

GH 4 G.2.

21, 1953

No. 9 of 1951.

# In the Privy Council.

## ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL, LAGOS,  
NIGERIA.

UNIVERSITY OF LONDON  
W.C.I.

- 9 FEB 1954

BETWEEN

ADEGBITE, The Owa-Ale of Ikare . . . . .

Appellant  
SCHOOL OF ADVANCED  
LEGAL STUDIES

AND

ALASAN BABATUNDE, substituted for Adu Jibrilu,  
10 decd., The Olukare of Ode . . . . .

Respondent. 3377

## Case for the Appellant.

RECORD.

1. This is an Appeal from a judgment of the West African Court of Appeal dated the 12th May, 1950, allowing the appeal of one Adu Jibrilu, the Olukare of Ode, against the judgment of Pollard, Acting Puisne Judge, in the Supreme Court of Nigeria dated the 14th October, 1949, and setting aside an injunction granted by the acting judge to restrain the said Adu Jibrilu from wearing a crown and performing functions and ceremonies and offices pertaining to a crowned Owa-Ale and enjoying the privileges and perquisites which, according to Native  
20 Law and Custom, exclusively attached to a crowned Owa-Ale. The said Adu Jibrilu has died since the said judgment and by an Order-in-Council dated the 11th February, 1953, the present Respondent was substituted in his place.

2. The principal issues in this appeal are as follows :—

(A) Whether the Supreme Court had jurisdiction to entertain the suit or whether it was precluded from doing so by Section 2 of the Appointment and Deposition of Chiefs Ordinance.

(B) Whether the Supreme Court has jurisdiction to entertain a claim to a title, dignity or chieftaincy.

30 Section 2 (2) of the Appointment and Deposition of Chiefs Ordinance originally read as follows :—

“(2) The Governor shall be the sole judge as to whether any appointment of a chief or head chief as the case may be has been made in accordance with native law and custom.”

After amendment in 1945 the subsection read as follows :—

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

The full text of the Appointment and Deposition of Chiefs Ordinance, as amended, is annexed hereto together with the Chieftaincy Disputes (Preclusion of Courts) Ordinance, 1948, which was enacted after the commencement of these proceedings, and the material sections of the 10 Supreme Court Ordinance, 1945.

3. The Appellant became the Owa-Ale of Ikare after his father's death in 1920 and has continued to be the Owa-Ale of Ikare ever since. p. 89. On the 20th December, 1927, the acting Resident of Ondo Province addressed to the Secretary, Southern Provinces, a Memorandum asking for approval for the appointment of the Respondent as the Olukare, p. 89. District Head of Ikare and President of the Ikare Native Court. By Memorandum dated the 11th January, 1928, the acting Secretary of the Southern Provinces informed the Resident that he had been directed by p. 90. the Lieutenant-Governor to convey His Honour's approval for the said 20 appointment.

4. On the 8th October 1947 the Appellant submitted a petition through the District Officer, Owo, to the Resident, Ondo Province, maintaining that he alone was entitled to wear a crown in Ikare. He complained that the Olukare in September 1947 had worn a crown and had deprived him (the Appellant) of his salary and the land “in some respect” and all privileges due to an Oba. He therefore asked for an investigation in order to determine (1) who was the Oba of Ikare when Ikare came into existence in 1886, Owa-Ale or Olukare? (2) Who had the original crown after and before the advent of Europeans, Owa-Ale or Olukare? On the 30 25th October 1947 the acting Resident of Ondo Province addressed a letter to the Appellant referring to his said petition and stating that p. 94. “inquiries are being made in regard to your claim to wear a beaded crown, but I warn you that if, by your act in wearing a crown, to which your right has not been established, you thereby cause a breach of the peace, you will be held solely responsible.” On the 5th March 1948 the Appellant's Solicitors wrote to the District Officer complaining that he had p. 99. seized the Appellant's crown and bugle. On the 16th July, 1948, the acting Senior Crown Counsel Ibadan replied that after creating a disturbance at a meeting of the Akoko Council by causing his bugle to be sounded the 40 Appellant was asked to hand over his crown and bugle and these were placed on the table at which the District Officer was sitting. The letter continued as follows :—

p. 99, l. 22. “I am to inform you further that the crown and bugle will “be returned to the Ale on his application. At the same time, he “should take warning that it appears he is not entitled to use either “by native law and custom and that if he infringes native law and “custom in this respect, he renders himself liable to an action for “an injunction restraining their use.”

5. By Particulars of Claim filed in the supreme Court of Nigeria on the 21st July, 1948, the Appellant instituted

### THE PRESENT SUIT

10 seeking as against Adu Jibrilu a declaration that he, the Appellant, as the Owa-Ale of Ikare was by Native Customary Law the Natural Oba and Ruler of the whole Ikare and as such the only person entitled to wear a Crown and not Adu Jibrilu who was a subordinate chief under the Appellant. The Particulars alleged that Adu Jibrilu had wrongfully arrogated to himself the right of wearing a Crown and had been wrongfully ruling the Ikare people and enjoying the privileges thereto attached. The Appellant sought an injunction restraining Adu Jibrilu from wearing a Crown and performing the functions of Oba and Ruler and enjoying the said privileges.

20 6. On the 10th August, Protheroe, Ag. Puisne Judge, ordered that a Statement of Claim be filed within 21 days and a Defence 28 days after service of the Statement of Claim. Pursuant to the said order the Appellant filed a Statement of Claim dated the 27th August, 1948, in which he pleaded (*inter alia*) that on the 17th March, 1947, the District Officer had seized his crown and bugle on the pretext of inspecting the same. He further pleaded that by the assumption by the Respondent of the office of ruler of Ikare and by Adu Jibrilu's arrogation of the right of wearing the crown and the seizure of his crown and bugle he had suffered great damage and had been wrongfully deprived of and ousted from his office as the Owa-Ale and ruler of the whole Ikare and consequently of the privileges and emoluments thereto attached.

30 7. On the 1st June 1949 the Senior Crown Counsel of the Legal Department Ibadan, filed an affidavit deposing that "owing to inadvertance" the matter had been "lost sight of" and praying for an extension of time to file the Defence. On the 29th August, 1949, the Statement of Defence was received in the District Registry. It was pleaded (*inter alia*) that Adu Jibrilu's predecessors were the natural rulers of Ikare and wore crowns from time immemorial; that the Appellant's crown and bugle were seized by the Akoko Council because the Appellant had ignored the warnings of that Council that the Appellant was not by rank entitled to a Crown or bugle and that the Appellant was later informed (*sic*) to apply for the crown but he must not wear it. Paragraphs 11 and 12 of the Statement of Defence were as follows:—

40 "11. The Defendant avers that he is a chief within the meaning of the Appointment and Deposition of Chiefs Ordinance (No. 14 of 1930); also that his appointment as the Olukare of Ikare was approved in 1928 by the Lieutenant-Governor, Southern Provinces, and that he is a member of the Olukare and Ikare Group Council which is a native authority subordinate to the Akoko Federal Native Authority.

"12. The Defendant will contend at the trial that this Honourable Court has no jurisdiction to try this action."

p. 26.

8. On the 7th September, 1949, Pollard, Ag. Puisne Judge, extended the time for the delivery of the defence to the same date and fixed the 3rd October, 1949, for the determination of the issue as to whether or not the Supreme Court of Nigeria had any jurisdiction to hear and determine this action.

9. On the 4th October, 1949, Counsel addressed the acting judge on the issue of jurisdiction. The learned Judge's note of the argument by counsel for the Appellant includes the following :—

“ This is an action in which the Court is asked to determine  
 “ the meaning given by Government to the words The Olukare 10  
 “ and now as to Owa Ale, the Plaintiff was since 1921 the Owa Ale.  
 “ He has been recognised by Government as such. Defendant  
 “ has never claimed to be Owa Ale. The Plaintiff still is the Owa  
 “ Ale. That is a title which has been used by Government.  
 “ That is the title of the President of the Ikare Native Court  
 “ Ale of Ikare. Documents will show that Plaintiff was addressed  
 “ in that capacity by Government.

“ The Plaintiff's case is the Government ceased in 1946 to  
 “ attach to the title of Owa Ale of Ikare its full powers and  
 “ privileges—side-tracked the Plaintiff—allocated to the title 20  
 “ Olukare the powers and privileges of the Owa Ale and attaching  
 “ them to the title Olukare vested them in the Defendant. Up to  
 “ that stage the Plaintiff alone was wearing a crown : it was seized  
 “ by the District Officer, and is still with Government.”

pp. 33-43.

10. On the 7th October, 1949, the acting Judge gave judgment on the issue of jurisdiction. After citing the terms of Ordinance No. 13 of 1930 as amended by Ordinance No. 20 of 1945 he held as follows :—

p. 37, l. 30.

(A) Section 2 (2) as amended meant that the Governor was not in law the sole judge as to whether any appointment of a chief had been made in accordance with native law and custom 30 until after due inquiry and consultation with the persons concerned in the selection.

p. 37, l. 41.

(B) Since the Governor was designated the sole judge he could not delegate to any administrative or other officer the powers conferred upon him by the sub-section.

p. 38, l. 26.

(C) Until the stage had been arrived at when the Governor became vested with the power to adjudicate, the authority of the Courts remained (*sic*) supreme to entertain litigation on all disputatious matters.

p. 38, l. 29.

(D) Although Counsel for the Defendant had cited the second 40 decision of the West African Court of Appeal delivered on the 4th December, 1948, in *Lagunju v. Olubadan-in-Council and Laoye*, he (the acting judge) proposed to adopt the construction placed upon sub-section (2) in an earlier judgment of the West African Court delivered on the 10th November, 1947, on the same issue between the same parties.

(E) There was considerable assistance to be derived from the decisions of the House of Lords in the interpretation of those sections of the Friendly Societies Acts which provided that disputes between the Societies and any member should be referred to arbitration. Just as the English Courts had a right to exercise their jurisdiction where there had been a breach of a Society's rules or a denial of natural justice so the Supreme Court of Nigeria had jurisdiction to entertain causes based on the violation, however innocent, of subsection 2. pp. 39-42.

10 Finally the learned judge said :

p. 42, l. 44.

“ The final matter to be considered is—what have these two Ordinances to do with the dispute between these parties ? I repeat my summary of the outstanding questions between the parties as they are now known to the Court :—

1. Is there according to Native Law and Custom, any title in Ikare formerly known as Owa Ale ?

2. Did the chief, if any, enjoying that title have according to Native Law and Custom the right to wear a Crown in Ikare ?

20 3. If he did, had anyone except him a right according to Native Law and Custom ?

4. Had the Olukare the right, according to Native Law and Custom to wear a crown in Ikare ?

5. Has the Olukare such a right according to Native Law and Custom ?

6. What in the Order of precedence at Ikare is the rank of the Chief called the Olukare according to Native Law and Custom ?

30 7. If there was in Ikare an Owa Ale and The Olukare, which of the holders of those titles was according to Native Law and Custom the recognised Native Head and Ruler of Ikare ?

40 As not a single one of those questions could by the most elastic stretch of the most fertile imagination come within the provisions of those two ordinances, only one decision is possible and that is that this Court has full and unfettered jurisdiction to deal with this action, I order that the Defendant whatever the final result of this action may be, shall in any event pay the Plaintiff's costs on this issue, which having regard to the three separate days devoted to this determination I assess at twenty guineas and I further order that those twenty guineas shall not be paid till the action is finally disposed of by this Court. It is also ordered that in the event of the Defendant succeeding on the whole action, this sum of twenty guineas is to be set off against his costs, if any.”

After the aforesaid judgment had been delivered Counsel for Adu Jibrilu stated that his client had instructed him to take no further part in the proceedings and that, as the question of jurisdiction had been decided

against him, his client had instructed him to appeal. The Court then ordered that the Magistrate, grade I, of Benin City should take the depositions of certain other chiefs namely the Alafin of Oyo, the Oni of Ife and the Olowo of Owo. The Oni of Ife was included on the application of Counsel for the Respondent.

p. 49.

11. On the 12th October, 1949, Counsel for Adu Jibrilu moved the Court for special leave to appeal against the interlocutory judgment on jurisdiction and, on such leave being refused, stated that there would be no appearance of the Respondent or his Counsel at the resumed hearing. Oral evidence was then called on behalf of the Appellant. The evidence 10 of the Appellant himself included the following passages :—

pp. 51-2.

p. 50, l. 11.

“ As Owa Ale I was first paid £5 a month. It was brought from Owa from the European. He left Ikamu for Kabba : and then to Igbirra : then to Ifon and then to Owo. The £5 was my salary. I do not get the £5 now. A clerk of the Native Court Ikare used to bring me the £5. I used to give judgment according to my instructions.”

\* \* \* \* \*

p. 50, l. 29.

“ Oluposere and Oshode were the persons to appoint. They put this crown on my head. The European who resided at Ifon called Lamotte came to Ikare on my father's death. I told him 20 of my father's death and that I wished to take up his post. He asked whose duty it was to crown. I told him it was the duty of Oluposere and Oshode. After that I was crowned before Lamotte and took up the title of Owa Ale. It was after that I received £5 a month.

This crown was taken from me about 1½ years ago. Olukado together with his counsellors and an European man came and seized my crown. The crown was seized in the Court.

I do not always wear the crown when I go to Court. I was called from my house on this day. A messenger came to my house 30 and told me that the European is calling me in the Office. I went to his office. He was the District Officer who came all the way from Owo. He asked me whether the quarrel between me and Olukado has been settled. I told him no. I was asked to go home. When I was getting from my car a P.C. told me I was being called again. I went to the Barracks to meet the District Officer, the Olukado and councillors.

The District Officer told me to come near him : I did so and he removed the crown from my head that I was wearing. I told him that that crown is not to be removed from my head : I am 40 telling you that.”

\* \* \* \* \*

p. 54, l. 18.

“ I wrote several complaints to the Resident and the District Officer at Owo. I asked my children to do so. I have come to Court because I could not get satisfaction.”

Among other witnesses the Appellant's Counsel called Bayode a retired native Court Clerk who deposed *inter alia* as follows :—

“ The persons who attend Ikare Native Court get sitting fees. p. 54, l. 32.  
 “ The President gets a salary. The President of the Ikare Native  
 “ Court gets more than the other judges. The Owa Ale according  
 “ to Native Law and Custom is the President of that Court. I am  
 “ a native of Owo. As an Owa Ale the Plaintiff would have to  
 “ perform many ceremonies. He would as a consequence receive  
 “ many gifts : oil, fowls and so on.”

10 12. The three chiefs whose evidence was taken by the Magistrates  
 in accordance with Section 183 of the Evidence Ordinance No. 27 of 1943  
 deposed *inter alia* as follows :—

(A) Adeyemi II, the Alafin of Oyo, deposed that he knew pp. 56-7.  
 Owa-Ale to be the Oba and the natural ruler of Ikare ; that time  
 immemorial the Owa-Ale had worn a crown ; that there was no  
 such title as the Olukare ; and that the Oluka Odo (i.e. the  
 Respondent) had no right to wear the crown.

20 (B) Aderemi, the Oni of Ife, said that as far as his knowledge p. 58.  
 went there was no title at Ikare according to Native Law and  
 Custom known as Owa-Ale. There was an Olukare of Ikare but  
 he had not known when the title was created. In cross-examination  
 this witness said that when he saw that the title of Olukare bore  
 the name of the town Ikare he considered that he must be the  
 ruler of Ikare from the foundation of the town.

30 (C) Olagbegi II, the Olowo of Owo, deposed that he was pp. 59-60.  
 conversant with the history of Ikare ; that he knew that there was  
 a title of Ale in Ikare and that there was a title of Olukare in Ikare.  
 No Olukare ever wore a crown except the present Olukare. In  
 answer to the Court this witness stated that the Owa-Ale had no  
 right to wear a crown but he wore a head-gear of straw and cowries.

13. On the 14th October the acting judge gave judgment for the pp. 60-61.  
 Appellant and granted the declaration and injunction referred to above.

14. Adu Jibrilu appealed to the West African Court of Appeal. pp. 78, l. 28.  
 Blackall P. held that the Appellant by his claim was challenging the  
 validity of Adu Jibrilu's appointment as not being in accordance with  
 Native Law and Custom and that that was precisely the kind of dispute  
 of which the Governor was made sole judge by Section 2 (2) of the  
 Appointment and Depositions of Chiefs Ordinance. He then proceeded  
 as follows :—

40 “ Mr. Thomas sought to get over this difficulty by arguing that pp. 78, l. 34.  
 “ the question of appointment is not in dispute, but only that of  
 “ precedence. In my opinion that argument is inconsistent with his  
 “ pleadings, but apart from this it has been held in the case of  
 “ *Adanji v. Hunvoo* (1 N.L.R. p. 75) that the Courts will not  
 “ entertain an action to establish title to a chieftaincy only, that is,  
 “ where it is a mere dignity or a position of honour or of primacy

“ among a particular section of the native community. But this  
 “ is what the learned acting judge did in paragraph 2 of his judgment  
 “ where he declared that the Plaintiff ranks higher than the  
 “ Defendant or any other chief among the chieftaincies (*sic*) in  
 “ Ikare. The decision in *Adanji v. Hunvoo* accords with the well-  
 “ known English case of *Cowley v. Cowley* ([1901] A.C. 446) where  
 “ it was decided that a peer could not prevent his former wife from  
 “ using the title she attained on marriage because the law of  
 “ England allows a person to assume any name he wishes. In the  
 “ same way there is nothing to prevent anybody walking along 10  
 “ Piccadilly wearing a coronet—if he is prepared to incur ridicule—  
 “ but if on the strength of wearing it he attempts to take his seat  
 “ in the House of Lords, he will not be allowed to do so. So also  
 “ the wearing of a crown in this country is not a matter for the  
 “ Courts to adjudicate upon unless it can be shown that by wearing  
 “ it, definite material rights are derived.

“ Mr. Thomas endeavoured to surmount this obstacle by  
 “ relying upon the evidence of the witness Bayode, who said that  
 “ the Plaintiff ‘ as an Owa-Ale ’ would have to perform many 20  
 “ ceremonies. He would, as a consequence, receive many gifts,  
 “ oil fowls and so on. The ceremonies were not specified and the  
 “ rights seem to be rather nebulous but apart from this, that  
 “ witness, who is a retired Native Court Clerk, asserted that the  
 “ Plaintiff is, according to native law and custom, President of the  
 “ Native Court, which he must know perfectly well is a statutory  
 “ office. I am not therefore disposed to attach any value to his  
 “ evidence.”

pp. 79-80.

Ames, acting C.J. referred to the decision of the Privy Council in  
*Laoye and Others v. Oyetunde* ([1944] A.C. 170) and held that in the present  
 case the evidence regarding privileges was “ quite unreal.” Lewey, J.A., 30  
 concurred.

p. 87.

15. The Appellant being dissatisfied with the said judgment applied  
 to the West African Court of Appeal for leave to appeal to His Majesty in  
 Council. Final leave was granted on the 27th November, 1950.

The Appellant respectfully submits that the judgments of the West  
 African Court of Appeal should be set aside and the judgment and order  
 of the trial judge restored for the following amongst other

## REASONS

- (1) BECAUSE the trial judge was right in holding that he  
 had jurisdiction to try this action. 40
- (2) BECAUSE Section 2 (2) of the Appointment and  
 Depositions of Chiefs Ordinance 1930 as amended in  
 1945 only makes the Governor the sole judge as to  
 whether any appointment of a chief has been made in  
 accordance with Native Law and Custom in the case  
 of any dispute and after due inquiries and consultation



with the persons concerned in the selection and does not in any way oust the jurisdiction of the Courts to determine any other issue relating to the appointment, title, dignity, power or emoluments of a chief.

- 10
- (3) BECAUSE (if it be material) the trial judge was right in holding that Section 2 aforesaid constituted the Governor alone as the sole judge and that, in the absence of express statutory provision, the Governor could not delegate to any other officer the powers conferred upon him by the sub-section.
- (4) BECAUSE the issue in these proceedings was not whether the Appellant or Adu Jibrilu had been validly appointed as chiefs but whether either of them, and if so which, was entitled to wear a crown in Ikare and which of them according to Native Law and Custom was recognised as the Native Head and Ruler of Ikare.
- 20
- (5) BECAUSE the West African Court of Appeal were wrong in holding that they could not entertain an action to establish the title of a chief apart from any rights to property or pecuniary rights connected therewith.
- (6) BECAUSE the case of *Adanji v. Hunvoo* 1 N.L.R. 75 which was relied upon by the West African Court of Appeal as authority for holding that they had no jurisdiction to entertain a claim merely to establish a title to a chieftaincy, was wrongly decided.
- 30
- (7) BECAUSE in any case there was evidence, which the West African Court of Appeal should have accepted, that the position of Owa-Ale and the wearing of the crown entitled the person concerned to material perquisites.
- (8) BECAUSE the judgments of the West African Court of Appeal were wrong and the judgment of the trial judge was right and should be restored.

DINGLE FOOT.

## ANNEXURE.

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### ORDINANCE TO PROVIDE FOR THE APPOINTMENT AND DEPOSITION OF CHIEFS.

1. This Ordinance may be cited as the Appointment and Deposition of Chiefs Ordinance, 1930 and shall apply to the Colony and Protectorate (including the Cameroons under British Mandate).

2.—(1) Upon the death, resignation or deposition of any chief or of any head chief the Governor may approve as the successor of such chief or head chief, as the case may be, any person appointed in that behalf by those entitled by native law and custom so to appoint in accordance with native law and custom, and if no appointment is made before the expiration of such interval as is usual under native law and custom, the Governor may himself appoint such person as he may deem fit and proper to carry out such duties incidental to the chieftaincy as it may be necessary to perform. 10

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

(3) The Governor may grade head chiefs as first, second, third, fourth or fifth class according to their importance. 20

(4) The Governor, after due enquiry and consultation with the persons concerned in the selection may depose any chief or any head chief, whether appointed before or after the commencement of this Ordinance, if after inquiry he is satisfied that such deposition is required according to native law and custom or is necessary in the interest of peace, or order or good Government.

(5) For the purposes of sections 2 and 4 of this Ordinance the words "chief" and "head chief" mean a chief or a head chief who has been appointed to the office of native authority under the provisions of the Native Authority Ordinance, 1943, or which office is deemed to be constituted thereunder or who is a member of a native authority constituted or deemed to be constituted under the provisions of that Ordinance or, where the office of native Authority so appointed or deemed to be constituted, is a chief associated with a council, any chief or head chief who is a member of that Council and any chief or head chief who is a member of an advisory council. 30

NOTE.—The words underlined did not appear in the original Ordinance of 1930 but were inserted by the amending Ordinance of 1945.

SUPREME COURT ORDINANCE

\* \* \* \* \*

11. The Supreme Court shall be a superior court of record and in addition to any other jurisdiction conferred by this or any other Ordinance shall, within the limits and subject as in this Ordinance mentioned, possess and exercise all the jurisdiction, powers and authorities which are vested in or capable of being exercised by His Majesty's High Court of Justice in England.

To have jurisdiction of High Court of Justice in England.

12. Subject to such jurisdiction as may for the time being be vested by Ordinance in native courts, the jurisdiction by this Ordinance vested in the Supreme Court shall include all His Majesty's civil jurisdiction which at the commencement of this Ordinance was, or at any time afterwards may be exercisable in Nigeria, for the judicial hearing and determination of matters in difference, or for the administration or control of property and persons, and also all His Majesty's criminal jurisdiction which at the commencement of this Ordinance was, or at any time afterwards may be there exercisable for the repression or punishment of crimes or offences or for the maintenance of order; and all such jurisdiction shall be exercised under and according to the provisions of this Ordinance and not otherwise :

His Majesty's civil and criminal jurisdiction vested in court.

20 Provided that, except in so far as the Governor in Council may by order otherwise direct and except in suits transferred to the Supreme Court under the provisions of section 25 of the Native Courts Ordinance, the Supreme Court shall not exercise original jurisdiction in any suit which raises any issue as to the title to land or as to the title to any interest in land which is subject to the jurisdiction of a native court nor in any matter which is subject to the jurisdiction of a native court relating to marriage, family status, guardianship of children, inheritance or disposition of property on death.

\* \* \* \* \*

14. Subject to the terms of this or any other Ordinance, the common law, the doctrines of equity, and the Statutes of general application which were in force in England on the 1st January, 1900, shall be in force within the jurisdiction of the court.

How far the law of England in force.

\* \* \* \* \*

17.—(1) Nothing in this Ordinance shall deprive the Supreme Court of the right to observe and enforce the observance, or shall deprive any person of the benefit of any existing native law or custom, such law or custom not being repugnant to natural justice, equity, and good conscience, nor incompatible either directly or by necessary implication with any law for the time being in force.

Application of native laws and customs.

(2) Such laws and customs shall be deemed applicable in causes and matters where the parties thereto are natives and also in causes and matters between natives and non-natives where it may appear to the court that substantial injustice would be done to either party by a strict adherence to the rules of English law.

40

(3) No party shall be entitled to claim the benefit of any local law or custom, if it shall appear either from express contract or from the nature of the transactions out of which any suit or question may have arisen, that such party agreed that his obligations in connexion with such transactions should be regulated exclusively by English Law or that such transactions are transactions unknown to native law or custom.

(4) In cases where no express rule is applicable to any matter in controversy, the court shall be governed by the principles of justice, equity and good conscience.

Law and equity to be concurrently administered.

18. Subject to the express provisions of any other Ordinance in every civil cause or matter commenced in the Supreme Court law and equity shall be administered by the Supreme Court concurrently and in the same manner as they are administered by His Majesty's High Court of Justice in England. 10

Questions of foreign and native law or custom to be decided by judge.

19. Where for the purpose of disposing of any action or other matter which is being tried in the Supreme Court by a judge with or without a jury or assessors it is necessary to ascertain the law of any other country or the native law or custom of Nigeria which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law or custom shall, instead of being submitted to the jury or assessors be 20 decided by the judge alone.

Determination of matter completely and finally.

20. The Supreme Court in the exercise of the jurisdiction vested in it by this Ordinance shall, in every cause or matter pending before the court, grant, either absolutely or on such terms and conditions as the court thinks just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim properly brought forward by them in the cause or matter, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided. 30

Rules of equity to prevail.

21. Subject to the express provisions of any other Ordinance in all matters not particularly mentioned in this Ordinance, in which there was formerly or is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter the rules of equity shall prevail in the court so far as the matters to which those rules relate are cognisable by the court.

*Chieftaincy Disputes (Preclusion of Courts) No. 30 of 1948.*

AN ORDINANCE TO PRECLUDE THE HEARING AND DETERMINATION OF  
TITLE. CHIEFTAINCY DISPUTES FROM CERTAIN COURTS BOTH IN ORIGINAL  
AND APPELLATE JURISDICTIONS.

BE IT ENACTED by the Governor of Nigeria, with the Enactment, advice  
and consent of the Legislative Council thereof, as follows :—

1.—(1) This Ordinance may be cited as the Chieftaincy Disputes (Preclusion of Courts) Ordinance, 1948, and shall apply to the Western Provinces and shall come into operation on a date to be fixed by the  
10 Governor by notice in the Gazette.

Short title,  
commencement  
and application.

(2) The Governor may apply this Ordinance to the Northern Provinces upon a resolution adopting this Ordinance being passed by the House of Chiefs and the Northern House of Assembly, and to the Colony upon being so requested by a majority of the Native Authorities therein.

2. In this Ordinance :—

Interpretation.

“ chief ” includes a chief within the meaning of the Appointment and Deposition of Chiefs Ordinance, 1930 ;

No. 14 of 1930.

20 “ Court ” means a Magistrate’s Court, the Supreme Court and the West African Court of Appeal or any one of such Courts ;

“ property ” includes all regalia and other things whatsoever attaching to a chief by virtue of his chieftaincy.

3. Notwithstanding anything in any written law contained whereby or whereunder jurisdiction is conferred upon a Court, whether such jurisdiction is original, appellate or by way of transfer, a Court shall not have jurisdiction to entertain any civil cause or matter instituted for—

Chieftaincy disputes  
not to be  
entertained by the  
Courts.

(a) the determination of any question relating to the selection, appointment, installation, deposition or abdication of a chief ; or

30 (b) the recovery or delivering up of any property in connection with the selection, appointment, installation, deposition or abdication of a chief.

4. Where in any criminal proceedings it is necessary to name the person to whom any property belongs and that property is the property of a chief by virtue of his chieftaincy, it shall be sufficient to name such chief by whichever title such chief is known notwithstanding that no person has been duly appointed or installed as such chief or that there is a dispute in respect of such chieftaincy, and the provisions of sections 146, 147 and 154 of the Criminal Procedure Ordinance, 1945, in particular, and any other similar provisions in any other written law shall be construed

Description of  
ownership of  
property of chiefs  
in criminal cases.

40 accordingly.

Saving.

5.—(1) Nothing in this Ordinance contained shall prejudice or prevent the trial of any cause pending before the Supreme Court or a Magistrate's Court on the date on which this Ordinance comes into operation, or any appeal from the decision of such Court in any such pending cause, or the prosecution of proceedings for giving effect to a judgment in any such trial or obtained before the coming into operation of this Ordinance.

(2) For the purposes of this section, the date on which this Ordinance comes into operation shall, with respect to the Northern Provinces or the Colony, be construed to mean the date on which this Ordinance is applied to the Northern Provinces or to the Colony, as the case may be. 10

**In the Privy Council.**

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**ON APPEAL**

*from the West African Court of Appeal,  
Lagos, Nigeria.*

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**BETWEEN**

**ADEGBITE, The Owa-Ale of**

**Ikare . . . . . Appellant**

**AND**

**ALASAN BABATUNDE,**

**substituted for Adu Jibrilu,**

**decd., The Olukare of Ode Respondent.**

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**Case for the Appellant.**

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**HATCHETT JONES & CO.,**

**66A Fenchurch Street,**

**London, E.C.3,**

***Solicitors for the Appellant.***