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43/1961

1.

IN THE PRIVY COUNCIL

No. 22 of 1957

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

B E T W E E N :-

- 1. KVAMI BADU
 - 2. KVESI AYIAH
 - 3. KVESI TEKYEI
 - 4. NANA ABA YAA (substituted for KWESI EDUAMOAH deceased)
 - 5. KOFI ADJEI (substituted for KWAMI OTSINKORANG deceased)
 - 6. VINCENT KOFI NINSON (substituted for KWAKU ESSEL deceased)
- all of Nyakrom (Defendants)

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- 1. V.K. NINSON
 - 2. G.N. HAYFORD
- all of Nyakrom (Co-Defendants)

Appellants

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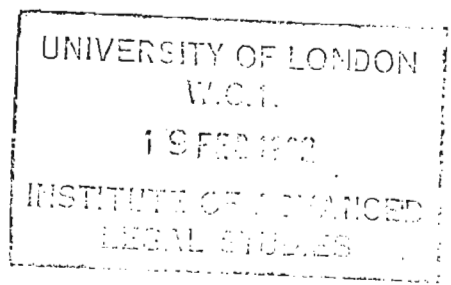
- and -

- 1. AMBA AMOABIMAA, Queen Mother of the Ampiakoko Section of the Yego Family and
- 2. KOFI BOYE, the Family Linguist of the said Family

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on behalf of themselves and as representing the other members of the said Family of Apana Quarters Nyakrom (Plaintiffs)

Respondents



CASE FOR THE APPELLANTS

Record

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1. This is an appeal from a judgment of the West African Court of Appeal dated the 3rd April, 1956, allowing the Respondents' appeal from a judgment of the Land Court, Cape Coast, dated the 22nd October, 1954, which allowed the Appellants' appeal from a judgment and order of the Agona Native Court "B" Western Province, dated 18th June, 1954, in Suit No. 383 of 1953 whereby the Native Court ordered that the Respondents should recover possession of the Lands of Otsinkorang, Busumpa and Obuafi.

p.103
p.84
p.72
p.1

The Appellants are hereinafter referred to as the Defendants and the Respondents as the Plaintiffs.

Record
p.75, 1.30.

p.63, 1.25.

p.8, 1.17.

2. A plan of the lands in dispute was not made, nor was it necessary, as the parties were not disputing over boundaries. Parts of the lands however were or had been let to strangers as tenants and a plan, made in 1931, of the respective holdings of some of these tenants was put in evidence as Exhibit B3. The three lands are all in a line and a comparison of Exhibit B3 with the Gold Coast Survey Map of the district shows that they are all in a line North of the town of Nyakrom extending some 5 or more miles in length running approximately NNW to SSE and that the Southerly end of the line is probably about 4 miles from the town. 10

3. The questions now between the parties are (1) whether, on the one hand, the Plaintiffs, as they contend, have the title to, and are entitled to possession of, the said lands to the exclusion of the Defendants on the ground that the lands were originally acquired by one Ampiakoko, who was their ancestor, and, in consequence of an alleged separation of family ties on the 13th May, 1949 hereinafter referred to, have reverted to the Ampiakoko section of the Apaa Yego Family of Nyakrom free of all rights of the Defendants (representing other sections of the Apaa Yego Family of Nyakrom) whether by way of title or by way of the usufructuary right "to live and eat" upon the lands, or (2) whether, on the other hand, the lands (whether originally acquired by the Defendants' own ancestors, Buafi, Otsinkorang and Abuenyi, in association with Ampiakoko, as the Defendants contend or originally acquired by Ampiakoko alone as the Plaintiffs contend) are not now, as they have been for generations past, part of the totality of the family lands of the Whole Apaa Yego Family of Nyakrom, the title to which totality is now, and has been for many generations past, in such undivided Apaa Yego Family of Nyakrom but which totality, if there had been the alleged separation of family ties and in consequence of the said separation of family ties, ought to be divided between the Ampiakoko section on the one side and the other sections of the Apaa Yego Family of Nyakrom on the other side in such manner as may be fit in the circumstances and in accordance with customary law as to title and as to possession and use, the contention of the Defendants being that, in any event, the sections of the said Family represented by the Defendants have, irrespective of where the title has been in the past or is now, acquired, by actual occupation and use, 20 30 40

the right "to live and eat" undisturbed upon the said lands of Otsinkorang, Busumpa and Obuafi, at least to the extent of such actual occupation and use, that right being equally the right of all the sections of the Agaa Yego Family of Nyakrom as constituents of that Family.

4. The parties to this suit and appeal are all inhabitants of the Fanti or Fanti influenced State of Agona in the former Gold Coast Colony.

10 The Fantis are a sub-division of the Akan race, of which the Ashantis and the Akims, referred to in this Record, are also sub-divisions with others. The social organisation of all the Akans is broadly the same. This suit and appeal is concerned with the organisation of a Fanti, that is an Akan, "Family" or "Abusua" in respect of the personal and proprietary relations of the members of such an Abusua. A description of the Akan Abusua is given in the late
20 J. Mensah Sarbah's "Fanti Customary Laws" 1st edition, 1896, which is received in the Courts of the Gold Coast (now Ghana) as the main authority on Fanti Customary Law and, subject to later decisions of the Court and later investigations, his statement still holds good in the main. Some extracts from Sarbah are set out in the Appendix to this Case.

30 An Abusua is an exogamous matrilineal (and largely matriarchal) totem group (the totem usually being an animal). All the members of each group are considered as descended from a common female ancestor of the whole group. This group Sarbah refers to as a "tribe" or "clan" or "great family". Such "tribe", "clan" or "great family" as a whole is not in itself a proprietary group but each is composed of, and differentiated into, an unlimited number of proprietary groups, termed by Sarbah "coparcenaries", the members of each of which are, in fact, descended from a common ancestress, remote or recent. Such ancestress will usually have been the matriarch of an original small group of persons
40 closely united by actual matrilineal relationship to her, namely her own sons and daughters and the matrilineal descendants of daughters together with the matrilineal descendants of her own mother, of whom the nearest would be her uterine brothers and sisters and her uterine sisters' sons and daughters. One of such persons, if not the matriarch herself, would be the acquirer, the small kinship group existing

Record

before and forming the proprietary co-parcenary. As appears from the present case, it is competent for such a co-parcenary to coalesce with another co-parcenary (provided as an essential that it is of the same clan) to form an aggregated co-parcenary, throwing the land of each into a common stock. It may also split into two or more separate co-parcenaries, a division being made between the new fissioned co-parcenaries of the land formerly owned by the former undivided co-parcenary. It is also possible, as appears from the present case, for there to be a larger co-parcenary owning lands in community as, or as if, a family constituted by the matrilineal descendants of a common ancestress but with sub-families, each comprising the matrilineal descendants of a less remote ancestress, forming distinct co-parcenaries with separate lands held in community only between the descendants of each such less remote ancestress.

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Sarbah's remarks are directed almost wholly to the simple and usual case of an undivided co-parcenary stemming from a single (and usually a known) female ancestress.

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5. Until 1949 the parties and their ancestors were members of an aggregated co-parcenary known as the Apaa Yego Family of Nyakrom. This consisted of five sections or Houses, then called by the names of the then heads of each House, namely Kofi Donkor's House, Kwami Badu's House, Eduamoah's House, Otsinkorang's House and Henry Saah's House. The first 4 houses appear coalesced at some time in the remote past which cannot be precisely determined but was certainly several generations ago. Henry Saah's House more recently joined the Apaa Yego Family of Nyakrom, but without severing all connexion with the co-parcenary to which it theretofore belonged, and may not have full family and co-parcenary rights on the same footing as the first 4 houses in the Apaa Yego Family of Nyakrom. These respective Houses as sections of the Apaa Yego Family of Nyakrom are also sometimes referred to in the Record under the respective names of earlier ancestors. Kofi Donkor's House is in this nomenclature the Ampiakoko Section. The Defendants will contend that according to native customary law the whole of the lands in dispute were in 1949 and for generations past owned by Apaa Yego Family of Nyakrom and consequently were enjoyed and to be enjoyed in common by all the Houses and by all

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p.181, 1.30.

p.158, 1.1.

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the members of such Apaa Yego Family of Nyakrom.

Record

6. In 1949 Kofi Donkor (who was then head of the Apaa Yego Family of Nyakrom, and also head of the Ampiakoko section), claiming to sue on behalf of the Ampiakoko Section in his representative capacity as head of that Section, instituted a suit by Summons in the Agona Native Court "B" held at Swedru against Kwesi Eduamoah, now the 4th Defendant. In the present suit it was deposed by the present 2nd Plaintiff Kofi Boye that this former suit was against the present 4th Defendant and his people but it does not appear in the Record of the present Appeal what was the relief claimed, except that, in the judgment upon appeal referred to in paragraph 12 of this Case, the Magistrate expressed the opinion (obiter) that the intention of the Summons in the suit was that Kofi Donkor wished to be recognised as Head of the Yego Family because Kwesi Eduamoah was not a blood relative but a stranger trying to act as a blood member. It does not seem however that anyone questioned that, at the time of the institution of that suit, Kofi Donkor was the recognised Head of the Apaa Yego Family of Nyakrom (as well as of the Ampiakoko section). The contention of Kofi Donkor and his Section was that Eduamoah and his section were not one with them, not because they were not of the Yego Clan, which they admittedly were, but because they came, not from the State of Agona in Ashanti, from which the Ampiakoko section (disputedly) claim to have migrated to Nyakrom, but from Akim-Oda in Akem (which is not part of Ashanti but of the former Gold Coast Colony). Nyakrom is in the State of Agona which is also in the former Gold Coast Colony and far south of and not part of Ashanti, and this State adjoins the Akim States, all of which were also in the Gold Coast Colony.

p.18, 1.40.

p.18, 11.32-39.

p.149, 1.28.

p.8, 1.6.

p.9, 11.7-18.

But all members of an Abusua (Clan or Great Family) are united by blood ("bogwa") and (as Sarbah indicates, 1st ed., p.3) the fact that they are of different nations, e.g. one Ashanti, the other Akim, does not make them "strangers".

There was no decision of whatever may have been the issue in this suit for it is alleged by the Plaintiffs that during the hearing of this suit Eduamoah retired with all the other Defendants who were heads of the other Houses of the aggregated coparcenary and, on returning into Court, Eduamoah

p.10, 1.21

p.106, 1.37.

Record

p.10, 1.21.
p.179, 1.22.

told the Court that they were breaking family ties with the Ampiakoko section. The Court then asked the representatives of the Ampiakoko section whether they agreed and they said that they did. The ceremony of the cutting of the tie in accordance with custom is alleged to have been forthwith performed. Accordingly on the 13th May, 1949 the said Native Court made the following order -

p.148, 1.9 to
p.149, 1.12.

"Order of the Native Court:-

In view of the agreement arrived at by both parties as to separation of Family Ties it is needless calling upon any other witnesses in this case nor asking the Defendant to make his defence. 10

It is hereby ordered and directed, by consent of both parties that the Family Ties hitherto existing between Kofi Donkor as representing the members of Ampiakoko Section of Yego Family (Amaa Section) of Nyakrom and all his descendants of the one part and Kwesi Eduamoah and with him Henry Saah, Kwami Badu and Kwami Otsinkorang as representing the other four houses of Yego Family (Amaa Section) at Nyakrom and all their descendants of the other part be separated and the same are hereby separated, each party not having any further family dealing with the other. 20

The question of the Yego Family (Amaa Section) Stool of Nyakrom and all the properties attached thereto or belonging to the said Family shall be later settled amicably between the parties by Nana Kobina Botchey, Adontenhene of Agona State, who shall see to the division of such properties and to the ownership of the Stool." 30

7. The words in the Order of the 13th May 1949 "his descendants" and "all their descendants" must be understood, not in the English sense of the descendants of the male persons named but in the Akan sense of the "Adehye", the female members and matrilineal descendants of the female members of the respective sections to which belonged the male persons named in the Order. No child, male or female, of a male person could be a member of the section of the abusua to which that male person belonged but would belong to the clan and family and section of 40

p.180, 11.16-18.

family to which belonged his or her mother, the wife or one of the wives of such male person, for "bogwa" cannot be transmitted through males. The word "descendants" is similarly used in the same sense elsewhere in this record.

10 8. The question whether there was on the 13th May 1949 an effective separation of family ties so that, as the Order purports to direct, the Family ties theretofore existing between the members of the Ampiakoko Section of the one part and the other four sections or houses of the other part were severed and whether that separation continued to subsist up to the institution of Suit No. 383 of 1953 was considered by the parties an important question in the litigation. The Plaintiffs have alleged the affirmative, the Defendants the negative.

20 The Defendants will submit that whichever way the question might be decided, they were and are entitled to succeed for the reasons hereinafter appearing.

9. At the time when the said Order was made it is common ground that Kofi Donkor was on the Stool of the Apaa-Yego Family of Nyakrom (as well as being the Head of the Ampiakoko Section). If in fact all the Heads of the other Sections were privy to the Order, it may be that it was binding upon the Apaa Yego Family of Nyakrom as a whole and each Section or House of it as a record of their agreement, if not as a decision in a suit.

p.159, 1.21.
p.169, 1.20.
p.54, 11.47-49.

30 The Defendants however submit that, even upon the footing that there was then effected a separation of family ties between the Ampiakoko Section on the one side and the four other Houses of the Apaa Yego Family of Nyakrom, it is clear that, in the view of the Court, the properties of that united Family and the ownership of the Stool of the united Family remained in statu quo ante and that this was the view of the parties to this separation, for their division was referred by consent, or at least without dissent,
40 to the amicable settlement of the President, Nana Kobina Botchey, Adontenhene of Nyakrom.

10. It is submitted that, if the personal ties which had hitherto united into one family the four or five sections of the united Apaa Yego Family of Nyakrom were severed on the 14th May 1949, they

Record

thereby formed two groups forming, in their personal relationship, two separate families and two co-parcenaries. The one family was composed of the Ampiakoko section and the other of the remaining four houses. But, upon principle, this separation of family ties could not of itself effect a partition of the lands theretofore owned by the formerly united Apaa Yego family of Nyakrom, the title to which lands remained in suspense in the co-parcenary constituted by the formerly united Apaa Yego Family of Nyakrom until a division had been duly made. Upon any such division it would also be necessary to make provision for all the debts and liabilities of the undivided family, either by discharging them or apportioning them between the two new groups. It is submitted that, as to the property of the Apaa Yego Family of Nyakrom, the result, and the necessary result, if there were a cutting of the personal relationships on the 13th May 1949, was to give to each of the two groups thereby formed the right to claim a division of the totality of the family lands (or so much of them as might not be required to meet the liabilities of the formerly united family) in accordance with the rights of the respective sections. Such rights would have to be ascertained and such division made in accordance with the customary law and ordinarily this would be done by means of a customary "arbitration", such as was envisaged by the final section of the Order of the 13th May 1949, but, if such customary "arbitration" was for any reason abortive, the liquidation of the Apaa Yego of Nyakrom co-parcenary would be, it is submitted, a matter for a Court of competent jurisdiction, and until such liquidation had been completed and the division of assets and liabilities duly made, no section had any title to any specific part of the family lands (the title being in the whole). Nor did the separation deprive any member of usufructuary rights which, as a member of the Apaa Yego Family of Nyakrom, he or she had acquired before the separation of family ties, by use or occupation of parts of it for farming or residence, though the Ampiakoko Section on the one side and the other sections on the other side had a right, which they had not before, to insist upon a liquidation and an appropriate division of such lands after providing for the liabilities of the Apaa Yego Family, and subject to the rights which had been acquired by members of the family by such use and occupation of parts. It is submitted that the position is not dissimilar, in

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10 respect of the title remaining in statu quo ante
until division, to the position which arises under
the law of England upon a voluntary winding up of a
solvent limited liability Company, which leaves the
title in the Company and vests no asset or specific
part of any asset in any shareholder but does vest
in each shareholder the right to have the affairs
of the Company duly wound up and to have eventually
distributed to him in cash or kind his appropriate
share of the net assets ascertained in the course of
the winding up. But the liquidation of the Company
would not deprive any shareholder of any distinct
right acquired over the property of the Company, e.g.
as tenant of a farm.

20 11. With regard to the settlement of the question
of the allocation of the Yego Family (Amaa section)
Stool of Nyakrom and of the properties attached
thereto or belonging to the said Family amicably
between the parties by Nana Kobina Botchey (who was
in fact the President of the Court), that would be
the usual and proper method of settling the question,
but according to one view of a customary arbitration
the parties are not (except in special circumstances)
bound unless they agree to what the arbitrator pro-
poses. It appears from the reference to amicable
settlement in the Order of the 13th May 1949 that it
was not contemplated that Nana Kobina Botchey should
be able to impose what he considered an equitable
settlement upon the parties but that whatever he pro-
posed should require their consent. This record
does not disclose what, if any, amicable settlement
he proposed, but it is evident that no amicable
settlement was arrived at. It is submitted that it
follows, as that reference has not been proceeded
with, that the properties remained undivided (and
the Family Stool unallocated) until division had been
duly made of the whole community property in accord-
ance with custom and that therefore the present action
should have been, on that ground (if on no other),
stayed or dismissed, for it was not competent for
any section to claim piecemeal any part of the
common property of the formerly united family as its
own even if the ancestor of that section had origin-
ally acquired it, until, in a distribution of the
whole of the family property, that portion had been
duly appropriated to the claimant section by agree-
ment or otherwise in accordance with the customary
law. That the properties in suit had formed part
of the community property was, it is submitted,
admitted, as hereinafter appears.

Record
p.149, 1.13.

12. Kwesi Eduamoah appealed from the said Order of the 13th May 1949 to the Magistrate's Court at Winneba but on what grounds does not appear in the Record of the present appeal. By a judgment dated the 13th August, 1949 (only part of which appears in the Record), the Magistrate (Mr. J.R. Wallis), having expressed the opinion mentioned in paragraph 6 of this Case as to the intent of the original summons, expressed the further opinion that the intention of the Native Court in its order in its context (that is), after evidence that Eduamoah was not a blood member of the Yego Family and following the latter's request for such an order as was made, could only be an affirmation (of the claim) that the Defendant was a stranger. It is submitted that the order implied no such affirmation but the contrary, for it implied that Eduamoah and his House were not strangers but members of the undivided Apaa Yego Family of Nyakrom together with the other Houses, including the Ampiakoko Section. The Magistrate then proceeded to hold that the order was not illegal, that the order did not divide a family but merely declared what was already known to both sides and made the way clear by referring to arbitration the settlement of a family suit. He added - evidently with reference to the intended division by Nana Kobina Botchey:-

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p.150, 1.36.

"The parties need not comply with the order. Arbitration is essentially voluntary. There is therefore nothing to appeal against."

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He therefore dismissed the appeal with costs.

p.151.

13. That some of the Houses had lands which belonged to the particular section was established against Kofi Donkor in the year 1950 when Kwesi Eduamoah brought proceedings by suit No. 33 of 1950 against Kofi Donkor in the same Agona Native Court "B" claiming (inter alia) as follows:-

p.151, 1.12.

"Claim:- The Plaintiff's claim against the Defendant is for a declaration of title to all that piece or parcel of land in Agona Kwaman Road situate lying and being at Agona Nyakrom which is the ancestral land of the Plaintiff herein, bounded on the North by land belonging to Nsona family of Odumasi Quarters in Nyakrom, on the South by Chief Yankson's land, and on the East and West by land belonging to Yego

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Family of Apaa Quarters in Nyakrom. The Defendant without the knowledge and consent of the Plaintiff as the owner of the said piece or parcel of land having entered on the land and felled forty eight (48) palm trees."

Record

The land so described was known as the Zongo land and is also referred to as Abuoni Maase land.

p.154, 1.4.
p.160, 1.20.
p.12, 1.1.

10 The Gold Coast Survey Map shows that Kwaman is a village about $3\frac{1}{2}$ miles distant from the centre of Nyakrom in a south westerly direction. (Agona Kwaman indicates that the place is in the State of Agona to distinguish it from other Kwamans). The land in dispute in Suit No. 33 of 1950 was therefore no part of the lands in dispute in Suit No. 383 of 1953 but several miles away.

20 In these proceedings evidence was given by Kobina Obu, the uncle of the Defendant, Kofi Donkor, and, as such, his predecessor as the Abusuapenin of the Yego Family of Apaa Quarters, Nyakrom, not only that the Zongo land belonged to the House of Eduamoah, but also, in reply to Kofi Donkor, that Buafi and Otsinkorang belonged to the Yego Family of Apaa Quarters, Nyakrom, and, in reply to the Court, that this was in accordance with arrangements made by their ancestors.

pp.153-155.

p.154, 1.42.

p.155, 1.7.

The judgment of the Native Court, which was delivered on the 6th March, 1950 in favour of the Plaintiff Eduamoah, included the following passage:-

p.161, 1.24.

30 "It seems that there are some pieces or parcels of land belonging to the Yego Family of Apaa Quarters in Nyakrom, which the members of the five Houses of which the said Yego Family of Nyakrom is composed, cultivate in common, but there are other parcels or pieces of the Family lands which belong to each particular section or House and in which the other Sections or Houses have no interest."

p.161, 1.4.

40 It seems from this judgment, that the Defendant's case was not that the Zongo land was not the ancestral property of the Plaintiff but that he admitted it was and alleged that he, as Abusuapenin of the Yego Family of Nyakrom (i.e. of the united family) and as having been appointed by all 5 sections, had the right to go upon land belonging to

p.161, 1.13.

(p.159, 1.21)

Record

any section of the Family (though not belonging to the united family) to fell palm trees or do whatever he would.

The Court held that the Abusuapenin had not this right in respect of lands belonging to a particular Section but only in respect of lands of the united family i.e. lands in which all the sections had an interest. The Court accordingly granted the Plaintiff the declaration he sought and awarded him £25 damages with costs.

p.161, 1.24.

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p.154, 1.3.

14. This suit (No. 33 of 1950) was evidently brought by Eduamoah in a representative capacity on behalf of his (the Torbor) section of the Apaa Yego Family of Nyakrom (though not so described in the title of the summons) and it was brought against Kofi Donkor because of actions which he claimed to have the right to do as Abusuapenin of such Apaa Yego Family of Nyakrom. The actions before suit and the defence of Kofi Donkor were an assertion by him that his rights of control as Abusuapenin of the whole Apaa Yego Family of Nyakrom still subsisted notwithstanding the severance of family ties on the 13th May 1949, which assertion, it is submitted, necessarily implied that lands remained in statu quo ante, notwithstanding the severance of personal relationships effected by the severance of family ties. It further seems that, in this suit, not only was Kofi Donkor, though it was after the alleged separation of family ties on the 15th May 1949, continuing to act as the Abusuapenin of the Apaa Yego Family of Nyakrom (i.e. in a matter not affecting personal relationships) but that his right so to act as Abusuapenin was not challenged. It is submitted that this is only consistent with the view that even if there had been an effective cutting of family ties on the 15th May 1949, the co-parcenary property remained in statu quo ante with title vested in the Apaa Yego Family of Nyakrom, as has been hereinbefore submitted. The mere fact that there had been a cutting of family ties, would, it is submitted, not obviate the duty of the Abusuapenin appointed by all 5 sections when united to protect the interest of all concerned in the community lands of the formerly undivided family until such community lands had been duly divided according to the customary law nor obviate, until that division had been made, rights as the Abusuapenin appointed by all 5 sections before the cutting of family ties. The judgment of the Native Tribunal

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p.159, 1.21.

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p.161, 1.19.

recognises that Kofi Donkor was still the Abusuapenin of the (Amaa) Yego Family of Nyakrom.

Record

15. Some decision of the Agona "B" Court in the case of Donkor v. Eduamoah (referred to in paragraph 4 hereof) went again on appeal, this time by Kofi Donkor, to the Magistrate's Court at Winneba. What was the decision appealed against does not appear in the Record, only part of the judgment of the Magistrate (Mr. C.F. Ferguson) appearing in this Record. This judgment, allowing the Appeal, is dated the 7th February, 1950 (which is during the pendency of the suit No. 33 of 1950, Eduamoah v. Donkor). The part in the Record includes the following final passage:-

"Here one party before me seeks to enforce the order of a Court, the other party objects. If I were to allow the order to be enforced, I should have to ask what Order.

p.152, 1.21.

No order by a Court which this Court could direct should be enforced has been brought to my notice therefore I have no course open to me but to allow the appeal. I doubt whether this decision will give satisfaction to either party, since I note that in the previous case before the Magistrate's Court at Winneba, it was the then Defendant Eduamoah who objected to the validity of the Order made by the Native Court, whereas now it is the other party, Kofi Donkor, who seeks to oppose the enforcement of the said Order. There seems no reason in this. I presume parties know what they want; but they would save money if they brought the proper issue before the appropriate Court."

16. On the 18th July, 1950, eleven persons including the present Appellants Kwami Badu, Kwesi Tekyi, Kwesi Eduamoah, Kwami Otsinkorang, V.K. Ninson and G.N. Hayford, on behalf of the other members of their Yego family Quarter (Amaa Section) Nyakrom Agona State, took proceedings against Kofi Donkor, for himself and as representing the members of his Ampiakoko Section of the Yego Family of Nyakrom in the Agona State Council held at Swedru claiming inter alia a declaration that the Family Stool and paraphernalia of the Yego Family (Amaa Section) of Nyakrom were the common property of their said family. In the present Suit the Plaintiffs deposed that the Plaintiffs in that Suit "were found guilty"

p.162, Ex.C.

p.11, 1.35.

Record
p.11, 1.29.

(i.e. meaning that their claim was dismissed) and the Defendants alleged that the decision of the State Council was appealed against and it was ruled that the State Council had no jurisdiction. In view of section 23 of the Native Authority (Colony) Ordinance 1944 (Ordinance No. 21 of 1944) and the definition of "matter of a constitutional nature" in section 2(1) of that Ordinance, it is submitted that the State Council could not have had jurisdiction as the dispute concerned a private family stool and not a political stool and therefore was not a matter of a constitutional nature.

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p.165.

17. The majority of the sections of Apaa Yego Family of Nyakrom now took steps to remove Kofi Donkor from being Abusuapenin of such Family and to appoint the 1st Plaintiff, Kwami Badu, in his place. On the 22nd November, 1950 a General Meeting of the Yego Family (Apaa Quarters) of Nyakrom (the Apaa Yego Family of Nyakrom) was held at which were present not only the 1st, 4th and 5th Appellants, Elders of the Family, and Heads of their respective Sections, but also the Abusuapanyin (Heads of Family) of the branches of the Apaa Yego Family at 3 other towns, Ochiso, Gomoa Dahum and Abodom, together with Nana Apaah, the Chene (Chief) of Lower Ochiso and occupant of the Family Stool there. There were also present a number of other members of the family including the first Co-Defendant and some Baabanyin (children of male members) together with a number of witnesses. Kofi Donkor, who, on previous notice of the meeting, had refused to attend, was again formally requested to do so and again refused.

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p.166, 1.30.

to
p.167, 1.8.
p.169.

After debate, a resolution was passed unanimously removing him from his position as the Head of the Family. Messengers were sent to him to inform him, who reported that he agreed that he had been removed. Thereafter the members of the Family appointed the 1st Plaintiff Appellant, Kwami Badu, as Head of Family of the Yego Family (Apaa Quarters) Nyakrom. He was recognised as such at Nyakrom by those concerned with local affairs.

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p.170.

p.177, 11.7-15.

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p.178, 1.2.

18. "When any Head of a Family at Nyakrom is removed, the family properties including the Family Stool (if any) are to be delivered by the removed one to the Family when the Family hands them over to the new appointed Head of the Family".

Kofi Donkor however did not hand over the Family

properties or the Family Stool.

Record

Kwami Badu, the new Abusuapenin of the Apaa Yego Family of Nyakrom, supported by 11 others as co-plaintiffs, including all the present Appellants, accordingly instituted a suit, No. 115 of 1951, in the same Agona Native Court "B" for and on behalf of the Apaa Yego Family of Nyakrom against Kofi Donkor as the former Head. The suit came before the Court on the 11th June 1951 when it was ad-
 10 journed. The Plaintiffs in this suit claimed (for the whole Apaa Yego Family of Nyakrom) the delivery and surrender of the Family Stool and of all Stool properties founded and created by the ancestors of the members of the Family, enumerating 8 lands including Otsinkorang, Bosompa and Obuafi.

p.174.

p.175

It appears from the judgment of the Land Court in this Appeal that Kofi Donkor resisted the claim and claimed the properties in his possession on behalf of the Ampiakoko section of the Family. But
 20 in the course of the proceedings he appears to have stated, when questioned by the Court, that all the lands were the family properties of the Apaa Yego Family of Nyakrom and all attached to the Family Stool; and his witness, Kobina Afful, under cross-examination, deposed that all the lands attached to the Family Stool were for all the 5 houses.

p.89, 1.24.

p.178, 1.28.

p.181, 1.20.

19. By their judgment dated the 5th July 1952 (in the Record the proceedings appear headed erroneously 5th July 1953) the Native Court held that the Plain-
 30 tiffs were right to claim the Family Stool and all other properties in the custody of Kofi Donkor for the whole Yego Family including Kofi Donkor's section. They therefore ordered him to deliver up possession and surrender the specified properties to the Plaintiffs in that suit for the whole Apaa Yego Family, Nyakrom, including Kofi Donkor's section. These properties included Otsinkorang, Busumpa and Obuafi. Some of the subsequent history of this litigation up to October 1954 appears from
 40 the following passage from the judgment of the Land Court in the present proceedings:-

p.184.

p.185, 1.17.

p.89, 1.14.

"In Exhibit "1" the Defendants-Appellants herein were among others the Plaintiffs in the action against Kofi Donkor, Ex head of the Yego Family, claiming inter alia the lands in dispute. The case came to this Court on

Ex.1, p.174 (on p.89 referred to as "I").

Record

appeal from the Native Court and it is now pending before the West African Court of Appeal for its ruling on jurisdiction when the appropriate Court would hear the appeal on the merit. The appeal from Exhibit "1" is by Kofi Donkor, the Defendant therein, who resisted the claim and claimed the properties in his possession as for and on behalf of the Ampiakoko Section of the Yego Family of which the Plaintiffs are members. The issues were identically the same. 10
The evidence led for Defendant were almost the same as in this case. The lands claimed are the subject matter in this appeal."

p.16, 1.45.

20. At some subsequent date before the institution of the present suit Kofi Donkor ceased to be Abusuapenin of the Ampiakoko Section, which at the instituting of this suit appears to have had no Abusuapenin.

THE PRESENT SUIT

p.2.

21. By suit No. 383 of 1953, in the same Agona "B" Court, the Plaintiffs instituted the present suit claiming a declaration that the three parcels of land generally known as and called Buafi (Obuafi) land, Bosompa land, and Otsinkorang land were acquired or founded by Ampiakoko, the Plaintiffs' ancestor, and not by the ancestors of the Defendants. 20

p.4, 1.13.

The proceedings in Native Courts are summary and without pleadings, so that the issues have to be discovered mainly from the evidence led.

p.2, 1.40.

The Civil Summons by which these proceedings were presumably initiated (as there is no sign of the suit being by way of Oath procedure) is not in the Record, but the first proceeding in the record is the hearing on the 15th September 1953 of a Motion, where the title of the suit and the claim are set out. It is clear, from this claim and from the course of the proceedings in the Native Court, that the Plaintiffs were claiming the three lands for the Ampiakoko section alone and were suing as claiming to represent that section, in the same way as Kofi Donkor, who had then been the Abusuapenin of the Ampiakoko section, had claimed these same lands for his Ampiakoko section in suit 115 of 1951 in the same Native Court. 30 40

p.2, 1.3.

While the 1st Plaintiff may be correctly described, the description of the second Plaintiff in the title of this suit 383 of 1953 as "the Family

Linguist of the said Family" that is, of "the Yego Family" is clearly incorrect, for, in his opening evidence, he correctly describes himself as "the Linguist to the whole Ampiakoko Descendants" that is to say, Linguist to the Ampiakoko section of the Family. Consequently the claim to be suing "as representing the other members of the said Family of Apaa Quarters, Nyakrom" is patently an error and inconsistent with the claim, which is adverse to the sections and members of the Yego Family of Apaa Quarters, Nyakrom, other than the Ampiakoko Section and its members.

p.2, 1.5.

22. By an Order of the Court dated the 9th October, 1953, V.K. Ninson and G.N. Hayford were joined as Co-Defendants.

p.4, 1.20.

23. On the 2nd February, 1954, the Defendants pleaded, under Section 17 of the Native Courts (Colony) Procedure Regulations 1945, that the case had been adjudicated upon and was therefore res judicata. They relied for this purpose upon the aforesaid judgment of the 5th July 1952 against Kofi Donkor. The Plaintiffs stated that they had applied to be made parties to that Suit but that the application had been refused. There is no other evidence on the present record of any such application, nor, if there were any such application, that the Plaintiffs appealed against any alleged refusal to join them, but it is hereby conceded that Amba Amoabimaa, for herself and purporting to act on behalf of the other members of the Ampiakoko Section, did apply to be made Co-Defendant jointly with Kofi Donkor, though admitting that he was the representative of the Ampiakoko Section, and that, upon the refusal of such application, she appealed to the Magistrate's Court, who dismissed her appeal.

p.6, 1.20.

p.7, 11.18-32.
Ex.2, p.184.

p.7, 1.13.

It is submitted that such refusal and dismissal were clearly correct, for Kofi Donkor, as the then Abusuapenin of the Ampiakoko Section, was the necessary and proper person to assert or defend the rights of the Ampiakoko Section and it is clear that he did so.

The Court, in the present proceedings, held that res judicata did not apply since the first action was taken against Kofi Donkor, the ex-occupant of the Family Stool, for the surrender of Family properties which came into his possession by right of his office.

p.7, 1.35.

Record

It is submitted that this ruling was erroneous, for, though the action was brought for the purpose stated by the Court, the issue which was raised by Kofi Donkor, on behalf of himself and the Ampiakoko Section, was that the properties were the separate properties of the Ampiakoko Section and this issue was decided against him and, through him, against the Ampiakoko Section, who therefore could not litigate that issue again by other representatives or at all.

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- p.8. 24. The Plaintiff Kofi Boye (who throughout conducted the case for the Plaintiffs and was their first and principal witness) then proceeded himself to give traditional evidence that Ampiakoko had migrated to Nyakrom from Ashanti, and that he had first acquired Obuafi (the nearest of the 3 lands to Nyakrom) by hunting and subsequently Otsinkorang and Bosompa by gift from the Chief of Nkum. (Nkum is a town a few miles to the north west of Nyakrom).
- p.9, 1.35. 25. On the 12th April, 1954, the Plaintiffs' claim was amended by the addition of a claim for recovery of possession. 20
- p.10. 26. Thereafter, on the said 12th April 1954, the second Plaintiff, Kofi Boye, gave further evidence (already mentioned in paragraph 6 of this Case) as to the suit in 1949 of Donkor v. Eduamoah and as to the cutting of family ties made in the course of that suit, tendering in evidence the said Order of the Native Court made on the 13th May 1949 which, after objection, was admitted, as also was the (part) Judgment of Mr. Wallis on appeal referred to in paragraph 12 of this Case and the claim in the State Council for the Stool made by the principal present Defendants as claimants on behalf of the whole Apaa Yego Family of Nyakrom against Kofi Donkor as representing his Ampiakoko Section. This evidence may have been designed to support a case that the Family Stool of the Apaa Yego Family of Nyakrom was in reality the Family Stool of the Ampiakoko Section, to which the whole Apaa Yego Family of Nyakrom had owed allegiance; that there had been a breaking of family ties with the Defendants, the result of which was that the Stool remained with the Ampiakoko Section as their Stool with the lands claimed in the present suit attached to it by reason of the alleged original acquisition of such lands by Ampiakoko, but that the Defendants were disputing that the Stool belonged to the Ampiakoko Section, as appeared from the proceedings taken by them in the State Council

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Ex. A, p.148.
 Ex. B, p.149.
 Ex. C, p.162.

to establish that the Stool was the Stool of the whole Apaa Yego Family of Nyakrom.

Record

27. Kofi Boye then deposed that after the case (Donkor v. Eduamoah) the 1st Defendant, Badu, and the 2nd Co-Defendant, Ninson, had told his section "that we happened to live on their land through "Unity - Once we had separated ourselves, we got no "right to step on their land of Kyekyegya."

p.11, 1.36.

10 Kyekyegya admittedly was the property of the House founded by Nana Apaa of which the then Head was Badu.

p.19, 1.32.

He then deposed that 6 members of the Ampiakoko Section had had cocoa farms on Kyekyegya and that 4 of them had been ejected.

p.11, 11.41-49.

20 He also deposed that Eduamoah, the 4th Defendant, had similarly informed Ampiakoko section that it was through the Unity that the Ampiakoko Section had been permitted the work on "Abuoni Maasi" lands and that, "once the family tie was broken, none of the descendants of Ampiakoko should step on the land. Kofi Donkor the ex-head of our Family did not agree but went to work on "Abuoni Maasi" land". That for this Eduamoah sued him in suit No. 33/50 Eduamoah v. Donkor (already referred to in paragraph 9 of this Case), and the witness put in evidence the claim in that suit (Exhibit D) and the judgment and stated that one of his elders, Kobina Abaka, had been ejected from his cocoa farm on this land by Eduamoah who had taken it.

p.11, 1.49.

Ex. D, p.151.

Ex. E, p.160.

30 Kofi Boye also put in the evidence given in suit 33/50 by Ninson, the 1st Co-Defendant in the present suit. Neither Kyekyegya nor Abuoni-Maasi had been claimed in suit 115/1951 (Badu v. Donkor) as the common property of the Apaa Yego Family of Nyakrom, as had Buafi, Bosompa and Otsinkorang.

Ex. F, p.155.

40 The evidence so led by Kofi Boye was that certain defendants had ejected certain members of the Plaintiffs' Section from their farms upon lands which were not the common property of the alleged ejectors' respective sections.

28. It is submitted that the evidence of Ninson, upon which the Plaintiffs relied, by no means supports the case that any of the Defendants had done anything which could be prayed in aid in support of the Plaintiffs' case.

It is submitted that this is clear when Ninson's

Record

evidence (so relied upon by Kofi Boye) as to the ejections is examined.

p.156, 11.5-9.

(1) He claims Kyekyejah as a portion of the separate communal property of the section of the Apaa Yego Family of Nyakrom to which he belongs, i.e. the section then headed by Badu:

p.156, 11.16-17.

(2) (a) He then says every member of each house is entitled to make a farm upon any part of the communal lands;

p.156, 11.18-21.

(b) and to own for himself and his successors the farm so made (i.e. the portion of the family land which he (or his ancestor) has cleared or in the expression he used "to the extent which his cutlass has reached" to the exclusion of other members, upon which farm therefore other members must not encroach:

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(3) (a) He implies that it was the practice in the Apaa Yego Family of Nyakrom for his section with regard to their separate lands (and presumably the practice was mutual) to permit members of other sections to farm upon such separate lands in the same way as they had the right to do upon the lands common to the whole Apaa Yego Family of Nyakrom, but subject to the same limitation that there should be no encroachment upon the farms of others;

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p.156, 11.21-28.

(b) But sundry members of other sections had encroached upon his farm and he had therefore ejected them namely -

- (i) Opanin Kobina Obu'a mother
- (ii) Donkor's sister Yaa Nkrumah
- (iii) " " Sadaabi

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Opanin Kobina Obu's mother is presumably Akua Ketse, the first person named by Kofi Boye as having been ejected, Yaa Nkrumah is the second person he mentions, Sadaabi is the 4th person he mentions.

It is clear therefore that these ejections of members of the Ampiakoko Section from farms on Kye-Kyegya had not been because of the cutting of family ties, but because of wrongful encroachment on other farms. And Kofi Boye does not dispute that part of the evidence of Ninson which he put in that all

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p.156, 11.35-41.

these people whom Ninson had ejected had been allowed

back upon recognition of his title to the farm, a procedure wholly in accordance with the custom of amicable settlements and forgiveness upon acknowledgement of fault. None of the persons alleged to have been ejected was called as a witness to say that they had any complaint or to be cross-examined.

Record

10 29. Kofi Boye proceeded to complain that the 4th Defendant, Eduamoah, had excluded the members of the Ampiakoko from farming upon Abuoni Maase lands, the separate property of Eduamoah's section.

p.11, 1.48 to
p.12, 1.4.

But the only evidence he adduced of this was the claim in the suit No. 33 of 1950, Eduamoah v. Donkor, referred to in paragraphs 13 and 14 of this Case, which suit shows no such exclusion but merely a resistance to the unlawful acts of Kofi Donkor, as appears from the Judgment, which Kofi Boye put in evidence.

pp.151, 152,
Ex.D.

p.12, 1.25.

20 He also complained that one of his elders, Kobina Abaka, had had his farm taken by Eduamoah, but again the person supposed to have been aggrieved was not called to say so.

p.12, 1.18.

30. Kofi Boye next referred to the action Badu v. Donkor, Suit 115 of 1951, referred to in paragraphs 18, 19 and 23 of this Case, and deposed that "we applied to be made a party but the Court refused our application", a matter dealt with in paragraph 23 of this Case.

p.12, 1.40 to
p.13, 1.23.

30 He then related a meeting between himself and another person deputed by the 1st Plaintiff, Amba Amoabimaa, on the one side and all the Defendants on the other side, when they informed the Defendants that now the union was broken the Defendants must remove from the lands in dispute, they having been acquired by Ampiakoko, when the Defendants denied this and alleged foundation by their ancestor Nana Apaa.

p.13, 11.24-43.

40 In support of the alleged acquisition by Ampiakoko, with which allegation he had begun his evidence, it being the foundation of the Plaintiff's claim, Kofi Boye put in evidence extracts from previous proceedings.

31. This documentary evidence was as follows:-

Record
Ex. G.

(a) The evidence of Kwesi Mensah, a member of the Ampiakoko section, who had given evidence in the year 1915 in an action of Sam v. Nkrumah on behalf of the Apaa Yego Family of Nyakrom in defence of their title when attacked by another Family and had stated that the original acquisition of Otsinkorang and of Bosompa was by Ampiakoko, but not that it was by way of gift.

p.111, 1.35.
p.114, 1.25.

p.117, 1.33
Ex. H.

(b) The evidence of the representative of the Chief of Nkum in the same action who had given similar evidence.

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p.123.
Ex. I.

(c) The Judgment in the said action in favour of the Apaa Yego Family of Nyakrom, which refers to that defendant Family as Ampiakoko "descendants", which they were not in any sense.

p.124.
Ex. J.

(d) The evidence in 1935 in another action, Essawah v. Nkum, given by J.B. Quartey, a matrilineal relative of the then Ohene of Nkum. This action was against the Apaa Yego Family of Nyakrom and was a dispute as to boundaries between the Apaa Yego Family of Nyakrom and the owner of lands adjoining Bosompa and Otsinkorang lands.

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p.124, 1.28.

p.125, 11.8-48.

The witness stated that the latter lands were given to Ampiakoko by a former Chief of Nkum.

p.128.
Ex. K.

(e) The evidence in 1935 in the same action, Essawah v. Nkum, by Kwesi Egyiah, the representative of the Apaa Yego Family of Nyakrom, on behalf of that Family, and the Stool holder, as to the acquisition by Ampiakoko of first Obuafi and later Otsinkorang and Bosompa by occupation but not by way of gift.

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p.128, 1.40.
p.129, 1.47 to
p.130, 1.15.
p.131, 1.10.
p.133, 1.1.

p.135.
Ex. L.

(f) The evidence in 1936 in the same action, Essawah v. Nkum, by Kojo Okyire (Kwadjo Kyir), said to be related both to 1st Defendant Badu and 3rd Defendant Tekyi, given on behalf of the Apaa Yego Family of Nyakrom, that Bosompa land became the property of the then Defendant Apaa Yego Family of Nyakrom through Ampiakoko, who also acquired Otsinkorang, but neither of them by gift.

p.15, 1.14.
p.135, 1.11.

p.136, 1.15.

It is submitted that none of these exhibits was rightly admitted in evidence.

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32. It is submitted that, while this documentary

evidence (if rightly admitted) tends to prove that the first acquirer of the 3 lands or some of them was Ampiakoko, it proves beyond doubt that all concerned (both Plaintiffs and Defendants and tribunals) in the suits in 1915 and 1935-36 considered that the lands were vested in the Apaa Yego Family of Nyakrom and not that the title was in one section, the Ampiakoko section of that Family.

Record

10 33. Finally Kofi Boye deposed that, about 12 years previously (i.e. about the year 1942), the 1st Defendant Badu had taken action against one Kobina Bu, whom he described as an elder of the Ampiakoko section, whereby that section became indebted and pledged Otsinkorang to the 4th Defendant Eduamoah for £700, who received the rent of £300 for 3 years. He commented "If the 4th Defendant is the owner he would not see that we pledged his own property to him. If 1st Defendant has a share in the land he would not sit tight so that we might pledge his own land to
20 get money to litigate with him". (Kobina Bu is the same as Kobina Obu, whose evidence in suit 33 of 1950 is referred to in paragraph 9 of this Case).

p.15, 1.38 to
p.16, 1.11.

The only other evidence as to this alleged transaction was that of one Ohene Bonam Okwan for the Plaintiffs, the leader of the Gomoa Farmers, whose holdings upon Otsinkorang lands are shown on the plan B 3, who stated in this action that Kobina Bu (Kwabena Obu) had told him of the pledge and that thereafter the rent of £300 a year due from the
30 Gomoa Farmers was paid for 5 years to Eduamoah. This same witness had given evidence for Donkor in the action Badu v. Donkor, when he said that, during the Sheep-Head case, Kobina Obu, Head of the Apaa Yego Family, had pledged the land to Eduamoah for £700 and had ordered him to pay the rents to Eduamoah which was done for 5 years, when Donkor (who had become Abusuapenin) told him the land had been redeemed, after which he paid the rent to Donkor, evidently as the Abusuapenin of the Apaa Yego Family
40 of Nyakrom.

p.36, 1.43.

p.182, 1.36.
Ex. U.

It is clear from this evidence that Kobina Obu, being the Head of the Apaa Yego Family and being as such entitled to dispose of the income of the property of the Apaa Yego Family, had pledged the lands by the usual (usufructuary) customary mortgage to Eduamoah, as he lawfully might have done to any person, and that Badu, who as a member of the Family

Record

had no title to the land, could not prevent this. Nor had Eduamoah either any title to the land. If the action of Kobina Bu was disapproved by the Family, it was for the Family at a Family Meeting to remove him from being Abusuapenin of the Family in the same way as Kofi Donkor had been removed. But, as no such action was taken, evidently the majority of the Family, including Eduamoah, were supporting Kobina Obu and Badu was helpless. It is indeed highly unlikely that such a pledge would have been given by Kobina Obu as Abusuapenin of the Apaa Yego Family of Nyakrom without the prior approval of the majority of the Elders of such Family.

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It is also (it is submitted) clear from this evidence that the innuendo of Kofi Boye that Otsinkorang was pledged by the Ampiakoko section as being the separate property of the Ampiakoko section is untrue.

34. Kofi Boye was cross-examined at length. The following material statements (among others) were made by him:-

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p.16, 11.29-31.
p.26, 11.27-30.

(1) Donkor had been made Abusuapenin by 3 sections, that of Badu not included;

p.16, 1.45.

(2) Donkor had been deposed by the Ampiakoko Section and was no longer their Head;

p.16, 1.47 to
p.17, 1.2.

(3) The other 4 houses had no dealings with the Ampiakoko section, in as much as the Family tie had been cut;

p.21, 11.38-43.

(4) When there was no division, all actions had been taken against the occupant of the Yego Stool on behalf of the Apaa Yego Family of Nyakrom and not against "4 sections of Yego Family" and no action had ever been taken against Ampiakoko section of such Family;

30

p.26, 11.33-40.

(5) When Kwabina Obu was the Abusuapenin the lands of the Yego Family (i.e. the Apaa Yego Family of Nyakrom), were Gyekyegya, Abuonyin, Maase, Mansaadi, Otsinkorang, Busumpa and Obuafi (though he had previously admitted that Gyekyegya belonged to the Badu Section alone and not to the whole Apaa Yego Family of Nyakrom, a matter which had been decided since the time of Kwabina Obu in suit 33 of 1950);

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p.19, 1.32.

(6) That he accepted the truth of the evidence given by Kwesi Mensah, Kwesi Ayiah (Eyiah or Egyiah) and Kofi Nkansah, members of the Apaa Yego Family of Nyakrom who had represented (i.e. as advocates) the Yego Family (i.e. the Apaa Yego Family of Nyakrom) in their law suits.

Record
p.17, 1-31.

10 35. The first witness for the Plaintiffs, after Kofi Boye, was Obaatan Apu, a witness from Nkum, who was called to support the tradition as to Ampiakoko having been the acquirer of Bosumpa and Otsinkorang. This witness deposed that the land was given by the then Chief of Nkum to Ampiakoko as a hunting ground and that Ampiakoko built 2 cottages there bearing those names and that the land was there for his descendants.

p.27, 11.20-28.

20 He admitted however that the litigation by Asarewa (Essawah v. Nkum before referred to) with regard to the land given to Ampiakoko was with the Yego Family and that her boundary was with the Yego Family, meaning the Apaa Yego Family of Nyakrom, thus admitting that, even if Ampiakoko in the remote past had been the first acquirer of these two lands, they were nevertheless the property of the whole Apaa Yego Family of Nyakrom.

p.28, 1.20.

p.28, 1.38.

30 This witness also deposed that, when Ampiakoko received the gift, he came with his Elders (though the witness did not know their names) and that, when he had before that come to Nkum, he came with attendants who were Nhenkwaafu, i.e. the special attendants of a Chief on a Stool.

p.28, 1.8.

p.29, 1.24.

40 36. The second witness for the Plaintiffs was Kweku Atta, a member of the Ampiakoko Section. This witness was a nephew of Donkor and the person whom Donkor had improperly and unsuccessfully attempted to make a Sub-Chief for the Apaa Yego Family of Nyakrom in or about 1949 (before the alleged cutting of the family ties on the 13th May 1949). He gave general evidence of the formation of the united Apaa Yego Family of Nyakrom and of all (4) sections having then constituted all their lands the community property for all the sections to live on. He appears to be referring to what had occurred on the formation of the unity. He then referred to the suit by Donkor against Eduamoah, during which he said the family tie was cut with all customary observances in his presence and said that subsequently

p.30, 11.1-16.

p.31, 1.14.

pp.142-3.

p.30, 1.17.

p.34, 1.12.

- Record
- p.35, 1.32. Badu had ejected from their farms on Gyegyegya the persons named by Kofi Boye, namely Akua Ketse, Yaw Nkromah, Saarabe (Sarah) and the Plaintiff (Amba Amoabimaa) but he later admitted that Akua Ketse, Yaw Nkromah, Sarah and Amba Amoabimaa were still working there, which corroborates the statement by Ninson that all persons ejected for trespass on the farms of others had subsequently been given permission to return. He also admitted the custom under which these people had been expelled saying - "where one has cultivated belongs to him. If someone goes to cultivate upon that same portion he has committed trespass". 10
- p.156, 1.35.
- p.34, 11.38-48. He further admitted that "when there was no split in the Family, Busumpa, Obuafi and Otsinkorang lands belong to the Yego Family" - i.e. the Apaa Yego Family of Nyakrom.
37. The third witness for the Plaintiffs was Bonam Okwan, whose evidence as to the pledge of Otsinkorang land has already been referred to in paragraph 20 33.
- p.36, 11.20-40. He described his negotiations for permission to farm on Otsinkorang about 30 years earlier with Opanin Abeka, who was then on the Family Stool of the Apaa Yego Family of Nyakrom, that Abeka had told him that Ampiakoko had acquired Otsinkorang and Busumpa, that libation had been poured to Ampiakoko on permission being granted, but he admitted that the receipt he received was given in the name of the Yego Family and that he did not know the "Apaa land history". 30
- p.182, 11.17-20. In his previous evidence in Badu v. Donkor (Suit 115 of 1951), on the 1st July 1952 he had distinctly said that he had dealt with Abeka as the Stool occupant of the Apaa Yego Family of Nyakrom and that, when a litigation came on the Otsinkorang land, then the Whole Apaa Yego Family litigated it, that Abeka told him that Ampiakoko had acquired the Otsinkorang land when he was the occupant of the Family Stool of the Apaa Yego Family and that Abeka 40
- Ex. U. had given a receipt for the £10 asedze (aseda)(thank offering) paid on the permission to farm in the name of this Apaa Yego Family as the Head of the Yego Family of Apaa Quarters Nyakrom.
- p.183, 11.18-20.
- p.183, 11.36-42.
- p.40. 38. The fourth and last witness for the Plaintiffs

Record

p.40, 11.1-14.

10 was Kwame Samang, the Krontihene (one of the Sub-chiefs) of Odoben, a village 6 to 7 miles north west of Nyakrom. This witness in his evidence in chief deposed that his ancestor Atware had (acquired) a land known as Nkwanta which had boundary with Ampiakoko's land. The Government map shows two places named Nkwanta (which is a very common Akan place name, signifying a place where a path forks), one of which lies to the north of Otinkoran (Otsinkorang) the other to the south. This evidence therefore is probably directed to Otsinkorang land and also to Busumpa land which the witness mentioned in cross-examination.

p.42, 1.1.

20 The only other evidence he gave in chief was that it was the custom to litigate on land in the name of the ancestor who acquired it. But as it appears that all litigation with third parties with regard to the lands in question in this appeal had been carried on in the name of a person representing the Apaa Yego Family of Nyakrom and not of one representing the Ampiakoko section, this evidence goes against the Plaintiffs.

30 Under cross-examination this witness stated that he did not know the history of Apaa Yego Family or of Apaa Yego Family lands. He stated that he had been Mankrado for almost 30 years, and knew the native custom. He stated that it was customary when a person is made the Head of a Family, he takes possession of all Family properties as of right but, surprisingly he could not (or would not) say whether, when an occupant of a Stool acquired a property, it belonged to all the members of the Family i.e. was Family community property.

p.41, 1.53 to
p.42, 1.1.
p.42, 11.13-15.

p.42, 11.8-12.

40 39. It is submitted that this evidence for the Plaintiffs was insufficient to establish the title of the Ampiakoko section of the Apaa Yego Family of Nyakrom to the lands of Obuafi, Bosompa and Otsinkorang, or any of them, in the face of the admitted possession of all of them by the whole Apaa Yego Family of Nyakrom for a very long period.

It is evident that the Apaa Yego Family of Nyakrom as a whole were in possession before the case of Sam v. Nkrumah in 1915 but for how long before is uncertain so far as the Plaintiff's evidence goes. The approximate date of the alleged acquisition by Ampiakoko is also uncertain but from

pp.117-119.

Record
p.118,11.12.

the evidence of Kobina Agil in that case of Sam v. Nkrumah and the reference there to "ancient time Ashanti War" "in Fanti" it is probable that it was not much, if at all later, than 1863-64 and may have been much earlier, there having been Ashanti wars which answered that description from 1806 (the first) until the latest in 1863-64 (the fifth).

40. The case for the Defendants was conducted by the said Ninson who was also their first and principal witness. He belonged to the Badu Section.

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pp.43-46.

(a) His traditional evidence was that his ancestors Apaa and others, male and female, migrated with the Bobor Fanti from the north and settled at Nyakrom at a place they named "Siw-Mpæm" and so founded the Apaa Yego Family of Nyakrom. Later another family group, male and female, migrated from Denkyira (a State whose people at one time inhabited part of the present Ashanti from which they were expelled about 1700), headed by Kofi Nkum and joined them and became part of the Apaa Yego Family of Nyakrom. The immi-

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p.45, 11.18-29.
p.49, 1.28.
p.45, 1.20.

grants having multiplied, they created a Stool, so that it might rule over them all and placed upon it one Ampiaaw. A brother of Ampiaaw, travelling to the coast for salt, met Ampiakoko on the way and found that he was also of the Yego Clan, as a result of which Ampiakoko and his sister joined the group at Nyakrom and eventually, after Ampiaaw had been succeeded on the Stool by several others, Ampiakoko himself became their Chief upon the Stool, his elders being Basi, Otsinkorang and Abueni (Abueni being of the Eduamoah section). They went together to Nkum and together acquired Obuafi, Busumpa and Otsinkorang lands for the Apaa Yego Family of Nyakrom. After they had got the lands Ampiakoko died and was succeeded upon the Stool by Abueni, who ruled for a very long time over the whole Family (Plaintiffs alleged that Abueni was a regent only). Abueni was succeeded by Nkruma of the Ampiakoko section, he by Abeka, who was destooled, he by Nkum who abdicated, after which nobody was enstooled but the Family was ruled by the Abusuapenin.

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p.26, 1.48.
p.45, 1.46.
p.46, 1.33.

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p.46, 11.4 & 15. (b) As to the Abusuapenin, Badu was this when Abeka and Nkum were on the Stool, but offended the whole family and was deposed by all sections, being succeeded by Kobina Obu who was also deposed and was succeeded by Donkor.

- Record
- (c) In rebuttal of the Plaintiffs' tradition that Ampiakoko had come to Agona in the Gold Coast from Agona in Ashanti and had brought the Family Stool with him, Ninson put in evidence without objection the emphatic evidence to the contrary of the linguist of and deputed by the Omanhene of Agona (Ashanti) before the Agona State Council in *Badu v. Donkor* on the 25th July 1950. This witness deposed that no Yego Clan was known in Agona (Ashanti). p.44, 1.17.
(Ex.M, p.164)
- 10 (d) As to Abuonyi and the succession of Stool Holders, he put in evidence without objection - p.45, 1.8.
- (1) the evidence of the said Kwesi Mensah on behalf of the Apaa Yego Family of Nyakrom on the 6th October 1915 in *Sam v. Nkrumah*, (Ex.N, p.120)
p.45, 1.40.
- (2) the evidence of the said Kofi Nkansah on behalf of the then Head of the Family in *Badu v. Nkum* on the 4th September 1940 (the Sheep's Head case), (Ex.O, p.137)
- (3) the evidence of Kobina Obu in the same case on the 12th November 1943. p.45, 1.40.
(Ex.P, 1.141)
- 20 (e) As to *Badu* (1st Defendant) having been Head of Family in the time of *Abeka*, he relied without objection on *Kofi Donkor's* evidence in the State Council on the 22nd February 1949. p.46, 1.7.
(Ex.R, p.142)
- (f) As to *Kofi Donkor* having been made *Abusuapenin* by all 5 houses he relied without objection upon the evidence of *Donkor* in *Donkor v. Eduamoah* on the 22nd February 1950, but the Plaintiff had previously qualified this evidence by the statement that *Badu* had not joined in the election. p.46, 1.23.
(Ex.S, p.159)
p.16, 1.29.
p.26, 1.27.
- 30 (g) As to the right of all members of the Apaa Yego Family of Nyakrom to farm upon any part of the lands in dispute and to have as his own any farm so made (with the right to dispose of it), he deposed that *Donkor* himself had done so and had sold a farm without objection. p.47, 11.20-31.
- As to this custom (1) he put in without objection the evidence of the former *Abusuapenin* *Kobina Obu* that he had as such never disturbed any member of the five houses occupying family lands and had always granted permission to any member who wanted to make use of any part of the family lands in Ex.T, p.153,
1.29 to
p.154, 1.3.
- 40

- Record
- p.34, 11.38-48. accordance with the practice of their ancestors and that nobody trespassed on another's portion of the Family land without the consent of "the owner or occupier" of that portion (2) he referred to the beforementioned evidence of Plaintiff's witness Kweku Attah stating that where a member had cultivated belonged to him and for anyone else to cultivate there was a trespass.
- p.47, 1.35. (h) He also deposed that, when there was litigation as to the land, all sections united and embarked upon it, citing the before mentioned evidence of the Plaintiff's witness Bonsam Okwan as to this. 10
- p.183, 1.18, Ex.U. (i) He supported his own evidence that the disputed lands were the property of the whole Apaa Yego Family of Nyakrom and were all attached to the Stool of that Family by reference to the evidence of Donkor in Suit 115 of 1951 (Badu v. Donkor) and of Donkor's witness, Kobina Afful, in the same suit.
- p.48, 11.13 to p.49, 1.9.
- p.178, 1.28. Ex. V, p.181. (j) He also relied on evidence given in 1915 in Sam v. Nkrumah (referred to in paragraph 31(a) of this Case) in the action taken by Yorkor Family against the Apaa Yego Family of Nyakrom claiming Bosompa. 20
- p.49, 1.12.
- pp.120 & 121. Ex. X. p.121, 1.20. p.122. In this action two Chiefs holding for their people lands adjoining Bosompa gave evidence. The Chief of Akroso's evidence was to the effect that he had boundary with Abonyi, who had been succeeded on the land by Otorboh. The Chief of Anamasi's evidence was that his ancestors had found Ampiakoko in possession, then Abonyi and then Otoboh. Largely upon this evidence the judgment relied upon by the Plaintiff was given for the Apaa Yego Family of Nyakrom, who were defending and not either of the sections to which Ampiakoko or Abuonyi and Torbor had belonged. It is submitted that it is clear therefore in the light of this evidence that this judgment should not be taken as supporting the present Plaintiff's case when it refers to the then Defendants, the Apaa Yego Family of Nyakrom as Ampiakoko's descendants. It is submitted that it implies the finding that the whole Apaa Yego Family of Nyakrom, the Defendants to that suit, stood in the shoes of Ampiakoko, who had been a former head of that Family. 30
- Ex. Y. p.123. Ex. I.
- p.50. (k) Defendants also relied upon evidence which had been given for the Apaa Yego Family of Nyakrom in an 40

action covering lands on or near the westerly side of the disputed lands which had been taken against the family through Nkum then on the Family Stool by a woman Asarwa (Essarwah) in consequence of a sale by the Apaa Yego Family of Nyakrom of land there. This action was settled, the Plaintiff paying the costs of the Apaa Yego Family of Nyakrom.

Record

p.138-9.
Ex. Z.

10 (1) The evidence of the 2nd Defendant, Kwesi Ayiah, in the suit of Essawah v. Nkum had been relied upon by the Plaintiffs (as stated in paragraph 30(e) hereof). It was also relied upon by the Defendants as showing that he had acted for the united Family and had treated the ancestors of each section as his own ancestors, all being regarded equally as the ancestors of the Apaa Yego Family of Nyakrom. In the same suit Kojo Okyire (Kwadjo Kyir) had represented the Apaa Yego Family of Nyakrom and its Chief Nkum and the Plaintiffs had relied in the present

20 Bosompa and Otsinkorang by Ampiakoko. But it was also relied upon by the Defendants as proving that through Ampiakoko they became the property of the whole Apaa Yego Family for the evidence of Kojo Okyire begins with the statement "Busumpa land was left for Yego Family by my ancestor Ampiakoko". This is also evidence of the full integration of the Houses into a single Family, the Apaa Yego Family of Nyakrom, as this witness refers to Ampiakoko as his ancestor, and the Plaintiffs had emphasized that in

30 fact he did not belong to the Ampiakoko section but to the section headed by Badu, being his real elder brother, i.e. an elder son of the same mother.

p.15, 1.16.
p.128.
Ex. K.

p.50, 1.34.
p.127.
Ex. A1.

p.15, 11.27-37.
p.135.
Ex. L.

p.51, 1.15.
p.135, 1.11.

p.15, 1.29

This witness therefore was doing the converse of what Kwesi Egyiah, belonging to the Ampiakoko section, had done in the same action.

p.128, 11.1-7.

40 (m) As further evidence that the lands, in particular those let to the Gomoa Farmers in 1931, belonged to the United Family and not to any particular section, Ninson referred to this letting having been made by the heads and representatives of all 4 main sections namely Otsinkorang, Eduamoah, Badu and Nkum.

p.51, 11.24-37.

(n) On the same point he referred to the action Okai v. Yego Family in 1949 and put in the proceedings taken by a tenant against the Apaa Yego Family of Nyakrom represented by Donkor as then Head of that

p.51, 1.37 to
p.52, 1.5.
p.144.
Ex. A2.

Record
p.146, 1.36.

Family in respect of his unlawful ejection from a farm on Obuafi lands, in which the Court displaced Donkor as the representative of the Family by Eduamoah as an ad hoc representative of the Family without Donkor objecting that the land belonged to the Ampiakoko section, which, it was submitted, showed that the land belonged to all the members of the Apaa Yego Family, as he submitted did all the Exhibits he had referred to and the admission of Kobina Obu, acting for the Family Stool in Badu v. Nkum that Abuoni had occupied the Family Stool.

p.52, 1.7.

Ex. P.
(same as Ex.Q)
p.141.

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Ex. A.
p.148.

41. With regard to the Order of the Native Court on the 13th May 1949 as to the cutting of family ties, Ninson contended that it was ineffective and in any case did not exclude the followers of Eduamoah from the Apaa Yego Family of Nyakrom. In support of the submission that the Order was ineffective be relied upon the Orders made in the Magistrate's Court by Mr. Wallis on the 13th August 1949 and by Mr. Ferguson on the 7th February 1950 and put in without objection extracts from their respective judgments before referred in this Case paragraphs 6, 12 and 15.

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A5 - "B" - 13.
p.149
A6
p.152

42. Besides Ninson, 5 witnesses were called for the Defendant.

p.57, 1.4
& 1.42.

(1) The second witness was Kweku Buah, Gyasehene of Akroso, whose lands adjoin the disputed lands on the westerly side of the disputed lands. He deposed that his ancestor had told him that Akroso Stool land had boundary with Apaa Yego Family of Nyakrom, 4 principal persons in which had been Abuonyi, Otubor, Boafi and Ampiakoko, but he could not say who had founded the lands in dispute.

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p.58.

(2) The third witness was J.B. Quartey, the son of the Plaintiff in Essawah v. Nkum, and a former Ohene of Nkum. His evidence in that action had been relied upon by the Plaintiffs in the present suit to prove that Ampiakoko was the acquirer of Bosompa and Otsinkorang from a former Chief of Nkum (as is stated in paragraph 27 of this Case) as Quartey had then stated. When called in this suit Quartey stated that these lands had been given to the ancestors of Plaintiffs and Defendants, and were the properties of the whole Apaa Yego Family of Nyakrom and, when his former evidence was put to him and that there he had said the lands had been founded by Ampiakoko alone, he explained that Ampiakoko was the then Stool occupant, which was the reason he had

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p.125.

p.58, 11.9-17.

p.58, 11.24-27.
p.60, 11.4-8.

p.60, 11.16-20.

- mentioned his name and he pointed out that he had not stated specifically that Ampiakoko founded the lands alone. In fact his recorded evidence in *Essawah v. Nkum* shows that he had referred to the lands with others as having been given to the "predecessors" of the then occupant of the Apaa Yego Stool of Nyakrom, and had stated that, when his ancestor went with a certain Atta and gave the land to Ampiakoko, he could not tell who also went with them. Record
p.125, 1.51 to
p.127, 11.12-15.
- 10 (3) The fourth witness was Ababio, the Chief of Anamase, who gave the tradition derived from his ancestors that their lands abutted on the disputed land and confirmed the evidence given by his predecessor Yaw Donkor about 39 years earlier in *Sam v. Nkrumah* (otherwise *Wilson v. Mensah*) (Exhibit Y) that the disputed land belonged to the Apaa Yego Family. He deposed that his elder had told him the land belonged to the descendants of Ampiakoko and Abuonyi and, though he could not tell the actual person who first founded the lands in dispute, he 20 relied upon Abuonyi having succeeded Ampiakoko upon the Apaa Yego Stool as showing that the lands were not for Ampiakoko alone, but for the whole family. p.61.
p.122
p.62.
- (4) The fifth witness was Forson, a surveyor acting for the Gomoa tenants about 1933, who deposed that he negotiated with Nkum (of the Ampiakoko section, then on the Family Stool) and that it was intended that an agreement should be made in which would 30 have joined certain other named persons, evidently including the elders of the other sections, though they were not introduced to him as such. This witness produced the plan before referred to of the land (Exhibit B3) showing the farms of the Gomoa Farmers, headed "Nyago" (i.e. Yego) "Family lands and Gomoa Farmers" and dated 2nd June 1931. p.63.
"B.3"
- (5) The sixth witness was one Asua, a man of 70 years of age, the Abusuapenin of the Asona Family of Nyakrom and a son of a male member of the Otsinkorang Section of the Apaa Yego Family of Nyakrom. He deposed that his own family had owned villages 40 adjoining Otsinkorang and Obuafi lands and that there had been litigation between his uncle (evidently from the context in connection with these villages) which had been litigated by all 4 houses. p.64
- The witness was cross-examined as to evidence he was alleged to have given in *Badu v. Donkor* in respect of the lands in dispute and denied that the p.64, 1.27.
p.64, 1.43.

Record
p.65, 1.24.
p.65, 1.1.

p.65, 1.9.

land belonged to Ampiakoko alone but, on the contrary, it was owned by the Apaa Yego Family of Nyakrom, explaining that if he says the land is for Ampiakoko, it does not mean that it is for him alone but for the 4 houses of the Family, and that, if a Chief founds a property, it belongs to all the members of the family.

p.66.

p.148.
Ex. A.
p.148.

43. The Defendants' representative, in addressing the Court, first challenged the Order of the Native Court in Donkor v. Eduamoah (Exhibit "A") dated the 13th May 1949 as to the separation of family ties on the ground that such relief had not been asked for in the Summons, that the other 7 defendants in the present suit had not been parties to the former suit, and that the Order had been reversed by the Magistrates' Court.

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Ex.B, p.149.
Ex.A6, p.152.

He proceeded to comment on the evidence (much even from the side of the Plaintiffs) that before the alleged separation of family ties the lands in dispute had belonged to the Apaa Yego Family of Nyakrom and not to any one section of it, which had been shown by the repeated instances of the Family as a whole defending its title and doing so successfully, and to the title of the Family having been verified by all the surrounding owners of land, that there had been a single Stool for the united Family, and that the Family was one in every respect, that its land was communal but that every member of the family was entitled to where his outlass had ploughed without disturbance in his farm and so on.

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p.72.

p.75, 1.46.

p.76, 11.12-15.

44. On the 18th June 1954 the Agona 'B' Court found that the lands in dispute belonged to the Plaintiffs as the descendants of Ampiakoko, holding that he had acquired the land for his descendants and the Court gave judgment in favour of the Plaintiffs as Ampiakoko's descendants and ordered that they should recover possession of the lands of Otsinkorang, Busumpa and Obuafi.

45. It is submitted that this judgment was erroneous.

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Ex.2, p.184.

In the first place the question of the ownership of the land was res judicata because of the judgment of the same Court in Badu v. Donkor (Suit 115/1951) on the 5th July 1953 which had decided that the lands in dispute were the property of the whole Apaa

Yego Family of Nyakrom including the Ampiakoko Section and not of the Ampiakoko section alone.

Record

46. But if the question had not been res judicata the judgment was still erroneous.

The Court stated the question to be decided by them as follows:-

"Now the question in issue is this: were the lands in dispute i.e. Buafi, Otsinkorang and Busumpa founded by Ampiakoko, the Plaintiffs' ancestor or by Buasfi, Otsinkorang, Abuenyi the Defendants' ancestors and Ampiakoko."

p.74, 1.18.

The question as to who had first acquired the lands was the only issue raised in the original claim of the Plaintiffs for a declaration and that question, having regard to the Defendants' case that their ancestors had been associated in the acquisition, is correctly stated by the Court. But it is submitted that the subsequent amendment of the original claim by a further claim for possession raised much more extensive questions, which would not be answered by merely answering the question which the Court propounded.

It is submitted that the questions which eventually emerged are those set out in paragraph 3 of this Case

47. On the simple question propounded by the Court, namely whether Ampiakoko was alone when the lands were acquired or whether he was accompanied as elders by Buasfi, Otsinkorang and Abuenyi, there was, if not a conflict of evidence, an uncertainty in the evidence as to the presence of the three elders, the then heads of the other houses, which might have justified the Court in finding, on the balance of probabilities, that Ampiakoko was not accompanied by the elders, if such evidence had been rightly approached. The evidence one way or the other was however entirely traditional and had therefore, it is submitted, to be judged by the impact upon it of admitted facts, of which a most important fact was that the lands had been enjoyed in common by the whole united family for generations, and, so far as it appears, ever since they had been acquired.

If due weight had been given to this, it is submitted that it is at least doubtful whether

Record

Ampiakoko was alone without the elders, that the balance of probability was the other way and that therefore the Plaintiffs had failed to prove, for what it was worth, that Ampiakoko had been alone. It appears to be common ground (as unquestioned Akan law) that if Ampiakoko had been accompanied by the elders, he would have been considered to have acquired the lands for them all. But if he had not been accompanied by the elders, he might still have acquired the lands not for himself and his own "descendants" but for the whole Apaa Yego Family of Nyakrom. Admittedly he had occupied the Stool of the Apaa Yego Family of Nyakrom and had done so up to his death, when he had been succeeded by Abueni, either on the Stool (as the Defendants allege) or as Regent (as the Plaintiffs allege). It is established Akan law that upon a person being placed upon a Stool, his previously acquired property becomes Stool property, unless he has previously segregated it, and that, having been placed upon a Stool, so long as he is upon the Stool, all he acquires is acquired for the Stool, unless the product of his previously segregated property.

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The Plaintiffs' evidence in this case indicates that Ampiakoko was upon the Stool at the time of the acquisition of these lands, their witness Abaatan Apu from Nkum deposing that at the time of the acquisition from the Chief of Nkum, Ampiakoko was a Chief. Also the former evidence of the Plaintiffs' witness, Bondam Okwau was that Abeka, the Stool occupant of the Apaa Yego Family of Nyakrom, had stated that Ampiakoko had acquired Otsinkorang land, when he had been the occupant of the Family Stool. But if he were not then on the Stool of the Apaa Yego Family of Nyakrom but was subsequently placed upon it, it is submitted that thereupon, if the disputed lands were not already lands of that Family, they thereupon became attached to the Family Stool and merged with any properties of that Stool.

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It is submitted that the admitted fact of the disputed land being treated as the common property of the Apaa Yego Family is inexplicable except upon the footing that at the time of their acquisition or shortly thereafter they became absolutely attached to the Stool of such Family and were so at the time of the institution of the present suit.

The Agona 'B' Court however considered that the

p.28, 1.16.

p.182, 1.17.
p.183, 1.32.

Record

- mere fact, as they found, that Ampiakoko had alone acquired the disputed lands disposed of the case that the lands in dispute belonged to the whole Apaa Yego Family of Nyakrom, though supported, as they considered it was, by the facts that the title to the lands had been defended by the united Family in Sam v. Nkrumah in 1915 and Essawah v. Nkum in 1935 and that the adjoining landowners had given evidence that their lands formed boundaries with the lands owned by the Apaa Yego Family of Nyakrom.
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48. In coming to the conclusion that the lands in dispute belonged to the Ampiakoko Section alone and not to the whole family, it is submitted that the Court misdirected themselves with regard to the evidence of Asua, the 5th witness for the Defendants, in regarding it as a final point in favour of the Plaintiffs.
- This witness is recorded as saying:- "Each of the 4 houses has a land on which to work".
- 20
- The Court in their judgment transmute this, rightly or wrongly, into "He said all the houses have their individual ancestral lands" and after commenting "We agree with him in that respect", proceed to find that the lands in dispute belong to the Plaintiffs, though the witness had emphatically stated that the lands in dispute did not belong to only one section, that they did not belong to Ampiakoko alone and that the Yego Family owned the lands. It is submitted that, even if the transmutation was right, it does not assist to prove the Plaintiffs' claim unless it had been proved that the Ampiakoko section had no ancestral lands unless the lands in dispute were such.
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49. Even if the Plaintiffs had been entitled to a declaration of title, it is submitted that they were not entitled to recover possession of the three lands and to deprive the persons, members of the other sections of the Apaa Yego Family of Nyakrom, of their rights of cultivation which they had acquired while the lands were being treated as open to all the members of the family for the exercise of such rights.
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- These rights were vested and could not, it is submitted, be disturbed in consequence of anything proved or alleged in this suit.

p.74, 11.16-17.
p.74, 11.1-16.

p.75, 1.48 to
p.76, 1.8.

p.65, 1.28.

p.76, 1.3.

p.64, 1.25.
p.64, 1.43.

p.65, 1.24.

Record

It is submitted that such farming rights, having been lawfully acquired and exercised, were burdens upon the title to the lands, whosoever was or became the owner of the lands.

50. The Defendants duly appealed from the judgment of the Agona 'B' Court to the Supreme Court of the Gold Coast (Land Court).

p.90, 11.21-40. This appeal was heard by Mr. Justice Acolatse who on the 22nd October 1954 held that the claim of the Plaintiffs should have been dismissed and allowed the appeal accordingly. 10

p.87, 11.18-32. He found an admission on both sides that, before the order of separation of family ties contained in Exhibit "A" was made, all the branches or houses of the Yego Family of Nyakrom were one and owned the lands in common under one family stool and one head of the Family. In his opinion the decisions of the Magistrate's Court on the 13th August 1949 and 7th February 1950 nullified Exhibit "A", and he himself considered that it was ineffective against anyone not a party to the action (Donkor v. Eduamoah) in which it was made nor a party to the consent order itself and he considered that it could not be said that the parties to the action before him (suit 383/1953) or the other branches of the Family, having regard to the title of the suit Donkor v. Eduamoah and the conduct of the parties, had agreed to the severance of family ties. In his opinion Exhibit "A" was the main ground for the institution of the action before him since they were no longer one family. 20

p.87, 1.33 to
p.88, 1.24.

p.88, 11.9-15. 30

p.88, 1.24 to
p.89, 1.10. He further held that the Native Court had been wrong on another ground in giving judgment for the Plaintiffs and thereby excluding the other branches of the family, because all the branches had had a common ownership for a very long time under one common stool and under each succeeding head of the Family unit and in his view such lands so commonly owned could not then revert to one branch of the joint family and lose the character of stool property. Presumably he was dealing with the hypothesis of a cutting of family ties on the date of Exhibit "A", for otherwise no question of reverter would arise. He held that all the members of the family had a joint interest in the property "which is indivisible". 40

The learned Judge proceeded to hold that the order for recovery of possession was premature and misconceived. In this connexion he referred to Suit 115/1951 Badu & others v. Donkor (already referred in paragraphs 18, 19 and 23 of this Case), in which the Agona "B" Court by its judgment of the 5th July 1952 had given judgment for the lands in dispute as the property of the whole Apaa Yego Family of Nyakrom, a judgment which was then under appeal, as the learned judge stated, by Donkor, who has resisted the claim made on behalf of the whole Apaa Yego Family of Nyakrom and had claimed the properties in his possession for the Ampiakoko Section alone. The learned Judge stated (it is submitted rightly) that the issues were identical with the issues in the present suit, the evidence for the Defendant Donkor had been almost the same as in the present suit and the lands claimed in the former suit were the subject matter of the appeal in the present suit then before the learned Judge. He stated that in consequence of the appeal in the former suit the Plaintiffs in it had been deprived of execution upon it, so were not in possession of the land claimed, consequently the Defendants in the present suit had nothing to give up.

He held that, though the Ampiakoko Section had deposed Donkor from being their Abusuapenin, yet as head or ex-head (semble, of the Apaa Yego Family of Nyakrom) he still was the person holding the title to and the possession of family properties either for the joint family or for the Ampiakoko section after the alleged "cutting of the family ties" and in his view the said title to and possession of the properties for and on behalf of the family (i.e. the Apaa Yego Family of Nyakrom) remained in Donkor until he was divested of his title and possession either by a judgment of a competent Court or by the branches or houses of the whole Apaa Yego Family of Nyakrom.

In allowing the appeal, by setting aside the judgment of the Agona 'B' Court and dismissing the Plaintiffs' claim, he said that this did not vest the title or the possession in the Defendants as against the Plaintiffs or any one else.

51. It is respectfully submitted that the learned Judge should have allowed the appeal, set aside the judgment of the Agona 'B' Court and dismissed the Plaintiffs' claim on the ground that the Plaintiffs

Record
p.89, 1.11.

pp.174 seq.

p.184.

p.89, 1.17 to
p.90, 1.2.

p.90, 11.2-20.

p.90, 11.21-30

Record
p.184.

were estopped by the previous judgment of the Agona 'B' Court of the 5th July 1952 from claiming, on behalf of the Amplakoko Section, either the title to the lands in dispute or the possession and that any other grounds were unnecessary.

Subject to this overriding submission, it is respectfully submitted:-

That he correctly found an admission by both sides as to the former community of property;

That the learned Judge was right in holding that, if there had been a cutting of ties and if the lands had initially been acquired by Amplakoko, nevertheless they had clearly become the co-parcenary property of the whole Apaa Yego Family of Nyakrom and could not and did not upon the cutting of family ties (if they had been cut) cease to be such co-parcenary property and become the separate property of the Amplakoko Section;

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That his opinion that, as the Defendants were not in possession, no judgment for recovery of possession was possible against them was correct;

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That he rightly held that the title and possession of the lands in dispute had remained with Donkor as Abusuapenin of the Apaa Yego Family of Nyakrom until he was divested of his title and possession by a judgment of a competent Court or by the houses of the whole Apaa Yego Family of Nyakrom but that the true position at the date of the judgment of the learned judge (as also at the date of the judgment he set aside) was that Donkor had been removed and the 1st Defendant Badu substituted as Abusuapenin of the Apaa Yego Family by the Houses of the whole Apaa Yego Family on the 22nd November 1950 and that this and the consequent transfer of the rights of, and title as, Abusuapenin to the 1st Defendant Badu had been recognised and become res judicata by reason of the judgment of the Agona 'B' Court on the 5th July 1952 in Suit 115 of 1951 ("Badu v. Donkor") and that this res judicata was not obviated by the pendency of the appeal in Suit 115 of 1951 though, because of such appeal, the 1st Defendant and the other plaintiffs in the present suit (No. 383 of 1953) had not received possession under the judgment in Suit 115 of 1951.

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52. (a) The Plaintiffs appealed from the judgment of the Land Court to the West African Court, who, on the 3rd April 1956, unanimously allowed the appeal, set aside the judgment of the Land Court and restored the judgment of the Agona 'B' Court.

Record
p.109, 1.12.

The judgment of the Court was delivered by the President.

10 (b) In the course of reciting the facts, the learned President stated that the Defendants, members of the houses other than Ampiakoko's, were sued as the persons who had actually taken possession of and asserted title to the three lands as against the Ampiakoko house. Among the grounds of appeal, No.5 had been: "The finding that Defendants were not in possession was unsupported by any evidence on record. The Defendants were not sued in their representative capacities; they were sued individually as persons being in possession of the lands in dispute."

p.104, 1.41.

20 This ground of appeal was, it is submitted, an afterthought which ran contrary to the conduct of the suit by the Plaintiffs and indeed by the Defendants. The contest was in substance as to whose ancestors had originally "founded" the lands, and whether the title to the lands was in the Apaa Yego Family of Nyakrom or in the Ampiakoko section of it - and no question of possession except possession in law in consequence of title to the land was investigated or discussed and no evidence was given
30 that any of the persons against whom the suit was brought was upon any of the lands, even as exercising farm rights thereon. As the learned Judge had stated, owing to the appeal from the decision of the Agona 'B' Court in Badu v. Donkor (Ex.2), Badu and those associated with him had not been able to obtain the possession on behalf of the Apaa Yego Family of Nyakrom which that judgment had given to them.

40 It is submitted therefore that the Court of Appeal misconceived material facts bearing on the initiation of the present suit and on the judgment in the present suit for recovery of possession.

(c) The Court of Appeal considered Exhibit A (the order of the 13th May 1949) in its bearing on the severance of the family tie and held there had

p.105, 11.5-40.

Record
p.106, 11.30-47.

been a severance as recorded in Exhibit A, rejecting the finding of the Land Court that there had been no valid severance.

It is submitted that, for the purpose of the decision of this suit and appeal, it does not ultimately matter whether there had been or had not been a severance of family ties on the 13th May 1949.

If there had been no severance of family ties then no question arises, in consequence of severance of family ties, as to any severance of family coparcenary property or as to the continuance of Donkor as Abusuapenin of the whole Apaa Yego Family of Nyakrom and as such in possession for the Family of the Family properties, from which position and right of possession however he had been removed by the Family Meeting and the 1st Defendant Badu placed in his stead. 10

If on the other hand there had been a separation of family ties, it is submitted that the position was as is submitted in paragraph 10 of this Case, that Donkor was still the guardian of the undivided family properties until he had been removed from his position with its appendant rights and duties by the Family Meeting and the 1st Defendant Badu placed in his stead. 20

p.106, 1.48
seq.

The Court of Appeal stated that the learned Judge expressed a view as a general proposition that the lands of a family stool cannot revert to one branch of a family, but that the Native Court, in the particular circumstances, held that on severance each house assumed title, to the exclusion of the other houses, of the lands acquired by its founder, and that this was a finding on the native custom applicable to the case, which was the custom of "cutting ekar" dealt with in Sarbah's Fanti Customary Laws (1897) at p.31. The Court of Appeal considered that this was a finding of fact which the learned Judge could not, on the material before him, be satisfied was wrong. 30 40

The President then cited from the Judgment of the Privy Council in *Angu v. Attah* (P.C.1874-1928 p.43 on 44), a Judgment given in the year 1916, as to proof of the customary land law in the Gold Coast Colony. Lines 30 to 45 in p.107 of the Record,

though appearing as if from the judgment of the Privy Council, are observations on it by the President, who concluded this part of his judgment by holding that the Land Court should not have interfered with this finding of the Agona 'B' Court.

10 (d) It is submitted however that while the Land Judge had expressed a general proposition resembling that attributed to him by the President, he had carefully related it to the facts of the particular case.

It is also submitted that the learned President was in error in holding that the Agona 'B' Court had made a finding on the native custom applicable.

20 The 'B' Court said that they held the view that Ampiakoko founded the lands for his descendants (as to which submissions have been made in paragraph 46 of this Case) but they failed to rule upon the question to which the Land Judge addressed himself, of the lands having for so long belonged to the whole Apaa Yego Family of Nyakrom attached to the common stool of that family and it is submitted that they cannot be considered, by omitting to rule upon the question, to have found the native custom with regard to it. It is further submitted that the President was not justified in assuming that the learned Trial Judge was not taking judicial notice of a custom of which judicial notice ought to be taken or, in effect, in assuming that the learned Trial Judge, himself of Gold Coast birth appointed to the Bench after long practice at the Gold Coast Bar, was not as well, or better, versed in the customary law of the Gold Coast as the Agona 'B' Court whose decision was under appeal, particularly when their decision was contrary to the previous decision of the same Agona 'B' Court, differently constituted.

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p.75, 1.46.

40 (e) With regard to the argument that if Ampiakoko was the occupant of a Stool when he acquired the lands in dispute (which some of the evidence of the plaintiffs themselves supports) and that therefore the lands became attached to the Stool, the Court of Appeal accepted as the law that all property acquired by a stool holder while on the Stool enures to the Stool (though this proposition was too widely stated by the learned President, vide paragraph 46 of this Case). But the Court of Appeal

p.108, 11.31-47.

Record

considered that the finding of the Agona 'B' Court that Ampiakoko founded the lands for his descendants rejected the contention of the Defendants that he was already upon the Stool of the Apaa Yego Family when he founded it and the Court of Appeal considered it probable, on the evidence, that he was elected to that Stool long after he had acquired the lands. What the Plaintiffs contended was that he had acquired the lands alone and not in association with the elders of the whole Apaa Yego Family, that is, it was a self acquisition, and assuming that this is accepted it could only have been done (as the Court of Appeal think probable) before he was elected to the Stool of the Apaa Yego Family of Nyakrom. 10

As a self acquisition, it would fall within the other branch of the customary law (which the Court of Appeal omit to refer to), and upon Ampiakoko coming to the Stool the properties would become attached to the Stool of the Apaa Yego Family of Nyakrom, unless Ampiakoko at that time reserved them for himself and his "descendants". The subsequent course of events, it is submitted, negatives any such reservation. It is respectfully submitted that neither the Agona 'B' Court nor the Court of Appeal considered sufficiently the destructive impact of the facts upon the evaluation of the traditional evidence of the Plaintiffs. 20

(f) The learned President concluded his judgment by holding that the Land Court should have disregarded as irrelevant the suit of Badu v. Donkor, under appeal when the judgment of the Land Court was given. The Appeal Court gave no grounds for holding the proceedings in Badu v. Donkor irrelevant. It is respectfully submitted that the proceedings were relevant and that the Plaintiffs' claim in the present suit should have been dismissed on the ground that the judgment of the Agona 'B' Court in Badu v. Donkor constituted an estoppel against the claim of the Plaintiffs. 30 40

p.110.

53. Upon the 27th July 1956 the West African Court of Appeal duly granted to the Defendants final leave to appeal to Her Majesty in Council and this appeal is now proceeding pursuant to section 2 of the Ghana (Consequential Provision) Act 1960 and the Ghana (Pending Appeals to Privy Council) Order in Council 1960.

54. The Appellants respectfully submit that this appeal should be allowed, with costs throughout, the judgment of the West African Court of Appeal of the 3rd April 1956 set aside and the judgment of the Supreme Court of the Gold Coast (Land Court), of the 18th June 1954, dismissing the Plaintiffs' claims, restored for the following (among other)

R E A S O N S

- 10 (1) BECAUSE the Plaintiffs were estopped by the judgment of the Agona 'B' Court pronounced on the 5th July 1952 in the suit No. 115/51 Badu & others v. Donkor;
- (2) BECAUSE none of the Defendants were in possession of the lands in dispute except possibly of parts in the exercise of vested rights of cultivation, and no judgment for recovery of possession should have been made against them;
- 20 (3) BECAUSE the Plaintiffs did not prove their title to the lands in dispute as representing the Ampiakoko Section of the Apaa Yego Family of Nyakrom;
- (4) BECAUSE the Defendants proved the title to the lands in dispute of the Apaa Yego Family of Nyakrom;
- 30 (5) BECAUSE the Defendants could not be deprived of any usufructuary rights they had acquired before the cutting of family ties, and the Agona 'B' Court did not consider whether such rights existed and what they were nor make any judgment for recovery of possession (if proper to make such a judgment) subject to such rights as may have existed;
- 40 (6) BECAUSE the Defendants proved that for a very long time the Apaa Yego Family of Nyakrom had one common ownership of the lands in dispute under and as attached to the one common stool of that Family under each succeeding head of that family unit and such common ownership was not severed ipso facto by the cutting of family ties and had not been severed otherwise at the time of action brought;

- (7) BECAUSE the finding of the Agona 'B' Court in this suit that the lands in dispute had been acquired by Ampiakoko alone was against the weight of the evidence regarded as a whole;
- (8) BECAUSE the judgment of the Agona 'B' Court on the 18th June 1954 was contrary to the customary law;
- (9) BECAUSE, as the Magistrate's Court at Winneba rightly held, the purported order of the Agona Native Court 'B' dated the 13th May, 1949 was not an order with which the parties need comply; 10
- (10) BECAUSE none of the Defendants, except Kwesi Eduamoah, was a party to the proceedings in which the said order was made;
- (11) BECAUSE the said order did not effect the partition of the Stool land;
- (12) BECAUSE the said order only provided that the properties belonging to the Family should be later settled amicably between them by Nana Kobina Botchey who should see to the division of such properties and no such division was ever made; 20
- (13) BECAUSE Exhibits C, D, E, F, G, H, I, J, K and L were wrongly admitted in evidence;
- (14) BECAUSE the Agona Native Court 'B' and the West African Court of Appeal were wrong in making an order for possession without granting a declaration of title; 30
- (15) BECAUSE the Native Court and the West African Court of Appeal failed to have regard to the proceedings in the General Meeting of the Yego Family (Apaah Quarters) on the 22nd November, 1950;
- (16) BECAUSE the judgment of the Land Court in dismissing the suit was right and should be restored.

DINGLE FOOT.

GILBERT DOLD.

A P P E N D I X

DESCRIPTION OF THE AKAN ABUSUA FROM
SARBAH'S FANTI CUSTOMARY LAWS

Note the suffix "fu" in these extracts is a word of plurality signifying membership of a group, class or order, e.g. Akanfu, the Akan people; Ahinfu, Chiefs; Abusuafu, members of a particular Abusua;

10 The extracts are from the pages of the 1st edition (1897) indicated at the head of each extract and the corresponding pages of the 2nd edition (1904) are also indicated.

EXTRACT 1

(From 1st edition page 3.
2nd edition page 4 corresponds)

20 The whole of these peoples are divided into twelve tribes or clans, wholly irrespective of their several and distinct nationalities. Individuals belong to one or the other without natural^{*} distinctions, and it is a characteristic of each tribe or clan, that the members thereof call each other brothers and sisters, father and mother. ...
.....

* Note: It is submitted that the word "natural" above is a misprint for "national".

EXTRACT 2

(From 1st edition page 4.
2nd edition page 5 corresponds)

30 As far as can be relied on, these are the principal clans, divided sometimes into three principal classes: Akonnoi, Abrotu, Aburadi, Nsonna, Annona, Yoko, Ntwa, Abadzie, Appiadie, Twidan, Kwonna, and Dwimina. It goes without saying that the Akanfu have a different name to some of these clans.
.....

EXTRACT 3

(From 1st edition page 5.
2nd edition pages 5-6 corresponds)

Others, who have studied this interesting subject, say the various tribes above mentioned were comprehended in seven great families, in which the members still class themselves and recognize each other, without regard to national distinctions, viz:

- 1. Nsonna, in some localities known as Dwimina.
- 2. Annona, Yoko, Aguna, or Eguana. 10
- 3. Twidan, Eburotuw.
- 4. Kwonna, Ebiradzi, or Odumna.
- 5. Aburadzi, Eduana, Ofurna, or Egyirna.
- 6. Ntwa, Abadzi.
- 7. Adwinadzi, Aowin.

.....

EXTRACT 4

(From 1st edition page 32.
2nd edition pages 34-35).

(iii) Partition is of rare occurrence, where persons live in the same town or locality. It takes place where two branches of one family, living in separate localities, agree to relinquish to the other, all claim to whatever family property that other has in its possession. 20

E.g.: The family of Anan is divided into two branches, one residing in the family house at Chama, and the other branch living on the family land at Siwdu. As soon as the two branches agree to give up all claim to the property in each other's possession and retain what each has, none of the members of the Chama branch is considered member of the Siwdu family. The successors to each property will be selected from each branch. If one branch get into family difficulties, and the members thereof decided to sell their possessions, the other branch cannot stop such sale. But if at any time the right person to succeed to one branch of the family be a minor, then the headman 30

or senior member of the other branch is, by his position, guardian. On failure of the legal successors, the two branches merge, and the existing line succeeds to both. Partition does not cause an absolute severance from one's family.

EXTRACT 5

(From 1st edition pages 33-35. 2nd edition pages 36-39 corresponds except as noted and with minor addenda)

10 The members of the family are termed Ebusuafu. The normal condition of a Fanti family being joint, the law throws the burden of proving that a family has ceased to be joint, or that a person has ceased to be a member thereof, on the person asserting it. There is no limit to the number of persons of whom a family may consist, or to the remoteness of their descent from the common stock, and consequently to the distance of their relationship from each other. But the Fanti coparcenary, properly so called, constitutes a much larger* body. When we speak of a joint family as constituting a coparcenary, we refer, not to the entire number of persons who can trace descent from a common female person, and among whom no cutting of the ekar has ever taken place; we include only those persons who, by virtue of relationship, have the right to enjoy and hold the joint property, to restrain the acts of each other in respect of it, and to burden it with their debts. Outside this body there is a fringe of persons who possess inferior rights, such as that of residence in the case of children, of maintenance in the case of domestics, or who may under certain contingences hope to enter into the coparcenary.

20

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The ordinary incidents of a family are - **

- (i) A common penin.
- (ii) Common liability to pay debts.
- (iii) Common funeral rites.
- (iv) Common residence.
- (v) Common burial-place.

* Note: It is submitted that "larger" is a misprint for "smaller".

** Note: The 2nd edition heads the list with "(1) Common clan" and continues as in the 1st edition, renumbering the list accordingly.

In the native courts, and with the experienced Judges of the Supreme Court, these several incidents are most carefully looked into in deciding contending claims, and for any light which may be thrown upon the matter, the opinion of the neighbourhood, and the statements of domestics and friends and servants, are received in evidence. *Amonoo v. Ampima.*

(i) A common penin (elder), also called Egya, father.

The Senior or other male member of a family who has control of the family, and is its representative, is called the penin, or egya. Such person may be a freeborn person of the heritable class (Dihi) known as the head of the family, managing and directing its affairs; or he may be the person who first brought wealth into the family; or increased its importance by buying slaves or receiving several persons by way of commendation; or who, by some act or deed, had increased the family possessions. The penin has control over all the members of the family and the issue of such members. Where the founder of the family is deceased, then the senior male member in the line of descent is, in the absence of any direction to the contrary, the penin. As such, he is the natural guardian of every member within the family. He alone can sue and be sued, as the representative of the family, respecting claims on the family possessions, and he is as much the guardian and representative for all purposes of property as the Roman father-Paterfamilias.

The penin is usually one whose fitness had been recommended by the immediate predecessor, and who had been confirmed in his position by all, or by the majority of, the principal members of the family.

The principal members of the family have the right to pass over any person so recommended, and to elect another member of the family instead. Where the penin suffers from mental incapacity, or enters upon a course of conduct which, unchecked, may end in the ruin of the family, or persistently disregards the interests of the family, he can be removed without notice by a majority of the other members of the family, and a new person substituted for him.

In the absence of the penin, the eldest male member of the family acts as penin, for the long

absence or incapacity of the penin must not prejudice the interests of the family.

Like other members of the family, the penin has but a life interest in the immoveable property of the family.

10 (ii) Common liability to pay debts. Not only does the Customary Law render the person or persons who defray the burial expenses of any person liable and responsible for the debts of the deceased, but, as Bosman states, the members of a family and the head thereof are jointly and severally responsible for any family liability. If a member of a family contract debt which benefits the family, or commit a wrong for which he is liable to pay damages or give satisfaction, the other members of his family are bound to pay, or such member must be given up by the family to the person making the claim. If the family do not wish to be held responsible for the future acts of a certain member, there must be a public notice of their decision to that effect, and such person must be expelled the family, thereby severing his connection with them.

20

.....

(iv) Common residence. Persons who have a right to reside in the family house, or the right to dwell on the family possessions unconditionally, are members of the same family.

30 (v) Common burial-place. It is customary for the family to have a common burial-place, which may be either in the dwelling-house, or a grove or a plot of land set apart for burial.....

IN THE PRIVY COUNCIL

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

B E T W E E N :

1. KWAMI BADU
2. KWESI AYIAH
3. KWESI TEKYE
4. KWESI EDUAMOAH (since deceased)
5. KWAMI OTSINKORANG (since deceased)
6. KWAKU ESSEL
all of Nyakrom (Defendants)

1. V.K. NINSON
2. G.N. HAYFORD
all of Nyakrom (Co-Defendants)
Appellants

- and -

1. AMBA AMOABIMAA, Queen Mother of
the Ampiakoko Section of the
Yego Family and
2. KOFI BOYE, the Family Linguist
of the said Family

on behalf of themselves and as
representing the other members of
the said Family of Apaa Quarters
Nyakrom (Plaintiffs)

Respondents

CASE FOR THE APPELLANTS

Lodged the

December 1960

A.L. BRYDEN & WILLIAMS,
53, Victoria Street,
London, S.W.1.

Solicitors and Agents for
the Appellants.