

*Privy Council Appeal No. 46 of 1917.*

Peter Awoonor Renner - - - - - *Appellant*

*v.*

The Fanti Consolidated Mines, Limited, and others - - - *Respondents*

FROM

THE SUPREME COURT OF THE GOLD COAST COLONY (WESTERN PROVINCE).

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 3RD APRIL, 1919.

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*Present at the Hearing :*

VISCOUNT FINLAY.

LORD DUNEDIN.

LORD PHILLIMORE.

[*Delivered by* LORD DUNEDIN.]

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This is a suit by one Renner, and seeks for a declaration of title of a piece of land described as situated on the Poassi Road, Secondee, and bounded by that road on one side, by the premises of the African Association on another side, by the railway yard on a third side, and by the railway fence on a fourth. If such a declaration were made it would negative the title of, first, the Fanti Consolidated Mines, Limited, and secondly, one Yaw Antoney, who respectively are in possession of strips of land extending from the Poassi Road to the depth of 230 feet, and in breadth, in the case of the Fanti Company, of 48 feet 3 inches, and in the case of Yaw Antoney of 54 feet at the road, tapering down to 33 feet at the upper end. Accordingly, these parties have defended the action and resist the declaration.

The plaintiff's title is derived from one Hendrick Vroom, and the land described in the conveyance from Vroom of date the 22nd February, 1910, as it originally stood had as one of its boundaries "on the third side by Egbert and Mercer's premises." Now Egbert and Mercer's premises are on the upper side of the defendants' lots—that is the side remote from the Poassi Road.

The plaintiff brought an action in 1912 claiming a declaration in the same terms as in the present action. It was defended by

the same defendants. The Judge of first instance entered judgment for the defendants, but on appeal the Court of Appeal, in February, 1913, altered the judgment and non-suited the plaintiff, on the ground that his title gave no indication that his property came to the Poassi Road. The plaintiff then commenced a suit against Vroom for rectification of his title. To that suit the present defendants were no parties, and Vroom making no objection, the title was rectified, purporting to be in accordance with what had been conveyed to Vroom by a Chief, Johnfia, on the 17th August, 1900—by which rectification one boundary is described as the Poassi Road. The plaintiff then raised the present action. It was tried before the same judge, who repeated the judgment of non-suit. On appeal this judgment was affirmed by the High Court.

The title of the defendants, the Fanti Company, flows by progress from a conveyance by the same Chief, Johnfia, of date the 13th December, 1901, to Karri, Davies and Russell. This conveyance grants a strip of land of 48 feet in width along the Poassi Road, extending upwards for 288 feet. The defendant Yaw Antoney has a conveyance from another Chief, the successor of Johnfia, who had been deposed. This conveyance is of date the 21st December, 1910, and is of a strip extending from the Poassi Road 211 feet upwards and described as bounded by Mercer's premises. The plaintiff argues that both these conveyances are inept because the ground had already been conveyed by Johnfia to Vroom.

The conveyance by Johnfia to Vroom is, so far as is material to the present question, in these terms :—

“ All that piece or parcel of land situate and being on the road to Dixcove and measuring 600 feet by 200 feet and bounded on the north by the railway yard and railway fencing, on the south by the Dixcove Road, on the east by a land leased to African Association, Limited, and on the west by the railway fencing, which said piece or parcel of land is more particularly delineated and coloured in the plan drawn at foot of these presents. . . . Provided always and it is hereby agreed that the vendor shall hold and enjoy within and of the said piece or parcel of land hereby granted or expressed so to be an area of 170 feet by 50 feet for his or the purpose of his heirs and successors.”

The road to Dixcove is another way of describing the Poassi Road.

The appended plan, as judged from a copy put in, shows a rectangular plot of ground. There is no scale, so that it is not possible to measure in feet. Further, the sides of the rectangle do not correspond proportionately with the supposed measurement, for the long side, instead of being three times as great as the short, is barely two and a quarter times. The rectangle is not shown as extending to the Poassi Road, there being an intervening space of considerable extent with markings of trees, which are lettered as “cocoanut trees.” It is therefore evident that the boundaries do not tally with the plan, nor the extent with the boundaries. It is this interposition of the cocoanut trees

which, in the opinion of the High Court, prevents the plaintiff from making out a boundary on the Poassi Road.

In the state of uncertainty that arises as to such a title it was legitimate, as was done, to enquire into the circumstances attending the conveyance and the state of possession following on it. That enquiry elicited, first, the fact that the conveyance was prepared at Cape Coast Castle by persons not familiar with the *locus in quo*; secondly, that the plan was adjected to the conveyance at a subsequent date; and thirdly, that at the time of the signing of the conveyance by Johnfia the land he understood he was conveying was pointed out by him and boundary pillars inserted. Unfortunately, the pillars have disappeared.

Turning now to the state of possession, it appears that prior to Vroom's conveyance to the plaintiff, Egbert and Mercer were in possession of houses built on a piece of land which is receded from the Poassi Road. When, therefore, Vroom gave off land to the plaintiff, which he described as bounded by Egbert and Mercer's premises, it seems likely either that he was giving off only a part of what he had got from Johnfia (upon the assumption that Johnfia's grant to Vroom did extend to the Poassi Road) or that he recognised that *de facto* his ground ended where Egbert and Mercer's began. Further, it is in evidence that Egbert junior was asked by Vroom to look after his land, that he saw the boundary pillars and a fence, which have subsequently disappeared, and that he knew Vroom's land, which as shown to him by Vroom, extended only upwards from Mercer's, *i.e.*, in accordance with the original description in the conveyance from Vroom to the plaintiff; and that while he did look after the land to the upper side of Mercer's property, he never looked after the land between Mercer's and the Poassi Road.

To the same effect is the evidence of Sam, who was in Vroom's service, who acted as interpreter at the time of the signing of the conveyance by Johnfia, who put in the pillars, and who was put in charge of the land by Vroom. He declares that that land was *not* between Mercer's land and the Poassi Road.

There is also evidence on behalf of the Fanti Company that they exercised right of ownership on their piece by putting up a fence. Against this there is only the evidence of Vroom, who says he cut a drain down near the Poassi Road.

In this state of matters their Lordships agree with the unanimous judgments of the Courts below that the plaintiff has not made out his case. The exact boundaries or extent of any of the properties cannot be found with certainty by perusal of the titles. All the titles are more or less self-contradictory. In such a case possession seems the only safe guide, and there the defendants have, their Lordships think, made out their case.

Their Lordships will, therefore, humbly advise His Majesty to dismiss the appeal with costs to each of the first two respondents.

In the Privy Council.

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PETER AWOONOR RENNER

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THE FANTI CONSOLIDATED MINES, LIMITED,  
AND OTHERS.

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[DELIVERED BY LORD DUNEDIN.]

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