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African Cases

WEST AFRICAN LANDS COMMITTEE.

COMMITTEE ON THE TENURE  
OF LAND IN WEST AFRICAN  
COLONIES AND PROTECTORATES.

DRAFT REPORT, &c.

[The Minutes of Evidence are printed separately as African (West) No. 1047;  
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## INTRODUCTORY NOTE.

On the 20th of June 1912 a Committee was appointed by the Secretary of State for the Colonies "to consider the laws in force in the West African Colonies and Protectorates (other than Northern Nigeria) regulating the conditions under which rights over land or the produce thereof may be transferred, and to report whether any, and, if so, what, amendment of the laws is required, either on the lines of the Northern Nigeria Land Proclamation or otherwise."

The Committee consisted of the following :—

Sir KENELM E. DIGBY, G.C.B., K.C. (*Chairman*).  
Sir F. M. HODGSON, K.C.M.G.,  
Sir W. TAYLOR, K.C.M.G.,  
Mr. J. C. WEDGWOOD, M.P.,  
Mr. E. D. MOREL,  
Mr. C. STRACHEY,  
Mr. W. D. ELLIS, and  
Mr. R. E. STUBBS.

In October, 1912, Mr. Stubbs having been appointed Colonial Secretary of Ceylon, Sir Walter Napier was nominated in his place.

The Committee sat fifty-two times for the taking of oral evidence and seventy-nine witnesses came before them. In addition a great deal of evidence was taken on commission in West Africa.

The greater part of a Draft Report was from time to time placed by the Chairman before the Committee and formed the subject of lengthy discussions. Ultimately a Sub-Committee, consisting of Sir F. M. Hodgson, Sir W. Napier, and Mr. Morel, were requested by the Chairman to revise Part II. of the Draft Report in the light of the discussions which had taken place in Committee. War broke out while this revision was proceeding and prevented any further discussion of the Report by the full Committee. In order, however, to gather up the results of the enquiry, so far as might be practicable, the Sub-Committee undertook, not only to revise Part II., but also to complete the rest of the Draft Report as they would have drawn it, guiding themselves as far as possible by the opinions of the full Committee so far as they had been expressed, and this Draft Report, which was completed in the course of 1915, is the result.

Colonial Office,  
March, 1916.

# DRAFT REPORT.

## PART I.

### BASIS AND DEVELOPMENT OF BRITISH JURISDICTION.

#### BASIS OF BRITISH JURISDICTION.

##### TWO CLASSES OF DEPENDENCIES.

1. The British Dependencies in West Africa consist, as is pointed out in the terms of the reference to us, of Colonies and Protectorates. As the basis of British jurisdiction differs in the two classes, and as it is necessary to comprehend the nature of the powers of legislation and control exercised by the British Government and by the legislatures subordinate to it, and to ascertain what, if any, limitations exist to these powers, we shall commence our report by a discussion of this important subject.

##### (1) COLONIES.

###### *Difference between Settled and Conquered Colonies.*

2. So far as the first class is concerned, we do not think that we can do better than transcribe the lucid explanation of Sir Henry Jenkyns in "British Rule and Jurisdiction beyond the Seas," pp. 4-7. He says:—

"The Colonies differ according as they have been acquired by settlement or by conquest or cession, and the courts of law have sometimes been called upon to decide whether a Colony was a settled or a conquered Colony. The distinction appears to depend upon whether at the time of the acquisition of any territory there existed on that territory a civilised society with civil institutions or laws, whether in fact there existed anything which could be called a *lex loci*."

3. "As regards a settled Colony, the principle is well established that an Englishman carries with him English law and liberties into any unoccupied country where he settles, so far as they are applicable to the situation, having regard to all the circumstances.

"Consequently, apart from statute law, no legislature can be established in a settled Colony by the Crown, except one which comprises a representative body having powers of taxation; nor can the Crown legislate for it by Order in Council or otherwise."

4. "It was found necessary to alter this rule by statute in cases where the settlements are so small or have so large a subject population that the ordinary representative institutions are unsuitable, and to give power to the Sovereign in Council to legislate for the settlement and to delegate the power of legislation to three or more persons within the settlement.

"This power was first given by an Act of 1843<sup>(1)</sup> with reference to the settlements on the coast of Africa and the Falkland Islands, and was extended by an Act of 1860 to other British Possessions.<sup>(2)</sup> Owing to some doubts as to the application of these Acts in certain cases they were repealed and superseded by an Act of 1887.<sup>(3)</sup> The provisions of the Act of 1887 extend to every British Possession not acquired by cession or conquest and not for the time being within the jurisdiction of the legislature (constituted otherwise than by virtue of the Act of 1887 or of either of the two Acts which it repeals) of any British Possession."<sup>(4)</sup>

<sup>(1)</sup> 6 & 7 Vict. c. 13.

<sup>(2)</sup> 23 & 24 Vict. c. 121.

<sup>(3)</sup> The British Settlements Act, 1887 (50 & 51 Vict. c. 54).

<sup>(4)</sup> Section 2 is as follows:—

"It shall be lawful for Her Majesty in Council from time to time to establish all such laws and institutions and constitute such Courts and officers, and make such provisions and regulations for the proceedings in the said Courts and for the administration of justice, as may appear to Her Majesty in Council to be necessary for the peace, order and good government of Her Majesty's subjects and others within any British Settlement."

"The Act allows the legislative power to be delegated either by an instrument under the Great Seal or by instructions under the Royal Sign Manual, and also allows civil or criminal jurisdiction, original or appellate, respecting matters within the settlement, to be vested in the court of some other British possession."

5. "As in the case of a settled Colony the Englishman takes his law with him, the fundamental law, or as English lawyers would say, the common law, of every such Colony is the English law as existing at the date of the settlement, or as modified by subsequent legislation of the Imperial Parliament, expressly or by necessary implication extending to that Colony. The date at which the English law so applying is to be ascertained has been in many cases fixed by local legislation. In other cases legal decisions have been given that English Acts or legal rules are inapplicable under the circumstances of the Colony."

6. "In the case of a conquered or ceded Colony, the Crown has absolute power of legislation by Order in Council, but that power may be surrendered either by establishing or authorising a governor to establish a representative legislative assembly or otherwise, or if expressly reserved may be exercised concurrently.

"In a conquered or ceded Colony, the law existing before the conquest or cession is usually presumed to continue until altered, and therefore forms the common law. But it is necessarily affected by the introduction of the law of the conqueror as regards administration, appellate jurisdiction, matters connected with the exercise of the sovereignty, or matters of universal policy, e.g., navigation or slave trade. Moreover, any laws contrary to the fundamental principles of English law, e.g., torture, banishment, or slavery, are *ipso facto* abrogated.

"After the legislature is established, the Crown is in the same position in respect of the Colony as it is in the United Kingdom; and indeed, before that establishment, the Crown must follow English law, and therefore cannot create a court with jurisdiction unknown to English law."

#### *Powers of Colonial Legislature.*

7. The legislature of every Colony is subordinate to the Imperial Parliament and its legislation has of itself no effect beyond the territory of the Colony, but again quoting Sir Henry Jenkyns—

"The powers of a Colonial legislature are plenary and not delegated powers; such a legislature is not a delegate or agent of the Imperial Parliament. Therefore the principle of *delegatus delegare non potest* does not apply, and although the limits of legislation are prescribed, yet within these limits the right of legislation is absolute, and the Colonial legislature is supreme, and has the same authority as the Imperial Parliament to confer powers on other bodies and persons, as, for instance, to give a municipal body power to make by-laws."

It is clear that though, in order to ascertain what the law in any particular Colony is, it may be necessary to ascertain whether or not that Colony is a settled or a conquered country, this distinction has lost much of its importance in testing the basis of jurisdiction for, either at common law or under the British Settlement Act, 1887, an absolute power of legislation is vested in the Crown in Council.

#### (2) PROTECTORATES.

##### *Crown's Powers of Sovereignty.*

8. The above principles apply only to territories annexed to the dominions of the Crown and do not affect protectorates. The nature of a British protectorate is thus defined by Sir Henry Jenkyns:—

"A British protectorate is a country which is not within the British dominions, but as regards its foreign relations is under the exclusive control of the King, so that its government cannot hold direct communication with any other foreign power, nor a foreign power with that government.

"The British Crown, either by treaty, by suzerainty, or by force, assumes over a defined territory a protectorate in this sense, and this excludes the Government of the protected territory from making treaties with other foreign powers or declaring war or peace with them, or receiving ambassadors or consuls from them; whilst, on the other hand, the Crown undertakes to protect the inhabitants of the territory from interference by any foreign power." (1)

(1) Jenkyns: "British Rule and Jurisdiction beyond the Seas," p. 165.

### *Foreign Jurisdiction Acts.*

9. In addition to possessing this external sovereignty, we shall find that in the West African Protectorates the British Crown in nearly every case has all the powers of an internal Sovereign. For the exercise of this internal sovereignty resort has been had to the Foreign Jurisdiction Acts, which were originally passed for quite different purposes.

In the year 1843 an Act of Parliament was passed known as the Foreign Jurisdiction Act, 1843, by which, after reciting that "by treaty, capitulation, grant, usage, "suffrance and other lawful means Her Majesty hath power and jurisdiction within "divers countries and places out of Her Majesty's dominions," and that, "doubts had arisen how far the exercise of such power and jurisdiction is controlled by and "dependent on the laws and customs of this realm," and that, "it was expedient "that such doubts should be removed," it was enacted "that it is and may be "lawful for Her Majesty to hold, exercise, and enjoy, any power or jurisdiction which "Her Majesty now hath or may at any time hereafter have within any country or "place out of Her Majesty's Dominions in the same and in as ample a manner as "if Her Majesty had acquired such power and jurisdiction by the cession or conquest "of territory."

### *Orders in Council basis of Legislation.*

10. We have just seen that where the Crown has acquired jurisdiction by the cession or conquest of territory it may legislate by Order in Council, and Orders in Council are accordingly the bases of legislation in the Protectorates of West Africa.

The Act of 1843, and that of 1890 which re-enacted it with the various amendments which had from time to time been made in it, did not confer territorial, or indeed any, jurisdiction on the Crown, but facilitated the exercise by the Crown and its officers of jurisdiction *ab extra*.<sup>(1)</sup>

The extent of the jurisdiction depends, therefore, on treaty or usage and not upon the Act, and the validity of legislation made under its provisions may be open to challenge on the ground that it is *ultra vires*. When, therefore, as formerly in parts of Southern Nigeria, there are treaties expressly defining the jurisdiction, any local ordinance transcending those limits will be invalid,<sup>(2)</sup> but as explained below in paragraph 58, the treaties formerly existing have now been abrogated and no question of this kind can now arise.

### *Tendency of Distinction between Colony and Protectorate to disappear.*

11. Although the basis of jurisdiction is distinct in theory in the case of a Colony and of a Protectorate this distinction has tended to disappear; as we shall see, the legislative functions for a Colony and for a Protectorate are sometimes conferred on one legislative body and that body has felt itself as free to legislate with regard to a Protectorate as with regard to a Colony. In fact we think that it may now be considered that the powers of legislation are as wide in a West African Protectorate as in a Colony, and that there no *legal* limits to the powers conferred on any of the legislative bodies with which we are concerned to legislate for the peace, order, and good government of the territories confided to their care.

### *Principle of respect for Private Property not opposed to Right of Legislature to regulate Use of Land.*

12. But although the legal powers of legislation are not limited, there are certain principles deeply rooted in our methods of Colonial legislation from which no Government would think of departing. The principle which most concerns us in this inquiry is that in countries acquired by conquest or cession private property, whether of individuals or communities existing at the time of the cession, is respected.

It is a very different question whether it is not in the power of the supreme legislature to regulate in the public interest the use to which an owner may put his lands or to prevent him from using those lands in a way calculated to prejudice the welfare of the community.

(1) Jenkyns: "British Rule and Jurisdiction beyond the Seas," p. 153.

(2) See "The Imperial Japanese Government v. Peninsular and Oriental Steam Navigation Company," L.R. (1895), App. Ca., p. 644.

For instance, it has been contended that because the land is not owned by the Crown the Colonial legislature has no jurisdiction to enact such laws as the ordinance regulating the forests of the Gold Coast and other ordinances dealing with the transfer of rights over land.

Such laws do not imply or presuppose that the Government possesses or claims any right of ownership of the land. They are Acts of regulation not of appropriation. Such regulations as are contained in these laws are imposed by the legislatures of all civilised countries.

All European legislation is full of such restrictions. If the preservation of the forests is essential in the interest of the inhabitants of the country, it is the right and the duty of the Government by legislation to take the necessary steps to secure their preservation. This principle lies at the root of all factory, mining, and sanitary legislation. In each of these cases the powers of the owner and occupier are restricted, and obligations are imposed attaching to him as owner or occupier of the land. To represent legislation of this character as inconsistent with rights of ownership and still more as an attempt by the Government to appropriate the ownership of the land is opposed alike to reason and to experience.

### *DEVELOPMENT OF BRITISH JURISDICTION IN EACH OF THE FOUR DEPENDENCIES.*

#### ORIGIN OF WEST AFRICAN DEPENDENCIES.

13. The earliest of the four Dependencies with which we are dealing to be brought under British influence were the Gambia and the Gold Coast. That influence at first was not exercised by the British Government but grew out of the enterprise of individual traders or companies. The first European nation to establish trading stations on the coast of what was then called Guinea was Portugal. Gradually Portuguese influence declined, and English and French enterprise occupied the field. In the earlier years of the reign of Queen Elizabeth and, in some instances, even before that time, voyages were made for the purpose of trade to the West African coast both by the English and the French. Sir John Hawkins, in 1562, set a bad example to his countrymen by starting a trade in slaves, but otherwise commerce was for long confined to the other products of the country.

14. In 1588 began the system of recognising and encouraging trading by an association of merchants. In that year Queen Elizabeth gave a patent to certain merchants of Exeter and others of the west parts and of London for trading to the rivers "Senega and Gambia," in Guinea, giving them a monopoly of the traffic of these two rivers and the intermediate coast for ten years. A similar patent was granted to a merchant of Taunton and others for a strip of coast line extending further south to Sierra Leone. In 1618 a Royal Charter was granted to Sir Robert Rich and others for the purpose of "adventuring in the golden trade in West Africa." This company was styled the "Company of Adventurers of London trading into Africa." Their first step was to erect a fort on an island in the Gambia and another at Cormantine on the Gold Coast. "These were the earliest British settlements in West Africa."

15. Soon after the declaration of the independence of the United Provinces of Holland in 1581, the Dutch commenced their trading voyages to West Africa, and in 1621 the Netherlands West India Company was incorporated, and its charter included a monopoly of trade on the West Coast of Africa. Like the English and French the Dutch then began to acquire or construct forts mainly in what is now the Gold Coast. In 1637 the Dutch captured the Portuguese fort at Elmina, and in 1642 that at Axim.

The growth and pre-eminence of the slave trade during the latter part of the 17th and the whole of the 18th centuries led to fierce struggles first between the English and the Dutch and afterwards between the English and French, which had for their object the monopoly of, or at all events the supremacy in, West African trade. About the year 1645 the Swedes were trading to the Gold Coast, for they then built what is still known as Christiansborg Castle. They were driven out by the Danes in 1657 and left the coast. The Danes established settlements and built forts at Addah and Quittah.

It is unnecessary to follow the details of the Dutch war which ended with the peace of Breda in 1667—or of the succeeding French wars which were concluded by the Treaty of Paris in 1815.

These wars, so far as West Africa was concerned, largely consisted of attacks on the forts belonging to the respective nations—their capture and recapture. They had no territorial object or result.

“The competition between French, Dutch, and English was for trade, not for sovereignty. The forts and factories were built on soil which belonged and was recognised as belonging to natives. West Africa was owned by negroes who admitted European traders, and no part of it, except possibly some small islets such as Goree, was definitely conquered by or sold or ceded to any European Government.”<sup>(1)</sup>

The forts and factories which at the termination of the Dutch and French wars were recognised as being under British control constituted the nucleus of the power which was gradually extended over a large part of West Africa and resulted in the establishment of the Colonies and Protectorates of the present time.

16. Two Acts of Parliament, the first passed in 1750 and the second in 1752, mark important stages in the story of the growth of British influence in West Africa. The Act of 1750, after reciting that the trade to and from Africa (which was then in the hands of the Royal African Company) is very advantageous to Great Britain and necessary for supplying the plantations and colonies thereunto belonging with a sufficient number of negroes at reasonable rates and for that purpose the trade ought to be free and open to all His Majesty's subjects, incorporated “all His Majesty's subjects trading to Africa . . . by the name of the Company of “Merchants trading to Africa.” By the second Act the Royal African Company was finally dissolved, and the new company were authorised to take over, amongst other things the “lands forts and castles” belonging to the former company which had been incorporated in 1662, and a subsidy of from 10,000*l.* to 15,000*l.* a year was granted to the company wherewith to keep up the forts for the public service.<sup>(2)</sup> After the Act for the abolition of the slave trade, passed in 1807, the subsidy was increased, and in 1821 the company was dissolved and the forts taken over by the Crown. The forts were scheduled to the Act of 1752, and were nine in all, one in the Gambia at James Island, and eight in the Gold Coast. These were Cape Coast Castle, Commendah, Secondee, Dixcove, Tantumquerry, Winnebah, Accra, and Whydah.

The subsequent part played by the forts as centres of British influence and jurisdiction will be described in connection with the history of the Gold Coast.

17. We propose now to deal with the development of each of the four Dependencies with reference to the growth of British jurisdiction, especially as regards rights over land and the produce thereof.

#### THE GAMBIA.

##### *Brief History.*

It has been seen that, as early as 1588, the trade with what is now the Gambia was of sufficient importance to justify Queen Elizabeth in granting a patent to certain merchants of Exeter conferring upon them a monopoly for the trade in the Gambia river, and that in 1618 the company established in that year by King James I. constructed the first English fort in the Gambia. This fort was probably that which was afterwards known as Fort James, and, after the abolition of the slave trade in 1807, was abandoned by the company. In 1816 some British merchants established themselves on the island of St. Mary, having removed from Senegal and Goree when those territories were, at the end of the great war, restored to France. In this year St. Mary's Island was ceded by its native king to the British Government, and the town of Bathurst was built thereon. In 1821 the African Company was abolished by Act of Parliament. The town and island were taken over by the Government, and with certain of the forts on the Gold Coast were placed under the Government of Sierra Leone, which had become a Crown Colony in 1808. All these places were constituted a single colony and placed under the Government of Sierra Leone and received the name of the “West Africa Settlements.”

18. In 1823 an island in the Gambia, named McCarthy's Island, after Sir Charles McCarthy, first governor of the West Africa Settlements, was purchased from its native king and was added to the Dependency.

<sup>(1)</sup> Lucas : “Historical Geography of the British Colonies,” Vol. III., p. 105.

<sup>(2)</sup> It may be of interest to note that by the same statute Bance Island, about 15 miles above Freetown (which had been occupied by the Royal African Company and subsequently deserted), was granted to certain named individuals, “their heirs and assigns, to and for their own use and benefit.”

In 1826 a strip of territory on the northern bank of the river between 35 and 40 miles in length and one in breadth was acquired from the King of Barra for the annual payment of 100*l*. This was afterwards known as "the Ceded Mile."

Somewhat similar acquisitions of territory were obtained on the southern bank of the Gambia river.

The object of these acquisitions appears to have been mainly the protection of the river bank for the purposes of trade, and no further actual acquisitions on any large scale seem to have been effected. British influence has gradually extended over large districts of the adjoining territory, and in 1889 an agreement was come to between England and France under which the frontier between the French and English Protectorates was defined.

19. The "West Africa Settlements" were subdivided in the year 1843 and the Gambia was constituted a separate colony, but in 1866 all the settlements were again united under one Governor-in-Chief, though each retained its own legislative council. After the separation of the Gold Coast and Lagos in 1874 the connection of the Gambia with Sierra Leone still continued, the Governor being resident in Sierra Leone, and the Administrator of the Gambia being subordinate to him. In 1888 the Gambia was made an independent colony with a separate Governor. The only remaining link between the Gambia and Sierra Leone is that an appeal still lies from the Supreme Court of Gambia to that of Sierra Leone.

#### *Instruments of Government in (1) Colony and (2) Protectorate.*

20. The instruments whereby the Colony and Protectorate are constituted and governed exhibit the difference in the basis of colonial and protectorate government clearly. They consist firstly of Letters Patent under the Great Seal of the 28th November 1888, and secondly of an Order in Council of the 23rd November 1893. The former relates to the Colony, the latter to the Protectorate.

The Letters Patent erect the settlement of Gambia into a separate Colony to be called the Colony of the Gambia, to be in charge of a Governor and Commander-in-Chief, or a Lieutenant-Governor, or an Administrator, as the Crown should from time to time direct. The Colony is to comprise "all places, settlements, and territories " which may at any time belong to Us in Western Africa, between the twelfth and " fifteenth degree of north latitude, and lying to the westward of the tenth degree " of west longitude." A Legislative Council is to be formed consisting "of the " Governor and such persons, not being less than two at any time, as We shall direct " by any instructions under Our Sign Manual and Signet, and all such persons shall " hold their places in the said Council during Our pleasure." Under Clause 9, which is made in pursuance of the British Settlements Act, 1887, to which reference has already been made, the Crown delegated to the Legislative Council "full power and " authority subject always to any conditions, provisos, and limitations prescribed by " any instructions under Our Sign Manual and Signet, to establish such Ordinances " not being repugnant to the Law of England, and to constitute such Courts and " officers, and to make such provisions and regulations for the proceedings in such " Courts and for the administration of justice as may be necessary for the peace, " order and good government of the Colony." The Order in Council recites the Foreign Jurisdiction Act, 1890, and the Letters Patent, and "that Her Majesty hath " acquired jurisdiction within divers foreign countries on the West Coast of Africa " near or adjacent to Her Majesty's said Colony of the Gambia and that it is expedient " to determine the mode of exercising such jurisdiction," and then proceeds to empower the Legislative Council of the Colony "to exercise and provide for giving " effect to all such jurisdiction as Her Majesty may at any time before or after the " passing of this Order in Council have acquired in the said territories adjacent to " the Colony of the Gambia."

#### *Protectorate System.*

21. As we shall see in the next part of our Report, the law which is administered in the Colony is the law of England. In the Protectorate, on the other hand, consisting as it does almost entirely of country districts, it was deemed necessary to govern through the native organisations and to recognise native customs; accordingly a system of government known as the Protectorate system was evolved and is contained in the Protectorate Ordinances.

It was found convenient to apply the system to certain parts of the Colony, and now, by section 4 of the Protectorate Ordinance, 1902, as amended by subsequent Ordinances, it is provided that the "portions of the Colony known as Brevet, Bajanis, McCarthy's Island, the Ceded Mile, and British Krombo, shall be subject to the Protectorate system." The effect is that only St. Mary's Island, on which the town of Bathurst is situated, remains outside the "Protectorate system."

It must be borne in mind that these parts of the Colony, although administered on the Protectorate system, still remain part of His Majesty's dominions.

## SIERRA LEONE.

### *Brief History.*

22. The origin of the Dependency of Sierra Leone is different from that of any other of our West African dependencies, and has not been without effect upon the system of transfer of land in that Colony and Protectorate. It is unnecessary to dwell at any length on the early history of Sierra Leone. With its fine natural harbour and its ample water supply it could not but have been a favourite point of call for the traders and adventurers who sailed to the West Coast of Africa.

During the latter part of the 16th and the whole of the 17th and 18th centuries it was an important station for trade, at first mainly in gold and ivory, afterwards in slaves. This trade was then carried on by the Royal African Company, and suffered much at the hands of the Dutch and the French, and also of the pirates who frequented the bays along the neighbouring coast. The company was, as has already been mentioned, dissolved by Act of Parliament in 1752.

23. In 1772 Somerset's case was decided in the Court of King's Bench. The effect of Lord Mansfield's judgment in that case was that all slaves arriving or living in England became free men. The number of African slaves who had been brought into England at that time is stated to have been about 14,000. These numbers were increased by further immigration to London of negroes who had served on the British side in the American War, and an association was formed for "relieving the black poor" by means of founding a Colony on the West Coast of Africa. The Government consented to pay the cost of their transfer, and after much delay and many catastrophes a number of negroes were landed at Sierra Leone on May 9th, 1787. There was also about the same time a settlement of a body of these negroes in Nova Scotia who ultimately were transferred to Sierra Leone.

A grant of land about 20 miles square was procured from the king of the country and a local chief, and confirmed by a treaty dated August 22nd, 1788; and houses were built for the settlers, which developed into the present Freetown. Many misfortunes marked the early history of the new Colony. The promoters of the scheme, of whom the principal was Granville Sharpe, nothing daunted, formed themselves into an association "for the purpose of opening and establishing a trade in the natural productions of Africa to the free settlement in St. George's Harbour," part of what is now Freetown harbour. In 1791 the company was incorporated by Act of Parliament. The object was stated in the preamble to be "the general trade and commerce from these kingdoms to and with the coasts of Africa and from thence to and with the several interior kingdoms and countries of that continent." The Act expressly recognised the territory at Sierra Leone which had been ceded as being vested in the Crown.

In 1791 the remnants of the original band of colonists were collected and settled near the original settlement in a village which received the name of Granvilletown.

In 1792 a large number of the negroes settled in Nova Scotia as above-mentioned were transferred to Sierra Leone. These immigrants gave some trouble to the authorities of the company.

In 1794 the new town was sacked and burnt by a French squadron. It was mainly due to the exertions of the then Governor, Zachary Macaulay, that these misfortunes were repaired, and in 1798 Freetown had 300 houses and 1,200 inhabitants, and was the centre of a considerable trade.

24. In 1800 a Charter of Justice was granted by the Crown to the Company. The peninsula was granted to the company, and they were empowered to acquire other lands in the peninsula of Sierra Leone. By this Charter the company were authorised to appoint a Governor and a Council, and to legislate for the Colony, subject to the restriction that the laws were not to be repugnant to the laws of England. Provision was also made for the administration of justice.

In the same year a body of Maroons, who had been transported from Jamaica to Nova Scotia for rebellion in Jamaica were brought from Nova Scotia to Sierra Leone and proved an important addition to the population of the Colony. They supported the Government in a quarrel with the Nova Scotians and prospered as traders and mechanics. Neither the Nova Scotians nor the Maroon element of the population succeeded in agriculture, and their lands were tilled by hired labourers. In 1808 the government of Sierra Leone was resumed by the Crown.

25. The population of the original Colony consisted, as will be gathered from the above sketch, of a strangely miscellaneous character, and had little or no customary relation to the land. The land in fact was regarded as vested in, and at the entire disposal of, the Crown. From time to time further acquisitions of land, or, at any rate, of controlling power over land, were made by the Crown, mainly by cessions or consent of the native chiefs.<sup>(1)</sup> At length, in 1882, a convention was made, which the French supplemented by subsequent agreements, which finally fixed the boundary between the English and French Protectorate. An arrangement has also been made with the Liberian Republic. Thus the territory subject to the jurisdiction of the Crown, either as Sovereign or under the powers given by the Foreign Jurisdiction Act, became at last definitely ascertained.

#### *Instruments of Government in (1) Colony and (2) Protectorate.*

26. The Letters Patent and Order in Council regulating the system of Government in the Colony and in the Protectorate are on lines similar to those in force in the Gambia. By the Letters Patent, which are dated the 3rd April 1913, the Colony of Sierra Leone is to comprise all places, settlements, and territories between the sixth and tenth degrees of north latitude and the tenth and fourteenth degrees of west longitude and bounded on the north by the Anglo-French boundary line and on the south by the Anglo-Liberian boundary line. The provisions as to the Legislative Council and as to the powers delegated to it are similar to those contained in the Gambia Letters Patent. The Order in Council which regulates the Protectorate is dated the 7th March 1913 and has the like effect as that which relates to the Gambia Protectorate.

#### *Protectorate System.*

27. As in the Gambia so in Sierra Leone, whilst the law administered in the Colony is English law, that in force in the Protectorate is a different system based on native organisation and native custom and embodied in the Protectorate Ordinance, 1901, the Protectorate Courts Jurisdiction Ordinance, 1903, and the Protectorate Native Law Ordinance, 1905. This Protectorate system includes a small portion of the Colony whilst the rural parts of the Sherbro district of the Colony, although not within the definition of Protectorate contained in the first of the above Ordinances, have a system of Courts on the lines of the Protectorate Courts and have been brought under the Protectorate Native Law Ordinance.

### THE GOLD COAST.

#### (1) THE COLONY.

##### *Early History.*

28. The attention of European traders was first drawn to the Gold Coast by the rich promise of wealth which the gold to be obtained from the country afforded. In process of time the trade in gold and other products of the country was, to a large extent, superseded by the still more lucrative commerce in slaves. The forts already mentioned, which were built and fought for mainly for the purposes of the slave trade, lost their principal importance when, in 1807, the slave trade was abolished. But, as Sir Charles Lucas points out, the long connection which had existed between England and West Africa was not interrupted even temporarily by the cessation, so far as this country was concerned, of the principal trade. A number of the forts were abandoned, but four were retained, in what is now the Gold Coast Colony. These were Dixcove, Cape Coast Castle, Anamaboe and Accra. The parliamentary grant for the maintenance of these forts was continued. The forts were in 1808 included in the West Africa Settlements, which, as we have seen, included

(1) Lucas: "Historical Geography of the British Colonies," Vol. III., p. 189, *et seq.*

Bathurst and Sierra Leone, with headquarters at the latter place. Troubles, however, had already arisen with the neighbouring kingdom of Ashanti. In 1807 the Ashantis attacked Anamaboe, and compelled the English to acknowledge the suzerainty of the Ashanti king and to pay tribute or rent for the forts. Disputes followed between the Company and the Imperial Government, and, as already stated, in 1821 the Company was dissolved. In 1824 an invasion of Ashanti territory was conducted by the Governor, Sir Charles McCarthy. He was disastrously defeated and lost his life. In 1826, however, a new invasion of the Ashantis was so successfully resisted, that they gave no further active trouble for a space of a generation.

#### *Origin of Judicial Jurisdiction.*

29. The following extract from a Memorandum by Sir William Brandford Griffith, who had long experience of the Gold Coast as Chief Justice and in other capacities, gives an account of the origin of the judicial jurisdiction which has since been exercised in places under British influence but outside the dominions of the Crown. Referring to this period he writes:—

“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 towus 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.”

African  
No. 1048,  
p. 292.

30. The policy of the British Government at this date had for some years favoured withdrawal from the expensive and troublesome task of maintaining and protecting the British settlements in West Africa. In 1828 an arrangement was made that the government of the forts should be vested in a committee of London merchants chosen by the Government, who were engaged in trade with the Gold Coast. Five persons residing at Cape Coast Castle and Accra, approved by the Government, were appointed by the committee as a local council of administration and a court of justices of the peace.

The authority of the committee was not to extend beyond the limits of the forts. Cape Coast and Accra were to remain dependencies of Sierra Leone, and British law was to be in force at those places. Parliament was to grant a subsidy of 4,000*l.* a year for the maintenance of forts and garrisons. Thus for a time the British settlements in the Gold Coast passed under the ostensible control of a body of merchants.

#### *Maclean's System.*

31. In 1830 Captain George Maclean was appointed Governor under the new régime of 1828. One of his first acts was to bring about between the English and their native allies and the Ashantis the treaty of 1831 which was called by the Ashantis “the treaty of Maclean.” This treaty for the time being assured peace and free traffic between the coast and the interior. The Ashanti king relinquished his claim to dominion over the Fantis (who occupied the land between Ashanti and the coast), “and the English Governor was recognised as the future referee and arbitrator in the case of native quarrels.”

Although the authority of Maclean was technically limited by the walls of the forts, beyond which neither he nor the committee under whom he acted had any legislative or judicial jurisdiction,<sup>(1)</sup> he appears in the course of a few years to have gained an extraordinary influence over the natives of the adjoining country. Speaking of the judicial authority established by him, Sir W. Brandford Griffith says:

“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

African  
No. 1048,  
p. 294.

(1) “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 required to exercise their functions on the very spot where their exercise is never required.”—Extract from letter of Maclean to the London Committee, quoted in Sir W. Brandford Griffith's Memorandum on the History of the British Courts in the Gold Coast, July 1904 (*African No. 1048*, p. 293).

magistrates in any case in which they doubted their home court. . . . 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."

No records have been preserved of the proceedings in these tribunals. But we may well believe that the civil jurisdiction exercised by them, dealing with disputes in matters relating to the land, must have had a prominent place. Boundary disputes, which would have led to fighting and blood-shed, were doubtless amongst the questions frequently dealt with by the British courts.

*Report of Select Committee in 1842 on the West African Settlements.*

32. After a time, however, complaints arose. Maclean was charged with allowing foreign vessels engaged in the slave trade to obtain supplies from the forts under his jurisdiction, and also with unduly stretching his authority outside the limits of English territorial jurisdiction. Dr. Madden, who had been a stipendiary magistrate in the West Indies, was sent out to report. His report, though unfavourable to Maclean's system on the ground of its irregularity, acknowledged its beneficial working. A Select Committee of the House of Commons was appointed in 1842 to report on the West African Settlements. The Committee reported that Maclean, with the "miserable pittance of between 3,500*l.* and 4,000*l.* a year," had exercised from the first, in these "ill-provided forts . . . manned by a few ill-paid black soldiers, " a very wholesome influence over a coast not much less than 250 miles in extent and " to a considerable distance inland; preventing within that range external slave " trade, maintaining peace and security, and exercising a useful though irregular " jurisdiction among the neighbouring tribes, and much mitigating, and in some " cases extinguishing, some of the most atrocious practices which had prevailed " among them unchecked before." On the question of the judicial powers which Captain Maclean and other magistrates had in fact exercised by the consent of the natives outside the limits of the forts, the Committee used language which, as it marks an important step in the extension of British jurisdiction in West Africa, we quote at length.

"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 other forts, have generally, we might almost say uniformly, been carried into effect without the interposition of force. The value of this interposition of an enlightened, though irregular, authority (which has extended in some cases, and with advantage to humanity, even to an interference in capital cases), is borne witness to, not only by parties connected with the government of the Settlements, who might be suspected of a bias in its favour, but also by the Wesleyan Missionaries, and even by Dr. Madden, who, objecting to its undefined extent, and to the manner in which, in some respects, it has been carried out, yet still bears high testimony to its practical value, to its acknowledged equity, and to its superiority over the barbarous customs which it tends to supersede."

The Committee recommended, in order that this jurisdiction should be better defined and understood, that a "judicial official 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 should not be restricted to the technicalities of English law, " and that altogether he should be allowed a large discretion." "The first result of " the report," says Sir W. B. Griffith, "was the passing of the Act 6 & 7 Vict. c. 13, " whereby Her Majesty was empowered to legislate by Order in Council for Her " Settlements in the West Coast of Africa, and also to delegate Her authority by " commission under Her signet and sign manual to resident officers."

*Foreign Jurisdiction Act.*

33. It is significant that in the year following the report of the Select Committee, the Foreign Jurisdiction Act, 1843, was passed, the provisions of which have already been referred to, whereby when the conditions of consent or sufferance are satisfied,

jurisdiction, both legislative and judicial, may be exercised in territories which are not otherwise subject to British sovereignty. Thus the leading and most characteristic feature of our West African Protectorate was established, and the distinction between Colonies and Protectorate for practical purposes, other than questions relating to nationality, greatly narrowed.

#### *Separation of Gold Coast from Sierra Leone.*

34. One of the recommendations of the Committee had been the resumption of the government by the Crown and its separation from that of Sierra Leone, and accordingly the settlement was given its own Governor or Lieutenant-Governor, although it remained a nominal dependency of Sierra Leone until 1850.

The Select Committee had also recommended that as far as possible the jurisdiction of the British courts should be made the "subject of distinct agreement." The most important of these agreements was that called the Fanti Bond (March 6th, 1844). It recognised the jurisdiction which had been exercised on behalf of Her Majesty, and declared that crimes or offences would be tried and inquired into "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." The office of Judicial Assessor was created, with Maclean as the first occupant, and it was significant of the spirit of the jurisdiction that an Order in Council of September 3rd, 1844, provided that "all judges magistrates assessors and other officers duly appointed to exercise any power belonging to 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 as nearly as may be according to the said law of England." Maclean confined himself to his judicial duties until his death in 1847. "He was," says Mr. Sarbah, "deeply mourned by the whole country."

#### *Extension of British Authority.*

35. In the Gold Coast the extension of British authority was very gradual. Beginning with the voluntary jurisdiction acquired and consolidated as has been above explained, in 1847 the area over which it extended was estimated as 6,000 square miles, with a population of 275,000. This extension brought into the forefront the necessity of various measures for the better government of the country. This need was further emphasised by the acquisition in 1850 of the powers and rights still possessed and exercised by the Danes on the eastern portion of the coast comprising certain forts and exclusive though ill-defined rights of protectorate over the "hinterland." This purchase brought under British influence the tribes of Akim and the district of the Volta river. By Letters Patent of the 24th January in the same year, made pursuant to 6 & 7 Vict. c. 13, the Gold Coast was separated from Sierra Leone, with a Legislative Council empowered to legislate for the newly constituted Colony.

36. In 1852 an assembly of native chiefs was summoned by the Governor, and called the Legislative Assembly of Native Chiefs upon the Gold Coast, at which a poll tax was agreed to in consideration of the advantages derived from the protection of Her Majesty's Government, and by an ordinance passed in April of that year, it was provided "that the revenue derived from this tax after payment of the stipends of the chiefs and other expenses attending its collection be devoted to the public good, in the education of the people, in the general improvement and extension of the judicial system, in affording greater facilities of internal communication, increasing medical aid, and in such other measures of improvement and utility as the state of social progress may render necessary, and that the chiefs be informed of the mode of its application and entitled to offer such suggestions on this point as they may consider necessary."

This measure, though not strictly an Ordinance, as it was not passed by the Legislative Council of the Colony, stands first in the Chronological Table of Ordinances published under the authority of the Reprint of Statutes Ordinance, 1909. It was repealed by No. 1 of 1886.

#### *Supreme Court Ordinance, 1853.*

37. In 1853 the first ordinance establishing a Supreme Court for the Colony was passed. Section 8 recognises the distinction between the Colony and the Protectorate, and, by section 9, Mr. Fitzpatrick, who was described as "now filling the office of

“ Judicial Assessor or assistant to the native sovereigns and chiefs of the country adjacent to Her Majesty’s Forts and Settlements on the Gold Coast,” was appointed as Chief Justice of the Supreme Court. Although the Legislative Council had not yet been empowered to legislate for the Protectorate, the ordinance contained a provision for an appeal from decisions of the Judicial Assessor to the Governor in Council sitting, of course, in the Colony. This Supreme Court Ordinance was repealed in 1866, and a new court constituted. This, again, was superseded by No. 4 of 1876, which is still in force, and is referred to in detail in the next part of this Report.

38. These Ordinances of 1852 and 1853 appear to have been based on the assumption that the legislative and judicial authority of the Crown extended far beyond the limits of its territorial jurisdiction, and consequently must rest on the assumed fact that the condition of assent or sufferance required by the Foreign Jurisdiction Act, 1843, had been satisfied. This assumption was further acted on by an Order in Council of April 4th, 1856, made under the Statute 6 & 7 Vict. cc. 13. and 94., by which 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 which Her Majesty might exercise without the consent or co-operation of any native chief or authority in the same way as if such matter had arisen within the forts; (2) that in all matters civil and criminal the assessor to the native chiefs should have all the power and jurisdiction acquired by Her Majesty in such territories; (3) that the Legislative Council of the Colony should have power to legislate respecting the exercise of all such power and jurisdiction as aforesaid; and (4) that in the determination of any matter or question which may concern or arise out of any dealing with the natives of the protected territories, equitable regard shall be paid to the local customs of the said territories so far as the same shall not be repugnant to Christianity or to natural justice.

The acquisition of Lagos in 1861 with which we shall deal later under the heading of Southern Nigeria, brought to a head the feeling, which at that time was very prevalent, against further extension of the responsibilities of the British Government in foreign lands.

#### *Report of Select Committee in 1865.*

39. In 1865 a Select Committee of the House of Commons was appointed to consider the state of British establishments on the Western Coast of Africa. This Committee reported that all further extension of sovereignty or of protectorate was inexpedient, and that the object to be kept in view should be the ultimate withdrawal of the Queen’s Government from the coast except the settlement of Sierra Leone. “ Yet,” says Sir Charles Lucas, (1) writing in 1893, “ as a matter of fact territory has been extended, government has been assumed; a long series of treaties has been made, perpetually enlarging the sphere of British protection; until, at the present day, the British Government is far more deeply and far more definitely involved in West Africa than ever it was in the days of the slave trade.”

#### *Development of British Jurisdiction and its bearing on the Law relating to Land.*

40. The growth and development of British jurisdiction in the Gold Coast above sketched had a most important bearing on the law relating to the transfer of interests in land and its products. Under the Supreme Court Ordinance of 1853, English law and procedure continued to be in force both in civil and criminal cases in the “ Forts and Settlements of the Gold Coast.” By the Order in Council of April 4th, 1856, the jurisdiction of the Supreme Court and of the Judicial Assessor, was expressly extended to the Protected Territories, and express provision was, as we have seen, made for administering native law and custom within such territories. The most important subject matters of civil jurisdiction would be those relating to land and its products. Although technically the office of Chief Justice and of Judicial Assessor were quite distinct, and the limits to which they were respectively attached were different, the two offices were from the first held by the same person. Gradually there came, as Sir W. B. Griffith points out, a change in the Assessor’s Court. The practice had crept in for the Assessor to hear cases without the aid of the chiefs. After the repeal of the Ordinance of 1853 and the reconstitution of the court by the Ordinance of 1866 “ the old practice was resorted to and the chiefs were summoned to sit with the judicial assessor; but the chiefs no longer tried the cases with the

(1) Lucas, “ Historical Geography,” Vol. III., p. 116.

“aid of the assessor.” It was they who became the real assessors assisting the assessor who really tried the case.

41. In 1872, Mr. D. P. Chalmers, who then held both offices, pointed out in a letter to the then Administrator of the West Africa Settlements the importance of co-operation in judicial matters of the English magistrate and the native chief. He suggested the encouragement of this co-operation, the success of which must, as he says, largely depend on the personal qualities of the English officer and of the chief of the district. He proposes subsidising and co-ordinating certain selected paramount and subordinate chiefs, and laying down certain regulations and conditions. He made many suggestions as to how his scheme might be carried out, the general object being in civil matters to respect and enforce native customs and to give the native courts the assistance which the presence of an English official might afford, and to secure recourse in proper cases to the Supreme Court.

#### *Conquest of Ashanti and Grant of Charter constituting Gold Coast Colony.*

42. The following extract from Sir W. B. Griffith's Memorandum<sup>(1)</sup>, already referred to, carries on the history from this point:—

“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<sup>(2)</sup> 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 1865 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<sup>(3)</sup> 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.”

43. The union with Lagos was not long lived, and on the 13th January 1886, letters patent were issued 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. A Legislative Council was constituted for the Colony, and in pursuance of the Imperial Act, 6 & 7 Vict. c. 13, the Crown delegated to such Council

(1) African No. 1048, p. 297.

(2) They had transferred their forts and rights to the British Government in 1872.

(3) Given at pp. 288-292 of Mr. Sarbah's "Fanti Customary Laws," 2nd edition.)

authority to establish such Courts and to make provision for the proceedings in the Courts and for the administration of justice as might be necessary for the peace, order, and good government of the Colony. The Colony 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.

#### *Order in Council of 1901.*

44. The distinction between those portions of the territory subject to the territorial sovereignty of the Crown and those parts over which, though not British territory, jurisdiction was exercised as explained above gave rise to many difficulties. In the words of a judgment of the Supreme Court quoted by Mr. Sarbah, "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 the raising of many legal problems, but it was a source of danger to the well-being of the Colony."<sup>(1)</sup>

These and similar difficulties were set at rest by the Order in Council of September 26th, 1901, whereby the Gold Coast Colony was extended so as to include the whole territory between Ashanti and the coast, the limits of which on the east, north, and south were set out in detail in the Order. Henceforward the legislative power of the Crown over the Gold Coast has rested on the basis of territorial sovereignty, and no distinction exists between the Colony and what was formerly the Protectorate. By the Order, all existing laws and ordinances previously existing were confirmed.

#### *Powers of Legislative Council.*

45. The contention, to which we have already referred, that the Colonial legislature has no jurisdiction to enact such laws as the Forest Ordinance and other Ordinances relating to land originated at a time when the bulk of the Gold Coast was protectorate, and the contention doubtless was that the "power and jurisdiction" obtained by the Crown was of a limited nature. Sir W. B. Griffith, in a passage we have already cited, says, "How far such jurisdiction extended was not without doubt, as may be seen by Lord Carnarvon's despatch of the 20th August 1874." That despatch proposed to define the jurisdiction by proclamation and covered a draft proclamation specifying as one of the subjects of legislation "the protection of individuals and property." Although this proclamation was not adopted and "the Legislative Council, unhampered by any restriction, set about exercising its powers as freely as if Her Majesty's power and jurisdiction in the Colony and protected territories were co-extensive," it might have been argued that the draft was evidence that only the power to protect property was conferred and that any legislation with regard to property which was not within this power was *ultra vires*.

46. Without expressing any opinion on this, which is now an academic point, we would point out that by annexation a new basis of jurisdiction—territorial jurisdiction—was substituted and the whole of the former protectorate came under the Letters Patent of the 13th January 1886, whereby the Crown, acting under the statutory authority conferred by the British Parliament, had empowered the Legislative Council to establish such Ordinances as might be necessary for the "peace, order, and good government of the Colony."

Under these circumstances we are satisfied that it will be competent for the Legislative Council to pass the measures recommended in Part III. of this Report.

#### (2) ASHANTI.

47. The relations of Ashanti and the Gold Coast down to the war of 1873-4 have been already noticed. The complete defeat of the Ashantis in that year "was followed by the defection of several of the outlying provinces, which became absorbed in the British Protectorate. Disturbances arose and it became necessary to call upon the then King of Ashanti to keep his treaty engagements and refrain from attacking

(1) Sarbah: "Fanti National Constitution," p. 115.

"his neighbour."<sup>(1)</sup> Ultimately an expedition was sent which occupied Coomassie without resistance and Prempeh, the King paramount, was deposed and deported. In 1900 the Ashanti tribes, with the exception of the Bekwais, having rebelled and having been defeated, an Order of the King in Council was made on September 26th, 1901, which, after reciting that the territories heretofore known as Ashanti had been conquered by His Majesty's forces, declared the annexation of those territories. The Order fixed the boundaries, and placed Ashanti under the jurisdiction of the Governor of the Gold Coast, with power to appoint a Chief Commissioner and to impose on him such powers and authorities as the Governor of the Gold Coast might think fit, subject to the approval of the Secretary of State. It was specially declared that the Governor in issuing ordinances "shall respect any native laws by which the civil relations of any nations, chiefs, tribes, or populations under His Majesty's protection are now regulated except so far as the same may be incompatible with the due exercise of His Majesty's power and jurisdiction or clearly injurious to the welfare of the said nations." In exercise of these powers the Ashanti Administration Ordinance, 1902 (No. 1 of 1902), was enacted by the Governor of the Gold Coast, providing for the appointment of Chief Commissioner and the establishment of a Chief Commissioner's Court.

### (3) THE NORTHERN TERRITORIES.

48. The Northern Territories were dealt with by an Order in Council dated on the same day as the Order relating to Ashanti. These territories are bounded "on the south by Ashanti, on the west and north by the line of the frontier between the British and French Possessions, and on the east by the line of frontier between the British and German Possessions."<sup>(2)</sup>

Several treaties of protection and friendship had been entered into about the year 1894 with various tribes inhabiting this territory. The Order in Council recites that "by treaty, grant, usage, sufferance, and other lawful means His Majesty has power and jurisdiction within the said territories." The Order does not, as in the case of Ashanti, purport to annex the Northern Territories, but is based entirely on the statutory powers conferred by the Foreign Jurisdiction Act, 1890. It confers upon the Governor of the Gold Coast all powers and jurisdictions which "His Majesty at any time before or after the date of this Order has, or may have, within the Northern Territories." Irvine,  
4395.

### SOUTHERN NIGERIA.

#### *History of Lagos.*

49. The dependency which, at the date of the reference to us, was called Southern Nigeria and consisted of the Colony of, and the Protectorate of, Southern Nigeria, was, as from the beginning of 1914, amalgamated with Northern Nigeria and now forms the Colony of, and the Southern Provinces of, Nigeria. We propose, however, in this report to use the name applicable before the amalgamation.

Prior to such date the Colony and Protectorate of Southern Nigeria consisted of the former Colony and Protectorate of Lagos, and also of the territory extending along the coast line from the River Benin to the Rio del Rey, to the east of Old Calabar, together with the hinterland as far as the southern boundary of Northern Nigeria. This territory is bounded on the east by the agreed line of frontier separating British territory from the German Cameroons, and on the west by French Dahomey.

50. The history of Lagos dates from the eighteenth century, when some Yoruba settlers established themselves over the island of Iddo, close to the island of Lagos, and began to cultivate land in Lagos. Afterwards further settlers arrived in Lagos from Benin. Lagos became an important centre of the slave trade, which after 1807 had been driven from the neighbourhood of Sierra Leone. The slave trade necessarily gave rise to frequent wars, and was greatly developed under King Kosoko, in league with the King of Dahomey and Portuguese slave dealers.

51. In 1851 the English interfered. Lagos was stormed and taken. Kosoko was ejected, and a former king reinstated, who was under treaty to prohibit the slave trade. After further troubles, a treaty was made on the 6th August 1861 with King Docemo,

(1) Lucas: "Historical Geography," Vol. III., p. 151.

(2) See Order in Council of the 22nd October 1906.

whereby he ceded the port and island of Lagos "and the direct full and absolute dominion and sovereignty" of such port and island to the English Crown. Some subsequent additions of territory were made, and thus the island of Lagos became part of the dominions of the British Crown. This Colony was for a time, as has already been mentioned, placed under the Governor-in-Chief of Sierra Leone, and in 1874 was incorporated with the Gold Coast. By Letters Patent of January 13th, 1886, Lagos was made a separate Crown Colony, and a Legislative Council was established.

*Extension of Jurisdiction to Lagos Protectorate and Yoruba States.*

52. In addition to the territory thus acquired, various rulers in the vicinity of the Colony submitted themselves to British influence and became known as the Lagos Protectorate, and by an Order in Council of December 29th, 1887, purporting to be made under the Foreign Jurisdiction Act, 1843, after reciting that Her Majesty had acquired power and jurisdiction within divers countries on the West Coast of Africa, near or adjacent to the Colony of Lagos, the Legislative Council of Lagos was empowered to exercise all such powers and jurisdiction as Her Majesty at any time had acquired or might acquire in the countries adjacent to the Colony of Lagos. A subsequent Order in Council, dated July 24th, 1901, confirmed the Order of 1887, and brought the Yoruba States within its scope, the Lagos Protectorate thereby becoming coterminous with the boundaries of Northern and Southern Nigeria.

*Establishment of Royal Niger Company and Oil Rivers Protectorate.*

53. The delta of the Niger was occasionally visited by European traders in the latter part of the sixteenth century. Hakluyt mentions a voyage to Benin in 1588 by merchants who brought back to England "oil of palm, Guinea pepper, and elephants' teeth"; and the Portuguese also traded on the coast. No European settlements were established, and the trade of the Niger itself was left in the hands of private traders, but at length, in the face of growing foreign competition, all the English firms who traded in these regions combined their resources and their efforts in the year 1879, forming one large company under the name of the United or National African Company.

Between 1879 and 1884 the National African Company made a succession of treaties with the various native States on the Lower Niger, and in the last-mentioned year, in consequence of the German annexation of the Cameroon district, Consul Hewitt, the British representative in the Bight of Benin, negotiated a series of treaties with the native States on the Oil Rivers, Old and New Calabar, and several other parts adjoining the Niger delta as far west as Lagos. These last-mentioned treaties were the origin of the Oil Rivers Protectorate, under which consular jurisdiction was administered under the Foreign Jurisdiction Act.

54. In June 1885 the British Government proclaimed to the world a formal Protectorate over the Niger districts, with a coast line from Lagos to the Rio del Rey.

In the following year (1886) the National African Company received a charter from the Crown, and, taking the title of the Royal Niger Company, was authorised to administer the territories over which it had acquired rights by treaties and acts of cession. The range of these treaties extended beyond the limits of the Protectorate, as recently proclaimed, and accordingly the Gazette of 18th October 1887 contained an amended proclamation, by which the British Protectorate of the Niger districts was declared to comprise, in addition to the coast line, "all territories in the basin of the Niger and its affluents which are or may be for the time being subject to the government of the National African Company, now called the Royal Niger Company." Far reaching as was the scope of the Company's control, it did not include the whole area of British influence on the Lower Niger. The coast line and part of the interior from the Benin to the Forcados, and from the Nun mouth of the Niger to the Rio del Rey, including the Calabar estuaries, was excepted from its jurisdiction, and formed the Oil Rivers Protectorate to which we have already referred. By an Order in Council dated the 13th May 1893, this Protectorate was extended, and its name changed to that of the Niger Coast Protectorate.

Thus in 1899 the middle portion of the Central and Eastern Provinces of the present Southern Nigeria were administered by the Royal Niger Company, whilst the territories flanking that portion on either side were under the Niger Coast Protectorate. Whilst in the Protectorate justice was administered by consular officers, under the

*Ibid.* as  
"Historical  
Geography,"  
p. 112.

*Ibid.*,  
p. 152.

*Ibid.*,  
p. 233.

*Ibid.*,  
p. 153.

*Ibid.*,  
p. 154.

*Ibid.*,  
p. 154.

Foreign Office, acting under the Foreign Jurisdiction Act, in the Company's territories the courts were manned by judges appointed, not under the Act, but under the charter, which empowered the Company to make laws and to administer justice.

*Transfer of Company's Territories to the Crown.*

55. Arrangements having been come to in 1899 with the Royal Niger Company for the transfer of their territories to the Crown, the charge of the Niger Coast Protectorate was taken over by the Colonial Office from the Foreign Office, and, by the Southern Nigeria Order in Council of the 29th December 1899, the Protectorate of Southern Nigeria was constituted by the fusion of the Niger Coast Protectorate and of the southern portion of the territories of the Royal Niger Company. *Ibid.*, p. 155.

*Establishment of Colony of Southern Nigeria.*

56. In February 1906, by Letters Patent, the Colony of Lagos received the name of the Colony of Southern Nigeria, and by an Order in Council dated the 16th of the same month and year, known as the Southern Nigeria Protectorate Order, the Legislative Council of the Colony of Southern Nigeria, formerly the Colony of Lagos, was empowered to make ordinances exercising His Majesty's power and jurisdiction over territory outside the Colony subject to the proviso "that nothing in any such ordinance or ordinances contained shall take away or affect any rights secured to any natives in the said territories by any treaties or agreements."

This Order in Council applied to the whole territory formerly consisting of the Colony and Protectorate of Lagos and of Southern Nigeria, and thus the whole dependency became the Colony and Protectorate of Southern Nigeria.

*Niger Lands Transfer Ordinance.*

57. Shortly after this, the rights over a very large extent of land within the Protectorate claimed by the Royal Niger Company were transferred to the British Government under the Niger Lands Transfer Ordinance (No. 5 of 1906). These rights had been acquired by the Royal Niger Company under various grants or agreements entered into with various chiefs, the particulars of which are set out in the First Schedule of the Ordinance. The greater part of these transactions appear to have taken place in the years 1896-8, but some are of an earlier date.

The preamble of the Ordinance states that it is expedient to provide for the vesting of certain lands and rights which on January 1st, 1900, belonged to the Royal Niger Company, in the Governor and his successors in office in trust for His Majesty, his heirs, and successors. And it is provided that, with the exceptions mentioned in the Second Schedule, all the lands and rights within the Protectorate belonging to the Niger Company on January 1st, 1900, specified in the instruments mentioned in the First Schedule thereto which were duly registered under the Lands Registry Regulation (1896) of the Royal Niger Company were thereby vested in the Governor in trust for the Crown. Certain pieces of land, specified in the Second Schedule, were reserved and remained vested in the Royal Niger Company. By this Ordinance a vast extent of territory passed to the control of the Government. The question with regard to this transfer is considered in the next part of this Report.

As we have already stated, the amalgamation of the two Dependencies of Northern and Southern Nigeria took place as from the 1st of January 1914, the Colony of Southern Nigeria becoming the Colony of Nigeria and the Protectorate of Southern Nigeria the Southern Provinces of the Protectorate of Nigeria. Various Acts of State were promulgated whereby legislative power in the Colony was vested in the Governor with the consent of a Legislative Council and in the Protectorate in the Governor alone,<sup>(1)</sup> the treaty rights secured to natives being expressly safeguarded by a proviso in the same terms as that contained in the Letters Patent of 1906.

(1) An Order in Council of the 22nd November 1913 authorises the formation of an Advisory Council for both Colony and Protectorate, whilst another of the 10th August 1914 empowers the Governor, with the consent of the Legislative Council, on behalf of the Colony, and the Governor on behalf of the Protectorate, to legislate for the whole Dependency by a Joint Ordinance.

*Jurisdiction of Supreme Court.*

58. In 1874 a Supreme Court was constituted in the Settlement of Lagos, and by Ordinance No. 1 of 1888 it was provided that the Supreme Court of Lagos should be the Supreme Court for the Colony of Lagos and for the territories near and adjacent thereto wherein Her Majesty might at any time before or after the commencement of the Ordinance have acquired power and jurisdiction. Subsequently, in 1909, the entire Protectorate was divided into Supreme Court districts for the trial of cases.

There were formerly treaties and agreements with certain districts of Southern Nigeria, viz., Egbaland, Oyo and Ibadan, Ife and Ijebu Ode, limiting the jurisdiction of the Supreme Court in these areas; but these treaties and agreements have now been abrogated, and under Ordinance No. 2 of 1915 the Supreme Court has now the same jurisdiction in matters in those areas as in other parts of Southern Nigeria.

## PART II.

THE LAWS RELATING TO THE TRANSFER OF RIGHTS  
OVER LAND OR THE PRODUCE THEREOF.*Introductory.*

59. Our object in this part of the Report is, first, to ascertain the actual state of the laws in force in the West African Colonies and Protectorates regulating the conditions under which rights over land or the produce thereof may be transferred; and, secondly, to consider generally in what respects these laws are incomplete or otherwise defective and to indicate the lines on which they appear to us to require amendment. We shall formulate and summarise our specific recommendations in Part III.

We propose to examine, in the first instance, the general principles of the law relating to land in force in the various dependencies, stating shortly the constitution of the courts which have to administer the law. This examination will, we think, show that the general principles of that law are the same throughout the whole of the dependencies with which we have to deal, with the exception of parts of the Colonies of the Gambia and Sierra Leone. When we have finished this survey we shall deal specifically with each dependency, and shall see that the application of these general principles, and the enactments dealing with particular matters passed by the different legislative bodies, have resulted in systems which differ materially from one another.

THE COURTS AND THE GENERAL PRINCIPLES OF THE LAWS  
RELATING TO LAND ADMINISTERED BY THEM.

60. In our treatment of this subject we shall deal with the various dependencies in the same order which we adopted in Part I. A more detailed statement of the law will be found in Sir W. Napier's Memorandum.<sup>(1)</sup>

## I.

## Gambia.

## THE PORTION OF THE COLONY NOT UNDER THE PROTECTORATE SYSTEM.

The Colonial Courts consist of the Supreme Court and the Court of Requests at Bathurst. The former has jurisdiction in all land disputes, the latter in those where the value of the land in dispute does not exceed 50*l.* The Ordinance at present in force with regard to the Supreme Court is the Supreme Court Ordinance (No. 4 of 1889), and, in respect of the provisions which concern us, follows the Sierra Leone Ordinance, No. 9 of 1881, which, when it was passed, applied also to the Gambia.

Although the Ordinance does not expressly declare that the common law of England and the doctrines of equity are introduced, it is based on the assumption that they are in force and form the groundwork of the legal system.

The important provisions of this Ordinance are section 17, which introduces into the Colony the whole of the then existing English Statute Law "of general application"; section 19, which provides that English Statute Law shall be in force so far only as the local circumstances or the jurisdiction of the court permits; and section 21, which provides for the fusion of law and equity. The working of these and similar provisions in the laws of other dependencies will be dealt with later in the Report. For the present it is enough to point out that, so far as the area with which we are dealing is concerned, the law governing the transfer of land is English law so far as applicable.

THE PROTECTORATE INCLUDING THE PORTION OF THE COLONY UNDER THE  
PROTECTORATE SYSTEM.

61. The Protectorate Ordinance, 1913, regulates the judicial system within this area. Whilst the Supreme Court and the Court of Requests at Bathurst are to have the like jurisdiction that they have within the Colony, a system of native tribunals is constituted with jurisdiction in cases where the value of the land does

<sup>(1)</sup> See *infra* page 124.

not exceed 50%. These tribunals may consist of several native members or of the Travelling Commissioner, or some Commissioner specially appointed, either sitting alone or along with one or more native members.

A Commissioner has power to stay any case pending before a native tribunal or to rehear one already heard, and an appeal lies from the native tribunal to the Supreme Court.

With regard to the law to be administered under the Protectorate system, section 36 of the Ordinance provides that—

"All native laws and customs existing in the Protectorate relating to . . . . . tenure of land shall where not repugnant to natural justice nor incompatible with the law of England nor with any law or ordinance of the Colony applying to the Protectorate . . . . . continue and remain in full force and effect, and shall be taken cognizance of and enforced in all courts of law whether in the Colony or in the Protectorate in all causes or matters whatsoever arising in or relating to the Protectorate."

In the Gambia, therefore, in the case of matters relating to land in that part of the Colony which is not under the Protectorate system (practically, the town of Bathurst) the courts must act on the principles and rules of English law so far as applicable. As to the same class of questions arising in parts of the Dependency which are subject to the Protectorate system, the courts are bound to act upon the native laws and customs existing in the Protectorate, subject to the restrictions quoted above. It should also be pointed out that by section 35, "so far as consistent with the Protectorate system," any laws, statutes, ordinances, and rules for the time being in force in the Colony "being of general application throughout the same shall extend and apply to the Protectorate." The practical effect of this seems to be that in the Protectorate English law is applicable unless the matter in question is regulated by native custom, as, for instance, by a local custom regulating inheritance.

## II.

### Sierra Leone.

#### THE PROTECTORATE INCLUDING THE PORTION OF THE COLONY UNDER THE PROTECTORATE SYSTEM.

62. We think that it will conduce to clearness if we deal with this portion of the Dependency first. Here there exist three courts: (1) the Court of the Native Chiefs, with "jurisdiction according to native law to hear and determine" all cases regarding land between natives other than a case involving a question of title between two or more paramount chiefs; (2) the Court of the District Commissioner, with jurisdiction in cases involving a dispute between paramount chiefs; and (3) the Circuit Court (consisting of a Judge of the Supreme Court), with original jurisdiction in land cases not assigned to the other courts. Although there is no other specific provision as to the law to be administered than that set out in the above passage, the Court of the Native Chiefs, which is composed of native members, "according to native law and custom," will, presumably, decide matters before it by the only rules with which it is conversant, that is to say, native law and custom.

It is a matter to be noticed that there is no appeal from the native tribunal.

Section 6 of the Protectorate Courts Jurisdiction Ordinance, 1903, lays down, for the guidance of the Court of the District Commissioner and the Circuit Court, that native law and custom is to be administered as between natives, and is, in fact, a shortened form of section 19 of the Gold Coast Supreme Court Ordinance, a section which we shall discuss at length. Section 40 enables the Circuit Court to consult native chiefs on matters of law and custom, providing that "the opinion of each chief shall be given orally and shall be recorded in writing by the judge, but the decision shall be vested exclusively in the judge."

Legal practitioners are debarred from audience in the Courts of the Native Chiefs and of the District Commissioner.

#### THE COLONY.

63. Turning now to the Colony, we find that a large portion of it, that is to say, the district of Sherbro, with the exception of the Port of Sherbro and the site of the old town of Bendu, although not strictly speaking under the Protectorate system, has been placed by the Sherbro Native Courts Ordinance, 1905, under a system of courts practically identical with those in existence in the Protectorate, viz., the Courts of the Native Chiefs, and of the District Commissioners. Although the Ordinance

contains no provision similar to sections 6 and 40 of the Protectorate Ordinance, we suppose that it may be assumed that in settling disputes between paramount chiefs the District Commissioner would take native customs into consideration.

In the remainder of the Colony, and in cases arising in the Sherbro district not assigned to the Court of the native Chiefs, or to the District Commissioners, the Supreme Court of Colony is the tribunal for the determination of disputes with regard to land. The Supreme Court consists of a Chief Justice and a "Puisne and Circuit Judge," and its proceedings are regulated by the Supreme Court Ordinance No. 14 of 1904. This Ordinance declares the statutes of general application in force in England on the 1st of January 1880 to be in force in the Colony, and contains the like provisions as to the application of these statutes and as to the fusion of law and equity as are in force in the Gambia.

English law, therefore, is the only system recognised in this part of the Colony, and no evidence of native law or custom is admissible to determine the rights of the parties in any matter relating to land there.

### III.

#### Gold Coast.

##### THE COLONY.

##### *The Judicature.*

64. The Supreme Court, which consists of a Chief Justice and three Puisne Judges, has jurisdiction in all cases relating to land. The Colony is divided into provinces, and the original jurisdiction is exercised by a single judge while the full court constitutes the Court of Appeal. The provinces are subdivided into districts, and under the District Commissioners Ordinance, 1894, the executive officer of each district, known as the "District Commissioner," is constituted a Commissioner of the Supreme Court with a limited jurisdiction.

##### *The Supreme Court Ordinance.*

65. The Supreme Court Ordinance at present in force in the Gold Coast is No. 4 of 1876. The provisions governing the relations of English law and native custom are set out in detail in Sir Walter Napier's Memorandum. They are contained in sections 14, 17, 18, and 19.

*Infra, p. 1 et seq.*

Section 14 brings into force the common law of England and the doctrines of equity. It also brings into force all statutes "of general application" which were in force in England on July 24, 1874.

##### *Applicability of English Statute Law.*

66. It will be observed that it is only the Statute law of "general application" which is to be in force. The interpretation of these words has given the courts some trouble.

*Pennington v. The Queen, 7189-99.*

It is a general principle that when English law is introduced into a foreign country by reason of the settlement therein of a body of English subjects, "such colonists carry with them only so much of English law as is applicable to their own situation and the condition of an infant colony, such, for instance, as the general rules of inheritance and the protection from personal injuries."

The Judicial Committee of the Privy Council has held that the word "applicable" must be read as "reasonably" applicable, an interpretation which gives the courts a wide discretion in deciding to what extent English law is applicable in any particular case. Macleod, J. (a judge of the Supreme Court of the Gold Coast) is reported to have complained that the words above quoted are "a slovenly expression made use of by the Legislature in this Colony to save itself the trouble of explicitly declaring what the actual law of the Colony shall be."

*Rex v. McKimney, L.R. 14, A.C. 77.*

Whether or not the Legislature of the Gold Coast deserves censure as Mr. Sarbah states<sup>(1)</sup> for not undertaking a task of such magnitude and difficulty, we are disposed to think that, in the case of the transfer of rights over land, some provisions of a more definite character than exist at present might be laid down by the Legislature, and we shall make later certain recommendations on this subject. (See below, para. 86, and Part III., para. 368.)

<sup>(1)</sup> Sarbah: "Fanti Customary Laws." Second Edition, p. 268.

Section 17 somewhat further extends the latitude given to the courts by the section already referred to, in construing legal enactments by providing that such enactments "shall be in force so far only as the limits of the local jurisdiction and local circumstances permit."

*Recognition of Native Customs.*

67. By section 19 it is provided that "Nothing in this Ordinance shall deprive the Supreme Court of the right to observe or enforce the observance, or shall deprive any person of the benefit of any law or custom existing in the Colony, such law or custom not being repugnant to natural justice, equity and good conscience, nor incompatible, either directly or by necessary implication, with any enactment of the Colonial Legislature."

Under this provision it is the duty of the Supreme Court, whether sitting as a court of first instance or as a court of appeal, to take cognizance of any native "law or custom" the existence of which the court may consider to be established. The court is bound not to deprive "any person" of the benefit of any such law or custom. This is the enactment which determines the relations between English law and native custom, and applies where all parties to the proceedings are natives of the Colony. It also applies in cases between natives and Europeans "where it appears that substantial injustice may be done to either party by a strict adherence to the rules of English law."

It is further provided that "no party shall be entitled to claim the benefit of any local law or custom if it shall appear either from express contract or from the nature of the transactions out of which any suit or question may have arisen that such party agreed that his obligations in connection with such transactions should be regulated exclusively by English law." It is, we think, clear that though a party to a transaction may agree to his obligations in respect of such transaction being regulated by English law, yet this cannot affect the rights and obligations of a third party. We shall recur to this matter later.

The section concludes with a general provision that "in cases where no express rule is applicable to any matter in controversy the Court shall be governed by the principles of justice, equity, and good conscience."

*Native Jurisdiction and By-laws.*

68. The Supreme Court Ordinance did not abolish the native courts. This was decided by the full court in 1887. Native jurisdiction was however made the subject of a separate and very important ordinance, the Gold Coast Native Jurisdiction Ordinance, 1883. That ordinance as amended in 1910, now regulates the native courts.

So far as is material to this Report, its main provisions are as follows. The Ordinance recognises "head chiefs" and "chiefs," the latter including the subordinate chiefs known as "Oh-n, Ohene, Manche, and Amagah." The head chief is a chief who is not subordinate in his ordinary jurisdiction to any other chief. The expression "native tribunal" means "a head chief or the chief of a sub-division or village, as the case may be, sitting with the captains, headmen, and others, who, by native customary law, are the councillors or assistants of such head chief or chief." "Head chiefs division" means "the portion of the Colony under the supervision of a head chief." The "sub-divisions" of the division of the head chiefs are those which existed at the time of the passing of the Ordinance, or which have been or may be subsequently made by Order of the Governor in Council (section 4).

By the original Ordinance of 1883, section 3, the Governor in Council was empowered "to declare from time to time, as he may think desirable, 'that any head chief's division or part thereof shall be brought from a time to be named 'therein under the ordinance.'" By a series of orders issued between April 1883 and 31st December 1909, the application of the ordinance was gradually extended to the whole Colony, and by the amending ordinance of 1910 it was declared that:—

"Every head chief's division, with all its sub-divisions, is within the operation of this ordinance, and the powers and jurisdiction of all native authorities therein shall be exercised under and according to the provisions of this ordinance and not otherwise."

The authority of each head chief over the division under his supervision is recognised and confirmed, and he is empowered, with the concurrence of his councillors, to make by-laws "for promoting the peace good order and welfare of the people of his division." The by-laws are to be forthwith reported to the Governor in Council

for approval or disallowance, and when approved are published in the Gazette and thereupon have statutory force. A number of by-laws were made under the Ordinance as originally passed in 1883, and are of a very comprehensive character. For instance, the first printed set of by-laws give certain rights as regards minerals to the "successful native prospector" and regulate the farming royalties and rubber royalties payable by the farmer or manufacturer to the native authorities. The schedule, as amended in 1910, sets out the specific purposes for which by-laws may now be made. Those which seem most material for the purpose of the present inquiry are:—

"Taking care of unoccupied land and conserving forests. Making and preserving landmarks and fences. Regulating mines and mining for gold and other minerals. The proper cultivation collection and curing of agricultural and economic products and the eradication of diseases affecting such products."

#### *Native Courts.*

69. By section 10 of the ordinance:—

"The head chief of every division and the chiefs of sub-divisions or villages shall with their respective councillors authorised by native law form native tribunals having power and jurisdiction to try breaches of any byelaws . . . and to exercise civil and criminal jurisdiction in the causes and matters hereinafter mentioned in which all the parties are natives or in which any party not a native consents in writing to his case being tried by the native tribunal."

It should be observed that by the definition clause "native" means "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."

Amongst the matters specified (section 16) as being comprised within the civil jurisdiction of the native court is the following:—

"All suits relating to the ownership or possession of lands held under native tenure and situated within the particular jurisdiction of the tribunal."

We refer to the expression "lands held under native tenure" later in our Report (para. 117 below. See also paras. 78 and 369).

There is no limit in respect of value or otherwise to the jurisdiction of the native court, except as regards the situation of the land in question. The jurisdiction is exclusive when all the parties to the suit are natives, but consensual as regards any party not a native. The Supreme Court, or the Court of the Commissioner which is included in the definition of "the Court," may, if it considers any case brought before it one properly cognizable by a native tribunal, stay further proceedings and refer the case to the native tribunal. Power is also given to the Chief Commissioner by section 20, and to the Provincial Commissioner by section 21, to remove any civil case for sufficient reason, and by section 22 a defendant may make an application to the Provincial Commissioner for this purpose. Under section 23 an appeal lies from an inferior to a superior native tribunal in the same head chief's division, and from the highest native tribunal to the Supreme Court. In appeals relating to the ownership or possession of land the Court is to be formed by the Commissioner of the Province, and if any party to the suit is aggrieved by the decision of the Provincial Commissioner, he may appeal to the full court. A note of a case illustrating the procedure in the case of an appeal will be found in the Correspondence and Papers laid before the Committee, p. 126. No professional legal assistance is permitted, except by leave of the court either in the native court or in any proceedings removed to the court by appeal or otherwise.

African  
No. 1018,  
p. 126.

The Ordinance (sections 27 and 27A) also contains powers for the Governor in Council to suspend or depose any native chief for sufficient reason.

Provision is made by sections 30 and 31, and in the schedule to the amended Ordinance, for the recording of the proceedings of the court.

When judgment is given, the presiding chief, if able to write, is to record the proceedings. If a head chief is unable to write he may send the parties with the linguist to the District Commissioner, who is to make the record.

As to the law to be applied by the Native Courts it is expressly provided by section 32 that every native tribunal shall, in determining the rights of parties and also in procedure, be guided by the native custom prevailing in that part of the Colony in which it has jurisdiction so far as such custom is not inconsistent with the principles of justice or with the Ordinance.

#### ASHANTI.

70. The courts with jurisdiction over cases in respect of land are the Chief Commissioner's Court, the Commissioner's Court, and the native tribunals. A tribunal

of the last-mentioned class is composed of a head chief sitting with his captains, headmen or others who, by native law, are his councillors and assistants, and has jurisdiction as between natives in all cases relating to land. Provision is made by section 7 of the Ashanti Administration Ordinance that the Chief Commissioner's Court and the Courts of the Commissioners are to be guided by the law in force in the Gold Coast. Though there is no provision as to the law to be applied by the Native Courts, we may assume that they will act in accordance with native law and custom.

It is important to notice that the employment of barristers and solicitors is prohibited in all cases, civil and criminal.

#### THE NORTHERN TERRITORIES.

71. What we have just stated with regard to Ashanti applies also to these Territories, the provisions applicable to them being practically the same as those in force in Ashanti.

#### IV.

#### Southern Nigeria.

##### *Supreme Court Ordinance, 1914.*

72. Since the amalgamation of Northern and Southern Nigeria, three new ordinances relating to the courts have been promulgated, viz., the Supreme Court Ordinance, 1914, the Provincial Courts Ordinance, 1914, and the Native Courts Ordinance, 1914.

The Supreme Court Ordinance, 1914, applies both to the Colony and the Protectorate of Nigeria.

The Provincial Courts have no jurisdiction in the Colony; as regards the Protectorate, by section 8 (1) of the Provincial Courts Ordinance, 1914, no Provincial Court shall exercise jurisdiction within any area declared to be within the territorial limits of the jurisdiction of the Supreme Court. These limits, so far as the Southern Provinces are concerned, are specified in section 22 of the Supreme Court Ordinance, 1914, as follows:—

"22. Subject to such orders as may be made under the twenty-first section the exercise of jurisdiction by the Supreme Court in the Protectorate shall be limited to—

- "(a) Those parts of the Protectorate lying within a radius of five miles from the Court house at \* \* \* \* \* Onitsha, Degema, and Calabar; and of three miles from the Court House at Warri, Sapele, Bonny, Brass, Eket, and Opobo.
- "(b) The port of Koko Town including the area within a radius of two miles from the Customs House.
- "(c) The port of Forcados, including Burutu.

In addition to this territorial and exclusive jurisdiction the Supreme Court has, under section 24, jurisdiction throughout the Protectorate in all suits and matters in which a non-native is a party. This jurisdiction is, by section 24 of the Provincial Courts Ordinance, to be concurrent with that of the Provincial Court. Under section 21 of the Supreme Court Ordinance, the Governor in Council is empowered to alter the territorial limits of the Supreme Court and to extend its concurrent jurisdiction to other classes of causes and matters. With regard to this concurrent jurisdiction, it would seem that the plaintiff would have power to commence proceedings in either court, but the Governor has, under section 34 of the Supreme Court Ordinance, power at any stage to transfer any cause or matter from the Provincial to the Supreme Court.

73. Each of these Ordinances specifies separately the law to be administered in the Supreme and Provincial Courts respectively. So far as regards the law relating to the tenure and transfer of land the provisions of the two Ordinances are in substance, with the exceptions specified below, identical with those of the Gold Coast Ordinance, which we have already treated at length. The observations, therefore, contained in paras. 66 and 67, with regard to "Applicability of English statute law" and "Recognition of Native Customs," apply, subject to the exceptions pointed out below, to the new legislation for Southern Nigeria.

In the Supreme Court Ordinance, section 77, and in the Provincial Courts Ordinance, section 10 (2), there is a provision, which is not found in the Gold Coast Ordinance, in the following terms:—

"In deciding questions of native law and custom the court may give effect to any book or manuscript recognised by natives as a legal authority, and may call to its assistance native chiefs or other persons whom the court considers to have special knowledge of native law and custom."

We have, in commenting on the corresponding provisions in the Supreme Court Ordinance of the Gold Coast, under the heading "Recognition of Native Customs" (para. 67), pointed out the importance of enabling the Court to take judicial cognizance of native law or custom by means of any of the ordinary channels of information which may be open to the judges of the Court, without the necessity of calling evidence to prove the existence of the custom. The new enactments referred to partially recognise and provide a special means of informing the Court as to questions of native law and custom. We think, however, a more general power should be given to the Court such as is suggested below in paras. 80-84 and 367. We shall make in Part III. a specific recommendation to this effect, applicable to all courts in the four Dependencies.

74. A very important provision, affecting in many ways the transfer of rights over land, not found in the Supreme Court Ordinance of the Gold Coast, is the definition of the terms "Native," "Native Foreigner," and "Non-native."

"'Native' means any person whose parents were members of any tribe or tribes indigenous to Nigeria and the descendants of such persons; and includes any person one of whose parents was a member of such a tribe.

"'Native foreigner' means any person (not being a native within the preceding definition) whose parents were members of a tribe or tribes indigenous to some part of Africa and the descendant of such persons, and shall include any person one of whose parents was a member of such a tribe.

"'Non-native' means any person who is not a native and includes a native foreigner."

Supreme  
Court Ordinance, 1911  
§ 2.  
Provincial  
Courts Ordinance, 1911  
§ 2.  
Native  
Courts Ordinance, 1911  
§ 2.

The important provisions as to the applicability of native laws and customs in causes and matters relating to marriage and to the tenure and transfer of real and personal property when the parties thereto are "natives" are declared to extend also to "native foreigners" as above defined. Further, native laws and customs are to apply "where it may appear to the Court that substantial injustice would be done, in causes and matters between natives and non-natives by a strict adherence to the rules of English law." Under the existing Gold Coast Ordinance and under the Ordinance of Southern Nigeria which has just been repealed, the provision which applies now to all non-natives was restricted to "Europeans."

#### *Constitution and Jurisdiction of Supreme Court.*

75. Although the law so far as it relates to the tenure and transfer of land in Southern Nigeria is, under the new Ordinances, substantially the same in the Supreme Court and in the Provincial Courts, the composition of the tribunals appears to be based on somewhat different principles. The Supreme Court has exclusive jurisdiction in the Colony and in those parts of the Protectorate in which, as consisting of important towns and their immediate surroundings, individual ownership, as hereinafter described, is chiefly to be found.

Under section 4 of the Ordinance the Court shall consist of a Chief Justice and such judges as the Governor shall from time to time appoint by Letters Patent under the public seal of the Colony in accordance with such instructions as he may receive from His Majesty; and also of the Chief Justice and every judge of the Supreme Court of the Gold Coast Colony, and the said Chief Justice and judges of the Supreme Court of the Gold Coast Colony shall be puisne judges of the Supreme Court of Nigeria.

Any judge of the Court may exercise "all and any part of the original jurisdiction, civil and criminal, vested by this Ordinance in the Court."

Power is given to the Governor to appoint Commissioners of the Court on whom, amongst other powers, jurisdiction is conferred "in all suits between landlord and tenant for the possession of any lands or houses claimed under lease or refused to be delivered up where the annual value or rent does not exceed fifty pounds." Every station magistrate and every district officer in charge of a district within the territorial jurisdiction of the Supreme Court, is to be an *ex officio* Commissioner within the local limits of the jurisdiction of the Court.

*The Provincial Courts.*

76. These Courts have jurisdiction in all parts of the Protectorate except those which under the provisions above referred to, are placed under the exclusive jurisdiction of the Supreme Court, but as we have pointed out, in certain cases that jurisdiction is concurrent with that of the Supreme Court.

In each Province, as defined by the Ordinance, a Provincial Court is created, consisting of (1) the Resident or Commissioner of the Province; (2) all District Officers and Assistant District Officers appointed to the Province; (3) all persons appointed as justices of the peace for the Province.

The civil jurisdiction of the Resident or Commissioner is over all civil causes and matters, but that of the other members of the Court is limited.

It is to be observed that legal practitioners are not allowed to appear before a Provincial Court.

There is an appeal in civil proceedings from a Provincial Court to the Supreme Court, where the amount involved is 50*l.* or upwards. In such an appeal a legal practitioner may not be employed without the previous consent of the Chief Justice, and there is a proviso "that such consent shall only be given where the appeal involves a question of law in the determination whereof the Court would in the opinion of the Chief Justice be assisted by legal argument."

The rules of procedure are appended to the Ordinance, and it is to be observed that by Order 22 the Court may, for the purpose of execution, issue a warrant directing an officer of the Court to sell the interests of the judgment debtor in any lands within the district over which the Court has jurisdiction, in which he is beneficially interested, and before issuing such warrant may inquire, if it thinks fit, into the nature and extent of the judgment debtor's interests.

77. Though, as pointed out above, the law, so far as relates to the tenure and transfer of land, is substantially the same as that administered by the Supreme Court, the fact that so large a proportion of the Judges of the Court are also executive officers will in all probability greatly facilitate the recognition of native customs as regards land in the Protectorate. The territorial limits of the jurisdiction of these Courts and of the Supreme Court will probably roughly coincide with those parts of the Dependency where the communal system predominates and those parts where individualism has penetrated, though it must be borne in mind that the Supreme Court, no less than the Provincial Court, is bound to give effect to native customs where, under the provisions of the Ordinance, they are legally applicable.

*The Native Courts Ordinance, 1914.*

78. This Ordinance repeals the Native Councils Ordinance (No. 15 of 1901), which applied to the Western Province of the former Protectorate of Southern Nigeria "so far as it relates to the administration of justice within the Protectorate," and also repeals the Native Courts Ordinance (No. 7 of 1906) which applied to the Central and Eastern Provinces.

The principal provisions of these repealed ordinances are explained in Sir W. Napier's memorandum. The new Ordinance applies only to the Protectorate, and enacts in section 4:—

"By warrant under his hand and subject to the approval of the Governor, a Resident or Commissioner may establish, at such places within his province as he shall in his discretion select, native courts and judicial councils which shall exercise jurisdiction within such limits as may be defined by the warrant establishing the same."

The Native Courts consist of an Alkali, with or without native assistants, or of a paramount chief or head chief, with or without minor chiefs, or other persons sitting as judges or assessors, with such powers as the Resident or Commissioner may determine. A judicial council is to "consist of a paramount chief or other chief, or a district headman with such holders of high office, or other persons acting in conjunction with the president or sitting as assessors with such powers as a Resident or Commissioner may appoint." The members of a native court or of a judicial council are to be appointed by the Resident or Commissioner, subject to the approval of the Governor, in consultation with a paramount chief, if any, or on his nomination. The native court is to have jurisdiction, to the extent set out in its warrant, in, amongst other things, all civil cases in which all the parties are natives, but if one of the parties, though a native or native foreigner, is not domiciled or resident in the province within the meaning of the Ordinance then only with the consent of the Lieutenant-Governor or of the party himself.

Provincial  
Court Ordinance, 1914,  
§§ 22, 32 (2).

*Infra.*  
p. 127-9.

In the Gold Coast and until the passing of the new Ordinance in Southern Nigeria, the jurisdiction of the native tribunals as to land was only to land "held under native tenure," but now this limitation, whatever its legal effect, as to which we shall have something to say hereafter (para. 117 below), has been removed and all suits as to land between natives are, if the warrant permits, cognizable by the Native Courts.

No legal practitioner is permitted to appear for any party in a native court.

A report of all cases tried in any Native Court is to be made to the Resident Commissioner or the district officer in charge of a division or territory, &c., in writing, or, if so directed, orally.

The Resident or Commissioner and any District Officer may by section 16 have access to the Court and may suspend or modify any decision of a Native Court, order a rehearing or may transfer any cause or matter either before trial or at any stage of the proceedings to the Provincial Court.

The provisions as to appeals from Native Courts established under the Ordinance are as follows. By section 22 an appeal lies in favour of any person who is dissatisfied with the decision of a Native Court in any civil case "to such Court" as the Resident or Commissioner may appoint for that purpose under section 23." That section enables the Resident or Commissioner to appoint "the Court of the Chief Alkali or the Judicial Council or the Native Court presided over by the paramount chief at the capital city of his province, to be a court of appeal from all other native courts in the province or any part thereof or from such of them as he may name in the order."

79. There is not, so far as the Ordinance is concerned, any recognition of English law as an element in the law relating to the transfer of land. The law to be administered in the Native Courts, so far as civil cases are considered, including matters relating to the tenure and transfer of land is, by section 11, "the native law and custom prevailing in the territory over which a native court has jurisdiction, and any amendment of or addition thereto made under section 24 of this Ordinance." Section 24 is in the following terms:—

"24. Every native court, with the concurrence of the paramount chief or of the head chiefs of the district, and subject to the approval of the Governor-General, may make, amend, and revoke rules.

"(1) embodying any native law in its district with or without such additions and modifications as may be deemed expedient;

"(2) adopting and embodying as native law in its district any law of the Protectorate, or any portion thereof, or any regulations made thereunder, with or without such modifications as to penalties may be deemed expedient;

"(3) generally providing for the peace, good order, and welfare of the natives of the district;

"(4) regulating and promoting trade in its district;

and, subject to the approval aforesaid, may impose for the breach of any such rule, a fine not exceeding fifty pounds, with or without imprisonment for a term not exceeding two years, or any equivalent punishment according to native law and custom."

The Governor has power to make regulations with regard to the practice and procedure of the Native Courts and, subject to any such regulations, the jurisdiction is, as regards practice and procedure, to be exercised in accordance with native law and custom.

Unlike the sections of the Supreme Court Ordinance, 1914, and the Provincial Courts Ordinance, 1914, which follow the language of section 19 of the Supreme Court Ordinance of the Gold Coast, section 11 of the Native Courts Ordinance, 1914, imposes no restriction with reference to the *character* of the native law or customs prevailing in the territory over which the Court has jurisdiction. Whereas a Provincial Court, when exercising jurisdiction in the same territory as a Native Court, would be bound to consider, before enforcing any native law or custom, whether such law or custom was or was not "repugnant to natural justice, equity, and good conscience," the native court would not, so far as the terms of the Native Courts Ordinance is concerned, be under any such obligation. It seems possible that the absence of any corresponding words in the Native Courts Ordinance may lead to inconvenient consequences, especially as no appeal is provided by the Ordinance to the Provincial or Supreme Court, and the only statutory method of interfering with the proceedings of the native court is by the interference of the Executive, as above explained.

Where the Provincial Court has jurisdiction that jurisdiction will, so far as cases relating to land are concerned, be concurrent with that of the Native Courts which may be established under the new Ordinance.

Whether in such districts questions relating to land will tend to gravitate to the Provincial Court or to the Native Court, and generally what may be the result upon the permanence of native law or custom it would be idle to speculate. The decisions of Native Courts upon questions of law or custom relating to land might, especially if embodied in rules made under section 24 and duly recorded, be extremely valuable in the Provincial Courts and the Supreme Court of Nigeria as evidence of the existence or nature of a particular native law or custom. We shall refer to this point again in dealing with the recognition of native customs.

#### GENERAL OBSERVATIONS ON SUPREME COURT ORDINANCES.

80. It may be convenient now to make some observations with regard to certain provisions of the Supreme Court Ordinances with which we have dealt above.

##### *Recognition of Native Customs.*

As the provisions of the Supreme Court Ordinance of the Gold Coast, so far as relates to the questions now to be discussed, are practically identical with those in the other Dependencies, our observations will apply generally to all four Dependencies, with the exception, already explained, of certain portions of the Colonies of Gambia and Sierra Leone.

It will be remembered that section 19 of the Gold Coast Ordinance gives the Supreme Court the right to "observe and enforce the observance of any law or custom existing in the Colony, such law or custom not being repugnant to natural justice, equity, and good conscience, nor incompatible, either directly or by necessary implication, with any enactment of the Colonial Legislature." It also contains the very important provision that "nothing in this Ordinance" shall "deprive any person of the benefit of any law or custom existing in the Colony." Not only, therefore, has the Court the right to recognise and enforce any native custom affecting the transfer of land, but any person may claim the enforcement of any law or custom to which he is entitled. Thus the natives have *rights* under their own laws and customs.

But before the Supreme Court can exercise these powers, or the natives assert their rights, the appropriate custom or law must be brought to the knowledge of the court. A court constituted of English lawyers, often new-comers to the country, cannot have judicial knowledge of native custom, however fundamental that custom may be. It may be, and there is some evidence, that there are some customs of such general notoriety that they are either at once admitted by the parties or recognised by the court; but, generally speaking, the regular method of enabling the court to take cognizance of a custom relied on by the parties is by calling evidence in the ordinary way to establish it. This class of evidence, we are told, is often very unsatisfactory and untrustworthy.

81. The following passage from Sarbah's "Fanti Customary Laws," p. 19, is pertinent to this subject :-

"The comparatively modern practice of parties to a suit calling experts as witnesses to prove what is the custom is of doubtful value, and has been the means of some erroneous opinions finding their way into the records of the Court as native laws and customs. . . . It is always safer and better for the Court, after the parties have stated the native laws or customs they rely upon, to seek the assistance of others who may be versed in the native laws and customs, and to do so in the way known to the judicial assessors, and the person who framed Rule 92" (now section 74), "who knew the practice, subsequently followed by Mr. Justice Hector Macleod."

The method of informing the court as to the existence and character of a native custom referred to by Mr. Sarbah is by the assistance of native referees sitting with the judge under section 74 of the Supreme Court Ordinance. The affirmation of these referees, if consulted by the court, is binding on the court. Another method which appears to have been practised by some judges is consultation with native experts out of court. This practice, however, was not approved of by Sir W. B. Griffith.

82. As regards the native tribunals, section 32 of the Gold Coast Native Jurisdiction Ordinance 1883 appears to assume that these tribunals would take judicial cognizance of local customs, as would naturally be the case. Under that Ordinance it would seem to be open to the chief and his council to embody any native custom prevailing in the district in a by-law which, if approved by the Governor in Council and duly published, would have the force of law. It may, we think, be well worth consideration whether in particular cases the chiefs might not be advised to exercise these powers in order to establish the legality of any local

Griffith,  
14,303.

Crowther,  
10,119.

Sir W.  
Napier's  
Memoran-  
dum, *infra*,  
p. 127.

Griffith,  
14,348.

Sir W.  
Napier's  
Memoran-  
dum, *infra*,  
p. 127.

custom which it might be desirable to place beyond question. Such a proceeding would be somewhat analogous to the presentment by the homage of a manor of a custom and its enrolment in the rolls of the manor.

83. As regards the Supreme Court it appears desirable that the court should be left perfectly free to inform itself in any manner as to the existence and character of any native custom relevant to the transfer of rights over land which it thinks fit to adopt. The methods above mentioned are referred to by Mr. Hayes Redwar<sup>(1)</sup> in a passage quoted by Sir Walter Napier in his Memorandum, and were discussed with Sir W. B. Griffith. Sir W. Griffith prefers the ordinary method under English law of proving any proposition of foreign law by evidence as a fact. But native customs relating to land are not on the same footing as foreign law in England. Native law or custom is made by Statute part of the law of the Colony; every native has a statutory right to the benefit of the custom. Customs relating to the transfer of land are in a similar position to that of the Kentish custom of gavelkind,<sup>(2)</sup> with reference to the ordinary common law. A judge who had never heard of gavelkind could not require that a Kentish solicitor should be called to prove it; he would consult his colleagues, or refer to a text-book. In the Gold Coast, in many cases, proof of custom by evidence could not, of course, be dispensed with. Customs, varying in different localities, appear to regulate the smallest obligations. Sir W. B. Griffith instances the question of how many cloths are necessary for a certain marriage, or how much help from a member of the family in building a house would constitute the house a family house. Such customs as these must, as a rule, be proved by evidence. But we see no reason why the Supreme Court should not, when necessary, inform itself by extra-judicial methods, at any rate in the case of the more general and notorious customs. Although at present there is a great lack of accessible reports of the proceedings of the Supreme Court, there are a few text-books which the court might well consider itself free to recognise. Sometimes, too, reliance might be placed on the previous recognition of a custom by a court, whether native or Supreme, having jurisdiction in the matter.

Griffith,  
14,341, &c.Griffith,  
14,316.

84. There is one source of information to which recourse does not appear to have been had by the courts. Probably the view taken has been that, strictly, native law and custom under the procedure established by the Supreme Court Ordinance requires proof, as is the case with foreign law relied on in an English Court. Many of the experienced witnesses who have been called before us have extensive and accurate knowledge of the customs relating to the transfer of land in the parts of the Dependencies with which they are familiar, and we cannot imagine any more trustworthy information of the existence and character of the customs than that which they could furnish. This information, however, it would appear from Sir W. B. Griffith's evidence, is not available or, at all events, is not resorted to by the Supreme Court. Mr. Eliot, lately a Provincial Commissioner in the Gold Coast, speaking of the advisability for the judges of the Supreme Court to have the benefit of the knowledge of the Provincial Commissioner in the majority of the land cases coming before them, wrote as follows in a memorandum which was furnished by him for the Committee but was not printed: "It not infrequently happened that while a Commissioner was endeavouring to bring parties into agreement regarding a tribal or family land dispute, the case was brought before the court, probably without his knowledge, and judgment given, according to the weight of evidence adduced, evidence being intentionally suppressed which might have been brought out by the Commissioner." On that statement Sir W. B. Griffith observed, "That is quite possible. I have known cases of that sort. I may say that in my own court fully half my work is compromised."

Griffith,  
14,301-23.Griffith,  
14,333.See also  
Crowther,  
10,124-7.

It appears to us that it ought to be made clear in the amending Ordinance that the Court has full power to consult the Provincial Commissioner or other executive officer with reference to native customs affecting the transfer of land, and to act on a report obtained by him without the necessity of calling him as a witness.

We shall, in Part III., put into a more definite form our proposals as to amending the law with regard to the recognition by the Supreme Court of native customs affecting the transfer of land.

#### *Requisites of a Legal Custom.*

85. The conditions which a custom must fulfil before it can be recognised as binding are specified in section 19 of the Supreme Court Ordinance. There is a decision of the

(1) Hayes Redwar: "Gold Coast Ordinances," p. 82, quoted *infra* p. 126.

(2) *Viz.*, descent of land to all sons equally.

Fanti-Customary Laws, p. 160.

Griffith, 14,284.

Supreme Court in 1884 (*Welbeck v. Brown*) applying to a custom of the Gold Coast the rule of English law that it must be "immemorial," in other words that a custom whose origin can be shown is not legally enforceable. This decision appears to have given general dissatisfaction, and we gather from Sir W. B. Griffith's evidence that it would probably not be followed by the Supreme Court, if the same question were to arise again. It is, however, as a decision of the Supreme Court, technically binding upon a court of co-ordinate jurisdiction, and, therefore, in our opinion, the law in this respect requires amendment. We include the point in the suggestions we make in Part III. as to the amendment of the law with regard to the recognition and enforcement of native custom by the Supreme Court.

#### *Application of English Law to Transfer of Land.*

86. We have seen that English law is to be applied in certain cases, and the evidence before us shows that such law as regards the transfer of land has only been applied in its simplest form and that no attempt has up to the present been made to introduce any system of settling land. We, however, consider it undesirable that there should remain any power of introducing such restrictions, and we suggest that it should be declared by Ordinance that in the case of land to which English law applies no deed or will should operate to create any proprietary right over land other than an estate in the nature of an estate in fee simple or of a demise.

#### *General Effect of Legislation.*

87. Before we leave this part of our subject we would sum up the preceding paragraphs by stating that in our opinion the enactments which we have quoted show that whilst English law with regard to land is in force in certain parts of the Colonies of the Gambia and Sierra Leone, yet with regard to the rest of the Dependencies their Legislatures have shown unmistakably that so far as natives are concerned they are entitled, in the absence of exceptional circumstances, to the benefit of their native laws and customs.

### NATIVE CUSTOMS GOVERNING TRANSFER OF RIGHTS OVER LAND.

#### LEADING CHARACTERISTICS.

88. Before we are in a position to discuss the application of these general principles to the different dependencies and the enactments specifically relating to the transfer of land in each, it is necessary that we should consider briefly the leading characteristics of the native customs governing transfer of rights over land. These, it appears, according to the evidence given before us, are in the main the same in all the parts of West Africa with which we are called upon to deal, though, of course, there are divergencies in detail, owing to differences of local conditions.

It must be remembered that none of these Dependencies possess any written records of customs. The knowledge we possess of native customary law consists of particulars as to practices which universally, or at least generally, obtain in relation to the disposition and use of the land by communities or individuals. The mass of evidence which has been laid before us, both orally and in writing, has enabled us to arrive at certain definite conclusions as to the principles which underlie those practices.

89. Of these principles, none, we think, is more clearly established than that the individual who first clears the land and cultivates it becomes possessed of a definite right over it, and of the improvements his labours have wrought upon it, rights which are shared by his family and descendants. Thus Mr. Dennett traces the origin of the communal system of holding land to the wandering of an individual from his own community and his taking possession of "undeveloped and may-be unoccupied lands"; Mr. Chris. Johnson, editor of the *Nigerian Chronicle*, says: "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"; and Dr. Maxwell, District Commissioner, Sierra Leone, states: "When natives in any part of the Protectorate [Sierra Leone] are asked to state the conditions under which land is held by them, the answer is the same, that the land belongs to the man who was the first to bring it under cultivation, or to his descendants if he is dead."

Dennett, 10,937.

African No. 1048, p. 22.  
See also Bishop Johnson's statement, African No. 1048, p. 218.  
African No. 1048, p. 3.

90. A second principle of equally universal application is that the individual only enjoys his rights as a member of a family. He does not stand alone, but is associated with his blood-relations. The individual instanced by Mr. Dennett marries and has offspring. A family is formed. In course of time the younger generation move further afield and other families spring up. Disputes arise and it is necessary to find an arbiter. The descendant of the original founder is chosen. He is the link between the families which then form a house or clan, and he and his council become the guardians of all the unoccupied land between the boundaries of the families. As generation succeeds generation, the same process is repeated and a number of houses or clans come into existence. As in the case of families, disputes arise between the heads of the different houses and between members of each house and its head. It is necessary to find a judge to decide these disputes. The heads of the houses meet together and elect a judge, again in direct descent to the original founder. This judge is the link between the various houses which then form a tribe, and he and his council, composed of the heads of the houses, become guardians of all unoccupied lands. The final development may then ensue. As the different families grew into a house or clan, and the number of houses into a tribe, so the tribe grows into several tribes and the heads of the tribes come together and elect a king. The king, once more, is chosen from among the direct descendants of the original founder of the first family. His court becomes the supreme appeal. He is invested with priestly powers as incarnating the spirit of the original ancestor. He and his council become the guardians of all unoccupied land between the boundaries of the tribes. This is the basis of the communal character of native land tenure, which to the mind accustomed to European ideas is its most striking characteristic.

91. A third principle is that land is considered as still the property of the original settler, and thus as belonging to the past, the present, and the generations to come. This idea was thus put by one of the chiefs of Jebu-Ode: "I conceive that land belongs to a vast family of which many are dead, few are living, and countless members are yet unborn."

92. The statement that no land is without "owners" is the symbolic expression of this same governing principle in native conceptions, accentuated as it is by the spiritual significance which in native ideas is associated with the land. The European view which regards uncultivated land, variously described as "unoccupied," "vacant," or "waste," as land which is unowned, finds no place in native custom, and is contrary to all native ideas.

93. These principles hold good, whether we consider the original stage of a community's foundation, or the later stage when a community, be it large or small, has evolved from the actions of individuals. In the latter case, the individual enjoys his rights subject to the fulfilment of the political and social duties which devolve upon him as a member of the community. So long as he performs those duties, he enjoys security of tenure, and benefits from the fruits of his labours, but in the event of a serious breach of the community's laws he is liable to expulsion from his holding.

94. Realisation of the corporate character of native social life is essential to a true understanding of native land customs. The word "family" has a much wider significance in West African than is the case in European sociology. According to Mr. Francis Crowther, Secretary for Native Affairs in the Gold Coast, the standard by which a family must be measured is a "traceable consanguinity." According to Mr. R. E. Dennett, the family consists of the "departed father, the widow, the successor (son or nephew), his children (a husband and wives), his grandchildren "and his great-grand children." Dr. Sapara defines the family as composed of "anyone who is connected by blood." Every unit within the family community is entitled to a portion of the family land to cultivate: "Even if he has gone to live elsewhere he has the right to return and on doing so would be given part of the family land to cultivate." (Dr. Muxwell, District Commissioner, Sierra Leone.) Native custom in this respect was clearly put by Dr. Sapara:—

7775. (*Mr. Ellis.*) Where is your family land?—My family land is at Ilesha.

7776. But you have been living at Lagos and all sorts of places?—Yes.

7778. Is there any piece of land at this estate in Ilesha which is ear-marked as Dr. Sapara's land?—No.

7779. (*Sir Frederic Hodgson.*) If you went to live there would you get a piece of land?—Yes, if I went to live there.

7780. (*Mr. Strachey.*) Your brother is Mr. Sapara Williams?—Yes. . . . He is the head of the family.

7782. Is it true that as long as he lives at Lagos and does not go to the family land at Ilesha, he has no particular piece of land of his own as it were?—He has no piece of land of his own as such.

Robertson,  
2292; Part-  
ridge, 4145;  
Irvine, 4537;  
Alexander,  
5301;  
James, 6805;  
Crowther,  
9932A,  
10,135; Den-  
nett, 10,967,  
10,946.

Crowther,  
9961.

Dennett,  
10,939.

Sapara,  
7768.

African No.  
1048, p. 3.  
Sapara,  
7775.

95. The fundamental conception of native tenure, which looks upon land as God-given, like air and water, and considers that every individual within the community has a right to share in its bounties, persists in every form of native social structure.

Alexander, 3417; Crowther, 9932A.

96. It follows, therefore, that the ultimate ownership of land remains in the community and that land cannot be permanently alienated.

Dennett, 10,940, 10,989.

Thus, whether for purposes of discussion the smaller or larger social organisation be regarded as the landowning unit, the true foundation of all native *government* is the head of the house or clan. The head of the family has no land to dispose of outside the requirements of the family. The head of the house has. His is the duty to allocate land to families desiring fresh land and to strangers. Under the guidance of himself and his council the land carries with it the responsibility or charge of supporting the sick, indigent, infirm, and old.

97. If these principles are steadily borne in mind the contradictions which occur in some of the evidence we have received are seen to be more apparent than real. These apparent contradictions are largely due to an attempt to describe in European legal phraseology a system of tenure which such phraseology is incapable of properly describing.

Land not in actual cultivation will, in due course, become subject to family possession. Meanwhile, it is the common property of the community as a whole. When it is allotted, it ceases to be communal in the accepted sense of the term, but the holders thereof remain under social and political obligations to the community.

Every member of the community has the right to the user of as much of the soil as he and those dependent upon him may need for their sustenance.

If he plants trees upon his holding they become his property even when the land upon which they grow is in the occupation of others. The right to allot is inherent in the heads of the community, but the right to have land allotted to him is no less inherent in the individual. As a member of the community he has to perform certain obligations. These obligations vary in accordance with local customs, but they appear to be well understood and accepted by the particular community affected. They may include:—

- (a) Contribution towards community debts.
- (b) Personal service on the chiefs.
- (c) Contribution from crops or from the exploitation of forest produce to the heads of the community.

In exceptional cases, such as religious ceremonials, or entertaining expenses, the chiefs may call for special contributions. So long as these obligations are performed and grave social misdemeanors are not committed the individual holder cannot be disturbed. He enjoys a perpetuity of tenure, but he cannot sell his holding and he may not mortgage it. He can, however, "pawn" it or the crops upon it for debt; but the pawnee must evacuate the premises when the debt is liquidated, and native custom is impatient of attempts on the part of the pawnee unduly to prolong occupation.

98. Permanent alienation to strangers is equally foreign to native ideas. In the words of Dr. Maxwell, "it is an unthinkable suggestion."

"Just as in English law bequests may be set aside on the grounds of insanity, so from a native point of view any bequest of a man's land to strangers would be regarded as unsound."

When, however, there is abundance of land, strangers, members of other communities, may be granted the temporary use of land, though on less favourable terms than members themselves. Such strangers may often, as time goes on, intermarry with the community and become absorbed in it. If the stranger uses the land for shifting cultivation, he is not usually required to make any contribution from his crops, but if he intends to grow cocoa or some other permanent crop, it is now becoming the custom for him to arrange to pay a portion of his crop to the native authorities. This is a natural development, seeing that the extension of permanent cultivation within a community must trench upon the area available for the cultivation of food-stuffs. We shall return to this matter later on in our Report, when we come to deal with the cultivation of cocoa.

99. The above is a description of pure native tenure, such as it exists to-day with local variations in detail, but not in fundamental principle, in the Gambia and Sierra Leone Protectorates, in Ashanti, in the Northern Territories, and, with a few exceptions, in Southern Nigeria outside the restricted limits of the "Colony."

European influences of various kinds connected with gold-mining enterprise, and with the exploitation of tropical produce, and, above all, perhaps, the introduction

Alexander, 3417; Dennett, 11,114.

Crowther, 9980; Dennett, 11,005.

Alexander, 3417.

Alexander, 3583; Crowther, 10,353; Dennett, 11,102.

Alexander, 3418; Fuller, 4827; Sapara, 7538; Armistage, 12,350.

African No. 1048, p. 6.

Alexander, 3517; Fuller, 4671.

Atterbury, African No. 1048, p. 12; Philbrick, African No. 1048, p. 14; Maxwell, African No. 1048, p. 17.

of English legal ideas with their conception of freehold and mortgage, so entirely alien to native conception, have tended to act as a solvent to native customary law. This process has been further assisted in the Gold Coast by the rapid development of permanent cultivation (cocoa), and by the policy of non-intervention pursued by the Administration, of which Chiefs and a certain class of educated natives have taken advantage. Sales of land by the Native Authorities, alienation of large areas for prolonged periods to strangers, and the growth within the community of a species of individual ownership are among the changes which these influences have brought about. But apart from the Gold Coast and the old Colony of Lagos, the policy of the Executive has been to check these tendencies; their operation is virtually confined to the fringe of Europeanised settlements on the coastline, and even there the native system of tenure has shown great tenacity in resisting foreign encroachments. Indeed, we find instances where land, having once passed under the English system of tenure, has reverted to the native system. We shall return to this subject later on, when we deal with the question of land tenure in the different dependencies.

100. Before proceeding, it may be convenient here to state that, when describing land belonging to a community we propose to use the term "Community land"; when speaking of land allocated to a family we shall use the term "family land"; while we shall employ the expressions "communal land" and "communal tenure" as general terms to cover both. Land which has passed under individual ownership, in the sense which we describe in para. 105 below, we shall refer to as "individual land."

#### RELATIONSHIP OF NATIVE CUSTOMARY TENURE TO NATIVE POLITY.

101. It is easy to see from what precedes how native polity and social economy are inseparably connected with the preservation of native tenure.

The heads of the community in their various stages are the arbiters in all land disputes between their subjects. They are the allocators of unoccupied land, and enjoy the privileges and emoluments pertaining to that position. When a family has outgrown the land allotted to it, it applies to them for an increased area. Their subjects, and strangers settled within their boundaries, possess and enjoy land subject, as already stated, to the due fulfilment on their part, of political and social obligations recognised by the community. The power, resident by customary acceptance in the heads of the community and their advisers, to expel an occupant guilty of serious social misdemeanours is the community's ultimate safeguard against social crime. While the heads of the community are not entitled by native custom to interfere in the usage or enjoyment of land which has been allotted to, and is in the occupation of, specific families, they are the general guardians of the community's interests, the chief of which is the undisturbed occupation of land. Upon the exercise of this function, of the power of allocation, of adjudication in land disputes, and of the power of expulsion for offences against the community, the prestige of the native authorities depends, both as regards their own subjects and strangers settled within their boundaries.

It follows that native polity must prove unworkable in the long run when one or other, or all, of the following tendencies become operative:—

- (a) When the native authorities are deprived of their powers by the Government;
- (b) When native authorities cease to use their powers as guardians of the community's interests, and arrogate to themselves a right of dealing with unallotted land for their own pecuniary benefit; or
- (c) When members of the community cease to recognise the inter-connected ties of social custom and political allegiance and arrogate to themselves the right of disposing of the land they occupy regardless of these ties.

The position is put quite plainly by Mr. Alexander, the Lands Commissioner for Southern Nigeria:—

"The native kings and chiefs, great and small are necessarily ignorant of the pecuniary value of land, but the rules and restrictions of native tenure save them from themselves. Grant them the power of free transfer, and within a few years they will have been induced to part with their powers over land for the sake of obtaining and squandering ready money. Grant, again, to the actual occupier of the soil, a free power of mortgage, with right to the unpaid mortgagee, to sell or enter into permanent possession, and in the course of time the land will be under the control of money-lenders, and this Government faced with the difficulties in an exaggerated form that have confronted British rule in Burma and India."

102. That the general object of the British Government is to maintain native polity in West Africa, and that it is so interpreted by the political officers, does not

seem to be in question, and is stated or implied as a matter of course by the numerous witnesses who have given evidence before us, or whose statements are given in the Appendix. A recent declaration on the part of Sir Hugh Clifford, the Governor of the Gold Coast, is particularly emphatic. In a recent speech to the Legislative Council, he said:—

“The tribal system, which has been evolved by the inhabitants of this Colony, supplies the natural machinery for the administration of the people, and it is my earnest wish to see the authority of the chiefs supported by all Government officers, and the chiefs and their principal advisers taken into the confidence of the Government, and habitually consulted when any matter affecting them and their people is under consideration.”

It may be well, therefore, to give a few references to the views entertained, expressed in explicit and in general terms, by political officers of experience and responsibility, in regard to the close connection between the maintenance of native polity and native customary tenure.

Mr. Alexander says <sup>(1)</sup> :—

“Native rule depends upon the native land system. They must stand or fall together. If it is the policy of the Government to govern the natives through themselves, subject to European supervision, retaining what is useful in their institutions, the native system of land tenure must be preserved at any cost.”

Mr. Dennett :—

“There is no doubt that the two things go together.”

Mr. James, Acting Governor of Southern Nigeria :—

Q. “(Mr. Morel.) Do you agree with Mr. Alexander, who says that the maintenance of native rule (indirect rule) is intimately bound up with the land question?—I quite agree.”

Mr. Fuller, Chief Commissioner of Ashanti :—

Q. “(Mr. Morel.) In the general way in regard to all matters affecting native custom you would deprecate the undermining of native rule?—Yes, it is not advisable to interfere with their powers.”

We now propose to deal with the laws specifically relating to the acquisition of interests in land in the various dependencies which are the subject of our enquiry.

## SPECIAL LAWS RELATING TO LAND IN FORCE IN THE VARIOUS DEPENDENCIES.

### I.

#### The Gold Coast.

103. Before dealing with the main part of our subject we shall say a few words as to land held by the Crown, including land held under statutory provisions in trust for the Crown.

#### CROWN LAND.

Sir Walter Napier observes in one of his Memoranda :—

“The amount of land vested in the Crown seems to be but small, and I have found no legislation dealing with it, though the Letters Patent printed in the Ordinances of the Gold Coast gives the Governor the usual power to make grants of such lands; see Collection of the Ordinances, 1910, page 1883.”

Mr. W. C. F. Robertson, Chief Assistant Colonial Secretary, who has had fourteen years' experience of the Gold Coast, states that under the legislation of the Gold Coast the Government must acquire the land, if they wish to possess it, from the native proprietors, that there was no assumption at all of any individual right of property in land on the part of the Government, and that the Government has no right of ownership.

Mr. Francis Crowther, with nearly fifteen years' experience of that dependency, in his very important and carefully considered evidence, told us :—

“It is, I think, generally admitted that land in the Gold Coast Colony is the property of the native inhabitants, and that irrespectively of the merits of the proposal, the hour is too late for the adoption of any system of ownership by the Crown designed to effect its administrative regulation. There is, I believe, an unwritten theory that the land within range of the guns of the forts is the property of the Crown, but if this claim was ever asserted, it has long since vanished.”

There appears to be very little, if any, Crown land at present held upon transfer from native authorities. Most of the land now held by the Crown has been acquired,

(1) Page 5 of a memorandum, dated 4th Nov. 1910, and printed in Lagos, on Native Land of Tenure in the Colony and Protectorate of Southern Nigeria. See also p. 152 below.

Gold Coast  
Government  
Gazette of  
14 Oct. 1913,  
p. 1344.

Cf. also  
Alexander,  
3536 et seq.  
and 3665.

Dennett,  
11,124; James,  
6706; see also  
6789.

Fuller, 4787;  
see also Irvine,  
4357; J. C.  
Maxwell,  
15,447 & paras.  
21 & 22 of  
memo. African  
No. 1048,  
p. 5; John  
Maxwell, Q. 2,  
African  
No. 1048, p. 17;  
Phillips, Q. 2  
& 3, African  
No. 1048, p. 18;  
Furley, Q.  
2 & 3, African  
No. 1048, p. 21.

Infra,  
p. 131.

Robertson,  
2294-6.

Crowther,  
5932A.

Crowther,  
ibid.

under the Public Lands Ordinance, 1876, for specific public needs, and is inconsiderable in area.

It appears, therefore, that, so far as Crown land is concerned, no important question arises with which we need deal in this part of this Report. What is important to bear in mind is that the principle that the Crown has no inherent claim to the ownership of the land has been universally recognised in the Gold Coast.

We cannot agree with Sir H. Belfield's observation in paragraph 23 of his Report (*see* para. 123 below):—

Belfield  
Report  
[C'd. 6278].

"Lastly, the Crown possesses the inherent right of *ultimus hæres* to any land for which no other owner can be found, but no case has occurred in which that right has been exerciseable."

This matter is dealt with by Sir W. Napier in his Memorandum, *infra*, p. 146, and he there points out that any right of escheat which the Crown may formerly have possessed has now been given up.

#### LAND OTHER THAN CROWN LAND.

104. We shall now proceed to deal with land other than Crown land.

##### *Stool Land.*

We have already stated at length our views with regard to what we have called "community land" throughout West Africa, and we do not propose to pursue the subject further, except to explain that in the Gold Coast, what we have called community land is known by the name of "stool land." Every chief after installation is entitled to sit upon the "stool" of the community of which he is the head, and the land of the community is known as stool land—and one, and indeed a very prominent, object for which the property of the community can be used is the maintenance of the dignity of the stool. In dealing with the Gold Coast we shall therefore speak of what we have called community land as stool land, though for the land which has become "family land" we shall use that term as elsewhere.

##### *Individual Land.*

105. Alongside the communal system we find another system of ownership of modern origin and characteristics. It is ownership by an individual as opposed to a community or family, and its distinguishing feature, from our point of view, is the power of alienation possessed by the owner, which is as wide as that of a tenant in fee simple in England. We have had considerable difficulty in arriving at a satisfactory term by which to designate this system of ownership, but finally we have decided to give it the name of individual ownership, though we feel that the term is by no means free from objection.

We have had no materials placed before us which would enable us to reconstruct the early history of this institution, and surmise would be of no value.

106. At some time—when, we do not know—sales of stool and family land began to take place.<sup>(1)</sup> Thus we read in a report of Mr Crowther that between 1860 and 1870 certain chiefs started to sell land in the Densu Valley to individuals, but that the right was disputed. There are, however, a series of reported cases, commencing in the early seventies, which are set out in Sir W. Napier's memorandum from which we think it appears that the Judicial Assessor sanctioned the practice of sales, holding that the chief or the head of the family could sell the stool or family land provided the consent of the requisite parties was obtained, though in the case of the sale of family land Mr. Sarbah adds that "the alienation must be for the benefit of the family, either to discharge a family obligation or the proceeds of such alienation must be added to the family fund."

*Infra*, p. 144,  
*et seq.*

It would appear from the general principles which we have stated in an earlier portion of this Part, para. 80, that the test of the validity of a transfer by a native should have been whether such transfer was in accord with native custom or not.

<sup>(1)</sup> The following evidence taken by the Select Committee on "The West Coast of Africa" in 1842 shows that sales of land to Europeans in the Colony of Sierra Leone were taking place as early as 1842:—

"137. (*Viscount Ebrington.*) Would any one buy land of any particular chief who was the lord paramount, or is the land subdivided into properties and purchased of any native who happens to be in possession of it?—It is bought of any native who happens to be in possession of it.

"139. In buying the property you negotiate with the chief, almost invariably; he is ordinarily the seller?—Yes."

As we understand native custom, however, it does not permit of permanent alienation. The grounds of the earlier decisions are not given, though in the later case of *Azzraidu v. Daidzie* decided in 1890, Sir Joseph Hutchinson, the Chief Justice, expressly stated that the case, which involved an absolute gift and subsequent sales of land, must be decided according to native law. It is interesting, however, to note that when the case came before him a second time on a re-trial he found the answers of the chiefs who gave evidence were contradictory, and disclosed no principle, and accordingly followed a decision of the Full Court which in 1878 sanctioned the principle of sale.

As we have already stated, we think surmise on the matter would be of no value, and we consider that the position which we must recognise is this, that when the use of the land for residence or for the production of agricultural produce for export or sale acquired an economic value, the right of possession of the land also acquired a saleable value, and judicial decision did some time, perhaps in the sixties or earlier, establish, side by side with the communal system, a system to which we have given the name of individual ownership, and that this system must be taken to be legally applicable in the Gold Coast, though there is much evidence that it is by no means universally practised by the natives.

107. Nor did the Legislature discourage the course of judicial decision. In fact, the provisions of the Supreme Court Ordinance as to enforcing the judgments of the Court and of the Land Registry Ordinance with regard to the registration of instruments affecting land presuppose that land may be held by natives as individual owners.

The decisions to which we have referred sanction the sale of stool and family land by the chiefs and heads of families, but give no countenance to a sale or mortgage by the occupant of stool or family land of his interest as individual property. The stool or family had, as we think, what would be called in English law, a reversion in the land, and for an occupant not only to sell his rights but also to oust the reversioners would scarcely appear to be in accordance with either English or native legal principles.

The proviso to section 19 of the Supreme Court Ordinance, to which we referred in paragraph 67 above, cannot, in our view, be construed so as to enable an occupant of stool land and a purchaser from him, by agreement between themselves, to convert stool land into individual ownership, though under that section it might be competent for an individual owner of land to agree with a person advancing him money that the latter should have an English mortgage upon it.

It is a common practice for the Supreme Court to issue writs of execution under which land in the possession of a judgment debtor is taken in execution and sold in satisfaction of a debt. If, as we think, an occupant of stool or family land could not sell, it is difficult to see how the Court can, in accordance with principle, seize in execution and sell his interest as individual property.

It appears from the cases cited by Sir W. Napier in his Memorandum (p. 133) that family property cannot be seized for the private debt of a member of the family, and that the Court would stay any order having this effect. When, however, in 1907 an attempt was made to apply the same principle to stool property, the result was very different. The importance of the case of *Lokko v. Konklofi ex parte Bruce* requires us to dwell upon it at some length.

#### *The Lokko Judgment.*

108. A full report of the judgments of Sir W. B. Griffith himself, as judge of first instance, and of the Court of Appeal, where he also presided, will be found in the Papers laid before the Committee. In that case a village and some cocoa and sugar-cane farms occupied by the defendant had been seized and sold in execution under a judgment against him. The land was claimed on behalf of the chief as his stool land and, therefore, incapable of being taken in execution. The facts are stated in Sir W. B. Griffith's judgment in the following terms:—

"Some forty years or more ago Jabba, the father of Konklofi and Kwamin Kuma, came to Berekesu with Larte Kofi, the then Onene of Berekesu, and was given the land in question to work upon. He worked upon it until about 1873 or 1874, or thereabouts, when he died. The land was bush land, but probably he had a small farm there, and the palm trees about the spot were regarded as for his use. His two sons were young men at his death, hardly old enough to have farms of their own, but as they grew older they attached themselves particularly to the land their father had: Konklofi worked one portion of the land and Kwamin Kuma worked the other, a road being the line between their respective portions. I do

not think that Konklofi worked for Lamily (a female holder of the stool) as he states. All he would have done would have been to give her, as stool-holder, occasional presents of palm nuts, palm wine, yams, &c. Konklofi had other farms on other parts of the Berekusu land where he worked by way of shifting cultivation, but the land in question he permanently settled upon. He made a village on the land, probably about twenty years ago, made a sugar-cane farm close by, where the canes would be allowed to grow as long as the soil continued good, and about five years ago made a cocoa farm. He has been in the habit of giving the Ohene and the claimant, as the heads of his family, a small portion of the produce of his shifting cultivation, such as yams, &c., or of the bush produce, such as palm nuts and palm wine; he does not give them anything from the land in question. The land has never been definitely allotted to him as his portion of the stool land, but it is recognised as his land, and I am satisfied that it could not be taken from him by the stool."

In substance the decision is that the facts as found established that Konklofi had become the individual-owner of the stool land, and that consequently it might be sold under an execution upon a judgment for his separate debt.

Sir W. B. Griffith observes in his evidence that "this judgment may have far-reaching results in transmuting stool property into private property." We agree that this decision may have most important results. The judgment is of the highest judicial authority, and, subject to any future decision of the Judicial Committee of the Privy Council, must be regarded as declaratory of the present condition of the law in the Gold Coast Colony. It is, therefore, worth while to consider how far it leads us.

Griffith,  
14,370-82.

109. It is one of the principal difficulties in ascertaining the present state of the law as to the transfer of land that there is nothing approaching to a complete or accessible record of the decisions of the Supreme Court. This is the more important because of the wide powers which, as has been shown above, are given to the Supreme Court by the Supreme Court Ordinance to decide what rules of English law are or are not applicable, and what native customs are to be recognised and enforced. There are, however, certain useful text-books, some of which contain notes of decisions of the Supreme Court,<sup>(1)</sup> and some important judgments have been laid before the Committee and are printed in the Appendix.

From such information as these writers afford of cases decided by the Supreme Court we cannot avoid the inference that the decision to which we have referred has carried the conversion of stool property into private property a step further than had previously been recognised.

We find, for instance, a notice of a decision<sup>(2)</sup> in 1885 before Sir W. B. Griffith himself, where the chief on the stool had re-entered on stool land which had for forty years been in the occupation of the plaintiff, and had been cultivated by him without paying any rent or rendering any produce to the chief. The question was put to the referees, presumably acting under section 74 of the Supreme Court Ordinance: "Does this prolonged possession destroy the title of the original owner?" The referees, who were the late Mr. Sarbah, who was a native barrister of great experience, and two chiefs, replied that "such prolonged possession does not destroy the title of the original owner." It is probable that, strictly speaking, this answer of the referees, though by the Ordinance binding on the Court in the particular case, would not be regarded as laying down any general rule or as binding the Supreme Court in other cases. It is the finding of the referees, not the decision of the Court. However this may be, the apparent inconsistency of this decision, which is supported by the opinions of Mr. Sarbah and Mr. Furley, quoted by Sir W. Napier on pp. 141, *et seq.*, of his Memorandum, appears to be inconsistent with that in the Lokko case, which latter judgment shows that individual ownership is being favoured by the Supreme Court, and that if its advance is to be checked or regulated clear rules should be laid down by the Legislature.

110. The facts stated in the extract from the judgment in Lokko's case are consistent with what appear to be the characteristics of the ordinary relation of the holder of the stool to the occupant of a portion of the land of the stool. (See above, para. 97.) It seems that the case was treated by the court exactly as a similar question would have been dealt with in an English court. In England the way in which the right to the land had devolved, the tacit recognition of the possession by the defendant and his father, the exercise of the right of building and planting on the land, the absence of all evidence of the payment of rent or rendering other services to the original owner of the land, would have raised a very strong presumption that the occupant

<sup>(1)</sup> We may especially mention Mr. Hayes Redwar's "Comments on some Ordinances of the Gold Coast Colony," the excellent treatises on Fanti laws by the late Mr. Sarbah, a leading native barrister, and the volumes on "Gold Coast Native Institutions," and "The Truth about the West African Land Question," by Mr. J. E. Casely Hayford, also a native barrister, who gave evidence before us.

<sup>(2)</sup> *Eccobang v. Kagan, Sarbah*: "Fanti Customary Laws," p. 109.

was tenant in fee simple of the land; and, though it might be an admitted fact that the land was originally the property of the stool, the operation of the Statutes of Limitation would under the circumstances of this case practically have converted the right which was originally only a tenancy at will into an estate in fee simple.

When, however, the facts relied on in the judgment are looked upon from the point of view of native custom, their consideration leads to a very different result. As we have already pointed out, it is a leading principle of Gold Coast customary law that stool land is inalienable by the person actually in occupation of the land. The land cannot by any act of the occupier be converted by gift or sale into private property in the hands of another person. But short of the power of alienation the occupier enjoys rights similar to those of an owner of the land. From the point of view of native custom the facts relied on in the judgment of the court, so far from leading to the inference that the land thus dealt with has been separated from the stool, are the ordinary and typical incidents attending the customary occupation of stool land. The occupant can use the land as he pleases, build on it, plant trees, cultivate cocoa or rubber and dispose of the produce. At his death it devolves according to local custom. What he cannot do consistently with native custom is to alienate it, whether by sale or mortgage, so as to give the purchaser or mortgagee a right over-riding that of the stool.

#### *Bearing of the Lokko Judgment on Family Land.*

111. Though the judgment in Lokko's case shows the risk which the maintenance of stool land is under at present, Sir W. B. Griffith shows that the like danger does not exist, at any rate at present, with regard to family land:—

“The decisions as to family land, which reach far back, show that the English courts will not, other than in exceptional cases, permit family property to be seized in execution. In this way the family reaps the advantage both of the native and English law, without the disabilities of either system. By native law the family property could not be seized for the debt of one of the members, but any member of the family might be panyarred<sup>(1)</sup> until the family paid the debt and expenses: the English law put an end to the panyarring, but allowed the family to retain the advantage of non-seizure for a private debt. Had section 19 of the Supreme Court Ordinance, 1876, been in force at the date of the first decision it is possible that the courts might have invoked the aid of the concluding words of that section, and have required the family to pay and, in default, have allowed the property to be sold. That course, however, was not adopted and the law is now settled in favour of family property.”

It must, therefore, be recognised that the general rule is that family land cannot be taken or sold in execution for the private debt of the occupant of the land. The custom appears to be that though the occupant has the free right to use and enjoy the land, this land cannot be alienated either voluntarily or involuntarily as if it were individual property.

112. It seems to us that the probability that this decision may have far-reaching results in transferring stool property into private property, imposes upon us the duty of considering whether any and what steps should be taken by the Legislature to check or to regulate the conversion of stool land into private property in the manner in which this result has been accomplished in the case under consideration. We propose that the practice should be limited by laying down that all land that can be shown to have been stool or family land shall be presumed to remain as such unless the occupier and his predecessors can prove that they have occupied it for a certain number of years in a manner inconsistent with the rights of the stool or family.

113. We do not think that it would be proper to interfere with the vested rights of persons who are now the individual owners of land, in other words we do not recommend that where any person has the rights of an individual owner those rights should be taken from him. The question as to who has the rights of an individual owner is a further question and one of considerable difficulty. We should have wished the holding of an inquiry into the claims of all persons alleging themselves to be individual owners, with a view to registering them and establishing a registry of title applicable to them, but we have come to the conclusion that the holding of such an inquiry would result in a flood of litigation which would aggregate an evil

(1) Panyarring, or kidnapping individuals in order to obtain restitution of goods or money unjustly withheld, was formerly common among the Fantis on the Gold Coast. If a resident of one place was indebted to a native of another place, and would not discharge the demand, or withheld property improperly, the first native of the former place who might fall into the hands of the creditor was detained by him until the claim was settled or the property restored, which was often promptly acceded to, for the family of the man detained immediately compelled the debtor to release their relative by discharging the debt. See note on p. 282 of Sarbah's "Fanti Customary Laws" (Second Edition).

which, as we shall show hereafter, is already a cause of grave concern. We have, therefore, reluctantly come to the conclusion that we cannot recommend any reform in this direction, but must leave the question as to whether a person is entitled to sell or mortgage a particular piece of land to be decided by an intending purchaser or mortgagee subject to any recourse he may have to the Courts by law.

114. We shall presently discuss the Concessions Ordinance, which was an attempt on the part of the legislature to safeguard the rights and interests of native communities by subjecting certain transfers by them to Government supervision, and shall defer the question until after that discussion, as to whether the powers of alienation possessed by communities and families should not be further safeguarded and controlled.

#### *Partition of Family Land.*

115. Mr. Willoughby Osborne speaks of the practice of the Supreme Court to grant a partition of family land at the instance of the purchaser of a share of one of the members at a sale under a writ of execution. Such a proceeding, however, would apparently be contrary to native custom. The ownership of the land by the family is not analogous to that of tenancy in common under English law, but is a joint and indivisible ownership, no part or share of which is capable of being alienated either voluntarily or involuntarily by any individual occupant of a portion of the land.

Napier  
memo., *infra*,  
p. 148.

Although Sir W. B. Griffith does "not recollect ever having heard of family land" "having been partitioned," the point should not be lost sight of in any future legislation on the subject of land tenure. Ditto.

#### *Law relating to Individual Ownership.*

116. This form of ownership in the hands of a native involves on the part of the owner power to sell and to mortgage during his lifetime. His power to dispose of it by way of testamentary disposition appears to us to depend upon custom, as also does devolution after death when there is no will, the general rule being that native individually-owned land becomes family land on the death of the owner intestate. The statutory exceptions to this rule are set out in Sir W. Napier's Memorandum, page 147.

In the case of a non-native English law would *prima facie* be the guide.

It is interesting, however, to note Sir W. B. Griffith's experience of the action of the Supreme Court in cases of Mohammedans and others who are natives of West Africa but not of the Colony. Speaking of section 19 of the Supreme Court Ordinance, he says:—

"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.'"

#### *Land held under Native Tenure.*

117. This distinction between the laws applicable in the case of natives and non-natives brings us to the question of the phrase "land held under native tenure" which as we have already seen is used in the Native Courts Jurisdiction Ordinance. There have been attempts to argue that lands which have been dealt with by written instruments are no longer to come within this expression. The judgments set out on pages 126-128 of the Papers laid before the Committee show that this line of argument has not so far been successful, and it would seem to follow from the provisions of the Supreme Court Ordinance that land held by a native is land held by native tenure unless it is the subject of an English mortgage or of an English lease.

Where land is sold or mortgaged and the purchaser or mortgagee is a non-native the land so dealt with, for a time at all events, ceases to be held under native tenure, and the purchaser holds the lands free from any obligation as regards dues or services in respect of his holding towards the chief or community. He is free to alienate the land as he pleases by deed or will. We say "for a time at all events," for it is a curious proof of the inveteracy of the customs regulating native tenure that if the land is again acquired by a native it frequently returns to the dominion of native custom.

African  
No. 1048,  
p. 306.

In his memorandum on native tenure Sir W. B. Griffith, speaking of transfer of rights over land by an individual native, puts the point as follows:—

“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 would then 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 B and C, and thus 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 the land is held can vary with the status of the owner, and that no owner impresses on the land any permanent form of tenure.”

The conclusion thus expressed by Sir W. B. Griffith as the result of his great experience in the Supreme Court that “the tenure of land can vary with the status of the owner” appears to us to be of great importance, and to be consistent with the views of the most experienced of the administrators of the Gold Coast. It should be borne in mind in any fresh legislation which may be recommended with regard to the tenure and transfer of land.

#### *Mode of Transfer of Individually Owned Land.*

118. A further important matter is with regard to the mode in which a conveyance either by a community, a family or an individual owner can be made. As we should expect a transfer which is valid by customary law is as valid a mode of transfer as a conveyance with the formalities of an English deed. It would appear, however, that it is rapidly falling into disuse. Sir W. B. Griffith, in his judgment in a case under the Land Registry Ordinance, says:—

“It is only the peculiar position of this Colony which allows a parol sale of land among natives; in most places the Statute of Frauds or some similar enactment forbids it; here we are bound to pay respect to native customary law and consequently to permit between natives sales of land by parol,” and again, “Except in the bush, sales of land by native custom, are of infrequent occurrence and year by year they will become less frequent.”

#### *Registration.*

119. No discussion of the principles affecting the transfer of land would be complete without a reference to the Land Registry Ordinance, 1895. The object of this Ordinance was to set up a registry of all instruments affecting land, and its main provisions are set out in Sir Walter Napier's memorandum, page 133. Since that memorandum was written judgments on several cases have been set before us. The results of these decisions may, we think, be roughly summarised in the following propositions:—

- (1) That as between registered instruments priority of registration gives priority of title.
- (2) That as between a registered instrument and an instrument prior in date, which could have been but was not registered, the former has priority.
- (3) That as between a registered instrument and a prior parol sale, made in accordance with native custom, the latter has priority. In other words the purchaser who has searched the register and has paid his purchase money and has registered his conveyance may find that a parol purchaser of whom he had no notice has priority over him.

120. The inconvenience of the latter principle needs no comment from us. Sir W. B. Griffith says in a judgment reported on page 98 of the Papers laid before the Committee with regard to these parol sales:—

“Probably the Legislative Council deemed it wise when enacting the Land Registry Ordinance, 1895, to pay no heed to such sales; they probably thought that the time had not yet arrived to deal with such sales and that it would be preferable to suffer the anomaly than either on the one hand to forgo the advantage of registration of instruments affecting land or on the other to abolish the native customs as to sale of land.”

We propose to recommend a measure which may put an end to this defect in the law.

#### LEGISLATION AS TO CONCESSIONS.

121. The next enactment with which we have to deal is the Concessions Ordinance, which was passed in 1900. It is not possible thoroughly to appreciate the provisions of this Ordinance without some reference to the Land Bill of 1897, introduced by Sir William Maxwell, the then Governor of the Gold Coast, for which it was substituted.

African  
No. 1048,  
p. 98.

African  
No. 1048,  
p. 98.

## THE MAXWELL BILL.

About twenty years ago the value of the Gold Coast as a producer of gold caused a speculative movement on the London Stock Exchange which soon attained considerable proportions. Prospectors and "concession hunters" flocked to the Gold Coast and entered into negotiations with native chiefs. It soon became apparent to the British authorities that the law (or rather the absence of law) wherewith to meet this new situation of fact was wholly inadequate, and that grave injury was threatened to the rights of the natives of the Gold Coast and to public interests generally. In a message to the Gold Coast Legislative Council on March 10th, 1897, Sir William Maxwell stated:—

"Native chiefs cannot be permitted to deal uncontrolled with public rights, and the transactions by which it is alleged that private rights have been created over public land, in a manner wholly unknown to the native tenure of West African tribes, require examination and possibly extensive modification."

Gold Coast  
Government  
Gazette,  
1897, p. 84.

He sought to regulate the position by a Bill entitled "An Ordinance to regulate the administration of public lands and to define certain interests, and to constitute a Concessions Court." This became known as the Lands Bill, 1897.

The preamble was as follows:

"Whereas from time to time various instruments purporting to create interests or rights over land in 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."

The methods by which these objects were to be attained under the provisions of the Bill are explained in Sir Walter Napier's memorandum. In some respects they were certainly open to the criticism that the provisions of the Bill did not accord with established native customs. Under those customs there was no such thing as land which was not subject to proprietary rights of some community or its members. In other words, there was no such thing as "public" land in the sense in which that term was used in the Ordinance.

*Infra*,  
p. 131.

122. The Bill provoked strong opposition. A deputation came to England to see Mr. Chamberlain, then Secretary of State for the Colonies. The burden of the representations against the Bill was that all land in the Gold Coast was owned either tribally, communally, by families, or by individuals, and that to invest the Crown with the proposed powers over "public" land, whether actually occupied or not, would be a violation of native rights and an infringement of the spirit of the agreements, and a distortion of the historical sequence of events, through which British rule became established in the Gold Coast.

Mr. Chamberlain acceded to these representations. The main provisions of the Bill were dropped. The project of constituting a "concessions court" remained, though, as Sir Walter Napier points out, it was invested with wider powers than those proposed in the Bill. The right of the native chiefs to alienate the land of their people for periods up to one year short of a century, subject to the provisions of the Concessions Ordinance as to details, was tacitly admitted. In Mr. Chamberlain's words—

"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, is more effectually secured to him by the conditions which the Bill imposes on the grantee." (Despatch of Dec. 2, 1899.)

African  
No. 1048,  
p. 287.

## THE CONCESSIONS ORDINANCE, 1900.

123. We shall now proceed to discuss the provisions of the Concessions Ordinance at length, but before doing so, it may be convenient to state at this point that the provisions of the Ordinance formed the subject of an enquiry by Mr. H. Conway Belfield, C.M.G. (now Sir Henry Belfield), who was sent out at the beginning of 1912,

in view of the many complicated land questions that had arisen in the Gold Coast, to report on the legislation governing the alienation of native lands in the Gold Coast Colony and Ashanti. His Report was published in July 1912 [Cd. 6278], and in framing this part of our Report we are much indebted to Sir Henry Belfield's researches, as the numerous quotations from his Report and from the evidence taken by him show.

Passing to the consideration of the provisions of the Ordinance, we shall see that, since the passing of the Ordinance, there has been a considerable divergence of opinion as to what transactions come within its purview. The important matters to bear in mind are that at the time the Ordinance came into force alienation by chiefs and families was recognised by the courts, provided that the consent of the proper parties was obtained, that the Ordinance did not validate any alienation which was not previously valid, but that in certain cases it controlled, and limited this alienation. Any transaction not within the purview of the Ordinance derives its validity from, and must be decided by, the general law of the Colony.

Before, however, we discuss details, it will be advisable to examine the general scheme laid down. The object was probably to induce every holder of a concession from a native chief of mining or forest rights to bring his concession before a court in order that it might be ascertained whether it complied with certain rules laid down for the protection of the natives, *e.g.*, that it should be fair, be properly understood, for a term not exceeding ninety-nine years, and should not derogate from the customary rights of the natives, "in respect of shifting cultivation, collection of firewood and hunting " and snaring game." If it complied with these rules a certificate of validity would be given, establishing an absolute title to the rights granted, and power was given to the court to modify the terms of the contract in order to bring it into conformity with the rules.

The Ordinance does not render an uncertified concession void, but section 8 provides 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."

#### *General Scheme of Procedure.*

124. The procedure is very succinctly sketched out by Captain Lees, the late Director of Surveys, in the following paragraph:—

"A brief description of the procedure in taking up a concession is necessary; the applicant approaches the chief of the district, and the terms as to area, consideration money, occupation and mining rents are settled, the rents being subject to revision by the Court; these terms are embodied in a deed, drawn up in complex language, the deed being signed by both parties, one of whom understands very little about it; within six months (section 9) of the date of the concession, a notice containing certain details of this deed (Form A. Schedule to Rules under section 6 of the Concessions Ordinance, 1900), must be filed with the Registrar, the penalty for non-compliance (section 9 (2)) being a monetary one, and this notice is promulgated in the *Gazette*; at any time after the expiration of three months from the date of filing the notice (section 12) an inquiry may be held by the Court as to the validity of the concession; this inquiry having proved satisfactory, a Court Order for survey is made; this Order, or a certified copy, is forwarded by the concessionaire to the Director of Surveys, who arranges for a certain proportion of the survey fees to be deposited, and for the land to be surveyed; the survey having been completed, and the fees paid, the plan, together with three tracings, is forwarded to the concessionaire, who can then go into Court, and, subject to no opposition being entered, obtain his certificate of validity."

#### *Definition of "Concession."*

125. By section 2 of the Ordinance the term "concession" is defined as meaning—  
"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, 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, but shall not include an assignment of a concession as above described."

The grantor of the concession must be a "native," a term which by the same section—

"includes all persons of African birth who are entitled by native custom to rights in land in the Colony."

#### *Grant to a "Native."*

126. As we have already pointed out, it is probable that the Ordinance was intended originally to regulate grants of rights over lands by native chiefs to Europeans; but there appears to be nothing to prevent the Ordinance operating in the case of a grant to a native.

#### *Subject-matter of a Concession.*

127. It has been pointed out that the Concessions Ordinance was substituted, by the action of the Colonial Office, for Sir William Maxwell's Bill. That Bill, as is

shown by the preamble quoted above (paragraph 121), contemplated only or mainly the grant of rights of mining and of felling timber. The definition of "concession" in the Ordinance of 1900, in addition to rights relating to mines and timber, includes rights relating to rubber and other products of the soil.

The definition in question cannot be said to be free from difficulty, and was in fact the subject of judicial decision within a few months after the Concessions Ordinance came into force. The claimant in Concession Enquiry No. 63 asked that a writing which in its terms appeared to be an absolute grant should be certified, as he desired to commence mining operations on the lands comprised on it, "which he says were bought by him for mining purposes." Mr. Justice Nicol held that mining rights were indirectly granted by an absolute conveyance of land, although not mentioned in it, and that the Court could validate such a conveyance, making any modifications in it, *e.g.*, as to the period of its duration, which were required to bring it into conformity with the rules to which we have already referred. This decision of Mr. Justice Nicol has been followed by the Courts ever since, and apparently it has been generally considered that every conveyance of land, even from native to native, which would indirectly operate so as to include the minerals under it was within the definition, even if taken without the intention of mining or of dealing "with timber, rubber, or other products of the soil."

African  
No. 1048,  
p. 133.

#### *Agricultural and Arboricultural Concessions.*

128. It was perhaps in view of this decision that the Legislature in 1905 amended section 8 of the Ordinance, which, as we have seen, provides that no proceedings are to be taken to give effect to an uncertified Concession without the leave of the Court by enacting that the Court should not, unless it sees good reason to the contrary, withhold leave in the case of a Concession which is a *sale* of land where such land has not, in the opinion of the Court, been purchased for the purpose of mining, timber cutting, or rubber collecting.

The policy underlying this amendment in favour of agricultural and arboricultural concessions was followed in the next year by the Order in Council of the 11th April 1906, with which we shall deal later.

129. Although the above would appear to have been the view of the Judicature and the Legislature it does not seem to have been shared by the general public, who disregarded the Ordinance in purchases of building sites or land for ordinary native farming, nor would it appear that the judicial view obtained universal acceptance in the legal profession, for Mr. Giles Hunt raised the question before us whether the words in the definition "other products of the soil" are to be confined to *natural* products of the soil, such as the fruit of the wild oil-palm trees, or whether they are wide enough to cover *artificial* products, and include concessions for the purpose of planting and cultivation of cocoa, or oil-palm trees, or rubber. This question has assumed recently much practical importance. So far as we are aware, there is no judicial decision on the point. Mr. Giles Hunt, who has had a very large professional experience in the working of the Ordinance, is of opinion that the Ordinance does not apply to planting or cultivation of trees or other produce, but that any such grant may be brought within the Ordinance by judicious conveyancing, *i.e.*, by putting into the deed of transfer a grant to work mines or timber in the conceded area.

Townsend's  
Memo.,  
African  
No. 1048,  
p. 302.

Hunt,  
1344-8.

130. The view, however, taken by the Colonial Office and the Government of the Gold Coast appears to be different. In the returns we have obtained, giving the number and particulars of concessions which have been proceeded with at least partially under the Concessions Ordinance, we find that agricultural or arboricultural concessions are included as a recognised class of concessions operating under the Concessions Ordinance. So, too, the Order in Council of April 11, 1906, referred to by Sir H. Belfield, and commented on in Sir W. Napier's Memorandum, shows that grants for these purposes were regarded as falling within the definition of a concession. Power is given to the Governor in Council by section 3 of the Ordinance to exclude from the operation of the Ordinance, subject to any conditions which he may impose, any class of non-mining concessions. In exercise of this power, the Order in Council above mentioned excluded all agricultural and arboricultural concessions which satisfied certain conditions.

African  
No. 1048,  
p. 33.  
See notes by  
Sir W. B.  
Griffith,  
p. 498 of  
Minutes of  
Evidence.  
*Infra*,  
p. 131.

These conditions were:—

- (1) The concession must not involve mining rights.
- (2) It must be duly stamped.
- (3) It must be duly registered under the Land Registry Ordinance, 1895.

- (4) It must, if it is in respect of an area exceeding one square mile, have the consent of the Governor endorsed on it or on a certificate (*sic*) copy of it. The Governor is empowered to withhold his consent without assigning any reason.

Belfield  
Report, para.  
57.

131. Sir H. Belfield, in commenting on this Order in Council, thinks that grants for the purpose of agriculture and arboriculture are not within the scope of the Concessions Ordinance. We think this is scarcely an accurate statement of the position.

Assuming that agricultural and arboricultural concessions are within the definition, we think that the result would be that a duly stamped and registered grant of the kind would be quite outside the Ordinance if the area comprised in it was one square mile or under, but that if it exceeded one square mile it would be within the scope of the Ordinance, unless the consent of the Governor was obtained.

132. The Order in Council was amended by a further one of the 28th June 1913, which required the consent of the District Commissioner in cases where the area of the concession was one square mile or under. In his statement of the objects and reasons the Attorney-General said :—

“It is necessary to ensure that natives selling their farms should have the assistance and protection of an experienced person to prevent unfair bargains and prevent people from acquiring or getting the option of acquiring and holding considerable extents of such lands just for the purpose of holding as a gamble in the hope of creating a fictitious value and thereby obstructing the use of the land.”

African  
No. 1048,  
pp. 303 and  
305.

133. The attention of the Committee has been drawn to a decision of the Privy Council delivered on the 29th April 1914, in the case of the Wassaw Exploring Syndicate, Limited, *v.* The African Rubber Co., Limited, and we have been favoured with a memorandum on the case by Sir W. B. Griffith, which is set out on p. 305 of the Papers laid before the Committee.

The facts were as follows:—In 1906 the African Rubber Company obtained a concession whereby five square miles of land were “granted let and demised” to them “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.” The demise included all mines, mineral substances, precious stones, &c., and gave power amongst other things to do all matters and things so absolutely and effectively as if the African Rubber Company were for the time thereby “intended to be demised absolute owner of the fee simple.” As to timber the Company had power to 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.”

In 1909 the appellants, the Wassaw Syndicate, obtained a concession, part of which related to the same land as had already been the subject of the concession to the African Rubber Company in 1906.

This later concession purported to “demise and grant the land together with all “the mines and minerals therein” for ninety-nine years. The Syndicate were given power amongst other things to take and carry away minerals, and also to fell and take away timber for the use of the steam engines and machinery used in the said mines and for the erection and maintenance of any buildings, &c.

The Wassaw Syndicate “promptly” applied for and obtained a certificate of validity. This certificate was dated January 4th, 1910.

At the end of 1909 the African Rubber Company (the respondents) also took steps to apply for a certificate of validity for their concession which, as above stated, was obtained in 1906. This application was opposed by the Wassaw Syndicate (the appellants). The Supreme Court of the Gold Coast, on July 29th, 1912, affirming the decision of the court of first instance disallowed the opposition to the grant of the certificate to the African Rubber Company, and the appeal to the Judicial Committee was against this disallowance.

The contention of the appellants, both before the Supreme Court and the Judicial Committee, was that by section 23 of the Concessions Ordinance “a certificate “of validity shall be good and valid from the date of such certificate as against any “person claiming adversely thereto,” and that consequently they were entitled to the exclusive possession of the land which had been previously demised to the African Rubber Company, and to treat the respondents as mere trespassers on the land to the surface of which as well as to the mines and minerals contained therein they claimed to be entitled.

It was admitted throughout the argument, both in the Courts of the Gold Coast and in the Privy Council, that, in so far as rights covered by the Concessions Ordinance were concerned, the fact that the appellants had obtained a certificate of

validity on January 4th, 1910, gave them priority of title over any similar rights purporting to have been granted to the respondents by the Concession of 1906. It was not disputed that the certificate of validity conveyed to the appellants the mining rights and such surface rights as to timber and otherwise as are incidental to mining, and that to this extent the certificate of validity did override the prior Concession of 1906.

With regard, however, to the rights other than mining rights over the land as to which the appellants claimed priority by reason of their certificate of validity, the Judicial Committee held that the certificate of validity did not give the appellants any such priority. But the Judicial Committee went further, for it expressly stated that the definition of "concession" "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." With regard, therefore, to the demise of the land for purposes other than mining, section 23 of the Concessions Ordinance and the certificate of validity gave the appellants no right of priority over the previous uncertified grant.

134. This decision, as Sir W. B. Griffith points out in his memorandum, overrules the view which has apparently been taken by the Supreme Court of the Gold Coast ever since the passing of the Concessions Ordinance as to the meaning of the term "concession." It is now obvious that the procedure under the Concessions Ordinance does not apply to any rights over land except those specified or implied in the definition of "concession" in section 2. Consequently land sold or leased for building or residential purposes would not be within the ordinance, and does not require the confirmation of a certificate of validity. Sir W. B. Griffith refers to the decision of Mr. Justice Nicol above referred to in para. 127, and further points out that the Legislature has in two ordinances recognised that a sale of land is a concession within the meaning of section 2 of the Ordinance. He suggests that some "definite action" be taken to get rid of this awkward position which results from the apparent conflict which has arisen between the ruling of the Judicial Committee and the long-established practice of the Supreme Court.

We do not feel called upon to speculate as to the effect which the recent decision may have upon certificates of validity already granted, but we think that the objections to which we have referred point to the urgent need of such a change in the methods of transfer of rights over land in the Gold Coast as will obviate the difficulties and uncertainties which are involved in the procedure set up by the Concessions Ordinance.

We hope to suggest an amendment of the law under which, in the future, similar difficulties will not arise.

#### *Options and Prospecting Licences.*

135. Besides the terminable rights over land, in the nature of leasehold interests, which can be validated under the Concessions Ordinance, that Ordinance includes by section 2 in the definition of "concession," the grant of an *option* to obtain a concession of any of the rights over land specified in the ordinance. The duration of the right to exercise an option is confined to three years. These options have been mainly granted for mining purposes, though there appears to be nothing to prevent the validation of an option for any class of concession. The granting of options has been found by experience to be open to grave objections.

Sir H. Belfield's view is thus expressed:—

"The objection to the recognition of options is that they can be made use of by unscrupulous speculators and promoters to persuade people that they have property to sell which is not in fact at their disposal. So long as a person can obtain for a small sum an option of selection for three years over an extensive area, he is able to acquire a document which may be accepted as a title by people in Europe not conversant with the conditions of tenure in the Colony. Such a document is thus invested with a marketable value to which it is not entitled, and it is only when it has changed hands that the purchasers discover that they are in possession of nothing more than a right of selection contingent on the disbursement of a further substantial sum. Presumably, recognition was given by the ordinance to this form of interest in consequence of representations that time must be allowed and facilities given for the examination of likely areas, before selection can be made. This is undoubtedly necessary, but it is not necessary and it is not desirable that the facility should take the form of an option. The time required by the miner for examination of the land, and his right of ultimate selection, can be secured to him by remodelling the system of prospecting licences in a manner which I shall explain later on, so that, while his legitimate interests are protected, he will be afforded no opportunity of foisting upon a credulous public a document which gives rise to misconception and is instrumental in causing pecuniary loss. Whatever form of procedure is adopted in the future, the practice of granting options should no longer be countenanced."

African  
No. 1048,  
p. 305.

Report, para.  
73. [Cd.  
6278.]

Hunt, 993.<sup>o</sup>  
985.<sup>o</sup>

Mr. Giles Hunt, in the evidence before Sir H. Belfield, spoke of the danger of the misuse of options for fraudulent purposes.

He stated that his own practice was to take a lease of the land for three years instead of a mere option. Such a lease would include a power to prospect and a right to take a lease of any part of the land up to the statutory limit in respect of area for a period not exceeding ninety-nine years. The object of this method is to safeguard the title of the grantee of the land within which it was desired to select an area or to prospect.

136. We agree with Sir H. Belfield that the practice of granting options should be prohibited by law. We also think that the practice of granting leases merely for the purpose of prospecting and obtaining a right of pre-emption is undesirable. All that seems to be needed is a right to prospect by means of a licence under proper regulations. We may point out that the Ashanti Concessions Ordinance of 1903, so far as regards transactions taking place after the commencement of the Ordinance, prohibits options with respect to minerals and precious stones. Why this amendment of the law was not extended to the Gold Coast does not appear.

We deal with prospecting licences in connection with mining. (See below, paragraph 215.)

#### PROCEDURE FOR OBTAINING AND VALIDATING A CONCESSION.

##### *Application for Concession.*

137. As we have seen, one of the grounds of the opposition of the native chiefs to Sir W. Maxwell's Bill was that it prevented the natives from dealing directly with the grantees. The Gold Coast Concessions Ordinance was intended to leave the native chief free to make his own bargain direct with the applicant for the concession, usually a European or a European company. In this respect, as we shall see later, the Concessions Ordinance differs widely from the law and practice in the other West African dependencies.

As we shall see later, when, after the experience of three years of the working of the Concessions Ordinance of the Gold Coast, a measure on the lines of that Ordinance was introduced into Ashanti, it was found necessary to introduce the precautions of a measure of executive control. Unfortunately, however, no corresponding amendments were made in the Concessions Ordinance of the Gold Coast.

The working of the system, established by the Concessions Ordinance of the Gold Coast, of leaving the chief and his elders free to make their own bargains, has been much commented upon both in the evidence given before us and that collected by Sir H. Belfield. Sir H. Belfield states the practice thus:—

“The applicant for a concession, in the first instance, approaches the chief of the district, either personally or through the agency of a lawyer, and describes to him and his elders, orally, and through an interpreter, the situation and area of the land which he desires to acquire, and the purpose for which he wants it. When the chief has been made to comprehend these particulars as far as possible, and has expressed his willingness to grant the land, the parties proceed to bargain as to the amount of consideration money and rent to be paid in respect of it. When terms have been finally settled, all details are embodied in an indenture or deed of agreement, written in the English language, which is usually read over and explained to the chief and his councillors by the English-speaking clerk, but as these documents have usually been drawn in the complex language employed by conveyancers, the value of the explanation given by a superficially educated African may be left to the imagination. Finally, the document is signed in duplicate by the respective parties, and one copy is retained by each.”

##### *Need of Executive Advice and Supervision at early Stage.*

138. Strong comments have been made both by Sir H. Belfield and by many of the witnesses called before us, on the importance of the chief and his councillors having the benefit of independent assistance at the hands of the executive government before the serious step of alienating the lands of the community is taken. With regard to the present practice Sir H. Belfield says:—

“One very obvious disadvantage attendant on the present system of disposition of concession land by the chiefs and elders is found in the fact that all the negotiations preliminary to the execution of the indenture or deed of agreement are conducted either directly between the applicant and the chief, or through the medium of a lawyer retained by the former. The chief is usually able to ascertain the proposals and requirements of the applicant only with the assistance of an interpreter, who is generally in the service of the applicant and more mindful of his interests than those of the landowners. The knowledge of the situation and area of the land applied for which is derived by the chiefs from the statements made at such interviews is of a very sketchy description. The prevalent ignorance regarding boundaries and areas prevents their realising the true position and extent of what is applied for, and the

Report  
para. 59.

Report,  
para. 36.

only point which appeals to them as being of importance is the amount of the consideration money and rent which can be secured as the result of the bargain. It is not suggested that in all cases the natives have been persuaded to part with their lands upon terms less equitable than those which should have been secured, but such has certainly been the case in some instances, and no arrangement can be considered satisfactory which does not ensure that the chiefs shall receive advice and assistance from some disinterested person cognisant of the situation and condition of the land applied for and competent to form a practical judgment of what may reasonably be leased and what should be paid for it. I have been informed that cases have occurred in which the chief has been sufficiently alive to the fact of his own inability to judge for himself to have insisted that the draft agreement should be considered and explained to him by the District Commissioner before appending his signature to it."

This stage in the proceedings is also described by Captain Lees, the Director of Surveys, in a passage which has already been quoted, as follows (para. 124) :—

"The applicant approaches the chief of the district, and the terms as to area, consideration money, occupation and mining rents are settled, the rents being subject to revision by the Court; these terms are embodied in a deed, drawn up in complex language, the deed being signed by both parties, one of whom understands very little about it."

African  
No. 1048,  
p. 83.

Many other witnesses emphasize the importance of disinterested advice and assistance, at this stage. The natives, according to Mr. Giles Hunt, are "quite incapable of managing their own affairs." The view of the Director of Surveys is that :—

Fuller,  
4842-6,  
1358.

"Effective control from the very commencement of the bargaining between the concessionaire and the grantor is very desirable; the District Commissioner and the Director of Surveys should both be concerned in this initial stage."

African  
No. 1048,  
p. 83.

139. We agree with the opinion adopted by Sir H. Belfield and generally held by the witnesses who have had the largest experience that in every case of an application for a grant of rights over land by the chief and elders or other representatives of the community for any purpose whatever, the application should in the first place be made to the Governor through the proper channel, and his permission obtained to negotiate with the chief. The proper executive officer would then act as intermediary between the applicant and the native authorities, and all the main proceedings would be under his supervision, and the native authorities would have the protection of his advice. We shall recur to this matter in Part III.

#### *Parties to Concession.*

140. It must be borne in mind that although the terms of the Ordinance would seem to contemplate that the "grantor" of the concession was an individual chief or other person, the parties to the concession are, we believe, invariably the chief and his elders. In the Gold Coast the grant is commonly of stool lands, and the chief on the stool, together with his elders or council, are taken to represent the whole community and to grant rights over the land which up to that time had been the property of the community. One of the matters of which the court must be satisfied before granting the certificate of validity is that the proper persons were made parties to the concession. (Section 11 (2).) In our opinion the question of the sufficiency of the parties and their representative character so as to secure that the proposed concession is in fact assented to by the community generally should also be a matter for the executive officer to supervise before the grant is executed. As, however, the question of the sufficiency of the parties may give rise to a question of title involving the rights of third parties, we think that when it does it may properly be referred to the judicature for decision.

See Section  
25 of  
Ordinance.

See speci-  
mens of  
grants set  
out in  
African  
No. 1048,  
p. 39 *et seq.*

#### *Gazette Notice.*

141. The procedure necessary to make a deed operative under the Concessions Ordinance is prescribed by Section 9. Within six months after the date of the concession notice thereof is to be filed by the grantee with the registrar of a Court of the Province within which the land subject to the concession is situate. All other documents relied on by the claimant in support of his title are to be filed within a period of three months of the filing of the notice of the concession. Non-compliance with these provisions renders the claimant liable to a penalty of 5*l.* for every day during which the default continues. It is the duty of the Court to cause notice of every concession so filed to be published in the Government Gazette. There is, however, as we have already pointed out, no provision for the avoidance of the concession by default in filing the notice. Although the section we have referred to is imperative that notice of any concession must be filed in court, we are told on the best authority that as regards both timber and mining concessions "some have been worked for many years without even notice of the concession." The con-

Hunt, 1078,  
1301-12.

Hunt, 1075. cessions may be and "probably are registered" under the Registration Ordinance, but although such registration affords evidence of the existence of the concession of which notice ought to have been given, it appears that it has not been the practice to enforce the filing of the notice. "There is a penalty of 5*l.* per day, but it is never enforced." It appears, therefore, that it is by no means an uncommon practice in the Gold Coast to work concessions without taking the first step which is required by the Ordinance, and no action has apparently been taken by the Government to check this illegal practice. In Sir W. B. Griffith's view a grantee who adopts this course is in great danger, "and remains in danger," having regard to the provisions of section 8, to which we have already adverted.

Osborne, 14,930-3.  
Griffith, 14,447.  
Grey, 5566. Mr. W. H. Grey, an unofficial member of the Legislative Council, possessing a very lengthy experience of the Gold Coast, puts the matter thus:—

"At present a very large number of concessions are not recognised by the Government because they have not been passed through the Concessions Court, but they are legal, and any new company coming in and trying to get one of these concessions in order to work it can be stopped by the concession holders, although the concession has not passed through the Concessions Court. There is a large area of country under concession which in the Blue Books and Government statistics is altogether ignored. If you ask for figures of land under concessions you would be supplied with figures which are not accurate, because the figures given would only represent concessions which have already passed the Concessions Court, or which are at present passing the Concessions Court. There is a very large area of land the deeds of which are in the hands of concession holders, and ready to be put before the Court whenever there is a boom."

#### *Inquiry by the Court.*

142. Up to the time of the filing of the notice the transaction has been entirely private between the chief and his elders and the applicant.

With the filing of the notice the Court becomes seised of the proceedings. When the gazette notice has appeared it has all the appearance of an official notice of a completed concession, and is frequently so treated for speculative purposes. Although the next step contemplated by the Ordinance is the holding of an inquiry and the grant of a certificate of validity, it is very common for concessions to be worked without any further step being taken; and, indeed, the evidence shows that, at all events of late years, it has become a general practice to dispense with any application for a certificate of validity.

An interval of three months must elapse between the filing of the notice and the "inquiry as to the validity of the concession." Provision is made for entering notice of opposition to the granting of any certificate of validity (section 12).

By section 14 the Governor may direct the Attorney-General to intervene in any inquiry. Sir H. Belfield describes the proceedings which take place upon the application of the issue of a certificate of validity as follows:—

"At this inquiry the Court confines itself to ascertaining, by means of such evidence as is available, whether the proper persons are parties to the deed, whether they thoroughly understand its contents, whether the terms are reasonable and sufficient, and whether the customary rights of the people have been protected (Section 11), and if satisfied on all these points, proceeds to make an order for the survey of the land, leaving further action in abeyance until the survey has been completed and the plan furnished.

"The order of survey made by the Court will not become operative until the applicant has deposited the prescribed fees with the Director of Surveys, but when such payment has been made, and the work completed, usually after a prolonged interval of time, the Court will reopen the inquiry as soon as the plans are before it, and unless some complication arises, will proceed to prepare and issue a certificate of validity to be attached to the deed of concession (Sections 15, 16).

"Such is the procedure in straightforward cases in which no conflict of interest arises, but disputed cases also occur in which opposition to the claim is entered (Section 12), when the inquiry will assume the aspect of the hearing of a civil suit, the proceedings are usually of a prolonged nature, and the costs become as heavy as those incidental to other forms of litigation."

#### *Conditions necessary for a Certificate of Validity.*

143. The Ordinance of 1900 sets out certain conditions which must be satisfied before the grant can be certified as valid. The most important, for the purpose of this report, are those enacted by section 11 (6), with the object of protecting certain customary rights of natives over the area comprised in the concession. The rights specified are rights in respect of shifting cultivation, collection of firewood, and hunting and snaring game. When the practice of obtaining rights under the Concessions Ordinance to collect natural produce, especially the fruit of the oil palm tree, developed in 1911, the Government thought it necessary to give further protection to the customary rights of natives, and an Ordinance, No. 16 of 1912, was passed requiring the refusal of a certificate of validity if the concession grants or purports to grant rights to collect natural produce "to the exclusion of natives," or, "if it

“grants or purports to grant rights to remove natives from their habitations within the area of such concession.” We shall have to refer to these provisions in another connection (*see* para. 233 below).

*Nature of Interest permitted under Concessions Ordinance.*

144. Section 19 prohibits the issue of a certificate of validity of any concession which purports to confer any right over land for a longer period than ninety-nine years. It follows, therefore, that no sale of the ownership of land can be validated under the Concessions Ordinance. The Court, however, is not obliged to refuse a certificate of validity on the ground that the grant purports to be a grant of the absolute ownership, or for a period longer than ninety-nine years, but has power under this section to cut down an absolute sale of land to an interest falling within the prescribed limit. This power is frequently exercised by the court.

Griffith,  
14,167-70,  
14,186.

It may accordingly now be regarded as established law in the Gold Coast that the only interest in land which can be created under the machinery of the Concessions Ordinance is in the nature of a leasehold interest—that is, an interest consisting of rights over land which terminate at a fixed period. We think that this principle should be adopted hereafter in any legislation regulating the transfer of rights over lands from native communities to individual persons or to corporations. We shall refer in Part III. to the period of time in respect of which such transfer should be allowed.

*Power to modify a Concession.*

145. Section 13 practically enables the Court to make a new bargain between the parties, or at all events to vary the old bargain in most important particulars.

Under this provision, coupled with section 19, the Court may and sometimes does cut down the term specified in the concession, increase or reduce the agreed consideration to be paid for the rights conceded, reduce the area of the land over which the rights are conceded, and, as in the instance referred to above, impose conditions and vary the terms of the concession as it may think equitable.

Griffith,  
Notes  
appended to  
Oral Evi-  
dence,  
p. 499.

It has been pointed out that by the Concessions Ordinance the Government “not only admitted the native rights of ownership, but deliberately permitted the natives to retain their right to deal directly with persons wishing to acquire an interest in the land.” The provisions of section 13 giving the Court power to modify the terms of the original concession must be taken to be an important qualification of the freedom of the native to make his own bargain.

Griffith,  
p. 498.

A case has been brought to our notice, which we shall refer to further hereafter (*see* paras. 239 *seq.*), where under this section a variation of the certificate of validity was agreed on between the Government and the grantees of the concession, without consulting the grantors, by which terms more favourable to the natives than those contained in the original concession were validated.

*Contents of a Certificate of Validity.*

146. By Section 16 a certificate of validity must state:—

- (a) The boundaries, extent, and situation of the land.
- (b) The nature of the concession, that is to say to which of the classes of concessions enumerated in section 2 (*see* above paragraph 125) it belongs.
- (c) Any limitations, modifications, and conditions imposed by the Court.

*Limitation of Areas of conceded Lands.*

147. Section 20 of the Ordinance of 1900 provides that no concession shall be valid which purports to confer any rights over an area exceeding, if the concession is for mining purposes, 5 square miles; if for cutting timber or collecting rubber or other products of the soil, 20 square miles. Further, that 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 the other rights above referred to, 40 square miles (sub-section 2). In the event of a concession exceeding these limits the Court may issue a certificate of validity in respect of any area, not exceeding the above limits, which the holder of the concession may select within the boundaries of the conceded land. If this is done the Court is bound to declare the concession void as to the residue of the conceded land (sub-section 3).

*“Dummying.”*

148. Evidence has been given before us which points to the conclusion that a practice has been adopted to some extent in mining concessions, and recently on a larger scale in concessions for the exploitation of palm-bearing land, for several persons or corporations (which by the definition clause are included in the word “person”) to combine to acquire areas of land exceeding in the aggregate the limits laid down in the Ordinance, so that the larger area may be managed in the interest of the associated individuals or corporations. By this process the spirit, if not the letter, of the Ordinance is disregarded, and rights are enjoyed by the associated grantees, acting in one interest and practically under one management, over areas far exceeding in the aggregate the limits allowed to one “person” by the Ordinance. This practice is known by the name of “dummying.” In reply to an inquiry on this subject made at the request of the Committee the Acting Governor of the Gold Coast, in a despatch dated the 20th December 1912, forwarded a report from the Secretary for Mines containing the following statements:—

“There is no doubt that it has been and is the practice of persons to acquire from the chiefs larger areas than they are entitled to under section 20 of the Concessions Ordinance, but, as a rule, they give their own names, as, apparently, until the certificate of validity is issued, no attempt is made by the registrars filing concession notices to confine the areas held by any one person to within the limitations of section 20, and I do not know whether the registrars would have the power to do so. After concessions have obtained their certificates of validity I do not think that the Court, as a rule, is in a position to know the area of the land already held under certificates of validity by the person applying for a new certificate of validity. However, with the exception of the Ashanti Goldfields Corporation, which has a special agreement, and those concessions which are exempted under section 20, subsection 4, of the Concessions Ordinance, I do not think that the total area of land held by certificates of validity for mining purposes by any one person in his own name amounts to more than 20 square miles.

“There have been cases in which companies holding larger areas than they are entitled to hold under the Concessions Ordinance have managed to retain these areas by floating subsidiary companies and allocating part of the areas to each of these subsidiary companies, which take no active part in working the area acquired, but I do not see how such an action can be prevented.

“Also I have no doubt that companies have in some cases managed to control larger areas than they are entitled to by using one of their agent’s names as the owner of the concession for which the certificate of validity is being applied for, but it would be very difficult to prove this.”

The Acting Governor also enclosed a list of applications for survey furnished by the Director of Surveys, “which seems to indicate the existence of the practice in question.” These, with the observations of the Director of Surveys thereon, will be found in the Papers laid before the Committee, p. 35.

149. In order to test the efficacy of the section in question, the Governor of the Gold Coast, in a case to which we shall again refer (*see* para. 236 below), directed the Attorney-General to intervene and to oppose the validation of a concession taken by Messrs. Joseph Crossfield and Sons, Limited, on the ground that they were closely associated with Messrs. Apol, Limited, who were already the holders of similar concessions, the aggregate area of which exceeded 20 square miles, and that any further validation would be contrary to the spirit of the section now under discussion. The claimants admitted that there was a financial and directoring connection between the companies, but claimed that the companies being separately incorporated and registered under the Companies Act, were separate entities, and so did not contravene the Ordinance. The point was decided in favour of the claimants.

It is obvious that more effective provisions against the practice of dummying than those contained in the Concessions Ordinance are needed.

*Registration of Certificate and effect of Certified Concession.*

150. When a certificate of validity has been obtained it is registered under the Land Registry Ordinance, 1895 (section 15), and is good and valid from the date of the certificate as against any person claiming adversely hereto (section 23).

We have already seen in paragraph 133 that the last-mentioned section was the subject of discussion by the Privy Council in the important case of the Wassaw Exploring Syndicate, Limited, *v.* The African Rubber Company, Limited, where it was pointed out that priority was given by the section to rights coming within the definition of a concession. Consequently, in so far as rights outside that definition are conferred, their priority must be determined by the rules of law existing at the date of the ordinance, and would therefore chiefly depend on the Land Registry Ordinance, 1895.

151. The nature of the rights conferred by a certified concession has been the subject of considerable doubt. It must, of course, turn to a considerable extent on the

language of the concession, but the Ordinance would be a guide to the legal construction. It will be remembered that in the case before the Privy Council the appellants' concession purported to demise and grant the land, together with all the mines and minerals therein for ninety-nine years, and gave the concessionaire "full, free and exclusive liberty" to do what was necessary for mining purposes. The Privy Council held that the terms employed in the lease were not of such a character as to give the concessionaires a demise of the land itself with the exclusive possession for ninety-nine years thereof. They were "mining lessees," but the concession was "for one specific and particular purpose," the rights of mining which were the subject of the grant were of "a strictly limited nature," and, subject to the concessionaire's "mining needs," the native grantor retained the right to grant concessions with respect to the land.

This judgment is of considerable value as a guide to the construction of a timber or oil palm concession, but it has not solved all the difficulties as to the legal effect of grants of these descriptions.

#### *Payment of Rents.*

152. Under section 26 rents under a certified concession are to be paid to the Colonial Treasurer, who is to pay them to the native entitled under the concession. Under section 23, in the event of the land referred to in the certificate or any portion of it becoming or being declared to be the property of any person other than the grantor mentioned in the certificate, the Court is to endorse the effect of the declaration on the certificate and to give notice to the Treasurer, presumably that he may pay to the true owner. Mr. Giles Hunt points out that under the law as it stands there is no provision enabling the registration under the Land Registry Ordinance, 1895, of the endorsement of the change of interest.

153. We have carefully considered the question, which Sir H. Belfield raised in para. 110 of his report, namely, whether a portion of the rents payable to native authorities in respect of lands leased or granted by them for any purpose—whether that purpose be mining, cocoa, or rubber cultivation, collection of oil palm fruits, or anything else—should be retained to form a fund for use in the district from the lands of which the fund is derived. Reference has been made to the matter by several witnesses who have given evidence before us. We are of opinion that the proposal is one that should be adopted in the best interests of the native population, the majority of whom, at present, derive no pecuniary benefit from the alienation of their tribal lands, and we suggest that 25 per cent. of the rents should be retained for this purpose. We think that the sums annually retained should be invested, say, in the Post Office Savings Banks, where they exist, in the names of two of the native authorities of the district concerned, and of the Provincial or District Commissioners or other Government officers. The money thus collected should be expended on some useful work of advantage generally to the tribe. It would, we think, be preferable, at any rate in the first instance, to employ it upon road construction and maintenance, and upon the construction of bridges. At the present time chiefs are required to turn out their people periodically, for the purpose of clearing those roads which have not been taken over as Government roads. It may not be possible for some time to discontinue this practice; but the formation of the district funds should, at any rate, enable the Government gradually to improve the condition and quality of the roads in the districts concerned.

Although we suggest that the money should be expended in the first instance in the improvement of roads and bridges as being works urgently needed and likely to prove of lasting benefit to the native inhabitants, the expenditure need not necessarily be limited to these purposes. There are other purposes which readily suggest themselves, such as sanitation, water supply, provision of markets, and so forth, in fact anything likely to be of permanent use to the people concerned in the land from which the fund is derived.

It has been suggested that the sums retained by the Government should pass into the general revenues of the Colony for use by the Public Works Department, but we do not regard such an arrangement as satisfactory or fair to the communities concerned.

#### *Suspended Concessions.*<sup>(1)</sup>

154. Soon after the passing of the Concessions Ordinance the Supreme Court became aware of the fact that a number of concessionaires, having got their conces-

Hunt, 1331.  
Thorburn,  
1556.

Griffith,  
14,450.

(1) See Sir W. B. Griffith's note on "Hung-up Concessions," Evidence, p. 497.

sions into Court or having reached the order-for-survey stage, stopped there, with the result that up to 1904 there were in the books of the Court some thousands of part-heard concession inquiries marked "adjourned *sine die*." To remedy this undesirable state of things, section 6 of the Concessions Ordinance of 1900 was amended by section 4 of the Ordinance 29 of 1903, by giving the Supreme Court power to make rules "for striking out at any stage inquiries which are not duly prosecuted." Rules were accordingly made for this purpose. Rule 19 provided that where an inquiry had been adjourned *sine die*, "the Court may of its own motion or on the motion of the Attorney-General direct that it be placed on the cause list for a certain date," and due notice thereof given. This enabled the Court to take proceedings of its own motion to strike out bogus or abandoned notices of inquiries which encumbered the lists of the Court. The effect of striking out the inquiries is, by Rule 21, that if no application to reinstate is made within three months, "all proceedings with respect to such inquiry shall lapse and shall be of no effect," section 56 provides that, when proceedings have lapsed, the concession shall be deemed to have determined as from the date of the lapse.

155. After the rules above mentioned had been made, Sir W. Griffith, then Chief Justice, informed the Court that he proposed to deal under those rules with any case which had not reached the survey stage, and that he would recommend his brother judges to take the same course. He explains that his reason for drawing this line at the survey stage was because in such cases, "claimants had often gone to considerable expense in bringing the grantors down to the Court and in marking out the land conceded." He observes, however, that it was "open to the Attorney-General to move the Court to deal with such cases if the Government thought that such cases should be dealt with." Speaking of his own Court he says that up to the time he left (February 1911) the Attorney-General had taken no action under rule 19 at Accra. He further tells us that "instructions were given to the Chief Registrar of the Court at Accra to issue notices under these rules in every adjourned case which had not reached the order for survey stage, and, so far as I am aware, with some special exceptions, every case in the Accra record books not carried on to the order for survey stage was struck out."

As we shall see from the Tables given in para. 157, concessions dealing with a total area of 10,279 square miles have been struck out by the Court up to the end of 1913, mainly, it may be presumed, under the procedure explained by Sir W. B. Griffith. Sir W. B. Griffith is unable to say whether similar action was taken by other branches of the Supreme Court or by the Attorney-General in these Courts.

Except for the vigorous action taken by Sir W. B. Griffith himself, and perhaps other judges, we have no evidence that any serious attempt has been made to exercise the powers given by the Ordinance to prevent the suspension of concessions, with the serious consequences which have been pointed out in the evidence quoted above.

Captain Lees, Director of Surveys, speaks thus of the position in April 1913:—

"Once the notice of the concession has been filed with the Registrar and promulgated in the Gazette, there is no obligation on the part of the concessionaire to take any further action; he may hold on to the land 'under notice' for an indefinite period, hoping for a boom, or that some individual will acquire the land under a fresh inquiry number and then have to buy him out; the result is that a large area in the Colony is held under notice, and that people who mean business do not like to take up concessions for fear of finding the expenses of acquisition very considerably increased by the necessity for coming to terms with some individual who has held the land 'under notice' for years, and done nothing to develop it."

#### *Unnotified Grants to Non-Natives.*

156. In some cases, as we have pointed out in paragraph 141, grants of land have never been notified in the "Gazette," and have consequently not been dealt with under the Concessions Ordinance at all. These grants would naturally be registered under the Land Registry Ordinance, 1895, but registration does not validate a title which was not good before.

So far, however, as a grant which is within the definition of a concession in the Concessions Ordinance, but which has not been notified, is concerned, it appears to us that, whilst, on the one hand, there is nothing in the Concessions Ordinance to invalidate such a grant, yet, on the other hand, the concessionaire is under heavy penalties for failure to notify under section 9 (2), whilst he may be disqualified from proving his title in court under section 8.

So far as a grant is outside the definition of a concession, its validity, as we have already pointed out in para. 123, must be decided by the general law of the Colony

See note to evidence, p. 497.

Gold Coast Despatch of 20 Dec. 1912. African No. 1048, p. 32.

African No. 1048, p. 84.

Hunt, 1075.

independently of the Concessions Ordinance, and it may well be that some grants which were formerly considered to come within the definition must now, owing to the decision of the Privy Council in the case to which we have already referred in para. 133, be considered as outside it and valid in law.

Having dealt with the provisions of the Concessions Ordinance, and having noticed\* certain classes of cases in which the procedure contemplated by that Ordinance has not been fully followed or has been entirely neglected, we shall now proceed to deal with the character and extent of the alienations which have taken place under the Ordinance.

#### CHARACTER AND EXTENT OF ALIENATIONS UNDER THE CONCESSIONS ORDINANCE.

157. By successive returns furnished by the Gold Coast Administration in response to requests from this Committee, it transpires that in the first ten years of the operation of the Ordinance, *i.e.*, from 1900 to 1910, the native authorities of the Gold Coast alienated, according to notifications in the Gazette, 23,606 square miles of land (23,151 square miles for mining purposes and 455 square miles for "agricultural and arboricultural purposes"). Within the same period the courts struck out concessions aggregating 8,673 square miles. From the end of 1910 to the end of 1913, a further 1,502 square miles have been alienated, a feature of these more recent alienations being that they are for the most part alienations of surface rights. It will thus be observed that of their own volition, and acting in ignorance—we must assume—of the character and extent of the public rights with which they were parting, in the vast majority of cases for one year only short of a century, the chiefs of the Gold Coast have in the past thirteen years alienated an area which actually exceeds the total area of the colony itself. This does not take into account the alienations to which they have consented in the last two or three years, and which have not been notified in the Government Gazettes. The present position is indicated in the following tables.

#### *Alienations of Land by Native Authorities, which have been Notified in the Government Gazette from 1900 to December 31st, 1913.*

##### Western Province.

Period and Reference.	Character of Alienation.		Grand Totals.
	Mining (Square Miles, disregarding Fractions).	Agricultural or Arboricultural (Square Miles, disregarding Fractions).	
1900–December 1910, First return, Papers, p. 33 -	12,241	285	12,526
January 1911–June 1912, Second return, Papers, p. 34	372	476	848
July 1912–December 1912, Third return, Papers, p. 72–3	10*	109†	119
January 1913–June 1913, Fourth return, Despatch July 24, Papers, p. 91.	10‡	98	108
July 1913–December 1913, Fifth return, Despatch February 3, 1914, Papers, p. 121.	—	130†	130

Total area alienated under notification - - - 13,731 square miles.  
 Total area of Province - - - 9,723 „

##### Central Province.

1900–December 1910, First return, Papers, p. 33 -	3,171	168	3,339
January 1911–June 1912, Second return, Papers, p. 34	33	112	145
July 1912–December 1912, Third return, Papers, pp. 72–3	—	29†	29
January 1913–June 1913, Fourth return, Despatch July 24, 1913, Papers, p. 91.	—	20†	20
July 1913–December 1913, Fifth return, Despatch February 3, 1914, Papers, p. 121.	—	43†	43

Total area alienated under notification - - - 3,576 square miles.  
 Total area of Province - - - 4,626 „

\* "Includes timber or other rights."

† Henceforth designated as "timber or other concessions not being mining concessions."

‡ Does not include "timber or other rights."

## Eastern Province.

Period and Reference.	Character of Alienation.		Grand Totals.
	Mining (Square Miles, disregarding Fractions).	Agricultural or Arboreal (Square Miles, disregarding Fractions).	
1900–December 1910, First return, Papers, p. 33 -	7,738	2	7,740
January 1911–June 1913, Second return, Papers, p. 34	44	—	44
July 1912–December 1912, Third return, Papers, pp. 72–3	10*	—	10
None in Fourth return - - - - -	—	—	—
July 1913–December 1913, Fifth return, Despatch February 3, 1914, Papers, p. 121.	—	7†	7

	Square Miles.
Total area alienated under notification - - - - -	7,801
Total area of Province - - - - -	9,986

\* "Includes timber or other rights."

† Henceforth designated as "timber or other concessions not being mining concessions."

The position at the close of 1913 may therefore be summed up as follows:—

Square Miles.

Total area of the Gold Coast - - - - -	24,335
Total alienation of land by native authorities of the Gold Coast which have been notified in the Government Gazette from 1900 to 31st December 1913 - - - - -	25,108
Total area of alienation struck out by the courts from 1900 to end of 1913 (Telegram 22nd April 1914) - - - - -	10,279
Total area remaining alienated on 31st December 1913 - - - - -	14,829
Total area (being part of the last-mentioned area) whose alienation has been validated by the courts up to 31st December 1913 (Despatch 6th March 1914) - - - - -	1,084

158. The situation set out above cannot be defended on any ground. The most serious feature, in our view which it connotes, is the failure of the Government to protect the present and future generations of natives in their public rights. This inability is not disguised by the Gold Coast Administration itself. "It cannot, in such circumstances, be said that the Government extends to the governed that protection which duty demands that it should."

The above sentence, which occurs in a despatch from the Deputy-Governor of the Gold Coast, Mr. W. C. F. Robertson, to the Secretary of State, appears to express the position with accuracy. We agree with Mr. Robertson that this aspect of the question "is not affected by the consideration that a small proportion only of these concessions have reached the stage of validation."

As Mr. Robertson states:

"The point is that the ordinance places little or no check on the alienation of their land by the representatives of the native proprietors, so far as their action can accomplish this object, and there is no indication that the courts would have refused to render that alienation effective had the holders of the concessions been prepared to proceed further with their claims."

The courts could not have been blamed had they done so. The duty of the courts is to administer the law.

It seems to us impossible to contend, in view of the evidence expressed before Sir Henry Belfield, and the general character of the evidence taken by the Committee, either that public rights are safeguarded under a system which exposes the chiefs and their councillors to the temptation of sacrificing those rights for temporary pecuniary profit, from which in the generality of cases the mass of the people do not even receive a share, or again that the chiefs and people of the Gold Coast are sufficiently far-seeing or acquainted with English land measurements to be able to cope with the situation which has been created by this form of European enterprise. The mere extent of the land alienated is sufficient to dispose of such arguments were they seriously advanced.

159. It must be borne in mind that, although the Privy Council has recently held that there may be two or more concessions in respect of the same area, yet in the

African  
No. 1048,  
p. 132.

African  
No. 1048,  
p. 128.

African  
No. 1048,  
p. 80.

case of all concessions prior to the passing of Ordinance No. 16 of 1912, to which we have referred above in paragraph 143, the rights reserved for the natives in the concession deeds were limited to shifting cultivation, the collection of firewood, and hunting and snaring game.

Mr. Crowther, in his evidence before Sir H. Belfield, stated :

"I do not think the chiefs have the slightest idea of the extent of the lands they are conceding. They probably have no conception of what a square mile is. . . . They merely seek money and have no appreciation of the value of the land." Cd. 6278, p. 56.

Mr. Hutton-Mills, the senior unofficial member of the Legislative Council, said :— Cd. 6278, p. 48.

"The chiefs have little conception to what extent alienation has proceeded."

Mr. Gough, Senior Puisne Judge, said :—

"I do not think that the chiefs are cognizant of the areas they grant." Cd. 6278, p. 59.

Mr. Grimshaw, Acting Provincial Commissioner, Western Province, stated :—

"No portion (of the consideration money) goes to the bulk of the people. Therefore, so far as they and those who follow them are concerned, they have lost the use of the land without having received any compensation or material benefit." Cd. 6278, p. 61.

Mr. Adams, Acting Solicitor-General, gave it as his opinion :—

"I think the chief, in alienating the land, has no knowledge of the area he is conceding : if he had he would often reduce the area." Cd. 6278, p. 63.

Mr. Furley, Provincial Commissioner, Central Province, stated :—

"The chiefs never know the value and extent of the land they alienate."

One chief deposed to having alienated a quarter of his "stool" lands, *i.e.*, as we have explained elsewhere, of the community land belonging to the tribe. Another admitted that he had disposed of "about one half" of the "stool lands."

Chief Mate Kole stated that he had "personal knowledge" of a case where a chief had granted "32 concessions of 4 square miles each, at a rental of only 50*l.* each, thereby depriving the people of permanent cultivation over the whole of this "extensive area." "The Government," he added, "should not allow the chiefs to do this." Cd. 6278, p. 59.

In a memorandum communicated to us, but not printed (*see above*, para. 84), Mr. E. C. Eliot, late District Commissioner in the Gold Coast, speaks of the "mulcting" of the rights of the community by further inroads on the rapidly decreasing supply "of common land." Referring to the helplessness of the mass of the population, he says :—

"Even should those interested in the land in question be cognizant of the transaction, they can be accommodated on other stool land, not yet leased or sold, or allowed to remain temporarily under the provisions of section 11 (6) of Ordinance 14 of 1900, and certainly it would not occur to them to object actively to the diminution of their common land until they begin to feel the actual pinch, *i.e.*, until the time arrives that the common land will fail to carry all the subjects."

This officer proceeds to explain in an instructive passage that "the chiefs have one thing only to give in return for the allegiance of the subject," *viz.*, an allotment of land, that, if this privilege of their position disappears, "having nothing to give, they can expect no return," and that "the eventual result" must be that they will become mere figure-heads, or even cease to exist, "unless measures are taken to secure sufficient common land for the needs of each community."

The Rev. F. Lochmann, of the Basel Mission, states that chiefs have parted with land without the knowledge of their subjects, and that their subjects "have to re-buy it again." African No. 1048, p. 32.

Mr. Crowther declares that—

"The pecuniary advantage of land to Europeans has tempted the chiefs to avoid the duty of consulting their tribes, and to assume rights over the land to which they are not entitled by the customs of the country." Cd. 6278, p. 56.

160. We are glad that the suggestion made by the Secretary of State in his despatch to the Governor, of February 25th, 1913,<sup>(1)</sup> has been acted upon, and that the Provincial Commissioners have been instructed to call meetings of the chiefs and people and to explain to them "how much of the tribal land in that Colony has been alienated by concessions, and the consequent risk of native enterprise being crippled." African No. 1048, p. 46.

But we are satisfied that such warnings must in any case prove ineffective so long as an efficient control upon the alienation of public rights is not exercised by the Government, as is the case in all the other British West African dependencies.

<sup>(1)</sup> Letter to Commissioners of Western, Eastern, and Central Provinces, May 5th, 1913. Enclosure in despatch from Governor, October 1913 (African No. 1048, p. 193).

161. That the future of the natives of the Gold Coast has not been compromised to the full extent to which the improvidence of their chiefs has exposed them is largely attributable to the collapse of the gold mining boom (referred to in para. 121) and to the congestion in the courts. But as will be seen from the tables printed above, after allowing for the concessions struck out by the courts, an area of 14,829 square miles remains legally alienated, of which 1,084 square miles have been validated, leaving a total of 13,745 square miles which, under the influence of a renewed period of activity in Gold Coast mining shares on the Stock Exchange, may still be pressed forward to validation. These figures, which are based upon the returns furnished to the Committee, are slightly different from Captain Lees's figures, who, working out the position by a calculation based upon estimated averages, reaches the slightly lower total of 12,229 square miles "held under notice in the Colony." Whatever the right figure, it is clear that concessions affecting more than half the total area of the Colony may, under the influence of a renewed period of activity in Gold Coast mining shares, be still pressed forward for validation.

#### UNSUITABILITY OF JUDICIAL AUTHORITY TO EXERCISE EXECUTIVE FUNCTIONS.

162. The evidence which has been laid before us points strongly to the conclusion, that the Legislature has charged the Court with duties which properly belong to the Executive and which cannot satisfactorily be performed by judicial authority.

Sir H. Belfield, speaking of the duty of the judge of the Concessions Court, says :—

Report,  
paras. 67, 68.

"The first stage at which the Court takes part in the proceedings is that in which the judge issues his orders for the attendance before him of those persons whose evidence he may deem to be necessary. In making such order he suffers from a disadvantage inevitable to his position. His Court and station is situated at a considerable distance from the locality in which the concession area is situated. He has no personal knowledge of the land, or of the people who own the land and are responsible for its disposal. He is dependent for information as to the proper parties to be summoned on the names which appear on the deed of grant, possibly supplemented by others supplied by the applicant or his counsel. He does the best he can under the circumstances to ensure the attendance of all responsible persons, but it is always possible that the name of some material witnesses may be omitted. Compare this with what would take place if the inquiry were in the hands of an executive officer. He would be the officer responsible for the administration of the district. He would make himself acquainted with the situation and condition of the land applied for by personal examination. He would know, and be known by, the chief and elders of the tribal owners, and would be in a position to determine with exactitude who are the persons to be consulted."

"Later on, when the inquiry is under way, the judge is required to satisfy himself of the adequacy of the consideration paid for the concession, but no scale or standard of adequacy is laid down for his guidance, and there is, as a rule, no evidence before him which bears on the subject. In the absence of such assistance, and of any testimony indicative of the value of the property, it is difficult to see on what basis his decision can be framed—therefore, it is not surprising to hear that different judges have held widely divergent views as to the amounts which should be paid, and in some cases have made orders which the parties have been unable to carry out. One instance has been quoted to me in which the judge raised the consideration money to a figure which, in the opinion of the applicant, was in excess of the value of the property, and he consequently withdrew his application, only to be approached later on by the native owner, who begged him to hold the concession at the lower price at which they had originally agreed. I do not, in this case, argue that a more accurate estimate of value would be made by an executive officer, but I suggest that the standards of payment ordinarily expected and made in respect of different classes of concessions are now so generally recognised that it should be practicable to prescribe rates which will be generally acceptable, and thus remove from the controlling authority the power of imposing conditions which may occasionally bear hardly upon one or both of the parties interested."

Sir H. Belfield, when stating the arguments brought to his consideration on the spot by the witnesses who supported and those who were opposed to the continuance of the present relations between judicial and executive functions in the administration of the Concessions Ordinance, thus states his view of the result of the evidence given before him :—

"Those who favour the retention of the present system are in a minority, and their status and experience is not, as a rule, such as would lend substantial weight to their expressed opinions. Moreover, those opinions are not always free from the taint of personal bias, or of desire to retain pecuniary advantage for themselves."

After summarising the argument on both sides, he continues :—

"Further, even those who are staunch supporters of the present system are compelled to admit that procedure under the Ordinance is unduly prolonged and productive of expense, but are unable to offer suggestions for its improvement. They appear prepared to accept with equanimity the continuance of existing disadvantages, and view with apprehension any suggestion of amelioration which does not preserve intact the system of judicial control.

"On the other hand, I find among those whose experience and position justifies me in attaching weight to their views a complete unanimity of opinion in favour of discontinuing the present system. They all recognise the disadvantages attendant on the procedure laid down by the Ordinance, which have been enumerated in the preceding part of this Report. They would welcome the introduction of a scheme of

Report,  
para. 85.

administration which would expedite the process of alienation and reduce the expense of acquisition, and they see the possibility of attaining that end by transfer of the jurisdiction to the executive authority. Personally, I am convinced that the procedure prescribed by the Concessions Ordinance is cumbersome, and, in some instances, defective; that it is undesirable that the work should be entrusted to the Judges, because they do not possess any first-hand knowledge of the land with which they are dealing, and because their decisions are not open to revision except in contested cases. I believe that the work can be performed more effectively, more expeditiously, and more economically, if entrusted to executive officers, and I recommend that a system of land administration by the executive be substituted for that which at present prevails."

163. Sir W. B. Griffith, who, as a member of the Legislature, had taken part in the framing of Sir William Maxwell's Bill, fully admitted its defects. He was, he tells us, strongly opposed from the first to the principle adopted in the Concessions Ordinance of assigning to the judiciary powers which, in his opinion, could only be effectively exercised by the executive. As, however, this policy was adopted by the Legislature chiefly with a view to concessions for mining purposes, he would not, so far as mining is concerned, alter the law<sup>\*</sup>; but, as regards concessions for other purposes, he would transfer the power of superintendence and control to the executive. Sir W. Brandford Griffith's views are, in our opinion, entitled to the greatest weight as regards the proper functions of the executive and of the judiciary in regulating concessions of rights over land in the Gold Coast.

Griffith,  
14, 182-90.

It is obvious that the duties imposed on the court by this legislation differ widely from those which are usually regarded as properly falling within the sphere of judicial authority. Such questions as the proper limitation of boundaries, the amount of the consideration for the grant, the settling of the terms of the transfer, the adequate protection of the natives, are matters which, in our opinion, can only be properly regulated by the executive, subject to a reference to the Court in matters of title. The proper time for arranging these matters is before and not after the concession is granted. The ascertainment of the extent and character of the area over which the rights are to be granted and the proper description of the boundaries should be matter of inquiry at the earliest stage. The adequacy of the consideration, if it cannot—as experience shows it cannot—in the interest of the native community—be safely left to the chief and the applicant, should be considered at the beginning and not at the end of the transaction. The question whether the rights applied for should be granted at all, having regard to the needs of the native community, and, if granted, what, if any, special provisions are required to safeguard the interest of the natives, should be settled by negotiation in which the representative of the Government should take part. As to the method of inquiring into these and similar questions, the investigation should be in most cases carried out on the spot, by personal interviews with the parties to the proposed concession, with such knowledge as can be obtained of the area of the proposed grant so as to insure the proper description of the boundaries in the deed of transfer. Generally the transfer should not go through without official knowledge of the circumstances of the case, the extent to which the rights hitherto enjoyed by the natives would be affected, and some security that those now nominally represented by the chief and elders really understand what the effect of the grant will be. At present the court can only acquaint itself of the facts by evidence. When it is remembered that the court is often sitting at a place remote from the site of the concession, more remote, probably, in time and ease of access than in actual distance, that some of the parties really interested must necessarily be absent, that the evidence available is often notoriously untrustworthy, that the effect of the vesting of the whole jurisdiction in the court is to a large extent to deprive the tribunal of assistance from the executive officers who may be acquainted with the facts,† we cannot avoid the conclusion that the Legislature has laid upon the Supreme Court of the Gold Coast an almost impossible task, of which it should be relieved, and that the superintendence of the matters to which we have referred should be placed in the hands of the Executive.

\* "I am not at all a friend to the Concessions Ordinance. From the outset my opinion was that it was a huge mistake, and I strove my utmost for Sir William Maxwell's Bill with amendments; but now that the Concessions Ordinance has done all its possible harm so far as mining is concerned and now that it can be worked so far as mining is concerned with ease and effectiveness, I am opposed to its repeal so far as regards mining." (Minutes of Evidence, p. 496.)

† See striking instances of this stated by Captain Lees, Director of Surveys, Papers, pp. 83 and 84. See, too, a remarkable case mentioned by Mr. Crowther, 14, 126-30. On the other hand Sir W. Griffith stated that it was frequently his practice, in an informal way, to consult the Executive. See Griffith, 14, 461-5.

### REPEAL OF CONCESSIONS ORDINANCE AND TRANSITORY PROVISIONS.

164. For the reasons stated in the preceding paragraphs of this Part of our Report we recommend that the Concessions Ordinance of the Gold Coast should be repealed, and that a system of leases by the native authorities concerned, supervised and controlled by the Executive, should be substituted for it.

We have carefully considered the suggestion of Sir W. B. Griffith referred to above (paragraph 163) that the Ordinance should be kept alive as regards grants of mining and timber rights; but we are satisfied that these classes of grants are also in need of regulation under an amended system, and we therefore are of opinion that the Concessions Ordinance and the various amending ordinances and Orders in Council relating thereto should be entirely repealed, except for the purpose of the winding up by the Commission, which we propose should be created, of proceedings pending at the time of the repeal in respect of concessions then the subject of notification. We shall deal with the duties of the Commission in Part III.

165. With the exception of the Forest Ordinance, we have now dealt with the most important Ordinances relating to land in force in the Gold Coast, and have reserved this Ordinance until later, as we think it will be more conveniently treated in connection with the forest laws of the other dependencies.

We shall now say a few words with regard to Ashanti and the Northern Territories, and shall then proceed to deal with the more important land enactments which are on the statute books of the other dependencies.

#### ASHANTI.

##### *Land for Public Purposes.*

It does not appear that any land is earmarked as Crown land, but the Chief Commissioner is empowered by section 33 of the Administration Ordinance to take any land required for the public service, the only compensation given being for growing crops, and for disturbance with buildings or works on or near the land.

##### *Land Tenure.*

166. As in the Gold Coast, community land is known as stool land, and we find also the class of land known as family land; the old rules as to communal tenure are still maintained, and the occupier has no right to sell or to mortgage, the utmost that is allowed being a native pawn of the land. When, in 1900, claims were made to land based on loans to stool chiefs, the Government "insisted on the money being paid back at once, and then the land reverted to the original stool owner "it belonged to."

##### *Concessions Ordinance.*

167. The Concessions Ordinance was not introduced until 1903, and though it was framed on the lines of the Gold Coast enactment there were variations which experience had shown to be necessary. Thus, as we have already stated, although options are included within the definition of a concession, it is expressly provided that future options in respect of minerals and precious stones are to be void.

Again, the rules contained in Schedule B. to the Ordinance expressly provide that any person desiring to obtain a concession in Ashanti must, in the first instance, apply to the Governor through the Colonial Secretary of the Gold Coast Colony for permission to obtain a licence to prospect (Rule 1). The Governor, "if it appears "to him" to be one which should be granted," acquaints "the Chief Commissioner of Ashanti and so advises" the applicant, who then applies to the Chief Commissioner (Rule 2). If the Chief Commissioner "is unaware of any local objection "to the application" he issues his licence to prospect (Rule 3). The holder of a licence to prospect may then apply to the chief or chiefs for a concession. The application must be notified to the Chief Commissioner, who thereupon instructs the chief or chiefs concerned to appear before him or before a District Commissioner, "and the Chief Commissioner or District Commissioner shall ascertain from them "in the presence of the applicant or his agent whether they are willing to grant the "concession applied for and are prepared to co-operate in the supply of labour and "so forth" (Rule 7). The executive officer is to arrange with the applicant in the presence of the grantors the sum which should be paid annually in consideration of the concession.

The document is to be executed by the parties in the presence of, and to be duly certified by, the Commissioner or District Commissioner, and is to contain "full particulars of boundaries and a suitable plan showing the same" (Rule 8).

As the Chief Commissioner acts as the head of the Executive, as well as exercising the judicial powers of the Supreme Court, he is able to deal with the questions arising thereunder from the executive as well as the judicial point of view, and consequently the trouble which has resulted in the Gold Coast from the confusion of judicial and executive functions has not, so far as we are informed, occurred in Ashanti.

#### NORTHERN TERRITORIES.

168. The position of the Government with regard to the land is summarised by Major Irvine thus:—

"The chiefs and people consider that all lands in the Northern Territories belong to the Government. They do not understand the difference between land acquired by treaty and that by conquest. They believe we are in the country not on account of any treaty, but owing to the fact that they do not consider themselves strong enough to oppose our rule, and in consequence yielded to circumstances beyond their control, or perhaps welcomed British friendship as a protection. In any case it is clear that the natives think the Government is justified in assuming the same rights as if it had conquered the country, and that the ultimate title to the land belongs to the Government as suzerain."

Irvine, 4299,

There has been no difficulty in getting land without payment for the establishment of Government stations or for other public purposes.

Irvine,  
4404-5,

The rules of customary tenure have held their ground. Sale is not allowed and individual ownership is unknown.

Irvine, 4295,  
4342.

With regard to the powers of the chiefs, Captain Armitage tells us:—

"When I got up to the Northern Territories I found that the powers of the chiefs had largely lapsed, and that it was the custom to put, one might almost say, the village idiot on the stool. Our policy has been to re-establish the powers of several big chiefs, and it has been a remarkable success."

Armitage,  
12,397.

Although no concessions have been granted as yet there is an elaborate and well thought out Mining Ordinance, having the title of the Mining Rights Ordinance, 1904, the provisions of which will be found summarised in Sir W. Napier's Memorandum. The only point with regard to it which it is desirable to emphasise is that any licences or options granted under the Ordinance would be signed by the Chief Commissioner and that the rents would go to the public revenue; it is provided, however, that the rights conferred are to be subject to the existing rights of any native chief or native person in respect of the land.

## II.

### Southern Nigeria.

#### CROWN LAND.

169. Owing to the history of the Colony and Protectorate sketched in Part I., Crown land assumes a more important place in Southern Nigeria than is the case in the Gold Coast.

#### Lagos.

The history of land tenure in Lagos is important, and we may commence it with an extract from the judgment of Mr. Willoughby Osborne, delivered in the "fore-shore" cases to which we shall refer later. He said:—

"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."

African  
No. 1048,  
p. 307.

The position prior to the introduction of modifications due to British influence is summed up by Mr. Buchanan Smith 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.

African  
No. 1048,  
p. 224.

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

During the decade between 1852 and 1862 the practice of alienation sprung into vogue and another feature totally foreign to native law, which knew not writing, was introduced in the shape of written grants by the king of Lagos, whose influence had been increasing to such an extent that "he came to be looked upon as the proper party " to execute grants of Lagos land."<sup>(1)</sup> It appears that King Docemo prior to the cession issued some 76 grants.

170. As we have seen, this king on the 6th August 1861 ceded the island of Lagos to the British Crown. By the treaty of cession, Docemo, with the consent and advice of his council, granted unto the Queen of England, 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 revenues as the direct full and absolute dominion and sovereignty of the said port and premises, with all the royalties thereof, freely, fully, entirely and absolutely.

That the cession was not intended to interfere with the rights of private property is clear from the report of Consul Freeman of the 8th March 1862. In this report he adverts to a rumour that the cession of Lagos to the British Crown involved the abrogation of all private rights of property, and states: "On the 11th ultimo I received the king and his chiefs at my house and detailed to them the reasons which had induced Her Majesty's Government to obtain the cession of this island; pointed out the changes which will result therefrom, and explained to them that, far from depriving them of their private property, the cession will render it more valuable to them."<sup>(2)</sup>

In the year following an Ordinance (No. 9 of 1863) was passed "for appointing certain Commissioners for the purpose of ascertaining the true and rightful owners of land within the settlement of Lagos," whereby after reciting that there are at present many persons holding lands within the settlement impoſſessed of any legal title thereto, and that it had become necessary and expedient that the just rights and titles to such lands should be inquired into, settled and defined, Commissioners were appointed with powers lasting until the 1st April 1864. The Commissioners' powers were extended on two occasions, but they came to an end in 1866. The Ordinance provided for the issue of a certificate of title by the Commissioners when a title was proved 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. When the Lands Commissioners' Court was abolished, subsequent applicants were required to satisfy the Administrator to the Government as to the *bonâ fide* character of their claims.

171. The position assumed would appear to be that the cession vested the soil of the island in the Crown, but that the Government were prepared to recognise existing private rights by issuing Crown grants to persons who could prove their titles. It is to be noticed that the grants were of land to be held in individual ownership, without regard to any existing rights over the land which might belong to the family of the grantee.

In pursuance of their policy the Government recalled the Docemo grants and issued fresh ones in their place. It is stated that 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.

According to Mr. Buchanan Smith "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."

172. It was not till 1897 that the practice of disposing of Crown land by way of lease was attempted. The method then adopted was to grant permits to occupy and improve Crown land. It was part of the scheme that there should be a complete survey of the colony of Lagos, and if upon survey the conditions of the permit were found to have been satisfactorily performed, a lease for 999 years was to be granted in exchange for the permit. This scheme, however, seems to have been dropped.

173. Of recent years there has been litigation between the Crown and claimants to land, involving the question as to what rights in the land were acquired by the Crown under the treaty of cession.

(1) See Willoughby Osborne, C.J., in his judgment on foreshore cases. Papers, p. 307.

(2) See Papers relating to the Occupation of Lagos presented to the House of Commons pursuant to an address dated the 2nd of May 1862.

The Government, according to Mr. Alexander :—

“maintains the position that this and similar treaties constituted actual cessions of land, and that no private ownership of land referred to in them can exist, except under grants from the Crown.”

In 1909 informations were filed by the Crown against two English companies occupying portions of the Lagos foreshore asking for declarations that such foreshore was vested in the Crown. These cases, which were consolidated, raised a number of difficult points of law, but the only ones with which it is necessary for us to deal are the contentions on the part of the respondents that the island, including the foreshore, was at the date of the cession the property of the White Cap chiefs, that they were not parties to the cession, and therefore that the Crown did not obtain any property in the soil. In the result the Divisional and the Full Courts decided that the land of the island and of the foreshore of the lagoon adjacent to the island passed by the cession to the Crown, subject, however, to existing private rights. The judgment of the Privy Council with regard to this part of the case is as follows :—

“The Treaty is printed at length, the only question which has been mooted upon it is as to whether by its terms it granted sovereignty and jurisdiction alone to the exclusion of property. The words are complete and absolute.” After setting out the terms of the Treaty, the judgment continues :—“Their Lordships do not refer to the Treaty further than to say that, in their opinion, property was not excluded from the grant; and they think also that this is subject to the condition that all rights of property existing in the inhabitants, under grant or otherwise from King Docemo and his predecessors, were to be respected. It may be that these required confirmation by subsequent procedure prescribed by way of ordinance or otherwise, but no question on that head arises in the present case.”

174. Another and a later case, in which the head of the Onisiwo family claimed by petition of right that certain land, used by the Government for carrying on the new harbour works at Lagos, was the property of the Onisiwo family, requires mention as it involved the like contention by the Crown that the land was vested in the Crown, and had been so vested since the date of the cession. In this case, however, it was found by the Divisional and the Full Courts that the Onisiwo family had exercised acts of ownership over the land and were the owners of the land; and accordingly that as the cession was subject to existing private rights the petitioners were entitled to succeed. It appears from the evidence of Mr. Dennett that he considers that the land in dispute was not family land but rather “clan or communal land at the disposal of the Onisiwo.” This was doubtless the contention underlying the case of the Crown, the argument being that the rights of the Onisiwo in respect of the land in question were not rights of private ownership, but rights attached to his chieftainship, which, being of the nature of sovereign rights, passed to the Crown. If Mr. Dennett's view had been adopted by the Court, the result might have been different.

An appeal to the Privy Council was entered in this case at the instance of the Crown, but, not being proceeded with, was dismissed, in accordance with the Judicial Committee rules.

175. Now that the decision of the Privy Council has made the legal situation clearer, it would seem a suitable time to review the whole position of the land question in Lagos, and it may be desirable to appoint a Commission or Committee to consider the advisability of proceeding with the scheme of 1897. We recur to this proposal in paragraph 184 below.

#### *Transfer of Niger Lands.*

176. The circumstances and general purport of the transfer to the British Government of the territorial rights of the Royal Niger Company have been dealt with in Part I. of this Report. (See paragraphs 55-7.)

Mr. Alexander, Commissioner of Lands in Southern Nigeria, told us that—

Alexander,  
3442.

“Direct ownership of large areas adjacent to the Niger appears to be vested in the Government by transfer from the Niger Company.”

He then quoted the language of the Niger Lands Transfer Ordinance, the substance of which is set out above, in paragraph 57, and proceeded—

“Actual possession of the whole of this territory has not been taken, and much of it appears to be in the possession of natives ignorant of its alienation. Moreover, there is some difficulty in identifying the extent of land originally claimed to have been acquired by the Niger Company.”

No clear decision appears to have been reached as to the real relation of the Government to the land. As stated in the passage quoted above, much of the land

remains in the possession of natives who are quite ignorant of any alienation. Whatever, therefore, might have been the strict rights of the British Government arising out of the transfer, it seems to be important to endeavour to ascertain what portions of the territories comprised in the grant are claimed to be in the actual ownership of the Crown and what remain under native ownership. Here it might be desirable to appoint a Commission to inquire and report.

Land where the Crown is entitled to full rights of ownership should be duly registered.

*Central and Eastern Provinces.*

177. In stations such as Warri and Sapele, situated on the coast line of the Delta over which the Oil Rivers Protectorate was first established, the position of the Government is rather peculiar. Practically the whole of the land forming the settlement has been acquired by the Government from the native chiefs on lease for ninety-nine years, the Government thus becoming the landlords to the various trading firms who have been established there.

In recent years claims have been put forward on behalf of the Government in the Central and Eastern Provinces. Thus it is contended that as the territory formerly belonging to the Kings of Benin has been acquired by conquest, all unoccupied land within it now "vests in the Crown as their successor," and we are told that "this view has recently been extended so as to include all the waste and unoccupied lands in the Central and Eastern Provinces and sub-soil and mineral rights." There is, however, no law directly vesting this land in the Crown and we do not see how, without express legislation, these lands can properly be termed "Crown lands," nor do we think that it would be equitable at this time to pass such legislation.

178. The mineral ordinances passed last year in regard to the Central and Eastern Provinces (Ordinances XVII. and XXIII. of 1913) furnish a clear indication of the Government claims to "the subsoil and mineral rights," for mining leases are under them to be granted not by the native owners, with the assent of the Governor, as formerly, but by the Governor only, and apparently all royalties will be paid into the Colonial Treasury and form part of the general revenue. There is also an important provision contained in section 26 of the first-mentioned ordinance which enables the Governor to grant a lease to a mining lessee of such part of the surface as is necessary to the full and effective exercise of the rights conferred by the lease, "subject to such rental as the Governor may fix on behalf of the person entitled thereto," and subject to compensation being paid in respect of any disturbance of native rights.

Apart from the saving provisions contained in section 3 of the former Ordinance which keeps alive the right of quarrying stone for building purposes and the rights of natives of the Protectorate to mine for iron, salt, soda, or potash, no one is permitted to mine without a mining lease under a heavy penalty. The result would seem to be that a native community keeps only the restricted rights first mentioned over the minerals under its land, and that the minerals and even the land itself can be leased by the Governor, a surface rent only being payable to the native authority.

Without making any specific recommendation, we would express our opinion—

- (a) that no mining lease should be granted over the land of any native community without its consent, and that of the royalties reserved on any such lease, a portion should go to the native authority, another portion should be devoted to local purposes similar to those which we have recommended with regard to the Gold Coast in para. 153, and the remainder should fall into the general revenue of the Dependency; and
- (b) that it is improper to exclude a native community from working the minerals under its land, though it would be right to require the payment by them of the amount which would go to local purposes and to general revenue, if a lease were made of the land.

179. The Crown Lands Management Ordinance, 1906, which applies only to the Central and Eastern Provinces, defines Crown lands as—

"All lands and rights in and over lands which at any time at or after the commencement of this Ordinance are vested in, held in trust for, or otherwise belong to, His Majesty, his heirs and successors."

The Governor is to have the management of all Crown lands and may at any time sell, lease, exchange, or otherwise dispose of such lands as he may think fit.

Mr. Alexander tells us that "only titles subject to a rental are, in fact, issued by the Government."

James, Oral Evidence, p. 238.

Buchanan Smith's memo., para. 10, African No. 1048, p. 162.

c.f. Alexander, 3442, and James, Oral Evidence, p. 238.

Alexander, 3442.

*Generally.*

180. Although the Crown Lands Management Ordinance, 1906, was not repealed, an Ordinance called the Crown Lands Ordinance was passed in 1908, and was made applicable to the whole of Southern Nigeria.

The main points to be observed with regard to it and the rules made thereunder are that though the Crown has power to "sell, lease, exchange, or otherwise dispose of" Crown lands, the form of disposition contemplated appears to be grants or leases securing rents subject to periodical revision every thirty years; that improvements are not to be taken into account upon revision of rent, and that no grant is to be issued till the land has been surveyed. Rule 9 of 1912 contains provisions as to the grant of agricultural leases. Under this rule no agricultural land can be granted for an area of more than 1,500 acres, and the term is limited to ninety-nine years, but is renewable.

Provisions with regard to the compulsory acquisition of land for public purposes are contained in the Public Lands (Acquisition) Ordinance No. 5, 1903; the main provisions of which and of the Lands Ordinance (No. 9 of 1907) and of the Land Registration Ordinance (No. 15 of 1907) are summarised in Sir Walter Napier's memorandum. Under the two latter Ordinances every grant by the Crown is to be registered, and there is a provision that, if this is not done within sixty days, it is to be void.

See para. 19  
of Buchanan  
Smith's  
memo.,  
African  
No. 1048,  
p. 162.

## LAND OTHER THAN CROWN LAND.

*Communal Land.*

181. We do not propose to add anything here to our general description of communal land. The term "stool land" is not used in Nigeria, and we shall accordingly use the terms "community land" and "family land."

*Individual Land.*

## (1) In the Colony.

182. By Ordinance No. 3 of 1863 English law was declared to be law in Lagos. The grants which were, as we have seen, issued, were in accordance with English form and operated in favour of the grantee "his heirs and assigns." The substitution of alien for native methods of dealing with land has been, as Mr. Buchanan Smith points out, productive of some confusion, and, as the late Sir T. C. Rayner in his report on Land Tenure in Lagos observes, a "curious mixture of English and native law" is the result.

183. Much of the land originally vested in some individual native by grant from the Crown appears to have relapsed into the condition of family land. Possibly from the first, it was often the case, that neither the grantee nor the family to which he belonged at all realised the nature of the rights intended to be conveyed by the grant. The native system would not blend with the English system. Instead of the grantee being recognised as the individual owner of the granted land, and entitled to sell or mortgage it, or to regard it as descending to his own separate heirs, or as capable of being disposed of by will, "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." Mr. Buchanan Smith observes with regard to this:—

"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."

African  
No. 1048,  
p. 226.

The land thus held by families could, it seems, be sold for family purposes if the consent of the whole family was obtained, and Mr. Willoughby Osborne thinks that a purchaser from a family acquires an absolute interest in severalty which he can dispose of by will or *inter vivos*. The result appears to be that, in Lagos and its immediate neighbourhood, land is sometimes held by families and sometimes by individuals.

184. It is not, therefore, surprising to find that there exists in Lagos and its immediate neighbourhood much confusion as to the titles of families and individuals

to land. We are informed that "in order to remove some of these anomalies for which a rather haphazard system has been responsible," a proposal has been made for the appointment of a commission to inquire into the system of Lagos titles. As we have already stated in paragraph 175 above, we think that it is desirable that this proposal should be carried into effect now that the judgment of the Privy Council has rendered the legal position more clear.

(2) In the Protectorate.

185. It would seem from section 19 of the Southern Nigeria Supreme Court Ordinance, 1874, and the sections of the new Supreme Court and Provincial Court Ordinances which take its place, that a transfer to be good must be in accordance with native law or custom, and a case was brought to our notice by Mr. Willoughby Osborne in which the Supreme Court held that land in Ibadan could not be the subject of alienation in perpetuity, and that a purchase in contravention of the rule must be set aside. So too, when natives of Sierra Leone and Lagos went to Onitsha and bought land there, Mr. James tells us that—

James, 6700. "I ordered the District Commissioner to call on all these people to show their title to the land and go to hold it as their individual property. However, it does not follow that these sales would be held to be valid, though doubtless in some of the Europeanized coast towns at any rate conditions and population have so changed that individual ownership of the Gold Coast type has established itself. With regard to the country generally, the evidence we think shows that the idea of sale is unknown or, if known, abhorrent to the native mind.

186. It would seem from the evidence that natives of Lagos and others have purchased land in the old Western Province and in the coast towns, and purport to hold it as their individual property. However, it does not follow that these sales would be held to be valid, though doubtless in some of the Europeanized coast towns at any rate conditions and population have so changed that individual ownership of the Gold Coast type has established itself. With regard to the country generally, the evidence we think shows that the idea of sale is unknown or, if known, abhorrent to the native mind.

187. At the same time there is evidence, we think, that in some places where there has been considerable penetration by traders, the old communal system is undergoing modification.

Thus, in some districts round Brass, sales and purchases by families are allowed.

In other cases, too, sales and purchases by individuals are customary.

The rights of sale, however, when they do exist are not of a uniform character, and depend upon local conditions; thus, sale may be allowed of rural but not of urban land, and sale may be permitted to members of the same community but forbidden to outsiders.

Just as these rights, then, are not of a uniform character, the same may probably be said as to the relation of the new purchaser of the land to the native authorities of the district where the land is situated.

LEGISLATION WITH REGARD TO ALIENATION OF LAND BY NATIVES.

188. With regard to the transfer of rights over land we find that the methods adopted for the protection of the natives are in striking contrast with the principles of the Gold Coast Concessions Ordinance. Under that, as we have seen, the safeguarding of native interests is delegated to the judicature, whereas in Southern Nigeria it is exercised by what appears to us the more natural guardian, the executive represented by the Governor or some subordinate Government Officer.

The ground covered by the Concessions Ordinance is here dealt with, so far as mining is concerned, by the Mining Regulation Ordinance (No. 6 of 1905) in the old Western Province and by the recent Minerals Ordinances (Nos. XVII. and XXIII. of 1913) in the old Central and Eastern Provinces; so far as the cutting of timber and the collection of forest produce by the Forestry Ordinance: whilst the Native Lands Acquisition Ordinance applies to protect the native interest against European exploitation in cases where the special ordinances do not apply.

*Mining.*

189. It is unnecessary to dwell at length on the provisions of the above Ordinances relating to mining and it is sufficient to point out that the Government either grants or approves of every mining lease, and that the term of such lease cannot exceed

in the case of the Western Province sixty years and in the case of the Central and Eastern Provinces twenty-one years, renewable for a further like term. A more detailed statement as to the provisions of these Ordinances will be found in Sir W. Napier's memorandum. *Infra*, p. 135.

#### *Native Lands Acquisition and Land Registration Ordinances.*

190. The first legislative Act of the Southern Nigeria Legislature in 1900 was directed to the prevention of the exploitation of the native by aliens. This was repealed in 1903, when the present Native Lands Acquisition Ordinance (No. 1 of 1903) was passed, an ordinance applicable to the whole of the protectorate. Under section 3 no alien is to acquire any interest or right in or over any lands within the protectorate from a native except under an instrument which has received the approval in writing of the Governor, and any instrument which has not received the approval of the Governor is to be null and void.

191. This provision is further strengthened by section 12 of the Land Registration Ordinance (No. 15 of 1907), which requires that an instrument whereby land is granted by a native to a non-native is to be void unless registered within sixty days from its date; by section 7 of the Native Lands Acquisition Ordinance which provides that no instrument is to be registered unless the approval of the Governor has been duly given; and by sections 5 and 6 of the last-mentioned Ordinance, which provide for the summary expulsion of an alien in possession of land wrongfully or under colour of an instrument to which the approval of the Governor has not been given. The schedule to the Native Lands Acquisition Ordinance gives the procedure whereby the approval of the Governor is given. The important matter from our point of view is that the inquiries preliminary to the approval being given are matters of executive action by the District Commissioner, and include inquiries as to whether the grantor is entitled to the interest or right to be granted, and whether the grantee is a person of good character and desirable as a resident or trader in the district. The rules, though containing no express provision on this point, contemplate a leasehold tenure, and failure on the part of the grantee to behave in a quiet and orderly manner is one of the reasons which will enable the grantor or the District Commissioners on his behalf to re-enter and determine the lease.

We have had no complaints with regard to the alienation of land in Southern Nigeria in favour of non-natives, and we think that the executive supervision exercised there must be regarded as successful.

The Land Registration Ordinance, like the Gold Coast Land Registry Ordinance, 1895, establishes a register of deeds, and the provisions of the two Ordinances are in the main the same.

### III.

#### Sierra Leone.

##### CROWN LAND.

192. All land in the Colony to which a title cannot be proved is claimed as Crown Land. The legislation with regard to the alienation of this class of land, and for the acquisition of land in the Colony for public purposes, is mentioned in Sir W. Napier's memorandum.

There does not appear to be any public land within the Protectorate except what is required by the Government for administrative and other purposes. This is acquired by arrangement with the chiefs, no rent or tribute being in general paid for it; when land has been taken for a head station and the site is afterwards abandoned, the Government gives up all claim to the land, which reverts to the jurisdiction of the chief.

*Infra* p 137.  
Merewether,  
1799.  
Haddon  
Smith, 5799.

##### LAND OTHER THAN CROWN LAND.

193. In a portion of the Colony as we have seen English law prevails, and accordingly land is held under the English land law. The Committee were supplied with a most interesting account of the land tenure prevalent in the Protectorate, written by Dr. J. C. Maxwell, which is in its main principles in accordance with the account we have already given. We are told that "as a general rule land was not sold or pledged, and is still not sold or pledged," but a few instances of sale and of pledging are given which appear to be of recent date.

African  
No. 1048,  
p. 2.

*Protectorate Native Law Ordinance, 1905.*

194. As regards questions relating to land in the Protectorate, the "Protectorate Native Law Ordinance, 1905" (16 of 1905), applies to the Protectorate, properly so called, and to those parts of the Colony (mainly Sherboro' Island) to which the Protectorate Ordinance, 1901, extends. Part III. of that Ordinance (sections 21-35) relates to the "Settlement of non-natives on native lands." A summary of the provisions of this part of the Ordinance will be found in Sir Walter Napier's memorandum. The Ordinance throughout recognises "tribal laws and customs" as existing and as binding, but makes no attempt to state or define any of these laws or customs. For instance, in section 21 it is provided that "Every person who does not recognise and " is not subject to the control of a native chief or to the tribal laws and customs " which such chief is empowered by native law and custom to enforce shall if " desirous of settling in or near any native town make . . . the customary " presents to the paramount chief of the chiefdom in which such town is situated." By section 22 "customary presents" are commuted into a monthly payment to the paramount chief of two shillings and sixpence during the time of settlement. This payment will exempt the settler from any other payment to the chief of the town

*Infra*, p. 138.

"in respect to such occupation or in respect to any trade which he may carry on in connection with such lot and such person shall also be exempt from working or supplying labour for work on road making, road maintenance or general sanitation which has to be undertaken by the town. Provided that nothing in this exemption may be deemed to exempt the settler from observing the local regulations with respect to keeping the lot in a sanitary condition."

195. We have referred to these provisions in detail because they afford a good illustration of the attitude assumed by the legislature of the Dependency to land which is not exclusively controlled by English law. The position and rights of the "tribal authority," "the paramount chief," and the "chief of the town" are here "expressly recognised. They apply to a stranger who does not recognise and is not subject to the control of a native chief or to the tribal laws and customs." This would include a European immigrant, and also apparently a native African of another community or tribe, except a new-comer under the conditions presently described. The section also recognises the right of the "tribal authority" to "give" the settler a bit of land.

196. The gifts and privileges conferred or recognised by these sections must be carefully distinguished from the process prevalent, as the evidence taken before us abundantly shows, throughout the whole of the four Dependencies, whereby a stranger native desirous of obtaining the use and occupation of some land within the territory of another tribe does so in the first instance with the knowledge and under the authority of the chief or head of the tribe or clan or family within whose territory the land is situated. In this case, according to the evidence given before us, he probably, in process of time, comes under allegiance to the chief of the tribe on whose land he has settled by payment of tribute, marriage, or otherwise. Sometimes this process may take place on a large scale, and whole villages or classes may immigrate and be permitted to settle upon the territory of another tribe. In this case, differing from that previously mentioned, the land remains communal—the new-comer, whether a single individual or a body of individuals, being absorbed in the community to which they have attached themselves—and there is no alienation of land or breach of native customs. In the former case the land thus obtained passes out of the community, practically loses its communal character, and tends to become individual property.

197. The enactments above referred to appear to contemplate only the grant of a small lot of land and the erection of buildings of "native construction." Section 24, however, provides that where a "tribal authority has allowed any person to have a lot " for the purpose of building a house or store of a permanent character," the arrangement shall be by deed which

"shall state the annual consideration to be paid to the paramount chief and his successors and to any sub-chief and his successors, the object for which the settler or grantee desires to use the lot, the duration of the grant and whether or not the interests of the settler or grantee may be assigned or in the event of death is intended to devolve on his heirs administrators or assignis."

The language of this section appears to contemplate that the grant may be of an interest either of a freehold or leasehold character as known to English law. The

provision as to reservation of rent seems more consistent with a leasehold than with a freehold interest.<sup>(1)</sup>

198. It is further important to notice that by section 25 it is provided that no "such" deed shall be valid unless it is attested before the Commissioner of the District or other officer appointed for the purpose, and contains the required stipulations, and is duly registered. The Ordinance also provides for the receipt by the paramount chiefs of the sums payable in respect of the transaction and for the appropriation of such sums to "purposes similar to those for which the customary presents have heretofore been used and appropriated." With the consent of the District Commissioner the paramount chief may forgo exacting payment of the whole or part of any fixed sum "in the case of any settler who by his knowledge of any special trade or calling is in the opinion of the paramount chief conferring a benefit "on the town or place where the lot occupied by such settlers is situated."

Any settler who pays a fixed sum under the provisions above referred to is entitled to the "friendly offices" of the paramount chief and his sub-chief. By "friendly offices" is meant the supply, when wanted by the settler, of a reasonable number of carriers at market wages, and of reasonable quantities of native food at market prices. Persistent refusal of "friendly offices" makes the paramount chief liable to a fine or to deposition.

The provisions above referred to relate only to the acquisition by the settler of a "lot" of land, and by section 30 a lot of land is defined as "an area which, in the town or place where allotted, would be considered sufficient for the compound of one who is a principal adviser to the chief." It is plain, therefore, that these provisions are intended to refer mainly, if not entirely, to grants of rights over land for the erection of residences or buildings for purposes of trade.

199. Sections 31 and 32 appear to contemplate transfers of land to settlers on a somewhat larger scale. Section 31 provides that no settler shall occupy any land (save a lot granted as aforesaid), unless he has obtained the consent of the tribal authority to occupy such land and also the consent of the District Commissioner in cases where such consent is required. By section 32 that consent is not necessary if the conditions therein specified as to the extent of the area conceded—in no case exceeding fifty acres—the amount of rental, and the obligation to keep the land or a reasonable part of it in cultivation are complied with. Any grant for occupation not complying with these conditions requires the consent of the District Commissioner, and the particulars must be duly recorded with regard to (1) the annual consideration payable; (2) the area of the grant; (3) the duration of the grant; (4) any special conditions providing for reduction or non-payment of the annual rental in consideration (for instance) of an undertaking by the settler to establish permanent cultivation in cocoa, rubber, &c., and (5) the power of the settler to assign his interest, or whether that interest in case of his death is intended to devolve on his heirs, administrators, or assigns. These provisions were at first made applicable to specified localities, but by Ordinance No. 26 of 1906 the power was given to extend these provisions "to all or any part of the territories to which this Ordinance applies," and they have now been applied to the whole of the Protectorate and to a part of the Sherbro' district of the Colony.

It will have been noticed that when control was considered necessary it was executive and not judicial control that was imposed. Indeed, government by executive action, legal and moral, would seem to be the keynote to the government of the Sierra Leone Protectorate.

200. We have seen that the Protectorate Native Law Ordinance enumerates or presupposes four forms of transfer of protectorate lands—

- (1) Transfer to a person who recognises the control of the native chief, a mode of transfer which is outside the Ordinance and is entirely dependent upon customary law.
- (2) Transfer to a non-native of a lot as a site for a house of native construction.
- (3) Transfer to a non-native of a lot as a site for a house of a permanent character.
- (4) Transfer to a non-native settler of a larger area than a lot. In some cases the consent of the District Commissioner is not required, but in other cases it is necessary, to confer a valid title.

(1) It must be borne in mind that in English law the essential difference between an interest of freehold and one of leasehold tenure is that the latter must have a fixed period of termination however remote that period may be; in the former case the period of termination is undefined. Thus an estate for life, or an estate descendible in perpetuity to heirs, is a freehold, an estate fixed to terminate on the expiration of a hundred or a thousand years is a leasehold.

Although it appears that, as a rule, the grants which have been made have been executed under the provisions of the Ordinance under discussion, we must mention several other forms of transfer which are applicable to Colony and Protectorate alike.

*Concessions Ordinance.*

201.—(5) Grant for cultivation under the Concessions Ordinance Amendment Ordinance, 1906. A grant of this description requires the assent of the Governor, and, where the area exceeds 5,000 acres, that of the Secretary of State.

Section 3 prescribes certain rules for the guidance of the Governor in giving his assent; thus he is not to give it—

- (a) when the grant is of an area of 1,000 acres or under, unless he is satisfied that it is for the benefit of the chiefdom;
  - (b) when the grant is of a larger area, unless he is satisfied that it is for the benefit of the whole country, and either that the tribal administration will not be destroyed or injuriously affected by such grant, or that adequate provision is made by the terms of such grant, or otherwise for the administration of the area granted, by other means than the tribal system.
- (6) Concessions or licences to gather palm kernels, piassava, and kola nuts. These were formerly under the Concessions Ordinance, but were excluded in 1906, and now require to be assented to by the Governor, who is to be guided by the rules to which we referred under the last heading.
- (7) Concessions involving minerals, timber, or wild rubber. These require validating under the Concessions Ordinance, 1902, an Ordinance which was in 1903 brought into practically the same form as the Ashanti Concessions Ordinance, 1903, to which we have already referred. Thus, an intending concessionaire must in the first instance obtain permission from the Governor to prospect, and the negotiations for the concession take place through the District Commissioner. A further safeguard was, however, imposed by the Amendment Ordinance, 1906, which requires that no proceeding to validate a concession is to be taken unless the concession has been provisionally recognised by the Governor, and renders any concession which has not been so recognised within one year from its date null and void. After the provisional recognition has been given, proceedings are still requisite in the Concessions Court to render the concession valid.

202. The principle that negotiations under the Concessions Ordinance are to go through the District Commissioner are naturally applied to grants of every description, and the Executive, as represented usually by the District Commissioner, exercises, from the earliest stages of the transaction, supervision and control. The application by (for instance) the European applicant is made to him: "Every communication or negotiation must go through the District Commissioner, if the transaction is carried through the rent is paid to him and is paid by him to the chief 'for the benefit of the chiefdom,'" that is, the community and its administration is superintended by the District Commissioner.

Haddon  
Smith, 5793.

203. It remains to notice Ordinance No. 16 of 1911, which prevents the alienation of land of an area greater than fifty acres, whether under the Protectorate Native Law Ordinance or under the Concessions Ordinance, to any person other than the Colonial Government or for a longer term than ninety-nine years.

The Concessions Ordinance has, in fact, been acted on only to a very small extent, if at all, either in the Colony or Protectorate. Sir Philip Smyly, who was Chief Justice of the Colony when the Ordinance came into force until August 1911, "only heard of one case during the whole time."

Practically, therefore, the Concessions Ordinance may be regarded as having been inoperative, both in the Colony and Protectorate of Sierra Leone.

*General Principles of Policy.*

204. The general principle of policy adopted by the Governor were thus expressed to us by Mr. Haddon Smith, lately the Colonial Secretary in Sierra Leone:—

"Our policy is to govern through the native chiefs. . . . We act as guardians of the native chiefs, and they follow our advice. There is never a case in which they do not follow our advice, and at the same time they retain all their old customs."

Haddon  
Smith, 5780,  
5831.

Again, Sir E. Merewether, the present Governor, speaking of disputes between chiefs as to boundaries, which "in the absence of a supply of accurate maps and a proper survey" are very common, told us, "The chiefs generally abide by the decision of the District Commissioner."

Merewether,  
1999.

205. This settlement of boundary disputes by an executive officer requires some further notice, as it is clothed with statutory sanction. Thus section 101 of the Protectorate Ordinance, 1901, until recently ran as follows:—

"The District Commissioner shall have power and authority to settle any matters within his district which have their origin in Poro laws, native rites or customs, land disputes, or any other disputes which, if not promptly settled, might lead to breaches of the peace; and any disregard or defiance of such a settlement shall be deemed to be an offence."

Dr. Maxwell, District Commissioner, supplied us with the following note:—

"In holding inquiries under this section a District Commissioner acts as an executive officer; and as a matter of course an appeal may be made to the Governor against his decision. There is no time-limit for such an appeal, as is the case in appeals against the decisions of the District Commissioners' Courts—an obvious advantage in land disputes, as the full effects as a decision may not be realised by those affected until some time after it has been given. In addition, decisions under authority of this section may be modified at a future date should altered circumstances render this advisable."

*Infra*, p. 129.

206. A recent Ordinance No. 16 of 1913 extended this power of the District Commissioner so as to include land disputes between paramount chiefs.

Writing before this Ordinance had become law, Dr. Maxwell said:—

"The effect of the proposed modification of the law will be that a District Commissioner will deal with all land disputes between paramount chiefs, and with such other land disputes as in his opinion he should inquire into and settle, as an executive officer holding a judicial inquiry, and not as a judicial officer sitting in the District Commissioner's court. At the same time, he has the power as a magistrate to enforce the decisions given at the inquiry."

*Infra*, p. 130.

"Section 101, as at present existing, and as modified, gives a District Commissioner power to settle any land dispute, irrespective of any decision that may have been given in the court of a native chief. There is at the same time no formal appeal from the courts of the native chiefs. The courts of the native chiefs are not courts of record, and decisions given in them have not the permanence that decisions given in the District Commissioners' courts and the circuit court have. A chief may reverse or alter the decision of his predecessors, a circumstance which may at times cause abuses, but which at other times leads to the rectification of abuses. It is not contrary to native custom for a District Commissioner as a superior authority to set aside settlements arrived at in land disputes by native chiefs. The section would authorise a District Commissioner to inquire into land disputes in which non-natives were involved, but such an inquiry would not affect the right of either party to such a dispute to bring an action in the circuit court."

Major Fairtlough, District Commissioner of the Northern Sherbro District, in the southern part of the Protectorate, gave us some important illustrations of the beneficial effect of the increased influence of the Executive in preventing improper alienation of communal lands. Speaking of the condition of things about 1900, he says:—

"I know that chiefs have given over the whole right, title, and fee simple of their estates for a few cases of gin or a few pounds. Whenever it was brought to the notice of the Government it was abrogated."

Fairtlough,  
6164.

There is, however, one instance where over a large district of the Protectorate government through the chiefs has become impossible.

207. In one portion of Major Fairtlough's district, we were informed, the whole machinery of the system of government through the native chiefs had been for some time upset by a most serious outbreak of cannibalism in which practically the whole of the native chiefs were involved. The secret society from which these crimes emanate has long been a trouble in the Protectorate, and the matter has been dealt with by many ordinances and other measures. In this district, we are told, practically the whole of the tribal authorities, about 400 persons, were in gaol waiting trial. Notwithstanding, however, this, happily exceptional, state of things, Major Fairtlough strongly confirms the views of his colleagues that it is essential as a general practice to utilise native administration so far as regards the regulation of rights over land, as appears from the following extract:—

"6232. (*Mr. Morel*.) In your district at present things have gone completely wrong, and your native administrative machinery has broken down?—Yes.

Fairtlough,  
6232.

"6233. And therefore you are in an abnormal condition. But in the general way do you consider that the native administrative machinery is the best machinery to use to govern the Protectorate?—Yes, I do, at the present stage. It is the cheapest and it suits the people. We could not run the administration of the country without an enormous army of officials that we could not possibly pay for.

"6234. And in the general way do you think that their system of land tenure is a system suitable to the country?—I do.

"6235. You would not alter it in any way?—I would not alter it.

"6236. In the Gold Coast and in other places we find that freehold has crept in from the coast. Do you think that if that presented itself in Sierra Leone it should be encouraged or deprecated?—I think it should be discouraged.

"6237. Why?—Because it would be subversive of tribal rule—tribal administration."

## IV.

## Gambia.

208. The key to land legislation here is executive control, and so far as the Protectorate, at any rate, is concerned, the legislation affords a striking contrast with the elaborate legal system of Sierra Leone.

## THE COLONY.

As we have seen (*see* para. 60), English law prevails, with its system of individual ownership. With regard to land in the Colony Sir George Denton says:—

“In the first case the original ownership has been vested in the Crown, and Crown grants in freehold have been issued by the Government, and in making any transfers the ordinary laws of England dealing with land have been held to apply, and disputes relating to it are dealt with by the Supreme Court.”

The practical question as to what can now be dealt with as Crown land is answered by the Vacant Lands (Ascertainment of Title) Ordinance, 1903, which enables the Crown when “any land is unoccupied or is without any known or certain owner or is occupied by a person who appears to the Colonial Secretary to have no title” to apply to the Court for a declaration that the land is “vested absolutely in His Majesty.”

So far as land in the hands of private owners is concerned, the only Ordinance of importance for our purpose is the Land Transfer Ordinance, 1904, which provides for a system of registration of title. A survey was felt to be necessary before the system could be brought into force and accordingly it has not as yet come into operation.

## THE PROTECTORATE.

209. Under this head we include that part of the Colony which is under the protectorate system.

Here communal tenure remains untouched. The notion that any portion of that land can be sold or disposed of by the person who is in actual occupation or enjoyment of that portion is inconceivable to the native mind which has not been imbued with European ideas. But there is a difference between this communal tenure in the Gambia and that in the other dependencies with which we are concerned. Instead of the right of allotment of land to new settlers being exercised by the chiefs and elders of the community, this allotment is made by, or strictly supervised by, the Executive Government.

Concessions of land to strangers have seldom, if ever, taken place, but the principle that all land is under the control of the Government and that any disposal of land otherwise than under native custom must be sanctioned by the Government seems to be firmly established.

210. This idea that all the land is under the control of the Government is probably to some extent due to the fact that the principal native tribe in the Protectorate is that of the Mandingoes, who were early Mohammedan immigrants, and by their superior state of civilisation and organisation acquired ascendancy over the aboriginal natives. As in Northern Nigeria, the Mohammedan influence tends to concentrate control of the land in the hands of the ruling power, and the subordinate native chiefs and heads of families do not apparently exercise the same degree of authority as in the countries where that influence is not felt. Another circumstance which tends to the exercise of the control of the Government is that, in some parts of the Protectorate, some shortage of available land has begun to be felt, which necessitates some degree of supervision in its distribution.

211. Accordingly, no Ordinance on the lines of the Gold Coast Concessions Ordinance or of the Sierra Leone Protectorate Native Law Ordinance is to be found in the Gambia statute book, but instead there is an enactment styled the Protectorate (Public Lands) Ordinance, 1896, which places all “public lands” under the “management control and direction of the Administrator.” Public lands are defined as—

“(1) All lands in the Protectorate not in the actual occupation of persons . . . who at the time when Her Majesty’s protection was established in the territory in which such lands are situate had by the laws and customs of such territory an original or derivative title to the said lands; (2) all lands belonging to any conquered or deposed ruler; (3) all lands in the Protectorate which before the establishment of Her Majesty’s protection in the territory in which the lands are situate were vested in the ruler of such territory as his own and not as his own private property.”

The chief magistrate, Mr. Hume, told us that he had very great difficulty in interpreting the above definition of public lands. Hume, 2960.

The other provisions of this Ordinance which must be noticed are, that no grants, concessions, or dispositions of public lands are to be valid unless made by the Administrator, and that all revenues from public lands are applicable to the expenses of the Government of the Protectorate.

A set of rules was, in 1897, made under the ordinance; under them the head chief and headman of a district, unless a special supervisor is appointed, have charge of the public land in their district. No timber, fibre, rubber, gum, palm nuts, or palm kernels are to be cut or collected from, nor are cattle to be depastured on, public land without a permit from the Colonial Engineer or a travelling Commissioner. Firewood for use may be cut without a permit, but not for sale.

The Administrator has power to grant licences for a term of years to "responsible and solvent persons" to occupy tracts of public land for the purpose of cutting timber.

The schedule to the rules contains a list of fees payable, as for instance, for collecting palm nut: for the purpose of expressing the oil or obtaining the kernels, or for depasturing cattle not the *bona fide* property of a resident of a district or town where the land in which the cattle are depastured is situate, or to which it is adjacent or appurtenant.

The Ordinance was only to come into operation in districts notified by public proclamation, and at present is in force in the districts of Niani and Niamera, Sandu and Wuli.

212. The Public Lands (Grants and Dispositions) Ordinance, 1902, empowers the Governor to make grants of Crown lands in the Colony and of public lands (as defined above) in the Protectorate. Grants may be made of freehold either in fee simple or for life, and also of leasehold for any period. It seems doubtful, however, whether even in the Colony the power of granting freehold interest has been exercised. Usually, at all events, the grants are of the nature of leaseholds. In the Protectorate a considerable number of grants of leasehold interests have been made by the Government to mercantile firms and others for the erection of factories and other purposes.

213. Strangely enough, the Vacant Lands Ordinance, to which we have referred in dealing with the Colony, is also applicable to the Protectorate, so that land there may be declared to be vested in the Crown, and not, as one would have expected, declared to be public land.

A further complication in nomenclature is to be found in the Public Lands Acquisition Ordinance, 1901, which applies to "the Colony and Protectorate" alike; all lands acquired under it wherever situate would be properly termed "public lands."

Although there is little evidence of practical difficulty arising from the uncertain state of the law with regard to public lands in the Protectorate, we have drawn attention to it in order that if at any time legislation with regard to land is undertaken a more satisfactory system of nomenclature and definition may be adopted.

We will next proceed to discuss several subjects, such as mining, the exploitation of the oil-palm, forests, and the cocoa industry, which lend themselves to treatment in a more general manner. We shall confine our observations in this part of our Report to questions of principle, reserving our detailed recommendations for Part III.

### MINING.

214. In the Gold Coast the principal form of mining is mining for gold. In Sierra Leone and the Gambia there is no mining, and as to Southern Nigeria we have no evidence of any gold mining being carried on at present. We are given to understand that mining for mineral oil has been carried on to a certain limited extent both in the Gold Coast and Southern Nigeria, and we understand also that coal has been discovered in Southern Nigeria, but we have not taken any evidence with regard to mining of these kinds, and we do not feel ourselves called upon to advise as to the particular regulations which such forms of mining may require. We propose, therefore, to confine our remarks entirely to gold-mining on the Gold Coast.

#### GOLD MINING ON THE GOLD COAST.

A Mining Department exists in the Gold Coast, but its functions appear to be limited to the inspection of mines in connection with their safety. This Department should deal with all matters connected with and relating to mining. Cogill,  
15,475 and  
15,506.

*Prospecting Licences.*

See above  
para. 136.

Hunt, 1141.

215. We have already expressed the opinion that the granting of options should be prohibited by law, and we recommend that rights to prospect should be given by licence under proper regulations. Sir H. Belfield, in paragraph 124 of his report, expressed the opinion that a licence should not convey exclusive rights to prospect over the area named in it, but in this we do not concur. We think that the licence should be an exclusive licence. Mr. Giles Hunt in his evidence was probably justified in saying that if a licence were not exclusive it would have no value. It may be assumed that no one will prospect land for gold unless he holds an exclusive right to take up the land that he prospects, or a portion of it. We agree generally with the arrangements suggested by Sir H. Belfield for obtaining a prospecting licence, as set forth in paragraph 123 of his report, excepting as regards the amount payable to the chief concerned. We recur to this point in Part III. (paras. 390-1). As Sir H. Belfield says in paragraph 124 of his report, "when furnished with this licence the holder will have the right to carry on prospecting work on any scale he pleases, and he will further be assured that if he decides to make a selection he will get a concession."

*Grant of Mining Rights.*

African  
No. 1048,  
pp. 39 *et seq.*

216. In order that a complete grant of mining rights may be made under the Concessions Ordinance, two instruments are required:—

- (1) a licence by the Governor;
- (2) a lease by the tribal authority.

The usual form of lease consists, as appears by the specimen leases set out in the Papers laid before the Committee, simply in a demise of a specified area of land, and "the mines, minerals and mineral substances, and precious stones in, upon, under, and about the said piece or parcel of land," or similar words. The subject of the demise is the land itself, including both the surface and the subsoil. Sometimes other rights are specifically included. For instance, in the specimen set out on page 39 of the Papers laid before the Committee, to the grant of mining rights is added a grant of "all timber and other trees and all forest rights." As regards surface rights, in the specimen leases which have been brought to our notice there appears to be no restriction. The lessee has on the face of the grant full control over the land demised, subject only to the reservation of certain native customary rights above explained, but his "rights" have been considerably cut down by the decision of the Privy Council in the case of the Wassaw Exploring Syndicate, Ltd., *v.* The African Rubber Company, Ltd., which is referred to in paragraphs 133 and 150 above.

We think that, under the legislation we propose, the lease from the tribal authority should comprise—

- (1) a grant of the right of mining or otherwise collecting minerals within the specified area;
- (2) a grant of such rights over the surface of the area as are incidental to the working of the minerals. The nature and extent of these rights are indicated below.

The requirement of a licence from the Governor should be re-enacted in the new Ordinance.

*Surface Rights.*

217. We concur generally in the remarks made by Sir H. Belfield in paragraph 129 of his report as to the nature and extent of surface rights which should be deemed incidental to the exercise of mining rights. In that paragraph he says:—

"The possession of mining land must be held to invest the miner with such rights to the surface as are necessary to enable him to carry on his work. These rights include the use of the land for sites on which to erect his plant and put up the buildings required as housing accommodation for the staff and labour force; also power to make railways, tramways, roads, and aqueducts, and to cultivate the soil for the purpose of raising food-stuffs for his people. He is further entitled to take such timber as is required for use in or about the mine, or for building or for fuel, and lastly, he may properly convert suitable areas into dumping grounds."

The rights here enumerated constitute all that in our opinion should be conferred on the holder of a mining lease, and we think that they should be exercised subject to regulations by the Mines Department. At the same time we consider that natives in the occupation of the soil over which such surface rights extend, whether such occupation consists of shifting or permanent cultivation or of habitation, should if

and when disturbed receive compensation in respect of their habitations, growing crops, oil palm trees, or other trees of economic value—such compensation being made the subject of arbitration in cases of dispute.

Mr. Cogill, Secretary for Mines in the Gold Coast, in his evidence before us urged that the area over which surface rights should extend should be limited to one-half the area included in the mining lease. But we incline to think that such a scheme would be very difficult to work in practice, and we are of opinion that, if the area of a mining lease is limited as proposed above, no further limitation of surface rights is necessary.

Cogill,  
15,623.

#### *Planting Rights.*

218. We think that it should be clearly laid down that no planting rights other than those included in "surface rights" are conveyed by a mining lease, and that when such rights are required they should be obtained through the Department of Agriculture under such regulations as may be in force at the time.

#### *Timber Rights.*

219. The right to take such timber as is required for use in and about the mine, and for building and for fuel is included among the "surface rights" already referred to. The removal of timber from any land outside the mining area should form the subject of a timber licence. This licence should be issued by the Forest Department under the conditions recommended elsewhere.

We have also dealt elsewhere (*see* para. 289) with the question of placing under the control of the Forest Department the action of mining companies in dealing with timber within the mining area.

#### *Commencement and Prosecution of Work.*

220. Sir H. Belfield proposes in paragraph 117 of his report as follows:—

"117. To take the case of mining land first, the holder of the concession should be under obligation to commence work within a period of two years from date of lease. This does not mean that actual mining operations must be started within that period, but that the preparations necessarily preliminary thereto must be put in hand. These would include verification of the results of previous prospecting work, and further examination of the strata or reef to be operated on—the clearing and levelling of sites—the construction of roads and waterways—the erection of buildings, and the installation of plant. It is not generally desirable that a man should take up a concession unless he is possessed of the capital to work it, or knows where to go for it. It is not necessary, therefore, to allow time for him to go about seeking for it—all that is requisite is that he should be given sufficient opportunity to purchase his plant and engage his staff, and for these purposes a period of two years is an ample time allowance."

This proposal appears to us to be unduly favourable to the holder of the lease. Mining operations should be commenced within one year of the commencement of the lease—in other respects we concur with what is stated in that paragraph. See Cogill,  
15,640.

We concur also in the conditions given by Mr. Belfield in paragraph 118, which reads as follows:—

"When work has commenced, the miner should be under obligation to continue it systematically and efficiently, to the satisfaction of the officer entrusted with the supervision of mines. Cases will undoubtedly arise where a temporary cessation of work is unavoidable, but such occurrences can be provided for by authorising the Commissioner of Lands to grant a certificate of exemption from work for any period not exceeding 12 months upon good cause shown by the miner. If he fails in either of these obligations without reasonable excuse, forfeiture of the concession should ensue under the conditions of his lease."

In view of the alleged growing shortage of labour in the Gold Coast we do not advise the imposition of labour conditions, *i.e.*, the requirement of the employment of so many labourers per square mile. Cogill,  
15,714.

#### *Tax on Profits.*

221. We recommend that the provisions in the existing Concessions Ordinance as to the tax on profits should be retained.

#### *Housing of Labourers.*

222. We are of opinion that persons obtaining mining leases should be required to make<sup>(1)</sup> suitable provision for the housing of their labourers, and that no charge

<sup>(1)</sup> It may be desirable for the Government to require conformation to certain regulations as regards, for example, sanitary arrangements, water supply, and so forth.

should be made to the labourers for the accommodation afforded. This, too, is the opinion expressed by Sir H. Belfield, and we concur in the following recommendation which he makes in paragraph 134 of his report :—

“In those cases in which a large proportion of the houses are the property of the occupiers it is desirable that they should be taken over at a valuation. If the companies are unwilling to do this, the collection of rent should be prohibited.”

We further think that where a large number of labourers are employed the lessee should be required to provide a qualified resident dispenser and a dispensary, with hospital accommodation sufficient for the average number of cases of sickness among the labourers resident on the mine.

#### *Maintenance of Peace and Order.*

223. Mining Managers should have power to evict undesirable persons from habitations which are the property of the Mining Company. This has been urged in evidence as necessary in the interest of the mining population. We think it is. It has also been urged by witnesses representing the mining industry that no native village should be allowed within a certain distance of the mining works. In the exercise of his surface rights the holder of a mining lease will have the matter in his own hands so far as the area comprised within the lease is concerned, subject to grant of compensation in the case of existing habitations as above proposed. But, while we recognise that the establishment of native villages or groups of habitations outside the area, but in close proximity to the mining works, might be undesirable, we do not suggest any action other than that of the lessee, where necessary, arranging matters with the Native authorities concerned, the District Commissioner acting as intermediary.

Where the Government deems it desirable that special provision should be made for the maintenance of peace and order within the mining area, mining managers might be permitted to employ rural constables approved by the District Commissioner under such regulations as the Government may from time to time deem it necessary to lay down.

#### *Sanitation.*

224. The holders of mining leases should be required (as the Committee understand is the practice at present) to carry out such suitable sanitary arrangements as may from time to time be prescribed by the Government, and we think that before regulations to this effect are passed, amended, or added to, the views of the principal mining managers should be obtained. There should be periodical sanitary inspections by the authorised Government officers, and where, after due notice, mining managers fail to carry out any of the prescribed requirements, the Government should have power to step in and do the necessary work at the expense of the mining lessee.

#### *Liquor Licences.*

225. These, we suggest, should be issued by the Government only after consultation with the mining authorities concerned.

#### *Trading Licences.*

226. There have been strong arguments for and against the restriction of the establishment of traders in mining areas. In this matter Sir H. Belfield expresses his views in paragraph 135 of his report, which reads as follows :—

“As the presence of traders is necessary to the labourers, arrangements must be made for their admission—whether such traders be European firms or native merchants, they should be admitted only at the discretion of the mines manager, and with the approval of the District Commissioner, who will satisfy himself that the number admitted is not in excess of requirements. The buildings necessary for their accommodation should be erected by, and remain the property of, the company, and they should pay to the District Commissioner an annual fee for a trading licence, which may be treated as a contribution towards the sanitary expenditure. If the number of traders is not so restricted, it will inevitably become substantially in excess of requirements, and businesses will be established which will look for their customers elsewhere than at the mine.”

The control of trading operations within mining areas should, we think, be retained in the hands of the Government. If the admission of traders into a mining area

Murray and  
Ford, 9122,  
9116.

Cogill,  
15,606.

See also paras.  
17 and 18 of  
memo. appended to Murray  
and Ford's evidence.

Batty, 8211—  
27.  
Murray and  
Ford, 9129—  
59.

be left entirely to the discretion of mining lessees, they themselves will in many cases establish stores, and not unnaturally take care that competition is eliminated. Monopolies will be created, prices will be kept up, and the natives will be the sufferers. At the same time, we admit the force of Sir H. Belfield's argument against unrestricted competition, and care should be taken to license only such numbers of traders in each case as may be necessary to secure the interests of the population resident within a mining area. We think that before a licence is issued the mining manager concerned should be consulted, and due consideration given to his expressed opinion.

See Murray and Ford, 9170.

See also Hunt, 1052.

We do not agree with Sir H. Belfield that the buildings necessary for the accommodation of licensed traders within a mining area should be erected by and remain the property of the lessee. In our opinion it would be better in all future mining concessions for the Government to take power to reserve sufficient land within the mining area for the erection of buildings by persons desirous of establishing trading stores. Such buildings should be approved, and they should be erected by the licensed traders at their own expense in accordance with such regulations as may be deemed necessary.

#### ASHANTI AND THE NORTHERN TERRITORIES.

227. We think that the foregoing recommendations should apply to mining in Ashanti and the Northern Territories—that in fact the arrangements in the Gold Coast, Ashanti, and the Northern Territories should be the same.

#### EXPLOITATION OF THE OIL-PALM.

##### HISTORY OF OIL-PALM INDUSTRY.

228. Within the last few years attempts have been made by Europeans to exploit the oil-palm in British West Africa. Their actual operation is confined at present to the Gold Coast and Sierra Leone.

These attempts have taken two forms. One, confined to the Gold Coast, has consisted in obtaining concessions of oil-palm lands from the native authorities both under the Concessions Ordinance and outside the Concessions Ordinance. The other has sought to secure special privileges for the erection of machinery under the Palm-Oil Ordinance. The latter method has been adopted both in the Gold Coast and in Sierra Leone.

A considerable amount of evidence has been received by the Committee on the subject, and certain action has been taken by the Committee in regard thereto. We propose to examine both methods and the problems incidental to their prosecution.

229. Before doing so we think it necessary to give a brief introductory sketch of the character of the industry as now carried on, and the important bearing that it has upon the usage and enjoyment of land by the natives of British West Africa. A fuller account is provided in Mr. Moré's memorandum annexed to this Report.\* As is shown in that memorandum, the oil-palm industry is wholly a native one. The fruit is put to three principal uses. It is a staple food supply and it may be said that every part of the tree enters largely into the domestic economy of the natives. It is an article of internal trade between native communities. It constitutes the most extensive branch of the export trade between West Africa and Europe.

230. As regards the export trade, there has been long established in West Africa a considerable free commerce in the fruits of the oil-palm—both oil and kernels—between the native communities and European merchants. The export trade is carried on in the following manner. The natives express the oil from the pericarp by various processes. They crack the nut by hand (except in localities where the merchants have introduced cracking machinery) and convey the oil obtained from the pericarp and the kernels obtained by cracking the nuts to the trading stations of the European merchants for sale. The oil and the kernels are shipped by the latter to Europe in bulk, and produce a very considerable proportion of the homeward freight earned by West African shipping. In the seven years 1906-12, palm-oil and palm-kernels of a sterling value of just under thirty millions have been exported from Southern Nigeria, Sierra Leone, and the Gold Coast.

The export branch of the oil-palm industry is constituted by a voluntary application of native labour to purposes of external trade, in collecting, preparing, and transporting the article. The natives receive in exchange for the product which their

\* Appendix D., p. 156.

labour causes to be placed upon the world's markets, merchandise and British silver coinage. From this free traffic the natives derive the wealth which comes to them through the commercial enterprise of Europeans in their country. The proportion of merchandise and cash they receive for their output of oil and kernels fluctuates with ruling prices in Europe. When ruling prices are high the interests concerned in Europe with the process of refining the raw material sold by the natives to the merchants and shipped by the latter to the home ports may suffer temporary inconvenience which, it may be assumed, will eventually be borne by the consumer. On the other hand, high prices prevailing on the home markets benefit the West African producer, the manufacturer of goods for the West African markets, and the revenues of the colonies and dependencies. The native's purchasing power is increased, the volume of imported merchandise is thereby augmented and the revenues of the colonies and dependencies, which, as shown in Mr. Morel's memorandum, are very largely dependent upon Customs dues upon imported merchandise, are proportionately swollen. The industry forms the staple export trade of Southern Nigeria and Sierra Leone, and is increasing very rapidly, as is proved by official statistics. The great development of the cocoa industry in the Gold Coast has checked a similar all-round increase of the oil-palm industry in that colony. In the last few years the exports of palm-oil from the Gold Coast have fallen substantially in quantity, although inconsiderably in value, owing to the rise in prices. On the other hand, the export of palm kernels has largely increased, both in quantity and in value, during the same period, and it is suggested in the Agricultural Reports that the decrease in the export of oil is largely attributable to an increased local consumption by the natives themselves due to increased prosperity arising out of the growth of the cocoa industry.

Such, then, is the manner in which the exploitation of the oil-palm for the export trade with Europe has been and is carried on.

The characteristic features of the export trade in the fruit of the oil-palm as at present conducted are free exploitation of the tree by the natives, and free traffic between competing merchants and competing natives.

#### CONCESSIONS OF PALM-BEARING LANDS.

##### *The "Apol Company, Limited," its Allies, Nominees, and others.*

231. The attempts at exploitation by European firms of the oil-palm industry in the Gold Coast through the process of acquiring concessions of oil-palm bearing lands, for the most part for ninety-nine years, appear to have originated towards the close of the year 1911. Shortly after its sittings began, the Committee, acting upon evidence received, asked that a return might be furnished to it "specifying the number and extent of the concessions granted by chiefs to Europeans for exploiting palm-bearing lands, and stating whether any such concessions have been validated by the Courts."

This information was furnished in the despatch of the Acting-Governor of the Gold Coast dated 20th December 1912.

In this despatch the Acting-Governor forwarded returns prepared by the Chief Registrar, one of which, marked C, showed the "concessions granted since the commencement of 'The Concessions Ordinance, 1900,' by chiefs to Europeans for exploiting palm-bearing lands that have formed the subject of notices in the 'Government Gazettes,' and the other, marked D, was a "Return from Deeds registry of concessions for exploiting palm-bearing lands not yet the subject of notices in the Government Gazettes registered since 1900." The Acting-Governor reported that up to that date "no certificates of validity have been issued in respect of concessions for exploiting palm-bearing lands."

Return C showed that 14 concessions aggregating 100 square miles had been granted by the native authorities in the Western Province, and 5 concessions aggregating 72<sup>3</sup>/<sub>4</sub> square miles in the Central Province. The first concession so granted bore the date of 29th September 1911. The principal grantees of these concessions were a company styled "Apol, Limited, of London," which had secured 113 square miles. The other grantees were Messrs. Joseph Crosfield and Sons, Limited, who had acquired 39 square miles, and Mr. Frank Wheeler Plane, 20 square miles. Both of these, as we learn from the Secretary of State's despatch of 17th December 1912,

were acting on behalf of or in alliance with Messrs. Apol, Mr. Crosfield being, we understand, the Chairman of the company. All these concessions are for periods of ninety-nine years.

Return D showed concessions from native authorities granting, in the whole, four square miles to one Earle Trevor, described elsewhere as an attorney for Apol, Limited. These were grants for twenty-five years from 1st May 1911, and, as already stated, were marked as "not yet the subject of notices in the Government Gazette." They may, therefore, be taken as instances of concessions altogether outside the operation of the Concessions Ordinance, although registered under the Registration Ordinance.

Hunt, 1077.

Two later sets of returns were furnished by the Governor of the Gold Coast in his despatch of 25th March 1913. Return A contained "Concessions which have formed the subject of notices in the Government Gazettes for the half year ending 31st December 1912." The first part of Return B was entitled "Return from Deeds Registry of agricultural and arboricultural concessions of areas exceeding one square mile for half-year ending 31st December 1912," and the second part recorded the registration of deeds for similar concessions not exceeding one square mile. According to Return A, concessions specifically granting rights over oil-palm bearing lands, aggregating 73 square miles, had formed the subject of notices in the Gazettes during the latter half of 1912. According to Return B, 173 square miles of concessions conferring unspecified "agricultural and arboricultural rights" had been registered during that period. Of this total in Return B, 6 concessions, aggregating 81 square miles, do not figure in return A as having been gazetted.

African  
No. 1048,  
pp. 72-5.

It appears further by a return forwarded by the Governor on 24th July 1913, that in the half-year ending 30th June 1913, in the Central and Western Provinces, notices appeared in the Gazette of four concessions, covering an area of 62 square miles, for "agricultural and arboricultural" purposes. One of these, covering 20 square miles, stands in the name of Messrs. Brunner, Mond, & Company, Limited, and specifically conveys rights "of collecting the fruit of palm trees." The same return also gives a list of 5 concessions from the Deeds Registry of agricultural or arboricultural concessions during the same period amounting to 77 square miles. Of these 5 concessions 3 figure in the list of concessions gazetted. The remainder, which aggregate 25 square miles, do not appear to have been gazetted and again would seem to be transactions intended to operate altogether outside the Concessions Ordinance.

African  
No. 1048,  
pp. 90-2.

232. The last returns we have received are from the Deputy-Governor of the Gold Coast. They are contained in a despatch dated 3rd February 1914, and cover the half-year ending December 1913. They disclose a notable increase in this kind of concession. Return B shows that in the last six months of 1913, 11 concessions, affecting no less than 254½ square miles of land, for agricultural and arboricultural purposes were registered in the Deeds Registry. Of these 11 concessions apparently only 3, affecting 43 square miles of land, figure in Return A as having been gazetted. This would appear to indicate an extension of the practice already referred to on the part of concessionaires to dispense with the medium of the Concessions Court. Return A shows that 180 square miles of "timber or other concessions, not being mining concessions," were notified in the Gazettes during the same period. Of these concessions, four specifically convey rights "of collecting the products of palm trees" or "of collecting palm fruits." They are in favour of Thomas Whitehead, William Gossage and Sons, Limited, and Lewis A. Smart, and affect in all 63 square miles. Return C shows that up to the end of 1913 agricultural and arboricultural concessions, covering 1,714 square miles, had been granted in the Gold Coast, whereas, at the close of 1910 the figure stood at 455 square miles. It is not altogether easy to ascertain from these returns what the real position is, but it is clear that the native communities of the Gold Coast are parting with their surface rights at a steadily increasing rate.

African  
No. 1048,  
pp. 121-6.

#### *Concessions (Further Amendment) Ordinance, 1912.*

233. As we have already pointed out (*see above para. 143*) a new ordinance was passed in 1912 requiring the refusal of a certificate of validity if the concession grants or purports to grant rights to collect natural produce "to the exclusion of natives," or, "if it grants or purports to grant rights to remove natives from their habitations within the area of such concession." If upon the hearing of an application for a certificate of validity it appears that the deed purports to operate "to the

exclusion of the natives" the certificate of validity must be refused. Apparently this provision would apply if the deed gave the concessionnaires the *exclusive* right to gather the fruit in the conceded area.

In the case of the Apol concessions it appears that the Apol Company proposed, after some correspondence with the Colonial Office, a copy of which has been laid before Parliament,\* a modification of the terms of the original concessions in order to satisfy the new conditions imposed by the Ordinance of 1912, and that the Secretary of State consented to the proposed modifications, if the Court should see fit to adopt them under the powers given by section 13 of the Ordinance of 1900 as above explained. We comment below on the clauses thus modified.

#### *Action by the Committee.*

234. When this Committee first became aware of the number and extent of the areas of the Apol concessions as stated in the despatch of the Governor of the Gold Coast of 20th December 1912, and also of the arrangement as to the intended modification of these concessions by the court in granting the certificate of validity, it appeared to them that, whatever might be the conclusion they ultimately reached as to the changes, if any, in legislation which they ought to recommend with the view of regulating more effectively the granting of rights over oil-palm bearing lands, it was imperative that an effort should be made in the meantime to check or prevent the creation of new vested interests in this class of native property. This, it was thought, could be to some extent effected by making use of such means as the present state of the law provided for the purpose. Accordingly, they addressed to the Secretary of State a letter dated 28th March 1913, recommending certain action on his part. The letter was signed by all the members of the Committee except Mr. Morel, who was absent from England at the time, but whose views on the subject he had communicated to the Committee before he left. Mr. Morel subsequently expressed his agreement with the proposals submitted to the Secretary of State, although he desired to go further than, in all the circumstances, the other members of the Committee thought possible. The letter is annexed to this Report. The Secretary of State was pleased to act upon the recommendation of the Committee, and the decisions he arrived at will be found in his despatch of 5th April 1913 to the Governor of the Gold Coast, together with the instructions given by the Governor thereupon to the Provincial Commissioners.

*Infra*,  
p. 123.  
African  
No 1048,  
p. 48.

#### *Validation of Apol Concessions by Court.*

235. At the time of addressing the letter to the Secretary of State, the Committee were not aware that at various dates, in January 1913, certificates of validity had been obtained by the Apol Company and its coadjutors in ten of the cases which had been notified in the Gazette. It subsequently appeared from a return enclosed in the Governor's despatch of 9th October 1913, that eight of these, comprising 41·706 square miles, were granted on the application of the Apol Company as lessees, and two, comprising 3·76 square miles, on the application of Joseph Crosfield and Sons, Limited, one, comprising 2·37 square miles, being subsequently transferred to Apol, Limited. The grant of these certificates was, we understand, unopposed, in accordance with the arrangement which had been made with the Secretary of State.

236. With regard to three concessions granted to Joseph Crosfield and Sons, Limited, referred to in the same despatch, and aggregating 27 square miles, the Attorney General intervened under section 14 on the ground that Joseph Crosfield and Sons and the Apol Company were one "person" within the meaning of section 20 (2) of the Ordinance. We have already referred to this case under the head of "Dummying" (*see* para. 149 above). The claimants admitted that there was a financial connection between the companies, but contended that the companies, being separately incorporated and registered under the Companies Act, were separate entities, and so did not contravene the ordinance. The Court decided in favour of the claimants, and the intervention failed.

It may be well to point out that this decision, although, no doubt, sound in law, establishes a condition of things which is contrary to the declared policy and desire of

*See* Govern-  
or's desp.  
26th Dec.  
1913.

\* [Cd. 6673] May 1913.

the Government. "I consider," wrote the Secretary of State in a despatch dated 17th December 1912 to the Officer Administering the Government of the Gold Coast, "that the total area obtained by Messrs. Apol and their allies and nominees under "either system should be limited to forty square miles." Referring to this paragraph in the Secretary of State's despatch in connection with the decision of the Court, the Governor of the Gold Coast remarks:—

"It would appear that Messrs. Apol have merely utilised the warning there stated to have been conveyed by you to them to frustrate your intention and to evade that with which section 20 of the Concessions Ordinance was framed,"

African  
No. 1048,  
No. 114.

Governor's  
despatch of  
26th Dec.  
1913.

237. The Governor's despatch of 9th October also shows that four concessions aggregating some 46 square miles were discontinued by Apol, Limited, or their nominee, Mr. Plane; that two concessions granted to the same company, and aggregating 29 square miles, were opposed by the Attorney-General and marked "Nothing done"; two granted to William Gossage and Sons, Limited, and covering 23 miles, were marked "Period of notice not expired"; and one of 20 square miles granted to Brunner, Mond, & Company, Limited, was marked "Opposed by Attorney-General. Nothing done."

African  
No. 1048,  
p. 114.

It appears from the returns above quoted that certificates of validity have been obtained by the Apol Company and its coadjutors for areas covering in the aggregate 72,466 square miles. The area applied for by individuals or companies believed to be in the same interest as the Apol Company, in respect of which no certificates have as yet been obtained, or where the application has been discontinued, embrace a very much larger area.

238. Apparently, at present at all events, it is not the intention of the Apol Company to work themselves any of the concessions they have obtained. Their professional adviser, Mr. Giles Hunt, explained to us the method they proposed to adopt:—

"... May I explain, as I am well acquainted with the Company, that they do not propose to work it themselves if they can help it. The native is encouraged to bring in his own produce and a collateral agreement is generally made along with the concession that we will pay to the chiefs so much royalty on every ton of fruit brought in and pay the people also so much per lb. for bringing it in. All that Apol, Limited, is doing besides acquiring concessions is erecting works. They are erecting works at Dixcove for crushing the fruit and producing the oil.

Hunt, 1215-  
8.

"1216. Are they preventing the natives from selling to anybody else?—I cannot say that they are. The collateral agreements say that they shall not sell outside, I believe.

"1217. (Mr. Morel.) Then it is a commercial monopoly?—No, because we have nothing to enforce the agreement.

"1218. But in practice it is a commercial monopoly for the area affected?—It is not in practice, to that extent. It would not be a commercial monopoly. I can fairly say that, I think."

Later he adds—

"1312. . . . We are not working under the Apol concession. We are not collecting palm fruit ourselves. We are only buying it as it is collected. We are paying rent but we are not occupying or making any use of the premises."

Hunt, 1312.

#### *Terms of original Grant and Certificate of Validity. Modifications made by Court.*

239. If, however, we examine the form of the original grant and of the certificate of validity which has been granted, with the modifications therein made by the Court under section 13, we find that the rights which are granted to the Company include very extensive rights of gathering the fruit of the oil-palm, and generally of the control of the conceded area of land.

See African  
No. 1048,  
p. 106.

Examples of the form of the original concession, as notified in the Gazette and as modified by the Court in accordance with the agreement already referred to, will be found in the Papers laid before the Committee. We understand that, *mutatis mutandis*, all concessions followed this form.

It will be seen that the parts of the original concession which were struck out by the court are shown in *italics*, and the substituted or added words are set out in the certificate of validity. These documents afford an opportunity of comparing, in the instance referred to, the original concession granted by the native authorities with the concession as modified by the Court.

240. The concession is in the form of an English lease, and begins with a demise of "all that piece or parcel of land" therein described. The extent of the area conceded is described in the original concession as containing about 10 square miles; in the concession as certified after survey the area is stated as 13,156 square miles. The concession goes on to transfer the palm trees on the land as well as the land itself

“ together with all oil-palm and other palm trees of what nature soever there growing “ or being or hereafter to grow or be thereon.” It must be remembered that in some parts of the palm-bearing land many of these palm trees have been planted by natives or their ancestors, and are regarded by native custom as being the property of the individual who planted them, or his family, or descendants. According to native custom, as we have already pointed out, the transfer of the land would not necessarily carry with it the transfer of the trees which had been planted by the occupant of the land. It has evidently been thought necessary to provide expressly for the transfer of the palm trees themselves as well as the land on which they grow. It would probably come as a surprise to the native—who considered himself the owner of a palm tree, and who probably would never have heard anything of the transaction between the chief and elders of the community and the grantees—if he were to find that the property had passed under the concession to a foreigner, who had exercised his right expressly granted under the concession “ to have access to all “ oil-palms and other palm-like trees of what kind soever that now are or hereafter “ may be on the said land and to take the fruits thereof by themselves or their “ servants or employees and to carry the same away and to make such use thereof “ as the Company or its local manager for the time being shall think fit including the “ export or sale of the same or of the products thereof.”

241. Though the owners of the trees who would be affected by the provisions above quoted may be comparatively few in number, yet it must be remembered that the rights vested in all the members of the community whose land is within the area of the concession to gather the fruits of the wild or uncultivated oil-palm for domestic purposes or for sale, either of the fruit in its raw state or of the oil extracted from the pericarp, or the kernel, are at least of as great importance as the exclusive right to the privately-owned palm trees. It is difficult to believe that under a system such as is embodied in these concessions there can be any security that the natives whose interests are affected are in any effective or real sense parties to the transactions.

242. Although this grant as certified retained the form of a lease of the land itself and of all trees growing thereon, extensive modifications were, as we have already seen, afterwards arranged with the Apol Company, which have the effect in point of law of considerably cutting down the extensive character of the transfer. It does not, however, appear that the chiefs and elders who were the original grantors were in any way consulted or were made parties to these modifications of the original deeds of grant. These were given effect to by the order of the Court under the powers of the Ordinance as above explained. If the alterations are carefully examined they will be found materially to diminish the powers which the lessees would have possessed under the deeds as entered into between the parties. The following are some of the most important of the modifications agreed on between the Secretary of State and the concessionaires and adopted by the Court.

The original concession gave the company “ full and exclusive liberty ” to make clearings “ for the purposes of agriculture and arboriculture . . . and generally to “ do all things which shall be convenient or necessary for obtaining the produce or “ fruits of the land hereby demised.” These powers are still retained in the amended concession, but the words “ full and exclusive ” are struck out. The effect appears to be that the right to make “ clearings ” is not exclusive as it would have been under the original covenant. The native authorities would still retain their right to clear the bush.

The power in the original concession “ to remove any village farms compounds “ or other erections as in the opinion of its local manager for the time being may be “ deemed expedient for the said purposes ” (of clearing, &c.) is struck out. It will be remembered that under Ordinance No. 16 of 1912 the granting of a certificate of validity was forbidden if the concession granted or purported to grant rights to remove natives from their habitations within the area of such concession. This modification seems to have become necessary in consequence of this Ordinance.

A power to establish farms and to build villages and compounds, &c., and set up such machinery as to the company or the local manager for the time being may seem expedient is retained. But a power “ to give or grant licence to any person or persons “ corporation or corporations so to do and make such regulations for the inhabitation “ and sanitation of all such villages and compounds as may seem expedient ” was deleted.

A power to dam up and divert all waters and watercourses within the limits of the concession and generally for controlling the water supply was converted into a

power to make use of the water supply, "but not so as to deprive the lessors and their people of a sufficient and reasonable quantity of water for their domestic purposes."

A power to sell or dispose or underlease the whole or any part of the demised premises became a power "to sell, dispose, or underlease any of the rights and privileges granted or purporting to be granted by these presents." The effect of this alteration was that the grantees could no longer assign exclusive rights to a third person, but only the concurrent rights which they themselves possessed.

The native authorities had originally entered into the following covenant :—

"(3) That they will not at any time exercise their customary rights of taking the fruits of the aforesaid oil palm or other palm or palm-like trees or cut down or destroy the said trees for the purpose of making palm-wine or otherwise or grant licence to any persons other than the company so to do."

This covenant was struck out, and in its place the following clauses were inserted in the deed :—

"2. That during the continuance of these presents they will not at any time grant to any person or persons corporation or corporations any rights licences or easements of whatsoever nature or description over the premises hereby demised or intended so to be."

"3. That they will not at any time cut down or destroy any of the oil palm or other palm or palm-like trees now or hereafter growing or being on the premises hereby demised."

At the end of the deed the following proviso was introduced :—

"Provided always that nothing contained in these presents shall be read or construed so as to confer upon the company the right to collect the fruit of the palm trees or other natural produce (other than timber) now or hereafter growing or being upon the said demised premises to the exclusion of the natives nor the right to remove natives from their habitation."

#### *Objections to Concessions of this Type.*

243. This proviso is obviously intended to bring the concession into conformity with the requirements of Ordinance No. 16 of 1912. The concession could not be legally validated if it granted or purported to grant any right to collect the fruit of the wild oil palm "to the exclusion of the natives," or "any right to remove natives from their habitations within the area of the concession." It seems clear that as the concession was originally framed it would have offended against both of these provisions. In order to conform to the Ordinance, care has been taken to remove from the concession all expressions which would or might have imported any power of excluding the natives from the enjoyment, concurrent with that of the grantees, of their rights, or of removing them from their habitations. But the rights of the grantees are not otherwise limited. Supposing the grantees were to introduce a system of hired labour by natives not members of the community, and organise a systematic gathering of the fruit, would not the answer to any complaint that the rights of the natives were being unduly interfered with be "You are not excluded." "You have a perfect right to gather the fruit yourselves. Go and do it"? We fear that the natives would come badly off in a competition of this kind. The extensive powers which the Apol Company still retains under its certificates of validity appear to indicate at least the possibility that the system of free traffic between natives and merchants in the natural produce of the oil-palm, the fruit being gathered by the natives in the exercise of their customary rights, may be superseded by a system whereby the natives resident within a given area would tend to become labourers for hire, or be dispossessed altogether, by the importation of labour from other parts of the Colony or elsewhere.

This would tend, in our opinion, to inflict an injustice upon the natives inhabiting the area included within the concession for not only would a native industry be restricted, but the prestige of the native authorities would be impaired, with a result fraught with danger to the welfare of the native population and to the good government of the Colony. Against this danger the Ordinance of 1912 appears to us to afford very inadequate protection.

244. Moreover, it seems to us that the terms of the proviso introduced at the end of the deed as amended (*vide* para. 242), while undoubtedly framed with the intention of protecting native rights, is open to a variety of interpretations, and contains, in its actual application, the germs of serious trouble between the natives inhabiting the area of the concession and foreign native employés brought in from outside by the concessionnaire for the purpose of collecting the fruits of the palm trees within the concession.

## THE PALM-OIL ORDINANCES.

245. The second method alluded to above (para. 228), viz., the granting of special privileges by the Legislature for the establishment of machinery designed to extract oil from the fruit in the largest quantity and of the best quality, may now be dealt with. This is the object of the Palm-Oil Ordinances of Sierra Leone and of the Gold Coast which received the assent of the Governors concerned on 12th March and on 20th July 1913 respectively.

*Provisions of Ordinances.*

246. While exhibiting some variations in phraseology and detail, the Ordinances are substantially identical. They empower the Governor to grant to any person, within such area not exceeding a circle with a ten-mile radius and for such period not exceeding twenty-one years from the date of the grant and upon such terms and subject to such conditions as he may think fit, the exclusive right to construct and work mills, to be operated by mechanical power, for expressing or extracting oil from the pericarp of palm fruit (section 3 (1)).

A power of renewal of the grant for a like period is given to the Governor (section 3 (2)).

The exercise of this power is, in the case of the Sierra Leone Ordinance, conditional upon "the concurrence of the Tribal Authority," as is also the renewal of the grant.

In the Gold Coast section 3 prescribes a limiting condition as follows:—

"If he (the Governor) is satisfied that the consent of the Tribal Authorities or a majority of them has been obtained, and if they have satisfied him that the owners or a majority of them have approved,"

and provides a further condition that—

"No such grant shall be made in respect of any area as aforesaid which includes a town containing more than 10,000 inhabitants."

This last condition is absent from the Sierra Leone Ordinance. Neither of the above conditions are specified as applicable to the renewal of the grant in the Gold Coast.

By section 4 of the Sierra Leone Ordinance and section 3 of the Gold Coast Ordinance it is stipulated that no grant or renewal of a grant of this character shall be given in future unless the terms thereof shall have been published in the local Gazette three months before ratification. The Sierra Leone Ordinance contains the further stipulation that—

"Any person objecting to any such grant may, within such period, give notice of such objection to the District Commissioner of the district in which the area affected thereby is situated, and shall in such notice specify the grounds of his objection" (section 4).

By section 5 of the Sierra Leone Ordinance and 4 of the Gold Coast Ordinance it is provided that—

"Nothing in this Ordinance shall confer, or authorise the Governor to confer by any grant under this Ordinance, any right, interest, or property in or over any land or the products of the soil of any land."

Section 8 of the Sierra Leone Ordinance and section 7 of the Gold Coast Ordinance make it unlawful for any person other than the grantee to do within the area any act the exclusive right to do which is by the grant vested in the grantee, under a maximum penalty of 500l. for any mill constructed or commenced in contravention of such provisions, and to a fine of twenty pounds for any day during which any such mill is worked, and all plant, materials and things used in the commission of any offence under the section are to be liable to forfeiture.

Such are the principal provisions of the Ordinances.

*History of Ordinances.*

247. The circumstances which led to the passing of these Ordinances appear in the Blue Book entitled "Correspondence respecting the grant of exclusive rights for the "extraction of oil from palm-fruits" [Cd. 6561]. In so far as these Ordinances affect or are calculated so to affect the existing and future rights of the natives over the areas subject to their provisions, a consideration of the problems which they raise would seem to lie within the scope of our reference. Before we record our own views we deem it necessary to summarise the narrative contained in the Blue Book; to

indicate the modifications which have occurred in the Ordinances since they were originally introduced into the Sierra Leone and Gold Coast Legislatures and the character of the objections offered thereto.

248. The negotiations relating to these grants appear to have been of a protracted character, and to have begun in October 1907, when Messrs. Lever Brothers, Limited, applied to the Secretary of State for certain privileges connected with the contemplated introduction in Sierra Leone of modern scientific methods for the local treatment of the fresh fruit of the oil-palm. Ca. 6561,  
No. 1.

It seems that Messrs. Lever desired at that time to acquire "a large area" of forest land for the "local cultivation of the oil-palm." This proposal was not favoured by the Governor of Sierra Leone, and by July 1908 Messrs. Lever had temporarily abandoned the idea. They then limited their demands to the sole right of erecting power-mills and to the exclusive privilege, except against the Government, of laying down mono-rails within a radius of twenty miles from a given point. These rights and privileges were to be for a fixed period of ninety-nine years with the option of cancellation by either party at the end of each period of ten years, and were to carry no burden of rent either to the Government or to the chiefs. As the result of consultations between the Secretary of State and the Governor of Sierra Leone, and further correspondence with Messrs. Lever, the Secretary of State informed the latter on 6th February 1909, how far the Government were prepared to go in order to meet their wishes. Ibid.  
Ibid., No. 6.

The terms specified, "subject to the consent of the natives concerned having been obtained in a manner satisfactory to the Government and to the passing of any necessary legislation," were as follows:—

- A. The exclusive right to erect power mills for the "expressing of oil from the palm-fruit," but not for the cracking of nuts.
- B. The exclusive right, except as against the Government, to lay down mono-rails or "other forms of traction."

These exclusive rights were to be operative within a radius of twenty miles from a given centre and to last for twenty-one years subject to the observance by the grantees of certain conditions to be afterwards elaborated. The Government were prepared to forgo the payment of a rental, but stipulated for a "reasonable payment" to the native authorities concerned, either in the form of rent or otherwise.

These terms Messrs. Lever declined. Ibid., No. 7.

In October 1910 Messrs. Lever wrote that they were desirous to set up "depericarping machines for the treatment of the whole fruit of the palm and other trees" in Nigeria, and asked that— Ibid., No. 9.

"The areas for a distance of twenty miles around the location of our depericarping machinery should be considered as reservations for the special purpose of our proposed new enterprise; that is, that no other firm should be allowed to erect and establish machinery for the treatment of the whole fruit within twenty miles of our location."

The Secretary of State was unable to accede to these proposals, and made a counter-offer (24th February 1911), which Messrs. Lever declined (20th June 1911). Messrs. Lever subsequently revived their request for privileges in Sierra Leone (2nd October 1911) and Southern Nigeria (20th December 1911), and applied for similar privileges in the Gold Coast. So far as Southern Nigeria is concerned, the last document printed in the Blue Book which bears upon that Dependency is an intimation from the Secretary of State to Messrs. Lever that it is not proposed to introduce legislation therein "unless it is shown to be absolutely necessary, which is not at present the case" (10th December 1912). We understand that this necessity has not since arisen. Ibid., No. 11.  
Ibid., No. 12.  
Ibid., No. 13.  
Ibid., No. 17.  
Ibid., No. 63.

249. The applications in respect of Sierra Leone and the Gold Coast were, however, favourably received, but the radius within which the grants were to become operative was reduced by one-half, viz., ten instead of twenty square miles from a given point. The Ordinance was introduced into the Gold Coast Legislature on 7th August 1912, and into the Sierra Leone Legislature on October 25th of the same year. As first submitted to those Legislatures the Ordinances gave power to the Governors without consulting the native authorities to confer upon the grantees, in addition to an exclusive right to erect machinery to express the oil from the pericarp, an exclusive right to erect machinery to extract oil from the kernels, and an exclusive right, except as against the Government, to lay down mechanical traction within the radius affected Ibid., Nos.  
14. &c.

by the grant. The object the Government had in view is explained in the Secretary of State's despatch to the Governor of the Gold Coast on 3rd May 1912:—

Cd. 6561, No. 33. "The Ordinance has been so drafted as to make it possible to grant exclusive rights in respect of machinery for treating palm-kernels as well as for treating the pericarp, and for constructing railways; and any one or more of these rights may be granted with or without the other or others."

*Opposition in England and in West Africa.*

250. The Ordinances and the policy they sanctioned met with strong opposition from the Manchester Chamber of Commerce and from various merchant firms engaged in the palm-oil and kernel trades. They were as vigorously objected to by the unofficial members of the Legislative Councils of the Gold Coast and Sierra Leone. The Governor of the Gold Coast reported that both he and the members of his Executive Council viewed "with some apprehension, as a matter of principle, the introduction of an Ordinance which in effect enables the Government to grant a monopoly."

It was also on this ground that the objections of the Manchester Chamber of Commerce and others were principally founded. Exception was taken to the policy of granting monopolies affecting the exploitation of a product which already formed the basis of an established trade. Emphasis was also laid upon the undesirability of granting to private persons or corporations exclusive rights to lay down mechanical traction:—

Manchester Chamber of Commerce, 7 June 1912. Cd. 6561, No. 38. "The right to make roads and mono-rails and employ other means of mechanical traction could hardly be exercised without grave interference with the present means of transit in the area proposed to be conceded. Present native bush tracks would most likely be monopolised and rendered impassable to ordinary and present-day traffic. Methods of conveyance necessarily involving interference with public rights of way should be retained under the direct provision and control of the Government."

The grant of exclusive rights to extract oil from the kernels of the fruit was also the subject of protest.

The objections raised were considered by the Colonial Office, with the result that the Government came to the conclusion that it was desirable to limit the exclusive privileges granted to the erection of machinery for the expression of oil from the pericarp, and to strike out from the Bills the exclusive right of traction.

251. While the criticisms mentioned above were freely urged in the Legislative Councils, the native members objected more particularly on the ground that the Ordinance implies that the power to grant rights of this character was inherent in the Governor and not in the native authorities, or, at least, that the Governor should be apparently empowered to make such a grant irrespective—so far as the wording of the Ordinance might otherwise suggest—of the views of the native authorities. In the Sierra Leone Legislative Council Mr. Shorunkeh-Sawyer contended that—

Minutes of Sierra Leone Legislative Council, 21 Feb. 1913. "English law recognises that where property is to be granted, he who owns the property should be the grantor, and any person holding the position of protector should concur in the grant . . . The present clause would mean a gradual acquisition of ownership by the Government, which is, as I gather, not the intention of the Government. The moment we admit that as a fact they are the owners of everything above and beneath the soil, we concede that they should be the grantors of anything relating to rights in that soil."

*Ibid.*, 28 Feb. 1913. It was for the purpose of meeting these objections that the provisions noted in para. 246, making in effect the exercise of the grant by the Governor conditional upon the concurrence of the native authorities, were moved, and accepted by the Council.

These, and other amendments affecting the scope of the measure, satisfied the Legislative Council of Sierra Leone, and the Bill was read a third time without opposition at the sitting of 28th February 1913. They would not seem, however, to have sufficed to allay the apprehensions of the unofficial members of the Legislative Council of the Gold Coast. Those who are recorded as having been present voted against the third reading, which took place on the 4th July 1913.

252. It will be observed, from what precedes, that all parties concerned in objecting to the Ordinances concurred in the view that a grant of this kind is practically equivalent to giving an exclusive right to the fruit of oil-palms over the area affected, *i.e.*, over an area of 311 square miles. Mr. Smart, to whose evidence before us we shall presently refer, is of the same opinion. Mr. Grey, who, as senior unofficial member of the Gold Coast Legislative Council, urged the same point before that body, was equally insistent thereon in his evidence before us. The representatives of the Manchester Chamber of Commerce endorsed the opinions of the Chamber already

Grey, 5627.

Pickering and Walkden, 8688.

quoted. Mr. Cowan, a director of the trading firm of Miller Brothers, took a rather more favourable view of the grant of exclusive privileges for the erection of special machinery than the other merchant witnesses. But he declared that his views would change if such privileges were accompanied by an exclusive right to lay down mechanical traction. The representative of Messrs. Lever Bros., Ltd., hardly sought to contest the argument that a monopoly would ensue from the exercise of such a right.

Cowan,  
13,677-9.

Moseley,  
5284-5,  
5289-90.

As we have seen, this latter privilege does not now figure in the Ordinance, the Government proposing to grant Messrs. Lever a licence to construct railways within the perimeter affected under the Proprietary Railways Ordinance.

Cd. 6561,  
Nos. 66 and  
68.

253. The contention that the Ordinance confers a virtual monopoly over the fruit of the oil-palm is not, strictly speaking, a correct view of the legal effect of the Ordinance. The Ordinance, as has been pointed out, expressly excludes the grant by way of lease or otherwise of any land, or the products of the soil of any land. No general control can be given under the Ordinance. In our opinion, however, there can be no doubt that the land within a radius of ten miles round the dominant factory or mill is burdened under the Ordinance with what would be called in English law a negative easement. No owner or occupier within that area may erect a factory or work machinery moved by mechanical power for the purpose of extracting or expressing oil from the pericarp of the fruit. The exclusion of all such machinery will in all probability tend to give the grantees the command of the produce within the area, and by preventing competition with other possible purchasers of the fruit serve to bring about a practical monopoly. The tendency will, of course, be more pronounced when the grantee is able to command mechanical traction, even under the conditions provided in the Proprietary Railways Ordinance.

#### *Dangers of Ordinances.*

254. Moreover, the large size of the area specified in the Ordinances would appear to constitute a grave danger. The palm oil belt in the Gold Coast is of considerable extent, being estimated to amount to about 3,000 square miles, but a very few areas of ten miles radius carefully placed would probably monopolise the whole; and under the Palm Oil Ordinance there would appear to be grave risk that in a very few years the whole of the palm oil industry would pass under the control of a close ring of allied companies, who would first destroy the competition of the merchants by offering the natives so large a price for the fruit that they would have no incentive to make oil themselves, and then, having destroyed all competition, would be in a position to make what terms they pleased with the natives. The same general considerations hold good in the case of Sierra Leone.

Smart, 9899.

255. Again, the native owners would be debarred from erecting any machinery themselves in any part of the area and, of course, from benefiting from any newer and better machinery which might be invented during the period of the grant. If any such improved machinery which the native owners of land were themselves capable of handling should be placed upon the market the district affected would be excluded from its use. The possibility of native inventions is not entirely to be dismissed, a native of the Gold Coast having invented a "small hand-machine" for palm-oil extraction which, if perfected, is stated by the Agricultural Department to be likely to "prove in every way suitable to native use."

Moreover, there would appear to be signs of a co-operative movement among the natives themselves and a growing appreciation on their part of the increased efficiency which such co-operation would bring with it from a point of view of the preservation of native interests. This co-operative movement, combined with increasing native wealth, makes it at least probable that the time is not far distant when some natives will be in a position to purchase machinery for the scientific treatment of tropical products, and it would not seem just that any legislation should be framed calculated to deprive them of the opportunity.

As to European machines of this kind, we were told by the representative of Messrs. Lever that "there are several in the market." Similar evidence was forthcoming from the representatives of the Manchester Chamber of Commerce.

Moseley,  
5172.  
Picketing  
and Walk-  
den, 8717.  
*vide also*  
Cd. 6561,  
No. 38.

256. It is true that the grant of exclusive rights under the Ordinance is confined to the erection of machinery for expressing the oil from the pericarp. It should be remembered, however, that possession of the fruit *entire* is indispensable to that

process. Possession of the fruit *entire* necessarily involves possession of the nuts. The grantees are not precluded from erecting machinery to deal with the nut and to express the oil from the kernel, although their exclusive privileges do not extend to such machinery. The value of the palm-kernels, now for the most part shipped home in bulk to Europe, is vastly greater than the value of the oil similarly exported, and the natural tendency of a grantor under the Palm-Oil Ordinance would be to combine the depericarping process with the crushing of the kernel, and thus capture the entire raw material of the industry. That grantees under the Palm-Oil Ordinance contemplate even wider powers and privileges than they possess at present under the Ordinance was virtually admitted by the representative of Messrs. Lever.

Moseley,  
5074.

"5074. (*Mr. Wedgwood.*) You want exclusive rights over and above the exclusive right to erect mills or to make railways?—(*Witness.*) Yes, I suppose it comes to that."

#### COMBINED CONCESSIONS FOR CULTIVATION, PLANTING, AND MECHANICAL TREATMENT.

257. A policy of direct European exploitation of the oil-palm which would combine the cultivation, planting, and gathering of the fruit and its treatment by machinery, and would involve dividing the oil-palm bearing areas of the Gold Coast among a selected number of European concessionaires, was recommended by Mr. Smart.

#### *Proposals of Mr. Smart, and Objections thereto.*

Smart, 9716.

258. Mr. Smart has carried on a large business in London for about twelve years, with the object of obtaining and negotiating for clients concessions of land, establishing "factories" for the purchase and manipulation of produce in foreign countries and British colonies, and has paid several visits to West Africa, the last in 1912, when he gave special attention to the Gold Coast. In Mr. Smart's opinion the leases which have been recently granted, referring apparently to the concessions to the Apol Company, are so situated that they monopolise about four times the area they actually require. He contends that the "surrounding areas are so sub-divided that there are none of them large enough or good enough for anyone else to take up." Mr. Smart's suggestion is—

Smart, 9718.

"That the whole oil palm belt of the Gold Coast Colony be divided up, by an independent expert, into areas of equal, or predetermined relative commercial value or potentiality, and that not till this has been done should any firm be granted any area under the new Palm Oil Ordinance. It is not necessary to allot all the areas now or at any future time. The unit should not be area, but commercial value, and no grant should be made which spoils, or virtually monopolises, a much larger area."

259. Mr. Smart in substance advocates the suspension of all further concessions of palm-bearing land until the whole of the palm-bearing area of the colony has been marked out into appropriate areas of sufficient size and value to justify the erection of proper machinery for treating the fruit, whether wild or cultivated, produced thereon. Applicants would then have to select from amongst these areas, and some might be reserved for the Government itself to work. This scheme appears to assume that the Government is entitled to partition the land of the Gold Coast as it pleases. We do not think that the situation can be dealt with in the manner recommended by Mr. Smart. His proposal appears to us to be quite impracticable; even if it were not open to the fatal objection of disregarding altogether the customary rights of the native population and their chiefs.

#### *Importance of Cultivation of Oil Palm.*

260. Mr. Smart gave some interesting and important evidence as to the need of *cultivating* the oil palm both in its wild state and in plantations if the supply of the oil is to attain anything like the full development of which it is capable. He dwelt on the necessity of thinning the palm trees before they get too old, and gave figures to show the enormous increase of produce which might, in his opinion, be obtained by the proper treatment of the oil palm and keeping the trees free from bush.

He especially laid stress on the excellent results obtained by a well-known chief who is also a member of the Legislative Council of the Gold Coast, the Konor Mate Kole in Eastern Krobo. He and his father before him had been planting and cultivating oil palm trees for many years, and Mr. Smart estimates the yield of fruit obtained by him and his people as at least three tons per acre, whereas in the ordinary wild untended forest it probably averages only two or three hundredweights per acre. He illustrated his views by a series of very interesting photographs showing the difference between trees properly tended and grown and the trees left simply in their natural state.

Smart,  
9655-6.

261. Mr. Smart also dwelt on the importance, from the point of view of developing the trade in palm oil, of adopting better methods than those practised by the natives of extracting the oil from the pericarp and kernels of the fruit. He thought that, in order to justify the establishment of modern machinery for extracting the oil, a regular supply of at least 10,000 tons of fruit per annum would be required for each factory. Smart, 9677.

He considers that the quantity required cannot be obtained from the wild palm, and that what is necessary is to encourage the plantation system rather than rely on the supply of wild fruit. He objects to the ordinance of 1912 and to the Palm-Oil Ordinance on the ground that both these Ordinances appear to contemplate dealing only with the wild fruit and to ignore what he considers the much more important method of plantations of young oil palms. Smart, 9677. Smart, 9691.

262. On the other hand, Mr. Smart makes the interesting statement that, in point of fact, the areas in the Gold Coast which are now producing palm-oil for export are cultivated. The exploited oil palm he declares has become "practically a plantation produce." This, if accurate, would suggest that the natives already bestow a much greater amount of attention upon clearing the undergrowth and pruning the trees than is usually attributed to them. In this respect Mr. Thompson, speaking of Southern Nigeria, corroborates Mr. Smart. Mr. Smart's principal contention is, however, that considerable areas of oil-palm bearing land are not now utilised by the natives in the Gold Coast. Smart, 9760-4. Quoted in Morel's memo., *infra*, p. 160.

Mr. Smart thinks that a longer period than twenty-one years, specified in the Palm-Oil Ordinance, should be secured to the lessee as the oil palm, if raised from seed, takes about eighteen years to come to maturity. But authorities differ as to the maturity period, which appears to be largely a matter of soil, atmospheric conditions, and variety. An exhaustive Report<sup>(1)</sup> prepared by the Conservator of Forests in Southern Nigeria states that the tree is in full bearing at the age of twelve years, and begins to bear at the age of six or seven years, or in exceptionally favourable circumstances at the age of four years.

263. In so far as Mr. Smart's observations are concerned with the importance of encouraging the cultivation of the oil palm tree we think that they are deserving of careful consideration. He would favour grants of smaller areas than those which have been recently granted, and evidently considers that the careful cultivation of these areas is far more important for the future of the palm-oil industry than the concession of extensive rights of collecting the fruit of the wild palm.

The results arrived at in the Krobo country, to which Mr. Smart has called our attention, show that under an enlightened and progressive chief and with an industrious population some of the best results hitherto reached can be obtained.

#### GENERAL CONCLUSIONS.

264. The general position may now be summarised so far as the export trade in the fruit of the oil-palm from the British colonies and dependencies in West Africa is affected.

The new forms of enterprise which have recently made their appearance are inspired by the European interest engaged in the process of refining the raw material. That interest seeks to obtain a privileged position in the colonies and dependencies with two main objects in view. These objects are (a) the acquisition of the raw material at the place of production and consequently at less cost; (b) the extracting of the oil by machinery on the spot in order to secure a larger yield and, while it is fresh, in order to conserve certain chemical properties which are lost or diminished during the process of native preparation and owing to the exposure and delay which intervene between the gathering of the fruit in West Africa and its delivery in Europe. We are only concerned with the economic causes which have led to these new forms of enterprise in so far as their prosecution may affect the interests of the native population in their occupation, use and enjoyment of the land and its resources. The methods whereby it is hoped to bring about the results stated above have been successively examined.

265. That the oil-palm industry should be encouraged in every way possible by the Governments of the various colonies and dependencies, and that the necessary facilities should be granted to European companies and individuals who may desire to erect machinery for improving the preparation and treatment of the product appears to us not to admit of question. It is important in the interests of the native population, and of the trade and revenues of the colonies and dependencies. Some witnesses have argued that native methods are wasteful. It is obvious that suitable machinery for the purpose of treating the oil of the pericarp must give results superior to those

(1) "The Oil Palm and its Varieties," p. 20.

• which manual labour can produce. It is also true, no doubt, that a certain amount of palm kernels are not utilised, but as the machinery for the introduction of which special advantages of one kind or another are sought is primarily designed for the extraction of the oil from the pericarp, the argument based upon a wastage of the kernels is hardly relevant. Machinery has been introduced for the cracking of palm nuts and for the crushing of the kernel without recourse to special privileges. No concrete case has been made out before us to the effect that the introduction of machinery for expressing the oil from the pericarp is dependent upon the grant of exclusive privileges. Several witnesses have argued strongly in the opposite direction. One witness assured us that his firm had erected machinery of the kind in a neighbouring colony without any monopolistic rights.

Moseley,  
5011.  
No. 25 in  
Cd. 6561.  
Grey,  
5623-5.  
Pickering  
and Walk-  
den, 8685-7  
and 8717.  
Batty, 8608.  
*See also*  
No. 38 in  
Cd. 6561.

Grey, 5635.  
Smart, 9725.  
Crowther,  
10,443.  
*See Reports*  
of Agr.  
Dept., 1908-  
12. *See also*  
Morel's  
Memo.,  
p. 162, *infra*.

266. Again, the cutting down of palm trees for wine or to make room for cocoa is stated by some witnesses to have been excessive in certain districts of the Gold Coast. Mr. Crowther, however, through whose office all the reports from the Agricultural Department and from native inspectors pass, does not consider that the practice has gone on to a very serious extent. This is primarily an administrative matter and has been referred to by witnesses from Southern Nigeria. General allegations of "wastage" under the present conditions of the industry should not, we think, be taken too seriously when it is borne in mind that the value of palm-oil and kernels exported from British West Africa in 1912 amounted to over five and a half million sterling.

267. After giving very careful consideration to the matter we are unable to view the system of concessions of oil-palm bearing lands of the "Apol" type which the legislation of the Gold Coast alone permits, or the system set up under the Palm-Oil Ordinance, otherwise than with grave apprehension.

So far as the concession system is concerned it is clear from the Secretary of State's despatch of 5th April 1913 (referred to in para. 234 above) that he views that system with anxiety, and we desire to associate ourselves with the warning which that despatch conveys and with the action which the Governor took on its receipt. We cannot share the optimistic view that the danger of this growing practice is more apparent than real and that the native population is well able to take care of itself. We do not think that the natives are able to appreciate the consequences involved in the action of their chiefs in parting with rights over a natural product which is of such immense value to the mass of the population. Indeed it may be doubted whether in many cases the mass of the population is in a position to be fully informed of what is taking place when the bargain is concluded. It seems to us that the eagerness with which large concessions of palm-bearing land have been sought during the last few years, even since amending legislation in favour of a greater protection of native rights, furnishes a sufficient answer to the suggestion that the privileges thus acquired are nominal rather than practical. We consider the failure of legislation to provide any efficient check upon the control which individuals and associations have been able to obtain over extensive areas of such land in the Gold Coast to be fraught with real peril to native interests and to good government. Neither in Sierra Leone, nor in Southern Nigeria, is this concession system tolerated by the local administrations; experienced officials have spoken to us strongly against it, and we cannot believe that either the welfare of the natives or public interests in general can be served by its continuance. The danger of the system appears to us to have a treble character, (a) to involve the dispossession of the natives for one year short of a century from the use of land which must become increasingly valuable to them with the growth in their numbers, and from the enjoyment of customary rights resulting from its possession; (b) to alter completely and detrimentally the position of the natives by substituting for a system carried out by free proprietors working their own soil under their own labour and social customs, an exploitation through hired labour, whether local or imported; (c) to tend in the direction of restricting the natives in the use of the palm tree and its fruits for domestic and internal trading purposes.

268. The policy embodied in the Palm-Oil Ordinance, although not constituting, in our opinion, a danger of so direct a kind, appears to us objectionable on much the same grounds and for the reasons already stated.

It should, we think, be recalled that the various parties engaged in the endeavour to obtain the raw material at its source of production by securing oil-palm bearing lands on leases of a duration so lengthy as virtually to amount to a freehold,

African  
No. 1048,  
p. 48.

Maxwell,  
15,340  
Thompson,  
6997-8.  
Dennett,  
11,522-3.  
Bedwell,  
4062-74.

or by establishing special rights over oil palm bearing areas, are united by the ties of a common economic interest. We do not suggest that this interest is other than perfectly legitimate. But, the circumstances being what they are, the influence that interest will inevitably strive to exert must lie in the direction of the eventual establishment of a state of affairs which would confine the native to one market for his produce: The upshot would be to withdraw from the natives the advantages which competition brings to them and to destroy that free commercial traffic in the produce of the oil palm under which the industry has attained its present large proportions, with every prospect of increasing still further.

Smart,  
9742-3,  
9832-5.

269. The true policy would seem to be that of encouraging the natives to expand this important native industry by providing them with such technical assistance and instruction as is possible in cultivation, planting, selection and preparation; by increasing the facilities of public transport where needed and allowing free competition in the introduction of various forms of machinery both for treating the oil of the pericarp, cracking the nut, and crushing the kernel. If, as is probable, the native method of preparing the oil will, in course of time, be superseded by mechanical processes, the change should come about by ordinary economic processes and under conditions which would not inflict injustice and unnecessary hardship upon the various interests now concerned in an industry which, however open to improvement it may be, is to-day the premier export industry of British West Africa.

270. These considerations lead us to conclude that concessions of the "Apol" type should be altogether discontinued, and that the Palm-Oil Ordinances of Sierra Leone and the Gold Coast should be repealed and that no similar legislation should be enacted hereafter. The collection of the fruits of existing oil-palm forests by Europeans with hired labour is not a process, we think, which would prove in the long run a wise one even from the purely commercial point of view, owing to the admitted difficulties of obtaining this kind of labour and to the marked preference shown by the natives to work on their own account.

In our opinion this practice should not be permitted in Southern Nigeria or Sierra Leone, countries where the activities of the native population are already so largely engaged in the industry. The conditions in the Gold Coast and Ashanti are different, and there may be circumstances under which rights to collect the produce in question may properly be conceded.

271. Thus in areas where, owing to the scantiness of the native population or for other causes, it can be satisfactorily established that the fruits cannot be collected by the natives, licences for a comparatively short period might be granted by the tribal authorities with the approval of the Forest Department.

272. Again we recognise that in these last-named dependencies special circumstances may exist in which it may be advisable to accede to applications for leases of land for the cultivation of oil palms, and in such a case care should, of course, be taken to provide for compensation for oil-palm trees within the area owned by individual natives. It does not appear to us, however, that such leases should be granted where the oil palms are actually exploited by the natives.

The main purpose of these grants should be the encouragement of the cultivation of the palm, and the rights of the grantees to collect the wild fruit should be incidental to this cultivation. The covenants in the grant should include the obligation to improve the wild areas by thinning, cleaning, &c., and the grant should be liable to forfeiture for breach of any of these covenants. The area over which the rights of collecting the wild produce would be granted would be determined by the circumstances of each case and the probable capacity of the grantees to work it effectively. This would have to be considered by the proper executive official in each case. The working of these grants should be periodically reported on by the Agricultural Department. The maximum area and duration of such grants should be the same as that of other grants for the purpose of planting and cultivation.

## FORESTRY.

273. A considerable number of the provisions of the Forestry Ordinances in the various dependencies are, strictly speaking, outside the terms of reference, but the Committee understand that an expression of their views will be welcome on the provisions of the Ordinances generally.

In our treatment we propose to deal with Southern Nigeria first, as forest administration is more advanced there than in the other dependencies.

## I.

## Southern Nigeria.

## FORESTRY ORDINANCE.

*Principal Provisions.*

The Forestry Ordinance is framed on the lines of the legislation in force in Burma, where forest administration has been attended with signal success. The main principle of the legislation is thus stated by Mr. Thompson in his valuable Report on Forests in the Gold Coast [Cd. 4993], p. 113. There he says that it seems to him that—

“An arrangement by which Government reserves to itself, in the principal enactment, the right to interfere in matters of forest policy and administration whenever it is absolutely necessary to do so, yet at the same time allows considerable freedom on the part of the chiefs and native communities to carry out the necessary measures in their own way, is well suited to the requirements of our West African colonies.

“The forest laws of old Southern Nigeria were based on this conception of the extent to which the suzerain power should interfere in matters of forest administration in that Protectorate. In these laws, as will be seen presently, native rights and customs were adequately safeguarded, and the principle was recognised all through that the chiefs and communities were entitled to a share of the taxes levied on, and other profits accruing from the exploitation of, forest produce.”

Cd. 4993,  
p. 109.

The main objects for which forests are required Mr. Thompson states as follows :—

“1. As means for protecting and favourably altering the climatic factors.

“2. For a constant and sustained yield of forest produce especially with a view to satisfying future increased demands.

“3. For supplying wooded areas suitable for the exercise on them of those methods of practising agriculture now in vogue amongst the natives.”

Cd. 4993,  
p. 157.

274. With regard to forest reserves (which are, as Mr. Thompson defines them, “permanent estates from which the demands for forest produce will have to be met in the future,”) he says :—

“The keystone of all forest conservancy is *reservation*. Unless the paramount Government can ensure the thorough and legal protection afforded by reservation to estates that are meant to be managed as forests, real conservancy is out of the question, and the forests as such will gradually disappear off the face of the land. Reservation being ensured, the forests should be managed with a view to supplying a *sustained* and increasing yield of produce both for local requirements and for the home markets.”

The primary object of the Forestry Ordinance was the formation of forest reserves and their regulation, but subsidiary to this, all “native lands” (*i.e.*, all waste, forest and other lands at the disposal of a native community and not being the private property of any individual) are, subject to the possible exceptions in the old Western Province, brought under the regulations of the Forest Department. As, according to the evidence, no difficulties have been met with in the gradual formation of the forest reserves, we do not propose to pursue this subject further, but an explanation of the regulations which are applied to native lands is necessary, more especially in view of the proposals which we make in relation to the Gold Coast.

*Timber Licences.*

275. In the place of a timber concession which in form, at any rate in the Gold Coast, involves a demise of the land itself for a term which may extend to ninety-nine years, a timber merchant desirous of cutting timber for export must obtain a timber licence which in normal cases would be for a term of five years with a liberty of renewal for further periods of two years. Provision is, however, made to enable the Governor to extend the term in cases where the licensee expends capital on the construction of tramways, mono-rails, or other work.

The procedure for obtaining a licence is laid down in the rules. No licence is to be granted except with the consent of the Governor. To obtain this consent, an applicant forwards to the Provincial Forest Officer particulars of his application. That officer forwards it to the Provincial Commissioner with his reasons for “recommending that the licence be granted to the applicant in preference to the others.” The Provincial Commissioner in his turn sends the application to the Conservator of Forests, “with the political reasons, if any, why the licence should not be granted,” and it ultimately reaches the Governor through the Colonial Secretary.

If the Governor decides to approve the grant of a licence provisionally—

“He shall direct the Provincial Commissioner to inquire into and advise as to the title of the proposed grantors and of any other persons claiming to have, or, in the opinion of the Provincial Commissioner, having, a right to grant or oppose the grant of a licence, and to grant or refuse the licence accordingly, subject to an appeal to the Governor.”

In case there is any doubt as to the title of the grantors, the matter is referred to the Attorney-General for his report.

276. The licence, which must have a properly verified plan endorsed upon it, is settled by the Provincial Forest Officer and the grantee, and it must “be read over, interpreted if necessary, and explained in the presence of a Commissioner,” and executed by the parties in his presence. The licence grants the sole and exclusive right to take the trees named therein, and is not to confer any exclusive right to the use of roads, waterways, and river frontages within the area over which the licence is granted.

The only provision with regard to area is that no licence for an area exceeding 100 square miles shall be granted without the consent of the Secretary of State.

With regard to the fees collected for timber a portion forms part of the general revenue of the Colony and another portion is distributed among the grantors of the licence.

#### *Rubber Licences.*

277. Rubber can only be collected under a licence from the Forest Department, and before such a licence can be granted to an applicant, a proposing licensee must show a competent knowledge of the proper method of tapping trees and preparing rubber. The licence granted is a purely personal one and does not give exclusive right to collect over any particular area. From this it would seem to follow that no concession can be granted enabling a European concessionaire to obtain an exclusive right to collect wild rubber through natives, and we would express our agreement with this policy.

#### *Application of Ordinance to Western Province.*

278. With regard to the Western Province, there is an express provision in section 21 of the Ordinance that no rule or order is to come into force in any district or province to which the Native Councils Ordinance (an Ordinance, as we have seen, applicable only to the Western Province) applies,<sup>(1)</sup> unless the same shall have been approved by the Native Council duly constituted in accordance with the provisions of such Ordinance for the district or province affected thereby.

It appears that the present regulations have been brought into force, with the approval of the native Councils concerned, in the whole of the Province except Egbaland, Ijebu Ode, Ilesha, Ondo and Badagry, but the Forest Department, being desirous of establishing a uniform and efficient system of forest administration throughout the whole Dependency, is dissatisfied with the section in question, and desires its repeal—a recommendation in which we concur.

## II.

### Gold Coast.

#### THE COLONY AND ASHANTI.

#### *Report of Mr. H. N. Thompson.*

279. In 1908 Mr. H. N. Thompson, Chief Conservator of Forests in Southern Nigeria, was deputed to visit the Gold Coast, in order to furnish the Executive with “professional advice as to the best means of regulating the haphazard methods “of exploiting the mahogany forests” in vogue in the Gold Coast and Ashanti. After an extended tour Mr. Thompson came to the conclusion that a process of indiscriminate destruction of the forests was taking place in many districts. This process of destruction is due partly to the excessive felling of timber, especially in mining areas, and even more to the native practice of shifting cultivation. Besides wasting valuable sources of potential revenue, the present unrestricted

<sup>(1)</sup> This Ordinance has only been repealed so far as it relates to the administration of justice (see para. 78).

destruction of the forests threatens the future of the country and people with considerable dangers, not the least among them being the disastrous effect (partially in operation already) upon tropical agriculture produced from a diminished water supply and from the disappearance of moist climatic conditions, consequent upon forest destruction.

Mr. Thompson's Report, which constitutes an able and exhaustive treatise upon the subject by an expert of acknowledged reputation, and enters fully into every aspect of the problem, has been published as a Parliamentary paper [Cd. 4993].

280. Some of the more important passages from the Report will be found in the notes of Mr. Thompson's oral evidence before the Committee, and, in view of the great importance of the subject, it may be desirable to quote *in extenso* here a few of the paragraphs describing the damage which is being done by the present indiscriminate destruction of the forests.

Speaking of the result of shifting cultivation, more particularly in the Aburi district, Mr. Thompson says :—

“ Under existing agricultural practice there is nothing whatever to stop the gradual spread of the arid country into the very heart of the forest region, and that is what will undoubtedly take place unless efficient barriers against its spread are created. Such barriers are even now available, provided that the forests occupying the hill ranges which border the arid plains are strictly protected against farming and against forest fires.”

And again a little lower down :—

“ As matters now stand, there is every indication that the cocoa plantations on the hills facing the plain are doomed to destruction at an early date. The vegetation here is already altering in character, from the evergreen to the deciduous type, and the change is so pronounced that the Acting Director of Agriculture estimates the life of a cocoa tree at not more than six or seven years in this locality. What is more important, however, is the fact that the damage is not likely to end here. The process of substitution will progress till the very heart of the forest country is involved. Such changes will jeopardise the palm-oil industry as well as bring about a general reduction in the fertility of the soil.”

And again further on, in connection with the subject of shifting cultivation generally :—

“ This problem of how to cope with and restrict the enormous (comparatively speaking) extent of country that is being continuously brought under the treatment of *shifting* cultivation is one of the most difficult ones that we have to face. Given sufficient time and a corresponding increase of population (which latter may be confidently expected under British rule), there is not the slightest doubt that slowly, but surely, the climatic factors will be altered for the worse. When a marked change has been effected and the grasses have obtained the upper hand xerophilous conditions established, and the annual fires, characteristic of such regions, are in full sway, then good-bye to all those vegetable products the cultivation of which is so dependent on the heavy rainfall and conditions of growth usually associated with the luxuriant vegetation of the moist tropics.”

281. Speaking of the result of mining operations, he says :—

“ I understand that the mining leases in most instances carry with them the right to all timber growing on the land, and it is a moot point as to what amount of control, if any, Government can exercise over the fellings on such property. There is one point, however, in this connection that is universally recognised and acted upon in all European countries, and that is the right of the State to control any acts that by excessive or improper exploitation of the forests or by their destruction imperil the climatic factors of the country, or, as in the cases of avalanches and landslips, the life and property of the inhabitants. To this extent, then, I imagine Government could interfere, should occasion arise, with the exploitation of the forests growing on areas leased to the mining companies.”

282. Comparing the damage done to the forests by farming and by over-exploitation, Mr. Thompson says in a very important passage :—

“ As regards the protection of the forests themselves, the main dangers to guard against are, first, the depletion of the forests from over-exploitation; and secondly, their destruction by the natives for farming purposes. The former can be met by fixing a minimum girth for the more important species that are being exploited for trade purposes, and the latter by selecting and taking up as Forest Reserves the richest areas and protecting them strictly against all fellings except such as are made under the technical supervision and management of a properly constituted Forest Department. On no account, except under the strictest professional supervision, should farming be allowed on such areas, nor should farming, as a right, be admitted in the Reserves. The damage done to the forests by farming is far greater than that due to over-exploitation, because the latter is limited to certain species only, whilst the former makes a clean sweep of everything, and these clearings are then very often re-occupied by species (that happen to thus get a favourable start in the struggle for existence) other than those that formerly occupied the area. The character of the ‘secondary’ forest that springs up is thus very often different from that which previously occupied the land; moreover, the proportionate numbers of the various species are frequently altered as the result of such clearings, and the alterations are in general more favourable to those species that do not at present happen to be of any economic value to man.”

Thompson,  
6482  
(p. 11 of Report).

Thompson,  
6482  
(p. 11 of Report).

Thompson,  
6492  
(p. 32 of Report).  
Cf. 6513.

Thompson,  
6490  
(p. 30 of Report).

Thompson,  
6506  
(p. 53 of Report).  
Cf. 6517.

283. As regards the value of the forests in Ashanti, it may be desirable to quote the following passage:—

“The potential forest wealth of Southern and Western Ashanti is enormous, and its value must increase rapidly from year to year as the supply of American mahogany and cedars diminishes. The exhaustion of the American sources of supply is, from over-exploitation, likely to be realised in the very near future, and of late the annual imports to Europe and America of African woods have already exceeded the total output of that from Central America and Cuba. The forests of Ashanti are so valuable that a special effort should be made to protect the richest of them and bring them under organised control; they are well worth any expenditure likely to be incurred for this purpose.”

Thompson,  
6500  
(p. 51 of Re-  
port).

The conclusion of the Report is to recommend the creation of forest reserves and the elaboration of rules based upon those which have been applied with much success and profit to the native communities under the direction of the Forestry Department in Southern Nigeria, but making certain modifications suggested by the differing conditions.

#### *History of Forest Ordinance.*

284. A Forest Bill was drafted to carry out the recommendations contained in Mr. Thompson's Report, was read a first time on the 29th October 1910, and was published in the Gold Coast Government Gazette of the 16th November 1910. This Bill, which was a reproduction of the Southern Nigeria Forestry Ordinance with the amendments suggested by Mr. Thompson, was received with disapproval, and was withdrawn on the 13th May 1911, a fresh Bill being read a first time on the same day and published in the Government Gazette of the 20th May 1911. The second Bill was, with very few verbal and minor alterations, drafted by Sir William Brandford Griffith, the then Chief Justice of the Colony. On the 13th September 1911 the Bill was down for second reading, but before the order was reached Messrs. Caseley Hayford, E. P. Brown, and Charles Bannerman were heard in opposition to it on behalf of certain persons who had petitioned the Legislative Council against it. The motion for the second reading was not then taken, but on the 9th November it was moved by the Attorney-General, who explained that a number of amendments to the Bill would be moved in Committee, amendments as to which the senior unofficial member of Council had been consulted. The second reading was supported by Mr. Hutton Mills, Mr. Grey, and Konor Mate Koie, the unofficial members of Council present (Mr. Giles Hunt being absent in Europe), and was carried unanimously. The Council then resolved itself into Committee, made a number of amendments, and the Bill was read a third time. It received the Governor's assent, but has not been brought into force.

#### *Sir H. Belfield's suggested Amendments.*

285. The Ordinance was the subject of careful consideration on the part of Sir H. Belfield. He received a body of chiefs and their elders and representatives of the local Aborigines Rights Protection Society at Cape Coast on the 4th March 1912, and subsequently took the evidence of eleven gentlemen whose views were opposed to the measure. Part IV. of Sir H. Belfield's Report<sup>2</sup> is devoted to the Forest Ordinance, and the conclusion at which he arrived is set out in paragraph 156 of his report as follows:—

“While, however, the law should be enacted upon lines which will empower the Government to effect the conservation of forest lands by rules and methods similar to those which are being successfully employed elsewhere, it is necessary that regard should be paid to the extreme jealousy with which the natives will view any provision which will bear the construction of interference with their ancestral rights. The Bill, as at present prepared, should, therefore, be so altered that its scope may be limited to the selection, demarcation, constitution, and maintenance of reserves, and no terms should be incorporated which by expression or implication will confer upon the Government the power of dealing with reserved areas in a manner not essential to the formation of an effective system of conservancy.”

Sir H. Belfield then proceeded to suggest a number of amendments with a view to the removal of what he considered the objectionable features of the measure.

#### *Visit of Deputation to this Country.*

286. Subsequently, under the auspices of the Gold Coast Aborigines Rights Protection Society (which is distinct from the Gold Coast Branch of the Anti-Slavery and Aborigines Protection Society of London), a deputation, consisting of four

\* [Cd. 6278.]

educated African gentlemen connected with that Society and claiming to represent all the kings and chiefs of the Colony, came over to England to place their protests before the Secretary of State. They were received by Mr. Harcourt on June 28th, 1912, and subsequently appeared before the Committee and gave evidence.

Their chief objection to the Forest Ordinance was on account of the interference which it involved with the control by the natives of their own lands. They urged that the protection of the forests should be left to the native authorities under the instruction of the Forest Department, and contended that the matters should be dealt with by by-laws which the chiefs are specially empowered to pass under the Native Jurisdiction Ordinance (*see above*, para. 68).

#### *Necessity for an Ordinance.*

287. In our opinion there can be no doubt that in a matter so vital to the general interests of the country the State must have control, and it appears to us essential, therefore, that the main principles of forest administration should be laid down by the central government and that rules should be drawn up which can be generally enforced. It is very desirable that the native authorities should be encouraged in every way possible to co-operate in the work of the Forest Department (as is the case now in Southern Nigeria), especially by passing by-laws for the protection of the forests so long as such by-laws are not inconsistent with the rules laid down by Government.

We think, therefore, that a Forest Ordinance is necessary in the interests of the present and future population of the Gold Coast, and we propose to take the Ordinance as passed as the basis of our observations. We will deal with the provisions of the Ordinance in detail in Part III., and in the present part will confine ourselves to questions of principle.

#### *Supervision of Forest Areas by Government.*

288. Under the Bill proposed by Mr. Thompson, the Forest Department would have had some degree of control, not only over forest reserves, but, following the precedent of Southern Nigeria, also over all "native lands" within the Colony, but though the first Bill contained provisions to this effect these provisions do not appear in the Ordinance as passed, except in so far as subsection (6) of section 16 may have this effect.

Under this section, the Governor in Council is empowered to make rules which shall apply to such part of the Colony as the Governor in Council may declare with respect to, *inter alia*, (6) "taking, collection, and preparation of any forest produce." The intention of Mr. McLeod, Conservator of Forests in the Gold Coast, as to this is contained in paragraph 8 of his memorandum of the 2nd November 1912 (enclosed in Deputy-Governor's despatch of 25th November 1912), and is as follows:—

"With regard to the scope of the Ordinance, I am strongly of opinion that the interests of the people and of the country would not be best served if some measure of control of forests other than reserves were not placed in the hands of the Forest Department. Section 16 (6) of the Ordinance provides for this, and I would urge that this subsection be retained and such rules be made under it as would ensure the necessary amount of control."

289. The construction of this subsection does not appear to us to be by any means clear, and we consider that the Ordinance should confer in clear language a power of regulation and supervisory control over the exploitation of forest produce throughout such forest areas of the Colony as the Governor may consider desirable, irrespective of whether such areas are constituted forest reserves, with a view to the immediate regulation of the cutting and transport of timber and of the tapping and preparation of rubber. The assumption of these powers, which are similar to those exercised with beneficial results in Southern Nigeria, is essential for the following reasons:—

It will do away with the practice, which we regard as detrimental to the public interest, under which concessions of forest areas, conveying monopolistic and proprietary rights over forest products, are granted to Europeans by native communities. It will replace this system by a system of short time renewable licences, granted by the native owners under the supervision of the Forest Department, who should act as the medium between the native owner and the would-be licensee. It will place the Forest Department in a position to control the actions of mining companies in dealing with the timber upon their concessions and enable the Department to devise regu-

lations in respect of the replanting of forest areas denuded by these companies and, in general, to take such steps as may be necessary to ensure a reasonable amount of reafforestation in the mining districts.

We propose that this should be effected by empowering the Governor to declare any forest land of the Colony to be an area "subject to supervision by the Forest Department," within which the taking and collection of forest produce shall only be permitted under such rules as may from time to time be made by the Governor in Council.

#### *Employment of Native Staff.*

290. In connection with the management of reserves by Government we would refer to paragraph 3 of Mr. McLeod's memorandum of the 2nd November 1912, and recommend its adoption. In that paragraph he says as follows:—

African No.  
1048, pp. 28-  
30.

"I would gladly approve of a clause being inserted in the Ordinance to the effect that the native staff considered necessary by the Conservator of Forests for adequate control and management of a reserve shall be nominated by the owners of the reserve from among men belonging to their community, on the understanding that such a staff be under the sole orders of the superior officers of the Forest Department; and in case the community fails to provide such a staff, either as regards number or efficiency, that the Conservator shall make up the deficiency from natives of other parts of the country. I believe such a clause would go far to conciliate the natives, as it should make them feel that they co-operated very materially with Government in the management of their own property."

The question of dealing with the products of the oil-palm has been considered elsewhere (*see paras. 264 et seq.*).

#### NORTHERN TERRITORIES.

291. An Ordinance similar to that passed in the Gold Coast was brought into force in Ashanti, but, with the exception of a provision in the Administration Ordinance conferring upon the Chief Commissioner certain powers with regard to forests, there is no special legislation on the subject in the Northern Territories.

#### III.

#### Sierra Leone.

292. The Forestry Ordinance of 1912 was drafted on the lines of that of Southern Nigeria. To quote Sir W. Napier's memorandum, it—

*Infra*, p.  
139.

"provides for the constitution of forest reserves and for the regulation of the cutting of timber and the collection of rubber and gum copal, not on native lands generally, but on what are termed 'restricted areas.'

"'Reserves' may be constituted by the Governor on any Crown lands in the Colony, and, at the request of a tribal authority, on any native lands upon which trees and forest produce or any kinds thereof are growing, or which are suitable for the production of trees and forest produce.

"With regard to 'restricted areas,' it is provided that the Governor may, by order to be published in the Gazette, constitute any Crown lands in the Colony, and, at the request of any tribal authority, any lands in the Protectorate to be restricted areas, within which the taking and collection of timber, rubber, and forest produce shall only be permitted under such rules as may be made by the Governor in Council. The distinction was thus put by the Acting Attorney-General when he introduced the Ordinance into the Legislative Council:—'It was proposed to define two different areas, one to be called a forest reserve, which would be exclusively reserved for the growth of timber, the other kind of area would be known as a restricted area. That was one in which no attempt would be made to interfere with the persons living thereon except that all trees of commercial value would be strictly safeguarded, and only on a licence would people be allowed to cut down such trees as gum, rubber, or other trees of commercial value.'

"Although there are some slight divergences between the two Ordinances and the two sets of rules, yet it is accurate enough for general purposes to say that what has been written as to Southern Nigeria applies also as to Sierra Leone, except that the words 'restricted areas' must be substituted for the words 'native lands.'"

We have had no evidence as to the working of this Ordinance.

#### IV.

#### Gambia.

293. The legislation with regard to the forests in this Dependency is contained in the rules to the Protectorate (Public Lands) Ordinance, 1896, to which we have already referred in paragraph 211. Dr. Hopkinson tells us that the forests are not extensive; he does "not think there are any trees of economic value within a reasonable distance of water transport. African mahogany is the only one."

Hopkinson,  
2796.

## THE COCOA INDUSTRY IN THE GOLD COAST AND IN ASHANTI.

*History and Progress of the Industry.*

294. The rise and growth of the cocoa industry in the Gold Coast and Ashanti has been remarkable. The industry is wholly a native one, carried on by native farmers with very satisfactory results. Attempts to cultivate cocoa on a small scale have been made by Europeans, but, owing to various causes which would seem inherent in West African labour conditions, hitherto without much success. The industry, it is said, was introduced in the early eighties by a native of Accra upon his return from employment upon a cocoa plantation in the Island of Fernando Po. In 1885 the first consignment of native-grown cocoa was exported from the Gold Coast to Europe. It weighed 121 lbs. and was valued at 6*l.* 1*s.* In 1895 the export had risen to 28,906 lbs. valued at 47*l.* In 1908 the Agricultural Department, in their Annual Report, under the heading "Introduced Products," stated that the most important of these is cocoa. The rapidity with which its cultivation has extended is most gratifying, and also indicative of its suitability for this Colony. The natives have taken kindly to the industry; plantations are being extended, and we may safely anticipate an increasing export for some years to come. A glance at the table of exports shows the marvellous rapidity with which the industry has developed. In that year the export was 28,545,910 lbs. and the value 540,821*l.* Last year (1913) the export was 113,239,980 lbs. and the value 2,484,218*l.* The Gold Coast is now easily ahead of all other cocoa-producing countries in the world. A table printed in the Appendix shows the rapid rise of the Gold Coast in the scale of cocoa-producing countries.

295. As may be supposed, lack of the necessary technical knowledge in the cultivation and preparation of this new product resulted in a poor quality being produced for the first few years. There is still room for improvement. But the efforts of the Agricultural Department, on the one part, and the initiative of Messrs. Cadbury Brothers, Limited (who have established buying centres in the country) in offering higher prices for the better prepared article have already produced notable effects in the desired direction. In his evidence before the Committee, Mr. William Cadbury stated that when, in 1908, his firm began to take an interest in Gold Coast cocoa only 5 per cent. of it was "good quality," while fifteen per cent. was "fair," and eighty per cent. "common." By 1912, owing to the adoption of the measures specified above, this proportion had been changed to thirty-five per cent. "good," fifty per cent. "fair," and fifteen per cent. "common." Speaking as a manufacturer, and from the standpoint of general economic interest, Mr. William Cadbury declared himself anxious that nothing should be done to "upset a system which has produced these returns."

Cadbury,  
10,596.

Cadbury,  
10,701.

*Permanent Cultivation under Native Land Tenure.*

296. Some witnesses have suggested that the systematic cultivation by the native of a crop having a commercial value for export purposes must of necessity transform the character of the native tenure *because* of its resultant effects in giving to land a value not realised so long as the economic use of land has been mainly confined to the object of raising food-stuffs for local consumption. The argument, as applied to the cocoa industry in the Gold Coast, postulates that the cultivation of crops of this character is incompatible with the preservation of the fundamental character of native tenure. The argument must be accepted with caution. It is not borne out by experience. The cultivation of crops for the export trade with Europe is not, in itself, a new feature in West African economics. Cotton has been cultivated for many years in the Western Province of Nigeria, where the cultivation of cocoa has also, in more recent times, been introduced. Both these industries are spreading, and have not sensibly affected native tenure. In part of the Central Province of the same Dependency, large numbers of rubber plantations have been created by the natives, with the encouragement of the authorities, some of which are managed by villages in common, others by individual villagers. The prosperity of the Gambia is wholly dependent upon the cultivation of the ground, or pea, nut, described by Sir George Denton (10,897) as "very hard . . . genuine" cultivation, and the native conception of tenure remains undisturbed. Dr. Hopkinson, a political officer with ten years' experience of that Dependency, assured us that, in his opinion, the people of the Gambia are the "most prosperous and luckiest in the world," "living under their own national system and customs, with a beneficent over-lord."

This view was generally confirmed by Sir George Denton, and by the Chief Magistrate of the Gambia, Mr. Hume. It is, therefore, inaccurate to contend that systematic cultivation of crops for export is necessarily inconsistent with the native system of tenure.

#### *Dangers attending the Cultivation of Cocoa.*

297. Notwithstanding, or perhaps in part, at all events, because of the rapid development of the cultivation of cocoa in Ashanti and the Gold Coast, the industry is not free from dangers, against which it is necessary to take precautions. The chief of these appears to be the danger of disease. In a recent debate in the Legislative Council upon the Oil Palm Ordinance, the Konor Mate Kole, who is probably the most experienced and most successful cultivator of cocoa in the Gold Coast, is reported to have said:—

“Cocoa was introduced into this Colony not so very long ago, but its cultivation has so spread that a large portion of the natives are growing it. In spite of the great assistance and instruction given by the Government, natives do not cultivate the cocoa properly, and I believe that in a few years' time it will all die away.

“The farms are not weeded and insect pests are not destroyed. . . . The Government must back the native rulers in enforcing the cocoa by-laws.”—*Minutes of Legislative Council, March 20, 1913.*

298. There is also the danger that unregulated cultivation of cocoa may injuriously affect the forest areas. Both the Agricultural Reports and Mr. Thompson, in his Report on the Gold Coast and in his evidence before us, chronicle the continuous invasion of forested areas by the native population in their zeal for cocoa cultivation, and the dangers in which this practice involves not only the forest resources of the Dependency, but the very industry itself. Reference is also made to a section of the Ashanti population starting plantations in grassland containing an insufficiency of moisture and of humus required for successful cultivation. These plantations become centres for the propagation of plant disease.

299. Further, several witnesses have accentuated the increasing shortage of food-stuffs, owing to the population formerly employed in raising them devoting themselves to the planting of cocoa. Mr. Crowther told us that the inhabitants of the cocoa districts are now living “almost entirely on tinned foods.” The Agricultural Department's Reports contain numerous allusions to the same phenomenon.

Crowther,  
10,451.

For these and other reasons it seems desirable that the industry should continue to be carefully supervised by the Agricultural Department in co-operation with the Forest Department. The former Department should be empowered to make regulations for the prevention of disease whilst, as we have already seen, one of the chief functions of the Forest Department is the preservation and protection of forest areas.

#### *Influence of Cultivation of Cocoa on Land Tenure.*

300. The cultivation of a permanent crop of considerable economic value by the natives of the Gold Coast and Ashanti has naturally introduced a new element into the life of the people of those countries; and it raises complex issues which closely concern the tenure and use of land.

It has now to be considered whether the cocoa industry in the Gold Coast and Ashanti has had or is likely to have solvent effects upon the essential characteristics of native tenure: if so, what are the results which have ensued or may ensue and what measures, if any, should be adopted to deal with those results, or to anticipate them. We will deal with Ashanti first.

#### *The Situation in Ashanti.*

301. The population of Ashanti is returned as 287,814 (compared with 853,761 in the Gold Coast). The Census Return is accompanied by the statement that the figures are an under-estimate. The Chief Commissioner of Ashanti, Mr. Fuller, declares that the population is greatly on the increase. It should be pointed out that in Ashanti the action of the Courts has been much restricted. The influence of the Executive has remained supreme in all branches of the Administration and the efforts of the Political Officers ever since the conquest and annexation of that country would seem to have been directed at consolidating the power of the chiefs and supervising the Native Courts, governing the country through them and protecting the structure of native society. The fact has an important bearing upon the subject

Evidence  
before Sir  
H. Belfield.  
Cd. 6278,  
p. 88.

under consideration. No information has been put before us which suggests that the development of the cocoa industry in Ashanti has modified the native conception of tenure. In Ashanti the native authorities do not exact from their subjects any recurrent tribute for the use of land. But immigrants from other communities to whom land is allotted usually pay one-third of the value of their crops. This was exacted in the case of cocoa, but, upon the initiative of the Chief Commissioner in consultation with the chiefs, the proportion was reduced to one-tenth. It is in regard to this class of immigrant cultivators that the question of security of tenure has arisen and the Executive has found it necessary to intervene on their behalf. This intervention has not, apparently, resulted in friction, and the chiefs have willingly agreed that the stranger-farmer shall be immune from disturbance and shall enjoy the same perpetuity of tenure as the indigenous cultivator, provided the agreed-upon proportion of the crop is regularly paid to the native authorities. The evidence of both Mr. Fuller and Mr. Philbrick, the Acting Chief Commissioner, is clear that this exercise of Executive influence and authority in favour of the stranger-farmer has in no way affected the tenure of the land. Ownership still remains vested in the community, and Mr. Fuller emphatically asserted that the increased security thus acquired for such immigrant cultivators was not regarded as conferring upon them, nor did in fact confer upon them, any power to dispose of the land so used or any privilege, in short, other than that of the indigenous cultivator who, by virtue of native custom, enjoys perpetuity of tenure. Mr. Fuller added that any attempt at sale would not be encouraged by the Executive.

Fuller, 4753;  
see also  
evidence before  
Sir H.  
Belfield; C.I.  
6278, pp. 87-  
8; Philbrick  
African No.  
1048, p. 14.

Fuller, 4782.

302. In his evidence, Mr. Fuller also stated that a certain unformulated sense of insecurity of tenure did exist "mainly among the Christian converts." He knew of no case where a planter had been turned out of his holding and his enterprise brought to nought. But he thought there was danger of such cases arising. Mr. Fuller's evidence appears to show that the advent of a permanent form of cultivation has brought no basic change in native tenure. As is but natural, the cultivation of a product requiring several years of labour and attention to mature and yielding handsome results, has intensified the interest of the cultivator in his holding and must increasingly do so. But individual ownership in the European sense of the term is "non-existent" in Ashanti. Secondly, the Ashanti Administration does not favour such a development. The following excerpts from Mr. Fuller's evidence allow of no doubt on the subject.

Fuller, 4752  
-60.

"4752. (*Chairman.*) Could they sell it (the land)?"

"(*Mr. Strachey.*) That is the test?"

"(*Witness.*) No. Of course they could not.

"4753. (*Mr. Morel.*) They could not?—No, and they would not be supported by the Executive in any attempt to sell it.

"4754. (*Sir Walter Napier.*) Or by the Courts?—Or by the Courts.

"4755. (*Mr. Morel.*) Individual ownership of land is, as a matter of fact, still non-existent in Ashanti?—Yes.

"4756. (*Chairman.*) Does it not depend upon what you mean by ownership? I suppose they have individual ownership in the sense that as long as they are there they can keep anybody else out of the land?—Yes.

"4757. (*Chairman.*) But if they cannot sell it or mortgage it it is something very different from what we consider private ownership?—I daresay that a good many enterprising Ashantis (and it is the enterprising man after all who has, as a rule, most individuality), having planted cocoa and having cocoa plantations which are a great success, do not want to give them up. If the community want to turn them out they would probably say: 'Certainly not, this is our land.' And there would be trouble. From that point of view private ownership exists.

"4758. (*Mr. Morel.*) They have fixity of tenure subject to carrying out such obligations as they may have towards the State?—Yes.

"4759. But the land, as a matter of fact, is not owned by them, and they cannot dispose of it?—Certainly not.

"4760. Is it desirable that they should?—No."

African No.  
1048, p. 14  
et seq.

The Acting Chief Commissioner of Ashanti, the Acting Provincial Commissioner for the Western Province of Ashanti, and the Provincial Commissioner for Southern Ashanti, all agree that private ownership of land in the European sense of the term does not exist in Ashanti.

Thus, so far as Ashanti is concerned, the cocoa industry is proceeding at a great pace without threatening to dislocate native social life.

#### *The Situation in the Gold Coast.*

303. In the Gold Coast, as in Ashanti, the cultivation is entirely in the hands of the natives. So far as we are aware there have been but few grants of lands by native authorities to Europeans or others for the purpose of cultivating cocoa. No

concessions for this purpose appear to have been certified under the Concessions Ordinance. The majority of cultivators are presumably occupiers of stool or family lands under native tenure.

It is true that Mr. William Cadbury told us that "during the last year or two" his firm had received numerous letters from persons in London, Manchester, and elsewhere offering cocoa estates for sale or lease for a long term of years. These, however, appear to have been mere speculative transactions, and did not, so far as his firm were concerned, result in any actual business. It is the practice of Messrs. Cadbury Brothers, Limited, to establish buying centres in various parts of the country, and to purchase the cocoa from the natives who work their own farms. Mr. William Cadbury summed up his view as to the value of pursuing the old native system in the following answer:—

"10,699. (*Sir Walter Napier.*) If he has security of tenure, is it necessary that he should have a right to sell his plantation?—As far as I can see, the old native system works exceedingly well. One cannot help feeling that if a man begins to sell his plantation (and very large areas are owned probably by a syndicate at home with a manager out there) it cannot be for the ultimate encouragement of further cultivation. I think that the man as a freeholder, or practically a freeholder, will do very much better work, and take infinitely more interest in the work.

"10,700. (*Mr. Morel.*) You mean a freeholder under the native system?—Yes, under the native system.

"10,701. (*Mr. Strachey.*) You would say, "Let well alone"?—Certainly. I cannot imagine any better proof than these figures, which are so extraordinarily satisfactory that I am most anxious to do nothing to upset the system that has produced this return."

Cadbury,  
10,699-  
10,701.

303A. There is, however, some evidence that in the Gold Coast the development of the cocoa industry has been instrumental in encouraging the sale and mortgaging of native lands in a manner inconsistent with native customs.

Mr. Grey, a member of the Legislative Council of the Gold Coast and chief agent for the old established firms of Miller Brothers, Limited, and F. A. Swanzy, Limited, told us that during recent years the custom has grown up amongst cocoa planters of selling and mortgaging their land, "very many thousands of pounds and thousands of acres" changing hands every year. Mr. Grey will not allow that this mortgaging is an evil, but says that it might develop into an evil, and suggests that Government should decide the terms on which lands should be mortgaged.

According to Mr. Grey, the practice is for Native Chiefs to sell areas large and small to natives. How far the native purchaser is still regarded as holding under native tenure and what is his status to the Chief is not clear.

## LITIGATION WITH REGARD TO LAND.

304. The conferring of jurisdiction in all land disputes upon the Supreme Court, the recognition by that court of a right on the part of the chief and headmen of a community to sell community land, the scramble of Europeans to exploit the land of the natives for mining and other purposes, and finally the selection of the judicature to supervise the granting of concessions, thereby excluding the Executive from proper control of the land, has resulted in a flood of litigation which is fraught with dangers to the country.

305. The most common subject of dispute in the courts of the Gold Coast is with regard to boundaries. It is not only in the case of concessions that these disputes arise. Quarrels which before the advent of the British power would have been settled speedily by native courts, or in the case of disputes as to tribal or stool lands, frequently by actual fighting, now become the subject of costly litigation. But a new source of trouble has arisen in that a generation of native barristers has arisen of whose services the native disputants seem to be only too eager to avail themselves, and indeed under the existing system they have often no option in the matter.

Sir H. Belfield says:—

"To the native mind litigation seems to be one of the joys of life, and differences with his neighbours regarding the ownership of land which has vastly appreciated in value has supplied the chief with the opportunity of indulging his weakness. The debts, which in some instances show a total of four figures in sterling, have been incurred in respect of what was for the most part unnecessary reference to the courts, with attendant expenses in the form of law costs and lawyers' fees. Therefore the discharge of such debts, in whole or in part, merely gives the chief opportunity for the further continuance of the pastime, and benefits nobody but the local lawyers, who naturally make no effort to counteract the proclivity."

Report, para.  
33 [Cd.  
6278].

The evidence taken by Sir H. Belfield contained the following statements :—  
Major Bryan said that—

“In a number of cases the greater the chief's revenue arising from concessions the greater the number of his legal advisers and the amount of his debts.”

“A chief who is often illiterate may be advised by a solicitor who is also acting for the applicant. He takes fees from both parties.”

Hunt, 1320.

Mr. Giles Hunt gave it as his opinion, that since the Concessions Ordinance came into existence about 100,000*l.* had found its way into the hands of the chiefs, of which he estimates that thirty per cent. or more has been paid to lawyers.

See encls. in Gold Coast desp. of 13th Jan. 1914. African No. 1048, p. 115.

306. Strong complaints of the trouble arising from excessive litigation come from many parts of the Colony. Mr. Crowther, Secretary for Native Affairs, was recently commissioned by the Governor to inquire into native affairs in the Wassaw divisions of the Colony. These two important districts “have industries associated with the four principal economic products—gold, rubber, timber, and cocoa.”

He also says :—

“A regrettable number of land disputes between the various subordinate stools are before the courts. The discords and attrition which these cause is not abated by the law's delays, while the entirely disproportionate expenses in which on this account the various stools are involved not only directly retard the development of the country by the discouragement of individual efforts (a condition which the institution of heavy local monetary levies induces), but they tend further to render the office of chief unacceptable to suitable men, and the long enforced absences from their villages of the Asafohenfo concerned results in the ultimate weakening of the office itself. Ill-kept roads, poor houses, and depopulation of the villages is the visible result of this tribal bankruptcy.”

He thinks that no “portion of the Colony has been so torn asunder by disputes” as to the ownership of land. The evidence he quotes “will show how strong a “feeling against the processes of the Supreme Court is abroad.”

Speaking of alienations under the Concessions Ordinance he adds—

“The high proportion which the alienation of land is capable of yielding to the paramount stool in return for a merely nominal loss, and the mineral wealth of certain portions of the country have doubtless inspired litigation which in more happy circumstances might have been averted, but it is doubtful if these are the only causes of inspiration. Whatever be the cause or causes the effect at least is patent, and while the condition of the villages is generally indicative of a want of prosperity, there can be little doubt that nearly every stool is indebted to an amount for the redemption of which there is but slender hope. One pauses to reflect whether the economic condition induced by constant litigation is materially better than those left by the internecine wars which it has replaced.”

307. Remarkable evidence by chiefs of this part of the Colony as to the ruinous cost of the litigation in which they are constantly involved, and of the influence of the lawyers, who are alleged to foster it, may be read in the evidence collected by Mr. Crowther and printed in the Papers laid before the Committee.

“again and again in the evidence are passages coloured with reference to the procedure of the Supreme Court in matters relating thereto, and it is imbued with expressions of dissatisfaction on this account. Its passages are punctuated with complaints and with petitions for the establishment of what the witnesses consider a more suitable tribunal for the determination of these causes, and on the morning of my departure from Benson the assembled chiefs of Wassaw Fiase begged that causes of this nature might be conducted as they are in Ashanti. Neither the complaints nor the pleas can be overlooked, and, if the statement made by Mr. Ben Kofi in Enclosure E is true, it appears that action under the Native Jurisdiction Ordinance does little in practice to remedy matters.”

The following extract from the evidence of the Omanhene of Wassaw Amenfi is interesting as illustrating the views of an intelligent native on the old procedure and that substituted for it :—

“Most of my chiefs are in Secondee about land cases; if they had been here they could have looked after their towns. It is a point of honour for a native to look after the land. In olden times if a land dispute came an oath was taken. There is certain medicine connected with a stool called odum. The parties who swear the oath must drink this; after that the matter is brought before the Omanhene to decide it. They used to decide it well without trouble; the one who made a false statement would be killed by this odum. Nowadays we are being killed by lawyers. If a small matter arises they instigate you to bring it to court and get it postponed again and again for their refreshers, and we earnestly ask you to help us.

“At present the land owned by my forefathers any common man can now rise up and claim it, and I beg you to assist me to get some other way of settling things, so that our towns may be good as in the time of our forefathers. You see all my people are poor. We have to sell land to pay the debts.”

African No. 1048, p. 114.

Strong confirmation of the above statements is afforded by the Governor's despatch of the 8th of December 1913, in the course of which he states—

“The Omanhene of Upper Wassaw was principally insistent upon the evil which is being inflicted upon himself, his sub-chiefs, and people through frequent, endless and expensive litigation, and

he repeatedly entreated me to order his sub-chiefs to refrain from further law-suits, and evidently envied his neighbours across the border in Ashanti, upon whom the local lawyer is not permitted to prey."

"There can, I fear, be no sort of doubt that the endless litigation on the subject of land in which so many of the chiefs and sub-chiefs in this colony are perennially engaged is in its own way almost as ruinous to the prosperity and well-being of the tribes as the petty tribal warfare which it has replaced. . . . There is also only too much reason to think that the naturally litigious character of the people is taken advantage of by the local lawyers, who acting both as solicitors and barristers have no inducement to advise their clients not to take a case into court, or on appeal from court to court, and have indeed on the contrary every personal motive for withholding such advice.

"It has, I believe, been frequently represented that the natives of this colony would regard with suspicion any tribunal, which was not a court of law of the ordinary type, set up for the purpose of dealing with land disputes. The institution of such a land court, if lawyers were not permitted to plead before it, would, of course, be hotly opposed by the educated native community; but I am by no means clear that it would not be welcomed by a majority of the rest of the native population. During my tour in the Eastern Province in February last chief after chief asked me to settle his land dispute for him; and similar requests have since reached me from chiefs in other parts of the colony which I have visited. . . . it is obvious that the existing state of things is unsatisfactory, and that the expensive legal machinery which at present is the only means of settling land disputes is in every way ill-adapted to the circumstances of the native population of this colony."

308. But there is other litigation besides that arising from boundary disputes. The unregulated sale of stool land by chiefs and disputes between individuals who claim to have acquired individual rights, and the mortgaging of land, are additional causes, whilst to these are now being added suits by individuals who have benefited by such sales. The result has been, besides plunging many parts of the country into debt, to lead the chiefs to set aside "those rules and regulations of native tenure" which constitute the cement which holds native society together and to undermine the native system of government through the chiefs which, as we have seen, is the only way in which a country like the Gold Coast can be efficiently governed.

The following statement made by the Omanhene of Akwapim is of special interest, as it shows how the sale of community land by the chiefs to individuals has as a natural consequence the disappearance of the chief's authority over his subjects and how it is necessarily destructive of native polity:—

"1. Nearly all the lands from Kentenkren to Mangoase were sold by Ex-Omanhene to private persons contrary to native custom. There have been two cases in which the validity of sales by Akuffo was put to the test. African No. 1048, p. 112.

"The first was *Aberewatia v. Kwasi Omrako*, the first person who bought a stool land from Akuffo with necessary consent; the native tribunal composed of the Adonten upheld the claims of the *Aberewatia* at Amanokrome on the 20th November 1906.

"The second case, *Omanhene Owusuansu v. Kwajo Owusu*, was in April 1908, before His Honour Sir William Brandford Griffith. In this case after His Honour heard that Akuffo sold 300 or more pieces of stool land, the learned judge suggested a compromise and the Omanhene consented to a judgment that the buyer from Akuffo retains the land for 25 years to reap the benefit of his cocoa trees on payment of 5*l.* a year for ground-rent, and the court then thought that it would be an easy matter to get all other such purchasers from Akuffo to consent to such payments, but I found difficulty from year to year to collect any thing from them, and had to sue even the defendant in that test case (*Kwajo Owusu*) for arrears of rent, and, in fact, very few of them have acknowledged the title of my stool lands occupied by them since the 1908 test case."

The following statement by the Rev. G. Josenhans, General Superintendent of the Basel Mission in the Gold Coast, draws attention to the uncertainty of title possessed by individual owners of land. He says:—

"Innumerable law-suits are the result of such disputes at present, which involve inestimable expenses for both parties, and prove a great impediment to progress and the welfare of the people, however a lucrative source of income for unscrupulous native lawyers." African No. 1048, p. 38.

309. In Ashanti, it should be remembered, the Chief Commissioner acts as the head of the Executive, as well as exercising the judicial powers of the Supreme Court. Though the Ashanti Concessions Ordinance is, as has been pointed out, mainly on the same lines as that in force in the Gold Coast, the Chief Commissioner is able to deal with the questions arising thereunder from the Executive as well as the Judicial point of view, and consequently the trouble which has resulted in the Gold Coast from the confusion of Judicial and Executive functions has not, so far as we are informed, occurred in Ashanti. Fuller, 4556 -61.

310. We have referred specially to the prevalence of litigation with regard to land, and to the serious consequences which such litigation entails, for two reasons. Firstly, to emphasise our recommendations with regard to transferring to Executive control the procedure now entrusted to the Judicature under the Concessions

Ordinance, and, secondly, to recommend the prevention of unnecessary disputes and the procedure for determining such disputes as may occur, whether in the course of transactions arising between natives or between native authorities and Europeans.

### NATIVE TENURE *versus* INDIVIDUAL TENURE.

311. There still remains the important question as to whether the growth of individual tenure should be encouraged at the expense of native customary tenure, or whether steps should be taken to check it. We have already seen that the tribal system supplies the natural machinery for administration, and that this system depends upon the maintenance of the communal land tenure; further, that permanent cultivation can be successfully carried on under the native system, but that such permanent cultivation, in the Gold Coast at any rate, shows signs of encouraging the sale and mortgaging of lands in a manner inconsistent with that system; and, finally, that selling and mortgaging land is one of the causes of the litigation which is so detrimental to the development of the Dependency where it is practised.

### EVILS TO BE APPREHENDED FROM INDIVIDUAL TENURE.

312. But there is still another aspect of the case which claims attention, viz., the tendency of the system of individual ownership to divorce the people from the land. In considering this aspect we would at the outset record our opinion that any Governmental action—legislative, executive, or judicial—which tends to divorce the people from the land or to convert the landowner cultivating his own land into a paid labourer working on the land of another, is to be condemned.

The following extract from a memorandum supplied by the Rev. A. W. Wilkie, of the United Free Church of Scotland, working at Calabar, in the Eastern Province of Southern Nigeria, puts the case with regard to the Efiks clearly, and shows the necessity of a "long view":—

"In so far as I am able to read native opinion in regard to *individual ownership*, I should say that there is a limited desire for greater freedom to hold land absolutely. This desire is more pronounced amongst those commonly known as 'half-free.' Many of these are wealthy traders and farmers.

"Some 'chiefs' express a similar desire, and would gladly hold that land for themselves absolutely which they hold at present 'in trust' for the family. I incline to think that the desire is mainly with a view to charging members of the family *rent*. But I am convinced that they have not thought out the full implications of such a change in principle of land tenure. In so far as they are not merely selfish and self-seeking they are short-sighted and do not consider the effect of such a change on the whole social system, and on future generations. Under the present system, real poverty is unknown and impossible. Every member of the family has a right to the use of the land. If an individual system of ownership is introduced the danger of a landless population, dependent for their livelihood on the produce of the land, becomes imminent. Poverty, hitherto unknown, would almost certainly become a serious problem. The danger of land gradually falling into the hands of a few wealthy landowners, or the still more serious danger of the ultimate alienation of the land from Efik, has not been considered by the people. I venture to urge most cautious action in touching the native land law of Efik, and to suggest that any change contemplated should be on truly native lines of communal rather than individual ownership of land."

Although this view is expressed with regard to the Efik community, it appears to us to apply throughout the Dependencies with which we are called upon to deal.

The devotion of the West African to his land is, perhaps, his most persistent and striking quality, but there is nevertheless a danger of his becoming a victim to the cupidity of others, or a prey to the moneylender, and it is the duty of the Government to afford him protection against such danger.

313. The feeling of the native towards his land is well expressed by the representative of the Oni of Ife. He thought that it was a bad thing for any member of the community to sell lands to another member of the community. And when asked the reason, answered:—

"Because the ground is sacred to the Ifes. We came from the ground and we have to go back to the ground, and it is altogether out of place for anyone to think of selling the ground."

The view of Mr. Akinsan, a clerk in the Government service at Lagos, was:—

"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 lauds passing into the hands of strangers."

The Hon. C. A. Sapara Williams, C.M.G., stated in a memorandum prepared by him:—

"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."

African No.  
1048, p. 244.

These quotations are but a few among the many expressions of opinion by natives put before us, of which the keynote is satisfaction with the present system and anticipation of the evils likely to arise from unrestricted buying and selling of land. The only notable exception to this predominant native feeling was expressed by Mr. Adegboyega Edun, secretary to the Egba Government. While deprecating the sale of land to non-Egbas, he declared that the selling of land was an established custom, and had been in existence for fifty years or more. We are unable to accept his views as against those of the other native witnesses.

Edun, 13,123  
*et seq.*

Turning now from these expressions of native feeling, which it is proper to point out emanate only from Southern Nigeria, we would call attention to the opinions expressed by the officials employed in the different dependencies. So far as those having experience in Southern Nigeria, Sierra Leone, Ashanti, and the Northern Territories are concerned, their opinions are unanimously against the introduction of the system of buying and selling of land.

314. The case of the Gold Coast is, however, rather different. With regard to the position there, Mr. Crowther states his conclusions in a paper which he prepared for our use as follows:—

"The three most obvious forces which wear down the communal system of tenure are firstly, by judicial practice, secondly, the operations of mining activities, and thirdly, commercialism. The action of the first of these is attributable to the want of knowledge and to the want of machinery for gaining knowledge of native law and custom, and if local conditions are brought into focus it will be seen that it is largely due to an inevitable ignorance. The action of the second is attributable directly to a necessity imposed by circumstances, but it may be traced through the Concessions Ordinance to the same causes as the first. The action of the third is attributable to a revolution in ideas. As opposing forces the first and second are measurable; the third is not, and unless its relationship to the land is directed and controlled it promises to destroy the old order. The substitution of ungoverned individualism for the communal system in the rural districts in my opinion is the signal for poverty and social disaster for the majority. But it is equally clear that the communal system in its simplicity is inadequate for the needs of the changed and changing economic conditions. The position might be summarised in the statement that the present conditions demand a greater degree of protection for the rights of the occupier than can be found in the existing native custom, and a greater degree of security for the communal character of the land than is offered by existing legislation. I think that policy should be directed on a course the object of which is to meet this demand, for a compromise of convenience offers no remedy and the end to which legislation leads should be clear."

Crowther,  
10,126.

As against this, Sir W. Brandford Griffith and Mr. Robertson, the Chief Assistant Colonial Secretary of the Gold Coast, have expressed themselves in favour of the encouragement of individual tenure.

Griffith,  
14,193.  
Robertson,  
2589.

315. In spite of these adverse opinions, we are unable to recommend the introduction of a system which is alien to native custom, and is likely to subvert the principle of native government and to lead to poverty and social disaster for the majority. We therefore consider that, whilst in towns where commercialism has taken root it is too late to abolish individual tenure, in the country districts throughout the whole of the Dependencies with which we are called upon to deal, legislation should have as its aim the checking of the progress of individual tenure and the strengthening of native custom.

#### MEANS OF STRENGTHENING NATIVE TENURE.

316. We must now consider the modes in which greater security may be given to native customary tenure.

The main security must lie in the careful supervision by the District Commissioners of the native tribunals so as to prevent the wrongful deprivation of individual cultivators of their holdings. This would seem to be all that is required so far as ordinary cultivation is concerned.

317. The cultivation of permanent crops of economic value, owing to the fact that it affects the area of land available to the community as a whole for the planting of food crops, may require special supervision.

In certain districts of the Gold Coast a condition of insecurity is thought by some witnesses to be an actual fact. In some parts of Southern Nigeria, and (as we have seen) in Ashanti, the danger is believed to be rather in the nature of a potential one. In Sierra Leone and the Gambia it appears to be so remote as not to require consideration at present.

So far as Southern Nigeria is concerned, Mr. Dennett inclined to the view that the cultivator of permanent crops requires no additional security, since by native customs the trees planted by the individual are his property irrespective of the ownership of the land. Mr. Dennett thought that if greater security became needful, it might take the form of a document between the native authorities and the cultivator, which would be registered in the native court. Mr. James considered that greater security was required, and that registration in the native court would be difficult. He deprecated, however, the idea that the cultivator should be placed in the position of holding his land from any but the natural authorities of the community. This view was also held by Mr. Ross, who stated that the native authorities were competent to deal with the matter. Mr. Alexander on the whole favoured the registration of title through the native courts.

With regard to Ashanti, Mr. Fuller thought that registration in the native courts would suffice, and that if the indigenous permanent cultivator (who, unlike the stranger native, is not, as we have seen in para. 98, required by custom to give his chiefs a proportion of the crops) paid for registration, such payment could in itself constitute a title.

The following question and answer shows Mr. Crowther's view:—

“(Sir Frederic Hodgson.) You think that all allotments of land, other than for shifting cultivation, should come under the cognizance of the Government?—Yes, it would be an enormous piece of work. It would have to be worked through the chiefs in some way. If some system of registration could be made through the native tribunal and subject to inspection and supervision by the local executive officer, and if a man wished for registration, it should be open to him to have more definite registration; but I think that the machinery of the Government would be so enormous that it would probably swamp the whole of the revenue.”

318. The problem would seem to be one which sooner or later must be faced, and there would seem to be an advantage in dealing with it before permanent cultivation has extended still further and created greater complications.

Essentially it is one of ensuring security for a particular form of native enterprise which is worthy of every encouragement, without impairing the structural character of native tenure. The difficulty should not prove insuperable, but conditions vary so greatly in different districts that a procedure which might be practicable in one district might be impracticable in another.

319. There would appear to the Committee to be, broadly speaking, two alternatives: either, as the witnesses quoted suggest, a simple form of registration through the native courts, whenever those courts are sufficiently well organised to permit of it; or that the permanent cultivator should be entitled to apply for a lease in the same manner as a non-native.

The disadvantage of the leasehold system would be that it would set up two forms of tenure within the community, and would thus tend to lessen the legitimate powers of the native authorities over their subjects and to that extent weaken political and social ties. Both methods would of necessity entail some amount of increased supervision on the part of the Executive, which might be met by the creation of a Native Lands Department. But if the leasehold method were adopted the additional work would obviously be much greater, and would lead to more direct interference on the part of the Executive with the internal affairs of native communities than the great majority of official witnesses considered desirable.

320. We think that the principle of a minimum of direct interference, and a maximum of responsibility under guidance and supervision placed upon the native machinery of administration, is the principle from which the more permanently satisfactory results can be obtained.

## PART III.

### RECOMMENDATIONS.

#### RECAPITULATION.

321. In the last Part we have seen that native customs with regard to the transfer of rights over land are, in the main, the same in all the dependencies in West Africa with which we have to deal, that the general principles of the law, as laid down in the Supreme Court Ordinances, are similar throughout nearly the whole of those dependencies, but that the enactments of the different legislatures specifically dealing with land have resulted in systems which differ materially from one another. Whilst in the Gold Coast, and in a lesser degree in Ashanti, control of the land has been confided to the judicature, in Southern Nigeria and in the Gambia it has been exercised by the executive. In Sierra Leone, although in theory the judicature has some power of control, in practice that control appears to be exercised by the executive.

#### ARRANGEMENT OF PART III.

322. There seems to be no adequate reason in principle for the divergencies to which we have referred, and we suggest that they should be lessened as much as possible, though doubtless special circumstances may render some deviation from a common form desirable. A few words as to the arrangement of this Part will conduce to its clearer comprehension. The most convenient classification of "the transfer of rights over land and the produce thereof" is one founded on the purpose for which the transfer is made, and we shall therefore set forth our recommendations under the following heads:—

I. Transfer involving the use of the surface of land for cultivation, habitation, or trading.

This heading we shall divide into—

- (1) Transfer in favour of Non-Natives.
- (2) Transfer in favour of Natives.

And the first of these two subheads we shall divide again into—

- (A) Transfer for the purpose of cultivation.
- (B) Transfer for the purpose of habitation or trading.

II. Transfer for the purpose of mining.

III. Transfer for the purpose of felling timber and the collection of such natural products as rubber and the produce of the palm-oil tree.

We shall then state certain recommendations with regard to—

- IV. The Forest Ordinances of Southern Nigeria and the Gold Coast; and
- V. The Land Departments.

#### I.—TRANSFER INVOLVING THE USE OF THE SURFACE OF LAND.

##### OUTLINE OF RECOMMENDATIONS.

323. In order to understand the subheadings a brief sketch of the outlines of the scheme which we recommend is necessary.

As we have already stated we have come to the conclusion that it is desirable that the tenure of land occupied by natives for the purposes of habitation and cultivation shall continue to be in accordance with the customs which have moulded themselves to the requirements of the people.

Whilst this is the main principle underlying our Report, we feel that it must be recognised that conditions in some of the urban districts within the dependencies of the West Coast have become so changed by contact with Europeans and Europeanised natives, that customary tenure has been to a large extent superseded by a form with striking resemblances to English land tenure, a form which we have called individual tenure. We consider that it is no longer possible to revert to the old system in such areas, and we therefore propose that there should be power in each dependency to declare any district subject to these conditions to be an *exempted district* when facilities would be given for the creation within it of a land tenure on English lines.

Turning now from these few small urban districts we pass to the main bulk of the West African dependencies. Here we propose that the rules of native customary tenure with their prohibition of sale and mortgage shall continue in force with certain

safeguards which suggest themselves to us. Though we think that in future no facilities should be given for the conversion of community or family land by transfer from native communities or families to individual natives or for the transmutation of customary rights into those of individual ownership, we recognise that where individual ownership, whether in the hands of non-natives or of natives, may be proved to exist in any particular land, it must have the same legal effect given to it as is given by the Courts at the present time.

Native customary law is, of course, inapplicable to transfers to non-natives, and we propose, with a view to safeguard the interests of the natives, that it shall be laid down as a cardinal principle that, except in small transactions, no transfer of any interest in land by a native community to a non-native shall be valid unless it is by lease for a term of years and is made with the consent of the Governor.

We further recommend the creation of a system of registration of title to be applicable to the proposed leases, which system should, we think, include the mining leases which we recommend under the heading "Transfer for the purpose of mining." In addition to future leases, we suggest that the register shall also include existing transfers of land which have had the sanction of the Government, as, for instance, Crown grants or leases, and concessions validated under the Concessions Ordinance.

We propose, then, in the first place to describe the system of leases which we suggest should be constituted, together with the system of registration of title which we recommend should be applied to such leases.

We shall then enter upon the subject of native customary land tenure and formulate our recommendations with regard to its strengthening.

Following on this we shall state the limitations under which individual ownership of land is to be permitted in the main bulk of the dependencies.

This will bring us to the mode by which districts may be constituted as exempted districts and the effect of such exemption.

We shall then formulate certain proposals which have not come within the main lines of our scheme. These will include suggestions to enable any superabundant land of one tribe to be transferred to another tribe, to facilitate the settlement by executive authority of boundary questions between community and community and various subsidiary matters of rather a legal nature. We shall in conclusion consider the applicability of our proposals to each dependency in turn.

## (1) TRANSFER IN FAVOUR OF NON-NATIVES.

### *A Note as to Definitions.*

324. The legislation as it stands at present is not quite uniform in the four dependencies with regard to the use and definition of the terms "native," "native-foreigners," "aliens," and "non-natives." We recommend that in future identical terms should be used with identical definitions in the legislation of each of the four dependencies with regard to the law relating to the tenure and transfer of land, and for the purpose of this report we adopt the definition contained in the new Supreme Court Ordinance of Nigeria, and shall use the expressions "native" and "non-native" in the sense given to these expressions in the definition set out above in paragraph 74.

### (A) TRANSFER FOR THE PURPOSE OF CULTIVATION.

#### *Mode of Procedure.*

325. An intending applicant for a lease should present an application in the prescribed form to the District Commissioner stating the area of land and the purposes for which the lease is desired. The officer should forthwith give notice of the application through the usual channel to the Governor, so that, if the latter has knowledge of any circumstances rendering a lease inadvisable, he may instruct the District Commissioner to stop the negotiations.

326. Upon receipt of an application it would be the duty of the District Commissioner to be the medium of communication between the applicant and the native authorities, and to give the native authorities advice and assistance with regard to the effect and expediency in the interests of the native community of the proposed arrangement. He should also assist in the framing of the terms of the proposed contract. It would be especially the duty of the executive officer to take measures to ensure that the nature and effect of the proposed concession should be made known as widely as possible throughout the area which would be affected by it.

He would arrange a meeting with the native authorities, and explain to them the nature of the application and the situation and extent of the land to which it related. He would advise them as to the terms which he considered fair and reasonable. The native authorities having consulted in accordance with the native custom, and come to a decision, would convey their decision to the District Commissioner.

The District Commissioner should then make his report, which should be forwarded to the Governor through the Provincial Commissioner or other Superior Officer, and should deal with the following matters:—

- (1) The area and boundaries of the land the subject of the proposed grant;
- (2) Whether the title of the land proposed to be granted properly belongs to the community purporting to grant it;
- (3) Whether, after having the terms of the proposed grant fully explained to them, the community fully assent to it;
- (4) Whether the consideration for the concession, whether in the form of premium or rent or otherwise, is adequate, and if not, what modification is desirable;
- (5) Whether the grant would materially interfere with the rights of the natives who are members of the community in respect of—
  1. The agricultural and arboricultural requirements of the community.
  2. Collection of natural products.
  3. Fishing and hunting rights.
- (6) Whether, if the natives were to retain any of the last-mentioned rights over the land during the existence of the lease, the grant made sufficient provision for the protection of those rights.

327. After the report had been received by the Governor, a notice should be inserted in the Government Gazette giving short particulars of the proposed grant, and calling upon any person wishing to oppose the application to file in writing the grounds of his opposition with the Commissioner of Lands before a date specified, which should not be less than three months from the date of the advertisement, and also the name of some person within three miles of the office of the Commissioner on whom service of notices may be made.

Upon the expiration of the time specified in the advertisement the application should be laid before the Attorney-General together with any grounds of opposition filed, and he should thereupon certify whether or not he is satisfied that the proposed grantors are entitled to make the grant.

328. The matter should next come before the Governor-in-Council, who would then consider whether, having regard to all the circumstances of the case, he ought to give his consent to the grant.

If the Governor-in-Council considers the grant is advantageous he would, if the Attorney-General has certified that he is satisfied that the proposed grantors are entitled to make the grant, approve of it, subject to survey being made, or, if the Attorney-General has certified that he is not so satisfied, approve of it subject to survey being made and to a certificate as to title being given by the Supreme Court. In this latter event the Governor would refer the question as to the title of the grantors to the Supreme Court. The certificate of the Supreme Court as to title should be subject to appeal to the Full Court and to His Majesty in Council in the same manner and subject to the same rules as any other appealable judgment of that Court.

The Governor-in-Council should have power, if he thinks fit, to allow any person who has filed grounds of opposition to appear either in person or by counsel, but counsel should only be allowed to appear in special cases where the Governor thinks that his presence would be of assistance.

329. As soon as the survey has been completed and the certificate of title, if the matter has been submitted to the Court, has been given the grant should be prepared in the office of the Commissioner of Lands (being settled if necessary by the Attorney-General) and should be signed by the native authority in the presence of the District Commissioner and countersigned by the Governor. It should then be registered in the new registry which we propose should be constituted and should be good as against the world.

330. We would further suggest that where it is desired to work under the grant at an early date, the terms of the grant might be embodied in a conditional agreement at an early stage of the proceedings, and that the Governor might in such a case execute the formal grant without further reference to the native authority.

This should only be done with the consent of the native authority, who should sign the conditional agreement and thereby authorise the Governor to execute a final grant on the terms of the agreement on its behalf. A caveat might then be entered upon the registry so as to safeguard the interests of the grantee against third parties, but any work done by him would have to be at his risk so far as survey and proceedings in court were concerned, and he would be liable to be ejected from the land if the Governor should decide that he ought not to give his consent to the grant.

Every survey shall be at the expense of the grantee, and rules should be made as to paying the whole of its cost or part in advance or as to giving security.

#### *Conditions of Lease.*

331. The lease would be for a term of years, which would not exceed the period prescribed by rules in respect of the purpose for which it was granted. A rent would be reserved which, if not prescribed by the statutory rules, would be fixed at the highest amount that could be reasonably obtained for the land, regard being had to the rent obtained or obtainable in respect of other like land in the neighbourhood, and it would be the duty of the District Commissioner to exert himself to see that as large a rent as was reasonable under the circumstances was obtained.

332. With regard to premium, we do not desire to see the extension of the premium system and would have liked to recommend its total abolition, but recognising the hold which the system has obtained in some parts of West Africa, especially the Gold Coast, we recommend that in districts where the system is established the amount of the premium should be limited to a sum not exceeding three times the amount of the annual rent. All premiums and rents should be paid to the District Commissioner, who will be responsible for their allocation. We have already in paragraph 153 recommended that 25 per cent. of the rents should be expended on some useful work of advantage generally to the community.

333. No transfer of a lease should be valid unless the consent of the Governor be obtained to it. The lease would be made liable to forfeiture for the following causes:—

- (i) Breach of rent or other periodical payment.
- (ii) Breach of any of the conditions in the lease relating to commencement and continuance of working.
- (iii) Breach of any requirements imposed by the ordinance or by any rules made under it.

334. The Governor should have power to request the Attorney-General to take proceedings in the names of the grantors to enforce the covenants of the lease by taking the necessary proceedings for forfeiture or otherwise.

235. It will be noticed that our proposals do not include any specific recommendation with regard to the practice of dummying to which we adverted in paragraphs 148 and 149.

One of the points which the Governor and his subordinate officers will have to consider before giving his assent to a lease or to a transfer will be whether such lease or transfer will have the effect of placing a larger amount of land in the hands of the lessee or transferee than he is entitled by law to hold. Though we do not venture to predict that under the system dummying will be impossible, we think that if care is taken, it should be reduced to a minimum.

336. Special rules would be required to deal with the following points—

- (a) Circumstances under which leases are to be granted.

As a rule, the granting should be at the discretion of the native authority under the supervision of executive government. In exercising this supervision the executive government should weigh all the circumstances bearing on the question as to whether the lease will be of ultimate advantage or of ultimate detriment to the community or its members.

337. There is, however, one limitation which we think should be imposed on the power of the native authority to lease land, and that is with regard to palm-bearing land. For the reasons which we have set out in paras. 264 *et seq.*, we recommend that it should be laid down by Ordinance that leases of palm-bearing land should not under any circumstances be made in Sierra Leone or Southern Nigeria, and only in the Gold Coast and Ashanti in areas where natives are not exercising rights of collection over the trees.

## (b) Period of lease.

338. This period should depend on the product to be cultivated. In order to encourage the cultivation of palm trees and other trees or plants of slow growth, it would be necessary to give a prolonged time, say, for instance, in the case of palm trees fifty years.

## (c) Area.

339. No greater area than one square mile should be the subject of one application and no person who has obtained a lease or has put in an application for one shall apply for a lease of additional land nor become the transferee of another lease unless he satisfies the Governor that the land described in the original lease in his favour has been beneficially occupied, and that he is in a position to develop a further area. Under no circumstances should one person or one group of persons be permitted to hold more than three square miles.

## (B) TRANSFER FOR THE PURPOSE OF HABITATION OR TRADING.

*Mode of Procedure.*

340. A simpler procedure than that above indicated would appear to be sufficient for transfers under this head. We propose that they should be strictly limited to a maximum of five acres, and therefore, no risk of undue accumulation of land or interference with the rights of natives would appear to arise.

The intending applicant should present an application in the prescribed form, stating the area and situation of the land, and the purposes for which it is desired, to the District Commissioner, who should act as an intermediary between the applicant and the native authorities, and who should give to the latter all necessary advice as to the terms which would appear fair and reasonable. In the event of any doubt as to the title to the land, the District Commissioner should take such steps as may be practicable to advertise in the neighbourhood the particulars of the proposed grant, and to invite any person wishing to oppose the application to come forward and state in writing the grounds of his opposition.

341. The District Commissioner would then forward to the Governor, through the usual channel, a report containing his observations on the proposed grant. The Governor would then, after reference to the Attorney-General if necessary, decide whether the grant should be approved, and would intimate his decision to the District Commissioner. If he decided to approve the grant, the approval would be subject to survey being made, and, if the Attorney-General was not satisfied as to the question of title, subject to a certificate as to title being granted by the Supreme Court. In the latter event the procedure would be the same as already indicated in the case of "Transfer for the purpose of cultivation."

342. When a grant has been approved the survey should be made as soon as can be conveniently arranged. As the land the subject of this class of grant will usually be situated in a township area, it should in ordinary circumstances be possible to arrange for survey without any serious delay, but in cases where for any reason this cannot be arranged, there would appear, generally speaking, to be no objection to allowing building operations to commence in anticipation of the detailed survey, provided that a provisional contract is signed and that the land in question is clearly marked out, which, in view of the small area involved, should not be a difficult matter.

*Conditions of Lease.*

343. The provisions with regard to rent, premium and transfer of a lease would apply as in the case of "Transfer for the purpose of cultivation."

344. The period of the lease should be a term of years not exceeding ninety-nine, and at the end of the term the lessee should be entitled to the value of all unexhausted improvements effected by the lessee during the term, the value of such improvements to be determined by arbitration. The lease may include any existing building and a reasonable amount of land for cultivation, for the habitation and use of the persons residing or working thereon, and for surroundings and amenities or for contemplated extension building, *et cetera*.

345. As we have already stated, the area of land to be granted under this head should in no case exceed a maximum of five acres. Any application for a grant of land exceeding this area should be subject to the procedure already indicated in the case of grants of land for the purpose of cultivation.

## EXCEPTED TRANSACTIONS.

346. The procedure sketched out above is an elaborate one, and it would be proper that an exception in favour of small transactions should be made to the general rule that no transfer of any interest in land by a native community to a non-native should be recognised as valid unless made with the consent of the Governor. Such a procedure would, for instance, seem to be unsuitable to the plots of land obtained by grant or otherwise by non-natives of African descent for trading and other purposes. We hardly feel able, in the absence of detailed local knowledge, to define the small transactions which should be so excepted, and will only say that there should, in our opinion, be a narrow limit set to the area leased and to the term for which a grant of this nature should be permitted.

## SYSTEM OF REGISTRATION OF TITLE.

347. We recommend that a system of registration of title on the lines of the well known Torrens' Act be created with regard to the leases to be granted under the procedure sketched out above, and that there should be included within its scope all past grants made by or approved by the Government, and also all future mining leases granted under the heading "Transfer for the purpose of mining."

It would be out of place here to enter upon a detailed explanation of this system; it will be sufficient to say that its main principles are that a register is prepared on which are entered the names of the persons who will be recognised by the Courts as the owners of interests in land, that this register is constantly kept up to date by noting every devolution of the interest on sale, death, or otherwise, and by the cancellation of every entry the effect of which is exhausted, and that the land recognises no title save entry on the register. As Mr. J. S. Stewart-Wallace in an article on "Land Reform and Registration of Title" in the "Contemporary Review" of June 1914 puts it, "No one dealing with land is concerned with the past history of the title, nor how nor when a person was entered on the register. A purchaser need only see that his vendor is in fact the person who is entered on the register as the owner of the land he wishes to buy. If so, he can complete the purchase forthwith without further cavil or question as to title. Entry on the register then gives him a State guarantee that under no circumstances can he be dispossessed of the land he has paid for."

348. All leases granted in future under the regulations recommended above and bearing the signature of the Governor would upon presentation be placed upon the register. As to the other grants to be so placed, only those which on the face of them bear the signature of a Government official would be received by the Registrar. Thus a Crown grant in any dependency would be accepted, whilst in the Gold Coast every certified concession, and in Southern Nigeria every grant approved under the Native Lands Acquisition Ordinance, would be entitled to a place on the register. The register would contain a succinct statement of the interest of the person registered and of any limitations on his interest and a reference to the instrument creating the interest. A copy of the instrument should be deposited in the registry. It will be necessary to provide that no transfer of any interest on the register shall be valid unless registered and to prescribe the manner in which the execution of transfers may be authenticated. Any instruments of transfer authenticated in the manner so prescribed would be registered without further formality.

Where any grant which was on the register had determined, provision would be required so that the entry relating to it would be expunged from the register.

No one should be entitled to be placed upon the register in respect of the interest of a deceased holder, except his personal representative, and then only after probate or letters of administration had been taken out.

It would appear that the rules of English law would, under the Supreme Court Ordinance, be applicable in respect of interests entered upon the register, and that no legislation will be required to bring about this result.

## (2) TRANSFER IN FAVOUR OF NATIVES.

## NATIVE CUSTOMARY LAND TENURE.

349. We have seen that, generally speaking, the rights of natives in respect of land are, under the Supreme Court Ordinances, to be governed by native custom, and we have stated our opinion that this is a mode of tenure well suited to the needs of the natives and that it ought to be maintained. Land is under the control of the

native authorities of the various communities occupying the country, and custom regulates the power to allot, the right to receive an allotment, and the rights and duties of the occupier of allotted land. Customs, though in the main principles the same, vary in different localities in matters of detail, and accordingly we do not consider that it would be desirable to attempt to codify these customs. Under the existing provisions of the Supreme Court Ordinances they will remain in force and no further general statement of law need be entered upon the statute book. There are, however, several particular matters with regard to native customs as to which we recommend or suggest that there should be legislation.

350.—A. As to the right of the chief or head to transfer community or family land:—

In the view which we have taken of the evidence, the power of the chief to alienate land was limited to transfer for occupation or cultivation, and such a transfer by custom gave no permanent and indefeasible right to the land. In the Gold Coast and in certain restricted areas of Southern Nigeria a power on the part of the chief, with the concurrence of the elders, to sell their land has been recognised by the Government Courts, and land so sold has been held to be the individual property of the purchaser, who could resell it at will. We recommend that the powers of the chief and elders in respect of community land and of the heads of families in respect of family land should be declared to extend only to—

- (1) leases or licences under the provisions of law recommended in this report; and
- (2) customary transfers for occupation and cultivation, subject to the rendering of any dues and services which may be customary, a proviso being added that no such transfer shall operate to deprive the community or family of the land itself.

351.—B. As to the right of the native occupant to transfer the land which he occupies:—

We think that it follows from the principles underlying native customs governing the transfer of rights over land that where a native is in occupation of land such occupation is on behalf of the community or family of which he is a member, and that he has no separate or individual interest in the land, which can be sold, mortgaged, or taken in execution. This principle appears to us to have been considerably trenched upon in the Gold Coast by the judgment in Lokko's case (a case with which we have dealt at length in Part II, paras. 108–110), and we are of opinion that it is desirable that the principle should be reinforced. We therefore recommend that a declaration should be embodied in a statute to the following effect:—

- (1) That it should be presumed that all land of which a native is in beneficial occupation belongs to the family or the community of which he is a member.
- (2) That the native occupier of family or community land or land presumed to be such holds the land on behalf of the whole family and community, and has no separate or individual interest in the land, though he has in the crops. He is therefore only entitled to sell or mortgage the latter; consequently he has no interest in the land which can validly be taken in execution or sold.

352.—C. As to the security of tenure of the native occupant:—

The right of the occupant of land and of his successors to cultivate such land and to appropriate the proceeds subject to the rendering of customary dues and services is, in theory at any rate, sufficiently secured by native custom, and we do not propose to make any specific recommendation but merely to repeat that “the main security must lie in the careful supervision by the District Commissioners of the native tribunals so as to prevent the wrongful deprivation of individual cultivators of their holdings. This would seem to be all that is required so far as ordinary cultivation is concerned.”

353. We have already, in paras. 316–320, discussed the question as to whether further security cannot be obtained in respect of land allotted for the cultivation of permanent crops, and we have expressed our opinion that such security might best be given in a simple form of registration through the native Courts, whenever those courts are sufficiently organised to permit of it. In the meantime the exercise of a watchful supervision by the District Commissioners should bring to light any case of wrongful deprivation or any action on the part of native authorities tending towards future insecurity.

## NATIVE INDIVIDUAL OWNERSHIP.

354. We have seen that persons who have purchased from communities or families and in some instances persons who have come into occupation by native customary transfer are recognised by the Court as having the rights and as being under the obligations of an "individual owner" in the sense in which we have used the term. Thus they may be regarded as having the power to sell or mortgage their land and their creditors may be held to have authority to take it in execution. We have already expressed our opinion that where such rights have been brought into existence under the law as at present administered by the Courts, they must have the same legal effect given them as at present. The question as to whether any particular person has the rights, or is subject to the obligations, of an individual owner is one of considerable difficulty. We have already in para. 113 given our reasons for not recommending an inquiry and the creation of a register of title applicable to native individual owners, and have stated that in our opinion the question as to whether a person is entitled to sell or mortgage a particular piece of land must be left for decision by an intending purchaser or mortgagee subject to any recourse he may have to the Courts by law.

355. We think, however, that certain rules which are complementary to those set out in para. 351 should be laid down by the Legislature. Those rules may be stated as follows :—

- (1) That any question which may arise whether any particular land is community or family land or the property of an individual occupier shall be decided by the Court, having regard to the facts of each case, and that in deciding this question the Court must recognise that, under native custom, rights are not lost by mere non-user.
- (2) If, however, the land has been enjoyed by the occupier or his predecessors in title for twenty years in a manner inconsistent with the rights of the family or community, the Court may, if it sees fit, treat the land as individual land and as liable to be sold, mortgaged, or taken in execution.

It will be necessary to retain in force the existing provisions with regard to the registration of deeds, *e.g.*, the Gold Coast Land Registry Ordinance, 1895, and the Southern Nigeria Land Registration Ordinance, so far as transactions not entitled to entry in the Register of Title, recommended above, are concerned.

356. In view of the inconvenience caused by the decision referred to in paras. 119–120 that as between a registered instrument and a prior parol sale the latter has priority, it will be well to amend the Registration Ordinances by giving facilities to enable an intending vendor and purchaser to appear before the District Commissioner and to provide that a memorandum made by him of a transaction entered into between such persons shall be deemed to be an instrument of transfer capable of registration.

357. It might also be desirable to further amend the Registration Ordinances by requiring, as a condition precedent to registration in every case, the filing of a document stating the facts upon which the vendor or lessor relies as establishing his title to individual rights over the land entitling him to deal with such rights in the manner proposed, and bearing the attestation of the District Commissioner or other prescribed executive officer. The officer should before attesting the document satisfy himself that there is *prima facie* evidence of the truth of the facts therein stated, and in any subsequent proceeding the court should be empowered to accept the document bearing such attestation as *prima facie* evidence of the truth of such facts.

## EXEMPTED DISTRICTS.

358. We have already stated our opinion that conditions in some of the urban districts on the West Coast of Africa have become so changed by contact with Europeans and Europeanised natives that it may be desirable to exempt them from the customary rules of tenure and to recognise their land tenure on English lines.

*The mode in which a District may become an exempted District.*

359. The Ordinance might itself specify certain districts fulfilling the above conditions to be exempted districts, and might further authorise the Legislative Council to declare any other districts to come within the category.

We think that great caution should be exercised in making any declaration, and we accordingly recommend that the Ordinance should provide that before the Legislative Council exercises this power of exemption full public inquiry should be held, after notice promulgated in the Gazette, and that in any district where a native council exists it should be consulted.

*Law within an exempted District.*

360. A simple statement as to this law should be declared by the Ordinance. It would probably be sufficient if the following principles were laid down :—

- (1) The rules limiting the rights of native communities and families to dispose of their land recommended in para. 350 should not apply, and such communities and families should be empowered to sell or mortgage their land provided the consent of any person whose consent would be required by custom is given.
- (2) The presumption suggested in para. 351 that all land of which a native is in beneficial occupation belongs to the community or family of which he is a member should not apply, but the contrary presumption should be made.
- (3) Individual owners should have power to lease, sell, mortgage, or dispose by will of their land, and it should be liable to seizure in execution for debt.
- (4) Assurances should be by simple document in writing.
- (5) Upon death of an individual owner probate or letters of administration should be requisite to perfect the legal title of the successor.

With regard to the devolution of the beneficial interest in default of testamentary disposition, a strict adherence to the rules of English law would not appear to be reasonable. Special provision would, doubtless, be made in respect of Christian and Mohammedan succession, and rules might be framed in respect of each district under which the beneficial interest would descend in a manner more in accordance with native ideas than the strict rules of English law.

- (6) Where not otherwise provided, the rules of English law should apply to land unless injustice would be the result.

*Registration.*

361. Where circumstances in any exempted district are favourable we would urge that a system of registration of title, on the lines above referred to, should be introduced, but it must be borne in mind that this system cannot be satisfactorily introduced unless a proper survey is provided.

It would be necessary to retain the existing system of registration of deeds in any area until a system of registration of title has been brought into force.

MISCELLANEOUS RECOMMENDATIONS.

*Transfer of the Use of Land from Tribe to Tribe.*

362. It may well be that one tribe may have land over and above what is required for its needs, whilst its neighbour may not have sufficient. We therefore think that provision should be made enabling the Governor to remedy such a state of things. As a rule the transfer should only be made with the consent of the native authority whose land is transferred, and it would require a very strong case of public necessity to warrant land being transferred without such consent. The transfer should only be for a term of years, say ninety-nine, and a rent should be payable by the tribe to whom the transfer is made, which would be applicable in the same manner as rents received under leases.

*Tribal Boundary Disputes.*

363. We have in paras. 304–307 set out our reasons for advocating the prevention of litigation as to tribal boundaries by substituting a simpler and more effective procedure than is provided by the Courts.

We recommend that whenever a dispute with regard to a tribal boundary has arisen, or is likely to arise, the dispute should be brought before the Governor, who should have power to decide it in a summary manner. Where any such dispute

should become an issue in litigation it would be the duty of the court in which it arose to report it to the Governor and to stay proceedings pending the Governor's decision.

*Method of Recognition of Native Customs by the Courts of each Dependency.*

*Supra*, p. 28  
*et seq.*

364. We have already pointed out with reference to the Gold Coast the provisions of the Supreme Court Ordinance with regard to the recognition of native customs by the Courts. There is no provision in the Supreme Court Ordinances of the Gold Coast or Southern Nigeria enabling the Court to take judicial notice of any native law or customs, however notorious such law or customs may be. The methods at present in use appear to be to take the evidence of chiefs or other experts as to the native customs in question, who are called as witnesses under the ordinary conditions. In the new Supreme Court and Provincial Courts Ordinances of Nigeria, in the sections quoted above (Part II., para. 73), we find a provision that the Court may, in deciding questions of native law or custom, give effect to any work in manuscript recognised by natives as a legal authority. This provision appears to us to be too narrow.

Griffith,  
14,303.

365. We think that every Court ought to have the power of taking judicial notice of any native custom which it considers to be sufficiently notorious. There should be no statutory limitation as to means which the Court might adopt to satisfy itself as to the notoriety of the custom. Thus, if native councils were encouraged to set down in writing any native customs prevailing within their district, these records would furnish a valuable fund of information. If, however, the Court considered that it had not sufficient material to decide upon the existence or character of a native custom in dispute, it might then require expert evidence to be called. The practice sanctioned by section 74 of the Gold Coast Supreme Court Ordinance and by the above-mentioned sections of the new legislation for Nigeria of obtaining the assistance of native referees or assessors should also be continued. All that seems necessary in the way of new legislation appears to be a provision to the effect that where it appears to the Court, upon its own knowledge and on such other materials as it may think fit, that any alleged custom with regard to the tenure or transfer of rights over land is sufficiently notorious, it may, without formal evidence of the existence or character of the alleged custom, take judicial notice thereof.

366. Such a provision should supersede, so far as Southern Nigeria is concerned, the provision in the new Ordinances of Nigeria referred to above in paragraph 73.

The decision of a Court that a custom is sufficiently notorious should be capable of review by any Court having appellate jurisdiction in the matter.

*Amendment as to Requisites of a Legal Custom.*

367. For the reasons given in Part II., para. 85, we think a provision is required to the effect that a custom shall not be deemed to be invalid in point of law merely because it may be proved to be of recent origin.

*Application of English Law to transfer of Land.*

368. For the reasons given in Part II., para. 86, we think that it is desirable that provision should be made that, in the case of land to which English law applies, no deed or will should operate to create any proprietary right over land other than an estate in fee simple or a demise.

*Jurisdiction of Native Tribunals.*

369. It will be remembered that, whereas in the Gold Coast the jurisdiction of native tribunals is limited to lands held under native tenure (*see* para. 69), in Southern Nigeria no such limitation exists (*see* para. 78). Whatever may be the legal meaning of the expression (as to which *see* para. 117), we think that it should be made clear that native tribunals have jurisdiction in all disputes as between natives with regard to land, and that the limitation should be removed.

APPLICATION OF PRECEDING PRINCIPLES TO THE DIFFERENT DEPENDENCIES.

**Gold Coast, Ashanti, and Northern Territories.**

370. All the recommendations made above apply to the Gold Coast and Ashanti, but it is probably premature to bring them into operation in the Northern Territories.

We have already stated in para. 164 our opinion that the Concessions Ordinance should be repealed, except for the purpose of winding up proceedings pending under it. This winding up, we think, should be entrusted to a small temporary Commission, who should carry it out with as little delay as possible in the manner which we shall now proceed to state.

371. The course to be taken with regard to concessions which have been notified but in respect of which certificates of validity shall not have been obtained at the date of the repeal may be divided into two classes: those in which proceedings have been prosecuted with reasonable diligence, and those in which little or nothing has been done subsequent to the notification, and which, in other words, are in default. The machinery which exists at present under the Concessions Ordinance, to which reference has been made in para. 154, should, we think, be sufficient for the purpose, but provision might be made to enable the Commission to formulate rules, if this should prove not to be the case. The Commission should order all inquiries which had been adjourned *sine die* to stand for hearing on a certain day, and unless good cause were shown they would be struck out. If after three months the inquiry was not reinstated the concession would *ipso facto* come to an end, as we have already explained, under section 56.

372. In deciding whether an inquiry should be struck out, the Commission would act in a different spirit according as it had been prosecuted with diligence or was in default. If it came within the former class, then the proceedings should be adjourned to enable the matter to be brought to a conclusion and a certificate of validity granted; but if it was in default, then no adjournment should be permitted unless the concessionaire shall be in a position to satisfy the Commission that he is entitled to what we will call "equitable treatment." In deciding whether a concessionaire is entitled to equitable treatment, it will be an important consideration whether the grantee or other person claiming through the grantee is at the time of the repeal of the Ordinance, and has been for a time sufficient to guarantee his *bonâ fides*, actually working or exercising the rights conceded and duly paying all rents due to the native authority. If it can be proved to the satisfaction of the Commission that the concession or some of the rights granted thereby are being really and *bonâ fide* worked or exercised, and that all obligations thereunder have been duly discharged, we think the Commission should give facilities for the inquiry being prosecuted. Where, however, no work had been done under the concession, or where, though work might have been done, it had ceased, and generally in every case where the Commission were not satisfied of the *bonâ fide* intention of the grantee to start or continue the exercise of the rights purporting to have been conceded, or where the obligations to the native authorities have not been carried out, it would be its duty to strike the inquiry out.

373. The action to be taken with regard to the classes of unnotified grants to which we have referred in para. 156 is by no means free from difficulty.

It will be remembered, as we have pointed out in paras. 128-130, that the Colonial Legislature and the courts have assumed that all grants for agricultural and arboricultural purposes are "concessions" within the Ordinance, and we have come to the conclusion that, whatever the strict legal interpretation of the definition may be, all such grants as exist should be inquired into by the Commission.

We accordingly recommend that all persons claiming uncertified or unnotified grants for mining, the felling of timber, the collection of forest produce, or any agricultural or arboricultural purpose, be required within a time prescribed by the Governor to produce them before the Commission, the only exemption being those which have received the consent of the Governor under the Order in Council of the 11th April 1906, or of the District Commissioner under the Order in Council of the 28th June 1913.

When any such grant is brought before it, the first duty of the Commission would be to consider whether or not it constituted a "concession" within the legal meaning of the Ordinance.

374. The subsequent action of the Commission would be different according as this question was answered in the affirmative or the negative. We will deal with the two events separately:—

- (1) In the former case the Commission would then proceed to consider whether the grantee is entitled to "equitable treatment" in the sense in which we have used the expression. If he has discharged all his obligations under the concession, and his grant satisfies the requirements of section 11

of the Concessions Ordinance, the Commission might issue a certificate accordingly, and the Governor should, without any further consent on the part of the native authorities, be empowered, after survey, to grant a lease in accordance with the regulations governing the new system of leases which we propose should be created. In case the Commission came to the conclusion that the grantee was not entitled to equitable treatment, it would certify accordingly, and the Governor should be empowered to determine the concession so that the land and all rights would revert to the grantors.

- (2) In the second case, *i.e.*, if the Commission decided that the grant did not come within the definition of a "concession," then it would be its duty to consider whether such grant was valid or not according to the general law of the Colony. In case it decided that the grant was valid a certificate to that effect would be endorsed upon it, whilst if the decision was adverse to its validity, the Commission would so certify, and the Governor should be empowered to determine the grant so that the land would revert to the grantors.

Two principles should, we think, be laid down—

- (a) That all grants which are required to be, but are not, produced before the Commission, should be absolutely null and void.
- (b) That the Governor be empowered to use the names of the grantors to enforce any provisions in the original grant as regards forfeiture for non-payment of rent or other breach of covenant and generally to enforce the provisions of the lease on behalf of the grantors.

375. We suggest that the Commission should consist of three members, that it should be presided over by a present or former judge of the Supreme Court of the Gold Coast, with two executive officers, both of whom should have had considerable experience in dealing with questions relating to law in the Gold Coast Colony or Ashanti. We think the Commission should be appointed for three years, with power to the Secretary of State to extend the period. There should be a right of appeal on questions of law to the Supreme Court, and from the Supreme Court to the Judicial Committee of the Privy Council, subject to the ordinary rules.

#### *Registration of Title.*

376. In carrying out the system of registration of title which we have recommended—

- (i) all concessions certified by the Court prior to the repeal of the Concessions Ordinance;
- (ii) all agricultural or arboricultural concessions assented to by the Governor or a District Commissioner under the Orders in Council of the 11th April 1906 or of the 28th June 1913;
- (iii) all grants certified as valid by the Commission under the procedure sketched out above;
- (iv) all grants to the Crown for public purposes; and
- (v) all leases issued in accordance with the regulations which we shall recommend,

should, upon production to the Registrar, be entitled to be placed upon the register.

377. As we understand that there are a number of grants in favour of European religious and commercial bodies which would not come under any of the above categories, we would suggest that it is a matter for consideration whether provision be made whereby the holder of any such grant may, if he so desire it, submit his title to the Registrar, who, if he found that the body has a title to the land with a right of sale, might place him upon the register.

#### **Southern Nigeria.**

378. All the recommendations which we have made above apply to this dependency. The legislation proposed would supersede the Native Lands Acquisition Ordinance.

#### **Sierra Leone.**

379. It must be remembered that Part III. of the Protectorate Native Law Ordinance, 1905, contains an elaborate procedure for "the settlement" of non-natives on native lands, that under the various Concessions Ordinances the alienation of land

for cultivation and the granting of concessions for the exploitation of palm kernels, piassava, and kola nuts by a native authority requires the assent of the Governor, and that under the same Ordinances concessions involving minerals, timber, and wild rubber require provisional recognition by the Governor and a certificate of validity from the Supreme Court.

380. No complaints have been made as to the working of this legislation, and therefore it is impossible to say that fresh legislation is urgent.

The evidence with regard to the working of the Protectorate Native Law Ordinance is not very definite, but settlement of non-natives under it appears to have become an established institution, and if this is so, it would not be advisable to repeal it.

So far as the provisions of the Concessions Ordinance with regard to the alienation of land for purposes of cultivation are concerned they appear satisfactory, and we should not suggest their repeal except with a view to uniformity of legislation with the other dependencies. Haddon  
Smith, 6082.

381. It may be that the Colonial Government may decide to adopt the system of leases recommended by us whilst retaining the principles underlying Part III. of the Protectorate Native Law Ordinance. To frame the necessary legislation would require a more detailed acquaintance with the practical working of the land laws of the Protectorate than we have been able to acquire and would be best carried out on the spot.

382. There is as yet no mining in Sierra Leone, and therefore legislation with regard to it may appear superfluous. If, however, the exploitation of minerals should become a practicable proposition, we would suggest that the necessary legislation should be framed on the lines which we subsequently recommend with regard to the Gold Coast.

383. We shall deal with legislation in Sierra Leone as to the felling of timber and the collection of natural produce in a later portion of this Report.

384. The legislation which we have recommended for the Gold Coast and Southern Nigeria in the foregoing paragraphs headed "Native customary land tenure," "Native individual ownership," and "Exempted districts" appears to us to be unnecessary in Sierra Leone for the present, at any rate, for native individual ownership does not appear to have obtained any foothold except in the parts of the Colony where English law prevails, and there it is fully protected by the law as it stands.

## Gambia.

385. We have no recommendation as to immediate legislation to make in respect of this dependency, but as to future legislation we would refer to our remarks in para. 213.

## II.—TRANSFER FOR THE PURPOSE OF MINING.

### PRELIMINARY OBSERVATIONS.

386. Under this heading we shall deal with, or refer to, the various matters connected with mining that have been brought before us. At present, mining is dealt with in the Gold Coast and in Ashanti under the Concessions Ordinances. Although there is no mining in Sierra Leone the like procedure is contemplated there. In the Northern Territories there is an elaborate Ordinance, passed in 1904, but no action has as yet been taken under it. In Southern Nigeria, the Mining Regulation Ordinance (No. 6 of 1905) is in force in the old Western Province, whilst new Mining Ordinances were in 1913 passed with regard to the old Central and Eastern Provinces. In para. 178 of Part II. we have criticised some provisions of this last-mentioned Ordinance. In the Gambia there is as yet no mining nor special legislation with regard to it.

387. Our proposals have been drafted with reference to the gold-mining industry of the Gold Coast and Ashanti, and we recommend that legislation founded upon them be introduced into those dependencies and also into the Northern Territories, the legislation of which should, we think, be similar to that of the territories lying between it and the Coast. Although, as we have pointed out in para. 214, we do not feel called upon to deal with other forms of mining, we cannot but think that it would be desirable that legislation on the same lines, at any rate as regards the granting of

prospecting licences and mining leases, should be introduced into Southern Nigeria and, should minerals be found there, into Sierra Leone also.

388. The question whether the grant of mining rights should be regulated by a special ordinance regulating mines generally or whether provisions relating to mining should be comprised in a general Ordinance relating to the transfer of rights over land is one which would be best determined by the Government of each Dependency.

Whether the regulation of rights of mining is provided for in a general or special Ordinance the main questions to be dealt with appear to fall under the following heads:—

- (1) Prospecting licences ;
- (2) Mining leases ; and
- (3) General provisions.

389. Before dealing with these several heads we would premise that the principles of the scheme we recommend are the same as those underlying the proposals for leases in favour of non-natives of land for cultivation, habitation, and trading. In fact, all that we have said, with one exception, with regard to the application for and the granting of those leases applies also to mining leases. It will be remembered that we have not recommended that leases for cultivation, habitation, or trading should be granted to natives. The reason for this course does not apply to mining. Although we have had no evidence of mining on modern lines being carried on by natives, it may well be that this stage may be reached later, and we propose that no distinction between native and non-native shall find a place in the creation of mining leases.

#### PROSPECTING LICENCES.

390. Under the present law in force in the Gold Coast an intending prospector must obtain an option from the native authority in respect of the land which he desires to prospect and also a prospecting licence from the Governor authorising him to prospect generally throughout the Colony, the licence being granted under section 27 of the Concessions Ordinance.

In lieu of these two documents we propose that a single prospecting licence be granted authorising the licensee to prospect over a particular tract of country. Sir H. Belfield in para. 123 of his Report\* sets out the mode in which he recommends that such a prospecting licence should be obtained. Application is to be made to the District Commissioner, and, after the assent of the native authority has been given, a licence is to be granted by the Commissioner of Lands. Such a mode seems satisfactory.

391. As regards the terms of the licence we think that it should be granted for one year, renewable for a further period of one year ; that the payment to the native authorities for the exclusive right of prospecting should be one shilling per acre, with a minimum payment of 32*l.* ; that the maximum area to be prospected should not exceed five square miles ; and that the licence should confer a right to select at any time during its continuance not more than two blocks of mining land, not exceeding one square mile each in extent, within the area covered by the licence.

Every licence should be subject to a stamp duty of 5*l.*, the amount payable to the Government in respect of the general prospecting licence at present issued.

#### MINING LEASES.

392. Under the present law in the Gold Coast, anyone mining must, in addition to having a certified concession, obtain a mining licence from the Government. This licence, we recommend, should still be required. The procedure which we recommend for the obtaining of mining leases is the same as that applicable for leases for occupation and cultivation, and everything which we have said with regard to leases generally and as to their registration applies to mining leases.

#### *Period of Lease.*

393. Sir H. Belfield would leave the maximum term of the lease in the Gold Coast and Ashanti ninety-nine years ; in Northern and Southern Nigeria the period is twenty-one years, with the option of renewal at the end of the term if the lessee is carrying on work in a normal and businesslike manner, and the lease shall not at that time be liable to be declared void ; and in the Northern Territories of the Gold Coast it is ninety years.

\* [Cd. 6278], July 1912.

The native witnesses who came before us from the Gold Coast were unanimous in stating that they regarded the term of ninety-nine years as too long. After careful consideration we think that the period should, in future, not exceed fifty years in the Gold Coast, Ashanti, and the Northern Territories. We should have been disposed to recommend an even greater reduction but for the fact that in many cases great expenditure has to be incurred in bringing a deep mining enterprise to the producing stage.

A lessee should have the right to determine his lease by giving the Mines Department six months' notice of his intention to do so.

#### *Mining Areas.*

394. No greater area than one square mile (640 acres) should be the subject of one application. This is in accordance with Sir H. Belfield's recommendation, and we suggest that no person or group of persons should hold more than three such areas. It should be understood that an applicant for a mining licence should not necessarily be the holder of a prospecting licence.

#### *Rent and Premium.*

395. We consider that the premium to be paid might be fixed at 5s. per acre.

Rent might be fixed at the rate of 50l. a year per square mile calculated from the date on which the lease is signed, or possession is taken, whichever is the earlier date, and might increase annually by 50l. until it reaches the maximum of 200l. a year. In any case the maximum rate should be charged from the date that the winning of gold is commenced. We think that these charges, which have been suggested by the Secretary of the Gold Coast Mines Department, are more suitable for adoption than those recommended by Sir H. Belfield in paragraph 121 of his report.

#### *Commencement and Prosecution of Work.*

396. This matter has already been dealt with in para. 220.

#### *Surface Rights.*

397. We recommend that the Ordinance should contain a declaration with regard to the nature and extent of the surface rights which should be deemed incidental to the grant of mining rights. This declaration should, in our opinion, be to the effect set out in para. 217.

The exercise of these rights should be subject to regulations to be made by the Mines Department and approved by the Governor-in-Council.

#### GENERAL PROVISIONS.

398. We have dealt in paras. 221-226 with the provisions as to tax on profits, housing of labourers, maintenance of peace and order, sanitation, liquor licences and trading licences, and recommend that the legislative and administrative measures there suggested should be adopted.

### III.—TRANSFERS FOR THE PURPOSE OF FELLING TIMBER AND FOR THE COLLECTION OF NATURAL WILD PRODUCE.

#### RECOMMENDATIONS.

399. So far as these transfers are concerned, our recommendations may be stated shortly as follows:—

1. The repeal of the Palm Oil Ordinances of Sierra Leone and the Gold Coast.
2. No transfer of the produce of the wild oil palm shall be permitted in Southern Nigeria and Sierra Leone.
3. Transfers of the produce of the wild oil palm shall only be permitted in the Gold Coast and Ashanti in respect of areas where there are no natives exercising rights of collecting the produce.
4. Transfers for the purpose of felling timber and for the collection of rubber, piassava, kola nuts, and other natural wild produce (including that of the wild oil palm where a transfer is permitted) shall only be made by licence.

5. A licence to fell timber or to collect natural wild produce shall be for a term not exceeding ten years, with a liberty of renewal for future periods of five years. Provision might be made, as at present in Southern Nigeria, for a longer term in cases where the licensee is to expend capital on the construction of tramways, monorails, or other work (*see* para. 275).
6. A licence should be granted by the native authority concerned under the supervision of a branch of the Executive.

400. The question whether the granting of these licences should be supervised by the Land Department or by the Forest Department is one of some importance. The ideal arrangement would be, as we shall see later, that the Land Department should deal with all questions involving the transfer of interests in land, and that the Forest Department should be a Scientific Department in touch with the Land Department, but not itself concerned with the granting of licences. The practice, however, in Southern Nigeria (the premier state so far as forestry administration is concerned) does not square with this suggestion, for under the legislation in force there the issue of timber and other licences is regulated by rules under the Forest Ordinance, and the granting of such licences is supervised by the Forest Department.

401. The manner in which the principles which we have enumerated above should be carried out is, it appears to us, a matter for the consideration of the Government of each of the various dependencies. In Southern Nigeria the subject has not been dealt with directly by the Legislature, but has been left to be dealt with by rules under the Forestry Ordinance. This manner has proved satisfactory, and in drafting this report we have assumed that it will be continued. For the sake of conformity we have further assumed that this manner will be likewise adopted in the Gold Coast, and have drafted our recommendations with regard to the Forest Ordinance on this assumption. There is, however, much to be said in favour of embodying our proposals under this head in express provisions of the general Lands Ordinance which will be required to carry out our other recommendations.

#### IV.—THE FOREST ORDINANCES OF SOUTHERN NIGERIA AND THE GOLD COAST.

##### Southern Nigeria.

###### RECOMMENDATIONS.

402. The recommendations which we have to make are :—

- (1) The prohibition of the transfer of the wild oil palm and its produce.  
Whether a saving proviso should be made recognising the validity of arrangements between different communities for the collection of such produce is a matter on which the Forest Department should be consulted.
- (2) We have already in para. 278 recommended the repeal of section 21 of the Forestry Ordinance.

##### Gold Coast.

###### AMENDMENTS RECOMMENDED.

403. Taking as our basis the provisions of the existing Forest Ordinance as explained in Part II. (*see* para. 287 above), we will proceed to indicate, as briefly as possible, certain amendments to the Ordinance which we would recommend.

*Preamble.*—We do not consider that the object of the Ordinance is “to make provision for the beneficial “working of the undeveloped land of the Colony; and “for the preservation of forest resources,” and would prefer a more extended Preamble to the following effect :—

“Whereas the conservation of the forests of the Colony is of vital importance to the public interest :

“And whereas the indiscriminate destruction of such forests depletes the Colony of its natural vegetable resources, affects detrimentally the cultivation of agricultural crops by reducing the water supply and the atmospheric humidity essential to their successful growth and restricts the recurrent supply of forest produce :

"And whereas such destructive processes are becoming prevalent throughout the Colony :

"And whereas it is expedient that the Government charged with the guardianship and welfare of the native communities should make provision for the preservation and development of the forests and of the agricultural resources of the Colony :

"Be it enacted, &c."

*Section 2.*—(i) In order to make it clear that what is to be constituted reserves is not "unoccupied land" in general, but only such as is actually forest or is suitable for reafforestation, we recommend that the definition of "unoccupied land" be deleted, and the following substituted for it:—

"'Forest land' means—

"(a) any land upon which forest exists; and

"(b) any land which is suitable for the production of forest produce, and which is not used for permanent habitation, and has not been cultivated for ten years."

The further alterations relative to this definition would be—

The substitution of the words "forest land" for the expression "any land which appears to be unoccupied" in section 4 (i), and for the expression "unoccupied land" wherever it occurs in sections 8 and 9.

(ii) In view of the alteration we suggest below in section 11 (i), the definition of "reservation land" may be struck out.

(iii) The insertion of a new definition as follows:—

"Lands subject to supervision by the Forest Department" means "lands declared to be such under section 12A."

The further amendments relative to this definition would be—

(a) A fresh section, which might come after section 12, as follows:—

12A. It shall be lawful for the Governor in Council to declare such forest land within the Colony as he may think fit to be "lands subject to supervision by the Forest Department" within which the taking and collection of forest produce shall only be permitted under such rules as may from time to time be made by the Governor in Council.

(b) The words "and lands subject to supervision by the Forest Department" should be added at the end of section 13 (1), (b) and (c).

(c) The words in section 16 "which shall apply to such part of the Colony as the Governor in Council may declare" should be omitted, and the words "and lands subject to supervision by the Forest Department" be added after the words "Forest Reserves" in section 16 (1), (2) and (12), and be substituted for the words "reservation land" in section 16 (3).

New section to come after section 3.—In order to bring to the forefront the fact that there is no intention to interfere with the native rights of property, we recommend that a fresh section be inserted to the following effect:—

3A. Nothing in this Ordinance shall be deemed to vest in the Government any right or title to any land dealt with under the Ordinance.

*Sections 8 and 9.*—We suggest the substitution of the words "customary or other rights" for the word "easements" in these sections, as the latter is not comprehensive enough.

*Section 11 (i).*—We propose that this subsection run as follows:—

"It shall be lawful for the Governor in Council by order to constitute any forest land as to which judgment has been given under section 8 to be from a date specified in the order a forest reserve."

*Section 11 (iii).*—Though it is clear that a lease could only be taken by the Government with the express consent of the owner of the reserve, yet, as some misapprehension has occurred, we would recommend that the provision (iii) (c) be omitted, and further that instead of two-fifths of the gross receipts being paid to the owners the whole of the net receipts should be paid to them.

*Section 14.*—Though we think that there has been a misapprehension with regard to this section construed in connection with the portions of sections 15 and 16, which relate to concessions and leases, and we consider that its proper meaning is that

African  
No. 1048,  
p. 28 *et seq.*

contended for by Mr. McLeod in his memorandum already referred to, we would recommend that this section should be deleted and one to the following effect substituted:—

Nothing in this Ordinance contained shall prevent the granting of prospecting or mining licences under the provisions of the law for the time being in force with regard to mining over forest reserves or lands subject to supervision by the Forest Department or any part of them.

*Section 15.*—We recommend that the reference to concessions and leases should be omitted and that the first part of (1) should read “the fees to be charged on the “grant of licences.”

*Rules.*—In order to carry out our recommendation with regard to alienation of the produce of the oil palm, the taking of such produce by persons other than the native owner or the holder of a licence might be prohibited by the Governor in Council, and a set of rules might be framed to regulate the granting of such licences, one of such rules expressly laying down that no licence would be granted in respect of an area where natives exercise rights of collecting the produce.

#### V.—LAND DEPARTMENT.

404. In the foregoing recommendations we have assumed that in any dependency where our proposals are adopted there will be an official whose especial duty it will be to deal with land questions, and we have designated this official as the Commissioner of Land. Such an officer exists in Nigeria but not in the Gold Coast. It is evident that the supervision of the granting of leases and licences and of the working of the native land system will involve a large amount of work of a most important character, and that the officer at the head of the Land Department should be possessed of special experience in land matters and as to native customs affecting land. It is scarcely necessary to add that there must be an efficient survey staff either under him or in the closest touch with his department. In addition to the Land Department there should also be departments dealing with agriculture, forestry and (where necessary) with mining.\* With regard to the relation of these departments with the Land Department, it appears to us that the ideal arrangement would be that the Land Department should deal with all questions relating to the allocation and administration of land or the produce thereof, and that the forestry, agriculture, and mining departments (whilst in close touch with the Land Department) should be scientific departments not concerned with the granting of leases and licences. In practice, however, as we have already pointed out, this does not seem to be the invariable rule, for under the Southern Nigeria forestry rules the granting of timber licences is under the Forest Department. It appears to us that the question is one for the Government of each dependency to decide having in view existing legislation and practical convenience. Another question for the consideration of the Governments concerned would be as to the relation of the Land Registry with the Land Department, and it may be considered advisable that the Commissioner of Lands should also be the Registrar of Titles.

405. The important matter appears to us to be that there should be an efficient Land Department with records of all dealings with land and its produce, and that it should have at its head an experienced officer competent to advise the Governor on such special matters as the transfer of land from tribe to tribe or a boundary dispute, as well as to carry on the general administration and allocation of land and its products.

\* I think that in the Gold Coast there should be one department dealing with lands and mines, for the reasons stated in my Memorandum, *infra*, p. 165.—F. M. H.

## APPENDIX.

## (A) LETTER FROM THE WEST AFRICAN LANDS COMMITTEE TO THE SECRETARY OF STATE.

Downing Street,

28th March 1913.

SIR,

THE Departmental Committee on the Transfer of Lands in West Africa desire to call your attention to the numerous transactions which are taking place in the Colony of the Gold Coast between native chiefs and European firms or companies or their intermediaries, having for their object the transfer under the Concessions Ordinance of 1900, and amending Ordinances, of extensive areas of palm-bearing land, for the purpose of obtaining large quantities of the fruit and extracting oil. The Committee have learned of these transactions with considerable regret and apprehension. If and when these transactions are completed by the issue by the Concessions Court of a certificate of validity, the concessionaire obtains for a long period of years an indefeasible title to the land, subject to certain conditions in favour of natives which are imposed by the Ordinances or are expressly specified in the Concession or certificate of validity.

In a despatch from the Governor of the Gold Coast, dated December 20th, 1912,\* it is stated that up to that date no certificates of validity had been issued "for the purpose of exploiting palm-bearing lands." But in the same despatch is enclosed a return, from which it appears that during the year 1911 and the first half of 1912 notices had appeared in the Government Gazette, as required by the Concessions Ordinance, showing that grants had been made by chiefs to Europeans of "rights of taking the fruit of palm trees and planting the same, and of agriculture and "arboriculture" over no less than 172 square miles of land in the Gold Coast. So far, however, as we know, there is only one group of concessions, covering an area of 40 square miles, in respect of which certificates of validity have been applied for. The Committee are not informed whether these certificates have been granted by the Concessions Court.

The Committee have arrived at the following conclusions with regard to the grant of oil-palm bearing land by tribal authorities:—

- (1) They are of opinion that the present state of the law is unsatisfactory and requires careful revision and amendment.
- (2) They consider that if any such grants are made (as to the advisability of which the Committee do not desire at present to make any representations) they should be subject to statutory regulations especially as to—
  - (a) the purpose of the grant, for example, whether it is for the purpose of gathering the natural produce of the wild palm trees or whether it is for the plantation and cultivation of the palm;
  - (b) the area of the grant, in order to prevent interference with the native customs and rights which it is desirable to safeguard, especially with regard to the economic position of the natives in the future;
  - (c) the powers conferred by the grant, which should not be such as would be likely to conflict unduly with the jurisdiction of the native chiefs or with the control of the central government;
  - (d) the parties to the grant, so as to secure from the first that the interests of the community are properly represented, and the grant made with sufficient knowledge and deliberation;
  - (e) the adequacy of the consideration for the grant; and
  - (f) the proper application of all moneys received.

We hope to deal fully with the above and other similar points in our report.

It appears to us to be of the first importance that, so far as practicable, further proceedings to validate concessions of the nature specified should be suspended until there has been a full opportunity of reconsidering, and, if necessary, amending the present law so that no further claims to large areas of land may in the meantime be established. This object may, it appears to us, be in some degree attained by the exercise of powers given by the law as it stands at present.

The Concessions Ordinance of 1900, section 3, provides that the Governor in Council may exclude from the operation of the Ordinance, subject to any conditions which he may impose, any class of concessions (not relating to minerals). This power was exercised by the Governor in Council by the Order dated April 11th, 1906. The Order provides for the exclusion of "every concession granted for the purpose of agriculture or arboriculture," in respect of which certain conditions are complied with, one of which conditions is the following:—

"If the concession confers, or purports to confer, rights over an area exceeding one square mile, the consent of the Governor must be endorsed on the concession or a certificate copy thereof; provided that the Governor may withhold such consent in the case of any concession without assigning any reason therefor."

We think that, pending the reconsideration of the law, the Governor should not hesitate to exercise, wherever practicable, his power of refusing consent to any concession which purports to give any rights of cultivating trees or agricultural produce over an area exceeding one square mile. Any case of doubt whether the proposed concession does or does not fall within the terms of the Order in Council should be referred to the Attorney General.

We further think that it is desirable to consider the best mode of enforcing the provisions of the recent Ordinance of August 24th, 1912 (No 16 of 1900). This ordinance amends section 11 of the Concessions Ordinance, 1900, so as to make it read "No concession shall be certified as valid . . . (7) if it grants " or purports to grant rights to collect natural produce " other than timber to the exclusion of natives."

Whether or not a concession purports to grant rights to the exclusion of natives would be a question of the construction of the document, in other words a question of law. Whether the concession would if acted on operate to the exclusion of the natives would be a question of fact. In doubtful cases the former would be a question for the Attorney General, the latter for the District Commissioner. It would seem therefore desirable that every concession of palm-bearing land of which notice is given in the Gazette should be submitted for examination and report to each of these officers, and that if the Attorney General should consider that there are grounds on which the application for the certificate of validity ought not to be granted, or ought to be modified, he should so advise the Governor who, if he thought fit, might under section 14 of the Concessions Ordinance direct the Attorney General to intervene and oppose the grant of the certificate. The conduct of the case would then be in the hands of the Attorney General, who after consulting the District Commissioner would advise upon the evidence which would be needed on any question of fact which might arise. It appears to us that if any concessionaires make any application to the Colonial Office in reference to the proposed terms of a concession, or of a certificate of validity, they should be informed that the Secretary of State has determined in future to adopt some such procedure as above indicated.

We have had evidence that a considerable quantity of land (how much it is difficult to ascertain even approximately) has been leased by chiefs on the Gold Coast either outside the Concessions Ordinance altogether, or by taking the earlier steps prescribed by that Ordinance without proceeding to apply for a

\* No. 14 in African No. 1948.

certificate of validity. How to deal with this practice and what the legal effect of such transactions is, or ought to be, is one of the difficult questions we shall have to deal with in our report. Meanwhile it seems advisable to use any influence which may be available to impress upon the chiefs the dangers of these large concessions of land, whether under the Concessions Ordinance or otherwise. We recommend that the attention of the District Commissioners should be called to the importance of making use of every opportunity of acting on these lines, and we venture to suggest that the despatch No. 121 of 25th February 1913,\* with reference to the cocoa plantations, affords *mutatis mutandis* an admirable precedent for a statement of policy with regard to palm-bearing lands.

\* No. 20 in African No. 1048.

We regret that Mr. Morel's absence from England has prevented our communicating with him during the consideration of this paper. He left, however, a document stating his views, and we have no reason to suppose that he would dissent from our opinions as above expressed.

We have, &c.

KENELM E. DIGBY.  
F. M. HODGSON.  
W. T. TAYLOR.  
WALTER NAPIER.  
JOSIAH C. WEDGWOOD.  
CHARLES STRACHEY.  
WALTER D. ELLIS.

(B) MEMORANDUM BY SIR WALTER NAPIER ON SOME OF THE LAWS BEARING ON THE SUBJECT SUBMITTED TO THE WEST AFRICAN LANDS COMMITTEE.

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- PART I.—*The Constitutions of the West African Colonies and Protectorates.*  
" II.—*The Courts and the General Principles of Law administered in them.*  
" III.—*Ordinances relating to Land.*

PART I.

*The Constitutions of the West African Colonies and Protectorates.*

THE GOLD COAST.

The whole of this territory is now Colony. In order to understand the present position, it is not necessary to go into matters prior to the grant of the Letters Patent of the 13th January 1886. Under them the Colony comprised all places, settlements, and territories belonging to the Crown on the Gold Coast in Western Africa between the 5° W. longitude and the 2° E. longitude. These places, settlements, and territories extended "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." (Lord Carnarvon's despatch of 21st August 1874.)

The Letters Patent constituted a Legislative Council, and in pursuance of the Imperial Act, 6 and 7 Vict. c. 13, the Crown delegated to such Council authority to establish such Ordinances, to constitute such Courts, and to make such provision for the proceedings in the Courts and for the administration of justice as might be necessary for the "peace, order, and good government of the Colony."

The countries adjacent to the Colony were protectorate, and an Order in Council of the 29th December 1887, under the Foreign Jurisdiction Act, 1843, empowered the Colonial Legislative Council to exercise the power and jurisdiction of the Crown within such countries.

By Order in Council of the 26th September 1901, the boundaries of the Colony were extended so as to include the Protectorate, which was annexed to the Dominions of the Crown and declared to be part and parcel of the Colony in like manner, as if it had formed part of the Colony at the date of the Letters Patent of the 13th January 1886. Express provision was made empowering the Colonial Legislative Council to make laws for the peace, order, and good government of the territories so annexed. By another Order in Council of the same date, the Order in Council of the 29th December 1887 was revoked.

An Order in Council of the 22nd October 1906 rectified the boundary between the Colony and Ashanti, and defined the limits of the Colony in detail.

ASHANTI.

This territory is, like the Gold Coast, Colony. An Order in Council of the 26th September 1901, after reciting that the territories in West Africa known as

Ashanti had been conquered by His Majesty's forces, ordered that such territories should be annexed to and form part of His Majesty's Dominions, and should be known as Ashanti. The Governor of the Gold Coast was empowered generally to exercise all powers and jurisdiction of the Crown in Ashanti, and specifically by Ordinance to provide for the administration of justice, the raising of revenue, and, generally, for the peace, order, and good government of the country, and of all persons therein, including the prohibition and punishment of acts tending to disturb the public peace.

It is germane to note that "the Governor in issuing "such Ordinances, shall respect any native laws by "which the civil relations of any native chiefs, tribes, "or populations under His Majesty's protection are "now regulated, except so far as the same may be "incompatible with the due exercise of His Majesty's "power and jurisdiction, or clearly injurious to the "welfare of the said natives."

An Order in Council of the 22nd October 1906 rectified the boundary between Ashanti, the Gold Coast Colony, and the Northern territories, and defined the limits of the former in detail.

THE NORTHERN TERRITORIES.

These territories, which are protectorate, are governed under another Order in Council of the 26th September 1901. This Order is under the Foreign Jurisdiction Act, 1890, and is very similar in form to the Ashanti Order in Council of the same date. It empowers the Governor of the Gold Coast to promulgate Ordinances and safeguards native laws in identical terms.

An Order in Council of the 22nd October 1906 defines the limits of the Protectorate in detail.

SOUTHERN NIGERIA.

The territories forming Southern Nigeria consist of the Colony and of the Protectorate of Southern Nigeria.

The constitution of the Colony is regulated by Letters Patent of the 28th February 1906, whereby it was provided that the Colony of Lagos should thenceforth be known as the Colony of Southern Nigeria, and should comprise the Island of Lagos and such portions of the neighbouring territories as had been annexed to the Dominions of the Crown. A Legislative Council was formed and to it were delegated powers within the Colony similar to those conferred upon the Legislative Council of the Gold Coast within that Colony.

The Government of the Protectorate is regulated by an Order in Council of the 4th February 1911 made under the Foreign Jurisdiction Act, 1890. Such Order applies "to the territories of Africa which are "bounded on the south by the Atlantic Ocean, on the "west by the line of the frontier between the British "and French territories, on the north and north-east

" by the British Protectorate of Northern Nigeria, " and on the east by the frontier between the British " and German territories." There is express provision that the Colony is not to be included within the limits of the order.

The Legislative Council of the Colony is empowered by Ordinance " to exercise and provide for giving effect " to all such powers and jurisdiction as His Majesty " at any time before or after the passing of this Order " has acquired or may acquire in the said territories " or any of them." To this power there is the following important proviso:—

" That nothing in any such Ordinance or Ordinances contained shall take away or affect any rights secured to any natives in the said territories by any treaties or agreements made on behalf or with the sanction of Her late Majesty Queen Victoria, His late Majesty King Edward the Seventh, or of His Majesty, and all such treaties and agreements shall be and remain operative and in force, and all pledges and undertakings therein contained shall remain mutually binding on all parties to the same."

#### SIERRA LEONE.

These territories consist of the Colony and of the Protectorate of Sierra Leone.

The Letters Patent at present regulating the Colony are dated the 3rd April 1913. Under them it is to comprise all places, settlements, and territories belonging to the Crown, between the 6° and 10° N. latitude and the 10° and 14° W. longitude, and bounded on the north by the Anglo-French boundary line as delimited by Convention, and on the south by Anglo-Liberian boundary line as similarly delimited. A Legislative Council was formed with the usual powers of legislation.

The Government of the Protectorate is regulated by Order in Council of the 7th March 1913. The boundaries of the Protectorate are set out in detail, and the Legislative Council of the Colony is empowered to legislate for it.

#### GAMBIA.

These territories consist of the Colony and of the Protectorate of the Gambia.

The Letters Patent regulating the former bear date the 28th November 1888, whilst the Order in Council regulating the latter is dated the 23rd November 1893.

The Legislative Council of the Colony, formed under the Letters Patent to make Ordinances for the government of the Colony, is, by the Order in Council, empowered to exercise the jurisdiction of the Crown within the Protectorate.

#### PART II.

##### *The Courts and the General Principles of Law administered in them.*

#### THE GOLD COAST.

##### I.—Courts.

(1) The Supreme Court, regulated by Ordinance 4 of 1876.

The Court consists of a Chief Justice and three Puisne Judges.

Its jurisdiction as to land within the Colony is that possessed by the High Court of Justice in England.

The Colony is divided into Provinces and these are subdivided into districts. In each Province there is a Divisional Court, normally consisting of one Supreme Court Judge, and the original jurisdiction of the Supreme Court arising in the Province is exercised by the Divisional Court with an appeal to the Full Court when the subject-matter is 50*l.* or upwards in value.

Under the District Commissioners Ordinance, 1894, a District Commissioner is constituted a Commissioner of the Supreme Court and has jurisdiction: (a) in certain suits between landlord and tenant for the possession of land or houses of a limited annual value or rent when claimed under lease or refused to be given up, (b) in certain cases when the ownership of land comes in question and all parties consent.

An appeal lies from the decision of a Commissioner to the Divisional Court.

(2) Native tribunals, regulated by the Native Jurisdiction Ordinance, 1833, as amended in 1910.

Under section 10 the head chief of every division and the chiefs of subdivisions and villages are, with their respective councillors authorised by native law, to form native tribunals.

Under sections 10 and 11 the civil jurisdiction of a native tribunal extends to the hearing and determination of all suits relating to the ownership or possession of lands held under native tenure and situated within the particular jurisdiction of the tribunal, where all the parties are natives (*i.e.*, persons who are, under native customary law or under any Ordinance, members of a native community of the Colony, Ashanti, or the Northern Territories) or in which any party, not a native, consents in writing to his case being tried by the native tribunal.

By section 17 the jurisdiction of native tribunals is to be exclusive of all other native jurisdictions and is not to be exercised by any other native tribunal on any pretext whatever, and any Court, in which it appears that any case brought before it is one properly cognisable by a native tribunal, shall, unless satisfactory reason to the contrary is shown, stop the further progress of such case and refer the parties to the native tribunal.

By section 19 legal practitioners are debarred from audience, except with leave, in native tribunals or in proceedings removed from a native tribunal to the Supreme Court by appeal or otherwise.

By section 21 the Provincial Commissioner has power, subject to an appeal to the Governor, to direct any case brought before a native tribunal to be tried by a superior native tribunal or by the Supreme Court.

By section 23 there is an appeal from a native tribunal to any superior native tribunal in the same head chief's division and from the highest native tribunal to the Supreme Court. The appeal to the Supreme Court in cases relating to the ownership or possession of any land is to a Court formed by the Commissioner of the Province in which the land is situated and any person aggrieved by his decision may appeal direct to the Full Court.

The Schedule to the Ordinance contains provisions for a simple written procedure.

When judgment is given the presiding chief, if able to write, is to record the proceedings.

In any decision by a head chief's tribunal in respect of land, if the chief is an illiterate person, he may follow the last-mentioned procedure or he may send a linguist with the parties to the District Commissioner, who will make the record.

A judgment may be enforced against the movable or immovable property of the person condemned therein or by such other methods of enforcing judgments in accordance with native customary law as are not repugnant with natural justice or with the principles of the law of England.

#### II.—Law Administered.

##### (1) In the Supreme Court.

The following sections of the Supreme Court Ordinance are of such capital importance that they are set out *in extenso*.

14. The common law, the doctrines of equity, and the statutes of general application which were in force in England at the date when the Colony obtained a local legislature, that is to say, on the 24th day of July, 1874, shall be in force within the jurisdiction of the Court.

17. All Imperial laws declared to extend or apply to the Colony or the jurisdiction of the Court shall be in force so far only as the limits of the local jurisdiction and local circumstances permit, and subject to any existing or future Ordinances of the Colonial Legislature; and for the purpose of facilitating the application of the said Imperial laws, it shall be lawful for the Court to construe the same with such verbal alterations, not affecting the substance, as may be necessary to render the same applicable to the matter before the Court; and every Judge or officer of the Supreme Court having or exercising functions of the like kind, or analogous to the

functions of any Judge or officer referred to in any such law, shall be deemed to be within the meaning of the enactments thereof relating to such last-mentioned Judge or officer; and whenever the Great Seal or any other seal is mentioned in any such statute it shall be read as if the seal of the Supreme Court were substituted therefor; and in matters of practice all documents may be written on ordinary paper, notwithstanding any practice or directions as to printing or engrossing on vellum, parchment, or otherwise.

18. In every civil cause or matter which shall come in dependence in the Supreme Court, law and equity shall be administered concurrently; and the Court in the exercise of the jurisdiction vested in it by this Ordinance shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as shall seem just, all such remedies or relief whatsoever, interlocutory or final, as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim or defence properly brought forward by them respectively, or which shall appear in such cause or matter; so that as far as possible all matters in controversy between the said parties, respectively, may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided; and in all matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter the rules of equity shall prevail.

19. Nothing in this Ordinance shall deprive the Supreme Court of the right to observe and enforce the observance, or shall deprive any person of the benefit, of any law or custom existing in the Colony, such law or custom not being repugnant to natural justice, equity, and good conscience, nor incompatible, either directly or by necessary implication, with any enactment of the Colonial Legislature existing at the commencement of this Ordinance, or which may afterwards come into operation. 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, and to inheritance and testamentary dispositions, and also in causes and matters between natives and Europeans where it may appear to the Court that substantial injustice would be done to either party by a strict adherence to the rules of English law. No party shall be entitled to claim the benefit of any local law or custom if it shall appear either from express contract or from the nature of the transactions out of which any suit or question may have arisen that such party agreed that his obligations in connection with such transactions should be regulated exclusively by English law; and in cases where no express rule is applicable to any matter in controversy, the Court shall be governed by the principles of justice, equity, and good conscience.

It seems that the principles of the last section may be embodied in the following rules:—

- (1) In this section "Native law" means any native law or custom which is not repugnant to natural justice, equity, and good conscience, nor incompatible either directly or by necessary implication with any enactment of the Colonial Legislature existing at the commencement of the Ordinance or which may afterwards come into operation.
- (2) In all suits where the parties have agreed to be bound by English law in any transaction that law will be applied, and an agreement may be express or may be implied from the nature of the transactions out of which the suit may have arisen.
- (3) In suits between natives where Rule 2 does not apply, native law is to be applied.

- (4) In suits between Europeans and natives, English law will be applied, unless a strict adherence to it will cause substantial injustice to either party. This rule is subject to Rule 2.
- (5) Where no rule of law (English or native) is applicable, the case must be decided according to the principles of natural justice.

The application of section 19 was discussed by Sir William Brandford Griffith in the case of *Cole v. Cole* (reported on p. 201 of "Comments on some Ordinances of the Gold Coast Colony," by Mr. Hayes Redwar, at one time a Puisne Judge of the Gold Coast). The question there was as to whether the rights of natives married by Christian rites should be regulated by English or native law. After quoting the first part of the section, he says: "Does this mean that the Court is bound to observe native custom or to allow 'native custom to apply in every case of a native where the custom is not repugnant to natural justice, &c., nor incompatible with any local ordinance? I think not. When the Court has before it a matter which is purely 'native,' or where all the circumstances to be taken into account are connected with native life, habit or custom, then undoubtedly native law and custom should apply. Where, on the other hand, the matter before the Court contains elements foreign to native life, habit and custom, the Court is not bound to observe native law and custom." With reference to the concluding words of the section, he expressed his opinion as follows:—"These words show that the Legislature was well aware that it could not lay down specific rules as to where native law and custom was to apply, and where it was not to apply. It was aware that cases must arise for which it could not possibly provide; accordingly, it framed the section in very general terms, expressly specifying one class of transactions in which natives should not take advantage of native law and custom, and finally giving the Court large discretionary powers."

The question as to the substitution of English law for native law by contract came before the Supreme Court in the case of *Swanzy v. Bordoh, Redwar, 197*. The case is thus stated in the head note: "In a mortgage deed drawn as nearly according to the English form of mortgage with an express power of sale and given by a native to an English firm the mere fact that no interest was expressed to be payable is not sufficient to convert the mortgage into a native mortgage. The deed being substantially an English mortgage, the parties must be deemed to have excluded the native law by express contract, there being clear evidence of their intention not to be guided by the native law of pawning or pledging lands." This case is discussed in the evidence, Questions 7222-4.

As to the meaning of the words "law or custom" in section 19, Mr. Sarbah remarks on page 2 of Fanti Customary Laws that so far as he has been able to ascertain, the Court has only once discussed the meaning of these words, and this was in *Welbeck v. Brown* before the Full Court of Appeal in 1884. In this case (which is reported on page 160 of Fanti Customary Laws) Bailey, C.J., and Smalman Smith, J., laid it down that although the Court is to give effect to native customs, it is only to do so when the customs were customs which dated from a time whereof the memory of man runneth not to the contrary" and proved to have had the essential character of immemorial customs according to the English law on the point. Macleod, J., dissented from the view that this ancient doctrine of English law was applicable, but the decision was, of course, that of the majority of the Court. This judgment is criticised by Mr. Sarbah on page 25 *et seq.* of Fanti Customary Laws, and by Mr. Redwar, on page 16 of his book, and seems a very narrow interpretation of the Ordinance and not in accordance with Indian decisions.

Section 74 of the Supreme Court Ordinance sets out one of the modes in which the Court may inform itself as to native law and custom. It is as follows:—

The Court may in any proceeding in which matters of native law or custom may be material to the issue to be therein determined, and in

which it may think it expedient to do so, call in one or more native chiefs, or other persons whom the Court shall consider specially qualified, to act as referees, and may hear and try such cause or matter wholly or partially with the assistance of such referees, and the affirmation of any such law or custom by the said referees, upon being consulted by the Court, shall be evidence thereof, and the Court shall presume the correctness of such evidence. Such referees shall be selected and summoned in such manner as the Court may direct.

Mr. Redwar, on pages 82 and 83 of his book, summarises the sources of information as to native law as follows:—

- (1) Decisions of the Judicial Assessor's Court and the Supreme Court.
- (2) Affirmation of native referees sitting in Court with the Judge under section 74 of the Supreme Court Ordinance.
- (3) Consultation with experts in the native law out of Court.

This practice was, it is believed, initiated by Mr. Justice Smith, and has been attended with excellent results. The course adopted is to lay the material facts of the case by letter—suppressing the names of parties—before native judges and experts, unconnected with the litigants, and residing at some distance from them, and submitting certain questions of native law for their opinion. The names of the experts are not disclosed to each other or to the parties, and in this mode of proceeding the possibility of partiality or undue influence is reduced to a minimum. Upon the opinions being received, they are read in Court by the Registrar to the parties or their Counsel, and argument is invited, after which judgment is given.

Evidence of expert witnesses called by the parties in the usual way.

This course is open to the objections common to all expert testimony, which in such case is liable to be biased according to the interest which the witnesses may, often given unconsciously, feel in the matter. The opinions of such witnesses almost constantly favour the side calling them, and are usually found to differ considerably.”

- (2) In the native tribunals.

Section 32 of the Native Jurisdiction Ordinance, 1883, lays down that every native tribunal shall, in determining the rights of parties and also in its procedure, be guided by the native custom prevailing in that part of the country in which it has jurisdiction, so far as such custom is not inconsistent with the principles of justice or with the Ordinance.

Under sections 5 and 6 by-laws made by the head chief of a division with the concurrence of the chiefs, captains, headmen and others who by native customary law are the councillors of his stool, for promoting the peace, good order and welfare of the people of his division are to be valid, if consistent with the laws of the Colony approved by the Governor in Council and published in the *Gazette*.

Under section 9 all existing laws, bylaws or regulations which, previously to the commencement of the Ordinance, had been enacted in the manner sanctioned and authorised by native law, not being repugnant to natural justice, equity or good conscience nor incompatible either directly or by necessary implication with any present or future Ordinance of the Colonial Legislature, are to have the same effect as if enacted and approved by the Ordinance.

#### ASHANTI.

The Government of Ashanti is divided into four provinces and these are subdivided into districts.

#### I.—Courts.

(1) The Chief Commissioner's Court, regulated by Ordinance 1 of 1902.

The President of this Court (which is a Court of record) has the jurisdiction of a divisional Court in the Gold Coast.

By section 15 it is provided that by leave of the Governor in writing an appeal shall lie from the Chief Commissioner's Court to the Supreme Court of the Gold Coast where the sum or matter involved amounts to 100*l*.

(2) A Commissioner's Court, regulated by Ordinance 4 of 1907.

This Court, when presided over by a Provincial Commissioner, has jurisdiction in suits relating to the ownership or possession of land situated in the province and not exceeding 300*l*. in value (section 11). When presided over by a District Commissioner the jurisdiction is limited to land not exceeding 50*l*. in value (section 13).

There is an appeal from the Commissioner's Court to the Chief Commissioner's Court (section 5).

(3) Native tribunals, regulated by Ordinance 1 of 1902.

By section 3 a native tribunal means a head chief sitting with his captains, headmen or others who by native law are his councillors or assistants.

By section 17 native tribunals are to exercise the jurisdiction heretofore exercised by them, provided that:—

(a) A native tribunal shall not have jurisdiction to hear any case where any of the parties concerned is not a native (the term native being defined as a "member of the aboriginal races or tribes of West Africa").

(c) A native tribunal shall have jurisdiction in all cases relating to land.

(d) No native tribunal shall enforce any judgment or order in any way repugnant to natural justice or to the principles of the law of England.

By section 18 the Chief Commissioner has a discretion as to enforcing a native judgment.

By section 19 an appeal lies from any decision of a native tribunal to the Chief Commissioner's Court or to the Court of a Commissioner.

By section 20 the Chief Commissioner may stay the hearing of any case before a native tribunal and direct it to be heard in his Court or that of a Commissioner.

It is expressly provided by section 9 of Ordinance 1 of 1902 that in no case, civil or criminal, shall the employment of a barrister or solicitor be allowed.

#### II.—Law administered.

(1) In the Chief Commissioner's Court and in the Courts of the Commissioners.

Section 7 of Ordinance 1 of 1902 provides that in civil matters the Court shall be guided by the law in force in the Gold Coast Colony as set forth in section 14 of the Gold Coast Supreme Court Ordinance as modified by sections 17, 18 and 19 of the said Ordinance.

(2) In the native tribunals.

There is no provision with regard to this.

#### THE NORTHERN TERRITORIES.

What is said above as to Ashanti applies also to the Northern Territories, the provisions applicable to which are practically the same as those in force in Ashanti.

#### SOUTHERN NIGERIA.

##### I.—Courts.

The administration is divided into three Provinces—the Western, the Central and the Eastern. As might be expected from its history, the Western Province differs in its institutions very considerably from the Central and Eastern ones.

Thus a portion of the Western Province is Colony, while the remainder of it and the whole of the other Provinces consist of Protectorate. Again, though the jurisdiction of the Supreme Court in general extends over the Colony and the Protectorate alike, yet in

some parts of the Western Province that jurisdiction is subject to certain limitations. The Protectorate may, it seems, be divided into three parts:—

- (i) The old Lagos Protectorate, including such places as Addo, Igbesa, Ilaro, and Pokra, to which the laws of the Colony have been expressly applied by Orders made under Ordinance 5 of 1890, and where the Supreme Court has the like jurisdiction which it has in the Colony;
- (ii) Such States as Ilesha, Mekko and Ondo, with which no judicial agreements have been made and to which the laws of the Colony have not been expressly applied, but which, nevertheless, are included in districts by Order in Council, No. 2, of 1909, for the purpose of jurisdiction; and
- (iii) The States of Egbaland, Ibadan, Oyo, Ife, and Jebu Ode, with which judicial agreements have been made and where the jurisdiction of the Supreme Court is limited.

In the territories of Ibadan, Oyo, Ife, and Jebu Ode the Court has no jurisdiction in land cases where both of the parties are natives of the territory, and in Egbaland there is a further limitation, viz., that to confer jurisdiction the property in dispute must be of the value of 50l. or upwards.

To deal with cases under 50l. where a non-Egba is a party, a tribunal, termed a Mixed Court, is provided by the Egbaland judicial agreement. This, which is to consist of a President and two other members appointed by the Egba Council, two being a *quorum*, is composed as a matter of fact of the District Commissioner and a native of Egbaland. An appeal on questions of law and fact lies from the Mixed Court to the Supreme Court.

Cases not within the jurisdiction of the Supreme Court or of the Mixed Court are, of course, cognizable solely by the Courts of the territories.

Again, as we shall see, the system of statutory native courts which extends over the Eastern and Central Provinces has no place in the Western Province.

(1) The Supreme Court, regulated by the Supreme Court Ordinance.

The Court consists of a Chief Justice and Puisne Judges.

In each Province there is at least one Divisional Court normally consisting of one Supreme Court Judge and the original jurisdiction of the Supreme Court arising in the Province is exercised by the Divisional Court, with an appeal to the Full Court where the subject-matter is 50l. or upwards in value.

Each Province is divided into districts, and, under Part II. of the Supreme Court Ordinance, a District Commissioner is constituted a Commissioner of the Supreme Court with the same jurisdiction that the like officer has in the Gold Coast.

There is an appeal from the decision of a Commissioner to the Divisional Court.

By an Order in Council made on the 21st April 1911 (No. 12 of 1911), in pursuance of a power contained in section 20 of the Supreme Court Ordinance, the jurisdiction of the Supreme Court was not to extend or apply to the trial of causes and matters between natives of the Central and Eastern Provinces relating to the ownership or uses of land within those Provinces, save and except in nine scheduled urban districts and places.

## (2) Native tribunals.

### A.—Western Province.

The Native Councils Ordinance only applies to this Province. It contemplates a central native Council which has nothing to do with the administration of justice, and provides Native Councils for each district or Province to which it is applied: Each district and Provincial Council is responsible for "the proper exercise of the Civil and Criminal jurisdiction vested in or usually exercised by the native authority." There is nothing in the books to give us any information as to what Native Courts do exist.

As to these Councils, see the answers of Mr. Willoughby Osborne (who was Attorney-General of the Gold Coast from 1903 to 1908 and who is now Chief Justice of Southern Nigeria) to Questions 14,874 *et seq.*

### B.—Central and Eastern Provinces.

In these Provinces there is a regular system of "Native Courts" established by the Native Courts Ordinance. They consist of

- (1) "Native Councils" and
- (2) "Minor Courts."

By section 7 every Native Court consists of the Provincial Commissioner, the District and Assistant District Commissioner and such other persons as the Governor appoints.

Under sections 14 and 17 the jurisdiction of a Native Council extends to the hearing and determination of all suits relating to the ownership or possession of lands held under native tenure, and situate within the district of the Council, where the value of the lands does not exceed 200l. and where all the parties are natives (*i.e.*, of the two Provinces) or in which any party, not a native, consents in writing to his case being so tried.

Under section 19 a like jurisdiction is conferred on minor Courts where the value of the land does not exceed 25l.

There is power to the Governor under section 8 to extend the jurisdiction to native foreigners (*i.e.*, natives of any country on the West Coast of Africa other than the two Provinces).

By section 15 the jurisdiction of a Native Court is exclusive of all native jurisdiction within the district, and by section 27 any Court in which it appears that any case before it is properly cognizable by a Native Court may stop the further progress of the case and refer the parties to the proper Native Court.

By section 28 any Judge of the Supreme Court may transfer any case from any native Court to any other native Court or to the Supreme Court or to any District Commissioner.

By section 33 legal practitioners are debarred from audience in a Native Court except by special leave of the Court.

Section 39 contains a similar provision, as to enforcing a judgment, to that in force in the Gold Coast Native Courts.

Section 40 gives a right of appeal from a minor Court to the Native Council of the district, and from a native Council to the Supreme Court. The last-mentioned appeal is by section 41 to be heard before a judge sitting with not less than two, and not more than five assessors, selected by the judge from the members of any native Court or Courts, for advisory purposes.

Sections 43 to 45 give the Provincial and District Commissioners wide powers of transfer of cases brought in Native Courts.

Section 48 empowers the Governor in Council to make rules as to practice and procedure in Native Courts, but no provision is made for making written procedure obligatory at present.

### II.—Law administered.

#### (1) In the Supreme Court.

The statutory provisions are the same as in the Gold Coast, except that the English Statute law up to the 1st January 1900 is in force.

Sections 14, 17, 18, 19 and 111 correspond almost verbatim with sections 14, 17, 18, 19 and 74 of the Gold Coast Ordinance.

The provisions with regard to the law to be administered by the Supreme Court in its jurisdiction within the territories of Egbaland, Ibadan, Oyo, Ife, and Jebu Ode are worth consideration. The following are taken from the Ordinance dealing with Egbaland (Ordinance 14 of 1904), but there are similar ones in the other Ordinances, viz., 17 and 20 of 1904, and 22 of 1909.

5. 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 this Ordinance vested in the Court, but shall be deemed to extend thereto, and be in force, so far only as the jurisdiction of the Court and local circumstances reasonably permit, and render such extension and enforcement suitable and appropriate.

6. The Court in the exercise and administration of the jurisdiction vested in it by this Ordinance, shall have the right to observe and enforce the observance of the laws and customs existing in Egbaland, such laws or customs not being repugnant to natural justice, equity and good conscience. Such laws and customs shall be deemed applicable in causes and matters between Egbas and persons not being natives of Egbaland only when it may appear to the Court that substantial injustice would be done to either party by a strict adherence to the rules of English law, and in such other causes and matters as the Court may deem just and equitable.

These provisions appear to agree in the main with section 19 of the Supreme Court Ordinance.

(2) In the Native Courts.

There is no provision in the Native Courts Ordinance corresponding to section 32 of the Gold Coast Native Jurisdiction Ordinance 1883, but section 32 of the Southern Nigeria Ordinance provides that any Native Court may invite the co-operation of native assessors, with a consultative voice only, for the purpose of giving it information, when required, respecting native law or custom.

Section 12 provides that every Native Court shall, as regards its judicial functions, act under and follow the instructions given to it by the Chief Justice or other Judge of the Supreme Court.

Under section 47 every Native Council is, subject to the approval of the Governor in Council, empowered to make rules:

(i) Embodying any native law in its district with or without additions or modifications as may be deemed expedient.

(iv) Generally providing for the peace, good order and welfare of the natives therein.

(3) In the Egbaland Mixed Court.

The judicial agreement provides that the Court is to be guided in its decisions so far as practicable by the laws in force in the Colony of Lagos.

#### SIERRA LEONE.

This Administration consists partly of Colony and partly of Protectorate, a portion of the former being under the protectorate system.

#### I.—Courts.

A.—In the portion of the Colony not under the protectorate system:—

(1) The Supreme Court, regulated by Ordinance 14 of 1904.

This Court consists of a Chief Justice and one or more Puisne Judges.

By Ordinance 14 of 1912, provision is made for an appeal to a Full Court where the subject-matter in dispute is 50*l.* or over in value.

(2) The Sherbro Native Courts Ordinance 1905, provides for the institution within the rural portion of the Sherbro District, of Courts of Native Chiefs and of Courts of District Commissioners, with the like jurisdiction possessed by such Courts within the Protectorate, and where jurisdiction is so conferred that of the Supreme Court is expressly taken away.

B.—In the Protectorate.

Under the Protectorate Courts Jurisdiction Ordinance, 1903, there are three Courts:—

(1) The Court of the Native Chiefs.

The constitution of these Courts is not defined; they consist of: "The Courts of the Native Chiefs as now existing according to native law and custom," and they have jurisdiction in all land cases arising exclusively between natives other than a case involving a question of title to land between two or more paramount chiefs.

A "native" is defined in the Protectorate Ordinance, 1901, as "any member of the aboriginal races or tribes of Africa ordinarily resident within the Protectorate (or in the territories other than the Colony adjacent thereto) and not employed in the service of His Majesty."

There does not appear to be any appeal from this Court.

(2) The Court of the District Commissioner.

Section 12 subsection (1) of the Protectorate Courts Jurisdiction Ordinance, 1903, gives this Court jurisdiction to hear all cases involving a question of title to land between two or more paramount chiefs, and the concluding sentence of the section provides that nothing in it shall authorise the Court "to hear or determine any civil action or suit wherein a title to land other than one between two or more paramount chiefs shall come into question."

There is an appeal from this Court to the Circuit Court.

Under section 7 of an amending Ordinance (No. 33 of 1905) this Court is empowered, when a Court of the Native Chiefs refuses to hear any case, or where, in the opinion of the District Commissioner, the paramount chief is personally interested or a fair and impartial trial cannot be had in any case, to deal with the case as if it had been originally within the jurisdiction of his Court.

Section 101 of the Protectorate Ordinance, 1901, is important; it is as follows:—

"The District Commissioner shall have power and authority to settle any matters within his district which have their origin in Poro laws, native rites or customs, land disputes, or any other disputes which, if not promptly settled, might lead to breaches of the peace; and any disregard or defiance of such a settlement shall be deemed to be an offence."

Dr. Maxwell, District Commissioner, has kindly supplied me with the following notes:—

"In holding inquiries under this section a District Commissioner acts as an executive officer; and as a matter of course an appeal may be made to the Governor against his decision. There is no time-limit for such an appeal, as is the case in appeals against the decisions of the District Commissioners' Courts—an obvious advantage in land disputes, as the full effects of a decision may not be realised by those affected until some time after it has been given. In addition, decisions under authority of this section may be modified at a future date should altered circumstances render this advisable.

"There is now under consideration a Bill which has passed its first reading, and is published in the 'Sierra Leone Royal Gazette' of July 5th, which, when it becomes law, will materially modify the above.

"Sections 3 and 4 of this Ordinance (The Protectorate Amendment Ordinance, 1913) are as follows:—

Section 3.—For section 101 of the Protectorate Ordinance, 1901 (herein-after called the Principal Ordinance), is substituted the following section:—

101.—(1) The District Commissioner shall have power and authority to inquire into and settle any matters within his district which have their origin in Poro laws, native rites or customs, land disputes, including land disputes arising between paramount chiefs, or any other disputes which, if not promptly settled, might lead to breaches of the peace.

(2) In any such inquiry the District Commissioner may, if he thinks fit, be assisted by one or more native chiefs as assessors to be summoned by him as occasion requires, but the decision shall rest exclusively with the District Commissioner, and no settlement shall be deemed invalid if any or all of the assessors so summoned shall not be present throughout the whole of the inquiry.

(3) Any disregard or defiance of a settlement made under this section shall be deemed to be an offence.

Section 4.—In Section 12 of the Protectorate Courts Jurisdiction Ordinance, 1903, the following amendments shall be made:—

(1) Subsection (1) shall be repealed.

(2) The words "other than one between two or more paramount chiefs" in the last sentence shall be repealed.

"The effect of the proposed modification of the law will be that a District Commissioner will deal with all land disputes between paramount chiefs, and with such other land disputes as in his opinion he should inquire into and settle, as an executive officer holding a judicial inquiry, and not as a judicial officer sitting in the District Commissioner's Court. At the same time, he has the power as a magistrate to enforce the decisions given at the inquiry.

"Section 101, as at present existing, and as modified, gives a District Commissioner power to settle any land dispute, irrespective of any decision that may have been given in the Court of a Native Chief. There is at the same time no formal appeal from the Courts of the Native Chiefs. The Courts of the Native Chiefs are not Courts of Record, and decisions given in them have not the permanence that decisions given in the District Commissioners' Courts and the Circuit Court. A Chief may reverse or alter the decision of his predecessors, a circumstance which may at times cause abuses, but which at other times leads to the rectification of abuses. It is not contrary to native custom for a District Commissioner as a superior authority to set aside settlements arrived at in land disputes by Native Chiefs. The section would authorise a District Commissioner to inquire into land disputes in which non-natives were involved, but such an enquiry could not affect the right of either party to such a dispute to bring an action in the Circuit Court."

(3) The Circuit Court.

This Court consists of a Judge of the Supreme Court, and has original jurisdiction in land cases, not assigned to the other Courts.

By section 7 legal practitioners are debarred from audience in the Courts of the Native Chiefs and of the District Commissioner.

The Courts of the Colony are by section 46 empowered to hear cases arising in the Protectorate sent to them under fiat of the Governor.

II.—Law Administered.

(1) In the Supreme Court.

The Supreme Court Ordinance does not expressly import the common law and the doctrines of equity. It contains the following provisions, viz. :—

Section 8 declares the statutes of general application in force in England on the 1st January 1880 to be in force in the Colony.

Section 9 (which deals with the application of English statutes) is on similar lines to section 17 of the Gold Coast Ordinance, but there are divergences in the wording of the two sections.

Section 10 (which provides for the fusion of law and equity) is almost verbatim the same as section 18 of the Gold Coast Ordinance.

There are no sections corresponding to sections 19 and 74 of the last-mentioned Ordinance.

(2) In the Courts of the Native Chiefs.

There is no express provision as to this, but naturally native customs would be recognised and acted on.

(3) In the Courts of the District Commissioner and in the Circuit Court.

Section 6 of the Protectorate Courts Jurisdiction Ordinance, 1903 (dealing with the application of native laws), is a shortened form of section 19 of the Gold Coast Supreme Court Ordinance. It is probably the same in substance at any rate.

Section 40 authorises a Circuit Court to consult two or more native chiefs in matters of native law or custom. It is on the lines of section 74 of the Gold Coast Supreme Court Ordinance, but contains at the end the following provision:—"The opinion of each chief shall be given orally and shall be recorded in writing by the Judge, but the decision shall be vested exclusively in the Judge."

Section 68 provides that in hearing and determining matters or causes the Circuit Court and the Courts of the District Commissioners shall as far as possible be guided in arriving at a decision by the laws in force in the Colony.

GAMBIA.

This administration, like that of Sierra Leone, consists partly of Colony and partly of Protectorate, a portion of the former being under the Protectorate system.

I.—Courts.

A.—In the portion of the Colony not under the Protectorate system:—

(1) The Supreme Court regulated by Ordinance of 1889.

The Supreme Court consists of the Chief Magistrate, and there is an appeal from it to the Supreme Court at Sierra Leone.

(2) The Court of Requests at Bathurst has, under Ordinance 15 of 1899, jurisdiction in all actions of ejectment, or in which the title to any corporeal or incorporeal hereditaments shall come in question, where the value does not exceed 50*l*.

B.—In the Protectorate.

By section 15 of the Protectorate Ordinance, 1902, the Supreme Court, and the Court of Requests at Bathurst are to have, in respect of matters occurring within the Protectorate, the same jurisdiction, civil and criminal, original and appellate, as they may respectively possess from time to time in respect of matters occurring within the Colony.

By section 21 there is to be in every district a Court to be styled "the native tribunal," having jurisdiction in all land cases where the lands are situate within the jurisdiction, and do not exceed 50*l*. in value.

By section 22 native tribunals consist of—

(a) three to nine members duly appointed by the Governor;

(b) the Commissioner (*i.e.*, a travelling Commissioner or any other officer appointed by the Governor to exercise jurisdiction under the Ordinance) sitting alone or along with one or more native members.

By section 20 Colonial Courts may remit any cases properly cognizable by a native tribunal, and of a nature to be more conveniently and expeditiously disposed of by such tribunal, to a native tribunal.

By section 35 a Commissioner may stay any case before a native tribunal, and himself hear the same summarily.

By section 36 a Commissioner may rehear any case disposed of by a native tribunal.

Section 39 provides that an appeal shall be made to the Supreme Court from the decision of any native tribunal when the case has been finally disposed of by the native tribunal, on security being given for costs in a sum not exceeding 20*l*.

II.—Law Administered.

(1) In the Supreme Court.

As in Sierra Leone, there is no express importation of the Common Law and of the doctrines of equity. The Supreme Court Ordinance contains the following provisions, viz. :—

Section 17 declares the Statutes of General Application in force in England on the 1st November, 1888, to be in force in the Colony.

Sections 19 and 21 (relating to the application of Imperial laws and to the fusion of law and equity) are practically the same as sections 9 and 10 of the Sierra Leone Ordinance.

Ordinance 8 of 1889 contains a provision that all laws in force in the Settlement when it became a Colony were to continue in force.

(2) In the Protectorate.

Section 29 of the Protectorate Ordinance, 1902, provides that, so far as consistent with the Protectorate system and without prejudice to any such reasonable native laws and customs as are hereinafter mentioned, all laws, statutes, ordinances and rules for the time being in force in the Colony, being of general application throughout the same, shall extend and apply to the Protectorate and to all matters civil and criminal arising therein and shall be so extended and applied

in all Courts of Law whether within the Colony or the Protectorate.

Section 30 provides that all native laws and customs existing in the Protectorate, whether relating to . . . the tenure of land or any other matter, shall, where not repugnant to natural justice nor incompatible with the principles of the law of England or with any law or ordinance of the Colony applying to the Protectorate (whether by virtue of the immediately preceding section hereof or in any other manner), continue and remain in full force and effect, and shall be taken cognizance of and enforced in all Courts of Law, whether in the Colony or in the Protectorate, in all causes and matters whatsoever arising in or relating to the Protectorate.

### PART III.

#### Ordinances relating to Land.

##### THE GOLD COAST.

###### I.—*Crown Land and its Alienation.*

The amount of land vested in the Crown seems to be but small, and I have found no legislation dealing with it, though the Letters Patent printed in the Ordinances of the Gold Coast gives the Governor the usual power to make grants of such lands; see Collection of the Ordinances, 1910, page 1833.

###### II.—*Restrictions on Alienation of Land.*

These restrictions are contained mainly in the Concessions Ordinance, 1900, and the ordinances amending it, and also in the Forest Ordinance, 1911.

###### A.—*The Concessions Ordinance.*

Before dealing with this Ordinance, it may not be out of place to give some account of the provisions of the Land Bill introduced by Sir William Maxwell in 1897, as amended in Committee.

###### (i) *Maxwell's Land Bill.*

The objects of this Bill seem to have been as follows:—

- (1) To deal with a number of concessions *already* granted;
- (2) To regulate the granting of *future* concessions;
- (3) To define the rights of the Governor and of the native Chiefs with respect to "public land" (an expression which may be roughly defined as land not subject to individual rights); and
- (4) To transmute tribal and family holdings into individual ownership.

(1) To deal with concessions *already* granted, a Concession Court was to be established to enquire into all such concessions; all claims had to be filed within a prescribed time; and any claim not so filed was to be void. The Court was to decide as to the validity of such concessions, and to require them to comply with certain specified conditions. Provision was also made for quit-rents or royalties being paid to the Government in respect of validated concessions.

(2) To regulate the granting of *future* Concessions, the Governor was empowered to issue, on such terms and for such consideration as he thought fit, "land certificates," and also mining, timber, and other licences. These land certificates were to be valid as against the world, and land held under such a certificate was to devolve according to English law.

(3) The Bill starts with a declaration that all public land might be administered by the Government, and then defines the powers of native Chiefs as to such land. A native Chief or head of a family, was to be precluded from creating, except with the consent of the Governor, any private right in any land under his control, except as follows:—He might authorise a native to occupy land as a site for a habitation or for agricultural, industrial, or trading purposes, or he might allot land for shifting cultivation. Furthermore, the customary rights of natives to take timber and forest produce, and also to get minerals on public land, were expressly recognised.

(4) The transmutation of tribal and family holdings into individual rights was promoted by conferring

what is termed in the Bill a "settler's right" upon any native in possession by native tenure, at the commencement of the Ordinance, of land which he used as the site of a habitation or for non-shifting cultivation, and also upon any native who after the commencement of the Ordinance occupied public land under the authority of his Chief for three successive years.

The possessor of a settler's right was to have a permanent and heritable right of occupancy. It was also transferable, with this limitation, that no assignment could be made, without the consent of the Governor, to a person not a native.

The Governor was to be empowered to convert a settler's right into a land certificate with the incidents noted above.

###### (ii) *The Concessions Ordinance.*

By section 8 no proceedings shall, without the leave of the Court, be taken to give effect to any concession unless it has been certified as valid by the Court; but the Court is not, unless it sees good reason to the contrary, to withhold leave in the case of a concession which is a sale of land, where such land has not, in the opinion of the Court, been purchased for the purpose of mining, timber cutting, or rubber collecting.

It is necessary to define the words "concession" and "Court"; "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, 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, but shall not include an "assignment of a concession as above described." The points about the definition seem to be—

- (a) there must be a writing;
- (b) the writing must operate as a grant or agreement for a grant of an interest in land or of an option to acquire such an interest;
- (c) it is not every interest in land that is within the definition, but one in respect of
  - (i) minerals or precious stones, *i.e.*, mining;
  - (ii) timber, rubber or other products of the soil.

The question at once arises in a lawyer's mind whether any, and, if so, what, limitations should be placed on the expression "other products of the soil." I believe I am right in surmising that at the date of the Ordinance timber and rubber were not cultivated, and the question arises whether only products *ejusdem generis*, *i.e.*, uncultivated, come within the definition. This is apparently the view of Mr. Giles Hunt, see Question 1346, but the Government have not acted on that construction, but have dealt with it as including interests for the purpose of agriculture and arboriculture.

(d) The grantor must be a native.

Native includes all persons of African birth who are entitled by native custom to rights in land in the Colony.

"Court" means a Divisional Court of the Supreme Court.

By section 3 the Governor in Council is empowered to exclude from the operation of the Ordinance, subject to any conditions which he may impose, any class of non-mining concessions.

By Order in Council of the 11th April 1906 the Governor excluded from the Ordinance every concession granted for the purpose of agriculture or of arboriculture in respect of which certain conditions were complied with. These conditions were:—

- (1) The concession must not involve mining rights.
- (2) It must be duly stamped.
- (3) It must be duly registered under the Land Registry Ordinance, 1895.
- (4) It must, if it is in respect of an area exceeding one square mile, have the consent of the Governor endorsed on it or on a certificate (*sic*) copy of it. The Governor is empowered to withhold his consent without assigning any reason.

The result seems to me to be that where the substantial object of a non-mining concession is agriculture or arboriculture, a concessionaire may, if he can get the consent of the Governor, avoid the necessity of having recourse to the Court.

Section 11 is of capital importance. At the time the Committee was appointed it ran as follows:—

No concession shall be certified as valid—

- (1) Unless made in writing signed by the grantor or some person duly authorised by him.
- (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.
- (3) If obtained by fraudulent or other improper means.
- (4) If made without adequate valuable consideration, regard being had to the circumstances existing at the time of the concession.
- (5) Unless all of the terms and conditions upon which such concession was made, which ought to have been performed, have been reasonably and substantially performed.
- (6) Unless the Court is satisfied that the customary rights of natives are reasonably protected in respect of shifting cultivation, collection of firewood and hunting and snaring game.

Since the appointment of the Committee two new provisions have been added by Ordinance 16 of 1912.

- (7) If it grants or purports to grant rights to collect natural produce other than timber to the exclusion of natives.
- (8) If it grants or purports to grant rights to remove natives from their habitations within the area of such concession.

By section 19 the period of a certified concession conferring an interest in land is not to exceed 99 years, or conferring an option 3 years.

By section 20 the area of a mining concession is not to exceed 5 square miles, and that of any other concession is not to exceed 20 square miles. No individual or corporation is to hold mining concessions aggregating more than 20 square miles or other concessions aggregating more than 40 square miles.

Section 21 confines the ownership of mineral oil concessions to British subjects, firms, or companies and provides that every concession and assignment of a concession in respect of mineral oil is to be subject to the approval of the Governor.

The procedure for obtaining a certificate of validity in respect of a concession is shortly as follows:—

- (a) The claimant must within six months from the date of the concession file notice of his concession with the Registrar of the Court of the Province within which the subject-matter of the concession is situate. A notice is then published in the Gazette, affixed in the Court and served on the native grantors or one of them, and also on such persons as the Court may direct.
- (b) The claimant must, within three months from the date of filing his notice, file the documents on which he relies in support of his right to the concession.
- (c) Failure on the part of the claimant to comply with the foregoing provisions renders him liable to a penalty not exceeding 5*l.* for each day of default.
- (d) As soon as the documents are filed, the Registrar is to fix a day not less than 3 months from the original filing of notice, for the hearing of the inquiry.
- (e) Provision is made whereby persons wishing to oppose the granting of a certificate may be made parties for that purpose.
- (f) The Attorney-General, on the direction of the Governor, may intervene and become a party.

(g) If a claimant makes default in filing his documents or in paying for service on the necessary parties the enquiry may be struck out.

(h) When an enquiry is called on and the parties appear, the matter is proceeded with in ordinary course, but should the Court deem it necessary, it may require the boundaries of the land affected to be surveyed at the cost of the claimant.

(i) In case the claimant does not appear, the Court may postpone the enquiry or it may for good reason proceed with the enquiry or strike it out.

(j) In case the party opposing does not appear, the Court may postpone the enquiry or may proceed with it.

(k) In case no party appears the enquiry is struck out.

(l) Where an enquiry has been postponed and no date is fixed for its coming before the Court, the Court may of its own motion or on the motion of the Attorney-General fix a day peremptorily.

(m) When the Court makes its final order it may modify the terms of the concession and impose conditions with respect to the issue of the certificate. In particular it may reduce the term to one for which a concession may be lawfully granted and where the area of a concession is greater than allowed under the Ordinance, it may declare the concession valid in respect of such legal area as may be selected by the claimant and void in respect of the residue.

(n) When an enquiry is struck out, a period of 3 months is given within which it may be replaced on the cause list; but if it is not so replaced, then the concession is deemed to have determined and all liability in respect of future rent shall cease.

Section 16 provides for the requisites of a certificate of validity. It must contain *inter alia* a statement of any limitations, modifications and conditions imposed by the Court.

Section 15 requires registration of the certificate under the Land Registry Ordinance, 1895.

Section 17 provides for the case of a concession being declared to be in whole or in part invalid. In such an event an order may be made for the repayment of any consideration previously paid.

Section 13 provides a procedure whereby, on the application of any person aggrieved or of the Attorney-General, the Court, on the breach of any condition, may determine a concession, may order the condition to be complied with, and award damages for non-compliance, or make any other order which seems just to it.

Under section 25 the Court may, with the consent of the parties to a certified concession, add to or otherwise modify the terms of the certificate of validity, but, strangely enough, there is no provision for the registration in the Land Registry of the modification.

A certificate of validity when granted, is, under section 23, good as against any person claiming adversely thereto.

Section 26 provides that rents payable under any concession to a native shall be paid into a Government Treasury, and the latter part of section 23 provides that, in the event of the land the subject of the concession becoming or being declared to be the property of any person other than the grantor named in the certificate, the Court shall endorse a statement to that effect upon it and send a copy to the Treasurer.

A certified concession may be transferred, either as a whole or in part, without other formalities than an instrument registered under the Land Registry Ordinance, 1895, and stamped with a duty in addition to the ordinary stamp duty.

Sections 27 and 28 deal with prospecting and mining licences.

A prospecting licence (which purports to give permission to prospect generally "within the Gold Coast Colony") may be granted by the Governor, and any person prospecting without such licence, unless he is prospecting on lands in respect of which he holds a mining licence, is guilty of an offence, and liable to a penalty.

A mining licence is granted by the Governor, and gives permission to mine within a limited area. Any person (other than a native mining according to native custom) carrying on mining without being the holder of a concession and of a mining licence is guilty of an offence and liable to a penalty.

There is a provision enabling the Governor to grant a mining licence to a concessionaire pending the granting of a certificate of validity.

Sections 29 to 48 inclusive deal with duties which are charged in favour of the Government on the profits made in respect of the working of a concession.

Section 54 empowers the Governor to take possession of any land in respect of which a certificate of validity has been granted, if it is required for the purpose of any works or objects of public utility or convenience. The only compensation payable is what the Court may deem reasonable in respect of disturbance of, or interference with, the works or improvements erected or made by any holder of the certificate.

#### B.—The Forest Ordinance, 1911.

This Ordinance, although passed by the Legislative Council, has not been brought into force. As its provisions are under the consideration of the Committee, I do not propose to deal with it in this memorandum.

#### III.—Registration of Instruments affecting Land.

The Land Registry Ordinance, 1895, established a registry at Accra and other places, in which instruments affecting land may be registered. The system under it is not registration of title, but registration of deeds. It is unnecessary to state the mode in which registration is affected, but I will state shortly its effect.

There is no provision, as there is sometimes in similar legislation, that an unregistered instrument shall not be received in evidence and section 20 expressly states that registration is not to cure any defect in any instrument registered, or confer upon it any effect or validity which it would not otherwise have had.

By sections 17 and 18 as against other documents:—

- (1) a will registered within the prescribed period from the death of a testator takes effect as from the date of death;
- (2) any other document registered within the prescribed period from its execution takes effect as from its date.
- (3) Any document not registered within the prescribed period takes effect as from the date of registration.

Every instrument registered (except a will) is to contain a description (including a statement of boundaries, extent, and situation) of the land affected by it and if it contains a plan, the registrar may require a copy of it to be incorporated in the register (sections 6 and 12).

#### IV.—Acquisition of Land for Public Purposes.

This is regulated by the Public Lands Ordinance, 1876, which empowers the Colonial Secretary to take any lands required for the service of the Colony. Such "reasonable compensation as may be due to the owners" is to be paid, and in case an agreement is not come to the amount of compensation and every case of disputed interest or title may be settled by "any of His Majesty's Courts having jurisdiction to determine as to the ownership of such lands."

There is provision that compensation is not to be awarded in respect of unoccupied lands, and any lands are to be deemed unoccupied where it is not proved that beneficial use "for cultivation or inhabitation or for collecting or storing water, or for any industrial purpose, is or has been had during the lives of any

"persons claiming interest therein or of the last immediate ancestor or predecessor of such person."

#### V.—Execution against Land.

If judgment is given for a sum of money, it may be enforced by attachment and sale of property of the party against whom the decree is made (O. 44 r. 5). The attachment is by writ of *fi fa*, under which, if the defendant has not sufficient movable property within the province in which the judgment was issued, it is the duty of the Sheriff to realise the debt out of the movable property situate outside the province, or, if the plaintiff prefers it, out of the immovable property of the debtor (*Ibid.* r. 14).

In order to complete execution against land, the Sheriff issues a written order prohibiting the judgment debtor from alienating, and other persons from receiving, the property by sale, gift or otherwise. The Sheriff may also, by direction of the Court, take and retain actual possession thereof (O. 45 r. 10). The Court may appoint a manager to receive the rents or may postpone the sale of the land to enable the debtor to raise the money by mortgage (*Ibid.* r. 22).

If any claim is preferred to or objection offered against the sale of lands taken in execution, the Court shall proceed to investigate the title, and if it shall appear that the land was not in the possession of the debtor or of some person in trust for him, or that being in his possession, was so not on his account or as his own property, the Court shall release the property (*Ibid.* r. 25). Any sale may be made by the Sheriff or Registrar, as the Court directs, but in default of any direction shall be made by the Sheriff (*Ibid.* r. 27).

Fourteen days' public notice must be given (*Ibid.* r. 28), and after sale 21 days is given for any application to set aside the sale "on the ground of any material irregularity in the conduct of the sale" (*Ibid.* r. 31).

In case no such application is made, the sale is to be deemed absolute and the Court gives a certificate to the effect that the purchaser has purchased the *right title and interest* of the debtor in the property sold (*Ibid.* rr. 32 and 34).

To carry out the sale the Court may put the purchaser in possession of land in the possession of the debtor, or, where the land is in the occupation of persons entitled to occupy the same, it may order delivery to be made by affixing a copy of the certificate of sale on some conspicuous place on the land (*Ibid.* r. 37).

The general principle is that nothing can be sold under a writ of execution except what the debtor himself could have sold, and it was on this principle that Mr. Justice Macleod in 1885 decided the case of *Quassie v. Ansafu*, F.C.L. 243, when he held that a certificate of purchase only conveyed such a title as the execution debtor had. From this it follows that if stool or family land is taken in execution for a private debt, it may be recovered by the persons entitled thereto, either by interpleader before the sale or by action afterwards if there is no improper delay or laches in bringing the action. I have found no case dealing with this matter in its application to stool land, but there is a series of cases showing that family property cannot be seized for the private debt of a member of the family, and that the Court will stay any sale having this effect (*Halm v. Hughes*, F.C.L. 144; *Tokou v. Asima*, F.C.L. 147; and *Russell v. Meffull*, F.L.R. 119).

In this connection I would refer to the answers of Sir W. Brandford Griffith, lately Chief Justice of the Gold Coast, to Questions 14,369, *et seq.*

The following note has been kindly supplied to me by Mr. Willoughby Osborne:—

"Sometimes the interest of a member of the family is ascertainable, e.g., he may own one undivided moiety. If such an interest were purchased under a *fi fa*, the Court would entertain a claim by the purchaser for partition if such were feasible. A register of family property would do away with most of the difficulties that now arise."

## ASHANTI.

## I.—Restrictions on Alienation of Land.

The Ashanti Concessions Ordinance, 1903, and the rules under it are founded upon the Gold Coast Concessions Ordinance, but, as they were framed in the light of experience gained during the working of the latter, there are some divergencies of importance.

(1) Options are included in the definition of a concession, but it is expressly provided that future options with respect to minerals or precious stones are to be absolutely void and of no effect.

(2) A concession cannot be obtained simply by negotiation with the Chiefs, but must be acquired in conformity with the rules laid down in Schedule B to the Ordinance. Section 51 prescribes heavy penalties for the acquisition of a concession otherwise than in accordance with these rules.

The procedure laid down is as follows:—

- (a) Any person desiring a concession must apply to the Governor for permission to obtain a licence to prospect.
  - (b) Having obtained this permission, he will apply to the Chief Commissioner for a licence to prospect in a definite locality. If this is obtained, intimation is made to the Chiefs concerned, and they are instructed to give the necessary facilities.
  - (c) A licence to prospect gives the licensee power to remove "a sufficient quantity of quartz" or alluvial gold or of timber, rubber or "other product of the soil to serve as specimens."
  - (d) The holder of a licence may apply to the Chiefs of the district over which the licence extends for a concession, and they are empowered to grant it to the holder of a licence, but not to a person not holding a licence, to prospect in the locality.
  - (e) Notice of the application must be made to the Chief Commissioner and the Chiefs, and the applicant appear before him or the District Commissioner. The official then ascertains whether the Chiefs are willing to grant the concession, and are prepared to co-operate in the supply of labour and so forth. The rent is then arranged and the terms of the agreement are embodied in a concession whose execution is attested by the Government Officer. A plan must appear on the concession.
  - (f) Several licences to prospect may be issued for the same locality, but applications for concessions are dealt with in the order of their receipt.
- (3) If notices of a concession and of the documents in support are not given within the prescribed period, then the concession is void (section 9 (2)).
- (4) No enquiry as to validity is to be held until the survey is complete (section 13), and failure to pay survey fees for 6 months from the date of the concession renders it void (section 10).
- (5) When rent under a concession is not paid within 6 months from its becoming due the concession becomes void (section 27 (3)).
- (6) Notice of the determination of a concession is to be published in the Gazette (section 26).
- (7) If the holder of a mining concession does not commence actual mining operations within five years from the date of the concession, the rent under the concession becomes payable and a further payment is to be made to the Crown (section 50).
- (8) The provision in force in the Gold Coast for fixing the date of a postponed enquiry is absent.

## II.—Registration of Instruments affecting Land.

The Gold Coast Land Registry Ordinance is in force in Ashanti.

## III.—Acquisition of Land for Public Purposes.

This topic is dealt with in section 33 of the Ashanti Administration Ordinance, 1902.

The Chief Commissioner may take any land required for the public service.

Lands taken for townships or village sites or for any purpose which is, in the opinion of the Chief Commissioner, conducive to the health and welfare of the inhabitants of any town or village are deemed to be acquired for the public service.

The only compensation given is for growing crops or in respect of disturbance of or interference with any buildings, works or improvements on or near the land taken.

## THE NORTHERN TERRITORIES.

The only Ordinance affecting the alienation of rights over land, or indeed the only Ordinance with which I need deal, is, the Mineral Rights Ordinance, 1904. It introduces a very elaborate system under which an individual who ultimately carries on mining obtains—

- (1) a non-exclusive *prospecting licence*,
- (2) then, after preliminary prospecting, an *exclusive prospecting option*,
- (3) then, having proved and selected his ground, a *mining option*, which enables him to erect machinery but not to mine, and finally
- (4) when the mine is fully equipped for working, a *mining licence*, the document under which regular mining operations are carried on.

The fees payable under the various stages progress from 1s. a square mile in the first to 40l. (with a further possible 10l.) for the same unit, as also a duty on profits, in the last.

- (1) *Prospecting licence*.

No one may prospect without this licence. Anyone wishing to obtain it must first apply to the Governor of the Gold Coast for a recommendation. Armed with this, he applies to the Chief Commissioner giving particulars of a general nature, of the area in respect of which he applies. The granting or refusal of the application is in the discretion of the Chief Commissioner. A licence when granted is for six months, but it is renewable at the like discretion.

It is not assignable.

- (2) *Prospecting option*.

The holder of a prospecting licence may apply for this option over the whole or a part of the area included in his licence. The particulars required are of rather a more specific nature. The option which is granted by the Chief Commissioner, with the approval of the Governor, confers upon the holder the sole right for three years of prospecting, but does not give any power to set up machinery for actual mining operations.

- (3) *Mining option*.

The holder of a prospecting option may, during its existence, apply to the Chief Commissioner for one or more mining options over the land included in his prospecting option, and the Chief Commissioner "shall" issue to the applicant the options for which he applied. The option entitles, during a period of three years, the holder to further prospect and to set up buildings, machinery and works for mining operations, but he is not to commence actual mining operations, whether by crushing, dredging, or any other process whatever, on the land.

- (4) *Mining licence*.

The holder of a mining option may, during its existence, apply to the Chief Commissioner for a mining licence over the whole or any part of the land comprised in his mining option. If satisfied that the applicant is in a position to commence actual mining operations with proper machinery the Chief Commissioner "shall" issue the mining licence.

This licence may be for a term not exceeding 90 years, and it confers on the holder the right to use or occupy the land only for mining purposes. This right empowers the holder—

- (a) to construct roads, tramways, buildings, machinery for mining, and ancillary purposes;
- (b) to cut and fell timber for the like purpose; and
- (c) to use the water from any stream.

Some general observations may be added:—

- (1) *Prospecting and mining options and mining licences* are assignable with the consent in writing of the Chief Commissioner. An

assignment must be stamped and registered in the Gold Coast in accordance with the law for the time being in force there.

- (2) The rights conferred are in each case subject to the existing rights of any native chief or native person in respect of the land.
- (3) Each document may be cancelled on non-payment of the rent or on breach of any of the duties of the holder under the Ordinance; and
- (4) If dredging is carried on in a river to which The Northern Territories River Ordinance, 1903, applies, then the requirements of that Ordinance must be complied with.

#### SOUTHERN NIGERIA.

##### I.—*Crown Land and its Alienation.*

(1) By the Niger Lands Transfer Ordinance (No. 5 of 1906), with the exception of certain pieces of land, and subject to certain rights, all lands and rights within the Protectorate belonging to the Niger Company, Limited, were vested in the Governor and his successors in office, in trust for His Majesty, his heirs and successors.

(2) By the Crown Lands Management Ordinance (No. 6 of 1906), which applies only to the Central and Eastern Provinces, the Governor has the management of all Crown Lands, and may sell, lease, exchange, or otherwise dispose of such lands as he may think fit. Express validation is given to all dispositions of land vested in the Crown by the last-mentioned Ordinance, prior to its commencement.

Power is given to frame rules as to the terms and conditions upon, and subject to, which, and as to the forms of instrument by which Crown lands may be alienated, but this power would appear not to have been exercised.

(3) By the Lands Ordinance (No. 9 of 1907), no Crown grant or transfer is to be issued except in duplicate, one copy being filed in the office of the Commissioners of Lands. Every such document must be registered under the Land Registration Ordinance.

(4) The Land Registration Ordinance (No. 15 of 1907) provides that every instrument executed after the commencement of the Ordinance, whereby land is granted by the Crown to any person or persons whatever, shall be void unless registered within 60 days from its date.

(5) The Crown Lands Ordinance (No. 13 of 1908) gives the Governor in Council power to frame rules as to the terms on which grants, leases, or other dispositions are to be issued.

If grants are made, rents are to be reserved which are to be subject to periodical revision every 30 years. Improvements are not to be taken into account in revising rent. Rent on revision is not to exceed by more than 50 per cent. the rent payable in the preceding term. No grant is to be issued until the land has been surveyed. Rules as to agricultural leases are set out in the Appendix, p. 99.

##### II.—*Restrictions on Alienation of Land.*

The ground covered in the Gold Coast by the Concessions and Forest Ordinances is here dealt with by the Native Lands Acquisition Ordinance (No. 1 of 1903), the Mining Regulation Ordinance (No. 6 of 1905), the Mining Regulation (Oil) Ordinance (No. 12 of 1907), and the Forestry Ordinance (Nos. 28 of 1901 and 14 of 1902).

##### A.—*Native Lands Acquisition Ordinance.*

Section 3 is as follows:—

- (a) No alien shall acquire any interest, or right in or over any lands within the Protectorate from a native except under an instrument which has received the approval in writing of the Governor.
- (b) Any instrument which has not received the approval of the Governor as required by this section shall be null and void.

N.B.—An alien means any person who is not a native of the Colony or Protectorate.

Section 7 provides that no instrument is to be registered under the Land Registration Ordinance, unless it appears that the required approval has been given.

Sections 5 and 6 provide for the expulsion and punishment of an alien in possession of lands wrongfully, or under colour of an instrument to which the approval of the Governor has not been given.

The schedule contains rules for obtaining the approval of the Governor, and provision is made to enable the Governor in Council to supersede these rules by others.

Under the present rules the procedure is as follows:—

- (i) The alien is to give notice to the District Commissioner, together with the names of the parties, the purposes, terms, and conditions.
- (ii) The District Commissioner then makes enquiries whether the grantor is entitled to the interest or right to be granted, and whether the grantee is a person of good character, and desirable as a resident or trader in the district.
- (iii) If the District Commissioner is satisfied as to the title and as to the character of the grantee, the instrument is sent to the Colonial Secretary, and from him to the Governor.

No provision is made in the rules as to the terms and conditions to be contained in the instrument, except so far as these are embodied in the forms. These contemplate a leasehold tenure, and failure on the part of the grantee to behave in a quiet and orderly manner is one of the reasons enabling the grantor or the District Commissioner on his behalf to re-enter and determine the grant.

##### B.—*The Mining Regulation Ordinance.*

The following statement is derived in part from the Ordinance, and in part from the scheduled rules, but it must be borne in mind that these rules are subject to alteration by the Governor in Council.

##### (1) *Prospecting Licences.*

Licences are granted by the Governor to prospect for any mineral or minerals within any lands which are the property of the Government, or of a native community, the latter expression being defined as including any body of persons of African birth who are entitled by native custom to rights in land in the Colony or Protectorate. These licences may be (a) exclusive, or (b) general.

(a) An *exclusive* licence confers the sole right to prospect for minerals generally, or for the mineral or minerals mentioned in the licence, within the lands named therein (not exceeding 500 square miles), for such period not exceeding three years as the Governor thinks fit.

It is provided that where such licence is limited to a particular mineral or minerals the Governor may grant over the same area prospecting rights in respect of other minerals.

An *exclusive* licence is assignable with the consent of the Governor.

(b) A *general* licence confers the right to prospect for minerals generally, or for the mineral or minerals mentioned in the licence, within the area described in the licence, for the period of one year.

A *general* licence is not assignable.

No licence is to be granted to prospect upon any lands which are the property of a native community without the consent of the native authority.

Native authority is defined as the Native Council duly constituted under the provisions of the Native Councils Ordinance, or the Native Courts Ordinance, for the district or Province concerned, or, if there be no such Native Council, the chief or other person or body of persons entitled under native custom to deal with the common lands, or lands which are the property of a native community.

Application for a licence over lands the property of a native community is made through the District Commissioner, who submits it to the chiefs of the district, and reports on his action.

The rights conferred by a licence are :—

- (a) To enter upon any lands named in the licence;
- (b) To dig and mine on any such lands, and to dredge any stream or pool so far as may be necessary for the purpose of prospecting;
- (c) To construct a camp on any unoccupied land;
- (d) To take firewood from any forest land for domestic purposes; and
- (e) To take water from any stream, spring and pool, or well, not private property, for domestic purposes or for the purposes of prospecting.

(2) Mining leases.

Mining can only be carried on upon lands the property of the Government under a lease from the Governor, or upon lands the property of a native community under a lease granted by the proper native authority and approved by the Governor.

Although the consent of a native authority is required to licences or leases of their property, the Ordinance contains in section 21 a provision to deal with cases where a refusal is unreasonable and detrimental to the interests of the community.

If the holder of a prospecting licence wishes to obtain a mining lease, he marks off the area over which he desires a lease and applies to the Governor through the Colonial Secretary.

The holder of a licence who first marks off an area and applies for a lease has a prior right, but the Governor has power, without assigning any reason, to refuse to grant or give his approval to a lease, but if he approves the application is forwarded to the District Commissioner, who submits it and the lease to the chiefs of the community. If they approve the lease is executed by them in the presence of the District Commissioner, who attests the same.

The following provisions are of importance :—

- (i) No lease is to exceed 60 years.
- (ii) The area shall not exceed 5 square miles where minerals have not been found within 10 miles of it, or 1 square mile where minerals have been so found.
- (iii) The aggregate extent of area to be held by any person in his own right or jointly with others is not to exceed 20 square miles where minerals have not been found within 10 miles, or 3 square miles where minerals have been so found.

The rights of a mining lessee are thus stated :—

- (a) To enter upon any lands named in his lease;
- (b) To mine such mineral or minerals as are named in his lease, and for that purpose to make all necessary pits and shafts;
- (c) To erect, construct and maintain houses and buildings for the use of his agents and workmen;
- (d) To erect, construct and maintain such engines, machinery, buildings and workshops and other erections, as may be necessary or convenient;
- (e) To deposit rubbish produced in mining;
- (f) To make watercourses and ponds, dams and reservoirs, and to divert and use any water on or flowing through the land named in the lease;
- (g) To cut such trees as may be necessary for the purposes of obtaining wood for carrying on mining and for domestic purposes; and
- (h) To construct and maintain all such railways, tramways, roads, communications and conveniences as may be necessary.

A lessee may assign his lease, with the consent of the Governor first had and obtained.

Section 16 should be noted; it is as follows :—

Notwithstanding the grant of any licence or lease, any rights of collecting produce, cutting timber, gathering firewood, hunting, using water, farming or any other right exercised by any native in and over the lands subject to the licence or lease may continue to be exercised by such native, if and so long as such right can and shall be exercised without interfering with the rights conferred upon the holder of the licence

or lease by this Ordinance or any rules made thereunder.

Before entering upon cultivated lands or damaging any house, building or erection, a lessee is to give notice to the District Commissioner and to pay compensation, and no licensee or lessee is to cut down or permit to be cut down any mahogany or other timber tree, or shea butter, palm oil, palm nut, rubber, or other produce-bearing tree without the consent of the District Commissioner and of the owner.

Special provision is made against polluting or diverting running water.

C.—The Mining Regulation (Oil) Ordinance.

The main principle of this Ordinance is Government control for Imperial purposes. Mineral oil can only be worked in districts proclaimed by the Government as oil areas and which they are empowered to purchase from native communities. For the first four years after the commencement of the Ordinance there is provision for the granting by the Government of licences to drill and work mineral oil and leases, but at the expiration of that period only holders of leases from Government are to work such oil.

Provision is made that all licensees and lessees are to be British and the Government have a right of pre-emption over crude oil and all its products. No lease is to exceed 50 years.

D.—The Forestry Ordinance.

This Ordinance and the rules under it provide for the constitution of forest reserves and for the regulation of the cutting of timber and the collection of rubber both in the reserves formed under it and on "native lands," i.e., waste, forest and other lands at the disposal of a native community and not being the private property of any individual.

As explained by Mr. Thompson on page 140 of his report, measures of protection to areas outside forest reserves are "of a tentative nature and are only necessary till such time when the best forests and a sufficient extent of wooded land has been placed under the intensive protection afforded by reservation. Reserves are the permanent estates from which the demands for forest produce will have to be met in the future, and they therefore require different treatment from the generally protected areas, which latter are only protected in order to give sufficient time within which to complete the selection and reservation of the forests that it is considered necessary to manage solely as estates for the supply of forest produce."

Forest reserves may be formed either on what may be compendiously termed Crown land, or on lands belonging to natives or to a native community, which, or rights over which, have been acquired by the Governor by agreement. They are constituted as such by an order of the Governor after a procedure having for its main object the enabling of any person or community claiming any right over the land, to be formed into a reserve, an opportunity of proving the right. Any rights which are proved are recorded and if it is deemed advisable they may be extinguished after their voluntary or compulsory acquisition by the Governor.

The preservation of reserves is stringently safeguarded and produce can only be collected there under licence.

In addition to the safeguards peculiar to the reserves the Forest Department, as stated above, has considerable powers over the cutting and collection of timber and rubber both in reserves and on native lands.

i.—Taking of Timber.

Timber for export may be taken by the holder of a licence or by the owner of the land on which the timber is growing.

(1) Timber licences.

These licences take the place of timber concessions on the Gold Coast, and it is therefore desirable to state briefly the mode in which they are granted and their effect.

A licence can only be granted with the consent of Governor. Application for this consent is made in the first instance to the Provincial Forest Officer, and after passing through the hands of the Provincial Commissioner, the Conservator of Forests and the Colonial Secretary, it is laid before the Governor.

A licence takes the form of a grant by the owner of the sole and exclusive right to take trees of a specified kind on a certain area. It is for a term of five years with liberty of renewal for periods of two years, but there is a provision enabling the Governor to fix a longer term where the licensee expends capital on the construction of tramways, monorails or other works.

An investigation of the title of the grantors is made by the Provincial Commissioner, and in case of doubt the advice of the Attorney-General is called for.

The terms of the licence are settled by the Provincial Forest Officer, and the document is executed in the presence of the District Commissioner. No licence for an area exceeding 100 square miles can be made except with the consent of the Secretary of State.

The rights of a licensee are set out in Rules 7 and 24 of the Timber Rules; they confer—

- (a) The right to fell and carry away the species of trees named in the licence, but no exclusive right to the use of roads, waterways and frontages within the area. The Governor has, however, power to grant an exclusive water frontage.
- (b) The right to dig and set up pits, stages and erections, and to make such roads and ways as may be necessary for dressing and carrying away timber.
- (c) The right to erect such houses, offices, sheds and other buildings as are necessary for the residence and use of his agents, workmen and servants.

But the holder of a licence is not to damage or allow damage to be done to any rubber or other trees, undergrowth, or crops other than such damage as is incidental to and unavoidable in the exercise of the rights conferred by his licence.

No part of the land is to be farmed until the consent of the owner and of the nearest European Forest Officer has been obtained.

The taking of timber under the licence is safeguarded by stringent rules.

A licence is only transferable with the consent of the Governor in writing.

Fees are payable on application for and on the granting of a licence, and royalties are charged on each tree felled. A part of these fees and royalties is paid by the District Commissioner to the grantors of the licence.

(2) When timber for export is taken by the owners of land, they are required to pay royalties on the trees felled at a lower rate than that to which licensees are liable, and to comply with certain conditions.

(3) The owner of land and any person with his consent is permitted to fell timber for sale for use locally, at a scale still further reduced.

(4) The owners of native lands in respect of which no licence has been granted, and persons authorised by them may, with the consent of the nearest Commissioner or European Forest Officer, take timber required locally for domestic, agricultural or other like purposes or for the construction or repair of canoes, vessels, buildings, bridges, tramways, railways or other like work, but not for sale.

#### ii.—Collection of Rubber.

Rubber can only be collected under a licence for the granting of which the proposing licensee must show a competent knowledge of the proper method of tapping trees and preparing rubber.

A licence, which is not transferable, confers a right to collect rubber on the reserves and on native lands in the district for which it is granted, but a licensee who is not a member of a native community of the district has to obtain the consent of the head chiefs of the community to the collection by him of rubber on the lands belonging to such community.

A fee is paid on every licence and commuted royalties are charged to every licensee who is not a member of the native community of the district. Rules are laid down as to the mode of tapping and other matters, and a breach renders a licence liable to forfeiture.

With regard to the Western Province, there is an express provision in section 21 of the Ordinance that no rule or order is to come into force in any district or Province to which the Native Councils Ordinance (an Ordinance, as we have seen, applicable only to the Western Province) applies, unless the same shall have been approved by the Native Council duly constituted in accordance with the provisions of the said Ordinance for the district or Province affected thereby. The Forest Department have found this provision irksome, but without some such approval it is difficult to see how the law could be enforced, in some parts of the Province at any rate, for jurisdiction in criminal matters other than murder and manslaughter is, so far as natives are concerned, reserved to the native tribunals in Egbaland, Ibadan, Oyo, Ife and Ijebu Ode, and the general laws of Southern Nigeria do not seem to be binding on these tribunals.

#### III.—Registration of Instruments affecting Land.

This is dealt with by the Land Registration Ordinance, No. 15 of 1907, an Ordinance on the lines of the Gold Coast Land Registry Ordinance. What has been said with regard to the latter applies to Southern Nigeria, and the only provisions to which reference need be made are:—

- (1) Section 6, which provides that no instrument, other than a will affecting land, shall be registered unless it contains a proper description, and also a plan of the land affected by such instrument.
- (2) Section 12, which enacts that every instrument executed after the commencement of the Ordinance whereby land is granted by natives to any person or persons other than natives, or by the Crown to any person or persons whatever, shall be void unless registered within 60 days from its date.

#### IV.—Acquisition of Land for the Public Service.

This is regulated by the Public Lands Ordinance (No. 5 of 1903). In case of dispute the compensation to be paid is assessed by the Supreme Court, but no compensation is to be given in respect of unoccupied land.

#### V.—Execution against Land.

What has been written with regard to the Gold Coast applies to Southern Nigeria.

The following note, kindly supplied to me by Mr. Willoughby Osborne, illustrates a point of practice in the working of this mode of execution:—

“It is open to argument whether a writ of *fi fa* issued in the Colony can be executed in the States of the Western Province, where there are treaty jurisdictions. I have directed the Sheriff not to levy in Egbaland on a judgment obtained in Lagos, as I question whether the Egbaland judicial agreement gives this jurisdiction.”

#### SIERRA LEONE.

##### I.—Crown or Public Land and its Alienation.

This topic figures but slightly in Sierra Leone Legislation.

Colonial Crown land is dealt with by the Crown Lands Conservancy Ordinance, 1902, under which licensees to occupy and use Crown land may be granted or a term of 4 years.

It would seem, however, that Crown grants are made for a longer period, the Registration of Instruments Ordinance, 1906, providing that every Crown Grant, unless registered within one year of its date, is to be void. There does not seem to be any legislation similar to the Crown Lands Conservancy Ordinance relative to State land in the Protectorate.

## II.—Restrictions on Alienation of Land.

### A.—Concessions and Protectorate Native Law Ordinances.

Though the evidence shows that the legislation with regard to the alienation of land works well in practice, yet, as this legislation, which is generally applicable to Colony and Protectorate alike, appears on the pages of the statute book, it is very complicated.

In 1902 the Concessions Ordinance, 1902 (No. 8 of 1902), an Ordinance on the lines of the Gold Coast Concessions Ordinance, 1900, was passed. It did not remain long in this form, for in the next year Ordinance No. 18 of 1903 was passed, which brought the law into practically the same form as the Ashanti Concessions Ordinance, 1903. For example, the rules requiring an intending concessionaire to receive the permission of the Governor to obtain a licence to prospect and providing that negotiations shall go through the District Commissioner, were brought into force. In fact what has been said as to the Ashanti Ordinance applies generally to the law as it was in Sierra Leone after the Ordinance of 1903 became law.

Part III. of the Protectorate Native Law Ordinance, 1905, is headed "Settlement of Non-natives on Native Lands." I would summarise the provisions of this Part as follows:—

(1) A person not a member of the tribal community may obtain from the tribal authority a "lot" of land on which to build a house of native construction paying to the Paramount Chief a fixed sum which exempts him from making customary presents and from working on the roads, but not from observing the local regulations with respect to keeping the lot in sanitary condition.

(2) A "lot" for the purpose of erecting buildings of a permanent character may also be obtained from the tribal authority. It must be by deed stating the annual consideration, the object for which the lot is to be used, the duration of the grant and "whether or not the interests of the settler or grantee may be assigned, or, in the event of death, is intended to devolve on his heirs, administrators or assigns." The deed is to be attested before the District Commissioner and must be registered in the office of the Registrar-General.

N.B.—"Lot" means an area equal to the area which, in the town or place where allotted, would be considered sufficient for the compound of one who is a principal adviser to the Chief.

(3) Section 31 provides that no settler shall occupy any land save a lot granted as aforesaid unless he has obtained the consent of the tribal authority to occupy such land, and also the consent of the District Commissioner in cases in which such consent is required.

The consent of the District Commissioner is not stated to be required in any specific cases, but section 32 is as follows:—

The consent of the District Commissioner shall not be required if the terms and conditions of the occupation of such land comply with all of the following provisions:—

(a) If the area occupied is within 500 yards of the Chief's compound, such area shall not exceed 5 acres; and the annual rental shall be at the rate of 3s. for the first acre and of 5s. for each of the remaining acres; and it shall be a further condition of such occupation that the land shall be kept in continuous cultivation.

(b) If the area occupied be situated at a greater distance from the Chief's compound than 500 yards, such area shall not exceed 50 acres; and the annual rent shall be at the rate of 3s. an acre; and it shall be a further condition of such occupation that the land shall be kept under cultivation.

(c) If the tenure of the settler is to terminate at his death, and is not assignable.

(4) This part applies to the Protectorate and to a part of the Sherbro district of the Colony.

(5) The scope of this part appears to me to be of a restricted nature, and scarcely applicable to large planting concessions, as, for instance, to an English

company. It is intended to apply to "settlers," i.e., persons, European or otherwise, not subject to the tribal authority, and the idea of settlement would appear to imply personal occupation.

The Concessions Amendment Ordinance, 1906, is of capital importance.

Section 2 provides that "no Chief shall have power to alienate land for purposes of cultivation except under the provisions of this Ordinance and of Part III. of the Protectorate Native Law Ordinance, 1905, and no grant or other disposition of land for the purpose of cultivation, except such as is made under the provisions of Part III. of the Ordinance aforesaid, shall be made by any chief without the assent of the Governor."

Section 3 provides that the Governor is not to assent to any such grant or disposition:—

(1) When the grant or disposition is of an area of 1,000 acres or under, unless he is satisfied that it is for the benefit of the chieftom.

(2) When the grant or disposition is of a larger area, unless he is satisfied that it is for the benefit of the whole country, and either that the tribal administration will not be destroyed or injuriously affected by such grant or disposition, or that adequate provision is made by the terms of such grant or disposition or otherwise for the administration of the area granted, by other means than the tribal system.

(3) When the grant or disposition exceeds 5,000 acres, without the consent of the Secretary of State.

(4) Unless a certificate signed by the District Commissioner of the consent of the principal men is produced, and the terms of the grant or disposition are put into writing and signed by the parties and contain certain particulars, among others being:—

(e) Whether, or not, the interest of the grantee may be assigned, or in case of death is intended to devolve on his executors administrators or assigns.

(f) Whether, or not, the grantee is to be entitled to the palm trees or kola trees, rubber vines or rubber trees on the land.

(5) Any grant or disposition under the section is not to be deemed a "concession" within the meaning of the Concessions Ordinance, 1902, and no proceedings in the Concessions Court are to be necessary to establish its validity. This subsection (5) was added by Ordinance No. 22 of 1910.

By section 4 no proceeding is to be taken under the Concessions Ordinance, 1902, to establish the validity of any concession which has not been provisionally recognised by the Governor. Any concession which has not been so recognised within one year from its date, is to be null and void.

By section 5 any grant or disposition is to be subject to any future conditions which the Legislature may impose, and the assent of the Governor is not to affect any question of law as to title or any other matter as between the parties to such grant or disposition, but to be an undertaking on the part of the Governor that he will not prevent the grantee from entering on the land or exercising any rights conferred upon him by such grant or disposition, and will not interfere therewith, save in so far as may be necessary to carry out any order of a court of law or the requirements of any present or future Ordinance.

By section 6 (as amended by Ordinance No. 10 of 1910) palm kernels, piassava, and kola nuts are not to be deemed products of the soil within the meaning of the Concessions Ordinance, and no concession or licence to gather the same shall be made without the assent of the Governor.

To summarise the law under the Concessions Ordinance:—

(1) To obtain validity, a concession involving minerals, timber or wild rubber must receive the provisional recognition of the Governor within a year or become void. Having received this provisional recognition, the concessionaire still requires a certificate of validity from the Court to perfect his title.

(2) Concessions or licences to gather palm kernels, piassava and kola nuts require the assent of the Governor, and he is to be guided

by the rules above referred to which are intended to safeguard the interests of the tribal administration.

- (3) Grants for cultivation, when not under the Protectorate Native Lands Ordinance, are made by the chiefs with the consent of the Governor, who must be guided by the rules above referred to.

Yet another Ordinance was passed in 1911 to amend the Concessions Ordinance. It is No. 16, of 1911, and is to be read as one with the Concessions Ordinances and the Protectorate Native Law Ordinance, 1905. Section 2 provides that from and after the passing of this Ordinance it shall not be lawful for any tribal authority to enter into or execute any agreement, deed, lease, or conveyance whereby any land of a greater extent than 50 acres shall be sought to be alienated from such tribal authority to any person or persons other than to the Colonial Government for a public purpose, for a longer term than 99 years. Section 3 makes an assurance entered into in contravention of the last preceding section "void and of no effect."

In introducing the Bill to the Legislative Council the Acting Attorney-General explained that under the existing law, land could be acquired from a tribal authority who were owners of land in the Protectorate, and that a case of this nature had occurred in which the land had been leased for 999 years. This would doubtless be so, but I should have gathered from the provisions quoted above that it was certainly the intention of the Legislature that a grant of land of over 50 acres could only be made with the consent of the Governor or of the District Commissioner.

#### B.—The Forestry Ordinance, 1912.

This Ordinance is much on the lines of the Southern Nigerian Ordinance. As I have pointed out, that Ordinance provides for the constitution of forest reserves and for the regulation of the cutting of timber and the collection of rubber both on these reserves and generally on native lands. The Sierra Leone Ordinance provides for the constitution of forest reserves and for the regulation of the cutting of timber and the collection of rubber and gum copal, not on native lands generally, but on what are termed "restricted areas."

"Reserves" may be constituted by the Governor on any Crown lands in the Colony, and, at the request of a tribal authority, on any native lands upon which trees and forest produce or any kinds thereof are growing, or which are suitable for the production of trees and forest produce.

With regard to "restricted areas," it is provided that the Governor may, by order to be published in the Gazette, constitute any Crown lands in the Colony, and, at the request of any tribal authority, any lands in the Protectorate to be restricted areas, within which the taking and collection of timber, rubber and forest produce shall only be permitted under such rules as may be made by the Governor in Council. The distinction was thus put by the Acting Attorney-General when he introduced the Ordinance into the Legislative Council: "It was proposed to define two 'different areas, one to be called a forest reserve, 'which would be exclusively reserved for the growth of timber, the other kind of area would be known as 'a restricted area. That was one in which no attempt would be made to interfere with the persons living thereon except that all trees of commercial value would be strictly safeguarded, and only on a licence would people be allowed to cut down such trees as gum, rubber, or other trees of commercial value."

Although there are some slight divergencies between the two Ordinances and the two sets of rules, yet it is accurate enough for general purposes to say that what has been written as to Southern Nigeria applies also to Sierra Leone, except that the words "restricted areas" must be substituted for the words "native lands."

#### III.—Registration of Instruments affecting Land.

The Registration of Instruments Ordinances 1906, is much on the lines of the Registration Ordinance in

force in the Gold Coast and Southern Nigeria. Land as defined by the Ordinance includes "real property and chattels real" in the Protectorate as well as in the Colony.

#### IV.—Acquisition of Land for Public Purposes.

The land for the Sierra Leone railway was acquired under a special Ordinance, which was afterwards extended to the Protectorate.

The general Ordinance is the Public Lands Ordinance, 1898, which only applies to the Colony. Compensation, where not a matter of agreement, is assessed by the Chief Justice. The provision as to "unoccupied land" which appears in the Gold Coast and Southern Nigerian Ordinances does not appear in that under review.

#### V.—Execution against Land.

This subject, so far as the Colony is concerned, is dealt with by the Execution against Real Property Ordinance, 1906; section 5, makes it clear that the purchaser of land sold by the Sheriff under a writ of *fi fa* gets the title which he would have got if the debtor had himself sold the land.

Under section 64 of the Protectorate Courts Jurisdiction Ordinance, 1903, payment of a judgment is enforced against a debtor by seizure of his goods and chattels.

### GAMBIA.

#### I.—Land and its Alienation.

One is struck by the fact that in the Gambia there is no legislation corresponding to the Concessions Ordinance in the Gold Coast or to that covering the same ground in the other territories. The reason, I suppose, is that here the Crown has assumed a much stronger control over land than elsewhere.

The Protectorate (Public Lands) Ordinance, 1896, places all public lands under the control of the Administrator. Public lands are defined as—

- (1) All lands in the Protectorate not in the actual occupation of persons, or of the tenants, agents, or servants of persons, who, at the time when Her Majesty's Protection was established in the territory in which such lands are situate, had by the laws and customs of such territory an original or derivative title to the said lands.
- (2) All lands in the Protectorate belonging to any conquered or deposed ruler.
- (3) All lands in the Protectorate which before the establishment of Her Majesty's Protection in the territory in which the lands are situate, were vested in the ruler of such territory as ruler, and not as his own private property.

The meaning of this section is discussed in Questions 2953-2963, and is not very clear.

Section 4 provides that no grant, concession, or disposition of public lands shall be valid unless made by the Administrator, and no grant, concession, or disposition of land in the Protectorate made in favour of Europeans before the establishment of the Protectorate is to be valid unless approved by the Administrator.

A set of rules were made under the Ordinance. Under them the head chief and headmen of a district have charge of the public land of their district.

No timber, fibre, rubber, gum, firewood, palm nuts, or, palm kernels are to be cut or collected from, and no cattle are to be depastured on, public land without a permit.

The Administrator has power to grant licences for a term of years to "responsible and solvent persons" to occupy tracts of public land for the purpose of cutting timber.

The Public Lands (Grants and Dispositions) Ordinance, 1902, empowers the Governor to make grants, in fee simple or for any lesser period, of Crown lands in the Colony, or public lands (as defined by the last-stated Ordinance) in the Protectorate.

## II.—Registration of Instruments affecting Land.

This is dealt with by the Registration Ordinance, 1880, on the same lines as the subject is dealt with elsewhere on the Coast. It applies only to the Colony.

In 1904, the Land Transfer Ordinance, 1904, was passed, providing for the registration of title. It has never, as I understand, been brought into operation, and by section 89 is to apply only to the Island of St. Mary, with power to the Governor to extend its operation to McCarthy's Island, British Kombo, and other portions of the Colony administered under the Protectorate system, or any of them.

## III.—Acquisition of Land for Public Purposes.

The Public Lands Acquisition Ordinance, 1901, applies to the Colony and Protectorate alike. It is practically the same Ordinance as the Gold Coast Public Lands Ordinance, 1876.

## IV.—Execution against Land.

This is dealt with by the Real Estate (Payment of Debts) Ordinance, 1912, which is on similar lines to the Sierra Leone Execution against Real Property Ordinance, 1906.

1st August, 1913.

WALTER NAPIER.

## (C) MEMORANDUM BY SIR WALTER NAPIER ON THE PRINCIPLES OF NATIVE LAND TENURE IN THE GOLD COAST AND SOUTHERN NIGERIA.

## I.—COMMUNAL TENURE.

So far as I can see, the principles underlying land tenure are in the main the same throughout all the tribes on the West African Coast. Land, until the influence of English legal ideas had been felt, belonged to or was under the control of some community (be it family, clan, tribe or kingdom). Although perhaps it is natural to emphasise the main characteristic as lying in the communal nature of the institution, yet too much emphasis should not be placed on this aspect, for the action of individuals always played an important part in it. Thus Mr. Dennett traces the origin of the communal system of holding land to the wandering of an individual from his own community and his taking possession of "undeveloped and may be unoccupied lands" (10,937); and Mr. Chris. Johnson, Editor of the *Nigerian Chronicle*, says: "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." (African No. 1048, p. 220.) See also Bishop Johnson's statement (African No. 1048, p. 218).

Again, the allotment of lands belonging to a community is to an individual, though when transmission of interest gradually comes to be recognised, it is not transmission to an individual but to a family group.

The individual instanced by Mr. Dennett marries and has offspring. A family is formed which expands into a house or clan. As a rule, to which exceptions exist, this or its representative head, is the land-owning unit. In the country it is a village community; in a town the town itself or one of its quarters. In such a unit in the time when only shifting cultivation was practised, the chief "each year points out the direction in which the farmers shall make their farms" (Dennett, 10,940). Above the head of the community may be the head of the town or district; and over the aggregate of towns and districts, the king.

In some districts, generally in those in the vicinity of towns, some families acquire an exclusive right to particular parts of the communal land, whilst still owing allegiance to the village head. Mr. Crowther thinks this represents the growth of an aristocracy within the community. Here, I should mention, that I use the word "family" in its broader sense as comprehending a patriarchal family or a joint family (Sarbah's "Fanti Customary Laws," p. 62).

In Southern Nigeria, then, we find that land is classed as belonging either to some community or to some family.

In the Gold Coast, the nomenclature is different; but the essentials are the same. The land, for the most part, is called "stool land"—an expression which needs some explanation. A stool is the emblem of authority of a chief. The stool of a king is termed the "paramount stool;" subordinate to him come the stools of the sub-divisional chiefs, and below them again the stools of the village heads. According to Mr. Crowther, all these stools viewed as land-owning units are co ordinate and "the privileges of one stool are precisely equal to those of another" (Crowther,

9932A). However this may be, it is certain that in some cases the paramount stool exercises a substantial control over the allotment of land by the subordinate stools. Land belonging to any of these stools is, unless it has become family land—for this kind of land is common enough in the Gold Coast, especially in the towns—called "stool land," and this expression includes land which is in the occupation of individuals so long the stool has a reversionary right over it.

Besides stool and family land, writers and witnesses name other systems of tenure, as for instance, "tribal" or "clan" land; but the distinction of these systems of land from stool land is by no means clear; and any differences which there may be do not seem to be of material importance, so far as the questions before the Committee are concerned. The fundamental principles underlying all communal land, whether in the Gold Coast belonging to a stool, tribe, or family, or in Southern Nigeria to a community or family, appear to be the same, viz., that the land is held by the chief or head for the members of the community, tribe, clan, or family, and is to be administered for their benefit.

This land, for want of a better term, I shall call "communal land."

So much for the land-owning units; I now turn to consider briefly the way in which these units utilise their land, and the main principles of the tenure.

Land, I think I shall show, could not according to ancient custom be parted with except for a temporary purpose. This temporary use and alienation was supervised by the chief, assisted in many cases by the elders of the community and would in the main be in favour of the members of the community who had a right to the allotment of sufficient land for their sustenance. Where, however, there was an abundance of land, strangers, members of other communities, would be admitted, but on less favourable terms than members themselves. Such strangers would often as time went on intermarry with the community and become absorbed in it. In the earliest stages land would be allotted for houses or taken or allotted for shifting cultivation. The period of user, at first for life or a shorter period, in any case determinable on bad behaviour, would tend in the direction of security and greater permanence. The family of an individual member would succeed to the occupation of the ancestor, and gradually this right of succession would be extended to the family of a stranger occupant.

I now propose, *Firstly*, to consider the nature of an occupant's right, to show that it was by native custom of a defeasible nature, incapable of alienation and incapable of expanding into absolute ownership.

*Secondly*, I shall discuss the question as to whether land could be alienated by a community by ancient native usage.

I shall as far as possible in this Memorandum deal with the decisions of the Supreme Courts as being, as Mr. Buchanan Smith in his valuable contributions puts them, "probably the most reliable source of information in so far as they give an unbiased account of the native views before the question had assumed a "controversial character" (African No. 1048, p. 223).

I.—*The Nature of an Occupier's Right.*

Mr. Philbrick, acting Chief Commissioner of Ashanti, thus describes the present position in Ashanti (Papers, p. 14).

(i) *When the Individual Cultivator is one of the Community.*—Every member of the community has the right to the user of as much of the soil as he needs for cultivation, either shifting or permanent.

He receives no grant or licence from the heads of the community, but as a member of the community he has to perform certain obligations, such as—

- (a) Contribution towards debts.
- (b) Personal service on chief.
- (c) Contributions from his crops to the heads of the community.

These contributions vary very much. Normally they are trifling, but a chief would call for a larger contribution if a big custom were taking place or if he needed to make presents of considerable quantities of food. So long as these obligations are performed he cannot be disturbed.

(ii) *When the Individual Cultivator is a Stranger.*—Up to now, such is the quantity of available land, a stranger has made no contribution from crops he has obtained by shifting cultivation for his own use, but strictly he requires verbal licence from the community and should pay a proportion of his crops to the community.

If, however, he intends to grow cocoa or other crops for profit, it is now the established custom for him to obtain a verbal licence from the chiefs and elders and to arrange to pay a proportion of the crop as rent.

The consensus of opinion among the chiefs seems to be that as long as the stranger pays this rent he cannot be disturbed, but cases have occurred where a stranger, having become for some reason obnoxious to the community, has been turned off the land."

I quote this, as it gives a vivid picture and draws a clear distinction between the case of a member, and of a stranger, cultivator.

Mr. Justice Smith, in an Opinion written in 1891, and printed on p. 271 of "Fanti Customary Laws," says, "Each subject of the king or chief has a right to have allotted to him a portion of the stool land for cultivation. . . . To natives other than subjects of the stool, permission may also be granted to cultivate stool property; but this permission is granted by the king or chief with the concurrence of his headmen or councillors. To obtain permission, rum or sometimes money is given, more or less as the applicant is or is not subject of the stool, portion of the produce of the land being from time to time given to the king or chief as the case may be. But this partial alienation vests no right whatever in the cultivator of the soil beyond his right of tilling the ground. No time is specified as to the duration of the grant; but as soon as the grantee ceases to cultivate the land, it reverts to the stool. Even during the period of cultivation, should the grantee assert a title to the land in himself, he forfeits his right to continue the cultivation and is at once ejected from the land."

Mr. Sarbah, in his work on "Fanti Customary Laws," devotes a chapter to "Tenures." On p. 66 he says: "According to native ideas, there is no land without owners. What is now a forest or unused land will, as years go by, come under cultivation by the subjects of the stool or members of the village community or other members of the family. "The granting of permission to others (*sic*) and outsiders to reside on or cultivate the lands of a family, a stool, or a village community, is a practice of the greatest antiquity, and was in times past more universal than sale of land, which is of comparatively modern growth."

Then, on p. 68, after making the important observation that "It must be borne in mind that no person can acquire by long uninterrupted possession, an

"adverse title against the owner of property, through whom or whose ancestors possession was first acquired," he proceeds to explain the following kinds of tenure:—

(i) *Sowing tenure.*

Under this a right is given to use land for one sowing season, the representatives of the tenant, dying before the crops are garnered, being entitled to reap them.

(ii) *Annual tenure.*

Under this a licence is given to cultivate until such time as the owner shall by notice determine it. On the death of the tenant "his heir or successor after notifying the owner and after certain ceremonies, acquires the same rights and privileges until the landlord gives notice to determine the tenancy, when the land goes back to the owner with all the improvements thereon. But the owner of the land is not entitled to such crops as are sown and reaped yearly, unless the tenant has failed to remove them after due notice. Where the owner of land gives to a person permission to cultivate a portion of his land and this person and his heirs continue the cultivation of such land, for upwards of forty years, without paying any rent or giving any produce therefrom to the owner, such long possession does not destroy the title of the original owner and his representatives.

"The original owner or his successor can at any time go upon and retake possession of the land as soon as the tenant asserts an adverse claim to it. In the absence of such adverse claim, he cannot disturb the quiet enjoyment of the tenant without prior notice to the tenant that he requires the land."

(iii) *Abehem tenure, a tenure of palm land.*

(iv) *Building tenure.*

"Lands so granted are resumable by the grantor and his successors on failure of successors in the grantee's family.

"Land so granted is inalienable, except with the express consent and concurrence of the grantor, if it be his self-acquired property; but if ancestral or family property, then the consent of the persons entitled to the reversion and who have an interest in it, and who are usually consulted before any alienation is made, must be gained."

Mr. Sarbah, in the same volume and in his volume of "Fanti Law Reports," gives several instances of these tenures. Thus, on p. 159 of the "Fanti Customary Laws," he reports the case of *Eccobang v. Hagan*. There the referees, who included Mr. Sarbah himself, were asked by the Court, "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 for 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?" The reply was, "I say and affirm that such prolonged possession does not destroy the title of the original owner." The Court accordingly found that the land "claimed by the plaintiff was held by the plaintiff at the will of the defendant, and that the defendant before entering on the land gave notice to the plaintiff and that the defendant by entering on the land after such notice . . . did not commit a trespass."

In *Aworthchie v. Aidgun* (1890) Fanti Law Report, 56 it was held that where a person was permitted to build a house on land and the house went to ruins, the land reverted to the owner.

Before leaving the Gold Coast, I would call attention to a remark of Mat Kolie in the course of his evidence, taken by Mr. Belfield (Cd. 6278, p. 59). "In the case of those plantations which are situated on stool land the rights of the owner are limited to culture and usufruct. There is no right of alienation," and to the statement of Sir B. Griffith, that a person to whom stool land has been allotted for permanent cultivation cannot sell and give a title to the land (14, 531 *et seq.*).

The tenures described by Mr. Sarbah, who writes of them in the technical terms of English law, as is natural

as he was an English barrister, are very similar to those in Southern Nigeria. It must be kept in mind that the length of British influence in Nigeria is very short as compared with that of the coast towns of the older Colony, though it is true that the Portuguese were in Benin City in the 16th century. Lagos, which was the first scene of European penetration, played no part in the early history of European trade and settlement, and it is not known to have been inhabited before 150 years ago. In the early part of the nineteenth century it was a thriving centre of the slave trade. In 1857, the English interfered and a British Consular Agent was appointed to reside there; in 1861, the cession of this island to us took place (*Lucas*, Historical Geography, vol. iii. 226). We are thus able to get a clearer view of the pure native land tenure in Southern Nigeria than in the Gold Coast, and to trace the events by which its principles were endangered.

The following cases relate to agricultural land. In *Callamand v. Vaughan* (1878), the question was whether a grant for agricultural purposes determined when the land ceased to be used for such purposes. A Government Surveyor deposed as follows:—"I have given much attention during the last 20 years I have been here to the land laws of the country. I have always found that land is only given for so long as it is occupied, that after abandonment, any one of the people of the country may occupy it without special permission, but that a stranger would have to get permission."

The Chief Olotu deposed, "One of my powers has been to give lands to any person who wanted to work. When any person applied for land I sent my staff man with him to point out uncultivated land that he could have. When land is given a man it does not descend to his children. When he dies I receive it back."

On the facts, the Court found that there had been abandonment and that the grant determined accordingly (*Papers*, p. 246, and Oral Evidence, p. 524).

In *Eshugbayi Olotu v. Dawodu* (1904), the following evidence was given by a chief:—

"Q. Is the grant ever given so as to deprive the stool of grantor of that land absolutely?"

"A. No, it is only granted to work."

"Q. When grantee dies, is anything required of his successor?"

"A. He will come and ask permission from owner of land to continue."

"Q. If he does not?"

"A. The owner will send a message to him."

"Q. If he still insists on not coming?"

"A. Then fetish is put on the farm."

"Q. Can the grantor then take the land away?"

"A. Yes." (Oral Evidence, p. 523.)

In *Idewu v. Ogubiyi* (1878), the Court said, "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 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. I see no reason why the observance of this Custom should not, when necessary, be enforced by this Court." (*Papers*, p. 246 and Oral Evidence, p. 526.)

In the case of *Odu of Ikeja v. Abikoye of Ikeja* (1892), the Bale of Ewu deposed, "It is our custom when we grant land to those who are our 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 the land. . . . The custom I have spoken of was in force as long as I can remember, and in the time of my father and grandfather." (*Papers*, p. 246.)

Again, in the case of *Oyinkan v. Mokoogun*, the Chief Justice said that it was "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," and he held that the

children of a tenant could not succeed to the tenancy without the consent of the landlord. (*Papers*, p. 248.)

The following cases have reference to building grants.

In *Chief Eletu Odibo v. Seidu Salako* (1882), the Assessors informed the Court that the following were points of native law:—

(1) That when persons were allowed by another to live and build on land and that permission was accompanied by the ceremony described in the evidence of the kola nuts and rum, that land belonged for ever to the persons so allowed to build and live, their heirs and successors, until some wrong was committed, and that the native word for wrong is "buburu," which means some gross crime.

(2) That the sale or attempted sale by the person so entitled to live and build on the land is a gross crime or "buburu." (Oral Evidence, p. 523.)

In *Ajoseh v. Efulde* (1892), evidence was given by a chief, "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)."

Sir John Smalman Smith, the Chief Justice, in giving judgment, said "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 disposes the grantee so long as these obligations were fulfilled." (*Papers*, p. 246 and Oral Evidence, p. 525.)

In the case of *Ashogbon v. Juradu Somade* (1885), the Judge made the note that "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." (*Papers*, p. 248.)

The case of *Moses Johnson v. Weto* (1895), arose outside Lagos; the following evidence was given. "According to Popo custom land cannot be sold. Land is sometimes given to a stranger to work on and live on. That stranger cannot sell the land. If the stranger sell the land, the land will (*sic*) belong to the man to whom it is sold. The owner will get it back. If the stranger do not sell the land, but only pawn the palm tapes on the land, the owner can still get back his land." (Oral Evidence, p. 526.)

No. 9.—*Pinnock v. Oyesihle* (1911) had reference to the Customs in Oyo. The following evidence was given, "If a stranger comes to Oyo and asks for land, the Alafin gives him the land. He is allowed to farm on it or to build on it if he likes, but cannot sell it without the permission of the King. The son of the stranger can go on staying there provided the father never offended the King."

Further, "A stranger will ask for land from the Alafin, when he can farm on it or build or use it as he likes, but not sell it. If he does not offend, his children can live on the land; but if he offends, we drive him out." (Oral Evidence, p. 527.)

The case of *Fernandez v. Shepherd* (1906) arose in Ibadan. The following are some passages from the evidence of the Bale:—

A person, according to native law, who gets land cannot pass it on without the approval of the grantor. This applies equally to an Ibadan man and to a stranger. If a grantee passes on land, I will speak to him and say, "Why did you give up that land without consulting me?" If he beg, I will leave it with him because I have already granted him. He must beg me I'll leave it with the man he gave it to, but if he does not beg me, I'll take the land from him. He must beg me with presents.

Q. Suppose the man to whom the land is transferred is a stranger, do the same principles apply?

A. Yes.

Q. Under what circumstances can a grantor turn a grantee out of land according to native law and custom?

A. (1) If he is impertinent to me; (2) If he does not give me service when required; (3) If I am sick and he does not minister to me; (4) If he does not give me some of the proceeds of the farm, such as palm oil, corn, and fams; (5) If he is a thief, a bad man; (6) If he disposes of land without my approval; (7) If he has made had medicine to injure people generally; (8) If he calls title of landlord in question; (9) If he takes the grantor's wife or any of his relatives. (Oral Evidence, p. 527.)

The case of Obadiah Johnson v. Maraimo, discussed by Mr. Willoughby Osborne in his evidence, is also important. (14,858 *et seq.*)

On the point that the interest of the cultivator cannot by lapse of time ripen into individual ownership, I would add to the observation of Mr. Sarbah, quoted above, and to the decision in the case of Eeobang v. Hagan, a further dictum of Mr. Sarbah, F.C.L., p. 64, with regard to clan property:—"By no length of uninterrupted enjoyment can any one acquire any title adverse to the title of the whole clan," and the opinion of Mr. Furley that "it is, however, a recognised principle of native custom that title to land can never be acquired as against the original owner by long and uninterrupted possession." (Papers, p. 21.)

That the same rule is applicable in Southern Nigeria appears from the evidence of Mr. Willoughby Osborne. In question 14,803 he was asked with reference to a claim that land seized under a writ of *fi fa* was not the property of the debtor, but family land. "Suppose, as a matter of fact, the man" (the occupant of family land) "had dealt with the land as the owner for a considerable time and that there was no evidence of the family having intervened in any way or having had any interest in it, would that operate largely on the decision of the Court?" His reply was: "Yes, it might, though at the same time the native has no idea of prescription. Their titles can never ripen by prescription."

To sum up this part of my argument, I think it is established that by ancient custom the right of occupancy—though tending in the direction of security and greater permanence—was of a defeasible nature incapable of alienation and incapable of expanding into absolute ownership. To use terms of English law, there was a right of reversion on the part of the community which could be used to enforce performance of the customary duties due from the occupant to the chief as head of the community, and this right could not be lost by prescription.

## II. Can a community, acting in accordance with ancient native custom, transmit an absolute interest to an individual?

It will be noted that I limit the question to alienation to an individual; for absolute interests, so far as such existed at all in the native mind, must have passed by conquest from the earliest times. Mr. Crowther places the subject of alienation from one community to another rather prominently in his evidence. He thinks the practice of one community borrowing money from another on the security of land has the sanction of ancient usage, but doubts if this involved "the permanent right." (9992.) Whether he thinks that the instances of alienation involving the permanent right, which he cites, had the sanction of ancient usage is not clear. (10,024, 10,141.)

There is evidence from the Rev. A. W. Wilkie that the Efik tribe in Southern Nigeria were recent settlers and that there is certain proof of their settlement as early as 1809. The former occupants sold "land to the Efik, but whether this was under compulsion or a recognised part of their own system, I am not able to say." (Papers, p. 195; see also *Prince Bassay*, 12,673.)

### GOLD COAST.

The question propounded is not easy to answer for contact with European civilization since the building of the first fort in 1481 has brought the natives of the

towns into association with European ideas of property, and it is with this class of native, and not with the country people, that the Judicial Assessor and the Supreme Court have had to do.

Mr. Sarbah, on pp. 85 and 86 of Fanti Customary Laws, says: "The careful student will doubtless not fail to observe that, of all things, land is about the last thing which became the subject of an out-and-out sale. Owners of land were as reluctant and unwilling to part with their land and inherit it as was Ephron the Hittite to sell a burying place to Abraham as recorded in the Holy Writ. Rather than sell his land, the Fanti landowner prefers to grant leave to another, a friend or alien, to cultivate or dwell upon it for an indefinite period of time, thus reserving unto himself the reversion and the right to resume possession whenever he please. This is the reason why the first European settlers could not buy the freehold of the sites of their forts and castles, but had to give pay notes securing to the owners certain annual rents." Again, on p. 89: "It should be noted, while on this point" (the power of an individual owner to sell) "that, with the exception of the coast towns, where there is much contact with European ideas, self-acquired or private property in its strict sense does not exist over the whole country because the family group is of the patriarchal type."

Mr. Justice Hayes Redwar put the old custom in restraint of sale very strongly in 1893 in the case of *Kwesi Abessibro v. Kofa Ama*, F.L.R. 78. "It is plain that according to the contemplation of ancient customary law (as embodied in numerous decisions in this Court as well as indicated by the evidence in this case), there is no such thing in the interior as an absolute transfer of land as between natives, whether by sale or gift, and the only thing that passes is the usufruct or licence to use the land in certain ways as disclosed by the agreement between the parties," and he held that in the transaction the subject of the case only such a licence was given (see also Hayes Redwar, Comments on some Ordinances of the Gold Coast p. 75).

Mr. Casely Hayford in his work "The Truth about the West African Land Question," p. 56, says: "But in the Customary Law we find no trace of individual ownership"; and again, "with this important qualification, namely, that the family in the Customary Law is the unit for the purpose of ownership, we may now proceed to distinguish Ownership from Paramountcy."

Mr. Crowther, in his evidence, says that it is entirely a modern condition that an individual should own land, and therefore it follows, I think, that in his opinion, a community would not in accordance with ancient custom alienate land in perpetuity to a private individual (10,183). He expressly says that alienation by one individual to another would be invalid (10,156).

Mr. John Maxwell, Commissioner of the Western Province, says: "The chiefs are prohibited by their native customs from selling the stool lands outright." (Papers, p. 17.)

Mr. Furley says that the acquisition of lands by individuals "was not found among the old native communities." (Papers, p. 22.)

Mr. Willoughby Osborne was asked (14,908): "You are of opinion that in accordance with the old native custom there was no alienation of land in the Gold Coast?" His reply was, "I do not think so, I do not think there was any individual ownership."

This seems also to be the opinion of Sir P. Smyly, (8069) as of Mr. Dennett (10,052).

Sir Bradford Griffith's view (14,035) is that "there was little or no buying in the far-off days, and as it was not the practice to sell land, so it got to be said that it was the custom not to sell it. In my opinion, there was no custom on the point at all."

### SOUTHERN NIGERIA.

Sir T. C. Rayner, Chief Justice of Lagos, writing in 1898, says "the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village, or the family, never to the individual." Land Tenure in West Africa, 2.

In the case of *In re* Chief Eshugbayi Oloto (1899), the Acting Queen's Advocate contended "that the Chief had no right to sell the land, but only to let it." Unfortunately the Court did not decide the point finding that the alleged sales were not established. (Oral Evidence, p. 523.)

The custom in the Popo country was succinctly put by the Assessor in the case of *Johnson v. Weto* (1895). "According to Popo custom, land cannot be sold. Land is sometimes given to a stranger to work on and live on. That stranger cannot sell the land." (Oral Evidence, p. 526, and see *Osborne, 14,859 et seq.*)

The custom in the Oyo country was stated in the case of *Pinnock v. Oyeshile* (1911). "If a stranger comes to Oyo and asks for land, the Alafin gives him the land. He is allowed to farm on it or to build on it if he likes, but he cannot sell it without the permission of the King." (Oral Evidence, p. 527.)

In the case of *Fernandez v. Shepherd* (1906) a purchase was set aside on the ground that there could not be alienation in perpetuity. (Oral Evidence, p. 527.)

The conclusion which I am inclined to draw from the above evidence is that both in the Gold Coast and Southern Nigeria it was not in accordance with ancient custom for a community to convey an absolute interest in land to an individual, or in other words that ancient custom did not recognise individual ownership.

## II.—INDIVIDUAL OWNERSHIP.

It will be advisable to treat this species of ownership in the Gold Coast and in Southern Nigeria separately.

### GOLD COAST.

In those parts of the Colony—generally towns which have been subjected to European civilisation—we find a system of ownership by natives and others bearing striking resemblances to an estate in fee simple in England. This I shall call "native individual ownership" in contradistinction to the original system which for want of a better term I have called communal. The distinguishing feature of this later form of ownership was that the person possessing it had the unlimited powers of alienation, *inter vivos*, possessed by an owner in fee simple according to English law.

I have searched in vain for any account of the mode in which this ownership originated, and in this connection I would quote from the speech of Sir William Maxwell in the Legislative Council, on the second reading of the famous Land Bill: "I have not been able to find that any consistent theory on the subject of tenure is deducible from such decisions as are available." (Papers, p. 274.)

I am therefore thrown back on first principles, and have in the first instance to satisfy myself as to the proper construction of Section 19 of the Supreme Court Ordinance in connection with those sections which precede it.

The following propositions appear to me to be justified:—

- (1) Primarily, English law is introduced.
- (2) To this, there is an exception which requires all cases between natives as to the tenure, transfer and inheritance of land to be decided in accordance with native custom.
- (3) To this exception there is a further exception re-introducing English law in any case where a party to a transaction has agreed either expressly or impliedly that his obligations in connection with such transaction are to be regulated by English law.
- (4) This sub-exception does not allow a vendor and purchaser of land held under native tenure, by contract to agree that the land in future shall be held under English law; but it has merely reference to matters which may be the subject of contract between parties. Thus, a native individual owner might create a mortgage having the attributes of an English mortgage; or he might create a lease having the attributes of an English lease. Even in this case it would not be accurate to

describe the land as "held under English tenure"; as the interest of the mortgagor or mortgagee (if he is a native) would pass in accordance with native law, and the land would, when the mortgage was paid off, resume all the incidents of native ownership.

The case of *Swanzy v. Bordoh*, quoted *supra* on p. 126, is a case where the Court held that a native borrower had made an English mortgage of his land and not a native pawn or pledge.

Assuming that my conclusion that land could not be alienated according to native law is correct, on what principles did the Courts recognise alienation?

According to the general principles I have indicated the decisions which establish the rights of communities and families to sell should have been based upon proof of some later native custom sanctioning transfer.

Whether the earliest decisions depended upon proof of some such custom, there is, so far as I am aware, no record; but no doubt the influence of English law operating through an English judge and through native Counsel trained in the principles of English law, must have largely conduced to the result.

However, by the time Mr. Sarbah wrote his book on Fanti Customary Laws, the principles of alienation and private property were established, and he assumes that the right of out-and-out sale did exist, and only discusses the conditions under which it is valid. The point in issue is always as to whether the parties whose consent is necessary have given their consent.

In the case of *Barnes v. Atta* (1871), F.C.L. 169, the validity of a sale of stool property was in question. There Mr. (afterwards Sir D. Chalmers) said: "I apprehend that not even the regular occupant," *i.e.*, of the stool, "could alienate property without some concurrence by the people of the stool who have an interest in it, and are usually consulted on such a matter."

With regard to *family land*, there are several cases in which the matter was discussed. Thus, in *Tokoo v. Asima* (1870) F.C.L. 168, it is stated, "Per Samuel Christian—whole family must concur in sale. The present members of the family may agree to put away the house."

The matter came before the full Court in 1878 in the case of *Bayaidee v. Mensah*, F.C.L. 171; there all the members of the family had not consented to the sale, but the purchaser had possessed the land for a series of years in undisputed ownership, had cultivated and improved the land and established a home upon it. The Court held that whatever right of impeaching the sale the family possessed was barred by their acquiescence, and the plaintiff's continued course of undisturbed possession. In the course of the Judgment the Court said: "Now although it may be, and we believe it is, the law that the concurrence of the members of the family ought to be given in order to constitute an unimpeachable sale of family land, the sale is not in itself void, but is capable of being opened up, at the instance of the family, provided they avail themselves of their right timely, and under circumstances in which, upon the rescinding of the bargain, the purchaser can be fully restored to the position in which he stood before the sale."

This case was followed by Sir Joseph Hutchinson, the Chief Justice in 1890 in *Assraidu v. Dadzie*, F.C. L. 174. The importance of this decision is, that the Court recognised that the question as to the power of a family to make a gift of land was a matter to be decided according to native law. The Court said: "This case must be decided according to native law; that is, I ought to give the same judgment that a native Court judging honestly in accordance with native law and custom . . . ought to give." The case is worthy of study, as it illustrates the nature of the transactions which were taking place with regard to land in the early eighties and the difficulties of obtaining evidence of native custom. It was twice heard by the Chief Justice, and on the last occasion he stated that the evidence as to the circumstances under which family land can be absolutely sold was so contradictory that he could not place any reliance

upon it. He accordingly followed the decision of the Full Court already quoted.

Mr. Sarbah sums up the matter on p. 90 of Fanti Customary Laws. "The head of a family cannot without the consent of, or notice to all the principal members of the family, or the greater part thereof, alienate any part of the family immovable possessions, and if such consent is secured, the alienation must be for the benefit of the family, either to discharge a family obligation, or the proceeds of such alienation must be added to the family fund."

To sum up, then, it seems clear that throughout the whole of the Gold Coast stool and family land can, apart from the Concessions Ordinance, be sold, provided that the parties whose assent is required do so assent, and that the sale would confer an absolute interest on the purchaser.

Whether it was custom that preceded judicial or judicial decision that preceded custom, it is, I think, clear that customary rules were evolved round the idea of individual ownership. One instance of this is the mode in which a sale could be effected.

Mr. Bruce Hindle, Attorney-General in 1896, in a report on native customs with regard to land set out in Fanti Customary Laws, p. 276, and Mr. Phillips, a Deputy Commissioner, in his answers to certain questions put by us (see Papers, p. 18), both describe a ceremony whereby stool property is sold by native authorities to an individual to be held as private property. The account they give is substantially the same and involved the tearing asunder by two parties of a palm or other leaf; but whereas Mr. Bruce Hindle gives the name of the ceremony as Foyibah, Mr. Phillips refers to it as cutting the Guaha. Sir W. B. Griffith, in his evidence (14,035) and in Vol. 7 of the *Journal of Comparative Legislation*, p. 275, describes under the name of cutting the Guaha another ceremony which involved the cutting of a string of Cowries, and he expressly states that this ceremony was applicable to a sale by one individual to another (14,052).

Mr. H. M. Hall, C.M.G., in a Report on Tenure in the Gold Coast, published in 1895, p. 35, also refers to the ceremony as taking place between individuals and gives the names used for it in Tchwi, in Accra, and in Ewe or Krepi.

The explanation perhaps is that cutting the Guaha was originally applied, as Mr. Phillips states, to the sale of stool property to be held as private property, and was afterwards extended to resales of land which had become, through alienation by a stool or family, private property. Mr. Willoughby Osborne with reference to the ceremony says (14,907), "I should think that if it refers to an out-and-out sale it is probably of recent introduction." (See Sir P. Smyly's evidence as to the ceremony, 8063.)

Later on it would seem elaborate ceremony dropped into disuse. In a case referred to by Sir B. Griffith, *Basel Mission v. Bruce* (1899), F.L.R. 99, evidence was given that in the case of land the boundaries of which were plainly demarcated, the property passed on a verbal agreement and on payment of the price.

In still more modern times, deeds became usual, in the towns at any rate.

Sir W. B. Griffith in his Judgment in the *Tarkwa Railway Mining Concession* (1911) says with reference to the Land Registry Ordinance 1895:—"No doubt the fact that a sale of land by native customary law may take place without writing adds to the uncertainty of titles in this Colony; but it cannot interfere with the expressed intention of the Legislature. Except in the bush, sales of land by native custom are of infrequent occurrence, and year by year they will become less frequent. . . . It is only the peculiar position of this Colony which allows a parcel sale of land amongst natives: in most places the Statute of Frauds or some similar enactment forbids it; here we are bound to pay respect to native customary law and consequently to permit, between natives, sale of land by parol." (Papers, p. 98.)

The leasing for long terms of timber and mining rights, whether to Europeans or natives, was of comparatively late origin, and was made by deed regulating the rights of the contracting parties.

#### *Nature of Native Individual Ownership.*

It is important to obtain as clear an idea as we can as to the meaning of the term "individual ownership" and cognate expressions.

If an Englishman were told that he was acquiring individual ownership, he would think he was getting, an estate in fee simple or something very like. He would expect to have a right of disposition by sale, mortgage or otherwise, without the consent of any other person during his lifetime, and a like right by will to take effect upon his death, whilst in the event of his dying without exercising this right, he would expect the property to pass to his heir at law, or, if he were familiar with the provisions of Colonial legislation to his administrator for his next of kin.

The questions I should like to clear up are, firstly, what is the native conception of "individual ownership," and, secondly, what are the legal rights arising out of the ownership?

Mr. F. Crowther's view is that this institution among natives has not "the sanction of ancient customary right." He says, "It is the question of individual ownership which presents the real difficulty. But even in this question it must be borne in mind that polygamy and other social conditions, coupled with inherent ideas as to the communal character of land, give even to the individual owner an affinity to the family owner sufficient to confuse the outlines of a too rigid classification" (9992); and again, "It is very difficult for a native to understand individual ownership. It is contrary to his ideas. He has at the back of his mind the idea of communal ownership. He may see a certain advantage in individual ownership, but the conception generally is contrary to his ideas" (10,048).

An interesting instance of what to an English lawyer might seem a confusion of ideas was given by Chief Mate Kole in his evidence before Mr. Belfield (p. 58, Cd. 6278). "In the case of private ownership which is possible in some instances, the land is quite out of the control of the chief. The sale of such land is subject to the consent of the owner's family." Again, on the next page, speaking of permanent plantations, he says: "Most of the plantations are the individual property of the owner, and these properties can be sold without reference to anyone but members of the owner's family."

Mr. Casely Hayford, in "The Truth about the West African Question," p. 56, says: "But in the Customary law we find no trace of individual ownership. What the head of a family acquires to-day in his own individual right will, in the next generation, be quite indistinguishable from the general ancestral property of which he was a trustee. Even during his lifetime the person on the stool scarcely makes a difference in his own mind between what he received as family property and what he adds thereto by his own exertions. And the law of succession furnishes the best reason for the phenomenon. Both what came to the head of the family and what he has made, pass, at his death, to his uterine brother, cousin or nephew, as the case may be, who being the only possible and legitimate successor to the stoolholder, the latter gladly regards as the trustee in one sense and one of the beneficiaries in another sense, of all after his death."

What are the legal rights arising out of private ownership according to law?

The rights would, I think, vary according as the owner was a European or a native, the rights arising out of a European ownership being generally those according to English law. With this I am not further concerned, and I would proceed to consider the rights arising out of ownership by a native.

First, then, as to the estate held by a native in land held by him in private ownership, Mr. Sarbah says (p. 65 *et seq.*), "Strictly speaking, the term 'fee simple' as used in English law, cannot be correctly applied or used when speaking of the highest kind of the tenures obtaining on the Gold Coast. . . . The King, by the law of England, is the supreme lord of the whole soil. Whoever, therefore, holds lands, must hold them mediately or immediately of him; and while the subject enjoys the usufructuary possession, the

" absolute and ultimate dominion remains in the " King " (Co. Lit. 1a). " As far as the Gold Coast is " concerned, this portion of the English law does not " apply, for it is a group of territories under native rulers " taken under British protection; it is British territory, " but not so by conquest or cession; as a matter of fact, " the Colonial Office stated on the 11th day of March " 1887, as published in Parliamentary Blue Book of that " year, that it is inaccurate to state that after the suc- " cessful Ashanti Expedition of 1874, the Protectorate " was annexed by Great Britain and became a Colony, " inasmuch as the greater portion of the Gold Coast " Colony still remains a Protectorate, the soil being in " the hands of the natives and under the jurisdiction " of the native chiefs."

The latter part of this passage was correct when Mr. Sarbah published the first edition of his " Fanti Customary Laws " in 1894, but not so when he reproduced it in 1904, for in the year 1901 the boundaries of the Colony were extended so as to include the Protectorate which was annexed to the Dominions of the Crown and declared to be part and parcel of the Colony.

Mr. Hayes Redwar, on p. 68 of his work already referred to, says, " By the Marriage Ordinance, 1884, " s. 39, it is enacted that where by the law any " portion of the real or personal estate other than " native family property, of persons married under " its provisions and dying intestate and without " next-of-kin, would become a portion of the hereditary " revenue of the Crown (*i.e.*, by escheat, or as " *bona vacantia*), such portion shall be distributed in " accordance with the native law of succession and " shall not become a portion of the said casual " hereditary revenue." It will thus be seen, that in " the only case in which escheat could occur (*viz.*, " where natives by contracting monogamous marriage, " have changed their status and brought their indi- " vidual property within the rules of English law " under section 14 of the Supreme Court Ordinance) " the Legislature interferes to prevent escheat. It " should be remembered that escheat is purely an " incident of the possession of lands held under tenure " from the Crown, which cannot exist when the " Crown, by its responsible officer and through the " medium of the Colonial Legislature has disclaimed " the right as *ultimus hæres* to the reversion. There " are therefore no lands at the Gold Coast which " devolve on the Crown on intestacy and failure of " heirs, and there is no tenure from the Crown as " regards the native landowners, who are not tenants " in fee simple (the largest known to English law " which is still liable to the incidents of escheat to " the Crown by its ultimate reversionary right) but " absolute owners "

With regard to the rights arising out of private ownership, Mr. Justice Smith deals with them in a general way in the report already referred to, " Family " property can be traced to individual ownership. A " person being absolute owner of land—that is, land " that he has himself acquired—has every right to " dispose of it, verbally or by writing, the latter mode " formerly in one or two cases but now frequently " resorted to. Failing this, the land descends accord- " ing to the native law of inheritance and then be- " comes family property, and the mode of alienation " is the same as that of the stool property of the chief " or king." Fanti " Customary Laws," pp. 271, 273.

The evidence is, I think, clear that an individual owner would have during his lifetime the right of alienation *inter vivos* of the owner of an English fee simple, subject of course to the provisions of the Concessions Ordinance, with which I am not now concerned.

As to the powers of testamentary disposition of a native individual owner in the Gold Coast, Mr. Bruce Hindle, in his report, says, " There is a difference " between property acquired and property inherited. " The former can be disposed of out of the usual " course of succession; the latter must go in course " traced through the heirs of the acquirer."—Sarbah's " Fanti Customary Laws," p. 280.

Mr. Sarbah, on p. 95 of the same work, says, " The customary law knows nothing of wills in " writing, and even in the matter of testamentary dis- " positions the members of the family exercise much

" influence." On page 97, he traces out the history of " testamentary power, " Without doubt, the custom " of making wills with respect to self-acquired pro- " perty is of modern growth, but no one can tell " when the practice first began. Death-bed dispositions, " known as Samansiw, seem to be recognised, not so " much because of any assumed right to make such a " disposition as because, from feelings of affection, " respect, or even superstition, the last wishes of the " deceased are considered to be entitled to weight " among the members of his family. And this idea runs " through the customary law relating to testamentary " disposition of property. In fact, the only disposition " of property known to the early customary law was a " transfer followed by immediate possession. Contact " with British rule in the old settlements gave rise to the " practice of reducing into writing such transactions, " and writing has in some cases become common, not so " much because it is essential for the validity of transfer, " but because it is a permanent record of such occur- " rence." On p. 98 he states the rule, " Where the owner " of self-acquired property gives testamentary direc- " tions as to its disposal among the members of his " family, who thereby take such property as heritable " or ancestral property, the person who would other- " wise have succeeded to the deceased cannot ignore " such dispositions and the persons benefited have a " right to enforce such bequest."

He then gives an illustration shortly as follows:—An owner by testamentary disposition bequeaths property to each of the following, a son, a niece, a younger brother and a friend. By customary law the son cannot take unless the father " placed him in possession before his death," the ground being presumably that a son was not of heritable blood, the niece is entitled and " can enforce her right to possess the land, being of heritable blood." The younger brother can take, but the friend could not compel delivery of the property, in his case some pieces of cloth.

Mr. Sarbah continues, " Where a woman having " issue or descendants possesses self-acquired property, " her testamentary declarations as to the disposal of " her property among her children and grandchildren " are binding." Further, on p. 99: " A stool holder, " who had kept his self-acquired property distinct from " the stool property to the knowledge of the senior " and immediate members of the stool, can make a " valid testamentary disposition of such self-acquired " property to a member of the family. The customary " law does not permit any person to bequeath to an " outsider a greater portion of his property than is left " for his family."

In an opinion<sup>o</sup> relative to the Accra district, Mr. Bannerman thought " Property acquired by the " deceased he can either in writing or verbally will " away to whomever he pleases." (*Id.* p. 110.)

Mr. J. T. Furler, Commissioner of the Central Province, thus expresses his opinion: " The English " law of testamentary dispositions applies to the Gold " Coast and a devise of individually acquired lands to " an individual would be upheld by the Courts." (*Papers*, p. 22.)

Mr. Redwar says on page 80 of his book that it is clear that the holder of individual property has " an " unfettered right to dispose of his individual property, " either during his lifetime or by will," and states that where " an individual owner dies " leaving a will, the " heir by native custom is bound by the dispositions of " the will and the recipients of the testator's bounty " can enforce their rights even in the native tribunal, " the law on this point being now fully established."

As to succession in default of testamentary disposition, I would quote the following opinions, which are in addition to those of Mr. Crowther and Mr. Justice Smith, cited above—

- (i) " In the case of a member of a family may make separate or private acquisitions and dispose of them as he pleases in his lifetime, provided none of his family nor any part or portion of his ancestral or family property contributed to the acquisition of such property. But any property of his that remains undisposed of at his death descends to his successors as ancestral property."—Sarbah's " Fanti Customary Laws," p. 61.

- (ii) "Practically all the land in the Gold Coast is communal. It is seldom that 'individually owned' land is met with. Land is often acquired by individuals, but unless disposed of in the individual's lifetime, it afterwards becomes merged in the family lands."—Mr. J. T. Furley, Papers, p. 21.

"When an individual does acquire lands with his own self-acquired resources, he has the right to dispose of them in his lifetime. On his death, according to native custom, his nephew, brother, uncle, or cousin would succeed to his lands and other property, but the successor would hold them in trust for the family, who would all have an interest in the lands, including those individually acquired. . . . The English law of succession is, however, regarded with disfavour by the inhabitants of the Gold Coast as it tends to break up the old family system. The family system is deeply rooted in the native institutions. . . . It is not accurate to state that there is any recognised system of individual ownership in land with a right of 'individual succession to it. Land which was originally the subject of individual ownership in practically every case merges into family property and becomes the common interest of the family. Where an individual died without leaving any family or blood relations at all, his lands would become merged in the communal lands of the community to which he belonged, but such cases would be rarely met with."—*id.*, p. 22.

- (iii) Mr. W. C. F. Robertson was of opinion that on the death of an owner the land became family land (2358). "As a matter of fact, there is a change going on now in the spirit of the laws of inheritance, and it frequently occurs that people actually do devise."
- (iv) Sir W. Brandford Griffith thought that at Accra such property "would belong to his family, 'The family would be his brothers and sisters, and, I think, his mother too'" (14,122).
- (v) Mr. Redwar, on page 80 of his work, says, "The native law, however, while recognising individual property, does not regard it with favour, and upon the individual owner's death intestate it is held that the property then becomes impressed with the character of joint family property, and devolves upon his heir by native custom as the head of 'Family Community.'"

Certain legislation with regard to succession remains to be noticed.

Under section 19 of the Supreme Court Ordinance, succession to the property of natives would be governed by the rules of customary law.

To this general rule the exceptions in the Gold Coast are as follows:—

- (i) Where a person "who is subject to native law or custom" is married under the Marriage Ordinance, 1884, and he or the issue of such marriage dies intestate any real property of which the intestate might have disposed by will, descends as to two-thirds in accordance with the law of England on the 19th November, 1884, and as to one-third in accordance with native customary law. There is an important proviso to the effect that real property the succession to which cannot by native customary law be affected by testamentary disposition shall descend in accordance with such native customary law.
- (ii) Sir W. Brandford Griffith, in Coles' case (referred to *supra*, p. 126), decided that the succession to persons married by Christian rites, though not under the Marriage Ordinance, 1884, must be governed by the rules of English law. This would not, I submit, apply to communal land.
- (iii) By section 10 of the Muhammadan Marriage Ordinance, 1907, on the death of a Muhammadan whose marriage has been duly

registered under the Ordinance, the succession to his or her property shall be regulated by Muhammadan law.

It is a question whether the provisions of the Ordinance would apply to communal land, but I would submit that they do not.

To sum up the characteristics of native individual ownership—

- (1) The estate taken by such an owner is not a fee simple but an enlargement thereof by Ordinance.
- (2) The powers of disposition *inter vivos* or by will are treated as matters depending on custom and not on English law.
- (3) A sale may be carried out by one of the modes of disposition described by Sir B. Griffith and in the case of *Basel Mission v. Bruce* (*vide supra*), which are not such as would be valid conveyances of land by English law.
- (4) Devolution on the death of the owner intestate is, apart from legislation, governed by custom and not by the rules of English law.

The meaning of the expression, "land held under native tenure," used in Section 11 of the Gold Coast Native Jurisdiction ordinance, and in legislation of other dependencies, was before the Supreme Court on the cases reported on pp. 126 to 128 of the Papers laid before the Committee. Those cases decide that the transfer of land, held under native tenure by a document, does not cause such land to cease to be held under native tenure.

As I have already stated, it appears to me to follow from the provisions of Section 19 of the Supreme Court Ordinance that the question, whether land is held under English or Native tenure depends upon the status of the owner, and this view is, as I understand the opinion of Mr. Townsend, the Attorney-General of the Gold Coast and of Sir W. B. Griffith (*see* pp. 301 and 306 of the Papers laid before the Committee).

*Modes in which land may be transferred from communal tenure to individual ownership.*

So far, the only mode of transfer which I have noticed, has been a sale by a community or family to an individual. This, however, is not the only mode; in addition, the interests of the occupants of stool or family land are in some cases being gradually transformed into or are being dealt with as absolute interests. The modes in which this may operate seem to be the following:—

- (1) By an individual treating his right of occupancy as a right of ownership and selling or mortgaging it.
- (2) Mr. Crowther instances another mode by the case of a man bringing an action in his own name in respect of family property. The judgment would be in his own name and might be used by him to establish a claim to land as his individual land.

This Mr. Crowther calls a "typical" case (10,055). Sir P. Smyly, on the other hand, gives instances of the care of families to prevent individual members dealing with the family land as their own (8069).

- (3) By seizure of communal property under a writ of *fi fa* in respect of the debt of an individual member of the community. Any seizure might be (a) of the interest of an individual occupant of stool land, or (b) of the interest of an individual occupant of family land. With regard to (a), Mr. Crowther's evidence pointed to the fact that a considerable amount of land had been sold by creditors, and it is to be observed that it has the sanction of the full Court in the case of *Lokko v. Konklofi* (1907, Papers, p. 100). With regard to (b), I have shown in my first-Memorandum that family land cannot be seized in respect of the debt of an individual member, but there is nothing apparently, as Mr. Willoughby Osborne points out (*vide infra*), to prevent the interest of an individual member being seized, and the Court helping the creditor by decreeing a partition.

It is certain that for some time land has been in the course of transfer from communal to individual tenure by one of the three modes specified: but the first, and indeed, so far as I am aware, the only, case which suggests the legality of any of these modes of transfer is that of Lokko v. Konklofi. This case, which is fully dealt with in the Report, forms a leading case in Gold Coast law, and is worthy of careful study. The only passage to which I wish to refer, is a portion of the Judgment of Sir W. B. Griffith. Speaking of the Defendant, he says:

"It is clear that his father or grandfather first farmed the land, then built a village on it, settled on it, and became in time to be recognised as the exclusive owner of the land. Possibly the first entry may have been with the consent of the stool, but gradually without further application to the stool, occupation ripened into full ownership. In this manner much stool land has become private land. I have never known a case of family land having become private land in this way."

- (4) By partition of family property among the members of the family, each member taking a part of the land in absolute ownership.

This is a mode which is obviously one which might prove a very expeditious mode of conversion of communal land into private ownership. It has been brought to my attention by the statement kindly supplied to me by Mr. Willoughby Osborne and set out *supra*, p. 133. "Sometimes the interest of a member of the family is ascertainable, e.g., he may own one undivided moiety. If such an interest was purchased under a *fi fa*, the Court would entertain a claim by the purchaser for partition if such were feasible."

Partition does not, however, appear to be at all common, for Sir W. B. Griffith in his judgment in Lokko v. Konklofi says, "I do not recollect ever having heard of family property having been partitioned. A decree of partition of family land seems to me to be hardly consonant with native ideas, for a family is something more than a number of joint tenants." As Mr. Sarbah says, on page 100 of "Fanti Customary Laws":—

"There is no such thing as succession, in the proper English meaning, in a family owning ancestral property. The whole family, consisting of males and females, constitutes a sort of corporation; some of the members being coparceners i.e. persons entitled to a portion of the property on partition (cutting Ekar), and others who are dependents, and are entitled to reside in the dwelling-house for life, such as sons and daughters, subject to good conduct and not disputing the right of the family. Partition being extremely rare, the idea of heirship scarcely presents itself to the mind of any member of the family. The members are entitled to reside in the ancestral house, and to enjoy that amount of affluence and consideration which springs from their belonging to a family possessed of greater or less wealth."

*The extent to which native private ownership has superseded the old native tenure by communities.*

Mr. Sarbah, in "Fanti Customary Laws," 2nd edition (published in 1904), pp. 61 and 62, says, "In this country joint property is the rule and must be presumed to exist in each individual case until the contrary is proved. If an individual holds property in severalty—that is, as sole owner and possessor—it will in the next generation relapse into a state of joint tenancy." Again, on p. 89, "It should be noted, while on this point, that, with the exception of the coast towns, where there is much contact with European ideas, self-acquired or private property in its strict sense

"does not exist over the whole country, because the family group is of the patriarchal type;" and again, on p. 90, "In the English law, individual property is the rule: the converse holds on the Gold Coast."

Mr. Redwar, on p. 79 of his book says, "According to native law there is a presumption in favour of all land being jointly held by a family or other community, which presumption may, however, be rebutted by evidence that it has been acquired by an individual through his own personal exertions in trade or otherwise, without any assistance from the community of whom he is a member, or by gift to the individual apart from the rest of the community. Absolute and exclusive ownership of land by one individual is still comparatively rare, although individual property will probably increase as time goes on and European notions get a firmer hold of educated natives. Joint family or stool property is still, however, the rule, and individual the exception."

Such has been the pace, however, during the last few years (Batty, 8302), that Sir W. Brandford Griffith informed the Committee that the idea of individual ownership of land has taken root to such an extent that he would assume that ownership was in an individual unless there was evidence to the contrary.—(14,273 *et seq.*)

With regard to the towns, most of the land is held by individuals or by family groups claiming through individuals.

In the country the matter is more difficult. It chiefly turns on whether the tenure of the land planted with cocoa is to be taken as individual or not. It would be improper to express an opinion as to this. Mr. Grey (5343) and Mr. Batty (8296) think it is. Sir P. C. Smyly thinks otherwise (8063). Mr. McDonnell's view is that the cultivator has no power of alienation and does not think he has (11,975). Captain Ross expressed the view that he cannot sell the land (11,857, 11,865). Mr. Crowther thinks the cultivator thinks he has a right to sell (10,055). Mr. McLeod does not think there is much individual ownership "in our sense" and must therefore, I think, agree with Sir P. C. Smyly (14,018).

As to the various provinces, it appears to be least in evidence in the Western Province (Papers, p. 17, *per* Mr. Maxwell).

Mr. Furley, Commissioner of the Central Province, thinks that the institution is seldom met with (Papers, p. 21.) In Saltpond, it exists practically through the whole district in a greater or less degree (Papers, p. 16).

In the Eastern Province it would appear to be chiefly met with. In Quittah it is an appreciable factor (Papers, p. 13). In Aburi, according to one Government Officer, it is appreciable and not confined to coast towns (Papers, p. 14) whilst according to another, quite 50 per cent. of the land is so held (Papers, p. 20). Sir W. B. Griffith puts the amount in the Krobo district as about 10 per cent. (14,527). In the Birrim District, the District Officer thinks it not an appreciable factor in rural areas, but that it is, with a few exceptions, confined to certain coast towns (Papers, p. 18). It however appears from a Report of Mr. Crowther, that certain chiefs in the Densu Valley started between 1860 and 1870 to sell land to individuals "and at the present day the greater portion of it is held by private individuals" (Papers, p. 110).

#### SOUTHERN NIGERIA.

Mr. Willoughby Osborne traces the beginning of individual ownership in Lagos to the rough conveyances, "which King Docemo gave to liberated slaves between 1852 and 1861" (14,791-4).

During the administration of Sir J. H. Glover from 1863 to 1872, "all land on the Colony of Lagos was regarded as within the gift of the Crown," and measures were taken "to alienate in perpetuity a very considerable area by way of Crown Grants conferring fee simple titles." (Papers, p. 161.)

Mr. Buchanan Smith, in Papers, p. 225, says that grants issued by Docemo—

"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 Commissioners

Court was abolished, subsequent applicants being required to satisfy the Administrator of the Government as to the *bona fide* character of their claims.

"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.

"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." The result of these grants was a revolution in ideas as to native tenure. They were granted to occupants who, as I have tried to show, according to native tenure held only a usufruct in the land—a usufruct which was not and could not become the subject of sale, but who on receiving grants in fee simple, got all the power of such an owner according to English law, including an unfettered right to sell or mortgage. Naturally this revolution was not confined to those who received Crown Grants, but chiefs and occupants of land conceived that they had similar estates and acted accordingly. In some cases, too, land which belonged to a family was granted to an individual. (Papers, p. 226, par. 48.)

The matter was put plainly enough in the case of *In re Chief Eshugbayi Oloto* (1899). There the claimant deposed, "Formerly a chief could only give land for rental, but when the English came the very people who had qualified possession sold the land and took their money and returned to their country. I have the right with the consent of the family to sell the land."

Cross examined, "The custom for chiefs to sell land outright arose in Governor Glover's time." Chief Obanikoro deposed, "I am one of the white-capped chiefs. A chief has the right to sell land when it is for the general benefit of the family and assented to by the other members of the family. This is since the English came to Lagos. Prior to that time land was not sold at all." (Oral Evidence, p. 523.)

This passage points out the twofold change—chiefs and their elders began to sell family land, whilst individual occupants, in spite of the reversion in favour of the community, sold their usufructuary right as absolute property, thus ousting the rights of the reversioners.

The result was that in Lagos, at any rate, the rule that land could not be alienated in perpetuity has been relaxed and the same right of alienation is allowed by the Supreme Court in respect of land there as in the Gold Coast. Thus Mr. Willoughby Osborne, when asked: "If the members of a family who are *sui juris*, convey family land, does not the purchaser get a good title?" (14,827), replied "Yes, now. The families are beginning to convey out and out in certain cases, but only for family purposes."

In the case of *Eshugbayi Oloto v. Dawodu* (1894 or 1904), a chief who gave evidence as to custom, was asked: "Cannot a man nowadays sell stool land?" His reply was, "That depends on circumstances. If there is something owing, he can then call the family and then can sell. The chief and his family must be in money (financial) difficulties before the land can be sold" and to the Court he said, "The family could sell a piece of land to preserve the rest of the land." The Court observed, "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." (Papers, p. 248 and Oral Evidence, p. 523.)

Mr. Kitoyi Ajasa, a barrister of 19 years' standing, speaking of the mainland, Ebute Metta to the Egba boundary, says: "There have been many instances of sales of land out and out where these have been for the purpose of relieving the family in distress. Later usage has sanctioned such sales. In other cases, I question whether such sale could be upheld in Court." (Papers, p. 243.)

This remark of Mr. Ajasa with regard to later usage supports the argument which I have advanced when dealing with the Gold Coast. Section 19 of the

Supreme Court Ordinance sets native custom as the test of the validity of a transfer of land by a native, and accordingly in localities where ancient custom did not allow of the sale of land, there must, I submit, be some later custom sanctioning it, in order that a sale in perpetuity can be validated. Later, in this memorandum I shall attempt to summarise the evidence with regard to the localities where sales in perpetuity have occurred or where there is evidence of a custom permitting a sale. Here it will be sufficient to point out:—

- (1) That in Lagos and its immediate neighbourhood sales are valid as they are in the Gold Coast.
- (2) That though sales have taken place in a number of localities outside the immediate neighbourhood of Lagos, it does not follow that such sales are valid, in fact, Mr. Dennett's opinion is that buying and selling land is not recognised in Southern Nigeria outside the Colony of Lagos (11,050).
- (3) That there is some evidence of later customs allowing sales, such customs in some cases only extending to country, as opposed to town, land and in some cases only permitting alienation in favour of persons of the same tribe as the alienor.
- (4) That there is some evidence with regard to the districts round Brass and Bonny that sales by and to families are permitted.

#### *Nature of Native Individual Ownership.*

There is some information with regard to the incidents attached to this form of tenure so far as Lagos and its immediate neighbourhood are concerned, but none, so far as I am aware, in relation to the other parts of the country. The information which is available corroborates my contention that the rights depend upon custom and accordingly may vary from locality to locality. So far as Lagos is concerned, the rights of a native individual owner are in the main the same as are the rights of a native individual owner in the Gold Coast.

With regard to the right of testamentary disposition Mr. Willoughby Osborne writes, "A purchaser from a family acquires an absolute interest in severalty which he can dispose of by will or *inter vivos*." (Oral Evidence, p. 522.) The authority which he cites is *In re Ayorinde* (1899).

That was an action for the administration of the estate of A., who died intestate about 1874. After his death his son J. succeeded him, and used his real and personal estate for the benefit of the family, largely increasing the personality. J. died about 1898, and by his will left the property to his own wives and children, excluding the other members of A.'s family. The plaintiff, also a son of A., was elected head of the family.

The following were among the questions put to the assessors:—

- (3) By strict native law can a man dispose of property he himself acquired by his own labour?

All the assessors answered "Yes."

- (4) By strict native law can a man leave his property to a stranger after his death?

All the assessors answered "No."

- (5) Can a man leave his property, or any part of it, to any particular members of his family to the exclusion of the others?

All the assessors answered that he could do so with respect to any property he had worked for and acquired, but not property he had inherited.

With regard to the whole case, the assessors found that the plaintiff must take all the property, and none could go under the will unless J. had property he had acquired independently of the property of his father; that the plaintiff must take the property for the benefit of the whole family of A. and must keep it; that by native law it could not be divided among the family.

There was no actual decision by the Court as to the right of a man to dispose of individually-owned land,

and from the case it would appear to depend rather on the custom of the district than on a general rule of law. (Oral Evidence, p. 525.)

In Lagos the principle that on the death of an individual owner the land becomes family land was applied by the native mind with reference to Crown grants, which were, of course, to individuals. The following passages from Mr. Buchanan Smith's memorandum speak for themselves (Papers, p. 226):—

"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.

"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 a view that on their death it should pass in bulk to their descendants and be considered family land, and as such inalienable.

"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 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.

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

Mr. Thomas William Johnson says "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."—(Papers, p. 238.)

Mr. C. W. Alexander has given me the following note:—

"The history of Crown grants in Lagos is illuminating. The policy of the administration up to recent times was to make absolute grants to individual natives. Here, if anywhere, one would expect to find individual ownership introduced into native tenure. But we find these grants developing into two classes:—

"(a) Those held by natives cognisant of English ideas who have regarded the land as subject to their individual power of transfer and have transferred it.

"(b) Those held by natives who have retained the land.

"In such cases the grantee had absolute ownership originally, but as descendants were born they acquired *ipso facto* rights and obligations. Though by pure native law, land is inalienable the Courts recognise to some extent a right of alienation if the whole community consents. Crown grants falling in this class (b) can be transferred only with such consent. Difficulties of two kinds have arisen. First each descendant of the original grantee claims a right to have allocated to him a part of the family land with the result that there is overcrowding, for the land granted, though sufficient for the grantee himself, is often insufficient to accommodate his descendants. Secondly, it frequently occurs that an individual member of the family, mortgages his holding, and when the creditor, often a European, attempts to realise his security, he finds that the Courts will not enforce the transaction because the consent of the whole family has not been obtained."

I will conclude this part of my subject by referring to two cases.

*Feshitan Oshodi 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. (Papers, p. 248.)

*De Cruz v. De Cruz* (1894). 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 lifetime. (Papers, p. 248.)

Certain legislation with regard to succession remains to be noticed.

To the general rule that succession would be governed by custom the exceptions in Southern Nigeria are as follows:—

(i) By section 2 of the Real Estate (Administration) Ordinance, where a person dies intestate, leaving real property of which he might have disposed by will, such property is to be deemed part of the personal estate of the deceased and administered accordingly. There is a proviso that real property, the succession to which cannot by native law or custom be affected by testamentary disposition, is to descend in accordance with the provisions of such native law or custom.

Mr. Willoughby Osborne has kindly furnished me with the following note on this Ordinance: "The Real Estate (Administration) Ordinance applies only in cases where administration has been granted by the Court either under letters of administration or special orders, and the usual practice is to apply for leave to administer the realty under the Ordinance."

(ii) Section 39 of the Marriage Ordinance, which it is important to observe applies only to the Colony, provides that where a person "who is subject to native law or custom" is married under that Ordinance and he or the issue of such marriage dies intestate, any real property of which the intestate might have disposed by will is to be distributed in accordance with the English Statutes of distribution any law or custom to the contrary notwithstanding. As in the Gold Coast, however, real property which is not transmissible by will is to descend in accordance with native law or custom.

#### *Prevalence of Individual Ownership.*

Coming now to Southern Nigeria, I will commence by giving some general expressions of opinion. Writing in 1898, Sir T. C. Rayner, the Chief Justice of Lagos, said: "I am quite aware that land is freely bought and sold in all coast towns, including Lagos, but this is in all cases due to the gradual introduction of English ideas, and is quite foreign to native ideas."—*Land Tenure in West Africa*, i.

Mr. F. S. James, C.M.G., Senior Provincial Commissioner, expresses the matter very widely when he says: "I am convinced that there is no such thing as private ownership throughout the whole of Southern Nigeria."—(Oral Evidence, p. 237.)

Mr. Alexander, who travelled in 1910-11 through many parts of the Western and Central Provinces for the express purpose of examining into the nature of land tenure and of individual ownership, is almost as sanguine; the result of his researches has convinced him that there is no such thing as an individual right in the land implying the right of buying and selling. This opinion is confined to the Western and Central Provinces, as he has not visited the Eastern (3556-8). He disagrees with Mr. Watt, a Senior District Commissioner, when that Officer states that at Onitsha and other places individual ownership of land by the natives is recognised, and that land is dealt with as a marketable commodity. He thinks Mr. Watt is under a misapprehension, though he admits that there may be a few cases at Onitsha (3468-9). He qualifies the statement later, expressing his belief that in some of the coast towns the practice has grown up of selling land (3472). I shall deal with Mr. Watt's statement later.

Mr. Alexander dealing with his tour writes to me:—

"Familiar as I was with the extent to which land in Lagos had been sold, I was astonished to find how few traces I could find of natives in the interior having any conception of power to sell land. Even granted that isolated instances of sale occur at places such as Onitsha, I am very confident that in interior districts, sale of land has never become a recognised custom or right among the indigenous natives."

Mr. Dennett's opinion is that buying and selling land is not recognised in Southern Nigeria outside the Colony of Lagos (11,050).

Mr. Boyle, C.M.G., Colonial Secretary, thinks that individual ownership is only found over a comparatively small area, though it has undoubtedly sprung up in Calabar and other old ports. He suggests that it may be—he will not say more—that, in addition to individual tenure, which has in certain places crept in by the operation of English law, and Europeans coming in, a form of individual tenure under native customary law is growing up. He will not give an opinion one way or another on the question as to whether individual ownership has not been evolved by native customary law (2171 *et seq.*).

Mr. Osborne thinks that land outside Lagos is to be presumed to be family and not individual land (14,802).

Mr. Pennington connects the increase of alienation with the development of the cocoa industry mainly, and to some extent oil palms (7287).

Mr. Northcote Thomas, the Government Anthropologist, in discussing the question of the extent to which private ownership has penetrated into the interior says "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." Again "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." (Papers, pp. 300 and 301.)

#### Western Province.

I will now discuss the position in Lagos itself. Mr. Buchanan Smith gives the following description:—

"37. In Lagos itself the influence of English law has effected a considerable change in the conditions of tenure. There remains part 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." (Papers, p. 225.)

Owing to the withdrawal of their former paramount chief, and to the construction of the railway, considerable modifications of the old system have taken place among the Aworis, 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."—(Papers, p. 226.)

"56.—Except, however, near Lagos itself or the railway, and on 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."

Some of the evidence taken by Mr. Buchanan Smith refers to the cocoa district of Agege. We learn that buying and selling of land has gone on there since 1898 approximately. "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 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."—(Jacob Kanyeide Coker, Papers, p. 235.)

There is evidence that the practice of selling land has extended up along the railway to the Egba boundary, and that the native custom, "in the old Eastern and Western districts—that is Epe on the one side and Badagri on the other—has broken down." (T. W. Johnson, Papers, p. 238, see also Rev. T. A. Ogunbiyi, *id.* 242; Mr. Sapara Williams, *id.* 244; J. B. Benjamin, *id.* 243). The summary of the evidence taken by the District Commissioners with regard to Badagri in Papers, pages 174 and 206, however, states that land cannot be sold there.

With regard to the Jebu tribes, Mr. Sapara Williams says (Papers, p. 244): "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. . . . Land is never sold to strangers, and the purchaser must be a Jebu man of the district." . . . 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.

#### Ikorodu (the Jebu Remo District).

There was a considerable amount of evidence taken before the District Commissioners, and the result is summarised in the statement that "neither can any one sell land" (Papers, p. 171). That some buying and selling has taken place there, however, seems to be clear from the evidence of the Rev. J. A. J. Ogunbiyi (Papers, p. 242), Mr. J. B. Benjamin (*id.* 243), and Mr. Sapara Williams (*id.* 244). It must be borne in mind that these gentlemen all come from Lagos.

#### Ijebu Ode.

Mr. Partridge, the District Commissioner, on giving evidence before us, expressed himself very strongly against the selling of land, giving it as his opinion that it should be absolutely prohibited even among the Ijebu's themselves (4189-90). He produced a Proclamation, passed in the Ijebu District Council on the 18th May 1912, absolutely prohibiting the sale of land to any person other than an Ijebu and forbidding the sale of land between Ijebu's themselves except by the consent of the majority of the communal owners (Oral Evidence, p. 154).

Subsequently, on his return to Ijebu Ode, Mr. Partridge took evidence with regard to land tenure, and his

minute accompanying it contains the following passages—

"During the last 20 years the practice of selling land—practice unknown before 1892—has gradually cropped up, and as far as I can learn, a good deal of land has been sold during the last two decades. Up to the present, however, every sale has been between Ijebu and Ijebu; there exists no example of any purchase of land by a non-Ijebu. The procedure is as follows:—A member of a certain family community desiring to sell his share of land notifies his community. If they object he cannot sell. If they consent, he sells to some other member of his community or to a member of another Ijebu community. The latter may be the purchaser."—(Papers, p. 185).

The District Commissioner then went on to state that an attempt was made to treat the purchaser as having the right to re-sell the land to another Ijebu without consulting the family, but apparently such land belongs, by native custom, not to the purchaser as an individual, but to his family.—(Papers, p. 181 and 185.)

In conclusion, he said that he was inclined to modify the views he had expressed before the Committee.

"Europeanism and its ideas have got so deep into the very heart of Yorubaland that it now seems all but impossible to conserve entirely the former state of things. A generation of Yorubas with educated and progressive views is becoming a power in the land and must be considered. Under our peaceful rule the population is increasing to such an extent that family land, especially in the great towns, can no longer be subdivided. There are young men who have acquired small fortunes in trade who desire to purchase sites for their homes. Provision should, I think, be made for them. For the present, at any rate, I would keep Ijebuland for the Ijebus, Egbaland for the Egbas, &c., but I would permit sale under certain conditions (see section 5 of the said Proclamation) between Ijebu and Ijebu, between Egba and Egba, &c."

The first witness examined before the District Commissioner was Gbadamosi Kuku, and his evidence was given in the presence of the Olisa and the majority of the Council who agreed with it. He said (Papers, p. 182): "Our houses are all built on the land we have received from our ancestors and no stranger has ever been permitted to buy land around Ijebu Ode, and I am sure this has been so in the villages also. . . . Land can be sold, but not to strangers. I speak of land which is not held jointly. Family land, which is held jointly, requires the assent of the majority of the owners before a sale can be effected. Family land cannot be sold without informing the Awujale."

The second Chief of Odogbolu said: "Farms can be sold if all agree. Town houses go to the eldest son. He cannot sell the town house because the fathers are buried there and their bones and souls would then be sold. . . . If a man has bought a farm he can sell without reference. If inherited, the relatives would object and the head of family must be consulted. It would not be honest to sell my land which came to me from my fathers, for what would my children have to live on?"—(Papers, p. 183.)

Mr. Alexander points out to me that, Yorubaland is a somewhat wide expression and that he thought that although Mr. Partridge had an intimate knowledge of Ijebuland, he had not of other parts of the Western Province except Abeokuta; he adds:—

"The evidence taken by me shews I think that there is very far from being a custom of sale in Yorubaland and that in the rural districts at any rate sale is unknown."

The evidence referred to was taken by Mr. Alexander during tours which he made in 1910-11 in order to study Native Land Tenure. Several memoranda by him, together with notes of the evidence taken, as also memoranda by Messrs. T. D. Maxwell, James Watt, and R. M. Heron, were published in Lagos in 1912, and were laid before the Committee. These memoranda are not included in the Papers laid before the Com-

mittee, but are referred to in the present memorandum under the title "Native Land Tenure in Southern Nigeria."

Mr. Dennett writes on p. 203 of "Nigerian Studies" (11,047). "The selling of land with the consent of the Chief in Ijebuland has reached such a pitch that when I was last there, the chiefs were trying to prevent people from buying and selling land in a certain quarter of the town of Ijebu which they held more or less sacred."

Subsequently three witnesses from Ijebu Ode attended before the Committee. They all strenuously denied that buying or selling of land took place in their State and made light of the Proclamation produced by Mr. Partridge (13,366, 13,372 *et seq.*, 13,391 *et seq.*, 13,422, 13,423).

#### *Egbaland.*

The evidence from Egbaland is interesting, and I extract the following passages from that of Mr. Edun, the Egba Government Secretary.

"Urban.—Where, in the family land, a member of the family has obtained from the other members through the head a definite position and by his own individual men he has built upon or in other ways improved it, this portion becomes his own individual property. He may pledge it or sell it, but never outside the community. No Egba man can pledge or sell land to anyone who is not an Egba. As far back as the year 1903, this law, which may be regarded as the great land law of the Egbas, was embodied in a piece of legislation promulgated in circular form."

This piece of legislation provided:—

- (1) That houses and lands cannot be sold or mortgaged to any one not a native of Abeokuta territory.
- (2) That no lease to a non-native shall be good without the sanction of the Alake in Council.

"Rural.—In the family forest or uncultivated lands, any portion that has been taken up by a member of the family, in order that the right of absolute individual possession may be acquired, such portion (or some part of it) must have been cleared and the trees felled. This having been done, his individual right is respected by the other members of the family. . . . He has absolute right of alienation, temporary or final, over such portion. But he is prohibited from alienating out of the community, i.e., he cannot sell or pledge to anyone not a member of the Egba community." (Papers, p. 187.)

There is another passage from the statement of the President of the Native Court which illustrates the conversion of native into individually owned land by division of property. "Compound or family allotment of land is subdivided and allotted to each individual who has absolute right of possession on his land; he can alienate to people of Egba descent." (Papers, p. 188.)

Another witness deposed that he had been buying land in Egbaland since 1874, and that he had now bought 20 pieces of land, and that the custom about sales to foreigners was exactly the same before the Order in Council (Papers, p. 189).

Mr. Edun was examined by the Committee and amplified the evidence he had already given, 13,018-13,200, producing an Order of the Egba Government of the 3rd April 1913, and substituted for the Order of 1903 (Oral Evidence, p. 454).

Mr. Alexander writes with regard to the district as follows:—

"There is a strong connection between Lagos and Abeokuta, many of the inhabitants of Abeokuta being related to educated natives of Lagos. The native Government of Abeokuta is in the hands of educated natives and the Order in Council would be advantageous to Lagosians desiring to acquire land, as many of them would be included in the very wide definition of 'Egba' appearing in the land, which really sanctioned sales of land between Egbas. When

I travelled through villages just outside the Egba district (see evidence taken by me) the repudiation of any custom to sell land to any one was as strong as in other outlying parts of the interior of the Western Province."

#### Ibadan.

Mr. Willoughby Osborne puts the custom very clearly "In Ibadan the land belongs to the Ibadan people, and is controlled by the Bale, or principal native ruler of Ibadan, as trustee for them. It is not sold outright, but granted to strangers for use and occupation during good behaviour." (Oral Evidence, p. 523.)

The summary forwarded by the Governor tells us (Papers, p. 201) that "urban land cannot be alienated in any way, but rural land can be mortgaged or 'pawned.'" When sales did take place Chief Justice Nicoll set aside one in 1906 in the case of Fernandez & Co. v. Shepherd (Oral Evidence, p. 527) and the Government ignored the sales and obliged the purchasers to take out leases (10,988).

Two witnesses who appeared before the Committee spoke to the illegality of the selling of land in Ibadan and said it did not take place (13,236 *et seq.*, 13,248-9). Pawning was, however, permissible. As against this, we have the following statement taken from Mr. Dennett's "Nigerian Studies," p. 200 (11,047). "In Ibadan the custom of selling land, it appears, has crept in through the depravity of certain owners of farms and the necessity of their paying back money that has been borrowed." Again, on p. 203, "So in Ibadan territory, in spite of the fact that, according to ancient law, land is inalienable, it has been pawned and sold for a long time and is still being sold."

Captain Ross spoke of sales being common, and that the people had been warned that they would not be recognised, adding that in one or two cases they have had to sign leases (12,220 *et seq.*). Mr. Edun, too, knew "as a matter of fact that lands are bought amongst the members of the community of Ibadan" (13,143).

Mr. Alexander writes:—"Captain Ross in speaking of sales being common referred, I think, to Ibadan Town. Some months ago, papers were referred to me relating to a case where a Syrian had bought land in Ibadan Town. The Ibadan Council refused to acknowledge the validity of the transaction but eventually allowed the purchaser to have a lease for a term of years at a rental. In the evidence taken by me (printed in 'Native Land Tenure in Southern Nigeria') sale was denied at Lanlate and Adodo both in the Ibadan district."

#### Oyo.

Mr. Willoughby Osborne sums up the matter thus:—"In Oyo, the capital of the Alafin, the principal native ruler in Yorubaland, a stranger obtains land, whether for farming or building, from the Alafin. He holds during good behaviour and cannot alienate his interest without the Alafin's consent." (Oral Evidence, p. 523.)

The Resident (Captain Ross) gave evidence before us to the effect that there is no such thing as sale of land recognised, though pawning is allowed (11,966-8, 12,157, 12,246). This is corroborated by the evidence of the Alafin and another witness whom Mr. Alexander interviewed (Native Land Tenure in Southern Nigeria, pp. 13 and 14).

Mr. Dennett in his "Nigerian Studies," p. 200, says, "In that part of Yorubaland, where the Alafin holds direct sway, old customs are conveyed far more strictly than in the other States, where the people have more power and the sale of land, although not unknown, is rare. It occurs at times when the claim to succeed to the ownership of land is disputed. As a way out of the difficulty, the farm is sold and the yield divided between the claimants. But the Alafin has the right to step in and take the land from the family and give it to whom he likes. This is seldom done, but it is possible. The custom of buying and selling land is gradually becoming more common, but it is much rarer here than in the other States where more kola and palm trees are planted."

#### Oshogbo.

The summary of the evidence informs us that land cannot be sold or leased (Papers, p. 201).

#### Ife.

The evidence taken in Southern Nigeria and before the Committee is to the effect that land cannot be sold in this State (Papers, p. 203, 13,468-9, 13,473).

#### Ilesha.

We are told in the evidence taken on the spot that there is no selling, and this was corroborated by two witnesses who appeared before us (Papers, p. 166, 13,280-1, 13,308-9).

#### Ara.

A witness attended before the Committee to represent the Alara, and gave evidence that land was not saleable there (13,347). The Bale gave evidence to the like effect (Native Land Tenure in Southern Nigeria, p. 9).

Mr. Pennington, however, gives an instance of an outright sale by the Chief of Alara himself (7423).

#### Ondo.

The state of affairs is thus summarised:—

"Sale of rural land is forbidden, but land may be leased or granted. . . . No alien is allowed to plant life trees, such as cocoa, coffee and kola, for the cultivation of such trees would give him a claim to the ownership of the land. Urban land can be sold to another Ondo provided the vendor obtains the permission of all the members of his family" (Papers, p. 206).

The evidence taken was contradictory and it is doubtful if it bears out the summary.

#### Central and Eastern Provinces.

Going now to the Central and Eastern Provinces, which may be conveniently dealt with together, we find that Mr. Sproston and Mr. Hives, both District Commissioners who have seen service in the two provinces in question hold optimistic views. The former thinks the idea of an out-and-out sale has never entered the heads of the natives, and has only known one case of it, and that is at Okigwe (6881, 6876). The latter has never heard of land being actually sold, and only knows of ownership by communities (3255-7 and 3299). Mr. Partridge, too, who had seen service in the Eastern Province, told us that selling was quite unknown in that Province when he was there, and quite unknown up the Niger (4184).

Mr. Watt, a Senior District Commissioner, in an instructive memo., takes a less optimistic view (Native Land Tenure in Southern Nigeria, p. 30). He thinks that in those parts of the provinces which have been for some time under direct Government control, *i.e.*, the areas within which the Courts of the Niger Protectorate or of the Royal Niger Company exercised jurisdiction, conditions of land tenure have been influenced by the practice of the Government and of the merchants and missionaries who have acquired land. Within the Protectorate, land was acquired by trading firms and missions, and Government leased land as required from the chiefs, and paid rent for land so acquired. "Such leases were entered into at Calabar and other stations in the Eastern Province, and also at Warri, Sapele, Koko and Forcados (I think)." "Whatever may have been the original conceptions of the natives in these parts, it was not long before they began to realise that in relation to foreigners and strangers they had in their land a marketable commodity of great value. Old rights of possession came to be regarded as rights of ownership, and the possessors dealt in land as they did in any chattels. The ownership of land has been surrendered, land has been mortgaged and dealt with in a manner quite contrary to the practice which obtains beyond the area which has been for long under direct control."

With regard to the Royal Niger Company, "it allowed deeds of gift of land to be made to missions and private persons subject to no restrictions as to the use to which the land was to be put. These rights of ownership in some cases lay dormant for many

" years until the land acquired great value through no exertions on the part of the grantees. Moreover, individual ownership of land having once been introduced in these instances, the conception has been given an extended application and, it will be found, at Onitsha, at any rate, that individual ownership of land is recognised and land is dealt with as a marketable commodity."

Mr. Watt might have pointed to what appears to me to be rather a striking instance of the attitude of the Royal Niger Company with regard to individual ownership. In 1896 it, by Regulation (No. 42) made under the Charter, established a registry of deeds. Under it any "owner of land" was entitled to file a petition in the Supreme Court to be registered as proprietor of land, and the Court, if satisfied with the petitioner's claim, was to issue a certificate stating the petitioner's title to the land. The form of certificate is instructive and was: "that the land described is the property of A. B. and that it appears by the evidence that he owns the said land absolutely."

Mr. Cowan, a partner in Miller Bros., and thus largely interested in Southern Nigerian trade, corroborates Mr. Watt's view in general terms. He said that of late years there had been a good deal of buying and selling of individual land in the Central and Eastern Provinces. (13,723.) "The coast natives have been working back and they have been buying lands for plantations or country houses, growing yams and and so on, keeping so many of their people there like a country seat. They may grow rubber or cocoa. The land has been acquired from native communities inland or native owners. That is where individual ownership comes in" (13,724).

I shall now proceed to go through the various districts in which there is evidence of individual ownership or of sales of land having taken place, going roughly from west to east. In the districts other than those specifically named, so far as I am aware, the communal system untainted by individualism still prevails.

#### 1. Sapele.

The District Commissioner writes:—

"In many cases plots of land containing palm trees are bought or sold and sometimes pledged for debt, the original possession having been obtained by squatter's rights. . . . Several individuals own palm forests which pass from son to son and can be sold or pledged. No urban land can be owned absolutely" (Papers, p. 170).

The evidence taken by Mr. Alexander is opposed to this view. One witness puts the matter plainly. "The Sobos never sell land" (Native Land Tenure in Southern Nigeria, p. 21). Possibly the District Commissioner is not clear in distinguishing sale and pledging of land from sale and pledging of palm trees on land.

#### 2. Kscale.

Of 13 witnesses examined by the District Commissioner, nine were emphatically against the practice of sale, but there was some evidence by the remaining two of a custom of sale of rural land among themselves but not to outsiders (Papers, p. 175, *et seq.*).

#### 3. Warri.

The witnesses examined by Mr. Alexander testified that land could not be bought or sold (Native Land Tenure in Southern Nigeria, pp. 19, 20).

Mr. Pennington speaks of a case where a considerable quantity of land was sold which was referred to him by the Commissioner of Lands (7255-6). Mr. J. A. Thomas, who spoke with regard to the country between Sapele and Warri, and Mr. Nauna, who lives in Koko Town, between Sapele and Benin, however, gave evidence to the Committee, that in the districts with which they were acquainted land was not bought or sold (15,043, 15,129 *et seq.*, 15,202).

#### 4. Brass.

Two witnesses from this district gave evidence before the Committee, *viz.*, Chiefs Cameroon and Yekorogha. From the evidence of the first-named it appears that lands are held by families, and that it is

customary for families to purchase and sell lands, and that there is a great deal of selling (14,571 *et seq.*, 14,587 *et seq.*). Sales can only be made to fellow-countrymen and not to those outside the tribe. Mr. Pennington corroborates this testimony (7244).

#### 5. Degema.

Chief Goodhead appeared before us and gave the following evidence: "When necessity compels a man, he can sell with the consent of his family. If I am in difficulty and I have a piece of land, and there is no other way out of the difficulty, I must of necessity sell the land (12,925). . . . I can sell it to a native, but if there is no native to buy it from me and the only way out of the difficulty is to sell it to a European, I can do it (12,926). . . . I cannot remember any case just now when land was sold to a European outright" (12,929).

#### 6. Okrika.

Chief Koko gave the following evidence: "One family or the head chief of the town has no power to part or deal with these lands, *i.e.*, family lands, unless with the consent and concurrence of the whole community" (12,977). When asked whether he remembered the case of a family selling their land, he replied "No" (13,017).

#### 7. Bonny.

Chiefs Jumbo and Benigo gave evidence before us, the result of which appears to me to be that, as at Brass, sales by and to families are permitted, but the purchasing family must not be a foreign one but a native of the Delta" (12,740, 12,862, 12,904).

Mr. Pennington speaks of selling taking place in this district (7244).

#### 8. Opobo.

Chief Cookey Gam said, "There is private ownership of land with power to the individual owner to sell. . . . Opobo natives also buy land from the Quas and Ibos and it is thereafter their own personal property to use or sell again as they like" (Papers, p. 198).

Mr. R. T. Chisholm, who had had eight years' experience in the Qua Country of the Opobo District and had been Court interpreter, deposed: "There is private ownership of both urban and rural land among the Quas. The owner can sell rural land without the consent of the chiefs or community, but he cannot sell urban land. . . . town lands cannot be sold." This evidence is scarcely surprising when we bear in mind that the Opobos, who were originally Bonny people and who only moved up to Opobo about 30 years, had to buy their way into their present country (Papers, p. 198).

The result of the inquiry as to testamentary disposition seems to confirm this evidence (Papers, p. 251).

#### 9. Eket.

The Acting District Commissioner states that "some few freeholds exist"; that "when a man has succeeded to wealth or created it by industry and then invested in land from such private means as distinguished from those of his house property thus acquired is regarded as his own freehold, to be kept or sold as he chooses." House property can be sold by the consent of an overwhelming majority of the house.

He adds: "The natives appear convinced that the system of individual ownership is, and will continue for a long time to be so, insignificant compared with the general system of tenure that its effect may be regarded as negligible" (Papers, p. 198).

The Rev. S. A. Bill, of the Qua Ibo Mission, says: "The fundamental law of tenure is that the land belongs to the community, to the tribe, and to the town or village. It becomes the private property of the individual by his clearing, occupying, and using it. After thus taking possession, it is his absolutely and is so recognised by native laws. While according to native law the owner has the right to sell, the community as a rule looks with disfavour on its being sold to an alien" (Papers, p. 198).

10. *Aba*.

The head chief of each compound owns the land, but he cannot sell, pawn or alienate without the consent of all the members of the compound. When land is thus bought from a compound the vendee has absolute individual ownership but on his death it becomes family property (Papers, pp. 190 and 195).

11. *Ikot Ekpene*.

Land is owned by the house and for the house. No land can be sold except with the sanction of all the members of the house (Papers, p. 191). Individual ownership is unknown (Papers, p. 199.)

12. *Uyo*.

All land is owned by individuals except markets, which are owned in common. The owner has an absolute right of alienation without obtaining permission from anyone (Papers, p. 191).

13. *Bende*.

The Acting District Commissioner reports that individual ownership with absolute right of possession and alienation, temporary or final, is recognised by native law and custom with regard to rural land. Urban land cannot be sold, as when a man dies he is buried inside his house. "The crime of digging up one's ancestors was punishable by death, and any man who sells urban land is driven out of his town" (Papers, pp. 193-4).

14. *Afikpo*.

Writing from Unwana, the Rev. E. MacLacklan tells us that individual ownership with absolute right of alienation is recognised, but the District Commissioner's report shows that the head chiefs of four representative towns denied the right of sale and that they were corroborated (by many chiefs present at the meeting) (Papers, pp. 192-3.)

15. *Calabar*.

There is a good deal of evidence.

An interesting paper by the Rev. A. W. Wilkie gives an account of tenure in vogue mainly among the section of the Efiki tribe residing in Duke Town (Calabar) and the country district between the Qua river and the Akwa Efe river. He explains that the Efiki are recent settlers, and base their ownership to some extent on their purchases of land from other tribes. An Efiki may buy rural land in individual ownership, and has power to sell the same during his lifetime. He has no power to make a will except with the consent of his family. On his death land becomes family land, and can only be alienated with the consent of all the members. Individual ownership of urban land is not recognised (Papers, p. 195) as to power of testamentary disposition, see Papers, p. 252.

The Rev. W. T. Weir, residing at Creek Town, with a large district extending 80 miles into Aro-Chuku, attended before the Committee. He said that "in Creek Town quite a number of our people own big tracts of land in the Ekoi country (8919)." That land was sold outright among themselves (8926-7, 8963, 9023). When asked whether it was the coast natives who had introduced the idea of private property in land, his reply was in the negative, and his view was that "it is not a new feature, except that it is new in the last 50 years" (9035).

Prince Bassey Ephraim, of the Efiki tribe, also attended in England. In the course of his examination he said, "In our country lands were sold and bought from time immemorial. This is amongst ourselves. You could buy land from one family with the consent of the head of the house or family. It is with us a purely native custom, and not an introduction by any foreign element as the result of 'European civilisation' (12,575). He proceeded to say that a purchaser can do what he likes with his property during his lifetime; after his death it goes to his family. The custom of wills is coming in, but it is not a native custom. A person clearing forest land

within the boundary of the town to which he belongs becomes owner of it (12,583-8). Sales from tribe to tribe are frequent (12,673-4).

He was asked "Have you the power according to 'native custom to sell land?—If you have, have you the power to alienate it by selling to Europeans?" His answer was "No we have not according to native custom. We had not that power originally" (12,635).

Chief Eyoita concurred in Prince Bassey's evidence. The evidence of a gentleman termed "Chief Bassey, Duke of Calabar," was taken before the District Commissioner. He deposed that "bush land outside the town belongs to different families, and is also held by individuals; these can be sold. . . . In the old days before the days of the Government my fathers bought and owned land" (Papers, p. 197).

It is only right to quote the opinion of the District Commissioner with regard to the evidence taken by him; he says, "Native evidence on such points is apt to be misleading owing to their suspicion that there is 'something behind it,' and instead of summarising what was actually told me, I venture to express the following opinions in regard to land tenure drawn from the evidence, and my experience in matters dealing with land questions in this Protectorate.

"Previous to the arrival of the Government in Southern Nigeria there was, I think, no idea of ownership of land. It was not recognised as property. The land existed and there was ample room for all; the then governments of the communities—the chiefs and elders—apportioned the use of the land as required among the people.

"Gradually, with the arrival of the Government and the settlement of the country, the natives have discovered the value of land as property and the leasing of land has been introduced and in some cases the sale of land" (Papers, p. 197).

16. *Oron District*.

Our information is here derived from a letter of Mr. C. P. Groves, Acting Superintendent of the Primitive Methodist Mission. His view is that "land is owned by the individual household in the person of the head of the household or the father of the compound" and that "this head has absolute right of possession and alienation." On the death of the head the land is divided among the members, each assuming headship of his house. This results in the land being subdivided into small portions (Papers, p. 196).

17. *Onitsha*.

Here Mr. Watt thinks "that individual ownership of land among the natives is recognised and land is dealt with as a marketable commodity." (Native Land Tenure in Southern Nigeria, p. 31).

Mr. James gives the following explanation: "With regard to the town of Onitsha, which is an important river port, all the scallywags from Sierra Leone and Lagos went there before we had our eyes open and they got hold of pieces of land from the people. Only about three or four years ago, I ordered the District Commissioner to call on all these people to show their title to the land, and go into the question and make out proper leases between them and the Onitsha people. We did not give them leases for more than 10 years" (6700).

When an inquiry was made as to disposition of property on the death of the owner, the report was that "Land belongs to the community, but the Eldest Son succeeds to the occupation of it" (Papers, p. 252).

Mr. Alexander informs me that recently Sir F. Lugard, when at Onitsha, suggested to the Onitsha chiefs that they should receive a lump sum as compensation for certain land required for Government use, and that the chiefs replied that they could not do this as it would be selling land which was against their custom, and that they would prefer to hand over the land for nothing to be used by the Government as long as it was required.

WALTER NAPIER.

## (D) MEMORANDUM BY MR. E. D. MOREL ON THE OCCUPATION AND USAGE OF LAND BY NATIVE COMMUNITIES IN WEST AFRICA.

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 Native export industries.—  
 I. The oil-palm industry—  
 A.—The oil-palm as a source of domestic needs and internal trade.  
 B.—The oil-palm as a source of native externally acquired wealth.  
 C.—Existing European interests in the oil-palm trade.  
 II. The cocoa industry in the Gold Coast, in Ashanti, and in the Southern Province of Nigeria.  
 General conclusions.

The problem which this Committee has been requested to study and report upon involves questions of the greatest possible moment to the welfare of the native races inhabiting the tropical regions of Western Africa.

It may be fittingly approached by recalling the chief motive which has inspired the proceedings and swayed the policy of the British Government in this portion of the Dark Continent for the past century.

## CHARACTERISTICS OF BRITISH POLICY IN WEST AFRICA.

The chief motive claimed has been philanthropy. And while the task of responsible administration, international rivalries sometimes of an acute nature, the enormous growth of trade, and the complexities incidental to the rapid development of intercourse between West Africa and the outer world, have in recent years raised many conflicting and contradictory issues, the fundamental character of British official policy in this part of the world has persisted. It has remained primarily influenced by a desire to promote the advancement and the welfare of the native races.

The exciting influence to which this policy responds had its original source in "the new-born love of the human race,"\* outcome of the revulsion of feeling against the slave trade, and in the conviction that as Britain had been most tainted with the guilt of the trade, so she was beyond all other nations pledged to remove its effects† and repair the evil she had wrought in the past.

In so far as financial sacrifices could minister to the change which occurred in national ideas at the close of the eighteenth century, Britain gave of her substance with unstinted measure.

Apart from the twenty millions distributed by way of compensation to the slave owners of the West Indies, the 1,250,000*l.* to the slave owners of Cape Colony, the further millions expended in founding the settlement of Sierra Leone, in assisting Liberia, in patrolling the West Coast with ships of war for the best part of a century; Britain sought to infuse with similar ideals the policy of all the European powers territorially interested in West Africa. In 1820 she spaniards would cease to buy negroes in Africa.‡ In 1836 she paid Portugal 300,000*l.* to secure the prohibition of the export of slaves from the Portuguese

African possessions.\* Her friendly representations to Napoleon III. in 1860 led to the abolition of the so-called free emigration of negroes from the Gaboon to the French West Indies† and to the initiation of joint naval operations against the slave trade with the French on that part of the coast. More recent instances of the survival of the original national motive may be found in British diplomatic action relating to the abuses which prevailed in the Congo Free State‡ and in the present co-operation of British Consular Officers with the Portuguese authorities respecting the conditions of indentured labour in Portuguese West Africa.§

Without attempting any detailed historical summary of the differing circumstances under which extensive areas in West Africa have passed under British control, it may be affirmed without hesitation that a claim to benefit the native races has always been advanced, either explicitly or implicitly, by the directors and authorised exponents of British policy. British dominion in Sierra Leone owes its existence to British action, both official and unofficial, in providing a refuge for freed slaves and for the descendants of slaves upon West African soil.|| The extension of British jurisdiction in the interior of the Gold Coast was the outcome of measures concerted to protect the communities with which relations had already been established against attack by more powerful neighbours.¶ The acquisition of Lagos was, in part, designed to strike a blow at a slave-trade centre.\*\* The gradual assumption of political control over what is now known as the Southern Province of Nigeria was directed towards the suppression of slave-dealing and human sacrifices and to the establishment of internal peace and order.†† The overthrow of the Fulani Emirs in the Northern Provinces of Nigeria was defended, and rightly so, on much the same grounds.‡‡

In all these cases, the wish and intention of bettering the conditions of the native races were proclaimed and were in a great measure carried out.

This traditional policy was emphasized in the Report of the "Northern Nigeria Lands Committee":—

The principle governing the exercise of its (the Government's) power of control is the interest of the native population. . . . Second to this object, the development of the country should be kept in view. §§

\* \* \* \* \*

It is, then, in strict consonance with these traditions that the problem which this Committee is called upon to examine should be envisaged primarily from the standpoint of the interests of the native races inhabiting the regions with which its Report deals.

To this end, it is necessary that the very special manner with which the welfare of the indigenous peoples of West Africa is bound up with their possession and enjoyment of the land should be clearly grasped, in order that the problem itself may be fully understood and the menace to native interests calculated to ensue from the unrestricted and misdirected operation of certain influences, both exotic and indigenous, may be adequately realised.

It is with the object of presenting this aspect of the case more comprehensively than was possible in the main body of the report that this memorandum has been compiled.

\* Johnston. *The Colonisation of Africa*. (Cambridge: The University Press.)

† Morel. *The British Case in French Congo*. (Heinemann.)

‡ White Books: Africa, Nos. 4, 10, 14, 1903; 1 and 7, 1904; 1, 1905; 1, 1906; 1, 1907; 1, 2, 3, 4, 5, 1908; 1 and 2, 1909, &c.

§ White Books: Africa, 2, 1913; Africa, 1, 1914.

|| Lucas, *op. cit.* Sarbah, "Fanti Constitution," &c.

¶ Lucas, *op. cit.* Memorandum by Sir W. B. Griffiths (Committee documents). Macdonald, "The Gold Coast Past and Present" (Longman), &c.

\*\* Lucas, *op. cit.*

†† Mockerle-Berryman. *British Nigeria*. (Cassell.)

‡‡ Orr. *The Making of Northern Nigeria*. (Macmillan.)

§§ Morel. *Nigeria: its People and its Problems*. (Smith, Elder.)

§§ Cf. 5142, pp. x and xi, par. 25.

\* Lucas. *Historical Geography of the British Colonies*, Vol. III. West Africa. (Oxford: The Clarendon Press.)

† *Ibid.*

‡ Johnston. *The Colonisation of Africa*. (Cambridge: The University Press.)

THE LAND PROBLEM IN SOUTH AFRICA AND IN WEST AFRICA.

The Report of the South Africa Native Affairs Commission, 1903-05, which was presided over by Sir Godfrey Lagden, contains the following passage:—

From it (land tenure) there is a common origin of many serious native problems. It dominates and pervades every other question; it is the bed-rock of the native's present economic position, and largely affects his social system.

This expression of opinion applies with infinitely greater force to British West Africa, where the problem of government is that of administering a country peopled by African races, and not by races both of European and of African descent for whose joint expansion under one rule a *modus vivendi* has to be sought. If land tenure can be described as of such extreme importance administratively, economically, and socially to the natives in a region of Africa where the export industries are wholly in the hands of the white population,\* and where the natives have been to a very large extent swept into the vortex of the European industrial system, and native social life very largely modified where not entirely altered, how much greater must be its importance in British West Africa, where the native population is both enormously and relatively larger, where the export industries (other than mineral) are wholly in the hands of the natives, where Europeans are but a handful,§ where polity and social economy alike are inseparably connected with the land, and where the avowed object of the Administration is to utilise the native machinery of government and to consolidate, improve, and strengthen it?

The relative importance of the problem in South Africa and in West Africa can be estimated at its full significance by a comparison of vital statistics.

The total area of Imperial South Africa is 1,204,827 square miles. Scattered throughout this vast territory is a native population of 6,389,544 souls.¶ The total area of British West Africa is 445,234 square miles. Its native population numbers 20,177,367. The average density of the native population in Imperial South Africa is a fraction over 5. The average density of the native population in British West Africa is a fraction over 45.¶¶

THE IMPORTANCE OF LAND TO WEST AFRICAN COMMUNITIES.

I.—From the point of view of the Density and General Needs of the Population. (Two tables illustrating.)

The attached tables (1 and 2) will show that the native population of British West Africa is considerably larger and denser than the population of all other British Africa\*\* combined, including the native population in the territories of the South African Union. A table is also appended giving further particulars as to the population of Southern Nigeria.

Two factors should also be borne in mind in connection with the West African figures given in these tables. First, that no inconsiderable portion of the total West African area is composed of rivers and channels, and of swampy ground which is unfit for human habitation and cultivation. The area thus covered impinges,

\* Gold and diamonds accounted (1911) for 43,000,000l. out of a total export of 55,547,614l. The remaining export industries are managed by Europeans, with insignificant exceptions.

† The Commission's Report deals also with Basutoland and Bechuanaland, now protected States under the Colonial Office.

‡ The exceptions are so small as not to be worth mentioning—part of the timber from Southern Nigeria and the Gold Coast is exported by European concessionaires with hired native labour.

§ The white population of British West Africa is under 5,000, and none of the whites are settlers unless that term be applied in a very limited sense to the Roman Catholic missionaries.

¶ Exclusive of 678,146 "coloured" in the South African Union.

¶¶ Fuller particulars are given in the accompanying tables. If the Northern Provinces of Nigeria are excluded, the average density of the population of the rest of British West Africa (with which the Report of the Committee is specially concerned) is a fraction over 57.

\*\* Egypt excluded.

therefore, upon the total area available for natural expansion. Secondly, that under the *pax Britannica* ensuring internal peace and a steady advance in sanitary science, the population is bound to increase, and to increase rapidly. It may be reasonably assumed that, short of influences involving catastrophic disaster, the population of British West Africa one hundred years hence will be at least one and a half times as considerable as it is to-day. That is the ratio of increase estimated by the Gold Coast Census Officer (1911) for that colony, where the population would not appear to be so prolific as in Southern Nigeria, and where the *pax Britannica* has been of far longer duration than in a considerable proportion of Southern Nigeria.\*

It may also be advisable at this stage to indicate briefly another factor of recent growth, which will be referred to in greater detail later, and which has an important bearing upon the general problem. That factor is the new usage to which the land is being put, and will increasingly be put, in the cultivation of permanent crops of economic value for export purposes. The significance of this new departure can hardly be over-estimated. It must tend to render an abundance of land, and free access thereto, an object of even greater moment to future generations of our protected subjects who will require, in addition to an increasingly larger area of land for the cultivation of food-stuffs proportionate to their natural increase, more and more land for the purpose of economic cultivation. Thus land will be doubly needed. It should be borne in mind in this connection that the land of West Africa is, virtually, the one source of food supply of its peoples. The population is self-sustained, for although a greater quantity of European food-stuffs is imported every year, the great bulk of these are consumed by Europeans and by the anglicised population of the Coast settlements. It would be difficult to form any estimate of the vast supplies of cereals and other food crops such as yams, cassava, rice and ground-nuts, which require to be raised to provide for the wants of twenty million natives. Nor would it be easy to exaggerate the part played in native domestic economy by the oil palms, whose fruits in many districts are a food-staple, as explained in greater detail further on.

TABLE I.

Comparative Tables of Area and Population of British West Africa and other Territories in British Africa. (Egypt is excluded from this list for obvious reasons.)

BRITISH WEST AFRICA.		
—	Area.	Population.
	Square Miles.	
Gambia†	4,504	146,100
Sierra Leone‡	24,915	1,403,132
Gold Coast§	24,335	853,766
Ashanti -	24,800	287,814¶
Northern Territories	31,100	361,806¶¶
Southern Nigeria	79,880	7,855,749
Northern Nigeria	255,700	9,269,000**

\* The Census Officer regards the aforesaid ratio of estimated increase as an under-estimate.

† Area of the Colony, 4 square miles; population, 7,700. Area of the Protectorate, 4,500 square miles; population, 138,400. (Census 1911.)

‡ The density of the population in the Protectorate, according to the Census of 1911, amounts to 53,375 per square mile. It varies considerably, according to the districts, from 21·8 in the Koinadugu district to 98·9 in the Karene district. Area and population of the Colony: area, 515 square miles; population, 75,572 (702 whites). (Census 1911.)

§ The density varies considerably. Thus the density of the three provinces of the Gold Coast is computed as under:—

Western	16·7	per square mile.
Central	53·4	" "
Eastern	44·3	" "

¶ Believed to be under-estimated (Census Report 1911).

¶¶ Under-estimated by 56,000.

\*\* Census 1911 (estimated).1

Total area of British West Africa, 445,234 square miles.

Total population of British West Africa, 20,177,367. Average per square mile, a fraction over 45.

## BRITISH AFRICA (other than West Africa).

	Area.	Population.
	Square Miles.	
British East Africa	200,000	3,750,000
The Soudan	984,520	3,000,000
Uganda	117,681*	2,840,469
Nyasaland	39,801	999,423
Somaland	68,000	348,805
Basutoland	11,716	403,111
Bechuanaland	275,000	123,658
Swaziland	6,536	98,733
Rhodesia	439,575	1,743,640
South African Union	473,000	4,697,152†

Total area of British Africa (other than West Africa), 2,615,829 square miles.†

Total population of British Africa (other than West Africa), 18,002,991.

Average per square mile, not quite 7.

TABLE II.

## Density of Southern Nigerian Population.

SOUTHERN NIGERIA.		Per Square Mile.
Average density		98·37§
Some densities in Western Provinces:		
Egba District		141·63
Ibadan District		107·10
Ilesha District		114·46
Oshogbo District		144·42
Some densities in Central Province:		
Udi District		298·22
Onitsha District		277·53
Awka District		371·77
Warri District		110·98
Some densities in Eastern Province:		
Owerri District		368·64
Abakaliki District		225·47
Bende District		334·92
Opobo District		211·03

Husbandry and commerce are the predominant vocations of the peoples of British West Africa. The tribes and communities inhabiting the Southern provinces of Nigeria, the Gold Coast, Sierra Leone, and the Gambia are not nomadic. They are primarily agricultural, and the site of their towns and villages is usually permanent.

## II.—From the point of view of the Export Trade with Europe. (Four tables illustrating.)

From the earliest times, the natives of West Africa have eagerly availed themselves of the opportunities for external trade afforded them by the presence of Europeans on the coast. They gathered the natural products of their land which the white man required and bartered them for European merchandise. This trade in natural products has grown to very large proportions with the opening up of the interior country as the result of the extension of European political control. It is increasing largely year by year. Some idea

\* Does not include the whole area (*vide* Colonial Office List 1913 and Cd. 6622).

† Inclusive of 678,146 "coloured."

‡ Less a portion of the Uganda area (*vide* (7)).

§ Southern Nigeria. (Census 1911.)

may be formed of the extent to which the natives of British West Africa utilise the resources of the land for this purpose by examining the output of this free native labour for the past seven years.

TABLE III.

Value of Raw Material collected and cultivated by the Native Population for purposes of External Trade from 1906 to 1912 inclusive.

SOUTHERN PROVINCES OF NIGERIA.				
	Palm Kernels.	Palm Oil.	Cocoa.	Cotton Lint.
	£	£	£	£
1906	1,193,939	1,001,648	27,054	41,562
1907	1,658,292	1,313,960	47,840	97,043
1908	1,424,595	1,154,933	50,587	53,317
1909	1,815,967	1,447,163	71,196	103,270
1910	2,450,814	1,742,234	101,151	78,479
1911	2,574,405	1,696,876	164,664	66,935
1912	2,797,411	1,654,933	130,542	102,931
	13,915,423	10,011,747	593,034	543,537

	Cotton Seed.	Rubber.	Shea Rubber.	Shea Nuts.	Timber.
	£	£	£	£	£
1906	9,534	307,077	6,800	12,118	68,718
1907	10,938	244,989	4,984	26,627	69,241
1908	6,059	98,530	5,637	35,612	77,168
1909	1,239	109,076	5,230	78,029	46,372
1910	5,473	311,691	6,804	43,510	60,191
1911	4,577	179,355	4,978	35,518	55,576
1912	10,030	125,022	4,798	46,609	78,006
	47,850	1,375,740	39,231	278,023	455,272

Thus, in seven years, the natives of the Southern Provinces of Nigeria have gathered, cultivated, prepared, and sold to European merchants raw products to the value of = 27,259,857.

With the sole exception of a portion of the "timber," which in some instances is worked by European leaseholders with hired native labour under the forestry rules, this total is the product of native industry in the fullest sense of the term, the European merchant being merely the intermediary between the Nigerian producer and the European markets where these commodities are ultimately disposed of.

TABLE IV.

## GOLD COAST.

	Cocoa.	Kolas.*	Copra.
	£	£	£
1906	336,269	73,632	4,290
1907	515,089	78,901	6,186
1908	540,821	84,362	6,490
1909	755,347	93,850	10,451
1910	866,571	77,716	13,032
1911	1,613,468	93,099	13,257
1912	1,642,733†	34,231	11,841
	6,270,298	535,791	65,547

\* The kola-trade is an export trade, but the product is forwarded, not to Europe, but to Nigeria for local consumption.

† The value of the cocoa exported in 1913 was 2,484,218.

	Timber.*	Palm Kernels.	Palm Oil.	Rubber.
	£	£	£	£
1906 - -	80,018	80,834	125,008	334,505
1907 - -	169,458	101,822	119,468	333,120
1908 - -	158,312	77,821	129,535	168,144
1909 - -	82,937	112,425	120,978	263,694
1910 - -	148,122	185,058	161,388	358,876
1911 - -	138,836	175,891	128,916	219,447
1912 - -	228,748	205,364	112,885	168,729
	1,006,431	939,215	898,178	1,846,515

Thus, in seven years, the natives of the Gold Coast and Ashanti have gathered, cultivated, prepared, and sold to European merchants raw products to the value of = 11,561,975.

TABLE V.  
SIERRA LEONE.

	Ginger.	Gum Copal.	Kolas.†
	£	£	£
1906 - - -	10,880	3,945	104,082
1907 - - -	11,579	6,015	113,674
1908 - - -	11,871	4,948	108,895
1909 - - -	14,147	5,036	153,919
1910 - - -	33,288	3,331	191,942
1911 - - -	44,668	2,966	194,312
1912 - - -	44,864	1,607	276,530
	171,297	27,848	1,143,354

	Palm Oil.	Palm Kernels.	Rubber.
	£	£	£
1906 - - -	27,745	330,427	30,170
1907 - - -	51,154	447,801	22,480
1908 - - -	36,451	892,887	9,372
1909 - - -	64,273	482,614	8,079
1910 - - -	62,852	644,684	7,666
1911 - - -	69,927	657,348	5,918
1912 - - -	67,314	793,178	2,962
	379,716	3,658,939	86,647

Thus, in seven years, the natives of Sierra Leone have gathered, cultivated, prepared and sold to European merchants raw products to the value of = 5,497,801.

TABLE VI.  
GAMBIA.

	Ground Nuts.	Palm Kernels.	Rubber.	Wax.
	£	£	£	£
1906 - -	278,055	2,122	1,084	1,787
1907 - -	236,685	3,657	5,686	2,325
1908 - -	245,084	3,488	1,163	3,036
1909 - -	323,231	3,326	1,550	2,180
1910 - -	387,943	5,640	952	1,274
1911 - -	437,472	4,758	836	1,514
1912 - -	502,069	6,518	409	1,164
	2,430,539	29,709	11,680	13,280

Thus, in seven years, the natives of the Gambia have cultivated, gathered, prepared, and sold to European merchants raw products to the value of = 2,485,208.

\* Same comments as at foot of Table III.

† The kola-trade is an export trade, but the product is forwarded, not to Europe, but to Nigeria for local consumption.

III.—From the point of view of the Commercial and Financial position of the Dependencies. (Two tables illustrating.)

The collection, cultivation, and preparation of raw material required by European industrialism represents the earning and purchasing capacity of the native population of British West Africa as expressed in terms of European merchandise.

Thus the economic activities of the natives resulting from their enjoyment and occupation of the land may be divided into three branches. The first is directed to raising the necessary food-crops for home consumption. The second is concerned with the sale and exchange of these and other commodities between communities. Every town and village has its local market, and the country is studded with larger market centres where natives of different tribes, often living at considerable distances from one another, periodically meet and exchange the products of their respective countries. The British occupation, by ensuring the safety of internal communication, by the creation of railways and roads, and by the improvement of waterways, has given greatly increased facilities to this internal commercial intercourse, the importance of which in the social life of the native peoples is sometimes overlooked. It is apt, for instance, to be forgotten that the external trade in the products of the oil palm represents only one side of the native exploitation of this valuable tree, and that enormous quantities of oil and kernels are gathered and prepared by communities living in the oil-palm belt to supply the needs of communities living outside the oil-palm belt, in exchange for commodities which the former do not produce. The third branch of native economic activity is concerned with the external or export trade, the volume of which has been indicated in the preceding tables.

In this connection it may not be without utility to point out that the trade in imported merchandise, which is in the hands of European merchants, and the revenues of the British Administration in West Africa, are alike dependent upon the commercial instinct which induces the native peoples to devote a portion of their time and labour in the pursuit of externally acquired wealth by collecting and cultivating commodities for which there exists an external demand. Were this activity to dwindle, or were the capacity to give expression to it seriously curtailed, the financial and commercial position of British West Africa would collapse. In the Southern Provinces of Nigeria and in the Gold Coast, the administration levies no direct tax. In Sierra Leone and the Gambia, a small annual tax is imposed. The amount of the customs duty is, of course, calculated by the European merchant in fixing his selling price. The following tables show (1) the proportionate value of the raw material collected and cultivated by the natives for the external trade compared with the total value of the exports; (2), the proportion of customs revenue to total revenue.

TABLE VII.

(The figures are for 1912.)

SOUTHERN NIGERIA.

Total value of exports (ex specie)	£	5,437,189
Value of raw material collected and cultivated by natives	£	5,411,300

GOLD COAST, ASHANTI, AND NORTHERN TERRITORIES.

Total value of exports (ex specie)	£	4,307,802
Value of raw material collected and cultivated by natives	£	2,837,142
Value of gold won by European leaseholders with hired native labour	£	1,470,660

SIERRA LEONE.

Total value of exports (ex specie)	£	1,350,172
Value of raw material collected and cultivated by natives	£	1,258,933

GAMBIA.		£
Total value of exports (ex specie)	-	738,593
Value of raw material collected and cultivated by natives	-	510,160

TABLE VIII.

Showing proportion of Customs Revenue to Total Revenue, with Notes relating to Railway Revenue and the yield from Direct Taxes. (The figures are for 1911.)

	Total Revenue.	Revenue derived from Customs Dues upon imported Goods.
	£	£
Southern Provinces of Nigeria.	1,955,948	1,439,385
Gold Coast -	1,006,633*	610,602*
Sierra Leone -	457,759	242,324
Gambia -	82,880	64,730
Total -	3,503,220	2,357,041

The total revenue from railway receipts for the three dependencies (there is no railway in the Gambia) was 664,817*l.*, and from the direct taxes in Sierra Leone and the Gambia, 60,689*l.*

The position, then, as shown by the above table, is briefly this:—

The industry of the native population in exploiting the land for the export trade was responsible for providing the revenue with 2,357,041*l.* in customs dues levied by Government upon imported merchandise bought by that native population with the proceeds of its labour, out of a total revenue from all sources of 3,503,220*l.*

Of the balance, 1,145,179*l.*, railway receipts amounted to 664,817*l.*, a further direct result of native industry for the bulk of the railways' receipts is derived from the freight upon the raw material harvested by the natives on its way from the centres of production to the ports of shipment, and upon merchandise imported to pay for that raw material; while the 60,689*l.* obtained from the hut tax in Sierra Leone (52,771*l.*) and the yard tax in the Gambia (7,918*l.*) are, in effect, imposts levied upon native industry.

#### NATIVE EXPORT INDUSTRIES.

##### I.—The Oil Palm Industry.

The two most considerable existing native industries in British West Africa connected with the export trade are the oil-palm industry and the cocoa industry. Both industries raise questions of considerable importance which have bulked largely in the evidence before the Committee, and upon which the Committee is called upon to pronounce. Detailed treatment in this memorandum would thus seem to be called for. I will deal first with the oil-palm industry, which has its domestic as well as its external aspects. In the last seven years the natives of the Southern Provinces of Nigeria have produced for the external trade palm-kernels valued at 13,915,423*l.*, and palm-oil valued at 10,011,747*l.* In the same period and for the same purposes the natives of the Gold Coast have produced palm-kernels to the value of 939,215*l.*, and palm oil to the value of 898,178*l.*, and the natives of Sierra Leone palm-kernels to the value of 3,688,939*l.* and palm-oil to the value of 378,716*l.* This represents a total production for the export trade of palm-kernels and palm-oil by the natives of the three Dependencies in the last seven years amounting to the considerable sum of 29,833,218*l.*; the Southern Provinces of Nigeria accounting for 23,927,170*l.* of the total.

In cocoa, rubber, and other tropical products, West Africa competes with the tropical world generally, but West Africa has a virtual monopoly of the oil-palm.\*

We will touch first upon the part played by the oil-palm in the domestic economy of the natives.

##### A.—The Domestic uses of the Oil-Palms.

The interest of the natives in the oil-palm is immense, and of a double character. Domestically its fruit is indispensable to them. It is one of the staple articles of food (after preparation), eaten as soup, cooked with meat, fish, and vegetables. Prepared in various ways it is used as an ointment against the bites of flies, and for purposes of cleanliness, as a medicine, and as a sleeping draught. Together with the juice of other palms it provides a sustaining beverage, "palm-wine," which is also converted into vinegar by the admixture of onions and pepper, and used as a disinfectant, an insecticide, a rust remover, and as a substitute for yeast in the making of bread. Its leaves when fresh are used for dressing wounds; dry, as tinder; with various forms of preparation, in which the oil of the fruit and kernels enter, as a preventive of diarrhoea; to accelerate parturition, as a remedy for jaundice and biliousness. The leaves and their mid-ribs are also used as roofing material, for the manufacture of nets, mats, baskets, brooms, and ropes. The male flower is burnt into charcoal and used as a dressing for burns. The stalks of the fruit branches are beaten out to form sponges. The shell of the kernel makes an admirable fuel, which gives out great heat. The "cabbage" or growing point, makes a succulent vegetable.

Thus, it may be said that the oil-palm enters into the domestic life of the West African at every turn. It is, as Mr. Thompson, the principal Conservator of Forests in Southern Nigeria informed to the Committee, "a semi-domestic tree." Mr. Thompson, to whom we are also indebted for an extremely valuable Report on the Oil-palm, printed by the Nigerian Administration, corrects several current misapprehensions with regard to the native exploitation of the oil-palm. The oil-palm reproduces itself freely, springing up in immense numbers when the land is cleared for farms. The clearing of the land for these purposes is said to help the growth of the young trees which would otherwise die off in the shade and damp. The fires which are run over the farm clearings also assist germination by removing the hard skin over the "eye" and allowing moisture to be absorbed. Human agency is thus employed to some purpose in the propagation of the tree. Indeed, Mr. Thompson goes so far as to say that—

"A large portion of them (oil-palms) have sprung up from human acts, or been helped on by human acts."

"6989. Q. It not only grows wild, but it has been cultivated to some extent?—A. Yes, in a peculiar way. They make clearings round the parent tree and allow the seeds to spring up. They do not actually plant them, but they tend the young ones."

"6990. Q. It is quite incorrect to say of certain parts of Southern Nigeria that the natives take no trouble at all with their palm trees?—A. That is wrong."

"6991. Q. Four out of five people tell us so?—A. But it is quite wrong. There are lots of places where they take great trouble over the palm-trees."

The fruit of the palm-tree itself gives rise, of course, to an active internal trade between village and village, market and market; one community will be specially proficient in preparing the oil for consumption; another for other purposes; some communities are deficient in the tree and eagerly exchange commodities for the fruit, and so on. It is the commonest sight on the roads to see men and women carrying palm-oil in pots

\* "It is impossible to exaggerate"—writes Mr. T. J. Allridge, for many years District Commissioner in Sierra Leone—"the important part this sovereign tree fills in the life of the country. . . . It provides the people among whom it flourishes with meat and drink, and with nearly all the simple necessities of daily life."—*A Transformed Colony* (Seely & Co.)

and pans on their heads. At every little native market palm-oil is on sale. The fruit of the oil-palm has, therefore, a marketable value for the natives *apart altogether from the export trade*, and leads to a considerable (in some parts of the Southern Provinces of Nigeria a very considerable) internal trade. It must not, then, be overlooked that as an article of internal commerce, apart altogether from an article of consumption, the fruit of the oil-palm bulks largely in the economic activities of the communities inhabiting the palm-oil belt.

The folk-lore of West Africa is saturated with allusions to the palm-tree, and the existence of hundreds of proverbs in which it figures show the intimate part it plays in social economy. Guilds—like the famous "purrah" Society of Sierra Leone—exist to protect the tree from being tapped at the wrong time. There are classes of oil-palm climbers and classes of palm-wine preparers. In some parts of British West Africa, the usage of the fruit is set aside for the use of the whole community irrespective of the ownership of the land where the trees are situated. In other parts it is regarded as a precious inheritance of the individual, and the individual who has planted trees retains his right to their use even though the land upon which he planted them may have passed out of his family or may have been his only by virtue of a tenant right. Whatever form native local custom takes as to the usage of the tree, the tree and its fruit are usually a matter of regard and concern, although cases do occur where a community or individual, allured by the prospect of larger immediate prospects, by growing cocoa (for instance), will remove the palm trees, or afflicted by a drunken bout, will cut down the tree for the wine (which can, however, be secured without its destruction).

The Native Councils of Southern Nigeria have, in many cases, passed rules inflicting divers pains and penalties upon their subjects for this offence, and by-laws have been passed in the Gold Coast which, however, owing perhaps to the weakness of the Executive's general position, do not appear to have been particularly effective. Mr. Thompson is of opinion that any measures calculated to restrict the free usage of the oil-palm by the native communities of the Southern Provinces of Nigeria is to be strongly deprecated:—

6997-98. Q. Taking palm-oil in Southern Nigeria, in view of the fact that it is so largely used for domestic purposes, and also the fact that it is used for trade purposes, any action tending to restrict the free use of it and tending to create monopolies in the exploitation of it is to be deprecated?

Certainly. I think that if the natives were to lose interest in the palm-oil trade, that is, if they were not allowed to take a personal share in the protection and collection and disposal of it, the revenue of the country would go down tremendously, and a lot of harm would be done.

Q. You would deprecate anything which reduced the native from the position which he now holds of trader and exploiter on his own account to that of a hired labourer on someone else's account?

Yes, otherwise he would virtually be a domestic slave on his own land.

This view is borne out by Dr. Maxwell, District Commissioner in Sierra Leone. He says:—

"Native chiefs and their advisers have shown themselves ready to consider and to grant concessions for mining or other purposes so long as these purposes do not affect the cultivation of the land by the people themselves; they have at the same time shown themselves averse from granting any rights to non-natives over land which they can cultivate themselves or over the natural products of the land which they have been in the habit of working themselves and from which they derive their wealth. In such cases they are acting as guardians of the rights of the different owners of the land. In one specific case where the chiefs were asked to consider a scheme whereby they would give exclusive rights of purchase of the fruits of the oil-palms in their

chiefdoms to one person, a number of these chiefs, acting quite independently of each other, stated that they had no power whatsoever to agree to such an arrangement on behalf of their people, and that they could not enforce this on the other holders of land in the chiefdom."

Major Bedwell, District Commissioner Southern Nigeria, expressed a similar opinion (4064-7).

These views are generally endorsed by Mr. R. E. Dennett (11,150-3).

So far as the Gold Coast is concerned, Mr. Crowther, Secretary of the Native Affairs Department, favours a policy calculated to assist native communities in improving their methods and in encouraging native enterprise. (10,431, 10,444-7, 10,315-7.)

*B.—The Oil-palm as a source of native externally acquired wealth.*

Under a system of absolutely free labour, so far as his relations with the European are concerned, the native of West Africa has in the course of the last century built up, as has been shown, a very large export trade in palm-oil and kernels with the European. He voluntarily collects the fruit, prepares the oil, and conveys both oil and kernels to the European trading stations.

In the Gold Coast, palm-oil and kernels were never, probably owing to the existence of a native gold-industry, the staple factor in Afro-European trade that they became in Southern Nigeria after the disappearance of the slave trade. And latterly the activities of a certain section—but only of a certain section—of the Gold Coast peoples have been concentrated upon cocoa. But, judging from the following figures, it would not seem that the growth of the cocoa-industry has affected the output of palm-oil and kernels very materially in the last five years:—

Year.	Kernels.	Value.	Oil.	Value.
	Tons.	£	Gallons.	£
1908	8,956	77,821	2,255,371	129,535
1909	11,598	112,425	2,007,296	120,978
1910	14,182	185,058	2,044,868	161,388
1911	13,254	175,890	1,610,209	128,916
1912	14,628	205,365	1,444,432	112,885

Taking palm-oil and palm-kernels together, the value of the exports was greater in 1912 than in 1908.

It is true that the exports of oil from the Gold Coast show a steady decrease since 1908. This, however, does not necessarily prove that fewer palm trees are being exploited by the natives for the export trade.

Were that true the export of kernels would show a large falling off instead of, in point of fact, an increase. In view of the increased export of kernels, the fall in the export of oil is almost certainly attributable (as the Agricultural Department's Report points out) to an increased local consumption of oil. It may also be noted that in the two years 1897-8 (before the cocoa industry became thoroughly established) the export of oil was slightly less than in the years 1908-9, with which the above table deals. To speak of the exploitation of the oil-palm as being a "decaying industry" in the Gold Coast, is, therefore, clearly erroneous, so far as it can be controlled by statistical information.

In Sierra Leone, palm-oil and palm-kernels are, and have been for many years, the staple export industry, and the kernel trade is increasing largely, as the following figures show:—

Year.	Kernels.	Value.	Oil.	Value.
	Tons.	£	Gallons.	£
1908	33,721	332,886	489,636	36,451
1909	42,896	482,613	851,998	64,273
1910	43,030	644,683	645,339	62,852
1911	42,892	657,348	725,640	69,927
1912	50,750	793,178	728,509	67,314

The small proportion of oil produced relatively to the large quantity of kernels has always been a feature of oil-palm exploitation in Sierra Leone. It is put down by most authorities to the large local consumption, and internal trade in, the oil.\*

The total value of the export trade of the Gold Coast (exclusive of gold mining, which is not now a native industry, and of the trade in kola nuts, which is a purely inter-African commerce) amounted in 1912 to 2,430,797*l.*, so that the free traffic with European merchants in palm-oil and kernels represents 13 per cent. of the purchasing capacity of the natives expressed in terms of European merchandise.

The total value of the export trade of Sierra Leone (exclusive of the trade in kola nuts, which, as in the Gold Coast, is a purely inter-African commerce) amounted in 1912 to 1,073,642*l.*, so that the free traffic with European merchants in palm-oil and kernels represents 80 per cent. of the purchasing capacity of the natives expressed in terms of European merchandise.

So far as the Gold Coast is concerned it should be borne in mind that, should the cocoa industry receive a set-back the natives can always turn to their palm-trees, unless their palm-trees have meantime been alienated from them. Poverty can never affect the native inhabitant of the oil-palm belt of West Africa unless the proprietorship in the land and trees passes from him, or unless the external markets for the product are by some means or other closed to him. It may be noted that certain tribes in the Eastern Province of the Gold Coast have been systematically planting the oil-palm for several years, and are still doing so.

In Southern Nigeria, the collection, preparation, and sale of palm-oil and kernels to the European merchant may be accurately described as the national industry of four-fifths of the population, and represents more than 77 per cent. of the purchasing capacity of the native population expressed in terms of European merchandise. With the advent of the railway (so far as the Western Province is concerned) the improvement of road communications (to some extent), and the gradual pacification of the country in the real sense of the term, through the British occupation, the increase in the native output has been enormous, as the following figures show:—

	Palm Oil.		Palm Kernels.	
	Gallons.	Value.	Tons.	Value.
		£		£
1908	18,328,896	1,154,933	136,558	1,424,595
1909	22,996,487	1,447,163	158,849	1,815,967
	Cwts.			
1910	1,537,016	1,742,234	172,998	2,450,814
1911	1,586,738	1,696,876	176,389	2,574,405
1912	1,539,883	1,654,933	184,625	2,797,411

It is curious that in the face of these figures and of the tables given in another part of this memorandum statements should be made in certain quarters as to the alleged "idleness" of the West African native and the wastage of the oil-palm product. In so far as such statements may be put forward for the purpose of influencing legislation, it may be worth while to draw attention to one or two points. The amount of labour required in collecting, transporting over considerable distances, marketing, and preparing the fruit of the oil-palm to the value of 5,630,906*l.* (the output of British West Africa in 1912) must, in the aggregate, be enormous. That virtually the entire population inhabiting the oil-palm bearing zones of Southern Nigeria, *i.e.*, literally several millions of people, spend months at a time in various branches of the industry is clear from the Forestry Department's Report already alluded to.

\* Palm-oil, again, is a staple food throughout the Colony and Protectorate. Its domestic uses are many, and it is "impossible to estimate, even approximately, the quantity which is used in home consumption."—Sierra Leone Report for 1909, Cd. 4964-22.

The processes of preparation vary according to districts and traditional customs, just as the oil varies in value and chemical properties according to the method of preparation. These processes necessitate no little patience, skill and a great variety of forms of employment, while the processes of bartering and purchase among competing local producers and brokers for the markets involve a constant appeal to enterprise and resourcefulness. The character and volume of the voluntary efforts put forth by the natives of Southern Nigeria to supply the world's requirements may be realised by the following particulars furnished in the Report on the Oil-palm by the Conservator of Forests.

Basing his calculations upon a palm-tree in bearing, yielding five bunches of fruit per annum, with an average yield of oil per tree per annum from those five bunches of 7.5 lbs., and using as an illustration the export figures of palm-oil for 1910—1,537,016 cwts.—the conservator reaches these conclusions. To produce 1,537,016 cwts. of oil, 22,933,896 palm trees need to be exploited. Local consumption and internal trade demand a further production, bringing the total estimated production (on the 1910 figures) up to 2,293,389 cwts., thus making a grand total of 25,227,285 trees exploited by the natives in the year 1910. Of these 25,227,285 trees, the conservator (basing himself upon the export of kernels for the same year and adding an estimated number of kernels consumed locally, considers that 18,975,056 trees are worked for Kernels as well as oil, the residue (6,252,229 trees with a potential yield of 55,823 tons of kernels) being worked for palm-oil only. Inaccessibility of markets caused by remoteness and insufficiency of communication is the chief explanation of this so-called "wastage" of kernels. And it should be noted that these causes are steadily disappearing with the opening up of the country. Thus the figures for 1912 show that while the export of oil only slightly exceeded the export in 1910, the export of kernels increased by 11,627 tons.

The foregoing, I think, conclusively demonstrates that no legislation conferring rights upon European individuals or corporations should be sanctioned if there is reason to fear that a grant of such rights would restrict the usage by the natives of a tree so indispensable to their welfare. It is submitted that the principle inspiring the Government in the case of industries which the natives have created and shown themselves eminently capable of developing should be that of jealous guardianship of native rights. The argument in favour of this course gains additional weight when the raw material of such industry is also a staple food supply and an object of inter-tribal commercial activity.

#### C.—Existing European Interests in the Oil-palm Trade.

Some indication may now be given of the European interests involved in the trade in palm-oil products as now carried on.

##### (1) The Merchant Interest and Allied Interests.

At the present moment, the processes, so far as European interests are concerned, under which palm-oil and palm-kernels reach Europe (and through Europe the United States, which are large consumers) are these. European merchants established on the coast and in the interior purchase the oil and the kernels from the native, sometimes from the actual producers and manufacturers, sometimes, and more generally, from native communities which are at once merchants and transporters for the producing communities—"middlemen" between the actual producers and manufacturers, and the European merchants.

A considerable number of allied interests at the European end are dependent upon the European merchant interest. For example, the casks in which the palm-oil is shipped from West Africa are manufactured at home, and are shipped to West Africa, taken to pieces, in bundles of what are called "staves"; the iron hoops for the staves are also manufactured at home; a considerable trade between Liverpool and Ireland, chiefly, is done in the stems of the common sedge (*Scirpus lacustris*) which are shipped to West Africa to caulk the casks and make them oil-tight

when put together; the bags in which the palm-kernels are packed and shipped in West Africa are of home manufacture. Numerous interests are also and necessarily involved in the export, handling, and distribution of so many thousands of tons of bulky produce at the European ports, their conveyance either to the railway *dépot* or to the store; their reshipment to other parts of the world; the treatment of the article itself in industrial establishments, and so on.

(2) *The Steamship Interest and Associated Interests.*

Another very important interest concerned is the steamship interest. It may with safety be stated that the immense bulk of the freight earned on produce brought home from West Africa by the various steamship lines trading between West Africa and Europe (several of which are British) is earned on shipments of palm-oil and palm kernels. I am authoritatively informed that freight on palm-oil and kernels represents about 35·24 per cent. of the whole of the tonnage of the steamers of these lines, which ply between the West Coast and Liverpool; while the percentage in the case of Messrs. Elder Dempster & Co.'s steamers trading between the West Coast and Hamburg is about 72·30 per cent. It is needless to point out that upon this steamship interest depend a number of associated interests—represented in wages.

(3) *The Kernel-crushing Interest.*

There is also the substantial existing industry concerned in the European mills which have been created for the crushing of the kernels. This is at present an Anglo-German interest. There is also at least one large mill in Liverpool which crushes 30,000 tons of kernels a year.

The character of the trade may undergo change and modification through the introduction of machinery for the treatment of the pericarp or entire fruit, on the spot. It may, however, be suggested that this change, if it is to take place, should preferably result from the play of natural economic laws and normal competing processes. The highest and lowest prices for palm-oil and kernels in the home market from 1910 to 1913 are given in the footnote.\*

II.—*The Cocoa Industry in the Gold Coast, in Ashanti and in the Southern Province of Nigeria.*

Reference has been made in the main body of the Committee's Report to the rise and growth of the cocoa industry in the Gold Coast. The following table, giving the export figures for the past 13 years, will enable the rapid development of the industry to be more fully appreciated—

	Weight.		Value.	
	Lbs.	£	Lbs.	£
1901 - - -	2,195,571	42,837		
1902 - - -	5,387,405	94,944		
1903 - - -	5,104,761	86,250		
1904 - - -	11,451,458	200,025		
1905 - - -	11,407,608	186,809		
1906 - - -	20,104,504	336,268		
1907 - - -	20,956,400	515,089		
1908 - - -	28,545,910	540,821		
1909 - - -	45,277,606	755,347		
1910 - - -	50,692,949	866,691		
1911 - - -	88,987,324	1,613,468		
1912 - - -	86,197,151	1,642,736		
1913 - - -	113,239,980	2,484,218		

	Palm-Oil.		Palm-Kernels.	
	Highest.	Lowest.	Highest.	Lowest.
1910	£ s. d.	£ s. d.	£ s. d.	£ s. d.
1911	37 10 0	25 10 0	21 0 0	17 2 6
1912	37 7 6	24 10 0	21 3 9	16 7 6
1913	34 10 0	24 10 0	21 7 6	18 11 3
	37 17 6	24 15 0	25 0 0	21 7 6

I am indebted for these figures to Messrs. William Porter and Co., Liverpool.

As is pointed out in the report, Mr. William Cadbury informed the Committee that in five years the quality of the article produced had greatly improved. When Mr. Cadbury gave evidence before the Committee, the proportion of "good" quality was 35 per cent., of "fair" 50 per cent., and of "common" quality 15 per cent. Mr. Cadbury now informs me that the returns for the 1913-14 crop disclose a further advance in these proportions. The situation now reached is that "90 per cent. of the cocoa is marketable anywhere, and only 10 per cent. thoroughly common and unfit for manufacture of a better class." These estimates are based upon the Liverpool imports, but the Liverpool brokers "make the important statement that Liverpool imports during 1913 are considered a fair estimate of the whole crop. As far as we can ascertain no larger quantity of 'common' is sent direct to the Continent than to here, and the same grading, we think, would apply."

These figures must be taken as a striking example of the enterprising spirit of the native population, and dispose of the suggestion that native cultivators are incapable of improving their methods. They constitute a powerful argument in favour of encouraging native industries.

The achievements of the Gold Coast native farmer in this respect, and the evidence they afford of the wisdom of the policy of encouraging the growth of native industries in West Africa, has formed the subject of treatises by German and French experts who have visited the Gold Coast fields and reported upon them to their respective Governments. Several of these reports are publicly accessible. From the latest (by M. Yves Henry, Director of Agriculture for the French Colonies, 1913) we extract the following remarks:—

"The production, which is, without doubt, of most interest from an economical point of view, is the native production, particularly that of the Gold Coast and Lagos; and there is no more fascinating history than the spread among the dark races—considered as altogether primitive—of a cultivation hitherto thought to belong solely to civilised races

"Ten years later, in 1900, the export reached 743 tons for the two British Colonies; and 20 years later, in 1910, 26,500 tons, of which 23,300 tons were from the Gold Coast alone. If there are like examples of development by the natives in West Africa, such as the cultivation of the ground-nut in Senegal, or of maize in the Gulf of Benin, it must be admitted that this is the first instance of native tree cultivation. One finds, in an embryonic state it is true, another example of this adaptive faculty that most of the forest races of the Gulf of Guinea possess. It is in Southern Nigeria, in the Eastern Provinces, and, above all, in the neighbourhood of Benin, where the natives have planted millions of *Funtumia elastica* in dense plantations of two to five years' growth

"Everywhere else cultivations of this kind come from the initiative of Europeans; such is the case with coffee in Brazil, with tea in Ceylon, rubber trees in the Malay Archipelago, in Ceylon, in Brazil; indeed, with cocoa, too, on the East Coast of Africa.

"Here (West Africa) it is the black who has done everything; the introduction and the development of this culture are the results of his initiative and of his agricultural aptitude.

"Government action only came later on to perfect a work necessarily primitive, and, above all, to industrialise it. One must admit, therefore, that however primitive one may consider the native method of culture, Africa has its own resources, and can produce on a scale which until recent years it would have been thought incapable of. From the cultivation of the cocoa tree the Gold Coast blacks have increased their gross revenue by more than 20,000,000 francs. They have also proved that from the moment peace reigns throughout the equatorial forest, Africa will become the principal cocoa-producing country in the world. There is reason to believe that the limit of production

in the Gold Coast will not be reached for a great number of years, and that in the immense forests in Southern Nigeria there will be year by year increased planting.

The comparatively slow progress of the alternative method, and the difficulties inherent thereto in *West Africa*, viz., the system of lease or sale of lands to Europeans, and the clearing and planting of such lands by hired native labour under European management, are well illustrated in the cocoa industry of the Cameroons (German territory), which has been established on these lines, and upon which the highest scientific knowledge and abundant capital has admittedly been lavished.

Output, 1902	-	-	-	650 tons.
"	1911	-	-	4,400 "

Of the Cameroons industry, M. Yves Henry states:—

"The dividends paid have been up to now very small, firstly, by reason of the poor return obtained, but also through the heavy expense entailed by the putting down of plantations, dwellings, and machinery, and the upkeep of a numerous European staff.

"The Germans have accomplished in this colony a notable effort in colonisation, truly worthy of praise for its own sake. One cannot but regret that in their methods they have gone too far, and have not availed themselves of the simple and inexpensive methods so necessary to the success of any agricultural enterprise in Africa."

Notwithstanding the demands of the oil-palm industry upon its population, the natives of the Southern Provinces of Nigeria are also actively taking up the cultivation of cocoa, as the following figures, reproduced here from Table III., will show:—

		£
1906	Value of raw material collected and cultivated for purposes of external trade.	27,054
1907		47,840
1908		50,587
1909		71,196
1910		101,151
1911		164,664
1912		130,542

#### GENERAL CONCLUSIONS.

The following conclusions are irresistibly suggested by the facts and figures which have been set forth above.

Liberty of access to, and enjoyment and usage of, the land are vital to the present and future welfare of the peoples of West Africa who enjoy the protection of the British flag.

These peoples have shown themselves to be possessed of the requisite capacity, energy, and enterprise to exploit the vegetable resources of their soil which modern industrial development requires. They are doing so with no other stimulus to labour than is provided in their own marked aptitude for commercial dealing which is able to exercise itself freely and without hindrance through the action of the British Government in ensuring internal peace and order and the safety of the trade routes; in providing mechanical and other means of transport, and in improving waterways.

These peoples may thus be said to be adequately fulfilling their obligations towards the controlling Power, since it is their industry which pays the cost of the administration of their country, the salaries of the officials, the works of public construction, and the interest on loans; and since it is their industry which procures employment and profit both in West Africa and in Great Britain for numerous British subjects and important British commercial undertakings.

It would seem, therefore, a clear duty laid upon the paramount Power (a) to preserve liberty of access to and enjoyment of the land for the peoples of West Africa, for whom these facilities will be an increasing need as the population grows, which it will rapidly do now that it has secured for the first time in its history continuous internal peace, thanks to British control;

(b) to assist the peoples of British West Africa to expand still further their productive industries in economic freedom.

Grants to European individuals or syndicates made by the Government, or by native authorities (incapable of fully appreciating the full effects of their actions) with the sanction of the Government, involving surface rights over large areas of land for prolonged periods, or otherwise calculated to result in cramping natural expansion or in restricting native enterprise, would appear incompatible with the performance of this duty and out of harmony with the character of British policy in West Africa referred to in the opening lines of this memorandum.

The practice of conferring these grants, or of allowing them to be conferred, is frequently defended on the ground of expediency and of justice to the British taxpayer. These arguments may be briefly examined.

The regions of British West Africa to which the attentions of this Committee have been directed cost the British taxpayer nothing.

The argument of expediency in this connection means little more than a plea that commercial development should be hastened. On closer analysis it is seen to involve the giving of special privileges in the exploitation of the soil's resources to certain private interests.

What may be expedient from the point of view of private interests is not necessarily expedient on the basis of the general public interest.

It is difficult to conceive of any economic conditions under which the general commercial development of British West Africa could have proceeded at a more rapid rate than has actually taken place in recent years. It may be said to have fully kept pace with the available means of transport, expanding synchronously with the amelioration of the latter.

Indeed, development would admittedly have been even more rapid but for the inaccessibility of interior markets due to lack of transport.

The introduction of machinery may have beneficial consequences in certain industries by improving the quality, and hence the selling value, of the article produced. But no case has been made out before the Committee to the effect that such introduction—if dependent upon the grant of monopolistic rights over the land and its fruits—can result in advantage to the public interest as a whole.

The assertion that specific natural products in certain regions are not at the moment fully exploited by the inhabitants thereof, may or may not be accurate. But that assertion fails to be substantiated by evidence, such as might carry conviction, that the cause is not due to attendant circumstances which will provide an intelligible explanation.

That the agricultural and arboricultural methods of the West African are not as perfect as they might be will be readily conceded, although criticism in this respect does not appear to be altogether free from overstatement and is not strengthened by evidence of inquiry into the difficulties and drawbacks with which indigenous enterprise is confronted. Unaccompanied by data concerning the character of the soil, atmospheric conditions, insect pests, manuring facilities, labour requirements for social purposes, and so forth, criticism of this kind has little value. West Africa is a vast country where physiological conditions differ very widely, and in the absence of anything in the nature of exhaustive scientific research applied to any part of it, sweeping generalities of the kind referred to, emanating from not always disinterested quarters, should be received with caution. There is no evidence before the Committee calculated to establish that an increase in the meagre outlay now devoted to technical instruction and investigation of local circumstances, coupled, perhaps, with inducements to careful cultivation by the payment of more generous prices for products of better quality, would not have permanent results in the desired direction. It has already been noted that these factors have had considerable effects already in producing an improved quality of cocoa in the Gold Coast.

The broad fact remains, and in the face of the figures adduced in this memorandum it can hardly be disputed that, ethical considerations apart, the natives of British West Africa have justified and are justifying a policy which treats them as owners of their lands and as free exploiters, in their own interests and in the interests of the outer world, of the natural resources of those lands.

But it may be questioned whether, if it is to pursued, the time is not ripe for this policy to receive more explicit expression in legislation and more positive authority from H.M. Government.

Although it by no means stands alone, the evidence of Mr. W. H. Himbury, the manager of the British Cotton Growing Association, and whose experience of tropical Africa is lengthy and varied, may be studied with advantage. At the conclusion of his examination before the Committee, Mr. Himbury handed in a written statement for which he desired to take personal responsibility, and with which this memorandum may fittingly close:—

"If utmost and sustained endeavours be made to teach natives to grow economic products for sale for their own account on their own land, the success of that policy will almost certainly imply that natives will not care to go and work for wages on European plantations. Thus if lands are granted to Europeans by Government in the present stage of native policy the European will bring pressure on Government to relax Government efforts towards native industries and to thereby cease inducements to natives to work on their own account instead of for Europeans. If Government refuses and still continues to teach natives to plant for themselves, the European plantation owners will say that the Government has broken faith

with Europeans, in that Government attracted Europeans into the country to spend money on plantations and then deprived the Europeans of cheap labour. So Government should face this at the outset and declare their policy, if it be so, to make the native an independent farmer. Failure to do this, *i.e.*, confusion of policy in (a) granting land to Europeans while (b) pursuing the native economic policy, has already led to British East Africa becoming restless. Government ought to make it perfectly clear as to the policy they intend to adopt for the development of any Colony, or Protectorate, or any part thereof, *viz.*, whether this development is to be by means of a purely native industry with the natives cultivating the land on their own account, or by means of plantations under European management on which the natives work as hirelings."

In associating himself with the sentiments expressed in the above paragraph the present writer desires to point out that he does not interpret Mr. Himbury's statement to be condemnatory of the grant of restricted areas to Europeans in West Africa for planting purposes under proper regulations. He does, however, understand Mr. Himbury's statement to mean that in such parts of tropical Africa, as harbour a relatively abundant and industrious population, justice demands that the first consideration of Government shall be to safeguard the present and future needs of that population in the matter of land; that reasons both of justice and utilitarianism favour the commercial development of these countries by the native communities themselves working on their own account in economic independence, and that the attention of Government may be usefully directed to the advantage of adopting a clear and consistent policy in this respect.

E. D. MOREL.

(E) MEMORANDUM BY SIR F. M. HODGSON, ON THE FORMATION OF A LANDS AND MINES DEPARTMENT IN THE GOLD COAST.

GOLD COAST.

*Formation of a Lands and Mines Department.*

In order to obtain gradually a complete record of all transactions in land outside those transactions which are in accordance with native custom, and in order that the Government may effectually supervise the granting of leases for mining purposes, or for the cultivation of cocoa, rubber, cotton or other products of economic value, or again, the issue of licences to cut timber or collect the fruit of the oil palm tree or any product of other indigenous trees, it is desirable to establish a special department of the Government charged with the work of such supervision and record.

This department might conveniently be called the Lands and Mines Department. Already there is in the Gold Coast a department called the Mines Department, with functions limited to the inspection of mines in connection with their safety and to seeing that no mining is undertaken without a mining licence, and this department and perhaps also the Department for Native Affairs might together form the nucleus of the new department. Amalgamated with it, and forming one of its most important branches, would be the Survey Department. In connection with the leasing of lands, and, in fact, with all transactions relating to land, the employment of the Survey Department will frequently be necessary. It is desirable, therefore, that the staff of that department should work in conjunction with the staff of a department supervising land transactions; that, in fact, in the best interests of administration the two departments should be worked together and should be amalgamated and placed under one head.

The formation of a Lands Department is recommended by Sir Henry Belfield, and, writing on the subject of land administration, he says, at page 16 of his report: "An efficient system of land administration should provide machinery for dealing with all

"classes of land over which it is desirable to exercise control." His recommendations on the subject are given at page 24. They are suitable as far as they go, but in place of the title "Commissioner of Lands," it would seem better to take the more comprehensive title of "Commissioner of Lands and Mines," and to place the officer holding that title in charge of a department dealing with the supervision and recording of all transactions connected with land and the indigenous products of it, or with the work of surveying the land or any portions of it.

Sir Henry Belfield recommends the appointment of Settlement Officers (travelling officers with a knowledge of survey work). The appointment of such officers may or may not be necessary. Experience will show whether additional surveying officers are required, and what their qualifications should be.

The Lands and Mines Department must not interfere with the control of the Commissioners in their own districts, but must work in conjunction with them. It must be ready to assist the Commissioners in dealing with all land and mining transactions. Furthermore, it should, through its surveyors, wherever and whenever possible, settle the boundaries of tribes, the disputes with regard to which, according to the evidence before us, are not infrequently the cause of much ill feeling and unrest. Such settlement would incidentally further the work of a cadastral survey of the whole colony.

The knowledge of native affairs which the Native Affairs staff have already acquired would be of the greatest service to the proposed department. They could continue their work under the Commissioner of Lands and Mines, who should, it would seem, be the officer to be consulted in future by the Governor in all matters connected with native affairs, involved as they are, as a general rule, in land transactions.

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