COMMISSIONER'S COURT OF ASHANTI held at KUMASI on the 10th day of October, 1939, before His Worship G. P. H. BEWES, Esq., Acting Assistant Chief Commissioner, appointed to preside over the Chief Commissioner's Court.

	Between		
CHIEF ASAFU BUAKYI II (CHIEF KWAME TAWIA, Substituted)	... ..		
	<i>v.</i>		
CHIEF KWAME ASANTE	... ..	<i>Defendant-Appellant.</i>	30

ERNEST SILVERSTON SOUNDE WOOD, sworn.

I am a Licensed Surveyor living at Cape Coast. I was deputed to survey the land in this case. This is the Plan I made. I was accompanied on my surveying by representatives of the two parties. The plan is signed by me and sworn before a Commissioner of Oaths on 14th March, 1939. (Plan tendered in evidence, identified, and marked Exhibit "I.")

Exh. "I."

Cross-examined by APPELLANT.

I put on the plan the boundary you showed me. It is marked in yellow.

Cross-examined by RESPONDENT.

Your representative did not show me any boundary. When there was a case between Akawua and Bantama I surveyed the land. I showed on the plan made in that case three villages called Awhirisu I, II and III. Awhirisu III was outside the land claimed by Bantama. The blue line on the tracing was the boundary laid down in that case between Bantama and Asafu. Bantama on the North of the blue line and Asafu in the South of it.

In the  
Chief  
Com-  
missioner's  
Court,  
Ashanti.

Evidence  
of Survey.

No. 22.  
Edward  
S. S. Wood,  
Surveyor,  
10th  
October,  
1939—  
*continued.*

### No. 23.

#### Arguments on Appeal.

(1) Chief KWAME ASANTE (Defendant) in support.

CHIEF KWAME ASANTE, Appellant, states :—

My ancestor hailed from Denkyira. His name was Anubirisra whose Stool I occupy. From Adansi we came to Kokofu. Nana Osei Tutu sent one of his Abirimpong to bring us down to Kumasi. That Chief was called Oframo. Nana Osei Tutu told Oframo to take us to his village Santase and live there with us. Whilst we were there Komfo Anokyi the fetish priest prophesied that an enemy would come from Bekwai road, i.e. on the road from Trede to Bekwai. Nana Osei Tutu told Oframo that the people whom he handed to him to stay with together with the Pekiys should go on that road and stay and guard the place. We watched on that road and got to a place where there was a tree one called Twiredu, under which Oframo stayed. That place is called Twireduase.

We went further and met a stream spread over the whole land and near this stream my ancestor Anubirisra also stayed and that is why we called the place Trede from a Tere—a flood. The name of Pekiyhene at that time was called Oboyina. He went further and settled on a land where there were some rocks and this place is now called Peki Aboso. When we had settled at Trede we lifted up our eyes and found there was some smoke coming from all the Denkyira ruined villages. We went there and saw one man called Kwasi Krutwiam whom we arrested and he was brought to Osei Tutu. Latter ordered that this man should be taken back to where he was arrested and be made to show us all the tracks and roads over that area on which his overlord Denkyira Ntim Jakari would pass. We took this man back and we found the enemy was coming on those roads. My ancestors got up and met the Denkyira people who were coming and fought against one of the Denkyira Chiefs called Kweku Bomori that place called Homufoase. Latter was killed or beheaded by my ancestor and the head was brought to Osei Tutu who gave it back to my ancestor which now forms part of my Dwira. I had the skull and the jaw bone was given

No. 23.  
Arguments  
on Appeal.  
(1) Chief  
Kwame  
Asante  
(Defendant)  
in Support,  
10th  
October,  
1939.

In the  
Chief  
Com-  
missioner's  
Court,  
Ashanti.

No. 23.  
Arguments  
on Appeal.  
(1) Chief  
Kwame  
Asante  
(Defendant)  
in Support,  
10th  
October,  
1939—  
*continued.*

to Pekiyhene. Whilst we were there we heard Denkyirahene had passed through Fiase. We went to Fiase and helped Asantehene to fight against Denkyira and Denkyirahene Ntim Jakari was killed. After the war we came back to Kumasi where Nana Osei Tutu told us that we should take the land on which we were living, i.e. Tradeh, and settle there as a reward for our assistance in the Denkyira war and also because we had travelled from Denkyira to this place to settle. In the olden days game was killed on the land and report was made to Asantehene who sent his cooks to dissect the animals. Anything we obtain from this land was sent direct to Asantehene and no one has ever disturbed me since I occupied this land 10 during the reign of Osei Tutu up to the rubber boon, i.e. when British Government took over administration, (circa 1900). We were at that time asked to tap rubber. When a bucketful of rubber was obtained we sold it. When I got mine, Kwatchi Kofi, predecessor of Respondent, asked me to give him a share. I told him I was not living on his land so that he could ask for a share. I refused to give it to him and as a result he took action against me before District Commissioner claiming damages of £25. We appeared before District Commissioner who gave judgment against him. I have not got a copy of the judgment. Respondent states a review was made but I never heard of one. No one brought me a notice nor did 20 I appear before the District Commissioner again. So I remained on my land undisturbed. Whilst I was on this land Pekiyhene whom I called my brother also litigated with me for this land and the litigation lasted for three years. The case was started before Mr. Pott. The record of that case is in evidence. Mr. Fuller who gave a decision in this matter said I should remain on the land without paying any tribute to anybody and that he would send a surveyor to demarcate the boundary so as to get my portion. A surveyor was sent on the land without informing the District Commissioner, Obuasi, and so the District Commissioner, Obuasi, told the surveyor to go off the land. The boundary was after all not cut. The 30 boundary between myself and Respondent is a stream called Krafua. While living on this land Asafu Buakyi II who has recently been destooled swore the Great Oath claiming ownership of Trede land. I responded to the oath. The case went to Kumasi Court "B" who gave judgment against me. I appealed to Court "A." Judgment was again given against me. Judgment has been given 4 times in the Kumasi Native Court against me so I decided to appeal to this Court because Asafu Buakyi has stated that on the road from Kumasi Fort to Trede all the land on the left has been given to him by Government up to the Offin River and that he has a boundary only with Esumejahene and no one else. I find that on 40 the left there are so many villages for instance Twireduase belonging to Mframo. Bantama has also got a land on the left called Bekwame. One of the subchiefs under Akyimpimhene called Kofi Twemase has also a land on the left with whom I form a boundary and that place called Kwahoma on the left belongs to Adumhene on which his subjects live and take anything they get on the land to him. Adiembra is with Denyasehene and is also on the left. There are many Chiefs having land, towns, and villages

on the left. I wonder why Respondent should swear Ntamkese to the effect that the land on the left is for him and I have none there. I tendered in evidence copies of decisions given in connection with Tredeh land but no notice was taken. In the case between Akwamuhene and Kwame Kyem Bantamahene before Mr. Bartlett it was stated in the judgment that Tredeh land was not included in the dispute. The boundary between myself and Respondent is Krafua stream. My own subjects are farming on the other side of Krafua where agreement has been made between them and Respondent for him to collect tribute in respect of that portion. From  
 10 Krafua stream you go to another stream called Inam. In fact I pointed out my boundaries to the surveyor who put them on the plan. I have been occupying this land for a very long time. When Osei Tutu gave me this land to live on he made me his Twafu in case of war. As my ancestors were in front during any war they always got killed.

Adjourned to Friday, 13th October, 1939.

G. P. H. BEWES,  
*Ag. A.C.C.A.*

In the  
 Chief  
 Com-  
 missioner's  
 Court,  
 Ashanti.

No. 23.  
 Arguments  
 on Appeal.  
 Chief  
 Kwame  
 Asante  
 (Defendant)  
 in Support,  
 10th  
 October,  
 1939—  
*continued.*

(2) CHIEF KWAME TAWIA in reply.

13th October, 1939.

20

KWAME TAWIA, in reply.

I now stand in the place of the ex-Chief Asafu Buakyi II. Our great ancestor was called Awere who was made by the Asantehene and his stool created by Asantehene as Asafohene. In Kumasi whenever a war is waged against an enemy the only Twafohene we know is Asafohene. He is the first Chief to fire a gun in war or in Kumasi. In Kumasi the Asantehene who created almost everything was Osei Tutu. The Ohene of Denkera at that time was called Ntim Jakari. The latter had many people than those in Kumasi but we made up our mind to fight against them. A firewood cutter for Ntim Jakari was called Akyiribin Semiduroman. Our  
 30 ancestor called Awere fought against Akyiribin Semiduroman at Anyanim where he was living. All the Denkeras who were in the neighbourhood of Anyinam ran away together with Akyiribin Semiduroman. After these Denkeras had escaped Ntim Jakari deputed one of his Asafohene called Tibri Kropa to whom Denkerahene gave 1,000 gunners to stay at Apimanim. This place was so named on account of the 1,000. Awere my ancestor also deputed three people namely Pimpong Akopim, Pimpong Mansory, and Pimpong Abema to whom he gave 300 gunners to go on that road where he expected the enemy to come from. The next day after these people had gone Awere himself left for a certain place which is now called Dakoo and  
 40 fought against Tibri Kropa. He fought against Tibri Kropa and drove him away. When Awere was on the field he did not see the three Pimpongs and so after the war Awere asked them why they did not take part in the battle. They replied to Awere that the enemy took a different course.

(2) Chief  
 Kwame  
 Tawia in  
 Reply,  
 13th  
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Tawia in  
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After the war was over Dawa Takyi collected his people and settled with them at a place called Tekyiman. My ancestor again fought against Dawu Takyi and drove him away so that all the Denkeras who had come and occupied that site of the country had been driven away and the land on which they lived together with the villages had become the property of my ancestor Awere. After my ancestor had taken the land he returned to Kumasi. My ancestor Awere had a nephew called Bofo Djimma who was a hunter. He used to go on the road to spy and after he had gone past a village called Pekyi Akrofonso formerly called Kubease he met another spy from Essumeja near a stream called Abesu. He told the other 10 spy from Essumeja that where they had met would be their boundary. He turned to another road leading to Denkera. While he was spying on this road he saw a lame man walking on the road. He arrested this man and asked him where he came from. He told him he came from Denkera. He said it was Denkerahene who had deputed Kweku Bomori with an army to come and fight. He went and slept under a silk cotton tree which had fallen down and killed some of them. The spy asked the lame man to show him the fallen tree. He went with him and showed it him. He asked him where Bomori was and he pointed out to him where Bomori was lying. He counted the people who had been killed by that tree and he found 61 dead 20 bodies including Bomori. A stream called Mafuwa which we regard as a fetish caused the death of these people by allowing the storm to blow down the tree. Bofo Gyima cut off Bomori's head and brought it to Kumasi. Osei Tutu was informed. He said he did not like the head of Bomori neither did my ancestor Awere like it and so the head was buried under a tree called Dedua. The ancestor of the Appellant called Nebeasra and another one called Bohina were natives of Denkera. They escaped from Denkera to Adansi. Adansihene wanted to kill them and so they ran away to Kokofu. Kokofuhene treated them as subjects. Nebeasra had a sister and was married to Kokofuhene. The woman was called Adubiri Kete. 30 Kokofuhene then was Djeme. Ancestors of Appellant used to go to the bush to collect tortoises for Djeme. Nebeasra and Bohina sent to tell Asantehene that it was because of Asanethene that they had escaped from Denkera to Ashanti and that Kokofuhene had taken them and treated them as subjects. Asantehene sent a messenger to Kokofuhene for the Appellant's ancestors to be brought to Kumasi. They were brought to Kumasi before Kronti was created. The Asantehene handed them over to my ancestor Awere who also sent them to a place called Santase to stay. When Ntim Jakari left Denkera for this place to fight Mamponghe called Boahin Anantio became the Captain of the war. I should say here that 40 the head of Bomori was not buried under a tree but kept on the branches of a tree. So the ancestors of Appellant begged for the head of Bomori because he was during his lifetime at Denkera giving them any amount of trouble while they were at Denkera. So the head was given to them and Pekyihene got the jaw. So it is not correct for Appellant to state that he fought and got the head. When Boahin became Captain of Denkera war Ntim Jakari was captured and killed and his people were driven away.

So the Asantehene divided the Denkera land. Asantehene gave the land which was in possession of Awere before as well as the Denkera Akrofonsu. After the land had been given to us we formed a boundary with Bantama. I say Kronti was created after the war and I say that in those days Appellant was under Asafu when Kronti was being created—Asantehene obtained from my ancestor Awere one Akyina of Asuowin and also Nebeasra ancestor of Appellant as well as Pekyihene called Bonyina and created Kronti with it. When ancestors of Appellant were given to Kronti, Krontihene made them leaders of war, i.e. Twafo. This was after the

10 Denkera war. Ancestors of Appellant approached Asantehene and complained they could not get any foodstuffs to eat at Santase because he has given them to Kronti clan and so he wants Asantehene to speak to my ancestor Awere for another place to stay. So my ancestor deputed his nephew Bofo Djimma to take the ancestors of Appellant to a place where they could farm. Latter conducted them to this place where they found a stream had flooded the land. This is now called Tredeh. Bonyina who went with them said there was not room for both of them so he went further and stayed at Pekyi. If Appellant states it was Osei Tutu who gave him this land, it is not correct. My version is correct. Again too when we

20 allowed Appellant's ancestors to stay on our land we did not tell him to serve Kronti clan with our land. In those days we only farmed on the land. When we celebrated Odwira they brought yams to my ancestor. They also brought game. The first litigation which Asafu had was the one brought about by one Dyawu. He was on the Stool of Bantama (i.e. Kronti) during the time of Kwaku Dua I. Akuwa Dente was also on Asafu Stool during the time of Kwaku Dua I. Dyawu wanted to claim ownership of the land. We met before Kwaku Dua I. Judgment was given against him by Kwaku Dua I. When Kwabena Awua was on Kronti Stool, Asafu Buakyi I. was also on Akwamu Stool. These two Chiefs also litigated over

30 before Asantehene Bonsu and judgment went against Kronti. During the hearing of latter case I was present. Nothing happened again until Government took over the administration of this country. Osei Mampong occupied the Kronti Stool after Government had taken over the administration and at this time Kwakyi Kofi was on the Akwamu Stool. During the time of these two Chiefs rubber was tapped on the land in dispute which was claimed by Bantamahene Osei Mampong. They disputed about the ownership and the matter came before Sir Francis Fuller. This is Exhibit "F" in the record of proceedings before the Native Court. A boundary was laid by Sir Francis Fuller, that left of the

40 road was for Asafu and right for Bantama, up to Whini River and beyond to Nkwanta is for Nkwantahene. After this boundary had been demarcated Tredehene caused rubber trees to be tapped and Kwakyi Kofi asked for it. Kwakyi Kofi took action against Tredehene. He failed to attend Court and case was struck out. Kwakyi Kofi produced a copy of a document in that case and the Commissioner said he had made a mistake and so Sir Francis Fuller told Mr. Wheatley to hear the case again. This is Exhibit "C" on record of Native Court. Judgment was given for

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Kwakyi Kofi. Kwakyi Kofi had costs of £3. 7. 9. which Chief Kwame Asante paid. He did not appeal against this judgment. Kwakyi Kofi wanted to drive Kwame Asante away from the land but the Chief Commissioner said that arrangement should be made between them and if Kwame Asante refused to make that arrangement he should go off the land after seven years. Kwame Asante begged through Kobina Kufuor and Antwi Adjei, Akwasi Gyawu, Yaw Nkroma, Kwaku Dontor and Agoboni of Tredah to run an apology to Kwakyi Kofi. Latter had the following people present : Kofi Kuntuor, Kwakyi Mframo, Annikora, Kofi Dei, Kwasi Mosi and Yaw Mensah a linguist of Asantehene. Kwakyi Kofi was begged by Asante through Kobina Kufuor that he had done wrong and he was pacified with the sum of £12, 2 bottles gin and a sheep. After this had been done agreement made as far as this land was concerned was that snails collected from this land should be sent to Kwakyi Kofi ; also he should get a share of any rubber tapped on the land, and a leg of any big game killed. It was also aranged that £4. 13. 0. should be paid every year. This is Exhibit " A " in the record of proceedings. All the people whose names I mentioned signed. Every year Kwakyi Kofi sent for the collection of this tribute. After Kwakyi Kofi, Akowuah came and he also collected it. During Akowuah's time, Kwame Asante refused to pay so he was sued by Akowuah. The case was not contested and he paid up. During the time of Akowuah, Kwame Kyem was put on Kronti Stool and they disputed over this same land. Matter came before Chief Commissioner who went on land and inspected it. I was present at the inspection. Akowuah took action against Kwame Kyem. A plan was made by Mr. Wood and Wireso III. on that plan came to our side. Judgment was given in my favour in the case with Kwame Kyem in the Chief Commissioner's Court. After judgment had been given in our favour, matter was referred to Asantehene who got for us a compensation of £40. from Asante. After the compensation had been paid we decided that the old boundary should remain, i.e. Kronti on right and we on left. After this an oath was sworn at Wireso III. I swore Ntemkese that Winisu belonged to us and Appellant responded to it. Case was heard by Court " B " which gave judgment in my favour. Case went to " A " Court on appeal where we got judgment. Altogether we have got four judgments in the Asantehene's Court. Appellant says Asantehene gave him the land but Asantehene says no he did not give him the land. So he appealed to Government. When the matter came before the Court the land was surveyed. I have no boundary with Appellant. When anyone dies at Mpatase we do not report it to Appellant because land is for us. Appellant mentioned Adiembra the other day that it belongs to Essumeja but that is not so. It was Adumhene who gave the land to Denyase for his subjects to stay on. Akrofrum has no boundary there. Mr. Pott found Pekihiene had no land to live on and so Sir Francis Fuller said he would lay a boundary between Kumasi and Obuasi. Even after this boundary had been laid, Tredah came on our side. We did not have any dispute with Pekihi about this land. There was a dispute about farm boundaries and a surveyor went

to survey, but we objected. The Appellant is living on our land and we have no boundary with him. We collect tribute from strangers living at Tredeh.

Adjourned till tomorrow morning.

G. P. H. BEWES,  
*Ag. A.C.C.A.*  
 13/10/39.

(3) CHIEF KWAME ASANTE in answer.

14th October, 1939.

10

KWAME ASANTE, in reply.

Kwame Tawia in his statement said certain things against Bantamahene. I have already made my statement about the review of the Chief Commissioner's judgment. Before a review is made both parties should be notified, but I was not notified at all so that I could come forward and challenge him. I again pointed out in my statement the irregularities about this review when I was before the Asantehene's Court. I asked Respondent to produce any document he may have in connection with this review to prove I was present when review was made. No document was produced. I did not make an agreement in respect of Tredeh land. About five of my subjects are farming on his land, i.e., beyond Krafua stream, and in respect of these subjects I made an agreement. The subjects are Yaw Dedja, Kwabena Fusuhene, Kofi Dabanka, Yao Asante, Kwabena Bi. For these five people I made agreement. The clerk who prepared the agreement was Awuah, the ex-Chief of Bantama. He was then a clerk to Kwakyi Kofi. The agreement was in his handwriting. Three stamps were affixed on it. When the case was before Court "B" I subpoenaed Awuah who came to give evidence. The document shown yesterday was shown to Awuah. Awuah said that was not the document he prepared. He said the one prepared by him was on a white paper.

30 This was the first time the case was called. The Court did not call Awuah in second time the case was before Court "B." I again swore to an affidavit protesting against the blue document (i.e., the Agreement, Exhibit "A"). I made agreement for these five people and handed it to Kwakyi Kofi who collected tribute from the five people and up to the present his successor is collecting. If I were to make an agreement on behalf of twelve villages considering the number of people therein it would not be possible for me to pay £4 13. 0. It is not correct to say I made an agreement in respect of Tredeh. I made it positive that if Respondent alleges I made an agreement then it is not valid. Another case happened

40 between myself and Pekyihene before Sir Francis Fuller which lasted for three years. Sir Francis Fuller inspected the land up to Wini River and he found my twelve villages on the land. After the inspection he gave judgment

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in my favour and he gave me a copy, that I should pay nothing again. After Sir Francis Fuller had given judgment in my favour he allowed me to collect tribute from people living on this land and here are the agreements. Respondent said yesterday that the successor of Osei Tutu had given him the land. This is not so. Both Sir Francis Fuller and Mr. Bartlett decided that the land was for me. Mr. Bartlett said Tredeh land was not included in the dispute between Kwame Kyem and Akowuah. In a case between Essumeja and Peki before District Commissioner, Bekwai, Nana Prempeh gave evidence and a boundary was demarcated between Essumeja and Peki and Respondent has no boundary there. It is not correct that Respondent has any boundary with Essumeja. In Respondent's statement yesterday he said I gave compensation of £12, 2 bottles gin and a sheep. I did this because after judgment had been given in my favour by Mr. Wheatley, Kwakyi Kofi abused me. I also abused him. Kwakyi Kofi complained to Chief Commissioner Fuller who told me I had done wrong and so I should pay this sum. Kronti Stool was not created after the Denkera war. It was already in existence. 10

(At this stage the plan of the land in dispute in the case between *Kwame Akowuah v. Kwame Kyem* which is referred to as Exhibit "A" in Exhibit "G" before Court "B" is admitted in evidence with the consent of the parties and marked Exhibit "J.") 20

Exh. "J."

Adjourned sine die for judgment.

G. P. H. BEWES,  
*Ag. A.C.C.A.*

No. 24.  
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No. 24.  
Judgment.

This is an appeal from the judgment of the Asantehene's "A" Court given on the 16th December, 1937, in favour of Chief Asafu Buakyi II. in respect of a piece of land in the vicinity of Tredeh south of Kumasi. The Asantehene's "A" Court sat as an Appeal Court on the judgment of the Kumasi Divisional Court "B" given on 1st July, 1937, in favour of Plaintiff-Respondent. 30

This dispute was before this Court on a previous occasion but I sent it back to be heard *de novo* as at the original hearing before the Kumasi Divisional Court "B" the President of that Court did not agree with the judgment and I was not prepared to accept a majority verdict.

A plan of the land in dispute has been made and admitted in evidence—  
Exhibit "I."

Both Courts below base their judgments on decisions in previous dispute over this land or land in its vicinity so it will be convenient if I set forth the various documentary exhibits in chronological order. 40

Exhibit "B"—An executive decision given on the 19th April, 1907,

by Sir Francis Fuller in a case between Chief Kwakyi Kofi and Chief Osei Mampon. Kwakyi Kofi was a predecessor of the present Respondent and Osei Mampon was Bantamahene. This decision laid down that all the land to the left of the main road from Kumasi to Nkwanta via Aburaso Techiman and Terebum shall belong to the Stool of Asafu. This road is marked in blue on the plan marked "I."

It will be seen that the Tredeh land now in dispute lies to the left of that road. In that case the predecessor of the Respondent established his claim to the land as against that of Bantama (Kronti) Stool. I must note here that Appellant comes under Bantama.

Next we have Exhibit "H"—23rd December, 1911, in respect of Chief Kwakyi Kofi's claim to Peki land. In this exhibit a boundary was laid between Peki and Kwakyi Kofi and is that marked pink on the plan Exhibit "I." This boundary was also to be considered the Provincial Boundary, and it is to be noted that at this enquiry the Chief of Tredeh was present as well as Chief of Asafu (Kwakyi Kofi).

Exhibit "C," 10th February, 1914—A case between Kwakyi Kofi (predecessor of Respondent) and Subchief Kwame Asante (present Appellant) before District Commissioner, Mr. L. H. Wheatley, in which Kwakyi Kofi claimed from Kwame Asante £25 damages for refusing to give him share of rubber tapped on his land. In the proceedings in this case it is evident that Tredeh land is referred to. In this case Kwame Asante says he serves Osei Mampong (Bantama) and says that the dispute (Exhibit "B") did not include Tredeh land. The District Commissioner without assigning any reasons gave judgment for the Defendant Kwame Asante but on 7th May, 1914, reversed it in favour of Plaintiff having received evidence of a judgment given in favour of Plaintiff (Kwakyi Kofi) in the Chief Commissioner's Court. This is evidently the case Exhibit "B." Kwame Asante has denied any knowledge of this review. It was given 25 years ago and I consider it very surprising if he did not hear of it.

Next on 28th July, 1914, comes Exhibit "A"—an Agreement between Kwakyi Kofi and Kwame Asante in respect of division of products raised from Tredeh lands. Appellant denies having made this agreement and I must point out here that the date of this agreement is just over two months after the date of the reversal of the judgment in Exhibit "C" knowledge of which he also denies. This agreement is also dated shortly after the expiration of the 7 years mentioned in the executive decision in Exhibit "B" during which time Bantama people were to live free of tribute to be paid to Asafu.

Next on 22nd June, 1917, we have Exhibits "D" and "E" concerned with boundaries between Peki and Tredeh. An executive decision in that case laid down a boundary between Peki and Tredeh. This is the one marked green on the plan Exhibit "I." In that decision it was laid down that the pink line should still remain the Provincial Boundary.

Next Exhibit "F" on 3rd September, 1923, an Agreement between the Appellant and certain individuals to pay rent to Appellant for farms

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on Winisu land. Winisu is included in the land in dispute and lies between the pink and green line on Exhibit " I."

Another Exhibit " F" on 14th April, 1932, is a promissory note given by certain individuals on Winisu lands to pay rentals to Kwame Asante for farming.

Finally on 23rd September, 1927, there is Exhibit " G" a judgment by Mr. H. E. G. Bartlett, presiding over the Chief Commissioner's Court, between Chief Kwame Akowuah (predecessor of Respondent) and Kwame Kyem of Bantama. In this case the Plaintiff claimed all land to the left of the boundary laid down in Exhibit " B", i.e. the road from Kumasi 10 to Nkwanta (Manso Nkwanta on plan).

In this case a plan was made which with the consent of the parties I have accepted in evidence and marked Exhibit " J."

If this plan is joined on the new plan it will easily be seen where the Tredeh land lies in relation to the boundary laid down in Exhibit " B."

This old plan is referred to in Bartlett's judgment as Exhibit " A."

Mr. Bartlett bound himself by the decision in Exhibit " B" and decided that all Bantama subjects to the left of the road should pay the usual tribute to Asafu. The Commissioner in his judgment said that " further complaints arose relating to Tredeh, Kukubin, Apimanin and 20 " Gyarbi. Of these Tredeh is not shown on the plan Exhibit " A" and " would appear from the general map to be outside the boundary of the " lands claimed by the Plaintiff in this action."

This particular case now before me is like some of its predecessors to establish the liability of the settlers on the land to pay tribute. It has been shown that the Defendant is a subject of Bantama (Kronti clan). If therefore the land is his or Bantama's then the Tredeh people would not have to pay tribute, but if the land is for the Plaintiff who is of the Akwamu clan then the Tredeh people not being members of that clan and therefore " strangers " would be liable to tribute. 30

The first executive decision Exhibit " B" has shown that the land in the left of Nkwanta Road is not for Bantama, but for Asafu, i.e. present Respondent.

There followed this in 1911 the enquiry Exhibit " H." This was between Peki and Asafu. The Chief of Tredeh was present at this enquiry and as a result of it the boundary marked in pink on Exhibit " I" was laid down.

In 1917 the other executive decision in evidence is found in Exhibits " D" and " E" and the enquiry which preceded this decision was evidently necessitated by the fact that Tredeh farms were found to be south 40 of the pink boundary laid down in the case between Peki and Asafu. This decision re-adjusted the Peki boundary to that marked green on Exhibit " I," but retained the original boundary as the Provincial Administrative Boundary.

I am of the opinion that Tredeh is bound by the result of the enquiry in Exhibit " H" at which he was present as there is no evidence that at that time he put in any claim to this land, and the fact that Exhibits " D"

and " E " placed the boundary further south does not give him a title to the land lying between the pink and green boundaries although it is not disputed that there are Tredeh farms there.

The Agreement Exhibit " A " between Kwakyi Kofi and Kwame Asante of the execution of which the latter denies all knowledge seems to me the natural consequence both of the judgment of Wheatley in Exhibit " C " and the lapse of 7 years granted by the executive decision in Exhibit " D " during which Bantama subjects were to live tribute free on Tredeh land. The original of this agreement cannot be found but I note from an  
 10 endorsement that it was accepted in evidence in the case between Kwami Akowua (Predecessor of present Respondent) and Kwame Asante.

I am of the opinion that the sequence of events tend to show that the Appellant did at one time agree that he and his people were in the position of " strangers " on this land and nothing has been brought to show that his position has ever been any different. I am considerably impressed with the historical evidence that at the time Appellant alleges he was given the land, that it was in occupation by Ntim Jakari and was not Ashanti land till after the defeat of Ntim Jakari.

The evidence is against the Appellant and the appeal must be dismissed  
 20 with costs to be taxed.

G. P. H. BEWES,  
*Ag. Asst. Chief Commissioner.*

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 missioner's  
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### No. 25.

#### Grounds of Appeal.

IN THE WEST AFRICAN COURT OF APPEAL.

#### GROUNDS OF APPEAL.

- 1.—Judgment error in law.
- 2.—Wrongful rejection of admissible evidence.
- 3.—Improper admission of inadmissible evidence.
- 30 4.—Judgment against the weight of evidence.
- 5.—Judgment otherwise erroneous.
- 6.—Because the Plaintiff did not prove his title.
- 7.—Proceedings are irregular.

Dated at Kumasi this 15th day of January, 1940.

C. F. A. BENJAMIN,  
 (Hayfron-Benjamin & Co.),  
*Solicitor for Appellant.*

The Registrar, Chief Commissioner's Court,  
 Kumasi. And to Chief Asafu Buakyi II.,  
 40 Kwame Tawia (Substd.), Kumasi.

n the West  
 African  
 Court of  
 Appeal.  
 ———  
 No. 25.  
 Grounds  
 of Appeal,  
 15th  
 January,  
 1940.

In the West  
African  
Court of  
Appeal.

No. 26.

**Additional Grounds of Appeal.**

No. 26.  
Additional  
Grounds  
of Appeal,  
23rd May,  
1940.

The Appellant, being dissatisfied with the Judgment of the Chief Commissioner's Court, Kumasi, delivered on the 14th day of November, 1939, and having obtained Final Leave to appeal therefrom dated the 13th day of January, 1940, and having already filed his Grounds of Appeal on the 16th day of January, 1940, is desirous of Amending by Adding thereto the following grounds :—

**ADDITIONAL GROUNDS OF APPEAL.**

8.—Because the Asantehene's Divisional Court " B " was irregularly and improperly constituted and the Judgment delivered by it is in consequence a nullity. 10

9.—Because the subsequent appeal proceedings before and the Judgments by the Asantehene's Court " A " and the Chief Commissioner's Court of Ashanti are null and void.

10.—Because the Plaintiff, in an action for a Declaration of Title ought to succeed on the strength of his own Title; an onus which he failed to discharge.

11.—Because the Chief Commissioner, Ashanti, mis-directed himself in the construction of Exhibit " A " and gave weight to it which was not justified, the said Exhibit " A " being inadmissible. 20

12.—Because the Asantehene's Court " A " based its judgment on evidence of Tradition which was not before it; and, like the Chief Commissioner, Ashanti, did not give due weight to the Defendant's acts of ownership, long undisturbed possession and occupation.

13.—Because the Chief Commissioner, Ashanti, failed to give full effect to the Judgment of F. C. Fuller dated the 22nd June, 1917 (Exhibit " D ") (a later Judgment to that of Mr. L. H. Wheatley in Exhibit " C ") arrived at after the *locus in quo* had been inspected.

14.—Because the Chief Commissioner, Ashanti, failed to give due weight to Exhibits " D," " E," " F," " G " and " H " as establishing the Defendant's ownership and possession. 30

15.—Because the Judgment of the Asantehene's Divisional Court " B " is against the weight of evidence.

16.—Because the Plaintiff-Respondent is estopped by Exhibit " E " —Judgment in the case between *Pekyi v. Treddeh*—of which he was cognisant and stood by, without taking steps therein.

Dated at Accra this 23rd day of May, 1940.

C. F. H. BENJAMIN,  
*Solicitor for Defendant-Appellant.*

To the Registrar, West African Court of Appeal, Gold Coast Session—Accra.  
And to The Plaintiff-Respondent, Chief Kwame Tawia, or His Solicitor Ernest Prempeh, Or His Agent or Attorney at Kumasi.

40

No. 27.

Court Notes of Arguments.

In the West African Court of Appeal.

(1) Submission of BENJAMIN for *Appellant*.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at VICTORIABORG, ACCRA, on Tuesday, the 4th day of June, 1940, before Their Honours SIR DONALD KINGDON, C.J., Nigeria (President), SIR PHILIP BERTIE PETRIDES, C.J., Gold Coast, and GRAHAM PAUL, C.J., Sierra Leone.

No. 27. Court Notes of Arguments, 4th June, 1940.

				Civil Appeal—16/40.	
10		Between			(1) Submissions of Benjamin for Appellant.
	CHIEF KWAME TAWIA	... ..	...	<i>Plaintiff-Respondent</i>	
			<i>v.</i>		
	CHIEF KWAME ASANTE	... ..	...	<i>Defendant-Appellant.</i>	

Appeal from Judgment of BEWES, Ag. Assistant Chief Commissioner, Ashanti.

C. F. H. BENJAMIN for *Defendant-Appellant*.

E. O. A. ADJAYE (with him E. PREMPEH) for *Plaintiff-Respondent*.

BENJAMIN for *Appellant*.

Judgment of Chief Commissioner, Ashanti, is at page 46.

20 Grounds of Appeal—page 49—all abandoned—Fresh grounds filed : Nos. 8-16. I rely upon these—

Grounds 8 and 9—

See page 25—Constitution—1st July, 1937—He sat that day and gave judgment. Whereas he was not present on 11th February—pages 5 and 6—and did not hear the evidence recorded on those pages. On 4th February, he was present—see page 1.

*Hanson v. Ashun*, 15th March, 1934, before this Court.

*Twerebu v. Baa*, 9th March, 1936, before this Court.

*Lewis v. Lewis*, 27 English and Empire Digest, p. 48 92 J.P. p. 88.

30 (In answer to Petrides, C.J.): This is the first Court in which Counsel has appeared.

ADJAYE called upon as to this point.

(2) Reply of ASAFU-ADJAYE for *Respondent*.

(2) Reply of Asafu-Adjaye for Respondent.

ADJAYE :—

I submit that the cases quoted are decided under Native Administration Ordinance, not the Ashanti Ordinance which is different.



In the West African Court of Appeal.

See Cap. 80 (Laws Vol. III p. 393/4)—  
Native Courts—section 5—

I submit that if we have 3 persons sitting continuously that is sufficient—the others are a superfluity. If 3 continue throughout, it must be valid.

No. 27.  
Court Notes of Arguments, 4th June, 1940.  
(1) Submissions of Benjamin for Appellant—  
*continued.*

BENJAMIN :—

It is the participation in the judgment of a person who has been absent that vitiates the judgment.

Decision reserved.

DONALD KINGDON, 10  
*President.*

4th June, 1940.

No. 28.  
Order, 5th June, 1940.

No. 28.  
Order.

5th June, 1940.

ORDER

The further hearing of this appeal is adjourned till the next session of this Court in order to enable the Respondent to make enquiries concerning the constitution of the Asantehene's Divisional Court " B " on the 11th February, 1937, and if it is found that in fact Hiahene Boakye Adade II was present on that occasion, to file the necessary affidavit, showing that to be the case. 20

DONALD KINGDON,  
*President.*

5th June, 1940.

No. 29.  
Affidavit of Chief Boakye Adade, 3rd October, 1940.

No. 29.  
Affidavit of Chief Boakye Adade.

IN THE WEST AFRICAN COURT OF APPEAL.  
GOLD COAST SESSIONS.

	Between			
CHIEF KWAME TAWIAH	...	...	...	<i>Plaintiff-Respondent</i>
	<i>versus</i>			
CHIEF KWAME ASANTE	...	...	...	<i>Defendant-Appellant.</i>

30

AFFIDAVIT OF CHIEF BOAKYE ADADE II. HIAHENE.

In the West African Court of Appeal.

I, BOAKYE ADADE II. Hiahene, Kumasi, Kumasi make oath and say as follows :—

1.—That in 1937, the Adontenhene Kwame Frempong Toasehene Kofi Wusu, Dadeasuoabahene Kwasi Edusei, Linguist Awuah and I Hiahene Boakye Adade II. were the members of the Asantihene Divisional Court “ B ” who heard and determined the Suit out of which this Appeal has arisen.

No. 29. Affidavit of Chief Boakye Adade, 3rd

2.—That I was present throughout the hearing before the Asantihene’s Divisional Court “ B ” on all the days on which the Court sat and heard the evidence of the parties as well as that of all their respective witnesses, and I was present on the day when Judgment was delivered.

October, 1940—*continued.*

3.—That I was not absent on the 11th day of February, 1937, and the omission of my name from the Record must have been due to a mistake on the part of the Recorder or Registrar.

4.—That I swear to this Affidavit to show that I was present at the hearing of the said Suit on the 11th day of February, 1937.

Sworn at Kumasi this 3rd day of October, 1940, after the contents of this Affidavit had been read over interpreted and explained to the Deponent in the English language by E. O. K. Opong and he appeared to understand the same before signing his name in the presence of

(Sgd.) BOAKYE ADADE II.  
Hiahene—*Deponent.*

Before me  
(Sgd.) J. YAMIKE QUAIDOE,  
*Commissioner for Oaths.*

(Sgd.) EBEN. O. K. OPONG,  
*Law Clerk,*  
Bosomprah Chambers, Kumsai.

30

No. 30.

Further Ground of Appeal.

The Appellant, being dissatisfied with the Judgment given on the 14th day of November, 1939, and having obtained Final Leave to appeal therefrom dated 13th day of January, 1940, and having filed his Grounds of Appeal dated 15th day of January, 1940, hereby desires to add a further Ground of Appeal hereinafter set forth :

No. 30. Further Ground of Appeal. 4th November, 1940.

In the West African Court of Appeal. —  
 No. 30. Further Ground of Appeal, 4th November, 1940—  
*continued.*

17. ERROR IN LAW—

Because the Asantehene's Divisional Native Court " B " was wrongly constituted in that on the 4th day of February, 1937, when the above case commenced and on the 1st day of July, 1937, when judgment was given the following Chiefs to wit :—Toasehene Kofi Wusu, Dadiasuabahene Akwesi Edusei, and Hiahene Buakyi Adade II. were not legally empowered to sit in the Asantehene's Divisional Native Court " B "—*Vide* Native Courts (Confederacy) No. 2 Amendment Order 1938 (Order by the Chief Commissioner made under the Native Courts (Ashanti) Ordinance No. 42, 1938, dated 2nd May, 1938.

10

Dated at Accra this 4th day of November, 1940.

H. A. H. BENJAMIN,  
 For C. F. HAYFRON-BENJAMIN,  
*Solicitor for Appellant.*

To the Chief Registrar, West African Court of Appeal, Victoriaborg—Accra. And to Chief Asafu Buakyi II., Kwame Tawia (Substd.), Kumasi.

No. 31.

Court Notes of further Arguments.

20

No. 31. Court Notes of further Arguments, 21st and 22nd November, 1940.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at VICTORIABORG, ACCRA, on Thursday, the 21st day of November, 1940, before Their Honours SIR DONALD KINGDON, C.J., Nigeria (President), SIR PHILIP BERTIE PETRIDES, C.J., Gold Coast, and GEORGE GRAHAM PAUL, C.J., Sierra Leone.

Civil Appeal.

		Between	
CHIEF KWAME TAWIA ...	...	... <i>Plaintiff-Respondent</i>	Respondent
		v.	
CHIEF KWAME ASANTE...	...	... <i>Defendant-Appellant</i>	Appellant. 30

Appeal from Judgment of BEWES, Acting Asst. Chief Commissioner, Ashanti.

C. F. H. BENJAMIN for *Appellant*.

E. O. ASAFU-ADJAYE (with him ERNEST PREMPEH) for *Respondent*.

BENJAMIN continues—

Grounds 8 and 9. An affidavit from Registrar would have been more convincing than the affidavits now before Court.

(Court points out one is from Boakye Adade II. himself.)

ADJAYE: We have one also from the Registrar—not filed—shown to Benjamin.)

40

BENJAMIN : I am now satisfied.  
 I abandon Grounds 8 and 9.  
 I have filed fresh Ground of Appeal on 4th November.  
 No. 17. I will argue that first.  
 The record speaks for itself.

In the West  
 African  
 Court of  
 Appeal.

No. 31.  
 Court  
 Notes of  
 further  
 Arguments,  
 21st and  
 22nd  
 November,  
 1940—  
*continued.*

ADJAYE points out that if the allegation in this ground is correct it  
 it imputes an offence on the part of the persons named, namely  
 “adjudicating without authority”—Cap. 80 Section 30. If Benjamin  
 wishes to raise this ground he should prosecute first, otherwise this Court is  
 10 being asked to adjudge these people guilty without hearing them and in  
 any case there will be prejudice to possible criminal proceedings. Broom’s  
 Legal Maxims, 8th Edition, p. 739. Point not raised in Court “B.” On  
 appeal to “A” Court never raised. On Appeal to Chief Commissioner,  
 Ashanti’s Court never raised. At last session of this Court never raised.  
 It is too late to raise it now.

BENJAMIN in answer :—

1.—If I can satisfy this Court that I am correct, it goes to the root  
 of the matter. Counsel have not appeared till this Court.

2.—As to it being a criminal offence. If I satisfy this Court, proceedings  
 20 should be stayed.

ADJAYE in reply :—

See page 31 of Record.

DECISION—

Court will hear Mr. Benjamin’s argument without necessarily  
 committing itself to give a decision thereon.

BENJAMIN.

Ground 17.

See Vol. III. p. 395 and 1938 Laws, p. 306.

Retrial in Court “B” started on 4th February 1937—page 1.  
 30 Judgment, 1st July, 1937—page 25.

Ordinance No. 4 of 1938 not in force then.

Consequently the people who could sit are those in 4th Schedule—  
 Vol. III. page 397.

Adontenhene is in Schedule.

But the rest had no authority.

No power to appoint additional members.

Toasehene had power to sit after No. 4/1938.

I don’t object to Kyeame Kofi Awuah who was only a linguist and  
 was properly present.

40 See paragraph 5, page 395, Vol. III. : Minimum not reached.

In the West African Court of Appeal.

No. 31.  
Court Notes of further Arguments, 21st and 22nd November, 1940—*continued.*

ADJAYE contra :—

Page 395 section 3—Depends on who occupies the office and whether one man can hold several offices.

The man holding the office is the one entitled to sit.

There is nothing to show that the persons mentioned on page 1 are not holders of the offices mentioned in the Schedule 4.

There should have been an affidavit to show that the persons objected to held none of the qualifying offices—also to show that by native custom if the holder of an office can't sit, another man cannot be appointed to the office for the purpose of sitting.

That makes it difficult for this Court to come to a conclusion. I submit that the names in 4th Schedule represent different clans, and object is to obtain 3–5 members from different clans to form the Court. Court must presume that the persons were qualified.

10

BENJAMIN in reply :—

On page 1—The position of each man is described.

Court decides to hear the other grounds of appeal.

BENJAMIN :—

Grounds 10 and 11—

See Judgment of “ B ” Court—pages 25 to 27.

20

Judgment of Court “ A ”—page 31.

Judgment of Chief Commissioner, Ashanti's Court—pages 46 to 49.

In neither of the Appellate Courts was evidence taken except that a plan was put in Chief Commissioner, Ashanti's Court by consent.

See page 25, line 38. Traditional evidence was discounted.

Court relied upon construction of documents.

Adjourned till 22nd instant.

(Sgd.) DONALD KINGDON,  
*President.*

21st November, 1940.

30

22nd November, 1940.

BENJAMIN continues :—

Grounds 10 and 11 (continued)—

See page 26, line 29. Plaintiff relied on Exhibits “ A,” “ B,” and “ C.” Exhibit “ A ”—page 72, paragraph 4.

Defendant objected to document—pages 10, 23, 26, line 32.

It was denied by their own witnesses—page 14.

Asante was not called to give evidence.

We say the document was not either the original or a copy.

(Graham Paul, C.J., points to page 23 of manuscript record.\*

Exhibit “ B ”—pages 63 to 66.

40

Osei Mampong was military commander of the Defendant's predecessor. I submit it was *res inter alios acta*. Osei Mampong was a commander of the Kronti clan, we are of the Kronti clan but we don't derive title from Osei Mampong but from the Asantehene. We owe military allegiance to

\* Printed above, page 13, line 30, to page 14, line 10.

the Bantama Stool. We are not one of the villages mentioned. The land in dispute is not included in the land dealt with in Exhibit " B."

(Asafu-Adjaye says that it is.)

(Adjaye explains Exhibit " I " is the plan made in 1939 for this appeal before Bewes. Shows the position of the land in dispute and the main road mentioned in " B.")

I don't dispute that, but " B " is very vague.

See page 22. (Court points out that there Defendant calls Osei Mampong his " Master.")

10 See pages 16, line 36, to 18, line 16.

See Exhibit " G "—Page 79 at page 81, line 1. Shows land in dispute was not embraced in Fuller's judgment.

(See Bewes' Judgment—pages 47, line 7, to 48, line 16.) In spite of that I say that my client is not a privy of Bantama.

Exhibit " C "—pages 69 to 71. That is between Plaintiff's predecessor and ourselves.

That affects the same land as that in dispute.

20 That judgment was a Court of limited jurisdiction and according to the laws in Ashanti the District Commissioner has jurisdiction over land cases where the value of the land is £50. and no more.

(In answer to Court): There is no evidence that the land was then worth more than £50.

But I submit that as soon as it appeared to be a land case, his jurisdiction ceased unless he showed it was under £50.

(Ordinance No. 4 of 1907 section 13.)

*Toon v. Stanbury-Eardley*, 22 T.L.R. 536.

*Mountney v. Collier*, 6 Mews Digest, page 45.

I submit that Exhibit " C " is a nullity as being without jurisdiction.

30 Further as to Exhibit " C." The review was not in our presence and was not done within 14 days (4 months instead) except with special permission, and there is nothing to show that special permission was given.

#### GROUND 13 AND 16.

See Exhibit " D "—pages 73 to 76. Parties appear at page 74—Executive decision was given by Fuller in 1917 at page 77.

All villages mentioned, page 75, lines 28 to 31, are on the area in dispute.

Boundary between Pekki and us is the green line on " I " and that binds all the world, being an executive decision. Cap. 120 section 3.

40 (Court asks what is the position where there are 2 executive decisions in their opposite sense about the same piece of land each binding against the world.)

In that case the Native Court ought not to have anything to do with the case. Cap. 120 section 3 (3).

In this case the Chief Commissioner, Ashanti's Court would be the

In the West African Court of Appeal. No. 31. Court Notes of further Arguments, 21st and 22nd November, 1940—*continued.*

In the West African Court of Appeal. Court with jurisdiction. In this case the Chief Commissioner, Ashanti's Court merely followed the Native Court.  
 (In answer to Court): The Chief Commissioner, Ashanti's Court is not the Supreme Court. The headings at page \* etc. are wrong.

No. 31. COURT Notes of further Arguments, 21st and 22nd November, 1940.—*continued.*

· GROUND 12 and 14, and 15—  
 See Exhibit "F," page 78. An Agreement between us and our tenants on the land in dispute, dated 3rd September, 1923. Shows we were exercising rights of ownership.  
 See also pages 83 and 84.  
 See page 20—Exhibits "D" and "E." 10  
 It would now be inequitable to oust Defendant from the land.  
 (In answer to Court *re* Exhibit "D"): At page 27, "B" Court dismissed it with a sweeping statement. Court "A" never touched upon it.  
 At page 47 Chief Commissioner escaped the issue.  
 But see pages 48 and 49.  
 Chief Commissioner, Ashanti, relied upon "H"—page 67.  
 (ADJAYE demonstrates on Exhibit "I" that Exhibit "H" laid down the pink line as boundary between Asafu and Pekki—land now claimed by Plaintiff is all North of green line.  
 Subsequently to "H," Exhibit "D" gave us between Pekki and Defendant the area between the pink and green line to Defendant because Defendant had farms there—but giving that to Defendant as against Pekki was giving it also to us as against Pekki because Defendants are our tenants on it, we having been given all land South of the blue line down to Pekki. The land North of blue line is Bantama's, i.e. Defendant's.) 20  
 In answer to that see page 74—part of "D."  
 See again page 48. I submit Chief Commissioner, Ashanti, wrongly took into account Exhibit "H," because first we are not parties, and secondly it is neither a judicial decision nor an executive decision validated.  
 I submit there is abundant evidence that we have not paid tribute to Plaintiffs and have been on land a long time, and our position is fortified by Exhibits "D" and "E." 30

(A short adjournment.)

On resumption—  
 ADJAYE not called upon.  
 Judgment delivered.

(Sgd.) DONALD KINGDON,  
*President.*

22nd November, 1940.

\* These items are not printed, being the proceedings to obtain leave to appeal from the Asantehene's "A" Court to the Chief Commissioner's Court. 40

**No. 32.**  
**Judgment.**

In the West  
African  
Court of  
Appeal.

In considering this appeal the first point to be dealt with is the additional ground of appeal filed on the 4th November, 1940, contending that the original Trial Court, the Asantehene's Court " B," was wrongly constituted. This additional ground was filed without the necessary leave of the Court and we hold that it was too late in the proceedings to raise a point of this nature which was not raised in any of the three Courts below or at the beginning of the hearing of the appeal in this Court. In any case  
10 having heard all that the Appellant had to urge in support of the ground we are not satisfied that there is any substance in it.

No. 32.  
Judgment,  
22nd  
November,  
1940.

We can also find no substance whatever in any of the other grounds of appeal. The three lower Courts have been unanimous in finding in the Respondent's favour and we agree with them ; in particular we concur with the finding of the original Trial Court, the Asantehene's Court " B," that Exhibit " C " operates as *res judicata* and is effective to bar the Appellant's present contentions.

The appeal is dismissed with costs assessed at £79. 7. 6.

20 (Sgd.) DONALD KINGDON,  
*President.*

(Sgd.) PHILIP B. PETRIDES,  
*Chief Justice, Gold Coast.*

(Sgd.) G. GRAHAM PAUL,  
*Chief Justice, Sierra Leone.*

22nd November, 1940.

Counsel :—

Mr. C. F. HAYFRON BENJAMIN for *Appellant.*

Mr. E. O. ASAFU-ADJAYE (with him Mr. ERNEST PREMPEH) for  
*Respondent.*

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In the  
Privy  
Council.

No. 33.  
Order in  
Council  
granting  
Special  
Leave to  
Appeal,  
22nd  
October,  
1942.

No. 33.

Order in Council granting Special Leave to Appeal.

[L.S.]

AT THE COURT AT BUCKINGHAM PALACE.

The 22nd day of October, 1942.

Present

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT  
FIELD MARSHAL SMUTS

MR. BEVIN  
CAPTAIN BALFOUR.

WHEREAS there was this day read at the Board a Report from the 10  
Judicial Committee of the Privy Council dated the 13th day of October  
1942 in the words following, viz. :—

“ WHEREAS by virtue of His late Majesty King Edward the  
Seventh's Order in Council of the 18th day of October 1909 there was  
referred unto this Committee a humble Petition of Chief Kwame  
Asante in the matter of an Appeal from the West African Court of  
Appeal between the Petitioner Appellant and Chief Kwame Tawia  
(representing the Asafu Stool and Akwamu Stool of Kumasi and  
substituted for Chief Asafu Boakyi II) Respondent setting forth 20  
(amongst other matters) that the Petitioner is aggrieved by a Judgment  
of the West African Court of Appeal pronounced on the 22nd November  
1940 in an Appeal by the Petitioner whereby the West African Court  
of Appeal rejected a plea to the jurisdiction of the trial Court which  
plea had been first raised before them and also rejected the Appeal on  
the merits : that on the 13th May 1941 the Petitioner obtained from  
the West African Court of Appeal conditional leave to appeal to  
Your Majesty in Council but owing to the serious illness of the Petitioner  
he was not able to comply with the conditions of appeal within the  
period of three months allowed : that notice of intended application  
to apply to Your Majesty in Council for special leave to appeal was 30  
lodged on the 19th December 1941 but owing to difficulties of  
communication and otherwise the Petitioner has been unable to present  
this Petition earlier : that the plea to the jurisdiction of the trial Court  
arose as follows :—the Suit is a dispute concerning the ownership of  
land in the Kumasi State (or Division) of Ashanti which dispute by  
local Ordinance was properly and solely cognisable by a Native Court  
the Asantehene's Divisional Court a Court of the “ B ” grade which  
Court is hereinafter referred to as the “ B ” Court : that this Court  
was constituted under the Native Courts (Ashanti) Ordinance 1935  
(Chapter 80 Laws of the Gold Coast, 1936 Revision) which came into 40  
force on the 31st January 1935 : that by Section 3 of this Ordinance  
the Governor of the Gold Coast is authorised to establish by Order  
Native Courts every such Order to specify the persons who are to  
constitute the respective Courts from among the persons or classes  
of persons specified in Section 4 of the Ordinance : that this power was  
exercised with regard to (*inter alia*) the Kumasi State or Division by  
by the Confederacy Native Courts Order 1935 : that the effect as to the  
Kumasi Division is it is submitted clearly to constitute the Asantehene

as Kumasihene or head of the Kumasi State the regular President of the " B " Court the other members being restricted to the persons holding in the Kumasi Division the offices specified in the 4th Schedule to the Order : that the Court was in fact constituted by (and described in the record as constituted by) the Adontenhene as President the Toasehene the Dadiasuabehene and the Hiahene together with a Kyeame (Speaker or ' Linguist ' ) : that of these only the Adontenhene is qualified under the 4th Schedule and as the prescribed minimum number of judges is three he could not alone constitute a Court : that it is therefore submitted that the proceedings before this alleged Court were *coram non judice* and a nullity : that the parties were illiterates and no Counsel had appeared on either side in the Courts below the West African Court of Appeal Counsel being prohibited in the Native Courts and only permitted by special leave in the Chief Commissioner's Court the immediate Court from which this Appeal had been brought to the West African Court of Appeal : that as to the merits that the Plaintiff was the Akwamuhene of Kumasi one of the principal war chiefs of the State of Kumasi the premier State of the Ashanti Confederacy : that the Petitioner is the Chief of Tredeh a village in the South of the Kumasi State and of lower rank than the Plaintiff and he was the Defendant : that the claim in the Suit was that the Plaintiff as the Akwamuhene of Kumasi was the owner of all the lands at Tredeh and Winisu occupied by the Petitioner and his people which the Defendant the Petitioner denied alleging that the land in question had been presented to his ancestor Nuben Sra by a former Asantehene Osei Tutu for services in war : that the area in question is a large area some 10 miles or perhaps more long and averaging some 4 miles wide or thereabouts and is of considerable value in itself and priceless to the Petitioner and his people being their home and living space : and reciting certain facts relating to the history of the area : that traditional evidence was adduced on both sides in the " B " Court and was largely in agreement but that Court after stating the claim and defence as set out in this Petition and noting correctly that the Petitioner's evidence was that it was after the Battle of Feyeasi that the Asantehene had settled the Petitioner upon the land in question decided it said to attach more importance to documents adduced in evidence which had come into existence since the British occupation the earliest being dated in 1907 and which were marked (Plaintiff's) A, B, C, (Defendant's) D, E, F, G, and H : that after considering these the Court gave judgment for the Plaintiff it is submitted erroneously as appears from the examination of the exhibits made in this Petition : that the Petitioner appealed to the Native Appeal Court the Asantehene's Court (a Court of the ' A ' grade and thereafter called ' the " A " Court ' ) : that the ' A ' Court having had read the grounds of appeal and the proceedings including the above mentioned exhibits upheld the decision of the ' B ' Court in a short Judgment giving no reasons save one : that it is submitted that as the one reason given is a gross blunder from which it is clear that they totally mistook the Petitioner's case they either cannot have understood what was read

In the  
Privy  
Council.

No. 33.  
Order in  
Council  
granting  
Special  
Leave to  
Appeal,  
22nd  
October,  
1942—  
*continued.*

In the  
Privy  
Council.

No. 33.  
Order in  
Council  
granting  
Special  
Leave to  
Appeal,  
22nd  
October,  
1942—  
*continued.*

to them or it must have been read erroneously : that for the reason they give is that the Petitioner's story was incredible and his claim groundless because the Petitioner had contended before the ' B ' Court that the land was granted to him long before the Denchera War whereas (they said) the land did not come under the sway of the Asantehene until after the conquest of Denchera : that the Petitioner appealed to the Chief Commissioner's Court of Ashanti held before Mr. Bewes Acting Assistant Chief Commissioner who after hearing the parties in person both as to the traditional history and the documents dismissed the Appeal : that the Petitioner appealed to the West African Court of Appeal when his Counsel raised the question of jurisdiction before referred to which was rejected it is submitted erroneously : that on the merits the West African Court of Appeal gave general approval of the decisions of all the Courts below which it is submitted have already been shown to be based as to the ' A ' Court and the Chief Commissioner's Court on obvious errors : that apart from such general approval they express particular concurrence with the finding of the ' B ' Court that the exhibit marked ' C ' operated as *res judicata* and was effective to bar the Petitioner's contentions : And humbly praying Your Majesty in Council to order that the Petitioner shall have special leave to appeal from the Judgment of the West African Court of Appeal dated the 22nd November 1940 or for such other Order as may appear fit :

“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof Their Lordships do this day agree humbly to report to Your Majesty as their opinion (1) that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the West African Court of Appeal dated the 20th day of November 1940 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs (2) that the costs of this application ought to be borne by the Petitioner in any event (3) that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of the Gold Coast Colony for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER.

## EXHIBITS.

## Plaintiff's Exhibit.

**“ B. ”—Executive Decision of Sir F. C. Fuller in Land Dispute between Osei Mampon and Kwatchi Kofi (with Statements made at prior enquiry).**

Exhibits.

Plaintiff's  
Exhibit  
“ B. ”

KWAMIN KWATCHI, states :—

I am Linguist to Chief Kwatchi Kofi. A long time ago a boundary was made between the lands of Chief Kwatchi Kofi and those of Chief Osei Mampon. The boundary was as follows :—All the land on the left side of the Tekiman Nkwanta main road up to where the Whim River cuts the  
10 main road was to belong to Chief Kwatchi Kofi and the land on the right side of the road to belong to Chief Osei Mampon.

Some time ago there was a dispute between Chief Kwatchi Kofi and Chief Osei Mampon as to the ownership of the lands known as Tredeh and Winisu. Judgment was given in favour of Chief Kwatchi Kofi. The decision was that the land on the left side of the main road to Nkwanta including Womasi and Gheki was to belong to Kwatchi Kofi.

A short time ago Chief Kwatchi Kofi sent messengers to collect tribute from the people of Womasi and Gheki. The Chief of Womasi refused to pay tribute for he said the land did not belong to Chief Kwatchi Kofi.  
20 Chief Kwatchi Kofi said Chief Asumani of Womasi was wrong that the land did belong to him, as it was given to him by a white man. Chief Kwatchi Kofi reported the matter to the Chief Commissioner.

KUDJOE FUDJOE, states :—

I am Linguist to Chief Osei Mampon. Some time ago there was a dispute between Kwatchi Kofi and Osei Mampon as to the ownership of the lands known as Tredeh and Winisu. The case was brought before the Chief Commissioner. Judgment was given in favour of Kwatchi Kofi that he was to maintain possession of the lands of Tredeh and Winisu. No mention was made about the lands of Womasi and Gheki.

30 Some time ago Kwatchi Kofi sent messengers to the people of Womasi and Gheki to collect tribute from them. The Chief of Womasi refused to pay and reported the case to Osei Mampon.

KWAKU ASIMANI, states :—

I am Chief of Womasi. Some time ago Chief Kwatchi Kofi sent messengers to me for rubber as tribute. I told them I would not pay them any tribute, as I had always paid tribute to Chief Osei Mampong. Chief Kwatchi Kofi sent messengers again for the tribute, and I swore Koromantin oath on them, they did not repeat the oath. I reported the case to Chief Osei Mampon. I told Chief Kwatchi Kofi's messengers that they had no  
40 right to claim the lands of Gheki and Womasi as these lands had nothing to do with the Winisu and Tredeh lands.

Executive  
Decision  
of Sir F. C.  
Fuller  
in Land  
Dispute  
between  
Osei  
Mampon  
and  
Kwatchi  
Kofi (with  
statements  
made at  
prior  
enquiry),  
19th April,  
1907

Exhibits.  
 —  
 Plaintiff's  
 Exhibit  
 " B. "  
 —  
 Executive  
 Decision  
 of Sir F.  
 C. Fuller  
 in Land  
 Dispute  
 between  
 Osei  
 Mampon  
 and  
 Kwatchi  
 Kofi (with  
 statements  
 made at  
 prior  
 enquiry),  
 19th April,  
 1907—  
*continued.*

I was made Chief of Womasi by Chief Amunkwa of Bantama. I was made Chief before the Prempeh Expedition.

I have never paid any tribute to Chief Kwatchi Kofi and he has never claimed any from me only a short time ago.

I have boundary with the Chief of Tereboom. There is a bush road from Gheki to Tredah, my boundary finishes on the right hand side of this road at a place called Fatchinakrom which is in ruins. The people of Gheki have the land the left side of this road. I do not know what people meet my land at Fatchinakrom.

AKWASI ADAI, states :—

10

I am a fetish linguist of Gheki and am looking after the town at present, the Chief Kudjo Kusi being away. The Chief went away to trade about two years ago. I was born at Gheki and live part of my time at the village and at Adahumase. I am under Osei Mampon because I was told the village was his. I pay tribute to Osei Mampon in meat, rubber, etc. Kwatchi Kofi has never sent to collect tribute from us only about six months ago. Osei Mampon used to send us powder and we used to send him meat, etc.

KWAMIN AGAI, states :—

My father and mother belonged to British Gaman. King Bonsu of Kumasi captured them and gave them to Osei Mampon's predecessors, and he sent them to Gheki where I was born, and I am now serving Osei Mampon. 20

KWAMI CHAY, states :—

I was born in Gheki. My father and mother were brought from British Gaman. I am serving Osei Mampon as a servant. I pay him tribute fees in rubber, food, etc. I also build houses for him at Kumasi.

KWAKU DONTOR, states :—

I am Chief of Tereboom. My town is on the main road to Nkwanta. I have no boundary with the Chief of Womasi, as we are all on the same land and all serve Osei Mampon. I look after the land on the main road. 30 If you are going from Tredah to Winisu two of these villages are on this side of the River Winisu the other on the far side of the River.

One village is on the Tredah Road the other off to the left of the road. My land meets that of Kwatchi Kofi at Winisu and also at a stream called Wurowuro which is off the road from Tredah. I was made Chief of Tereboom after the last Ashanti War by Osei Mampon, the boundaries were then explained to me.

CHIEF KWAMI KWATCHI, states :—

All I know is that the main road from Kumasi to Mansu Nkwanta is the boundary between me and Chief Osei Mampon. The Ofin River is the 40 boundary between myself and the Esumajas. I never had a dispute with

the Denkeras or the Esumajas as to my boundaries. It was only a short time ago that Chief Osei Mampon wanted to cross the main road and take some of my land. I told him that the land belonged to me but the people were his. I wish to call Chief Kwasi Nketia of Mansu Nkwanta as witness as this Chief used to look after the land now in dispute, also Chief Kwasi Ghan of Hiakosi.

CHIEF OSEI MAMPON, states :—

Osei Tutu fought against Temie Jakari,\* King of Denkera and took his lands as far up as Tekiman and gave this land to Chief Kwatchi Kofi and myself. My started making villages on this land. Some time ago Chief Kwatchi Kofi and myself had a case about the Winisu land. He called several witnesses who sent their statements to the Chief Commissioner. The Chief Commissioner asked me what I had to say. I told him I was not going to dispute with Chief Kwatchi Kofi over so small a land. The land between Tredeh and Winisu was given to Chief Kwatchi Kofi.

CHIEF GHAN, states :—

I am Chief of Hiakosi. I do not know whether there was ever any boundary made between Chief Osei Mampon's land and Chief Kwatchi Kofi's predecessors with regard to the land now in dispute. Some time ago a boundary was made between me and the Kumasi Chiefs by the Chief Commissioner. The boundary was the River Whini. Chief Osei Mampon and Chief Kwatchi Kofi used to build villages anywhere on the land now in dispute. I do not know who built the villages of Womasi and Gheki. I do not know if there is any boundary between the people of Winisu and the people of Womasi and Gheki, before the boundary was made between myself and the Kumasi Chiefs. I looked after the Winisu land but not the Womasi and Gheki lands. The Womasi and Gheki people never paid tribute to me, and I never sent to collect any from them. The Winisu lands are quite different to those of Womasi and Gheki. I was told when I was under Chief Kwatchi Kofi that the land on the right hand side of the main road from Hiakosi towards Kumasi was his.

CHIEF KWATCHI NKETIA, states :—

I am Chief of Mansu Nkwanta. There was a dispute a long time ago about Kwaku Dua's time between the Chief of Bantama and the Chief of Asafu as to the ownership of the lands of Ampeenin, Kwakuben, and Damukwa which villages are all on the right hand side of the main road from here going towards Kumasi, they are close to one another and near Impatasi. A boundary was decided by Chief Kwaku Dua that this land on the right hand side of main road from here to Kumasi was to belong to Chief Kwatchi Kofi. I was one of the arbitrators when this boundary was decided. The villages of Womasi and Gheki were built before the boundary was decided. Chief Kwatchi Kofi and Chief Osei Mampon used to build villages all over the land now in dispute. The Winisu lands are separate

\* *Sic. Error for Ntim Jakari.*

Exhibits.  
—  
Plaintiff's  
Exhibit  
" B."  
—  
Executive  
Decision  
of Sir F. C.  
Fuller  
in Land  
Dispute  
between  
Osei  
Mampon  
and  
Kwatchi  
Kofi (with  
statements  
made at  
prior  
enquiry),  
19th April,  
1907—  
*continued.*

Exhibits. from Womasi and Gheki. I never collected tribute from the people of  
 Plaintiff's Womasi and Gheki, and they never paid any to me.

Exhibit  
 " B. "

CHIEF OSEI MAMPON, states :—

Executive  
 Decision  
 of Sir F. C.  
 Fuller  
 in Land  
 Dispute  
 between  
 Osei  
 Mampon  
 and  
 Kwatchi  
 Kofi (with  
 statements  
 made at  
 prior  
 enquiry),  
 19th April,  
 1907—  
*continued.*

I am very glad that Chief Kwasi Nketia corroborated my statement that if I built a village, Chief Kwatchi Kofi also built one. Whenever a village was built a certain amount of land around it belonged to that village. The farms were generally the boundaries between the villages. The whole land was given to Chief Kwatchi Kofi and myself and I do not see why he should possess all the land.

The main road was also included in the land. If I built a village on the road he also built one further on. 10

Reference Ashanti  
 M.P. Case 457/06A.

SUBJECT.

Land Dispute between Osei Mampon and Kwatchi Kofi.

DECIDED :—

That all the land on the left of the main Road leading from Kumasi to Nkwanta via Aburaso Tekiman and Terebum shall belong to the Stool of Asafu—but in consideration of the fact that several villages belonging to the Bantama Stool are established on Asafu lands and have been so 20 established for many years, these villages will continue to serve Bantama for the space of seven years from the 1st January, 1907—after which date they must pay the ordinary tribute of snails and game to the Chief of Asafu. The people of the villages in question are forbidden to collect Rubber on any of the land to the left of the Road (going from Kumasi) except with the permission of the Chief of Asafu.

(It'd.) F. C. F.,  
 19/IV/07.

I Hereby Certify that the above is a true copy of Executive Decision given by Sir Francis C. Fuller, Chief Commissioner of 30 Ashanti on the 19th day of April, 1907.

Dated at Kumasi this 24th day of January, 1930.

(Sgd.) JOHN MAXWELL,  
*Chief Commissioner, Ashanti.*

I Hereby Certify that the foregoing is a true copy of an Executive Decision given confirmed or approved by the Chief Commissioner and officially recorded in the Boundary Book.

(Sgd.) H. V. WIMSHURST,  
*Secretary to Ag. C.C.A.*

## Defendant's Exhibit.

**“H.”—Report by Mr. Pott to Provincial Commissioner on Chief Kwachi's Claim to Pekki Land (with Memorandum Paper 618/10 attached).**

Ashanti M.P. No. 618/10.

## CHIEF KWACHI'S CLAIM TO PEKKI LAND.

The Provincial Commissioner, S.P.A.,

I. I have the honour to report that in accordance with instructions received, I recently visited Pekki and went over the land which forms the subject of this dispute. I held Palaver at Pekki and at Tredai (Terire) at which the Chiefs of Asafu, Esumeja, Pekki and Tredai were present, and I have summarised the evidence given at these meetings in the Palaver Book S.P.

II. To put the matter briefly, Chief Kwatchi Kofi claims that all the Pekki land belongs to his Stool and defines its Southern boundary as the Pekki Akropong Road.

The Pekkis assert that the land though formerly Coomassie land was given to them by Sir Donald Stewart after the 1900 rising. They contend that their boundary with Coomassie runs along the road from Winisu (on the Tredai-Winisu Road) until it meets the Tredai stream, and thence follows that stream down to its confluence with the Nananwhin (Anua) stream.

III. I recommend that the Pekki claim be upheld, and that the boundary be made accordingly, thus completing the line of demarcation West of the Oda River between the Central and Southern Provinces, if the Nananwhin stream to its confluence with the Odar be added.

IV. I attach a statement of the reasons for my recommendation and a plan shewing approximately the position and extent of the disputed area.

V. I attach M.Ps. Nos. 877/05, 906/05, 906B/05, 457/06, 457A/06, 148/08, 198/10, 152/09, 618/10, N.52/11, N.71/11.

(Sgd.) P. A. H. POTT,  
District Commissioner, Ashanti.

Obuasi,

23rd December, 1911.

Ashanti M.P. 618/10.

## PEKKI LAND DISPUTE.

*Summary of the case for Chief Kwatchi Kofi as presented by his own statements and by those of his witnesses.*

(I) That the Pekki lands formed part of lands given to his Stool by the King of Ashanti.

(II) That these lands extend as far South as the Pekki Akropong Road.

Exhibits.

Defendant's  
Exhibit  
“H.”

Report by  
Mr. Pott to  
Provincial  
Com-  
missioner  
on Chief  
Kwachi's  
Claim to  
Pekki Land  
(with  
Memoran-  
dum Paper  
618/10  
attached).

Memoran-  
dum Paper  
618/10—



- Exhibits.  
 Defendant's  
 Exhibit  
 "H."
- (III) That the lands were not given to the Pekkis when they went under Bekwai.
- (IV) That they were included in the Chief Commissioner of Ashanti's decision in *Kwatchi Kofi v. Osei Mampon—457A/06*.

Report by  
 Mr. Pott to  
 Provincial  
 Com-  
 missioner  
 on Chief  
 Kwachi's  
 Claim to  
 Pekki Land  
 (with  
 Memorandum  
 Paper  
 618/10  
 attached)  
 —continued

*Summary of the case for the Chief of Pekki.*

- (I) That the Pekki lands, formerly Denkera lands were settled by his people with the permission of the King of Ashanti whom he served through the Bantama Stool.
- (II) That after the last rising, the late Sir Donald Stewart, then Chief Commissioner of Ashanti, allowed the Pekkis to go under Bekwai and gave them their lands. That a paper to this effect was written at Essiankwanta and was for some time in the possession of the Omanhin of Bekwai, but has been lost. 10
- (III) That his boundary with Coomassie in the Tredai Winiso Road and the Tredai Stream.

It will be seen that both sides agree that the lands did at one time belong to Coomassie, and I consider that the Pekkis' contention that they did not belong to the Asafu Stool is correct. There is no Asafu village South of the Tredai Winiso Road. The villages on the land of any size are all Pekki villages, and there are also three or four farm villages belonging to Tredai people, with an average population of 8 persons or so. None of these people have, by Chief Kwatchi Kofi's own admission, ever paid him tribute of any kind. On the road itself are two farm villages which do belong to Asafu, Yakoben, and Odumassi. 20

Both sides again agree that the Southern boundary is the Pekki Akropong Road for the greater portion of its length, but the boundaries between Jamesu, an Esumeja village, and Pekki need definition. The Esumejas say they have no boundary, but the Pekkis showed me a mark on the road from Jamesu to Pekki Akrafunso (old Pekki) and a stream called Amachie on the path from Jamesu to Kenkyre (Kuntenkyre): this stream falls into the Nananwhin. 30

There is also no doubt that these lands were not included in the decision given by the Chief Commissioner in the dispute between Kwatchi Kofi and Osei Mampon, and recorded on M.P. 457A/06. This is clear from the Chief Commissioner of Ashanti's Minute on M.P. 618/10 dated 19/9/10, and I note that the word Pekki was never mentioned by Kwatchi Kofi during the Palaver; but the Omanhin of Mansu Nkwanta, a witness favourable to him says, in letter dated July 1906 in M.P. 457/06, "The Chief of Asafu has boundary with the Chief of Pekki at a place called Abbom." 40

Chief Kwatchi Kofi's claim therefore in my opinion fails utterly, and apart from this I do not think it can reasonably be contended that when the Pekkis were allowed to go under Bekwai, it was intended that their lands should remain under the control of the Coomassie Chiefs. Such an arrangement would have led to endless disputes and palavers, while as

a matter of fact there has been no claim raised for the last ten years, the Pekkis occupying and enjoying the land without question. There is perhaps some record of the late Sir Donald Stewart's decision in the Chief Commissioner's office.

The boundary claimed by the Pekkis includes no Asafu village, is well defined, easy to comprehend, and if completed by the Nananwhin stream, adequately fills the gap in the Provincial Boundary between the Wini and the Odar.

10 Obuasi,  
23rd December, 1911.

(Sgd.) P. A. H. POTT,  
*District Commissioner.*

**Defendant's Exhibit.**

**" D " (part of).—Statement of Boundary between Central and Southern Provinces of Ashanti.**

CHIEF OF TREDEH.

*Boundary between Central and Southern Provinces.*

The boundary between the Central and Southern Provinces to the West of the Railway, shall be as follows:—

20 From the point where the Wini River crosses the Road to the immediate West of Tredai-Winiso Village along the Winiso-Tredai Road, until it meets the Tredai Stream thence down the said Stream to its junction with the Nananwin Stream; thence down the Nananwin to its junction with the Oda River.

Coomassie,  
20th February, 1912.

(Sgd.) F. C. FULLER,  
*Chief Commissioner, Ashanti.*

**Plaintiff's Exhibit.**

**" C. "—Proceedings in the District Commissioner's Court in Kwakye Kofi v. Kwame Asante before Mr. Wheatley.**

30

10th February, 1914.

CHIEF KWAKYI KOFI

*vs.*

SUBCHIEF KWAME ASANTE.

Page 389—C.R.B. No. 3—

Plaintiff claims £25 damages against Defendant for refusing to give a share of rubber tapped on my land—

Plea—Not liable.

Adjourned till 11th instant at 9. a.m.

40

(Sgd.) L. H. WHEATLEY,  
*District Commissioner.*

Exhibits.

Defendant's  
Exhibit  
" H. "

Report by  
Mr. Pott to  
Provincial  
Com-  
missioner  
on Chief  
Kwachi's  
Claim to  
Pekki Land  
(with  
Memoran-  
dum Paper  
618/10  
attached)  
—*continued.*

" D "

(Part of).

Statement  
of  
Boundary  
between  
Central and  
Southern  
Provinces  
of Ashanti,  
20th  
February,  
1912.

Plaintiff's  
Exhibit  
" C. "

Proceedings  
in the  
District  
Com-  
missioner's  
Court in  
Kwakye  
Kofi v.  
Kwame  
Asante  
before Mr.  
Wheatley,  
10th and  
11th  
February,  
and  
7th May,  
1914.

Exhibits.

11th February, 1914.

Plaintiff's  
Exhibit  
"C."

CHIEF KWAKYI KOFI

*vs.*

SUBCHIEF KWAMI ASANTE.

Proceedings  
in the  
District  
Com-  
missioner's  
Court in  
Kwaky  
Kofi v.  
Kwame  
Asante  
before Mr.  
Wheatley,  
10th and  
11th  
February,  
and  
7th May,  
1914—  
*continued.*

Page 390—Civil Record Book No. 3.  
From above—  
Plaintiff absent—

Cast struck out.

(Sgd.) L. H. WHEATLEY,  
*District Commissioner.* 10

CHIEF KWAKYI KOFI

*v.*

SUB-CHIEF KWAMI ASANTE.

From above—Re-listed.

*Plaintiff—s.a.r.b.—*

My name is Kwakyi Kofi. I am the Chief of Asafu. Osei Mampon is my brother and I had a dispute with him about Tredeh. The Chief Commissioner gave judgment in my favour and said my boundary with Osei Mampon was Patase. Thence to Wamase thence to Tabuom thence to Winisu. The left hand side of the boundary going from Coomassie belongs to me and the right hand side to Osei Mampon. The Government said Tredeh, Winisu, Jetche and Wamase people when they collect rubber or snails they should bring them to me and give them seven years to remove from the land. 20

Defendant tapped rubber at Tredeh and refused to bring it to me. I sent to Osei Mampon to tell Defendant to bring in the rubber he had tapped to me. Defendant said he had not been paid for the rubber but if he had he would bring it. When he was paid he refused to bring it to me so I summoned him.

*XXd. by Court—*

Defendant tapped this rubber two months ago. Defendant has been living on the land all the time. He has never paid me any tribute. 30

*XXd. by Defendant—*

I did not hear you had tapped rubber last year. I don't know you are farming cocoa.

*Defendant, s.a.r.b.—*

Kwami Asante is my name. I succeeded to Stool of Tredeh seven years ago. Osei Tutu gave me the land to live on. Since I have lived on the land I have never sent any tribute to Kwakyi Kofi or Osei Mampon. The entrance to Tredeh from Coomassie going the right hand side belongs 40

to Plaintiff and the left belongs to me. Before Osei Tutu gave me the land I had to assist him to fight against Ntim Jackel.\* I have been living on the land ever since. The Government has not taken the land from me and I have always been living on it.

Exhibits.  
—  
Plaintiff's  
Exhibit  
"C."  
—

*By Court—*

Osei Mampon has never demanded tribute from me neither has Chief Kwakyi Kofi. I serve Osei Mampon. I have been in the habit of tapping rubber and collecting snails on the land.

Proceedings  
in the  
District  
Com-  
missioner's  
Court in  
Kwakye  
Kofi v.  
Kwame  
Asante  
before Mr.  
Wheatley,  
10th and  
11th  
February,  
and  
7th May,  
1914—  
*continued.*

*By Plaintiff—*

10 You disputed with Osei Mampon over Wamase and Jatche land. Tredah was not included. I was not on the Stool at the time.

*Judgment—*

Judgment for Defendant.

(Sgd.) L. H. WHEATLEY,  
*District Commissioner.*

7th May, 1914.

CHIEF KWAKYI KOFI  
*v.*  
SUB-CHIEF KWAMI ASANTE.

20 Page 499—C.R.B. No. 3—

From page 392 reviewed at the request of Plaintiff.

Evidence of a judgment in respect of the land claimed given in the Chief Commissioner's Court in favour of Plaintiff is put forward.

(Judgment of High Court produced and marked "A.")

The Judgment given in this case on the 11th February, 1914, is hereby reversed and judgment is entered for Plaintiff with costs.

Judgment for £1.0.0.  
Costs £2.7.9.  

---

£3.7.9.

30

(Sgd.) L. H. WHEATLEY,  
*District Commissioner.*

Certified True Copy.

(Sgd.) R. B. ANDERSON,  
*Registrar.*

15th December, 1934.

\* *Sic. Error for Ntim Jakari.*

Exhibits.

## Plaintiff's Exhibit.

Plaintiff's  
Exhibit  
"A."**"A."—Agreement between Chief Kwakye Kofi and Chief Kwame Asante.**Agreement  
between  
Chief  
Kwakye  
Kofi and  
Chief  
Kwame  
Asante,  
28th July,  
1914.

The following Agreement was made on this 28th day of July, 1914, between Chief Kwakye Kofi of Asafu-Coomassie and Chief Kwame Asante of Trede before the undermentioned Chiefs about the product of Trede land.

If the inhabitants of the people of Trede tap rubber, collect snails, get any money or anything from the land, the one who tapped the rubber, or collected the snails or got the money or such a thing from the land is to take half of the said above property and the remaining half is for the Chief of Trede and Chief Kwakye Kofi. The remaining half is to be divided into three parts, two-third (2/3) for Chief Kwakye Kofi and one-third (1/3) for Chief Kwame Asante of Trede. 10

2.—The legs of the Games (big animals) for Chief Kwakye Kofi.

3.—Re the Oath case, Aseda or Abene is to be divided into two parts one for Chief Oseemampong and Kwakye Kofi in addition to the oath's fees, and one other part for Chief Kwame Asante his attendants or courtiers of Trede.

4.—Re the cocoa fee Chief Kwame Asante is to pay to Kwakye Kofi every year the sum of £4. 13/—.

Before us :—

	Before us :—	Their	
	CHIEF KWAKYE KOFI	X	of Saafu-Coomassie.
	KWABENA KOFOO (Chief)	X	of Nkawe.
	KOFI KONTO	„	X of Mpatasee.
	ANTWI AGYEI	„	X of Takyiman.
	YAO NKOROMA	„	X of Apemanim.
	KWAKU DONKO	„	X of Tabuom.
	KWAME ASANTE	„	X of Trede.
	YAO MENSAH	„	X of Hyemang.

Marks

20

	Witness	Linguist	KWAKYE FRAM	X	Their	
	„		KWABENA AGOBONE	X		

Marks.

30

Dated at Asafu-Coomassie the 28th day of July, 1914.

Writer and Witness to Marks :—

(Sgd.) SAM. ASANTE,  
Licd. P. Writer No. 907,  
Station Road, Cssié.

*Exhibit "A"—Tendered and accepted in re Head Chief Kwame Akowua v. Chief Kwame Asante.*

(Itd.) R. B. A.

12/8/25.

40

## Defendant's Exhibit.

" D " (part of).—Judgment of Sir F. C. Fuller in the Chief Commissioner's Court  
in Chief Kojo Adai v. Chief Kwamin Ashanti.

23rd September, 1916.

IN THE CHIEF COMMISSIONER'S COURT OF ASHANTI, COOMASSIE,  
23rd September, 1916, before His Honour FRANCIS CHARLES FULLER,  
Esquire, Chief Commissioner, Ashanti.

KOJO ADAI

v.

10 KWAMIN ASHANTI (*Appellant*).

Pekki-Tredeh Boundary dispute—

Appeal from the decision of the Commissioner, Southern Province—

\* \* \* \*

All these villages and farms will be considered to be on Pekki lands  
but shall pay no tribute and the people will remain in undisturbed  
possession thereof.

Kojo Adai to pay half of damages and costs amounting to £51. 1. 4.  
in all.

(Sgd.) F. C. FULLER,  
C.C.A.

20 23/IX/1916.

SUBSEQUENT ORDER—

Pay £43. 5/- to Kwamin Ashanti and the balance to those who  
deposited the money. Kojo Adai will then owe Kwamin Ashanti £3. 17. 2d.

(It'd.) F. C. F.  
10/10/16.

Certified True Copy.  
(Sgd.) F. C. FULLER,  
C. C. A.

30 " A. " *Tendered in evidence, accepted and marked " A " in re Kobina Atta,  
Omanhene of Nkwanta v. Kwabena Nimo of Akrampa-Winisu.*

(It'd.) H. E. A.,  
Registrar.  
21/9/30.

Exhibits.

Defendant's  
Exhibit  
" D "   
(Part of).

Judgment  
of Sir F.  
C. Fuller in  
the Chief  
Com-  
missioner's  
Court in  
Chief Kojo  
Adai v.  
Chief  
Kwamin  
Ashanti,  
23rd  
September,  
1916.

Order,  
10th  
October,  
1916.

Exhibits

Exhibit  
" D "

(Part of).

Judgment  
in Chief  
Com-  
missioner's  
Court in  
Chief Kojo  
Adai v. Chief  
Kwamin  
Ashanti (&  
another),  
by Sir F.  
C. Fuller,  
11th  
February,  
1917.

## Defendant's Exhibit.

" D " (part of).—Judgment in Chief Commissioner's Court in Chief Kojo Adai  
v. Chief Kwamin Ashanti (and Another) by Sir F. C. Fuller.

No. P.P. 283/15.

Tredai " B. "

CHIEF KOJO ADAI

v.

CHIEF KWAMIN ASHANTI and CHIEF AKWESI WIASAW, *Appellants*.

## JUDGMENT.

This is in fact an appeal by the two separate Defendants and will be  
treated by me as two separate appeals. 10

1.—Chief Kwamin Ashanti appeals against a decision of the  
Commissioner, Southern Province, ordering him to pay tribute to Pekki  
for farms on Pekki land.

After hearing the evidence I have no doubt whatever that these  
farms were originally on land that was always farmed by the Tredai people.

By the Chief Commissioner's decision however this land is now Pekki  
land, and the Tredais must give up all claim to ownership of it.

As it was originally theirs I decide that they may continue on their  
existing farms and pay no rent for them.

No further farms are to be made by either side on the others land. 20

As Appellant does not succeed in entirety there will be no order as to  
costs. He will be refunded the £25 he deposited for leave to appeal.

2.—Akvesi Wiasaw appeals against the Commissioner, Southern  
Province, Ashanti's decision that this farm is on land given to Pekki, and  
that therefore he must pay rent.

After inspecting the land with the Commissioner, Southern Province,  
Ashanti, we both agree that it belongs to Esumeja and not Pekki. This  
boundary was not settled by the Chief Commissioner, Ashanti, and I take  
this opportunity of doing so. The claim of neither side can be admitted  
in its entirety and a compromise is adopted which will be as follows :— 30

From

Ashanti M.P. No. N60/1916.

CHIEF KOJO ADAI OF PEKKI

v.

CHIEF KWAMIN ASHANTI OF TREDEH.

*Pekki-Tredeh Boundary Dispute.*

\* \* \* \*

All these villages and farms will be considered to be on Pekki lands.

Each cocoa farm will pay an annual nominal tribute of one shilling per  
 10 cocoa farm to the Chief of Pekki who will allow the people to remain in  
 undisturbed possession of their villages and farms.

\* \* \* \*

(Sgd.) F. C. FULLER,  
 C.C.A.

Imbiem,

11.2.17.

Certified True Copy.

(Sgd.) HENRY PREMPEH,  
*for Registrar,*  
 Asantehene's Divisional Court "B."  
 25/8/37.

20

Exhibits.

Defendant's  
 Exhibit  
 "D"  
 (Part of).

Judgment  
 in Chief  
 Com-  
 missioner's  
 Court in  
 Chief Kojo  
 Adai v.  
 Chief  
 Kwamin  
 Ashanti (&  
 another),  
 by Sir F.  
 C. Fuller,  
 11th  
 February,  
 1917—  
*continued.*

**Defendant's Exhibit.**

"D" (part of).—Judgment in Chief Commissioner's Court in Chief Kojo Adai  
 v. Chief Kwamin Asante by Sir F. C. Fuller.

Exhibit  
 "D"  
 (Part of).

IN THE CHIEF COMMISSIONER'S COURT OF ASHANTI held at Pekki on the  
 22nd June, 1917, before His Honour FRANCIS CHARLES FULLER,  
 Esquire, Chief Commissioner of Ashanti.

Judgment  
 in Chief  
 Com-  
 missioner's  
 Court in  
 Chief Kojo  
 Adai v.  
 Chief  
 Kwamin  
 Ashante, by  
 Sir F. C.  
 Fuller,  
 22nd June,  
 1917.

After an inspection of the villages in dispute (i.e. the twelve villages  
 belonging to Tredeh :—Esumenum, Chineboase, Ejuman, Dente, Winsa,  
 30 Amosful, Nkwanta, Winisu I, Winisu II, Jakobin, Obuokrum and  
 Odumase),

THE COURT is of opinion that these are all Tredeh villages built upon  
 land that was common to both Tredeh and Pekki and that the inhabitants  
 should remain in undisputed possession thereof and of all their plantations.

The Order made by the Court on the 7th February, 1917, that these  
 Tredeh farms should pay a tribute of 1/- per farm to Pekki is therefore  
 rescinded. No tribute will be payable by these farms.

Per contra, no cocoa farms shall extend *South* of their present position  
 and no new villages will be founded South of the Tredeh-Winisu Road  
 40 until the boundary line between the two places has been defined.

A boundary line between Tredeh and Pekki farms should be laid down



Exhibits.  
 Defendant's  
 Exhibit  
 "D"  
 (Part of).

as soon as a survey of the land has been completed, but the boundary laid down by the Chief Commissioner on the 20th February, 1912, between Chief Kwatchi Kofi of Asafu and Pekki shall remain the administrative boundary between the Central and Southern Provinces.

Judgment  
 in Chief  
 Com-  
 missioner's  
 Court in  
 Chief Kojo  
 Adai v.  
 Chief  
 Kwamin  
 Ashante, by  
 Sir F. C.  
 Fuller,  
 22nd June,  
 1917—  
*continued.*

22.VI.17.

(Sgd.) F. C. FULLER,  
 Chief Commissioner, Ashanti.

"C."

*Tendered in evidence by Chief Kwame Asante in the matter of his Application for Interpleader Summons in re case of Kobina Atta, Omanhene of Mansu Nkwanta v. Kobina Nimo, Odikro of Akranpa Winisu—Marked "C."* 10

(*It'd.*) H. E. A.,  
 Registrar.  
 21/8/30.

Defendant's  
 Exhibit  
 "D"  
 (Part of).

**"D" (part of).—Statements of Tredeh-Pekki Boundary and Tredeh-Mpatasie Boundary.**

**TREDEH-PEKKI.**

Statement  
 of Tredeh-  
 Pekki  
 Boundary  
 and Tredeh-  
 Mpatasie  
 Boundary  
 (undated).

Starting from Tredeh on the Tredeh-Pekki Road to a spot known as Inyinasah Nkwanta thence along to Yarnah village and from thence to Samansuku village until you cross the Abofun streamlet thence to Abrensi Nkwanta Road then follow the road until you reach the river known as Winni and from thence to Winni village No. 2—the land lying on the right hand side belonging to Tredeh and that on the left hand side to Prahmiasi belonging to Pekki. 20

**TREDEH-MPATASIE.**

Starting from Winnie River thence to a village called Katamtu thence to Teseman old gold mine until you reach Jechi—the land on the right hand side belonging to Tredeh and that on the left hand side to Mpatasie.

## Defendant's Exhibit.

"E."—Executive Decision of Sir F. C. Fuller in Tredeh-Pekki Boundary Suit.

Reference Ashanti.

M.P. No. 60/1916.

SUBJECT.

PEKKI-TREDEH BOUNDARY DISPUTE.

CHIEF OF PEKKI *vs.* KWAMIN ASHANTI (APPEAL CASE),

PEKKI  
v.  
TREDEH } Boundary Dispute.

10 Civil Record Book Vol. III, Pages 329/331.

Tredeh appeals against a decision given by the Court on the 11th February, 1917, ordering certain Tredeh villages to pay tribute to Pekki. Owing to the grounds on which the appeal is based the Chief Commissioner consents to a revision of the case and determines to inspect the villages in question, which he does on the 20th June, 1917.

\* \* \* \* \*

After an inspection of the villages in dispute (i.e. the twelve villages belonging to Tredeh :—Esumenum, Chineboase, Ejuman, Dente, Winsa, Amoafu, Nkwanta, Winisu I, Winisu II, Jakobin, Obuokrum and Odumase) The Court is of opinion that these are all Tredeh villages built upon land that was common to both Tredeh and Pekki and that the inhabitants should remain in undisputed possession thereof and of all their plantations.

20

The Order made by the Court on the 7th February, 1917, that these Tredeh farms should pay a tribute of 1/- per farm to Pekki is therefore rescinded. No tribute will be payable by these farms.

Per contra, no cocoa farms shall extend *South* of their present position and no new villages will be founded South of the Tredeh-Winisu Road until the boundary line between the two places has been defined.

*For tribal boundary between Tredeh and Pekki, see Folio 186, Vol. 1, Executive Decision Book.\**

30

A boundary line between Tredeh and Pekki farms should be laid down as soon as a survey of the land has been completed, but the boundary laid down by the Chief Commissioner on the 20th February, 1912, between Chief Kwatchi Kofi of Asafu and Pekki shall remain the administrative boundary between the Central and Southern Provinces.

22/VI/17.

(Sgd.) F. C. FULLER,  
Chief Commissioner, Ashanti.

I Hereby Certify that the above is a true copy of Executive Decision given by Sir Francis C. Fuller, Chief Commissioner, Ashanti, on the 22nd day of June, 1917.

40

Dated at Kumasi this 8th day of February, 1930.

(Sgd.) JOHN MAXWELL,  
Chief Commissioner, Ashanti.

I Hereby Certify that the foregoing is a true copy of an Executive Decision given confirmed or approved by the Chief Commissioner and officially recorded in the Boundary Book.

(Sgd.) G. HADOW,  
Secretary to C.C.A.

\* From their position in the Manuscript Record these words in italics may be merely a note.

Exhibits.

Defendant's  
Exhibit  
"E."

Executive  
Decision of  
Sir F. C.  
Fuller in  
Tredeh-  
Pekki  
Boundary  
Suit,  
22nd June,  
1917.

22nd June,  
1917.

Exhibits.

Defendant's  
Exhibit  
" F " (Part of).

**Defendant's Exhibit.**

**" F " (part of).—Agreement between Chief Kwame Asante and Osei Yao and Others.**

Agreement  
between  
Chief  
Kwame  
Asante and  
Osei Yao  
and others,  
3rd  
September,  
1923.

MEMORANDUM OF AGREEMENT made this 3rd day of September, 1923, between Kwame Asante, Chief of Tredah in the Eastern Province of Ashanti, with the consent and concurrence of the Elders, Captains, and Principal Members of his family and successors in connection with the Tredah Stool, hereinafter called the Landlord of the one part, and Osei Yao, Chief of Sampasso, with Yao Nsia, Kojo Korkor, Kojo Forjuor, all of Winisu Village in the Eastern Province of Ashanti, hereinafter called the Tenants of the second part witnesseth :— 10

1.—That the Landlord has agreed to permit and the Tenants have agreed to retain and keep on with that portion of Winisu Land where the Tenants with their People have already made farms and cocoa plantations, in consideration of the sum of One hundred and ten Pounds (£110) contributed by the said Tenants towards the Tredah Stool debts.

2.—In consideration thereof, the Landlord has further agreed to charge and the Tenants also have agreed to pay to the said Landlord and to his successors an annual tribute of two pounds per head (each) in case of male members and ten shillings per head (each) in case of female members in respect of the said land assigned to the Tenants for farms and cocoa plantations. 20

3.—The Landlord further agrees and covenants with the Tenants that as long as they remain and live on that portion of Winisu land referred to and as long as they fulfil the conditions set forth in Clause 2 (two) the Tenants are not to pay any tax or donation whatsoever towards the said Tredah Stool.

4.—The Tenants also agree to depute a representative from Chief Osei Yao at the end of each year to assist the representative of the Landlord to collect from the Tenants the moneys as set down in Clause 2 (two). Should the Tenants at the request of the Landlord fail to provide a representative, the Landlord shall have the right to freely enter upon claim and demand the said tributes without further notice to, or interference by any person or persons. 30

5.—That should the Tenants fail to fulfil or observe the provisions of this Agreement, the Landlord shall have the power to institute legal action against the said Tenants for Breach of Agreement.

In Witness Hereof both parties have hereunto set forth their hands the day and year first above written. Exhibits.

This Agreement having been first read and interpreted to both Parties by T. R. Wright in the Twi Language and they seemed to understand its purport have set their 10 marks in the presence of—	CHIEF KWAME ASANTE	Their	X	Defendant's Exhibit "F" (Part of). Agreement between Chief Kwame Asante and Osei Yao and others, 3rd September, 1923— <i>continued.</i>
	SAFOHENE KWAKU NUBIN		X	
	LINGUIST KWAME DAPAH		X	
	SAFOHENE KWABINAH AGOBONI		X	
	SUBCHIEF KOFI NANTI		X	
	CHIEF OSEI YAO		X	
	YAO NSIA		X	
	KOJO KORKOR		X	
	KOJO FORJUOR		X	
	Witnesses :—	Their		
HEAD CHIEF KOBINA KUFUOR		X		
SUB-CHIEF KRAH ENIM		X		
YAW BOATIN		X		
ODIHYIA CUDJOE POKU		X		
OSEI YAO II.		X		
ADJUAH SERWAH		X		
	Marks			

20 Witness to Marks :—  
 (Sgd.) T. R. WRIGHT.  
 (Free of Charge.)

**Defendant's Exhibit.**

**"G."**—Judgment in Chief Commissioner's Court by Mr. Bartlett in Chief Kwamin Akowuah of Asafo v. Chief Kwame Kyem of Bantama. Defendant's Exhibit "G."

30 IN THE CHIEF COMMISSIONER'S COURT OF ASHANTI, held at KUMASI, this 30th day of November, 1927, before His Worship H. E. G. BARTLETT, Esquire, Commissioner appointed to preside over Chief Commissioner of Ashanti's Court, vide Ashanti Order No. 4 of 1927, by the Governor, dated 23rd September, 1927. Judgment in Chief Commissioner's Court by Mr. Bartlett in Chief Kwamin Akowuah of Asafo v. Chief Kwame Kyem of Bantama, 30th November, 1937.

CHIEF KWAMIN AKOWUAH  
*v.*  
 CHIEF KWAMI KYEM.

From Folio 405.

Parties present as before—

**JUDGMENT.**

In this case the Plaintiff Chief Kwamin Akowuah of Asafo sues the Defendant Chief Kwamin Kyem of Bantama, claiming that the boundary

Exhibits. between his lands known as Asafu lands and the lands of the Defendant  
 Defendant's known as Bantama lands is as follows :—  
 Exhibit “G.” “ Starting from Kumasi the bush path which leaves Kumasi  
 “ in the South-Westerly direction via Patasi, Nsama, Bruaso,  
 “ Akosuma, Techimang, Tichibong, Womasi, Trebuom and thence  
 “ to the spot where the Kumasi Mansu Nkwanta bush path crosses  
 “ the Wini River—That the land to the South of the line is Asafu  
 “ land and that the land to the North thereof is Bantama land.”  
 Judgment in Chief  
 Commissioner's Court by Mr. Bartlett in Chief  
 Kwamin Akowuah of Asafu v. Chief Kwame Kyem of Bantama, 30th November, 1937—  
*continued.*

To this the Defendant pleaded :—“ The boundary is not so. It is  
 “ one big tract of land without any boundary.” He offers as an **10**  
 alternative the boundary which is marked as his on the plan which has  
 been prepared in this case and which he states is the line to which his  
 people have been farming from time immemorial. This dispute appears,  
 from the evidence, from time to time to have been before the Kings of  
 Ashanti with no definite results.  
 In 1906 (C.C.A's Civil Record, Vol. II, page 107) a claim was made  
 by Chief Kwatchi Kofi, Plaintiff's predecessor, against Chief Kwamin  
 Bosi and Atta Kojo's subjects of the Bantama Stool for £100 being value  
 of 1/3rd rubber collected by Defendants and their subjects on Plaintiff's **20**  
 land. From the evidence then led it is clear that this claim relates to the  
 land now in dispute between the parties. The Head Chief of Bantama  
 appears to have intervened on behalf of his subjects and on 19th April,  
 1907, the Chief Commissioner of Ashanti decided that all land on the  
 left of the main road leading “ from Kumasi to Nkwanta via Aburaso,  
 “ Techiman, Terebuom, shall belong to the Stool of Asafu but in  
 “ consideration of the fact that several villages belonging to the Bantama  
 “ Stool are established on Asafu lands and have been so established for  
 “ many years, these villages will continue to serve Bantama for the space  
 “ of 7 years from the 1st of January, 1907, after which date they must **30**  
 “ pay the ordinary tribute of snails and game to the Chief of Asafu.” No  
 mention is made of cocoa tribute, but this is explained by the fact that the  
 cultivation of cocoa in Ashanti was then in its infancy. The boundary as  
 laid down is that now claimed in this action, and is shown by a Blue line  
 on the plan put in as Exhibit “ A.”  
 It should be mentioned that (no doubt by a slip) on the plan the wrong  
 colour has been assigned to the Plaintiff's claim : reversing these colours,  
 the plan is perfectly clear.  
 The seven years allowed to the Bantama free from tribute expired on  
 1st January, 1914, and by this time cocoa had become an important crop **40**  
 on the land in dispute.  
 In 1916 and 1917 the Plaintiff entered into various written agreements  
 with cocoa farmers in respect of their farms on the land in dispute, and  
 states that the Bantama subjects willingly paid tribute to his Stool.  
 The subject came up in 1919 and on 25th April of that year the Chief  
 Commissioner of Ashanti directed “ Bantama people on Asafu land to  
 “ pay tribute to Asafu and vice versa.”  
 Further complaints arose relating to Tredah, Kukubin, Apimanim and

Gyachi. Of these Tredeh is not shown on the plan Exhibit "A" and would appear from the general map to be outside the boundary of the lands claimed by Plaintiff in this action. Kukubin is claimed by Plaintiff as his own village, but from the evidence of the Odikro which I took there, it appears to be inhabited and farmed by subjects of both parties and also by Gyasis who outnumber the other two put together. It is agreed that Apemanim and Gyachi are villages on the land in dispute and all inhabited entirely by Bantamas. The Chief Commissioner of Ashanti on 24th October, 1919, directed: "Tell both Chiefs that owing to a long standing  
 10 "arrangement these Bantama villagers can remain where they are and "neither side need pay tribute except in the case of villages built since "my decision of 19th April, 1907. My Minute of 25/4/19 is hereby "cancelled."

Notwithstanding this the Plaintiff sued for and recovered judgment in 1924 and 1925 before the Chief Commissioner of Ashanti for tribute payable under the agreements before mentioned. Amongst those against whom judgments were given were persons living at Kukubin, Apemanim and Gyachi. The amounts awarded under these judgments were paid but since then no further tribute has been paid—hence the present action.

20 There is no doubt in my mind that the Chief Commissioner of Ashanti's decision of 1907, though it is not entered in the Civil Record Book, arose out of the case started in 1906 and was intended to settle the claim then made. Up to 1917 or thereabouts it appears further to have been accepted by both parties, and I do not think that the Defendant seriously contends that the boundary should be re-opened now.

His whole grievance is tribute. He states in evidence in answer to questions put by the Court, "I recognise that by Sir F. Fuller's decision  
 30 "of 1907 the land in dispute were given to Akowuah, but I say that my "people farming on that land should not pay any tribute. There are "subjects of Plaintiffs farming on land belonging to me, if they would "pay tribute, I should be content to let my people pay tribute" and in cross-examination, he states, "When you leased a concession on the land, "I did not interfere because Government had laid down boundary—if "you did it now I should not interfere."

The boundary Defendant suggests has never been agreed to by anybody. It is perfectly clear that the boundary settled by Sir F. Fuller has been accepted as determining the ownership of the land, and I decline to interfere with it. There remains the question of tribute. Cocoa tribute is not mentioned in the original decision, probably for the reason suggested  
 40 that cocoa was then in its infancy. In 1919 the land in dispute had not been closely surveyed and I cannot believe that the Chief Commissioner by his Order intended for all time to deprive the Plaintiff of the profits of land which was undoubtedly his.

Moreover he has recovered judgment against various farmers all of whom on being sued pleaded liable.

A survey has now been made and there can be no difficulty in deciding on which side of the line any farm lies. It was urged upon me that the

Exhibits.  
 —  
 Defendant's  
 Exhibit  
 "G."  
 —  
 Judgment  
 in Chief  
 Com-  
 missioner's  
 Court by  
 Mr.  
 Bartlett in  
 Chief  
 Kwamin  
 Akowuah  
 of Asafo v.  
 Chief  
 Kwame  
 Kyem of  
 Bantama,  
 30th  
 November,  
 1937—  
*continued.*

Exhibits.  
—  
Defendant's  
Exhibit  
"G."  
—

Judgment  
in Chief  
Com-  
missioner's  
Court by  
Mr.  
Bartlett in  
Chief  
Kwamin  
Akowuah  
of Asafo v.  
Chief  
Kwame  
Kyem of  
Bantama,  
30th  
November,  
1937—  
*continued.*

Plaintiff's and Defendant's people are one and that neither should pay tribute to the other. This, however, I am not prepared to accept, they are distinct clans, though both are Kumasis. Moreover, Defendant has admitted that, if he could collect tribute from Plaintiff's people, he would have no objection to the reverse process.

I therefore declare that the boundary between Asafo and Bantama lands is the line shewn in Blue on the Plan put in as Exhibit "A," the land to the South of that line belonging to Asafo and to the North of that line belonging to Bantama, and I order that the usual cocoa tribute shall be payable to the Asafo Stool by Bantama subjects owning farms to the South 10 of that line and to the Bantama Stool by Asafo owning farms to the North of that line. The Plaintiff is to be at liberty if he so desires at his own expenses to erect pillars along the line outside the Kumasi Town Boundary. If he desires to do so, he must give notice to the District Commissioner, Kumasi, under whose supervision pillars shall be erected.

On Exhibit "A" there are overlapping claims shewn, with *these* I am not concerned in this action and my judgment can of course only affect the parties before me.

Plaintiff, however, states that he admits some claims on the part of these Chiefs, and I can only express the hope that they will not require 20 adjudication by the Court.

As regards costs, the survey should be equally beneficial to both parties and I order that the expense of it shall be borne by the parties equally, as indeed has already been done. Apart from this, Plaintiff's costs are to be taxed and paid by Defendant.

(Sgd.) H. E. G. BARTLETT,  
30/11/1927.

Chief Kwamin Akowuah }  
v. } Taxed costs allowed at £40. 11. 0.  
Chief Kwamin Kyem }

30

(It'd.) H. E. G. B.  
12/12/27.

Certified True Copy.  
(Sgd.) A. PREMPEH,  
*Registrar,*  
C.C.A's Court, Ashanti.



**Defendant's Exhibit.**

**" F " (part of).—Promissory Note from Yaw Duku to Chief Kwame Asante.**

**Exhibits.**  
 ———  
**Defendant's**  
**Exhibit**  
**" F "**  
 (Part of).  
 ———  
 Promissory  
 Note from  
 Yaw Duku  
 to Chief  
 Kwame  
 Asante,  
 14th April,  
 1932.

TWENTY days after date hereof I the undermarked by name Yaw Duku of Tredah-Winisu in Kumasi District do hereby faithfully promise to pay to Chief Kwame Asante of Tredah aforesaid cash the sum of One hundred Pounds (£100) being part-payment of the sum of Two hundred Pounds (£200) which due to him by me on nine years rentals.

In default of making settlement steps for recovery is essential.

Dated at Kumasi-Tredah this 14th day of April, 1932.

10

YAW DUKU  
 Debtor (1)

His  
 X  
 Mark.  
 Their

Sureties. { (2) KWAMI SAMPENEY X  
 (3) YAW ASARE X  
 (4) KWEKU NKRUMA X  
 (5) ..... Marks.

Witnesses :—

20

KWEKU NYAMI-NA-OYEI X  
 KODWO NIMFUOR X  
 KWAMI MOSI ANKOBIA X  
 KWAMI DAPAA X  
 Marks.

Their Left Thumb Prints :— (Print)  
 (Print)  
 (Print)  
 (Print)

Writer and Witness to Marks :—

30

(Sgd.) D. KWABU,  
 (Free of Charge),  
 Stool Clerk, Tredah.

*Exhibit " C "—Tendered by Chief Kwame Asante of Tredah in re Chief Asafu Boakyi II v. Himself.*

(It'd.) I. K. A.,  
 Registrar.  
 Asantehene's Divl. Court.  
 26/3/36.



**Exhibits.**

Defendant's  
Exhibit  
" F "  
(Part of).

**Defendant's Exhibit.**

Agreement between Chief Kwame Asante and Yaw Senya.  
5th December, 1932.

**" F " (part of).—Agreement between Chief Kwame Asante and Yaw Senya.**

AGREEMENT made and entered into this 5th day of December, 1932, between Chief Kwame Asante of Tredeh called the Landlord, and Yaw Senya of Atasumasu hereinafter called the Tenant whereby it is agreed as follows :—

1.—That the Landlord has agreed to give or sublet to the Tenant a piece or parcel of land situate at Tredeh-Nkwanta and the said Tenant has also agreed to accept same for the purpose of cultivation.

2.—That the said Tenant shall be at liberty to cultivate on this piece or parcel of land given him by the Landlord up to his lifetime without the Landlord or any relative interfering with this Tenant while on this land in any respect. 10

3.—That the said Tenant shall be liable for the payment of a fee of £8. 0. 0 every year to the said Landlord or any of his representative after his death, and under no circumstances whatever shall the agreement be altered, as it should be considered always as a standing agreement with validity.

4.—That in the event of this Tenant failing payment regularly of the above fee yearly and owing to this negligence such fee will grow into arrears, the said Landlord shall have full legal power to sue the said Tenant promptly in any Court for the recovery of such arrears. 20

5.—That after the death of this Tenant any successor of the deceased property shall have right to inherit also the farms on this land, but before the said inheritor does so unless he has approached the Landlord to this effect for introduction in accordance with Native Customary Laws and rights but there should be no alteration of the standing Agreement in respect of the land in question in any way.

6.—That the said Tenant shall have no right to sell or mortgage this land to any person or Company without first informing the said Landlord for approval. 30

Signed by the parties concerned this 5th day of December, 1932. Exhibits.

- |   |       |  |  |
|---|-------|--|--|
|   | Their |  |  |
| 1. CHIEF KWAME ASANTE,<br>(Landlord of Trede) | X     |  | Defendant's<br>Exhibit<br>" F "        |
| 2. YAW SENYA,<br>(Tenant of Atasumasu)        | X     |  | Agreement<br>between<br>Chief<br>Kwame |

(1) Thumb Print.      (2) Thumb Print.  
(Left Thumb Prints)

Marks. Kwame  
Asante and  
Yaw Senya,  
5th  
December,  
1932—  
*continued.*

10 Witnesses :—

	Their
KOJO AKRO	X
YAW BERKU	X
CHIEF KWASI AMOAKU	X
CHIEF KWABENA BEKWE	X
	Marks.

W. & W. to Marks :—

(Sgd.) R. NELSON,  
L.P.L.W. 1538/32.  
(In Duplicate)  
Bantama-Kumasi.  
Fee 2/-.

20

# In the Privy Council.

No. 24 of 1944.

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

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BETWEEN

CHIEF KWAME ASANTE, Tredehene  
for and on behalf of his Stool  
*Defendant-Appellant*

AND

CHIEF KWAME TAWIA, for and on  
behalf of the Asafu (otherwise  
Akwamu) Stool of Kumasi (substituted  
for Chief Asafu Boakyi II,  
Akwamuhene) ... *Plaintiff-Respondent.*

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## RECORD OF PROCEEDINGS.

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A. L. BRYDEN & CO.,  
331-333 Bank Chambers,  
Southampton Buildings,  
Chancery Lane, W.C.2,  
*Solicitors for the Appellant.*

SOLE, SAWBRIDGE & CO.,  
Capel House,  
62, New Broad Street, E.C.2,  
*Solicitors for the Respondents.*