

Q. In fact the control of the Oloja and chiefs of Ajuwe would first have to be obtained?

A. Their consent is not needed, though desirable.

Q. Was the Lisa wrong, then, in saying yesterday that (in a similar case) the consent of the Olojo of Igbindo would have to be obtained?

A. The Lisa was not wrong. He was referring to lands of Igbindo other than common land.

Q. But "family lands" cannot be touched at all?

A. No. Lisa did not know common land was being talked about.

Q. What could he have been thinking about? All land must be common or family?

A. My questions seem to be quite different to those put to Lisa—the questions put to me are as sharp and strong.

Q. Is the individual ownership of land recognised either in town or country?

A. No. It is the "family" land system.

Q. In course of time all Ondo country will become family land as the population increases?

A. Yes.

Q. If land was granted to, say, a Lagos man, and he (the cultivator) died, what would become of the land?

A. If his son applied for a renewal of the grant to him it might be granted—otherwise it would revert to the Osemawe.

Q. Would such a man be allowed to grow produce for the export trade—say cocoa?

A. No.

Q. Could the Osemawe grant land, say, at Eluju—without consulting the Ondo chiefs?

A. No.

Q. Take Patrick Akinlade's town land in Ondo, is that belonging to his family.

A. Yes.

Q. Could they sell it?

A. Yes, but they dare not.

Q. Why "dare they not"?

A. If all the family consented, all right; but the sale would have to be to an Ondo man.

Q. Apart from rubber licences and timber money, what revenue do the heads of the community get from the usage of the land?

A. No other money—yams, palm wine, and corn are given to the chiefs.

CORNELIUS A. AWOSHKA,
Native Council Clerk.

Taken by me,

S. M. Wood,

District Commissioner,
6th November 1912.

DANIEL AFUWAPE ROGERS.

Q. Are you of Ondo tribe?

A. Yes, I am grandson of a farmer Asemame, I am a tailor and general trader.

Q. Are you a landowner?

A. I am part owner in the land of my family. There is land in this town and land in the bush.

Q. Is your bush land large?

A. One area is on Abuba Road, one on the Ileluje Road; they are all large. I cannot say the size, nor the boundaries. I know where they are, but not being a farmer do not know much about them. I know they have boundaries.

Q. How did your family get them?

A. My ancestors were the first to take possession of it.

Q. Can your family sell it?

A. No, not to any one.

Q. You could let it on lease?

A. Yes, but not for cash rent—only for farm produce. In the case of a foreigner cash can be accepted annually, to show the latter that the land is not sold to him.

Q. Why the distinction? It cannot be sold to either Ondo or foreigner?

A. An Ondo will know the land is not his own.

No more enlightening explanation could be obtained from the witness.

Q. Can your town land be sold?

A. If the whole family agree.

Q. Why can town land be sold but bush land not?

A. Because no one can live in the bush all his life, and the Osemawe has control over the bush, and moreover the family get their food from the land.

Q. Does your family pay tribute on account of your bush lands to the heads of the community?

A. No, only villagers pay tribute.

Q. Please explain?

A. The chiefs of each village call on their people for contributions in food, palm wine, &c., and when collected the stuff is sent to the Osemawe; they do this when called upon to do so by the Osemawe for annual festivals.

Q. Could anyone take your lands from you?

A. None.

Q. Could the Osemawe grant part of your land without your consent to anyone?

A. No.

DANIEL A. ROGERS.

Taken by me,

S. M. Wood,

District Commissioner
6th November 1912.

ODUNDUN.

Q. You were messenger to the late Awa of Idaure?

A. Yes.

Q. What are you now?

A. Messenger to the Idaure council.

Q. When a new Awa is appointed will you be his messenger?

A. I cannot say.

Q. Are you of Idaure tribe?

A. Yes.

Q. What people are they?

A. Our ancestors came from Ife.

Q. Have you the same land laws as the Ondos?

A. Yes.

Q. What is the native law of tenure?

A. The land belongs to the Owa—everyone in Idaure farms where he likes.

Q. So that any Idaure can go into the bush, clear land, grow crops and say nothing to anyone?

A. No.

Q. What is it, then?

A. Everyone goes to where his father worked.

Q. Then each family has its own land?

A. Yes.

Q. Is all Idaure divided up among families?

A. No, any man can come to my farm to work, and I can go to his farm to work.

Q. People do not necessarily go to where their father worked?

A. No.

Q. Is there no land which has been used by the same family for generations?

A. No.

Q. Then all Idaure is one common land?

A. Yes.

Q. Is the individual ownership of land in the bush recognised?

A. No.

Q. Is the system of "family" ownership of land recognised in the town itself?

A. Yes.

Q. Do the cultivators pay anything to the Owa?

A. The chiefs send presents of yams.

Q. Supposing an Ibadan man applied for a grant of land—what would happen?

A. The Owa would grant it and ask for nothing. He could stay there all his life and pay nothing.

Q. Why should he pay nothing?

A. No reason.

Q. When the man died what would become of the land?

A. It would revert to the Owa; if the man's children wanted to stay on the land we would let them.

Q. But would they not in course of time claim that land?

A. No one has played us that trick yet.

Q. Take Onishere—is that in Idaure?

A. Yes.

Q. It does not belong to you alone?
 A. No—it belongs to me and my relatives on the
 other's side—my mother's relatives have no share
 in it.

Q. It has been stated that any man can work on or
 use the land belonging to his mother's family—is that
 correct?
 A. Yes, I can go on the family land of my mother's
 family.

Q. Have you a town house and land in Ondo town?
 A. Yes, at Oke-Owo quarters

Q. Have the people of that quarter all got farms
 in the Oke-Opa road direction?
 A. Yes.

Q. Who is the headman?
 A. The Luwawo.

Q. Has he control over all the Oke-Owo land?
 A. Yes.

Q. To what extent?
 A. If a man from another quarter wants to farm
 on it he will have to get Luwawo's consent.

Q. If Luwawo consented where would he locate the
 man?
 A. Luwawo will know.

Q. He cannot put him on another man's farm?
 A. No.

Q. Is there, then, common land not belonging to
 any family included in the Oke-Owo area?
 A. No.

Q. Then an applicant could not get land?
 A. No.

Q. Had there been land to spare, could Luwawo
 grant it without consulting the Osamawe?
 A. No.

Q. Could the Osamawe grant land in the Oke-Owo
 quarter without referring to the Luwawo, or if Luwawo
 objected?
 A. Osamawe would certainly have to refer to him,
 but whether Osamawe could override Luwawo's wishes
 I do not know.

Q. If all your family agreed could the family sell
 the bush land?
 A. No.

Q. What about the town land?
 A. No—that could not be sold either—it is against
 native law.

Q. But land can be leased out?
 A. Yes.

Q. Is there any land in Ondo territory where there
 are no villages, no people, no farming?
 A. Yes.

Q. Would you call that communal land?
 A. Yes. It is called the King's land.

Q. Under the control of the Osamawe?
 A. Yes.

Q. What is the extent of his control over it?
 A. He could grant areas in it to natives of Ondo
 in perpetuity with the advice and consent of the
 remainder of the council.

Q. How would a Lagos man obtain such a grant?
 A. If the Osamawe agreed—a document would be
 drawn up and annual rent fixed—the rent would be in
 cash.

Q. Once the Osamawe has granted land to an Ondo
 man can he revoke the grant?
 A. He would not do it.

Q. But has he the power?
 No direct answer could be got to this question.

Q. In the case of a foreigner, can he revoke it?
 A. Yes.

Q. If the foreigner died, what becomes of the
 land?
 A. It goes back to the Osamawe, unless the lease
 is renewed by the man's children. A fresh paper
 altogether.

Q. Can the Osamawe grant a mahogany concession
 without the consent of the council?
 A. No.

Q. Are the farmers—being Ondo natives—under
 any rules as regarding tribute to the heads of the
 community?
 A. The village give annual presents to the Osamawe
 of snails and bush meat. The people of Ondo town
 give nothing in respect of their lands except what they
 like to give for the annual festivals.

Q. If a village fails to supply the snails and bush
 meat, are they liable to a penalty?
 A. Yes, the Osamawe could fine them. I have
 known of instances. Goats are not given, nor yams.

Q. Why are the village punished, and the people
 living in Ondo are not?
 A. Because Ondo town is where the Osamawe
 himself is living.

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 OSHINOROHUNBOYE ×
 mark.

Witness,
 J. L. OLOWA, Second Class Clerk.

Taken by me,
 S. M. WOOD,
 District Commissioner.

POPOOLA.

Q. Who are you?
 A. The chief messenger of the Deji of Akure.

Q. What tribe are the Akure people?
 A. Ekitis.

Q. Who is the native over-lord of all Ekitis?
 A. The Elekole of Ikole (in Ilesha district) who is
 over the Deji of Akure.

Q. Prior to British occupation were Ikoles and
 Akures all one?
 A. No.

Q. Why not?
 A. Only in war were they one.

Q. Did Deji pay tribute to Elekole in times past?
 A. No.

Q. Then Elekole is not over the Deji?
 A. No.

Q. When did the Ekiti first go to the Akure?
 A. Akure has been in existence since the beginning
 of the world.

Q. Did the Ekitis come from Ife in the beginning?
 A. I believe so.

Q. Then Akure was not there from the beginning
 of the world?
 A. I said that because I did not know the time.
 When God created the world He created Akure at
 the same time.

Q. Is it a fact that no man in Akure possesses
 land?
 A. No. Every chief owns land.

Q. Then nobody but a chief owns land?
 A. Yes, anyone whose father owns land inherits it.

Q. Does the land belong to one man?
 A. No, to the family.

Q. There is no such thing known as one-man
 ownership?
 A. No.

Q. Is every Akure man a part owner in land?
 A. Yes. No man is without a share.

Q. Has the Deji his own private family land?
 A. Yes.

Q. Can the Deji take any man's land from him?
 A. No.

Q. Is all Akure land divided up among families?
 A. No, part of it near the Ogbesse River is used by
 everyone indiscriminately.

Q. How is it used?
 A. People go there and farm wherever they like.
 Some people stick to the particular patch they have
 cleared and cultivated.

Q. Would such people hand on that patch to their
 children?
 A. Yes.

Q. Then it would become "family land"?
 A. Yes—"Oko baba mi" (my father's farm).

Q. Then in course of time that part of the country
 will all become "family land"?
 A. Yes.

Q. Can a family sell their family lands or give
 them away?
 A. No.

Q. If all the family are in agreement on the sub-
 ject, why can they not sell it?
 A. Because the young children will ask afterwards,
 "Where is our land"?

Q. But could the family be punished for selling their land?

A. The Deji would be angry, saying, "Why do you sell my land without telling me?"

Q. But it is not the Deji's land, is it?

A. Yes, it is all under him.

Q. But the Deji cannot take "his father's farm" from any man?

A. No.

Q. Does each family sell or give that town land away?

A. No; all that can be done with either town or bush land is to keep it or let it out on lease.

Q. Could an Ibadan man get land in Akure country?

A. Yes, he would go the Deji, who would make him enter into a deed containing the following words: "That this Ibadan man must not grow cocoa, coffee, rubber—that he must only plant yams, maize, and other 'foodstuffs.'" The man would also be required to pay rent annually.

Q. You have heard all the other witnesses giving evidence?

A. Yes, but what I have said is correct.

Q. You have heard about cocoa and coffee from the other witnesses?

A. Mr. Pinkett told us about it.

Q. Then this prohibition of cocoa and coffee is Mr. Pinkett's ruling, not native law?

A. It is native law.

Q. If this Ibadan man died what would become of the land?

A. It would revert to the Deji.

Q. Would such a man pay rent in money, or what?

A. In money—that is essential, whatever else is given.

Q. If this Ibadan man wanted land at Ita-Ogbolu, what would he do?

A. He would tell the Elewe (the head chief) of that place, who would see the Deji about it. If the Deji agreed it would be all right; if the Deji disagreed the man would not get it.

Q. Then the head chiefs of different villages have no control over their own village lands?

A. No.

Q. Are you sure, in making that statement, that you are not simply describing things as you would like them to be?

A. No; it is as I have described.

Q. You have recently agreed to grant a timber concession to Miller Brothers?

A. Yes, the Deji and the Akure chiefs.

Q. Could the Deji have granted that without the consent of his council?

A. No.

Q. How, then, can the Deji override the wishes of the Elewe of Ita-Agbon, who is as big a chief as any of the Akure Town Council?

A. Oh, because Elewe is only a villager.

Q. But could the Deji override the wishes of the Elewe in regard to a grant all by himself, or has he to refer to the Akure Council in that too?

A. He must refer to the council.

Q. What would happen if, in regard to a prepared grant by the Elewe, he was supported by the Akure Council, but opposed by the Deji?

A. The council would ask Deji for his reasons; if a deadlock ensued the Deji's will would prevail.

Q. I suggest you are only describing things as you would like them to be?

A. No.

Q. Supposing Deji did grant land to a man, could the Deji revoke the grant?

A. In the case of a foreigner he could—that is, if the man misbehaved himself—but a son of the soil, no; that could not be revoked.

Q. In that part near Ogbesse River which you mentioned, could any Akure man go there and farm without the consent of the Deji?

A. No.

Q. What becomes of all the money the Deji gets from rubber and timber?

A. It is divided between him and the chiefs; the villages get their share.

Q. Is it used in any way for public works?

A. No, the Deji gives presents to those who throw a log of wood across a river as a bridge: part of the money is spent in buying cattle to worship the town idols.

Q. What other money does the Deji get for the usage of the land?

A. None.

Q. I suggest that besides 6s. royalty on every iroko tree felled the Deji gets a couple of bottles of gin?

A. No.

Q. Who does get these bottles of gin?

A. I do not know.

Q. If an iroko tree is growing on a man's farm, why should he not get the 6s. royalty instead of the Deji?

A. The Deji gives 3s. to the owner.

Q. Do you know Akiaro's village?

A. Yes.

Q. What tribe are the people there?

A. Mostly Addo people; they came there about 50 years ago; they came there in time of war—they were not driven away. They came by force. We are all now one.

Q. Then all the land round that village is "family farms"?

A. Yes, "Addo family land" and "Akure family farms."

Q. Where are all the runaway slaves from Benin—have they land?

A. They have no land of their own. I don't know where they are.

POPOOLA
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mark.

Witness,

L. J. OLOWA, Second Class Clerk.

Taken by me,

S. M. WOOD.

District Commissioner,
7th November 1912.

OGUNKOWA.

Q. What are you?

A. The Orongun of Akure. A member of the Akure town or central council—10th man to the Deji.

Q. Are you of Akure tribe?

A. Yes.

Q. What is the fundamental principle of land tenure among the Akures?

A. The hereditary principle—land is handed on from father to children.

Q. How did the forefathers in the first instance get their land?

A. By being the first settlers.

Q. Does all Akure land belong to the Deji?

A. Yes.

Q. What does that mean exactly?

A. He is the over-lord.

Q. What are his powers in regard to the land?

A. Annual tribute in produce is paid to him.

Q. But what can he do and what can he not do?

A. He cannot drive people off the land, nor destroy their crops, nor take their crops for himself, nor take any man's land and give to another.

Q. Can he grant land?

A. No.

Q. It would appear he has no power at all, then?

A. Yes, he can grant land.

Q. Suppose an Akure man went to Deji and said, "Give me land, I don't care where." What would happen?

A. The Deji would tell the council to give him land where they thought fit. It would be in unoccupied land at some distance.

Q. Has the Deji control over all unoccupied lands?

A. Yes.

Q. In course of time all unoccupied lands will be granted to various Akure people and thus become family lands?

A. Yes.

Q. When that occurs the Deji will lose direct control over all his lands?

A. Yes, his control would then become political and judicial.

Q. Is there any native law whereby it is laid down that part of the land must remain communal always?

A. No.

Q. Can the Deji do anything with the land without the advice and consent of his council.

A. No.

Q. Thus Deji's control is limited?

A. Yes.

Q. Is the individual ownership of land recognised?

A. No, all lands belong to families.

Q. Supposing a family altogether consisted of 10 adults, what is there to prevent them, by mutual agreement, dividing up their family land between them—each man or woman his or her share?

A. The head of the family would not allow it.

Q. But if the head of the family agree?

A. Then it would be all right.

Q. Thus one-man ownership would arise?

A. Yes.

Q. Can land be sold?

A. No.

Q. If a family did sell their land would they get into trouble?

A. With the Deji, who would say his land was sold.

Q. But if the sale was between two Akures?

A. Just as bad.

Q. What would the Deji do?

A. It would depend on what the other family told the Deji.

Q. But if the sale was between two families?

A. If both families agree there would be nothing further to be said.

Q. Does that also apply to town lots?

A. No.

Q. Why not?

A. Oh, no—none would allow families to sell town lands.

No further evidence obtainable about this.

Q. If Deji granted land to an Akure would a paper be drawn up?

A. No.

Q. Would the grantee have to pay tribute?

A. No.

Q. But you said an annual tribute in produce was paid to the Deji—who pays that?

A. Every landowner pays yams annually.

Q. But do they pay?

A. Yes.

Q. Then the Deji must get enormous accumulation of yams, &c.? What does he do with it?

A. Some are given to his messengers, wives, to his council, &c.

Q. Can the Deji turn any man out of his land—can anyone do so?

A. No.

Q. Land is sacred?

A. Yes.

Q. How can a foreigner get land in your country?

A. He could apply to the Deji, who would refer to the council; if they agreed, he could take up land, and a deed would be drawn up, the District Commissioner would be informed, rent would be fixed—annual rent.

Q. On the death of this foreigner what happens?

A. If his son were a good man he could continue on the land, but a fresh agreement made—otherwise the land would revert to the Deji.

Q. But if the deed specified the man's "heirs and successors"?

A. The wording of the deed would be observed.

Q. Would such a man be allowed to grow produce for the export trade, e.g., cocoa, coffee, rubber, &c.?

A. No, if he grew such things he would say the land was sold.

Q. But the deed would show in writing that it was a lease, not a sale?

A. I agree that the deed would be safeguard enough, and the man could grow what he liked.

Q. There is nothing to prevent natives of Akure growing cocoa, rubber, &c.?

A. No.

Q. Could a stranger get leave to collect palm nuts all over Akure country?

A. No. Not at all.

Q. What revenue do you chiefs get from the land?

A. Royalties on rubber licences and timber felling permits—nothing else.

Q. If a man wanted to cut down an iroko tree on your private land what happens?

A. He takes a felling permit. 4s. goes to the government, 3s. to the Deji, 3s. to me.

Q. Would you not get gin as well as the 3s., the gin privately?

A. No.

Q. What use is made of the revenue received?

A. Some of it in public worship, some in feeding our families and messengers, &c.

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OGUNKOWA, the Orangun ×
mark

Witness,

J. L. OLOWA, Second Class Clerk.

Taken by me,

S. M. WOOD,

District Commissioner,

9th November 1912.

OSUMO of Akure.

Q. Is Osumo your name or title?

A. A title.

Q. Then what is your name?

A. I really do not know it, because I was made Osumo as an infant.

Q. Are you a chief—a member of the Akure Central Council?

A. Yes, I am seventh man to the Deji.

Q. Is there any communal country in the Akure district?

A. No.

Q. But Orangun (Agunkowa) said there was—is he wrong?

A. No—he was right. I now understand there is a lot of such land between Apom and Owerma rivers—that all belongs to the Deji as over-land.

Q. What can he do with that land?

A. When our population gets thick enough they will occupy that land.

Q. How? Just take up such land as they like?

A. They must tell the Deji first.

Q. Could he prevent them going on it?

A. No.

Q. Then why need they tell the Deji first?

A. Courtesy and politeness to the over-lord.

Q. If an Akure man took up a piece of land in that communal area between Apomu and Awerma without saying anything about it to the Deji—could the Deji turn that man out?

A. He could but he would not.

Q. If the Deji did turn such a man out for such a reason would the Deji become unpopular?

A. No, he would be supported by the other chiefs.

Q. How is land held?

A. Everyone is part owner in lands handed down from his forefathers.

Q. Has the Deji control over such family lands?

A. No, he has only control over communal lands.

Q. If he grants land to an Akure man can he revoke the grant?

A. No. It is in perpetuity.

Q. Can he revoke a grant to a foreigner?

A. Yes.

Q. What would be sufficient reason?

A. For any misbehaviour or going beyond his limits.

Q. Can a foreigner grow cocoa?

A. No.

Q. Why not?

A. If he were told to leave he would point to the trees and say, "If the land was not mine why was I allowed to grow these?"

Q. But would not a legal deed be sufficient to refute such an argument?

A. Yes, it would now—but I was talking of the old days.

Q. Then, no matter what such a man grew under this deed, would he be expected to pay anything but hard cash as rent?

A. No—hard cash is wanted—it is not necessary to know how he raises it.

Q. If a family owns land cannot the family sell it?

A. No.

Q. Why not—what man can stop it?

A. No one can stop it—but public opinion would be too strong—we think of our posterity.

Q. Does that apply to town land also?

A. Yes.

Q. Has each Akure village got its own communal lands?

A. Yes.

Q. Do the village chiefs control that?

A. As long as they consult the Deji—should their wishes in regard to a grant of land clash with the Deji's, the Deji's will must prevail.

Q. Supposing the village chiefs of, e.g., Ilara, wanted to grant land to a stranger in the Ilara communal land—supposing the Ilara chiefs were supported by the Akure Central Council, but opposed by the Deji who for some reason had a personal hatred to the man, would the Deji have to give way?

A. The Deji's will must prevail.

Q. Against all opposition?

A. Yes.

Q. Then the Deji is an autocrat?

A. Yes.

Q. Was the Orongun wrong, then, in saying that the Deji cannot do anything with the land without the advice and consent of the council?

A. A king cannot control a town by himself—he must consult his council.

Q. And abide by what the council says?

A. Yes.

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OSUMO X
mark.

Witness,

J. L. OLOWA, Second Class Clerk.

Taken by me,

S. M. WOOD,

District Commissioner,
9th November 1912.

Enclosure 4 in No. 68.

Bonny,

DEAR SIR,

November 23rd, 1912.

I HAVE the honour to acknowledge the receipt of your letter of September 17th, covering a memorandum of points connected with the system of land tenure in Southern Nigeria on which information is desired by the West African Lands Committee, and to say that I much regret that absence from Lagos very shortly after the receipt of the letter and my being on tour in the Niger Delta districts, and also pressure of work with the affairs of the churches in them, have united hitherto to prevent me from taking up and dealing with the matter. May I ask you to kindly excuse the delay?

2. It may be well for me to premise, in my endeavour to answer the questions asked, that I am not a native born of Lagos or of any other part of Southern Nigeria, though I am, through my parents, tribally connected with both the Ijebu Ode and the Akure districts in the Yoruba country, but of Sierra Leone, where I had served as a mission agent, first in the capacity of a lay worker, and afterwards as a clergyman for 16 years together, before I was in 1874 transferred to Lagos, and subsequently to the interior of the Yoruba country, where I served for some years as a superintendent of the Church Missionary Society's mission in it; and that subsequently and after a second and longer period of pastorate in Lagos I became, after my consecration in 1900, officially connected with the Niger Delta districts, some portions of the interior Ibo country, and the Benin districts.

Unfortunately, I had not made the question of land tenure a special matter of investigation in the inquiries I had made into the customs, religious and social, of the peoples in these several districts. This may

prevent my answers to the questions asked from being as full as they might otherwise have been if I had done this, or if I had been a native born of Southern Nigeria and had grown up in the midst of the customs that dominate the country and which show themselves to be fundamentally alike though they may vary in details. But I hope the knowledge I have acquired incidentally and from the interest I have in a family land through my mother in the Ijebu Ode district, and which I would make use of in answering the questions submitted to me and others, may be of some service to the Committee.

I would have preferred to appear in person before the Committee and answer, or endeavour to answer, the questions asked, as this might have made it possible for me to have a fuller understanding of one of the questions asked—(C); but absence from Lagos has not made this possible. I must therefore content myself with the opportunity afforded me to answer in writing the questions asked as far as it may be possible for me to do so.

3. I beg in reply to question—

(a) to say that the fundamental law of land tenure in Southern Nigeria is individual or family ownership; that this ownership when it is individual has been acquired by the owning individual having been the first person of a community to enter upon, clear, and occupy a piece of land, bush, forest, or otherwise, for farming, building, or other purposes, and that it might have been possible to trace this very far backwards into the distant past in very few numerous cases if family histories or traditions had not been seriously affected by the centuries of intertribal warfare, and the slave trade, and especially the great oceanic slave trade, which have ruined the countries and broken up families; or it might have been acquired through inheritance according to the customary laws regulating inheritance or succession among the different nations and tribes, and sometimes in some districts through purchase.

(b) But the life of the people being everywhere communistic, individual ownership is not commonly so exercised as to exclude apart from that of the immediate issues of an owner, the interest or right of other relatives of his, that interest which kinship gives. This virtually makes individual ownership to become family ownership, an ownership in the exercise of which every member of the family or every descendant from it shares, and which the customary laws of the country confer upon him.

It follows from this that native customary law does not generally recognise an absolute right of possession or alienation, temporary or final, as vested in individual ownership.

Individual ownership with the exercise of an absolute right of possession or alienation may perhaps be sometimes met with in these days, but it is not that which rules the life of the country. I have not noticed any marked distinction among the people in the interior countries in respect of the relative values of what may be spoken of as urban and rural lands. The absence of this may be attributed to the circumstance that the people had not originally lived in large towns which may from their size or other circumstances be regarded as of greater importance as carrying with them higher monetary value if a scale of any portion of them is to be negotiated for.

They had usually lived in villages scattered over large areas, as may be seen to-day in both the Benin and Ibo districts, and not one villager accounts lands in his own village inferior in value to those of other villages and districts, not excluding even those in which their kings or other chiefs reside. It was only for a greater security from the attacks of foes and for united and more effective resistance during the long reign of intertribal warfare that remnants of wrecked and destroyed townships came together and form such large towns as Abeokuta, Oyo, and Ogbomoso in the Yoruba country; and yet while this is the case, each of the different townships in their large towns still holds to its original village home, and it would not allow persons of other townships, though they be of the same tribe with themselves, to farm or build in it, the hope being entertained of an eventual re-inhabitation by its own people.

(c) Individual ownership being generally such as I have described above, it is evident that native feeling cannot, with the great conservativeness of the people, generally favour an extension of such ownership, whatever the direction such an extension may take, especially if it is calculated to affect native institutions, and also if it should not take into consideration the rights also of the family which are involved in those of the individual.

(d) The recognised heads of the community, that is, kings, chiefs, sub-chiefs, with their councillors or elders, exercise no control whatever over the usage of land except it be over their own respective individual or family lands. They have not the power to grant a licence to any cultivator for the use of a land he may desire to cultivate other than their respective own, nor have they the power to revoke any grant or licence that may have been given for the cultivation of produce for export trade or for internal consumption. Lands are often lent to cultivators by their lawful owners, individual or family.

Such loans are never made to carry with them the payment of rents for the use of them, rents that would be the proper values for such a use, but the payment of what is commonly known as peppercorn rent, which may be a few yams or heads of corn annually, and which are intended for an acknowledgment by users that the lands they use are not their own.

This peppercorn rent is always paid directly to an owner or a person deputed by him to receive it for him.

Lands so lent may be cultivated even after the death of the person to whom it was originally lent by his next of kin, who enters into his rights if he desires to do so and the owner is favourable. But if neither borrower nor lender desire the continuance of the relations subsisting between them through the loan, the land reverts in case of the death of the borrower or user to the legitimate owner, however long the relations might have subsisted.

The relation that exists between the cultivator or user and the head of the community is the same that exists between the owner and that head of the community, which is that of a protector on the part of the latter to the former in his rights, in connection with the use of the land lent to him, or in connection with ownership.

(e) I am not aware of the recognised heads of the community anywhere drawing revenues from the usage of land by user or owner for either personal use or for State or tribal requirements. Neither the individual user who cultivates produce for export trade, nor the raiser of foodstuffs for internal consumption or internal trade, pays anything more than a peppercorn rent to an owner for the use of his land, and neither shares with him the proceeds from the sale of their respective produce.

It is not the practice for an owner to allow to a user the privilege of collecting palm nuts from, or tapping palm trees for, the wine they yield on the land lent him.

This privilege the owner reserves always to himself.

Prairies, or grass fields, or forest lands unoccupied are always regarded as the joint and common possession of tribal or township communities, every member of a community having a right to the natural spontaneous products of such lands.

I should, however, mention that lands are not, according to native usage, lent for the cultivation of such economic plants as kola and palm, with which coffee, cocoa, and rubber, which are comparatively recent introductions into the trade of the country, would rank, because of the greater length of time they would take to grow and fructify, and because of their longer lives as fruit-bearing plants, which would make the land they occupy practically the user's or cultivator's, and debar the owner from the use of it when he desires. Lands are usually lent only for the cultivation of foodstuffs or other deciduous plants.

Nevertheless, in some parts of the Ijebu Ode district, e.g., Agbowa and Ikosi, lands have been lent to some Lagos people for the cultivation of cocoa and coffee plants. This was made possible, I think, only

through the ignorance of the aboriginal natives of those districts, at the time the loans were made, in respect of the character of the plants, as plants of the kola and palm class, whilst it is to be feared the planters or users have, in spite of the well-known customary laws of the country safeguarding the rights of owners, wilfully run themselves into the idea of long leases if not of purchase. I have spoken of ownership by purchase, but I should observe that the sale of lands is not by any means common among the people, and that wherever such a practice is found, sale and transfer are limited always and absolutely to people of the same tribe. Such a sale and transfer when effected in Ijebu are confirmed by the Awujale placing an Orisha Oko, a symbol of the divinity supposed to preside over the industry of agriculture, in it upon an invitation to him only as a protector of all his subjects in their respective rights, and for this he receives a fee from the purchaser. This is simply like the seal of the Sovereign of the British Empire to a contract voluntarily entered into by two or more persons between themselves.

The Awujale is no party to the contract, nor is his permission necessary for it.

A farm land may anywhere be passed over by borrower who owns it to a creditor, with the knowledge and consent of his relatives, to be used by him till the loan of money given him, for which he becomes a debtor, is paid. But as soon as repayment is effected the land reverts to its owner, however long the period the creditor had been using it may have been.

If a family land remain from one cause or another a very long time unoccupied anywhere in the country generally, the king or chief would have no power to give that land to anybody for use, for fear of someone belonging to the family turning up some day and claiming it as his own.

Ownership of lands covers both the surface and subsoils, together with all that the latter contain in it.

With regard to the modern conditions of land tenure in Lagos, I beg to say that absence from home has made it extremely difficult for me to make such an inquiry into them as is necessary for the information upon them which you ask for.

It does, however, appear that whilst the individual or family system of land tenure which I have described above is supposed and expected to be observed by the Idejo chiefs, who are the real owners of lands in Lagos, there have sometimes been cases where the law regulating and controlling the system has been violated by persons assuming to themselves an absolute right of possession and alienation; commonly on account of the exigencies of trade in a community which is mainly a trading one, and where the trade is based on a credit system which has too often landed people in debt, and in connection with which mortgages of land properties have often become unredeemable and need be sold off to liquidate debts contracted, on account of a growing disregard in the part of younger members of a family of the authority of heads of families and of the interest of the rights of other members; and perhaps on account also of the issue of Crown grants, which were originally intended to carry with them only a permissive possessory title, but which have been commonly treated now as conferring an absolute right of possession and alienation.

A due observance of primitive customs would, I fear, invalidate many a transaction performed under this assumed claim in the exercise of which members of a family whose rights these customs had protected have sometimes become landless and houseless.

It also appears that where inheritance is not governed by English law, and where Mohamedan law does not interfere, it is, in the absence of a will, controlled by the law that rules it in the Yoruba country generally, and under which the brother or sister of a deceased person becomes his heir and the guardian of his children.

I have no means of ascertaining the extent to which lands have passed out of the hands of their original occupiers through a foreclosure of mortgages,

but judging from what one hears, I fear it cannot be altogether very small.

With due regards,

I beg, &c.
JAS. JOHNSON,
Bishop.

W. Buchanan Smith, Esq.,
Acting Commissioner of Lands,
Lagos.

Enclosure 5 in No. 68.

Commissioner of Lands,
Lagos, Southern Nigeria,
18th November 1912.

SIR,
I HAVE the honour to forward a written statement on the native system of land tenure which was handed to me this morning by its author, Mr. Chris Johnson, Editor of the Nigerian Chronicle.

2. As its scope is very much greater than that of the Lands Office inquiry, which refers to Lagos and the Colony, neither of which are actually mentioned by name, I suggest that the evidence be sent home direct to the West African Lands Committee.

I have, &c.

W. BUCHANAN SMITH,
Acting Commissioner of Lands.

The Hon. the Colonial Secretary,
Lagos.

THE EVIDENCE OF MR. CHRIS JOHNSON, A NATIVE OF LAGOS, ON THE SYSTEM OF LAND TENURE IN YORUBA (SOUTHERN NIGERIA) (Editor of the Nigerian Chronicle).

Before making any statement I feel I must express the opinion that these questions are drawn from the standpoint of English ideas and not from that of native ideas, e.g., "tenure" according to English ideas is a different thing from "tenure" according to native ideas, if there is any such equivalent term in the Yoruba language. And so with "cultivator," and such like words. But for the purpose of this evidence I shall employ the terms with restrictions.

Answer to Question I.

By the question I understand the original usage or elementary rules governing the holding or possession of lands.

The right to the land upon which the Yoruba people now are was acquired in the first instance by their ancestors as the immediate gift of God. It was a *res nullius* (a nobody's land) when they came from across the Niger to occupy and take possession of it. (Tedo.) The nature of the land was what they call an Iju, a wilderness. Tradition gave the name Iju Oyoro—the wilderness of Oyoro—to the territory that was first occupied by the Oyo section of the people, and from that designation we have the modern name of the Alafin's City, Oyo. Other Yoruba tribes, the Benias, the Sabes, the Ketus, the Igbominaas, &c., migrated at different periods to different parts of this wilderness and settled upon it. Each tribe has its own tradition to prove this fact concerning the land upon which they came.

It has been said that the permanent occupation of the same land by a people was the first step towards landed property. And it is a fundamental law in Yoruba that the individual who is the first to enter and settle upon a no man's land (Tedo), and is able to show at any time a mark of first occupation, is the owner thereof. With them the taking possession of that which has no owner is the acquisition of ownership. The leaders of the different tribes, therefore, coming upon a virgin soil, added as a sign of ownership which they have in consequence acquired for themselves and their people the titular prefix *Oni* (owner, possessor)—(This prefix does not and cannot confer on Yoruba kings any possessory rights over lands. Kingship is not hereditary but elective in certain royal families. The connotation of the compounds of *Oni* and *Alayye* ("world owner") by which native kings are addressed

and which are based on a sort of Divine regard that natives have for their kings is beyond the scope of this inquiry)—to their tribal designation, which title they assumed as a temporary embodiment of the tribe.

In process of time and as their numbers increased each tribe had its own frontiers demarcated by rivers, streams, and other physical marks. This procedure they denominate *Ipa Ala* (setting boundaries). A tribal territory was divided into several districts, each district consisting of several villages. A number of villages sometimes come together to form a city, and each city is surrounded with walls, having gates leading to the farms which are always outside the city. A village is composed of several families. The extent of land owned by each family and therefore by each tribe depended, in the first instance, upon the number, the industry, and prospects of its individual members. Each head of a family at the beginning possessed and retained for himself and his offsprings the land upon which he was the first to come, and boundaries were invariably set to mark off the landed property of one family from that of another. Perennial trees, as *Akoko*, *Iperogun*, and *Botuje*, undeciduous plants, were generally used.

Every head of a family who is a citizen has a right to the ownership of land. He comes in for a share of the land owned by his tribe which has not been taken possession of by any other heads of families. The rule is that the head of the tribe for the time being, with the consent of his council, acts for the whole tribe. The head of the family secures a portion out of the tribal land for the whole family, present and future. The individual in turn secures out of the family land for himself and children present and future. In the event of exhaustion or otherwise consequent on increase of population there is the expediency that the head of a family in one tribe is eligible to hold land in another tribe, provided he proves to the satisfaction of the latter tribe that he and his household are willing to follow their fortunes among them. He can dispose of such lands by inheritance but not by grant without the consent of the tribe.

The Yorubas recognise the individual ownership of land through the family, for upon the *paterfamilias* devolve the duty of providing lands for building and farming for every male member of his family. These were often provided from the family or ancestral property held in reserve; and every allotment so made becomes the property of the individual to whom it is given. "No man deprives another of his ancestral lands" (*A ki igba ile Baba eni lovo eni*) is a common saying among the people. He holds it for himself and immediate descendants for ever, subject to any existing right over economic plants which other individual members of the family may lay claim to. For it is an immemorial usage that the individual who was the first to clear or clear the surroundings of any economic plant, be it in his own ancestral land or in that held by the tribe, is the owner thereof. An individual member of a family, by passing into another family of the same tribe, is eligible to hold landed property in the new family to which he is come. No ruler, king, or chief is sole proprietor of the tribal land. The office of a king is generally filled by election. It is therefore impossible for one king and his family to hold the sole proprietorship of the land. The tribe, as owner in the first instance, holds it in trust (*Onitoju*) for its members present and future, and is under a moral obligation, enforced by immemorial usage, to release its control the moment a lawful applicant approaches its representatives. (The tribal arrangement offers common opportunity for obtaining individual soon-to-be family possession of a part of the soil. All lands are received from the tribe unconditionally and subject to no other power. No service of any kind is demanded by the tribe for the gift of absolute and perpetual ownership conferred upon individuals through their families. Ownership was full, free, and for all times. The right could only be forfeited from want of respect for the continued existence of the State and sometimes from disrespect to life and property. Even in this instance it was transferred to the nearest of kin. A forfeiture of the rights of ownership is exercised for the latter offence in extreme cases.

The voluntary service which every adult (male) member of the State owes to his country in maintaining peace, conserving the town, fighting its battles, furthering its progress and preserving the sacredness of the national gods and their groves was incumbent not as a return for land owned but as a municipal obligation.

Answer to Question II.

Among the Yorubas lands are of two kinds, *ile* (house or city lands) and *oko* (farm or rural lands), and individuals through the heads of their families are entitled to one or both according to choice. A man's city lands are always, as a rule, at a distance from his farm lands. Native customary law recognises an unconditioned right of possession, full, free, and perpetual, in respect of urban and rural lands when an individual who is lawfully capable is the owner. Aliens and foreigners are incapable of holding lands, rural or urban, until they have become naturalised by adoption into a family. Matrimonial relations resulting in one or more issues, apart from other interests, are *sine qua non* of such adoption. The landed property, rural or urban, devolves on the children, as next of kin. Where there are no issues the land remains the property of the family, and the personal effects of the deceased are often either returned to his country of origin or they remain the property of the wife or husband.

Native customary law recognises the transfer, temporarily or final, of land rural or urban, by gift, inheritance, and adjudication from a lawful owner with the consent of the family to an individual capable according to native usage to receive and hold lands. In the case of juniors inheriting the lands of their parents, guardians (Alabojuto) are invariably appointed. No fee is paid by the inheritor either to the tribe or to the guardian.

An individual member of a family may, with the consent of his family, grant a portion of his rural land temporarily to a friend who is lawfully qualified to hold it at his, the grantor's, will, subject to any reservation of economic plant owned by the grantor and without any stipulated rent save what the tenant is disposed to give. Such grantee becomes a nominal member of the new family, but virtually a member of his own.

Native customary law recognises the temporary transfer of the ownership of rural lands to one's domestic servant acknowledged as such, without the family's consent—the servant holding it during the pleasure of his master and subject to a stipulated return in kind or money. An agreement can only terminate after a season's crop or by arbitration.

A transfer of land rural or urban involving an exchange by barter or sale for money, temporary or final, is not recognised by native customary law.

The acquisition of land rural or urban by fraudulent possession is not recognised by native law. Such lands revert to the nearest of kin of the original owner; or, where there is no legal successor, which very seldom happens, the tribe gives it to the first applicant capable of holding land.

Answer to Question III.

By this question I understand that the Committee desires to know whether a modification of the present restrictions, making it possible for some or all forms of voluntary transfer sanctioned by other Governments to be introduced, will be viewed with favour by the native; and that he, the native, appreciates the effect such a change would have on his social institutions.

The Yoruba people are in a great measure conservative in the matter of their social institutions. With them customs die hard. But notwithstanding this strong tendency towards conservatism there is the germ of progress in the nation, which has often shown itself on historic occasions—a capacity for adaptation when convinced that such a change would make for the solidarity—the material, moral, and spiritual advancement of the race.

The native land system makes it possible for every natural born member of the Yoruba nation, be he an Omoibole or an Omo, to own and acquire lands and

transfer them by grant and inheritance. An Omoibole is one who is born in the same tribe as are his parents. An Omo is one who is born out of a tribe where one at least of his parents is a member. He has a claim to be called an Omoibole of the tribe where he and one of his parents were born. A child who is born out of the tribe of either of his parents is an Omo in the native land of both parents. The children of two foreigners, born in a country where their parents temporarily reside, possess the same rights as their parents. A foreigner (Alejo) under that system can only become qualified to acquire land rural or urban after a naturalisation involving marriage and long residence. *Bi ewe ba pe ninu ose a die ose* (when a leaf had been incorporated with soft soap for a very long time and remained standing in it the leaf assumes the nature of the soap) is a popular saying. Save by inheritance he is not permitted to dispose of his right of ownership by grant, without the consent of the tribe or family who originally made him the grant. This system of the Yorubas has the unique advantage of keeping the natives, present and future, on their lands by putting the concessionaires off and preventing the bartering away of the land and the native rights of ownership to it.

The system of sale and leasing for considerable years in vogue at present in some quarters is really an extension of the native system which restricts owners from such practice. The effect of such extension, so far as could be seen, is surely resulting disastrously to the interest of the natives, who, from lack of knowledge of Western methods, play themselves into the hands of company promoters. I was instrumental in exposing a bogus leasing agreement offered to the people of Ilesha in 1910 by a European prospector representing a so-called influential company, who made fictitious promises with the tribal representatives. The said prospector, during an interview, assured the Ilesha representatives and myself that he had the support of the local representative of the British Government.

The native, left to himself, would not alienate his land to his own detriment, since it forms his capital, and the economic plants thereon his stock-in-trade. He feels that whatever deprives him of these, deprives him of his very life, unsettles his home, and takes away from him one of the instruments of advancement. *Ade bi pa ni ki ise ore ni* (he who causes one's starvation is not a friend). He can never, therefore, view the present extension with favour unless the modification proposed be such as would secure to him these advantages to which he is morally and lawfully entitled as owner. This objection is much stronger for rural or farm lands than for urban or city lands.

If I am asked to suggest, in view of modern capitalistic enterprise, what extension is necessary to accommodate aliens and foreigners, I would say that it would be in keeping with native customary laws if grants of temporary ownership of rural lands are allowed to be made either by families (in the case of family lands) or by tribes (in the case of tribal lands if any) so desirous with the general consent of their people, without naturalisation and any stipulated rent, but subject to any reservation; whilst the option to determine such grant at will remains with the grantors, who shall proceed according to native usage. Provided always that the necessities of individual members of the tribe shall not at any time be sacrificed for the convenience of aliens.

Answer to Question IV.

In Yoruba every member of a tribe who is also a member of a house is a landowner, rural or urban, or both, according to choice, with absolute right of possession. Chiefs and natural rulers, through their councils, have, as a body corporate, only a limited power over tribal lands, if any; but that power ceases the moment such tribal lands are granted to a qualified person capable of receiving land. Again, a chief or natural ruler as the head of his family exercises a supervisory power over the family land of which he is head. He often acts through the advice of the family council. On the other hand, a chief or natural ruler, as an individual, exercises complete control over

his own individual property; but cannot alienate by grant outside his family without the family consent.

According to foreign notions cultivators are individuals who originated from a class of labouring people called villeins. They held their lands from lords who held them from the king by simply paying a fee or feud. At first they, the villeins, were in the position of serfs; but eventually their unlimited labour rents were commuted for definite service. They form the peasantry in Russia. In Yoruba a cultivator is not in such a category. Invariably he is a landowner and in absolute possession of the soil he cultivates. He is under no obligation to anyone for services in return for land. And, whether cultivating produce for the export trade, or for internal consumption, or internal trade, he is under no obligation to anyone for the use he makes of his own lands, rural or urban, which go to his children on his death. If the children of the deceased cultivator are not disposed to follow the trade or call of their father, they are at liberty—

- (i) either to grant the loan of the rural land, subject to any reservation, to another cultivator or friend who may not be a member of their family and who uses the land and pays to the owners, as a sort of ground rent for the use of the land, a portion of the products raised by him. Such rents are never stipulated. Invariably the grantee works the economic plants for the benefit of himself and the grantors, which they share according to arrangements previously entered upon. The owners may terminate the grant at will;
- (ii) or to employ the services of the guild of cultivators or other special men who go to work, sometimes, only the economic plants for the benefit of the owners on payment (in case of hired men) or gifts in form of provisions, &c. (in case of the guild).

Most cultivators are members of the guild, and there are several guilds, the object of which is to render assistance to one another in the farm during the heavy season of work without payment or return save the bill of fare for the number of days spent on a farm, and for as many men who take part in it. Other trades have their own guilds with more or less similar objects. This is what people unacquainted with the customary laws of the Yorubas always refer to as communism.

The cultivator, as such and as owner of his land, is independent of the head of the community, unless

where he receives grant of rural land from him as an individual landowner. The urban land of a deceased cultivator in Yoruba is always open to any member of the family in case he has no direct issue. The head of the community gets nothing from his successor.

Answer to Question V.

Heads of community as such receive no revenue in kind or money for State or tribal requirements for the usage of the land either by individuals cultivating or collecting produce for export or by those raising foodstuffs for internal consumption and internal trade. They derive no income also for this purpose from the collector of palm nuts or the manufacturer of palm wine.

Heads of community as individual proprietors of land may derive income in kind or money for their personal use for the usage of their land either by individuals cultivating or collecting produce for export or by those raising foodstuffs for internal consumption and internal trade, provided such heads of community act in accordance with established usage as stated above. He may also claim a return in kind or money from the collector of palm nuts or the manufacturer of palm wine. Individual proprietors, not necessarily heads of community, are entitled to income in the same manner.

No individual can cultivate any land, raise, or collect any produce of any kind belonging to any proprietor without the sanction of the owner.

It is worthy of mention that the revenue for State or tribal requirements is derived chiefly from tolls or customs duties. *Oba ni gba owo ode* (it is the king who collects the tolls) is a common expression. Court fees, the summons and fines, not the "*ba mi se*," belong also to the State. The latter, which is the equivalent of counsel's fees of modern governments, are appropriated by respective chiefs, who are approached in any action. An enumeration of the other sources of revenue is outside the scope of this inquiry.

The individual ownership of land through the family is recognised by the different native races of Southern Nigeria, and the system, as obtained among the Yorubas, is regarded [as] the most highly developed, the most enlightened, and the best which, in the true interest of the other races, should be perpetuated, as it does away with domestic slavery in every shape and form

9943.

No. 69.

SOUTHERN NIGERIA.

The GOVERNOR to the SECRETARY OF STATE.

(Received 24th March 1913.)

(No. 120.) Government House,
Lagos, Southern Nigeria,
6th March 1913.

SIR, In continuation of my despatch of the 6th instant,* I have the honour to transmit a copy of a report prepared by Mr. Buchanan Smith, Assistant Commissioner of Lands, during the absence on leave of Mr. Alexander, on the system of land tenure prevailing in the Colony, together with a copy of his covering letter.

2. I forward also a copy of a letter addressed to the Commissioner of Lands by the Lagos Chamber of Commerce, together with Mr. Buchanan Smith's covering letter.

3. The memorandum of the editor of the "Nigerian Chronicle" has been forwarded separately† for the reason given by Mr. Buchanan Smith in paragraph 3 of his letter of 5th December.

4. I had retained Mr. Buchanan Smith's report in the hope that I should be able to study it and furnish my comments upon it. That, however, is not now possible, and I am unwilling to delay its transmission

longer. I would only say that it appears to me to be a most careful and lucid statement.

I have, &c.

F. D. LUGARD,
Governor.

Enclosure 1 in No. 69.

Commissioner of Lands,
Lagos, Southern Nigeria,
5th December 1912.

SIR, In accordance with the instructions contained in the despatch from the Secretary of State dated August 10th, an extract of which is attached, I have the honour to forward a report on the system of land tenure which obtains in the Colony of Lagos.

2. A notice was published by the Colonial Secretary in the "Government Gazette" of September 4th, informing the public that an inquiry was taking place, and inviting all those who had a special knowledge of the subject to give evidence. Letters were also sent to the Chamber of Commerce and such natives as were known to be taking an active interest in the question. From several of the latter no reply has been received.

* No. 68.

† Enclosure 5 in No. 68.

3. In consequence of the apparent reluctance of natives to give evidence, the inquiry has taken much longer than might have been the case under more favourable circumstances. Two witnesses, Bishop Oluwole and Dr. Johnson, a member of the Legislative Council, have sent in written statements, and 45 others have been examined orally, 19 of whom preferred to corroborate merely such statements as had already been made. A written treatise on the subject by the editor of the "Nigerian Chronicle" has been forwarded separately, as it contained no special reference to Lagos or the Colony.

4. As no further evidence appears to be forthcoming, I have had to base my report on such information as has been obtained already. In view of the contradictory nature of much that has been said, this has had to be drawn to some extent from old judgments of the Supreme Court on the subject of land tenure. The latter are probably the most reliable source of information, in so far as they give an unbiased account of the native view before the question had assumed a controversial character.

7. I have attached to the report a plan* showing the Colony, which is bordered yellow, and three appendices.† These contain—

- (i) the evidence;
- (ii) extracts from, or references to, cases heard by the Supreme Court relevant to the subject. I have, &c.

W. BUCHANAN SMITH,
Acting Commissioner of Lands.

The Hon. the Colonial Secretary,
Lagos.

Extract from "Memorandum of Points connected with the System of Land Tenure in Southern Nigeria, on which Information is desired by the West African Committee."

The Lands Committee does not appear to be concerned in questions arising out of the interpretation of the Treaty of Cession of 1861, and particularly in such cases as the "Foreshore case" now *sub judice*. The Committee suggests that the Lands Department should furnish a report on the conditions of land tenure in the Colony, and take such native evidence as may be of general interest with regard thereto, not affecting the interpretation of the treaty or treaties of cession. Witnesses of all classes should be invited, and every facility be given them to express their views. The report and evidence should be sent to the Secretary of State as soon as possible.

REPORT.

Land Tenure in the Colony of Lagos.

1. The Colony of Lagos extends, approximately, from the French boundary on the west to Odi on the east, and inland from the sea to the Egba boundary, and has generally a depth of some 20 miles. It includes, in addition to Lagos district, parts of the districts of Ikorodu, Badagri, and Epe, the total area being 1,335 square miles, and the population, as given by the 1911 census, 150,000.

2. The officers in charge of the three last-named districts have already taken evidence, and forwarded reports, and notes of evidence on the system in the Colony in general, but affecting in particular the Lagos district, an area of 547 square miles, with a native population of 102,190, are appended.

3. The native population of the Colony is Yoruba, various tribes being represented, the Jebus in Ikorodu and Epe, the Ekos or Lagosians, and the Aworis in the Badagri and Lagos districts. With the exception, however, of the 16 Idejo white cap chiefs the ruling classes of Lagos proper, including, apparently, the Eleko, claim descent from a Bini ancestry, and do not actually style themselves Yorubas. As it is certain, however, that the Binis are an offshoot of the main

Yoruba race, tradition even assigning them a place in the common home at Ife, the distinction is for practical purposes unimportant.

4. There are two distinct spheres in the Colony—

- (a) Lagos proper, that is the Island of Lagos, and such parts of the surrounding territory as fall within the municipal area, or, generally, the land of the Ekos.
- (b) The rest of the Colony. The system of tenure was formerly practically the same in both spheres, but the questions affecting them are in some respects no longer identical. They are therefore treated separately.

Lagos.

5. The main principle of tenure in the Colony at the present day, and, to a considerable extent, in Lagos itself seems to be ownership by the family, under the control, more or less authoritative, of its head, who, in old Lagos at any rate, was always a chief. One of the most curious features of the modern system, as disclosed by this inquiry, is, I think, the tenacity with which this principle is adhered to, even in cases where the titular proprietor has an undoubted freehold title vested in himself personally. Quite recently members of a certain family in Lagos took common action against one of their number, and petitioned the Supreme Court to set aside a Crown grant on the ground that it conferred a title on him in his individual capacity, and not as trustee for the rest of the family.

6. That the family system is the outcome of a still older phase, when all title to land was derived from the head of the community, is a fact which is, apparently, disputed in Lagos, but which can, I think be proved.

7. The early history of Lagos is extremely obscure, but the version which is now accepted by the courts is that probably about the beginning of the eighteenth century a chief of the name of Olofin came from Ife to Isheri, and then on to Iddo Island, where he settled. He is said to have parcelled out Iddo, Lagos, Apapa, and the immediately surrounding country, and even the lagoon, into 16 parts, each part being handed over to one of the 16 Idejo chiefs, who in return paid him an annual tribute. During the Benin invasion the Olofin was defeated, according to the statements of the white cap chiefs, and was deposed, but the tribute of the Idejos appears to have been kept up, and on his death, there being no subsequent paramount chief of his line, it was paid annually at his shrine, and is so paid to the present day.

8. The story of the Olofin is, of course, purely traditional, but like many other traditions it may, I think, be taken as an indication of a historical fact, and, though the majority of the witnesses have stated that within the Colony the head of the community has never had any interest in the land of his subjects, the probability is that it was not always so even amongst the founders of Lagos.

9. It is also related that the first Bini Ologun, or king, was accompanied by 16 war chiefs and 32 others, who subsequently became the Ogalade and Akarigbere white cap chiefs. Tradition is silent as to the manner in which these chiefs came to hold land in Lagos. The Idejos state that they were given allotments by them, the Idejos, in the customary way. The other white cap chiefs are unable to say how they obtained it, and the Eleko's statements on the subject are too contradictory to be of value.

10. In the absence of satisfactory evidence to the contrary I think that it may be assumed that at the time of the Bini invasion the King and Bini chiefs, who in any case appear to have acted with moderation, took what land they required, leaving the larger portion to the already established Idejo chiefs. At that time a considerable part of Lagos must have been uninhabitable swamp with a population correspondingly small, so that the temptation to deprive existing owners cannot have been very great. Most of the Bini chiefs appear to have held their principal farm lands elsewhere, and probably little was required in each case beyond a piece of ground of sufficient size to admit of houses being built on it for the chief or his followers, and possibly a strip for cultivation.

* Not reproduced.

† Only two printed.

11. The frequent assertions of witnesses to the effect that all land in Lagos, even after the Bini invasion, belonged to the Idejos, are doubtless based on the fact that the greater part of the Ekos' country was vested in these chiefs, and that in later years a Bini chief requiring more land than he already possessed would obtain it from them and pay the customary tribute. But that they were ever subsequent to the arrival of the Binis sole proprietors of the soil, or that the Binis ever paid tribute for their original holdings, is not, I think, correct. One of the most important cases on the subject of the local system of land tenure was initiated by the Ashogbon, who was not even a white cap chief but a war chief. A large quarter of Lagos is known to this day as Oko Faji, the farm of Faji, another war chief.

12. When, therefore, reference is made to the land-owning chiefs in Lagos, the term should include not only the Idejos, or principal land owners, but also the other two sections of the white cap chiefs and the war chiefs. The latter appear to have had the Marina assigned to them, possibly, as has been suggested, because that was the point most exposed to raids by Dahomeyans and rival aspirants to the Lagos throne, and possibly also because they were the intermediaries between the king and the slave traders who would anchor off that locality.

13. There remains the question as to the position of the paramount chief, in this case the King of Lagos. He was, it is true, not entirely paramount or independent in so far as he was a vassal of the King of Benin. As late as the reign of Akitoye the reigning prince obtained his insignia from Benin, and later still the usurper Kosoko stated as his reason for not coming to terms with the English that he was not entitled to make treaties as he had not yet been recognised by the King of Benin. The tie appears, however, to have been of a more or less slender character and, except for an annual tribute and certain ceremonial matters, the King of Lagos as far as home affairs were concerned appears to have been practically independent of his suzerain.

14. With regard to his subjects most of the witnesses allege that the king had no direct control over land except that which belonged to him personally or to his family. In the face of these statements the crown grants issued by Docemo between 1854 and 1860 seem to require explanation, especially in view of the fact that, as far as is known, on six only out of 76 is it stated that the grant was made with the consent of the chiefs. Probably the correct view is that outlined in 1892 by the then Chief Justice in his judgment in the case of Ajose, heir at law of Ladega Ashogbon v. Efunde and others:—

“The absolute ownership of land has never as far as my experience teaches me been acknowledged in this Yoruba land as inherent in the sovereignty of the kings of the country, but there is undoubtedly a national proprietary right which is vested in the king and his chiefs or council as respecting the community who elect or appoint them originally, and who conjointly may exercise the right of alienation.”

15. The Lagos system prior to the introduction of the modifications due to British influence seems, therefore, to have been as follows: the territory was divided up between the king, the war chiefs, and the white cap chiefs for the time being, the Idejo section of the latter being the only considerable landed proprietors. Land does not, however, appear to have been the personal property of the king or chief, but passed in each case with the title to the successor. As the latter was always a member of the same family as his predecessor it follows that land was always vested in the chief for the time being in his capacity as head of the family, using the latter term in its widest meaning, and as guardian of its interests.

16. Behind these family heads stood the king as head of the state, exercising with his chiefs and council the national proprietary right.

17. With regard to customs regulating the usage of land, much of the evidence is of a very conflicting character, and under the circumstances court records seem to be the most reliable source of information.

18. It appears certain that all applications for land, either urban or rural, whether it was required for

a stranger or a member of the family concerned in its allotment, had to be made to the chief as head of the family. The latter could not, however, make any grant without the consent of his family and he could not sell.

Urban Land.

19. Any allotment of urban land to a member of the family appears to have been of a permanent character, and was not necessarily chargeable with any preliminary fees. At the same time it seems to have been burdened with the duty of assisting the chief in the performance of the rites connected with the family fetish, and of contribution to the common expenses on the occasion of family festivals, and when the chief's house had been burnt down. Opinions differ as to whether a grant of this nature could be revoked, but generally it appears that the chief could neither alienate the land nor dispossess the grantee as long as these obligations were fulfilled, and as long as he was not guilty of certain offences which are mentioned later.

20. In the case of a stranger preliminary fees had to be paid, and the stranger remained in undisturbed occupancy provided that he was not guilty of a crime involving forfeiture.

21. In both cases, on the death of the occupier the land descended to his children, but, where a stranger was concerned, with the permission of the chief only. Where the deceased was a member of the chief's family it was, apparently, usual to obtain his consent, but not absolutely necessary.

Rural Land.

22. The customs controlling the usage of rural land seem to have been subject to variations, but the general principle was the same.

Agricultural land could be allotted free of preliminary charges to a member of the family, and the chief had no further control over the usage of the part granted. A customary present was, however, paid to the chief as head of the family whatever the produce of the individual cultivator, though according to some of the witnesses this was not necessary and was a matter of courtesy only.

23. The stranger had always to give a part of his produce by way of acknowledgment that his title was not absolute, the value of the contribution being, however, nominal, and bearing no relation to the value of the land or crops involved.

24. On the death of the individual cultivator the heirs at native law seem to have succeeded without difficulty. The chief's consent had, however, to be obtained whether the deceased had been a member of the family or a stranger. In the first case it was rarely withheld. Should there be no heirs, apparently a rare occurrence, the chief had the power to grant the land—urban or rural—to another, subject to the obligations with which the land had been burdened or charged during the term of his predecessor.

25. Other differences were mentioned during the inquiry. It was stated that on the death of the individual cultivator his heirs, on application to the chief, would be given not the same piece of land, but another, the original grant being vacated, and allowed to lie fallow, until the time came to re-allot it to another applicant.

26. Agricultural land was not usually granted with everything on it. Palm trees and kolas were, apparently, generally reserved, and the former were sometimes granted separately. No stranger possessed of a mere occupancy title was allowed to plant kola on family land.

27. There were certain offences which involved forfeiture of land, whether the individual cultivator was a member of the family or a stranger. They appear to have been—

- (a) Conspiracy against the grantor;
- (b) Conspiracy against the paramount chief to whom the grantor owed allegiance;
- (c) Seduction of the wife of the grantor or of any female of his immediate family, or of the wife of the paramount chief or of any female of his immediate family;

(d) Claiming absolute title as against the grantor or attempting to alienate; and

(e) Possibly also murder (especially by poison), robbery, or betrayal of secret societies.

28. These offences were punishable with deprivation of all title to land and apparently with exile. At the same time it is to be noted that though the whole of his followers and family might accompany the culprit into banishment, the punishment did not involve a taint of blood, and cases occurred apparently where the children of the exile continued to occupy the land from which their father had been expelled.

29. Permission to occupy also determined when the person to whom the land had been granted ceased to use it.

30. Several witnesses have alleged that land allotted by the head of the family was granted outright, and became the absolute property of the individual, who had the full right of temporary and final alienation—that there was in fact full individual ownership.

31. This is not in accordance with the statements of the white cap chiefs, which seem to show that their interest in land, urban or rural, never fell into complete abeyance. From the occupiers of the one they appear to have received certain services on the occurrence of functions of family importance, and from the other a gift of the products of the soil. Whether the latter were essentially a form of rent, or were given merely as a matter of courtesy, is a question which does not seem very important as long as it is admitted that such presents were customary. The permanent character of the chief's interest is, I think, best illustrated by a quotation from Mr. Ajasa's evidence:—

“Upon the death of the cultivator or user of rural land the heir and all the subsequent successors to the grantee may continue on the land at the option of the grantor and his family. This refers to the grantee whether a member of the family or an alien. In the former case it is hardly ever withheld, so that tenure is practically tenure in perpetuity, subject to the grantee conforming to the laws of the country relating to grants of land. The grant ceases absolutely should the grantee be found guilty of . . . attempting to disown the grantor's rights or title to the land.”

32. Most of the evidence tends to show that the grantor must be the head of his family, and in early Lagos at any rate any instance of a head of the family not being also a chief does not seem to have occurred. In any case, however, where the continued user or succession to land is subject to the consent of another, even though the obtaining of that consent be a mere formality, there cannot be said to be full individual ownership, and it is probable that until native customary tenure began to be influenced by English law proprietorship of this nature was unknown, though this is apparently not the opinion of many of the witnesses.

The Colony.

33. Within the Colony outside Lagos, that is, beyond the limits of the land belonging to the Ekos, the Bini element, if not entirely absent, was at least inconspicuous, the main body of the Aworis owing allegiance to the Oba of Ota, and the Ijebus to the Awujale of Jebu Ode. Land appears to have been vested in the local chiefs as heads of their families, and generally speaking, until the modifications resulting from the influence of the British system began to appear, the situation, as far as can be ascertained, was much the same as that which prevailed in the country of the Ekos, the Bale, or chief of the district, having the sole power to make grants of land.

34. An exception to the general rule forbidding the sale of real property within the Colony, and, incidentally, a curious instance of the ultimate or national interest of the head of the community in the land of his subjects, is afforded by a custom of the Jebus, amongst whom alienation by sale could take place, but only with the consent of their rulers, the Awujale or the Akarigbo.

35. With regard to the question of revenues due to the head of the community, I think that it is fairly obvious that in the main revenue was derived in Lagos, prior to the cession, from customs and the sale of slaves and, to a considerable extent probably, from fees

for decisions in disputed cases. In the Colony outside Lagos the latter source was possibly the more lucrative of the three, if indeed the first existed at all.

36. There seems to be a general impression that no revenue was obtained from any source connected with land. It is, however, admitted that it was customary for the head of a community in the Colony to receive presents from those connected with him and from chiefs. In an agricultural community it is almost certain that these must have taken the form of produce of the soil. That all such gifts were, however, purely personal to the head of the community is, I think, clear.

Existing Conditions of Tenure.—Lagos.

37. In Lagos itself the influence of English law has effected a considerable change in the conditions of tenure. There remain parts of the island and the adjacent mainland where the native system as already described still obtains, but even in these places an important departure from the old system has taken place in so far as native usage now recognises to a certain extent the right of sale, provided that the family agrees. This was formerly impossible, and even now is only possible in and close to Lagos.

38. A great part of Lagos town is now covered by Crown grants which confer on their holders a fee simple title. They were originally merely in the nature of an official confirmation of a pre-existing right of occupancy. Thus they were applied for and given to the Brazilian freed slaves for the allotments already granted to them by King Akitoje.

39. The Crown grant system actually came into existence prior to the cession, and about 76 grants were issued by Docemo before the year 1861. These were recalled after the cession and others issued in their place. Crown grants were also given to any occupiers in possession who succeeded in proving their title to the satisfaction of the commissioners appointed for the purpose. This procedure was followed up to 1868, when the Land Commissioner's Court was abolished, subsequent applicants being required to satisfy the Administrator of the Government as to the *bona fide* character of their claims.

40. Since 1863 about 4,000 Crown grants have been issued in Lagos and Iddo Island, and on the mainland at Ebute Metta, Leckie, and Badagry.

41. A considerable number of occupation tickets for land at Ebute Metta were also issued by Governor Glover. Judging from recent decisions, it would seem that the Supreme Court is of opinion that these were in the nature of freehold grants, and were transferable.

42. At a later period, beginning in 1881, Government issued a number of permissive occupancy grants for swamp land in various parts of the town. About 112 such grants were issued between 1881 and 1888. The grantees had to fill up a certain area of swamp land within six months, and received a Crown grant at the end of that period, provided that the terms of the occupancy grant had been carried out.

43. A number of these grants appear to have been sold and mortgaged without any improvements having been effected. Accordingly, in 1893, a form of swap agreement was drawn up which was intended to guard against similar evasions, and which at the same time secured to the occupier the right to claim a Crown grant in the event of his swamp land being properly filled up to the satisfaction of the authorities and within the stipulated time. This form of grant was in use a few years only.

44. In 1897 the first real attempt to introduce a system of leasehold tenure was made. It was proposed to issue permits to occupy and improve land which was at the disposal of the Crown. The scheme was connected with another for the survey of Lagos, and it was provided that if between the date of the grant and that on which the survey of the plot took place satisfactory progress with the work of improvement had been made the permit could be surrendered in exchange for a lease for 999 years.

45. The proposal does not seem to have met with a favourable reception, and was dropped.

46. Except in instances where the Government is bound by previous engagements Crown grants are no longer issued, and leases only are now granted in the

case of approved applications for the use of Crown lands.

47. Transactions in land between native and native, except where the old system still prevails take generally the form of sale or mortgage. Leases are practically unknown, and seem to be regarded with disfavour.

48. The substitution of alien for native methods of dealing with land has been productive of some confusion, which is, I think, largely due to the fact that a Crown grant is not a title which is readily adapted to the customary system of family ownership even in its modified modern form. In many cases it has conferred a fee simple title on the individual for land which belongs of right to his father's family, and in some cases to a series of families. Trouble immediately results on the grantee's death if his heirs claim all the land subject to the grant, as sometimes happens, and even during his lifetime if he attempts to alienate.

49. It also seems clear that amongst the natives of Lagos proper a Crown grant often becomes after the first generation as much a piece of inalienable family land as if it had been a grant by the chief or head of the family under the old system. Several witnesses have said that the native who purchases a Crown grant at a sale can sell it again if he so chooses, but that, if he fails to do so, at his death it becomes vested in his descendants as a whole, whether he has made a will to that effect or not, and cannot be alienated without the consent of each one of them.

50. The result is that a Crown grant often gets into the hands of a number of individuals all of whom have an equal interest. One witness stated that he knew of a case where thirty such persons were entitled to share.

51. In addition to those holding land by native titles of a date prior to the cession of 1861, or by Crown grants either absolutely or as members of a family, there are a certain number of natives who can show no title for their holdings. These are generally found in occupation of Crown grants whose owners have died out or disappeared, or else of reclaimed swamp land.

52. It is with a view to assisting such people to obtain proper titles, and in order to remove some of the anomalies for which a rather haphazard system in the past has been responsible, that a proposal has been made for the appointment of a Commission, with a judge of the Supreme Court as its president, to inquire into the question of Lagos titles. That a Commission of this nature is much needed is, I think, obvious.

The Colony.

53. The greater part of the Colony outside Lagos is peopled by the Aworis, a tribe whose customs seem to have been affected to some extent by political circumstances over which they have had no control. In former days all the Aworis appear to have recognised the Oba of Ota as their paramount head. This chief now lives in Egbaland, a fact which has evidently inspired the rest of the tribe settled within the jurisdiction of the Colony to withdraw their allegiance. The result is that the Aworis in Lagos district have no longer any common head, and each small village regards itself as an independent entity. One Bale, or headman, informed me that there were a great many Awori villages in the Colony, but as he was head of six of them he considered himself the most important chief of the tribe outside Egbaland.

54. A change of this nature, taken with the introduction of the railway, might be expected to lead to considerable modifications of the old system, and there seems to be little doubt that the possibility of alienation by sale is now fully recognised by certain sections of the tribe. Considerable stretches of land on either side of the railway line appear to have passed out of the hands of their original owners in this way or by foreclosure of mortgages. In some cases, too, deeds of sale have been drawn up after the present owner has been for some years in undisturbed possession under the permissive occupancy system allowed by native law. The probability is that in such cases the vendors were not unaware of the nature of the transaction, or otherwise they would long ago have sought relief from Supreme Court, which is always ready to set aside

sales which have not received the consent of all members of the family concerned.

55. A curious result of these sales of land in the hinterland of Lagos is the introduction of a new form of family ownership, to which reference has already been made in connection with the Crown grants, the purchasers having usually bought their land with the view that on their death it should pass in bulk to their descendants and be considered family land, and as such inalienable.

56. Except, however, near Lagos itself or the railway, and in one or two isolated localities mentioned by witnesses, the old system of native tenure still exists. Among the outlying villages sale and even pledging of land is prohibited, and land is allotted by the village chief or Bale, presumably in his traditional capacity as head of the family from which the village sprang. That he is not always the head of the most important family in the village, and is sometimes even a stranger, is true, but in such a case he appears to be appointed by the head of the land-owning family as his representative and Bale, a fact which seems to show that though the head of the land-owning family is not always chief in name he is none the less head of the community *de facto*.

57. It should be noted that, though the witnesses generally say that there is now no common land belonging to the village to be disposed of, it is admitted that such common land existed and in some cases still exists, and that its allotment is in the hands of the Bale and his council.

58. The question as to what extent land has passed into the possession of moneylenders affects both Lagos and the Colony generally. Many of the witnesses state that owing to the extortionate rate of interest charged on loans a great deal of land has passed under their control. A few witnesses, however, thought otherwise, one of them being Mr. Ajasa.

59. Reference to the records in the Lands Office Registry shows that from January 1st, 1902, to June 1st, 1912, mortgages were executed on private loans to the value of 37,281l. This sum does not include the mortgages to banks or those to trading firms intended to secure advances of goods issued on credit. The former amounted to 40,925l. and the latter to 30,936l. The value of reconveyances on private loans during the same period was 1,635l. The last figures are not altogether satisfactory, as it is, I think, probable that a great number of releases are not registered, the debtor being content with an unregistered discharge.

60. It is, however, a fact well known at the Lands Office and, I think, admitted generally that a great many transactions of this nature never find their way into the pages of the Lands Office registers. Registration of deeds between natives is not compulsory, and it is probable that land is pawned very much as it was under the old system, with this important difference that, whereas it was always redeemable by native law at any time, for instance after fourteen years (Akinlotan v. Salosa, 1893), and by any member of the family affected, it now becomes on foreclosure the absolute property of the creditor. The system in general is in fact practically that of equitable mortgage secured by the deposit of title deeds.

61. It is not unlikely that a considerable amount of land in the vicinity of the railway has been obtained in this manner, but at the same time witnesses are probably not far wrong when they say that in the majority of cases foreclosure is generally followed by immediate sale at a public auction.

62. It should, I think, be noticed that the modern system of mortgages and sales by order of the Supreme Court, especially when they affect land outside Lagos proper, must inevitably tend to cause hardship in a country where family proprietorship is more often the rule than the exception. It is, of course, always open to the members of the family to recover in court land alienated through the fault of the individual debtor, but it is probable that in many cases this is not done, either through ignorance or in order not to embarrass the debtor. It is also true that in some instances creditors have been deprived of their just rights by means of such applications to the court, the difficulties in either case being due to the fact that both mortgage and compulsory sale are quite foreign to the native

conception of the principles of land tenure even in their modern form.

63. The system of inheritance has also undergone some changes, which are due to the influence of English law. Originally the heir to the position of the head of the family was apparently the deceased's brother or eldest surviving male collateral. The eldest son succeeded in the absence of an older male collateral.

64. Women never succeeded in person, but were represented by their male relations or husband.

A woman had, however, the right common to all members of the family, male or female, to reside on the family land. Perhaps one of the most revolutionary of modern innovations is the recognition by the courts of the possibility of a woman succeeding to the headship of the family.

65. Under modern conditions land can descend to the children direct, and almost invariably does so in instances where it was purchased by the deceased, and was not originally family property.

66. Reference has been made by several of the witnesses to the fact that the Lagos white cap chiefs have lost a great part of the land which was formerly under their control. No details as to the amount alienated are obtainable, but the general impression seems to be that they have parted with at least half of their original property. This state of affairs has apparently been brought about, partly by the fact that in some cases tenants appear to have succeeded in obtaining Crown grants for land which their fathers held from the chiefs, partly owing to the expenses incurred during the interregnum between the death of a chief and the appointment of his successor, and partly, and to a great extent, owing to sales by the chiefs themselves. One of the witnesses stated that the white cap chiefs' principal source of revenue was the sale of land. Such improvidence does not seem satisfactory and must, I think, tend to diminish their prestige.

W. BUCHANAN SMITH,
Acting Commissioner of Lands.

Lands Department,
Lagos, 5th December 1912.

Appendix I.

Statement of Ojora, white cap chief.
Statement of Ibrahim, Limomu of the Mahomedan community.
Obanikoro, white cap chief.
Statement of Eletu Ijebu, white cap chief.
Statement of Opeluwa, white cap chief.
Statement of Onitana, white cap chief.
Statement of Olotu, white cap chief.
Statement of Aromire, white cap chief.
Statement of Z. S. Taylor, forest ranger.
Statement of Ali Balogun, trader.
Written statement of Bishop Oluwale.
Written statement of the Hon. Dr. Johnson, Member of the Legislative Council.
Statement of Dada Oke, farmer, Agege.
Statement of Sumono Oluwora, farmer, Agege.
Statement of Ibrahim Bashorun, Bale of Tapa village.
Statement of Idrisu Subadore, Limomu of the Brazilian quarter.
Statement of Aganran, Bale of Ojuwoye village.
Statement of Dada, Bale of Isolo village.
Statement of J. K. Coker, planter, Agege.
Statement of F. E. Williams, planter, Agege.
Statement of Joseph Ounbunu, farmer, Agege.
Statement of Moses Agbedeyi, Bale of Agege village.
Statement of Ogundimu, Bale of Iju village.
Statement of Akibiyi, Bale of Imosan village.
Statement of Akibon, a headman of Ifako village.
Statement of Eweja, farmer of Akiogun village.
Statement of James George, solicitor.
Statement of T. W. Johnson, retired interpreter of the Supreme Court.
Statement of Eleko.
Statement of Sule Osisi, Giwa.
Statement of Kasumu Giwa, Giwa.
Statement of Yesufu Agoro, trader.
Statement of Brimah Agbonsafara, trader.

Statement of Giwa Lawani, Giwa.
Statement of Salu Abagun, trader.
Statement of Afoda, trader.
Statement of Brimah Agbowokariowo, trader.
Statement of Brimah Bashorun, trader.
Statement of Oshotan Balogun, fisherman.
Statement of Lawani Giwa Abidogun, Giwa.
Statement of C. C. Cole, auctioneer.
Statement of C. I. Akinsan, assistant chief clerk, Secretariat.
Statement of Rev. A. W. Howells, Church Missionary Society.
Statement of Rev. T. A. J. Ogunbiyi, Church Missionary Society.
Statement of Hon. Kitoyi Ajasa, Member of Legislative Council.
Statement of Mr. J. B. Benjamin, surveyor.
Statement of Hon. C. A. Sapara Williams, Member of Legislative Council.

CHIEF OJORA.

1. I am the senior white capped chief of Lagos. The original chief of this part of the country was Olofin. He came from Ife and settled at Iddo. He made 16 Idejos, or landowners, who became the white capped chiefs, and all the land in Lagos and Iddo was divided amongst them. This happened many centuries ago. The lagoon was also divided into 16 parts and a portion given to each of the Idejos. The Olofin's fetish house is still at Iddo, and we worship there every year. The Olofin ordered each of us to look after our own land and hand it over to our successors when we died. These successors are not necessarily our children.

2. The law of tenure is as follows: The land belongs to the white capped chiefs. On the death of a white capped chief the land goes to his successors. The succession is arranged by the relatives of the chief, who meet and decide who shall succeed. Sometimes it is a brother and sometimes a son of the dead chief who is appointed, but in any case it is always a member of the family. Only the immediate relatives of the deceased chief elect his successor.

3. All land was originally allotted by the Idejo white capped chiefs. In former times when a man wanted a piece of land either for farming or for building purposes or in a town he applied to his chief. The latter never gave absolute possession of the land. That is to say, complete alienation was never recognised. The usual custom with regard to rural land was as follows: a man would apply to the chief, who would allot a certain portion to him which he generally retained for life, paying a yearly rent which consisted of a present of produce grown on the land so allotted.

4. In a town the man who received an allotment on which he built his house used to help the chief at festivals and funerals by contributing to the expenses. This constituted the urban rent.

5. The custom which I have just mentioned still exists, but a great many lands belonging to the chiefs have now been sold. The practice arose without the sanction of the white capped chiefs and is due to English influence. When we objected to the sale of land by the allottees we were told to go to court, and then lost our cases. We would be more powerful if land had not been sold in this way, and we would like to retain such land as we now possess and not sell it. In the old days we always got help from our people. Now when one of our men gets a piece of land he calls in a surveyor, gets it measured, and sells it.

6. Whether the allottee was planting foodstuffs or other produce for export or local consumption, he always had to get his land direct from the chief, and he always had to give a certain amount of the produce to the chief. The amount varied with the size of the farm.

7. In the case of farming land the land on the death of the cultivator reverts to the chief, who can give it to the cultivator's son if the latter applies. The same is the case in a town. The land and the houses built on it revert on the death of the occupier to the chief, who may, however, grant it to the descendants of the occupier. The latter may, however, be turned out at any time if they fail to pay the

customary contributions to the chief. Even if a man was given his land for life he could be turned out if he did not pay his customary dues. Otherwise the chiefs never interfered with him in any way.

8. All presents or customary dues are personal to the chief, who may, if he likes, use the money for the benefit of the community. In the case of war all his people come to his assistance.

9. In former days, whatever the produce was, part of it was given by the cultivator to the chief. In the case of palm nuts, however, the oil, and not the nuts themselves, was given. Palm wine was always given to the chief when he was going to make a feast. Now we no longer receive this produce, but are given cash in its place.

10. All that I have said still holds good where we have land left, but we have lost a great deal of land since the English came.

11. The Idejo white capped chiefs are the original owners of the soil. The Eleko, King of Lagos, is a descendant of the conquering Benin kings. The Idejos are the Olofin's descendants, and if the Eleko wants any farm land he has to apply to the Idejo white capped chiefs. The war chiefs, of whom there are now only three left, were appointed by the King of Lagos, and have also to apply to us, the Idejos. Originally we gave presents to the Olofin, but when the Olofin was captured and taken to Benin City we no longer paid any rent or tribute of any sort to the king who took his place, as he was a Bini. The Olofin came back after three months, but no one succeeded him when he died, and so every year we still pay tribute to him by sacrifices at his shrine. Nothing is paid to the Benin king by the Idejo chiefs.

12. All the white capped chiefs are not Idejos, and those who are not have to apply to us who are Idejos if they want any land in Lagos, Apapa, or Iddo. The other white capped chiefs who are not Idejos are either Ogalade or Akarigbere. The former have charge of the lands belonging to the Awori tribe, and the latter, who are descendants of the Benin kings, have family lands at Ikorodu.

his
CHIEF OJORA ×
mark.

Witness to mark,

HY. LIBERT,
C.C.N.A.

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands.
Lagos, September 18th, 1912.

STATEMENT OF IBRAHIM, Limomu of the Lagos Mahommedan Community.

1. I am a Beri Beri of Bornu, Northern Nigeria, but have lived in Lagos all my life and was born here. I am now Limomu, or Imam, of the Lagos Mahommedans, and am well acquainted with the local system of land tenure in Lagos Colony. Formerly all land was in the hands of the white capped chiefs, and through them it has come into the hands of individuals, so that the real principle of land tenure is now ownership by individuals.

2. This state of affairs came about in this way: Each chief had his own district which was peopled by his own followers. When a man wanted land he applied to his white capped chief. If he was a favourite he would be given the land free. An ordinary man, however, would pay a bag of cowries, worth now about 5s., and a case of gin, and the land so bought became his for ever, and his children's after him. If the follower of one chief wanted to get land from another, the two chiefs arranged the matter, and the same price was paid by the man who applied for the land. It again became entirely his own to do what he liked with, and to sell if he wished. The white capped chiefs could not interfere unless he died without heirs, when the land reverted to the chief. No rent was paid to the chief. As a matter of fact, land bought in this way was, before the arrival of the English, never sold again, but it could be sold. I will give you an instance of land alienated by the chiefs. A number of Portuguese freed slaves came from Brazil, and each one who paid the case of gin and the bag of cowries

was given an allotment which remains his property or his children's property to this day. No one in the large Brazilian quarters at Lagos pays rent to the white capped chiefs and they can sell the land whenever they wish to do so without interference from the white capped chiefs. My own land was inherited by me from my father, to whom it was given by one of the white capped chiefs. I am absolute owner of the land and can sell it to whom I please. I have never heard of any custom affecting temporary alienation. Beyond simply lending a house or land or hiring them I have not heard of temporary alienation.

3. All that I have said or have to say affects urban land only. I know nothing about the customs affecting rural land.

4. This system has, of course, resulted in a great diminution of land at the disposal of the white capped chiefs, but as long as they keep some land I do not think their position as chiefs will be affected. They have fewer followers than formerly, but I do not think that is the result of the land system. When their former followers died their children in many cases did not wish to follow their father's chief, with the result that the position of the latter has been weakened. They were formerly powerful, and got presents for that reason. They got nothing paid or given to them in respect of land except the original price when it was bought; and when once the land was bought it could never return to them unless the owner died without heirs.

5. I should like to add that natives in Lagos do not like the Government system of leasing land. It is contrary to the Lagos custom.

6. I should also add that the King of Lagos, who is a Bini and not of the same race as the white capped chiefs, holds some land in Lagos, but has nothing to do with that belonging to anyone else.

What land he has was given to him by the white capped chiefs. He derived his revenues through trading with foreign merchants and got nothing from land. He is now entirely dependent on his subsidy from Government. No one else pays him anything.

IBRAHIM IMAN DIN (signed in Arabic).

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands.

14th September 1912.

STATEMENT OF OBANIKORO.

1. I am a white capped chief and speak for the Ogalade section of the white capped chiefs. Altogether there should be 48 white capped chiefs, 16 Idejos, 16 Ogalade, and 16 Akarigbere. In reality there are not quite so many in existence, but descendants of all the 48 still exist. The original white capped chiefs in Lagos were the Idejos. The Ogalades came after the Benin conquest of Lagos. It was Olofin who came from Ife and gave the land of Lagos to the Idejo white capped chiefs. After that had happened the Binis came to Lagos, captured Olofin, and carried him to Benin. Afterwards, three months later to be exact, they brought him back, and set up a Bini king in Lagos. It was during the reign of the first Benin King, Ado, that the Ogalade chiefs headed by Obanikoro came to Lagos. They also came from Ife. The term Ogalade means "crowned chief." The reason the Ogalade came here was as follows: Obanikoro was a great chief at Idoluwo. Ado heard of his greatness and asked him to accompany him to Benin when he, Ado, went there to ask for the crown of Lagos. Obanikoro went straight to Benin, and when there was told not to return to Idoluwo, but to go to Lagos to help Ado and to settle in Lagos. This he did. On the advice of the Ife fetish, Obanikoro and his followers settled in the Idoluwo quarter of Lagos. It is in the larger Idunsagbe quarter. The land in Lagos all had been divided up amongst the Idejos by Olofin, and how Obanikoro got this quarter is not quite clear, but the fact remains that he did get it, and that no payment is made for it to the Idejo chiefs to this day.

2. The land custom was this: the land was in the hands of the chiefs, both in the town and the country, but there is a difference in the way the land was and is granted in the town and in the country. In neither case was the land granted outright by the chiefs, who

could get it back at any time they liked in the event of the grantee not behaving properly. The real law of tenure is, therefore, that the land is in the hands of the chiefs, and when a chief dies the land goes with the stool to his successor, who need not necessarily be his son but is a member of the late chief's family appointed by the family.

3. It is quite against native law and custom that land should be granted outright, and the person who was responsible for the change and the present system was Governor Glover, who took land and granted it outright. Previously all strangers coming from over the seas had got lands from the chiefs, and paid rents to them. We do not like the present arrangements.

4. When a man wanted land in a town he always went to the chief of the district, taking with him kola and rum.

5. The chief then always consulted his family, and if they agreed he sent his land messenger, called the Ikole, with the applicant, and the ground was pointed out. The applicant could then build his house, and held it subject to certain conditions. One of these was that he must subscribe to the expenses of the chief's fetish festivals; also, if the chief's house was burned to the ground, he had to help to rebuild it. When the grantee died and left a son who was a good man, that son succeeded to his land if he got the chief's permission. On his father's death he would make a present to the chief, who would then help him with the funeral expenses. After the funeral he had to apply formally to the chief for the land, and if he agreed, and the chief's family agreed, then, provided he was a good man, he would be confirmed in his father's holding.

6. A man could never sublet any town land without the chief's permission. Even if he wished to settle his father's brother in the house he had built himself, he had to introduce his father's brother to the chief. No instance of subletting of town land, even with the chief's permission, is known.

7. The custom with regard to agricultural land is this: There would be a special arrangement if there were palm trees on the land. Generally a man was granted either the land without the palm trees on it, or the right to the produce of the trees without the land. Sometimes he was given the right to the produce of both the land and the palm trees. He could not sell or even sublet the land, and could not plant kola or bitter kola without the chief's permission. Occasionally the grantee was allowed to plant kola, but only on the understanding that when the land reverted naturally to the chief, or when the chief wanted it, he also got the kola trees. I cannot speak with regard to cocoa, as it is a recent introduction.

8. In the old days there was no arrangement as to payment by money, but annual payments of produce were always given to the chief whether the produce was for internal consumption or for export.

9. On the death of the grantee of an agricultural area, the land reverted at once to the chief who granted it. If the grantee had been a good man during his lifetime, the son on applying to the chief could be given a piece of land elsewhere, but not his father's land. That had to lie fallow for some time, and was then granted to someone else.

10. If the grantee were a good man a chief might, if he liked, help him at times, but the grantee was entitled as of right to no assistance from the chief in anything.

11. All presents to the chief or customary dues were the sole property of the chief himself. He could, if he liked, give the king or other chiefs a part of them, but it was not necessary.

12. Whatever the agricultural produce was the chief always got a part of the produce. He got no share of the price paid to the grantee for the balance of his produce. Nowadays we get a money present instead of produce as formerly.

13. All that I have said applies to the present day wherever we have land left.

14. The Akarigbere white capped chiefs and the King of Lagos are all Binis, descendants of the Benin king. They held no land in Lagos before the coming

of the Binis. When they came to Lagos each of them took a quarter of the town for himself, just as the Ogalade chiefs had done. It is not clear how they got their land. All we know is that both the Ogalade and Akarigbere chiefs settled in Lagos, and that they actually own the land they have now got. We also know that all land in Lagos originally belonged to the Idejos, but how the Ogalades, the Benin king, and the Akarigberes got their land from the Idejos is not known. The war chiefs have also land, but it is land which was given them by the king.

15. The king's revenue was formerly obtained through trading, customs, and the slave trade. He got no revenue from land. Before the time of King Akesemoyin no European traders came to Lagos. When they came in Akesemoyin's time the following custom arose:

16. Before landing at all the Europeans had to pay a land tax called Owo Ile. This was taken to the king, who divided it amongst the Idejo chiefs. The merchants then landed their goods and had to pay a tax in the form of a customs duty. All of that tax went to the king. They were then allowed to trade. The war chiefs gained their power through getting slaves for the king to sell to the Europeans. The price of the slaves was paid to the king for every two sales, and the price obtained at the third sale went to the chiefs. In the time of Akitoye the English came and the Owo Ile ceased, and in the time of Docemo the native king's share of customs dues was also stopped.

17. In Governor Glover's time the Governor always obtained land with the consent of the chiefs; now the Government claim all land without asking the chiefs, and that weakens our position as chiefs.

18. With regard to the Brazilian freed slaves, they came in the reigns of Akitoye and Docemo. They were granted their land by the white-capped chief on the usual terms of native tenure, but when Governor Glover came they asked him for Crown grants and paid the chiefs nothing further.

19. The Ogalade chiefs land extends along the Porto Novo creek from Lagos to the Badagry chiefs' boundary.

Chief OBANIKORO.

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands.

Sept. 20th, 1912.

STATEMENT OF ELETU IJEBU.

I am a white-capped chief of the Akarigbere section. I have heard all that Obanikoro has said. He is quite correct in all respects and I have nothing to add to his statement.

his
ELETU IJEBU ×
mark.

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands.

Witness to mark,
M. A. ELEGBA.

CHIEF OPELUWA OF THE OGALADE SECTION.
CHIEF ONTANA OF THE IDEJO SECTION.
CHIEF OLOTO OF THE IDEJO SECTION.

We were present during the time that Obanikoro gave his evidence and wish to say that we agree with all he has said and have nothing to add.

their
OPELUWA ×
ONTANA ×
OLOTO ×
marks.

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands.

Witness to marks,
M. A. ELEGBA.
20 Oct. 1912.

AROMIRE.

I am an Idejo white-capped chief. I do not wish particularly to make a statement, as I was present when

chief Ojora gave evidence, and he has said all I would wish to say. I have nothing further to add.

his
x
mark.

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands.

Witness to mark,
M. A. ELEGBA,
26 Sept. 1912.

STATEMENT OF ZACCHEUS SIMEON TAYLOR.

1. I am a forest ranger and am by birth a Yoruba, and have been 13 years in the Government service. I am 58 years old, and always resided in Lagos before I entered the Government service.

2. The system of tenure in the Colony is this: the land really belongs to the chiefs and their families; in practice it is in the hands of individual owners, who give presents to the chiefs at various seasons in recognition of the fact that they hold their land from them and because they are their chiefs. The chief never disturbs the use of the land granted by him unless the occupier fails to give him the usual presents when he can turn him out and punish him. In due course a son always succeeds, but in the event of there being no son, then the chief arranges who is to succeed. The successor pays the customary dues to the chief just as his predecessor did. A piece of land can be lent by the occupier to others with the consent of the chief, but no permanent alienation is recognised. This is the system with regard both to town and country land. There were, however, a few instances of sale of land even before the arrival of the English, but it was done with the consent of the chiefs only.

3. The result of this selling of land has been that the authority of the chiefs has been weakened, which is not a good thing.

4. The chiefs and their families exercise control to a certain extent over land. That is to say, they are generally given presents of the produce of the land by occupiers of land on which yams, corn, or beans are planted. They also get a small present of palm oil and palm wine from the cultivators of the palm trees, but do not get anything from cocoa, because that is of recent introduction. The agricultural occupier of the land is not, however, always compelled to give these presents and only does so because it is customary to do so. As a rule, the chief never takes land back from an occupier. If he commits an offence he punishes him, usually by a fine.

5. Land always goes to the son, or failing the son to the heir appointed by the chief when the original occupier dies, and only reverts to the chief on the failure of heirs. This applies both in the town and in the case of rural land.

6. Beyond the above, that is, an occasional present to the chief, the occupier of any land granted by the chief has nothing further to give his chief or to do for him. Occasionally a chief will help a man when he wants to get married, or if he is in trouble.

7. The heads of the community from the king downwards never get any revenue from land. The presents to the chiefs from the occupiers of the land which they or their fathers have granted are purely personal to them and have nothing to do with the tribe or the state.

8. Nothing is paid to the chiefs in respect of the price obtained by the sale of produce grown on the land occupied by people who held from them.

9. All the chiefs in Lagos, whether they are white capped chiefs, or war chiefs, own land.

10. I should like to add something with regard to pawning land. If he obtained the consent of his chief a man could always pawn his land, but he always could get it back again at any time by paying back the money for which it was pawned.

11. I have spoken throughout of chief and chiefs, but no chief or chiefs can do anything with their land without consulting their family. Family in the native sense means all the relations of the chief and all his

wife's relations as well, as long as the latter acknowledged him as their chief.

Z. S. TAYLOR.

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands.

Lagos,
September 27th, 1912.

STATEMENT OF ALI BALOGUN.

1. I am a Mahomeddan trader and have lived in Lagos over fifty years and am by birth a Yoruba. I know only the Lagos custom as to land. The land of Lagos belonged originally to the chiefs and the King of Lagos. The position of the king was very much that of the Government at present. The chiefs were the regular owners of the land and the king exercised supreme authority just as the Government does now. He could not interfere with the sale or purchase of land by the chiefs or others, but could dispose of his own private land as he liked.

2. When a man wanted land he went to the owner with four bottles of rum and about 1,000 cowries, a sum which is about threepence now, but was formerly, when silver was introduced, equivalent to about sevenpence. He also took some kola nut with him. The cowries were not limited to 1,000 but could be 20,000 in number, or ten heads. That was the limit about the time of Docemo. The chief who owned the land would then call a meeting of his family and consult them. Certain ceremonies would then be performed and the land would then be granted to the applicant. The land then became his absolutely, and the chief and his family could not interfere any further with that piece of land.

3. The law of land tenure is therefore as follows: Originally it was all the property of the chiefs, but they gave it away to a great extent in the way I have described, so that eventually all the land got into the hands of individual owners, except those parts which the chiefs had not alienated or which were used by their slaves, who did not get an absolute title to the land they used.

4. Urban land was alienated fully and absolutely without any reservations. Sometimes, however, if there was a previous agreement to that effect, the occupier of agricultural land granted by the chiefs would pay the chiefs four bottles of rum, and 1,000 to 10,000 cowries annually. If he ceased to pay this the chiefs could take the land from him if he failed to give a reasonable excuse. Agricultural land could, however, be alienated absolutely and sold, just as in the case of urban lands, before the English came, but it was more usual not to alienate absolutely in the case of agricultural lands. Nowadays a great deal of agricultural land is sold, the original owner retaining no hold over it.

5. I think it is a good thing that land should be sold in this way. The white capped chiefs and other Lagos chiefs have now disposed by sale of about half their land, so that further sales would make no difference to their position. I do not think their position has been affected. There is no diminution of their prestige due to their parting with their land.

6. The chiefs had no control over urban land when they had once granted it, but usually retained a certain amount of control over agricultural land, as I have described above, being given presents of rum and cowries annually, and occasionally yams and other similar produce. Palm trees were not usually granted, but if they were the original owner was given palm oil annually. Kola trees were usually reserved by the owner.

7. If the cultivator or occupiers of agricultural land died and left a son, the son would succeed and hold it in the same way as his father had done. If there was no son a daughter might, by arrangement with the owner, succeed. If there was no heir the land reverted to the chief. Urban land was alienated absolutely, and if the owner of the land so alienated was a slave, and died without heirs, his master succeeded. I have never heard of urban land once alienated reverting to the chiefs.

8. There were no obligations on the original owner of the land to do anything for the occupier of agricultural land.

All the annual presents paid by occupiers of agricultural land to their chiefs or the original owners were for the benefit of the chief or original owner only. He could if he liked give some share to his brothers.

9. None of the king's revenue was derived from land, but was obtained from customs and from fees paid by traders.

10. There is a great deal of land mortgaged nowadays in Lagos. The mortgagor generally manages to recover the land mortgaged. The practice of pawning children and farms existed in the old days. If the pawnee had not money to redeem the pledge, in the case of a farm, his family would generally subscribe money and redeem the farm, and it would then become family land. A child would often remain with the pawnee till he had grown up and could redeem himself. Land never actually became the property of the pawnee as the pawner's family had always the right to claim it back at any time, except under the following circumstances: If the land had been pawned for a long time and there was no prospect of its being redeemed the pawnee would sometimes call together all his neighbours to value the land. If the value assessed was less than the value paid for the pledge he kept the land and suffered the loss of the balance of his money. If the value of the land was more than he had paid he would return the surplus to the family. But this could only be done with the consent of the pawner. The land then became the property of the pawnee.

11. I should like to add, with regard to agricultural land, that the reason the chiefs have lost half of their land, as I said, through sale is that whenever a chief has succeeded to the stool he has had to sell a little land to cover the expenses of his installation and of the burial of his predecessor, so that all the agricultural land in the hands of the chiefs has become gradually less.

ALI BALOGUN (signed in Arabic).

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands.

M. A. ELEGBA,
Witness and Interpreter,
Lagos, October 2nd, 1912.

WRITTEN STATEMENT OF BISHOP I. OLUWOLE.

Land Tenure.

(a) The fundamental law of land tenure is ownership.

(b) Individual ownership of land, urban or rural, involving an absolute right of possession, is recognised by native customary law. With the consent of responsible members of the family, land may be given for the occupation of an outsider, who then makes the owner a present, but pays no rent. If the outsider at any time gives up the use of the land it reverts to the owner.

(c) Native feeling is strongly in favour of such ownership. In fact the native knows no other system. To him any other would be an innovation, and, to say the least, most unwelcome.

(d) The recognised heads of the community do not exercise any control over the usage of land. Any attempt on their part to do so would be regarded as an interference and resisted. The individual cultivator has, and exercises, the absolute right to cultivate on his land whatever produce he likes without reference to anybody. A system of grant or licence for cultivation, or for collecting forest produce, is unknown. The only exception is the system introduced only a few years ago by the English Government, of obtaining licence for collecting rubber or cutting timbers. Upon the death of the individual owner of land, urban or rural, his children come into possession. As far as land tenure is concerned, there is no difference in the relation between an owner of land and the head of the community, and in that between such owner and any other person.

(e) In this country no revenues are derived from land. I have stated above the only exception in the cases of rubber and timbers. No rent is paid for the use of land for any purpose.

Joint ownership of compounds by the family, a general system in the hinterland, still obtains in some

parts of Lagos, especially in the old quarters occupied by the aborigines. In this case the land cannot be alienated, temporarily or finally, without the consent of the responsible members of the family. But in by far the greater part of the town individual ownership prevails with absolute right to bequeath and alienate.

It is well known how strongly opposed the people of this country are to house or land tax. I do not think that this is due to the natural hostility generally inherent in people everywhere against any tax. The principle of the objection to this particular tax seems to lie in the strong feeling of ownership in land. I remember the song of the women when it was proposed some years ago to introduce house tax in connection with electric lights:—

"Awa ko sanwo ile awa."

which means—

"We will not pay tax upon our own houses." The emphasis is on the second "awa," "our own."

I. OLUWOLE,

Lagos, Bishop.

October 24, 1912.

WRITTEN STATEMENT OF DR. O. JOHNSON.

The System of Land Tenure in Southern Nigeria (Yoruba).

(a) The fundamental law of land tenure in the Yoruba country is that the land belongs to the people, that it is inalienable, and not subject to sale. The ancient tradition, that the great ancestor and founder of the race had so many sons, to whom at his death he divided all his property including his wives' money, crowns, jewels, beads, garments, &c., and that to his youngest son and successor (the Alafin) he bequeathed the land, by giving him a bag full of earth with a bar of iron in it, is only a parabolic way of making him supreme over all his brethren; as all must subsist on the land, so all must be subject to him. It is not that the land is solely his.

(b) The ownership of land is absolute. Treason to the State is the only thing that can dispossess a man of his right; but then, if he escaped execution, it involves his expulsion from the State altogether and the confiscation of his land. If the expelled is a chief and the whole of his followers (and family) had to go with him, his land reverts to the State, and the chief ruler with the town council will allot it to another family; but if a private individual, the land will fall to the next of kin.

Lands may be alienated temporarily or finally within the tribe. Temporarily, as when a large influx of refugees enter a town, and land is apportioned to them for temporary use; it being understood that they will return to their own country in due course; in such a case, it is the law and custom that the fruit trees, e.g., palm, kola, &c., are not included in the grant. Otherwise, when land is given to individuals, it is given permanently; it is his whether he makes use of it or not.

Note.—There is always a confusion of ideas resting on the term "inalienable." Land may be given to a foreigner (or alien) for his use absolutely, but without the right of possession passing into other hands; to do this is to alienate the land and that is illegal, but when the land is no longer needed, by the death or otherwise of the party, the land must revert to the family of the donor.

But when the individual who acquired the land is not an alien, but a native of West Africa domiciling permanently in this country, his family will continue to make use of the land after his death. This is not alienation. In a word, alienation begins when the land is passed on to a third party not a member of either family.

So far as I know, there is no separate law for urban or rural land, excepting this, viz.: That urban land, when not in use, should always have a mark of ownership; the remains at least of a wall, or fence, or trees known to have been planted, and not sprung up spontaneously. If ever the land is wanted, even by the chief of the State, the owner must first be

communicated with, and except he voluntarily relinquishes his right, the land cannot be taken from him; but if no mark of ownership is found, other proofs will be required to establish his claim.

(c) The extension of ownership can only be limited to natives of West Africa residing permanently among us. Time and circumstances may bring about a gradual change in native social institutions, as it has been in the past. Changes and reforms have taken place, but always from within; any such thing from without will be strongly resented as not reformation, but revolution and an outrage.

No king can interfere with poor people's land, as all claim a common ancestor from whom they derived their rights. When a reform is necessary, the need is felt generally and universally, and then, the lead given by the recognised head of the community is acquiesced in naturally and followed instinctively. Customary laws are not evolved from without. Increase of population may bring about such a change or reform from within as may be essential.

(d) No king or chief can dictate to anybody what he should do to his lands. Kings and chiefs themselves have their own portions inherited from their fathers, and they can plant whatever they like for home consumption or for export. They can set examples which others may follow if successful. Elementary political economy has taught us that, were a regulation on these lines to be enforced, a deterioration in quality and diminution in quantity will soon become apparent in the products, with inevitable famine and diminished exports.

No licence is required from anybody. At the death of any cultivator, his farm belongs to his son, or brother, or next of kin according to the law of inheritance. It is a family affair, not a municipal; if there is absolutely no relative (a very rare thing indeed) the land reverts to the community, represented by the king or chiefs of the town.

(e) Personal service, especially in time of war, is the only thing required of every man by the heads of the State.

Naturally the chiefs have more farms, and larger, than those of private individuals. Their retainers and subordinate chiefs may be required to render help together at certain periods either in cleaning the farms or reaping the crops. In this way public services are rendered.

There is no State or tribal revenue, as such, to which all are supposed to contribute; for even in time of war, every freeman provides for himself, and the chiefs for themselves and their slaves, their households and retainers.

What may be regarded as national revenue were the tolls formerly taken at the gates of entry in each town, and even in this there was no common purse for them. Each gate was assigned to a particular chief who collected the revenue (tolls) from it, but in return he is responsible for the whole route and neighbourhood from that gate right on to the frontier of the next town. He is expected to keep it in repairs and in good order, he is the first to meet any danger coming from that quarter, he is to report to the town council or his immediate chief anything extraordinary that may occur in that quarter.

No revenue derivable from land is exacted: such demands are entirely alien to the genius of the people.

Other sources of revenue besides the tolls are the court fees, and they are dealt with in much the same way. The leading chiefs decide all cases in their respective districts and appropriate the fees for themselves and their subordinate chiefs; and, in return, they are responsible for the good order, what we may call policing, of the district.

Cases involving two or more districts, or with outsiders, or the more serious cases are taken to the head chief sitting in council with all the leading chiefs.

Court fees here are shared by all the leading chiefs in a regular systematic way by seniority.

No public prison or public institutions as such are kept requiring a common fund. Crimes are summarily dealt with at once. To house and feed and care for criminals is regarded as encouraging crime, hence under the present régime there are probably some ten

or twenty times more convictions for crimes committed than obtained under purely native government.

It is altogether a foreign idea for any man to pay rent for the use of his own land or to give a proportion of the proceeds derived from the sale of his products. A manufacturer of palm wine cannot be penalised more than the manufacturer of cloths or of earthenware vessels.

Whenever a public duty befalls a community, the responsibility is allotted to one or more of the whole body of the principal chiefs, and each one is assisted by his subordinate chief, and thus all individuals under the chief and sub-chiefs will contribute towards the object, whether by personal labour, money or food; the work is thereby done all the same as if from a public revenue.

All matters relating to the forests are under the charge of the hunters—a body of professional men who rank with the principal chiefs, with their titles and orders. These men have a complete knowledge of the forests with their flora and fauna. They are responsible to the head chief and the town council.

Laws relating to the forests should in a measure be entrusted with the confraternity.

Lagos.

Lagos, although a part of the Yoruba country, is to some extent under different rule as to land tenure. As a British colony, the Government have introduced some changes unknown in native States, such as the following:—

- (1) Crown grants or certificates of ownership by purchase.
- (2) Registration of house and land.
- (3) Sales of houses and lands for debts.
- (4) The partition or breaking up of an estate at the death of the head of the family.
- (5) A proposed house and land tax which is most objectionable and obnoxious to the people.

In the hinterland, the eldest surviving issue or nearest male relative becomes the head of the house at the decease of the head of the compound, and every member of the same retains the same right as he had before.

Debtors bear the consequences of their imprudence or misfortune singly with their personalities; houses and lands are never sold, being a common inheritance.

O. JOHNSON.

Marble Hall, Broad St.,
Lagos.

STATEMENT OF DADA OKE.

1. I am an Awori man and live in Tapa village. In the Awori towns each individual has his own land, the chief having his own land, and not interfering with that of his people. If a man has a piece of land and dies leaving 13 children, the land will belong to the whole 13, but the eldest will take it over, and if any of the rest want a piece of land belonging to the 13, he will ask his eldest brother for it.

2. Therefore the fundamental law of tenure is that land belongs to the family.

3. The piece of land which the younger member of a family gets from the elder he keeps for his life and then passes on to his children. The elder brother cannot interfere, or try to take it from him or his children. When the younger brother who has been given land by the elder dies his eldest son takes on the whole of his share, just as his elder brother took over from his father, and gives shares to the younger sons as they ask him.

4. If the land gets so divided up that at last there comes a time when no land is left, the descendants of the original owner who want land will go to someone who still has some land left and ask him for some. In order, however, that it may be clearly understood that he is on land which does not belong to him he pays the owner 24 yams every season.

5. Native custom recognises the right of the individual who is enjoying his share of the family land to do anything he likes with his land except sell it.

The question of selling land never came into prominence before the white man came.

No one tried to sell land, and if anyone had tried to sell no one would have bought. Final and absolute alienation was never recognised. Now people do sell land, but they never did so before the English came.

6. Temporary alienation in the form of pawning of land was recognised, but such alienation was never complete, as land so pledged could be redeemed at any time. A man can also lend his land to a stranger or friend, as I have said.

7. What I have said applies equally to town and rural land, except that in the town no yams were paid by the stranger to his landlord.

In our Awori towns we have plenty of room and when the house gets too small for an increasing family we enlarge it. The family lands in towns are not usually very small, and we extend on those lands.

8. The heads of the community and chiefs do not in any way interfere with the usage of land except in those parts which belong to their own families. Even the head of the family never interferes with the usage of the family land by any individual belonging to the family who has been given his share. He can cultivate what he likes and do what he wishes. He is not supposed to sell, and in any case would not sell, land without first consulting his family, even now. No individual cultivator ever gives anyone any presents for his land, provided he is using the share which has been allotted to him.

9. I do not think it is a good thing to sell land. A man who does so does not consider his children.

10. When a man dies and leaves no children his land reverts to his family both in the town and the country.

11. The recognised heads of our communities never got any revenue from land. They always derived their money from fees for settling disputes and from other sources unconnected with land.

12. In my part of the country between Agege and Isheri a lot of cocoa is grown by Aworis and by Lagos people. The latter have asked the Aworis usually for permission to cultivate in the neighbourhood which I know best and pay an annual monetary rent. Some, however, have bought their land outright, and we recognise that the purchasers have a right to hold the land they have bought for ever. That is not proper native custom, but is the result of the white man coming to our country.

his
DADA OKE ×
mark.

M. A. ELEGBA,
Witness to mark.

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands.
Agege, October 26th, 1912.

STATEMENT OF SUMONU OLUWORA.

1. I am a native of Lagos, but have lived in Oluwora village, near Isheri, ever since I was a small boy. I therefore am well acquainted with the local land customs.

2. I have a lot of land which was bought long ago by my father from the Awori tribe. I cannot say how long it is since my father bought it. I have also some land which was not bought. It is near Isheri, and my father asked the Aworis if he might occupy it. My father never paid the Aworis anything, but people who hold this land by permission from me give me annual presents, which I hand over to the Awori owners of the land I occupy.

3. The basis of land tenure is that the land belongs to the family. It does not belong to the chief, who has no say in the user of land unless it belongs to his own family. The head of the family has the chief voice in the disposal of the family land.

4. Native custom recognises that when once a member of a family has been allotted a piece of family land he can hold that piece for ever without anyone interfering with him. It is the same both in the town and the country. By Awori custom a man cannot sell land but can pawn it, but as he can by native custom always recover it there is never any question of permanent alienation. Even pawning is not carried out without reference to the eldest member

of the family. With these limits a member of the family who has been allotted a piece of family land can do exactly what he pleases with it, and, when he dies, it goes to his children, the eldest child taking over the management.

5. I think it is not desirable that land should be sold, because it is contrary to native custom.

6. The head of a community cannot interfere in any way with the individual who is using or cultivating any part of the family land allotted to him. A man can do exactly what he likes with his own land. Even the head of his family cannot prevent him from growing what he likes on it, or doing what he wants with his town land, provided that he does not sell. If any one wants to sell his land his family has to be consulted.

7. If the individual occupier of family land commits a serious crime his family can drive him out and temporarily deprive him of his land, but will always restore it on the matter being settled.

8. On the death of the individual if he has no children the land reverts to the family in general. Otherwise, if he has children it goes to them.

9. As far as land or its products is concerned the individual and the chief have nothing to do with each other. A chief's revenue is derived from the fees paid to him for settling disputes. He gets nothing from land except his own.

10. When a man has once sold land he cannot recover it. We all realise that.

11. Some of the cocoa planters at Agege have bought their land outright and some have asked the local natives for permission to cultivate. The latter pay rent and according to native custom can be compelled to leave the land at any time if the persons who gave them permission to occupy it so wish. No compensation would be payable, but as a matter of fact a person who had been given permission to occupy would not be turned out by his landlord unless he misbehaved himself.

his
SUMONU OLUWORA ×
mark.

M. A. ELEGBA,
Witness to mark.
Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands.
Agege, October 26th, 1912.

STATEMENT OF IBRAHIM BASHORUN, Bale of Tapa Village.

1. I am an Ekiti man, but am Bale of Tapa village, which is an Awori village. I cannot tell you for certain what are the Awori customs as to land, as I am not an Awori. I became Bale of the village by appointment by the son of the local Awori landowner. I have lived many years at Tapa. The last Bale was a Hausa. All the land belonging to the village belongs to the Aworis. I have been given land by them and pay them rent for the land I farm only, not for the piece on which my house is built. There are several people in Tapa village who are not Aworis, but they all pay rent to the Aworis for the land they cultivate. As long as I continue paying my rent, five shillings per annum, I will not be turned out of my land by the Aworis. My children can inherit it and will continue to pay the five shillings rent, and as long as they continue paying it they will by native custom also be left in undisturbed possession. I can sublet my land to others and get money from my tenants, but otherwise I get no money from land. I collect the village land rents each year and give them to the Awori headman and he divides the sum amongst his family. All rents are paid in money.

2. There have been no considerable sales of land in my village. The Aworis are averse to selling land and never sell it without first holding a family council about the proposed sale.

his
IBRAHIM BASHORUN ×
mark.

M. A. ELEGBA,
Witness to mark.
Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands.

STATEMENT OF IDRISU SABADORE, Limomu of the Brazilian Section of the Mahomedian Community in Lagos.

1. I was born in Lagos. My father was an Egba. He was captured in war and sold in Lagos to the Portuguese, who took him as a slave to Brazil. There he remained about 30 years. He was sold as a slave in the time of King Oluwole. When in Brazil my father worked and made sufficient money to redeem himself and pay his passage back to Lagos.

I was born after his return to this country, and after the arrival of the English.

2. When my father returned from Brazil he asked one of the white capped chiefs to ask the king to give him some land, and Akitoye, who was then king, sent his messenger and pointed out the land I have now got to my father. My father paid the king's messenger 10 heads of cowries, that is, 20,000 cowries, and one demijohn of rum. This was simply a present to the king's messenger. There was no purchase money. The land was given absolutely to my father, and he never paid rent to the king or the chiefs at any time. When the English came my father asked Governor Glover for a Crown grant, because the Governor said that everyone should have a grant for his land. That was the only reason why my father applied for a grant. His title was quite secure as it stood, as the king never took back land he had once granted. My father often told me the whole history of this grant. This custom was followed by other Brazilian freed slaves, and everything was the same except that some people had to give a present of five bags or 100,000 cowries to the king's messenger.

3. In and near Lagos all farm or agricultural land belonged, and does belong still, to the white capped chiefs.

4. My father also got a piece of farm land at Igamu, between Ebute Metta and Apapa, from chief Ojora, a white capped chief, and paid him an annual rent of two shillings and six pence.

The land is still in my possession, and I still pay Ojora two shillings and sixpence each year.

5. I am not my father's only son. There are eleven of us. The town land we all share. My father made a will to that effect when he died. Even if my father had not made a will we would still have shared the town land, as that is native custom. The farm land we also share, but in this case we only get part of the produce, as we have sublet it to a stranger. This produce takes the form of palm oil, which we divide up amongst ourselves.

6. I cannot tell you what the proper custom as to land is in Lagos, as I am still regarded as a stranger here, and do not know the local customs properly. I do know, however, that native custom is that land cannot be sold, but I also know that land is sold nowadays in Lagos. I have bought some myself. The part I have bought I would not mind selling again, but I would never sell the land I have inherited, because it is family land.

7. A great deal of land is getting into the hands of the moneylenders in Lagos. They are becoming rich. It is not, I think, good that it should be so.

8. I think that is all I can tell you.

IMAM IDRISU SABADORE.

Signed in Arabic.

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands.

October 29th, 1912.

STATEMENT OF AGANRAN, Bale of Ojuwoye Village.

1. I am an Awori, and am Bale of Ojuwoye village. I was appointed by the village elders.

2. All land belongs to families, and is divided up amongst members of each family, who all farm it together. All land belonging to families residing in the same village is regarded as village land, but no member of one family would interfere with land belonging to another family, nor would the Bale or any one of the village elders interfere with the cultivation of any land not belonging to his own family.

3. In the village itself there is a slight difference. Each family has its own house, but when that becomes too restricted, and cannot for some reason be enlarged on the same site, the head of the family will apply to the Bale for permission to occupy a vacant space in the village. Vacant spaces inside the village itself are common land at the disposal of the Bale and the council of village elders.

4. The right of each individual to do what he likes with his farm land is recognised.

He cannot, however, sell it, and cannot pawn it, and if he wishes to lend it to a stranger or some person not belonging to his family, he must get not only the permission of his family, but also that of the Bale and village elders. It is true that land has been sold to Lagos people by people in our village, but the transactions were conducted secretly without reference to the Bale or even to the head of the family interested in the land.

5. Inside the village itself the individual can, with the consent of the head of his family and of the Bale and village elders, lend his house to a stranger or friend, or allow them to hire it. He cannot, however, sell land or houses occupied by him within the village.

6. I do not think it is right that we should sell land. Had our fathers done so we should not have got any to-day.

7. Our chief is the white cap chief Eletu Odibo who lives in Lagos. He has nothing whatever to do with our land and we give him no presents from the produce of our land. All we have to do with him is to go to see him if we have any business which takes us to Lagos. He has got a piece of land of his own here, but people who wish to lend their land do not tell him, but the village elders and myself only.

8. An individual is absolutely free to cultivate what he likes on his own piece of family land without any interference from the head of the family or the village. He makes no contributions of produce to anyone unless there is a family festival. Then the head of the family calls for contributions from each member of the family and tells each what he is to give.

9. An individual cultivating or living on his own share of the family land cannot be deprived of it unless he does something very bad, when his family would drive him out. They would, however, return the same piece of land to him when propitiated.

10. The Eletu Odibo, our white cap chief, never gets any contributions from us, but I should add that there is a certain amount of land which belongs to our community and not to any particular family. When anyone is given a piece of this common village farm land he has to make an annual present to myself as Bale.

The annual present consists of two bottles of gin.

11. All persons cultivating either their own share of family land or land which has been given to them by the head of the village are entitled to the full benefit of the produce of that land without any deductions at all, no share of produce being given either to the head of the community or the head of the family.

12. I do not know what the history of our village is or how we come to be settled here.

M. A. ELEGBA, his
Witness to mark. AGANRAN x
mark,

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands.
Ojuwoye, October 30th, 1912.

STATEMENT OF DADA, Bale of Isolo Village.

1. I am an Awori, and am Bale of my village, Isolo.

2. All land in my village belongs to the families living in the village. The only common land belonging to the village and at the disposal of the Bale and council of elders is the unoccupied land within the village itself. The agricultural land is all divided up amongst families belonging to the village.

Each family has its own house in the village itself, but otherwise all the land inside the village belongs to the community.

3. The head of the family allots land to individual members of the family. He is always appointed by the family, but is generally the eldest son of the former head. The individual who has been given a share of family land has the right to do anything with that land except sell or pawn it, and when he dies it will go to his children. If, however, he wishes to lend the land to anyone he can do so with the permission of the head of the family both in respect to land for cultivation and land inside the village. The Bale is not necessarily referred to, but would be consulted if the affair was important. No part of the Isolo land has been sold or pawned up to the present.

4. I think that it is very undesirable that land should be either sold or pawned.

5. Such transactions were unknown by our fathers.

6. In the old days there was a king of Isolo called Onlogbo, but that was many years ago and there has been no king or chief since his death. I am the most important man now at Isolo and I was appointed Bale by the village council. I do not in any way exercise control over the usage of land except my own personal land, that is, my share of my own family land. I would, however, at once interfere if any member of my family tried to sell or pawn his land, or if he lent it to anyone without telling me, whether it was his farm or land inside the village. I would drive him out if he tried to do any of these things without consulting me. Apart from this, cultivation is carried on without grant or licence from me by individual members of the family, each on his own allotted share.

7. On the death of the individual without children the land reverts to the family, but I have never heard of a case where there were neither children nor brothers, and the latter succeed, failing children, before the land reverts to the family in general. This is the case with regard both to agricultural and town land. By the latter I mean land inside the village.

8. I am not entitled to any presents or share of produce, but sometimes members of my family make such presents if it is known that I want them. Similarly I would help members of my family who were in trouble. As Bale I am not entitled to any share of produce from anyone. I am entitled to a small present in my official position if any of the common land inside the village is allotted to anyone, but only one such present is made. It is not annually recurrent. Otherwise I am entitled to nothing in the way of contributions either monetary or of produce.

9. All cultivators enjoy the full amount of the produce of their land without any deductions for the chief or anyone else. The only exception to this rule occurs in the case of a stranger or a member of one family cultivating by consent the land belonging to another family. In both these instances an annual present of part of the produce of the farm is made to the head of the family which owns the land. The head then divides it up amongst the members of the family.

his
DADA ×
mark.

M. A. ELEGBA,

Witness to mark.

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands.
Ojuwoye Village, October 30th, 1912.

STATEMENT OF JACOB KANYINDE COKER.

1. I am Secretary of the Agege Planters' Union, which consists of over 300 members.

2. The fundamental law of tenure is that land belongs to individuals and to families. In very old times someone occupied the land and it then went to his family and to each individual in it, and so became divided up amongst individual families, each individual in each family having a share which he passed on to his children.

3. When there is plenty of land the unoccupied part belongs to the family in general, and if a member of a family is tired of his own piece of land or wishes it to lie fallow, he can take a piece of unoccupied family land. He tells the head of the family, but pays nothing. An individual member of a family can do exactly what he likes with his land without any reference

to the head of the family. As a matter of courtesy the head of the family can be informed if he wishes to lend or pawn his land. It is not, however, necessary that the head of the family should be informed.

4. Temporary alienation by lending or pawning is recognised both in town and country land, and as to permanent and final alienation a man could always give away his land absolutely, but did not sell it. There would have been no purchasers. Nowadays, the power to alienate permanently by sale is also recognised. In this case also a man might as a matter of courtesy inform the head of his family, but need not do so.

5. As a rule on a man's death his children divide up his land, and the share of each individual then becomes his, absolutely, to do what he likes with it, as I have said. There are, however, occasions where the land is not divided up as the individual members of the family do not care to farm it. It then remains the property of the whole family and cannot be alienated either temporarily or permanently without the consent of the whole family. The same applies to town land.

6. The natives already have by custom the right to alienate permanently, and selling, though not formerly customary, is so now. I would be in favour of things continuing as they now are.

7. The recognised heads of the community and their advisers can control the usage of their own personal landed property or their own family land. No grant or licence is required by anyone from the head of a community to do what he wishes with the land he cultivates. If a stranger wants land he deals with the individual from whom he gets it eventually, and no reference is made to the chief.

8. On the death of the individual his land goes to his children, and amongst the Egbas movable property and standing crops go to the children's maternal uncle or aunt. Amongst the Aworis their paternal uncle or aunt can also succeed to movable property or standing crops. They can give what share they like, or none they so wish, to the deceased's children.

9. The head of the community can settle quarrels with respect to land. Otherwise he has nothing to do with land beyond his own personal share of his family land. As far as land is concerned he is an ordinary individual only.

10. The chiefs or heads of the community are in receipt of no money or produce in respect of any land except that which belongs to them personally.

11. I have been at Agege for many years. I was born in Abeokuta, but came from Lagos to Agege about 1891. At first I got land by asking the land-owner for some, as was then customary, there being no selling in those days. Some of the land I have got I obtained from a single individual owner and some from families. When buying and selling of land was introduced I bought my land. Buying and selling of land has gone on in Agege since 1898, approximately.

12. There have been occasions when family land, as I have defined it, that is, land which belongs to the family as a whole and has not been divided up amongst the individual members of the family, has been sold or mortgaged at the instance of one member of the family. The rest of the family have appealed to the Supreme Court and had the sale or mortgage annulled. This happened in the case *Sogunro v. Obafemi, 1907 and 1908.

13. I should like to add that when I was originally given my land by the local natives it was given to me absolutely, but later, when buying and selling were introduced, I preferred to get documentary evidence so I paid money and had a deed of sale executed.

14. Agege is a great farming country. It is mostly under cocoa, and the cocoa is in a flourishing condition. A great many of the farmers come from Lagos. Some of them have bought their land outright, and some of them have leased their land, and some of them have obtained it in the old native customary manner by asking the original owner for it. The prosperity of Agege is due to the introduction of cocoa. It was

families, and that each adult member of each family, male or female, has his or her share. The brothers get their land on their father's death from their eldest brother, but the sister's share is kept by the eldest brother in trust for her son.

3. Each member of a family can do whatever he likes with his own land. He can part with it or sell it without any interference from the rest of the family. He has absolute ownership. This was not so in the old days, because there was less money, fewer people, and more land available in consequence. A bag of corn which now costs 5s. 6d. would then cost about a sixth part of a penny. Therefore no one wanted to buy more land and in consequence no one sold. The sale of land only began after the white man had come.

4. A member of a family cannot, however, sell any part of family land which has not been definitely assigned to him as his share. For instance, family land which has not yet been divided up, or the house where the family was born and brought up, is property common to the whole family, and cannot be sold without the consent of the whole family. If a junior member of the family disagrees as to the sale he can be given his share and the rest of the land is sold, but if the objector is the head of the family then the common family land cannot be sold. What I have said applies to town and country land.

5. I think that the practice of selling land is not a good one, as if a man has once sold his farm he cannot use it again for obtaining the means of livelihood.

6. The head of the community, or the village chiefs or sub-chiefs, cannot in any way interfere with the usage of any land except their own personal property. They derive no revenue or fees from land and are given no share of the produce of the land of other members of the community.

7. On the death of the head of a family his next brother will succeed to the direction of the family land, but his children will succeed to his own share of that land.

8. The Aworis have now no chief except the village chiefs within the Colony. I am the biggest Awori chief outside the Egba boundary. I look after six villages. There are a great many Awori villages. I do not know how many. Outside the Colony the Aworis recognise the Oba of Ota as paramount chief. He gets no share of money or produce from land.

9. If a stranger comes to our country and asks for land he can get it from any person he knows. He need not ask the Bale of the village. Any man who has his own share of land can give him a piece of his share and the stranger pays him produce to the extent arranged each year. That is provided the stranger does not buy the land outright.

10. I do not know how much land has been sold at Agege. Personally, I have sold none, but my family has sold.

his
MOSES AGBEDEYI ×
mark.

DIPEOLU KARONWI,
Witness to mark.
Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands.
Agege, November 5th, 1912.

STATEMENTS OF OGUNDIMU, Bale of Iju Village, Associate Judge of Iju (Egba Territory); AKIBIYI, Bale of Imosan Village; AKIBON, a Headman of Ifako Village; EWEJA, of Akiogun Village.

We are all Aworis and we have heard all that Moses Agbedeyi has said. We would prefer not to make separate statements. He said all that we would wish to say. His statements on the system of tenure and his replies to the Governor's questions are correct, and we approve of them.

their
OGUNDIMU ×
AKIBIYI ×
AKIBON ×
EWEJA ×
marks.

DIPEOLU KARONWI,
Witness to mark.
Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands.
Agege, November 5th, 1912.

STATEMENT OF MR. JAMES GEORGE, Solicitor.

1. I am a solicitor of the Supreme Court in this Colony, and a native of Lagos, whose people have always lived in Lagos, none of them having ever crossed the Atlantic as slaves. I am the only one of my family who has travelled outside Africa, and I went to Madeira in 1870.

2. It is said that the Olofin originally came from Ife to Iddo and that some of his children were Idejos. There were originally more than 16, their present number. The name of the principal chief was Olumegbon. He had no land in Lagos itself, but eventually got some on the mainland east of the island. The next in importance was the Oniru, who together with three other chiefs was the owner of the whole of the island of Lagos. The three others were Aromire, Onikoyi, and Onitolo. Other Idejo chiefs had land on Iddo and the mainland, Onisowo, Olotu, and Ojora being the most important. A portion of Apapa belongs to the Oluwa. As far as land was concerned these were the most important of the Idejos.

3. The Benin chiefs are known as the Akarigbere and the Ogalade. They had no land except what was given to them.

4. Some of the Awori lands were also under white cap chiefs, whose authority formerly extended to Ota.

5. The fundamental law of tenure in Lagos and elsewhere is absolute ownership by the individual. Land was formerly in the hands of the chiefs, but once it had been given it was given permanently. The consent of the chief's family had to be obtained. Any African who asked for land could obtain it from the chief; for instance, my father gave a native of Abeokuta a valuable piece of land near the Marina, in Lagos, for which no rent was ever demanded or money paid. My father during his lifetime made no claim to this land, which was always regarded as the absolute property of the man to whom he gave it.

6. So that individual ownership is recognised by native customary law as regards urban land. Rural land was treated in the same way. Land could always be alienated, but by gift only, never by sale.

7. Native feeling favours the extension of the power of sale, which was initiated at the British occupation, but to natives who speak Yoruba only.

8. The individual cultivator who wants the land for temporary purposes only uses the land which he usually gets by gift from the owner, to whom he pays annually one or two large basketfuls of produce, as corn, yams, and sometimes some palm oil. The gift is never revoked as long as the cultivator continues in possession of the land. Upon the death of the cultivator the land, rural or urban, does not revert to the owner, but descends to the cultivator's family or next-of-kin (as the case may be), who continues the annual payment, for rural land, of the same quantity of produce, but pays nothing for the urban land on which the cultivator has built his dwelling-house, he having paid to the owner the usual kola nuts and some pieces of cloth for the gift. But if land, rural or urban, is given to the alien, it reverts, on his death, to the owner.

9. Generally the relation between the cultivator or user of farm land and the owner is that of tenant for life, descendible to his family or next-of-kin for life.

10. The individual cultivator in temporary possession cultivates and collects any kind of produce, foodstuffs, and makes palm wine, and pays by way of rent the usual quantity of produce annually as before stated.

11. If the temporary cultivator in possession wants afterwards to be given his farm absolutely this would be done without any extra charges being made.

12. In Lagos the present system of paying a money rent for land, and of mortgaging and selling land, obtains since the introduction of European ideas and civilization.

13. When the Crown grant system was introduced, the head of the family used to apply on behalf of the family for a Crown grant, but though his name appears on the grant he only held it for the family. In the Epetedo quarter of Lagos whole communities subscribed the 2l. required for a Crown grant, and the name of one man was entered in the grant. No trouble arose during his lifetime, but considerable con-

fusion arose after his death, when the children tried to claim all the land under the grant, and the system has accordingly led to considerable litigation.

14. I do not think that much land has passed into the hands of moneylenders. In any case the mortgagee usually sells at once after foreclosure. In some few cases debts have been settled by the conveyance of the debtor's property to the creditor without a mortgage, as, for instance, in a conveyance from Alawusa to Daniel Conrad Taiwo, dated March 29th, 1880, No. 95, vol. 31 of the Register of Deeds, page 300.

15. I think that equitable mortgages are more common than the registered mortgage, but they are usually for small amounts below 50*l.*, though sometimes they are for much larger sums. They are generally arranged in this way to save the debtor from exposure.

16. The usual rate of interest is 6*d.* per *l.* per month, or 30 per cent., but it had reached 2*s.* per *l.* per month, or a rate of 120 per cent. This large interest was usually for small loans only, and though I personally have known of instances of such a high rate of interest, I have not had anything to do with them myself, and none of my clients have executed deeds for so high a rate of interest.

JAMES GEORGE.

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands,
Lagos, Tuesday, 3rd December, 1912.

STATEMENT OF MR. THOMAS WILLIAM JOHNSON.

1. I was born in Sierra Leone, but my parents were natives of Lagos, and I have been here since 1861. I was in the public service for 47 years up to 1909, when I retired on a pension. I was court interpreter from 1876 till I retired. I have, in consequence, been present at the hearing of most of the important land cases which have been tried during the 33 years of my service in that office.

2. From what I know and have heard in the courts I should say that the fundamental law of tenure in Lagos was that all land in Lagos belonged to the Idejo white cap chiefs, who shared it with their families and slaves. Each Idejo had his own share of Lagos and the immediate vicinity. He held the land for his family and during his lifetime. On his death it passed to the next representative of the family, who was selected by the family.

3. Individual ownership prior to the arrival of the English was not recognised either in the case of rural or of urban land. Permanent alienation was impossible, and temporary alienation to a stranger was only possible with the consent of the chief's family.

4. The king had no control in land matters, and if he wanted land had to refer to the chiefs.

5. All this has changed now except in certain parts outside Lagos. Both the chiefs and their families are selling land everywhere, though occasionally the family goes to court and gets the sale by the individual rescinded. But practically speaking, the native land custom in Lagos and the old eastern and western districts, that is, to Epe on one side and Badagri on the other, has broken down. The absolute right of possession and of alienation, temporary and final, is now recognised within those limits, but alienation in either form still occasionally leads to litigation between the family and the individual.

6. I think it is a pity that this should be the case, but I also think that it is unavoidable with the growth of civilisation and commerce. At the same time if steps could be taken to prevent alienation on these lines in the interior it would be a good thing, in my opinion.

7. The chief controlled the usage of land to certain degree in the old days. The occupiers of family land paid the chief a certain part of the produce of their farm as head of the family, and not because he was a chief. Occupiers of land belonging to the chief and his family would contribute to his fetish festivals. No occupier was allowed to plant kola. There is a Yoruba proverb, "the owner of a kola tree is the owner of the soil." The fact that the head of the community was usually the head of the largest family and family

connection has led to the theory that the chiefs were paid as chiefs, and not as heads of families. It was not, however, really so. The head of the community, as such, had no power over land. Docemo's grants were only made after reference to the white cap chiefs.

8. On the death of an individual cultivator or user, both in the town and country, the land went, with the consent of the head of the family, to the children of the deceased and, failing them, reverted to the family.

9. There was no actual relation between the individual cultivator or user and the head of the community. Thus a cultivator living on land granted to him by the white cap chief Ojora would have nothing to do with King Docemo as far as his land was concerned. Any payment of produce would be made to Ojora.

10. The heads of the community, as such, got no revenues derived from the usage of land either for personal or for tribal or State requirements. The head of the family, however, did get a share of whatever produce there was, both from the individual member of his family or from the stranger cultivating his family land.

11. A great deal of land in Lagos and its immediate neighbourhood has passed out of the hands of the white cap chiefs. I think that very few of them have now got half of what they originally held. Where they have land left, however, they take cash instead of produce for rent.

12. I think a lot of land in Lagos has been lost to moneylenders by its original owners, but I can give no statistics. I think that the moneylenders are the richest people in Lagos at the moment. They do not, however, keep the land they gain through foreclosing mortgages, but usually immediately sell it by auction.

13. There are various forms of tenure in Lagos now. In some places the old customary tenure from the head of the family obtains. There are also a great many Crown grants, and in some of the more civilised parts of the town there are leases, but these are rare. If a native wants a house he generally prefers to buy it rather than to hire it.

14. The owners of land in Lagos, even of Crown grants, generally prefer that on their death it should be held by their families. Sometimes they leave wills to the effect that their land is never to be sold, but held in trust for the members of their family, and sometimes they divide it up amongst members of the family, but even if it is left directly to the eldest son it is understood generally that he is to hold it for the benefit of the rest of the family. So that even under modern conditions the old native customary tenure still goes on to a certain extent. Sales of such family land to this day require the consent of the whole family and could be set aside if the whole family had not consented.

I think mortgages are not a good institution, as if a man loses his land through foreclosure it is not the individual who suffers but the family.

T. W. JOHNSON.

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands,
Lagos, November 6th, 1912.

STATEMENT OF THE PRINCE ELEKO.

1. I am the son of King Docemo, and was installed as head of the family and Prince Eleko ten years ago. My fathers came from Benin City over two hundred years ago. My family is Bini, and is not Yoruba. The white cap chiefs are divided into three sets of 16 each—the Idejos, who are Yorubas, the Akarigbere and Ogalade, who are Binis. I am the King of Lagos, and these three sets of chiefs are my council. There are also 16 war chiefs, of whom only three survive. The war chiefs are also Binis.

2. When my fathers originally conquered the country, the fight which settled the matter took place at Iddo. Lagos was then unoccupied and unowned. It belonged to the Idejo chiefs. Aromire, one of the Idejo white cap chiefs, was the first to go to Lagos and build. Formerly both he and Onitana had fishing huts where the Marina is now.

3. The Benin people originally came to Iddo to wage war with Olofin, the chief of Iddo. The Olofin was also chief of the Idejo chiefs. He was taken as a prisoner to Benin, but brought back after a while, and Ado, a Bini, became the first King of Lagos. Ado was a son of the King of Benin, and was made King of Lagos by the King of Benin. When he became King of Lagos he became king *ipso facto* of the Idejo chiefs or landowners. They were not disturbed in their possession of the land, but Ado and his successors, as Kings of Lagos, could take what land they required for themselves anywhere in Lagos. He informed the Idejos, The Akarigbere and Ogalade white capped chiefs have also got land in Lagos. They were given their shares by the king. The war chiefs were also given their share by the king. The war chiefs had their share where the Marina is now, probably in order that they might protect the island better. What I mean when I say that the king gave these chiefs their land is this—the king asked the Idejos to give them land.

4. The fundamental law of tenure in and around Lagos was that all land was in the hands of the Idejo chiefs. The king had no control over land in Lagos. I do not know what happened when Docemo issued his grants, I do not know whether he consulted the chief or not.

5. If a stranger came to Lagos and wanted land he went to the king, and the king would ask the chiefs to give him land. It would not belong absolutely to the stranger, who would give the king some of his produce annually and would leave the king to settle with the chiefs. This was the case both in the town and country. It also applied to a certain extent to people who lived in Lagos and were not strangers. They got land from the chiefs, but control of the land never passed out of the hands of the chiefs. There was no absolute alienation and the chiefs never agreed to temporary alienation.

6. Now we have to follow English law, except in the case where land still remains in the hands of the chiefs, when the old customs still obtain. But, with this exception, the individual can now do what he likes with his land and can sell. This began in the time of Governor Glover.

7. This is a bad practice and not in accordance with native custom. It weakens the power of the chiefs.

8. The chiefs by native custom exercised control over the usage of land to this extent. All cultivators, whatever they were cultivating, gave part of their produce to the chiefs, and strangers who obtained land through the intercession of the king gave part of theirs to the king.

9. If a man to whom the chiefs had given land did anything wrong—for instance, if he stole—the chief would take his land away from him and return it, whether it was in the town or was farm land.

10. The man who obtained land in the town from one of the chiefs always helped him when he had a festival in his house or anything of a similar nature going on.

11. When the user or cultivator of land died his children took possession, but the chief could take the land away if the children did not continue the services rendered by their father.

Witness to mark, his
THE ELEKO ×
mark.
HY. LIBERT,
C.C.N.A.

Adjourned till Saturday the 9th November, at 9 a.m.

Note.—1. The Eleko was subjected to a very considerable amount of interruption from the white cap chiefs whenever any mention was made of the connection between the Kings of Lagos and the land in Lagos. I had to remonstrate on several occasions. The Eleko more than once modified his statements after such interruptions.

2. Once when dealing with the subject of the history of Lagos the printed edition of Mr. Herbert Macaulay's speech at Government House was produced for my inspection. Out of it fell a typewritten unsigned document purporting to be a statement of the Prince

Eleko on the subject of land tenure. It began, as far as I remember, with the statement that all land in Lagos belonged to families and in some cases to the individual. The paper was then removed and not returned to me, although I asked for it. The Eleko also declined to tell me who wrote the paper for him.

W. BUCHANAN SMITH,
Acting Commissioner of Lands.

EVIDENCE OF THE ELEKO—(continued).

November 9th, 1912.

12. If land is abandoned it always reverts to the chief who allotted it. Land might, however, be abandoned for about 10 years without its reverting to the chief.

13. A cultivator or user of land has nothing to do with the head of the community as such. He has to give part of his produce to the chief who allotted the land.

14. In the old days the heads of the community, the Kings of Lagos, derived no revenue from land. They got all their revenues formerly from the sale of slaves, and later on from customs duties.

15. The white cap chiefs are appointed by the King of Lagos. The system is that they are appointed first by their families, and then presented to the king for his approval.

16. The white cap chiefs have got some land left in Lagos and the vicinity, but the greater part has been sold by those who were apportioned shares in the chiefs' land.

17. A lot of land in Lagos is passing from the original owners into the hands of moneylenders. It is not a good thing. I have no suggestions to make as to how the practice could be stopped. It originated when the Lagos people got Crown grants from Governor Glover. I think that is all I have to say.

18. *Question.* May I see the type-written document which was shown to me last week?

Answer. I have destroyed it.

Question. It purported to be evidence made by you on the land question. Did you give that evidence to anyone?

Answer. I did not know what were the contents of that paper. It was typewritten and given to me. I found that it was of no use to me and I returned it to the writer.

Question. Who was the writer?

Answer. I do not know who wrote the paper.

19. With regard to the Crown grant system I may add that when the owner of the original Crown grant dies the land is divided up amongst the whole family in accordance with native custom.

Witness to mark, his
THE ELEKO ×
mark.
HY. LIBERT,
C.C.N.A.

Before me,

W. BUCHANAN SMITH,
Acting Commissioner of Lands.
Lagos, November 9th, 1912.

STATEMENT OF GIWA SULE OSISI.

1. I am chief Giwa of Lagos, and a member of the People's Union. The Giwas are the chiefs of the Mahomedan clubs in Lagos, and I am chief of the Giwas. I am a native of Lagos. The title Giwa denotes a social rank and in itself has nothing to do with land, but as individuals we are all interested.

2. The fundamental principle was that the lands in Lagos were originally owned by the white cap chiefs. This is the tradition. The white cap chiefs still assert that they are the owners of the land. I agree that this is still correct, but when the white men came they used the land as they saw fit, and that introduced modifications. At the same time the Government admits that the white cap chiefs are owners of the land. When I mean that the white cap chiefs own their land I mean that they own it for their families.

3. An individual member of a white cap chief's family has not the right of absolute possession of any part of the family land, and he cannot alienate either

temporarily or finally without the consent of the family of the white cap chief either in the country or the town. Even the chief cannot alienate without the consent of the family.

4. In the old days, as I have said, it was not possible to alienate at all without the consent of the family, and, as a matter of fact, alienation by sale was never known until Governor Glover asked people to mark out their plots and then gave them Crown grants. When the Crown grants were given the grantees used to give away their grants as trading securities. That is how the sale of lands began in Lagos, and when Crown grantees fell into debt the white people sold their land.

5. I do not think that individual ownership of land should be encouraged. I prefer the family system. Wherever the white cap chiefs have land left in Lagos the family system obtains, and even amongst other Lagosians it is common. Thus, my house is family property, and any document I may make out about it would recite the fact. It often happens that even a Crown grant on the death of the original grantee goes to the family as a whole, that is, to all children of the grantee, the eldest son holding as trustee for his brothers. That is, I think, a much better system than that where land is owned by the individual only.

6. The heads of the community as such exercise no control over the usage of land except in so far as that land is their own family land. The white cap chiefs exercise control of the usage of their family lands with the consent of their family. It has happened that the white cap chiefs have given away land absolutely. In such cases the control is exercised by the person to whom the white cap chiefs have granted it or by his descendants. The white cap chiefs cannot interfere further. I refer, of course, to town land. The white cap chiefs do not give away rural land absolutely. They have sold, but not without the consent of the family.

7. In Lagos the head of a family must be a white cap chief. He gets a certain percentage of the produce of land which he has given to a stranger each year, but nothing from land given to a member of his family.

8. The member of a white cap chief's family is allotted land by the white cap chief. When he dies that land goes to his children with the consent of the white cap chief, or failing them to the brother, if the brother is a good man and has the consent of the white cap chief to his succession. Failing him also the land reverts to the family of the white cap chief. This applies both to town and country land.

9. There is no relation between the cultivator and the head of the community. There are relations between a man who has been granted land and the grantor, and between the head of the family and the member of the family using family land. The head of the community knows only about his own family land. The duties of the member of a family who is using family land are that he must contribute to the common expenses of the family, but all members of a family contribute equally whether they are using family land or not.

10. A member of a family cannot allot a piece of the land granted to him by the head of the family to anyone else without the consent of the family. He can allot land which is absolutely his own by purchase.

11. The head of the community in the old days derived his revenues from the customs and from fines imposed for all but capital offences. By these means he became rich and distinct from other individuals. He derived nothing from the produce of land or the usage of land.

12. In villages every one has his own land and the Bale gets money from settling disputes, but nothing from land except from his own farm.

13. It is true that a lot of land in Lagos has fallen into the hands of moneylenders, but it is not family land which is thus being lost, only the freehold of the individual. I only think that a lot of land has fallen into the hands of moneylenders. I can give no figures. It is only what I think.

14. It occasionally happens that the original Crown grantee dies, and the land which should be family land

stands in the name of the eldest son. That son may possibly mortgage and lose that land without the knowledge of the family and that is how the mortgage system sometimes causes hardship.

his
GIWA SULE OSISI ×

Witness to mark,
OBASA OF IKIJA. mark.

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands.

STATEMENTS OF—

KASIMU GIWA, Giwa
YESUFU AGORO, Trader.
BRIMAH AGBONSAFARA, Trader.
GIWA LAWANI, Giwa.
SALU ABAGUN, Trader.
AFODA, Trader.
BRIMAH AGBOWOKARIOWO, Trader.
BRIMA BASHORUN, Trader.
OSHOTAN BALOGUN, Fisherman.
LAWANI GIWA ABIDOGUN, Giwa.

We are all natives of Lagos. We have all heard what Sule Giwa Osisi has said, and we approve, and have nothing to add to his statement or to alter in it. We are all members of the People's Union.

his
KASIMU GIWA. ×
mark.
YESUFU AGORO. (Signed in Arabic.) ×
their
BRIMAH AGBONSAFARA. ×
GIWA LAWANI. ×
SALU ABAGUN. ×
AFODA. ×
BRIMAH AGBOWOKARIOWO. ×
BRIMA BASHORUN. ×
OSHOTAN BALOGUN. ×
LAWANI GIWA ABIDOGUN. ×
marks.

Witness to marks,
OBASA OF IKIJA.

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands,
November 11th, 1912.

STATEMENT OF MR. CHARLES CAMERON COLE.

1. I am an Egba, and was born in Abeokuta. I have not made a special study of the land question, and so cannot tell you much about land tenure in the past, but as I am an auctioneer, I know what goes on at present.

2. All the land which passes through my hands in my capacity as auctioneer is either held under Crown grant or by native tenure. The Crown grants are confined to Lagos and Ebute Metta. I have not sold in Lagos itself many lots which have been held under the native tenure system, but practically all those sold outside Lagos and Ebute Metta are so held. Nearly all the latter are compulsory sales owing to foreclosure by the mortgagee.

3. I have sold land up country as far as Agege, and in my opinion most of the land between here (Lagos) and the Egba boundary has been subjected to compulsory sales, and has passed out of the hands of the original holders.

4. Nearly all these up-country sales are due to natives having borrowed money from moneylenders. The rate of interest is high, and the borrower nearly always loses his land, which he mortgages to secure payment of the principal and interest. In my opinion most of the land between Lagos and the Egba boundary has, at some time or other, passed through the hands of moneylenders. They do not usually keep the land themselves, but generally sell it at once. When I mean between here and Agege, I mean generally along the railway line.

5. A certain amount of land has been sold by the white cap chiefs, but such sales usually lead to trouble between the purchasers and the members of the white cap chief's family. The late Oloto, for instance, sold a lot of land, and there is frequently

trouble between the purchasers and members of his family, who say that he had no right to sell.

6. As regards Crown grants, if the original grantee dies the land usually passes to his family as a whole, and each member has his share in the whole, so that one Crown grant may be held by many people of the same family. If the original grantee got into debt he could sell his land, but on his death when it has passed into the hands of all his children difficulties at once arise as to sale. I have known of as many as thirty people holding one Crown grant. The result is that wherever a Crown grant is sold it is sold by the original grantee. It is almost impossible for a Crown grant to be sold after the original grantee's death, as so many people have an interest in it. It becomes, in fact, family land.

7. In the case of farm land the natives hardly ever sell if they can help it. Farm lands sold have generally been subject to compulsory sale on foreclosure. Where there is no debt on the land the proprietor usually allows others to use that part of his land which he does not require himself in return for annual presents of produce at the proper season; for instance, a certain number of baskets of yams at the yam season.

8. I think that a great part of Lagos itself has passed at some time or other through the hands of moneylenders. Most members of the monied class lend money. It is not, however, often that the moneylender keeps the land which he has obtained through foreclosure. He generally sells it in Lagos just as he does in the country.

9. It sometimes happens that the same piece of land is sold twice within a short period, but I do not recollect selling the same lot more than twice.

10. Very little land is leased in Lagos and none in the country outside Lagos as far as I know, except in the native fashion which I have described before.

11. I speak from an experience of about fifteen years as an auctioneer in Lagos.

CHAS. C. COLE.

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands,
Lagos, November 16th, 1912.

STATEMENT OF CORNELIUS IBARE AKINSAN.

1. I am a native of Ondo, but was born in Lagos and have lived there nearly all my life. I have been in Government service for the last twenty-six years, and am now assistant chief clerk in the secretariat at Lagos.

2. Some time in the sixteenth century it is said that the Olofin came to Iddo. Tradition says that he found a unoccupied. He came from Ife. It was there that the 16 Idejo white cap chiefs got their land. It is not quite clear whether the Olofin gave it to them or if they took it as their right. They seem to have divided up Lagos and the surrounding country.

3. During the Olofin's reign the Bini invasion took place and the Olofin was deposed and a Benin prince appointed as king. The war chiefs and the Ogalade and Akarigbere white cap chiefs are descendants of the chiefs who followed the first king appointed by Benin to Lagos. They also got land in Lagos and the neighbourhood, but there is no record as to how they obtained it.

4. The chiefs each owned the land personally and gave allotments to their followers free of charge and at a price to strangers. The king had his own land and did not interfere with that belonging to the chiefs.

5. The fundamental law of tenure in Lagos was therefore that land was the personal property of the chief for the time being. He could not, however, sell it, and when he died it passed to his successor, who was a member of his family and elected by the family. Land was, practically speaking, attached to the chieftaincy. The chief, of course, always considered the interests of his immediate family first.

6. Every piece of land which the chief allotted became the absolute property of the individual to whom it was allotted. It is difficult to say whether the individual could sell it or not, as sale of land was unknown before the coming of the English. He could at any rate give it away, but had to tell the chief first. This refers both to town and agricultural land. There was no law that the allottee on a piece of the

chief's land should pay the chief anything in the way of produce if he was a member of the chief's family. As a matter of fact, however, courtesy always demanded that such presents of produce should be paid.

7. For all intents and purposes, however, absolute right of possession and alienation of the piece of land allotted to the individual by the chief was recognised. He could also alienate temporarily or finally, but in the latter instance could only give away; he could not sell. The chief's permission to final alienation was always sought as a matter of courtesy.

8. Personally I deprecate the idea of selling. I think that it has a bad effect on native institutions. If it goes on we might find ourselves servants in our own country instead of landowners, all lands passing into the hands of strangers.

9. Strictly speaking, the chiefs and sub-chiefs exercised no control whatever over the usage of land, and as of right received nothing of the produce planted by [an] allottee using their family land. As a matter of courtesy, however, such payments were always made.

10. A stranger could get land either from the chiefs or the king, but the latter had always to be informed of his arrival in the country. He could be granted urban land free, but for agricultural land he had to pay a share of his produce annually. He could be turned out if he did anything wrong and could be deprived of his land. This also applied to the member of the family who occupied family land if he committed any of the following offences:—

- (a) abduction of the wife of the king or chief,
- (b) murder,
- (c) betrayal of secret societies, or becoming a robber,

and, if he were a stranger, claiming absolute interest in land allotted to him or attempting to alienate it without the permission of the chief who granted it to him.

11. In the case of the individual cultivator or overseer, if he was a member of the chief's family his children succeeded, or his brother if his children were too young. No permission from the chief was necessary. In the case of a stranger the permission of the chief had to be given before the children could succeed. Nothing could be done by a stranger without the knowledge and consent of the chief as far as land was concerned.

12. Women could succeed to family property.

13. The head of the community received no revenues from the usage of land. He depended entirely on forfeitures, fines and customs. As far as I know the King of Lagos received no tribute from the chiefs, though voluntarily they often gave him presents.

14. All that I have said so far applies to former days, but it is still the custom where the chiefs have any land left, with the one exception that they now sell land. They have sold a great deal of land, more than half their possession, since the English came.

15. As far as I can see, a great deal of land is passing into the hands of moneylenders owing to the enormous interest charged.

16. In Lagos now the greater part of the town is held under Crown grants and is therefore freehold. When the original Crown grantee dies the land generally goes, as a whole, to his children and descendants, so that it is quite possible for fifty people to be holding one Crown grant. If any dispute arises the Crown grant is usually sold and the proceeds divided amongst the family.

17. Swamp land was regarded as belonging to the owners of the dry land abutting on it.

18. The Kings of Lagos in former days always went to Benin to be crowned, and an annual tribute was paid. The tribute took the form of slaves, money beads, or any similar articles of value.

19. Presents, in my opinion, were paid to kings and chiefs by those nearly connected with them from time to time, but those were purely a matter of courtesy.

C. IBARE AKINSAN.

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands,
Lagos, November 19th, 1912.

STATEMENT OF THE REV. ADOLPHUS WILLIAMSON
HOWELLS.

1. I am a clerk in Holy Orders and was ordained in 1897. I am a native of Abeokuta, but have been resident in Lagos since 1881.

2. The fundamental law of tenure in Yoruba land generally is that land is in the hands of the family, and it descends from a father to all his sons together. The family of the deceased meet together after the father's death and allot each son his share.

3. Previous to the introduction of the European system there was no alienation of land. Temporary alienation existed in so far as a man who was not a member of the family could cultivate the land with the owner's permission. Otherwise ownership was absolute and uncontrolled. The system of pawning or selling land is entirely modern, and in any case a man can never lose land by pawning it under the native system.

4. I think that the native has always had absolute power over his land, and I do not think that he would be in favour of any further extension.

5. The heads of the community exercise no control whatever over the usage of land, except over their own property.

6. On the death of the individual cultivator the land descends to the son or next-of-kin. If there was a daughter and no son the daughter's husband would succeed, provided there was no brother. A brother would succeed before a daughter's husband. Failing any near relation the land reverts to the family.

7. In former days no revenue was derived from the usage of land.

8. I think that a great deal of land has passed out of the hands of the white cap chiefs who were the original owners of land in Lagos. I fancy that they have not got much left. I do not think that the king had ever much to do with land apart from his chiefs.

9. I think that it is quite true that a great deal of land in Lagos has got into the hands of the money-lenders, but I think only temporarily, as on the death of the moneylender it gets redistributed by sale or otherwise.

10. In case of foreclosure of a mortgage it sometimes happens that family land passes out of the hands of the whole family, only one member of which was actually in debt. In such cases the mortgage system inflicts a real hardship.

A. W. HOWELLS,
November 26th, 1912.

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands.
Lagos, November 26th, 1912.

STATEMENT OF THE REVEREND THOMAS ADESINA
JACOBSON OGUNBIYI.

1. I am a clerk in Holy Orders and belong to the Church Missionary Society, and am pastor of Holy Trinity Church, Ebute Ero, in Lagos. I am a native of Lagos and son of a former war chief, Jacob Ogunbiyi.

2. Formerly Lagos was an uninhabited forest. The nearest inhabited place was Iddo Island, which was peopled by the Olofin and his people, who came from Isheri. From Iddo the natives came to Lagos for farming purposes. They built huts in Lagos in consequence.

3. After some time the children of the Olofin came over and settled in Lagos, notably Ontana and Aromire and a few others. These people were regarded at the time as owners of the island. Later a contingent of warriors came from Benin and fought the people of Iddo, but were repulsed. They then settled at Ikoyi Point on Lagos Island. They again and again attacked Iddo without result until they came and settled in Lagos and became the liege lords of the inhabitants. I have not heard that the Olofin was actually captured or was taken to Benin, but that Lagos was conquered after his death, by the Binis.

4. The Binis occupied the Isale Eko quarter of Lagos. Though they introduced certain of their own customs and accepted certain of the local customs, they never actually interfered with the control of land, which still remained vested in the original chiefs, who

held their former shares, which included a portion of the lagoon.

5. Whenever anyone came to settle in Lagos, the chief to whom he came would assign him a portion of his land to build on, and the tenant would render certain services to the chief in return. The chief would, in fact, regard him as one of his own family, all of whom had also to render certain services in return for permission to occupy their land. The same applies to slaves. As long as the member of the family or stranger was faithful to the chief he had absolute right over the land assigned to him.

6. The fundamental law of tenure was, therefore, that the land was vested in the chiefs as heads of their families. Up to the cession, at any rate, there could be no head of the family who was not a chief.

7. Originally there were no dealings with land at all without the permission of the chief, and if the grantee died without issue the land reverted to the chief. This applied in the case of both urban and rural land. There was practically no individual ownership, the ownership of land being entirely vested in the chief, and occupiers of urban land or cultivators held from him.

8. This state of affairs still exists in Isale Eko, the Bini quarter of Lagos.

9. The war chiefs, of whom my father was one, came with the Benin king and settled round him in Lagos. A great part of the island was devoted to farms; thus we have to this day a part of Lagos called Oko Faji, or the farm of Faji, a war chief. The war chiefs obtained all their land from the king when the Benin conquest took place, as also did the Ogalade and Akarigbere sections of the white cap chiefs, who were Binis, like the war chiefs. Later on the missionaries also got land in Lagos from the king, who allotted it to them in consultation with the white cap chiefs. All this I have heard from my father.

10. I have said that all land was vested in the chiefs as heads of families, but at the same time, as members of the family went on from generation to generation in occupation of the same land, the system was, practically speaking, one of individual tenure, and when land became valuable the individual asserted his right to claim the land which had been long occupied by his fathers as his own personal property.

11. There was a slight difference of tenure in respect to farm land and urban land. The latter was held subject to services. The former was held in a different way. If a member of the chief's family wanted land he would tell the chief, who would let him have a piece. This he would occupy, and it would be entirely his own; and though he would pay a certain amount of produce every year to the chief, it would be a matter of courtesy only. A stranger occupying land which had been primary forest when he obtained permission of the chief to occupy it would regard his land as entirely his own, but would also give the chief annual courtesy gifts. If, however, he was occupying land which had already been cultivated, or secondary bush, he would pay an annual share of his produce to the chief as a nominal rent. In both cases the stranger would pay certain presents on entering into occupation of the land.

12. This system still exists throughout the Colony, even in the immediate vicinity of Lagos, and is common everywhere except where the English system of buying and selling land exists, and this is practically confined to the immediate neighbourhood of Lagos and along the railway line to the Egba boundary, and recently in parts of Ikorodu and Epe.

13. Chiefs up to the present day can demand palm oil and farm produce from any one working on the family land, but do not prescribe what is to be planted. There is a well-known rule, however, that a stranger occupying family land can plant catch crops only and may not plant anything of a permanent nature, such as kola or cocoa. Formerly a certain amount of yams and corn were always paid to the chief by the member of the family cultivating land attached to the chieftaincy, and also by the stranger. Now five shillings per annum is more usual, but the gift of the member of the family is one dictated by courtesy only.

14. On the death of the cultivator or the user of urban land without issue it reverts to the chief. The

chief can also give the children notice to quit under the native system.

15. The presents or aids to a chief are necessary from the stranger, and optional to the member of the family, though, as a matter of fact, they are always paid. All such presents were personal to the chief. No State revenue was obtained from land, but was usually got from tolls and customs.

16. I think it is a case that in Lagos a lot of land is passing into the hands of moneylenders. A certain number of such transactions take the form of registered mortgage, but I think that a great many cases do not take this form, and are therefore not registered in the Lands Office. The moneylenders as a rule, however, at once sell the land when they have eventually obtained it.

17. Crown grants are generally vested in the head of the family for the family, but in this case the head of the family is not a chief. This is where the difference from the old system is most noticeable.

THOS. A. J. OGUNBIYI.

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands.
Lagos, November 29th, 1912.

STATEMENT OF THE HONOURABLE KITOYI AJASA.

1. I am a native of Lagos and related to most of the native chiefs of Lagos and the reigning prince.

2. I should say fixed, absolute, and uncontrolled possession of land, subject to native law, customs and usages, is the fundamental law of tenure.

3. As regards urban land and rural land, the rights of individual ownership of the sons of the soil involved absolute right of possession. The alienation of any part of such land to any other person other than a member of the family of the owner, such alienee being of the same tribe as the alienor, must be with the knowledge of the head to whom the alienor owes allegiance, not necessarily with his consent.

4. Where the alienee is foreign to the tribe of the alienor, there must be knowledge and consent on the part of the head to whom the alienor owes allegiance, the reason being that in this last-mentioned case the alienee is a foreigner who seeks the protection of the chief, which can be given or refused.

5. As to urban land, alienation to a stranger is subject to the will of the alienor.

6. I refer to past usage in Yorubaland, which in the hinterland obtains to-day.

7. Native feeling at the present day does not favour the extension of such ownership as above described, which has only become abused as far as Lagos is concerned, where it has fallen entirely into abeyance. Lagos, in this connection, may be said to extend to the Egba boundary.

8. The recognised heads of the community in Yorubaland, chiefs or sub-chiefs, do not exercise control over the usage of land outside lands which are the property of the recognised chief or sub-chiefs. For instance, the head chief requiring land, either for himself or someone else, must obtain the permission and consent of the family owning the land. It necessarily follows that the recognised head of the community in Yorubaland retains no power of revoking the grant or licence to use land given to a member of his community.

9. It is otherwise in the case of an alien; for the head chief by withdrawing his protection forces the grantor to expel the alien.

10. I am not aware of any native law whereby the recognised heads of the community receive for their personal use or for the State or tribal requirements products of land granted. The alien to whom land is granted pays for the use of the land in kind to the grantor whatever the particular produce is which is raised on the land granted.

11. Upon the death of the cultivator or user of rural land the heir, and all subsequent successors to the grantee, may continue on the land at the option of the grantor and his family. This refers to the grantee, whether a member of the family or an alien. In the former case it is hardly ever withheld, so that tenure is practically tenure in perpetuity subject to the grantee conforming to the laws of the country relating to the

grants of land. The grant ceases absolutely should the grantee be found guilty of—

- (a) plotting against the family of the grantor; or
- (b) plotting against the head chief to whom the grantor and his family owe allegiance; or
- (c) guilty of having had sexual intercourse with a female member of the immediate family of the grantor; or
- (d) attempting to disown the grantor's right or title to the land.

There are many cases decided on these points—the whole question in fact.

12. In Lagos town itself the modification of the old law relating to land has been so great that it has practically ceased to exist. On the mainland—Ebute Metta to the Egba boundary—it still exists in its old form, though there have been many attempts at introducing innovations. There are many instances of sales of land out and out where these have been for the purpose of relieving the family in distress. Later native usage has sanctioned such sale. In other cases I question whether such sale could be upheld in court.

13. Crown grants in their inception were no more than confirmatory of the rights, titles, and interests of persons in possession and occupation of the land to which they relate at the time of the cession. The grantee of land as such held it as his own private property during his lifetime. As his sons—not daughters—came of marriageable age portions of the land were allotted to them for their own use. No member of the family is allowed by law to interfere with any other member of the family as regards his allotment. Still the land is regarded as belonging to the founder of that family, the grantor. At his death another head is appointed in that family, who in turn exercises control over the family land, but without disturbing any member of the family to whom land had been allotted by the deceased founder. Should any one of the members of the family to whom land has been allotted die childless, his lot reverts to the head of the family, who can now deal with it with the consent of the whole family. In the case of a Crown grant, which, as far as Lagos is concerned, rarely covers more than an eighth of an acre, the system just described has become so difficult in application, owing to the increases of membership of the family, that a departure has been made. The lands covered by Crown grant are considered to be family land, in which every member of the family has an interest, male or female. It has become an asylum for every member of the family. If disputes arise as to ownership the courts usually decree sale of the Crown grant.

14. I can safely say that land is not passing into the hands of moneylenders. One of the most important of them is my client, and, with one exception, all his land has been bought at open sales. I am no moneylender and I own more than he does.

15. Under the old native law, property descends to the male in trust for his nephews and nieces. This is now varied, the children taking equal shares direct. So long as there are male descendants females do not succeed; they only have an interest in the family property, which is not capable of valuation.

16. I should like to add that I am a barrister of 19 years standing, and a practitioner in the Supreme Court of the Colony since September 1893, and have been a member of the Legislative Council since 1904.

KITOYI AJASA.

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands.
Lagos, December 3rd, 1912.

STATEMENT OF JOSHUA BAGANDOJI BENJAMIN.

1. I am an Associate Member of the Institute of Civil Engineers, and a surveyor licensed in Southern Nigeria. I was in Government service for ten and a half years, all of which were spent in the Survey Department. During the greater part of that time the Survey Office and the Lands Office were combined.

2. The principal existing systems of land tenure in Lagos are tenure by Crown grants, which are held in

fee simple, and tenure of land under the chiefs, that is to say, the native system. There are also lands in Lagos not subject to the chiefs or under Crown grants. Such cases are generally due to negligence in applying for Crown grants when it was possible to make an application with some chance of success.

3. Most of the land originally held by the white cap chiefs of Lagos has been alienated, both in Lagos itself and the adjacent mainland. Some of it has been sold by the chiefs themselves. They frequently make a livelihood out of the sale of land. In other words, they live on their capital. It is practically their sole surviving source of revenue, as they practically have no followers left, each man thinking that he can be independent.

4. It also frequently happens that the members of a chief's family also sell land, but this usually occurs between the death of one chief and the appointment of his successor.

5. Some lands held under Crown grants are now considered family land, and are treated in the same way as other native lands not under Crown grants. Crown grants treated by the natives in this manner are a continual source of trouble. There is no law whereby ownership of a family can be assured under a Crown grant, as it is originally intended for a single person and not for the family. I know of a whole block of land in Lagos granted originally to one man only, though actually occupied by many others who had a right to a Crown grant for their own share within the block.

6. The history of the case is as follows: Many years ago, probably before the cession, the King of Lagos granted a lot of land in the Oshodi quarter to Chief Tapa. Chief Tapa divided it up amongst his people, appointing a slave as head of each block. On the Crown grant system being introduced the head slave of each block asked for and obtained a Crown grant in his own name. Now the original heads are dead, and endless trouble is being caused as the children of the grantees claim all the land in the block granted, though their fathers under native custom were entitled to the part which they actually occupied only. One case that I know of has already been settled in court. I am afraid that I have forgotten the names, but the result of it was that the Chief Justice had to endorse on the Crown grant the names of the other people who were also in occupation of the block at the time the original Crown grantee obtained his title.*

7. A great deal of trouble has been caused by a member of a family mortgaging land belonging to the family and not to himself only, the difficulty being due in each case to the Government having inserted in the Crown grant the name of the individual and not that of the family. As the court always in such cases insists on the right of the family, mortgagees and creditors have lost considerable sums of money.

8. The value of land in Lagos has increased very greatly during the past ten years. This is principally due to the increase in population and to the large amount of land acquired by the Government. Speculative buying is rife outside Lagos, at Apapa and Yaba, for instance, but not, I think, actually in Lagos Island itself, where land is generally bought by people who really require it.

9. A great many sales in Lagos are due to foreclosure by moneylenders. Money-lending is very common in Lagos, as everyone who can save a little money finds it more profitable to lend it than to bank it.

10. The native custom of not selling land has fallen completely into abeyance in the Colony, that is, up to the Egba boundary. In Egbaland native law forbids the sale of land, but to my knowledge land has been sold even there. In the Colony I have known of land being sold at Ijeda and other places in the Ikorodu district, and even at Badagry.

J. BAGAN. BENJAMIN.

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands.
Lagos, November 23rd, 1912.

STATEMENT OF THE HONOURABLE C. A. SAPARA
WILLIAMS.

1. I was born in Sierra Leone, my father being a native of Ilesha, and I have been a member of the Legislative Council for the last eleven years, and have been practising at the Lagos and Gold Coast bars since 1880, having been called to the bar in 1879.

2. According to native ideas the fundamental law is that the native is owner of the land as head of the family and as member of the community. The individual pays no taxes, but in case of war is bound to contribute his own share as a member of the community to the public defence. I am talking of Yorubaland generally. The kings and chiefs have no rights over family land or over land belonging to the individual, nor can they interfere with the family unless they are members of the family. In case of dispute between members of a family they go before the king and chiefs to have the case heard.

3. The individual ownership of land involves an absolute right of possession, but alienation is unknown except in Lagos and its immediate neighbourhood, and that only within the years which have passed since the British occupation. In some countries, like Jebu and the western district of Lagos, something like alienation exists. In the case of Jebu the land is only alienated when the family has fallen into financial difficulties, and everything that could be pawned has been pawned, and the debt remains still unpaid. Even then before the land can be alienated the Awujale, in the case of Jebu Ode and Jebu Igbo and their districts, and the Akarigbo, in the case of Jebu Remo and its districts, must be informed so as to give publicity to the transaction.

They then send Agurin or messengers to the spot. The whole of the surrounding villages or people are informed, and after that the two parties to the transaction make sacrifices. An Orisha or fetish is placed on the land. Land is never sold to strangers and the purchaser must be a Jebu man of the district. If the family after some time becomes wealthy enough, by paying a little more than what they originally sold it for they can recover their land.

4. Land is sometimes pledged for debt. The pledgee works the land, and if there are palm trees he works them also. But at any time a member of the family owning the land can, by paying off the debt, recover their land.

5. These customs refer to both urban and rural land, as no distinction exists.

6. I am sure the natives would not like the system of sale extended, and I know that they do appreciate the fact that it would adversely affect their institutions.

7. The king and the heads of the community exercise no control over the usage of land. If a stranger requires land in a particular locality and does not know the chief of the locality, he goes to the king and asks for land, and the king sends him to the chief of the locality in which the applicant requires land. The chief then gives him the land subject to his paying to him an annual present in recognition of the chief's right over the land which he is occupying. Land in Lagos is controlled by the heads of the families, who in Lagos are the Idejo section of the white cap chiefs.

8. The individual cultivates his land as of right, but only his own family land. If he wants land in the same neighbourhood belonging to the head of another family he has to apply to the head of that family, to whom he makes the customary presents. If, however, he is a stranger he has to give an annual present as well, in recognition of the fact that he is occupying land which is not his own.

9. A member of the family can get his land free from the head of the family. On his death the children succeed as of right. In the case of the stranger the children have to obtain permission to succeed. If there are no children it goes to the family. This is the case both in urban and rural land. A stranger or his children who work without permission can be turned out by the owners of the land.

10. The principal forms of tenure in Lagos at present are Crown grants and land obtained by purchase. There is a remnant of the native tenure in

* Fish-tan *v.* Ajagun (*vide* Appendix II.) (p. 248).

chief's houses, compounds, and lands attached to the chieftaincy even in Lagos.

11. Even after a Crown grant has been given the family system continues, and the grant is retained by the head of the family or the head of the compound. In case of alienation the court will deprive purchasers of their rights unless the whole family have consented to a sale, mortgage or lease.

12. It is quite true that a lot of land is getting into the hands of moneylenders in Lagos.

13. The freehold system extends to the Egba boundary now, and it also exists to a certain extent in Epe, but less at Badagry, Ikorodu, and elsewhere in the Colony.

14. The land system of the Colony is not really that of the interior. There are a great many modifications due to the interference of the English law.

15. The heads of the community are not in receipt of any revenues derived from the usage of land. At the capital of a country there is always a chief representing the surrounding towns and villages. Every year and whenever they want anything these chiefs are given presents, which may take the form of agricultural produce, but have nothing to do with the usage of land. The kings and chiefs are practically kept up by presents from the various districts.

16. The Kings of Lagos originally came from Benin. The king's body was always taken, on his death, to Benin, together with his sword of state. The successor returned with the sword of state, having been crowned at Benin. This taking of the body to Benin continued until the death of Ologun Kuteri, whose body was intercepted by the Jekris at the instance of Oshilokun (the father of Kosoko). The King of Benin, having heard of this outrage, allowed the Lagos people to bury their kings in Lagos, but he still insisted on sanctioning the appointment and coronation of the king, so that all the Kings of Lagos obtained their emblems of authority from the King of Benin before they could be crowned, until the reign of Kosoko, whose appointment was never sanctioned. Even Docemo's accession was sanctioned by the King of Benin, though he was actually nominated on the advice of the Consul.

17. The native law and custom of Yorubaland with regard to tenure of land is never changed by a conqueror in case of war, nor does the conqueror exact from the conquered any tribute in respect of land.

18. Where the property is family property it descends to the eldest male member of the family. Thus a son would succeed only after his uncle or even elder male cousin. A female never succeeds in Yorubaland. In Lagos females never succeeded formerly, but of late women have been made heads of families (In *re* Mabinori's property).

C. A. SAPARA WILLIAMS.

Before me, W. BUCHANAN SMITH,
Acting Commissioner of Lands,
Lagos, December 3rd, 1912.

Appendix II.

1. Idewu v. Ogubiyi, 1878, Judgment.
2. Odu v. Akiboye, 1892, Evidence of Ogunrombi.
3. Asani Sogunro v. E. H. Obafemi, 1908, Judgment.
4. Callamand v. Vaughan and Jones, Extract of Judgment, 1878.
5. Ajose, heir at law of Ladega Ashogbon, v. Efunde and others.
6. Akinlotan v. Salosa, 1893, Reference.
7. Feshitan Oshodi and others v. Obayemi Ajagun, 1894, Reference.
8. Olotu v. Dowudu, 1894, Extract.
9. De Cruz v. De Cruz, 1892, Reference.
10. Olotu v. Ollah, 1894, Reference.
11. Ashogbon v. Jimadu Somade, 1895, Extract.
12. Oyinkan Oduremi and Olalabi v. Mokoogun Adetilo and others, 1911, Extract.

In the Supreme Court of the Gold Coast Colony,
Eastern Province.

Before Mr. Justice Marshall.

May 9th, 1878.

Idewu v. Ogubiyi, Ejectment.

Resumed.

Judgment.

1. This action will, I hope, lead to its becoming more generally known and understood that the Supreme Court has the right to observe, and also to enforce orders to observe, the laws and customs existing in the Colony and territories subject to its jurisdiction, especially in causes and matters relating among other things to the holding and transfer of land.

(Supreme Court Ordinance, Section 19.)

2. This court will always uphold and maintain the authority of the native chiefs and the laws and customs of the country so long as doing so leads to nothing contrary to natural justice and the Ordinances of the Colony.

3. At the last assize of this court a cause was heard which touched upon some of the same points of native law as have arisen in this, more especially the mode by which land is given and held. With the assistance of native assessors in each of these causes, it has been abundantly proved that the law that exists in the Protectorate of Lagos is that the chief or bale of the district has the sole power to make grants of land. This is most certainly the law at Amowoo, and it is one of those laws of the country which this court will always observe and enforce the observance of, subject to the rights of the Governors of the Colony.

4. I quite agree with the assessors in thinking it has also been proved that the custom at Amowoo in making grants of land is that the use of the palm trees, except for domestic purposes, is reserved to the natives of the place, and that when land is given to a stranger it is on the condition that he does not in any way interfere with this right of the natives.

5. I see no reason why the observance of this custom should not when necessary be enforced by this court.

6. Having made these remarks on the general laws of the Protectorate, I will now come to the facts of the case before the court, in which the plaintiff, the Bale of Amowoo, seeks the aid of this court in ejecting the defendant from the farm which was given to him, on the ground that the defendant has broken the conditions on which he received it.

7. The defendant is a Lagos man and received the land on the usual condition made with strangers—that he should not himself use or injure the palm trees on the farm, or interfere with the rights of the natives to use the trees for their own support.

8. If I had acted upon the defence raised by the defendant in this action I might have settled the case at once, for he declared over and over again that he never received his farm from the Bale at all, but from a younger brother of the Bale—Ogundeyi; his wife supported him in this assertion, and therefore by their evidence they have proved that the defendant never had any right to the land at all, and that he has been a trespasser all the time, for Ogundeyi never had any authority or power of himself to give land at Amowoo.

9. I do not believe the defendant's evidence on this point, and it is difficult to understand why he has gone out of his way to give false evidence which only takes away all right to this land from himself.

10. The witnesses for the plaintiff have not been so unkind to the defendant as he has been to himself; they have abundantly proved that it was from the plaintiff, the Bale of Amowoo, that he received the land, and that what Ogundeyi did was to carry out the orders of the Bale in making the grant.

11. Although, therefore, the defendant has been so anxious to prove that he never had any real right to the land, I will give him the benefit of the evidence of the plaintiff's witnesses, who have proved that he had a right to the land originally taken by him, because he received it from and by the authority of the Bale.

12. But then he has himself acknowledged the truth of the evidence brought forward by the plaintiff

to prove that he has deliberately broken and neglected the conditions on which he received the land. He has acknowledged that he cut down palm trees, the use of which was reserved to the natives of Amowoo; and that he has ceased to pay the annual tribute of coins.

13. As a defence for doing so the defendant has asserted that he considered that he held the land from the Government from the time he summoned Ogundeyi before the court for interfering with him in working his farm. This is nonsense. No court has the power to grant lands, and the police court, in which the case was heard, had no power to give any decision on titles to land.

14. The defendant has not only deliberately broken and neglected the conditions on which he, as a stranger, was allowed to work a farm at Amowoo, and has set the authority of the Bale at defiance, but I consider it has been proved that he has done so by pretending he had authority from the Government in all that he did, and even for appropriating an additional piece of land which the Bale never granted to him.

15. I am very glad the Bale of Amowoo has brought this case before the Supreme Court, for it will prove to the inhabitants of the Protectorate that this Court will not allow the authority of their chiefs and of their land laws and customs to be defied in the way the defendant has done.

16. I am glad that the decision of the court in this matter entirely agrees with the opinions of all the assessors, for with them I consider it has been proved beyond all doubt that the defendant is in the wrong, and that the Bale has very good reason for wishing to eject from his farm a man who for years has deliberately broken the conditions on which he, a stranger, was allowed to hold land at Amowoo, and who by cutting down palm trees has done permanent injury to the native of the place.

17. The decree of the court is that the defendant, having deliberately and persistently broken the conditions on which he received land at Amowoo from the Bale of that district, must deliver that land back again to the Bale and be ejected from it, but in order to enable the defendant to realise the value of the house, crops and other property now on the farm, it is further decreed that he be allowed six months, that is, until November 10th, before the ejection be carried into effect, but that he be allowed to give it up before that time should he wish to do so, and that he be held responsible if he in any way purposely injures the land before giving it up.

18. The defendant will pay the costs of this action, including counsel's fees, as I consider this a case in which it was right that a lawyer understanding the language and customs of the country should be employed, and 10s. as Registrar's fee for drawing up defendant's statement.

J. MARSHALL,
Justice.

2.—In the Supreme Court of the Colony of Lagos.
Before His Honour Smalman Smith, Chief Justice.
August 22nd, 1892.

ODU OF IKEJA v. ARIBOYE OF IKEJA.

* * * * *

(EVIDENCE OF OGUNROMBI.)

Ogunrombi.

1. I am Bale of Ewu. I was made Bale in 1872. I am about 80 years of age. We are all Awori people. I was born at Ewu. My grandfather came from Otta, my father was born at Ewu.

2. It is our custom when we grant land to those who are not children of the soil to keep the palm trees for the people of the country, who reap the palm nuts, but do not care to farm land. We told this to Governor Glover when the Egba people were sent. The Governor took some land and gave it the Egba converts; this was near Onigbombo; we do not interfere with that.

3. The stranger to whom land is granted at Ewu has no right to reap the palm nuts at all; he takes no share with the people of the country, but he may ask the Bale or man who let him the farm for permission to take a few kernels for his own use.

4. If a man broke the custom we should fine him and he would stop.

Cross-Examined.

5. The custom is an old custom. If the Bale were to give permission to a stranger to reap the palm trees the people would turn on him and abuse him for selling their rights. The Bale has no private land of his own. The land is the land of the people, the palm trees grow of themselves from the soil, people do not plant them, the seeds fall as they reap and the trees spring up. The whole country grows palm trees. The custom I have spoken of was in force as long as I can remember and in the time of my father and grandfather.

3. In the Supreme Court of the Colony of Southern Nigeria.

Before His Honour John Winkfield, Acting Chief Justice.

17th January 1908.

ASANI SOGRUNRO v. E. H. OBAFEMI.

Judgment.

Plaintiff claims land at Agege which is in possession of defendant. The land was conveyed to plaintiff by Ige Egun Oniye and other members of his family by deed dated 3 November, 1905. (Registered No. 70, p. 284, Vol. 44 of Register of Deeds in Registry Office, Lagos.) Three pieces of land were conveyed by the deed. The land in dispute is the second parcel.

Ige denies that he knew that the deed purported to convey the land. It is also contended that, even if he sold and conveyed the lands, he sold it without the consent of some of the chief members of his family, and the sale was *ultra vires*.

Upon the evidence I find that there was no valid sale to the plaintiff, and there must be judgment for defendant with 5*l.* 17*s.* and costs. Of the 5*l.* 17*s.*, 2*l.* 10*s.* is to be paid into court within seven days by plaintiff to be paid out to the two assessors called by the court.

J. WINKFIELD,
Acting Chief Justice.

4. In the Supreme Court of the Gold Coast Colony, Eastern Province.

Before Mr. Justice Woodcock, June 20th 1878.

CALLAMAND v. VAUGHAN,

and

CALLAMAND v. JONES.

* * * * *

The defendants holding under the Chiefs of Otta held subject to the conditions, usages, and customs which attach themselves to land held under native law and custom. One of these seems to be that permission to occupy ceases on the party to whom it is granted ceasing to use the land. Now Justice Marshall has found that before the permission to occupy was given to Monsieur Callamand, Vaughan and Jones had abandoned their farms, and this is the all important question of fact in the case. That being so, then, in accordance with the native law, they ceased to have any right therein.

THOMAS WOODCOCK,
Acting Puisne Justice.

5.—In the Supreme Court of the Colony of Lagos.

Before Smalman Smith, Chief Justice.

AJOSE, heir at law of Ashogbon Ladega, substituted as Plaintiff for Ladega Ashogbon by order, 27th June 1892 - - - - - Plaintiff.

v.
EFUNDE and MASHASHU, SOGBARO, KUTI and ADJALE joined by Order, 9th December 1891 - Defendants.

Judgment.

Delivered the 14th day of July 1892.

1. The plaintiff claims by Petition of Right as heir at law of one Faji, a slave of Ashogbon Oda, his

predecessor in title, for the revocation of a Crown grant dated 21st February 1868, to one Jacob Ogubiye, of certain land at Faji, Lagos.

2. Since the action originated, in October, 1891, the plaintiff died, and Ajoseh, his heir, according to native law, has been substituted as plaintiff.

3. It is admitted that Ogubiye occupied the land for many years previous to the grant in question, but it is alleged that he was originally placed in possession of the said land by Odunran Ashogbon, the predecessor in title of the plaintiff, on the decease without heirs of one Faji, a slave of Odunran, as "caretaker," and that he obtained the said Crown grant without the knowledge of the said Odunran Ashogbon, in whom alone the right to grant the land was vested, and that no proper investigation into the claims of the said Ogubiye having been made by the Government with the knowledge of the said Odunran Ashogbon, the grant was bad. It is further claimed that the plaintiff is entitled to the land as heir at law of the said Faji, deceased.

4. The defendant Efunde, a sister of Jacob Ogubiye, claims to be entitled to the land under a deed of gift from Ogubiye, dated February 11, 1869. The Queen's advocate disclaims all interest in the issue and appears in the case only *pro forma*.

5. It will be useful to recapitulate the facts as disclosed in the evidence.

6. Faji was a slave purchased by Ashogbon Oda, who lived in the time of Oshilokun, King of Lagos, about 1780.

He died about 1850 in the time of Kosoko. Jacob Ogubiye, the grantee, was bought by Ashogbon Oda in the time of Idewu Ojulari (1819) as a slave, but was shortly afterwards redeemed by his parents and chose of his own free will to remain with the Ashogbon. Ogubiye was formally put in possession of the land occupied by Faji upon the death of Faji, with the sanction of Ashogbon Oda, and seems to have taken charge of the people of Faji who were living on the land at the time, in accordance with the custom of the country, and buried those who died. A portion of this land was subsequently granted by Ogubiye to Daniel Conrad Taiwo, and this grant was confirmed by Ashogbon Odunran in accordance with native custom and law. Taiwo subsequently obtained a Crown grant for this portion, and Ogubiye received land from Taiwo in exchange for the portion of land granted by him.

7. It is not disputed that Ogubiye remained in possession of the residue of this land from 1850 to 1886, when he died. It therefore becomes important to ascertain (1) what were the extent and nature of his rights of property in this land under the native law previous to 1861, the date of the cession of Lagos to the British Government; and (2) what change, if any, was brought about by the cession and to what extent those rights were affected thereby.

8. The absolute ownership of territory has never, so far as my experience teaches me, been acknowledged in this Yorubaland as inherent in the sovereignty of the kings of the country, but there is undoubtedly a national proprietary right which is vested in the king and his chiefs or council as representing the community who elect and appoint them originally, and who conjointly may exercise the right of alienation. The titles of king and chief descend generally according to the native law of inheritance, but not necessarily. The chiefs as a body, with their king, can depose a chief, as the chiefs may depose a king. It is unnecessary to enquire closely into the methods adopted; suffice it that they are generally summary and effective. The white capped chiefs who are charged by the king and the community with the disposal of land have each allotted to them a portion of territory within which they might exercise their powers. These powers are described by the white capped chief Faro in his evidence. Faro was made a white capped chief in the time of King Adele of Lagos (1832-34); he was chief of Ojora, and was deposed by Governor Glover in 1864 for attempting to enforce his control over land contrary to the established law. He states that he is now a white capped chief of Lagos. He says: "The white capped chiefs have the power to dispose of land. They cannot sell land. No chief could sell land. If land is given to a man and he builds on it a house, he could not

" be turned out if he did not do anything wrong (that is to say, for example, if he took the wife of a chief or tried to poison the chief who gave him the land). If he died and left no heir, but had slaves living on the land, the slaves could not have authority over the land. The chiefs would give someone else authority over the land and the slaves and the land would descend in the same way as before, subject only to good conduct. The slaves who live on the land as long as they live in the house may live there, but they have no rights as against their master or his family, and might be turned out if they misbehaved."

9. The foregoing is a crude but tolerably accurate statement of the native law. As a rule the tenure of land among this people represented merely the right to the beneficial use of the land, subject to the obligation of service to the chief who granted it or the payment of tribute, as the case may be. The chief could neither alienate the land nor dispossess the grantee so long as these obligations were fulfilled.

10. Should the grantee cease to cultivate the land or abandon it, all his rights therein were determined, and the chief could re-grant the land (Woodcock, J., *Judgment in Callamand v. Vaughan*, June 20, 1878).

11. In the event of the occupier dying without heirs the chief had the power to grant the land afresh, subject to the obligations with which the land may have been burdened or charged during the time of his predecessors. Such was the position of Ogubiye when this land was granted to him by Ashogbon Odunran, in 1850. There is no alternative or other tenure such as that of "care taker" mentioned in the petition known to the native law, and there is no evidence to support such a contention.

* * * * *

I have repeatedly affirmed by judgments in this court the rights of private owners of land to recover possession thereof where there is a tenure by service or by rent or tribute and the service (being a lawful service, S. 19, S.C.O. 1876), rent or tribute is refused by the tenant, and when such a tenant deliberately applies himself to injure or annoy his chief or his family.

12. Further, there are usages and customs relating to the conditions under which land may be used or occupied, peculiar to certain localities, to which I need only refer in passing. See *Judgment of Marshall, J.*, in *Idewu v. Ogubiye*, May 9, 1878.

13. If the rights of Ogubiye were vested rights in 1861, he had surely a right to claim a Crown grant in 1868 after a peaceful occupation as right of 30 years and upwards.

14. With respect to the circumstances under which these Crown grants were applied for and obtained, the plaintiff's witness Ijagbo states: "I told Ashogbon Odunran that I wanted a grant and he told me to go and get one. He said, 'You can go and get a grant and measure it, but all is mine.' I have the grant and have kept it since I got it. I did not show him the grant. All of us at Faji took grants in Governor Glover's time, and in our own names, but some grants were taken in the Ashogbon's name, who knew what was being done. Ogubiye was in the same position as I and the others."

15. The natural presumption is, at this distance of time, that the Ashogbon was fully aware of, and acquiesced in, the issuing of these grants, and this presumption has not been displaced by any positive evidence. But whether the Ashogbon was, or was not, aware of the application seems to me immaterial inasmuch as, in view of the vested interests of Ogubiye under the native law, the Ashogbon would have had no right to object to the issue of the Crown grant, which was merely the formal recognition by the Crown of rights already acquired by a grantee and *à fortiori* the slaves of Faji would have had no such right. Neither can it be said that in any sense since 1861 was the Ashogbon the heir at law of the descendants of a man who was previously his slave. If such a contention were to receive any countenance or support from this tribunal, there would be no security of title to a very large portion of the land in Lagos. There would be no finality possible if after upwards of 30 years occupation of land by a man and his heirs he could be

disturbed by reference to the shadowy claims of the Ashogbon or white capped chiefs of Lagos, whose functions and powers as regards public land ceased to exist in 1861, when, as I have already stated, the rights of the occupiers became vested rights.

16. The plaintiff further concedes that Efunde, the present defendant, would still have the right to live on the land even should the grant be revoked. And I must add that not only Efunde, but those others who in 1861 had acquired the right to live on the land and have since done so also by native law, usage and custom, retain their right. In this view Efunde herself and her co-defendants concur. The house is, in fact, "a family house" in which Efunde merely has a life interest, with a reversion to those already found, by enquiry in Chambers, December 4th, 1891, to be entitled thereto under the provisions of the deed of gift referred to.

17. I find, therefore, that upon none of the grounds urged in this petition is the plaintiff entitled to a revocation of the Crown grant to Jacob Ogubi, dated 21st February 1868, and referred to in the 4th paragraph of the petition. I therefore dismiss the petition with costs.

SMALMAN SMITH,
Chief Justice.

6.—AKINLOTAN v. SALOSA, 1893.

In this case plaintiff sought to recover certain land which he alleged had been pawned in 1879, or 14 years before the date of the action. He succeeded.

7.—FESHITAN OSHODI and others v. OBAYOMI AJAGUN, 1894.

In this case a Crown grant for a large area had been given in 1869 to eight members of the house of chief Oshodi Tappa in the name of one Obayomi Ajagun. A dispute arose as to the ownership of the land granted, and a petition was made for a declaration by the Supreme Court that the property, or the title deeds thereto, were held by the defendant in trust for the plaintiffs. The petition was granted and the names of the plaintiffs endorsed on the Crown grant in question (Grant 69, vol. 4 of May 5th, 1864).

8.—OLOTO v. DOWUDU, 1894.

"War chiefs Neno and Eshugbayi Egba both say that they hold lands at Ebute Metta under Chief Olotu and pay for them. The evidence of other chiefs and an expert on native law given on behalf of the plaintiff is clear that lands were not in former times given away absolutely, even to war chiefs, and it therefore must require very strong evidence to warrant the Court to come to a conclusion contrary to this custom. . . . War chiefs at Ebute Metta got land to be a barrier to prevent the Egbas from raiding on that land."

Note.—Ebute Metta was under the Idejo white cap chief Olotu, and the case appears to prove that when once the Bini chiefs required land outside their original holdings on Lagos Island they had to ask the local chief and pay tribute for their new holding.

9.—DE CRUZ v. DE CRUZ, 1892.

The members of a family, including females, have by native law and custom a life interest in family land, even though it be subject to a Crown grant, and can reside on it during their life time.

10.—OLOTO v. OLLAH, 1894.

Decided that, even if subletting of a chief's land is permitted, the land still vests in the chief.

11.—ASHOGBON v. JINADU SOMADE, 1885.

In this case the plaintiff sought to recover possession of a house and land from defendant, who

he alleged, was occupying it by right of service judgment was given for the plaintiff.

The judge made the following note:—

"Six white cap chiefs being present, I asked whether it was in accordance with native law that the chiefs should thus recover possession of houses held on service, when service was refused by the tenants. The chiefs unanimously replied, it was native law."

12.—OYINKAN ODUREMI and OLABORI v. MOKOOGUN ADETULO BRIMAH SAKA AKERELE TAYEWO.

This was a case in which the plaintiffs claimed as the children of one Okoya, deceased, 100l. damages for trespass committed on a farm in the Ikorodu district. Okoya had been the tenant of the original landowners.

The Chief Justice held that the plaintiffs, as children of the tenant, would have to approach the landowner on the death of their father for a renewal of their tenancy, it being "clear that in the Jebu country great care is taken to prevent a stranger from acquiring any permanent interest in land which can be transmitted to his children, so much so that he is not allowed to plant permanent crops, such as cocoa or kola. In the present instance the plaintiffs did not approach the landowners for a renewal of the tenancy, and they have no title to maintain an action for trespass against the defendants."

Enclosure 2 in No. 69.

Commissioner of Lands, Lagos,
Southern Nigeria,
17th December 1912.

SIR,
I HAVE the honour to forward for your information a letter received from the Lagos Chamber of Commerce on the land tenure question.

The members of the Chamber of Commerce were not expected to give very valuable evidence on the subject of native land tenure, but it was thought that they might wish to take advantage of the clause at the end of the memorandum and give their views on the general question, including, possibly, suggestions as to the existing land laws.

I have, &c.

W. BUCHANAN SMITH,
Assistant Commissioner of Lands,
for Commissioner of Lands.

The Hon. the Colonial Secretary,
Lagos.

Chamber of Commerce, Lagos,
West Africa,
13th December 1912.

SIR,
WITH further reference to your letter of the 17th September and to the memorandum forwarded therewith, on the subject of the system of land tenure in Southern Nigeria, I beg to inform you that this matter has now had the full and careful consideration of the members of this Chamber, and I am instructed to inform you that they have come to the decision that the Chamber as a body is not competent to express an opinion on such an important matter. Replies to the questions set forth in the memorandum referred to could only be made by one with a trained legal mind and who was absolutely conversant with land tenure.

I have, &c.

J. WILSON,
Secretary.
The Commissioner of Lands,
Lagos.

No. 70.

14741.

SOUTHERN NIGERIA.

The GOVERNOR to the SECRETARY OF STATE.

(Received 1st May 1913.)

(No. 180.)

Government House,
Lagos, Southern Nigeria.

12th April 1913.

SIR,

In compliance with the request contained in your telegram of 24th December 1912,* I have the honour to transmit herewith a return compiled by the Commissioner of Lands showing, under the four heads of the Colony and the Western, Central, and Eastern Provinces of the Protectorate, the number of deeds of

sale, lease, and mortgage of land registered during the last five years, the character of the interests purporting to be conveyed, the length of the term, the consideration, and the approximate area granted.

2. All the deeds registered purport to operate under English law.

I have, &c.

F. D. LUGARD,
Governor.

Enclosure in No. 70.

WESTERN PROVINCE.

Year.	Sales.	Area in Acres.	Mortgages.	Area in Acres.	Leases.	Area in Acres.	Rent.
1908 - -	—	—	—	—	3	33·25	£ 43
1909 - -	5	92	4	·5	1	716·5	20
1910 - -	7	1,896	—	—	1	1	8
1911 - -	3	32	—	—	3	5,249	157
1912 - -	2	2	1	1·5	2	·25	40
Totals -	17	2,022	5	2	10	6,000	268

Terms of Leases.

Indefinite - - - -	4
99 years - - - -	1
50 years and over - - - -	—
30 years and over - - - -	1
20 years and over - - - -	1
10 years and over - - - -	1
5 years and over - - - -	2
Below 5 years - - - -	—
Total - - - -	<u>10</u>

Purposes for which Land leased.

Trading - - - -	10
Residential - - - -	—
Agricultural - - - -	—
Mission - - - -	—
Uncertain - - - -	—
Total - - - -	<u>10</u>

CENTRAL PROVINCE.

Year.	Sales.	Area in Acres.	Mortgages.	Area in Acres.	Leases.	Area in Acres.	Rent.
1908 - -	—	—	—	—	4	329	£ 58
1909 - -	—	—	—	—	11	1,500	25
1910 - -	—	—	—	—	8	1,722	39
1911 - -	—	—	—	—	10	1,068	106
1912 - -	—	—	—	—	6	126	24
Totals -	—	—	—	—	39	4,745	252

Terms of Leases.

Indefinite - - - -	11
99 years - - - -	6
50 years and over - - - -	7
30 years and over - - - -	10
20 years and over - - - -	5
10 years and over - - - -	—
5 years and over - - - -	—
Below 5 years - - - -	—
Total - - - -	<u>39</u>

Purposes for which Land leased.

Trading - - - -	18
Residential - - - -	—
Agricultural - - - -	8
Mission - - - -	13
Uncertain - - - -	—
Total - - - -	<u>39</u>

EASTERN PROVINCE.

Year.	Sales.	Area in Acres.	Mortgages.	Area in Acres.	Leases.	Area in Acres.	Rent.
1908	-	Not stated.	1	—	12	27	£ 225
1909	-	—	4	—	11	11	218
1910	-	—	1	—	12	39	246
1911	-	Not stated.	2	—	8	25	313
1912	-	Do.	2	—	9	25	186
Totals	-	—	10	1½*	52	127	1,188

* No details given, but Provincial Commissioner reports the total area to be about 1½ acres.

Terms of Leases.

Indefinite	-	-	9
99 years	-	-	16
50 years and over	-	-	5
30 years and over	-	-	3
20 years and over	-	-	7
10 years and over	-	-	12
5 years and over	-	-	—
Below 5 years	-	-	—
Total	-	-	52

Purposes for which Land leased.

Trading	-	-	36
Residential	-	-	11
Agricultural	-	-	—
Mission	-	-	5
Uncertain	-	-	—
Total	-	-	52

SUMMARY: PROTECTORATE (EASTERN, CENTRAL AND WESTERN PROVINCES).

Year.	Sales.	Area in Acres.	Mortgages.	Area in Acres.*	Leases.	Area in Acres.	Rent.
1908	-	Not stated	1	—	19	389.25	£ 326
1909	-	92	8	.5	23	2,227.5	263
1910	-	1,896	1	—	21	1,762	293
1911	-	32	2	—	21	6,342	576
1912	-	2	3	1.5	17	151.25	250
Total	-	2,022*	15	2*	101	10,872	1,708

* Provincial Commissioner, Eastern Province, is unable to give area of sales and states total area affected by mortgages to be about 1½ acres.

Terms of Leases.

Indefinite	-	-	21
99 years	-	-	26
50 years and over	-	-	12
30 years and over	-	-	14
20 years and over	-	-	13
10 years and over	-	-	13
5 years and over	-	-	2
Below 5 years	-	-	—
Total	-	-	101

Purposes for which Land leased.

Trading	-	-	64
Residential	-	-	11
Agricultural	-	-	8
Mission	-	-	18
Uncertain	-	-	—
Total	-	-	101

COLONY.

Year.	Sales.	Area in Acres.	Mortgages.	Area in Acres.	Leases.	Area in Acres.	Rent.
1908	-	63	86	52	3	.25	£ 274
1909	-	301	86	22	4	6.75	444
1910	-	603	89	15	8	2.4	1,146
1911	-	2,458	84	43	7	11.4	594
1912	-	268	97	45	14	53.2	953
Total	-	3,693	442	177	36	74	3,411

Terms of Leases.

Indefinite	-	-	—
99 years	-	-	1
50 years and over	-	-	1
30 years and over	-	-	2
20 years and over	-	-	5
10 years and over	-	-	8
5 years and over	-	-	12
Below 5 years	-	-	7
Total	-	-	36

Purposes for which Land leased.

Trading	-	-	33
Residential	-	-	2
Agricultural	-	-	—
Mission	-	-	—
Uncertain	-	-	1
Total	-	-	36

No. 71.

25397.

SOUTHERN NIGERIA.

The GOVERNOR to the SECRETARY OF STATE.

(Received 23rd July 1913.)

Government House,
Lagos, Southern Nigeria,
3rd July 1913.

(London, 21st July 1913.)

SIR,

WITH reference to your despatch of the 20th January 1913,* I have the honour to forward a copy of the proceedings in the case referred to by Mr. Weir in Question 8995 before the Lands Committee. The name Bassey Okpo Ene given by Mr. Weir is, I am informed, the alternative native name for Egbo Jack Bassey, which appears in the copy of proceedings. It will be seen that there was no decision of the court in this case and that no evidence was taken. The parties, with their legal advisers, submitted the terms of a settlement of the dispute, and he court merely made an entry in the record of the terms of the settlement arrived at. It may be pointed out that it is according to native custom in Calabar that the head of the house should be consulted before disposition of property is made, and he also receives a portion of the goods in recognition of his position as head of the house. In this case the deceased Okpo Ene had apparently failed to consult the head of the house, with the result that the case was brought to the court and an amicable settlement then made by the parties themselves.

2. The statements of Mr. Weir in regard to the making of wills in Calabar do not appear from the information supplied to me to be quite correct. There would seem to be little restriction in the disposition of property. The responsibility of the head of the house as trustee and overseer of the property and members of the house is insisted on, but this is unavoidable so long as the house rule continues, and in practice it should be as a rule beneficial to the welfare of the house and of its members.

3. I have caused inquiry to be made amongst the political officers as to the customs generally prevailing amongst the tribes of the different districts of the Colony and Protectorate in regard to the disposition of property on the death of the owner. An epitome of the replies is attached. It will be seen that in many districts wills are made by oral declaration in the presence of witnesses. The natives are generally too uneducated to have adopted the system of written wills, and in most parts of the Colony and Protectorate their introduction is unlikely to take place for some years to come.

4. In districts where the declaring of oral wills is not allowed, the object of the custom prohibiting this would appear to be to ensure provision being made for the headship of the family, and an equal distribution of a certain proportion of the property among the children. It may be explained that the references to the wives of the deceased being regarded as part of the property refer to the financial value accruing from them on re-marriage, an amount varying from 20l. to 50l. being paid by native custom by the husband on marriage to the person to whom she belongs.

5. I am of opinion that natives generally would resent any interference with their customs in regard to the disposition of property, and I am not aware that there is any real desire for such interference either in Calabar or elsewhere. There is no restriction to the chiefs and people of a district making such amendments as they desire in their customs, provided such changes are not antagonistic to the general well-being of the community. I have not yet sufficient knowledge of the native customs of Southern Nigeria to venture an opinion on this matter.

F. D. LUGARD,
Governor.

Enclosure 1 in No. 71.

In the Supreme Court of the Colony of Southern Nigeria, Calabar, the 7th day of February 1912.

Before His Honour Mr. A. F. C. Weber, Puisne Judge.
Ekpenyon Hogan Bassey v. Bassey Egbo Jack Hogan Bassey.

Opposition to administration order granted to appellant. The court grants letters of administration to Egbo Jack ordering him to file an inventory of the property in the court within three weeks and to serve the head of the house Ekpenyon Hogan Bassey with a copy of same.

The court thinks that costs three guineas should be paid by the house of Hogan Bassey.

A. WEBER, J.

Certified a true copy.

M. ENTSUA,
Registrar.

29th June 1913.

In the Supreme Court of the Colony of Southern Nigeria, Calabar, 28th day of February 1912.

Before His Honour Mr. Justice Green, Judge.
Ekpenyon Hogan Bassey v. Bassey Egbo Jack Hogan Bassey.

In the matter of an administration order granted in the estate of Egbo Jack Hogan Bassey deceased. No further order for letters of administration is necessary. Plaintiff admits receipt of inventory but has not yet checked it.

J. E. GREEN, P.J.

28th February 1912.

Certified a true copy.

M. ENTSUA,
Registrar.

11th June 1913.

In the Supreme Court of the Colony of Southern Nigeria, Calabar, the 3rd day of October 1911.

Before His Honour Mr. Justice Ross, Acting Puisne Judge.

Suit No. 43/11.

Chief Ekpenyon Hogan Bassey on behalf of himself and the House of the late Hogan Bassey v. Bassey Egbo Jack Hogan Bassey.

Claim.—To establish their right and title to the whole of the property including buildings, farms, &c., formerly occupied and enjoyed by the late Egbo Jack and situate at Creek Town and Adiabo—value of the property is about 500l.

Mr. Brew for plaintiff.

Mr. Gibson and Mr. Savage for the defendant.

Plea.—That all the land in Adiabo which the defendant occupied through the late Hogan Bassey belongs to the plaintiff.

The parties retire with their counsel to consult with a view to coming to a settlement. They return to court and inform the court—

Both parties have agreed that the plaintiff Ekpenyon Hogan Bassey is the Etubom or paramount head of the house (Egbo Jack house of Creek Town) of the defendant and that he is the overseer of all the property and members of the said house and that in all important matters concerning the welfare and administration of the house he is entitled to be consulted.

That all orders in accordance with native law and custom to be given to any particular branch of the house shall be given by the Etubom through the head of the Egbo Jack house in accordance with native law and custom.

Judgment accordingly.

Each side to pay his own costs.

R. J. B. ROSS,
Acting Judge.

Certified to be a true copy.

M. ENTSUA,
Registrar—E.P.

11th June 1913.

Enclosure 2 in No. 71.

DEVICE OF REAL AND PERSONAL ESTATE CUSTOMS OF
NATIVE TRIBES IN THE DISTRICTS OF SOUTHERN
NIGERIA.

1913.

Ibo Tribes.

Overri District.—Oral disposition of property can be made before death. When this is not done the property descends to son, if there is more than one son it is divided among them, the eldest taking half the estate. If there are no sons the property descends to a brother of the deceased.

Wives and daughters cannot inherit, they are treated as part of the property.

Opobo District.—Disposition of real and personal property is made verbally before death. Failing this, the property is divided two-thirds between the sons and one-third between the daughters.

Afikpo District.—Verbal instructions can be given as to disposition of property before death; failing this, personal property is divided amongst brother and sons, the brothers inheriting a larger proportion than the sons. The house goes to the eldest brother. The land allotted to deceased during his life is re-allotted to brothers and sons in the same proportions as the personal property. Wives and daughters are excluded from inheriting.

Okique District.—Real or personal property cannot be willed. Half descends by custom to the elder son, and the remainder is divided equally amongst the other sons. Failing sons, brothers share the property in the same way. In some parts of the district brothers share equally with sons, the eldest brother of the deceased dividing with the eldest son the half share of the estate. An adopted son may succeed. The women of the family succeed to all poultry, kitchen utensils and koko yams.

If women trade and acquire money they can buy land. On death it descends to her children, the eldest daughter taking the larger portion.

If land is mortgaged it becomes, on the death of the mortgagor, the property of the mortgagee, unless the family then pay off the debt.

Aboh District.—Property divided by custom on death, all personal property to eldest son, real property is divided among the sons; daughters do not participate. If deceased leaves a daughter only, she in this case shares the personal property with the nearest relations, all real property going to nearest male relations. If deceased leaves a wife only, all real and personal property is divided amongst the nearest relations.

Aghor District.—Property must be divided by custom among the male children, the greater portion going to the elder son. Female children are given a share at the discretion of the male children. No distinction is made between legitimate and illegitimate. If there are no male children, the property is divided among the female children, the eldest having the larger share.

If there are no children the eldest brother—failing brother, eldest sister—takes the property. All land is held by the community.

Aukwa District.—No disposition of property is allowed before death. A gift—other than money—made to a son during the life of the father, is treated as part of the father's estate, if still in the possession of the son at the time of the father's death.

Property is divided as follows:—Eldest son takes the house and the largest part of the land, the rest is divided among the remaining sons. If there are no children the nearest relative succeeds. A woman has no right of succession to land—if land is given her on her marriage it becomes the property of her husband.

Personal property is divided equally among all the sons; if no sons the nearest relation succeeds.

Kwale District.—No wills. The eldest son succeeds, and is responsible for the family. Failing an adult son, a brother of the deceased succeeds.

Ogwashi Oku District.—Property descends to sons, whom failing, to brothers, whom failing, to the chief of the quarter. Wife's personal property of beads, goats, &c., may be given by the husband on her death to a daughter.

Onitsha District.—Land belongs to the community, but the eldest son succeeds to the occupation of it. Personal property passes as a rule from father to son, but the father may before his death make over part of it to a daughter.

Ibibio Tribes.

Ikot Ekpene District.—Town land is common property, and is used by the authority of the chief for the benefit of the townspeople.

Land is also held personally, and portions of it may be given by husbands on marriage to their wives. On the death of the owner the eldest son succeeds to all land other than the portions given to wives of the deceased. Wives with their lands are regarded as personal property of the deceased, and are divided amongst all sons. Land belonging to wives descends to her male issue, unless she marries a distant relation. Daughters may receive marriage portions of land if they marry in their own town; this becomes their absolute property.

Munshi Tribes.

Obudu District.—All land is communal and is administered by the chief. Personal property descends to son or next of kin, whom failing, to the chief.

Cross River Tribes.

Ikom District.—Land must descend to eldest son, if no son to brother, if no brother to daughters of deceased or to next of kin. If daughters succeed the consent of the eldest must be obtained before any of the others can sell their land. On decease of a daughter, her land and personal property are divided amongst the others; if she had no sisters it goes to the next of kin.

Personal property descends to eldest brother, whom failing, to eldest son, if no sons to daughters, sisters or next of kin.

Efik Tribes.

Calabar District.—Heirs can be nominated and legacies made previous to death; when thus proclaiming his will testator swears an oath (Mbiam). A non-free member may be nominated heir, but he must at the same time be proclaimed free.

A non-free member can with the consent of the head of his house leave his property to any person he chooses, provided they are members of the same house. Portions of all property on decease of owner revert to head of house.

In the event of either a chief or free member dying intestate the house or family assemble and appoint heirs. In the case of a non-free member dying intestate his property goes to his immediate head and a portion to the supreme head of the house.

Ijaw Tribes.

Brass District.—Property must remain in the house, but a man may intimate previous to his death how he wishes his property disposed of, always providing the legatees are members of the same house.

Forcados District.—Property cannot be willed. It is divided at death of owner by elder relatives or principal chiefs of the town amongst the children, the elder son receiving the larger portion. Wives are regarded as part of the property and cannot inherit.

Igabo Tribe.

Aboh District.—Personal property goes to eldest son, real property is divided among all sons, daughters not participating. If a man leaves only a daughter she inherits all real and personal property. Children

need not be legitimate to inherit. Wills are not made and the customary division of the property is insisted upon.

Beni Tribe.

Benin District.—Formerly all real and personal property was vested in the King of Benin, who, however, seldom exercised his rights.

Heir is now chosen by deceased previous to death; the heir must divide the property among the family as he may think right.

Jekri Tribe.

Sapele District.—Property divided on death among children and brothers, but the owner may disinherit any member of the family.

Igara Tribe.

Idah District.—Division of property may be made before death; failing this being done the new head of the house takes over the property and provides for the household of the deceased.

Kurukuru Tribes.

Idah District.—No disposition made before death. The successor is appointed by the old men of the town and he is responsible for all the family. Only free members can inherit. Heir is generally brother, or brother's son, or elder son of the deceased. If the brother's son is older than the son of the deceased, former inherits.

Ishan District.—All real and personal property inherited as follows: eldest son; failing a son, a brother; failing a brother, the nearest male relative; if there is no male relative, the head chief of the town. Wives have no claim. Property can be given away during life, but no instructions can be given as to its disposal after death.

Iboji Tribe.

Idah District.—The brother, as a rule, succeeds and takes over the property and responsibilities of the house.

Mahommedan Hausas.

Idah District.—Heir is appointed before death and publicly recognised. Property is divided amongst the children. If there are no children or brothers, half the property goes to the wife of the deceased and half to the chief of the town. A daughter inherits a half son's share. If a daughter is the only offspring she inherits a third and the remainder goes to the chief of the town.

Egba Tribe.

Abeokuta District.—No written wills, but wills are made by oral declaration. Children succeed to land, personal property goes to brothers and sisters, and to sons and daughters of the sisters.

Yoruba Tribe.

Oyo District.—No wills are made. Women cannot own land. Eldest brother, if older than eldest son, succeeds and divides the property between himself and the children of the deceased. If the son is older than the eldest brother he succeeds and divides the property, giving only if he so choose a portion to the brothers of the deceased.

If there is no brother or children, sister of the deceased inherits, but not the wife. A daughter may inherit land when there are no male heirs, but her husband will be trustee for it on behalf of her children; he is also trustee for any personal property she may inherit.

Ibadan District.—Property may be disposed of by oral declaration, but as a rule it passes to elder brother, whom failing, to elder son. Natives are beginning to leave written wills.

Ijebu Tribe.

Ijebu-Ode District.—Wills not general, but possibly now made by a small number of educated Christians. Land reverts to community, and is re-appointed. Personal property is distributed by local elders, who have no claim on the estate; it is divided amongst sons and brothers.

No. 72.

SOUTHERN NIGERIA.

The GOVERNOR to the SECRETARY OF STATE.

(Received 13 December 1913.)

42030.

(Confidential.)

Government House, Lagos,

Southern Nigeria,

26th November 1913.

Str.

In reply to your telegram of the 6th November,* I have the honour to attach a copy of a minute by the Chief Justice in regard to the exercise by the Courts of civil jurisdiction under section 5 of chapters 4, 5, and 6 of Southern Nigeria Laws.

2. I referred your question "how that section has been acted upon by the Executive" to the Attorney-General, since I have only one year's experience in Southern Nigeria. He does not clearly understand how a section which is apparently concerned with the jurisdiction of the Courts can refer to executive action, but adds:—

"The only action of the Executive which I can call to mind as bearing in any way upon the matter is that in connection with the Forestry Ordinance. When we have desired to apply this Ordinance to the natives of Ibadan, Ife, Oyo, &c., we have had the Ordinance adopted by the native authorities, thus seeming to admit the limited application of that Ordinance in those districts."

I have, &c.

F. D. LUGARD,

Governor.

Enclosure 1 in No. 72.

MEMORANDUM AS TO EXERCISE OF CIVIL JURISDICTION BY THE SUPREME COURT IN EGBALAND, AND YORUBA STATES.

Under the Jurisdiction Ordinance relating to Egbaland, Yorubaland and Ife, it is provided that the

laws relating to civil matters for the time being in force in the Colony shall extend to and be in force within and under the jurisdiction by those Ordinances vested in the Supreme Court, but shall be deemed to extend thereto and be in force therein so far only as the jurisdiction of the Court and local circumstances reasonably permit and render such extension and enforcement suitable and appropriate.

There have been several instances in which the Court has declined to adjudicate matters in dispute solely between natives of the territory concerned, as such matters are outside the treaty jurisdiction, but where one of the parties is a non-native the Court has never yet failed to deal with the claim in the same way as it would in Lagos, except that the employment of barristers and solicitors is not allowed, in deference to the wishes of the signatories expressed in the treaties.

The greatest number of cases are of a mercantile nature, such as actions brought by European firms for goods sold and delivered, for shortages in stock, and so forth, but occasionally there is a land case in which a non-native is concerned. Habeas corpus applications in connection with non-natives have also been dealt with, and rare cases of tort. Any local custom bearing on a particular case would be taken into consideration by the Court, but apart from this the law administered would be similar to that administered in the Colony, unless there were some cogent reason to the contrary.

The application of Imperial laws would be governed by the principles laid down in section 17 of the Supreme Court Ordinance, as in the exercise of the ordinary jurisdiction of the Court. Up to the present there has been no case in which a non-native has been concerned in which the Court has considered the extension or enforcement of the Colonial laws relating to civil matters to be unsuitable or inappropriate, though I would not go so far as to say that such a case might

* 38373, not printed.

not arise. Where the parties have all been natives the Court has declined to adjudicate for want of jurisdiction, even when all parties have wished the Court to deal with the matter. This has happened in several land cases, in an action brought against judges of the Egba Native Court by an Egba for false imprisonment, and in an application for probate of the will of an Egba.

The question of jurisdiction in these states is by no means free from difficulty, but as a general rule it may

be stated that non-natives in their dealings with each other are treated as subject to the same laws as in the Colony, while civil matters in dispute between natives and non-natives will, subject to the provisions of the various Ordinances as to the observance of local laws and customs, be dealt with in the same way as though all the parties were non-natives.

A. WILLOUGHBY OSBORNE,
Chief Justice of Southern Nigeria.

17 November 1913.

II.—Miscellaneous Papers.

18101.

No. (1).

GOLD COAST.

THE GOVERNOR to the SECRETARY OF STATE. (Received August 19, 1897.)

(No. 306.) Government House, Accra,

July 15, 1897.

SIR,

In continuation of my despatch, No. 252, of the 19th June last,* on the subject of the Lands Bill, I have the honour to report that the instructions contained in your despatch, No. 227, of the 29th April,† have now been fully carried out.

2. The Bill was read a second time on the 29th June, on which day counsel for the Chiefs of Winnebah were heard. The Bill was subsequently considered in Committee on the 5th, 6th, and 10th July, and on the last of these dates it was reported with amendments. I informed you of the various stages reached in the discussion of this measure in my telegrams of the 1st and the 10th instant.‡

3. I have now the honour to enclose the following documents:—

- (1) Copy of a letter from Mr. A. Bissoe, dated Axim, June 25th, 1897, enclosing a petition to the Governor and Legislative Council from the Chiefs, &c. of Axim and the neighbouring districts, and copies of telegrams† sent to Her Majesty the Queen, His Royal Highness the Prince of Wales, and the Secretary of State for the Colonies.

(These are the petition and telegrams referred to in paragraph 3 of my despatch, No. 235, of the 10th June,§ and were only received here on the 2nd July.)

- (2) Petition to the Secretary of State from the Chiefs, &c. of Axim and neighbouring districts, dated May 18th (received at Accra on the 2nd July, with covering letter from Mr. A. Bissoe, dated June 25th).
- (3) Petition to the Governor and Legislative Council from the Head Chief of Gomuah and the Chiefs of Adjumaku and Winnebah.
- (4) Proceedings of the Legislative Council on the 4th, 5th, and 29th June, and 5th, 6th, and 10th|| July.
- (5) Copies of the Bill as amended in Committee.

4. The framers of the petition from Axim addressed to you have inserted into it (paragraphs 5 and 6) implied threats of disturbance if the proposed law is passed and enforced. This is to be regretted, but I do not consider the native Chiefs, who are illiterate, to be responsible for the contents of the document drawn up for them. The Colonial Government will be quite prepared to deal with any case of rioting that may occur, but I do not apprehend anything of the kind.

5. In remarking upon some of the chief points in which the Bill has been amended, I will deal first with those which were mentioned in your despatch, No. 227, of the 29th April.†

The rules to be made under section 27 will be subject to disallowance by the Queen.

Section 27 (c) was rendered unintelligible in the draft Bill by a misprint, the word "any" having been printed instead of the words "and the" before the word "person." This has been corrected.

In section 56 (renumbered section) the term "quit-rent" has been changed to "payment to the Governor."

* No. 170 in African (West), No. 531.

† No. 94 in African (West), No. 531.

‡ Nos. 159 and 164A in African (West), No. 531.

§ No. 161 in African (West), No. 531. || Not printed.

In the same section, subsection (d) has been struck out, as I concur that the Bill is complete without it.

In the same section, the proposed royalty of 5 per cent. on the gross products of land comprised in grants found by the Concessions Court to be valid has been reduced to a royalty not exceeding 2½ per cent., and the rate to be levied (within this maximum) is to be fixed from time to time by the Governor, subject to disallowance by Her Majesty.

I fully considered the advisability of omitting altogether in this Bill any provision for reserving a royalty. I was without the final indication of your views on this subject, which are to be embodied in a separate despatch not yet received. There seemed, on the one hand, to be some objection to legalising a royalty upon the produce of a particular class of lands, while other lands are exempt, and this appeared to be a reason for abandoning subsection (c) altogether, leaving it to the Legislature at some future date to impose a royalty upon the natural produce of all lands as a fiscal measure. On the other hand, I felt that the withdrawal of the subsection might be regarded as the abandonment of a principle, in regard to which I was as yet without your final instructions. I therefore decided to modify the subsection in the manner above described. I stated, however, very clearly in Council that the construction of roads and railways by Government in mining districts is not to be expected if companies and individuals who will profit by them are not ready to contribute to their cost.

Section 58 has been abandoned, and a new section, providing for an appeal to the "Full Court" of the Supreme Court, has been substituted.

The amendment which is necessary to prevent the misuse of the powers vested in Chiefs by section 11, in the manner pointed out in your Despatch, has, unfortunately, been overlooked; but, as it will be possible to re-commit the Bill before the third reading, I propose to insert in section 20, after the words "settler's right," the words "or of a right created under section 11 hereof." This will make it illegal for natives to evade the Ordinance in the manner suggested, and to obtain land ostensibly for their own use, but really to assign to European speculators.

6. I will now remark on the chief amendments made in the Bill in Committee in connexion with points which have not been the subject of correspondence. Some of these were suggested by the remarks made by the counsel whom the Legislative Council consented to hear. It having been pointed out that section 13 was silent as to the rights of Chiefs, that section has been amended by classifying rights in lands as "superior rights" and "inferior rights," and including the territorial rights of Chiefs under the former head. This has necessitated a slight amendment of the definition of "public land" in section 2.

7. The definition of "native" has been amended to bring it into harmony with the principles of the Bill.

8. Objection having been taken to sections 15 and 16 on the ground that they conferred on natives [power] to do certain acts, whether or not they were possessed of any customary right to do them, the necessary qualifying words have been supplied.

9. In connexion with section 25, further legislation will, I think, eventually be necessary, and I am disposed to think that it should be declared by law that land

occupied by the holder of a land certificate shall descend as personal property, and not as real property; that is, that it shall be vested in the personal representative, and not in the heir. A precedent is to be found in an Indian Act (XX. of 1837).

10. Section 33, which prohibits public officers from acquiring or holding land in the Colony, save as excepted, has been modified by excluding natives from its operation. This section is, I believe, founded on the law of British Guiana, and was suggested to me by Sir William Geary. Some regulation of the kind is undoubtedly required; but it seems to be immaterial whether this is provided by law or by a rule of the Executive Government.

11. I have thought it best to abandon sections 35 and 36. That proper powers should be given to the Supreme Court, upon the application of a person or persons beneficially interested in what is here called "family property," to order partition, I am quite convinced. But this is a matter requiring separate consideration, and it does not, perhaps, appropriately form part of a measure which has for its object the settlement of the broad principles of public and private rights in land.

12. Part III. of the Bill, which deals with the constitution of the Concessions Court, though amended in numerous minor particulars, has undergone no substantial change in principle except those already alluded to in paragraph 5 of the Bill. In regard to the Concessions Court, I beg to call your attention to the fact that the chief suggestion in the Axim petition (paragraph 11), and some of the main arguments of Counsel, have for their object the minimising of the importance of the proposed tribunal. In the Axim petition it is asked that a "Board," and not a "Court," may be constituted; that the Commissioners shall be persons with a knowledge of "Native Customary Law" (natives?), and that native Chiefs shall sit with the Commissioners. Counsel remarked in a deprecating manner upon the exclusive jurisdiction given to the Concessions Court in matters relating to land, and sought to show that the Supreme Court was being slighted—a suggestion promptly disavowed by the Chief Justice. Now, it is intelligible that native Chiefs should be vaguely uneasy when they hear that a law affecting stool-lands is under contemplation. But the persons likely to be anxious regarding the constitution of the tribunal, which is to investigate the transactions of the past few years, are not, I venture to think, the native Chiefs, but the native middlemen, who have been the brokers in negotiations between native Chiefs and European speculators, and to whom a really searching investigation is likely to be unwelcome. I regard the agitation which has been got up in the windward districts as being entirely the work of people of this class. It is a remarkable fact that where the native land-broker does not exist there is no remonstrance on the part of Chiefs. East of the region where traders in concessions are to be found there is no agitation, no protest, and no petitioning.

13. In addressing the Legislative Council during the debate on the second reading of the Lands Bill, I attempted to state succinctly the main principles of the native customary tenure, as I believe it to exist. I have the honour to enclose some copies of the report of my remarks, which it may be useful to have in a separate form, though the report is included in the full account of the proceedings. Having so recently and fully stated my opinions regarding the local customary tenure, I do not consider it necessary to make any further remarks on the subject in this Despatch. The contention that there is no "public land," and that waste and forest lands are the private property of the Chiefs to whose stools they are appurtenant will not bear examination, and it is noteworthy that the only native authority on the local tenure (Mr. Sarbah, author of "Fanti Customary Laws") had already committed himself to an opposite view before this Bill was published. (He mentions "public lands" on page 55, and "public land" on page 56.) The whole of his Chapter IV. is worthy of attention, as containing useful and interesting notices of native customs, though such terms as "grant," "lease," "grantor," "grantee," "freeholder," &c., must not be interpreted by the signification usually given to them in English law. I

find little in Mr. Sarbah's Chapter IV. (apart from mistaken analogies with English law) which does not fall in with the broad principles of tenure which I sketched when addressing the Council, and, consequently, with the Bill which I have now the honour to submit again for your consideration.

14. I have only to explain in conclusion that it has been found necessary to define more clearly than was done in the original Bill the exact scope of the duties of the Concessions Court. Section 41 (renumbered 38) gave the Court authority to inquire into "the validity" and scope of all claims founded upon grants, and "grant" (section 2) was defined to include almost any kind of transaction in land, evidenced by writing. It was clearly desirable to limit this authority to the exact requirements of the situation. By section 38, as now amended, the work of the Concessions Court will be limited to an inquiry into the scope and validity of grants, if such grants—

- (a) have not been registered under the Registration Ordinance, 1885, or the Land Registry Ordinance, 1895; or
- (b) having been so registered, are specially referred to the Concessions Court for inquiry under a direction issued under the last section of the Bill.

The utility of the lists of grants (extracted from the registers), which have been sent to England to be printed, see my despatches, No. 129, of 26th March, and No. 248, of 18th June,* will now be apparent.

I have, &c.

WILLIAM MAXWELL.

Enclosure 1 in No. (1).

Mr. A. BISSOE to the COLONIAL SECRETARY.

SIR, Axim, Gold Coast, June 25, 1897.

I HAVE the honour herewith to forward to his Excellency, through you, a petition from the kings, chiefs, captains, elders, and people of Axim and neighbouring districts, addressed to his Excellency the Governor "in Council with the members of the Legislative Council of the Gold Coast Colony."

I am also directed to enclose herein copies of the cablegrams transmitted to Her Majesty the Queen, the Prince of Wales, and Mr. Chamberlain, on the 17th of May last.

I have, &c.

A. BISSOE.

The Honourable the Colonial Secretary,
Accra.

To His Excellency Sir WILLIAM EDWARD MAXWELL, K.C.M.G., in Council with the MEMBERS of the LEGISLATIVE COUNCIL of the GOLD COAST COLONY.

SIR, Axim, Gold Coast, May 18, 1897.

THE humble petition of the kings, chiefs, captains, elders, and people of Axim and neighbouring districts, representing at least 50,000 of Her Majesty's subjects on the Gold Coast, sheweth:—

1. That your humble petitioners are informed that the Legislature of this Colony, over which your Excellency is the President *ex-officio*, is contemplating the promulgation of an "Ordinance to regulate the administration of public lands, and to define certain interests therein, and to constitute a Concessions Court."

2. That your petitioners are further informed that such a Bill has been read once in the Legislative Council, since which several telegrams from various districts and from us, strongly protesting against the same, have been forwarded to your Excellency.

3. That your petitioners deem it prejudicial to their interests as aborigines of the Gold Coast for such a Bill to become the law of the country, and therefore consider it a duty incumbent upon each to enter his emphatic and unqualified protest against the same.

4. That your humble petitioners fully sympathise with your Excellency with regard to the existence of certain specified causes which make some kind of legislation necessary in respect of the disposition or granting

* 8875 and 15453: not printed.

8. That pending such convincing proofs, or in the absence thereof, your petitioners most respectfully submit that no one would interfere in any way with the vested rights and interests of the people without wounding their feelings and susceptibilities, thereby causing general distress, disquietude, and disappointment under Her Majesty's Government, whose chief attributes should ever be peace, justice, and fair play.

9. That your humble petitioners have left no stone unturned to acquaint themselves with the contents of this Land Bill, and so far as they can understand it they most respectfully express the opinion that it has caused and will continue to cause much distress, disquietude, and discontent.

10. That your petitioners are fully acquainted with the extent of Her Britannic Majesty's jurisdiction on the Gold Coast, the chief feature being a disclaimer of any imposition of legislation without the assent of the native Chiefs and rulers; and the terms whereupon the Queen most graciously elected to become the Protectress of this country, as are evidenced in the draft of the Proclamation defining the nature and extent of her jurisdiction on the Gold Coast, submitted to the Chiefs by the Earl of Carnarvon, through Governor Strahan, in the year 1874; and for that reason, if for none other, they fail to see by what other authority or means whereby such changes detrimental to the interests of the community could be entertained and admitted by the Legislature as the law by which we are to be governed.

11. That in our humble opinion the only way and the only available means by which such difficulties as have already been mentioned could be overcome lies in the adoption of the following suggestions, which, with all due deference, we submit to your cool, dispassionate, and impartial consideration:—

- (a) That there should be a Concessions Board and not a Concessions Court; the reasons for such preference are too obvious to be detailed, the word "court" connoting a specific idea with distinctive rights, which could never be predicated of a "board."
- (b) That such persons as have acquired competent knowledge in regard to land tenure as is defined by native customary law, and such kindred subjects and rights as may arise in the investigation of land cases, should be appointed from time to time to preside over such Concessions Board.
- (c) That it should be the duty of such commissioners or officers to satisfy themselves as to the validity or otherwise of the claims set forth by landowners desirous of disposing of their lands to foreigners as well as the *bonâ fides* of such concessions as are to be disposed of, and to adjudicate thereupon.
- (d) That in the investigation of all claims the Board shall sit with at least two Chiefs or persons acquainted with the customary laws of the Colony.
- (e) That an appeal shall lie at the full court of the Supreme Court of this Colony.
- (f) That the Board shall satisfy itself that the terms, conditions, and stipulations laid down in all leases, documents, papers, &c., &c., presented thereto, and dealing with concessions to be disposed of, are fair, equitable, and reasonable.
- (g) That, in the absence of such a presentation before the Board and the consequent failure of inspection, investigation, and assent thereof, such grants as are made should be regarded null and void for all purposes whatsoever.
- (h) That, where no documentary evidence is forthcoming in the establishment of a right or interest in a concession or land, the usual procedure touching the reception of oral evidence should be admissible by the Board where such evidence is proved to be conclusive and legal according to native customary law.
- (i) That the fees ordinarily charged in the Supreme Court in so far as regards summonses,

subpenas, &c., &c., be the same in the case of Concessions Board, if necessary.

12. That your petitioners are of opinion that such a course, policy, or measure would not only protect the foreigner purchasing a concession, but also the natives disposing of the same.

13. That such a course, policy, or measure, as aforesaid would, we most respectfully submit, meet the difficulties set forth in the preamble of the Lands Bill, 1897, under consideration.

- (a) By making of none effect the claims of those Chiefs or persons in authority such as are doubtful, and are therefore unwarranted to create rights and interests over concessions or lands in any part of the country.
- (b) The uncertainty of boundaries, thereby entailing litigation such as the Bill deprecates, would be decided upon by the Board.
- (c) Doubtful rights, interests, claims, and instruments would no longer exist.
- (d) The inability to develop rights created by landowners would be reduced to a minimum.
- (e) The improvident creation of interests in lands or concessions and rights thereover would be prevented by the Concessions Board.

14. That such a measure so succinctly sketched above would not only ensure the mutual satisfaction, peace, and goodwill to *bonâ fide* owners of lands, as well as the foreigners who come to benefit themselves and to co-operate with the natives in the development of the country, but would also establish more than ever the good faith, trust, and confidence reposed by the natives of the Gold Coast in Her Majesty the Queen, and leave unimpaired and inviolate the terms under which the country accepted Her protection and governance.

15. That such a measure, so simple as it is, would reflect great credit on the Government, and at the same time enhance the respect, honour, and majesty such as your petitioners have always associated with the august name of Queen Victoria.

16. And fully persuaded and thoroughly convinced that when Her Most Gracious Majesty the Queen instructed her servant to especially take care to protect the native inhabitants of this country in their persons and in the free enjoyment of their possessions, she had in view not only your humble petitioners' ancestors, but their descendants and the generations to come; wherefore your humble petitioners indulge the most sanguine hope that the course or policy suggested above shall meet with your favourable consideration.

And your humble petitioners, as in duty bound, will ever pray.

We remain, &c.,

	their
KWEKU ATTAH,	× King, Axim.
KODWO ABROKOH,	× Chief, Upper Town Axim.
KOFI ASIMAH,	× Chief, Axim.
KWEKU EBBAH,	× Chief, Axim.
KOBINA INT'RIE,	× Chief, Bamianko.
KODWO AMAKYI,	× Cane Bearer, Axim.
YAMKHE QUAEBOE,	× Appollonia.
KWEKU GYANTEH,	× Linguist, Axim.

marks.

J. WOOD, and about 180 others.

Enclosure 3 in No. (1).

PETITION.

To His Excellency Sir WILLIAM MAXWELL, K.C.M.G., Governor and Commander-in-Chief, and to the HONOURABLE MEMBERS OF THE LEGISLATIVE COUNCIL OF THE GOLD COAST COLONY, West Africa.

Winnebah, June 23, 1897.

In the matter of a Bill intitled "An Ordinance to regulate the administration of public land and to define certain interests therein and to constitute a Concessions Court."

The petition of Kudjoe Inkum, King of Gomoah, Orkill Anshah the Third, King of Adjumaku. Gharty

the Fourth, King of Winneba, on behalf of themselves and the Chiefs and Headmen of their respective domains and districts, sheweth:—

That your humble and loyal petitioners have heard of the above Bill or Act of Legislature now before this Honourable Council relating to the proposed administration of public land and to define certain interests therein and to constitute a Concessions Court.

We, as landowners of stool property or of ancestral property, and of family property acquired by purchase or other lawful means, or as persons interested in some property of the kind enumerated, have not the least doubt but that our properties, as well as our rights, interests, and title to and in our lands will be seriously affected by the proposed measure "The Land Bill."

We believe we have not the right of appearing before you on matters of this nature without your gracious leave.

Had your petitioners the right to send a member to the Legislative Council of this Colony to represent them and watch their interests and express their views in such legislation, or to assert their rights, they would certainly approach such representative, but your humble petitioners have and have had no control or voice over and in matters which have from time to time come before and have emanated from this Legislative Council, nor have they any means of laying their views before this Honourable Council, but, considering the momentous and wide-reaching Act (this Bill) which now seriously threatens and affects them and the peoples of their respective districts, your petitioners pray that they may receive and find favour in your sight and be heard in person or by counsel before this august body.

And your humble petitioners, as in duty bound, will ever pray.

Dated this 23rd day of June 1897, at Winneba.

KUDJO INKUM, my × mark, King of Gomoah.

Witness to mark: W. A. Hanson.

GHAUTEY IV., King of Winneba.

Chief ORKILL ANSAH III., of Edjumaku, his × mark.

Witness to mark: S. B. Hanson.

QUASIE OTUBUAH, his × mark, Field Marshal of Winneba.

J. W. M. ANNOBILL, Chief of Winneba.

DAN. A. SAM, Chief of Winneba.

our

W. A. H. QUACOE MENSAH, ×

W. A. H. QUACOE ACKOM, × of Assin Gombah marks.

Enclosure 4 in No. (1).

NOTES OF THE PROCEEDINGS OF a MEETING OF the LEGISLATIVE COUNCIL held at Government House, Christiansborg Castle, on Friday, 4th June 1897.

Present:

His Excellency the Governor, Sir W. E. MAXWELL, K.C.M.G.

His Honour the Chief Justice, W. BRANDFORD GRIFFITH, Esquire.

The Honourable the Colonial Secretary, G. B. HADDON SMITH, Esquire (Acting).

The Honourable the Attorney-General, W. MCLACHLAN MONEY, Esquire (Acting).

The Honourable the Treasurer, DARENT McDONALD, Esquire (Acting).

The Honourable the Inspector-General, Major-General Sir FRANCIS C. SCOTT, K.C.B., K.C.M.G.,

The Honourable J. H. CHEETHAM, Esquire (Unofficial Member).

The Honourable JOHN VANDERPUYE, Esquire (Unofficial Member).

GEORGE LEACH, Esquire (Extraordinary Member).

A. W. OSBORNE, Esquire (Extraordinary Member).

Absent:

H. B. W. RUSSELL, Esquire (Extraordinary Member).

Minutes.

The Minutes of the previous Meeting are read and confirmed.

Petitions.

I beg to ask leave to lay before the Council a petition from King Tackie and other Chiefs of Accra on the subject of the Lands Bill and move that it be received.

Mr. Cheetham.—I beg to second the motion.

There being no objection, the petition is received, read, and laid on the table of the Council.

Mr. Vanderpuye.—I beg to ask that permission be granted to Messrs. J. M. Sarbah and P. A. Renner, Barristers-at-Law, to appear before the Bar of the Council and to be heard on behalf of the Head Chief of Abura and others, the Head Chief of Cape Coast and others, and the Head Chief of Anamaboe and others with regard to the Lands Bill.

Mr. Cheetham.—I beg to second the motion.

Mr. Vanderpuye.—Messrs. Bannerman and Mills, Barristers-at-Law, are the representatives of King Tackie; but Mr. Bannerman is not here.

Business.

Acting Colonial Secretary.—The Council is now ready to hear the Counsel of the petitioners.

BILLS.

The Lands Bill.

Mr. Sarbah.—May it please your Excellency and the Honourable Members of the Council, as Counsel with my learned friend, Mr. Renner, for the Chief of Cape Coast Castle and others, as well as the Kings of Abura and Anamaboe, I ask whether we may respectfully know the mode, procedure, and practice in the Council by which we may be guided during the time which we may have to address the Council.

Governor.—The Council are here to hear all that learned Counsel desire to say with regard to the private rights of their clients, or any alleged rights which are supposed to exist, and also to hear any reasons they may have to urge why this Bill should not become law as infringing any supposed rights of the natives of the Colony.

With regard to these points alone Counsel must address the Council.

Mr. Sarbah.—Will your Excellency and Council be prepared, according to the instructions we have in appearing before this Council, to hear us with regard to the principles enunciated by the Bill?

Governor.—The learned Counsel are not here to debate upon the principles of the Bill; that is the function of the Members of the Council, who are entitled to speak in their places, stating reasons or adducing arguments why a measure should or should not be accepted.

Mr. Sarbah.—As your Excellency pleases. May it please your Excellency and Honourable Members of the Legislative Council, the persons who have instructed us to appear here to-day are not only persons holding the position of Chiefs, but are also private individuals, and according to our instructions the Bill before this Council directly infringes the rights of such individual members of society.

Before touching the Lands Bill itself it is necessary to say here that the powers of the Legislature in this instance to make law for the protected territories are not derived so much from Her Majesty's Letters Patent of 1874 and 1887, whereby the old settlements on the Gold Coast were constituted and erected into the Colony, as from Her Majesty's Order in Council of 29th December 1887, similar to that of the 6th August 1874, by which the Queen delegated her powers to, and made it lawful for, the Legislative Council of Her Colony to exercise and provide for giving effect to all such powers and jurisdiction which she may have acquired in the protected territories near or adjacent to such settlements, that is the Colony. As the Lands Bill refers to the protected territories, the petitioners, who are the natives of the Protectorate, have instructed us to appear for them.

The Bill now before the Council refers in distinct terms to natives of the Gold Coast. The first point we are instructed to bring before the Council is this—the definition of "natives" in the Bill by excluding mulattoes directly destroys the rights of members of the community. There is, as far as I am able to remember, a decision in the courts of law here by which the rights of a mulatto are equal to that of a

native. The Bill before the Council excludes persons who are mulattoes from the enjoyment of such possessions which they may have.

The provisions of this Bill are distinct and clear to those who have endeavoured to arrive at a correct understanding of their meaning and scope, and the definition of native excludes every mulatto, whether he be a chief, the head of a family, or an individual member of his family. The mothers of mulattoes in this country are invariably natives; by our customary laws these women are members of their respective families, and the right of inheritance traced in the female line; by excluding mulattoes such persons forfeit all rights they have or are entitled to in their own family possessions. This, then, is one of the points which according to our instructions we have to bring to the careful consideration of this Council.

Another point which we have to bring before this Council is the definition of what is called "public land." In going through the Bill we have endeavoured to understand the meaning of each clause, and the meaning of the words in it. Looking at the definition of "public land," our instructions are that the Bill seems to fall into the error that every piece of land in this country except those enumerated in section 13 of the Bill is a public land. As to this we most respectfully refer your Excellency and the honourable members to the report of various persons included in the report of land tenure on the Gold Coast, by which it is affirmed that every piece of land and every plot of land in the Gold Coast has an owner, whether such piece or plot be waste land or forest land. From the facts disclosed by those reports the Crown Lands Bill of 1894 had to be reconsidered, and it was abandoned. As far as my recollection of international law goes, only by conquest, cession, or treaty can the soil of this country be vested in the Queen, and not by such a legislative measure as the present Bill.

When it is said Chiefs own lands it is erroneously supposed or presumed that because a Chief happens to be the ruler of the village, he is the owner of the lands of the village community. No; as a member of his own family such a person may have certain lands which he holds with the other members of his family, and over which the villagers have no control at all.

With the village elders and headmen, the Chief looks after the common land. Plots of land under cultivation by or in the possession of a family is the property of such family, and it has always been decided by Her Majesty's Judges in the law courts that the successor of the owner of such land is entitled to it. It is only on failure of successors that such land falls back into the common land of the village.

Since the time of Lord Wolsley the term "Chief" has been more generally used than it used to be. It is not the case that everyone who owns some property and is reputed wealthy is a Chief. There are what we call "Bronpon," meaning a rich man. These are persons who have acquired wealth by trade or enterprise, or by inheritance and own land by purchase or right of inheritance. It does not follow because these persons are members of the community that they are Chiefs of that locality. Property possessed by persons of this class is their own, that is, not public property.

Again, if Her Majesty's Government vests what is practically all the soil of the Gold Coast Protectorate in the Government, the control which the headman of a locality or the headman of a family has over the several members of the community or family will be destroyed; for in every community the members of the several households have their headman, and in the event of any headman wasting or improperly interfering with the family or community possessions without their consent, they have the right to supersede him or remove him from his position as headman. From the several heads of the respective families are the elders of the village Council selected. These elders with the headmen or Chief form the village Council. If the Chief of the village wastes the lands of the village community he also can be set aside. Thus the members of the families and several households control the elders and the Chief or headmen.

Moreover, the Bill ignores ancestral land and lands of inheritance, all aborigines who are landowners being reduced to settlers where they happened to be farmers.

He who is an artisan or mechanic or a clerk or is engaged in trade loses his title or interest in lands and estates which he as a member of his family now enjoys. Not only are the bonds of society to be snapped, but family ties are to be broken and family relationships destroyed.

This brings me, sir, to the next point, which is to find out what right has been reserved to the native of the Gold Coast. We have carefully examined and considered the Bill, and we find that a chief or at any rate "a recognised chief" may, in certain cases and under certain circumstances, by the previous consent of the Governor, create private rights in public land, or without such consent permit persons, that is, natives, to reside upon what is called a public land. But, notwithstanding this supposed reservation of right to the Chief, recognised by some means about which this Bill is silent, the only right which the Bill recognises the Chief to possess is a settler's right in section 13 hereof and no more. There is no distinction shown at all between the rights possessed by an individual person, or member of a family, or head of a family, or headman of a community, or members of a company or clan.

Putting aside the Queen's Orders in Council of 1874 and 1887, may I refer your Excellency and this Council to Her Majesty's Proclamation of 1874, when the Ordinance settlements were constituted and erected into the Colony, as well as paragraphs 4, 5, 6, of Lord Carnarvon's despatch which will be found in the Appendix to the "Fanti Customary Laws," pages 270-276.

From Lord Carnarvon's Despatch we find that the Proclamation was to prevent misunderstandings in future, and to enable this legislature to know on what subjects it may properly legislate; and turning to the Proclamation we find that laws to be enacted are to be framed with due regard to native law and customs where they are not repugnant to justice, equity, and good conscience. In pursuance of this settled policy to be guided by the native law and custom, section 19 of the Supreme Court Ordinance, 1876, particularly gives special directions for the enforcement and protection of the law of tenure in the protected territories of the Gold Coast; and subsequent legislation has taken special care to protect the law of tenure in this country. This Bill, however, practically alters this customary law of tenure, under which the landowner is an absolute landowner, by declaring that the largest right a native of the Gold Coast has in the soil of his country is what is called a settler's right.

Whenever land cases come before Her Majesty's Court special regard is paid to the facts which section 14 of this Bill totally disregards. It is usual, as far as one's experience in the law courts goes, that if a person appearing before the court in a land case can prove that he or his predecessors in title had been in possession of a piece or plot of land for a number of years, or has been exercising rights of absolute ownership over any land (whether waste or thick forest) his right has been sustained by Her Majesty's Judges, is so also in cases where such a person had given his land to another, who, under such leave, had gathered crops or done any kind of work on it, say for 60 years, and if the grantor, after such a long period of time, claims the land, and can adduce evidence to prove or support his claim that his ancestors were entitled to that piece or parcel of land.

There was a case of one Toku and Mensah, in which lands occupied for years by a Chief and his people were adjudged to be the property of Abessibu, a poor man, not a chief nor captain, but one of the King's subjects. The man Abessibu is the absolute owner of this large tract of land, part of which is covered by a thick forest extending several miles. Some time after the first case there was another case of Abessibu *versus* Amina, the successor of Mensah, the former defendant. In this case also the law courts upheld Abessibu's title and claim to recover possession of land, originally part of a forest which he had for several years allowed Mensah to bring under cultivation and found a village on.

There is another case, which came before Chief Justice Bailey at Cape Coast Castle between Kudwo Kru, Chief of Kommenda, and the Chief of Chama, with regard to a land called Kotobiri, which land has

now been leased to a certain syndicate in London. In this case, the question of title having been gone into, and it having been proved that the land belonged to the Kommenda people, who had been in possession thereof and exercised rights of ownership for very many years, the court gave judgment in favour of Kru and his people.

In connection with this subject, the Bill mentions certain instances in which what is called a settler's right may be lost:—One is three years' non-residence or non-user. By the decisions of Her Majesty's courts on the Gold Coast, the English Statute of Limitation does not apply here. Therefore, when a person who is a landowner, whether as Chief or head of a family, or whether as a private individual, of his self-acquired property by purchase or inheritance, leaves home and his possessions for very many years, his right to such property is not lost. On his return he has the right to take his property, and any person not related to the owner who may have occupied such land during his absence and taken profits therefrom is bound to pay some compensation to the owner.

The hardship of section 17, with reference to a settler's right, is this: If a native of the Gold Coast who for many years past has been in possession of a tract of land by right of inheritance from his ancestors or by purchase leaves this country for three years or more: it may be to the Congo or Niger to seek his fortune: it may be to Europe to study medicine or engineering: and while away his land is not tilled or in any way cultivated, by this Bill he loses his title and interest therein, because this Bill has reduced such title of absolute ownership to that of a settler's right, a right forfeited by three years non-user of one's own property. I am specially instructed to say that this Land Bill is an elaborate and expanded form of the Crown Lands Bill of 1894. That Bill refers only to what is termed waste and forest land, whereas this Bill refers to the whole land of this country, depriving the aborigines of their right in the soil of their native land. In fact the Bill of 1894 was more favourable to the natives of the Gold Coast than the present one before the Council.

Another thing I wish to bring before your Excellency is this: The King of Abura, as your Excellency is aware, does not reside on the sea coast, he belongs to that part of the population residing up country. Unlike those dwellings at the seaside he and his people have to depend mainly on their lands; on them, sir, the present Bill threatens, not only hardship, but absolute ruin. By this Bill shifting cultivation confers no title to land, nor is it a protection to quiet enjoyment of one's own possessions. The usual mode of cultivation in this country is cultivation by rotation. I do not mean rotation of crops, but the method by which the native farmer plants on one spot one year and in the next year clears the adjoining plot, which he plants, and so on. The people of India suffer frequently from famine owing to their system of planting in rotation. We do not know that here; the supply of food in this country has never failed to such an extent as to cause famine, and the recent fears of a famine on the Gold Coast arose from the devastation of the crops by the invasion of locusts. The present Bill does not give any native a greater right than that of a "settler's right"; practically, therefore, a person who grows corn owns no land and gains nothing, and, if the plot of land which he has put under cultivation is taken from him under this Bill and is given to another person by means of a land certificate, it follows that he is paid nothing for his land, which he perhaps purchased, and it is doubtful whether such a person will be refunded the expenses he incurred in planting his corn and other cereals. Then, with regard to a settler's right, section 16 of the Bill refers to the reservation of customary rights, which are enumerated, as the collection of rubber, palm kernels, kola nuts or other natural products, and so on. But there is much misconception concerning these so-called customary rights. Strangers and aliens have no customary or other right to collect rubber on anybody's land. The members of a family of the village community or of a company owning the land can collect rubber on such land without asking anyone's permission, although it is usual to give some of what is collected to the Chief

or headmen. After the collection of rubber, the owner of the land receives his tribute, and no native can collect rubber from that land without the knowledge of the head of the family. If he is a member of the family he collects but he gives some portion of it to the head of the family. If the land belongs to a village community and the members collect rubber, they give some of it to the headmen. But, as I have stated before, a stranger cannot do so without first obtaining the permission of the family or community. With regard to palm kernels, there is no such customary right as the Bill mentions; palm kernels customary right do not exist so far as I am aware. A person owning land containing palm trees at the proper time cuts the bunches of ripe palm nuts, covers them in pits for a few weeks, after which the nuts are taken up, pounded and boiled. The oil extracted is brought to the seaside and sold to the trader, while the bare nuts are spread to dry in large heaps. When the oil season is over, and other farm engagements permit, these nuts are cracked one by one, and the nuts picked out by the hand and sold as palm kernels. To enter on another's land without his permission is trespass, but to commit such trespass with the object of unlawfully removing one's property is an aggravation of wrong which law courts here have always punished by awarding heavy damages against trespassers. Kolanut trees are cultivated plants that require attention and care almost as much as coffee trees. There are no customary rights about the collection of such nuts. The collection of products is not free to everybody. For instance, the absolute right to gather snails shows right of ownership in land. No man can go from Cape Coast Castle, say to Supome, and cut trees in the Supome Forest for canoes without the permission of the headman or landowner. But what is more serious is the great qualification or restriction contained in section 16, namely, the words "according to native methods and customs in public land."

To a person who does not know this country and its local institutions, this section 16 seems fair and plausible. We, however, who are on the spot are convinced that it is not only misleading, but that it also enunciates a principle which will stultify the Queen's policy in relation to the aborigines of this and other countries, while the presence of the section and the wording thereof betrays an absence of knowledge of essential points in the mind of its author according to native methods. Why, native methods are admitted by the natives themselves to be wasteful and destructive. And so the natives are ever on the alert to profit by any improved or better methods, whether European or otherwise. By the destructive native method rubber plants and vines have been needlessly destroyed to a large extent, yet, in spite of this and the universal regret of this wanton waste, the native will be bound to go on in his work of destruction, for if he adopts the better system which he may learn from Europeans, it stands to reason that such improved methods, not being native methods, he cannot lawfully practise them, and he can be properly forbidden to practise any other than his native methods. Whatever progress society is making in knowledge, however great the strides civilisation is making among the community, civilisation and knowledge are to all intents and purposes not to benefit natives of the Gold Coast in the free enjoyment of their own possessions. Your Excellency, it is stated here that it shall be lawful for a native to cut and take timber; but this right is to be exercised according to native methods. Your Excellency and honourable members are perfectly aware that boards, beams, and other scantlings are prepared in this country, although not in very large quantities. For more than fifty years this industry has been pursued, but it was taught by European traders. Even now we do not manufacture pit saws, which are the necessary tools for this industry here. Pit saws are imported from Birmingham. Under this Bill it will not be lawful for a native in future to saw beams and planks from his own land or any public land. He will be driven to the destructive native methods, and there will be no necessity for him to import tools from England to earn an honest living. Take a place like Sefwhi, where nothing is known of the art of digging gold. I was a short while ago inquiring from a headman from Sefwhi their method

of gold mining there. He told me they did not know how to dig mines, but commonly practised alluvial washings; whenever they attempted to get gold from rock formation, they simply gathered a few faggots, heaped the same on the spot where the gold was visible and set fire thereto. The heat more or less melted the gold and softened the rock a little. From the chippings of such rock the people washed for gold dust and nuggets. The native miners from Apollonia, however, who are more or less acquainted with gold mining, sink shafts and blast the gold reefs, and crush the quartz. Sir, by this Bill no Apollonian or other person can go to Sefwhi and lawfully get gold or other minerals by mining, for that is not the native method of Sefwhi, nor for the matter of that could a native of Sefwhi, who had acquired some knowledge of scientific mining or better methods develop his own possessions by practising the better methods.

Leaving this part of the Bill, I come to the question of land certificates. A comparison of this Bill with the abandoned Crown Lands Bill of 1894 confirms the public suspicion of the present Bill being the abandoned Bill of 1894, and the suspicion is removed in favour of a certainty by the marginal note to section 34, which confirms the fears and suspicion to have been too well founded; for the marginal note reads "prohibition of officers in public service acquiring or holding Crown grant save as excepted;" for the words "land certificate" read "Crown grant," and the identity of these two Bills is clear, and this, in spite of your Excellency's message of the 10th of March last, wherein we read that "the principle which it was thereby sought to lay down has been subject to criticism, and under the direction of the Secretary of State it has been abandoned. The Bill of 1894 has therefore not been proceeded with, and no interference with native rights of property was contemplated or will be made whenever such rights can be shown to exist." Sir, the present Bill will not interfere with native rights, but will destroy them totally. This Bill does not only destroy the native's rights in property, but it also seeks by section 24 to convert all land-owners who have documentary evidence of their title into land certificate holders, who are to be subject by section 25 to English law only. When the local Marriage Ordinance was passed, I believe Her Majesty's Government here gave very deep consideration to the question and its bearings on the devolution of property and in order that section 19 of the Supreme Court Ordinance of 1876 may not be evaded, and that no person about to contract marriage under the Marriage Ordinance might be misled or taken by surprise, a specific duty was laid upon the Registrar of marriage to bring to the notice of the contracting parties the new law of devolution of property, to which they would in future be subjected. The couple were to be told distinctly that by entering into the married state they were contracting themselves out of customary law of inheritance. Her Majesty's Legislature of the Gold Coast Colony know very well that the soil of this country, I mean the protected territories, was not and is not vested in Her Majesty. As a matter of fact and universal knowledge here, whenever land is wanted for public purposes it is purchased from the native land-owner, who conveys it to the Queen. I repeat that knowing full well the soil is not vested in the Queen, this Legislature could not declare Her Majesty as the ultimate successor in cases of intestacy; hence it is enacted, in section 41 of the Marriage Ordinance of 1886, at page 603, Gold Coast Laws, that "provided always that where by the Law of England any portion of the estate of such intestate would become a portion of the casual hereditary revenues of the Crown, such portion shall be distributed in accordance with the provisions of native law and customs, and shall not become a portion of the said casual hereditary revenues," and here I may refer to the case of Anaman, deceased. There the Supreme Court, after argument and due consideration, distinctly decided that questions of testacy and intestacy must be governed strictly by the English Law. (Reported in "Fanti Customary Law," page 193.) If, therefore, a native, whether literate or illiterate, dies without making a will in strict accordance with the English statute of wills, although he may have made a will good and

lawful according to the local customary laws concerning property for which he may have acquired a land certificate, he dies intestate. For land held by virtue of a land certificate is not at all subject to any customary laws. Its devolution is strictly under the English law, and it is practically like a piece or parcel of land situate in England. It is respectfully submitted that Bethell's case, decided in Chancery Division some time in 1887, is applicable and useful while considering this point. There, Bethell, an Englishman, married a Baralong girl according to the custom of the tribe. The marriage was good according to the custom of that country in which it was contracted, but, like the Gold Coast, polygamy is not unlawful there. But the marriage was held unlawful, and the issue of that union was declared to have no title to succeed to land in England. I submit, any land held by an aboriginal inhabitant of the Gold Coast by virtue of a land certificate must escheat to the Crown in the face of these two decided cases. The usual rule of descent in this country is diametrically opposed to that of England, it being traced in the female line.

If a native landowner exchanges his right or title for a land certificate, and afterwards dies, say in Garman or Sefwhi, leaving such land and personal effects and a widow, the Crown can step in and take the land, because his widow was not a wife under the English law, having been married where polygamy is lawful; nor can his mother, brother, nephew, niece, or sister come in, for the deceased, a bastard in the eyes of the law of England, is the child of nobody.

On the other hand, the personal effects and other property left by the deceased would devolve on these persons who are entitled thereto by the customary laws of succession and inheritance. Moreover, if a person who is residing at Sefwhi gets involved and desires to sell a portion of his own land to settle his debt, he is forbidden to do so, unless he comes here to trouble the Governor, who has more important duties to attend to than to be troubled with a petty question of perhaps five or three acres.

Then again, Sir, this Bill goes further to regulate and administer what is called public lands. But it does not state for whose benefit such lands are to be regulated or administered. The abandoned Crown Lands Bill of 1894 distinctly stated all waste lands and all forest lands were to be vested in Her Majesty, for the use of the Gold Coast Government. Whether the so-called recognised chiefs or the usual chiefs or ordinary landowners have to desire any benefit or advantage from the Government administration of their lands and possessions nobody knows; we wish to know.

For the present I have done with Part 2 of the Land Bill. I may, however, in the course of my speech incidentally refer to some parts of it. I now come to Part 3, which deals with the new Concessions Court. Since the first reading of this Bill we in Cape Coast Castle have heard it is a Concessions Board that should be created, and not a court. The petitioners who sent me here have instructed me to speak against the creation of another court, having jurisdiction distinct from the Supreme Court of the Colony of the Gold Coast. In the judgment of the full Court of Appeal, in *Oppon v. Ackinie*, reported at page 207 of "Fanti Customary Laws," we learn a little of the past history of Her Majesty's Courts on the Gold Coast Colony. Prior to the Supreme Court Ordinance of 1876, Her Majesty had been exercising her jurisdiction by the help of a very confusing arrangement of courts and magistrates, all of which were to cease and give place to the one Supreme Court. Persons who have practised before this court are aware that the majority of cases which engage the attention of the judges relate to land. And very often in land cases, for a plot of land which if sold would not realize more than 10*l.* or 15*l.*, persons in dispute concerning its ownership run into expenses of 50*l.* or more to assert their title. Persons who are interested in or entitled to any land in this country usually know its boundaries and extent. The boundary marks may be unknown to the alien or stranger; nevertheless the natives are extremely particular about their boundary marks; several cases brought to the law courts arise from boundary mark disputes and encroachments on adjoining lands. It is sometimes said that people are too fond of litigation about

property. However regrettable this may be, still it is a strong unimpeachable proof of how much the aboriginal inhabitant of this country is unwilling to sell his land, and how deeply and intensely attached he is to his ancestral possessions, and to his own lands. The landowners of this country are absolute owners, who have never paid rent or tribute, nor do they pay tribute or rent to any superior, king, lord, chief, or anybody whatever. But persons holding land under or from landowners sometimes pay cash rent, or perform rent service in return for the land on which they dwell. Such services may be simply beating the landowner's drums, carrying musket or other arms behind the king in whose train he is serving, or bringing him some offering of rum, palm wine, &c., what time the annual yam custom celebrations are being performed. As an instance in point, I may mention the people of Abonu, near Cape Coast Castle, who once every year journey to take part in the observance of the king's annual custom at Anamaboe. The Concessions Court is to oust the jurisdiction of the Supreme Court in land cases. During the 20 years that the Supreme Court has been investigating titles to lands and deciding numerous land cases, in no instance has the jurisdiction of the Supreme Court been found inadequate or insufficient.

Governor.—I am unwilling to interrupt the learned Counsel, but I wish him to confine himself to the rights of the chiefs for whom he appears.

Mr. Sarbah.—But would your Excellency permit me to continue my address, as the Bill does not refer to chiefs only.

Governor.—You are addressing the Council in regard to the rights of chiefs; it is quite a different thing to remark generally upon the Bill.

Mr. Sarbah.—Supposing a person has had a land case before the Supreme Court, and the Supreme Court judge had gone carefully into the matter and settled it, this Bill gives the Concessions Court power to go through the same questions again. No judgment of the Court will be a protection to anyone. The Bill distinctly states that no judgment can estop this new Court going over the same matter again, even between the same parties, and the anomaly may possibly happen that a person who owns land purchased from one whose title had been confirmed by a judgment of the law court will be informed that the judgment does not bind the Concessions Court, and as he is unable to produce evidence, as was done by his predecessor in title, he loses his money and his land.

Governor.—A dispute arises between persons in possession of or claiming rights in lands which are contiguous. A suit is brought in the Supreme Court, and judgment is given between the parties. That is the function of the Supreme Court. The object of the Concessions Court is to enquire into the rights supposed to be acquired in alleged concessions.

Mr. Sarbah.—In the case put by your Excellency, if the dispute arose between the holder or lessee of a concession on the one part, and the owner or holder of the adjoining land, the question of ownership of the disputed land is invariably put in issue; and the lessee or tenant necessarily calls in the person from whom he derives his title, who adduces evidence of ownership. Every decision of the Law Courts in land cases more or less declares who are the persons entitled to the absolute ownership, nor have the Courts failed, when concession required, to inquire into and define the rights supposed to be acquired under alleged concessions. The late Surgeon-Major Africanus B. Horton, M.D., was the first person who acquired gold-mining concessions in this country, but several of his title deeds coming before the Court were set aside or rectified on grounds which I need not mention here.

There is also the numerous class of persons who are absolute owners of lands purchased at sheriff's sale, and who hold certificates of purchase signed by a judge of the Supreme Court.

This naturally leads me, sir, to the provision concerning those who possess title deeds or other documentary evidence relating to concessions held or lands

owned by them. Such papers must be filed in the Concessions Court. According to the Bill, he who fails to file such documents as he may possess by his failure causes all his title and documents to be *ipso facto* void, and this whether the non-production is within or beyond his control. That is, if I am a landowner by purchase, and have already registered my title deed for security, I shall be bound to file in the Concessions Court the original conveyance. If I am unable to do so, the deed having been lost or destroyed by insects (not an unusual occurrence in this country), this Bill declares my title void, and it is doubtful whether I possess the precarious settler's right. A copy of the conveyance certified by the Registrar cannot be accepted.

Further, if one is the owner of land of inheritance purchased many years ago, and the documentary title had been kept in some cupboard where it has been unfortunately destroyed, being eaten up by white ants, he may not file a certified copy, and by the absence of such paper his title becomes *ipso facto* void, and he is, perhaps, reduced to a settler's condition.

Governor.—The best evidence must be produced, and in the absence of the original document surely a certified copy is admissible.

Sarbah.—This Bill does not say so, sir. By the words notarial certificate we understand certified copies of documents in England. There is not one public notary in the Gold Coast; he is an official who has not yet made appearance here. It is impossible to obtain notarial certificates, seeing there is no public notary to certify. The Registration Ordinance distinctly states how and when certified copies of registered documents can be tendered in evidence. But we must remember that the Registrar of Deeds is not a public notary.

Adjournment.

Governor.—Adjourns Council for Saturday at 8 a.m.

NOTES OF THE PROCEEDINGS OF A MEETING OF THE LEGISLATIVE COUNCIL held at Government House, Christiansborg Castle, on Saturday, 5th June 1897.

Present :

His Excellency the Governor, Sir W. E. Maxwell, K.C.M.G.
 His Honour the Chief Justice, William Brandford Griffith, Esquire.
 The Honourable the Colonial Secretary, G. B. Haddon Smith, Esquire (Acting).
 The Honourable the Attorney-General, W. McLachlan Money, Esquire (Acting).
 The Honourable the Treasurer, Darent McDonald, Esquire (Acting).
 The Honourable the Inspector-General, Major-General Sir Francis C. Scott, K.C.B., K.C.M.G.
 The Honourable J. H. Cheetham, Esquire (Unofficial Member).
 The Honourable John Vanderpuye, Esquire (Unofficial Member).

Absent :

H. B. W. Russell, Esquire (Extraordinary Member).

Minutes.

The Minutes of the previous Meeting are read and confirmed.

BILLS.

The Lands Bill.

Mr. Sarbah.—May it please your Excellency and Honourable Members of the Legislative Council. Yesterday I was on that portion of the Bill relating to the Concessions Court, and continuing, I come to section 46, which provides for the Government being a party in all proceedings before such Court. This is a part of the Bill which strikes one with some kind of dismay or diffidence, or both; a person appearing

before the Concessions Court is, in a certain sense, considerably handicapped when he has against him, not only the person from whom he acquired, or to whom he granted, some land, but also the Government with all its resources for obtaining witnesses and other means of getting up evidence and retaining Counsel to watch its interests, if any, before the Court, which is practically under Government control, and is in fact a Government Department, subject to the peculiar powers reserved to the Governor under section 63 of the Bill. I submit that if, on the ground of public policy, there is any fear of any agreement between parties before it to defeat the ends of justice or to mislead the Court, perhaps some right should be reserved to the Crown, on the report of the Commissioner, of collusion or danger of one of them being imposed upon, or advantage being taken of his inability to procure skilled assistance to present his case, to intervene; but for the Government to be always a party in matters before the Court would undoubtedly result in making the native landowners and landholders reluctant, if not afraid, to appear before this new tribunal.

At least, my instructions do not warrant me to discuss at any length on what lines an admitted danger should be asserted and an error rectified; but I believe the majority of the intelligent part of the population say the views of the Legislature by which is justified the stepping in of this Bill to stop what is called the improvident alienation of lands to contractors who are speculating in gold mines, and the granting of other mining concessions, are most destructive to the right of the native in the free enjoyment of his possession, and as for the grounds specified in the Bill as proving the necessity for a speedy remedy, the Supreme Court possesses full jurisdiction and power to grant relief, and I repeat, nobody has complained against the inability of Her Majesty's Judges of the Supreme Court to grant such relief.

I must refer your Excellency to the circular letter of August 1891, which was sent to all District Commissioners, concerning the granting of concessions by native chiefs and other landowners. There it is seen how Her Majesty's Government were endeavouring to protect the native chiefs and landowners; the District Commissioners were ordered to put such persons on their guard against dishonest and swindling land speculators or concessions promoters. And, to protect these landowners from being taken in, the District Commissioners were to tender their useful advice. If it has been discovered [that] the means so suggested had proved inadequate and insufficient to stamp out the evil which was suspected, and that it is necessary to take stronger measures for the protection of the aboriginal landowners, your Petitioners, who have sent me here, would most humbly suggest for the careful and deep consideration of your Excellency and this Council, that a Concessions Board be erected; but that it should, in the first instance, only examine all the concessionary and other grants which have been created; and secondly, take care that in future no grants are deemed good and valid until after due examination by the Board, to see that the native landowner has been fairly dealt with, at the same time that the person who is acquiring the property has a good title and the Board has certified to that effect. By such means the Government would be in a position to prevent a native from improvidently dealing with his possessions; it will in the same way protect the person who is about to invest his money in the Gold Coast.

The circular, sir, to which I have referred, in plain terms makes known the fact admitted by Her Majesty's Government that the native chiefs and landowners can do what they like with their lands. For they were told, that notwithstanding any advice or guidance which may be given by the District Commissioner, any contract, grant, or concession, which the landowner may make will be made entirely at his own risk, and the Government can assume no responsibility whatever in respect to it. In the exercise of my profession, I have been consulted several times about the acquisition of concessions, and I have advised in terms of this letter that the Government, claiming no interest in or right to the soil of this country, has nothing to

do with concessions. I believe several others have held the same view and fallen into the same mistake, if it be a mistake. If it is now stated the landowners of this country are not the absolute owners of the land, a very difficult question is thereby raised.

Sir, I do not think it is necessary for me to speak much longer on this Bill, but just at the finish, I pray your Excellency and the Council to permit me to refer to one or two statements contained in your Excellency's message. Your Excellency in your message refers very often to the rights of natives. I have endeavoured, perhaps imperfectly, but still to the best of my ability, to show and point out to the Members of the Council the different kinds of rights which exist on the Gold Coast. The Supreme Court Ordinance notices these rights, and lays it down that Her Majesty's Court must in causes relating to, *inter alia*, tenure and transfer of real and personal property and to inheritance, administer the customary laws and enforce the native rights. The message also quotes a statement made by Mr. Secretary Chamberlain in the House of Commons last year, and from that we learn that "in the interest of all the native tribes and Chiefs, as well as British investors, it is essential that the local government should be able to see that such transactions are made in good faith and on reasonable terms, and that the conditions are thoroughly understood by the natives." This follows the policy laid down by the circular letter of 22nd August 1891, and Mr. Secretary Chamberlain's opinion is practically identical with the principle of the circular.

Had the District Commissioners been successful in rendering efficient service in this respect, the necessity for the present Bill may not have arisen, and Mr. Secretary Chamberlain has given the reasons why the granting of concessions should be regulated by legislation; since then I have seen copy of a letter, signed by Sir John Bramston, from the Colonial Office, dated the 4th day of March last, confirmatory of the statement made in the Commons.

Governor.—To whom was the letter addressed?

Mr. Sarbah.—To a mining syndicate in London.

Mr. Sarbah.—It is not desirable to waste the valuable time of the Council, because it is possible that considerable modifications will be made in this Bill, or the same will undergo a thorough revision.

Once more, I repeat, the chief and principal objection which your humble petitioners and the aboriginal inhabitants of this country have to this Bill is the fundamental alteration of their natural right of absolute ownership in the soil of their native land into that of mere landholders and settlers. They earnestly pray that such radical alterations may be effected in the Bill as would confirm, not destroy, their absolute ownership.

Once more, by this Bill shifting cultivation does not confer any right on anyone. But this is the only mode of cultivation found to be practicable and remunerative; the system practised here is this: the farmer first clears a plot of land; when the grass and sticks have dried he burns them and plants his corn. After three months (corn usually takes 100 days to grow and ripen from the time of sowing) he puts in the land something else, say cassava; when he reaps the corn the cassava comes on, and if he intends to plant something else he does so. In the space of about eighteen months, he discovers that the crops from that plot do not cover his expenses nor recompense him for his labour. He takes up another plot, letting the old one lie fallow for some time. The difficulty in this country is that the people do not use the plough.

I may say, however, that I attempted once to use a plough of American make. In the first year I gathered plenty of crops, but on the second year's ploughing of the same plot I gathered less crops than the first year, and the third year's yield was still smaller, so much so that the crops could not cover the expenses I had been put to. If, therefore, by this Bill the well-tried and only suitable system of agriculture practised here is not encouraged, but discredited, existing native rights are not preserved, but seriously invaded and threatened with destruction.

I thank the Council and your Excellency for hearing me so patiently, and though I have spoken in an acquired language, and so, perhaps, imperfectly, I entertain the hope that your Excellency and honourable Members here present will deeply think over and consider in all their bearings what I have laid before you, and be enabled by a good Bill to protect the foreigner, as well as the aboriginal inhabitants, in their dealings with each other concerning the acquisition of land, and in the free enjoyment of their ancestral and other possessions, and that henceforth, from this memorable year of Her Majesty's Diamond Jubilee, the benefits we enjoy under her beneficent protection being improved may continue.

Mr. Renner.—May it please your Excellency and honourable Members of the Legislative Council, I do not propose to engage the time of the Council more than a few minutes. In order to support the statement which I propose to lay before the Council, I beg to ask that it may be remembered that as far back as the time of Governor Strahan, when it was thought that some steps should be taken to abolish slavery in this Colony, it was thought then that some declaration should be made to the people of this Colony to show them that the Government, while respecting their inherent rights in the land, did recognise their rights to be legal and their holdings to be by the laws and customs of their country, which ought not to be interfered with.

In the second paragraph of the letter dated 21st August 1874* from the Secretary of State to the Officer Administering the Government (in correspondence relating to the Queen's Jurisdiction on the Gold Coast, Ch. 1139, of 6th February 1875), his Lordship states: "Her Majesty's territorial dominion on the Gold Coast is of narrow local range. It extends merely to the forts, or at most to so much of the lands immediately adjacent as may be required for defensive, sanitary, and other purposes essential to the maintenance of the British position on the coast. All beyond that area is foreign territory." Further (page 3) "that country is foreign soil, divided amongst native Chiefs and rulers standing in no relation of allegiance to Her Majesty, independent of one another, and each presumably a sovereign within the local limits of his own domain."

Since that letter was written no steps have been taken to deprive the people of their right to the land nor has any attempt been made by the Legislature to deprive the native Chiefs of the rights which they had to their lands, but, on the contrary, as my learned friend endeavoured to submit to the Council, in the Ordinances which were referred to special provisions were made showing that the legislature intended carrying out the original intention of Her Majesty's Government of reserving to the people the rights of holding their lands according to their native rights, laws, and customs: I pray, sir, that the native rights which from time immemorial have existed be allowed to exist.

In the Ordinance we read of what is termed "waste land"; I beg to submit to the Council that every inch of land in the Gold Coast is owned, there is no waste land nor forest land. All the land of the Colony is more or less owned.

In this connection I venture to invite the attention of the gentlemen of the Council to the report upon the customs relating to the tenure of land on the Gold Coast. That report was invited by this Government, and it is the report of its own officers made when there was no apprehension of difficulty or questions relating to the disposing of the people of the rights which had been handed down to them and which they wish to hand over to their posterity.

In the report of District Commissioner A. W. Thompson, he states, "in some districts, such as Wassaw, there are no individual rights of ownership of lands, these being attached to the stools of the Kings and Chiefs as appanages. On payment of rent, more correctly known as tribute, an individual may acquire a temporary right of building, cultivating, on mining or such land. In other districts, such as Fanti and Ahanta districts, there are

" absolute rights of ownership amounting to possession
" in fee simple conferred on purchasers, the principle
" being that the person first clearing a forest land
" becomes absolutely the owner of it, and on his demise
" the land so acquired descends to his heir."

As a general rule the lands of the Colony are held by private individuals and there is no land in the Colony which is not owned.

These are the words of another officer. In his report Colonel Scott says, "As a general rule among real natives of the Gold Coast the tenure of land is perpetual whether cultivable or otherwise. All land on the Gold Coast is either the property of a (1) tribe, (2) country, (3) town, (4) company, (5) family, or (6) an individual."

In the report of Mr. Peregrine of 6th June 1895, he states: "There are, I understand, waste lands in this Colony which are in the gift of the King or Chiefs, as the case may be, and are disposed of in a manner I have already stated."

In the report of Mr. Adams, a District Commissioner, he states: "Every acre of land on the Gold Coast has an owner. There is no unoccupied land. Though no boundaries may be visible to the European they are perfectly clear to the eyes of the various owners. It would seem as if in the remote past the whole land had been vested in the various kings—each stool within its boundaries forming a commonwealth."

In the report of Mr. Williams, a District Commissioner, he states: "With regard to forest and waste land, forest lands in Akwapim are supposed to belong to private individuals, and are apportioned to whomsoever they may require it for cultivation."

This shows that even waste lands are watched over, but in Eastern Akim forest land is supposed to belong to the King, and before he disposes of any he consults the whole of his people or townspeople.

In the report of Mr. Lamb, a District Commissioner, he states: "The land situated within the rule of the King of Adda belongs, in the first instance, to the stool. This is one of the forest districts in the Colony, wherein even forest lands have an owner."

In the report of Mr. Bruce Hindle, the Attorney-General of this Colony and late Chief Justice of Sierra Leone, who had a vast experience of the laws of the Gold Coast, in paragraph 3 he states: "It is considered by the natives that all lands, whether reclaimed or not, are attached to the stools of the different kings and chiefs, with the exception of the comparatively small portions detached in manner hereinafter mentioned. There is no land which is not or has not been so attached. In the bush the boundaries are generally fixed by particular trees, by natural features, such as rivers or streams, &c."

I draw the Council's attention to this particular portion of the report that the natives know their boundaries even in the interior. "As to forest land much of the same thing applies, that is to say, a certain fixed tribute has to be paid out of anything obtained therefrom; this payment of a tribute settles the question of the ownership."

He also states: "I do not know that there are any lands properly describable as waste land." This shows that even lands which are not used have owners.

In the report of Mr. George Ferguson (I think he was a Travelling Commissioner), he states: "The districts everywhere, particularly waste and forest lands, are owned by the tribe as common land, where the members may hunt, pasture, and cut firewood, strangers excluded."

"The lands of the tribe, whether cultivable, building, metalliferous, forest or waste land, are, in the first instance, attached to the stool, and cannot be alienated from it. On this principle no land can be transferred by communities, families, or individuals, without the knowledge or consent of the King and his Council. When an individual or a member of the tribe cultivates a portion of a tribe land, or in any way makes beneficial use of it, the land becomes the property of the person and his family for ever, even though they cease to occupy it."

* Gold Coast, No. 56.

"In case of protracted dispute between two or more parties; families, and communities, as to ownership of land, the King could declare that the land has fallen back into tribe land, or that it has become a particular property of the stool, and then take possession of it accordingly."

This shows how they watch their rights to lands—then he continues: "I have seen whole villages migrate of themselves from one portion of the district to another, but an allotment of land to communities by kings or chiefs has not come within my observation."

"The fact is that these communities have occupied their ancient habitation from time immemorial."

In the report of Mr. Cummings, a District Commissioner, he states: "Lands are acquired by purchase, lease, and inheritance; there is no difference in the system of tenure whether land is for agricultural, building, or mining purposes, or whether it is a forest or waste land. If land were inherited it is called family land and depends to the person who by native custom is the next heir."

In the report of Mr. Eyre, he states: "Theory of tenure is an immemorial custom. Cultivable land is a portion or part of a forest which has been cleared for that purpose by a king, chief, or head of a family with his relatives or tribal relations, who form the community. As a rule land is held in common by families, and there is also individual ownership."

In writing about forest and waste land he states: "The property of a king, chief, the community or individuals for the purpose of hunting, and to be made use of when land which has been for some time cultivated gets barren and is left to rest for some time, also for supplying wood and other materials; in the thickest forest there is a boundary showing its extent between one community and its neighbour."

In the report of the Acting Chief Justice, Mr. Smith,—I think this is a report which also ought to have a particular attention given to it, because of the wide experience of this Judge in all matters pertaining to land—the learned Judge writes:—

"Land in the district is distinguished under the following heads:—Stool land, private land, and family land. Under these designations all the land in the Colony, save what the Government have from time to time taken for public purposes has, according to native law, an owner."

"By what means property attached to a king or chief's stool has been acquired is difficult to say, probably by conquest. * * In whatever way the property is acquired it becomes attached to the stool absolutely, the occupant thereof during his life or good behaviour being considered the owner, but with no power of alienating the property. Such property includes lands cleared and cultivated, waste and forest lands."

"From the fact that stool property is a source of revenue to the stool holder absolute alienation of stool land is rarely, in the interior, made, and then under exceptional circumstances, such as to raise money to pay a stool debt."

"Forest land is also reserved for cultivation, and is from time to time cleared for this purpose, as the cultivator is obliged to adopt the shifting system,—no means of fertilizing the soil, beyond allowing it to lie fallow for some time, being known to the native."

"I am not aware of any permanent system of cultivation by natives."

"Family property can be traced to individual ownership:—

"Most carefully do the natives preserve and hand down all traditions connected with the ownership of such lands and no matter how small may be the plot of land they are always keen in preventing any encroachment on their rights in respect thereof."

In the confidential letter written by the same judge he states:—

"Lands, according to native law, are described as acquired, stool and family, and their modes of alienation vary."

Mr. Phillips, speaking in his report on the tenure of land, says: "The land belongs to the stool upon which the community sits in the shape of their representative."

This is an instance of the power of connexion of the people with the stool and tends to show how every effort is made in the primitive form to conserve the rights of the people to the land they occupy.

"As incident to this tenure" (says the same reporter) "it should be mentioned that the occupier renders himself liable to suits and services other than royalties, being at any time liable to have the Chief's oath sworn upon him to do almost any act, even to giving up his occupancy."

In the report of the Travelling Commissioner, Mr. Hull, he states: "Any person under the stool may by giving the Chief a flask of rum obtain permission to hunt on stool land; he must then give a portion of the antelope, &c. killed to the Chief."

This, I submit, is evidence of ownership if not in the Chief individually yet in his representative capacity.

Mr. Hull, speaking of cultivable land, says: "The same customs apply to mountainous land, land which is periodically submerged, forest, or fertile plain land." Further, as to land held by a community he says: "I think the only instance in which a community can hold land without it being vested in a Chief is in the case when a plantation is made by the members forming a certain portion of a town. Even then it will probably be found that this plantation, though seemingly one only, is divided by well-known boundary marks, the divisions being owned by the families sharing the plantation."

Here is an instance which calls for special precaution so as to guard against that doubtful and new creation of this Bill called the "recognised Chief."

Again, showing that the Chiefs recognise the domain of their neighbours, and that unoccupied lands are not considered nobody's property, this Commissioner says: "If a foreign tribe wishes to settle on land belonging to the King of any country or to one of his Chiefs, a deputation waits on the King or Chief and asks permission for the tribe to settle down, at the same time offering a present of sheep and rum, &c. If the request is granted then the boundaries of the grant are fixed in the presence of witnesses on both sides."

Again he says: "The Tchwi tribes (especially the Akwapims, the Akwamus, and most of the coast tribes) have to pay a yearly fee to the Chief for right to cultivate stool land."

In the report of the District Commissioner, Mr. O'Brien, he writes: "All land, whether cultivable land, land for building, metalliferous land, or forest or waste land, is attached to the stool of the King and all land is held from him. Formerly, it was held that the land of the stool could not be alienated from it, but there are some cases now where the land has been permanently alienated from it, but to enable the King to do that he must get the consent of his Head Chiefs. This practice has only grown up of late years."

In the Report of the District Commissioner, Mr. Vroom, a native of this Colony, who has had a very vast experience of the customs of the Colony, he writes: "As a general rule the lands of the country are held by inheritance, purchase or gift by some King, Chief, family or private individual, and there is no land in the country which is not so owned or has not so descended. Except in some cases of individual ownership, when lands have been acquired by purchase or gift, no land attached to a stool or belonging to a family or community can be alienated from it."

Mr. Hutchison, in a letter to the editor of the "Gold Coast Independent," on the subject of the Crown Lands Bill which is printed in this report, states: "The natives of the Gold Coast are mainly agriculturists and dwellers in villages."

"They are divided into tribes, clans, companies, and families, nearly every one of which groups possesses in common a portion of land known as the tribal, common, family or village property. Every member of these groups has, under native law, an indefeasible

right to a portion of the common land in each year for cultivation, and in this way each group raises its subsistence."

I submit, gentlemen of the Council, that the few extracts I have given you ought to receive some attention, and I believe that they will receive attention when this Bill is being reconsidered; and I submit also that they show very clearly that the owners of lands are holding their lands by right, supported by native laws and customs existing from time immemorial and unquestioned.

We know how the Courts are very often burdened with land cases, and the Chief Justice no doubt can say that he has inspected many lands the value of which has been very small, but yet so firm and zealous are the people of maintaining their ancient holdings and rights to landed property that they would expend thrice that value in defending such rights than relinquish their holdings and possessions. Notwithstanding this proof of the people's appreciation of their rights, the Bill before the Council, which is intended to be a protection against the aggression of future enterprisers, presents a remedy which is rather too severe and drastic; it, so to speak, by a stroke of the pen divests the people of their lands and inheritance.

I need not say anything further upon that, but it may be necessary for me now to refer your Excellency to some one or two cases which occurred in the Wassaw District, viz.: Enimil Kwoaw *versus* Kiriva, the Queen of Dabuasi: Quamin Enimil *versus* Enimah Koomah.

These cases refer to claims raised by kings and chiefs for lands belonging to their stools, and in the course of the inquiry the native law and customs relating to such holding were fully discussed, and the conclusion that there is no such thing as waste or unowned lands was arrived at after a careful study of the cases.

I may here be permitted to say that in the place of legislation of this nature the Government should pass some law which would impose upon those seeking to acquire lands for mining, timber and other enterprises, certain duty as to the nature of their deeds or title, the registration of same, the submission of same for approval or adjustment as to the consideration therein, and, if this present Bill is intended more particularly for the further increase of the revenue, then let a further impost be placed upon those coming from abroad to meet the Government wants, and preserve to the Chiefs and people of the Colony their ancient rights and source of maintenance.

Then as regards the constitution of the Concessions Court, in that connexion I may take what the Council provides as recognised Chief.

It means really that a new class of Chiefs would be created and enthroned. We have now Chiefs, who are called Native Jurisdiction Chiefs, Chiefs who hold their offices simply because they are recognised by a certain village community, or because of the relationship which exists in a family, and then we have Chiefs from time immemorial beyond the pale of Government influence, support, or recognition.

By the present ordinance, if A, a Chief recognised by his people but not by the Government, and B is a recognised Chief by the Government living near A, and betwixt their boundaries there is a land which is owned by A, and the fact is universally known, A dispute arises about this land between A and B; the case is brought before the contemplated Concessions Court; because A is not recognised by the Government (though he may adduce evidence to support his ownership) he will surely lose the case.

I think this is a matter which should be considered by the Council.

Again, the case of Toku and Armah with regard to the stool of Inkram; there Chief Mensah of Inkram was a Paramount Chief under King Chibboe of Yankomassi Assin. At the time of this Mensah's election to the stool, Toku, who was really entitled to sit and succeed, consented to be placed, as the natives say, behind (next to) Mensah.

There were several lands and villages belonging to the house of Mensah and Toku, each a Chief with a good large following.

In an action before the Divisional Court Toku, in claiming some of the villages, was adjudged to lose his right, as he would not serve the Paramount King

Chibboe, but only on that ground. Now Armah was also of that house, and was also a Chief but not recognised. In a case where each exercises his right to alienate or grant lands if a dispute arise, and they appear before the Concessions Court, as Mensah is a Chief, supported by King Chibboe, and had aided the Government in the Ashanti War—Mensah becomes a recognised Chief, he (Mensah) will have the weight in his favour notwithstanding the rights of the other Chiefs, who, as Chiefs either of a village community or a family are entitled to a share in the property granted or leased.

The election of Mensah does not give any other or better title than that of a trustee. The word "recognised" under the Bill gives preference and points to such as Mensah as owner, yet he should act for the benefit of all.

Such a state of things should not be created or introduced.

The Governor.—Do you say that they all can alienate concurrently?

Mr. Renner.—I do, sir. I say they can alienate, but not concurrently.

As regards the holding of land, I would refer to the case of Ecoobang *versus* Hagan, heard 29th May 1895. In this case the question of ownership as arising from long possession without payment of rent of any kind was considered. The judge (the present Chief Justice) who presided, following the old practice which existed in the days of Assessor's Court, and was assisted by three referees: Mr. Savah, a gentleman of Cape Coast, of wide native experience and once an honourable member of this Council: Chief Tackey, who I am happy to find is one of the representative Chiefs sent from the Western Province in connexion with this Bill: and another Chief, Essel, of Cape Coast. All the three men are trustworthy and reliable in such matters, and all things pertaining to the ancient customs and laws of the country, upon the question by the Court.

Question.—"The owner of land gives permission to a person to cultivate a portion of the land; this person and his heirs continue cultivating the land upwards of forty years, paying no rent, and giving no produce to the owner. By native law does this prolonged possession destroy the title of the original owner?"

Answer.—"I say and confirm that such prolonged possession does not destroy the title of the original owner."

This is evidence of how perpetual is title to land and how custom regards long possession as against original owner.

I would refer to the case of Kojoe Ghambra and Kwamin Eweah, in which my learned friend and myself were engaged opposed to each other. In that case the people of Yamsu village were held to control the Chief who sat on the stool; this being an instance where the village community exercises and asserts its right of control over the stool lands and stool.

This case went to appeal, and is on the whole not unworthy of the Council's consideration.

I do not propose to keep the Council any longer, but before I conclude I venture to suggest that the Concessions Court, as it is suggested by the Ordinance, would be the object of a great evil rather than prevent an evil, and if it were created I would suggest that it be a court not at all connected or in any way subject to the Governor or the Council directly or indirectly, and that it be as independent a court as the Supreme Court is.

It should be an independent court, subject to no control or interference as in the case of the Courts at home, which are only subject to the Appeal Courts.

If the officer who will be appointed the Commissioner is to receive his commission from here it is true that however conscientious may be his judgment, it will have to be taken to the Appeal Court, and there only finally settled. But at what costs? the cost of going to no less a court than the Privy Council; so when a man possesses land valuing 50*l.*, but which may by development be made to value 2,500*l.*, he goes to the Concessions Court and loses, there is no chance for him to reach the Privy Council, though there are records of cases wherein the amount in dispute is less

than the appealable sum; yet the Privy Council has entertained the appeal on special grounds. But in the case I have given, the value of the land being 50*l.*, not 300*l.*, the sum in respect of which you can go to Privy Council, the proposed appellant cannot, as of right, proceed to appeal, and thus that property which had supported him and his house becomes lost to them, there being no connection between the Concessions Court and the Supreme Court.

Governor.—I may here inform the Council that it is probable that an extensive modification of the provisions in the Bill in regard to appeal will be agreed to by the Government.

Mr. Renner.—Furthermore, it is to me unwise that the Governor should have power to make rules for the new court. The very fact of the Commissioner of this new court being under the Governor's appointment will always lead to instructions being sought of the Governor, and new rules being made to meet particular cases just as in the working of any other department of the Government under the direct control of the Governor.

I say again that the creation of this Concessions Court as is suggested would be an evil rather than a blessing.

As my learned friend has already thanked your Excellency and the Council for the patience you have had in hearing us, I do not think it is necessary for me to do so again, but I hope that when this Bill comes under consideration such alterations as would not alter the rights of the humble petitioners, the King, Chiefs, and headmen who have instructed us to be here will be made in the Bill.

NOTES OF THE PROCEEDINGS OF A MEETING OF THE LEGISLATIVE COUNCIL held at Government House, Christiansborg Castle, on Monday the 29th June 1897.

Present:

His Excellency the Governor, Sir W. E. Maxwell, K.C.M.G.
The Honourable the Officer Commanding the Troops, Lieutenant-Colonel D. M. Allen.
The Honourable the Colonial Secretary, G. B. Haddon Smith, Esquire (Acting).
The Honourable the Attorney-General, W. McLachlan Money, Esquire (Acting).
The Honourable the Inspector-General, Major-General Sir F. C. Scott, K.C.B., K.C.M.G.
The Honourable J. H. Cheetham, Esquire, Unofficial Member.
The Honourable John Vanderpuye, Esquire, Unofficial Member.

Absent:

His Honour the Chief Justice, W. Brandford Griffith, Esquire.
The Honourable the Treasurer, Darent McDonald, Esquire (Acting).
H. B. W. Russell, Esquire. } Extraordinary Members.
George Leach, Esquire. }
A. W. Osborne, Esquire. }

On the motion of Mr. Vanderpuye, seconded by Mr. Cheetham, permission is granted to Messrs. C. J. Bannerman and P. A. Renner, Barristers-at-Law, to appear before the Bar of the Council, and to be heard on behalf of Head Chief Tackie and other Chiefs of Accra, the Head Chief of Gomoah and other Chiefs of Winnebah, on the subject of the Lands Bill.

Mr. Bannerman.—May it please your Excellency:—I appear with my learned friend Mr. P. A. Renner for the Chiefs of the Winneba and Akim districts.

Before I address honourable members I shall first ask permission to say that this being the first time that I have appeared before the Council, not knowing the procedure, I beg that if I shall be out of order my so doing should not be misinterpreted. Now on behalf of the people of Gomoah, I am here to defend their rights against the Bill which is now before the Council

for second reading. In doing so I shall first of all take the message from his Excellency the Governor to the Legislative Council of the 10th March last. The recital reads as follows:—"Whereas grants, &c."—I say, your Excellency and honourable members, the recital states that certain things have been done without the consent of the Governor. It has not been pointed out in any way that makes it necessary for the Chiefs of the Protectorate to obtain the consent of the Governor in the first instance, before granting concessions to companies. The Chiefs have a right, an immemorial right, to their lands, and are perfectly justified in giving away their lands to any person they wish. Then there is another portion of the message which reads as follows:—"There is good ground, &c.:"—These grants which have been made by native Kings and Chiefs have always been recognised by the Supreme Court of the Gold Coast Colony. The Courts of the Colony have always found that the Chiefs of the different districts have a perfect right to their lands and there have never been any disputes as to the right or title of the people to their own lands. In fact, we have it upon authority that there are no waste lands in the Colony.

Governor.—On what authority?

Mr. Bannerman.—The reports of the various Commissioners and the Acting Chief Justice, the Honourable and learned Attorney-General, E. Bruce Hindie, Mr. Vroom, the Commissioner of Takwa. We have not been told anywhere how it is illegal and how it has been considered illegal that according to native law and custom Chiefs have no right to grant their lands and give absolute title to the grantee. From my connexion with the Court for nearly 14 years I have gained the experience that Chiefs have always been recognised, and have been always looked upon to give absolute right to persons to whom they may grant their lands. Now his Excellency on the 10th March states as follows:—

"The Government which has, &c."—I say, Sir, that if the Government requires land of the people of the Gold Coast Colony, the Ordinance referred to, that is the Public Lands Ordinance, has made ample provision for the Government to take any lands for their own purposes. But the present Bill really aims at taking away the right which has always been observed as belonging to the native Chiefs, and I say, Sir, that though it is the intention, and very good intention it may be, of your Excellency and the Legislative Council to protect in a certain measure the lands of the people of the Gold Coast Colony, yet I say according to native ideas the taking away in such a manner of their lands will be a violation on the part of the Government of the trust reposed in it by the people. I say that on behalf of the people the Council should reconsider whether the Bill which is now before it for second reading should not be negatived. Then the message reads, "For some years past, however, it has been, &c."—I say, Sir, if at all any examination is necessary the examination can only be made by the Supreme Court. But it has not been found necessary by the Supreme Court to make any such examination—the right as I have already stated has not been disputed. I have it on authority of one of the judges that the natives have their rights to their lands and the Government have their forts, and as provision is made by a special Ordinance which your Excellency mentioned by which they can obtain land from the people of the Colony, this Bill, I say, is an invasion of the rights of the people. If we refer to Despatches 20 and 21 of August 1874 by Earl Carnarvon, we find that it is not the intention of Her Majesty's Government to take away the rights of the native Kings and Chiefs so long as the English Government continues to be the protectors of the native Chiefs. Then, again, I say that the statement which the Honourable the Secretary of State for the Colonies made in the House of Commons in July 1896 is not supported by the decisions of the Supreme Court of the Gold Coast Colony. The decisions of the Supreme Court show that the Chiefs have the right to give away their lands and they have been doing so except where there is a claim of a rival Chief, and these disputes have always been settled satisfactorily. The Government can protect the property of the people but not

protect it in the manner in which this Bill intends the property to be protected. Now, it is stated in your Excellency's message of the 10th March that the Bill which was introduced in 1894 has been the subject of criticism and under the direction of the Secretary of State has been abandoned. I say, Sir, looking into the principles of the present Bill we cannot say that this Ordinance of 1894 is not the same in form as the present Bill. I say this is another way of getting into the room through the window if the doors are closed. Then your Excellency was careful to touch upon the right of the people. It is true that the Chiefs have the right to give away land and any native of a particular place has a right to go to any part of the country to cultivate for his own purposes, although this does not give him title to the land, but the moment he buys the lands with the consent of the Chief the same becomes his absolute property. And it is not necessary that the consent of all Chiefs should be obtained, for we have the decision of the Court that it is not necessary to do so. The King, who is the real owner for the time being of public lands, has a right, even without the consent of his Chiefs, to give away lands. Lately there was a decision in the Chief Justice's Court which shows clearly that his Honour was satisfied that the King has a right to give land to any person who pays him money for it.

Your Excellency further states, "It is believed that the sections referred to amply secure to the people, &c." I say, your Excellency, this will be no improvement of their position. This is simply to deprive them of what they have, and to say that this is an improvement of their position is, I am sorry to say, out of the question. Then comes the rights of the Chiefs. As I have already stated, it is not necessary for the various Chiefs of one particular town or place to hold a council before any piece of land can be given away. I believe the Council has heard a great deal upon that, that lands in a country are attached to a particular stool, that the Chief of a town is the rightful owner of a stool property, and as such he is the proper person to give away lands to other people. Then your Excellency states, "Recognised Chiefs, &c." Recognised Chiefs! Who are recognised Chiefs? Chiefs to be recognised by the Government or Chiefs recognised by their people? If this is to be taken as meaning Chiefs to be recognised by the Government, then I say this will be an alteration of things. The Bill really, I take it, is to change the order of things so far as native custom is concerned, and this is what my people strongly object to.

"Powers of the Governor in respect of public lands." By this a man can only have a better title to land upon the certificate of the Governor so that the Chiefs' rights in this respect are taken away: the Government assume to themselves the right of giving away lands which belong to a third party. With your Excellency's permission I will deal a little more with the message, for I think it explains the reasons why it is necessary that such a Bill should become law, and I must therefore confine myself for the present to the message of your Excellency.

It is explained here that "land in respect of which a land certificate is issued will be subject to English law exclusively." Now, assuming that this is to be the case, are the people who marry according to native law to lose their rights? It is known according to native law that lands descend in the female line, and we know that in the majority of cases marriage is here always governed by native law; if by native law lands descend from the female line, and the English law does not recognise descent in such a manner, are the people to obtain a certificate according to this Bill? are the people to lose their immemorial rights, that is, property descending from brother to sister? If this is the case, who then will become the owner of the land? It is to become the property of a land certificate holder. I say, your Excellency, this is taking away entirely the recognised rights of the natives of the Gold Coast Colony. According to the Bill, a land certificate gives a better title than the customary title which a person holds, and of course every person in the Colony would like to have something better than what he holds previously. If people now prefer to have deeds, conveyances, in the English form of conveyances, and if

this Bill becomes law and people know that a man can have a better title to land, everybody will apply for the Governor's certificate.

Generally it is explained that "there are grounds for hoping that the removal of the uncertainty which has been allowed for so long to surround all incidents of tenure in this Colony will give an impulse to industry of all kinds." That may be, your Excellency, but this can be done without this Bill becoming law. There are many other ways of getting the industry of the country than by the introduction and coming into law of such a Bill. Then for the purpose of deciding what Chiefs have titles to land it is proposed to establish a Concessions Court. I say, your Excellency, the Supreme Court has always been exercising jurisdiction in land cases and there has never been a single complaint that the Courts are not doing their duty. A Concessions Court cannot be better and cannot give greater satisfaction to the people who usually run to the Supreme Court than the Supreme Court has been giving. Now it is proposed in this Bill, should it become law, that "all dealings with and payments to native authorities in respect of lands must be conducted through the Colonial Government." This, your Excellency, is looked upon in a different light by the natives. Illiterate natives' ideas are altogether different from European ideas and from the ideas of educated natives. The fact of the rightful owners being kept behind and the Government stepping in will to a great extent make the people of the Colony, though perhaps improperly, lose confidence in the Government.

Part 2 of the Bill. I will leave the message and come upon the Bill. Now taking the recitals of the Bill. Section 5 states "the Governor may from time to time, &c." There is a provision made already under Ordinance No. 8 of 1876, so that if this Bill is intended to give the same rights which the Public Lands Ordinance is giving to the Government, I say on behalf of the people that this Bill is not necessary. The people are willing to give the Government any piece of land that the Government requires for public use, for I think that the Government which protects the country is entitled to some consideration on the part of the people. Section 9 states, "The Governor may divide into districts the territory of the Colony, &c." I say the districts of the Colony are already well defined. The whole principle of this Bill is to take away the rights of the people, that is the sole aim—to deprive the people of the Gold Coast Colony of their lands. These people from time immemorial have been known to have their lands according to native custom descending from their ancestors, and have always exercised their rights without doubt from themselves not from any other person, and the Government from time to time have impressed upon the people that their customary rights and immemorial rights will never be invaded. I say this Bill is a direct contradiction of what has always been impressed upon the people of the Colony, and the people should not be led to think that the promises which have been made to them by Governors from time to time will not be carried out. The people of the Colony are loyal subjects and in a time when everybody rejoices they should not for that alone be deprived of their sole rights and the means by which the Chiefs to a great extent obtain their living. The Kings and Chiefs only depend upon their lands for their living. It has been stated by a learned judge that the Government have the forts in the Colony and that the Chiefs have the lands for themselves, and that the Government can only take lands with the consent of the Chiefs, and it has also been stated by the same learned judge that the Government has no jurisdiction beyond 30 miles within the forts. The learned judge is Chief Justice Macleod. He gave his opinion in the case *Regina v. Abudulai*. The learned judge was then sitting as District Commissioner some time in April 1887. The same learned judge stated that a person claiming under a title from a colonial surveyor cannot acquire a better title than a man who claims from the Chiefs of the Colony (*Davies v. Morton*). The Chief Justice also stated that a man can have absolute title to land by long user for six years. To say that the Chiefs cannot

grant lands absolutely is not in accordance with the numerous decisions of the Supreme Court, and before the rights of the people of the Gold Coast, so far as their lands are concerned, are taken away, the proper persons who will be able to satisfy the legislature must be consulted. These are the judges of the Colony, who in always giving decisions show that the Chiefs have title and immemorial right to their lands. In protecting the rights of the Chiefs, I will particularly refer to the report and opinion expressed in the report upon customs referring to tenure of land by the Acting Chief Justice, Mr. Smith, and also that made by Mr. Vroom, District Commissioner of Takwa, and the late learned Attorney-General of the Colony, Mr. Bruce Hindle. These gentlemen dealt fully with the question and held up the title of the native Chiefs to their lands, and in considering this Bill, whether it should pass into law or be negative, I ask that the opinion of these gentlemen, who have had experience—several years' experience—and have come into contact with the native Chiefs and others in the country, may be carefully considered before any action is taken upon this Bill. This fact, I say, taking into consideration the whole Bill and the principle, the gist of the Bill, which is the taking away of the lands of the Chiefs of the Colony who have undoubted rights to their lands, the Council should take into consideration and negative the Bill becoming law. As the Council have heard a great deal already upon the rights of the Chiefs in previous sittings and as I am not the only one engaged on behalf of the Chiefs of Gomoah, but I am with a far able person than myself, I shall trouble the Council no longer but resume my seat and ask my learned friend to address the Council.

Mr. Renner.—May it please your Excellency and Members of Council, I hope I shall not be long in addressing you again as your Excellency and Members of Council have heard me upon the subject, but I shall endeavour to take quite a different field to that which I took before, and in addressing you on that field I shall bring one or two important matters before you. Whatever may be our shortcomings in laying before you as advocates what we consider or have been instructed to consider to be the rights of the Kings and Chiefs in connection with lands about which you are about to pass this Bill, we ask you as legislators to consider it having regard to your former conduct towards us, to your former dealings with us, and I ask you particularly to regard one thing only that I shall refer you to which appears in the "Gazette" of October 28th, 1895, wherein his Excellency, referring to the Crown Lands Bill in his address to the Council, said "that the Secretary of State, whilst fully respecting the objections put forward by the native authorities, is nevertheless of opinion that in order to protect the forests from injury by the reckless felling of timber, and to preserve the waste and forest land, and minerals from being invidiously dealt with, it will be necessary that some law on the subject should be passed." That particular portion I should like you to notice, and it goes further to say, "but no further interference with native rights of property is contemplated, or will be made, wherever such such rights can be shown to exist." I believe that when those words were used it was contemplated that there existed, as distinct from the Chiefs' and Kings' rights to lands, rights vested in this Government; but I think in following the past declarations of the officers of the Crown we come to the conclusion that declarations directly contrary have been made. I would ask you to look over the Civil Service List, which has been published, I believe, under the auspices of the Governor and the Government. There a summary of the history of the Gold Coast is given by Mr. Stanley Morgan, and he sets forth the powers which have been exercised by the Government up to 1824. "The authority of the English as well as that of other nations was up to this time limited to the immediate neighbourhood of the forts which they held." And it is stated that since that date various acts of the Legislature have been passed, but none have been made which have affected the rights of the people and Chiefs of the country in the same manner as that which is now contemplated, notwithstanding the fact

that the Government have from time to time required lands for public purposes and have purchased same, and have enjoined, in order that the towns may become more healthful, that certain pieces of land be kept open and described as open spaces. The fact that when Government required land they have had to purchase it and have had to pass an Ordinance whereby certain stipulations were made and notices given before such lands could be obtained is an indirect form of acknowledging that the lands at all events do not belong to the Government. If such an acknowledgment has first been made, then it strikes one as being strange that it should be thought expedient for such a course as is now proposed to be taken of divesting the people of their properties and then investing them in the manner proposed. It is true that for the sake of revenue and the better protection of forest trees certain acts of Legislature should be passed; but I think I may submit for your consideration that those Acts should first be passed to affect the persons who come into the country and devastate the land and despoil the owners of their property, and who, by their acts, have caused the Government to think that some steps should be taken in this matter. Now, so far as this matter goes, I again ask you to read for a moment Mr. Hutchison's report, to which I referred you when I last addressed the Council. This is what he says, having regard to the Crown Lands Bill (although this Lands Bill is not far different, and though, perhaps, that former Bill was much more virulent in its effects than the present Lands Bill):—"The terms 'waste lands' and 'forest lands' are defined in clause 2 in such a way as to be made capable of including the whole surface of the country, from the ownership of which the natives are thereby ousted." That Bill intended to oust the natives from their land; this seems, perhaps, not to wholly oust them from the use of their land, but simply to get a greater portion of it and to deprive them of the privileges they have hitherto enjoyed and their indefeasible rights.

"The natives of the Gold Coast are mainly agriculturists and dwellers in villages. They are divided into tribes, clans, companies, and families, nearly every one of which groups possess in common a portion of land known as the tribal, common, family, or village property. Every member of these groups has, under native law, an indefeasible right to a portion of the common land in each year for cultivation, and in this way each group raises its subsistence. Under this system every member of the community is provided with the means of maintaining himself, and as long as it is continued there can be no pauper class with its concomitant evil—a criminal class. The natives of the Colony have a complete system of land laws which regulate the devolution of property among them, which has existed among them from time immemorial, with which they are thoroughly acquainted and which (on the high authority of the late Sir James Marshall, formerly Judicial Assessor to the native Chiefs and the first Chief Justice of this Colony) is better adapted to their wants than the elaborate land systems of Europe. The common property is the bond of the various groups, and its appropriation by the Government as proposed in this Ordinance will lead to the breaking up of the social system."

This country it is suggested ought to be ruled by laws similar to those which rule India and the Malay Peninsula, and the system there in those countries may in some measure guide us as regards land tenure, and I would refer your Excellency and Honourable Members of Council to the writings of Standish Grove, Grady on Hindu laws, where he speaks of property in the following terms:—"In all countries, whether civilised or otherwise, the earliest subject of property was land, which still forms, at all events wherever civilisation has extended, the most important subject of acquisition. This is particularly so with regard to India, which being for the most a vast continent, shut out from maritime intercourse except on the seaboard, the people were in a manner compelled to engage in agricultural rather than commercial and manufacturing pursuits except so far as their own absolute exigencies required. It is property of a character chiefly looked to for the maintenance of

"families, and to which in different provinces and under successive despotisms they are recorded to have clung to the last so long as the exactions of power left to them anything (whenever they did leave anything) that could be called a proprietor's share." He goes on to say: "Till lately the prevailing opinion was that the right of the soil was in the Sovereign, an opinion that has been elaborately combated."

"This doctrine of the property in the soil vesting in the Sovereign," the writer says, "maintained by the Mahomedan Government was, upon England's acquisition of India, long acted upon, until its consequences in checking improvements became perceptible, when Lord Cornwallis so far restored the subject's right as to fix, professedly for ever, payable in money the proportion to which the State should be entitled, leaving to the possessor of the land after this deduction the benefit of progressive improvement with unrestrained power of alienation to be regulated only by the native law." In the present Bill the share is not fixed, and the power of dealing with property is very restricted even if and when the Bill is taken to be necessary, as in India; so by such Acts of Legislature as this will the cultivators and owners here be handed over to the mercy of "enterprisers and grabbers." That would eventually be the result here, the right of cultivation alone being descensible.

Mr. Hutchison says in his remarks on the Crown Lands Bill: "It will be found on careful consideration that the power to be given to the Governor will extend to any land whatsoever in the Colony; the onus of opposing a grant by the Governor being thrown on the person asserting that any land which has been granted or is to be granted is not waste, forest, or public land within the meaning of the Bill." The same effect is produced in or by this present Bill, more covert words being employed.

That is the opinion of one whose statement may be taken, perhaps, not without some due consideration. He once held office or some office in the Government. As far back as 1855 the various Governors dealing with their forts on this coast found it necessary to legislate as regards their customs duties, and so much did they adhere to the idea that they owned nothing beyond the forts, that they drew attention in an Ordinance which was passed in 1856, on the 4th April, to the troubles which the Government had because of not having to interfere with the territories beyond their forts which belonged to the Chiefs. These territories are now in contact with this Government and the Chiefs who rule them have to obey the civil law, but not to surrender their lands, and no attempt has been made to take the lands from them. And that policy has been supported to the letter and in spirit by His Excellency. When last year after the Ashanti War he made various treaties with the people in the neighbourhood of Ashanti, treaties of protection and treaties of friendship, and in those treaties there is nothing suggested that the lands of the people would be taken away from them, and that any interference would be made or had as regards the administration of their lands, and, far from it, on the contrary, the Government suggested that they might open and extend their roads and hold their lands, ceding their territories or lands to no other country. It is now not, I think, quite two years since that transpired and we have now an Act which does not consider how far these treaties go to support our former declarations, Acts, and undertakings, as regards the extension of jurisdiction and so far as dealing with lands is concerned. For those countries being foreign lands there scarcely can be said to exist at the same time the same rights now claimed under the Bill, and the same protection there offered and declared by the treaties. I may refer your Excellency to a treaty which was made with the people of Afflao as recently as 1879. In that treaty the people by their Chiefs and headmen placed their country under the protection of Her Majesty's Government in consideration of certain stipends being paid to them; this Government have failed in their undertaking, and though only a criminal jurisdiction was conceded by the Chiefs and not their lands, yet now on this Bill

becoming law it would apply to Afflao and that in spite of solemn existing treaty.

The Governor.—Counsel should not refer to such treaties.

Mr. Renner.—My object in so referring the President of the Council is that as recently as 1879 the Government, in making a treaty with the people, took their land only for the purpose of maintaining civil or, rather, criminal jurisdiction. The meaning then of this Act would be this: That it would then be extended to Afflao, which came to you as a friend for protection, and the people of Afflao would have their lands taken notwithstanding your engagement to observe their laws. That is the reason why I wish to bring before the Council these treaties and acts of Government whereby hitherto it was professed and declared by Her Majesty's representatives that they would not interfere with the lands of the Protectorate. This Bill is intended to extend to the protected territories, it is intended to deprive the illiterate native of the interior of his just inheritance under the cloak of conferring on him benefits and protection. That is the only reason why I have suggested that the same deliberation and construction should apply to many other treaties, but I will leave the Council to consider the treaties which are referred to in the Civil List of the Gold Coast Colony given on pages 68-70, with their dates, and it will be seen from them that all those lands which belong to and constitute the Protectorate could not and should not be brought within the scope of this Bill. Then principally the interior people who have not the immediate influence of the Government over them must have their lands, according to the Bill, withheld from them. If that be so, then the spirit which was evinced and mentioned as far back as 1874, when Earl Carnarvon said: "I am anxious to avoid the risk, if any, attendant upon this manner of proceeding, of alienating the feelings of the natives, and I am fully alive to the importance of their willing co-operation in the work of promoting the civilisation and prosperity of the Protectorate—should be considered in this important matter." That is the same spirit which should apply to-day. If the people have not been told what has been intended by the Government (and they have not), we ask that the Bill should not be read a second time without in fact allowing the Chiefs of the interior to hear by gong-gong what would be the effects of this legislation if this Bill be passed; we feel ourselves grateful for past protection, but I may mention, Sirs, that we will be handed over to an influx of enterprisers who would come to the Colony to acquire the lands and we will be reduced to that state of poverty which breeds criminals and engenders misery. I submit that this ought to be taken into consideration as this Bill intends to invest the Government with rights to all lands. It says first we take the land, who can prove title let him come and prove; who comes now and cannot prove title goes to the wall and we can then give the lands to those who come to the country, and no one will have the right to question what we have done. That means that the land owners shall no longer have safety and protection under their former title, but must turn to the land certificate which may be given.

I shall ask you, Sir, to look for a moment at one or two things that are in the Bill, and read thus: It speaks (in section 13) of rights acquired by the Government, by prescription. If I may venture respectfully to speak, Sir, I say that no such rights have been invested in the Government of this Colony. Prescription is unknown to us, while the Bill speaks of the Government acquiring property by prescription. If the Government can hold by prescriptive rights why not the people, the Chiefs, Kings, and village communities who and which were here before the Government obtained its power or was even allowed to exercise those powers which it now claims as rights? Then it speaks of possession? I pass over purchase. Possession! What can that possession refer to? Possession of holding adverse to the Kings or Chiefs of this Colony? But the Government have never held themselves as holding lands adversely but with the concurrence of the people, and have observed native custom and laws, and therefore hold lands with

concurrence of those Chiefs whom they now wish to deprive, and possession is not defined as adverse or otherwise, but I take it as adverse.

Grants.—Now do those grants mean grants that are made by the Government or by recognised Chiefs? I will not deal with “recognised Chiefs” so-called, because I brought that matter and creation to notice at the previous meeting. There is not a voice in the Colony that echoes for this Bill, not even the very merchants, the very miners whom you say you are protecting us against. That very section says that those rights which have been given to those people shall not be considered as good at all. Then it says also that no valid grant may be made of land within the limits of a town as defined under section 9 thereof or under the Towns Ordinance of 1892. Now these lands and those which were required for public purposes (open spaces) the Government have hitherto paid for. The moment this Ordinance comes in the Town Ordinance would cease to operate, because all the lands would be vested in the Government, and everyone else who would show better title must go through a long litigation. Surely this at all events could not be conducive to our improvement. Section 14 says no person shall acquire anything but a settler's right, that is, no native, and the section further refers to lawful possession according to native tenure, yet subjects the holder of lands under this provision to conditions and reservations. Now such holder's right under native tenure is clear and satisfactory, a thing by no means so here. Well, it goes on further to speak of lands which have been held for shifting cultivation. Well, I may say that the idea of shifting cultivation is unknown to us. We do not know, as the enlightened nations do, this system. The first man who clears the land has that land. That is sufficient, but if the shifting cultivation is only to be taken by natives, I say it will do a great damage and a great harm. I have already referred you to Mr. Hutchison's statements or writings on this matter. There is something upon this, *i.e.*, permanent alienation, which I should like to read to you; I cannot find it now, but it is in the report on tenure of land as far as I can remember now. The reporter says, and it is applicable to this Bill, the proposed measure does not conform to the admonitions of Her Majesty's Ministers in days gone by, when the powers of the Legislative Council were defined by the Earl of Carnarvon in August 1874, when it was laid down that the enactment of laws relating to property rights should be framed with due regard to native law and customs, and that property rights should be similar to those prevailing in the Gold Coast.

Now this Ordinance or Bill does not attempt or pretend to regard the above rule, for it diverts all of their rights, no matter how derived, and enacts for the permanent alienation of common property of the village communities and groups a provision which is inconsistent with native laws, ideas, and custom. This will have to be considered. There must be sufficient provision in the Bill to adequately recompense the Kings, Chiefs, and owners for the loss this change of system will cause. No definite statement is made as to the share they are to receive, and we apprehend that the Government will retain the greater portion; the Ordinance vaguely states that an adequate share would be given to them. It seems hard to consider what various Governors would deem an adequate share. I omitted to draw your attention to the absence in the Concessions Court of a provision as to what is to happen in the case of interlocutory orders made by the Commissioner, no appeal from such order being provided for. In order to work properly let us have powers equal in respect to the Supreme Court. Then, again, when the Government had declared any land under this Ordinance as reserved land or public land notice shall be filed according to the Ordinance in the “Gazette.” This step seems hard on the people whose land will be affected, for they cannot read, they cannot have the “Gazette” at Takwa and in the interior, and it seems superfluous to suggest such a thing. Means would have to be taken of giving them notice upon this matter. Then it is suggested in Section 45 that there is to be a law introduced into the country to affect real property, that is to say, introducing a statute of

limitation directly in disregard of native law, tenure, and custom; such a thing is foreign and unknown to this Colony. If we take away these lands and so set aside native law and customs we must bring English Acts to bear and bring them to bear at once. Then, under section 47, it is said: “Any person interested shall, with leave of the Concessions Court, be heard by ‘counsel,’ &c. I suggest most respectfully that after the word ‘may’ those up to the word ‘either’ ought to be left out; that everyone should have a right to be represented in the Concessions Court. It should read, ‘Any person interested in supporting or opposing any claim in whole or in part may in person or by counsel or attorney intervene.’ That discretion which is given to the Commissioner ought to be taken away, and we should have absolute right to appear. Then the Concessions Court, so far as I can conceive it after reading it again, only recognises the native dealing with minor and trivial concerns, timber or mineral enterprises, or concessions of that nature, with the result that my land in the interior may be of great value only to me; it may be alienated by my brother, not entitled, except with my consent, to deal with the land; my brother may go to the recognised Chief. The recognised Chief, supporting him, may acquiesce in the grant; now, in case of my failing before the Commissioner and the Chief allowing that land to go to such third person, I cannot, after the Concessions Court, go to the Supreme Court in relation to that matter, for its jurisdiction is from the beginning of this Act wholly ousted. It is inexpedient that the officers of this court should hold office during the Governor's pleasure. The Commissioners should be properly qualified persons at all times. This Court should not interfere with the former decisions of the Supreme Court in relation to ownership, as is proposed by section 41, nor should it interfere with registered grants or concessions made before its constitution. Then, further again, I may draw your attention to the provision under section 58. The time for appeal is too short. You have given us, or propose to give us, one month. It is provided that no leave to appeal shall be granted unless within one month from the date of any judgment or order; a petition for leave to appeal to be filed with the Secretary of the Concessions Court. The Supreme Court gives us at least three months and extends that time even to six months.

No mention or provision is made as to how matters are to be removed from the Supreme Court to the Concessions Court, and at whose or what expense, having regard to sections 41 and 43.

Time for filing claims should be fixed by the law, not by the Governor.

The Supreme Court is not so dependent on the Governor as this court will be, and even the customs procedure is free from so much of the Governor's interference, control, or supervision. Then, I hope I may be pardoned in saying that although in dealing with the question of “recognised Chiefs” it is suggested that the Chiefs are to be considered altogether ignorant, yet they are Chiefs, and the so-called recognised Chiefs seem to be the same as Chiefs under the Native Jurisdiction Ordinance, who also are in no better position. If they are not, or if it be not so, then some more clear definition ought to be given as to who can be called a Chief. If the Government are not on terms of friendship with the Chief of a town, and the Chief is not taken or regarded as the “recognised” Chief, his chance before a Concessions Court is a very poor one. Then, again, in the stool line there are those Chiefs or heads in the position of “Brompon.” They are rich, they have extensive property, and if they are not entitled to be called Chiefs, as they might be in going to the Concessions Court, there would not be much chance for even them as against a recognised Chief. Something should be done to those persons to whom I make reference though they sit on no town stool. If the Government are not claiming the lands as against the Chiefs, and will not take the larger share, giving them adequate share, why should they be a party in every matter? This leads to unnecessary expense, and handicaps the real parties; and again the Government Agent may work in support of one side and what about costs against Government? This should not be left to the discretion of the Com-

missioner. I go back, if you will permit me, sir, to section 31: "Whenever any question arises as to whether any land is or was 'public land,'" &c. That takes in itself a sort of assumption that these and all are public lands, and this Ordinance, in coming into force, will declare every land public land, and it says that the burden of proof shall be on the party who asserts right contrariwise. I should read that to mean that the Government ought to prove, but it means, I think, that the owner should go and prove. That, I think, is a hard provision; I may not understand it sufficiently, but that is how it strikes me at present. Section 16, which reserves to natives the right of collecting rubber, palm kernels, &c., says that that right shall not confer upon any person any title to the land over which such right is exercised.

The Government should not at one and the same time be owners, paramount power, and claimants, and adjudicators, or grantors. The Government would here like to be considered as conservators of rights, whilst they are in truth despoilers, who, without even going through the form of setting up some reasonable, however weak, a title or claim, constitute themselves first owners, putting the people to endless expense in trying issues with their own judges, with the result that they get, if anything, only that "adequate" (unknown) share.

Section 17.—"A native landholder who, at the commencement of this Ordinance, is in lawful possession according to native tenure," &c. Well, if the Government proposes to recognise native tenure, why not do so, and impose some tax upon the people generally? All who hold lands have been accustomed to hold them without payment of a certain amount, and no right really is given to a man who so holds as is provided in this section.

And then section 20, dealing with settler's right provides that, "The transfer of a settler's right by a native to any person other than a native shall be subject to the Governor's approval." &c. Well, that means expense to the people, hardship upon the people, particularly upon the people in the interior. It is easy for the people who are on the seaboard to rush to the Commissioner and do those acts necessary, but a man cannot come down from the interior, if it is, say, twenty days' journey, to get his title renewed or new title ratified or approved. Section 22, speaking of land certificates, simply imposes upon the natives a very great hardship. In these days, as your Excellency must be now aware, unless where there are those natives who have lived sufficiently long on the sea coast to know how to deal with paper, an endless system of fraud would be perpetrated and established in regard to land certificates. An illiterate person in the interior may have his certificate exchanged for a useless paper at any time. Some provision should be made; and to avoid such fraud I suggest that no land certificate should be issued at all, the necessity for this change in the Bill being that it creates evil, a serious one, if I may say so.

Then section 23, "Unless and until a land certificate expires by effluxion of time," &c. That is another hardship. Once the adjudication has taken place in the Concessions Court, or grant made by the Government, we cannot go to any court, and it would be monstrous if the very title given by the Governor should be held imperfect. If my brother has given my land away, even without the consent of the "recognised Chief," and I be poor, I can never have a hearing, and this Ordinance tells me directly that I cannot go to any court to have my title inquired into. I cannot even sue my brother.

I think these are the matters which I have to bring before the Council, and I can only again express myself as being grateful for the hearing which has been given us. This Act is one which is intended, I believe, for the benefit of the people, and as such I hope you will use your wise heads and consider these matters in order that detriment might not arise.

Acting Attorney-General.—Before moving the second reading of this Bill, I wish shortly to state the reasons that have led to its introduction. For the last twenty years and more, especially recently, native Chiefs have made alienation sometimes by way of out-and-out conveyances, and sometimes by way of long leases of lands

for a very small remuneration or consideration. And, apart from this question, it is very doubtful whether such a custom is admissible by the law of the country. Much litigation has also arisen from the fact that the boundaries have been uncertain, and that no one knows exactly the extent of the land he has purchased. Again, the native land tenure is extremely unsatisfactory, and it is absolutely unsuited to the state of things where the country is in a state of progress. It is necessary to effect a remedy for this by legislation, and I may say that in this Bill there has been no attempt to take away the rights of the people; the Government merely wishes to administer the public lands to the general welfare of the people, and this is intended to be done by a system of tenure of land, the evidence to which will be a land certificate granted by the Governor after consulting native Chiefs, when necessary. The Government, that is the paramount protecting power, will allot lands and interest in lands, and in this way all classes of the people will be benefited. First of all, the person who occupies the land under this system, because he will obtain a good title; he will obtain security, without which property is not worth the name. The native from whom land is purchased will benefit because he may be sure that he will obtain a higher price for it than he would were the Government not the intermediary. The Colony will be benefited generally because by this means the Government will be enabled to construct railways and other public works. It is impossible to develop a Colony unless the internal resources of the Colony are made to assist in its advancement.

As regards the natives themselves they are preserved in every possible way. First of all, a native may, according to customary law, occupy land or authorise another native to occupy land, merely provided that it is occupied in a useful way, either for building purposes, or for agricultural, industrial, or trading purposes. If the native continues to occupy this land in a useful way for three years, he obtains what is called a settler's right, which right may, under certain conditions, be transferred to a land certificate. This may be new to native ideas, but a Colony should not always remain stationary, but step by step should progress to a higher state of civilisation. It is hoped that this method of holding will be a stimulus to industry, because a native will be able to feel from day to day that if he works he is advancing to a good and secure title. Again, a native may occupy land under a system which I may call adverse possession ripened by prescription, for he may occupy and settle down there, and if he works on the land for three years, he will similarly acquire a settler's right. Again, a native may occupy land for the purpose of shifting cultivation, which is the system of farming in this colony. I believe no other system has been fixed, and therefore it is supposed that this is the best that can be adopted.

This possession of land will give him no ownership, but if he is dispossessed at any time by anyone to whom a land certificate has been granted, he will obtain remuneration for the growing crops. Right to collect rubber and palm kernels will be preserved; but, of course, no title to land will be obtained by such a user. It has been considered advisable to prevent public officers from dealing with any transaction in land, and therefore provision has been made whereby no Government officer can acquire more than 50 acres of land. It may be necessary in some cases to effect a partition of land, and the Supreme Court will have authority for that purpose. Again, the Government has a right to reserve land for certain public purposes.

A Concessions Court will be founded. The Supreme Court has sufficient work to take up, all its time at present, and if there is a Concessions Court it will have all its time for the consideration of claims that have been alleged to have been obtained from native Chiefs. I think that there may be a certain amount of opposition to this Bill until the native thoroughly understands the ultimate advantages which will be obtained from this measure. Objections have been raised simply because the native has not the gift of foresight, and unless he can obtain an immediate benefit he cannot see how he can be benefited. This is a Bill which will produce numerous advantages for posterity. A good title and security will be obtained,

security which is the distinct index of civilisation, and the primary object of law. The ordinary form at present of native tenure does not give such security, and I submit that this Bill and this system of land tenure will afford this security, and that in future the Colony will reap many advantages from the measure now introduced before you. I beg to move the second reading of the Lands Bill.

Acting Colonial Secretary.—I beg to second the second reading of this Bill, and I cannot but feel it an honour that it has fallen to my lot to be called upon to perform this duty with respect to a Bill which undoubtedly is one of the most important steps in legislation that has taken place up to the present in this Colony. I feel confident that whatever opposition there is at present to the Bill before the Council will be swept away as soon as the people of the country thoroughly understand its advantages, and how they will be protected and benefited by it. Up to the present, Chiefs who had no right have given concessions to speculators for what may be termed paltry sums. It is essential that the Government, in the interests of the natives of the country as well as British investors, should see that transactions are made in good faith and on fair terms, and for this reason it will be necessary that all concessions shall be made with the knowledge of the Government, and for the sums to be paid to be fixed by the Government. In this way the chiefs, and through them the people will benefit, and moreover, it will be an inducement to *bona fide* investors to place their capital in the country, and the land will not be taken up by purely speculative individuals. At the present moment, owing to there being no proper law as regards land and concessions not being properly guaranteed, investors in England will not look at any property in the West Coast of Africa, and when this Bill is passed it should be the means of introducing into one of the finest countries for timber and minerals large capital which cannot have any other effect than opening up the country to proper and legitimate trade. Opposition to this Bill is undoubtedly owing to misrepresentation, but, as soon as the Chiefs and the people see that it is not the intention of the Government to deprive them of their present rights, there will be but one feeling in the country, and that will be one of gratitude. Although this feeling may not be evinced for one or even for two years, it is sure to come about in the near future. Those who are timid as regards the royalty to be charged may rest assured that the question will receive the consideration of the Government, and if it is in any way proved to the Government that it is likely to handicap exports or cripple trade the percentage at present fixed in the Bill will be reduced.

Mr. Cheetham.—I move an amendment. The unofficial members of the Council object to the Bill entirely. The Bill is framed in such a way that we cannot adopt any portion of it. It might be possible to alter the third part of it if it is framed according to Sir Brandford Griffith's letter which was written to the Secretary of the Agricultural Committee. That letter reads:—"It might be," &c. As a member of the Council I have heard objections by native Chiefs and individuals to this Bill. First of all, what I object to is the principle of the Bill, as there are no lands called public lands. The words of Earl Carnarvon's Despatch of 1874 have already been quoted by the learned Counsel for the people, and they have also addressed you about the Lands Ordinance of 1876, to which there are objections, only that Ordinance was passed at the time when there was no official member of the Council, and therefore the Government took no particular notice until it came to be applied. We have heard several addresses to the Council on this matter, and all that I want to say is that a similar Ordinance was passed in Sierra Leone about lands, and that it was repealed; the Secretary of State thought it proper to repeal that Ordinance, and as there are no public lands, I do not see why the Legislature should make such a Bill. I have another letter in my hands about this Lands Ordinance. It was not written from the Colonial Office, but it was written by a man who had an interview with the Colonial Office about the same matter. The letter was written to Mr. J. B. Brown by the Secretary of the Mining Company. On these

grounds I move that the Bill be read a second time this day six months.

Mr. Vanderpyke.—I second the motion.
Motion put and lost.

The Governor.—In summing up this debate I have first to allude to the loss the Council has experienced this day in not having had the presence of the Chief Justice. Illness having unfortunately confined him to his house, he is unable to be here, and the Council is therefore unable to hear, on this important occasion, his views upon this measure. The Treasurer, too, is absent also from illness.

I am sorry that it has been thought necessary by certain native chiefs to go to the expense of being represented here to-day by counsel. They have, no doubt, been alarmed—unnecessarily alarmed—by the feeling which has been expressed here by the learned gentlemen employed that there is an intention on the part of the Government to take away their lands. There is no such intention; the Government does not intend to take away the lands of anyone. Somehow or other, I do not know how, an idea has got into the minds of ignorant people who are dependent on others for information that their rights are about to be assailed, and that they will no longer be able to call their lands, trees, plantations, and clearings their own. There is absolutely no reason whatever for any apprehension on the subject. I am sorry that there has been no means of explaining fully throughout the country to Chiefs and people the intention of the Government, but it is exceedingly difficult to do anything of the sort in a country where people do not read and write, and where there is no way of conveying ideas to them except by word of mouth. It is, of course, possible, in accordance with what I believe has been sometimes customary in this Colony, to convene a meeting and to have a measure or proclamation translated *vis à voce*, and this has been done in some places, I believe, by District Commissioners. But in regard to a highly technical Bill of this sort, what information would the people carry away after the *vis à voce* translation of its 63 sections? and what impartial person is the Government going to get, with sufficient knowledge both of the native languages and of the technical language of English law, to translate this Bill *vis à voce* in an intelligible way to Chiefs and people? I should have been very glad if I could find myself in a position to undertake such a duty, but I cannot say that I have at my disposal in this Colony any staff of competent Government interpreters in whose ability to do this I could place implicit confidence. It has been a gain to us, however, that certain Chiefs have on this occasion been represented in this Council by learned members of the Bar, and I am sure that the members of the Legislative Council will concur with me in acknowledging the fairness, moderation, and ability with which the case for the native Chiefs has been put before us by the counsel employed. They have done us the honour of understanding that we are not a jury; they have not attempted to influence us by rhetoric, but have applied themselves to argument, and have put their views before us—if I may be allowed to say so—in an admirable way. But, in their discourses, I have missed, I must say, any exposition of the real principles of African tenure. I should have liked to have learned more from them of what they suppose to be the fundamental principles upon which native tenure in this Colony rests. They have claimed absolute rights in lands for Chiefs; they have claimed absolute rights in land for heads of families, and also for individuals. Concurrent rights have been claimed for rival Chiefs. It has also been claimed that Chiefs of tribes are controllable by the tribe, and heads of families by the members of their families. It has also been claimed that shifting cultivation gives absolute proprietorship. Now I fail to see, and I think that my honourable friends in this Council must also fail to see, how these pretensions can possibly be reconciled. There has never, I venture to think, been any attempt in this Colony to lay down in an intelligible form any really consistent exposition of the principles underlying native notions of tenure. Lawyers whose only

acquaintance with tenures is what they have learned in England by a study of English real property law are very liable to be led astray by their learning, and they get an idea that there is only one system of land tenure in the world, and that that is the system of tenure which is in force in the British Islands. One of the learned counsel who addressed us the other day is the author of a book upon "Fanti Customary Laws," a work which, I venture to think, does infinite credit as well to his industry and ability as to his mastery of English, which he has told us is to him an acquired language. But I cannot go with him, and I do not think that many lawyers will go with him, when he lays it down as regards land in the Gold Coast, that "the ordinary tenures of land are "freehold and the derivative tenure leasehold." This is an instance of how an educated man may be led away by the study of English law to apply it to a state of things to which it is wholly inapplicable. There can be little in common between the ideas of an African tribe as regards land and the doctrines of English law, which have been elaborated from the relics of the old feudal system of Europe. We have, then, to make an effort to discover what principles lie at the root of African notions about land tenure, and the first thing to do is to get rid of English real property terminology and of the associations which are inseparable from the use of such terms as "freehold" and "leasehold." Now what have we to go upon? That was the question which occurred to my mind when I first arrived in this Colony two years ago, and found that contemplated legislation about land was engaging the attention of the Government and of the landholders in the Colony. I found, to my disappointment, that there was no authoritative exposition in any published work on the subject of land tenure in the Colony; and the first thing that I did was to call upon the gentlemen whom I supposed to be likely to be the best informed to furnish reports showing what were believed by them to be the ideas of natives in regard to tenure and other matters. Those reports have been so extensively quoted from by learned counsel, in the remarks which they have addressed to us, that I think I may claim that some service has been done by the Government in collecting and publishing them. I think also that natives interested in this question will bear witness to the fairness with which the Government has approached its consideration when they find that the collection contains not only the reports of Government officers, but also a series of letters addressed by a native gentleman to a local newspaper. Well, we have those reports, and we have also certain decisions which have been given by the Supreme Court from time to time, but what do these decisions amount to? They have generally been given, not upon points of doctrine of a recognised system of customary tenure, but upon questions of fact. The judges have generally had to decide upon boundary questions, upon the rival claims of rival Chiefs and tribes, and they have generally decided upon the facts before them without troubling themselves to ascertain or to lay down what the real system of tenure is. I have not been able to find that any consistent theory on the subject of tenure is deducible from such judicial decisions as are available. Now we must not expect to find a very elaborate system of land tenure among African tribes in this Colony. In Asia, among the people of ancient empires, with an old civilisation reaching back into the remote past, with an extensive literature and with considerable scientific knowledge, one does find a more or less elaborate system, provided with a technical terminology to express the various incidents connected with all kinds of dealings with land. This is not the case here, but at the same time it may be accepted that even aboriginal tribes have defined conceptions as regards land, which are based upon their own habits of life and their traditional customs as regards agriculture, residence, mining, collection of natural produce, and other things. Now, in looking into this matter and in studying what has been put before us by counsel, I think we can safely discover that there are superior rights and inferior rights. There are superior rights in the representative of the tribe or family, and there are inferior rights in individuals. The learned counsel

have used the word "immemorial" a great many times, but have they really studied the history of their country? I have read with considerable interest a book called the "History of the Gold Coast and Ashanti," recently published by the Rev. C. C. Reindorf, a native pastor of the Basel Mission, and the survey which he gives leaves upon the mind an impression of a number of tribes, more or less migratory, which have really only settled down in a quiet way, and have abandoned war and tumult, under the influence of European Governments. It can hardly be accepted as a matter of history that the rights of such tribes in respect of lands upon which they have settled are "immemorial." However, let it be granted that the tribe, or the community, or the family, has exclusive territorial rights within a particular tract, the limits of which have been gradually established by common knowledge and tradition. Though the limits of that tract are generally known, disputes and quarrels from time to time arise, and boundaries extend or contract according to the strength or weakness of the tribe or community or family at various times. Within this tract there may be minor jurisdictions with separate minor chiefs, each having separate stool rights but owning a common paramount chief, and these territorial rights of a tribe, community, or family may continue as long as it is strong enough to assert them; if it fails to succeed in doing so, it may be assumed that there will be encroachments by stronger neighbours. Members of a tribe or community or family have a right to maintenance out of the common lands of the tribe. Strangers have no such rights, but, as counsel stated to us the other day, they can be admitted on payment of tribute. It has also been stated to us by counsel, speaking on behalf of certain Chiefs, that Chiefs of tribes and heads of families can be controlled by members of tribes and members of families respectively, that is to say, a Chief must act with the co-operation of his council, and heads of families with that of the influential members of the family. From what I have learned since I have been here, and from the practice which I have observed in several cases, the deposition of a Chief (and, I presume, also of the head of a family) is possible if a combination of dissatisfied members of the tribe, community, or family is strong enough. If these facts be granted, how can it be argued that there is in a Chief or in a head of family any interest approaching to a freehold interest, or any right to make any legal permanent sale or concession of land which is the common inheritance of all? Is it not with reason that on the authority of the late learned Chief Justice of this Colony, Sir Joseph Hutchinson, I have declared the practice of doing so to be modern and probably illegal? Do we not all know that the head of a family cannot alienate the family property at his own will and pleasure? Are not illustrations of this common in the towns of this Colony? How, then, can it be maintained that Chiefs can, at their own will, make concessions of what are called stool-lands? The same principle governs both cases. Now as to inferior rights. The right of an individual member of a tribe or family is a right to sustenance. A free man has a right to have the use and occupation of as much land as is wanted by him for residence and cultivation and industrial purposes. If he is able in this way to establish occupancy over a large extent of land he becomes known as a "rich man." When he has improved land by cultivation or occupation, he is entitled to the possession of that land without disturbance as long as there is the fact of possession or some external sign of appropriation. There may be a question as to what period of abandonment involves forfeiture, and probably there is no universal rule on the subject. I see it is stated at page 56 of Mr. Sarbah's book, to which I have already referred, that "where a person in possession of a portion of the public land abandons it, or his family have abandoned it for more than 10 years at least, the village headman and elders can allow another person to occupy the same." The individual member of the tribe also has a right to resort to the common land of the tribe for hunting, for fishing, for mining, for collecting food of various kinds, including snails, and for collecting commercial products, rubber for

instance. It has been questioned by learned counsel whether there is any common right in individual members of a tribe to collect kola-nuts or palm kernels, it being asserted that the trees which produce them are generally the subject of private property. This is a question of fact which can, no doubt, be determined in any particular case. Sometimes service has to be rendered as a condition of tenure. It is stated by Mr. Sarbah, in the passage which I have just quoted, that "In cases where the land is appurtenant to the stool of a King or Head Chief, the tenant becomes subjected to such stool, and he, with his people, is bound to perform such services, or pay such annual sums as may be declared to be performed or paid yearly."

I have now stated what I take to be the superior rights of Chiefs and heads of families and the inferior rights of individuals. Now what is the position of the Government of this Colony in respect of public lands over which communities of this sort have a species of territorial right? I claim that the right of the paramount power established here is to exercise any and every right which may be exercised by any Chief. I claim, as Governor of this Colony, and as the representative of Her Majesty, to have in this Colony any and every power which may be lawfully exercised by native custom by any Chief; and further, I consider that there is an obligation upon this Government—an obligation upon me, as the representative of Her Majesty—to see that native Chiefs do not abuse their position, and exceed their powers, by encroaching upon the rights of those for whom they are really trustees, and by dealing illegally and imprudently with stool-lands, which are, in other words, the public lands of the tribe.

I will now ask the members of this Council, who have heard this exposition of principles, to consider with me how far this Bill carries out the theories which I have explained. It is alleged that the Bill encroaches upon the rights of Chiefs and people, and that it takes away their lands. What it does is this, it distinguishes between public rights and private rights. It recognises the fact that the stool lands of a tribe are really public lands, which ought to be administered for the benefit of the people, and it gives, in respect of those lands, concurrent rights to the Governor with the native headmen. I have stated what the powers of the Chiefs are, and, in all that concerns the dealings of a Chief with his own people in accordance with native custom, this Bill does not interfere with them. The Bill continues to the Chief power to authorise the occupation by a native of public land as the site of a habitation, or for permanent agricultural or industrial or trading purposes, or for shifting cultivation; in that respect, therefore, the existing rights of the Chief are not prejudiced. For shifting cultivation, which is the primitive kind of cultivation practised in this Colony, a Chief may, in future as heretofore, allot any portion of the common land of the tribe to any individual or group of his people. In that respect, therefore, his rights are not touched.

When, however, it comes to his dealing with foreigners and to the making of concessions, then, I admit, this Bill does curtail, not the real rights of the Chief, but the rights which he has usurped. Accordingly, it is laid down in section 10 of the Bill that, in future "it shall be unlawful for any native Chief or other native authority to create by any instrument in writing or by any other method any private right in public land without the previous consent thereto in writing by the Governor." This is the chief respect in which a right claimed by a native Chief or a power at present exercised by him is curtailed.

Now let us consider what I have called "inferior rights."

In future, as in the past, any native, with the customary right to do so, may take up what land he requires for "shifting cultivation," or for the site of a habitation, or for permanent agricultural or industrial or trading purposes, but it is laid down that a man does not, simply by resorting to a piece of land for "shifting cultivation," acquire any title in that piece of land or any interest therein beyond the ownership of the crops which he plants. It would be

monstrous if it were laid down by law that because a man plants a crop of cassava or yams on a piece of public land and then abandons it he may, nevertheless, at any time return and lay claim to it, and may stand by in the "dog in the manger" attitude and say that nobody is henceforward to take any crop off it, because he once did so! It is common land and it must be understood that anyone of the group or community of people who have a customary right to resort to it may do so. There is plenty of land for all and more than they can possibly use. In section 18 it is laid down that land which has been taken up for residence or for cultivation or for industrial purposes and is then abandoned for three consecutive years ceases to belong to the person who occupied it and becomes again public land. That is simply putting into legal language and into the technical form of a section in an ordinance a principle which is perfectly understood here, though there may be a question as to the period of abandonment which works forfeiture. Mr. Sarbah, in his book already cited, says:—"Where a person in possession of a portion of the public land abandons it, or his family have abandoned it for more than 10 years at least, the village headman and elders can allow another person to occupy the same." The Bill says "three years;" Mr. Sarbah says "ten years," and if three years seems to be a short term, I take it that the Council will consider the advisability of modifying that section in this respect, and I do not propose to make any objection on behalf of the Government to the reasonable lengthening of the term.

The learned counsel who has addressed the Council to-day has commented upon section 20, where it is laid down that "the transfer of a settler's right by a native to any person other than a native shall be subject to the approval of the Governor, or the person to whom he may under section 33 hereof delegate his power of approval." This provision is for the protection of the natives themselves. I want to give to the natives of this country the right of proprietorship, which in many cases, especially as regards people who have had or whose forefathers have had the status of slaves, they have not got. I should like to see every man with a proprietary tenure and in a position where he will be safe from any oppression on the part of any native authority. But, on the other hand, I do not think that he ought to be in a position to part with his right of occupancy to a foreigner. Let him part with it to a native by all means, but not to a foreigner without the permission of the Government. We must not do anything which would lead to collusion between natives with customary rights and foreigners without any. Otherwise land might be temporarily taken up by natives simply in order to have something to sell to a white man. Remarks have also been made upon section 5, where it is laid down that the Governor "may from time to time either by a general or particular description reserve for occupation either temporarily or permanently any public lands which in his opinion are required for any public purpose whatsoever, or for quays, landing places, tramways, railways and railway stations, roads, canals or internal communications, or for reservoirs, aqueducts, or watercourses, or for the sites of markets, abattoirs, public baths or wash-houses, schools, colleges, places of public worship, dwelling houses for the ministers of any religious denomination, reformatories, libraries, museums, or for experimental farms, and reserves for the growth and preservation of timber, gardens, parks or places for the interment of the dead, or for the recreation, convenience or amusement of the people, and by the same or any subsequent notice may except from occupation for mining purposes any specified portion of public lands, and no lands so excepted shall be the subject of a land certificate other than for the purposes in this section before specified until such exception shall be revoked." Now that is a section which I wish to explain to the Council. I have seen in other Colonies the difficulty and the inconvenience which have been caused where it has been necessary to set apart public lands for various quasi-public purposes. I have known such lands to be vested in trustees by a deed of gift or grant by the Governor of the Colony. What happens? The trustees in the

course of time die or leave the Colony, and proper attention is not given to the matter at the time; on some subsequent occasion, when it becomes necessary to do some act in regard to the land, no trustee is forthcoming to do what is necessary; the deed is then examined and it is found that there is no power in anyone to appoint fresh trustees; then application has to be made to the Supreme Court, with a possible expenditure of a good deal of time, trouble, and money on the part of all concerned (possibly religious bodies, clubs, associations, or municipalities). The section under remark is in force in some of the Australasian Colonies, and it affords a simple expedient for reserving from occupation or alienation lands which are required for the general benefit; it need not frighten anybody. There is no concealed purpose in it of depriving anyone of any rights or of over-riding any principle laid down at present in any Ordinance now in force for the acquisition of land for public purposes. It is an effort to provide a simple method of obtaining a good title to public land reserved for certain purposes, and of dispensing with the tedious process of vesting it in trustees by deed.

I do not hope, of course, that I shall have been able by anything that I have said to persuade my honourable friends at the lower end of the table to abandon their amendment, and to allow this Bill to be read a second time without a division, but I do ask them to believe, and to lead others to understand, that this Bill has been drafted and introduced with the most sincere desire to ascertain and to respect the real rights of the people. If Chiefs find themselves inconvenienced because they are no longer allowed to do what they have been doing and to continue to create irregularly all kinds of vague claims all over the country, claims which will cause infinite trouble and expense before they can be examined, they have only themselves to thank for this. They have been led away by offers, which may have seemed to them at the time to be tempting, to do what they ought not to have done, and they have committed acts which are really illegal. If objection is taken to the position which I claim on behalf of the Government, that the Governor has, as the representative of Her Majesty, a concurrent right with any Chief to create rights in public land (to be evidenced in future by land certificates) that objection is one which I cannot entertain. I believe the principle to be thoroughly sound, and I am sure that the Legislative Council will do wisely in accepting it.

I will only say in conclusion that this Bill will be very fully considered in Committee. We shall go through the sections very carefully with a view to make it as perfect a measure as possible and it will be my desire to remove anything which may seem to cause hardship to anybody. When the Bill has passed the committee stage (I announce this for the information of the Legislative Council), the Government will not at once proceed with the third reading, but I shall refer the Bill, as amended in Committee, to the Right Honourable the Secretary of State for the Colonies with a report of this debate, the arguments of counsel, and the protests and petitions which have reached me. I trust that whatever may be result it will be for the real prosperity and progress of this Colony.

The amendment was then put and lost.

The original motion was then put and carried.

Bill read a second time.

[Proceedings of the Legislative Council on the 5th, 6th, and 10th July, not printed.]

Enclosure 5 in No. (1).

Bill as read a Second time.

In Committee.

Amendments in Committee.

Throughout this draft the words in italics were inserted, and the words underlined struck out.

A
B I L L
INTITLED

AN ORDINANCE to regulate the administration of public land and to define certain interests therein, and to constitute a Concessions Court.

[1897.]

Whereas from time to time various instruments purporting to create interests or rights over land in

Bill as read a Second time.

the Gold Coast Colony, especially in regard to mining and timber felling, have been executed by natives claiming to be Chiefs or persons in authority, and whereas the claims of such persons to be Chiefs or to have the requisite authority to create such rights and interests is not in all cases admitted, and it is doubtful if the disposal of the land of a native tribe or community to foreigners is lawful by native custom, and whereas there is reason to believe that certain of the instruments aforesaid have been made improvidently and without adequate consideration;

And whereas the rights of persons claiming under all such instruments are doubtful, and in certain cases there has been litigation owing to uncertainty of boundaries;

And whereas, in respect of certain alleged concessions, nothing has been done to develop the rights supposed to have been created by such instruments;

And whereas the uncertainty of native customary tenure is calculated to retard the development of the Colony;

And whereas it is expedient to provide for the proper exercise of their powers by those entrusted with the disposal of public land and to prevent the improvident creation of interests therein and rights thereover, and to facilitate the acquisition of public land by private persons on proper conditions, and to decide upon the validity and scope of claims founded upon grants of land, or mineral or other concessions alleged to have been already acquired from native Chiefs or other persons.

Be it therefore enacted by the Governor of the Gold Coast Colony, with the advice and consent of the Legislative Council thereof, as follows:—

PART I.

Preliminary.

1. This Ordinance may be cited as "The Lands Ordinance, 1897," and shall apply to the Colony and come into force on the *1st day of January 1898*, provided that the Governor in Council may from time to time by notification published in the "Gazette,"

(a) Exclude from the operation of this Ordinance or any section or sections of it any portion of the Colony, and

(b) Cancel or alter any such notification.

2. In this Ordinance:

"Public land" means land over which there has not been acquired one of the *inferior* rights mentioned in section 13 hereof, and which has not been, or may not hereafter be acquired or reserved for, or dedicated to, any public purpose:

"Immovable property" includes land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth:

"Grant" includes conveyance, transfer, gift, sale, concession, lease and licence, and any contract for any of those things:

"Minerals" includes mineral oil:

"Native" includes *all persons of African birth who are entitled by native custom to customary rights in land in the Colony: all Africans, but does not include Mulattoes or West Indians of African descent:*

"Prescribed" means prescribed by rules made by the Governor in Council under this Ordinance:

"Tenant" means an occupier of land whose right is derived under a land certificate issued under this Ordinance:

"Transfer" includes conveyance, assignment, appointment, lease, settlement, mortgage, and other assurance:

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Inter
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Bill as read a Second time.

Bill as read a Second time.

Ordinance divided into Parts.

3. This Ordinance is divided into parts as follows :—
 Part I.—Preliminary.
 Part II.—Public land and the occupation thereof.
 Part III.—Constitution of Concessions Court.

PART II.

Public Land and the occupation thereof.

Public land to be administered by the Government.

4. All public land in the Colony may be administered by the Government of the Colony as herein provided.

Manner of reserving land for special purposes.

5. The Governor may, from time to time, either by a general or particular description published in the *Gazette* reserve from occupation, either temporarily or permanently, any public land which, in his opinion, *are, is, or may be*, required for any public purpose whatsoever, or for quays, landing places, tramways, railways and railway stations, roads, canals or other internal communications, or for reservoirs, aqueducts, or watercourses, or for the sites of markets, abattoirs, public latrines, public baths or wash-houses, schools, colleges, places of public worship, dwelling houses for the ministers of any religious denomination, reformatories, libraries, museums, or other institutions for public instruction, hospitals, asylums or infirmaries, or for experimental farms, and reserves for the growth and preservation of timber, gardens, parks or places for the interment of the dead, or for the recreation, convenience, or amusement of the people, and by the same or any subsequent notice *similarly published* may except from occupation for mining purposes any specified portion of public land, and no lands so excepted shall be the subject of a land certificate other than for the purposes in this section before specified until such exception shall be revoked.

Reserved land not to be occupied.

6. After any land has been temporarily reserved the same shall not be occupied or made the subject of a land certificate until such temporary reservation shall have been revoked by the Governor, and after any land has been permanently reserved every disposition thereof, except for the purpose for which such reservation has been made, shall be absolutely void.

Notice of permanent reservation of land to be published in the "Gazette" before such reservation.

7. Before any land is permanently reserved as hereinbefore mentioned notice of the intention to reserve the same shall be published in four consecutive ordinary issues of the "*Gazette*" before the same shall be so reserved, and in every such notice the land proposed to be reserved, and the purpose for which it is to be reserved, shall be fully described and stated.

Notice of temporary reservation to be published in the "Gazette" after such reservation.

8. When any land has been temporarily reserved as hereinbefore mentioned, notice of such reservation shall be published in four ordinary consecutive issues of the "*Gazette*," and before any such temporary reservation shall be revoked notice of the intention to make such revocation shall be published in four ordinary consecutive issues of the "*Gazette*."

Governor may divide territory into districts.

9. The Governor may divide into districts the territory of the Colony, and may also sub-divide any district into towns, and by proclamation to be published in the "*Gazette*," may define the boundaries of such districts or towns, and may distinguish each by a name, and after such proclamation the territory comprised within the boundaries of any of the said divisions shall thereforward be recognised as a district or town by the name so given as aforesaid. Provided that it shall be lawful for the Governor by proclamation to diminish or extend the area of any district, or to alter the boundaries or name of any district, and to add the territory taken away from one district to any other adjacent district, and to divide any district into two or more districts, and to give to each a distinguishing name.

Grant by native Chief territory into districts.

10. Except as provided in the next two following sections hereof, it shall be unlawful for any native Chief or other native authority to create by any instrument in writing, or by any other method, any private right in public land without the previous consent thereto in writing of the Governor, and any

instrument or delivery of possession executed or made in breach of this section shall be void and of no effect, and no action or legal proceeding shall lie in respect thereof in favour either of the original grantee or occupant, or anyone claiming through or under such original grantee or claimant.

Authority to native to settle on public land.

11. Subject to any rules made under this Ordinance it shall be lawful for a native, recognised by the Government as a Chief, *having by native custom, as a Chief or head of a family the right to do so*, to authorise the occupation by a native of public land *being land subject to native customary rights on the part of such Chief or head*, as the site of a habitation or for agricultural or industrial or trading purposes. Provided that no such authority shall be lawful in respect of public land reserved under section 5 hereof, or of any open space, or portion thereof, in a town to which the Towns Ordinance, 1892, applies.

Allotment of land for shifting cultivation.

12. Subject to any rules made under this Ordinance it shall be lawful for a native, *having by native custom as a chief the right to do so*, recognised by the Government as a Chief, to allot to any native or community of natives a tract of public land, being land subject to native customary rights on the part of such Chief for the purpose of shifting cultivation only, and it shall be lawful for a Chief or for the head of a family, with the concurrence of those persons (if any) whose concurrence is required by native custom, either himself to occupy or to give permission to natives, on the customary native terms, to occupy for the purpose of shifting cultivation only public land which was, before the passing of this Ordinance, subject to native customary rights on the part of such Chief or family. Provided that no such allotment or permission shall be lawful in respect of public land reserved under section 5 hereof or of public land which is within the limits of any town as defined under this Ordinance, or under the Towns Ordinance, 1892.

Rights in land.

13. No right of any description shall be deemed to have been or shall be acquired by any person over any land, except the following :—

I. Superior Rights :—

- (a) Rights exercisable by the Governor under this Ordinance;
- (b) The customary rights of a native chief in respect of land appurtenant to his stool subject to the limitations contained in this Ordinance regarding the exercise of such rights.

II. Inferior Rights :

- (a) Rights acquired by the Government by prescription, purchase, possession, occupation or user or under any law for the acquisition of land for public purposes.
- (b) Rights created by grants before the commencement of this Ordinance, subject nevertheless to the proviso in this section contained and to the provisions contained in Part III, hereof.
- (c) Rights created by land certificates and licences issued by the Governor after the commencement of this Ordinance.
- (d) Rights created by or originating in any of the modes in this Ordinance specified and made lawful.
- (e) Rights legally derived from any right mentioned in clauses (a), (b), (c), and (d) of this section.

Provided that no grant made in respect of land within the limits of a town as defined under section 9 hereof or under the Towns Ordinance, 1892, shall be valid in respect of land which is not actually occupied and improved by bona fide residence, cultivation, or use.

Shifting cultivation.

14. No person or family shall acquire or shall be deemed to have acquired by length of possession or frequency of occupation or otherwise any land to which he or they may have resorted for shifting

Bill as read a Second time.

Bill as read a Second time.

cultivation only or any right to compensation other than for growing crops in the event of a Land Certificate in respect of such land being issued which compensation shall be assessed by the Commissioner of the district and paid by the tenant. *An appeal shall lie from the award of a Commissioner under this section as if such award were a judicial decision by such Commissioner.*

15. It shall be lawful for a native, without the authority mentioned in sections 11 or 12 hereof, where such authority is not required by native customary law, to occupy, by actual residence, cultivation, or use, such public land *being land subject to native customary rights on the part of such native*, as he may require for the site of a habitation or for permanent agricultural or industrial or trading purposes or for shifting cultivation. Provided that nothing in this section contained shall be held to validate the occupation of public land reserved under section 5 hereof or within the limits of a town as defined under section 9 hereof; or of any open space, or portion thereof, within the limits of a town to which the "Towns Ordinance, 1892," applies.

16. It shall be lawful for a native to collect rubber and palm kernels, kola nuts, or other natural produce, and to cut and take timber and work and get minerals, stone, and building material according to native methods and customs in public land, *being land subject to native customary rights on the part of such native*, provided that the right in this section reserved shall not confer upon any person any title to the land over which such right is exercised or give any right to compensation in the event of a land certificate in respect of such land being issued.

17. A native landholder who at the commencement of this Ordinance is in lawful possession, according to native tenure, of land which is used by him as the site of a habitation or shaft or quarry or for cultivation (other than shifting cultivation) or as a place from which water can be drawn or brick-earth taken, or who, at any time after the commencement of this Ordinance, has been in possession for three consecutive years of land lawfully occupied by him under section 11 or section 15 hereof shall, subject to the conditions and reservations contained in sections 18 and 19 hereof, have a permanent heritable and transferable right of occupancy therein and such right shall be called a settler's right.

18. If any land being the subject of the right described in the last preceding section has

- (a) if agricultural land, been out of cultivation for three five years and does not contain fruit-trees of economic value planted by man, or
- (b) if the site of a building or quarry, or a place from which water can be drawn or brick-earth taken has been uninhabited or unworked or unused for three five years,

the settler's right in respect of such public land shall be forfeited and the land shall become public land.

19. There shall be reserved for the use of The Government of the Colony *shall have* in respect of land which is the subject of a settler's right the right of making roads, drains, railways, and telegraphs and laying down water-pipes and using and repairing the same paying to the holder of the settler's right compensation for surface damage only as assessed by the Commissioner of the district after reasonable notice of hearing given to the person interested. *An appeal shall lie from the award of a Commissioner under this section as if such award were a judicial decision by such Commissioner.*

20. The transfer of a settler's right by a native to any person other than a native shall be subject to the approval of the Governor, or of the person to whom he may under section 32 hereof delegate his power of approval, and if not so approved within one year from the making of the transfer shall be absolutely void and of no effect, and no action or legal proceeding shall lie in respect thereof in favour either of the

transferee or any one claiming through or under such transferee.

21. It shall be lawful for the Governor from time to time to authorise the occupation of public land for any purpose by such person or persons and on such terms and conditions and for such consideration and either in perpetuity or for a term of years absolute or conditional or defeasible, as he shall think fit. The authority of the Governor in that behalf shall be a land certificate in writing in the form or to the effect from time to time prescribed. Every land certificate shall be signed by the Governor and shall bear the seal of the Colony.

For the purposes of this section and section 25 the bed of a river or lagoon shall be deemed to be public land.

22. Land certificates shall be in duplicate, and every land certificate in addition to proper words of description shall contain a diagram of the land on such scale as the Governor may from time to time direct. One of such duplicates shall be issued to the tenant and the other shall be retained by such officer as the Governor may from time to time direct to be dealt with in such manner as may be prescribed.

23. Subject to section 29 hereof unless and until a land certificate expires by effluxion of time or becomes forfeited for breach of conditions or other valid reason, it shall be good and valid as against the Government of the Colony and as against all persons claiming adversely thereto and no action shall lie in any court in respect of any land being the subject thereof in favour of a person claiming by title paramount thereto.

24.—(1) If any person or persons being in lawful possession, by virtue of the right described in clause (b) of section 13 hereof, of land upon which a house has been erected or which has been brought into cultivation, planted, or otherwise improved, or having a settler's right in such land, shall be desirous of obtaining a land certificate in respect thereof it shall be lawful for the Governor, after such inquiry as he may order and provided that such land has been surveyed and demarcated to his satisfaction, to accept on behalf of the Government a surrender or release of any existing title and to issue in respect of such land, in the same manner as if the same were public land, a land certificate under section 21 hereof on such terms and conditions as he shall think fit.

(2) The Governor in Council may from time to time make and when made vary and revoke rules for carrying out the provisions of this section.

25. Immovable property in the Colony the right to which is derived from or evidenced by a land certificate issued under this Ordinance shall devolve and be transmitted in accordance with the provisions of the law of England, to the exclusion of any native law or custom relating to land in the Colony.

26.—(1) It shall be lawful for the Governor from time to time by licence under his hand to authorise any person or persons on such conditions and for such consideration as he shall think fit to dig for and take away precious stones or minerals, or to cut and take away timber or other vegetable product on public land.

(2) The Governor in Council may from time to time make and when made vary and revoke rules for carrying out the provisions of this section.

27. The Governor in Council may from time to time make and when made amend vary and revoke or rescind rules for the disposal or temporary occupation of public lands and generally for the better carrying out of the provisions of this Ordinance.

Such rules may provide among other matters for the following:—

- (a) The amount or kind of interest to be created in such land, the mode in which application for land shall be made, and the terms and conditions on which land certificates or other dispositions shall be issued.

Power of Governor to authorise occupying of public land.

As to land certificates.

Validity of land certificates issued by Governor.

Existing titles exchangeable for land certificates.

Land evidence by land certificate to be subject to English law.

Power of Governor to issue licence to mine or to cut timber &c.

Power to make rules.

Reservation of native right to take up land for residence, &c.

Reservation of native customary rights.

Settler's rights.

Forfeiture by non-user.

Power to make roads, &c. over land which is the subject of settler's right.

Transfer of settler's right.

Bill as read a Second time.

- (b) The forms of land certificates and licences according to the purpose for which the land is to be occupied.
- (c) The time and place at which *and the any* person to whom rent or other periodical payment (if any) shall be paid.
- (d) The fees, charges, and other expenses in connection with land certificates, including the stamping and registration thereof.
- (e) The mode of service and publication of notices.
- (f) The class or classes of chiefs or persons who may exercise powers under sections 11 and 12 hereof and the area of land of which they may respectively dispose.

All such rules and all amendments and revocations thereof shall be published in the "Gazette" and shall not, unless otherwise ordered by Her Majesty, come into operation until they have been approved by Her Majesty, but on coming into operation they shall have full effect as if enacted in this Ordinance.

28. The Governor in Council may, in making any rule under this Ordinance, attach to the breach of it, in addition to any other consequences that would ensue from such breach, a punishment on conviction before a District Commissioner not exceeding one month's imprisonment or a fine of twenty pounds, or both.

28. (29)* The Governor may, upon exercising the power vested in him by sections 21 and 26, give also to the tenant or licensee all such way-leaves, power to break or let down surface, and other powers, over any land whatsoever, as appears to the Governor to be necessary for enabling the tenant or licensee to have the full enjoyment of his holding, full compensation being secured to any person injured by the exercise of such powers.

29. (30) If at any time after a land certificate has been made it shall appear to the Governor that it was made by mistake, or that it contains any error, the Governor may, on such terms as he thinks fit, revoke the land certificate and substitute another or issue a supplementary land certificate.

30. (31) Whenever any question arises as to whether any land is or was public land, the burden of proving the existence of any of the rights mentioned in section 13 hereof shall be on the party who asserts any such right.

31. *Any person who wilfully and knowingly occupies or takes possession of any public land otherwise than in accordance with the provisions of this Ordinance shall be guilty of an offence, and shall, on conviction before a District Commissioner, be liable to a penalty not exceeding 50*l.*, and it shall be lawful for the District Commissioner, if necessary, to cause to be removed from such land by force any such person and any erection, animal, or thing, whatsoever, which he may have placed or have thereon.*

32. If any public land shall be wilfully and knowingly occupied or taken possession of by any person otherwise than in accordance with this Ordinance, the person so occupying or taking possession shall be guilty of an offence, and be liable to be dealt with summarily in the manner provided in sections 146 and 147 of the Criminal Code, save and except that the penalty may extend to 50*l.* Provided that proceedings taken under this section shall be a bar to any other proceedings relating to the same subject matter.

* Amendments in Committee—28. Figures in parenthesis indicate throughout No. of section as read a second time.

Bill as read a Second time.

32. (33) The Governor may from time to time appoint any person by name or by virtue of his their office to carry out any duties required to be done under this Ordinance, and may by writing delegate to such person any powers vested in the Governor by sections 20 and 26 hereof. Every person so appointed shall (subject to the control of the Governor, and of any superior officer appointed in this behalf) exercise and perform within such local limits as the Governor may from time to time direct the powers conferred and the duties imposed by this Ordinance or the rules made thereunder.

Appoint-
ment of
officers.

33. (34) (1) Every officer in the public service *not being a native of the colony, is hereby prohibited from acquiring by any act of his or holding directly or indirectly any share or beneficial interest in any land in the colony other than a block of land not exceeding 50 acres, and subject to the obligation of building a house thereon and cultivating the land.*

Prohibition
of officer in
public ser-
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ing or hold-
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grant save
as excepted.

(2) If any such share or interest devolves upon any such officer by will or inheritance, or from circumstances beyond his control, he shall immediately, on the facts becoming known to him, report the same to the Governor, who shall give such directions in the matter as he thinks expedient in the public interest.

(3) If any such officer—

- (a) *without the consent of the Governor thereto in writing* acquires or holds such share or interest contrary to subsection (1) hereof, or,
- (b) fails to report the fact of any such share or interest having devolved upon him as required by subsection (2) hereof, or,
- (c) refuses or neglects to comply with any direction given by the Governor in respect of any share or interest which has devolved upon him—

he shall on being convicted thereof by the Supreme Court, on proceedings taken against him by the direction of the Attorney-General, be liable to a fine not exceeding one thousand pounds for every such offence, and shall be subject to dismissal from the public service.

35. The Supreme Court, upon the application of the representative of a deceased proprietor or of any person beneficially interested, and after such previous notice to other parties and inquiry as it shall think fit to order, may direct the sale of such land, the course of proceeding which shall be taken in regard to the time and mode of such sale, the letting and management thereof until sale, the application or maintenance or advancement or otherwise of shares of infants, the expediency and mode of effecting a partition if applied for, and generally in regard to the administration of the property for the greatest advantage of all persons interested.

Court may
make order
as to man-
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land of
deceased
proprietor.

36. In any case wherein upon such inquiry the Supreme Court shall be satisfied that a partition of the land would be advantageous to the parties interested therein, the court may appoint one or more arbitrators to effect such partition, and to exercise in regard thereto, under the direction and control of the court, such powers as the court may by any order confer. And the report and final award of the said arbitrators setting forth the particulars of the land allotted to each party interested shall, when signed by them and confirmed by the order of the court, be effectual, without the necessity of any further instrument of transfer, to vest in each allottee the land so allotted.

Partition.

Bill as read a Second time.

Bill as read a Second time.

PART III.

Constitution of Concessions Court.

34. (37) A court shall be, and is hereby constituted and established to be styled "The Gold Coast Colony "Concessions Court," hereinafter referred to as "the "Concessions Court," which shall be composed of one or more Commissioners with a secretary, each of whom shall be appointed by the Governor by notification in the "Gazette," and shall hold office during the pleasure of the Governor.

35. (38) Any change in the person of one of the Commissioners or of the Secretary shall be notified in like manner, but the functions of the Secretary may be performed by any person temporarily appointed for that purpose at any time by the said Court or the Governor, *whether such person be appointed instead of or in addition to the Secretary.*

36. (39) If more than one Commissioner is appointed, each Commissioner sitting alone shall constitute the Concessions Court, and his decision shall be the decision of the Concessions Court. The Secretary shall have and exercise in relation to the Concessions Court the powers and functions which are by law, rule of Court, or practice, vested in or conferred upon the Chief Registrar of the Supreme Court of the Gold Coast Colony, and shall duly preserve the records of the proceedings of the Concessions Court constituted by this Ordinance.

37. (40) The procedure before the Concessions Court shall be in accordance with the rules of Court and practice established and followed in the Supreme Court, so far as is applicable, subject to the provisions of this Ordinance, and of any rules made thereunder and to the decisions of the Concessions Court. For the purposes of this Ordinance, the Concessions Court may frame such rules of procedure and practice as it may deem expedient, which shall be of full legal force and effect, upon approval by the Governor and publication in the "Gazette."

38. (41) The Concessions Court shall have power, jurisdiction, and authority, from time to time within such period as the Governor shall fix and determine, and at one or more sittings or adjourned sittings at any place within the Colony, to inquire into and decide upon the validity and scope of any all claims founded upon grants of land or timber or mineral or other concessions alleged to have been, before the passing of this Ordinance, acquired from native Chiefs or other persons in respect of any part of the Gold Coast Colony; if such grants—

(a) *have not been registered under Ordinance 8 of 1883 or Ordinance I. of 1895, or*

(b) *having been so registered are specially referred to the Concessions Court by a direction issued under section 60 hereof;*

and the said Court shall exercise such power, jurisdiction, and authority, subject to and in accordance with the provisions of this Ordinance, and with any directions or instructions published in manner provided in section 60 63 hereof.

39. (42) The Concessions Court may take cognizance of any matter coming within its jurisdiction notwithstanding any decision in respect thereof or suit pending in relation thereto in the Supreme Court. There shall be no bar by estoppel in respect of any claim by reason of such claim or any part thereof or any matter arising therefrom having been adjudicated upon by the Supreme Court. No writ of prohibition or of injunction shall be issued by the Supreme Court to stop proceedings in the Concessions Court or to restrain any person from taking any action therein.

40. (43) Upon the publication of the notification constituting the Concessions Court the following consequences shall ensue:—

First, every all proceedings then pending in the Supreme Court to assert or establish the validity of a claim mentioned in section 38 41 hereof shall be stayed

unless the Governor shall signify his consent in writing that such proceeding shall continue.

Secondly, so long as the Concessions Court continues in existence no fresh proceedings to assert or establish claims a claim mentioned in section 38, the validity whereof has not been finally recognised in the manner specified in this Ordinance shall be instituted in the Supreme Court, *without the consent of the Governor in writing. Any such consent may be conditional.*

41. (44) Within a time to be fixed by the Governor notice of which shall be published in the "Gazette," all such claims as aforesaid shall be filed with the Secretary of the Concessions Court or any person appointed by the Governor for that purpose, and every claim shall be set forth in a document to be styled the claimant's declaration, to which document shall be annexed such other documents as the claimant relies upon in support of his claim or duly certified notarial copies thereof, *provided that such documents or copies may be annexed at any time subject to the rules made under section 37 hereof, and provided that the filing of such notarial copies shall in no case be deemed to render unnecessary the due production at the inquiry into or trial of any claim of the original document or documents so relied upon.*

42. (45) No claim not duly filed within the time fixed as aforesaid or such extended time as may be allowed by further notice shall be admitted to be filed. Nor shall any such claim be thereafter entitled in any manner to recognition as of any legal validity in the Gold Coast Colony or elsewhere. Provided that by special authority in writing from the Governor, a claim may be admitted to be filed for inquiry and decision by the Concessions Court notwithstanding the lapse of the period or periods fixed or allowed as aforesaid.

43. (46) The Government of the Gold Coast Colony shall be deemed to be a party in respect of every matter coming before the Concessions Court for inquiry and decision and may by counsel or attorney or by any Public Officer appointed by the Governor for that purpose intervene, plead, lead evidence, and generally do all such things as would be competent to a party in a civil suit, but the said Court shall in no case direct that the costs of any claimant occasioned by opposition or other proceeding duly authorised by the Government shall be paid by the Government unless it shall appear that such opposition or other proceeding is vexatious or frivolous.

44. (47) Any person interested in supporting or opposing any claim in whole or in part may with the leave of the Concessions Court in like manner either in person or by counsel or attorney intervene, plead, lead evidence and generally do all such things as would be competent to a party to a civil suit, and the said court shall in enquiring into or deciding upon any claim afford sufficient opportunity to all such persons to take advantage of the provisions of this section. And for that purpose and generally for the purposes of this Ordinance the said court may frame such rules of procedure and practice as it may deem expedient, which shall be of legal force and effect upon approval by the Governor and publication in the "Gazette."

45. (48) Notice of any claim founded upon an alleged grant by or concession from any native Chief shall be given to such Chief or his successor by the secretary of the Concessions Court, in full time to permit such Chief or his successor to take advantage of the provisions of the last preceding section, and such notice shall be given either by personal service or by publication in the said "Gazette" as the said court shall direct.

46. *So much of Sections 81, 82, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, and 94, of the Supreme Court Ordinance 1876 as relates to Civil proceedings shall be read as part of this Ordinance and shall apply to the Concessions Court constituted and established hereunder and to the*

Concession Court established.

Changes.

Power of Commissioners and Secretary.

Rules of procedure.

Jurisdiction over all claims.

Jurisdiction of Supreme Court, ousted as to matters within jurisdiction of Concessions Court.

Stay of proceedings in Supreme Court and bar of fresh proceedings.

All claims to be filed.

Claims if not filed *ipso facto* void.

Government to be deemed to be a party.

Right of audience.

Notice to chiefs interested.

Summons to witnesses.

Bill as read a Second time.

proceedings of the Commissioners thereof. For the purposes of this section the words "Judge of the Supreme Court" and "Judge," wherever they occur in the said sections of the Supreme Court Ordinance, 1876, may be read as if the word "Commissioner" were substituted therefor.

(49) At the request of the claimant, any party or any interested native Chief, or other person, the secretary, with the authority of the Concessions Court, may grant, and the said court in the interests of justice may direct the secretary to issue, subpoenas or summonses calling upon any person therein named to appear upon a day and at a place therein appointed, and to testify before the court, concerning any matter in issue as the subject of enquiry, and every person shall be bound and obliged to conform to and obey any such subpoena or summons, or any other competent order of the said court duly served, whether such subpoena, summons or order be granted or issued for the purpose of calling such person to give evidence for the furtherance of any other purpose within the scope of the power, jurisdiction, and authority conferred upon the said court; and for default of obedience to any such subpoena, summons or order, the penalty shall be such as the Supreme Court aforesaid might in like case by attachment, fine, imprisonment, or otherwise direct and impose.

(50) The Concessions Court shall have power to administer an oath to any witness, but may in its discretion admit affidavits or take oral statements in lieu of evidence upon oath from any witness, but all witnesses, whether testifying upon oath or not shall be liable for false testimony to prosecution before any competent court in the Gold Coast Colony, and on conviction to the punishment provided for the crime of perjury.

47. (51) The proceedings of the Concessions Court shall be open to the public unless the said court shall otherwise direct. And notes of the evidence given in connection with any claim shall be duly recorded and preserved.

48. (52) The Concessions Court shall have power to punish summarily any person who shall commit contempt of court, and to issue a warrant for the arrest of any person whom the said court may suspect of having committed the crime of perjury as aforesaid, or of being guilty of any fraud, forgery, conspiracy, or attempt to commit any of the said crimes, or generally of any crime in connection with any matter coming before any court; and any person so arrested may be brought to trial or otherwise dealt with according to law by any court of competent jurisdiction in the Gold Coast Colony.

49. (53) The Concessions Court shall have power to adjudicate upon the alleged rights and powers of any person claiming to be or claimed by others to have been a Chief to grant land or make concessions within the colony.

50. (54) No grant of land or concession shall be valid:—

- (1) if found to have been made by a Chief without the express consent or concurrence of the councillors (if any) whose consent may be necessary by native custom;
- (2) if made by a Chief with relation to land in possession of another Chief or his people without the express consent or concurrence of the latter chief and the councillors (if any) whose consent may be necessary by native custom;

Bill as read a Second time.

- (3) if found to have been made by fraudulent or other improper means or without adequate valuable consideration;
- (4) if the Concessions Court shall find that any of the terms or conditions upon which such grant or concession was made have not been duly and satisfactorily performed; or
- (5) if the said court shall not be satisfied of the authenticity of the grants relied upon or that the grantor or grantee well understood the nature and terms of the grant.

51. (55) No condition in any grant or concession shall be valid:—

- (1) which purports to confer exemption from taxation or from the law now or hereafter in force; or
- (2) which is found by the Concessions said court to be calculated to confer or create
 - (a) monopoly, or
 - (b) any sole or exclusive right of trading or carrying on any commercial operation or undertaking, or
 - (c) any sole and exclusive right of carrying on any industrial or manufacturing operation, or any chemical operation concerning the winning or recovery of precious metals, or the reduction of refractory ores; or
- (3) which beyond reasonable or within vague or ill-defined limits confers sole or exclusive rights to precious stones or minerals: Provided that the said court may in its judgment and discretion define reasonable limits within which any such last-mentioned condition may be recognised as valid.

52. (56) Any land, a grant or concession of which in ownership is found to be valid by the Concessions Court, shall, as from the date of such finding, be deemed to be acquired subject to:—

- (a) if such land be situated within a town, as defined under this Ordinance or under the Towns Ordinance, 1892, an annual payment to the Governor quit-rent at the rate of two shillings for every thousand square feet;
- (b) if such land be situated beyond the limits of a town defined as aforesaid and be acquired or used for agricultural purposes only, an annual quit-rent payment to the Governor of one shilling an acre;
- (c) if such land be the subject of a grant of concession of rights to mine or to fell and remove timber or to extract and take rubber or other vegetable product, a royalty not exceeding 2½ of 5 per cent. on the gross value of all gold precious stones and other minerals, or timber or rubber, or other product gotten from or out of such land; and the rate of such royalty may be fixed from time to time by the Governor in Council by notification in the "Gazette," subject to disallowance by Her Majesty.
- (d) Whatever be the nature or situation of such land, or the purposes for which it has been acquired and occupied, such terms, conditions, or servitudes as are usually inserted in grants on perpetual quit-rent, subject to the directions or instructions of the Governor under section 63 hereof.

53. (57) The Concessions Court in its discretion shall have full power to reduce claims based on alleged grants which shall be found to be immoderate or unreasonable, and may, by its decision, modify the terms, conditions, or scope of any grant, or may impose equitable limitations, restrictions or conditions upon the exercise of any grant or concession. The Concessions Court may, in accordance with any such decision, draw up and issue to a claimant a certificate embodying

Invalid conditions.

Implied agreement in all grants and concessions.

Sworn testimony.
Penalty for false evidence.

Proceedings to be public.

Contempt of court and other offences.

Powers of Chief to be subject to adjudication.

Invalidation of grants of land.

Reduction of grants.

Bill as read a Second time.

a description of the rights recognised, and containing the conditions subject to which the same may be exercised.

54. When the Concessions Court shall decide that any grant is invalid, but shall find that consideration was given for the said grant, the Concessions Court may, in its discretion, make such order as to the repayment of such consideration or part thereof as it shall deem just.

Any such order or any copy thereof, certified in the prescribed manner, on being filed in a divisional court of the province in which the land is situate shall be deemed to be a decree of such divisional court and shall be enforced in the same way as a decree of such divisional court.

55. Orders and decisions of the Concessions Court shall at the instance of any person aggrieved be subject to appeal to the full court mentioned in section 7 of the Supreme Court Ordinance, 1876, in the same way as decisions of the Supreme Court in other matters are for the time being appealable.

The power of making, altering, amending, or revoking rules given by section 100 of the Supreme Court Ordinance, 1876, shall extend to the making, altering, amending, or revoking of rules for regulating appeals under this section and to the prescribing of the forms to be used and the fees to be payable.

(58) Appeals shall lie from any final judgment or order of the Concessions Court to Her Majesty's Privy Council in like case and manner subject to the like legal provisions, rules of court, and practice, which are in force and observed in connection with appeals from the final judgment or orders of the Supreme Court under the Order of Her Majesty in Council made on the 23rd day of October 1877.

Provided that no leave to appeal shall be granted unless within one month from the date of any judgment or order a petition for leave to appeal be filed with the secretary of the Concessions Court; and provided further that:—

- (1) If within three calendar months from the date of any such final judgment or order no leave to appeal shall have been obtained from the Concessions Court or from Her Majesty's Privy Council, or
- (2) If, in case leave to appeal shall have been obtained, such appeal shall be either withdrawn, lapse by default at any stage, or be determined otherwise than by the final judgment of Her Majesty's Privy Council.

Bill as read a Second time.

Every such final judgment or order shall be deemed and taken to be and become *ipso facto* absolute and titles or rights recognised or conferred thereby shall be and become indefeasible subject to the provisions of this Ordinance.

56. (59) Before any title certificate be issued in respect of any land a grant to which is affirmed by any judgment of the said Court and before any rights of possession can be claimed under any judgment in respect of any land affected by any grant or concession whether of ownership or of any lesser right to such land, such land shall be surveyed by some duly qualified surveyor, whose work must be submitted for the approval of the Director of Public Works or other person appointed in that behalf by the Governor, and the cost of such survey shall be paid by such person, persons or company claiming to be entitled under such judgment.

57. (60) No decision affirming any right or privilege in respect of land shall be deemed to exempt the holder at any time of such right or privilege from such laws as may be made hereafter regulating the exercise thereof.

58. (61) The fees of office and Court fees to be taken from claimants or other parties interested and appearing in connection with any matter coming before the Concessions Court shall as far as practicable be the same as those which would in like case or matter be taken in the Supreme Court aforesaid, provided that the Concessions Court hereby constituted may in any case not provided for, decide the fee to be taken in such and all similar cases.

59. (62) The costs of proceedings before the Concessions said Court shall be liable to taxation in manner provided by the rules and practice of the Supreme Court aforesaid, and upon the same scale or tariff, unless the Concessions said Court hereby constituted shall otherwise decide or determine by rules framed under the powers conferred upon it by section 37 hereof; and the Secretary of the Concessions said Court shall be the Taxing Officer.

60. (63) The Governor may from time to time by Government notification in the "Gazette," issue directions or instructions to the Concessions Court as occasion may require, and every such direction or instruction shall from the date of such publication be of like force and effect as though here enacted, and may relate as well to claims then already filed, or inquiries or matters then already proceeding as to claims filed, or inquiries or matters proceeding subsequent to the date of such notification.

No. (2).

18730/98.

REPORT OF PROCEEDINGS OF A DEPUTATION TO THE RIGHT HONOURABLE JOSEPH CHAMBERLAIN, COLONIAL SECRETARY, OF THE REPRESENTATIVES OF KINGS AND CHIEFS OF THE WESTERN PROVINCE OF THE GOLD COAST PROTECTORATE IN WEST AFRICA.

IN THE MATTER OF A PROPOSED LAND ORDINANCE FOR THE GOLD COAST PROTECTORATE.

Colonial Office,
Downing Street,
Friday, August 5th, 1898.

The Deputation, which was introduced by Mr. E. F. Hunt (Messrs. Ashurst, Morris, Crisp & Co.), consisted of Mr. Jacob Wilson Sey, Mr. Thomas Freeman Edward Jones, and Mr. George Hughes.
Mr. Corrie Grant, Barrister-at-Law, also attended.

The Deputation was received by—
The Right Hon. Joseph Chamberlain,
Lord Selborne,

Mr. Wingfield,
Mr. Antrobus,
The Hon. T. Cochrane, M.P.

(Mr. Hunt.) Sir, the kings and chiefs of the Gold Coast exhibit to you their swords as evidence that the deputation really represents the kings and chiefs. These swords have never been out of their country before.

We have only one matter to consider to-day, and that is the Land Ordinance. There is, as I believe you are aware, another petition which has first to be presented out there, and which may form a subject of discussion at a later date. But to-day it is only the

Surveyor

Savings of liability under (but) laws.

Fees.

Costs and the taxation thereof.

Supplementary directions and instructions.

Appeal to Privy Council.

question of the Land Ordinance. These gentlemen have come here, because there is a very strong feeling in their country about the proposed Land Ordinance, which seems to have been modelled somewhat on the Ordinance of the Straits Settlements and does not seem to be adapted to their country. The points upon the Ordinance I would rather leave to Mr. Grant who has drafted the Ordinance which is suggested by the natives, if I may with your permission do so.

(*Mr. Chamberlain.*) I find, on looking at the alternative draft Ordinance which you have supplied, that there is a great deal of difference in details upon which I suppose it is hardly worth while to dwell now. Any details we will carefully consider before coming to a decision, but I should like if Mr. Grant would address himself to what are the main points of objection to the original proposal, and in what way he now suggests those difficulties should be met.

(*Mr. Corrie Grant.*) If you please, I have had a number of interviews with these gentlemen, so that I know their position, I think, and they will correct me if I am wrong.

The main objection to the Lands Bill was that it proceeded on an assumption which the natives deny, and which they were not allowed to argue before the Governor when the Bill was under discussion there, and that assumption is that what is called in the Bill the "unoccupied land" in the Colony does not belong to anyone. The Governor's Bill—I will call it the Lands Bill in future—proceeds on the assumption that all unoccupied land in the country had no owner. Now the inquiries which Her Majesty's Government have made—I need not go into them in detail—they are all contained in the Gazette which was published, and the evidence which we are prepared to submit would, I think, establish clearly that the land system of the Gold Coast is clearly understood amongst the natives, and that it has been established for some years that there is a tribal possession of land which is distinct from individual possession, and that under that the whole of the land of the Colony belongs to what the deputation calls the stools. Either they belong to a family or a chief or to a king. But the whole of the land is so allotted out in the Colony, and is perfectly understood to be so allotted, and no one, whether he comes from another family or tribe, or whether he is a foreigner, can occupy any of that land without the permission of the stool or the head of the stool, whoever it may be. The Governor's Ordinance proceeded on the assumption that there was waste land in the Colony just as there may be waste land in England, without any definite owner. That was the first main objection.

The second was an objection as to procedure, or perhaps one might more correctly call it machinery. The Lands Bill proposed that persons appointed by the Governor, who were to be called "Commissioners," were to have the whole power of dealing with every concession that either was then in existence or that should afterwards come into existence in the Colony, and that they were to deal with it without any definite course of procedure laid down, subject to certain provisions which are contained in the Lands Bill itself, but which the natives felt were not satisfactory, because they were always subject to alteration or revision by the Governor himself on his own act by Ordinance. What they asked was that the procedure by which the concessions should be criticised and explained should be one that they understood and were acquainted with, and they asked that it should be judicial and not administrative.

The third point was also a very important one. The Lands Bill proposed that natives who acquire title in land in a variety of ways which are suggested in the Bill should have what the Bill calls a settler's right, and that that settler's right should be changed on application to the Governor into an absolute right which is to be conferred by what is called a land certificate, but that everyone who obtains land by land certificate should take it subject to English law, instead of subject to native law. Now that would amount to a revolution in the land system in the Colony. At the present time the land descends through the children of the women. Polygamy exists all over the country, and naturally the ordinary course

is that the property descends through the women, otherwise you would get into very great complications.

The suggestion of the Lands Bill was outside that, and would make land descend in the same way as English land descends, and that would be the introduction of a system which the natives know nothing about, and would completely upset their present customs and laws, which are perfectly well-known to them, and have been in operation for a great many years.

There was also a proposal for taxation. I do not think that is a matter of any great importance, because the deputation are quite willing to agree that some form of concession should come from them in payment of the protection that they enjoy from Her Majesty's Government, and the advantages which they acknowledge they have received and are receiving.

Then there are two or three other points. One is, the proposal in the Lands Bill was that unoccupied land should be taken for all purposes which could be called public purposes, some of which I do not think in England we should define as being public purposes. Those the deputation think should be limited to purposes which they have set out in their amended Bill.

Then there is a further point which, though one of detail, is really very important to them, and that is the method by which the court should deal with those concerned. The natives are scattered over a very great extent of territory, and they are not in touch with the chief towns. Some of the kings cannot read and write. Many of them do not know English. The proposal in the Lands Bill was that any procedure which was originated in regard to concessions should be originated by notice in the Gazette. But what the deputation ask is that there should be a notice personally delivered to the chief who is concerned in the concession in any way by an interpreter who speaks the dialect of the district and speaks English as well. What they want is to insure the certainty that these notices will come to the knowledge of the chiefs. It may seem a very small point compared with the other things, but really to them it is of vital importance, because the Gazettes, which are published at Accra, I think it is, on the Gold Coast, have a very small circulation, and they do not get, as a matter of fact, to the hands of the chiefs who are interested.

I think those are the main points of difference, but I might just sum them up. The main point is that they wish the devolution of land to remain as it has been in the Colony. They wish all concessions to be subject to such revision by a Concessions Court; they wish those concessions to be judicial and to be subject to a judicial authority, and not an administrative authority. They are willing to submit to a tax. They are willing to give up the land of the Colony for what are recognised public purposes. They attempt to define them in one of the sections of their amended Bill, but that is merely a suggestion, and that, of course, is a detail which I do not think it is necessary for us to discuss now.

(*Mr. Chamberlain.*) Now, Mr. Grant, I should like the chiefs to know what the object of the Government at any rate has been in proposing any legislation. The main object, almost the sole object, is to protect the chiefs against the action of speculators, who in many cases get hold of their land for insufficient consideration and without regard to the various interests in the land. For instance, a chief sells his land for a perfectly insufficient consideration: the interests of the tribe are not considered at all in that case, and the Government desires that the interests of the whole population—the whole of the tribe as well as of the chief and of the Government—should be taken into account whenever a concession is arranged; that a speculator from this country should not be able, trading upon the weakness of a chief, to get his land for a mere nothing, and to oust from it those to whom really it in right belongs. So far, therefore, the object is one entirely benevolent to the chiefs and their people, and I hope that there will be no difficulty whatever in coming to an arrangement as to the method by which this object shall be secured. Provided that the object is secured, our wish would be that the method should be one entirely satisfactory

to the chiefs and the people themselves. So much by way of preface.

Now I want to ask a question or two. In the first place, do you say that the same native rule with regard to the authority of the stool prevails with every tribe in the Colony? because we have certainly heard that the native customs vary tremendously among themselves, and while what you have said is true in some cases, it is not true in others.

(*Mr. Corrie Grant.*) Mr. Jones asks whether you mean in regard to land or the granting of concessions?

(*Mr. Chamberlain.*) With regard to land.

(*Mr. Corrie Grant.*) With regard to dealing with unoccupied land?

(*Mr. Chamberlain.*) With regard to the ownership of land.

(*Mr. Corrie Grant.*) The ownership of unoccupied land? What do you say, Mr. Jones; how is that in different parts of the Colony?

(*Mr. Jones.*) In the Colony where we came from, as to dealing with lands it is almost the same; as to the descent and transfer of lands it is all the same all over the western province of that portion of the Gold Coast. But I do not for a moment say that I know much of those beyond Accra.

(*Mr. Chamberlain.*) What I want to know is this. As to the authority of the chiefs to dispose of the land, does not that vary in different cases?

(*Mr. Jones.*) It is not only the chiefs who are the owners of the soil. A chief may be in a district or province, and he may have as his *bonâ fide* property a small portion of the land. Or the land may belong to the inhabitants of the place, the land, as the counsel has just said, belonging to the community in this way. A king may have his, or a chief may have his, and the people who are to be regarded as his subjects have their own *bonâ fide* family ancestral properties in land, and over these he has no control. Those that are connected with and appurtenant to his own stool are those which in reality belong to him. But as to the other he is as it were a trustee; he looks over the other property, whereas it belongs to each family and each tribe.

(*Mr. Corrie Grant.*) You are not quite answering the question.

(*Mr. Chamberlain.*) No. I will put it in another way. Suppose a European comes to a chief and asks for a concession of land which is not land which actually belongs to the chief, which he occupies himself; neither is it land which belongs to any of the tribe, but is unoccupied land which belongs to no one else. What authority has the chief over that land, and how would he deal with such an applicant, or how would you desire that such an applicant should be dealt with? Who would be the person who could make a valid concession then?

(*Mr. Jones.*) Those who could make that valid concession are those to whom in reality the property belonged.

(*Mr. Chamberlain.*) But where it does not belong to anyone?

(*Mr. Jones.*) There is no land there which does not belong to anyone. I have never known or heard of it.

(*Mr. Chamberlain.*) I think what Mr. Grant has said on your behalf is that a great deal of this land belongs to the tribe as a whole, but not to any individual member of the tribe.

(*Mr. Jones.*) No, by that he means that even where it belongs to this tribe, then the tribe are divided into families. Take a small village community, the village community is composed of different families, which in our country we understand to be the members in the maternal line, and in these are vested the lands.

(*Mr. Grant.*) The point you want to get at is this. Putting aside altogether for the moment land which is actually in cultivation, you have got, say, a tract of forest covered with trees, and an English speculator comes and says, "I want to buy the right to cut down all these trees and take them away." Now, he could go to the chief first of all; but, could the chief of himself give the right to that Englishman to cut down the trees?

(*Mr. Jones.*) Not without the concurrence of those who are his councillors.

(*Mr. Chamberlain.*) That is it. Is it your wish, then, that any concession to let in this way should be made by the chief and his councillors?

(*Mr. Jones.*) Yes.

(*Mr. Chamberlain.*) Together?

(*Mr. Jones.*) Yes.

(*Mr. Chamberlain.*) And that would be a valid concession?

(*Mr. Jones.*) Quite so.

(*Mr. Corrie Grant.*) What we have asked is that the court itself should deal in every case with every concession—first of all, the court being constituted every concession should come before it, and the court should certify the concession as valid, if certain provisions made in the Ordinance itself are complied with, and if the court itself was satisfied that the concession was validly made.

(*Mr. Chamberlain.*) According to native law.

(*Mr. Corrie Grant.*) As I understand it every chief, whether he is a king or a chief or a head of a family, has a council which advises him, but it is not by any means made up of the same people. Sometimes it is one, sometimes it is another—but that there has to be a family consent to deal with unoccupied lands is I think clear from what I have gathered from the deputation.

(*Mr. Chamberlain.*) Your court must have an immense deal of discretion in such cases as this.

(*Mr. Corrie Grant.*) That is quite what we propose.

(*Mr. Chamberlain.*) It will not proceed upon any laws laid down, but it will have to find out what in a particular case the native custom is, and whether the concession is valid according to that custom.

(*Mr. Corrie Grant.*) We find that the High Court already has dealt with certain concessions, sometimes in an indirect way, and there seems to be some amount of procedure fairly settled already as to what the courts should do in regard to concessions, and the desire of the deputation is to take advantage of that, and they do that by suggesting that the Concessions Court should be a branch of the High Court.

(*Mr. Chamberlain.*) I take it that the Concessions Court would have to find first that the concession was a valid one according to the native custom of the place?

(*Mr. Jones.*) Yes.

(*Mr. Corrie Grant.*) If I might refer to clause 19 on page 15 of the draft Bill, we have not attempted to define this closely: "No concession shall be certified as valid unless the court is satisfied that it was made with the express consent or concurrence of the councillors or others whose consent is necessary by native custom." The next one is where land apparently belonging to another chief has been dealt with. The remainder of the subsections set up reasonable provisions as to adequate consideration, and so on. Then in clause 20 they endeavour to prevent setting up monopolies and unfair dealing with the natives. But, if I may say so, as far as I can gather from several long interviews I have had with the deputation, I do not think there is existing at the present time any defined rule of practice all over the Colony as to who do constitute the councillors of the chief. That somebody has to assign besides the chief is I think clear, but who the somebody is varies, and what we suggest is that the Concessions Court can quite well find that out, because already the Supreme Court has been in the habit of calling in councillors to help them in regard to native laws and kings of various districts, and has acted on the advice that they have given—assessors almost exactly similar to the assessors who act in our own Admiralty Court here.

(*Mr. Chamberlain.*) Now I should like to understand about the land certificate. Have I correctly understood you that it is a case where what we should call a "squatter" desires to become a freeholder, and after giving proof I suppose of his having held the land for some time, he obtains a certificate of ownership?

(*Mr. Corrie Grant.*) Yes.

(*Mr. Chamberlain.*) But you say after obtaining that certificate he should be under the same law as before—that the land should be under the same law.

(*Mr. Corrie Grant.*) Yes, that is so. The point that we objected to was that by merely taking a certificate, which a native very often would not understand, he would find himself at once plunged into all

the intricacies of the English law, whereas previously he was under a law which he quite well understood.

(*Mr. Chamberlain.*) I do not want, as this is only a preliminary interview, to pledge myself beforehand till I have had time to consider this very carefully, but at present I think, as far as I understand your views, we shall have no difficulty whatever in meeting them.

Now you also said that these gentlemen who are chiefs recognise the duty of paying for the protection they will have both in this and in other respects, which, of course, is absolutely necessary. May I ask, in reference to that, in what form would they be willing to pay for that protection?

(*Mr. Corrie Grant.*) In clause 21 they suggest 1 per cent. on the gross value of all products. The Lands Bill suggested a defined land tax, and that was very strongly objected to. Of course much of the land in the Colony really does not produce anything which can be turned into money in order to pay the taxes, and, therefore, what they suggested was that there should be a percentage levied on the value of anything which is produced under a concession, and that they shall pay that to the Government.

(*Mr. Chamberlain.*) Yes, but I think that would be very difficult with a great deal of the product. It might be possible, for instance, in the case of a gold-mining concession, where one can see, we could get at the material where it was exported and make a charge upon it. But in the case of, say, nuts, for instance, and things of that kind, or rubber, it would be most difficult to ascertain the product.

(*Mr. Corrie Grant.*) I do not think there would be so much difficulty about the estimate of the value. Apparently, from what we hear, gold would be one of the main products exported, and probably there would be more gold concessions than any others.

(*Mr. Chamberlain.*) We have heard a great deal about it in other cases; but would the chiefs have any objection to arrange for taxation by a hut-tax or a poll-tax?

(*Mr. Jones.*) No, but they have been taxed already; they pay all the revenue.

(*Mr. Corrie Grant.*) Mr. Chamberlain asks whether the chiefs have any objection to paying either in a hut-tax (a tax on the house) or a poll-tax (a tax on the number of inhabitants).

(*Mr. Chamberlain.*) It seems to me that that, after all, is the simplest way of collecting the tax which will be necessary for dealing with land of the Colony or protecting it.

(*Mr. Corrie Grant.*) I should agree, it is the easiest.

(*Mr. Chamberlain.*) It is by far the simplest, and, therefore, economically, the best. It is not costly where it works well, as, for instance, in the Gambia and in South Africa; it is very easily collected there. It costs very little money, and it comes in.

(*Mr. Corrie Grant.*) You see here the unfairness of that would be that you might have in one chief's dominions concessions very remunerative, well-worked, and producing a large income to him, and in another one no concession at all, and yet the two chiefs would be taxed equally for the support of the Colony.

(*Mr. Chamberlain.*) But I think that is a different thing. Where there is a distinct concession made the concessionaires would have to pay.

(*Mr. Corrie Grant.*) What the deputation wished for is a tax levied on the concession and collected through them.

(*Mr. Chamberlain.*) Through the concessionaires?

(*Mr. Corrie Grant.*) Through the chiefs.

(*Mr. Jones.*) No, through the concessionaires.

(*Mr. Corrie Grant.*) You told me you wanted the chiefs to have control of it.

(*Mr. Jones.*) But paid by the concessionaires.

(*Mr. Chamberlain.*) I do not think that would be enough. Let me put this point. Suppose a European is working the gold, he will have to pay on the gold raised a royalty, undoubtedly. But that is a different thing. Now I want to know, in addition to that (which is what he will have to pay, and which we shall have to settle with him, according probably to the case with which he obtains the product and the possibility of a profit), I want to know what a chief will pay for the security which he gets, and for the protection of life and property, and for the roads

which will ultimately have to be made—for everything in fact which goes to the civilisation and improvement of his country—what is he willing to pay, even if he had no concessions at all?

(*Mr. Corrie Grant.*) That is a proposition which goes behind anything which was either contemplated in the Lands Bill or in our amendment. The Lands Bill only contemplated a land tax levied on all land which came under a concession. The whole of these proposals only dealt with taxes arising out of concessions. What you are suggesting now is a general income from the Colony raised from the chiefs. That is a much wider point.

(*Mr. Chamberlain.*) We want the chiefs, according to native custom in other similar cases, to pay to the head chief, that is, to the British Government, something for the protection which they enjoy, and, as these gentlemen are here, I should like very much to know from them, granting something must be paid, what is the easiest and best way of levying it—the one which would be most satisfactory to them and least objectionable to native customs. My suggestion is that the easiest plan is to have each village counted, either for its population or its number of huts, or in some other way, and a sum fixed as the sum which that village has to pay, and let that be collected by the chief. We would look to the chief. We should probably pay him a proportion for the collection which would come to him as his share of it, and then a proportion should come to us for our expenditure.

(*Mr. Corrie Grant.*) That is not a point that has at all arisen in any discussion that I have had with the deputation, because the Lands Bill only proposed a tax on the concessions. Our alternative suggestion was another method of taxing the concessions; it was not a general tax.

(*Mr. Chamberlain.*) Then, I would like to ask these gentlemen, as they are here, and I may not see them again, what they would say about this point I have raised—the question of general taxation. When we have to ask the chiefs to pay something for the protection which they get, in what way would they wish that money to be collected? Taxation is never pleasant any way, but which is the best way of collecting it, and which is the way which will be least objectionable to them?

(*Mr. Jones.*) In reply to this we might beg to say that this is a different subject altogether, and it needs to be considered. But we think that the taxation mentioned in this Lands Bill is that which may be collected from the yield of concessions, and that is the main taxation in the Lands Bill. We think that the authorities who are protecting both the lessor and lessee and their property must have to be paid, so we suggest that from the yield of the concession the parties may pay something to the Government for their protection; but as to taxation on the whole, it has never engaged our attention so far as the revenue on the Gold Coast is collected, and, if there has arisen any necessity for an increase in the revenue, that has not been brought before us, and, therefore, we have never thought of it. But now that you have brought it out we will go and think of it, and we shall be glad to give our views and what we think about it. But it was not embodied in our instructions at all. All the revenues have been collected from the people who are very near to what is called the Gold Coast Colony—a few miles from the coast line. They are the parties who have been paying the revenue.

(*Mr. Corrie Grant.*) As I understand—I am not very conversant with the Gold Coast at the present time—the income from the Colony bears the expenses of the Colony.

(*Mr. Chamberlain.*) It has done. It is not bearing the expenses of the hinterland.

(*Mr. Corrie Grant.*) No. It might be a question, first of all, whether the Colonial Government made out a case, as compared with other colonies, for another tax altogether.

(*Mr. Chamberlain.*) The point is this. A great part of the Colony, or the Protectorate behind it, has never been opened up. It is being opened up, and as something is done in that direction money will be required—just in proportion as you make roads, promote trade, and prevent the internecine quarrels which at one time

went on, you deserve money for the protection which you afford, and we shall have to ask it. At the present time, perhaps, the necessity may not have arisen, but it will arise in the future. Of course it will only be asking for money in return for something which is being done, some great benefit which is being conferred, and, as matters have assumed so much importance in another Colony, in Sierra Leone, I thought it would be interesting to know from these gentlemen what they thought about it. Sooner or later the chiefs, and especially those who are a long way from the coast, must do something for the protection which they get, and when that time comes we shall desire to make it as little burdensome as possible, and as much as possible in accordance with native custom. If they could have told me anything about it I should have been glad to have heard it.

(*Mr. Corrie Grant.*) When I spoke of their willingness to submit to a tax early this afternoon I was referring entirely to the question of concessions.

(*Mr. Chamberlain.*) Yes, I understand.

(*Mr. Corrie Grant.*) And this was a new question which has never been raised at all.

(*Mr. Hunt.*) (*To Mr. Jones.*) Still you would be quite content to consider this within the next two or three days, and submit your views upon it?

(*Mr. Jones.*) Yes.

(*Mr. Hunt.*) It shall be forwarded.

(*Mr. Chamberlain.*) Mr. Grant, one thing suggests itself. Where a European obtains a grant of land and becomes a freeholder there, I suppose you would admit that English law should apply.

(*Mr. Corrie Grant.*) Certainly. We do not wish to exclude a man from having his title under the English law if he chooses. The objection was to a native being forced to take a title under English law, or, rather, to be indirectly led into taking a title under English law, when he accepted a land certificate without knowing its effect. As far as I can judge, I think it is clear that at some time or another there will have to be some change in the land law of the Colony. I mean, as colonists come in they will not accept descent through the maternal line; they will want another system; they will probably remain English and want the English system.

(*Mr. Chamberlain.*) Your point is that where a native acquires a new status under this law, that there, at any rate, he shall have the option of continuing to be under native custom.

(*Mr. Corrie Grant.*) Exactly.

(*Mr. Chamberlain.*) Then may I take it that these gentlemen will communicate with me their views on the subject of any extension of tax in the hinterland which may afterwards become necessary?

(*Mr. Corrie Grant.*) Certainly.

(*Mr. Jones.*) You want to be enlightened as to this by hinterland chiefs who will have to pay the proposed hut tax. May I understand on the Gold Coast, say from Cape Coast about 72 miles or more to Prah or the frontier between the Gold Coast and Ashantee, these people who have inhabited that tract of land are those who have ever since been paying revenue to the Gold Coast, and, if there has arisen any necessity for a further taxation for the development of the country, then may I understand that this may apply to those beyond the Prah?

(*Mr. Chamberlain.*) Yes.

(*Mr. Jones.*) Then it is beyond us to say yes or no for them, because they are not included in the Gold Coast.

(*Mr. Chamberlain.*) No, you can only speak for the chiefs behind Accra, and up to 70 miles in the interior; is that so?

(*Mr. Corrie Grant.*) I think they can speak practically for the chiefs of the Western province.

(*Mr. Chamberlain.*) Really it is only for information and suggestion that I want it at the present time, and of course I should say this, that what they suggested as being the best method of taxation for chiefs who are between the Prah and the coast would also, probably, be the best method of taxation for people behind, although they may not speak for them, yet still it would be probable.

(*Mr. Corrie Grant.*) What we have attempted to do here, and what probably your advisers will find

necessary, will be to give some limit of jurisdiction to the Concessions Court, and within that limit of jurisdiction, certainly, these gentlemen would be able to speak for the chiefs, because the writ of the Concessions Court could not run effectively much more than 60 or 70 miles from the coast.

(*Mr. Chamberlain.*) No. The Concessions Court would have nothing to do with the taxation.

(*Mr. Corrie Grant.*) No, of course not, but the two things would go together.

(*Mr. Chamberlain.*) Then I think that will be all now. I am much obliged to you for your explanation, and I am glad to say this, that although, of course, I do not want to pronounce on details at all, they shall be carefully examined, and I think as you have stated your case I see absolutely nothing in principle between us. I agree with the objects which you desire to secure, and I have no doubt we shall be able, before we have done, to agree upon the methods and terms by which those objects shall be secured. I see no reason to doubt it.

(*Mr. Corrie Grant.*) I think I can say on behalf of the deputation they have been willing all through to leave the matter very much in the hands of their English advisers, and that we are only anxious to bring the matter to a satisfactory conclusion. It is very desirable, now they are here, to get the matter settled. That is really their feeling about it.

(*Mr. Chamberlain.*) Well, I think we must now examine it in detail.

(*Mr. Corrie Grant.*) If you please.

(*Mr. Chamberlain.*) Things are settled rather slowly here. I do not suppose we shall be able to settle it while these gentlemen are here.

(*Mr. Corrie Grant.*) I thought, perhaps, it might be possible for you to say definitely that the native system as to the devolution of land should not be interfered with, that there should be a legal court, not an administrative court, and if those things were settled I think they would then leave all details in the hands of Messrs. Ashurst, Morris, Crisp & Co., who are advising them.

(*Mr. Chamberlain.*) I think I understand you. I think I can give you the assurance which you wish—that is to say, as far as I can see, I see absolutely no difficulty at the present moment. I am willing that in all cases where the natives are concerned the native law shall remain and prevail—the native law I mean with regard to the devolution of land. And I am also willing that the court which is to decide upon these questions should be a judicial court.

(*Mr. Corrie Grant.*) Those are the two main questions that we have been anxious about.

(*Mr. Chamberlain.*) And then I should consider very carefully the other points you have raised, such as the exact nature of the public purposes for which land should be taken. As you are aware, in this country the tendency is to widen that very largely, and I think it should be sufficiently wide; but at the same time it may be that we are putting in more than is necessary, and I will look to that and see how far we can minimise or lessen that. And I will also see how far it is possible—and I should think it would be possible—to secure that personal notice should be given to the chiefs in every case. We must have an alternative for the case in which a chief is not to be found; just as we have in our courts here, we must have an alternative for the personal service; but still I do not see any objection to at all events providing that reasonable efforts shall be made to secure personal service.

(*Mr. Hunt.*) On the other point, as to the information which you desire to have, I understand you, sir, to say that if this country is to be developed and improved there must be expenditure, and that you wish in that event to know the views of the deputation as to the best way in which that expenditure could be raised by taxation?

(*Mr. Chamberlain.*) Yes, and perhaps I may make it clearer by saying it is impossible that that expenditure shall be met entirely by import duties, otherwise we should kill the trade that we desire to extend. If you put on too heavy duties you will not sell the goods. Therefore, there must be a limit to that. Therefore, if the expansion and improvement of the hinterland is to go on as quickly as I desire, if the country is to be

opened up by railways (and I am very desirous of getting railways as quickly as possible into the interior, which will add enormously to the benefit of those who are nearer the coast, because everything must pass through their country to their advantage), and if that is to be done I must have some source of direct taxation over and above the import duties.

(*Mr. Hunt.*) The landowners, who are to benefit, must contribute by taxation?

(*Mr. Chamberlain.*) They must contribute by direct taxation in some form or another, and if they tell me that they prefer a poll-tax to a hut-tax, or a hut-tax to

a poll-tax, or if there is some other form of taxation which they think will be better still, I shall attach the greatest importance to their wishes in the matter, but they must understand that no taxation means no improvement. If the country is to be improved and their ground is to be made more desirable, as it will be very quickly, they must be willing to pay some additional taxation.

(*Mr. Hunt.*) I thank you, sir; we will get their views and submit them.

(*Mr. Grant.*) May I thank you, sir, on behalf of the deputation, for seeing us this morning.

30395.

No. (3).

GOLD COAST.

THE SECRETARY OF STATE to the GOVERNOR.

(No. 532.) Downing Street,
— December 22, 1899.

WHEN you were last in this country advantage was taken of your presence to discuss with you the subject of the legislation required for regulating concessions of rights relating to land by natives of the Gold Coast.

2. I have now the honour to transmit to you the draft of an Ordinance which is the outcome of these discussions.

3. As the basis of this draft is materially different from that of the Lands Bill which was under consideration during the administration of Sir William Maxwell, I do not think it necessary to refer to that Bill, beyond observing that in considering this question I have had regard to the representations made by the deputation which came to this country in 1898. While I consider it absolutely necessary for the Colonial Government to supervise grants of land, so as to protect all parties against fraud or misrepresentation, to secure to them the rights given or reserved, to guard against results prejudicial to the public interests, and to obtain for the Government a reasonable income from profitable operations, at the same time I do not wish to make any "fundamental alteration in the rights of the natives" such as was apprehended by the deputation. The draft accordingly does not purport to confer on any Government authority the right of claiming or making grants of any land whatsoever which is owned by natives of the Gold Coast, and the idea of vesting any unoccupied land in the Governor as public land has been abandoned. The native owner is left free, as now, to make his own bargain if he wishes to sell to a European; and the benefit of his bargain is not interfered with, but on the contrary more effectually secured to him by the conditions which the Bill imposes on the grantee. I should be glad if you would take an opportunity of explaining this character of the Bill.

4. The draft provides for the establishment of a Concessions Court in the Colony to which every concession granted by a native will have to be notified, together with particulars of the concession and the documents on which the claimant relies in support of his claim. The Court will have power to certify the concession to be valid or invalid, except that any concession dated before the 10th of October 1895, duly registered, and undisputed, would be certified as of course to be valid if the Court be satisfied that the rights granted under such concession have been in fact exercised, and that the natives resident in the locality have known of and acquiesced in the exercise of such rights.

5. The Ordinance provides that the term of a concession is not to exceed 99 years, nor that of a prospecting licence three years.

6. The Ordinance restricts the area of single concessions to five square miles in the case of mining rights, and 20 square miles in the case of rights to take timber or rubber or other products of the soil. No one person or corporation is to be allowed to hold at one time concessions the aggregate area of which exceeds 20 square miles in the case of mining rights or 40 square miles in the case of rights relating to timber, rubber, or other products of the soil. The provisions

of this and the preceding paragraph do not, however, apply to any concession dated before the 10th of October 1895.

7. The Ordinance provides for the levying of a tax of 5 per cent. on all profits made by the holder of a concession from the date on which the Ordinance comes into force. Prospecting licences are to be subject to a stamp duty of 1*l.* per square mile.

8. The draft was communicated to the Chambers of Commerce of London, Liverpool, and Manchester, and also to certain other persons who were known to be interested in the subject* and they were invited to furnish me with their observations on it. A considerable number of criticisms not specially invited have also been received. I transmit herewith copies of letters† which have been addressed to this Department on the subject, and I have to refer you for others to my despatch, No. 499,‡ of the 30th of November last, relating to the Castle Gold Exploration Syndicate.

9. The draft Ordinance as now transmitted to you represents the printed draft which was submitted to the Chambers of Commerce and other persons, with the amendments suggested by the resulting criticisms. These amendments are noted by hand on the margin, and 20 copies of the draft as so amended are enclosed.

10. The substantial objections to the draft Ordinance were, as you will observe, mainly directed against the following points:—

- (1) The retrospective character of the Ordinance, under which it would be necessary that all concessions, however old, should be referred to the Concessions Court, and under which restrictions of area would be applied to concessions not dated prior to the 10th of October 1895.
- (2) The requirements of clause 12 as originally printed in regard to the proof of consent, of adequate consideration, and of other matters.
- (3) The limitations of area in clause 19 to which I have referred in the sixth paragraph of this despatch.
- (4) The tax of 5 per cent. on profits.
- (5) The provisions of clause 14 of the printed draft (now struck out) under which it was proposed to confer on the Court wide powers of modifying the terms of any concession.

11. With regard to (1), I think that it would be impossible to accept the objections without validating numerous vicious claims. You will observe that possible cases of hardship are met by special provisions.

* London Chamber of Commerce, 23 September. Liverpool Chamber of Commerce, 29 September. Manchester Chamber of Commerce, 28 September. West African Trade Association, 26 September. Messrs. Ashurst, Morris, Crisp, & Co., 18 September. Mr. Irvine, 13 September. Mr. Tarbutt, 14 September. Mr. Perks, 29 September. Mr. Kempf, 27 September. Mr. Kempf, 9 October. Mr. Kempf, 2 November. Castle Gold Exploration Syndicate, 25 September. West African Mahogany and Petroleum Co., 20 October. African Estates Co., 1 December.

† Nos. 92, 94, 95, 96, 98, 99, 101 to 104, 108, 115, 122, and 144 in African (West) No. 573.

‡ No. 143 in African (West) No. 578.

12. With regard to (2), it will be seen that amendments making the provisions of the Ordinance considerably less stringent in these respects have been introduced into the draft.

13. With regard to (3), I have to draw your attention to what is said in the enclosed letters as to the limitation of the areas of concessions, and to suggest that you should take into consideration the question of taking power in the Ordinance to allow larger areas in special cases. I am, however, at present of opinion that this power, if taken at all, should be confined to existing concessions. As the limitation of areas is a provision which was not in the Lands Bill of 1897, and is therefore new to concessionaires, some hardship might result from its being made retrospective, but there is no such objection to applying it to future grants.

14. With regard to (4), it is urged that the tax will fall entirely on the shareholders, and that the debenture holders will escape. The objections to a tax on gross output are, however, more serious, and I see no advantage in reopening the matter.

15. With regard to (5), considerable alarm was manifested at the wide powers which, by clause 14 as printed, it was proposed to confer on the Concessions Court. On considering the point I have come to the conclusion that the clause would confer too much power on the Court, and it has accordingly been struck out. Any regulations as to gold mining which may prove necessary will be better made by subsequent legislation than by the action of the Concessions Court under that clause.

16. I request that you will cause to be added, in regard to certain clauses of the Ordinance which impose penalties for infractions of its provisions (Nos. 9 (2), 28, 35, and 41), a statement of the Courts in which the penalties are to be recovered.

17. I have further to transmit to you, in original, a memorandum* upon the Bill submitted by Sir W. Brandford Griffith, which I request that you will take into consideration when the Bill is being dealt with by the Legislative Council. I request that you will return this memorandum, or a copy of it, when submitting the Bill for my further consideration.

18. With reference, however, to this memorandum and other criticisms of the draft, I trust that it will not be found necessary to modify the main principles of the Ordinance, though with regard to the details of the measure I desire to leave you a free hand to adopt amendments which will tend to make the measure more complete and to facilitate the practical working of its provisions.

19. I approve of your introducing the draft Ordinance into the Legislative Council without further reference to me, but, inasmuch as it is possible that considerable amendments may be found necessary, it would be desirable that I should be consulted after the Bill has been considered in committee; and I therefore request that, when that stage has passed, you will have the Bill reprinted so as to show by means (if possible) of deleted type and italics the manner in which the Bill as originally introduced has been altered by the Legislative Council, and that you will also submit to me a report on the amendments which have been made, with your recommendations thereupon.

I have, &c.

J. CHAMBERLAIN.

Enclosure in No. (3).

★ DRAFT CONCESSIONS BILL.

AN ORDINANCE TO REGULATE THE CONCESSION OF RIGHTS WITH RESPECT TO LAND BY NATIVES, AND TO CONSTITUTE A CONCESSIONS COURT.

Be it enacted by the Governor of the Gold Coast Colony, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as "The Concessions Ordinance, 1899," and shall come into force on the 1st day of January, 1900.

* Not printed.

2. In this Ordinance "Concession" means any writing whereby any right, interest or property in or over land, with respect to minerals, precious stones, timber, or rubber, or other products of the soil, or the option of acquiring any such right, interest or property purports to be either directly or indirectly granted or agreed to be granted by a native.

"Land" includes land which forms the bed of any river, stream, lake or lagoon.

"Minerals" includes mineral oil, and "mining" includes any operations for winning or obtaining mineral oil.

"Native" includes all persons of African birth who are entitled by native custom to rights in land in the Colony.

"Prescribed" means prescribed by rules made under this Ordinance.

"Person" includes a corporation.

3.—(1) A Court is hereby constituted and established, to be styled the "Concessions Court," which shall be composed of the Judges for the time being of the Supreme Court. The provisions of the Supreme Court Ordinance, 1876, and of any amendments thereof, shall apply to the Concessions Court.

(2) Any Judge of the Concessions Court sitting alone may exercise all the powers of the Court.

(3) Sittings of the Concessions Court may be held at any place within the Colony, and more than one sitting of the Court may, if necessary, be held at the same time.

4. A Registrar of the Concessions Court shall be appointed by and shall hold office during the pleasure of the Governor. He shall have and exercise in relation to the Concessions Court the powers and functions which are by law, rule of Court, or practice vested in or conferred upon the Registrar of the Supreme Court, and shall duly preserve the records of the proceedings of the Concessions Court. His duties may be performed by any person temporarily appointed for that purpose at any time by the Governor, whether such person be appointed instead of or in addition to the Registrar.

5. The procedure before the Concessions Court shall, subject to the provisions of this Ordinance, and of any rules made under this section, be in accordance with the rules of Court and practice established and followed in the Supreme Court, so far as such rules and practice are applicable. For the purposes of this Ordinance the Concessions Court may from time to time make, revoke, or vary such rules of procedure and practice as it may deem expedient, and such rules, upon approval by the Governor and publication in the Gazette, shall have effect as if enacted in this Ordinance.

6. The Concessions Court shall have power, jurisdiction, and authority to enquire into and certify as valid or invalid any concession, except so far as otherwise provided in this Ordinance, and shall exercise such power, jurisdiction, and authority subject to and in accordance with the provisions of this Ordinance.

7. Upon the date on which this Ordinance shall come into force, every proceeding then pending in the Supreme Court, directly or indirectly affecting the validity of any concession shall, unless the Supreme Court shall otherwise direct, be stayed until such concession has been adjudicated upon by the Concessions Court.

8. After the date on which this Ordinance shall come into force, no proceedings shall, without the leave of the Supreme Court, be taken to give effect to any concession unless such concession has been certified as valid by the Concessions Court.

9.—(1) Within such time *vis* months after the coming into force of this Ordinance with respect to any concession dated prior to the coming into force of this Ordinance, and within such time *vis* months after the date of the concession with respect to concessions dated after the coming into force of this Ordinance as may be fixed by the Governor by Proclamation in the Gazette, notice of every concession shall be filed by the person claiming to be entitled to the benefit thereof in the Concessions Court, together with a document, to be styled the "Claimant's Declaration,"

containing particulars of such concession, to which document shall be annexed such other documents as the claimant relies upon in support of his right to such concession or duly certified copies thereof, provided that such documents or copies may be annexed at any time subject to rules made under this Ordinance, and the filing of such copies shall not be deemed to render unnecessary the due production at the enquiry into any concession or at the trial of any question relating to any concession of the original document or documents so relied upon. Notice of the filing of every such declaration with particulars thereof shall be given by the Registrar to the Governor.

(2) Any person claiming to be entitled to the benefit of any concession who makes default in compliance with any of the provisions of this section shall be liable to a penalty not exceeding 5*l.* a day for every day during which such default continues.

10. The Governor may direct the Attorney-General to intervene in any case before the Concessions Court where he considers such intervention necessary, and thereupon the Attorney-General shall be for all purposes a party to the proceedings.

11. Where notice of any concession is filed in the Concessions Court, a copy of such notice, together with a copy of every document filed in respect of such concession, shall be sent by the Registrar of the said Court to every King or Chief to whose stool any land affected by the concession appears to be appurtenant, or in whose district such land appears to be situate.

12. No concession shall be certified as valid:

(1) ~~Unless made with the express consent or concurrence of every person whose consent is necessary by native custom;~~

(1) *Unless made in writing signed by the grantor;*

(2) *Unless the Court is satisfied that the proper persons were parties to the concession, and that it may be reasonably presumed that they understood the nature and terms thereof;*

(2) (3) *If obtained by fraudulent or other improper means;*

(3) (4) *If made without adequate valuable consideration; regard being had to the circumstances existing at the time of the concession;*

(4) (5) *Unless all of the terms or conditions upon which such concession was made, which ought to have been performed, have been duly and satisfactorily performed;*

(5) ~~Unless the Court is satisfied that the parties to the concession well understood the nature and terms thereof.~~

Provided that any concession dated prior to the 10th day of October 1895, and duly registered as provided by law in the Colony, and in respect of which no adverse claim has been entered on the register or filed in the Courts of the Colony before the 1st day of January 1900, shall be certified as of course to be valid if the Concessions Court is satisfied that the rights granted under such concession have been in fact exercised and that the natives resident in the locality in which such rights are exercisable and the natives by whom such concession was granted have known of and acquiesced in the exercise of such rights.

13. Whenever the Concessions Court shall have decided that a concession is valid, a certificate to that effect bearing the seal of the Court, hereinafter referred to as a "Certificate of Validity," shall be attached to the concession. Every such certificate shall be registered under the Land Registry Ordinance, 1895, and any Ordinance amending the same, by the Registrar of the Concessions Court on behalf of and at the expense of the person entitled to the benefit thereof. A copy of every such certificate shall be transmitted by the Registrar of the Concessions Court to the Governor, who shall cause particulars thereof to be published in the Government Gazette.

~~14. The Concessions Court shall have full power to modify the terms, conditions, or scope of any concession which shall be found un-~~

~~reasonable, and to impose equitable limitations, restrictions, or conditions upon the exercise of the rights under any concession.~~

15. Every certificate of validity shall specify the land comprised in or affected by the concession to which it relates, the nature of the rights or interests thereby granted, and the terms and conditions of such grant, ~~together with any limitations, restrictions, or conditions (if any) imposed by the Concessions Court,~~ and shall declare such concession to be valid subject to such ~~terms and~~ **limitations, restrictions, or conditions (if any).**

16. When the Concessions Court shall decide that any concession is invalid, but shall find that consideration was given therefor, the Court may order the repayment or return of such consideration or of any part thereof, *to the person who would have been entitled to the benefit of the concession if it had been declared valid,* or may make such order for the settlement of any question arising with respect to any such concession as it shall deem just, and in particular may, in making such order, take into account the time which has elapsed since the date of the concession, the knowledge of and acquiescence in any such concession on the part of any person claiming to be affected thereby, or any operations or expenditure upon the land. Any such order or any copy thereof certified in the prescribed manner, on being filed in a Divisional Court of the Province in which the land to which such concession relates is situate, shall be deemed to be, and shall be enforced as, a decree of such Court, *and shall be registered under the Land Registry Ordinance, 1895, and any Ordinance amending the same.*

17. The Concessions Court may, in any case where it shall deem it necessary, require that, before a certificate is issued in respect of any concession, the land affected by the concession shall be surveyed by some person approved by the Court, and the cost of such survey shall be paid by the person claiming to be entitled to the benefit of such concession.

18. No certificate of validity shall be issued by the Concessions Court in respect of any concession obtained on or after the 10th day of October 1895, which purports to confer any right in respect of any land for a longer period than 99 years, or in respect of any concession which purports to confer an option to exercise a right of prospecting for minerals, rubber, or other product of any land for a longer period than three years. The Court may reduce the term of any concession so as to bring the same within the limits aforesaid.

19. Every instrument by which the rights granted by any concession in respect of which the Concessions Court has issued a certificate of validity, or any part of such rights, shall be transferred, assigned, or surrendered, shall be registered under the Land Registry Ordinance, 1895, and any Ordinance amending the same, and shall be subject to a stamp duty in addition to any other duty payable by law in respect thereof of *1*l.** in respect of every square mile or portion of a square mile of the area in respect of which any rights are thereby transferred, assigned or surrendered.

20. (1) No concession shall be valid which purports to confer any rights in respect of any land over an area exceeding—

(a) in the case of land in respect of which rights of mining are conferred by such concession five square miles;

(b) in the case of land in respect of which rights to cut timber or to collect rubber or relating to other products of the soil are conferred twenty square miles.

(2) No person shall hold at one time concessions the aggregate area of which shall exceed, in the case of mining rights, 20 square miles, or in the case of ~~timber or rubber~~ rights relating to timber, rubber or other products of the soil 40 square miles.

(3) Where a concession purports to confer rights in respect of any area exceeding the limits aforesaid, the

Court may issue a certificate declaring the concession valid in respect of a portion of such area, which may be selected by the holder of the concession not exceeding such limits, and described in such certificate, and shall declare the concession valid in respect of the residue of the area comprised therein.

(4) The provisions of this section shall not apply to any concession dated before the 10th day of October, 1895.

20. Notice of the termination of the rights granted under any concession in respect of which a certificate of validity has been issued by the Concessions Court shall be given *in writing* by the person entitled to the possession of the land comprised in such concession to the Registrar of the Concessions Court, who shall report the same to the Governor.

21. No person shall, after the coming into force of this Ordinance, exercise any right under any concession which purports to grant any option of prospecting for minerals or precious stones without a licence from the Governor in the form set forth in the schedule hereto. Every such licence shall be subject to a stamp duty of *twenty fifteen* shillings in respect of every square mile, or portion of a square mile, of the area comprised in such concession. The Governor may grant such a licence to *any person claiming to be entitled to the benefit of any concession* in respect of land comprised in any concession notwithstanding that such concession has not been adjudicated upon by the Concessions Court, but if such concession shall be declared invalid by the Concessions Court such licence shall thereupon become void.

22. Any person prospecting for minerals or precious stones without a licence, and any person prospecting or mining without first having obtained a concession granting him the right so to do from the chief having power to grant such right, shall be liable to a penalty not exceeding 50*l.*, to be recovered in the Court of the District Commissioner, but this provision shall not extend to prevent natives subject to any chief from mining according to native custom upon land in any district over which such chief possesses jurisdiction.

23. The duties and charges by this Ordinance made payable shall be under the direction and management of the Colonial Treasurer, who is hereby empowered to employ all such officers or other persons, and to do all such acts and things as may be necessary or expedient for collecting, receiving, and accounting for such duties and charges.

24. Every holder of a concession shall as from the date of the coming into force of this Ordinance be charged with the payment to Her Majesty of the following duty, namely, one shilling for every twenty shillings of the annual amount of all profits made by such holder from or in respect of the exercise of the rights conferred by such concession.

25. Every such holder of a concession shall, on or before the first day of June ~~and the first day of~~ **December** in each year, prepare and deliver to the Colonial Treasurer, or his agent or officer appointed for the purpose, a true and correct statement of the profits made as aforesaid during the ~~six~~ **twelve** months ending on the 31st December ~~and 30th June respectively~~ preceding. Such statement shall be delivered before any appropriation or distribution is made or any dividend is declared payable in respect of any such profits.

26. In estimating the said profits no sum shall be set aside or deducted on account of any capital employed in the improvement of any premises occupied for the purpose of exercising the rights granted by any concession; or on account of any loss not connected with the trade or business carried on in the exercise of such rights; or for any sums employed, or intended to be employed, as capital in such trade or business; or on account of any capital withdrawn therefrom; or on account of any interest which might have been made on such sums if laid out at interest; or any debts except bad debts proved to be such to the satisfaction of the Colonial Treasurer; or for any sum recoverable under

an insurance or contract of indemnity, or for any expenses whatever not exclusively laid out for the purposes of the industrial or trading concern as distinct from domestic or private purposes.

27. Any person acting as treasurer, receiver or attorney for the time being of any such holder of a concession, or any officer having the direction or management of any trade or business carried on in exercise of the rights conferred by such concession, shall be answerable for doing all such things as are required by this Ordinance to be done by such holder, in order to the assessing or computing the duties in respect of profits payable by such holder under the provisions of this Ordinance.

28. Any person who is required by this Ordinance to deliver any statement as aforesaid, and shall neglect to deliver the same as directed by this Ordinance, shall be liable to a fine not exceeding 50*l.*, and in addition to treble the amount of any duty payable under this Ordinance in respect of the profits required to be included in such statement.

29. The Colonial Treasurer, or any officer appointed by the Governor for the purpose, shall assess in each case the amount of duty with which every holder of a concession shall be charged in respect of profits as in this Ordinance provided, and such assessment shall, subject to appeal as hereinafter provided, be final and conclusive.

30. It shall be lawful for the Colonial Treasurer or any officer appointed by the Governor for the purpose to require any person answerable under this Ordinance for delivering a statement of profits, to appear and verify the same; and to summon and examine in like manner any other person whom he shall think able to give information respecting any such statement of profits, and to examine every such person on oath, which oath the Colonial Treasurer or any such officer is hereby empowered to administer.

Any person, who, after being so summoned, shall fail, without lawful excuse, to attend and be examined, or to answer any questions put to him relating to such statement of profits, shall be liable to a penalty not exceeding 20*l.*, to be recoverable in the Supreme Court; and any person so summoned and attending, who, after being duly sworn to tell the truth, shall *knowingly* ~~wilfully~~ give false evidence, shall be guilty of perjury.

31. Where any person makes default in delivering a statement of profits as required by this Ordinance, or if the Colonial Treasurer or the officer appointed for the purpose of assessing the duty on such profits shall not be satisfied with such statement, the said Colonial Treasurer or officer shall make an assessment of such duty in such sum as according to the best of his judgment ought to be charged by virtue of this Ordinance, and such assessment shall, subject to an appeal as hereinafter provided, be final and conclusive.

32. If any person shall think himself aggrieved by any assessment under this Ordinance it shall be lawful for him to appeal to the Concessions Court, and the decision of the Concessions Court shall in respect to all matters relating to such assessment, be final and conclusive.

33. No person entitled or claiming to be entitled to the benefit of any concession, or to any right to prospect for minerals shall in the exercise of the powers conferred by such concession or of any such right, disturb or interfere with any railway, public road or pathway, or with any public building, burial ground, or land appropriated by law to any public purpose, and any person guilty of any such disturbance or interference shall be liable to a penalty not exceeding 100*l.*, to be recovered in the Supreme Court, and in addition may be ordered by the Court to pay the cost of making good any damage so caused by him.

34. Any rent or other periodical sum payable under any certified concession to any native shall be paid in the prescribed manner by the holder of such concession to the Treasurer of the Colony, and by the Treasurer to such native, and such payment to the Treasurer shall be a complete discharge to the person making the same.

36. 35. If any chief or other person shall declare or represent any land affected by any concession in respect of which a certificate of validity has been issued by the Concessions Court, or as to which proceedings are pending before such Court, to be fetich land, he shall be guilty of an offence and shall be liable to a penalty not exceeding 50*l.* for every such offence.

37. 36. Every person entitled to the benefit of any concession not ordinarily resident in the Colony shall appoint an attorney to represent him in all matters relating to such concession, and notice of every such appointment and of any change of such appointment, with a copy of the document of appointment, shall be given to the Colonial Secretary.

38. 37. No Government Officer shall acquire, or hold, any right or interest under any concession, and any concession purporting to confer any such right or interest to any such officer shall be void.

39. 38. No byelaws made in exercise of power conferred on native chiefs by the Gold Coast Native Jurisdiction Ordinance, 1883, for regulating mines and mining for gold and other minerals shall apply to interfere with any rights conferred by any concession in respect of which a certificate of validity is issued by the Concessions Court.

40. 39. The Governor and all persons authorised by him may notwithstanding the issue of any certificate of validity by the Concessions Court at any time—

(a) Take possession of any part of any land in respect of which such certificate has been granted which in his opinion may be required for the purposes of any works or objects of public utility or convenience, without making any compensation therefor, except such as he may deem reasonable in respect of disturbance of, or interference with, the works or improvements erected or made by any holder of such certificate.

(b) Use for any purposes any roads made on any such land.

(c) Enter upon and inspect any such land for the purpose of ascertaining the condition thereof or for any other purpose which the Governor may think reasonable.

41. 40. The Governor in Council may from time to time by notification published in the Gazette—

(a) Exclude from the operation of this Ordinance any portion of the Colony, and—

(b) Cancel or alter any such notification.

42. 41. The Governor in Council shall have power to make rules not inconsistent with the provisions of this Ordinance—

(a) With respect to the keeping of accounts and other records for the purpose of showing the amount and value of the minerals, precious stones, timber, and rubber, or other products

of the soil obtained from any land the subject of any concession, and for prescribing the form of such accounts and records, and the persons by whom such accounts and records are to be kept, and for the transmission of such accounts and records to the Governor or any officer nominated by him.

(b) With respect to the time and manner in which any fees, duties, royalties, rents or other payments made under the provisions of this Ordinance are to be assessed, received, or paid.

(c) Generally for the more effectual carrying out of the provisions of this Ordinance.

By any rules made under the provisions of this Section a fine may be imposed for the breach of any such rule which shall not exceed 25*l.* for any one offence, or in the case of a continuing offence 2*l.* for every day during which the offence is continued.

42. The provisions of this Ordinance shall not apply to the rights which were the subject of an agreement between Sir W. E. Maxwell and the Ashanti Goldfields Corporation, Limited, and other parties dated the 3rd day of June, 1897; nor, with the exception of the provisions relating to the exercise of the jurisdiction of the Concessions Court to enquire into and adjudicate upon the validity of concessions in other respects than that of area, to the rights which were the subject of an agreement between Mr. F. M. Hodgson and the Castle Gold Exploration Syndicate, dated the

~~43. No grant by a native of any right, interest, or property in, or over, land, with respect to minerals, precious stones, timber, or rubber, or of any option of acquiring any such right, interest, or property, or of prospecting for minerals or precious stones, shall be valid unless it shall have been made in writing, signed by the grantor.~~

SCHEDULE.

See Clause 21.

Permission is hereby granted to A. B. to prospect for (here insert "minerals" or "precious stones" as the case may be) on land comprised within the following limits. (Here set out limits.)

The day of 19 C. D., Governor.

STAMP.

No. (4).

A NOTE ON THE HISTORY OF THE BRITISH COURTS ON THE GOLD COAST, WITH A BRIEF ACCOUNT OF THE CHANGES IN THE CONSTITUTION OF THE COLONY.

By Sir WILLIAM BRANDFORD GRIFFITH, Chief Justice of the Gold Coast.

Everyone connected with the Gold Coast is aware that President Maclean had much to do with the extension of British jurisdiction over the native tribes of the Gold Coast, but there are very few who have a definite idea as to how that jurisdiction arose and how the earlier informal courts were gradually transformed into the present Supreme Court. Yet a clear knowledge of the history of the jurisdiction of the courts of the Colony is indispensable for the right understanding and solution of occasional present-day problems, both legal and executive, and it is accordingly proposed to give some account of how our jurisdiction arose and how it has come to its present stage of development.

Closely interwoven with the history of the jurisdiction are the various constitutional changes through which the Colony has passed. But not only are these changes a sealed book even to most lawyers, but it is far from easy to obtain information wherewith to trace

them. I propose, therefore, whilst tracing the history of the courts, to touch briefly on these various constitutional changes.

Although the English have had a footing on the Gold Coast for near two and a half centuries, until less than a century ago that was all they possessed. Elsewhere than in West Africa a trading fort quickly led to interference with the people beyond, and that again led to cession or conquest of the whole country. Here, whether it was the deadly climate alone or the climate combined with the slave trade, there was no such expansion. The traders lived inside or just under their forts, built originally as much for holding slaves as for protection; they bartered goods for slaves and gold; they considered themselves, and were regarded by the natives, as mere sojourners; and they made no attempt to extend their influence beyond gunshot distance from the fort walls. The forts themselves

were recognised as being on land belonging to the natives, and before a fort could be built a "book" had to be given and the possessor of the "book" was entitled to an annual ground rent. The king of Ashanti not inappreciated the situation to Mr. Dupuis, the British Consul to Kumasi in 1820: "White men," said he, "come to my country to trade; what have they to do with my slaves? They build castles and houses to live in; they stay as long as they like, then take the gold and go home again. . . . The forts are mine because I hold the books.† But I do not say that they belong to me to keep. I say that they stand in my country to trade with my people."

This condition of things existed up to 1807, the year when the British slave trade was abolished. The forts were then, and had been from 1750, in the hands of "the Company of African Merchants trading in Africa." They were governed by a body of directors of this company, by whom a Governor and other officers were appointed. Whether the Governor and officers traded as distinct from the Company I am unable to say, but I gather that men entered the service of the Company as writers, and gradually, by seniority, arrived at the position of Governor. An annual grant for the upkeep of the forts was made by Parliament, averaging, from 1750 to 1807, 13,500*l.* There were no judicial officers in the forts, and they do not appear to have been needed. Cases between Europeans were decided by the Governor upon his sole authority as Governor. Cases between Europeans and the natives in the town under the fort guns were similarly dealt with, but they were rare, as little credit was given. In the immediate vicinity of the forts the Governor would exercise his influence in restraint of any great cruelty, such as funeral sacrifices or putting persons to death on account of witchcraft. Inland there was no jurisdiction, and in view of the fact that slaves were the staple product of the country, and that the Gold Coast slave was the most valuable in the market, it is probable that any influence would not have been exercised in the direction of peace. We find, however, that after 1807 the influence of the forts was directed against the panyarring‡ of natives round the forts, and now that the slave trade was abolished and merchants had to depend on legitimate trade we may assume that their endeavour would have been to promote peace amongst the tribes. But up to 1822, when the forts were taken over by the Government, this very limited jurisdiction under the fort walls was all that we exercised outside the forts themselves.

The first change in the relations between the British and the surrounding tribes was brought about by the incursions of the Ashantis. It happened in this way. From 1807, when the Anamabu fort was attacked for harbouring Fanti refugees, until 1817 the Ashantis continually harried the tribes on this side of the Prah. This was ruinous to the merchants now that the slave trade was abolished, and in the latter year they sent Mr. Bowditch to Kumasi, where a treaty was made, declaring amongst other things that peace should exist between "the kings of Ashanti and Dwehen and all natives of Africa residing under the protection of the Company's settlements on the Gold Coast." Two years later, in 1819, the Ashanti King demanded the intervention of the Company's Governor to obtain reparation from Cape Coast and Kommenda who had insulted him. The Governor refused to intervene. About the same time a treaty made by Mr. Dupuis at Kumasi was repudiated; the result was that the relations between the Company and the Ashantis became strained.

Meanwhile the yearly subsidy granted by Parliament had reached 30,000*l.*, and the home Government decided to take over the forts. Accordingly, in 1821 an Act was passed (1 & 2 Geo. IV. c. 28), whereby the Corporation of the merchants trading to Africa was abolished; all forts, castles, buildings, possessions, estates, and rights of the Corporation were transferred

to the Crown; and by section 3, His Majesty was authorised to annex the forts and possessions to the Colony of Sierra Leone when they should become subject to Sierra Leone laws. This authority was exercised by letters patent, dated 17th October 1821, and on the 29th March 1822, at Cape Coast Castle, Sir Charles McCarthy, Governor of Sierra Leone, proclaimed the change of Government.

The Governor at once took a new line. Instead of confining himself to the forts he pursued an outside policy and endeavoured to bind together the Fantis against the Ashantis, who still continued their hostile raids across the Prah. When at length the Ashantis murdered one of his own sergeants he determined to take the matter into his own hands. He incited the Denkeras, Wassaws, and other Fanti tribes whom the Ashantis regarded as their slaves to join together against the common foe, and, supporting them with Government troops, in person led the allies to battle. On the 21st January 1824 the Governor was defeated and slain at Essamankoo, and the allied natives were scattered in utter rout.

Such was the unpromising beginning of our interference in native affairs. Had the matter been left in the hands of the home Government it would have here ended. But Captain Purdon, the commandant on the Coast, in contravention of the wishes of the Secretary of State, continued the policy of Sir Charles McCarthy. He again organised the tribes for resistance, supplied them with arms and ammunition and supported them with the forces of the Crown, with the result that he inflicted a signal defeat on the Ashantis at Dodowa on the 7th August 1826.

The Governor who had followed Sir Charles McCarthy (General Turner) did nothing; he does not appear to have quitted Sierra Leone, where he died. Sir Neil Campbell, his successor, who arrived at Cape Coast two months after the battle of Dodowa, brought out instructions to come to an understanding with the Ashantis if possible, but if that was not practicable to confine himself to maintaining the possession of the forts without the assistance of the natives. The elated conceit and turbulence of the allied tribes prevented the Governor making overtures to Ashanti, whilst their want of self-control, their absence of discipline, and their non-amenability to any sort of system convinced him that Ashanti would soon recover its leading position. In these circumstances he advised that the Government should replace the forts on a mercantile footing similar to the Danish and Dutch forts, where the Governor and all the officers were engaged in trade. To this the Government agreed, and it was arranged that the forts should be transferred to the merchants.

By this time our relations with the natives were very different from what they were in 1822, when Sir Charles McCarthy arrived at Cape Coast. By virtue of his commission as Governor he had appointed magistrates from amongst the local merchants and officers and had established petty debt courts. Before the magistrates, in criminal cases arising round about the forts, natives were brought by the fort police. To the petty debt court natives eagerly brought their own cases. First came natives from the towns adjoining the forts. The reputation of the courts for justice spread and cases were brought from a greater distance. The decisions were universally approved and were generally accepted. Sir Charles McCarthy and Captain Purdon had placed over the tribes south of the Prah the protecting power of the British. To the native mind leadership and the administration of justice are closely allied; it is to their chief and his council they bring their disputes for settlement, and when they found the protecting power with ready-made courts dispensing absolutely unbiassed justice and with uniformed police to carry out decisions, they gladly availed themselves of the privilege of using these courts. In this way was begun that external jurisdiction which was subsequently brought to such perfection by President Maclean.

Much negotiation took place between the Secretary of State and the merchants over the transfer of the forts, and towards the end of 1828 the forts were

* i.e., the coast tribes.

† Probably these "books" would now be found stuffed in the hollow of the historical golden stool of Ashanti.

‡ Seizing a debtor or the relative of a debtor and holding him as a slave until the debt was paid.

handed over to the merchants on the following terms:—

- (1) That the forts of Cape Coast Castle and Accra* should continue to be dependencies of the Government of Sierra Leone.
- (2) That British law should continue in those dependencies.
- (3) That the affairs of the forts should be chiefly regulated by a committee of African merchants in London, who should be chosen by the Government as often as occasion might require.
- (4) That five of the merchants resident at Cape Coast should be empowered to form themselves into a Council of Government, according to regulations made by the London Committee, and that the merchants composing this council were to be appointed justices of the peace and to form a court for the trial of all offences not amounting to felony or misdemeanor, it being understood that crimes and misdemeanors committed within the limits of the forts should be cognizable and punished by the court at Sierra Leone.
- (5) That the committee should have an annual grant of 4,000*l.* for the management of affairs and repair of the forts.

But though the forts at Cape Coast and Accra remained dependencies of Sierra Leone, it was distinctly understood that the Government of Sierra Leone was not to interfere. At the same time it was laid down distinctly that it was not the intention of His Majesty's Government that the magistrates should exercise any authority or jurisdiction over the persons or districts under the influence or protection of the forts, but that they should only exercise authority and jurisdiction in the forts and harbours or roadsteads thereto adjoining, and over the persons who resided there. Again, when the merchants pleaded for more extended jurisdiction, the Secretary of State stated that he could not consent to grant to the magistrates of Cape Coast and Accra any jurisdiction whatever out of the walls and roadsteads of those forts, although it would be, of course, competent for them to exercise the influence of the authority which was intrusted to them in the adjacent districts.

Of the permission to use their influence the magistrates took a liberal view. When a native brought a case before them for adjudication they appear to have proceeded precisely as before; they sent a policeman with a summons to the defendant, heard the case, gave judgment, and, when necessary, enforced it.

In January 1830, Mr. George Maclean, who, as lieutenant in the Royal African Corps under Sir Neil Campbell, had gained an acquaintance with the Coast, was, at the unanimous request of the local merchants, appointed President of the Council of Government. He took the same liberal views as his immediate predecessors. It would have been difficult for him in his position to have done otherwise. There is ample contemporary testimony to show the condition of the native courts; the fees were enormous; bribery was rampant, and judgment went to the highest bidder; costs and damages fell so heavily on unsuccessful parties that whole families were pawned in payment; panyarring was the recognised mode of enforcing judgment, and this led not only to many persons being sold into slavery, but to tribal dissension.

Writing in November 1836 to the Committee in London with respect to the regulations governing the forts, President Maclean, after giving a short review of the history of the Gold Coast, states:—

“Under this Government, surrounded as it has been by difficulties both internal and external, with means the most limited, and with powers ill-defined, or rather undefined, the British Gold Coast Settlements have nevertheless attained to a degree of commercial and agricultural prosperity before unexampled in their

history; while peace, order, and perfect security of person and property have been established throughout the country.”

“The great means whereby the local Government has been enabled during the last seven years to establish and maintain peace and order throughout so extensive a country, with such feeble and apparently inadequate resources at its command, have been the strict and impartial administration of justice. It is this which has had the happiest effects in maintaining peace, encouraging agriculture and commerce, and promoting the civilisation of the natives. Let but the local Government deny or cease to administer even-handed justice to the population for a single day, and the whole country would again become a scene of warfare, rapine, and oppression. Yet, according to the rules and regulations, the powers of the local authorities do not extend a yard beyond the walls of the several forts; that is, the magistrates are empowered to exercise their functions on the only spots where their exercise is never required. The forts are only occupied by those in the employment of the Government, who are governed by the regulations usual in all garrisons. It will be admitted that the chief object (though by no means the only one) of maintaining the forts and a local Government is to afford protection and encouragement to commerce. But no trade is carried on within the walls of the forts; the merchants or traders reside or have factories in the towns, and at various stations throughout a considerable extent of country. According to the rules and regulations, therefore, they are beyond the pale of the protection afforded by the British flag, and the authorities embarrassed in performing the chief duty for which they were constituted. But suppose even the authority of the Government to extend, as is in the case of isolated forts in foreign countries the general rule, as far as the guns of the forts can reach, still would its power, thus limited, be utterly insufficient for the protection of trade. At present traders resort to the several settlements from all parts of the country, in the full confidence that the British Government possess both the power and the inclination to protect their persons and property while journeying among the intervening tribes, while the latter well know that certain punishment will follow any attempt to molest them; were the case otherwise, constituted as that country is, all trade would cease. For example, the British resident merchants derive their chief trade (which is very extensive and lucrative) from Ashantee, the factories of which are about 100 miles distant from any British settlement, the intervening districts being inhabited by several tribes, all of whom are the hereditary enemies of the Ashantees. With what prospect of safety could an Ashantee trader traverse such an extent of country, inhabited by people withheld by no moral restraint, and personally hostile to him, if they were left to the guidance of their own lawless passions? Moreover, the British Government has long been bound by the most positive and sacred engagements to protect these tribes (who have been taught to consider, and do consider, themselves as British subjects) not only from external aggression, but from the miseries of internal quarrels; and to recede from those engagements now would be to plunge the entire country into the most dreadful state of savage anarchy.

“The immediate effect of such a step would be to throw the population back into the revolting state of society that existed before the abolition of the slave trade; and thus would the labour of many years be thrown away; perpetual wars, rapine, murder, and oppression would take the place of that peace, good order, and security of person and property, and content which at present prevails; and it would be frightful to contemplate the scene of human misery which would necessarily ensue. Legitimate commerce would of course be at an end, and the traffic in slaves would again become the chief pursuit of the native traders. For these reasons the jurisdiction of the forts over the surrounding districts, as it is at present virtually exercised, ought to be confirmed by authority. But the extent of the judicial power conferred upon the local authorities by the rules and regulations is

* There were also forts in occupation at Dixcove and Ananabu. The fort at Whyda had ceased to be occupied at this time.

equally defective in another point of view. The very limited judicial powers of a mere justice of the peace are but ill-calculated for the preservation of order and the repression of crime in an extensive and semi-barbarous country. Yet is there not in that country any court possessing powers more extensive than those possessed by a court of petty sessions in England. How, then, it may be asked, has the graver class of crimes been punished, or cases involving large amounts of property been decided heretofore? I answer that the absolute necessity of the case has hitherto compelled both myself and my colleagues to exercise judicial powers in all descriptions of cases, and that the same necessity has justified us to ourselves and others in so doing. But this manner of administering justice is neither satisfactory in itself nor safe to the parties acting as judges.

"To illustrate this I will suppose (a very common case) that one merchant owes another a large sum of money, say 1,000*l.* The debtor is unwilling and refuses to pay this sum, and the creditor applies to the only authorities, the only court within his reach. How, in such a case, are these authorities to act? If they declare that they have no jurisdiction, and decline to act, the natural and necessary consequence is that the injured party takes the law into his own hands, the debtor resists, and the matter becomes a mere question of physical strength betwixt the parties and their adherents.

"On the other hand, should the authorities act and compel the debtor to fulfil his engagements, either by distress or by personal imprisonment, it is plain that they are acting *ultra vires*, and expose themselves to ruinous legal proceedings in the courts at home. Again; suppose a British subject should commit murder or other felony, either within the fort walls or elsewhere, how, in that case, are the authorities to act? Justice and the interests of society equally demand that the criminal should receive the punishment due to his crime. But in whom is vested the power legally to award and execute that punishment?

"It may be said that Cape Coast Colony is in dependency upon Sierra Leone, and that persons guilty of grave offences ought to be sent there (where there is a competent court^(?)) for trial. But, practically speaking, this is impossible. We have no communication, or the means of communication, with Sierra Leone; nor have we funds wherewith to pay the expenses of conveying prisoners and witnesses to Sierra Leone could be defrayed. Besides, witnesses neither would nor could absent themselves from their homes and business for many months whenever the ends of justice might require their presence at Sierra Leone, nor could such a sacrifice be required at their hands.

"I have thus, I trust, shown the necessity of providing for the due administration of justice, either by authorising the existing magistrates to act judicially in all cases, or by the establishment of a separate and competent court."

But nothing was done to put things on a more regular basis, and the magistrates continued to exercise their unauthorised jurisdiction. Although devoid of legal foundation the procedure of the magistrates was eminently suited to the circumstances of the case. Offences were punished by fine, whipping, or imprisonment. Payment of debts was enforced by imprisonment in the fort, sometimes for years, until the debt was paid; but this was more humane than the native method, and when in 1841 it was rumoured that Dr. Madden, the Commissioner sent from England, was about to release all prisoners, it is stated that a number of creditors appeared before the castle gates of Cape Coast, armed with shackles and ready to seize their respective debtors on their release; and, as President Maclean fully explains, debtors who were unable to pay were rarely detained for any length of time. The instruments of justice employed were the soldiers of the local corps and messengers bearing the President's staff. Did a native lodge a complaint against another, it might be, dwelling 30 miles in the interior, a message from the President to the chief of the tribe to which the wrong-doer belonged ensured prompt satisfaction for the injury or the despatch of the accused down to the coast for trial before a magistrate.

At the outstation forts of Accra, Dixcove, Anamabu, Tantom, &c., the same procedure was followed. The magistrate, a merchant who was also commandant, disposed of petty cases, civil and criminal, but reserved all graver cases for the adjudication of the President and council. These more important cases were not determined by the President and council alone, but in concert with the native elders, and in such trials the President and council appear to have sat rather as assessors than principals, guiding, indeed, the judgment of the court, but leaving the decree to be pronounced by the native side of the tribunal. And where a capital sentence was the result of the trial the omission of torture or other cruelty was secured by the attendance of a few soldiers at the execution of the criminal.

This judicial system was so immeasurably superior to the courts provided by their chiefs that the natives practically deserted those courts near the forts whilst natives from a distance resorted to the magistrates in any case in which they doubted their home court. Long after President Maclean's death, Aggrey, the deposed Omanhin of Cape Coast, complained how, "in the days of Governor Captain Maclean, the Governor "in a very peculiar, imperceptible, and unheard of manner wrested from the hands of our kings, chiefs, and headmen their power to govern their own "subjects." But Aggrey was wrong. President Maclean did not wrest the power from the native chiefs. The natives, dissatisfied with their chiefs' courts, of their own accord transferred their judicial allegiance to the British courts, with the result that the majority of native courts fell into practical disuse except in respect of matters of too little importance to be dealt with in the British courts. And on the exercise of judicial powers followed the enforcement of judicial decrees and all that that implies.

In 1839 reports reached England that slave-trading vessels were supplied with goods by British merchants at Cape Coast, and, after an investigation, Dr. Madden was sent out to institute inquiry into various matters in West Africa. Dr. Madden reported adversely on many points, and specially called attention to the anomalous jurisdiction of the magistrates. In 1843 a select committee was appointed to inquire into the state of the British possessions in West Africa, and more especially with "reference to their present relations with the neighbouring native tribes." The Committee, whilst fully admitting the merits of the administration of Captain Maclean,* found that "the "judicial authority at present existing in the forts is "not altogether in a satisfactory condition; it resides "in the Governor and council, who act as magistrates, "and whose instructions limit them to the administration of British law, and that, as far as the natives are "concerned strictly and exclusively within the forts "themselves; but, practically, and necessarily, and "usefully, these directions having been disregarded, "a kind of irregular jurisdiction has grown up, "extending itself far beyond the limits of the forts "by the voluntary submission of the natives themselves, whether chiefs or traders, to British equity; "and its decisions, owing to the moral influence, partly "of our acknowledged power, and partly of the respect "which has been inspired by the fairness with which "it has been exercised by Captain Maclean and the "magistrates at the forts, have generally, we might "almost say, uniformly, been carried into effect without "the interposition of force."

"Still, however, it is desirable that this jurisdiction "should be better defined and understood, and that a "judicial officer should be placed at the disposal of the "Governor, to assist or supersede, partially or entirely, "his judicial functions, and those now exercised by the "council and the several commandants in their magisterial capacity; but we would recommend that while "he follows in his decisions the general principles, he be "not restricted to the technicalities of British law, "and that altogether he should be allowed a large "discretion.

"It is to be remembered that our compulsory "authority is strictly limited, both by our title and by

* He was given the local rank of Captain in 1838.

"the instructions of the Colonial Office to the British Forts, within which no one but the Governor, his suite, and the garrison reside, and that the magistrates are strictly prohibited from exercising jurisdiction even over the natives and districts immediately under the influence and protection of the forts. All jurisdiction over the natives beyond that point must, therefore, be considered as optional, and should be made the subject of distinct agreement, as to its nature and limits with the natives and chiefs, and it should be accommodated to the condition of the several tribes, and to the completeness of the control over them, which by vicinage or otherwise we are enabled to exercise. Their relation to the English Crown should be, not the allegiance of subjects, to which we have no right to pretend, and which it would entail an inconvenient responsibility to possess, but the deference of weaker powers to a stronger and more enlightened neighbour, whose protection and counsel they seek, and to whom they are bound by certain definite obligations."

The first result of the report of the Commission was the passing of 6 & 7 Vict. c. 13, (now repealed by the British Settlements Act, 50 & 51 Vict. c. 54), whereby Her Majesty was empowered to legislate by Order in Council for her settlements on the West Coast of Africa, and also to delegate her authority by commission under her signet and sign manual to resident officers not being less than three.

In the same year (1843) the first Foreign Jurisdiction Act (6 & 7 Vict. c. 94.) was passed, declaring (section 1) that Her Majesty may hold, exercise, and enjoy any power or jurisdiction which she may have or hereafter have within any country *out* of her dominions in the same way as if she had acquired such power and jurisdiction by cession or conquest of territory. By section 2 it was provided that any act done in pursuance of Her Majesty's power or jurisdiction in any country *out* of Her Majesty's dominions shall be deemed as valid as if done in accordance with the local law then in force in such country. Section 4 did not affect the Gold Coast, as at first sight might seem to be the case, for it only referred to places where there was a Supreme Court established, and there was none on the Gold Coast, the Supreme Court for the Gold Coast being at Sierra Leone. Section 5 was meant specially to apply to the Gold Coast. It provided that offenders lawfully convicted before a magistrate, &c. of Her Majesty within an adjacent country might, by warrant of such magistrate, be sent to any British Colony which Her Majesty might appoint so that the sentence might be carried out within that Colony. This section appears to have been, so far as the Gold Coast was concerned, founded on a mistake. The idea of the draftsman seems to have been that native offenders were tried outside the forts. But this was not so; they were tried inside the forts, whither, if necessary, the native elders came. It is possible that instructions were given to hear native cases without the forts, but if so that was not done.

Meanwhile the authorities on the Coast did what they could, in accordance with the recommendation of the Select Committee, to make their jurisdiction "the subject of distinct agreement," and on the 6th March 1844 some Fanti chiefs entered into an agreement with Lieutenant-Governor Hill. After acknowledging that power and jurisdiction had been exercised for and on behalf of Her Majesty within divers countries and places adjacent to Her Majesty's forts and settlements on the Gold Coast, the signatory chiefs declare that "murders, robberies, and other crimes and offences will be tried and inquired of before the Queen's judicial officers and the chiefs of the district, moulding the customs of the country to the general principles of the British law." This document, called "the bond," was of small intrinsic value. It was only made to satisfy the scruples of the Home Government, for, whether by virtue of our protection, or by consent or by usage or by usurpation, we had undoubtedly acquired the right of jurisdiction, civil and criminal; and, furthermore, the chiefs who signed the document only represented a portion of the tribes over whom we exercised jurisdiction. However, it was a basis on which to found jurisdiction, and on the 8rd September 1844, an Order in Council was passed

reciting the two Acts above mentioned, and ordering that "all judges, magistrates, assessors, and other officers duly appointed to exercise" any power possessed by Her Majesty "shall in the exercise thereof observe, until further order, such of the local customs as may be compatible with the law of England, and in default of such customs shall proceed in all things, as nearly as may be, according to the said law of England." It was further provided that Cape Coast Castle should be the place where persons might be sent "in order that sentences passed within such (adjacent) countries and places may be carried into effect" (section 5 of 6 & 7 Vict. c. 94.).

In the covering despatch of 22nd November 1844* the Secretary of State makes it clear that the last-mentioned power is what is really granted under the Order in Council. By the same despatch additional instructions were issued to the Governor of Sierra Leone authorising the Governor of Sierra Leone, the Lieutenant-Governor, George Maclean, and the two senior justices on the Gold Coast (1) to exercise "jointly or severally" Her Majesty's power and jurisdiction within the countries and places adjacent to the forts and settlements on the Gold Coast "as assessors or assessor, assistants or assistant to the native sovereigns and chiefs," and, *inter alia*, (2) by warrant to cause any person charged with the commission of any crime within the adjacent territories to be sent to Cape Coast Castle in order that the sentence passed within such adjacent territories might be carried into effect at Cape Coast Castle.

Under this authority Captain Maclean, acting severally, became judicial assessor to the native chiefs and in that capacity exercised all jurisdiction possessed by Her Majesty in the territories *outside* the forts. It is to be carefully noted that this external jurisdiction was given distinct from the jurisdiction *inside* the forts, where Captain Maclean and the other magistrates had the ordinary powers of magistrates. At the out-forts the commandants acted as assistants to the judicial assessor, and continued precisely as before, dealing with all cases brought before them except those of considerable importance, which they transferred to Cape Coast, or the judicial assessor would sometimes deal with them at the out-fort.

In May 1847 Captain Maclean died, and on the 1st October 1847 Brodie Cruickshank was appointed by the Governor of Sierra Leone as "judicial assessor" or assistant to the native sovereigns and chiefs "within" the "places out of but adjacent to our forts and settlements on the Gold Coast." On the 17th December of the same year J. C. Fitzpatrick was appointed under warrant from Her Majesty to the same office.

The duties of judicial assessor were never defined, but when the appointment was made the Secretary of State wrote to the Lieutenant-Governor: "You will understand that the system upon which Mr. Maclean has proceeded in the exercise of judicial powers over the natives is to be taken as the guide for the exercise of the powers of assessor for the future."

"It consists, in fact, in combining with an impartial investigation of the cases brought before him a mitigation of the severity of the sentences which in such cases would be awarded by native judges in the event of conviction. I need not, therefore, instruct you to caution the assessor of the necessity for a lenient exercise of the discretion entrusted to him; but in the event of his deeming capital punishment in any case inevitable, you will instruct him that the execution must be carried into effect by the native authorities, and take place in the country in which the offender is tried."†

Captain Maclean appears not to have dealt with minor matters arising outside the forts, but to have left these entirely to the magistrates. He sat as an appellate judge not only from the magistrates' decisions, but also from the judgments of native courts, and he also sat with the chiefs in important cases. This practice was continued by his successors.

* This despatch is given at page 265 of Mr. Sarbahi's "Fanti Customary Laws," 1st edition.

† See Sarbahi's "Fanti Customary Laws," edit. 1, p. 267.

Up to this time the forts had been dependencies of Sierra Leone. But, except when the Secretary of State directed the Governor of Sierra Leone to intervene for the sake of legality, there was practically no communication between the two places. It was accordingly decided that the connection should cease, and by charter under letters patent dated the 24th January 1850, the Gold Coast was severed from Sierra Leone and was constituted a separate colony. By this instrument a Legislative Council was created with power to make laws for the good government of persons within present or future forts and settlements, right being reserved to Her Majesty to legislate by Order in Council; power was given to appoint judges, justices of the peace, and other officers; and in default of there being a Lieutenant-Governor, the judicial assessor was to act in the Governor's absence. This charter does not seem to have been published until the following year, when instructions under the hand of Her Majesty were issued (1st April 1851) to Major Hill, the first Governor of the forts and settlements on the Gold Coast. These instructions were to "the Governor and Commander-in-Chief in and over our forts and settlements on the Gold Coast," and the Legislative Council is stated to be "for the forts and settlements," but several times the words "forts and settlements and their dependencies" are used whilst subsequent instructions are to "the Governor and Commander-in-Chief in and over our forts and settlements on the Gold Coast and their dependencies."

It was in the following year (April 1852) that the Poll Tax Ordinance was passed. This was not really an Ordinance. It was not made by the newly constituted Legislative Council, but by an assembly of native chiefs, and it is only noticed here as a step forward by the British authorities on the road to the complete government of the native tribes.

In 1853 an Ordinance was passed for the "establishment of a supreme court of civil and criminal jurisdiction within Her Majesty's forts and settlements on the Gold Coast." To this court was given "within the said forts and settlements" the jurisdiction of the Queen's Bench, Common Pleas, and Exchequer Courts at Westminster (s. 3); the court could only sit within the forts (s. 5); Mr. Fitzpatrick "now filling the office of judicial assessor or assistant" to the native sovereigns and chiefs of the countries "adjacent" to the forts was appointed chief justice, at a salary of 300*l.* a year in addition to his salary as judicial assessor (s. 9), and provision was made that appeals from the judicial assessor should be heard by the Governor and council (s. 10). By an oversight no provision was made for any person except Mr. Fitzpatrick being appointed chief justice, so that on his resignation the following year another Ordinance had to be passed making general provision for that office.

From this date there were two distinct jurisdictions. As judicial assessor appointed by the Crown, Mr. Fitzpatrick dealt with cases *outside* the forts; as chief justice appointed under Ordinance he dealt with cases *within* the forts. At first the two jurisdictions were kept distinct; in one court the chief justice sat alone, in the other the judicial assessor sat with native chiefs, or he sat alone on appeals from native courts of magistrates acting as his assistants; the chief justice administered English law, the judicial assessor was less hampered. As a matter of fact, the main difference was in the nature of the evidence received, the chief justice being bound by the rules of evidence whilst the assessor was bound by no rules. Gradually the two courts drifted into one, and in 1865 Mr. Hackett, chief justice and judicial assessor, tells us that he no longer sits in different courts, that natives have never sat with him, that it is impossible for any English judge sitting with a native chief to administer justice, and he practically says that the only difference between his office and the office of a judge now is that in addition to his ordinary judicial duties he sits as an appellate court from the decisions of native courts.

But to go back. It will be remembered that by 6 & 7 Vict. c. 94, Her Majesty was empowered to exercise any jurisdiction she might have in any country outside her dominions in the same way as if she had acquired such jurisdiction by cession or conquest, whilst by 6 & 7 Vict. c. 13 Her Majesty was empowered

to legislate by Order in Council for settlements on the coast of Africa. These powers were brought into exercise by an Order in Council dated 4th April 1856. By this Order in Council it was provided—

- (1) that all courts and magistrates authorised to act *within* the forts might exercise in the "Protected Territories" all power and jurisdiction in matters civil and criminal which Her Majesty might exercise without the co-operation of any native chief or authority, especially in bankruptcy and insolvency, in the same way as if such matters had arisen within the forts;
- (2) that in all other matters civil and criminal in the protected territories the assessor to the native chiefs should have all power and jurisdiction acquired by Her Majesty in such territories;
- (3) that the Governor might by Ordinance make regulations with respect to the exercise of the above-mentioned powers and jurisdiction, provided that equitable regard be paid to local customs; and
- (4) that certain articles with respect to the administration of estates should be in force in the forts and, as far as Her Majesty had jurisdiction, in the protected territories.

The effect of this Order in Council was to give to the Supreme Court, which had previously had jurisdiction only within the forts, jurisdiction *outside* the forts in every case in which Her Majesty had jurisdiction without the co-operation of the native chiefs. What that jurisdiction was it is difficult to say, but as the chief justice was also judicial assessor there would not have been any conflict.

Immediately after the making of this Order in Council an Ordinance was passed referring for the first time to the "Protected Territories," and making rules for the administration of estates outside as well as inside the forts. Two years later (1858) the Rules of Court Ordinance and the Bankruptcy Ordinance applying to the "Protected Territories," were passed by virtue of the above-quoted Order in Council, but the question of legislating generally for the protected territories was one which still greatly exercised the minds of the authorities.

In 1865 another Select Committee was appointed to consider the state of the British establishments on the Western Coast of Africa. The Committee found amongst other things that "the protectorate of tribes about our forts on the Gold Coast assumes an indefinite and unintelligible responsibility on our part, uncompensated by any adequate advantage to the tribes. It is even the opinion of the Colonial Secretary of that Government that it has enervated and disunited the protected chiefs, and that, so far from training the chiefs to a better conduct of their affairs, it only leads them to lean on the English.

"It rests on no documentary evidence or conditions; excites vague expectations among the chiefs, and practically engages the British Government in maintaining weak tribes against their former sovereigns and in keeping peace among them all, or even in compensating for losses mutually occasioned by invasion, and generally in administering a territory which we cannot even tax as subject."

The Committee goes on to recommend that the four West African Settlements should be concentrated under a supreme government at Sierra Leone, and, with respect to the Gold Coast, suggests that "The Protectorate should only be retained while the chiefs may be as speedily as possible made to do without it. Nothing should be done to encourage them to lean on British help, or to trust to British administration of their affairs, whether military or judicial. The judicial assessor does not fulfil the first intention of his office, assisting the chiefs in administering justice, but supersedes their authority by decisions according to his own sole judgment. This office, instituted with the best intentions, seems, by the evidence of a commissioner from the native king of Cape Coast, to have led to the introduction of needless technicalities and expense, and the employment of attorneys when the natives had better speak for themselves. The chiefs

Should be rather left to exercise their own jurisdiction, with only an appeal when necessary to the English magistracy."

"... The judicial establishments should consist only of magistrates, important cases being reserved for the Chief Justice's circuit from Sierra Leone."

In accordance with the recommendations of the Select Committee a Commission dated 19th February 1866, under the Great Seal, was passed revoking the Gold Coast charter of 1850 and the amendments thereto, and placing the Gold Coast under Sierra Leone. The Commission defined Her Majesty's settlements on the Gold Coast as all places, settlements and territories which may at any time belong to Her Majesty in West Africa between the fifth degree of West longitude and the second degree of East longitude; it provided for the Gold Coast an Administrator and a Legislative Council; there was no Executive Council, that was reserved for Sierra Leone only; and in the absence of the Administrator the Collector of Customs administered the Government. There was no reference in the Commission to the protected territories.

Furthermore, following the recommendations of the Select Committee, the Supreme Court established in 1853 was by Ordinance No. 7 of 1866 abolished, and the Court of Civil and Criminal Justice of the settlement on the Gold Coast "to consist of and to be holden by and before" a chief magistrate was constituted. On this court was only bestowed jurisdiction with respect to matters civil and criminal arising within the settlement, but by the effect of the Order in Council of 1866, which had remained unrevoked, magistrates possessed of jurisdiction inside the forts were empowered to exercise Her Majesty's jurisdiction in matters outside the forts, and use was made of these powers both by the chief magistrate and by the magistrates acting as commandants at the out-forts.

The powers of the judicial assessor being independent of the Supreme Court that officer continued to exercise his former jurisdiction. But there was a change in the procedure in the judicial assessor's court. The practice had gradually crept in for the judicial assessor to hear cases without the aid of the chiefs. The old practice was now reverted to, and the chiefs were summoned to sit with the judicial assessor; but the chiefs no longer tried the case with the aid of the assessor. It was they who became the real assessors, assisting the assessor who really tried the case. The chief magistrate was also judicial assessor, and as formerly the chief magistrate often heard with a jury cases which should have gone before the judicial assessor and chiefs.

Meanwhile a Smuggling Ordinance (6 of 1867) and a Spirit Licence Ordinance (7 of 1869) had been passed practically applying to the coast line. What the authority was for these ordinances it is difficult to say, but they were enforced without demur. It was at this juncture that Mr. Chalmers arrived in the settlement as chief magistrate and judicial assessor (1869). He quickly saw the inconsistencies in the Government position and brought the matter prominently to the notice of the home authorities. But the menacing attitude of Ashanti put on one side all technical legal questions. We had virtually taken the tribes under our protection, and when attacked by the Ashantis we were bound to protect them. The Ashanti war of 1873-4 followed, in which the power of Ashanti was broken. We were forced to abandon the restricted policy laid down in 1865. For the peace of the country it was necessary that there should be regular and definite government as well as protection, and as the tribes were incapable of governing themselves as a whole, the burden was thrown upon our shoulders. The conditions were much easier now than in 1865. We were no longer hampered by having the Dutch* as neighbours, and could therefore impose a tariff without being disturbed by open ports in our midst; we had definitely taken up our position as the protecting power, and had spent blood and treasure in protecting the country; we had been successful in war and the natives recognised to the full our overwhelming power. As there could be no drawing back now it was necessary to base the

administration of government on a solid and legal foundation.

The charter of 1866, so far as it applied to the Gold Coast and Lagos, was revoked, and a new charter dated 24th July 1874 was granted, erecting the Gold Coast and Lagos into a new Colony, to be styled the Gold Coast Colony; but there was not a complete amalgamation of the two settlements, the position of Lagos under a separate administrator appointed under Royal Warrant, but subordinate to the Governor of the Gold Coast Colony, being retained. By this charter the Colony only comprised, so far as the Gold Coast was concerned, all places, settlements and territories which might at any time belong to Her Majesty between the fifth degree of West longitude and the second degree of East longitude, i.e., the various forts along the coast which had originally belonged to us and any forts and territories we had acquired from the Danes and Dutch. Anything outside that was protected territory, and not Colony. As it was necessary to legislate for the protected territory, an Order in Council dated 6th August 1874, was made under 6 & 7 Vict. c. 94., conferring on the Legislative Council constituted by the charter the power to make ordinances for the protected territories to the extent of Her Majesty's jurisdiction in such territories. How far such jurisdiction extended was not without doubt, as may be seen by Lord Carnarvon's despatch* of 20th August 1874. But the proclamation suggested in that despatch, defining those powers, was not adopted, and the legislative council, unhampered by any restriction, set about exercising its powers as freely as if Her Majesty's powers and jurisdiction in the Colony and protected territories were co-extensive.

At this time it will be well to pause for a moment and survey the position of the local judicial tribunals. There was the court of civil and criminal justice, constituted by local ordinance and assisted by Imperial Order in Council, presided over by the chief magistrate. There was the court of the judicial assessor, whose powers were defined by the same Order in Council. There were the magistrates' courts, presided over by the commandants of the out-forts; as magistrates, their powers were small, but they really acted as assistants to the judicial assessors. Lastly, there were native courts, almost extinct round about Cape Coast, but still exercising large powers in the outlying districts and in the eastern parts of the protected territories.

In 1876 was passed the Supreme Court Ordinance, the first of a series of fundamental enactments prepared by Mr. Chalmers who had returned as Queen's Advocate of the new Colony. By sections 20 and 22 of that Ordinance (as originally passed), the first three tribunals were swept away, all their jurisdiction and all cases pending in them being transferred to the Supreme Court; but the native courts were left unnoticed. By section 12 of the Supreme Court Ordinance all Her Majesty's civil and criminal jurisdiction in the protected territories was vested in the Supreme Court, but it was held by the full court in 1887, in the case of *Oppon v. Aekini* (Sarbah, 1st edition, page 207), that this section did not abolish the native courts, which, though shorn of almost all their power to enforce judgments, have continued to exist up to the present.

In 1877 an Order of Her Majesty in Council was passed, providing for an appeal to the Privy Council from judgments of the Supreme Court where the amount involved was above the value of 500*l.*

To return to the constitution of the Colony. In 1883 it was decided to unite the finances and administration of the settlements on the Gold Coast and the settlement of Lagos, and to leave it to the Governor-in-Chief to provide for the public business at Lagos as in other parts of the Colony. Accordingly, by letters patent dated the 22nd January 1883, the charter of 1874 was revoked, and provision was made for the administration of the whole Government by the Governor-in-Chief, all reference to Lagos and the administration of Lagos being omitted.

* Given at page 270 of Mr. Sarbah's "Fanti Customary Laws," 1st edition. Also printed as Colonial Office paper "Gold Coast, No. 56."

* They had transferred their forts and rights to the British Government in 1872.

But the people of Lagos were dissatisfied with the subordinate position of their portion of the new Colony with respect to the Gold Coast, and clamoured for separation. The Home Government recognised the weight of the arguments brought forward, and on the 13th January 1886, letters patent were issued revoking those of 1883 and erecting the Gold Coast into a Colony by itself, Lagos being formed into a separate Colony. By these letters patent the Gold Coast Colony was defined as all places, settlements and territories belonging to Her Majesty in West Africa between the fifth degree of West longitude and the second degree of East longitude. The Colony, therefore, did not comprise the protected territories, and as the Legislative Council under the new letters patent was differently constituted from that under the previous charter, it was necessary to provide for the legislation with respect to these territories; accordingly, in 1887, an Order in Council was made under 6 & 7 Vict. c. 94., empowering the local legislature to make Ordinances for the protected territories.

But difficulties were constantly arising with respect to the difference between Colony and protected territories; draftsmen omitted to include the protected territories in Ordinances; questions arose as to whether the powers of the Executive in the Colony and protected territories were co-extensive or not, native chiefs often found themselves in a false position, not understanding how far they were subject and how far they were independent; it was impossible to say how far the Colony extended and where the protected territories began; thousands of persons who claimed to be British subjects were only protected aliens; and, altogether, the indefinite condition of things not only led to confusion and to the raising of many difficult legal problems, but it was also a real source of danger to the well-being of the Colony. This Gordian knot was cut by Chief Justice Sir Joseph Hutchinson in 1895. He was then about to prepare an edition of the local Ordinances, and, as a preliminary step, he drafted an omnibus revision Ordinance. Sections 2 and 3 of this Ordinance (No. 3 of 1895) were as follows:—

" 2. The definitions of 'Colony' and 'Colonial Waters' and 'Protected Territories' in the Interpretation Ordinance 1876 shall be repealed and the following put in place thereof:—

" 'The Colony' shall mean the Gold Coast Colony and shall include the settlement on the Gold Coast and the territories near or adjacent thereto wherein Her Majesty may at any time before or after the commencement of this Ordinance have acquired powers and jurisdiction;

" 'Colonial waters' shall mean the waters of the Colony as the term Colony is herein defined."

" 3.—Wherever in any Ordinance the expressions 'Colony and protected territories' or 'Colony or protected territories' occur, the word 'Colony' alone shall be put in place thereof; and all words in any Ordinance expressing that the Ordinance shall extend to the Colony and protected territories shall be struck out.

" (ii) In the Foreign Enlistment Ordinance, 1888, 'Colony' shall be substituted throughout for 'protected territories.'"

The Ordinance was passed locally and was affirmed by Her Majesty, no objection being taken to section 2 or to subsection (1) of section 3, and the objection taken to subsection (ii) of section 3 being subsequently remedied.

The effect of the section was to abolish the distinction between Colony and protected territories. As soon as any territory became protected territory it forthwith came within the definition of Colony, and the ordinances in force in the Colony were held to apply to such new territory; in fact, protected territories as acquired became *ipso facto* part of the Colony and were so treated by Executive and Supreme Court. Neither the power of the Legislature to make these sections nor the interpretation given to them by the Executive and the Supreme Court was ever questioned, and in the edition of the Ordinances of 1898 all reference to protected territories (except in two or three of the early Ordinances, where it was specially allowed to remain) was eliminated.

But the point began to come up again after the submission of Ashanti, and when the Government assumed protection over the Northern Territories. By the effect of Sir Joseph Hutchinson's sections these places, being protected territories, were "Colony," and therefore were within the jurisdiction of the Supreme Court, and the local Ordinances applied, and holding this opinion the courts of the Colony dealt with cases from Ashanti.

The situation, however, was not satisfactory, and the whole question was raised locally just before the last outbreak in Ashanti. The matter went before the Imperial Law Officers, who stated that they doubted the power of the local Legislature to change protected territories into Colony. Thereupon the Home Government decided to make *de jure* what had from 1895 been *de facto*. Accordingly, the Orders in Council of 26th September 1901 were made, revoking the Order of 1887 already referred to, legalising any acts of the Legislature done under the Ordinance of 1895, annexing the protected territories south of Ashanti, and attaching them to the Gold Coast Colony.

On the same day (26th September 1901) Orders in Council were made with respect to Ashanti and the Northern Territories of the Gold Coast. The Ashanti Order in Council annexed Ashanti, defined its boundaries and provided for its government. The Northern Territories Order in Council, made under the Foreign Jurisdiction Act, 1890, defined the boundaries and provided for the government of these territories.

At the present stage the Supreme Court has full jurisdiction throughout the Gold Coast Colony, but has no jurisdiction within Ashanti or the Northern Territories, except in the case of suits transferred to the Supreme Court by the Chief Commissioners of such Colonies and in the case of appeals by leave of the Governor of the Gold Coast.

The position of native courts on the Gold Coast is now *sub judice*.

July 1904.

W. B. G.

No. (5).

MEMORANDUM ON EVIDENCE AS TO THE EXISTENCE AND ORIGIN OF PRIVATE PROPERTY IN LAND ON THE GOLD COAST.

By Mr. W. D. ELLIS.

Pages 24 to 25 of the papers laid before the Committee. Mr. R. J. GHARTY, a native of Winnebah, as reported by District Commissioner Mr. S. Lloyd Roberts, said* :—

"The title of private ownership is derived:—

"(a) From priority of settlement on uninhabited virgin forest, mostly by hunters, and held under the cognisance of the head chief.

"(b) From purchase or gift, and such private owners are released from all obligations towards the head chief."

Page 27. Mr. A. E. EVANS, Acting Director of Agriculture, says* :—

"Private ownership is an appreciable factor in the social life of the communities and exists in rural areas as well as in coast towns." It arises from:—

"(a) 1. Conquest; 2. Squatter rights; 3. By purchase. "(b) 'Yes'; i.e., the owner is released from all obligations to the head of communities."

Page 28. Mr. J. T. FURLEY Commissioner in the Central Province of the Gold Coast, says† :—

* See p. 19 of this vol.

* See p. 21 of this vol.

† See p. 22 of this vol.

"When an individual does acquire land with his own self-acquired resources he has the right to dispose of it during his life time." . . . "The English law of testamentary disposition applies to the Gold Coast and a demise of individually acquired land would be upheld by the Court."

Page 29. YAW DUODU II, Omanhene of Agona, says* :—

"Private ownership in land exists in the Gold Coast, which ownership sometimes descending from ancestors or otherwise by virtue of purchase."

Page 29. HENRY OWUSUANA, Omanhene of Akuapim, says* :—

"The source of title of private ownership, speaking specifically, is *bona fide* purchase."

Page 30. ASAFU BOATENG, the Omanhene of Jauben, says† :—

"Private ownership is an appreciable factor to-day," and arises "when any individual person acquires a land either by payment or by risking his life in surveying land not previously acquired by anybody."

Page 30. Chief SOLOMON AMOAH, of Adoroot :—

"Private ownership in land is confined to the district of Akuapim specially, not only to the coast towns. The title is derived from having bought the said land according to the native custom of land purchase. Any owner of land is a master of his own land so long as he bought the land with his own money, and the chief, or the community of which he is a member, had no right to utilize anything belonging to him without his consent."

Page 30. Mr. EDWARD SAMSON, a native of Aburi, says† :—

"All lands have an origin of private ownership . . . The title of private ownership is derived from this source: the people fought with Ansah Sasraku, the Aquamu King, who once held sway over all Accra and Akuapim, and Akem conquered him and drove him from this land to Aquamu. The lands which he quitted were therefore captured as trophies of war. The chiefs and those who were mightiest among the people first made the appropriation, and then they conveyed or sold portions of it. From this source also arose what are known as family lands and stool lands."

Page 31. Mr. CONDUA, a native of Elmina, says† :—

"Private ownership in land is an appreciable factor in the social life of the Gold Coast community to-day, and is not confined solely to certain coast towns but prevails in all the rural villages and towns." It arises—

- (1) from the clearing of a virgin forest by your ancestors.
- (2) When it is a gift from one to another for some acts done.
- (3) When it is conveyed by one to another in consideration of money paid.
- (4) And a person becomes an owner of a land by clearing a virgin forest without any injunction from a paramount or sub-chief or any private individual."

Page 32. Chief MATE KOLE, Konor of Manya Kromu, says§ :—

"The private ownership in land is an appreciable factor to-day in the social life of the Gold Coast. It is not virtually confined to certain coast towns, it exists in rural areas. The title of private ownership is derived from right of purchase. The private owner is released from all obligations with regard to the use of the land both towards the recognised heads of the community to which he individually belongs, and towards the recognised heads of the community of which the community to which he belongs forms part."

Page 32. Chief KOFI OLOGO, Konor of Yilo Krobo, says§ :—

"Private ownership in land is an appreciable factor in the social life in Yilo Krobo, not only to-day but from time immemorial. The title of private ownership in land is derived through inheritance and purchase."

Page 33. Chief JOHN ANNOBILL, of Winnebah says* :—

"The title of private ownership is derived from the head chief, chief or head of family, sometimes by purchase or gift, and the holders are released from all obligations towards the grantor."

Page 24. Mr. J. PHILLIPS, Acting District Commissioner of Kibbi, says† :—

"The private owner of land in a community is released from all obligations in regard to the use of land from the time it becomes his private property. He is, however, subject to the orders of the heads of that community and has got to obey all the native laws and customs."

Some interesting evidence with regard to the native practice of selling land is given by Mr. Crowther, the Secretary for Native Affairs, in a memorandum dated the 17th of October, 1913, relating to the acquisition of land by the Government for a proposed railway. This paper will be laid before the Committee. He says† :—

"Between 1860 and 1870 Afrim, Odikro of Asafu, and his brother, the Odikro of Maase, started to sell land in the Densu valley to individuals of Larte and Shai."

"Asafu succeeded on the stool of Akapon by Kwamin Tawia, Kwamin Fori, Akuffo and Owusana. Kwamin Fori and Akuffo, particularly the latter, appear to have held nearly all this land, parting with the free simple of each farm to individuals without respect to their tribes, and at the present day the greater portion of it is held by private individuals,"

"The stool of English purchased its present land from the stool of Mawso for the sum of 315*l.*, and the stool of Kankan purchased its land (also from the stool of Mawso) for the sum of 700*l.*" . . . "With regard to the land I have described as (a) (that is the 'land from Manasi Station to the Kentenkere Valley'), there is little doubt that the major portion has passed out of the stool's control, and that it is held by individual farmers, mostly natives of Shai and Larte, a few of whom hold certificates of title."

Oral Evidence §

BELFIELD. Answer 332.

"I understand there are certain instances, although infrequently, of individual ownership even outside the limits of the coast towns, and so far as there may be such cases of individual ownership, so far those would, I take it, be outside the jurisdiction of the chiefs and elders."

T. F. E. JONES. Q. 723*.

"Does your customary law permit of the actual sale of land outright?"

"Yes."

Dr. B. W. QUARTAY PAPAFIO. Q. 955*.

"A man who does not pay (*i.e.*, rent or chief), is working *his own* or family land."

W. C. F. ROBERTSON.

Q. 2350-1.

Can the individual alienate land to a European?"

"I think so."

Do you mean complete alienation?"

"Yes, complete alienation, sale. If he has the actual ownership of the land he has the right to sell it."

W. H. GREY. Q. 5343.

"During recent years particularly the custom has grown up of the sale of land, and the custom of mortgaging land. So that the custom of freehold ownership actually exists on the Gold Coast."

Q. 5345.

"There are very many thousands of acres, and many thousands of pounds changing hands every year."

Q. 5369.

"As soon as the natives found some plant that could be permanently attached to the soil and of value that was the commencement of freehold rights of the natives, and that is how the freehold question has gradually cropped up. The land was made valuable, but before it was not valuable."

* See p. 23 of this vol.
† See p. 25 of this vol.

† See p. 24 of this vol.
§ See p. 26 of this vol.

* See p. 27 of this vol.
† See p. 110 of this vol.

† See p. 18 of this vol.

§ In African (West), No. 1047.

Q. 5616.

"Suppose that the value of the land in the Gold Coast is 20 millions, probably 18 millions of that is freehold property."

PENNINGTON.

Q. 7268.

Do you think there is a considerable quantity (of land) which is held in that sort of way (*i.e.*, freehold), and in respect of which there would be some sort of deed?

"I should think a great deal."

BATTY.

Q. 8336.

In your view I understand that private property in land is growing up on the Gold Coast among the natives, and you regard it as inevitable that it should continue?

"Yes, and I think it is advisable it should continue. You make a better people of them altogether."

Answer No. 8341.

"Supposing that you succeeded in distributing the land, and the natives became small cultivators, you would have done a vast amount of good and it would be a good deal better than all the communal land put together."

Q. 8352.

Do you consider that it is possible to uphold the authority of the chiefs without maintaining communal land tenure?

"I see no reason why not."

Q. 8355.

"I do not believe that the individual native, because he is an owner of land, is a worse native to his chief than when he worked on the land under the supervision of the chief."

CROWTHER.

Q. 10,189 *seq.*

"Enterprising individuals have come in from certain parts of the Colony and have acquired from the community farms and have farmed the land."

With the idea that it was to be their own?

"With the idea that it was to be their own."

Would the idea be in their mind that they could sell that land?

"Yes, I think so, entirely."

Q. 10,275.

Do you think that alienation from the village communities to individuals is right?

"It has become a right, but it is a very great danger."

COWAN.

Q. 13,762.

Do you think that we ought to try and prevent by law land passing out of the communal system into private native hands?

"I do not see any objection can be taken to it providing there are regulations guarding against any possible injustice."

Q. 13,764.

Apart from injustice to the individual you do not, in the general interests of the country, see any reason to prevent land falling into the hands of individuals?

"No."

Sir W. B. GRIFFITH.

See Evidence Q. 14,031 to 14,054 *passim*, but especially—

Q. 14,035.

"The legend that there is a custom that land cannot be sold has no foundation."

Q. 14,087. (Mr. MOREL).

The whole question is whether this individual right of property in land acquired by natives within their community carries with it the right of sale, as a regular thing or not?

"I never heard anything to the contrary."

Q. 14,089.

You mean permanent alienation?

"Permanent alienation."

Q. 14,093.

The conception of family ownership seems to pervade the whole time, does it not?

"I do not agree altogether. It is a conception of individual ownership but the family assist."

Q. 14,178.

You have told us that it is the native custom to buy and sell land outright?

"I have said that formerly there was no custom on the point, one way or another, but at present there is a custom."

Q. 14,210.

"There are tendencies which show that the country would get on better, so far as we can judge, by individual ownership than by communal ownership in that way at any rate."

"There would be more incentive to work."

Q. 14,260.

Do you consider that the tendency towards individualism would operate against maintaining the power of the chiefs and government by chiefs?

"Not necessarily."

January 1914.

W. D. ELLIS.

No. (6).

MEMORANDUM ON CUSTOMS RELATING TO LAND IN SOUTHERN NIGERIA.

By Mr. NORTHCOTE W. THOMAS, Government Anthropologist.

1. In considering the questions arising out of West African, and especially Nigerian, native laws connected with land, two main points have to be borne in mind before the distribution of variant custom can be understood. In the first place there can be no doubt that Europeans penetrated into the interior of Southern Nigeria in the sixteenth century; traces of Portuguese language are found; the cross-bow is in use all over the country; and it is held by many authorities that the brass work of Benin City has been deeply influenced by, if it did not originate in, Europe.

In the second place customs with regard to land undoubtedly tend to differ from the normal where the land has been recently occupied, whether it was unappropriated or obtained by conquest from the previous occupiers. The tendency appears to be to place land of recent occupation far more under the control of the occupier; he is in some places actually the owner. Thus at Ibwariam house land may be sold

and the same is the case at Acala, some few miles distant. Ibwariam was occupied some five and twenty years ago.

In addition to these two points, which are of general application, there is a third point specially applicable to the customs of Awka, Central Province, Southern Nigeria. The inhabitants of Awka are largely blacksmiths; they wandered far and wide in the exercise of their trade; I have myself found some Awka men settled beyond the Cross River and the case was by no means exceptional. There can be no doubt that intercommunication far more than geographical neighbourhood tends to cause interchange of customs, or, if not interchange, modification of the customs of one neighbourhood by those of another. I am disposed to think that the readiness with which land is sold at Awka is due to the transmission of coast customs which have grown up under European influence.

I have nowhere found evidence, apart from such

cases as are covered by the exceptions mentioned above, that individuals, according to native law, are at liberty to dispose of their house or of their farm land.

In certain cases, notably at Soso, which is remote from European influence, the head of the quarter, in whom land was vested, appears to have had the right to alienate this land; but with regard to this information it should be observed that my stay in the place was short and I was compelled to obtain my information through the mouth of two interpreters, as no English-speaking native could be found who understood the language of the country.

A second case is, however, clearer. Ubulubu, in the Assaba district, was founded some 50 years ago in what was at the time dense forest. They appear to have purchased farm rights, which are, I think, identical with the ownership of the land, over a certain district in the direction of Ezi, by handing over a woman as a wife to the chief of the quarter of Ezi mainly concerned. The people of Ubulubu have since then encroached upon the land of Ezi; and both this and the fact that the wife of the chief mentioned above was subsequently taken from him is a cause of complaint by the people of Ezi. I did not, however, gather that the sale of the land is regarded as invalidated by the fact that the wife did not remain permanently in Ezi. As, however, this and other cases may at any time come before the District Commissioner for decision, I did not feel myself at liberty to call all the witnesses before me who could have given information, and my account of the matter is only fragmentary.

2. My answer to the question as to the distance to which individual ownership has penetrated into the country has already been given by implication in the answer to the previous question. It must, of course, be recognised that, especially in the Ibo and Kukuru

countries, customs differ from town to town and great variations are possible, as may be seen by consulting the chapter on inheritance in my published report. Even if, therefore, evidence is produced that sale is recognised in one area by native law, such evidence in no way justifies the conclusion that a similar custom will be admitted in any other area. In this connexion I may call attention to the fact that in the Kukuru country two towns, distant only a few miles from each other and connected at the present day by a road, were so far cut off from each other in the old days that the old men of the town were of opinion that the other town, actually distant at most four hours, was more than twelve hours' march away. Except in such sporadic cases as Awka, the area within which individual ownership is recognised will, I imagine, be found to correspond roughly with the area of free communication with the European factory, that is to say, along the coast, at such places as Sapele, Warri and Onitsha, and possibly on other rivers.

3. Provided that discretion as to pawning was unlimited I do not think that the prohibition to sell land would be felt as a hardship by the natives in the districts in which I have worked. At the present time I think it would be desirable to permit any such prohibitions to be varied by a declaration of custom in individual localities, for it is highly probable that permission to sell to a member of the umunna, or other social unit related by blood to the seller, might be actually advantageous; it is at the same time not alien to the genius of native law; for the head of the umunna is the lawful heir to the property of an heirless man, even where sale of land is not permitted.

NORTHCOTE W. THOMAS.

February 1914.

No. (7).

MEMORANDUM AS TO INDIVIDUAL OWNERSHIP IN NATIVE CUSTOMARY LAW.

By Mr. W. R. TOWNSEND, ATTORNEY-GENERAL, GOLD COAST.

In native customary law there is an interest in land commonly known as "individual ownership." Such an interest is founded upon native law and not on the provisions of an Ordinance of the Colony. Native customary law is not created by Ordinance of the Legislative Council. In some past time such an interest may not have been part of the native law, but it is now; and I know of no reason to doubt that, even if it was not always part of that law, its adoption, whether by means of some ceremony or by tacit acceptance, was effected according to the principles of native law. Such adoption is not unknown in West Africa; for instance, in certain places where Mahomedanism has become prevalent principles and rules of Mahomedan law have been adopted and made part of the native customary law. I have never heard of the propriety of such adoption being questioned. Such an interest is acquired by the purchase of land by a native with his self-acquired resources, and such a transaction would be governed by native law unless English law were imported under section 19 of the Supreme Court Ordinance, 1876. Such purchases are frequently evidenced by documents similar to an English conveyance. In two cases heard recently (Christian Akutei Azzu v. Abadu Akarderi or Acardi, decided before the Full Court held on the 13th August 1912, and C. A. Azzu v. J. C. Cooper, decided before the Full Court held on the 24th February 1913) it was contended that the use of documents took the case out of the jurisdiction of the Native Tribunal, which by section 11 of Ordinance 5 of 1883 is given jurisdiction with respect to lands held under native tenure. The Court decided against this contention, and held there was not sufficient evidence of agreement to have the transaction exclusively governed by English law, although writing was used. Counsel in the latter case informed me that it was intended to appeal to the Privy Council against the decision. In connection with this subject the question is asked—What would be the duties of a native owner of an estate if there were an agreement,

express or implied, in the conveyance that the matter should be regulated by English law? I take the following instance. If a native purchases with his own money from another native, and the purchase is effected by an ordinary English deed which purports to convey an interest which is recognised only by English law, such as a fee simple, and it appears from the document that the parties agreed that their obligations in connection with such transaction should be regulated exclusively by English law (I use the words of the section), the question arises—To what matters is the English law made thereby applicable? I think there is no doubt that it is made applicable to the sale, and that the obligations of the vendor and purchaser to each other in respect to the purchase would be governed by English law. In my opinion the English law would only be made applicable to such obligations, and I think the Ordinance contemplated the importation of English law only in respect of them. It says:—"If such party has agreed that his obligations in connection with such transactions." The only obligations which are matters of agreement in this instance are those between the vendor and the purchaser. It would follow from this that, once the transfer is legally completed according to English law, the duties and obligations of the owner with respect to the land would be governed by native law. I assume the vendor to hold an "individual ownership" as recognised by native law, but as the transaction is to be governed by English law, it may be contended that what is conveyed to the purchaser is not a native "individual ownership" but a fee simple. Having regard to the limitation to the importation of English law which I have indicated above, I think that the furthest such a contention would carry would be that a fee simple is the measure of the amount of estate transferred, and whether the purchaser gets a native individual ownership or a fee simple, his duties and obligations with respect to it, after the purchase is completed, are governed by native law. The result in either case is practically the same,

for the purchaser, seeing the powers of alienation and disposal by will allowed by native law to an "individual owner," and in substance the only persons affected could be those who would succeed in case of intestacy, and the rights of these persons are, excepting the cases of Muhammadans and those exceptions caused by non-native marriage, I think, very properly governed by native law.

To decide what law is applicable to an estate in land held by a person, it is necessary to ascertain the status, *i.e.*, native or non-native, of that person. Section 19 of the Supreme Court Ordinance makes personal status the ground for the application of native law. The first line of section 47 of Ordinance 14 of 1884 also shows that the Legislature regarded personal status as the distinguishing test. I interpret the words "held under native tenure" in Ordinance 5 of 1883 to mean "held by a person or persons who are natives," notwithstanding the fact that such land may have been previously owned by a person who was not a native and to whose estate native law was not applicable. This I am given to understand is also the view of the native law [? bar].

II. Instances of the following transactions, which, according to the strict interpretation of the definition of the word "concession" in section 2 of Ordinance 14 of 1900, fall within that definition, have occurred. The ownership conveyed or purporting to be conveyed in such cases includes an interest in the minerals and products of the soil:—

- (1) Conveyance of the fee simple, the circumstances of which point to the fact that the object of the purchaser is not to win minerals or reap products of the soil—such as the purchase of a building site. A large number of these must have occurred.

- (2) Small transfers of land between natives, the circumstances of which show that the only and *bona-fide* purpose for which the purchaser obtained the land is simply to conduct ordinary native farming. Such transfers may take place according to native law without writing, and the purchaser has not been penalised for obtaining a writing which purports to effect the transfer. I am unable at present to give an estimate of the number of these.

- (3) Mortgages of land to secure credits given in trading. The only object of these is to insure payment. I cannot at present estimate the number of these, but they are not uncommon.

The above have not been popularly regarded as concessions, and the persons claiming under them do not take steps to comply with the Concessions Ordinance, and the Government has not sued for penalties under section 9 of that Ordinance.

I do not think these purchasers and mortgagees are guilty of any moral delinquency, as they are, I think, unaware of the applicability of the Ordinance. The Ordinance does not make such transactions void, but they have not the security given by section 23 to concessions certified as valid. Besides the liability to the penalty under section 9, the leave of the Court should be obtained under section 8 to take proceedings to give effect to them.

With regard to (3), I understand that to a considerable extent credit is given to native traders. Individual ownership affords a more ready means of giving security for such advances than other forms of native tenure.

13th April 1914.

W. R. TOWNSEND.

No. (8).

NOTES ON CERTAIN POINTS RELATING TO TRADING IN MINING AREAS.

By Mr. F. J. DYKES, LATE SENIOR WARDEN OF MINES, FEDERATED MALAY STATES.

My opinion is asked on the following two points:—

- (a) Should the control of trade in a mining area be retained in the hands of the Government or left to the mining companies? and
- (b) Should the erection of stores for traders be left to the mining companies, or should the traders be allowed to put up their own stores?

and I am asked to give an opinion based on procedure that may have been followed in similar cases in the Federated Malay States or elsewhere.

2. Dealing with the first question, I note from the evidence that the opinion expressed by those representing the miners is that trading should only be allowed at their discretion and with their sanction; that is to say, the miners desire to retain their rights as monopolists, whilst the traders desire an unrestricted right to trade.

In the Federated Malay States the policy of the Government has been to give all traders unrestricted rights to trade with employees on mines, either by permitting the erection of shops and stores on mining lands, and in town areas set aside for that purpose, or by licensed itinerant vendors. That right of freedom to trade, whether it be with the employees of European or Chinese-owned mines, has never been questioned with any success. Doubtless some employers would have liked to have been in the position of monopolists, and in early days concessionaires resented traders opening stores near mining concessions, alleging generally that such traders were often the receivers of stolen tin ore.

3. The above remarks set out the attitude taken up by the Government of the Federated Malay States in such matters, but as regards Chinese employers of labour there were decided restrictions on the employee in the matter of where he was allowed to obtain his stores. There is probably no analogy between the

employment of labour in the Gold Coast and in the Federated Malay States, but it seems advisable to set out briefly the system in vogue for the employment of Chinese labour in mines in Malaya, and for the supply of provisions to labourers in mines. Labour in Chinese-owned mines is employed on contract, on wages, and on tribute. In the first and second classes of labour, wages are not due for a long period, sometimes not for six months after the commencement of employment, and all food, clothes, and cash are treated as an advance from the employer. It is the survival of an old custom, when money earned was only paid half-yearly, the idea being that money earned was not available until the half-yearly smelting of tin ore was completed and the tin sold. During this time the employee is, of necessity, forced to obtain the necessities of life from his employer, and on these advances the employer charges 20 per cent. interest. The interest, however, is immaterial, as the labourer would accept 20 per cent. less in wages and in the price of his contract were he paid cash at the end of each month. Further, no self-respecting Chinese coolie would dream of entering into employment on wages or on contract until he had received an advance of \$5 or \$10 in cash—a financial arrangement that suits the employer and the employee. In the case of tribute labourers, they are invariably unable to finance themselves, and as a period of two or three months must elapse before tin ore is obtained and sold, recourse must be had to some storekeeper for the supply of cash and provisions. Until the labourer has obtained his tin ore and liquidated his debt he is bound by custom to get his supplies and cash from his advancer, at a price, above market rates, which is ruled by custom. I merely mention these particulars in case my statement that the Government allow traders absolute freedom of action might be contradicted. These arrangements are made for the mutual benefit of employer and employee under no compulsion from the former, and should an employee be desirous of obtaining his goods from

another trader, no restrictions are placed on his so doing, provided he is in a position to do so.

4. The second question is one that has been dealt with in Malaya in a most successful way. The case quoted by Mr. Batty (8215) is one that has happened a great many times in Malaya. A successful find of tin ore has on many occasions resulted in the springing up of a mining village on leased mining land, the owner of which reaps a benefit in the way of exacting rent. These villages were generally dirty and insanitary, and when the permanence of the mining field was proved, the Government invariably selected and laid out a township, auctioned the town lots, and built a police station. Such public institutions as the spirit farm and the pawnbroker quickly moved into the new township, near the protection of the police station, and then slight pressure was exerted by the purchasers of the town lots and the Government to bring about the removal of all traders to the new township. I would instance where this procedure was followed the townships of Tambun, Tanjong Rambutan, Belat, Bentong, Raub, Kampar and others, and in not a single case can I instance an occasion where the action taken by the Government has not been for the public good in every respect.

5. From my own experience I know that where freedom to trade has not been allowed, the labourer has suffered from the class of provisions supplied, and through want of competition he has suffered financially. The right, however, of freedom to trade necessitates

the possibility of being able to acquire sufficient land for the purpose of erecting a store, and, as matters are at present in the Gold Coast Colony, the concessionaire seems to have matters his own way. Any contemplated legislation that did not recognise an unrestricted right by any proper person to trade, and any contemplated legislation that did not give the Government or the chiefs the right to set aside, on concessions, sites for traders' stores, would, in my opinion, based on experience in the Federated Malay States, be a mistake. The present concessionaires and managers of mines—who wish to control the scope and position of traders—may be absolutely immaculate, but these men may pass away, and their places be taken by people of a more natural disposition, who would be quite ready to take full advantage of the position they have acquired as monopolists, to the detriment of the employee, and at the expense of the less favoured traders.

A difficulty would be sure to arise as to what part of a concession could be taken for the erection of stores, and the mine manager or a concessionaire would be certain to claim that positions selected would interfere with mining operations or their surface rights, but with a strong head of the Mines Department their contentions would soon disappear.

F. J. B. DYKES.

88, Cannon Street,
London, E.C.
April 28th, 1914.

No. (9).

JUDGMENT OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL IN THE CASE OF
THE WASSAW EXPLORING SYNDICATE, LIMITED, APPELLANTS, v. THE AFRICAN
RUBBER COMPANY, LIMITED, RESPONDENTS.

Present at the Hearing :

Lord Atkinson. Lord Moulton.
Lord Shaw. Lord Sumner.

[Delivered by Lord Shaw on the 29th of April 1914.]

This is an appeal from a judgment of the Full Court of the Supreme Court of the Gold Coast, which affirmed a judgment of the Concessions Division of that Colony.

There is in operation in the Colony the Concessions Ordinance of the year 1900, as amended by subsequent ordinances of the years 1901, 1902, 1903 and 1905. The ordinance in question in the present case is No. 14 of the year 1900. Under that ordinance a Divisional Court of the Supreme Court has jurisdiction to inquire into and certify as valid or invalid any concession, and by section 8 it is provided that "no proceedings shall, without the leave of the Court, be taken to give effect to any concession unless such concession has been certified as valid by the Court." The question before their Lordships arises out of a decision by this Concessions Court.

Generally speaking, one may say that the object of this legislation is for the protection of the natives and the native chiefs, for the validation at the sight of the Court of concessions granted of mining rights, rights of cutting trees, &c., and for the regularising of the rights of competing concessionaires by establishing priority among them *inter se*. On this last point section 23 provides that "a certificate of validity shall be good and valid from the date of such certificate as against any person claiming adversely thereto."

In 1906 the respondents, the African Rubber Company, obtained a concession by agreement between Chief Cudjoe Sah of Arkwasu, on behalf of himself his heirs and successors, and his tribe, by which the lessors granted, let, and demised to the respondents a parcel of land containing an area of five square miles "and all rubber vines fruits trees root and grass rubber timber of all description and surface rights and property in the said surface land and premises." Full and exclusive powers and liberty were granted to the respondents and their assigns to collect rubber, make clearings, construct farms, and to grow rubber or any other produce. The letting and demise also

included all mines, mineral substances, precious stones, and gave power to erect buildings, roads, and the like, and to divert watercourses, "and to do all acts matters and things so absolutely and effectively" as if the respondents and their assigns were for the term thereby intended to be demised absolute owner of the fee "simple." With regard to timber the grant was expressed thus: "with liberty to cut remove and fell and carry away all trees timber shrubs and plants either for the purpose of carrying on the works of the lessees or for the purpose of sale."

As stated, this agreement was made in 1906. An application was made in the end of 1909 for a certificate validating this concession. This was opposed by the appellants, the Wassaw Company, and on the 29th July 1912 the judgment appealed from, disallowing the Wassaw Company's opposition, was pronounced.

The *locus standi* of the Wassaw Company, the appellants, was this: In 1909 they had obtained a concession from the succeeding Chief of certain territory, part of which was the same as that contained in the concession granted to the respondents three years before. But the appellants promptly, that is to say, in the beginning of January 1910, obtained and applied for a certificate of validity. So far as the dates go, accordingly, the appellants' certificate, which was recorded on the 4th January 1910, has priority to that of the respondents.

The Wassaw Company now pleads its right, under the demise to it, altogether to exclude the African Rubber Company from the overlapping portion of the territory, to prevent it from either planting or cutting trees thereon, and, in short, to treat it in going upon the land for any purpose as a trespasser. This was the argument presented to their Lordships.

The Wassaw Company's lease is printed. It is true that it bears to be "a demise and grant" of a certain parcel of land, together with all the mines and minerals therein. The period of the grant is for ninety-nine years. There then follow clauses beginning: "It is hereby agreed and declared that during the continuance of this demise the Company shall have full free and exclusive liberty" to sink and make pits, erect bridges, use ground as timber-ground, take and carry away minerals, make tram-roads, "and also to cut heve

"down and fell and take away any timber or trees on the said lands for the use of the steam engines and machinery used in the said mines and for the erection and maintenance of any buildings works and contrivances thereon." It is upon the earlier portion of this clause, as a comprehensively exclusive demise, that the appellants take their stand.

Their lease further proceeds to give power to divert and turn water and watercourses "for the purpose of more effectually exercising and enjoying the liberties and privileges and easements hereby granted," and also to do all necessary acts or use all necessary devices "for the efficient working of the mines and premises hereby demised." The demise concludes by giving to the Company peaceable possession in these terms, which their Lordships think are important, viz.: that they shall "peaceably and quietly possess and enjoy the mines and premises hereby demised and exercise the rights and privileges hereby conferred without any interruption by the Chief," &c.

The appellants in certain portions of their written grounds of opposition appear to concede the practical limits of the rights thus conferred upon them. They confine their position to that of mining lessees, and they claim "the right to such timber as may be required for purposes ancillary to such mining, with the usual incidental powers and rights necessary for the beneficial enjoyment of such concession." Standing their priority on the concession record, this appears to their Lordships to be a correct statement of the measure of their rights. This the respondents, the African Rubber Company, have never disputed. And it ought to be further added, in fairness to the Courts below, that in these Courts this measure was never questioned or denied. Nor do their Lordships see any occasion to doubt that, suppose the proceedings had gone to the further stage of granting to the respondents a certificate of their, the respondents', title, that certificate would have been so worded as amply to protect any prior mining rights and all rights ancillary thereto which had been created in the appellants by their first validity concession.

It is now maintained, however, by the appellants, and it appears also to have been so argued in the Courts below, that the terms employed in their lease are of such a character as to give them a demise of the land itself with the exclusive possession for ninety-nine years thereof and of all the timber thereon, and with a right also to prevent trespass on any part of the area in question. Their Lordships cannot so construe the rights of the appellants.

In the first place, it has to be observed that a right of exclusion of this character as arising out of the agreement of lease if treated as a demise of land does not appear to be within the definition of "concession" or to be the subject of validation by the Concessions Court, or to gain any priority thereby. By the Ordinance "concession" means "any writing whereby any right interest or property in or over land with respect to minerals precious stones timber rubber or other products of the soil" purports to be granted by a native. This definition does not extend to a demise of the surface of the land, nor does it extend to a sale or lease of the land itself. Even if the lease were construed as a demise of the land it is something which is not a concession and to which priority under the Concessions Ordinance has no application.

In so far, moreover, as the lease bears this character it cannot be pleaded in a question with the respondents, the African Rubber Company, who three years before had, in fact, obtained a title of a similar, or rather of a much broader, character and not confined to mining purposes or purposes ancillary thereto. What is being done, as their Lordships understand, is that the respondent Company, under their lease of 1906, are cutting certain rubber trees and planting others, and developing the property in an agricultural and arboricultural sense. All this—subject to the appellants' mining needs—appears to be within the respondents' just rights.

The next point, however, is the general one and is of importance. The appellants, having got first on the Concessions Record with their mining lease, propose to prevent these operations of the respondents upon the

area in question because of the use of the word "exclusive" in that lease. They admit that they could not develop this territory themselves, indeed that they could not cut a tree upon it, except for their mining purposes. But they construe their rights as if the lease entitled them to prevent any development of this large tract of land by anyone else. Their plea is that it can never be known, if, say, trees were cut down, whether in the course of a century they, the Wassaw Company, or their successors might not come to require those trees. In their Lordships' opinion this plea is not well founded. Although the term "exclusive" is employed, it has to be admitted that this term must be taken along with one specific and particular purpose and the strictly limited nature of the rights of mining which are the subject of the grant. Accordingly the word cannot be comprehensively interpreted. For the result, upon such an interpretation, would produce a quite impracticable situation.

The Concessions Ordinance entirely covers such a case. It is provided under section 13 that "it shall be lawful for the Court in its discretion to make such modifications in the terms of any concession and to impose such conditions with respect to the issue of any certificate of validity as to the Court shall seem just." It is then provided by section 16 that the certificate of validity shall *inter alia* contain a statement "of any limitations, modifications and conditions imposed by the Court." Nothing could more clearly indicate that in the case of rival claims to, or overlapping rights in, any area which is the subject of a concession, the Court can adjust the rights of parties by exercising their discretion and having the practical regulation of these rights determined on the spot.

Their Lordships accordingly must repel the plea put forward by the appellants in this case in so far as it is a claim for exclusive possession of land, or for a right to exclude the respondents from it, or from exercising upon it all such rights of cutting and planting timber and the like as do not in point of fact invade the rights of the appellant Company as mining lessees.

It is with regret, however, that their Lordships have to observe that the actual order made in this case, in so far as it dismissed the opposition of the appellants at a stage prior to the actual terms of the certificate to be proposed being announced, was premature. The judgment referred to is that of the 24th February 1913. The Court, says that judgment, "is of opinion that the grantor retained the right to grant concessions subject to the prior rights of the opposer under their certificate of validity." This opinion, their Lordships think, was correct. But when, the order proceeded, "the Court is therefore of opinion that the Court of First Instance was justified in dismissing an opposition which appears to be based entirely upon hypothetical grounds," their Lordships unfortunately cannot agree. The appellants hold a title by their prior certificate to what was to some extent a competing right in regard to the same area of ground, and in these circumstances they think that the appellants had a right to remain in Court until the terms of the certificate came to be adjusted. Their Lordships do not doubt that now, that the claim of the appellants on the arguments submitted has been settled in the negative, the certificate of validity of the concession now the respondents will be dealt with by making such limitations, modifications, and conditions as will conserve the mining rights of the appellants and those rights of cutting timber which are ancillary thereto.

In the circumstances the orders for costs in the Courts below will not be disturbed, but their Lordships will humbly advise His Majesty to allow the appeal, and to remit the case to the Supreme Court, so that the proper steps may be taken for issuing to the respondents a certificate with the requisite limitations, modifications, and conditions, the respondents having leave to object thereto if so advised. Their Lordships are not inclined to think that the appellants would have been prejudiced by allowing the case to go forward to a certificate, the views of the Court in the direction of protecting their, the appellants', rights having been made plain. There will be no costs of the present appeal.

No. (10).

MEMORANDUM ON THE CONFLICT BETWEEN A RECENT JUDGMENT OF THE PRIVY COUNCIL AND LOCAL LEGISLATION AND JUDICIAL PRACTICE ON THE GOLD COAST.

By SIR WILLIAM BRANDFORD GRIFFITH, LATE CHIEF JUSTICE OF THE GOLD COAST.

On the 29th April last Lord Shaw delivered a Judgment* of the Privy Council in the following case:—
The Wassaw Exploring Syndicate, Ltd. - Appellants
v.
The African Rubber Company, Ltd. - Respondents.

The facts, so far as they are necessary, were as follows:—In 1906 the respondents, the African Rubber Co., obtained a concession whereby five square miles of land were "granted let and demised" to them. The demise included surface and mining rights. The African Rubber Co. registered their concession under the Land Registry Ordinance (No. 1 of 1895), but took no proceedings under the Concessions Ordinance (No. 14 of 1900) to have their concession validated.

In April 1909, the appellants, the Wassaw Exploring Syn., obtained a concession over part of the same land conceded to the respondents. This concession purported to "demise and grant the land together with all the mines and minerals therein" for 99 years and gave the appellant Syndicate the "full and exclusive liberty" to do what was necessary for mining purposes. The appellants registered their concession, but it though the Concessions Court and obtained from the court a certificate of validity on the 4th January 1910.

Subsequently the respondents brought their concession before the court. Thereupon the appellants filed notice of opposition as to the overlapping portion. The appellants claimed both in the courts below and in the Privy Council that the terms of their lease were of such a character as to give them a demise of the land itself with the exclusive possession thereof for 99 years and of all the timber thereon, and with a right to prevent trespass on any part of the area in question, and therefore that the respondents had no right to a certificate of validity as to such overlapping part.

Both the courts below and the Privy Council held that the appellants put their claim too high, and it was held that the native grantor retained the right to grant concessions with respect to the land, subject to the prior rights of the appellants, and that consequently the respondents had a right to a certificate of validity with respect to the overlapping land subject to such prior rights of the appellants.

Their lordships deal with the matter from two quite distinct points of view. They point out that the term "exclusive" in the appellants' concession does not bear the interpretation sought to be placed upon it by the appellants; and that is sufficient ground for their judgment. But they also deal with the matter from the point of view that if the appellants really did possess as high a right as they claim, i.e., an exclusive right to the land, they would be out of court because they would have no priority over the respondents. This is what they say:

"It is now maintained, however, by the appellants, and it appears also to have been so argued in the courts below that the terms employed in their lease are of such a character as to give them a demise of the land itself, with the exclusive possession for 99 years thereof, and of all the timber thereon, and with a right also to prevent trespass on any part of the area in question. Their lordships cannot so construe the rights of the appellants.

"In the first place, it has to be observed that a right of exclusion of this character as arising out of the agreement of lease if treated as a demise of land does not appear to be within the definition of concession, or to be the subject of validation by the Concessions Court, or to gain any priority thereby. By the Ordinance 'concession' means 'any writing whereby any right, interest or property in or over land with respect to minerals, precious stones, timber, rubber, or other products of the soil,' purports to be granted.† This definition does not extend to a demise

of the surface of the land, nor does it extend to a sale or lease of the land itself. Even if the lease were construed as a demise of the land, it is something which is not a concession, and to which priority under the Concessions Ordinance has no application.

"In so far, moreover, as the lease bears this character, it cannot be pleaded in a question with the respondents, the African Rubber Company, who three years before had, in fact, obtained a title of a similar, or rather a much broader character, and not confined to mining purposes, or purposes ancillary thereto."

Now on the one hand this is not the basis on which the judgment rests, as it was expressly held that the appellants' claim to "exclusive" rights was ill founded, i.e., that the appellants did not have a demise with exclusive possession for 99 years, and so their document of title came within the definition of "concession"; but on the other hand it is not an *obiter dictum* but an integral part of the solemn judgment of the Privy Council, the highest Colonial Court of Appeal, whose judgments and rulings are binding on courts below.

The judgment is clear and definite that the definition of "concession" does not include a sale or lease of the land itself. But the local courts have decided this very point contrariwise, whilst the Legislature has taken the same view as the local courts. Very soon after the Concessions Ordinance came into force a conveyance coming before Mr. Justice Nicoll was opposed upon the ground that a document which was an out-and-out sale did not come within the definition of "concession." Mr. Justice Nicoll held that it did come within that definition. The case was taken before the Full Court which sustained the judgment of the court below.‡ The courts have followed this decision ever since, and the very first certificate of validity I issued was with respect to an absolute conveyance.

I am able to say that when the Concessions Ordinance was before the Legislative Council in the form of a Bill it was thought that there could be no doubt of an instrument conveying land absolutely being included in the definition of "concession." To justify that belief I will quote from Blackstone: "Land hath also in its legal signification, an indefinite extent, upwards as well as downwards. *Cujus est solum, ejus est usque ad cælum*, is the maxim of the law. Therefore no man may erect any building, or the like, to overhang another's land: and downwards, whatever is in a direct line between the surface of any land and the centre of the earth, belongs to the owner of the surface, as is everyday's experience in the mining countries. So that the word 'land' includes not only the face of the earth, but everything under it, or over it. And therefore if a man grants all his lands he grants thereby all his mines of metal and other fossils, his woods, his waters, and his houses, as well as his fields and meadows."§ This is the Common Law, which obtains in the Colony, and I am not aware of any native custom which alters that portion of the Common Law so far as minerals are concerned.

Holding that view the Legislature subsequently amended section 8 of the Concessions Ordinance so as to provide for "the case of a concession which is a sale of land." Furthermore, the Legislature provided that "any concession which purports to be an absolute conveyance," and which is specially exempted, is to be free from the special 25% duty imposed upon all concessions (p. 632 of Vol. I. of Ordinances), whilst the directions to the officers who have power to exempt are as follows:—

* I do not recollect that the case went before the Full Court, but Mr. Justice Pennington, sitting in Full Court, in the case of *Markham v. Anyidoho* (24 Jan. 1905) refers to that fact.

† Kerr's Blackstone's Commentaries, 4th edit., Vol. 2, p. 15.

* No. (9).

† N.B.—The definition says, "purports to be either directly or indirectly granted . . . by a native," and the words "directly or indirectly" are important.

"The following concessions purporting to be absolute conveyances should be exempted:—

"All instruments dealing with *bona fide* sales of house property or of land for building or agricultural purposes" (p. 637 of Vol. I. of Ordinances).

The position, therefore, is as follows:—The local legislature has assumed that documents which are absolute conveyances of land are within the definition of "concession," and have legislated accordingly both in the Concessions Ordinance itself and in the Stamp Ordinance; the local courts, similarly, have decided that a document which is an absolute sale of land is within the definition of "concession"; whilst the Privy Council now holds, to the contrary, that the definition of "concession" does not extend to "a sale or lease of the land itself."* If the local Courts

continue to follow their present practice they would seem to be acting in defiance of the ruling of the Privy Council. If they follow the ruling of the Privy Council they must ignore the interpretation placed by the Legislature upon the definition of "concession"; whilst so long as this new interpretation of "concession" stands there must be doubt with respect to those absolute sales which have been put through the Concessions Court and have been thereby reduced to terms of 99 years. I would suggest that some definite action be taken to get rid of this awkward position.

W. BRANDFORD GRIFFITH.

2, Essex Court, Temple.
25 May, 1914.

* These words cannot be explained to mean the sale of the surface of the land as the judgment refers specifically to the case of the "demise of the surface of the land."

No. (11).

MEMORANDUM ON THE MEANING OF "TENURE" IN SECTION 19 OF THE SUPREME COURT ORDINANCE (No. 4 of 1876).

By SIR WILLIAM BRANDFORD GRIFFITH, LATE CHIEF JUSTICE OF THE GOLD COAST.

"Such laws and customs shall be deemed applicable in causes and matters where the parties thereto are natives of the Colony, and particularly, but without derogating from their application in other cases, in causes and matters relating to marriage and to the tenure and transfer of real and personal property" (section 19 of No. 4 of 1876).

What does "tenure" mean here? It is not only the tenure of real property but also of personal property. It seems to mean that the Supreme Court is to take notice of the fact that real and personal property are held in ways not known to the English law, and that, subject to the provisos in another part of the section, the Supreme Court is to apply the appropriate native law or custom when dealing with property so held.

For instance, land and personalty as well can belong to the stool, and the Court should apply the native law in dealing with such land or personalty. In some cases property acquired by the occupant of the stool vests in the stool when such occupant ceases to occupy the stool: in such cases the Court should apply the native law as to property so acquired. Sarbarh's "Fante Customary Law," chapters 3 and 4, describes various native tenures which the English courts should recognise and should give effect to in the proper circumstances.

It should be noted that an earlier part of the section refers to "any law or custom existing in the Colony," whilst the part quoted refers to "causes and matters where the parties thereto are natives of the Colony," so that the section seems to apply only in the case of natives of the Gold Coast Colony and with respect to laws and customs existing in the Gold Coast Colony. This consideration is not without importance, as there are in the Colony many Mohamedans and others who are natives of West Africa but not of the Colony. The section seems oblivious of this large class of West Africans as, though it deals with the case of disputes between Europeans and natives (of the Colony), it is silent with respect to non-Gold Coast natives. The practice of the Supreme Court, however, has been to apply this section in the case of non-Gold Coast natives between themselves in the same way as in the case of Gold Coast natives, so that the Court applies the Mohamedan law in the case of Mohamedans from without the Colony and would no doubt apply the Ashanti or Yoruba law in the case of Ashantis or Yorubas. This well-established practice might fairly be said to come within the scope of the closing words of section 19, viz., that the Court should, where there is no express rule, "be governed by the principles of justice, equity, and good conscience."

"Held under native tenure."

The expression "held under native tenure" occurs in section 11 of the Gold Coast Native Jurisdiction

Ordinance (No. 5 of 1883), where it is enacted that native Courts shall have jurisdiction in suits relating to the ownership of "lands held under native tenure." Lands held by the stool or lands held by native custom under the stool would be, doubtless, regarded as "held under native tenure." On the other hand, land held by a native mortgagee under an ordinary mortgage deed would not, in my opinion, be "held under native tenure," because the native law, although it knows a mortgage, does not know such a mortgage; nor would land held by a native under equitable mortgage be "held under native tenure," because such tenure is not known to native law. It has been sometimes assumed* that land sold to a native by means of an ordinary English conveyance must by reason of that conveyance be held to be under English tenure. But in such a case it is only the mode of transfer which is English. Section 19 of the Supreme Court Ordinance already referred to draws the distinction between "tenure" and "transfer." There is no reason why land should not be sold to a non-native, e.g., to a European, by the native customary methods, and such land clearly would not be "held under native tenure." Then let that European sell such land to another European by an ordinary English conveyance: there can be no doubt whatsoever that the land then would not be "held under native tenure." Now suppose this second European sells this same land to a native A, and suppose A's brothers B and C to have helped A with cash to buy that land, then the English courts would hold that the land was the family land of A, B and C, and the land would have all the customary incidents of family land and would, in my opinion, be "held under native tenure." These concrete illustrations go to show that the tenure under which land is held can vary with the status of its owner and that no owner impresses upon the land any permanent form of tenure.

If land is conveyed to a native by deed or if he buys land sold in execution and obtains from the Court a certificate of purchase, such native holds the land so conveyed or bought by a form of tenure known substantially both to the English law and the native law. But in view of the native law of inheritance and of the local legislation with respect to marriage and concessions the tenure approaches more nearly to native tenure than to any tenure known to the law of England. In such a case it would be difficult to say that the land was not held by the native purchaser "under native tenure"; but it would be easy to say that it was not held under English tenure.

It seems to me that if a native holds land in a manner known to the native law such land is "held under native tenure." If the holder be not a native, then the land would not be "held under native tenure," whilst if the holder be a native, but the land is held in some way

* Held to the contrary in *Azra v. Acanli* and *Azra v. Cooper* by Full Court August 1912 and February 1913, respectively.

not known to the native law, e.g., a mortgage under an ordinary mortgage deed, then such land is not "held under native tenure."

It must be noted that the adjective "native" in the expression "held under native tenure" does not necessarily mean "Gold Coast native." It is true that the title of the Ordinance is "The Gold Coast Native Jurisdiction Ordinance," but the noun "native" is defined in the Ordinance* to mean "any person who is

"under native customary law or under any Ordinance "a member of a native community of the Colony "Ashanti or the Northern Territories." Whether the adjective "native" should bear the limited meaning to be gathered from the title of the Ordinance, or whether it should have the wider meaning based upon the above definition, is a matter best left for the local courts to decide.

W. BRANDFORD GRIFFITH.

2, Essex Court, Temple.

June 2, 1914.

* As amended by section 2 of No. 7 of 1910.

No. (12).

A NOTE ON CASES INVOLVING THE TITLE OF THE CROWN TO LAND IN LAGOS.

By SIR WALTER NAPIER.

The question of the title of the Crown to land in Lagos was raised in the two cases of *Attorney-General v. Holt & Co., Limited*, and *Attorney-General v. W. B. McIver & Co.* In these cases informations were filed by the Attorney-General, asking that certain parts of the foreshore of the Island of Lagos might be declared to be Crown land. The cases, which were consolidated, involved a number of important points, but I shall only deal with those directly bearing on the question of the title of the Crown. The hearing was before Mr. Willoughby Osborne, the Chief Justice, who gave judgment on the 14th March 1910, and I extract the following passages:—

"In order to explain the prayers in the informations, it is necessary to allude briefly to the history of the Island of Lagos since 1840. At that time Lagos was one of the principal centres of the slave trade, and the Kings of Lagos were rich and powerful chieftains. In 1841, Oluwole, the reigning King, died, and was succeeded by King Akitoye, who in 1845 was deposed by his nephew Kosoko. This chief gave every encouragement to the slave traffic, and, to put a stop to this, Lagos was bombarded at the end of 1851 by a British force, who put Kosoko to flight and reinstated Akitoye. By a Treaty made on the 1st January 1852, the slave trade was finally abolished in Lagos, and its suppression marked the commencement of a new trade in palm oil and ivory, in which Europeans and natives alike engaged. It is important to bear this fact in mind, as it shows that no usages of this trade can be regarded as 'customary' rights in the legal sense. The establishment of a British Consulate at Lagos, and the influx of a large number of liberated slaves from Sierra Leone and elsewhere, soon introduced ideas foreign to native law, particularly with regard to dealings with land. By native law, pure and simple, land belonged to tribal communities; the idea of absolute alienation was unknown, though permission was given to strangers to occupy, for farming, trading, or residence. Sometimes tribute was paid, sometimes not; and the alien occupiers and their descendants, and sometimes their sub-occupiers, were allowed to continue in undisturbed possession, until they attempted to sell their interests or did some other act impeaching the title of the territorial overlord. But during the decade between 1852 and 1862 the practice of alienation sprang into vogue, and another new feature, totally foreign to native law which knew not writing, was introduced, in the shape of written grants by the King of Lagos. The land in Lagos was originally attached to the stools of the white-cap chiefs, who were in no way subordinate to the early Kings of Lagos, but, as has been pointed out in a historical treatise to which the Court has been referred, 'in later times there appears to have been a gradual diminishing of the original owners' interest in the land, and a corresponding increase of interest in it on the part of the King. It was customary when land was sold, as, for example, to European slave exporters, for one half of the proceeds to be taken by the King, and the other half by the white-cap chiefs, who were landowners.' The increase of the King's interest continued to grow after the abolition of the slave trade to such an extent that he came to be looked upon as the proper party to execute grants of Lagos land. In fact, one of the witnesses for the

Defendants, Chief Eletu, went so far as to say that the King was the superior lord of the chiefs with regard to land.

"It is urged on behalf of the Defendants that the Treaty of the 6th August 1861 was a mere cession of rights, and not a cession of territory. In support of this contention they rely on the terms of the Proclamation read after the signing of the Treaty; on a reply given by an Under-Secretary of State to a question in the House of Commons, from which, however, it appears that possession was taken of the island itself; on a despatch from Consul Freeman, dated 8th March 1862, in which he stated that the white-cap chiefs were the rightful possessors of the lands, on which they depended for their subsistence, i.e., their farms on the mainland, for evidence has been given in these proceedings to show that there was then no farming on Lagos Island; on a claim to the foreshore set up by Banner Brothers, a firm of merchants, in 1873, ultimately compromised by their accepting a Crown grant of the land in dispute; on the fact that, in 1877, a German firm adopted the attitude that under a grant from Docemo they were entitled to erect certain stores in the bed of the lagoon, and the Government apparently took no further action; on an Ordinance in which a chief is alluded to as having granted the fee simple in possession of some land in the island to the Crown; and on the acts done by the Defendants and their predecessors in title, as the Defendants assert, in exercise of their legal rights.

"As against all this we have the wording of the Treaty, which is quite plain and unambiguous. 'I, Docemo, do, with the consent and advice of my council, give, transfer, and by these presents grant and confirm, unto the Queen of Great Britain, her heirs and successors for ever, the port and Island of Lagos, with all the rights, profits, territories and appurtenances thereunto belonging, and as well the profits and revenue as the direct, full, and absolute dominion and sovereignty of the said port, island, and premises with all the royalties thereof, freely, fully, entirely and absolutely. I do also covenant and grant that the quiet and peaceable possession thereof shall, with all possible speed, be freely and effectually delivered to the Queen of Great Britain, or such person as Her Majesty shall thereunto appoint, for her use in the performance of this grant; the inhabitants of the said island and territories, as the Queen's subjects, and under her sovereignty, Crown jurisdiction, and government, being still suffered to live there.' The effect of this treaty was clearly enough understood by the native community, for in Colmel Ord's report (exhibit WW3) we find two memorials signed by certain native merchants in 1864, in which they refer to the annexation of Lagos, and protest against a policy of territorial acquisition. We have also the fact that the Legislature, on the 9th April 1863, passed a temporary Ordinance 'for appointing certain Commissioners for the purpose of ascertaining the true and rightful owners of land within the settlement of Lagos,' whereby, after reciting in the preamble that, whereas there were then many persons holding lands within the settlement in possession of any legal title thereto, it had become necessary and

expedient that the just rights and titles to such lands should be inquired into, settled, and determined, Commissioners were appointed with powers lasting until the 1st April 1864. An Ordinance similar in form was passed on the 6th July 1864, under which the Commissioners' powers continued in force until the 6th July 1865, and yet another on the 2nd August 1865, which expired on the 5th August 1866. These Ordinances provided for the issue of a certificate of title by the Commissioners, when a title had been established to their satisfaction, but, instead of adopting this procedure, they appear to have recommended the issue of a Crown grant, which was accordingly executed in favour of the successful party.

* * * * *

"By Ordinance No. 3 of 1863 it had been enacted that all laws and statutes which were in force within the realm of England on the 1st day of January 1863, not being inconsistent with any Ordinance in force in the Colony, or with any rule made in pursuance of any such Ordinance, should be deemed and taken to be in force in the Colony, and should be applied in the administration of justice, so far as local circumstances would permit. It has been contended that the English law as to foreshore is not applicable by reason of the difference in local conditions; but I can see no ground for this contention. Moreover, if English law is not applicable, what law is, there being no local enactment relating to the ownership of the foreshore. By Ordinance No. 9 of 1869, dated 4th May 1869, which was 'An Ordinance to settle claims to Lands, Hereditary and Tenements within the Settlement of Lagos and its Territories, and to give validity to Possessory Titles thereto in certain cases,' any person who, without any grant of land, had been in possession by himself or by his tenant of any cultivated land, house, warehouse, factory, brick-works, salt-works, dwelling-house, or place of trade or manufactory, or palm grove, situate in the Settlement or its Territories for a period of three years before the passing of the Ordinance, without the payment of rent, or anything in the nature of rent, and without any acknowledgment of title to any person, might apply to the Administrator for a grant of the property of which he was in possession. By section VII. of this Ordinance it was provided that any lands which might have been declared forfeited or escheated, or any waste and uninclosed lands for which no grant might have been made, might be sold or leased out to such persons, under such conditions and for such terms as the person for the time being administering the affairs of Lagos might direct.

* * * * *

"It seems to me to be quite clear that the Treaty of 1861 was a cession of territory, which at the same time respected pre-existing rights of private ownership, and I hold that under it the foreshore round the Island of Lagos became vested in the Crown, subject, however, to the then existing rights of riparian occupiers to use it for the purpose of access to the water, and for landing and embarking and mooring and hauling up canoes."

Shortly, then, the Chief Justice decided that the power to grant land not the subject of private ownership resided in Docemo, and not in the white-capped chiefs, and that the Treaty conveyed the district described in it to the Crown, subject to any rights of private ownership.

The consolidated cases subsequently came before the Full Court on appeal. The court consisted of the Chief Justice, who had heard the case, Sir W. Brandford Griffith, the Chief Justice of the Gold Coast, and Mr. Justice Winkfield.

The judgment of the court was declared on the 22nd April 1911.

The first judgment was that of Sir W. B. Griffith, and I extract from it the following passages:—

"The first ground of appeal is that the foreshore and bed of the lagoon were not the property of King Docemo. Now it was never contended that the right to the Lagos foreshore was separate from the right to Lagos land, so that the owner of Lagos land would be the owner of Lagos foreshore. Consequently, the root contention in this ground of appeal is that King Docemo was not the owner of Lagos land, and the

implication is that the white-cap chiefs were the owners of Lagos land, and therefore of the foreshore. There can be no doubt that there is some basis for the contention that the white-cap chiefs were owners of the land of Lagos Island in 1861; this is shown by the reply in Parliament of the Under-Secretary of State for Foreign Affairs, in June 1862, and by the despatch of Consul Freeman of March 1862. But the evidence is to my mind overwhelming that Lagos land, and therefore Lagos foreshore, was the property of King Docemo, at least for the purpose of ceding it to the British Government. The whole history of Lagos shows the King Docemo ceded Lagos Island and Port as representing himself and the chiefs and people of Lagos; one of the white-cap chiefs signed the Treaty of cession with him; the white-cap chiefs have never claimed compensation for the Government action with respect to the foreshore; many lands in the Island have as their foundation one of King Docemo's grants; most of the land upon which the appellant's factories are built was obtained originally by grant from King Docemo; and there are numerous bits of evidence all testifying to the general admission of King Docemo's title to the land, and therefore to the foreshore, of Lagos. I am also satisfied that King Docemo had as much property in the bed of the lagoon as a native king could have, subject, of course, to the rights of his chiefs and people to put up fishing stakes.

* * * * *

"The fifth ground of appeal is to the effect that, assuming the foreshore and bed of the lagoon to have been the property of King Docemo, he did not grant it to the Crown by the cession of 1861. King Docemo granted 'the port and Island of Lagos with all the rights, profits, territories, and appurtenances thereunto belonging.' Not only did he grant the Island of Lagos, but also the port of Lagos. Upon the terms of the treaty alone it is not possible to contend that King Docemo reserved to himself the foreshore rights, but, if anything further were needed, user could be called in to help towards interpretation, and the determined action of the Government in the assertion of its rights to foreshore would suffice to show that King Docemo did not reserve to himself the foreshore.

* * * * *

"In my opinion there cannot be the smallest doubt that by the cession Docemo granted the foreshore and also the bed of the lagoon as far as he possessed it.

"The sixth ground of appeal is that the cession was subject to existing private rights.

"This was not denied in the court below, and has not been denied in the course of argument before us, nor has the court below found to the contrary."

The Chief Justice of Southern Nigeria concurred, generally speaking, in the judgment of Sir W. B. Griffith, and the observations he made did not touch the points which concern us.

Mr. Justice Winkfield dealt with the title of the Crown as follows:—

"At the time of the cession the natives were aware that the land of the island was being ceded. The white capped chiefs complained that the cession involved the abrogation of all private rights of property, and they protested that the King could not give away their lands. They were assured that the treaty did not deprive them of their private property."

"After the cession no claim to the foreshore or the bed of the lagoon was made by the white-capped chiefs who, it is suggested, were the owners of the island. The Government has dealt with swamp and unoccupied lands in the island as if they were Crown property. It has reclaimed and sold swamp land and built the Marina on the foreshore and land reclaimed from the bed of the lagoon. Upon the recommendations of the Land Commissioners appointed in 1863, 1864, and 1865, the Administrator gave Crown grants to persons who proved a title to their lands under grants from King Docemo or by occupation.

"In 1869 it was provided by an Ordinance that the Administrator might declare that land to which the person in possession did not produce a good title within six months had 'reverted' to the Crown.

"The Government also granted permits to erect boat-houses and jetties on the foreshore and bed of the

lagoon on condition that they must be removed by the owners upon notice.

"By the Lagos Pilotage and Harbour Ordinance the erection of fishing stakes in the lagoon without licence was forbidden.

"Counsel for the defendants referred to the proclamation made after the cession, in which it is stated that the King Docemo had ceded the 'Sovereignty' of Lagos to a despatch by Consul Freeman in which he stated that the white-capped chiefs were the rightful possessors of the lands; to an Ordinance relating to Ikoyi lands in the island, in which it is recited that the greater of such land was granted to the Crown about 1865; to the fact that Gaisers had a boat-house, stores, and jetty, partly on the foreshore and partly on the bed of the lagoon, and that the Government, although aware of this, had not taken any steps to assert their claim, and to reclamation of the foreshore and bed of the lagoon by the defendants and their predecessors in title, the erection of buildings thereon, and the use of the land reclaimed by them, as if they were the owners without interference from the Government.

"I think that, looking at the wording of the treaty and at the evidence before the court that it is clear that the land of the island and the foreshore of the lagoon adjacent to the island passed to the Crown under the cession, subject to existing private rights.

"As regards the bed of the lagoon, the 'port' is opposite to the defendants' land, and I think that, under the wording of the treaty, the soil as well as the waters of the port were ceded.

"I am, therefore, of the opinion that the foreshore, adjacent to the island, and the bed of the lagoon opposite to the defendants' lands, became at the cession, and are now, the property of the Crown, except so far as the defendants can establish a title to any portion thereof, either by proving a grant or facts from which a grant may be presumed, or by proving possession for the period necessary to establish a title against the Crown."

The cases are now the subject of an appeal to the Privy Council, one of the grounds of appeal being:—

"Because the Treaty of Cession did not operate to transfer the foreshore of the lands in question to the Crown, as the land of Lagos was (except in so far as the same was in private occupation by your Appellants' predecessors in title and others) the property of the White Capped Chiefs who were not parties to the Cession by King Docemo."

The result is that the colonial judges who heard the cases came to the conclusion that the island of Lagos passed to the Crown, subject to any existing private rights, but that this conclusion is disputed on the ground that it was the property of the White Capped Chiefs, that they were not parties to the Cession, and consequently that their interests did not pass.

The question as to the title of the Crown to land in Lagos was also raised in the case of *Oduntan Onisowo v. Attorney-General*. The case was one in which a petition of right was brought, praying for a declaration that certain land was the property of the Onisowo family. The Attorney-General traversed the suppliants' claim and pleaded that the land was vested in the Crown, and had been so vested since the date of the Treaty of Cession.

Judgment was given in the Divisional Court on the 29th March 1911.

The judgment is not available *in extenso*, but it appears that the court found that the plaintiff was entitled to sue on behalf of the Onisowo family, and that the land in question was "under the control and authority of the Onisowo as head of the Onisowo family long before the Cession of 1861." The main contention of the Attorney-General was "that the land was included in the territories ceded by King Docemo in 1861, and that upon the Cession all "public and private lands within those territories "became the absolute property of the Crown, and "further, that though by the principles of international law private property ought to be respected by "the Sovereign who accepts the Cession, no Municipal Court has power to enforce such duty (*Cook v. Sprigg, L.R., Appeal Cases, 1899*)."

After discussing the treaty and the documentary evidence, the Divisional Court concludes its judgment as follows:—

"The Attorney-General has not satisfied the Court that the land was included in the Cession and is Crown land. The Court finds that the Onisowo family are the owners of the land."

The case went on appeal before a Full Court, consisting of Chief Justice Osborne, Mr Justice Winkfield, and Mr Justice Stoker, and judgment was given on the 2nd December 1912.

The Chief Justice concurred in the findings of the Divisional Court as to the control and authority of the Onisowo and as to the title of the plaintiff to sue on behalf of the family, and then went on to consider whether the land in question was included in the Cession. The following passages extracted from the judgment show how the Chief Justice dealt with this question:—

"I am not quite clear whether the contention of the Attorney-General in the Court below was that *Cook v. Sprigg* deprived the Court of all jurisdiction to inquire into the extent of the territory ceded, the wording of the treaty being vague and indefinite; but if that were his contention I do not agree with him. That the jurisdiction of a Municipal Court is not ousted merely because a question arises as to the construction of a treaty is apparent from the case of *Walker v. Baird* (1892 A.C. 491). The question of the extent of land ceded appears to me to be one of fact to be proved, not one of law."

After reading the treaty the Chief Justice continued:—

"The first point to which I wish to draw attention is that this is a treaty not by King Docemo on his own personal behalf, but on behalf of himself and his chiefs, and in the operative part of Article 1 the Cession is expressed to be made by him with the consent and advice of his council. I mention this as the treaty was referred to in the argument of counsel for the respondent as if it were in the nature of a conveyancing transaction, a private grant by an individual who had no title to the land. It was, of course, nothing of the kind, but was an act of state by the supreme executive authority in Lagos, viz., the King and the white-cap chiefs, and the subjects of Docemo were as much bound by it as the inhabitants of Lagos would be bound now if the island were to be ceded to a foreign power. Stress was laid on the fact that none of the Idejos were signatories. In the first place I question whether that statement is correct.

* * * * *

"In the second place the signature of the Idejos was not necessary. An Idejo's land belonged to the family of which he was the elected head; the community of Lagos at large had no interest in it or right over it as Lagosians. It was private property, though jointly owned, and the signatures of the Idejos to the treaty were no more a matter of legal necessity than those of other private owners of land. I am quite clear that whatever lands the Idejos owned as heads of their respective families at the time of the Cession passed under the Treaty. They were under the sovereignty of Docemo, and were essentially territories belonging to Lagos, and, moreover, they comprised much of the farm land on which the population of Lagos depended for its sustenance."

Mr. Willoughby Osborne then held as a fact that the land in question was part of the territory ceded. He went on:—

"The effect of the Cession must next be considered. As to this, I am clearly of opinion that the ownership rights of private landowners, including the families of the Idejos, were left entirely unimpaired, and as freely exercisable after the Cession as before, and, moreover, that the Attorney-General's contention as to act of State is untenable in this case.

"The Cession itself was, of course, an act of State, and it was an act from which, according to the ordinary usages of civilised nations, juristic consequences would follow. The doctrine laid down in *Cook v. Sprigg* is that "a change of sovereignty ought not to affect private property," but no municipal tribunal has authority to enforce such an 'obligation.' If the

Crown had chosen to repudiate this obligation, this Court would have no jurisdiction. But this case is distinguishable from *Cook v. Sprigg* in one essential particular; there the obligation repudiated was never expressly recognised by the Crown, whereas here the obligation now sought to be repudiated, *i.e.*, the obligation to recognise rights of private ownership in the ceded territories, has been actually adopted, and such recognition has been made part of the municipal law.

"The wording of the treaty shows that it was the intention of the Crown to accord to the inhabitants of the ceded territories the status and privileges of British subjects; and further effect was given to that intention in the Royal Instructions issued on the 13th March 1862, to the first Governor of the Settlement of Lagos and its dependencies, the 31st of which instructions contains the following passage:—

"And it is our will and pleasure that you do, to the utmost of your power, promote religion and education among the native inhabitants of our said Settlement, or of the lands thereto adjoining, and that you do especially take care to protect them in their persons and in the free enjoyment of their possessions."

After dealing in detail with a number of Ordinances which recognised the rights of private owners, the learned judge summed up this part of the case thus:—

"The recognition of private ownership in the ceded territories is thus clearly part of the municipal law of Southern Nigeria, and by that law the local representatives of the Crown are bound; and they cannot fifty years after the session adopt for the first time the attitude that they do not choose, as an act of State, to recognise any right of private ownership over a particular portion of those territories, wanted for public purposes, and never acquired therefore in accordance with the local laws."

Mr. Justice Winkfield, the judge who had formed the original tribunal, held that the land in question was not within the territories included in the treaty, but he intimated that if it had been he would have held that the Court, being a Municipal Court, had no jurisdiction to decide as to the claims of the Onisiwo thereto.

Mr. Justice Stoker concurred with the Chief Justice in his conclusions, holding that the Crown had throughout the last fifty years, since the Cession by its acts, deeds, and ordinances steadfastly recognised rights of private ownership within the ceded territories.

I understand that this decision is the subject of appeal, but is awaiting the decision in the Foreshore Cases before definite proceedings are taken.

WALTER NAPIER.

15th September 1914.

No. (13).

NORTHERN NIGERIA.

LAND AND NATIVE RIGHTS PROCLAMATION.

(Chapter LXV of the Statute Laws Revision Edition, 1910.)

A Proclamation to Define and Regulate the Tenure of Land within the Protectorate.

Whereas it is expedient that the existing customary rights of the natives of Northern Nigeria to use and enjoy the land of the Protectorate and the natural fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves and their families should be assured, protected, and preserved:

And whereas it is expedient that existing native customs with regard to the use and occupation of land should, as far as possible, be preserved:

And whereas it is expedient that the rights and obligations of the Government in regard to the whole of the lands within the boundaries of the Protectorate of Northern Nigeria, and also the rights and obligations of cultivators or other persons claiming to have an interest in such lands should be defined by law.

1. This Proclamation may be cited as the Land and Native Rights Proclamation.

PART I.

LAND TENURE.

2. The whole of the lands of the Protectorate of Northern Nigeria, whether occupied or unoccupied on the date of the commencement of this Proclamation, are hereby declared to be native lands.

Provided that, subject to the terms of the agreement made the 2nd day of August 1900, between Frederick Dealtry Lugard, High Commissioner of Northern Nigeria, of the one part, and Walter Watts, as representative of the Niger Company, of the other part, and of the agreement made the 28th day of August 1900, between the said Frederick Dealtry Lugard of the one part, and J. F. Bradshaw, as representative of the Niger Company, of the other part, the agreements and instruments set out in the First Schedule hereto shall be and remain of the same force and effect in all respects as though this Proclamation had not been enacted.

3. All native lands, and all rights over the same, are hereby declared to be under the control and subject to the disposition of the Governor, and shall be held and administered for the use and common benefit of the natives of Northern Nigeria; and no title to the occupation and use of any such lands shall be valid without the consent of the Governor.

4. The Governor, in the exercise of the powers conferred upon him by this Proclamation with respect to any land, shall have regard to the native laws and customs existing in the district in which such land is situated.

5. A title to the use and occupation of land shall be termed a right of occupancy, and the grantee thereof shall be termed the occupier.

6. It shall be lawful for the Governor—

- (a) to grant rights of occupancy to natives of Northern Nigeria and to persons other than natives of Northern Nigeria;
- (b) to demand a rental for the use of any native lands granted to any native or non-native; and
- (c) to revise the said rental at intervals of not more than seven years.

Such rights of occupancy may be for a definite or for an indefinite term, and may be granted subject to the terms of any contract which may be made between Governor and the occupier not inconsistent with the provisions of this Proclamation or any of them.

Provided that the Governor shall not (save in the case of a right granted in connection with a mining lease) grant rights of occupancy free of rent or upon any conditions which may preclude him from revising the rent at intervals of not more than seven years.

7. An occupier shall have exclusive rights to the land granted to him against all persons except the Governor.

8. It shall not be lawful for any occupier to alienate his right of occupancy by sale, mortgage, or transfer of possession, without the consent of the Governor first had and obtained. And any such sale, mortgage, or transfer effected without the consent of the Governor shall be null and void.

9. It shall not be lawful for the Governor to revoke rights of occupancy granted as aforesaid save for good cause.

"Good cause" shall include:—

- (a) non-payment of rent, taxes, or other duties imposed upon the land;
- (b) alienation by sale, mortgage, or transfer of possession, without the consent of the Governor; and
- (c) requirement of the land by the Government for public purposes.

Provided always that,

(a) should the rental demanded by the Governor from the occupier be raised on revision, the occupier may surrender his rights, and shall in that case be entitled to compensation from the Governor to the value at the date of surrender of his unexhausted improvements; and

(b) should any occupier be compelled to surrender his rights owing to the requirement of the land by the Government for public purposes he shall be entitled to compensation for the value at the date of surrender of his unexhausted improvements and for the inconvenience caused by his disturbance.

10. The devolution of the rights of an occupier upon death shall be regulated in the case of natives, by the native custom existing in the locality in which the land is situated, and in the case of non-natives, by the law of the deceased person's domicile.

11.—(1) It shall be lawful for the Governor, when granting a right of occupancy, to issue a certificate thereof under his hand and the seal of the Protectorate in the Form 1 set out in the Second Schedule hereto, or to the like effect. Any such certificate shall be deemed to be an instrument affecting land, and shall be registered in accordance with the provisions of Part II. of this Proclamation.

(2) Any person entitled to a right of occupancy may apply for a certificate which may be granted in the same manner and subject to the same conditions as in subsection (1) hereof.

12. Every such certificate shall be deemed to contain provisions to the following effect:—

(a) that the occupier binds himself to the Governor to pay compensation for any damage caused to native individuals or communities in the exercise of the rights granted to him and to accept the ruling of the Governor as to the amount of such compensation;

(b) that the occupier binds himself to pay to the Governor the amount found to be payable in respect of any unexhausted improvements existing on the land at the date of his entering into occupation;

(c) that the occupier binds himself to pay to the Governor the rent fixed by the Governor and any rent which may be fixed on revision in accordance with the provisions of this Proclamation.

13. In determining the rent to be demanded for any given land and on any subsequent revision of rent the Governor shall take into consideration the rent obtained or obtainable in request of any other like land in the immediate neighbourhood and shall fix the rent at the highest amount that can reasonably be obtained for the land: provided that in determining the amount of any rent, whether original or revised, the Governor shall not take into consideration any value due to capital expended upon the land by the same or any previous occupier during his term or terms of occupancy, or any increase in the value of the land the rental of which is under consideration, due to the employment of such capital.

14. All claims arising under the provisions of this Proclamation in respect of any right granted under a certificate of occupancy shall be prosecuted before the Supreme Court, which court shall have jurisdiction throughout the Protectorate accordingly; and the Chief Justice of the Protectorate shall have power to make rules as to the prosecution of such claims and matters relating thereto in the same manner as in matters concerning the ordinary jurisdiction of the court.

15. Nothing in this Proclamation shall be deemed to affect the validity of any title to land or any interest therein acquired before the date of the commencement thereof, but all such titles shall have the same effect and validity in all respects as though this Proclamation had not been enacted.

PART II.

REGISTRATION.

16. Any instrument affecting land directed by the law of the Protectorate to be registered shall be null

and void so far as regards such land unless registered within six months from the date when the same was first executed, or in the case of a will, within twelve months from the date of the death of the testator.

17. The Governor may by Government notice divide the Protectorate into districts for the purposes of registration and may appoint registrars for such districts; and instruments affecting land situated in any such districts shall be registered in a register kept at such place in the district as may be specified in such notice.

Provided that, until the Protectorate shall have been divided into districts as aforesaid, there shall be kept at the office of the Chief Registrar of the Supreme Court a register of instruments affecting land in the Protectorate, and the Chief Registrar shall be registrar of such instruments.

18. The registrar shall refuse to register any instrument requiring the consent of the Governor to the execution thereof, unless such consent be endorsed thereon or satisfactory evidence be given that such consent has actually been given.

19. Any instrument affecting land executed by the Governor shall be registered by entering in the register a duplicate thereof or a copy certified under the hand of the Secretary of the Administration to be a true and accurate copy thereof.

20. Any other instrument shall before registration be proved by the oath of one of the parties executing the same or of one of the attesting witnesses in one of the Forms 2 or 3 of the Second Schedule hereto, and the proof required must be made as follows:—

(a) if such instrument was executed in the Protectorate, before the registrar at the office where it is presented for registration, or before a judge or a resident of a province;

(b) if such instrument was executed in any other part of His Majesty's Dominions or Protectorates, before any judge of any court of law or any magistrate, or any person authorised by law to administer oaths therein

(c) if such instrument was executed in a foreign country, before any British Consul or other consular officer or accredited British representative resident in such country.

No instrument shall be registered unless there is inscribed thereon by the officer before whom the proof is taken an endorsement in the terms of Form 4 in the Second Schedule hereto.

An instrument not proved before the registrar shall not be registered unless it shall bear upon it a certificate, as near as may be in Form 5 in the Second Schedule hereto, under the hand and seal of some one of the persons hereinbefore authorised to receive such proof, to the effect that such instrument has been proved.

21. A probate or any judgment, or certified copy of a judgment, of any court may be registered without proof upon production thereof to the registrar.

22. If an instrument be executed in any part of the world where by law the original is kept in the custody of a public officer, a copy of the original and the certificate of proof thereof, certified to be correct by the public officer in whose custody the original is kept, shall be deemed to be an original instrument, provided the original has been proved in the manner herein provided.

23. A duplicate of the plan or map annexed to any instrument presented for registration must be lodged with the registrar to be pasted or bound in the register with the copy of the instrument.

24. The fees prescribed in the Second Schedule hereto, or such other fees as the Governor may from time to time order, shall be taken by the registrar. No registrar shall do any act, or furnish any certificate, copy or extract, or allow any search until he has received the fees payable in respect thereof.

25. The registrar shall immediately after the proof before him of any instrument presented for registration, and upon the presentation of any instrument duly proved before any other person or of any instrument which may be registered under this Proclamation without proof, place upon the instrument a certificate in the Form 5 or 6 (as the case may be) in the Second

Schedule hereto or as near thereto may be, specifying the year, month, day, and hour of the proof or presentation (as the case may be) of such instrument: and the year, month, day, and hour specified in the certificate shall be taken to be the year, month, day, and hour of the day at which the instrument was registered.

26. The registrar shall keep a set of books to be numbered consecutively, and shall cause a duplicate or copy of every instrument presented for registration together with the certificate as hereinbefore provided, to be pasted or bound in one of the said books in the order in which the same shall be presented, and shall cause every such duplicate or copy so pasted or bound in each book to be numbered consecutively, and each book shall have an index stating in alphabetical order the name of every party to every instrument with a reference to the page of the book where the instrument is recorded. Provided that, where, as representatives of a native tribe, a number of chiefs are party to any instrument, it shall suffice to index the name of the tribe and head chief.

27. Every instrument, other than a will, executed after the commencement of this Proclamation, and duly registered in accordance with the provisions thereof, shall so far as regards any land affected thereby, take effect as against other instruments affecting the same land from the date of its execution: and every will which is, or the probate of which is duly registered as aforesaid shall take effect as from the date of the death of the testator.

28. Registration shall not cure any defect in any instrument registered or confer upon it any effect or validity other than that provided by this Proclamation.

29. Searches may be made at all reasonable times in the books and the certified copies or extracts therefrom furnished upon application to the registrar.

30. Every copy or extract from a register or certificate of registration purporting to be signed by the registrar shall be receivable in evidence in any civil case without further or other proof thereof unless it is proved to be a forgery. The certified copy or extract of certificate shall only be received in evidence if the court is satisfied that the opposite party has had sufficient time to inspect the original register.

31. Nothing in this Part of the Proclamation shall be deemed to affect the validity or priority of any instrument duly registered under the provisions of the law in force in the Protectorate at the time of such registration.

32. Nothing in this Part of the Proclamation shall be deemed to affect in any way any local registration of titles to land other than those conferred by a certifi-

cate of occupancy under section 11, or by any subsequent devolution thereof: provided that no local register or extract therefrom shall be admissible in any court as evidence of any error in any register kept under the provisions of this Proclamation.

PART III.

GENERAL.

33. The Governor may make rules for the purpose of carrying this Proclamation into effect, and particularly with regard to the following matters:—

- (1) the terms and conditions upon which the Governor's consent to any sale, mortgage, or transfer of a right of occupancy may be obtained;
- (2) the terms and conditions upon which special contracts may be made under section 6;
- (3) the grant of certificates of occupancy under section 11;
- (4) the procedure to be observed in revising rents; and
- (5) the procedure to be observed in matters connected with registration.

34. In construing this Proclamation, the following terms shall have the meanings hereby assigned to them, unless the context otherwise requires:—

“Unexhausted improvement” shall mean anything or any quality permanently attached to the land, directly resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf, and increasing the productive capacity, the utility or the amenity thereof, but shall not include the results of ordinary cultivation other than growing produce;

“Instrument affecting land” shall mean and include a certificate of occupancy granted by the Governor, and any document whereby a right of occupancy granted as aforesaid is or purports to be charged, transferred or assigned in any way, including a will and a judgment of a court, and all documents necessary for the completion of the title to any such charge, transfer or assignment; and also all documents which are or may be directed by any law, which is or may be in force in the Protectorate, to be registered as instruments affecting land;

“Will” includes codicil;

“Probate” includes a probate of a will and letters of administration with the will annexed, and a certified office copy thereof.

THE FIRST SCHEDULE.

LIST OF AGREEMENTS AND INSTRUMENTS.

No.	Grantor.	Grantee.	Date.
1	Amagh Attah of Idah - - - -	Royal Niger Co., Chartered & Limited.	7th May 1896
2	David Ashford King - - - -	”	3rd Oct. 1896.
3	Queen Oleafa and the heir Quabashie - - - -	”	26th Nov. 1896.
4	King and Chiefs of Ekellie - - - -	”	”
5	Lamjar and Abarra, Chiefs of Koji - - - -	”	8th Dec. 1897.
6	Oduz and Kutaypa, Chiefs of Adanapa - - - -	”	6th Dec. 1897.
7	Asamu and Argunzu, Chiefs of Tsintakun - - - -	”	”
8	Dangana and Agara, Chiefs of Obebe - - - -	”	”
9	Ogoon, Chief of Kporo - - - -	”	9th Dec. 1897.
10	Walsh, Chief of Ajarra - - - -	”	”
11	Ajokpa, Chief and Headmen Orhakpon and Oleh - - - -	”	4th Jan. 1897.
12	Armadu and Sheedi, Chiefs of Moyea - - - -	”	16th Jan. 1897.
13	Momo Gana and Urusargie, Chiefs of Gure - - - -	”	15th Jan. 1898.
14	Alamajee and Dasaba, Chiefs of Boudon - - - -	”	16th Dec. 1897.
15	Momo Mogun and Alarsum, Chiefs of Mogun - - - -	”	”
16	Howdo and Gogbin, Chief of Ebutshi - - - -	”	23rd Jan. 1898.
17	Maganee and Shedi Armah, Chiefs of Bashunku - - - -	”	”
18	Howdo and Kuta, Chiefs of Edugbe - - - -	”	17th Dec. 1897.
19	Mamadu, Darkolo, Chiefs of Konom - - - -	”	”
20	Gana and Suma, Chiefs of Caponje - - - -	”	19th Feb. 1898.
21	Eza Gana, King of Nupe, and Sawako, Kuta of Nupe.	”	22nd Dec. 1897

No.	Grantor.	Grantee.	Date.
22	Orsomah and Chinkah, Chiefs of Gande	Royal Niger Co., Chartered & Limited.	9th Dec. 1897.
23	King and Chiefs of Ibi	" "	29th Dec. 1897
24	Oshomo, Chief of Adogu	" "	29th July 1898
25	Town of Bagana (or Amagodo)	" "	12th Mar. 1898
26	Port Ilorin—Affidavit of H. J. Drew and others, re	Proving right of R.N.C. to land.	22nd Jan. 1898
27	Jebba Island—Affidavit of H. J. Drew and others, re	Proving right of R.N.C. to land.	22nd Jan. 1898.
28	Egga—Affidavit of Walter Watts and others, re	" "	20th Dec. 1897.
29	Momo Sarba, Chief of Lar, and Zaboru Gana, Headman of Lar.	Royal Niger Co., Chartered & Limited.	21st Oct. 1898.
30	Alilu, Chief of Shonga, and Usumanu, Headman of Shonga.	" "	20th Oct. 1898.
31	Ibi Djuku—Affidavit of Margagi and others, re	Proving right of R.N.C. to land.	29th Dec. 1897.
32	Claudius Alexander Panaki	Royal Niger Co., Chartered & Limited.	6th Aug. 1898.
33	Roman Catholic Missionary Society	" "	31st Mar. 1898.
34	" " " "	" "	2nd May 1898.
35	" " " "	" "	" "

THE SECOND SCHEDULE.

FORMS AND FEES.

Form 1.

Protectorate of Northern Nigeria.

The Land and Native Rights Proclamation.

Certificate of Occupancy.

(Date.) (Volume and page of register.)

This is to certify that A.B. of is entitled to a right of occupancy in and over the land described in the schedule, and more particularly delineated in the plan annexed hereto (* for a term of years from the date hereof) according to the true intent and meaning of the said Proclamation and subject to the provisions thereof, and to the following special terms and condition, viz. —

1. (Commencing rent.)
2. (Term of reversion.)
3. (Etc., etc., etc.)

(L.S.) Given under my hand and the public Seal of the Protectorate the day and year above written.

(Signed)

Governor.

The Schedule.

Form 2.

Oath of Party executing.

I, A.B., of made oath and say that on the day of 19, I duly executed the instrument now produced to me and marked "A," and that I can read and write (or that I cannot read and write and that the instrument was read over and interpreted to me by at the time of its execution), and that I understood its provisions.

Sworn at this day of 19, Before me

Form 3.

Oath of Witness.

I, A.B., of make oath and say that on the day of 19, I saw X.Y., of, duly execute the instrument now produced to me and marked "A," and that the said X.Y. can read and

* Omit where no term specified.

write (or cannot read and write and that the said instrument was read over and interpreted to him by at the time of its execution), and that he appeared to understand its provisions.

Sworn at this day of 19, Before me

Form 4.

Endorsement on Instrument by Officer before whom the Oath is Sworn.

This is the instrument marked "A" referred to in the oath of Sworn before me this day of 19.

Form 5.

Certificate of Proof.

On the day of 19, at o'clock in the noon, this instrument was proved before me by the oath of the within-named to have been duly executed by the within-named.

Form 6.

Certificate of Delivery to Registrar of Instrument not proved before Him.

This instrument was delivered to me for registration by of at o'clock in the noon of this day of 19, Registrar.

Fees.

	s.	d.
For registering a duplicate or duly certified copy - - - - -	10	0
For every oath - - - - -	2	6
For every certificate - - - - -	2	6
For copying and registering an instrument, for every folio of 100 words - - - - -	0	9
For every search in the records, for every half hour or part thereof - - - - -	2	6
For attested copy of or extract of a recorded instrument, for every 100 words - - - - -	2	0
For comparing, if required, any instrument with the register thereof, for every 100 words - - - - -	0	0
For every other certificate or extract - - - - -		

NOTE.—For any number of words less than the same fee is payable as for 100 counted as a word.