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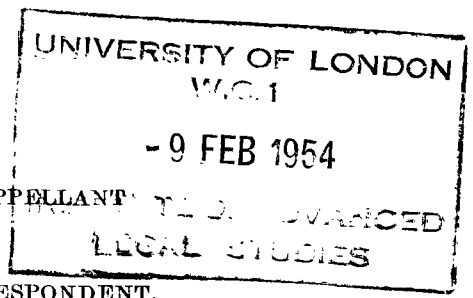
21, 1953

In the Privy Council.

No. 9 of 1951.

ON APPEAL FROM THE WEST AFRICAN  
COURT OF APPEAL

33178



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BETWEEN  
ADEGBITE, The Owa-Ale of Ikare ... .. APPELLANT  
AND  
ALASAN BABATUNDE, The Olukare Odo ... .. RESPONDENT.

CASE FOR THE RESPONDENT

RECORD

1.—This is an appeal from a judgment dated the 12th May, 1950, of the West African Court of Appeal (Blackall, P., Ames, Ag. C.J., and Lewey, J.A.), allowing an appeal from a judgment dated the 14th October, 1949, of the Supreme Court of Nigeria (Pollard, Ag. J.), by which the Supreme Court granted declarations that the Appellant was the Owa-Ale of Ikare and as such the only person entitled to wear a crown in Ikare ; that the Appellant ranked higher than Adu Jibrilu, The Olukare Odo (now deceased) for whom the Respondent was substituted as respondent to this appeal by order dated the 11th February, 1953, or any other chief in Ikare ; that Adu Jibrilu had been wrongfully wearing a crown and enjoying the privileges attaching thereto ; and that by native law and custom, irrespective of any statutory office held by Adu Jibrilu, the Appellant was natural Oba and ruler of the whole of Ikare ; and also granted an injunction restraining Adu Jibrilu from wearing a crown, performing the functions of a crowned Owa-Ale and enjoying the privileges by native law and custom attaching exclusively to a crowned Owa-Ale.

pp. 77-80

pp. 60-62

2.—This appeal raises the question of the jurisdiction of the Nigerian Courts to entertain actions concerning the validity of the appointment of native chiefs or mere matters of precedence in native communities. Of the relevant ordinances, the Appointment and Deposition of Chiefs Ordinance, as in force at the material time, is printed in the Record at

p. 35

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page 35. The Supreme Court Ordinance (Laws of Nigeria, 1948, Chapter 211) contains the following sections :—

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.

\* \* \* \*

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. 10

3.—By his Statement of Claim dated the 27th August, 1948, the Appellant alleged that he was descended from the Owa-Ales who had reigned over the whole of Ikare from time immemorial. He had succeeded his father as Owa-Ale in 1920. One of his ancestors had created an ancestor of Adu Jibrilu Oluka-Odo, Odo being a small quarter in Ikare. None of Adu Jibrilu's ancestors wore crowns. The Oluka-Oda had always been a subordinate chief under the Owa-Ale; but Adu Jibrilu's grandfather had taken the title of Olukare, and Adu Jibrilu had in September, 1947, started to wear a crown, and since then had been wrongfully ruling the Ikare people and enjoying the consequent privileges and emoluments. The Appellant had therefore been wrongfully deprived of his office as ruler of Ikare and its emoluments. The Appellant claimed a declaration that he was by native customary law the natural Oba and Ruler of the whole Ikare, and he, and not Adu Jibrilu who was a subordinate chief under him, was the only person entitled to wear a crown; and an injunction restraining Adu Jibrilu from wearing a crown and performing the functions and enjoying the privileges of Oba and Ruler. 20 30

4.—By his Defence dated the 27th August, 1949, Adu Jibrilu alleged that the Appellant was a quarter chief under him. The Appellant's ancestors had never worn crowns, had never reigned over Ikare and had never been known as Owa-Ale. Adu Jibrilu's predecessors were natural rulers of Ikare and wore crowns from time immemorial. Adu Jibrilu was appointed Olukare at a public election in accordance with native law and custom, the Appellant voting for him. About 1946 Adu Jibrilu had revived the custom of wearing a crown at Ikare, which had fallen into abeyance. The Appellant's ancestors had never received emoluments

because they were merely quarter chiefs. Adu Jibrilu was a chief within the meaning of the Appointment and Deposition of Chiefs Ordinance, and his appointment as Olukare of Ikare had been approved in 1928 by the Lieutenant-Governor of the Southern Provinces. Adu Jibrilu also contended that the Court had no jurisdiction to try the action.

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p. 17, ll. 14-17

p. 17, ll. 20-21

5.—By his Rejoinder dated the 12th September, 1949, the Appellant alleged that he had merely approved of Adu Jibrilu's election as Oluka-Odo when the people submitted him. There were several Olukas in other quarters of Ikare. The Appellant denied that either the

10 Appointment and Deposition of Chiefs Ordinance or any other ordinance affected his case.

p. 27, ll. 18-22

p. 27, l. 26-28

6.—The issue of jurisdiction was argued before Pollard, Ag. J., on the 4th and 5th October, 1945. Evidence was given for Adu Jibrilu by a Mr. Flint, the Assistant District Officer of the Owo Division. He said Adu Jibrilu was the Okare District Head, and his appointment as Olukare was approved by the Lieutenant-Governor of the Southern Provinces on the 11th January, 1928. Adu Jibrilu was a member of a Native Authority (so a "chief" as defined by Section 5 of the Ordinance). He produced a memorandum dated the 20th December, 1927, from the

20 Resident in Ondo Province describing the choice of Adu Jibrilu as Olukare, and another memorandum dated the 11th January, 1928, from the Secretary of the Southern Provinces setting out the Lieutenant-Governor's approval of the appointment of Adu Jibrilu as the Olukare District Head of Ikare and President of the Ikare Native Court.

p. 28, ll. 12-15

pp. 89-90

p. 90, ll. 21-39

7.—Pollard, Ag. J., gave judgment on the point of jurisdiction on the 7th October, 1949. He said that the Appellant admitted that Adu Jibrilu was a chief with the title of Olukare, that he was so appointed by the Lieutenant-Governor, and so approved by the Appellant in 1928, and he received a higher stipend from the Government than any other

30 chief in Ikare. The issues before the Court were whether there was by native law and custom such a title as Owa-Ale, and if so whether its holder had the right to wear a crown ; if so, whether anyone else had such a right ; whether the Olukare had the right to wear a crown ; what was the rank of the Olukare at Ikare by native law and custom ; and if there were both an Owa-Ale and an Olukare, which was by native law and custom the Ruler of Ikare. The learned judge then set out the Appointment and Deposition of Chiefs Ordinance, 1930. Under Section 2 (1), the power of appointing a chief rested with those entitled by native law and custom to do so, and the Governor had authority only to approve a person so

40 appointed. If he did not approve, that could not affect the appointment under native law and custom, and nothing was said about the position.

pp. 33-43

p. 33, ll. 38-43

p. 34, ll. 26-44

p. 36, ll. 8-26

p. 36, ll. 27-41

p. 36, l.42-p. 37, l. 3

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p. 37, ll. 4-8  
 p. 37, ll. 9-40  
 p. 37, l. 41-p. 38, l. 22  
 p. 38, ll. 26-28  
 p. 38, ll. 29-44  
 p. 39, l. 4-p. 42, l. 43  
 p. 43, ll. 12-15

Under Section 2 (2) the Governor was sole judge only of disputes of one class, viz., whether an appointment of a chief had been made in accordance with native law and custom. He became sole judge only when a dispute had arisen, and a dispute could arise only when an appointment had been made. He was required to hold due enquiry and have consultations with the persons concerned in the selection, i.e., with those entitled by native law and custom to appoint; until he had done that he was not the sole judge. The Ordinance made the Governor sole judge, and he could not delegate his powers. Unless those conditions were satisfied, the jurisdiction of the Courts remained. The learned judge then mentioned a decision of the West African Court of Appeal since affirmed by the Privy Council [1952] A.C. 387, that the Courts are precluded from considering whether a chief has been appointed according to native law and custom, and said he proposed to follow an earlier decision the other way partly because if both were taken together the majority of the judges favoured the earlier view. He discussed certain English decisions on the ouster of jurisdiction under the Friendly Societies Acts, and held, on that analogy, that the Supreme Court had jurisdiction in cases based on a violation of Section 2 (2). There was no difference between a society's breaking its rules of procedure or condemning a man unheard, and the Governor's failing to hold due enquiry or delegating his powers. None of the issues could possibly be said to fall under the Ordinance, so that the Court had full jurisdiction to hear the action.

pp. 43-44  
 p. 49, ll. 15-24  
 p. 49, ll. 27-28  
 pp. 49-60  
 pp. 60-62

8.—Counsel for Adu Jibrilu asked for an adjournment to allow an appeal on the issue of jurisdiction, but Pollard, Ag. J., refused to grant this. When the trial was resumed on the 12th October, 1949, Counsel for Adu Jibrilu asked for special leave to appeal against the interlocutory judgment, but this was refused. Counsel for Adu Jibrilu then withdrew and took no further part in the proceedings in the Supreme Court. The learned judge proceeded to hear evidence, and on the 14th October, 1949, gave judgment for the Appellant as set out in paragraph 1 hereof.

p. 74  
 p. 75, ll. 17-19

9.—Adu Jibrilu appealed to the West African Court of Appeal. The Grounds of Appeal, dated the 6th February, 1950, were (excluding one struck out at the hearing of the appeal) that the Supreme Court was wrong in ruling that it had jurisdiction, and it was an error to split the Appellant's claim into two parts for the purpose of the ruling on jurisdiction, and the judgment was against the weight of evidence.

pp. 75-76  
 p. 77, l. 29-p. 78, l. 3

10.—The appeal was heard on the 1st and 2nd May, 1950, and the West African Court of Appeal gave judgment allowing the appeal on the 12th May, 1950. Blackall, P., referred to the allegations in the Appellant's pleadings that Adu Jibrilu had been wrongfully ruling the Ikare people and enjoying the consequent privileges and the Appellant had been wrongfully deprived of his office as ruler and its privileges, and

the claim to a declaration that the Appellant was natural ruler of Ikare and an injunction restraining Adu Jibrilu from wearing a crown or performing the functions of ruler. There was evidence that Adu Jibrilu had been appointed Olukare by native law and custom and the Governor had approved his appointment. The Appellant in effect was challenging the validity of Adu Jibrilu's appointment, and this was a dispute of which, by Section 2 (2), the Governor was made sole judge. The Appellant's pleadings shewed that the dispute was about appointment, not merely about precedence; in any case the Supreme Court could not entertain an action to establish a mere dignity or position of honour. Only one witness spoke of any perquisites attaching to the position of Owa-Ale, and his evidence was of no value. The Appellant was asking for a decision on the validity of Adu Jibrilu's appointment as chief, and the West African Court of Appeal, in the case which the judge had disregarded, had already held that the courts could not decide such a question. Ames, Ag. C.J., said he agreed with the judgment of Blackall, P. A claim to a dignity could not be entertained unless there was some right to property connected with it. In this case it was alleged that there were privileges. The salary paid to the District Head was not a traditional privilege, and the other evidence of perquisites was quite unreal. Lewey, J.A., concurred.

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p. 78, ll. 24-27

p. 78, l. 34 . p. 79, l. 3

p. 79, ll. 4-12

p. 79, ll. 13-22

p. 79, ll. 29-30  
p. 79, l. 39-p. 80,  
l. 23

11.—The Respondent submits that it is clear from the summons and statement of claim that the Appellant was challenging the right of Adu Jibrilu, by native law and custom, to rule Ikare and claiming to be declared ruler himself. Any other relief claimed such as a declaration of the Appellant's right to wear a crown, was merely ancillary to this. The evidence of Mr. Flint was not merely that Adu Jibrilu had been appointed and approved as Olukare of Ikare, but also that Adu Jibrilu was the Ikare District Head. The Appellant's claim therefore constituted a challenge to the validity by native law and custom of Adu Jibrilu's appointment as chief, and by Section 2 (2) of the Ordinance the Supreme Court has no jurisdiction to deal with such a dispute.

pp. 3-4  
pp. 5-7

p. 28, ll. 12-15

12.—Accordingly, the Respondent further submits that the issue in the action was not a mere matter of precedence divorced from any question of appointment. If, however, the issue had been of precedence alone, the Supreme Court would have had no jurisdiction to decide it. By the common law of England, which is imported into Nigeria by the Supreme Court Ordinance, Section 14, the courts have no jurisdiction to try a question of right connected with a dignity, so that the jurisdiction of the Supreme Court, as defined by the Supreme Court Ordinance, Section 11, does not extend to a claim to a chieftaincy merely as a position of honour. A full bench of the Supreme Court of Nigeria so held in *Ajanji v. Hunvoo* (1908), 1 N.L.R. 75. The Respondent submits that such evidence as there was of any traditional perquisites attached to the dignity claimed by the Appellant was rightly rejected by the West African Court of Appeal.

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13.—The Respondent humbly submits that the judgment of the West African Court of Appeal was right and this appeal ought to be dismissed for the following amongst other

### REASONS

1. BECAUSE the issue in the action was whether Adu Jibrilu had been appointed a chief in accordance with native law and custom, and the Supreme Court had no jurisdiction to determine that question.
2. BECAUSE if, as the Appellant contended, the issue was that of precedence between the parties, the action was brought 10 solely to establish a position of honour, and the Supreme Court had no jurisdiction to entertain such an action.

FRANK GAHAN.

In the Privy Council.

No. 9 of 1951.

ON APPEAL FROM THE WEST AFRICAN COURT  
OF APPEAL.

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BETWEEN

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

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ALASAN BABATUNDE,  
The Olukare Odo ... RESPONDENT.

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CASE FOR THE RESPONDENT

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