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IN THE PRIVY COUNCIL

No. 6 of 1959

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

B E T W E E N :

CHIEF FAGBAYI OLOTO for himself and on behalf of the other members of the OLOTO Chieftaincy Family Since deceased substituted by Chief Immam Ashafa Tijani
(Plaintiff) Appellant

- and -

THE ATTORNEY GENERAL (Defendant) Respondent

RECORD OF PROCEEDINGS

HATCHETT JONES & CO.,
90, Fenchurch Street,
E.C.3.
Solicitors for Appellant.

CHARLES RUSSELL & CO.,
37, Norfolk Street,
Strand, W.C.2.
Solicitors for Respondent.

IN THE PRIVY COUNCIL No. 6 of 1959

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

B E T W E E N :

CHIEF FAGBAYI OLOTO for himself and on behalf of the other members of the OLOTO Chieftaincy Family Since deceased substituted by Chief Immam Ashafa Tijani (Plaintiff) Appellant

- and -

THE ATTORNEY GENERAL (Defendant) Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL BUT NOT REPRODUCED.

Description of Document	Date
Registrar's Statement	
Order for Pleadings	4th October 1949
Notice of Motion with Affidavit for extension of time	11th January 1950 & 16th January 1950 respectively
Order extending time	23rd January 1950
Notice of Motion for extension of time to file Statement of Claim and Affidavit in support	22nd May 1950 & 30th May 1950 respectively.
Order extending time	5th June 1950
Notice of Motion with Affidavit for extension of time to file statement of Defence etc.	7th September 1950
Order extending time	11th September 1950
Notice of Motion to amend Statement of Defence with Schedule and Affidavit in support	6th March 1952
Notice of Motion to further amend Statement of Defence and Affidavit in support	7th March 1952
Judge's note on Motions	12th March 1952
Order made on first Motion	12th March 1952
Order made on second Motion	12th March 1952
Notice of Motion for delivery of particulars of Statement of Claim and Affidavit in support	20th March 1952
Letter of Request for particulars of Statement of Claim	8th March 1952

Description of Document	Date
Judges Notes on Motion	24th March 1952
Judges Note	1st April 1952
Notice of Motion to amend particulars of Defence and Affidavit in Support	26th June 1952
Judges Note on Motion	30th June 1952
Notice of Conditions of Appeal	18th April 1953
Bond for Costs of Appeal	15th May 1953
Affidavit of Means sworn by Chief Ayoola Bajulaiye	15th May 1953
Affidavit of Means sworn by Chief Liadi O. Odesanya	15th May 1953
Schedule of documents for inclusion in Record of Appeal	27th May 1955
Certificate by Registrar of Supreme Court Lagos of service of Notice of Appeal and Certificate of Registrar that Conditions of Appeal had been fulfilled	5th September 1955
Notice of Motion to substitute Chief Immam Ashafa Tijani for Chief Fagbayi Oloto (since deceased)	31st August 1956
Affidavit of Chief Tijani in support of Motion	31st August 1956
Affidavit of Emanuel Jaiyesinmi Ogundimu	31st August 1956
Order substituting parties	15th October 1956
Notice of Motion for leave to appeal to Her Majesty's Privy Council	18th December 1957
Affidavit of Ashafa Bokinni Tijani	20th December 1957
Order giving conditional leave to appeal to Her Majesty's Privy Council, and Registrar's Order	17th February 1958
Affidavits of Means of Ayoola Bajulaiye and Liadi Giwa	26th March 1958
Motion for final leave to appeal and Affidavit in support	5th April 1958
Order giving final leave to appeal	5th May 1958

LIST OF EXHIBITS TRANSMITTED TO THE PRIVY COUNCIL BUT NOT REPRODUCED.

Exhibit Mark	Description of Document	Date
A	Plan	
B	Plan	
C	Plan	
D	Plan	
E	Plan	
F	Plan	
G	Plan	
H	Plan	
I	Plan	
J	Plan	
K	Plan	
L	Plan	
M	Plan	
N	A point in Exhibit J	
O	Certificate of Title	18th April 1899
P	Certificate of Title	22nd April 1901
Q	Plan	
R	Government Survey Plan	
R1	Government Survey Plan	
S	Gazette	5th August 1899
S1	Gazette	14th October 1898
T	Certificate of Title	2nd May 1899
T1	Certificate of Title	31st August 1903
T2	Deed of Certificate of Title	31st August 1903
V	Plan	
W	Certificate of Title	18th April 1899
X	Death Certificate	12th March 1952
Y	Schedule showing compensation etc.	
Y1	Plan	

Exhibit Mark	Description of Document	Date
Z	Valuation Title No. 3607/1897	
AA	Letter from Chief Eshugbayi Oloto to H.E. The Governor	13th November 1899
BB	Letter to the Ag. Colonial Secretary	16th December 1896
CC	Letter to H.E. the Governor	12th January 1900
CC1	Govt. Gazette Extraordinary	22nd April 1896
DD	Record of Commission of Enquiry	
EE	Receipt for £5.16. 1.	25th March 1911
FF	Certificate of Title	14th July 1891
GG	Record of Acquisition Ebute-Metta	
HH	Certificate of Title	27th February 1893
II	Plan	
JJ	Valuation of Claims at Ebute-Metta	
KK	Glover Schedule No.4	
LL	Death Certificate	9th April 1952
MM	Valuation of property at Ebute-Metta	
NN	Crown Grant	12th August 1904
NN1	Crown Grant	25th August 1904
NN2	Crown Grant	29th September 1905
OO	Deed of Conveyance	19th July 1901
OO1	Deed of Conveyance	17th June 1902
PP	Report of Sir Mervin L. Tew on Title to Court in Lagos	

IN THE PRIVY COUNCIL No. 6 of 1959

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

B E T W E E N :

CHIEF FAGBAYI OLOTO for himself and on behalf of the other members of the OLOTO Chieftaincy Family Since deceased substituted by Chief Immam Ashafa Tijani (Plaintiff) Appellant

10 - and -

THE ATTORNEY GENERAL (Defendant) Respondent

RECORD OF PROCEEDINGS

No. 1

STATEMENT OF CLAIM

In the Supreme Court of Nigeria Lagos Judicial Division

No. 1

Statement of Claim.

14th September, 1948.

IN THE SUPREME COURT OF NIGERIA

IN THE SUPREME COURT OF THE COLONY JUDICIAL DIVISION

Suit M.3446

IN THE MATTER of the PETITION of RIGHT ORDINANCE
20 Cap. 8 Vol.I L/N.

B E T W E E N

CHIEF FAGBAYI OLOTO for himself and on behalf of the other members of the OLOTO Chieftaincy Family Plaintiff

- and -

THE ATTORNEY GENERAL Defendant

STATEMENT OF CLAIM

(1) The plaintiff is the head of the Oloto Chieftaincy Family and has the authority of all

In the Supreme Court of Nigeria Lagos Judicial Division

No. 1

Statement of Claim.

14th September, 1948 - continued.

the other members of the family to institute this action.

(2) The said Oloto Chieftaincy Family (hereinafter called "the Family") are one of the original owners under native law and custom of land in Lagos.

(3) That the landed properties hereinafter described form part of the land owned by the family from time immemorial.

(4) That the Government of Nigeria are now using the said landed properties and no compensation has been paid to the family, for the user of the said properties by the said Government of Nigeria.

(5) The plaintiff has been in communication with the Chief Secretary to the Government and the Commissioner of Lands over the question of compensation for the said landed properties but is not satisfied with their explanations.

(6) The landed properties referred to above and the amount of compensation claimed by the family in respect of them are as follows :-

(a)	The area between Taylor Road and Oto Police Barracks now being filled up by the Government	£60,000
(b)	Land at Botanical Gardens, Ebute - Metta where the Magistrate Court and Police Barracks were erected	£50,000
(c)	Land at Odaliki, Ibadan and Thomas Streets Ebute-Metta now being used by the Government	£30,000
(d)	Land at Denton Bridge Street upon which the Free Air Service is erected	£30,000
(e)	Land at Ago-Ijaiye Ebute-Metta near Methodist Church and Old Printing	£170,000
(f)	The land upon which the Police Barracks at Jebba Street West Ebute-Metta	£15,000
(g)	The land upon which the Railway Traffic Training School Ebute-Metta is situate	£15,000
(h)	Shemore and Ilogbo Villages via Apapa Road, Ebute-Metta	£150,000
(i)	Land opposite (h) above	£10,000
(k)	The Railroad from Iddo to Odi-Olowo	£100,560
	TOTAL =	£630,560

(7) The plaintiff therefore humbly prays that Your Excellency would be graciously pleased to direct this Statement of Claim to be indorsed with Your Excellency's fiat "Let right be done".

Dated at Lagos this 14th day of September, 1948.

(Sgd.) F.R.A. Williams
Counsel for Chief Oloto

To His Excellency, the Governor,
of Nigeria through His Honour
the Hon. the Chief Secretary to
the Government.

In the Supreme Court of Nigeria Lagos Judicial Division

No. 1

Statement of Claim.

14th September, 1948
- continued.

No. 2

No. 2

Statement of Defence.

26th October, 1950.

STATEMENT OF DEFENCE

IN THE SUPREME COURT OF NIGERIA

IN THE SUPREME COURT OF THE LAGOS JUDICIAL DIVISION

Suit No. M.3446

CHIEF FAGBAYI OLOTO for himself)
and on behalf of the other members)
of the Oloto Family) PLAINTIFF

- and -

ATTORNEY-GENERAL ... DEFENDANT

STATEMENT OF DEFENCE

1. The defendant admits that the plaintiff is the Head of the Oloto Chieftaincy Family.

2. The parcels of land described in paragraph (6) of the Statement of Claim (hereinafter referred to as the said lands) were acquired for and on behalf of the Crown. Particulars of each of the said acquisitions which are the best particulars the defendant can give at the date hereof are as follows:-

In the Supreme Court of Nigeria Lagos Judicial Division

No. 2

Statement of Defence.

26th October, 1950.
- continued.

PARTICULARS

Parcel as set out in Plaintiff's Statement of Claim	Date of acquisition	Method of Acquisition
(a)	22nd April 1901	Certificate of Title
(b)	31st August 1903	Certificate of Title
(c)	16th November 1901	Public Notice in Government Gazette
(d)	31st August 1903	Certificate of Title
(e), (f) & (g)	31st August 1903	Certificate of Title
(h), (i) & (j)	30th March 1893	Certificate of Title
(k)	18th April 1899	Certificate of Title
	19th May 1899	Certificate of Title
	22nd April 1901	Certificate of Title
	31st August 1903	Certificate of Title

3. Save as is expressly admitted in paragraph 2 hereof, the defendant denies that the Oloto Chieftaincy Family had any interest in the said lands or any of them as alleged or at all.

4. The defendant admits that the plaintiff has been in communication with the Chief Secretary to the Government and the Commissioner of Lands over the question of compensation for the said lands.

5. The person or persons from whom the said lands were acquired received compensation from the Crown in money or by way of land in exchange in full satisfaction.

6. Further or in the alternative, the plaintiff's alleged claims did not accrue, if at all, within six years next before the commencement of this

action and were and are barred by the Limitation Act, 1623 (21 JAC. 1, C.16).

7. Further or in the alternative, if the Oloto Chieftaincy Family were entitled to compensation as Owners of the said lands or any of them (and this is denied) the defendant will contend that any right to compensation has been waived by their laches.

8. Save as aforesaid, the defendant denies all and each of the allegations set out in the Statement of Claim as though the same were herein repeated in full and specifically traversed seriatim.

(Sgd.) W.M. Brown

LEGAL ASSISTANT, LAND DEPARTMENT.
REPRESENTATIVE OF THE DEFENDANT.

DELIVERED this 26th day of October 1950 by Mr. W.M. Brown representing the Defendant.

In the Supreme Court of Nigeria Lagos Judicial Division

No. 2

Statement of Defence.

26th October, 1950

- continued.

No. 3

AMENDED STATEMENT OF DEFENCE

IN THE SUPREME COURT OF NIGERIA

IN THE SUPREME COURT OF THE LAGOS JUDICIAL DIVISION

Suit No. M.3446

CHIEF FAGBAYI OLOTO for himself and on behalf of the other members of the Oloto Family — Plaintiff

- and -

ATTORNEY-GENERAL ... — Defendant

No. 3

Amended Statement of Defence.

15th March, 1952.

STATEMENT OF DEFENCE AS AMENDED BY ORDER DATED 12/3/52.

1. The defendant admits that the plaintiff is the Head of the Oloto Chieftaincy Family.

2. The parcels of land described in paragraph (6) of the Statement of Claim (hereinafter referred to as the said lands) were acquired for and on behalf

In the Supreme Court of Nigeria
Lagos Judicial Division

No. 3

Amended Statement of Defence.
15th March, 1952
- continued.

of the Crown. Particulars of each of the said acquisitions which are the best particulars the defendant can give at the date hereof are as follows:-

PARTICULARS

SCHEDULE

Parcel as described in paragraph 6 of Plaintiff's Statement of Claim	Number and Date of Acquisition Notice in Government Gazette.	Certificate of Title No.	Page	Vol.	Date of Certificate
(a)	436 of 10.12.1900	(141	436	37	22.4.1901
		(43	43	1	18.4.1899
(b)	234 of 1. 7.1899	30	30	11	31.8.1903
	321 of 15.10.1899	10	10	1	14.7.1891
(c)	No record	No record			
(d)	234 of 1. 7.1899				
	321 of 15.10.1899	30	30	11	31.8.1903
(e)					
(f)	302 of 16. 6.1903	30	30	11	31.8.1903
(g)					
(h)	As to part by 302 of 16.6.1903 Remainder 207 of 11.10.1892	(As to part by			
		(30	30	11	31.8.1903
		(13	13	1	7.2.1893
(i)	207 of 11.10.1892	13	13	1	7.2.1893
(j and k)	239 of 11. 4.1896	42	42	1	18.4.1899
	240 of 12.12.1896	44	44	1	2.5.1899
	648 of 23. 9.1896	30	30	11	31.8.1903
	61 of 16. 2.1897	43	43	1	18.4.1899
	111 of 6 And 10.3.1896 234 of 1. 7.1899 321 of 15.10.1899 421 of 17. 9.1901 302 of 16. 6.1903	141	436	37	22.4.1901
As to part	61 of 22.11.1917	As to Part of 45/45/111			25.8.1924
As to part	57 of 4.12.1918 67 of 3.12.1919	As to Part of 52/44/111			21.12.1925
		58	58	111	9.12.1927

3. Save as is expressly admitted in paragraph 2 hereof, the defendant denies that the Oloto Chieftaincy Family had any interest in the said lands or any of them as alleged or at all.

4. The defendant admits that the plaintiff has been in communication with the Chief Secretary to the Government and the Commissioner of Lands over the question of compensation for the said lands.

5. The person or persons from whom the said lands were acquired received compensation from the Crown in money or by way of land in exchange in full satisfaction.

6. Further or in the alternative, the plaintiff's alleged claims did not accrue, if at all, within six years next before the commencement of this action and were and are barred by the Limitation Act, 1623 (21 JAC. 1. C.16).

7. Further or in the alternative, if the Oloto Chieftaincy Family were entitled to compensation as owners of the said lands or any of them (and this is denied) the defendant will contend that any right to compensation has been waived by their laches.

8. Save as aforesaid, the defendant denies all and each of the allegation set out in the Statement of Claim as though the same were herein repeated in full and specifically traversed seriatim.

9. Further or in the alternative the defendant will rely on the Court Procedure Act 1833.

(Sgd.) W.M. Brown
Legal Assistant, Land Department
Representative of the Defendant.

DELIVERED this 26th day of October 1950 by Mr. W.M. Brown Representing the Defendant.

F.R.A. Williams, Esq.,
41, Idumagbo Avenue,
Lagos.

In the Supreme Court of Nigeria Lagos Judicial Division

No. 4

Judge's Notes of Proceedings.

27th March, 1952.

No. 4

JUDGE'S NOTES OF PROCEEDINGS

IN THE SUPREME COURT OF NIGERIA

IN THE LAGOS JUDICIAL DIVISION

THURSDAY THE 27TH OF MARCH, 1952.

BEFORE HIS LORDSHIP

JOSEPH HENRI MAXIME DE COMARMOND, Esqr.,
SENIOR PUISNE JUDGE

Suit No. M. 3446.

CHIEF FAGBAYI CLOTO Vs. THE ATTORNEY-GENERAL

KAYODE for plaintiff.

BATE, Crown Counsel, for defendant.

Mr. BATE asks for leave to correct two clerical errors in Statement of Defence dated 26/10/50: the figure 421 in paragraph (b) of the Schedule to paragraph 2 of the Statement of Defence and in paragraph (d) of the same Schedule should read "321".

KAYODE no objection. Amendment effected.

BATE asks that one of his witnesses Government Servant who is expert valuer be allowed to stay in Court in order to help him although he will be a witness. The defendant is nominally the Attorney-General and of course there is at least one person on the Government side who knows almost the facts of the case. Such person should be allowed to be in Court says Bate.

MR. KAYODE strongly objects.

MR. BATE'S witness is Acting Colony Land Officer and Mr. Bate informs the Court that he is the only available officer in the Lands Department who can help him.

After considering Section 186 of the Evidence Ordinance, Seefe V Isaacson 1 F and F. 194; Chandler v. Harne 2 Mood and Role. 423; Cobbett v Hudson 1 E and B. 11. 14, Court decides that Mr. Bate's

application may be granted, the more so as this is not a case where the witness could possibly twist or alter his evidence on the strength of what he has heard in Court.

KAYODE does not open.

In the Supreme Court of Nigeria Lagos Judicial Division

No. 4

Judge's Notes of Proceedings.

27th March, 1952 - continued.

No. 5

Plaintiff's Evidence.

No. 5

CHIEF IMAM OSAFA TIJANI.

Chief Imam Osafa Tijani.

27th March, 1952.

Examination.

CHIEF IMAM OSAFA TIJANI, sworn on Koran, deposes in Yoruba. I am a Muslim missionary. I live at 70 Breadfruit Street, Lagos. I am 66 years old. Always lived in Lagos. Born in Lagos and so were my parents. I am a member of the Oloto Family. I am one of the important members of the family. I am a member of the Oloto family Council. The Oloto are chiefs who owned land in Lagos. They owned all the land in Ebute Metta. The family council has authorised the present case to be entered. I know the place called Otto in Iddo: the land there originally belonged to the Oloto Chieftaincy family. The family still owns the land at Otto on Iddo Island except those parcels which have been alienated by the family. Originally the Oloto family owned the land on the mainland at Ebute Metta, and excepting parcels alienated by the family, they still own land at Ebute Metta. I know Odi-Olowo, the land there originally belonged to the Oloto's and the land still is theirs except the parcels alienated by the family. I know Mr. Body-Lawson the Land Surveyor. The Chief Oloto and the family gave Mr. Lawson instructions to survey the Oloto Lands last year. I tender the plans made by Mr. Lawson. There are eight. Marked "A"; "B"; "C"; "D"; "E"; "G"; "F"; "I"; "H"; "Y" (no objection by Bate) and put in. I know Police Barracks at Otto. The causeway runs on plan "A" between Otto lands where Police Barracks are and land on the west of causeway opposite which are also Otto Lands. The causeway separated the Otto lands, and on the west of causeway on plan "A" the land outside the crimson triangle is still at present occupied by the Olotos.

In the Supreme Court of Nigeria Lagos Judicial Division

Plaintiff's Evidence.

No. 5

Chief Imam Osafa Tijani.

27th March, 1952.

Examination - continued.

Originally the palace of the Olotos was where Police Barracks are now on plan "A"; this is where they lived. I am speaking of what I know personally. We call the triangular crimson area west of causeway, Ago Ijayi. Formerly the area below the Police barracks shown on plan "A" was swamp land down to Taylor Road and was used only for fishing and also cultivating sugar canes. The fishing was for small fish.

It was in 1897 that the Oloto family ceased to live in that area because the Government took the land shown on plan "A". Government took the area edged pink except the swamp south of the portion where the Police barracks are now. In 1897 there was no causeway; it was all the Oloto land. In 1897 the Oloto family moved to the site on west of plan "A" where Palace Road and other places are marked.

When Government took the land where the Police Barracks now are (see plan "A") Government did not pay anything to the Olotos.

On south east on plan "A" outside pink portion is place called Oke Iluwuro. The Olotos originally owned Oke Iluwuro. It has now been acquired by L.E.D.B. in 1951 from the Olotos. The L.E.D.B. paid the Olotos.

The swampy portion on plan "A" within the pink edged portion south of Police Barracks was taken over in latter part of 1950 by Government and it has become a motor park.

I see plan marked "B" which represents land at Ebute-Metta. The whole area shown on plan "B" originally belonged to the Olotos. A long time ago our family used the land depicted on "B" for huts which were used in connection with fishing; nets were put to dry there and fish cured. In 1893 Government asked to be allowed to plant on the land shown on exhibit "B" to make a garden. The Olotos agreed because the Europeans were to consume the vegetables. Later on, between 1940 and 41, Government began to build on the land. Prior to 1940 the vegetable garden had disappeared but land was vacant. When the Magistrate's Court was built at spot shown on Exhibit "B" we went to survey our land. What I have just said about our land on Exhibit "B" refers to the portion edged pink. It

In the Supreme Court of Nigeria Lagos Judicial Division

Plaintiff's Evidence

No. 5

Chief Imam Osafa Tijani.

Examination:

27th March, 1952 - continued.

was about 17 years ago we had the land surveyed and it was by surveyor A. Coker. Now there stand on Land within pink border on "B", the Magistrates' Court, police Barracks which are Government buildings. I know the Atitebi family. They own land outside pink portion on Exhibit "B" on north-west side where Atitebi Street is shown. Before the barracks were built on land edged pink on "B", we had our sign board placed on the land; "Oloto Chieftaincy Family Land" - It was removed one week after, and we had another one put up and it disappeared again. It was about 1942 we had sign board put up. It was in 1942 we had surveyor Coker survey our land shown on "B". The Atitebi bought their land from the Oloto family about 1901. The members of Atitebi family still living on land outside pink area on north west of plan "B". Government did not pay anything for the area marked pink on "B" to the Oloto family. Land within pink area has not been sold by Olotos to any person.

Going back to plan "A", Police barracks shown thereon belong to Government of Nigeria. The triangle plot edged pink on "A" is occupied by Government, fire Brigade. Before Government took land Oloto family had shop there. Before 1897 the Olotos had houses and so on within the triangular space edged pink west of what is now indicated as causeway. Government demolished the houses.

On plan marked "C" I know the area bounded by Odaliki Street and Ibadan Street West. I see it edged pink on the plan. It is at Ebute Metta on mainland. It formed part of Oloto land at Ebute Metta. Government asked for the portion edged pink in 1900 from the Olotos to make bricks. The Olotos agreed. Government did not use it, it was waste land but Government dug the soil up and took it away to make bricks elsewhere. The holes made the land swampy. Native potatoes used to be planted on this portion of land by members of Oloto and other persons before Government took it over. Government has never paid Oloto family for this land. We expected something from Government but received nothing. Last year we tried to fence the area edged pink on Exhibit "C" and Government destroyed the fence. The Olotos used to own land surrounding pink area on "C" but have since sold part of such surrounding land. Olotos gave land on east of pink area on "C" to Odaliki who came

In the Supreme Court of Nigeria Lagos Judicial Division

Plaintiff's Evidence

No. 5

Chief Imam Osafa Tijani.

27th and 28th March, 1952.

Examination continued.

from Ijeun round about 1871, before my time; on the west of pink area the Olotos gave land to Ijaye people a long time ago. Government has paid us nothing for the land on Exhibit "C".

To continue to-morrow, Examination-in-Chief not concluded.

CHIEF IMAM OSAFA TIJANI, reminded that he is still on oath:

Looking at plan Exhibit "D". I know the land edged pink on plan "D". It is on mainland at Ebute Metta. Originally it belonged to the Oloto family; it forms part of land of the Olotos on mainland. Originally this portion of land was used as a market, there were stalls. The name of the market was Oyiabido market; there is no market there now. About eight years ago Government had the market moved; it may be longer than that. Government had done nothing to the land before market was removed. Government has taken land since market removed. When there was a market on the land edged pink on "D" the stall holders paid no fee or rent; Government now collects money from the stall holders of the new market. When market on land shown on "D", the stall holders etc. were there by permission given by Chief Oloto Akiyemi, no charge made. Government has taken over the land edged pink on plan "D". The Oloto family received no money from Government in respect of the portion of land depicted on plan "D". About 8 years ago was the first occasion on which Government interfered with the land under reference.

I know Ondo Street West which is shown on plan "E", "S". "F" and Jebba Street West and Jones Street. All the land in that area originally belonged to the Oloto family. The Government has taken all the land edged pink on plan "E", "S","F". Some of the land has been used for Railway Training School and tennis courts and Police Barracks. I cannot say how long ago Government took over land marked pink on "E", "S", "F", it is a long time ago. I cannot say when Government took over the land because Government has been gradually taking the land. I would say that the taking over covered a period from 25 to 40 years ago. Before Government came on this land the Olotos used to hire it out to

persons who got palm oil or palm wine from the trees. The Ijaye people used to live there, they had houses on the land shown edged pink on "E". The Ijaye people were under the protection of the Olotos. There were also other persons with houses on the land. Government gave these persons other lands on which to build their houses at a place called Songo at Ebute-Metta. Songo was also Oloto land. Government never paid anything to the Olotos for the land shown edged pink on plan "E". Government paid compensation for the houses demolished; compensation was paid to the persons who had erected the houses.

I now look at plan "H". I know area edged pink on "H". It is on mainland at Ebute-Metta. It forms part of the Olotos Chieftaincy lands. The Government took the land edged pink on "H" about 1900. Government was at that time making bricks. Within that area were places known as Shemore and Ilogbo. Originally Shemore and Ilogbo were at Iddo but when people were displaced from there by Government (to build railway) they migrated to the new Shemore and Ilogbo shown on plan "H". The persons who thus moved on to Oloto land received compensation from Government for their houses at Iddo. The old Shemore and Ilogbo at Iddo was also Oloto land and Government paid compensation therefore to the Olotos. But the Oloto family was not compensated when Government took over the new Shemore and Ilogbo lands shown on plan "H". The new Shemore was originally used for brick making by Government; when they stopped making bricks it was left until 1922 when the people from the old Shemore were resettled thereon. Before Government came on land edged pink on "H", the Olotos used to let the land to persons who made bricks thereon. I remember Labimpe used to live on that land before Government came on to it; also Eshubi Arograbalu rented land from Olotos on part of the land edged pink; another person was Apapiro. No compensation was paid by Government to the Olotos for taking over the land edged pink on plan "H". The land is still in possession of Government today; there are many houses on the land now.

I look at Exhibit "I". The area edged pink forms part of the original Oloto's land. It is on other side of Apapa Road opposite Shemore which is shown on plan "H" (Orientation of plan "H" seems wrong, east to west should be south to north). The lands depicted at "H" and "I" used to form one

In the Supreme Court of Nigeria Lagos Judicial Division

Plaintiff's Evidence

No. 5

Chief Imam Osafa Tijani.

28th March, 1952

Examination - continued.

piece of land, before Apapa Road built. The people who used to live on portion shown edged pink on "I" had same history as those who were on portion shown on "H". Government has taken land edged pink on "I" and Oloto family has received no compensation.

I see plan "I". The pink edged areas on "Y" belonged to the Oloto family. They are now in the hands of Government. These areas were taken by Government between 1920 and 1922. We are only claiming for the area taken for the Railway line shown on "I", not for the other areas edged pink. Government has the other areas edged pink but acquired them from persons to whom we had alienated the land. We are claiming only for the track on which the railway lines run from Iddo to Odi Olowo. The Government took the land for the railway line about 1897 and no compensation was paid to the Oloto Family.

I know land known as Brickfield land Ebute Metta. I know the land of Ojora at Apapa Road. Chief Oloto and Chief Ojora had a common boundary. The Brickfield land does not extend to the boundary between Chief Oloto land and Chief Ojora land.

(At this stage it is realised that plan "I" relates to item of claim (h) The Brickfield item is not pursued with this witness).

The Oloto family have approached the Government about all these lands for which we are claiming. The Government said that it had acquired all these lands and was using them; this was in 1947. We asked Government to pay us if they had acquired the lands. We asked for compensation for our lands. I and members of Oloto family, did not know that Government had acquired the lands mentioned in our claim. It was when we were told that Government had acquired the lands that we asked for payment of compensation.

Cross-examination

CROSS EXAMINATION BY BATE. I have been member of Oloto family council since I was born. I began to take active part in proceedings of the Council in 1915. Present Chief Oloto (Fagbayi) became Chief on 14th December 1944. Before Chief Fagbayi the Chief was Akinolu who became Chief in 1924. After Akinolu became Chief there was a split in the

Family and one Omidiji was appointed Chief by some members and Akinolu remained Chief for the other faction. Eshugbayi was Chief before 1924; he had become Chief in 1888. Chief George Andrew Akiyemi preceded Eshugbayi. There was a Chief Ajayi Oloto between Eshugbayi and Akinolu. There was no Chief Fasayiol Oloto. The Oloto Chiefs used to live at a place called Otto on Iddo Island. The Oloto family kept no written records of the Oloto Chieftaincy land. The Family employed Mr. Lawson the land surveyor to prepare the plans for the present case. I and other members of the Family indicated to Mr. Lawson the lands in dispute. I know a lot about these pieces of land. I had the history of these lands from Chief Eshugbayi Oloto. Eshugbayi died in 1910; he was my maternal grandfather and I used to stay with him. He used to talk to me and I remember his words. I learned all I know from Chief Eshugbayi. The Oloto family used to own all Iddo Island before Railway acquired it. It is very long since causeway between Otto and Ebute Metta was built; it cannot be more than 25 years ago. There used to be a bridge until Government filled in the road. Government had built the bridge between Otto and Ebute Metta about 1899. The Railway started building at Iddo about 1896; the railway connection with the mainland was about 1899. The Olotos did not like a causeway built between Otto and Ebute Metta because it would interfere with their fishing rights; the Olotos did not help Government to build the causeway except those who wanted to accept work as labourers (some of our people were among them). I remember the case of Chief Secretary against Oshinderu and 112 others; I know about it; Chief Oloto made a claim for himself and his family. In that case Olotos claimed land up to Ikeja; far further north than Odi-Olowo. Olotos did not win their claim.

The Aboki-Bada-Eyisha family had land at Ebute-Metta and the Olotos had a common boundary with them. The area of land known as Ebute Metta was large, it extended from the present Ebute-Metta to Agege. The Olotos had land in part of what used to be known as Ebute-Metta. I know Onamikoro. He has land about 12 miles from Ebute-Metta at a place called Ibe and this land was given to him by Chief Oloto; I cannot say whether he has land at Ebute-Metta now.

I am asking £670,000 from Government. It was

In the Supreme Court of Nigeria Lagos Judicial Division

Plaintiff's Evidence

No. 5

Chief Imam Osafa Tijani.

28th March and 3rd April, 1952.

Cross-examination - continued.

valued by an auctioneer Mr. Olaluye. We are claiming the value of the lands as they stand at present.

Cross-examination to be continued on 1st April next, then 3rd and 4th.

Land on Iddo Island belonged to Oloto family even before Chief Eshugbayi Oloto was born. Eshugbayi told me so. In 1897 Oloto family left Northern part of Iddo and moved to new residence. Everybody, including Government, knew that the Olotos owned the land there. Similarly it was common knowledge that the southern part of Iddo where the mere swamp used for fishing belonged to the Olotos. We, the Oloto family stopped fishing in the swamps when Town Council filled the swamp up. I cannot remember when that was. The car park I mentioned the other day as having been filled by Government for a car park is on plan "A" at the bottom of swamp area near Taylor Road. The greater part of the swampy area was filled up: I saw the Town Council servants bringing material for filling up but I cannot say for certain whether Town Council did the work. We claim compensation in respect of area edged pink on east of road shown on plan "A". The swamp south of Police Barracks may have been filled up four or five years ago (as suggested by Counsel) but it might be less or it might be more. The area where Police Barracks stand now as shown on plan "A" was taken over by Government in 1897 but I cannot say when Government began to use it.

The figure £60,000 in respect of all the areas edged pink on plan "A". An auctioneer helped with the fixing of the amount of the claim.

In 1897 when Government took the land I do not know whether the then Chief Oloto or the Family Council received notices from the Government. I was 11 years old in 1897 and not yet a member of the Family Council.

I remember what I said about land shown on plan "B". I used to accompany my mother when she went to dry fish on land shown on plan "B". My mother and Chief Eshugbayi told me the land belonged to the Olotos. In 1893 Government asked to plant vegetables on land edged pink on plan "B".

When Government started planting vegetables the members of the Oloto family stopped going thereon to dry nets or cure fish. The vegetable garden was kept up until Magistrate's Court built in 1922. I made a mistake the other day when I said that Court was built 17 years ago.

The figure of £50,000 claimed in respect of land at "B". The auctioneer valued it. That sum is for the value of the land and the using of the land. The value of the land is actual value at present time. I know that the Oloto Chief and the Family began claiming money from Government when Government started building the Court on land shown on plan "B". but they never went to Court about it.

From area edged pink on plan "C", Government took soil to make bricks. The soil was taken to Ilogbo and Shemore where the brick making plant was. The Brickfields were within area shown on plan "H". Land shown on plan "I" was part of brickfield. Now Apapa Road runs between "H" and "I". The Chief Oloto at the time in 1900 gave Government permission to take soil from pink area on plan "C". Government kept on taking the soil up to 1915. Between 1915 and 1951 nothing was done to land edged pink on plan "C". In 1951 the Town Council or Government (it is all the same to me) began to fill up the cavities on the land shown on plan "C".

I cannot say how much we are claiming in respect of the land shown on plan "C". The Auctioneer knows. There was no agreement with the Government for payment of compensation in respect of this piece of land. The claim we are making against Government is for taking the land and using it. The Olotos gave land to Odaliki now separated from pink area on "C" by Odaliki Street, where printing office is now shown on plan. I do not remember when Odaliki received the land; it must have been before my time or when I was young. The only information I have about the Oloto's title to land we claim as shown on plan "C" is what I heard from Chief Eshugbayi Oloto.

As regards area shown edged pink on plan "D", I heard from Chief Eshugbayi Oloto that it belonged to Oloto Family. There used to be a market on the land but Government moved the market about 8 years ago. It was 8 years ago that Government took

In the Supreme Court of Nigeria Lagos Judicial Division

Plaintiff's Evidence

No. 5

Chief Imam Osafa Tijani.

3rd April, 1952.

Cross-examination - continued.

that land. We are claiming money in respect of the taking the land and the using the land. I cannot say how claim is made up; auctioneer would know. The claim is "for taking the land and using it".

As regards pink areas shown on plan "E", "F", "G". I have said that the Olotos used to let them to the Ajayi people. This was before I was born. The Ijayes were not the Egba refugees. When Ijayes left they went to Sango which also belongs to Oloto family. I cannot remember when Ijayes moved, but it was when Governor MacGregor was here; this was during my life-time. Government took the Sango land from Oloto; but I cannot say whether Government paid compensation therefor. Sango was bigger than area shown pink on plan "B"; the Sango land was valuable as valuable as area shown on plan "B". We do not want to make a claim about Sango land now; I cannot say whether the Family will ever make a claim about Sango land. Government took pink areas on plan "E", "F", "G" for use of the Railways. Chief Eshugbayi Oloto told me all I know about area shown pink on plan "E", "F", "G".

As regards areas edged pink on plans "H" and "I", I know they belonged to Oloto Family because Eshugbayi Oloto, he was my maternal grandfather. Government took over these areas and area shown on plan "C" in 1900. Government took the whole of pink areas on "H", "I" and "C" at same time; I know this personally.

Government paid the people to whom the Olotos had sold all the areas marked pink on plan "Y" (except railway track), that is, when Government took the land from these people Government paid compensation. The railway track was not disposed of by the Olotos. The Olotos had sold land to these people. To my knowledge the Olotos have never sold any portion of the lands edged pink on plans produced to any person, excepting the portions on plan "Y" as just explained.

On plan "E", "F", "S", the land marked pink was never sold to anybody by the Olotos; other lands in the neighbourhood were sold by the Olotos. I know sites the Olotos sold, and those they did not. (Counsel had asked how witness could be so positive being given that no notes or records were kept). I cannot remember all plots of land in

Ebute-Metta sold by the Olotos, however, I know about the areas claimed in this suit. I cannot say how many thousand plots were sold by the Olotos because I have no record.

We claim the main line railway track from Iddo to Odi-Olowo. By track I mean the land on which the railway lines are laid i.e. a strip one hundred feet side. We claim for the railway track from railway station to Odi-Olowo. What is now called the causeway was originally a bridge. I am claiming the railway track or the Denton causeway. I did say that there was water between Ebute-Metta and Iddo Island; then Government built a bridge; then later on a causeway as it now stands. I also said that Oloto family did not want to help Government to build that causeway; Oloto were against the building of the causeway. Now we claim the causeway because the water belonged to us. Not claiming land where Railway Station at Iddo stands; only the track.

Re-examination.

RE-EXAMINATION. I know tradition of Lagos Island and mainland. They belonged to Idepo Chiefs originally. They were other Chiefs like Olotos who owned land. Chief Aromire owned portion of Lagos Island, Chief Onikoyi owned Ikoyi Chief Onitolo part of Lagos Island Chief Oloto: Iddo Island and mainland. Area "A" is on Iddo Island. All the other portion claimed except "I" are on mainland and the Olotos owned the mainland. None of the Idepo Chiefs ever challenged the Olotos right to Ebute-Metta on the mainland. I heard that Governor Glover when he wanted land to house the Egba refugees applied to Chief Oloto for land at Ebute-Metta. The area is now known as the Glover Settlement.

From the mainland side of Denton causeway to Odi-Olowo forms part of the mainland. Iddo Island belonged originally to the Olotos.

Chief Ajayi Oloto was the first one who sold land at Ebute-Metta.

About area on plan "C", there was no agreement between the Oloto family and the Government. We would expect Government to pay for land taken from us or other persons.

About area marked pink on "B", I said Olotos

In the Supreme Court of Nigeria Lagos Judicial Division

Plaintiff's Evidence

No. 5

Chief Imam Osafa Tijani.

3rd April, 1952.

Re-examination continued.

did not take Government to Court. When Magistrate's Court was being built thereon, the Chief and members of the family of whom I was one went to interview the Commissioner of Lands Mr. Nash. After that, on various occasions representations were made to Commissioner of Lands about land taken by Government.

Swamp, south of Police Barracks, on plan "A" is still being filled up now, being done gradually.

BY COURT. I cannot remember when Government began taking land shown edged pink on plan "E", "G", "F".

I did say this morning that we might claim for the Sango land later on. The Sango land transaction is not to my knowledge. I personally could not advise the family to claim it. The family would have to investigate first whether Government has paid for the land. Before making the claims now before Court the Olotos family investigated whether they had been paid by Government. We conduct investigation by going to land Department to investigate. The Chiefs who have died have left no records at all.

Case adjourned until to-morrow for continuation.

No. 6

Chief Onikoyi.

4th April, 1952.

Examination.

No. 6

EVIDENCE OF CHIEF ONIKOYI

CHIEF ONIKOYI, sworn on Bible. I am born in Lagos. I am one of the Idepo Chiefs. The Idepo Chiefs were the only ones who had land in Lagos Island and on the mainland in neighbourhood of Lagos such as Ebute-Metta, Apapa and so on. As Chief I have land on Lagos Island, all of Ikoyi was my land. Part of Ikoyi was acquired by Government in 1946. It was by compulsory acquisition. I was offered £80,000, refused and case came to this Court. I know that Chief Oluwa owns land at Apapa, also Chief Ojora. Originally these last two families owned whole of Apapa region. I know the Oloto family and its chiefs. The Oloto Chief is one of the Idepo. The Olotos are known to have been the sole owners originally of lands at Otto on Iddo and also of land on mainland at Ebute Metta. I used to know

that the Olotos owned the land up to the Ikeja area; what I mean is that no other Chief ever disputed the Olotos rights from Denton Bridge Area to the Ikeja area. The Olotos and Chief Ojora had a common boundary line on the West of the Oloto land. The Olotos also had boundary on East with the Onikoro people. What is now known as Ebute-Metta was part of the Oloto lands.

CROSS-EXAMINATION. I have been recognised by Government as 1st Class Chief in 1950. I ought to be recognised as 1st Class Chief; anyone who becomes a Chief like me must be a 1st Class Chief. Government has been informed that I am Chief Onikoyi, who, as such, is a 1st Class Chief but I do not know what was the reply made by Government. I am nominated by my family; then have to be approved of by Oba of Lagos who then notifies Government of my appointment.

I know place Ijora on Iddo Island.

When an Idejo Chief is appointed he takes the name of the land given to his forefathers. Chief Ojora got his name from the place known as Ijora on Iddo Island.

Chief Oloto was named Chief Oloto of Otto. The Ojora's land never extended to Iddo. Chief Oloto owned the land at Otto which extended to Iddo; Chief Ojora occupied part of Iddo Island, when Government acquired land at Iddo, Chief Ojora moved to Ojora on mainland.

My title to my land rests on fact that I am a descendant of Olofi.

Cross-examination. Iddo is an island, it is separated by a creek from Ijora which is attached to mainland near Apapa.

I know that as far back as my great-grandfather my ancestors were Chief Onikoyi and owned IKOYI.

As Chief I am not paid by Government.

(BY COURT). I am now 52 years old. Part of my evidence is based on what my grandfather and my father told me when I was young.

* Cross-examination Sic

* Re-examination.

In the Supreme Court of Nigeria Lagos Judicial Division

Plaintiff's Evidence

No. 7

Sanni Akanwo.

4th April, 1952.

Examination.

No. 7

EVIDENCE OF SANNI AKANWO

SANNI AKANWO, sworn on Koran. I live at Ago Ijaiye. It is at Ebute-Metta. I was formerly a brick maker; I have now retired. I know place called Shofuntere; it is not far from where I live now I know Ibadan and Thomas Streets at Ebute-Metta. I also know Odaliki Street. I also know Jebba Street West and Ondo Street. The Ijaiye people settled in the area where those streets are 52 years ago. The Ijaiye came from their lands up country (the Ijaiye country) because there was a war there. I am about 90 years old. Governor Glover got land from the Oloto family to settle the Ijaiye people at Ago Ijaiye. Then Government took part of the land where Ijaiye were and the Ijaiye were removed to Ebute-Metta; though some of them did remain at Ago Ijaiye. The place at Ebute-Metta to which many of the Ijaiye family went is called Songo. (They went to Songo from area shown on plan "E", "F", "G".)

I am living at Jebba Street. The land that Government took is just opposite where I live i.e. on opposite side of Jebba Street.

CROSS-EXAMINATION. NIL.

No. 8

Josiah Atitebi.

4th April, 1952.

Examination.

No. 8

EVIDENCE OF JOSIAH ATITEBI.

JOSIAH ATITEBI, sworn on Bible. I live at 17, Atitebi Street, Ebute-Metta. Am a retired civil servant. I know Botanical Gardens area Ebute Metta. I live close to it (Plan "B"). My father owned land in the neighbourhood. Atitebi Street gets its name from my father. My father got land from the Oloto family. I cannot read a plan. The Atitebi land is next to the area known as Botanical gardens. I have with my own eyes seen flowers and vegetables planted on the area known as Botanical Gardens. Government planted them. I know the Magistrate's Court on the Botanical Gardens land; also Police Barracks.

Cross-examination.

CROSS- EXAMINATION. It was my father who got land from the Olotos. It was before I was born. My father told me he had got land from the Oloto I was born in 1890.

RE-EXAMINATION. Father told me he bought the land about 1888. I remember date because I read receipt given by Chief Oloto.

(BY COURT) I have been living at Atitebi Street all the time. I saw Magistrate's Court being built. It was a large plot of land my father bought from the Olotos. We have sold other land bought by our father from the Olotos. My father bought other pieces of land from Olotos apart from the one in the neighbourhood of Atitebi Street.

In the Supreme Court of Nigeria Lagos Judicial Division

Plaintiff's Evidence

No. 8

Josiah Atitebi.

4th April, 1952.

Re-examination.

No. 9

EVIDENCE OF ISAAC BODY LAWSON

No. 9

Isaac Body Lawson.

4th April, 1952.

Examination.

ISAAC BODY LAWSON, sworn on Bible. I am a land-surveyor. I live at 35 Beecroft Street. I prepared the plans "A", "B", "C", "D", (E.F.G.), "H", "I", "J". The plans bear numbers given by me. They have not been deposited at Survey Department. The plans were prepared at request of plaintiffs - Looking at plan "A". The Chief Oloto and his retinue showed me what lands were to be edged pink on all the plans. I was told lands to be edged pink belonged to the Oloto family. I know Chief Imam Tijani (1st witness). He was one of those who instructed me. I did the work in November 1949. What I have just said applies to all the plans mentioned by me. Where land is swamp I indicated it as such. Thus on plan "C" I marked "Swamp being filled." I did not mark "swamp" on area on plan "A" south of Police Barracks because it was filled in. On the plans I indicated the area of the sections edged pink. Looking at plan "I" it shows railway line from Iddo to Odi-Olowo. Scale is 1040 ft. to the inch. On plan "I" the railway line is about two miles long. The railway line is black and white. After measuring in Court I say that line from Iddo Station to Odi Olowo is 43 miles. Length in feet are in fact marked on the plan. The branch line to Apapa shown on plan "I" is not included in the length mentioned by me. I was not told that it was included in the claim. I say that average width of strip on which rails laid is one hundred feet. The area covered by the railway track and

In the Supreme Court of Nigeria Lagos Judicial Division

Plaintiff's Evidence

No. 9

Isaac Body Lawson.

4th April, 1952.

Examination - continued.

land on each side of permanent way is therefore fifty-two acres.

At this stage Mr. Bate tenders a Survey Department plan on which land claimed by plaintiff as shown on plan "A" is edged blue. Kayode agrees that the blue boundaries on this plan (marked "K") denote the land which is subject matter of item "A"(a) of his claim as shown on plan "A".

By consent again Counsel tender a plan showing areas referred to in item (b) to (i) of Statement of Claim marked "L".

By consent again a plan, marked "M", showing railway line claimed under item (k) is put in.

Mr. Lawson continues and says that railway line traced on plan "M" agrees with that on his plan "I".

Looking at plans "A" and "K", I say that areas edged pink on "A" and areas edged blue on "K" are the same.

Looking at plan "L" and my plans "B", "C", "D", "E", "F", "G", "H", "I". I say that areas edged blue on "L" represent areas edged pink on my said plans and bear same identification letters.

The railway line from Iddo to Odi-Olowo indicated on my plan "I" is shown on plan "M".

Looking at all my plans "A", "B", "C", "D", "E", "F", "G", "H", "I" and "J", I say that all the areas which are subject of present claim come to 80.1 acres including the 52 acres of the railway track but not including the areas on plan "J" (except railway line). In square yards, figure is 387684 square yards for 80.1 acres.

Cross-examination.

CROSS-EXAMINATION. All my plans put in this case were traced from the Government Survey map of Lagos 88 except plan "J" which was traced from Government Survey map scale 1/10500. Exhibits "L", "M", "K" are of the same number as those from which I made my tracings.

The areas shown on my plans "A", "B", "C", "D", "E", "F", "G", "H", "I", "J" were calculated by means of an instrument called planimeter. There is a

more accurate way of calculating by co-ordinating every point on the map. For a job like this, the method used is accurate enough.

RE-EXAMINATION. Difference between the two methods would not be appreciable in this case. There might be a difference of .1 of an acre. The boundaries edged pink on my plans were those indicated by plaintiffs, these pink boundaries are reproduced in blue on plans "K", "L", "M".

(BY COURT) Ijora is on Iddo Island. Ojora is on mainland near Apapa.

Lateness of hour, adjourned to date after W.A.C.A. session. For continuation on 21st, 22nd, 23rd and 24th July next.

No. 10

EVIDENCE OF OLABOMI OLALEYE

OLABOMI OLALEYE: Sworn on Bible. I live at No. 6 Fadeyi Street, Ebute Metta. I was instructed to do some valuation of land at Ebute Metta in 1949. I see plan "A". I valued all the areas edged pink. Whole area is 10.386 x .967 = 11.353 acres. I valued it at 967 £54000, this is for the land bare and the value is uniform. This land is on the main road which is, in fact, the only road connecting the island of Lagos with the mainland at Ebute Metta. The position of the land gives it a high value.

I also inspected and valued land edged pink on plan "B" I fixed value of the bare land at £15,500 (fifteen thousand five hundred). Value uniform. It is a good residential area. It is on the lagoon. I valued each plot at £500; each plot being 50 x 100 feet.

I also valued land edged pink on Exhibit "C". It is one block surrounded by streets. I valued it at £11000. Area 2.613 acres. Bare land, still bare been filled in, no longer swamp land.

In the Supreme Court of Nigeria Lagos Judicial Division

Plaintiff's Evidence

No.10

Olabomi Olaleye.

21st July, 1952.

Examination - continued.

I also valued land edged pink on Exhibit "D". I valued it at £4000. I valued the bare land. It is in a commercial neighbourhood.

I see plan "E", "G", "F" (it is one exhibit). I inspected areas edged pink. I valued them at £5500. As usual this is value of bare land. These areas are at Ebute Metta, residential area.

I see Exhibit "H". This is an area abutting on Apapa Road, marked pink. I valued it at £33000 for the bare land. It is a commercial area.

I look at Exhibit "I". Land edged pink on this plan is on opposite side of Apapa Road to last preceding plot mentioned by me. I valued it at £4200 (for the land bare).

I see Exhibit "J" showing railway track from Iddo station to Odi-Olowo. I inspected the permanent way and the land on either side and also the land edged pink on left of railway track. Now I am asked to give value of the railway track on strip without taking into account the large area bulging out on the left although it is edged pink. I value the railway track from Iddo station to Ebute Metta at point I now mark with a Cross (denoted by N) on Exhibit "J" at rate of £300 per plot of 50 x 100 feet; for the remainder of the distance I value it at rate of £60 per plot of similar area.

In township land is measured by plot of 50 x 100 or 100 x 100 and it is on such areas that values are fixed.

(Subject to Kayode's right to re-call witness to give area of railway strip, the examination in chief ends here).

Cross-examination.

CROSS- EXAMINED by BATE:

When I say I value the bare land I mean as freehold land. The values first given by me were arrived at in 1949. I began my valuation early in 1949, before the rains. I used the plans exhibited in Court for my valuations. The plans were made by Surveyor Body-Lawson.

I have been valuing land for 29 years. I have been an Auctioneer during that period.

Before I made my valuation in this case I did not see any other valuation relating to the parcels on areas mentioned in the present case.

I see Exhibit "H". It is a valuable commercial area. Not so valuable as area shown pink on Exhibit "D". I valued land on "D" at £800 per plot of 50 x 100 feet.

Land shown edged pink on "H" I valued at £600 per plot of 50 x 100 feet.

Looking at Exhibit "A", railway line between Iddo Station and Denton Causeway. I valued the areas marked pink at £600 per plot of 50 x 100 feet. Now looking at plan "J".

QUESTION: Is not railway line on "J" included in pink area on Exhibit "A" - ANSWER - No.

I valued railway line on "J" from Iddo to point "N" at £300 per plot of 50 x 100 feet. I give lower value to railway track on Iddo Island because it is away from main road.

Re-examination.

RE-EXAMINATION: I valued the railway track at Iddo at £300 per plot because there is no access to the road, that is between main road and railway line is land owned by other persons and the plaintiffs could not therefore have free access to main road.

I now see that some of the plans produced were signed by Mr. Body-Lawson in 1949, some in 1950.

I say that the plans I used are those exhibited in this case, but I did not notice whether surveyor had signed them at the time.

For continuation to-morrow the 22nd July.

22nd July, 1952

KAYODE states that parties are agreed that the distance between Iddo Station as shown on plan "J" and point "N" on same plan is 25833 feet and from "N" to Odi-Olowo 8812 feet. Width of strip is agreed to be 100 feet (one hundred) all through, this being a minimum. From Iddo to point "N" area is equal to that of 517 plots of 50 x 100 feet and from "N" to Odi-Olowo the area of the strip is equal to that of 176 plots of 50 x 100 feet.

Mr. Bate agrees with the above.

In the Supreme Court of Nigeria Lagos Judicial Division

Plaintiff's Evidence

No.10

Olabomi Olaleye.

22nd July, 1952.

Re-examination - continued.

Kayode puts last witness in box to continue re-examination.

OLABOMI OLALEYE: reminded that he is still under oath.

Area equal to 517 plots from Iddo Station to point "N" on plan "J" is worth £155100 at the rate already stated by me yesterday. The area of 176 plots from "N" to Odi-Olowo is worth £10560 (ten thousand five hundred and Sixty pounds).

At this stage Counsel inform Court that the mistake in calculation was made and that the area between Iddo Station and point "N" is 300 plots; and from "N" to Odi-Olowo the previous figure (176 plots) is correct. The amount of compensation for area between Iddo and point "N" is therefore £90000 (ninety thousand).

Mr. Kayode moves to amend paragraph 6(k) of Statement of Claim by substituting £100560 for £40000. BATE has no objection, amendment allowed.

KAYODE reminds Court that claim in paragraph 6(j) of Statement of Claim was abandoned earlier.

KAYODE also moves to amend total of compensation claimed from £670,000 to 630,560.

No objection - Amendment effected.

Plaintiff's Case closed.

No.11

Notes of Speech for Defendant

22nd July, 1952.

No. 11

NOTES of SPEECH for DEFENDANT

BATE: All parcels of land mentioned in Statement of Claim have been acquired under Public Lands Ordinance, 1896 or 1903 except paragraph (c). Main provisions of previous Public Lands Ordinance correspond to present ones. They all make provision for acquisition by agreement, settlement of disputes by Supreme Court, title is conferred by a document called a certificate of title issued by the Supreme Court. Main provisions of present Chapter 185:

Sections 5 and 8 which correspond to Secs. 4 & 7 of the 1903 Ordinance and Sec. 5 of the 1876 Ordinance.

These sections deal with giving of notice of intention to acquire.

Section 9 of Ch. 185 which corresponds to Sec. 8 of 1903 Ordinance and Sec. 6 of 1876 Ordinance. These contain provisions for services of notice of acquisition.

Section 15 of Ch. 185 which corresponds to Section 17 of 1903 Ordinance (No corresponding provision in 1876 Ordinance). Attention drawn to section 15(h) of Ch. 185 which exists in 1903 Ordinance.

Section 21 of Ch. 185 which corresponds to section 24 of 1903 Ordinance and Section 11 of 1876 Ordinance.

Section 22 of Ch. 185 corresponds to Section 25 of 1903 Ordinance and Section 12 of 1876 Ordinance.

Section 25 of Ch. 185 corresponds to Section 28 of 1903 Ordinance and Section 10 of 1876 Ordinance which govern "Certificate of Title".

Section 26 of Ch. 185 corresponds to Section 30 of 1903 Ordinance and Section 10 of 1876 Ordinance (filing etc. of conveyances, certificates of title).

Section 10 of Ch. 185 corresponds to Section 10 of 1903 Ordinance and Section 7 of 1876 Ordinance which deal or dealt with disputes.

Certificates of Title covering all areas mentioned except area in paragraph 6(c) of Statement of Claim will be produced.

Proof that compensation has been paid for areas (a), (e), (f), (g) and (k) mentioned in paragraph (6) of Statement of Claim will be adduced.

Defendant also will lead evidence as to value of the land at time of acquisition.

Defendant will rely on two defences in law: Statute of Limitations and Civil Procedure Act, 1833.

In the Supreme Court of Nigeria Lagos Judicial Division

Defendant's Evidence

No. 12

Ayodele Vera-Cruz.

22nd July, 1952.

Examination.

No. 12

EVIDENCE OF AYODELE VERA-CRUZ.

AYODELE VERA-CRUZ: Sworn on Bible. I am a Government Surveyor employed in Survey Department, Lagos and I have passed Survey Departmental Examination.

I produce certified true copy of certificate of title No. 43 page 43 Vol.1 of 1899; (No objection marked "O").

I also produce certified true copy of Certificate of title No. 6 page 6 Vol.2 of 1901. This certificate has another number which was 141 page 436 Vol.37. The certificate marked No. 6 page 6 Vol. 2 has a plan attached; the other certificate registered as No. 141 page 46 Vol.37 has no plan attached. The two certificates are similar except for the plan. The plan fits the description of the land in either certificate.

KAYODE objects to this certified copy being put in as being a copy of certificate of title 141 page 46 Vol.37; no objection that it be put in as a copy of entry No.6 page 6 Vol. 2.

Mr. KAYODE after being told by Court that Mr. Bate will undertake to produce separate certified copy of the certificate (without plan) registered as No. 141 page 36 Vol. 37, does not insist.

Copy of Certificate of Title admitted marked "P".

I produce Sheets of Government Survey Map scale 88 ft. to the inch showing Iddo Island. I made the blue marks on this map to indicate areas mentioned in paragraph 6(a) of Statement of Claim. I also made yellow marks to show area described in certificate of title "O".

On same map I made red marks to indicate area covered by certificate of title "P". Map put in marked "Q".

I tender Government Survey Map of 1914 Sheet 50, 88 ft. per inch, showing part of Iddo Island and Sheet 47 of same survey showing another part of Iddo Island. I have marked in blue on both sheets the areas claimed by plaintiffs on Iddo Island.

KAYODE objects because these two maps indicate nature of land. This was never pleaded. If defendant wishes to put in the two maps merely to indicate positions of areas, there would be no objection.

(COURT looks at the maps which, it appears, were first published in 1913 by authority of the then Governor and later drawn and printed at the Ordinance Survey Office, Southampton in 1914).

BATE. Plaintiff has claimed large sum by way of damages. Difficult to value unless nature of land known. In Paragraph 9 of Statement of Defence, claims were generally challenged. By virtue of Section 39 of Evidence Ordinance Cap. 63 applies.

Court admits the two sheets which are marked "R" & "R1" (Sheet 50 is R and Sheet 47 is R1).

KAYODE asks Court to make a note of page 480 Bullen of Leak's Precedents of Pleading (1950 edition) in connection with above. Mr.Kayode's point (which I have overruled) is that the defendant cannot rely on R and R1, which denote nature of land because defendant has not specially pleaded that particular nature of land affected its value.

WITNESS CONTINUES:

I made blue marks on Exhibits "R" and "R1" indicating areas subject matter of claim on Iddo Island (paragraph 6(a) of Statement of Claim). The total area of claim (a) is 11.341 acres by trapezium triangles and planimeter. I computed area of swamp land.

(KAYODE objects to last answer on same grounds as above. Objection overruled), and found it to be of 771 acres and dry land 3.570 acres.

I tender Government Notice 234 of 1899 (a photostat copy of the G.N. published on page 281 of Gazette of August 5, 1899). KAYODE objects. BATE hands Gazette. Court may take judicial notice of Government Gazette and asks Bate to refer to the Gazette.

Now Kayode withdraws objection subject to the photostats being of the correct Government Gazettes.

In the Supreme Court of Nigeria Lagos Judicial Division

Defendant's Evidence

No. 12

Ayodele Vera-Cruz.

22nd July, 1952.

Examination continued.

Witness also tenders photostat copies of G.N. 321 (page 424 Gazette of October 14th, 1898 which is obviously mistake for 1899 which is date of the notice) marked "S1".

I produce certified true copy of certificate of title No. 44 page 44 of Vol. 1 of 1899 (marked "T"). Certificate No.30 page 30 Vol.2 of 1903 (marked "T1"); Certificate No.67 page 244 Vol.43 dated 1903 (marked "T2").

Comparing "T1" and "T2", "T2" has a plan whereas "T1" has not but the area described is the same.

I tender Government Survey Map of Ebute Metta Second Edition 1945 (no objection by Kayode). Marked "V". This shows all areas which are subject matter of claims except claim in paragraph 6(a) of Statement of Claim. I made blue marks on Exhibit "V" to indicate areas on mainland mentioned in Statement of claim.

I have marked these areas on "V" with letters corresponding to sub-paragraphs of paragraph (6) of Statement of Claim. I also drew red lines to indicate areas described in Government Notices No. 234 (Exhibit "S") and No. 321 (Exhibit "S1"). The area described in certificate of title "T" is within these red lines (but does not cover the whole area).

The green lines on Exhibit "V" were made by me. They surround areas defined in certificate of title No. 67 Exhibit "T2".

I tender certificate of title No. 42 page 42 Vol. 1 of 1899 (a certified photostat copy is tendered). No objection, marked "W". It refers to land at Ebute Metta.

I have marked "V" with letters corresponding to those denoting sub-paragraphs of paragraph (6) of claim to denote respective areas in respect of which compensation is claimed. Area "B" is 3.783 acres. Area "C" is 2.580 acres.
Area "D" is 0.654 acre 3166 square yards.
Area "E" is 1.359 acres or 6577.56 square yards.
Area "F" 0.298 acre or 1444 square yards.
Area "G" 0.628 acre or 3003 square yards.
Area "H" is 6.410 acres.
Area "I" 0.845 acre or 4090 square yards.
Area "K" 46.100 acres.

Cross-examination to be begun to-morrow.

Adjourned till to-morrow the 23rd July.

THURSDAY THE 24TH DAY OF JULY, 1952.

In the Supreme Court of Nigeria Lagos Judicial Division

Defendant's Evidence

No. 12

Ayodele Vera-Cruz.

24th July, 1952.

Cross-examination.

CROSS-EXAMINED by MR. KAYODE:

I see Exhibit "T". It contains no verbal description of the land but there is a plan of the land. With the plan on Exhibit "T" I could not identify the land. I know the land is at Ebute Metta.

I look at Exhibit "T1" the description of the land therein is similar to that in Exhibit "T2" which has a plan or sketch annexed. With the plan on "T2" I can identify the land described. I do not know extent of Botanical Garden on "T2" nor clay pit. The brick pillar shown on the plan is not there either. The causeway on lagoon is still there and the point at which it meets the land is still there and can be used as a starting point for tracing the land on the ground.

On Exhibit "V", the line indicating the boundary of the land by the lagoon is taken at high water mark.

When tide rises the water will cover dry land if the land is flat. The spread of the water on land which is dry at low tide is not uniform when tide rises.

The bridge or causeway shown across lagoon on "T2" is not visible now but the points at which it started are still visible. I mean that the first pier of the bridge is on firm land not in the water, it is on edge of the lagoon. I can see where road ended at edge of lagoon (I mean road which went over bridge). The Denton Causeway has replaced that bridge. Where the present Denton causeway meets the mainland at Ebute Metta is the same point as indicated on "T2" as being point where bridge met the land. The existing causeway is of course much broader than the old bridge. I can tell where the bridge ended on mainland because the old road at Ebute Metta leading to the bridge is the same as now leads to the causeway. As we know width of road, we know middle of road which was also middle of old bridge. I remember the bridge when it was in existence, it joined the road on Ebute Metta side in middle of the road. On plan or sketch on "T2" there is no mention whether the outline of lagoon was marked at high or low water. I do not know whether the of land shown on right of

In the Supreme Court of Nigeria Lagos Judicial Division

Defendant's Evidence

No. 12

Ayodele Vera-Cruz.

24th July, 1952.

Cross-examination.

causeway or rather bridge shown on "T2" has been filled in and whether the outline is now the same at the spot. I can find point marked "brick pillar" on "T2" although outline of lagoon has altered or been altered by reclamation.

On plan "T2" I have also the railway line and the corner of the space marked as "Town Site". From the latter, when found, I can trace the plot of land on the ground, in fact I did not need to do this in present case because there was the description in the certificate of title which gave further guidance.

Looking at Exhibit "O", I see the plan, which is to scale. Starting at spot marked Denton Causeway I can trace the outline on the ground and can relate the land tinged yellow to plan "A" where the land is edged yellow.

On Exhibit "R", is shown the causeway (which when plan was made was still a bridge); to left of slaughter house i.e. on side away from bridge was swamp land.

Looking at plan on Exhibit "O" I say that the boundary on lagoon at Denton Causeway is on firm land which does not change, so on Exhibit "Q" I see no reason to justify saying that outline of boundary on lagoon may have changed and this affected the tracing of the whole area. I cannot say whether lagoon outline on "O" was high tide or low tide: the difference would, in any case, be very small.

Swamp land on "R1" to left of slaughter house is covered by water at high tide only.

Latrine on "Q" (in 1945) was slaughter house on "R1".

Water recedes from swamp at low tide; even at high tide there is not a smooth sheet of water on the swamp; the water lies in pockets.

Re-examination.

RE-EXAMINATION:

I did not in this case survey on the ground or trace on the ground the areas described in the certificates of title. What I did was to trace the areas on the 1945 map marked "V". I explained yesterday what the red lines were. I did not plot on Map "V" the area described in Exhibit "T". The

green line on "V" represent areas mentioned in "T1" and "T2".

(KAYODE objects to last question and answer - BATE explains that area described in "T" was acquired earlier than that in "T1" or "T2" (these are the same) and "T" is included in area "T1" or "T2") Court allows question and answer.

In the Supreme Court of Nigeria Lagos Judicial Division

Defendant's Evidence

No. 12

Ayodele Vera-Cruz.

24th July, 1952.

Re-examination - continued.

No. 13

EVIDENCE of CHRISTIAN MACAULAY.

No. 13

Christian Macaulay.

24th July, 1952.

Examination.

CHRISTIAN MACAULAY, sworn on Bible. I am land Officer in Land Department, Lagos. Been there since 1947. I knew a Mr. Benjamin who was a government Surveyor. I know him even before I joined the Department. I knew him also while I was at Land Department. This is certified copy of his death certificate (marked "X"). He died in 1950. I know Mr. Benjamin's writing. I had occasion to see it often. Mr. Benjamin retired from Government Service before I joined it but he used to come to land Department and was in private practice. I think he retired between 1916 and 1918. I am in charge of the land record of Colony Section at Lands Department. I now tender Schedule relating to acquisition of land at Ebute Metta prepared by Mr. Benjamin in 1907. It is a Schedule of Compensation and refers to a plan on which plots are marked. (No objection) marked "Y" and admitted.

I also tender plan made by Mr. Benjamin. It is signed by him but no date appears on the plan which is old and rather dilapidated and patched up. Marked "Y1" (no objection by Kayode) and admitted.

CROSS-EXAMINATION.

Cross-examination.

I cannot say whether Benjamin's signature on "Y1" is much more recent than the other writings on the plan. The other writings (indicating and

In the Supreme Court of Nigeria Lagos Judicial Division

Defendant's Evidence

No. 13

Christian Macaulay.

24th July, 1952.

Cross-examination - continued.

describing blocks etc.) are in drawing ink while the signature is in ordinary ink. It is difficult to say whether the inscriptions in drawing ink are faded as compared with the ink of the signature. I agree that the drawing ink has faded; this is an old map. The signature is in ordinary ink and I cannot say whether it has faded. It is my experience that drawing ink does fade.

There is no express indication that "Y" and "Y1" are related. I deduce that the two go together because Mr. Benjamin was the author of both.

"Y1" is the only plan on record referring to Ebute Metta plots made by Benjamin. There are plans made by other Surveyors of other areas in Ebute Metta. I now explain that Benjamin made plans of other parts of Ebute Metta but "Y1" is the only one by Benjamin of the particular area depicted.

No re-examination.

For continuation to-morrow 25th July.

No. 14

Charles Stuart Glover.

25th July, 1952.

No. 14

EVIDENCE of CHARLES STUART GLOVER.

FRIDAY THE 25TH DAY OF JULY, 1952.

MR. KAYODE points out that Mr. Glover has been in Court throughout the case. Court points out that the matter was gone into and a ruling given at beginning of case. Mr. Kayode now says that Mr. Glover was not only in Court when plaintiff's case was heard but when defence witnesses were called - Court points out that attention was not drawn to this at the time but adds that original ruling contemplated presence of this witness in Court throughout the hearing.

Examination.

CHARLES STUART GLOVER sworn on Bible. I am Acting Colony Land Officer. I have been at Lands Department since 1946.

Land comprised in claim (a) i.e. described in paragraph 6(a) of Statement of Claim is Crown Land. Part of it was acquired at various dates (the

western part) between 1896 and 1899 by compulsory purchase. The Eastern portion was acquired in 1901 by compulsory purchase. There are two certificates of title covering the whole of land in claim (a) and also other lands. They are Exhibits "O" and "P" dated 18/4/1899 and 22/4/01 respectively The certificate marked "P" includes area to which "O" applies.

Looking at Exhibit "Q". The yellow lines enclose area covered by "O". The red lines denote area covered by Exhibit "P". The blue lines denote area of claim (a) which is partially within the yellow lines and wholly within the red lines.

I have been able to trace very little about payments. I have discovered one or two old papers. For example here is a minute paper of 1897 discovered amongst old records at the land office entitled"Lagos Railway - Valuation of houses expropriated on Iddo Island". Inside is a list of payments made for land etc. by expropriation Commissioner March 16th to May 12th 1897. At date March 18th 1897 appears name of Chief Esugbayi Oloto with the sum of £70 opposite the name. The minute paper is admitted as Exhibit "Z".

Another minute paper of 1910 - 1911 deals with land mainly outside present claim but there is reference to the price paid for solid land in the neighbourhood in 1899 (paragraph 10 of minute of the 13th March 1911).

Mr. Kayode objects on ground that this document is irrelevant. It deals with land on far eastern side of Iddo Island. (Mr. Bate explains that he wants this document produced only for the purpose of establishing value of land at the time). Kayode submits that the document is inadmissible because land referred to in document is not land with which this case is concerned and also because writer of the minute did not purport to record something he knew personally and had done in the course of his duty but merely quoted a value for purposes of comparison.

BATE relies on Section 13 of Evidence Ordinance and also on Section 90(5).

Court refuses to admit the minute paper because

In the Supreme Court of Nigeria Lagos Judicial Division

Defendant's Evidence

No. 14

Charles Stuart Glover.

25th July, 1952.

Examination - continued.

1st, the value mentioned refers to land "in the neighbourhood" of land with which we are concerned; 2nd, it is not at all clear that writer of the minute set down what he personally knew or what it was his duty to record.

I have a letter dated 13th November, 1899. This letter was extracted from a Government file for the purposes of a previous case. This letter is addressed to the Governor and Commander in Chief and was written by one Alfred Malomo for Chief Eshugbayi Oloto, Abore of Iddo, Bamgbose and Akelu Giwa.

KAYODE objects to production.

BATE informs Court that the use he wishes to make of this document is to show that the Olotos knew and recognised that land on Iddo Island had been or was being compulsorily acquired by Government.

At this stage witness explains that he obtained the document from a file about 1948 for use in a previous case. That file was not produced in Court because it was irrelevant to the matter. Now the file is mixed up with thousands of old files. The document remained in Court. Kayode says that materiality of document was not pleaded nor is it relevant. After hearing Counsel I decide that the document is admissible for the purpose of establishing knowledge on part of the Olotos in 1899 of the compulsory acquisition going on on Iddo Island, and for no other or further purpose. Marked "AA".

I produce report addressed to the Honourable Acting Colonial Secretary 16/12/1896 and signed M.R. Menendey. This report was extracted by me from an old file for production in Court in another case. The file is now stacked with thousands of others and would be difficult to trace. This report remained in Court until withdrawn and since then it remained in my custody.

Mr. Kayode objects to production of this report. No indication who Mr. Menendey was and what his duties were. No relevancy. Also Section 90(3) of Evidence Ordinance, Cap. 63.

BY COURT: Is a person who advises Government in a

case when Government is acquiring land, an interested party within meaning of Section 90(3) Cap. 63? - KAYODE says yes.

KAYODE adds that issue of value was not raised at all by defendant. Not admissible because materiality not pleaded.

Mr. BATE before replying asks to put 2 questions to witness in order to have a basis for his submission.

WITNESS: The date of the first certificate of title in respect of land acquired at Iddo Island is 18th April, 1899 (Exhibit "O").

BATE asks that document be admitted on 2 grounds. First because compensations mentioned in report were obviously in respect of land acquired prior to 1899 and covered by certificates of title, issued for that year onwards. Secondly because the report shows that Chief Oloto was fully aware of what was going on on the island in the way of acquisition by Government and payment of compensation.

Court admits document only for purpose stated by Mr. Bate as second ground. Marked "BB".

I tender another report dated 12th January, 1900, signed Frank Rohnweger who appears in a notice in a Gazette of 1896 as Acting Colonial Secretary. This report follows on to report "BB". No objection; Marked "CC".

Photostat of Government Gazette marked "CC1"

I tender original of report of Commission of Enquiry "On value of lands expropriated for Railway purposes at Iddo Island and Ebute Metta". The report deals only with Iddo Island. Report was signed by Black, Rennington and Handing.

KAYODE objects to production: Submits report is not admissible because not material. Also by reason of Section 90(3) of Evidence Ordinance (Submission based on Section 90(3) of Cap.63 is rejected by Court).

COURT admits report.
Marked "DD".

In the Supreme Court of Nigeria Lagos Judicial Division

Defendant's Evidence

No. 14

Charles Stuart Glover.

25th July, 1952

Examination - continued.

Paragraph 2 on page 3 of Exhibit "DD" relates to seigneurial right of Oloto Chief on Iddo Island and refers to a claim of £200 by Chief Oloto in October 1899. Also refers to application in January 1899 by Chief Oloto for a Crown Grant.

I tender a minute paper of 1908 relating to a claim of £5.16.1d for compensation in respect of 2244 square yards at Iddo covered by Crown Grant No. 194 Vol. V acquired by Government under Notice No. 186 of 1899; the sum of £6.10s. having been paid in 1899. The receipt of Mary Franklin date 25/3/11 is in this file for the sum of £5.16.1d and recites above facts.

KAYODE objects to receipt. Same objection as before. No disclosure of material fact in pleading because defendant did not expressly dispute value in his pleadings. Objection overruled.

- The minute paper is marked "EE" but only the receipt signed by Mary Franklin will be considered as evidence in this case -

The value mentioned in receipt EE works out at £24 per acre.

As to areas mentioned at (b),(a),(e),(f),(s), part of (h), part of (i) of paragraph (6) of Statement of Claim. All these areas are Crown land.

In August 1903 a certificate of title covering a very large area in Ebute Metta was granted ("T1" and "T2" are the same certificate as already noted).

On map Exhibit "V", the green line encloses the area covered by "T1", and "T2". The Plaintiff's claim set out in (b),(d),(e),(f) and (g) refer to areas marked with the corresponding capital letter on "V" and enclosed by blue lines; a part of the green area on "V" has been relinquished by Government as a result of the Glover Settlement Ordinance; possession had never been taken of such part and there were endless law suits.

Part of area "H" and a few square yards of area "I" also fell within the green lines on "V" i.e. are covered by certificates of title "T1" and "T2".

Certificate of Title No. 10.10 Vol.1 of 14th

July, 1891 relates to a parcel of land which according to the sketch attached to the certificate of title fits into the top portion of area "B" (i.e. northern portion on map "V"). I have satisfied myself that land described in this certificate of title covers the northern part of area marked "B" on map "V". The distances agree within one or two feet.

No objection. Marked "FF".

On southern part of sketch on "FF" appear words "Government Garden" (Outside the area covered by the certificate). The area thus marked "Government Garden" is part of area "B" on map "V". I deduce from "FF" that the northern part of area "B" must have been acquired before 1891 and the area south of it i.e. the rest of area "B" on map "V" was already in Government's possession when the certificate of title was issued in 1891.

Records at Land Department of transactions prior to 1907 are very sketchy; very little recorded. There are documents but it is almost impossible to say to what they refer; never been sorted out. No other record bearing on claims at (a) and (b) of paragraph 6 of Statement of Claim.

(Lateness of hour. Examination in Chief to be continued).

Adjourned to 1st and 2nd October next.

WEDNESDAY THE 1ST DAY OF OCTOBER, 1952. 1st October, 1952

EXAMINATION IN CHIEF resumed -

CHARLES STUART GLOVER, sworn on Bible, deposes in English.

COURT asks witness whether £24 per acre was what he stated as being value of land deduced from receipt "EE". Witness says that he said about £12 per acre.

Land mentioned in paragraph 6(c) of writ is marked "C" on plan "V". I could find no record as regards area marked "C". This land is generally known as one from which soil was extracted for use at Government brickfield at Ebute-Metta. In 1905 another piece of land nearby was acquired. It

In the Supreme Court of Nigeria Lagos Judicial Division

Defendant's Evidence

No. 14

Charles Stuart Glover.

1st October, 1952

Examination - continued.

was acquired for use also as a clay pit. I deduce that this new plot was acquired because the clay-pit at area marked "C" on plan "V" was exhausted (Kayode objects to this last answer; it is mere deduction). Court upholds Kayode's objection. Area marked "C" was known as the Government clay pit; it was in fact an excavated area, I saw it being filled up by Town Council. The Council have permission to dump refuse there. Area marked "C" is not covered by certificate of titles "T" and "T1". Government acquired in 1899 lands mentioned in Exhibits "S" and "S1"; the two areas acquired are contiguous and are bounded by the red line on plan "V". Areas "E","F","G" on west side of plan "V", were acquired in 1903 compulsorily; certificate of title which covers them is "T1". Boundary of land covered by Exhibit "T1" is shown green on Exhibit "V". I have here a book containing a record of acquisitions. It is called acquisition Record Book for Ebute Metta. Books like this one are still kept. The earliest dates back to 1906. This one covers approximately period 1911-12. Looking at p.53 of this book; in fact at page 53 to 67 the entries refer to land mentioned in paragraph 6 (e), (f), (g) of summons. On page 58 there is a plan from which I can identify the land described. This plan refers to entries on pages 53-67 of the book (Witness points out on plan at page 58 the main features which appear on plan "V" in respect of area "E", "F", "G". This Wesleyan Chapel at page 58 obviously corresponds to Methodist Church on plan "V" area marked "G". The names of street also correspond). The entries in this book record the history of the plots referred to. As regards land acquired for use of railway the compensation was paid by Railway on a certificate delivered by Commissioner of Lands. Mention of such certificate is made in this book and also amount of compensation and person compensated. I have not been able to find the receipts at the Railway Department because they have been burnt. On plan "Y1", building shown above Roman Numerals LXX is obviously the same Methodist Church already pointed out on plan "V" and at page 58 of this book (Acquisition Record). Ondo and Jebba Streets also appear on "Y", but I would explain that when Railway Compound was erected it severed continuity of these streets which nowadays are named in sections i.e. Ondo Street West, Ondo Street East for example. The Roman numbers indicate numbers given to Glover tickets.

This book was kept by Land Department and is still in the custody of the Department i.e. Colony Land Office.

Mr. KAYODE objects to production of this book. I admit the book after BATE calls attention to Section 122 of Evidence Ordinance Cap. 63 Book marked "GG".

Now as regards areas "H" and "I" on plan "V", which correspond to sub-paragraph (h) and (i) of paragraph 6 of writ of summons, part of "H" and small part of "I" are covered by certificate of title "T1". I have here a certified true copy of a certificate of title dated 7th February, 1893, relating to land constituting areas "H" and "I" on plan "V" (marked "HH") Exhibit "HH" has no plan attached to it. The verbal description set out in "HH" is not adequate to enable boundaries to be identified but it is sufficient to enable me to determine that it relates to an area which is where areas "H" and "I" are now marked on plan "V": I can deduce from description "HH" that it describes land on part of the land in areas "H" and "I" on plan "V" and probably more extensive than "H" and "I".

Land claimed in paragraph 6(k) of writ of summons is railway track from Iddo to Odi-Olowo. Parts of the track on Iddo Island were acquired and are covered by certificates of title marked "O" and "P" (1899 A.D. and 1901 A.D.) That part of area referred to in 6(k) of Summons which begins at northern end of Denton Causeway on mainland and extends to Oke-Ira Street was acquired compulsorily and covered by acquisition notice of 1899 ("S" and "S1") and is within area of main certificate of title of 1903 (Exhibit "T1"). As regards payment of compensation I can establish them by producing a plan from records of Colony Land Office purporting to be made by Macaulay on 27th January, 1897, showing small plots of land owned by different persons in neighbourhood of railway tracking and railway compound at Ebute-Metta. Names of owners of plots are marked on this plan (marked "II"). I can identify a number of the names on plan "II" with corresponding names on Schedule Exhibit "Y" which mentions plot number; from that plot number the plots can be seen on Exhibit "Y1". I conclude that when Mr. Benjamin prepared "Y" and "Y1" he must have considered the earlier plan "II".

In the Supreme Court of Nigeria Lagos Judicial Division

No. 14

Charles Stuart Glover.

1st October, 1952.

Examination - continued.

I have also a Schedule of valuation for payment of compensation for land acquired for railway prepared in 1899. There is a copy on reduced scale of plan "II" attached to this Schedule. The Schedule purports to have been signed by Commissioner of Lands (Mr. Rowsey?). No objection to admission. Marked "JJ". Exhibit "JJ" comes from the records of the Department. I found names and figures in "JJ" which correspond almost perfectly to items 1 to 76 of Benjamin's Schedule "Y". 10

The order is not the same but the names can be traced. I tabulated my findings for ease of reference. This is the tabulation which I tender (No objection marked "KK"). The left-hand half of Exhibit "KK" relates to Exhibit "JJ" and right hand part to Exhibit "Y" (Witness demonstrates to Court and counsel). Notes at bottom of Exhibit "KK" indicate the instances where reconciliation is not complete or quite complete. I conclude that Benjamin's list shows compensation in respect of 20 lands at Ebute Metta and Rowsey's list indicates that it was in 1899 that valuations were made. (Kayode submits that inferences cannot be drawn by witness. Kayode is right and Court will take care to arrive at its own conclusions). Items 1-76 of Benjamin's Schedule (Exhibit "Y") relate to the land included in area mentioned in paragraph 6(k) of summons and land contiguous to it.

I produce certified copy of entry of death in General Register kept at Somerset House recording 30 death of Matthew Olfert who was a Surveyor employed by Survey Department in Nigeria. He died in 1937. Marked "LL". I have here a Schedule of valuation of property at Ebute-Metta West side made on 9th March, 1904, and signed M. Olfert. This schedule is part of records at Colony Land Office. (Tendered - no objection). Marked "MM". The items on "MM" are identifiable with items 77-128 on Benjamin's schedule "Y". The order of names on both is the same. Numbering of plots on Olfert's schedule must 40 refer to some other plan but names on "Y" and "MM" are easily recognized. In a number of cases the amounts mentioned by Olfert in "MM" are lower than those mentioned in Exhibit "Y". Olfert dealt with valuation of improvements only: Benjamin's schedule from No. 77 onwards where Benjamin indicates that expropriated owners received land and money in compensation, the sum mentioned is same as

appears in Olfert's schedule. In a number of cases, Benjamin's schedule shows that no land was given in compensation, in such cases the amount mentioned in Exhibit "Y" is greater than that mentioned in Exhibit "MM". Thus in Exhibit "Y" after item 77 the first item where money only was paid is No. 83: the name of person compensated appears in item 15-20 of Olfert's list (MM) where it is recorded that amount of £68 was paid (as recorded in "Y") but also shows that Olfert's part of the valuation came to £35.12s.9d. With regard to land given in compensation to expropriated owners, as mentioned in Benjamin's schedule "Y", I have made searches found a number of Crown Grants. From No. 77 onwards in Exhibit "Y" the majority of owners received money and land: the Crown Grants I have traced are identifiable by area or name or both with land mentioned in Benjamin's schedule "Y" as being given in compensation. I have made a list of such Crown Grants and tender it (Mr. Kayode objects on ground that this list is the result of searches made by witness and that it should not be admitted without the Crown Grants being produced. Mr. Bate states that it would take a long time and cost much money to produce the Grants; he adds that he would gladly satisfy Mr. Kayode that the Crown Grants listed by witness do exist. Moreover Mr. Bate refers to section 94 of Evidence Ordinance paragraph (e) and section 96(e) and Section 108(a)(iii). I have in Court copies of Crown Grants to persons mentioned in items 125, 210 and 172 of the lists prepared by Mr. Glover). Mr.Kayode suggests that witness should only have mentioned Crown Grants of land made in part compensation in respect of land acquired for the railway line; he suggests that there could not be more than 9 or 10 such grants. Witness states that it would be very difficult to do what Mr. Kayode suggests. Difficulty is that he cannot put the space where railway track is on Benjamin's plan (Y1); I cannot do so with exactitude. Body Lawson's plan Exhibit "J" could not be superimposed on Benjamin's plan. What we have been endeavouring to do is to show that land, on which the railway track is, has been acquired and paid for (i.e. land on either side and including the track), and if we succeed the case for the defendant would be made out. (Mr. Bate agrees that he has been attempting to establish acquisition of a much larger area than that covered by railway track).

Examination to be continued to-morrow.

In the Supreme Court of Nigeria Lagos Judicial Division

Defendant's Evidence

No. 14

Charles Stuart Glover.

2nd October, 1952.

Examination - continued.

THURSDAY THE 2ND DAY OF OCTOBER, 1952.

CHARLES STUART GLOVER still under examination in chief; is reminded of his oath -

(When Court adjourned yesterday it had not been decided whether the list of Crown Grants prepared by witness was admissible. Mr.Bate now says that he will re-shape his question in order to avoid possible difficulties).

For item 77 onwards on Schedule "Y", land compensation was made wholly or in part in 9 out of 10 cases. I produce certified copy of Crown Grants registered as No.189 page 376 Vol. 34 dated 12th August 1904. Marked "NN" (No objection by Kayode). I also produce Crown Grant (certified copy of) registered as No. 217 page 432 Vol. 34; grant dated 25th August, 1904. Marked "NN1". I also produce another certified copy of a Crown Grant registered as No. 163 page 325 Vol.46, date of grant 29th September, 1905 (marked "NN2"). I can connect these Crown Grants with land mentioned in Exhibit "Y" as being in compensation.

Exhibit "NN" is a grant to Atomba who is mentioned in item 210 in Exhibit "Y". The members mentioned in the column opposite item 210 in "Y" have enabled me to trace the land on an old plan and to compare it with plan on Crown Grant "NN". So, besides the similarity of names, I have established that the Crown Grant covers land referred to in item 210.

By same process I have related Crown Grant exhibit "NN1" to item 172 on page 5 of Exhibit "Y" and I have related land covered by "NN2" with item 125 at page 4 of Exhibit "Y".

Exhibits "NN", "NN1", and "NN2" are copies of three of the Crown Grants I discovered; I discovered numerous others but have not obtained certified copies.

There are a few gaps in Exhibit "Y1", that is, small positions about which I have been unable to find anything. Where the plots are marked out and numbered on plan "Y1" I can easily relate it to Benjamin's schedule "Y". The area dealt with in Exhibits "Y" and "Y1" includes the whole of the

railway track between Denton Causeway and Oke Ira Road. Between the last mentioned point and Odi-Olowo the length of track is about 3½ miles. That last section was acquired under the Public Lands Ordinance; it is covered by certificate of title "W" of 18th April, 1899 (sketch indicates the Oloto's boundary). I have not been able to trace any record concerning compensation paid in respect of this last mentioned section of the railway line. I tender a written valuation made by me of value of lands in respect of which compensation is now claimed: I did my best to value as at date of acquisition.

(Mr. Kayode states he objects to evidence being given of the value of the land at time of acquisition. He objects on the ground that this is a material fact that was not pleaded. Court overrules objection because, in the circumstances, the general denial in paragraph 8 of defence was sufficient to warn plaintiffs that the figures quoted by them were not accepted).

Witness continues. Area (i.e. area mentioned in paragraph 6(a) of writ of summons) consists of swamp 7.771 acres out of a total of 11.341 acres. I value the dry land at £15 per acre and swamp land at £10 per acre Total £131.5s.2d.

I have been specially connected with valuation of Lands in Nigeria for about seven years. Been connected with land management in England for about twelve years. In this case I relied on comparison on records of contemporary prices, for example Exhibit "EE" which indicates an average of about £12 per acre. Another document on which I relied is Exhibit "DD" where (on 3rd page) value of £15 per acre is mentioned: this report "DD" dealt with land on Iddo Island. That report was made in 1901. I have here a decision of W.A.C.A. dealing with a case where compensation for land on Iddo Island was claimed (W.A.C.A. 3388 Morenikeji v. The Attorney-General) that decision was delivered in 1951.

(Mr. Kayode objects to production of copy of judgment on ground that it is res inter aliosacta. Mr. Bate does not insist.)

I took into consideration certain recent decisions of the Courts in Nigeria bearing on

In the Supreme Court of Nigeria Lagos Judicial Division

Defendant's Evidence

No. 14

Charles Stuart Glover.

2nd October, 1952.

Examination - continued.

compensation for land on Iddo Island. I reached conclusion that £15 per dry land and £10 per swamp land was reasonable compensation in 1900 or about then.

Areas "B", "C", "D", "H", "I", "K" (which correspond to areas mentioned in the several sub-paragraphs of paragraph 6 of writ of summons) were valued by me together. All acquired, according to records, on or before 1899. Total is 60.372 acres which I value at £20 per acre. I excluded Denton Causeway for area "K". Total arrived at is £1207.8s.10d.

As regards "E", "F", "G". I took them together because they were acquired between 1899 and 1903 (both years included). They are small areas and are close together. Total area concerned is 2.285 acres. I placed value of 1s per square yard which yields total of £552.19s.5d. My grand total is therefore £1891.13s.5d.

I wish to add that I also took into account the sale price paid to the Olotos for land at Ebute Metta (19th July 1901) by one Atitebi. I have a certified copy of the conveyance which I tender. The price works out approximately at £3 (three pounds) per acre. Copy tendered and marked "00". I have another certified copy of a conveyance executed in 1902 for land at Ebute-Metta, north of the land described in Exhibit "00", sold by Chief Oloto. Price works out at approximately £3.10s. per acre. Certified copy put in, marked "001".

Cross-examination.

CROSS-EXAMINATION by KAYODE.

I said that I have been Land Officer in Nigeria for 7 years; this involves quite a lot of valuation work. I have dealt with cases of purchase of land; I see documents and records dealing with price of land; I advise Government in a large number of cases as to current prices of land in local market. In many cases Government or Public Bodies come to me and seek my advice as to value of lands to be acquired.

At some stage I usually have to do with Government acquisitions of land or sales. Any Government Department before acquiring land must

obtain Government authority and this means going through us. The Commissioner of Land cannot buy land without authorisation by Government. If, for example, the P.W.D. were to offer to pay a price which is too high, the Commissioner of lands could raise objections. In Lagos the usual procedure would be for the Department to approach the Administrator of the Colony who then approaches the Lands Department and the file then goes to the Chief Secretary.

I now correct my evidence in chief on one point: I had 7 not 12 years experience before I came to Nigeria. My experience concerning valuation was more indirect than direct before I came to Nigeria. The 7 years experience before I came to Nigeria began after I left School. My family in England own a lot of land, I had financial interest in the land. I never acted as an independent valuer in England. Auctioneers, surveyors, valuers land and estate agents, (who act as valuers) in England, belong to professional associations.

As regards area "A" I based myself mainly on the documents already tendered in this case. I also relied on the contents of other documents (Witness says that "relied" is not correct word): I consulted other documents so as to gather data. I agree that I arrived at a conclusion as to value of area "A" by consulting certain of the exhibits and also other documents, and nothing else. Apart from contents of Exhibit "DD" I have something to guide me as to value of dry land on Iddo Island.

Document "DD" does not show that the Olotos took part on the inquiry. There is nothing in the report (Exhibit "DD") itself to show to what lands it applies: it can be deduced that the inquiry was held in respect of land covered by the certificates of title "O" and "P". There is nothing in Exhibits "O" and "P" connecting them with Exhibit "DD". From the contents of "DD" one cannot say that the lands referred to therein were in fact acquired. As regards areas "B", "C", "D", "H", "I", "K", I relied for valuation on Rowsey's report (Exhibit "JJ") made in 1899. Rowsey's report does not cover area "B". Area "B" is not far from the Apapa Road but does not touch it. The northern part of area "B" is connected to Apapa Road by Atitebi Street and Bontanical Gardens Road. Botanical Gardens Road

In the Supreme Court of Nigeria Lagos Judicial Division

Defendant's Evidence

No. 14

Charles Stuart Glover.

2nd October, 1952.

Cross-examination - continued.

is only a foot path; I cannot say whether in 1939 it could be used by vehicles. I have not visited Botanical Garden Road for several years; it used to connect Magistrate's Court with Apapa Road. I did not know that Atitebi family were customary tenants of Oloto family. I did not know the relations between Atitebi and Oloto families at time of the conveyances. I was in Court when a member of the Atitebi family gave evidence: at that time I had not found Exhibits "OO" and "OO1". I am inclined to think that I have come across at least one Crown Grant in Nigeria where it is stated that consideration was paid tp Government. In majority of cases no consideration is mentioned. Prior to 1906 there were plenty of Crown Grants. To my knowledge Crown Grants in Ebute-Metta were not issued to confirm rights of persons in possession: on Lagos Island Crown Grants were issued in confirmation of the rights of occupiers. I have heard of the Wright estate but do not know what its boundaries were. It is likely that Moloney Street, Macallum, Carter and Wright Streets (see Exhibit "V") stand on what was known as Wright's Estate but I cannot be certain, I do not know what I know as New Town formed part of the Wright's estate: in effect, I have to make same answer as I gave with respect to Wright's estate". I do not know whether Wright's land were conveyed to him. New Town is part of Ebute-Metta; I have heard that the Oloto family originally owned the whole of Ebute-Metta. Exhibit "NN" is a Crown Grant of land which is stated to be in New Town. I know that a good number of people holding land at New Town derive title from persons to whom Crown Grants were made. As far as I know Wright or his family have not claimed that they held their land under a Crown Grant.

New Town was Crown land. Government acquired New Town and the acquisition is covered by certificate of title "T1".

Exhibit "NN1" is a conveyance of land. I have heard that Governor Glover settled Egba refugees on what is now known as Glover Settlement at Ebute-Metta with the consent of the then Chief Oloto. I have heard that Governor Glover asked permission from the then Chief Oloto to settle refugees on Oloto land at Ebute-Metta, Chief Oloto agreed, the land was laid out in plots and denoted by numbers, refugees were given tickets bearing the number of

the plot assigned to them. I thought that settlement of Glover refugees began in 1870 not 1867 as suggested by Counsel.

To be continued Monday 6th and then on 9th October 1952.

In the Supreme Court of Nigeria Lagos Judicial Division

Defendant's Evidence

No. 14

Charles Stuart Glover.

2nd October, 1952.

Cross-examination - continued.

MONDAY THE 6TH DAY OF OCTOBER, 1952.

CHARLES STUART GLOVER, reminded of his oath, answers questions of Kayode who continues cross-examination :-

I am not in position to produce any record establishing payment by Government of land within area "A" (i.e. area referred to in paragraph 6(a) of writ of Summons).

6th October, 1952.

Exhibit "Z" is entitled "Valuation of houses expropriated on Iddo Island"; there is nothing in the correspondence to show whether the land on which the houses stood was also valued. I am unable to say whether the valuation covered the land too. Exhibit "Z" does not purport to be more than a valuation i.e. it does not show that payment of values arrived at was made. I do not know what were the reactions of the owners whose buildings were valued as shown in Exhibit "Z". I remember that in 1946 Government paid about £32000 for about 225 acres at Ikoyi: this was fixed by the Government; I believe original offer was in neighbourhood of £9000.

I have not heard that between treaty of cession and 1899 the Government was under impression that Island of Lagos and Ebute-Metta was vested absolutely in Crown i.e. that Crown was sole and full owner. I have read Tew's Report and read para.10 of Part I, am not prepared to accept view therein expressed. I have also read paragraph 14. My view is that up to time of Onisiwa case Government held view that Crown held the radical title or reversionary rights on the land. (In vol.3 Nigerian Report there is the case of Amodu Tijani v. Secretary Southern Provinces at page 50). I have read paragraph 9 of Part I of Tew's Report which follows mention of the Amodu Tijani case. I

In the Supreme Court of Nigeria Lagos Judicial Division

Defendant's Evidence

No. 14

Charles Stuart Glover.

6th October, 1952.

Cross-examination - continued.

am sorry to say that I cannot agree with Mr. Tew's view and do not understand how he came to express it. I know that Crown Grants of land on Lagos island were issued before such land had been acquired by Government. I agree that a large portion of the land covered by certificates of title "T1" and "T2" was never taken possession of by the Government. I have a good deal of evidence regarding taking of possession by Government of some of the areas of which Government did in fact take possession, not of all. I cannot say whether Government took possession of the land at the exact time when certificates of title were issued: I have no evidence to that effect. I know that railway line began to be constructed in 1894 on Iddo Island.

Railway line runs to West of area we have called Area "A" on Iddo Island. I have not found any record of fact that Government took possession of area "A" at any specified time; I have deduced from the fact that Railway line was begun in 1894 that land in the neighbourhood was also occupied. Apart from certificate of title and date of laying down of railway track I have no evidence of date when Government took possession of Area "A".

In certificates of title "O" and "P" there is no mention of time when Government took possession of ("O" and "P" include area "A")

I know Otto village west of railway line on Iddo Island. It is inside area covered by certificates of title but outside the area "A" claimed by plaintiff in present suit; it is Crown land. I believe that Otto village was moved from east to west of Railway line. Certificates of title "O" and "P" cover areas that overlap; one area includes the other. Exhibit "BB" throws difference between amount of compensation claimed and amount offered on valuations of Mr. Menandez.

I agree that Otto village used to be within area "A" I know from the records at my disposal that there were houses there, but I have no further particulars.

(Kayode reads from Exhibit "CC"). Witness answers:

There was more than one village on Iddo Island. I understand that Menandez investigated all cases

of expropriation on Iddo Island; Rohrwager continued the work. I have no reason for thinking that compensation offered by Government for acquisitions on Iddo Island were below the then market value.

In Exhibit "BB" page 2 there is a paragraph in which Menandez mentions price offered for land being rather below above average public auction prices of last few years, excluding 1896; I understand it to be a justification to effect that price offered was not excessive.

I know the purpose of the 1905 acquisitions by Government at Ebute-Metta. I know this from records in my office. The 1905 acquisition was of land near area "C" (i.e. area mentioned in paragraph 6 (c) of writ of Summons). Records leading up to 1905 acquisition contain references to the exhaustion of the "old clay pit" at area "C". I know of no other old clay pit referred to as the Government old clay pit at Ebute-Metta. I know of a clay pit at head of Yaba Canal.

Cross-examination to be continued to-morrow.

TUESDAY THE 7TH DAY OF OCTOBER, 1952.

7th October, 1952.

CHARLES STUART GLOVER, reminded of his oath.

I have that committee he was appointed to consider certain questions concerning land in Lagos and as a result of its report on Title to land in Lagos published in 1939 and a report by Sir Mungn L. Tew certain Ordinances were passed (Report tendered - No objection marked "PP"). I have heard that the Oloto Chieftancy family claim to be the original owners of all the land at Ebute-Metta. I have heard of another family who contest the rights of the Olotos on Ebute-Metta; the name of the family is Ojo Oniyun. I do not know the fact of the dispute between the two families. With regard to Exhibit "DD" I agree that I have found no record of any challenge by the expropriated owners and there is also no records of payments made. I deduced that compensation in respect of lands bought for Railways was paid by Cashier of Railway Department because certificates were issued by Commissioner of Lands to the effect that payment

In the Supreme Court of Nigeria Lagos Judicial Division

Defendant's Evidence

No. 14

Charles Stuart Glover.

7th October, 1952.

Cross-examination - continued.

could be made and I presume that such certificates were taken to Railway Department by the payees because the Railway funds would have to be used to pay for Railway land.

Exhibit "MM" deals with valuation of houses. It is Olfert's list. Some of the items therein are the same as in Exhibit "Y"; I explained this more fully earlier in my evidence.

There is no writing in Exhibit "Y" showing that payees had received and signed for compensation.

Mr. Benjamin was surveyor. The Survey Department and the Lands Department have on several occasions been merged and then been again separated. When Benjamin compiled Exhibit "Y" I do not know how the two Department's stood. Generally speaking if Benjamin was not a member of Government service I would not expect him to prepare a departmental record. Apart from "Y" and "Y1", I have seen no record to effect that Benjamin was commissioned to undertake work for Government.

Re-examination.

RE-EXAMINATION by MR. BATE.

In my Department, Lands Department, we do not destroy records. I cannot speak as to regards other Departments in that respect.

I have seen a large number of plans signed by Benjamin, where he describes himself as Government Surveyor.

Case for Defence closed.

Adjourned till 9th inst. for addresses.

No. 15

DEFENDANT'S COUNSEL'S FINAL SPEECH

THURSDAY 9TH OCTOBER, 1952.

In the Supreme Court of Nigeria Lagos Judicial Division

No. 15

Defendant's Counsel's Final Speech.

9th October, 1952.

MR. BATE addresses -

Proposes to refer to pleadings; then address on plaintiff's case; and thirdly on evidence adduced by defendant; and fourthly upon issues of Law.

Paragraphs 2, 3, 6 of Statement of Claim. Olotos claim title under native law and custom. Very large sum claimed.

Reads 2, 3, 4, 6 of Statement of Claim. According to evidence on Plaintiff's side, an average of 40 years exists between date of taking over and date of claim. Very strong and clear evidence would be required to prove such a stale claim. Evidence of title is basic requirement in such a claim; no satisfactory evidence of title has been adduced. Alleged title from time immemorial does not help plaintiff; what was necessary to prove was that at time Government took the lands the plaintiffs were entitled thereto. First Witness when cross-examined stated that what he knew about the lands claimed he had heard from Chief Eshugbayi who died in 1906. This is old hearsay evidence. Same witness admitted that family kept no record of land sold and also intimated that he did not pretend to know about the thousands of plots sold by the Olotos. Remarkable evidence about area "J".

Claims stale. On average 40 years old. Area mentioned in paragraph 6(a) was acquired by Government in 1897. Area (b) in 1893. Area (c) in 1900. Area (d) in 1946. Areas (e), (f), (g) between 25 or 40 years ago but plaintiff not sure. Areas (h) and (c) in 1900. The 1946 date was mentioned as date when Government moved a certain market place from the land and transferred it elsewhere.

No effective step until 1948 to assert claim. Evidence of 1st witness about possible claim in future, in respect of Songo land, is illuminating.

Claim for user is not supported by any evidence of value to be attached to user.

In the Supreme Court of Nigeria Lagos Judicial Division

No. 15

Defendant's Counsel's Final Speech.

9th October, 1952 - continued.

It would appear that claims in paragraph 6 of Statement of Claim are for the freehold (see plaintiffs valuer's evidence). No valuation of user at all.

Under the Public Lands Ordinance, 1876, section 10(2) and (4) provides that certificate of title confers indefensible right and production of certificate of title shall be a bar. In the 1903 the Public Lands Acquisition Ordinance, section 30, makes similar provision. The existing Ordinance does the same. Therefore no claim for user was possible after dates of certificates of title.

No valuation of the freehold at relevant date, even if such claims were entertained by the Government. Chapter 185 section 15(6); section 17 of the 1903 Ordinance above mentioned. Position in 1876 must be taken to have been the same.

At any rate, valuer's evidence did not bear out figures in Statement of Claim in certain cases; were much lower. On the other hand, value of £40,000 mentioned in paragraph 6(k) of claim was altered to £100,560 on valuer's evidence. Plaintiff's valuer has given evidence which does not deserve notice: it is absolutely unreliable. He valued in 1949 on Body-Lawson's plan but Body-Lawson says he made plans at end of 1949 (see dates on plans). Valuer placed value of £7000 per acre on land claimed in paragraph 6(h) of Statement of Claim. Valuer's figures quite unreliable and inconsistent. Valuer could not work out value per acre.

Submitted that plaintiff's have not adduced sufficient evidence to support their claim.

Defendant's case is that all land mentioned in claim was acquired by compulsory acquisition except area (c). There is evidence except in regard to area "C", that steps were taken to ascertain what payments of compensation had to be made. This creates presumption that payments were in fact made.

Area "A", Iddo Island, covered by certificate of title. See Menendez report, Rowsey report, report of Commission of inquiry in 1901, a minute paper Exhibit "Z" showing a payment of £70 to Chief

Oloto; Exhibit "AA" from Eshugbayi Oloto. Extremely probable that compensation was paid.

No evidence bearing out paragraph (5) of Statement of Claim. Area "B" covered by certificates of title "T" and "T1". (1903). Still no clear proof of payment by Government.

Area "C". Evidence is that Government took this area in 1900 (area is 2.5 acres).

Area "D" covered by certificates "T" and "T1" (1903)

Area "E", "F", "G" covered by certificates "T" and "T1" (1903).

Record of Acquisition book (Exhibit "GG") does not, it is true, establish actual payment, but it goes a long way towards showing that Government took all proper steps.

Area "H" and "I". Evidence from Plaintiff is that Government took over these areas in 1900. "H" partly covered by Exhibits "T" and "T1" and the rest is, I think covered by Exhibit "HH" of 1893.

Area "K" covered by certificates "O" and "P". Same evidence applies as for area "A". Certificates "T" and "T1" cover track on mainland (payment dealt with in Benjamin's paper and Rowsey's papers "X", "Y", "JJ"). Also Schedule Exhibit "MM" and Glover's reconciliation Exhibit "KK". The last section of the track was covered by certificate of 1899 (Exhibit "W"); no direct evidence of payment as to this last section.

Defendant as regards payment is entitled to omnia praesumntur rite esse acta Government did take all steps towards payment of compensation and there is a strong presumption that the money was paid.

Claim as to area "J" was given up. If you look at map "V". Plaintiff admitted that Government had paid the people to whom Olotos had sold the land. Remarkable that such a large area as mentioned in paragraph 6(j) of Summons should have been paid for and not neighbouring ones.

On Law. Petition of right does not lie when

In the Supreme Court of Nigeria Lagos Judicial Division

No. 15

Defendant's Counsel's Final Speech.

9th October, 1952 - continued.

another statutory remedy provided. The statutory remedy exists in this case: petition of right should be dismissed. Page 349 of Robertson's Civil Proceedings against Crown. Bell's Crown Proceedings (1948) page 3 paragraph 5. One of cases quoted in Robertson (1851) 3 H. of L. 449 de Bode's Case (E.R. Vol. 10 page 170). The other decision was in 1872 26 L.T. Futz v. Queen at page 774; L.R. 7 Ex. 365. re Canadian Eagle Oil Co. v. King (1946) A.C. 119 when Viscount Simon said "There is also a subsidiary point that - Right of appeal - where there is another remedy etc. (page 126 line 9). The land Acquisition Ordinance all provide for remedy. In 1876 the section is 7; in 1903 section 10 is relevant; in Cap.185 section 10 again (of course counsel assumes that Court will accept that all acquisitions were compulsorily made, (?) even parcel "C").

Section 12 of Interpretation Ordinance about effect of appeals. Therefore, Petition of Right does not lie.

The limitation Act 1623 and Civil Procedure Act; 1833. Either one or the other applies. If action of debt on implied contract the Act of 1623 applies. See section 3 of Act of 1623 which prescribes limitation period of six years. Section 14 of Supreme Court Ordinance; Koney v. U.T.C. (1934 A.D.) 2 W.A.C.A. page 188, 190. Pearce v. Aderoku (1936) 13 N.L.R. 9 also other case at page 46. Also 5 W.A.C.A. page 134. Finally (1950) Cyclostyled July - October 1950, Johnson v. Ojorabo W.A.C.A. page 71. True no direct local authority on Act of 1833.

Robertson page 567, 393. (Civil Proceedings against Crown). See the Rustomjee case (1876) 1 Q.B.D. 487 was case where money paid by China by virtue of treaty to Queen. Mr. Bate calls attention to page 491.

Submitted that Crown case take advantage of Statute of limitation. In (1929) 1 Ch. D. page 8. In re Mason, where Rustomjee case is mentioned.

Cayzer Irving and Co. v. Board of Trade (1926) 42 T.L.R. 163: "no quality in Crown preventing it from taking advantage of Statute of limitation". This case is in some respects similar to present case.

Section 3 of Cap.167 has no counterpart in petition of Right Act, 1860, in England. Only analogy is as regards procedure. See Section 7 of Act of 1860. In Nigeria quite clear that Crown and subjects on same level: what may be invoked by one, may be invoked by the other.

As to Common Procedure Act, 1833 (Halsbury's Statutes Vol.10 page 429). See note at foot of page: contract includes implied contract.

Aylott v. West Ham Corp. (1927) 1 Ch. 30 which was a case where C. Appeal held that 1623 Act and not 1833 Act applied.

No. 16

PLAINTIFF'S COUNSEL'S ADDRESS

Mr. Kayode will address on the 17th instant on balance left after dealing with Statute of limitation to-day.

Cap.167, Petition of Right Ordinance, section 3. No necessity for counterpart of this section 1860 Act in England. The sections of local Ordinance was necessary to enable subject to sue the Government in Nigeria.

If you look at (1929) 1 Ch. D. page 1, you will see that the action was about personal property. Bate read an "obiter dictum" of Lord Hanwell.

Halsbury Law of England Vol. 10 pages 429,430, also page 457. Bate wrong when he submits that, in general, the Crown can plead limitation of action. Law of England, Halsbury Vol. 9 page 697 "Act of 1623 only applies to actions, and petition of right is not an action". In re Mason was based on other considerations.

Decision in (1929) 1 Ch.D. page 1 was based on consideration that Crown could plead limitation by virtue of a statute.

Defendant did not plead "Stale claim". See page 398 of Robertson's book about Rustomjee Case. Olode on Petition of Right page 105.

In the Supreme Court of Nigeria Lagos Judicial Division

No. 16

Plaintiff's Counsel's Address.

17th October, 1952 - continued.

FRIDAY THE 17TH DAY OF OCTOBER, 1952.

Mr. KAYODE continues:

Last time I overlooked one point: Aylott v. West Ham Corporation Case. Petition of Right is not an action. Limitation Act 1623 Halsbury's Statute Vol.10, read note at beginning, see page 430 "Actions in which Act does not apply" note J. Kayode does not submit that Crown can never use Statutes of limitation: his point is that in the case of proceedings by petition of right the Crown cannot invoke these Statutes.

Certificate of title passes legal estate. To be noted that Crown did not take possession of large areas covered by certificates of title. See Glover Settlement Ordinance Cap 80 section 16 where mention is made of parts of Glover Settlement never occupied by Government.

Mr. BATE submitted that remedy was provided for by Public Lands Acquisition Ordinance and that petition of right was not proper remedy. This may be true if notice of acquisition duly served. Claimant or Crown may come to Court in cases of compulsory acquisition where owner does not accept compensation on ground that it is insufficient. Unless Government can prove that notices were served, how can it be said that the Olotos rejected an offer of compensation ?

Cap. 185 Laws of Nigeria; Section 10 about compensation claims. See also sections 9 and 5. (By Court. Should it not be presumed that all necessary steps were taken? - Kayode says no). In present case, plaintiff's 1st witness said that no compensation was paid and this destroys any presumption.

If one looks at paragraph 5 of defence one sees mentioned that money was paid on land given in exchange; the land given in exchange was not Government land.

Section 26 of Cap. 185: Government not hindered by fact that no compensation has been paid. Government should have established that notices of acquisition were served. They could have done so. See Exhibit "O" for example: date of certificate

of title is given, Crown had to come to Court to obtain certificate of title: search of Court records might have thrown light on the matter, but defendants have not even tried.

Under 1876 Ordinance position the same. Therefore Bate's submission that there was an alternative remedy is not based on evidence before Court.

On facts. Government cannot say that Olotos were not original owners of the land or owners at time material in this suit. Again look at Glover Settlement Ordinance, look at its preamble and at section 13. Tew's report shows that the Oloto's ownership of Ebute-Metta was never disputed.

Bate was not justified in saying that Imam Tijani gave hearsay evidence: this is certainly not entirely correct, "traditional evidence" been accepted by these Courts.

No evidence of value adduced by defendant. Court should not pay attention to Mr. Glover's evidence; he has not qualifications to be a valuer. He did not say that he had acted as valuer independently.

User. Compensation for user by Government from time lands taken till to-day (Court insists that Kayode should explain. Court asks whether if Olotos win this case, they would be entitled to claim again for "user" say in 10 years time?).

KAYODE says that plaintiff could have asked for return of land, or claimed compensation, or for user. The amount claimed for "user" is value of the lands as they stand to-day. For example in respect of area "C" for which Government holds no title how could Olotos claim value of land? We could not ask Government to pay for land not acquired by Government. Kayode states that their intention was to claim value of the lands for the "user" thereof and not to claim again, that is, Government could (after paying) use the lands for ever.

KAYODE refers to -

Tobin v. Reg. 8 L.T. 730, 732 about "wide terms" of petition of right. KAYODE submits that Petition of Right Act, 1860, applies on Nigeria.

In the Supreme Court of Nigeria Lagos Judicial Division

No. 16

Plaintiff's Counsel's Address.

17th October, 1952 - continued.

KAYODE agrees that market price at the time would be correct compensation under the Public Lands Ordinance of compensation paid, say, 45 years ago but value of money having declined it would not be right to expect plaintiffs to accept the same number of pounds.

See Section regulating compensation in Cap. 185. Liability to pay compensation under the Ordinance still remains.

At this stage KAYODE makes it clear that he is not claiming for "user" as from beginning to present time at so much per year: he is claiming a lump sum as compensation for allowing Government to use the lands for ever, "Purchase price" could not be proper expression because Olotos did not know what had been bought.

Tobin v. Reg. 10 L.T.R. 751, 755.

If Public Lands Ordinance held to apply, then value to be awarded is that as at time of acquisition, allowance being made to change of value of money.

Feather v. Rex 12 L.T.R. 114, 117. In present case Oloto land found its way to Crown and compensation is payable.

In re "J" Gorseman 42 L.T.R. 804 Thomas v. R. (1874) L.R. 10 Q.B. 31, 36.

Even if compensation governed by the Public Lands Ordinance, the compensation should have been paid about 5 years ago and interest should be allowed (rate not suggested but left for Court to fix).

A.G. v. De Keyser's Royal Hotel. (1920) A.C. page 508, 509; Crown's argument at page 510, 523-531.

BATE not right to submit that certificate of title bars all claims. KAYODE repeats that in absence of express enactment Crown cannot take land without paying compensation.

KAYODE submits that as 1876 Ordinance did not provide that compensation would be calculated according to market value at the time, the plaintiffs are justified in asking for present value.

Certificates covering (a), (c), (g), (i), (h) prior to 1903 Ordinance. Others in 1903 but not certain whether it was after 1903 Ordinance, came into force.

If Public Lands Acquisition Legislation do not apply. Asked by Court KAYODE says that it is not open to defendants to say (if they deserve to do so) that plaintiffs were content to keep quiet for many years knowing that money was safe and then bring a claim for a large sum: "Stale claim" never pleaded, says Kayode.

In re Gorsmann 42 L.T. section 54. Also 45 L.T. 267 (C.A.)

Valuation based on figures applying to other pieces of land is not acceptable. Even a 100 yards between two sites may make a big difference.

In Exhibit "P" it is stated that no hard and fast rules could or should be laid down for valuation. No evidence that lists of valuation produced refer to lands in question in present case.

Mr. Glover stated he did not discover any evidence of payments as to area "C". Exhibit "GG" page 58. No evidence of payment in claim "D"; as to "E", "F", "G", see Exhibit "GG" page 58.

As regards area "H", Benjamin's Schedule "Y" refers to surrounding areas only. Not established that track is on land mentioned by Benjamin.

Defendant has not proved that railway line beyond Oke Ira road has been acquired.

KAYODE repeats that title of Government not questioned, but Government has not paid anything for the lands covered by the certificates. Court has to decide whether compensation falls to be assessed under the Public Lands Ordinance then in force or does not so fall and has to be valued under general principles. KAYODE agrees that there is not much on record to enable Court to value lands at time they were taken by Government.

Time to consider. Parties will be warned.

In the Supreme Court of Nigeria Lagos Judicial Division

No. 17

Judgment.

17th January, 1953.

No. 17

JUDGMENT

This is a claim preferred against the Government of Nigeria by Chief Fagbayi Oloto on his own behalf and on behalf of the other members of the Oloto Family.

The suit was begun by filing a statement of claim in the Supreme Court in September, 1949, and delivering a copy thereof at the office of the Attorney General who is the designated officer by virtue of the provisions of the Petitions of Right Ordinance cap.167 (formerly Chapter 8 of the 1923 Edition of the laws of Nigeria).

The Governor granted his fiat unconditionally.

The statement of claim is to the effect that the parcels of land described in paragraph (6) thereof form part of the land owned by the Oloto Family from time immemorial and that the Government of Nigeria is using the said parcels of land and has not paid compensation to the Oloto Family for the user thereof.

Paragraph (6) of the statement of claim originally set out a list of eleven areas and showed the amount of compensation claimed in respect of each.

The claim in respect of the area mentioned in paragraph 6(j) was abandoned at an early stage of the hearing and later on, the learned Counsel for the Plaintiff (Mr. Fani-Kayode) moved to delete sub-paragraph (j) of paragraph (6) and to increase from £40,000 to £100,560 the compensation claimed in respect of the area mentioned in sub-paragraph (k). The amendment was allowed and the total of the claim for compensation was thus reduced from £670,000 to £630,560.

I would here mention that, for the sake of brevity, the several areas mentioned in paragraph (6) of the statement of claim were referred to by the witnesses as areas A,B,C,D, etc. respectively. These capital letters were also used to identify the plans of the respective areas put in by the Plaintiff: plan J however does not correspond to

the area described in sub-paragraph (j) which has been deleted; it corresponds to area K, and plan E, F, G, embodies the three areas E, F, & G.

The object of the claim as set out in the statement of claim is to obtain compensation in respect of the properties mentioned in paragraph (6) of the statement of claim. It seems that the compensation is for the "user" of the said properties as stated in paragraph (4) of the statement of claim.

There is, however, no mention of the duration of the so called "user" and there has been no evidence whatever as to the amount of compensation for "user".

At the close of the case, when Mr. Kayode addressed the Court, he was asked to explain the meaning of "User". Mr. Kayode's explanation was to the following effect; the Plaintiff had the choice of asking for the return of the parcels of lands, or of claiming compensation therefor, or of claiming compensation for "user".

Mr. Kayode went on to explain that, in the case of area C, for example, the Government held no certificate of title and therefore the Plaintiff could not ask the Government (i.e. the Defendant) to pay the value thereof, but the learned Counsel also said that the compensation claimed for "user" is the value of the pieces of land at present.

Mr. Kayode concluded his explanation by stating that the intention was to claim the value of the lands for the user thereof and not to claim again, that is to say, Government could, after paying the amount claimed use the lands for ever.

At the end of his final address, Mr. Kayode stated that Government's title was not questioned, but that Government had not paid anything for the lands covered by the certificates of title held by Government. The Court, Mr. Kayode went on to say, has to decide whether compensation falls to be assessed under the Public Lands Acquisition Ordinance in force at the time or falls to be assessed under general principles. Mr. Kayode conceded that there was not much on record to enable the Court to assess the value of the lands at the time they were taken by Government.

In the Supreme Court of Nigeria Lagos Judicial Division

No. 17

Judgment.

17th January, 1953 - continued.

In view of Mr. Kayode's explanation of the word "user" and also of the fact that Plaintiff's object, as revealed by the evidence, is to obtain payment of the full present day value of the several parcels of land, it seems to me that the word "user" was incorrect and misleading. Moreover, the statement of claim was almost meaningless because it did not specify the period of "user" and made no mention of how the "user" began.

However, the defendant did not question the meaning of the statement of claim at first. It was only just before hearing began that particulars were asked by the Defendant but the motion was ultimately withdrawn.

The statement of defence is to the effect that the parcels of land described in paragraph (6) of the statement of claim have been acquired for or on behalf of the Crown as shown by the particulars given. The Defendant challenged the averment that the Oloto Family had had any interest in the said lands or any of them at the time of acquisition by the Crown, and averred that the Crown had paid or compensated the persons from whom the said lands had been acquired.

In the alternative, the Defendant pleaded the Limitation Act, 1623, and also pleaded that even if the Oloto Family had been entitled to compensation "the Defendant will contend that any right to compensation has been waived by their laches". The Statement of defence was subsequently amended by adding a new paragraph raising a defence under the Civil Procedure Act, 1833 (which was wrongly cited as the Court Procedure Act) and by completing the list of acquisition notices and certificates of title.

In spite of the lack of precision of the statement of claim, the following main issues eventually emerged and the parties contested them:

(1) Are the parcels of land mentioned in paragraph (6) of the Statement of Claim covered by the certificates of title produced by the Defendant?

(2) What is the effect of such certificates of title?

(3) Assuming that the answer to (1) above is in

the affirmative, can the Plaintiffs establish that the parcels of land, when acquired by the Defendant, were their property at the time of such acquisition?

(4) If issues (1) & (3) are answered in the affirmative, in respect of all or some of the parcels, have the Plaintiffs received payment or compensation therefor?

(5) Is the claim for compensation time - barred?

(6) Is the Defendant justified in invoking the Plaintiff's laches as depriving them of the right to claim compensation?

(7) How is compensation to be assessed (if right to payment thereof is established)?

Before dealing with the evidence I propose to give my decision on the points of law which have a bearing on the case.

The Public Lands Ordinance No. 8 1876, is of importance because the certificates of title produced by the Defendant were issued under its provisions.

The 1876 Ordinance made provision for the service and publication of notices of acquisition (section 5 & 6). Section 7 gave jurisdiction to the competent Courts to adjudicate on questions of compensation or of disputed ownership etc. Sub-Section (6) thereof lay down that "compensation shall not be awarded in respect of unoccupied lands", and proceeded to define what lands were deemed to be unoccupied. Section 10 made provision for the issue of certificates of title by the Supreme Court. The said certificates were declared to confer on the Colonial Secretary in trust for Her Majesty an absolute and indefeasible right to the lands comprised or referred to therein "against all persons, and free from all adverse or competing rights, titles, interests, trusts, claims, and demands whatsoever".

Section 10(4) provided that the production of a certificate of title shall be held in every Court to be an absolute bar and estoppel to any action or proceeding by which the right of the Colonial

In the Supreme Court of Nigeria Lagos Judicial Division

No. 17

Judgment.

17th January, 1953 - continued.

Secretary to the land therein described is sought to be impugned or questioned.

The introductory lines of section 10 of the 1876 Ordinance and the first sub-section thereof are important and are here reproduced.

"The Colonial Secretary shall, at any time on production in the Supreme Court of a conveyance to any lands, or at any time after the expiration of twenty one days from the date of the service and publication of the notice mentioned in the fifth and sixth sections of this Ordinance, upon proof of such service and publication, be entitled to receive a certificate of title to the lands described in the said Conveyance, or notice, which certificate may be in the form C of the Schedule to this Ordinance, and shall have the following effects and qualities:

...

(1) The certificate shall not be questioned or defeasible by reason of any irregularity or error or defect in the notice, or the want of notice, or of any other irregularity, error, or defect in the proceedings previous to the obtaining ofsuch certificate".

It follows that where the Supreme Court issued a certificate of title under the provisions of the 1876 Ordinance, proof of the service and publication prescribed by sections 5 & 6 of the Ordinance had been duly established to the satisfaction of the Court, that is to say, the Court was satisfied that the notice of acquisition had been served personally on the person or persons entitled to sell or interested in the land to be acquired, or if such person or persons could not be found, that the notice had been left at his or their usual place or places of abode or business with some inmate thereof, or if such person or persons could not be ascertained, that the notice had been left with the occupier of such land or (if there was no occupier) affixed on some conspicuous part of the land to be acquired and also affixed to the door of the Court House of the district. Publication in the Gazette was also a requirement.

By reason of the provisions of section 10 of the 1876 Ordinance, I am of opinion that it was not incumbent on the Defendant to establish the service

of Notices and publications in the Gazette which preceded the issue of the certificates of title on which the Defendant relies.

It might be argued that, although the certificates of title justify the presumption that notices of acquisition were served and published as prescribed by law, there is a possibility that the Plaintiffs predecessors were not served personally and did not know until much later on that Government had acquired their lands. I am of opinion that such a possibility is a most improbable one. The Olotos have always been on the spot and, on their own showing, were well known as the owners from time immemorial of the whole of Ebute Metta; they had their place on Iddo Island. It is therefore idle to suggest that notices were not served on them or, that, at the time they failed to hear about the acquisitions.

When reviewing the evidence in this case I propose to point out facts showing that the Olotos have known for a long time that the areas mentioned in paragraph (6) of the statement of claim had been acquired by the Government.

Another point of law which is of great importance in this case is whether the defence can rely on the Statutes of Limitation.

The application in Nigeria of those Statutes of Limitation enacted prior to 1900 A.D. was not disputed. At any rate, any doubt on this point is disposed of by the decisions in such cases as de Souza v. Ajike 5 W.A.C.A. 134; Keney v. Union Trading Company 2 W.A.C.A. 188 (Gold Coast). Johnson v. Ojobaro W.A.C.A. cyclostyled reports October - December 1950 page 71; Pearse v. Adiroku 13 N.L.R. 9.

The point that falls to be decided is whether Mr. Kayode's submission (that the Defendant cannot rely on the Statutes of Limitation in a claim made by Petition of Right) is correct.

I hold that the submission is not correct because the so called Petitions of Right Ordinance, No.19 of 1915 (now Cap: 167 of the Revised Laws 1948) makes provision relating to Suits by and against the Government of Nigeria and lays down

In the Supreme Court of Nigeria Lagos Judicial Division

No. 17

Judgment.

17th January, 1953 - continued.

clearly that "all the powers, authorities and provisions contained in the Supreme Court Ordinance, or in any enactment extending or amending the same, and the practice and course of procedure of the Supreme Court shall extend and apply to all suits and proceedings by or against the Government etc." (Section 8 Cap.167).

Being given that by virtue of Section 14 of the Supreme Court Ordinance (Cap.211, Revised Laws 1948). The Statutes of general application which were in force in England on the 1st January, 1900, are in force within the jurisdiction of the Supreme Court of Nigeria, it follows in my opinion, that such Statutes are applicable in relation to claims made against the Government under the provisions of the Petition of Right Ordinance. There is nothing in the latter making such application inconsistent with its provisions. On the contrary, it seems quite clear to me that the object of the Petitions of Right Ordinance was to place the Government and private suitors on the same plane.

I find it therefore unnecessary to refer to the English cases such as the Rustomgee case and other quoted by learned Counsel (except in re Mason (1929) 1 Ch.1).

In that case the point was taken that, on a Petition of Right, the Crown could not rely on the Statutes of Limitation, but it was held that the Crown could do so in that particular instance because section 3 of the intestates Estates Act, 1884, provided that a petition of Right in respect of the personal estate of a deceased person shall not be presented except within the same time and subject to the same rules of law and equity in and subject to which an action for the like purpose might be brought by or against the subject.

My view is that section 8 of the Petitions of Right Ordinance achieves the same result (but on broader lines). I would add, moreover, that I doubt whether a suit, like the present one, can properly be called a petition of Right.

I will now examine the evidence.

The chief witness on Plaintiffs' side is Chief Imam Tijani. He is now 66 years old and has always

lived in Lagos. He is one of the important members of the Oloto Chieftaincy family and has a seat on the family Council. He is the only member of the Oloto family who has given evidence in this case.

He and other members of the family instructed Mr. Body-Lawson, the land surveyor, when the latter prepared the plans marked A,B,C,D,E,F,G,I,H and J.

Chief Imam Tijani has stated that the area edged pink on plan A used to belong to the Oloto family. These areas are on Iddo Island which lies between Lagos Island and the mainland. Iddo Island is now linked to Ebute Metta on the mainland to the north by a causeway built by the Government. The island looks like a peninsula. The causeway replaced a bridge, also built by the Government.

On the southern side, Iddo Island is joined to the island of Lagos by Carter Bridge.

On Iddo island stands the Iddo main line railway station and the railway lines run north to the mainland.

It cannot be disputed that the Olotos did own land on Iddo Island; in fact they still own land there. Imam Tijani's evidence, in respect of the pink areas on plan A, is that the palace of the Olotos was at Otto, at the spot where the Police barracks are shown on plan A. According to him, it was in 1897 that the Olotos moved from that palace to a site west of the pink triangular area on plan A, because the Government took the northern portion of the areas edged pink on Iddo Island. The Witness did not know when Government began using the land thus taken in the northern part of the Island, but as regards the triangular area edged pink, he stated that the Oloto family had owned houses there and that the houses were demolished when Government took over. With regard to the area south of the Police Barracks (which was a swamp) the Witness said that the Olotos used it for fishing until filling-up operations were begun some 4 or 5 years ago.

Chief Imam Tijani could not say whether or not the Chief Oloto or the family council were served with notices of acquisition before Government took the land in 1897 (as stated by him); he did say however that Government did not pay anything when

In the Supreme Court of Nigeria Lagos Judicial Division

No. 17

Judgment.

17th January, 1953 - continued.

the land marked pink on Plan A was taken.

I must pause here and point out that, in 1897, the witness was eleven years old and was not a member of the family council. (He became a member in 1915). I therefore attach no weight to his statement that no payment was made. Neither do I attach much weight to his evidence regarding the ownership of particular areas on Iddo Island by the Olotos (excepting the site of the old palace) because, according to his own story, he derived all his knowledge from what Chief Eshugbayi Oloto (who died in 1910) used to relate to him.

I propose to revert later on to this topic of the weight to be attached to Chief Imam Tijani's evidence regarding ownership of particular areas of land on Iddo Island and elsewhere, by the Oloto family.

The Defendant's case, as regards Area A (which, as shown on plan A consists of two parcels separated by the causeway) is that it was compulsorily acquired by Government under the provisions of the Public Lands Ordinance, 1876. Two certificates of title have been produced and marked O and P; the former bears the date 18th April 1899 and the other 22nd April, 1901; the area covered by the latter includes the area covered by certificate of title O and completely includes the area A which is mentioned in paragraph 6(a) of the statement of claim. The position is graphically shown on map Q put in by the defence: the blue lines enclose the area A, the yellow lines the area covered by certificate of title O, and the pink (or red) lines the area covered by certificate of title P.

I have already mentioned that the learned counsel for the Plaintiff stated in his closing address that the Defendant's title to the lands is not disputed.

I must therefore direct my attention to the question of payment of compensation.

The first point for consideration in this connection is whether the claim is time-barred.

I am of opinion that it is. My reasons for so holding are that, assuming that the Olotos were the owners at the time of the compulsory acquisition, they must be presumed to have had notice of the acquisition. The later in date of the two

certificates of title was issued in 1901 and more than 40 years elapsed before this claim was brought to Court. Even if the period of limitation were the one fixed by the Civil Procedure Act, 1833, the suit would be hopelessly out of time. Although it is unnecessary to marshal further reasons in support of the view I have taken, I would recall that Chief Imam Tijani did not go the length of saying that acquisition notices had not been served, and that he did say that the Olotos left Otto palace in 1897 because Government took the land but received no payment therefor.

I might also mention that the building of the railway on Iddo Island began in 1896 (according to Chief Tijani) and that the Chief Oloto, who resided on the island, cannot have been a disinterested spectator of what was going on. That he was not indifferent to what was happening is indicated by a letter (Exhibit AA) written on his behalf to the Colonial Secretary on the 13th November, 1899, concerning people whose houses had been destroyed so as to make room for the railway. That letter also contained a request on behalf of the Chief Oloto and of his Chiefs that Government should allow them to use the foreshore on the left of Otto (or Iddo) island for fishing.

If further confirmation were necessary I would mention exhibit BB which is a report by Mr.Menendez of the investigation he made in 1896 of claims to land on Iddo Island referred to in Government Notice 195 of 1896 (Mr. Menendez was a lawyer appointed to investigate claims on Iddo Island - See exhibit CC). It is mentioned in that report that the evidence was taken in presence of the Oloto. There is also Exhibit DD which is the report of a commission of enquiry on the value of lands expropriated for Railway purposes at Iddo Island, and Ebute Metta: that report makes mention of the fact that Chief Oloto was not entitled to the £200 compensation claimed by him for seigneurial rights on the island.

In view of the foregoing I refuse to believe that Chief Eshugbayi Oloto could possibly have been ignorant of the steps which Government took to acquire the area A. I find it impossible to believe, after reading exhibit DD, that he did not see to it that compensation was paid to him (except, of course, in respect of unoccupied lands for which he could not be awarded compensation).

In the Supreme Court of Nigeria Lagos Judicial Division

No. 17

Judgment.

17th January, 1952
- continued.

Before leaving area A, I wish to call attention to the plan on certificate of title O which indicates that Chief Oloto was not the only owner of land abutting on the land acquired. This, by the way, helps to dispose of the suggestion that all of Iddo Island belonged to the Olotos at the material time. That suggestion is also destroyed by Exhibit EE which shows that a Mrs. Franklin was paid compensation for land on Iddo Island acquired in pursuance of the Government Notice 186 of 1899.

In conclusion, I hold that the claim of compensation in respect of area A fails and I need not therefore go into the question of value.

I will now deal with area B which is on the mainland at Ebute Metta. This area is edged pink on plan marked B, made by Mr. Body Lawson in December, 1949. A Magistrate's Court was erected within this area in 1922. Chief Imam Tijani at first said that the Court was built 17 years ago that later corrected himself. There are also Police Barracks on this site which is known as the Botanical Garden because in 1893 (according to Chief Imam Tijani) Government asked the Oloto for leave to plant vegetables there. A garden did in fact exist on the site (see Atitebi's evidence).

The case for the defence is that this area was one of those acquired pursuant to notices of acquisition (S and S1) published in the Gazettes of 5/8/99 and 14/10/99 bearing Nos. 234 & 320 respectively, and subsequently covered by certificates of title T, T1, and T2. Exhibits T, and T2 are the same, except that T2 contains a plan. Certificate T2 was issued in 1903 under the 1876 Ordinance and the area described therein includes the area to which certificate of title T (dated 2nd May, 1899) applies.

The position is graphically set out in Exhibit V area B and other areas mentioned in the statement of claim are marked and edged blue. The red lines indicate the areas described in the notices of acquisition contained in Exhibits S & S1. The green lines enclose the areas covered by certificase of title T2. The area covered by certificate T is much smaller than that covered by certificate T2 and is also smaller than the areas described in notices of acquisition S & S1. For the purposes of this case I need consider only certificate T2 issued in 1903.

Area B is within the area covered by certificate of title T2 and is also comprised within the areas described in the acquisition notices. There is also certificate of title FF, dated 1891, which covers the northern portion of area B.

Chief Imam Tijani stated that prior to the creation of the garden in this area, the area was used by the Olotos for drying fishing nets and curing fish. He said that he remembers accompanying his mother to the spot when she had occasion to go there to dry fish. This must have been before 1893 and the witness was therefore barely 7 years old. Assuming that Tijani's recollections are correct, it does not necessarily follow that the area still belonged to the Olotos when Government acquired it.

I should perhaps explain my last remark at some length.

The Olotos' claim in this suit rests mainly on the averment that the areas mentioned in the statement of claim belonged to the Family from time immemorial. Chief Imam Tijani, and Chief Onikoyi also, have given evidence to the effect

In the Supreme Court of Nigeria Lagos Judicial Division

No. 17

Judgment.

17th January, 1952

- continued.

that the Olotos' right to the area now known as Ebute Metta right up north to Ikeja, was never disputed by the other Chiefs. This averment has become almost axiomatic and I am prepared for the purposes of this case to assume that it is correct. In doing so, however, I must emphasize that I do also take into account the undeniable fact that the Oloto Family have parted with the ownership or possession of much of their territory. For example, Chief Imam Tijani has admitted that the Oloto Family gave land at Ebute Metta to Odaliki near area C: This was before his time. Moreover, the Defendant has produced Exhibits 00 and 001 which are certified copies of conveyances executed in 1901 & 1902 by the Chief Eshugbayi Oloto to Atitebi of parcels of land at Ebute Metta; Atitebi's son was called by the Plaintiffs in this case and stated that his father had bought several parcels of land from the Olotos and had re-sold some of them. According to witness Atitebi, his father acquired the land contiguous to area B in 1888.

Anyhow, the fact that the Olotos did part with land at Ebute Metta is summed up by Chief Imam Tijani when he said in answer to Mr. Bate: "I cannot say how many thousand plots were sold by the Olotos because I have no record".

In view of the evidence just mentioned above, I consider that I cannot accept the bare assertion that, at the time of acquisition by the Government, the Oloto Family owned the areas acquired, as shown on the certificates of title T & T2. Something more cogent than a bare assertion based on "traditional evidence" is necessary. As regards area B, is there some cogent evidence establishing that the Oloto family were still owners when the Government acquired it? - There is only Chief Imam Tijani's evidence which I have set out above. It is far from being strong and reliable evidence, but, in the circumstances, I am prepared to accept it as establishing that area B belonged to the Olotos when Government acquired it.

The defendant has not been able to establish that compensation was paid in respect of area B (assuming that the area was not unoccupied land), but by 1903 at the latest, the Government had obtained a certificate of title conveying the area. On the evidence before me I have reached the conclusion that the Olotos were aware, by 1903 at the

latest, that the Government had acquired area B. At any rate, there can be no doubt that in 1922 they were fully aware of the position. (Chief Imam Tijani gave evidence to the effect that in 1922, when the Magistrate's Court was being erected in area B, the then Chief Oloto and members of the Family, including himself, went to interview Mr. Nash, the Commissioner of Lands.) This being so, the claim is time-barred.

The position, as regards area C, is that the defence has not been able to trace a certificate of title including it. As shown on map V, area C is outside the green lines indicating the area covered by certificate of title T2.

Area C is also shown on Mr. Body-Lawson's plan marked C.

According to Chief Imam Tijani, Government in 1900 asked the Olotos for this plot of land in order to use it for brick making: the Olotos agreed. The Government according to Tijani, dug out clay and took it elsewhere to make bricks, but never paid the Olotos for the land. If, as Tijani says, the Olotos did not receive payment for this land, I cannot conceive why they waited so long to make a claim. The clay was, so it appears, soon exhausted, and area C was left in a swampy condition until it was recently filled up by the Town Council with Government's permission. I am not satisfied that the Plaintiffs have established that area C was owned by the Oloto family when Government took possession. I would recall, in connection with this area C that Mr. Kayode stated in his final address that the Government's title to the area mentioned in paragraph (6) of the statement of claim was not challenged. Consequently, the claim, as regards area C, cannot be one for compensation in respect of the clay dug out by Government. The claim like the other claims, is for the value of the freehold and was more than 40 years old when this suit was begun. It is not easy, after such a period of time, for the Defendant to trace a record of the transaction, and the Defendant is justified in relying on the Statutes of Limitation. I hold that the claim in respect of area C, is time-barred.

Area D is depicted on the plan Exhibit D

In the Supreme Court of Nigeria Lagos Judicial Division

No. 17

Judgment.

17th January, 1952 - continued.

(produced by the Plaintiffs) and made by Mr. Body-Lawson. It is also shown on Exhibit V as being included within the area covered by notices of acquisition S & S1 and certificates of title T & T2. The evidence that it was owned by the Olotos when acquired by the Government (in 1903 at the latest) is practically negligible, apart from the general assertion that all land at Ebute Metta used to belong to the Olotos. I have already dealt with this general assertion and need not repeat myself. I am not satisfied that area D was owned by the Olotos at the time of compulsory acquisition. Assuming that it was still owned by them I would presume that notice of acquisition was brought to their knowledge and that the claim is consequently time-barred.

Areas E, F & G, are shown on the plan marked E, F, G. The said areas also appear on Exhibits L and V and fall within the lands covered by certificates of title T & T2. I hold that the claim in respect of these areas fails because it had not been established to my satisfaction that the Olotos still owned these areas when they were acquired by Government. Moreover, the claim is also time-barred.

Chief Immam Tijani gave the history of areas E, F & G as follows. Long ago the Olotos used to let the land to persons who got palm oil and palm wine from the trees in the area. Later on the Ijaye people and other persons were allowed by the Olotos to settle there and build houses. According to the witness, the Government began to use the land in those areas between 25 and 40 years ago and settled the occupiers thereof on other lands at a place called Songo at Ebute Metta. Government paid compensation to the said occupiers for their houses but never paid the Olotos for the area E, F and G: what is more, Songo also belonged to the Olotos and they received no compensation or payment therefor. When asked by Defendant's Counsel why a claim in respect of Songo had not been made, Chief Imam Tijani said: "We do not want to make a claim about the Songo land now". Later on, when questioned by the Court he explained that the Songo land transaction was not within his knowledge and that he personally could not advise the Family to claim it. He then added the Family would have to investigate first whether Government has paid for the land.

I consider that this piece of evidence about the Sango area sheds much light on the Plaintiffs' case and reveals its basic weakness. No reliable data are available to the Plaintiffs and most of the evidence given in the present case by Chief Imam Tijani can be ascribed to guesswork and wishful thinking. My opinion, just expressed, is considerably strengthened by Exhibit GG produced by the defence. This is a book containing a record of facts connected with Government acquisitions. Mr. Glover explained the purposes of this book. Exhibit GG covers the period 1911 - 12 and pages 53 to 67 contain references to areas E,F,G. This is ascertained by looking at the reference number of the Blocks and at the plan or sketch at page 58 of the Exhibit. The Wesleyan Chapel in Block LXX at page 58 obviously corresponds to the Methodist Church as shown on plan V within area marked G. The names of Streets correspond. On plan Y, the building shown above the number LXX is obviously the same Methodist Church as shown on plan V.

From this record book it appears that certain individuals received payment for plots of land within area E, F, G acquired by Government. This shows that Chief Imam Tijani did not give reliable evidence when he said that all the lands in those areas belonged to the Oloto family when Government stepped in.

I will now pass on to areas H & I which are shown on plans H & I. Apapa Road now divides these two areas which, before the road was built, formed one single area. According to Chief Imam Tijani the Government took these areas in 1900. There was no dividing road at the time. Place names such as Ilogbo and Shemore within these areas were originally names of settlements on Iddo Island. When persons were displaced from Iddo owing to the construction of the Railway, they moved across the water to areas H & I on the mainland. According to Chief Imam Tijani these displaced persons received compensation from Government for their houses and Government paid compensation to the Olotos in respect of the old Shemore and Ilogbo settlements on Iddo Island. The new Shemore was, according to the same witness, used at first by Government for making bricks; then in 1922 the people from old Shemore were settled on the new Shemore. The witness added that no compensation was paid to the Olotos in respect of areas H & I.

In the Supreme Court of Nigeria Lagos Judicial Division

No. 17

Judgment.

17th January, 1952 - continued.

Now, as regards areas H & I, the defence relies on certificates of title T2 (or T) and on an older certificate marked HH issued in 1893.

Exhibit V shows that part of area H and a small part of area I are covered by the Certificate of title T2.

According to witness Glover, called by the Defendant, the description in certificate of title dated 1893 (HH) does not make it possible, in the absence of an accompanying plan, to identify accurately the boundaries of the lands referred to therein, but Mr. Glover stated that he can deduce from the description in HH that it related to an area including the areas or part of the areas H & I, and probably more extensive.

It is interesting to note that Chief Imam Tijani's evidence about areas H & I incidentally reveals that Government did pay compensation for the old Shomore and Ilogbo on Iddo Island.

The certificates of title covering areas H & I are not so conclusive as in other cases because certificate HH contains no plan. I however, accept Mr. Glover's evidence as regards the area covered by Certificate HH, the more so as Mr. Kayode did not at the end of the case dispute Government's title to any of the areas. I have no difficulty in deciding that the claims in respect of H & I are also time-barred. Chief Imam Tijani has said that Government took the land (now areas H & I) in 1900; certificates of title relating to the area are dated 1893 and 1903 respectively and I reckon the period of limitation as beginning in 1903 at the latest.

It remains now to mention area K. This area is the one mentioned in paragraph 6(k) of the statement of claim.

The plan J prepared by Mr. Body-Lawson on the instructions of Plaintiffs affords one more illustration of the lack of certainty of the Plaintiffs' claim. It was intended that the claim in respect of area K would enbrace all the area edged pink. During the hearing, however, Chief Imam Tijani stated that the Plaintiffs were claiming only in respect of the strip of land on which the railway

lines are laid. The remainder of the area edged pink had been, said the witness, acquired by the Government from persons to whom the Olotos had previously alienated lands. This again shows, by the way, that land had been alienated by the Oloto family.

According to Chief Imam Tijani, the land for the railway track was taken by Government in 1897. The length of the strip with which we are concerned extends from Iddo to Odi-Olowo and is, on the average, one hundred feet wide.

This strip is also depicted on plan M put in by the defence (Mr. Body-Lawson agreed that the strip on M is the same as that depicted on his plan Y).

The evidence adduced by the defence is that portion of the railway strip on Iddo Island is covered by certificate of title marked O & P, while the portion of the railway strip from Denton causeway to Oke-Ira Street in Ebute Metta is covered by certificate of title T2 (or T1) dated 1903 A.D. and was included in the notices of acquisition S and S1.

In accordance with my decisions as regards other areas included in certificates of title, I hold that the claim in respect of area K up to Oke-Ira Street is time-barred but in addition, I am not satisfied that the Plaintiffs have established that they owned all the plots on which the line was laid.

I might mention that the defence has been able to produce evidence tending to show that plots of land along the path of the railway line were valued for compensation (see Exhibits II, Y, Y MM). The proof of actual payments was not however made because it was stated that payments were effected through the Railway Department and that the records have been burnt. In a few cases, however, where land was given in compensation to expropriate owners as indicated in Exhibit Y, the corresponding Crown Grants have been produced (see Exhibits NN, NN1, NN2). These Exhibits support the view that the Plaintiffs have no real basis for the averment that they owned all the strip of land along which the railway lines were laid. Their averment has only one basis, and it is a very tenuous one, namely, that at one time the whole of Ebute Metta and the area right up to Ikeja belonged to the Olotos.

In the Supreme Court of Nigeria Lagos Judicial Division

No. 17

Judgment.

17th January, 1952 - continued.

I have already stated that I hold the claim in respect of area K up to Oke-Ira Street to be time barred. As regards the remainder of the strip I am not satisfied that the Plaintiffs have established that they owned the land or had any interest therein when the Government took it; in any case, more than 40 years had elapsed before a claim for compensation was made and the claim is therefore time-barred.

I dismiss this suit with costs assessed at three hundred guineas. 10

(Sgd.) M. De Comarmond
SENIOR PUISNE JUDGE.
17/1/53.

In the West African Court of Appeal

No. 18

Notice and Grounds of Appeal.

April, 1953.

No. 18

NOTICE AND GROUNDS OF APPEAL

IN THE WEST AFRICAN COURT OF APPEAL

NOTICE OF APPEAL

(RULE 12)

Suit No. M.3446 20

B E T W E E N

CHIEF FAGBAYI OLOTO for himself and on behalf of the other members of the Oloto Chieftaincy Family Plaintiff-Appellant

- and -

THE ATTORNEY-GENERAL Defendant-Respondent

TAKE NOTICE that the plaintiff being dissatisfied with the judgment of the Supreme Court, Lagos contained in the judgment dated 17th day of January, 1953 doth hereby appeal to the West African Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4. 30

AND the Appellant further states that the name and addresses of the persons directly affected

by the appeal are those set out in paragraph 5.

2. Whole Judgment.

3. Grounds of Appeal:

In the West African Court of Appeal

No. 18

Notice and Grounds of Appeal.

April, 1953 - continued.

(1) The learned trial judge erred in law and on the facts in holding that the defendant can rely on the statutes of limitation (particularly the Limitation Act 1623 and under the Civil Procedure Act 1833).

(2) The learned trial judge erred in law and on the facts in holding that the plaintiff's claim is time barred.

(3) The learned trial judge erred in law and on the facts in not holding that the matter before the Court is a petition of Right.

(4) The learned trial judge erred in law in admitting the letter Exhibit "AA" in evidence when the aforesaid letter referred to matters not in dispute in this action and subject matter not before the Court in the present Suit.

(5) The learned trial judge erred in law in admitting the letter Ex. "BB" and "CC" in evidence when the aforesaid letters referred to matters not in dispute in this action and subject matter not before the Court in this present suit.

(6) The learned trial judge erred in law in admitting the letter Ex. "DD" in evidence when the aforesaid letter referred to matters not in dispute in this action and subject matter not before the Court in the present suit.

(7) The learned trial judge erred in law in admitting the letter Ex."E"in evidence when the aforesaid letter referred to matters not in dispute in this action and subject matter not before the Court in present suit.

(8) The learned trial judge erred in law and on the facts in rejecting plaintiff's evidence of the ownership of the areas of land in dispute and holding he was not satisfied the plaintiffs had proved their ownership when there is no evidence whatever to the contrary before the Court.

In the West African Court of Appeal

No. 18

Notice and Grounds of Appeal.

April, 1953 - continued.

(9) The learned trial judge erred in law and on the facts in holding "I therefore attach no weight to his statement (Chief Imam Tijani's statement) that no payment was made" in respect of the Area in dispute marked "A" when the onus of proving payment was on the defendant.

(10) The learned trial judge erred in law and on the facts regarding Area "B" of plaintiff's claim in holding that the plaintiff's claim to compensation to the said Area is time barred.

(11) The learned trial judge erred in law and on the facts in holding that "I am not satisfied that the plaintiff has established that Area "C" was owned by the Oloto Family when Government took possession" when the defendant did not challenge the plaintiff's title and no evidence before the court contradicting the plaintiff's claim to the said area of land.

(12) The learned trial judge erred in law and on the facts in holding that Area "C" of plaintiff's claim was not owned by the plaintiffs at the time of the compulsory acquisition, when the plaintiff's claim to the said area of land against the defendant was not contradicted by any evidence led by the defendant.

(13) The learned trial judge erred in law and on the facts in holding "Assuming that it was (the land in dispute) was still owned by them(the plaintiff) I would presume that notice of the acquisition was brought to their knowledge" when there was no evidence whatever on which the said learned trial judge's presumption is based.

(14) The learned trial judge erred in law and on the facts in holding that plaintiff's claim to Area "D" is time barred.

(15) The learned trial judge erred in law and on the facts on holding that"The claim in respect of the areas E, F & G fails because it has not been established to my satisfaction that the Oloto's still owned these areas when they were acquired by the Government" when the plaintiff led evidence as to their claim against the defendant and the defendant led no evidence to contradict the plaintiff's claim.

(16) The learned trial judge erred in law and on the facts in holding that plaintiff's claim to areas E, F & G is statute barred.

(17) The learned trial judge erred in law and on the facts in holding that plaintiff's claim in respect of Area "A" is time barred.

(18) The learned trial judge erred in law and on the facts in holding that plaintiff's claim in respect of Area "K" is time barred.

(19) Judgment against the weight of evidence in respect of each area claimed and in respect of the whole of the plaintiff's claim.

4. Relief sought from the West African Court of Appeal:

That the judgment of the Court below be set aside and for any further or other order as the Court may deem fit in the circumstances.

5. Persons directly affected by the Appeal:

Name:	Address:
The Attorney-General	Attorney-General's Chambers, Care Legal Department, Lagos.

DATED at Lagos this day of April, 1953.

(Sgd.) Thomas, Williams & Kayode.
APPELLANT'S SOLICITORS.

In the Federal Supreme Court of Nigeria formerly the West African Court of Appeal

No. 19

Order substituting Chief Tijani for Chief Oloto (Now deceased)

15th October, 1956.

No. 19

ORDER substituting CHIEF TIJANI for CHIEF OLOTO (now deceased)

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

Suit No. M.3446
W.A.C.A.191/1955.

Application Ex Parte for an Order that Chief Imam Ashafa Tijani be substituted for Chief Fagbayi Oloto, now dead.

B E T W E E N :

CHIEF FAGBAYI OLOTO (now deceased) for himself and on behalf of the other members of the Oloto Chieftaincy Family
Applicant

- and -

THE ATTORNEY-GENERAL Respondent

Monday the 15th day of October, 1956.

UPON READING the application herein and the affidavits of Chief Imam Ashafa Tijani and Emanuel Jaiyesinmi Ogundimu, sworn to on the 31st day of August, 1956, filed on behalf of the Applicant, and after hearing Mr. R.A. Fani Kayode of counsel for the applicant:

IT IS ORDERED that Chief Imam Ashafa Tijani be and is hereby substituted for Chief Fagbayi Oloto, deceased.

(Sgd.) S.A. Samuel
AG. CHIEF REGISTRAR.

No. 20

NOTES of JIBOWU Ag. FCJ.

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

BEFORE THEIR LORDSHIPS

OLUMUYIWA JIBOWU AG. FEDERAL CHIEF JUSTICE
M.C.E.C. NAGEON DE LESTANG FEDERAL JUSTICE
MYLES JOHN ABBOTT AG. FEDERAL JUSTICE.

W.A.C.A. 191/1955

B E T W E E N

CHIEF FAGBAYI OLOTO (now deceased) for himself and on behalf of the other members of the Oloto Chieftaincy Family substituted by Chief Immam Ashafa Tijani by Order dated 15.10.56. Appellant

- and -

THE ATTORNEY-GENERAL Respondent

Appeal from Judgment of De Comarmond, S.P.J. dated 17th January, 1953.

Mr. Shawcross (Ketun & Akinrele with him) for Appellant.
Brett, Ag. Attorney-General (Walker with him) for Respondent.

Shawcross opens and points out that the action was not for compensation under Public Lands Acquisition Ordinance but on a Petition of Right. Ten pieces of land are involved, amounting to about 88 acres. The lands were acquired by Government at different stages between 1891 and 1927. The aggregate value of the land at the present time is £630,560 - Value at date of acquisition amounts to £1,891.13.0d. The title of the Crown to the lands is not in dispute. What are in dispute are (1) whether or not the Crown was ever liable to pay the Oloto family anything at all for these lands. (2) If the Crown was so liable, at any time, whether anything was ever, in fact, paid to the Oloto family. (3) If

In the Federal Supreme Court of Nigeria formerly the West African Court of Appeal

No. 20

Notes of Jibowu Ag. FCJ.

12th, 13th & 14th June, 1957

In the Federal Supreme Court of Nigeria formerly the West African Court of Appeal

No. 20

Notes of Jibowu Ag. FCJ.

12th, 13th & 13th June, 1957 - continued.

nothing has hitherto been paid, whether the Crown is now liable to pay anything, and if so, how much.

Can the Crown rely on Statute of Limitation? If the Crown can so rely, the entire claim of the appellant is banned.

He submits that the learned trial Judge did not deal with the basis of assessment of the compensation. He refers to the Amended Statement of Claim at page 1 of the Record. Reads it.

Amended Defence is at pages 5-7.

He refers to the Public Lands Acquisition Ordinance and reads it out sections 3,5,7,9,10,11 and 12 of 1876. He draws attention to secs. 7 (2) and (3) and secs. 8, 10 and 12.

He now refers to the Judgment of the court below at page 64 - He reads it out.

See Notice of Appeal at page 82.

He reads the Grounds of Appeal.

Grounds 8 and 9

He refers to the evidence of Chief Immam Ashafa Tijani at pages 9-10.

He submits that the learned trial Judge rejected this evidence and there is no sufficient ground for doing so. He says the Judge accepted evidence as to Areas A.B.H. and I. There is presumption of continuity of ownership and, in spite of the evidence of alienation, he submits that the witness's evidence should have been accepted.

He refers to page 16 from line 34 to page 17, line 14 dealing with Exhibit "C"; page 17 line 14, page 17 lines 38-41 Spoke about Exhibit "D", page 17 line 42 to page 18 line 15, re Exhibits "E, F and G". He says the witness told the truth and the evidence should not have been taken against him. He refers to page 18 line 40; also page 19 line 7 - page 19 line 21 page 20 line 20. He refers to the evidence of Chief Onikoyi. Surveyor Lawson and of Auctioneer Alabomi Olaleye who valued the various pieces of land. He refers to Bate's submissions on page 28 et seq.

Defendant's 1st witness tendered Certificates of Title. Land Officer Macauley tendered Schedule of Compensation prepared by Benjamin in 1907. It does not show any compensation was paid to Oloto.

Land Officer Glover gave evidence from page 36.

Page 37 shows £70 put against name of Oloto but there was no evidence that the money was in fact, paid. He refers to page 30 et. seq.

What is the nature of the Claim?

He says it is not a claim on the face of it for any statutory compensation. It is a claim by petition of right for the use or value of the use which the Crown had enjoyed in respect of the lands since the dates of their acquisitions. Asked by De Lestang - how can the Government be asked to pay for the use of lands which were theirs? He says that the Petitioners are entitled to compensation for the use of the lands since its acquisition. He submits that the case is analogous to land requisitioned under the Defence of the Realm Act. He refers to De Keyser's Royal Hotel, 1920, A.C. 508, at pages 523, 525, 530 and 533. He submits that the Crown had taken the lands in question under an Ordinance. Without paying for the lands. See page 65 as to Kayode's explanation of "user".

Adjourned to 13th June, 1957.

TUESDAY the 13th day of JUNE, 1957. 13th June, 1957.

Mr. Shawcross is asked if he considers that the Statement of Claim disclosed any course of action.

He considers this case a novel one, but thinks that it is well within the principle laid down in De Keyser's Royal Hotel v. Attorney-General. He refers to Feathers v. The Queen, 12 Law Time 114 at page 117.

He points out that under a Petition of Right, the claim is for compensation due for the taking of the supplicant's property. He asks for leave to amend the Statement of Claim by the insertion of a new paragraph 5(a) to read:

> "In the circumstances set forward in paragraph 1-4, and in the circumstances that the Defendant failed or neglected to provide compensation for the Plaintiffs, pursuant to the Public Lands Ordinance of 1876, at or within a reasonable time after the acquisition of the several properties mentioned in paragraph 6 below an implied contract arose to pay the plaintiffs compensation for the deprivation of the use of the same land."

In the Federal Supreme Court of Nigeria formerly the West African Court of Appeal

No. 20

Notes of Jibowu Ag. FCJ.

12th, 13th & 14th June 1957 - continued.

He refers to England v. Palmer, 14 W.A.C.A. 659, at 661. Brett does not say that there is no powers in the Court to amend a petition of right, but he does not think that paragraphs 3 and 4 are consistent with the admission in the proposed amendment that the lands had been acquired by Government. Subject to this being made clear, he does not oppose the amendment.

Shawcross asks for leave to amend Paragraph 4 by inserting the words "having acquired the same under Public Lands Ordinance of 1876" between "properties", and "end" in the second line of paragraph 4, and also by inserting the words "either for the said acquisition or" between the words "family" and the word "for" in the third line of paragraph 4.

Brett does not object to the proposed amendments.

The amendments proposed are granted.

Shawcross continues

He says that the onus of proof of right of compensation is on the Respondent since there is an admission that the lands had been acquired.

He reads section 10 of Public Lands Ordinance 1876, also section 7 ibidem. The Defendant failed to produce documents showing agreement to assessed compensations or Court Records deciding the amounts of compensation fixed.

He refers to page 69 Record, lines 4 - 18.

This passage has relevance to the Statute of Limitation of Laches. He refers to page 77 line 40 page 78 up to line 16. See also pages 66-67. He submits that the learned trial Judge did not consider question (4). He agrees that time would start to run from time of the acquisition. He submits that there was no definite finding as to whether compensation was in fact paid or not. He refers to Glover's evidence at page 54 line 24. He thinks this reinforces his argument as to matters of fact. As regards the question of presentation as to notice, he says the Judge was wrong in applying the maxim Omnia praesumuntur rite ex solemniter acta", as that was the matter in issue. He submits that the proper presumption was that no compensation was paid.

Statute of Limitations Does it or does it not apply to Petition of Right?

In United Kingdom, in 1903, the Crown could not plead Statute of Limitations. See Irvine v. Board of Trade, 1927, 1.K.B. page 269, at 294. (Dicta); Rustomjee vs. The Queen 1875 - 6, LR. 1 Q.B. 487, at 496. Principle that the Crown cannot rely on a Statute which does not bind him.

He refers to Dr. Bells' Proceedings, Cap. 7. See also Robertson's Crown Proceedings page 393, at 396. Crown Procedure Act, sec. 30. Crown not being bound by Statute cannot take advantage of the Statute. See 10th Edition of Maxwell on interpretation of Statutes, page 143. See Sec.8 of Petitions of Right Ordinance.

He refers to the judgment at page 144, line 14. He submits that until words omitted are "so far as may be applicable" was no extension of the English Law. He submits that the Petition of Right Ordinance puts the Government in the same position as under the English Law.

He refers to Petition of Right, Act 1860 which he submits sets out the law which is identical with the Petition of Right Ordinance.

In Re Mason, 1929 1 Ch.1, the decision was based on Section 3 of Intestates Estates Act, 1884.

He refers to Bell on Crown Proceedings at page 63. See Limitation Act, 1939 Section 30 (1) - submits that there was necessity for the provisions -

See 15 Halsbury's Laws of England, Simonds Edition, para. 514 at page 283. Cases in the footnote are not available in the Court Library. He cites 1907, Law Report A.C. 73, at 76, 79.
Laches - This applies only against equitable claims. The Ag. Attorney-General intimates that he does not wish to argue the point. The amount of compensation the Court may have to refer case back for assessment.

He suggests the assessment should be on the basis of the present value of the land less the value at the time of the acquisition up to within 2 years thereof.

Brett replies -

He submits that the Plaintiff's Statement of Claim, as amended, now alleges an implied contract. In De Keyser's Hotel case the Court held that the suppliant was entitled to compensation. In this case compensation was due under the Public Lands Ordinance - Here there is no assent to the acquisiton -

In the Federal Supreme Court of Nigeria formerly the West African Court of Appeal

No. 20

Notes of Jibowu Ag. FCJ.

12th, 13th & 14th June, 1957 - continued.

The owner of the land cannot object to the acquisition - See Kirkness (Inspector of Taxes) vs. John Hudson & Co. Ltd., 1955, A.C. 696, at 709 (1st line) and page 728. Acquisition is compulsory. He submits there is no implied contract in a case of compulsory acquisition. Applicability of Statute of Limitations -

See section 7 of Petition of Right Act 1860 and compare with the local Ordinance.

He submits that the two are different on their scope and purpose. See the purpose of both - The Ordinance deals with other matters in addition to the Petition of Right Section 2 of the Ordinance has since been amended by adaptation. See sections 3, 4 and 8 - 8 deals not with petition of right. In Rustomjee's case Petition is said not to be an action. See definition in section 2 in the Supreme Court Ordinance, Cap. 211 Laws of Nigeria "Suits include actions". The object of the Petition of Right Ordinance was to make provisions for Suits. He submits that the proceedings under the Ordinance are in a suit and not a petition of right.

He submits that the dicta of Sutton J shall remain the law see Tomline vs. Attorney-General, 1880, 15 Chancery Division, 150. Held Crown acquired a freehold title under the Statute.

In Irvine vs. Board of Trade, 1927, 1 K.B. 283-4 Hanworth, M.R., was guarded and Scrutton expressed doubt.

In Re Mason, 1929 1 Ch. 1, at page 8. See Lord Hanworth's Dictum. See 1947 Crown Proceedings Act, sections 30 and 31 does not apply to Nigeria. The object presupposes that the right of the crown to take advantage of Statute exists. Bell's Book, page 198, footnote - accepts the existence of the right. He submits that there is nothing in the Petition of Right Ordinance or the Statute itself to limit the right of the Crown. He submits that the grant of the fiat does not necessarily make the case a Petition of Right.

Issues of fact. He says that the comment of Shawcross is not justified that the learned trial Judge was not justified in the conclusions he reached on the evidence. The onus of proof of payment or non-payment he submits, does not rest on the Crown.

If the claim was well founded, damages cannot be properly assessed at the present day value.

Sec. 10 (2) of the Public Lands Ordinance 1876, he says, makes the claim under an implied contract untenable.

Shawcross replies - He asks for adjournment.

Adjourned to 14th June not before 10.30 a.m.

FRIDAY the 14th day of JUNE, 1957.

Shawcross replies.

Implied Contract. No contract was or could be implied in De Keyser's Hotel Case. He agrees that there is no question of an agreement between parties with relation to the Acquisition. He submits that there was an implication that the Crown would pay compensation for land taken. Two procedures were open (1) for the Court to approach the Chief Secretary and agree to compensation offered or (2) to go to Court if no agreement could be reached.

He refers to page 521, 1920 A.C. With regard to 1955 A.C. he says the implied contract were not from the acquisition but from the obligation consequent on the acquisition.

With regard to the availability of State of Limitations to the Crown - He refers to Sec. 23 (12) of Land Registration Act, 1925, Crown Proceedings Act, 1947, section 31 - he draws attention to section 30 of Dr. Bell's Book at page 197. He submits that express provisions were made to enable the Crown to do what he could not do before. He distinguishes Tomline's case on the ground that in England the Crown is the ultimate owner of land - here he says the Crown is in a special position.

He refers to 15 Ch. D. 150.

Petition of Rights Ordinance, he submits, is merely procedure, comparable with the English Act of 1860. Compare the preambles. He says that there is no indication that the Legislature here intended to alter the law of England.

Regarding the word "Suit", see the Local Ordinance; the interpretation Ordinance says "Suits includes Actions".

He refers to Order 1 rule 2 Vol. X. Laws of Nigeria page 12 - Order 2, rule 1.

In the Federal Supreme Court of Nigeria formerly the West African Court of Appeal

No. 20

Notes of Jibowu Ag. FCJ.

12th, 13th & 14th June, 1957 - continued.

He submits that the present case is a Petition of Right which does not follow the Rules of Court. He submits that the Court should consider the substance of the matter and not look at the labels. He says that the proceedings cannot be an action within the definition of Action in the definition of that word in the as it is not to be commenced by a writ.

Re section 10 (2) of Public Lands Ordinance 1876, he says it is a common formula, and does not relate to compensations due under the Ordinance. He submits that section 10 relates only to Title.

He submits that section 10 (2) relates only to claims for title.

C.A.V.
(Sgd.) O. Jibowu, Ag. F.C.J.
14.6.57.

No. 21

Judgment.
(a) Jibowu Ag.FCJ.

16th December, 1957.

No. 21

J U D G M E N T

(a) JIBOWU Ag. FCJ.

This is an appeal from the judgment delivered by de Comarmond, S.P.J., as he then was, in the former Supreme Court of Nigeria on the 17th January, 1953, whereby he dismissed the plaintiff's claim for £630,560 being compensation claimed in respect of ten pieces of land at Iddo, Oto and Ebute Metta which the Nigerian Government was said to have been using without paying any compensation for the use thereof to the plaintiff and his family who were said to be the owners thereof.

The proceedings were commenced not by a writ of summons as in an ordinary action but by a Statement of Claim filed under the provisions of sections 3 and 4 of the Petitions of Right Ordinance, Cap. 167 of the Laws of Nigeria. The Fiat of the Governor was duly given under section 5 of the said Ordinance.

The amended Defence filed shows that the pieces of land had been acquired by the Nigerian Government under the Public Lands Ordinance of 1876

and that they were all covered by Certificates of Title issued by the Supreme Court of Nigeria between 1891 and 1903, excepting area 6(c) in the plaintiff's Statement of Claim, the Record of which could not be traced.

It should, however, be observed that Mr.Kayode, who appeared for the plaintiff in the Court below, informed the Court that the plaintiff did not question the title of the Crown to all the said pieces of land.

The Defence pleaded the Limitation Act of 1623, Civil Proceedings Act 1833, Acquiescence, Waiver and Laches and denied plaintiff's ownership of the said pieces of land at the time of the acquisitions.

Besides making findings of fact, the learned trial Judge held that the claims were statute barred and so dismissed the suit as I have said before.

It appears that the suit could have been dismissed on the ground that the pieces of land in respect of which the proceedings were instituted had become Crown Lands between 1891 and 1903 and that the plaintiff's claim for compensation for the user of the lands by the Nigerian Government was misconceived, as the Government could not be called upon to pay compensation for using its own lands.

Mr. Shawcross, who appeared for the appellant, obviously saw this point when he was asked by a member of the Court whether the plaintiff's Statement of Claim disclosed a cause of action, and he promptly applied for leave to amend the Statement of Claim. Mr. Brett, the Acting Attorney General, who led for the defence, had no objection to the proposed amendments and so paragraph 4 of the Statement of Claim was amended and a new paragraph 5(a) was added. The Court allowed the amendments in order to do substantial justice between the parties.

The amended paragraph 4 reads:

> "That the Government of Nigeria are now using the said landed properties having acquired the same under Public Lands Ordinance of 1876 and no compensation has been paid to the Family either for the said acquisition or for the properties by the said Government of Nigeria."

In the Federal Supreme Court of Nigeria formerly the West African Court of Appeal

No. 21

Judgment.
(a) Jibowu Ag. FCJ.

16th December, 1957
- continued.

Paragraph 5(a) runs thus:-

"In the circumstances set forward in paragraphs 1-4, and in the circumstances that the defendant failed or neglected to provide compensation for the plaintiff, pursuant to the Public Lands Ordinance of 1876, at or within a reasonable time after the acquisition of the several properties mentioned in paragraph 6 below, an implied contract arose to pay the plaintiffs compensation for the deprivation of the use of the same land."

It was contended on behalf of the appellant that the proceedings being in the nature of a petition of right, the Limitation Act of 1623 did not apply and it was contended for the respondent that the proceedings were just a suit and not a petition of right and that the Act applied by virtue of section 8 of the Petitions of Right Ordinance.

There was no dispute that the proceedings were taken under the provisions of the Petitions of Right Ordinance, Cap. 167 of the Laws of Nigeria, which does not provide the form in which the petition is to be presented other than stating in section 4 that the claimant shall not issue a writ of summons but shall commence the suit by filing a Statement of Claim. The Ordinance is headed "Petitions of Right", and section 1 thereof reads: "The Ordinance may be cited as the Petitions of Right Ordinance". There is no doubt, as submitted by the learned Acting Attorney-General, that the Ordinance deals with other matters besides Petitions of Right, but the head note and sections 1, 3 and 5 thereof clearly indicate that the Ordinance was intended to deal with Petitions of Right and therefore made provisions for the procedure to be adopted in presenting such petitions.

In my view, the fact that section 4 of the Ordinance refers to the proceeding so commenced as a suit does not deprive the proceeding of its character as a Petition of Right, and the proceeding is both a suit and a Petition of Right.

Section 2 of the Supreme Court Ordinance of 1945 states that a "suit includes an action", and defines an "Action" as meaning "a civil proceeding commenced by a writ or in such other manner as may be prescribed by rules of Court, but does not include a criminal proceeding".

Order 2 rule 1 of the Supreme Court (Civil Procedure) Rules provides that "Every suit shall be commenced by a writ of summons signed by a judge, magistrate or other officer empowered to sign summons". It is therefore clear that there are two categories of suits, namely, suits commenced by writs of summons, and suits which are commenced not by writs of summons but by statements of claim, as in this case. It follows, therefore, that the proceedings in this case, though a suit, are not an action within the meaning of that word in the Supreme Court Ordinance.

The Court was referred to Rustomjee v. The Queen, 1875-6, L.R. Q.B.D., 485 in which it was held that the Limitation Act of 1623 does not apply to a petition of right. At page 491 of the Report Blackburn, J., said: "The Statute of Limitations has relation only to actions between subject and subject, the Crown cannot be bound by it". At page 496, he said further: "With regard to the Statute of Limitations, I do not think it is necessary to say any more. There seems to be no pretence for saying that the statute applies at all to the Crown. It would no doubt be very proper, and right, and judicious for the legislature to pass an Act to say that in future some statute of limitation shall apply, but it has not been done yet".

The case of the Attorney-General versus Tomline, reported in 1880, L.R. 15 Ch.D., at page 150, was referred to as an authority to the contrary. In that case the Crown was held to have become freehold owner of the property in dispute by the application of the Statute of Limitation.

The learned Counsel for the appellant attempted to distinguish that case from this present one on the ground that in England the King was the ultimate owner of lands in England whereas it is not so in Nigeria. The peculiar position of the Crown in relation to lands in England was not mentioned in the judgments delivered in the case and did not form the basis of the decision. It seems to me a clear case where the Court of Appeal ruled that the Statute applied. It is, however, to be noted that the case was not a case of a petition of right.

In Re Mason, 1929, 1 Ch.D. 1, to which the attention of the Court was drawn, it was held that the Crown could take advantage of the Limitation

In the Federal Supreme Court of Nigeria formerly the West African Court of Appeal

No. 21

Judgment.
(a) Jibowu Ag. FCJ.

16th December, 1957
- continued.

Act of 1623. A study of that case, however, reveals that the decision was, in reality, based on section 3 of the Intestates Estates Act, 1884. "In Re Blake" reported in 1932, 1 Ch.D, 54, is another case in which it was decided that the Crown could take advantage of the Limitation Act of 1623, but like "In Re Mason" the decision was based on section 3 of the Intestates Estate Act, 1884. The three cases are, therefore, in my view, no authority contradicting the ruling in Rustomjee's case that the Statute of Limitation does not apply to a Petition of Right.

In Cayzer, Irvine & Co. v. Board of Trade, 1927, 1 K.B.D., 269, the question of the applicability of the Statute of Limitation to the Crown was raised but was not decided and no authoritative decision seems to have been given before the ghost of the question was finally laid to rest by the passing of the Crown Proceedings Act of 1947, which repealed the Petition of Right Act of 1860 and placed the Crown on the same footing as ordinary persons with regard to litigations.

If that Act had been applicable to Nigeria, the question would have presented no difficulty but as this Court can apply only Statutes of general application in force in England on the 1st January, 1900, this Court has to decide whether or not the Limitation Act of 1623 applies to this case and perhaps leave it to Her Majesty's Privy Council to give a decisive ruling on the important but difficult point of law.

It seems to me, however, that the passing of the Intestates' Estates Act, 1884, the Limitation Act of 1939, and of the Crown Proceedings Act of 1947 is the realisation of the legislative enactments visualised by Blackburn, J., in his dictum which I quoted above.

In the Attorney-General for New South Wales v. Curator of Intestates' Estates, 1907, A.C. 519, the Privy Council held that the Crown was not bound by section 4 of New South Wales Life, Fire and Marine Insurance Act, 1902, which purported to protect the proceeds of a life assurance policy from liability for payment of the debts of the deceased, and held also that the Crown was entitled to payment of a debt of £68. 2. 2. due to the Crown in priority to all other claims.

It follows, therefore, in my view, that the Crown cannot take advantage of the Statute of Limitation in this case.

With respect to the Acting Attorney-General, I am unable to accept his submission that section 8 of our Petitions of Right Ordinance extended the English Law and made the Limitation Act of 1623 applicable. In my view, the section merely incorporates the provisions of the Supreme Court Ordinance of 1945, so far as they are applicable. I am favourably impressed by the submissions of the learned Counsel for the appellant that the provisions made by the section relate only to procedure and not to any change in the law. The section makes it possible for the Court to apply English Statutes of general application in force in England on the 1st January, 1900, but does not go to the length of making the Statutes apply in conditions other than those in which they apply in England. The section makes no greater provisions than section 7 of the Petition of Right Act of 1860. In the circumstances, I hold that the Limitation Act of 1623 does not apply to this case.

This does not necessarily mean that the appeal succeeds because there are other grounds on which I think the appeal should be dismissed.

Firstly, the plaintiff's statement of claim after being amended based plaintiff's claims on an implied contract which suggests an agreement between the parties that compensation would be paid by the Nigerian Government for the acquisitions.

As the acquisitions were made under the Public Lands Ordinance, compensation was payable under the Ordinance which provided procedure for determining and assessing the compensation payable. If the parties met and agreed on the amount of compensation payable, that would be the end of the matter; but if the parties could not agree on the amount of compensation payable, or if more persons than one claimed ownership of the land being acquired, then the matter was to be referred to the Court for settlement.

The question of an implied contract could not, therefore, arise under the Public Lands Ordinance of 1876, nor did it arise, as was pointed out by Lord Dunedin in the Attorney-General v.De Keyser's Royal Hotel, 1920, A.C. at pages 522-523, under

In the Federal Supreme Court of Nigeria formerly the West African Court of Appeal

No. 21

Judgment.
(a) Jibowu.
Ag. FCJ.

16th December, 1957
- continued.

the Defence of the Realm Act.

For this reason, the appeal, in my opinion, should be dismissed.

Secondly, as I have already held that the Limitation Act of 1623 is not available to the Crown, the equitable defence of Laches should be invoked to bar the plaintiff's claims.

The evidence established beyond doubt that the lands in respect of which compensation was claimed, were acquired by the Nigerian Government between 1891 and 1903. The principal member of the Oloto Chieftaincy Family, Chief Imam Ashafa Tijani, could not say that the family was not served with notices of the acquisitions, and the learned trial Judge, in my view, was right in holding that the Oloto Chieftaincy Family knew of the acquisitions and did not bring their claim until more than 40 years after the last acquisition. They have acquiesced so long in compensation not being paid for the pieces of land that they appeared to have waived their right to compensation, if they had any interest in the lands acquired. They have slept so long on their alleged rights, allowed Government to pay compensations in respect of the lands to people who could no longer be traced, and made it difficult for the defendant to adequately prepare a defence to meet the belated claims as some of the old Records could not be traced, some having been burnt and others are unidentifiable; moreover, officers who actually had something to do with the acquisitions like Herbert Macaulay, Bagan Benjamin, Rowse and others are no longer available as witnesses. It is, therefore, inequitable, that the plaintiff's claims should now be entertained. They are, in my view, barred by their laches and acquiescence.

Thirdly, on issues of fact the appeal should also be dismissed. On the plaintiff's own showing, Chief Imam Ashafa Tijani, the principal witness for the Oloto Chieftaincy Family, was only 4 years old when the first acquisition was made in 1891, 6 years old in 1893 and 16 years old when the last acquisition was made in 1903. His evidence, according to him, was based on hearsay which was accepted as traditional evidence. He was supposed to have collected his information from his maternal grandfather, Chief Eshugbayi Oloto, in whose time the

acquisitions were made. He failed to tell the Court his grandfather's excuse for not applying for compensation when his family lands were acquired by Government although he lived for 7 years after the last acquisition. Old records produced by the defendant show that his grandfather did not tell him the truth about the acquisitions or that he fabricated the evidence about what he was supposed to have been told by his grandfather. While it might be true that the lands claimed belonged originally to the Oloto Chieftaincy Family, there was evidence from the defence and admissions by Chief Imam Ashafa Tijani that the family had sold quite a lot of their family lands before the acquisitions. His evidence that the whole of Iddo Island belonged to his family at the time of the acquisition is obviously untrue in the light of the information contained in the Records Exhibits 25 and Z produced by the defence. The evidence clearly shows that compensation was paid to many people at Iddo and Oto, including the Church Missionary Society and a Mrs. Mary Franklin. The evidence clearly shows further that Chief Eshugbayi Oloto claimed £150 for his land, obviously the site of his palace, and was paid £70 on 18th March, 1891, and that his claim for £200 for seigniorial right was turned down by the Acquisition Commissioners. See Exhibit DD.

Furthermore, the Chief Imam testified that Shemore and Ilogbo people were removed from Iddo to the site referred to in paragraph 6(h) of the Statement of Claim. Yet, with the knowledge of that fact he dishonestly claimed compensation for the acquisition on the basis that the whole area belonged to the Oloto Chieftaincy Family at the time of the acquisition.

All these facts go to show that the witness's ipse dixit that the lands claimed belonged to the Oloto Chieftaincy family at the time of the acquisitions could not be accepted as proof of that fact. The learned trial Judge's findings of fact that the area (A) did not all belong to the family at the time of the acquisition and that Chief Eshugbayi Oloto was paid for his land are justified by the evidence. The claim for compensation in respect of this area must therefore fail.

Regarding areas E, F and G, the learned trial

In the Federal Supreme Court of Nigeria formerly the West African Court of Appeal

No. 21

Judgment (a) Jibowu Ag. FCJ.

16th December, 1957 - continued.

Judge concluded that the plaintiff's ownership of the pieces of land at the time of the acquisition was not established. The oral evidence and Exhibit GG show clearly that many people were paid compensation by Government in respect of lands in the areas, which gave the lie to the evidence of Chief Imam Ashafa Tijani that the plaintiff owned the land at the time of the acquisition. The Chief Imam did not prove that the persons to whom compensations were paid were mere tenants nor did he dislodge the presumption raised by Section 11 of the Public Lands Ordinance which provided that the persons in possession of lands to be acquired as owners must be deemed to be the owners thereof until the contrary was proved.

The learned trial Judge's findings of fact in respect to those areas are perfectly justified and the claims in respect of the areas cannot succeed.

With regard to areas H and I, the evidence shows that compensations were paid to Shemore and Ilogbo people on the land and that fact was admitted by the Chief Imam. The plaintiff did not prove that the men on the lands at the time of the acquisition were their tenants, and that the areas still belonged to the Oloto Chieftancy Family at the time of the acquisition. The claims in respect of these areas must also be dismissed.

Regarding area K, the evidence was clear that the tract of land was acquired in 1897 for the Railway and that the people who claimed to be the owners of the lands were paid compensations for the acquisition. The Chief Imam admitted that the men paid acquired their title from his family, but he stated that the actual railway track was not sold. He did not produce any evidence of this and the claim rested entirely on his mere statement which is as fantastic as it is incredible. The Judge's finding of fact that the plaintiff failed to prove that the ownership of the land acquired was in the Oloto Chieftaincy Family at the time of the acquisition was not proved is amply justified by the evidence. The plaintiff's claim in respect of this area must also fail.

Coming now to area B, the learned trial Judge appeared to have got mixed up and so contradicted himself in his findings. He was not justified in

accepting the Chief Imam's unsupported statement that the area belonged to the Oloto Chieftaincy Family at the time of the acquisition in the face of the evidence which tends to show the contrary. The learned trial Judge, with respect to him, did not appear to have considered why Chief Eshugbayi Oloto, who got compensation for area A, failed to apply for and obtain compensation for area B, if area B at the time still remained his family property. The Chief Imam's evidence that the Government asked permission of the Olotos to use the area as a garden in 1903 could not have been true in view of the fact that the area was acquired before Certificate of Title Exhibit FF was obtained on 14th July, 1891. The learned trial Judge was right when he held that the Chief Imam's evidence was unreliable, and he, no doubt, fell into error when he later accepted the unreliable evidence.

Moreover, Atitebi was said to have bought land contiguous to the Botanical Gardens and other pieces of land which he had sold. The plan on Exhibit 00 does not show the land sold and conveyed thereby to be contiguous to area B, nor is there evidence of the location of the other pieces of land which Atitebi was said to have bought and sold.

Furthermore, the possibility of the area having been acquired as unoccupied land for which no compensation was payable under the Ordinance was not considered.

In view of these facts, it appears to me that the plaintiff's claim was not established and the claim in respect of the area should also fail.

With regard to area C, the claim in respect of this area also should fail on the ground that the mere statement of the Chief Imam who was found to be an unreliable witness was not sufficient proof of the ownership of the land.

Coming to the area D, the claim in respect of this area should also be dismissed. The learned trial Judge found the plaintiff's claim to ownership of the land at the time of the acquisition not proved, and with this finding of fact, I respectfully agree.

In case this case goes further, I would like

In the Federal Supreme Court of Nigeria formerly the West African Court of Appeal

No. 21

Judgment (a) Jibowu Ag. FCJ.

16th December, 1957 - continued.

to record my views about the amount of compensation claimed. As the pieces of land had been acquired compulsorily by 1903, compensation for the lands could only properly be assessed at the value of the lands at the time of the acquisitions. The present value placed on the pieces of land cannot be the correct yardstick for assessing the compensation.

The learned trial Judge did not consider it necessary to decide this point, but there was evidence of assessment given by Mr. Glover, a witness for the defence, which I consider quite generous. Should the plaintiff be considered to be entitled to compensation, I would award him compensation as follows, according to Glover's valuation, which I consider reasonable :-

Area A. Total acreage 11.341 acres. Dryland 3.570 at £15 per acre and swamp land at £10 per acre, amounting to £131. 5. 2.

Areas B, C, D, E, H, I and K, 60.3720 acres at £20 per acre, amounting to £1,207. 8.10.

Areas E, F, G, 2.285 acres, at 1/- per sq. yard, amounting to £552.19. 5.

Grand Total - £1,891. 13. 5.

In view of what I have said above, I would dismiss this appeal with costs assessed at 200 guineas.

(Sgd.) O. Jibowu
Ag. Federal Chief Justice.

No. 22

Judgment. (b) Nageon de Lestang F.J.

16th December, 1957.

No. 22

J U D G M E N T

(b) NAGEON DE LESTANG, F.J.

This is an appeal from a judgment of the then Supreme Court of Nigeria, in the Lagos Judicial Division (de Comarmond, S.P.J., as he then was), dismissing the appellant's suit with costs. It is necessary, for a proper understanding of this case,

to set out briefly the facts giving rise to the appellant's claim.

Once upon a time the Oloto Chieftaincy Family owned a great deal of land in or near the Colony of Lagos. They had their palace on Iddo Island and were the reputed owners of the whole of Ebute Metta, extending as far north as Ikeja. They did not, however, retain all their land, but from time to time disposed of portions of it to other families and individuals. Between the years 1891 and 1903, the Government of Nigeria compulsorily acquired for public purposes under the Public Lands Ordinance, 1876, several portions of land on Iddo Island and at Ebute Metta, including all those areas described in paragraph 6 of the Statement of Claim (with the possible exception of area "C" in respect of which no certificate of acquisition was produced) and have been in possession of them ever since. In 1948 the appellant, who is the Head of the Oloto Family, acting for himself and on behalf of the Oloto Chieftaincy Family, instituted proceedings against the Government of Nigeria under the Petitions of Right Ordinance (Cap.167).

By his Statement of Claim originating the proceedings, the appellant, after averring that the properties described in paragraph 6 thereof formed part of the land owned by the Oloto Family from time immemorial and that the Government of Nigeria were now using the said properties "and no compensation has been paid to the family for the use of the said properties", claimed £630,560 from the Government as compensation for such user. The alleged compensation claimed is no less than the alleged value of the properties at the time of the suit. The defence was that the properties in question had been compulsorily acquired by the Crown under the Public Lands Ordinance, that the Oloto Family had no interest in the said properties at the time of acquisition by the Crown, that compensation had been paid to the persons from whom the properties had been acquired, and finally that in any event the claim was time barred under the Limitation Act, 1623, and the Civil Procedure Act, 1833.

At the trial the appellant did not contest the Government's title to any of the properties, and Mr. Fani Kayode, the appellant's Counsel, said so

In the Federal Supreme Court of Nigeria formerly the West African Court of Appeal

No. 22

Judgment.
(b) Nageon de Lestang F.J.

16th December, 1957
- continued.

more than once. The learned trial Judge held

(1) that all the properties, save property "C" had been compulsorily acquired by the Government as alleged;

(2) that with the exception of property "B", which he found belonged to the appellant at the time of the acquisition, the appellant had failed to prove ownership of the properties at the material time;

(3) that the claim for compensation in all cases was time barred.

During the hearing of the appeal the Court expressed the view that the Statement of Claim as originally framed did not in the circumstances disclose a good cause of action because once the appellant had conceded that the properties belonged to the Government, there was no basis upon which a claim for compensation in respect of the user thereof could be founded, especially as the period of the user for which compensation was being claimed was not defined. Mr. Shawcross, who appeared for the appellant, conceded the point, but immediately applied to amend the Statement of Claim. As the Attorney-General did not object, the Court, not however, without reluctance at this late stage, granted the application. The material portions of the Statement of Claim now read as follows:-

"3. That the landed properties hereinafter described form part of the land owned by the family from time immemorial.

4. That the Government of Nigeria are now using, having acquired the same under the Public Lands Ordinance, the said landed properties and no compensation has been paid to the family either for the said acquisitions or for the usage of the said properties by the same Government of Nigeria.

5. (a) In the circumstances set forth in paragraphs 1 to 4 and in the circumstances that the defendants failed or neglected to provide compensation for the plaintiff pursuant to the Public Lands Ordinance, 1876, at or within a reasonable time after the acquisition of the several properties mentioned

"in paragraph 6 below, an implied contract arose to pay the plaintiff compensation for the deprivation of the use of the said lands."

It will be noticed that the claim for compensation is now founded on an implied contract arising from the alleged failure of the Government to pay compensation for the compulsory acquisition of the properties. The question which immediately arises for decision is whether, assuming the facts to be as stated, such a proposition is sound in law. The Attorney-General submitted that it was not, and I am in entire agreement with him. In a compulsory acquisition the consent freely given by the parties, which is necessary to constitute a comtractual obligation, is absent. Indeed the expression "compulsory acquisition" is itself the antithesis of agreement because in a compulsory acquisition the property is taken by the Crown as of right whether the owner agrees or not. Whatever compensation may be due to the owner can only arise under the provisions of the Public Lands Ordinance, 1876, and not by virtue of any implied contract. The case of the Attorney-General and de Keyser's Royal Hotel Ltd., 1920 A.C. 508 is clear authority for this proposition. In that case the Crown, purporting to act under the Defence of the Realm Regulations, took possession of an hotel for the purpose of housing the headquarters personnel of the Royal Flying Corps. The owners, by Petition of Right, asked for a declaration that they were entitled to a rent for the use and occupation of the premises. It was held that the suppliants were not entitled to a rent for the use and occupation apart from statute, as there was no consensus on which to form an implied contract. Lord Dunedin, at page 523, put the position very clearly in these words :-

"It (one argument) was that the Crown should pay a reasonable sum for use and occupation of the premises upon the ground of an implied contract. ..... The simple answer to this argument is that the facts as above recited do not permit of its application. In any case of implied contract there must be implied assent to a contract on both sides. Here there is no such assent. There was no room for doubt as to each party's position. The Crown took as a right, basing that right specifically on the Defence of the Realm Act.

In the Federal Supreme Court of Nigeria formerly the West African Court of Appeal

No. 22

Judgment.
(b) Nageon de Lestang F.J.

16th December, 1957.
- continued.

The Receiver did not offer physical resistance to the taking, and was content to facilitate the taking. He emphatically reserved his rights, and gave clear notice that he maintained that the Crown was wrong in its contention, and that no case for taking under the Defence of the Realm Act had arisen: in other words, that the Crown had, under the circumstances, according to their proposals, unlawfully taken. To spell out of this attitude on either side an implied contract is to my mind a sheer impossibility."

If I am right in the view I take of this claim, it is clearly misconceived, and this is an end to this appeal. In the event, however, of the case going further, I propose to deal briefly with the other points raised, namely :-

(1) Was the trial Judge right in holding that except as regards Area "B" the appellant has failed to establish ownership of the land at the time of acquisition?

(2) Has the plaintiff received compensation for the lands acquired?

(3) Do the Statutes of Limitation apply to this claim?

As regards the first point, Mr. Shawcross's argument, if I have understood it correctly, is two-fold. He argues firstly that since the Judge accepted the appellant's evidence of ownership in regard to one plot, he ought to have accepted it in regard to the other plots also because there was not sufficient reason to distinguish the evidence. I am unable to agree. The learned Judge dealt with the evidence in regard to each plot separately, and I can see no valid reason why he should not accept it concerning one plot and reject it as regards the others. In every case he gave his reasons for his conclusion, and I consider that there was evidence to support them. I would like, however, to remark that in the solitary case in which he found ownership proved, his finding seems more benevolent than justified, and I would respectfully agree with the remarks which my brother Jibowu, Ag.F.C.J., has made on this matter. Secondly, Mr. Shawcross relied on the presumption of continuance as establishing plaintiffs' ownership. His submission was that, as once upon a time the Oloto family were the owners of the lands acquired, they must be presumed

to have continued in their ownership until the contrary is proved. This contention in my view loses sight of the fact that the family have on the appellant's own showing made innumerable dispositions of land in the area concerned of which no records exist, none being necessary under Native Law and Custom, with the result that the foundation for the presumption of continuance has disappeared. To sum up, I consider that on the evidence before him the learned Judge was justified in concluding that the appellant had failed to prove ownership of the land at the time of the acquisition, and that he probably erred on the side of leniency in conceding that Area "B" belonged to the appellant at the material time.

As regards the second point, it was contended by Mr. Shawcross that it was for the respondent to prove that compensation had been paid, but that in any event, the evidence taken as a whole was more consistent with non-payment than with payment. The learned Judge made no clear finding on this point for the reason presumably that in view of his adverse finding on the question of ownership, there was no necessity for him to do so. It was, in my view, for the appellant, who was alleging that he had not received compensation, to prove his allegation, and on the view which the learned Judge took of the evidence of the appellant's star witness, he clearly failed to do so. In such a case as this the presumption omnia praesumuntur rite esse acta applies with particular force, as it would be unreasonable and indeed inequitable after the lapse of so many years to expect the respondent to be able to prove payment.

I now come to the third point which raises a question of some difficulty. It was contended by Mr. Shawcross that the Limitation Acts do not apply to a claim against the Government under the Petition of Right Ordinance for two reasons:

(a) because the proceedings are to all intents and purposes a Petition of Right, and there is good authority for holding that the Limitation Acts do not apply to a Petition of Right;

(b) because whatever the nature of the proceedings the Limitation Acts do not apply to the Crown and consequently the Crown cannot take advantage of the Statutes since it is not bound by them.

In the Federal Supreme Court of Nigeria formerly the West African Court of Appeal

No. 22

Judgment.
(b) Nageon de Lestang F.J.

16th December, 1957
- continued.

I think that the second argument can be disposed of in a few words. I am not very impressed by the contention that the Crown ought not to be able to take advantage of a Statute which is not binding on it on the sole ground of reciprocity because the position of the Crown is in many respects exceptional. The Crown, for example, could sue for tort and yet until quite recently it could not be sued for it. Be that as it may, it would seem on the authorities that the Crown can take advantage of a Statute although it is not bound by it. Those authorities are set out in Robertson's Civil Proceedings by and against the Crown, 1908 Edition, at page 567, and I need only refer to the most recent of those decisions, viz: Attorney-General v. Tomline 1880, 15 Ch.D. 150. In that case the Crown was allowed to take advantage of the Statute of Limitation, 1623, and to acquire thereby a freehold title to a close.

In support of his first argument, Mr. Shawcross relied on the case of Rustomjee v. R. 1876. 12 Q.B.D. 487. It was decided in that case that the Statutes of Limitation do not apply to a Petition of Right. This decision has been criticised, but it can be supported on the ground that the Limitation Acts apply only to "actions" and that a Petition of Right is not an action. It is, therefore, necessary to decide here whether proceedings like the present brought under the Petitions of Right Ordinance are an action or not within the meaning of that word in the Limitation Acts. Unfortunately, there is no definition of "action" in the Acts. "Action" is defined in the Supreme Court Ordinance as meaning "a civil proceeding commenced by writ or in such other manner as may be prescribed by Rules of Court, but does not include a criminal proceeding". As the present proceedings were not commenced by writ, they are clearly not an action for the purpose of the Supreme Court Ordinance. This, however, is not conclusive that the present proceedings are not an action within the meaning of the Limitation Acts. I can see no good reason for giving to the term "action" in this case the restricted meaning given to it in the Supreme Court Ordinance. In Bradlaugh v. Clarke, 8 A.C. 354, the Earl of Selborne, L.C. defined an action thus, at page 361:

> "I am also satisfied after full consideration that the word "action" is (as Lord Justice

Lush said) a generic term, inclusive, in its proper legal sense, of suits by the Crown."

In the same case, Lord Blackburn said this:

"but in legal phraseology, action includes every suit, whether by subject or in the name of the sovereign or by an information by the Attorney-General on behalf of the Crown;"

If one gives that meaning to the word "action", then I think that the present proceedings may be properly described as an action for the purposes of the Limitation Acts. The proceedings are called a suit which by definition in the Supreme Court Ordinance includes an action; the appellant is a plaintiff and the Attorney-General is a nominal party representing the Crown as defendant; the suit begins with the filing of a claim in the Supreme Court in the form of a statement of claim which, save for the fiat of the Governor, is in all respects identical with a statement of claim in an ordinary action in the Supreme Court; thereafter the procedure applicable to an ordinary action applies and issue is joined. There is thus immediately a 'lis' between the claimant and the Crown and in due course a judgment is pronounced for or against the Crown. In those circumstances, I consider that the proceedings under the Petitions of Right Ordinance are very different from a Petition of Right properly so called, and are in fact an action within the meaning of that term in the Limitation Acts. It follows, therefore, that the learned trial Judge was right in holding, though not for the same reason, that the Limitation Acts apply to these proceedings, and in further holding that the claim was statute barred.

I am in entire agreement with what Jibowu, Ag. F.C.J., has said concerning the quantum of compensation and do not desire to add anything on this question. In the result, I agree that this appeal should be dismissed with 200 guineas costs.

(Sgd.) M.C. Nageon de Lestang.
FEDERAL JUSTICE.

In the Federal Supreme Court of Nigeria formerly the West African Court of Appeal

No. 22

Judgment (b) Nageon de Lestang F.J.

16th December, 1957 - continued.

In the Federal Supreme Court of Nigeria formerly the West African Court of Appeal

No. 23

Judgment.
(c) Abbott, F.J.

16th December, 1957.

No. 23

J U D G M E N T

(c) ABBOTT, F.J.

I have had the advantage of reading the two judgments which have just been delivered and I also agree that this appeal should be dismissed.

I would, however, add the following observations.

The first matter to which I would refer is the nature of this proceeding. Mr. Justice Jibowu has held that this proceeding is both a suit and a Petition of Right, but, with respect, I venture to take a different view. It certainly is not a Petition of Right in the strict sense of this term. The form of the Statement of Claim filed here pursuant to the Petitions of Right Ordinance is very different from that of a Petition of Right and the subsequent pleadings filed and steps taken in these proceedings are very different from those to be found in the English procedure laid down for Petitions of Right. I also find myself unable to agree that the long title and sections 1, 3 and 5 of the Petitions of Right Ordinance go the length of showing clearly that the Ordinance was intended to deal with Petitions of Right. The short title I regard as one merely of convenience. The long title reveals, to my mind, that the Ordinance seeks to make provision for suits by and against the Government and to say how these shall be prosecuted and defended. I prefer the view put forward in argument by the learned Acting Attorney-General (as he then was) that Petitions of Right are unknown in Nigeria.

Sections 3 and 4 of the Petitions of Right Ordinance refer to the type of proceeding contemplated by the Ordinance as a suit and I think that "suit" is the proper designation of this proceeding.

To take that one stage further, I think that this proceeding is a suit invested with the character of a Petition of Right.

I now come to consider if this suit is sufficiently invested with that character to enable it to be treated as a Petition of Right vis-a-vis the application of the Statutes of Limitation, which, on the authority of Rustomjee's case (L.R. 12 Q.B.D. 487), supported by the opinion of the learned author of Robertson's "Civil Proceedings by and against the Crown" (1st edition) do not

apply to a Petition of Right.

That brings me to the question of whether the present proceeding is an action. The Limitation Act, 1623, applies only to actions. "Suit", according to Section 2 of the Supreme Court Ordinance, 1945, (the statute applicable at the time the Statement of Claim was filed in the Court below) "includes an action".

The definition of "action" in the Supreme Court Ordinance is "a civil proceeding commenced by a writ or in such other manner as may be prescribed by rules of Court ...." I am of opinion that that definition is not exclusive and exhaustive, because there is provision in more than one Nigerian Ordinance (e.g. Public Lands Acquisition Ordinance, Lagos Town Planning Ordinance) for the commencement of proceedings thereunder by originating summons. And though an originating summons is an action, it is not a writ of summons within, for example, Order XI r.1. of the English Rules of the Supreme Court.

So we already have, provided for by local statutes, "actions" that begin otherwise than by writ of summons and otherwise than as may be prescribed by rules of court.

It seems to me that the Petitions of Right Ordinance can be said to provide, similarly, for actions to be commenced otherwise than by writ of summons and otherwise than as may be prescribed by rules of Court and I therefore take the view that the present proceeding is an "action".

Does the Limitation Act, 1623, therefore apply here? Blackburn, J. in Rustomjee's case (L.R. 12 Q.B.D. 487) says that that Act "has relation only to actions between subject and subject, the Crown cannot be bound by it". But can the Crown, nevertheless, take advantage of it? I agree with my learned brother, de Lestang, F.J., that it can.

It follows from these conclusions that in pleading the Limitation Act, 1623, the respondent is on solid ground.

Next, I desire to refer to the amendment of the Statement of Claim which was allowed by this Court during the hearing of this appeal. It is

In the Federal Supreme Court of Nigeria formerly the West African Court of Appeal

No. 23

Judgment. (c) Abbott F.J.

16th December, 1957 - continued.

undeniable that, in its original form, the Statement of Claim disclosed no cause of action and the action could have been disposed of in the Court below on that basis. My agreement with the other members of this Court to allow the amendment was given with some reluctance and misgiving because, first, the application for amendment was made very late in the day; secondly, the amendment sought to convert an unsubstantial Statement of Claim into one of substance; Thirdly, this statement of Claim had received the fiat of the Governor (as he then was) and the power to allow amendment of a document so endorsed is limited to cases where amendment does not involve a substantial alteration in the cause of action; and fourthly, Mr. Shawcross, in opening the appeal, told us that the appellant's claim here was one "for free and unrequited use" by the Crown of the land in question: that it was "not a claim for compensation for compulsory acquisition but a Petition of Right making a claim for loss of use" - a standpoint considerably at variance with that adopted by Mr. Shawcross in applying for the amendment. It might well be said, I think, that an amendment which seeks to show a cause of action where none existed before does effect "a substantial alteration". However, according to Radman Brothers v. The King (1924) 1 K.B. 64, the test is "if the document had originally been presented in the form in which it stands after amendment, is there a reasonable probability that the fiat would not have been refused?" I am not prepared to say that the amendment made fails to pass this test.

But that does not mean that I consider the amendment put the appellant in any better position than he was before. I agree with the contention of the learned Acting Attorney-General that no implied contract, such as is averred to exist in the Statement of Claim as amended, can arise where land is acquired under compulsory powers. That contention is supported by the judgment of the House of Lords in De Keyser's case (1920 A.C. 508). At page 523 of the report, Lord Dunedin points out that "in any case of implied contract there must be implied assent to a contract on both sides". It seems to me that acquisition by the Crown of land under compulsory powers conferred by Statute is a complete negation of an implied contract to pay to the disseisee compensation for the deprivation of the use

of the land. The Crown is acting compulsorily: agreement or objection by the disseisee is useless and immaterial: so there can be, in my judgment, no agreement, and, therefore, no contract. Consequently the Statement of Claim, as amended, still fails to disclose a cause of action. The appeal should, in my view, be dismissed on this ground also.

As I hold that the appellant's claims are barred by the Limitation Act, 1623, the defence of laches need not be considered.

The learned trial Judge's findings of fact (except those in regard to area B) are, in my view, amply supported by the evidence before him, and it is plain, with regard to area B, that he erred in first finding himself unable to accept the bare assertion of Chief Imam Tijani that this area belonged to the Cloto Family at the time of its acquisition by the Crown, and then accepting the Chief's evidence as proving the fact alleged therein. I take the view that the learned trial Judge, with all respect to him, was not justified in so accepting that evidence.

Finally, I fully concur in the views of Mr. Justice Jibowu on the subject of the quantum of compensation and with his award of costs.

(Sgd.) M. J. Abbott.
FEDERAL JUSTICE.

Mr. C.N. Shawcross (with *Messrs. K.A. Kotun and J.O. Akinrele*) for appellant.

Mr. L. Brett (with Mr. Basil Walker) for respondent.

In the Federal Supreme Court of Nigeria formerly the West African Court of Appeal

No. 24

Order dismissing Appeal.

16th December, 1957.

No. 24

ORDER DISMISSING APPEAL

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

Suit No. M.3446
W.A.C.A. 191/1955.

On appeal from the judgment of the Supreme Court of the Lagos Judicial Division.

B E T W E E N :

CHIEF FAGBAYI OLOTO for himself and on behalf of the other members of the OLOTO Chieftaincy Family substituted by CHIEF IMMAM ASHAFA TIJANI by order of Court dated 15/10/1956 Appellant

- and -

THE ATTORNEY-GENERAL Respondent

(Sgd.) O.Jibowu
ACTING FEDERAL
JUSTICE.

Monday the 16th day of December, 1957

UPON READING the Record of Appeal herein and after hearing Mr. C.N. Shawcross, with him Messrs. K.A. Kotun and F.O. Akinrele, of counsel for the Appellant and Mr. L. Brett, with him Mr. Basil Walker, of counsel for the Respondent:

IT IS ORDERED that this appeal be dismissed and that the Appellant do pay to the Respondent costs on this appeal fixed at 200 guineas.

(Sgd.) S.A. Samuel
Ag. CHIEF REGISTER.

No. 25

ORDER granting final leave to Appeal to Her Majesty in Council

In the Federal Supreme Court of Nigeria formerly the West African Court of Appeal

No. 25

Order granting final leave to Appeal to Her Majesty in Council.

5th May, 1958.

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

Suit No. M.3446
W.A.C.A.191/1955

Application for an order for Final Leave to appeal to Her Majesty's Privy Council

B E T W E E N :

CHIEF FAGBAYI OLOTO for himself and on behalf of the other members of the OLOTO Chieftaincy Family substituted by CHIEF IMMAM ASHAFA TIJANI by Order of Court dated 15/10/1956 Applicant

- and -

THE ATTORNEY GENERAL Respondent

(Sgd.) A. Ade. Ademola
CHIEF JUSTICE OF THE FEDERATION.

Monday the 5th day of May, 1958.

UPON READING the application herein and the affidavit sworn to on the 5th day of April, 1958 filed on behalf of the Applicant and after hearing Mr. K.A. Kotun of counsel for the Applicant and Mr. B.O. Kazeem of counsel for the Respondent:

IT IS ORDERED that final leave to appeal to Her Majesty's Privy Council be granted.

(Sgd.) C.O. Madarikan
CHIEF REGISTRAR.