

*Privy Council Appeal No. 94 of 1914.*

**Manche Kojo Ababio IV.** - - - - *Appellant,*

*v.*

**Quartey and Another** - - - - *Respondents,*

FROM

**THE SUPREME COURT OF THE GOLD COAST COLONY.**

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**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 16TH MAY, 1916.**

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*Present at the Hearing :*

THE LORD CHANCELLOR.

EARL LOREBURN.

LORD SHAW.

SIR ARTHUR CHANNELL.

[*Delivered by* THE LORD CHANCELLOR.]

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Their Lordships greatly regret that in this case they are compelled to send the parties away empty-handed, without a decision on the real merits of the controversy ; but the form of the judgment which is the subject of appeal, and the position in which this action stands, prevent their Lordships being able to deal confidently with the actual substance of the dispute. In these circumstances it would be unfair to the parties that this matter should be finally determined before their Lordships have received the advantage of a full statement of the findings of facts upon which, in part at all events, the judgment of the Court of Appeal must depend, and also of a statement of the local customs, the local laws, and the principles by which their judgment must have been guided. In all cases these matters are very material for the consideration and determination of an appeal, but in a case of this kind they are of essential importance.

The action is one which, in form, is nothing but an action for trespass. It is brought by the appellant, who styles himself the Manche of James Town, Accra, on behalf of himself and the people of James Town, Accra, against certain defendants, claiming damages for trespass. The land in respect of which the trespass is said to have been committed is certain

land near Oblogo, and a ferry that runs across the river at that spot. The original defence to the action does not in actual terms deny the title of the plaintiff, but sets up a rival title on the part of the defendants themselves; this, however, was amended, and by the amendment a further defence was raised, stating that the plaintiff was not in possession of the land. This only raised the question of the plaintiff's title inferentially. If a wrong-doer is in actual possession, the real form of action at common law should be one of ejectment, though the difference between such an action and one of trespass is now of no practical importance if the facts are properly alleged; if, however, no one is in actual possession, the person who can prove his title is deemed to be in possession sufficiently to maintain a action of trespass, while again, as against a person having no title, actual possession alone unsupported by evidence of title is sufficient. This informality in the form of the plêadings, however, need not have embarrassed the Court which tried the case in determining the question which appears to have been the real question in controversy between the parties, namely, as to whether or not the plaintiff was what he styled himself, the Manche of James Town, in the district of Accra. Whether the Court did determine this point it is quite impossible to ascertain from the form of the judgment, and it is equally impossible to ascertain from the form of the judgment of the Court of Appeal what their conclusion was upon the matter. In form, this latter judgment amounts to nothing but a non-suit of the plaintiff, a non-suit which, upon the face of the judgment, is only given in respect of a particular matter which the Court appears to have thought was essential to the maintenance of the action. The judgment runs in these terms:—

“The Court is unanimously further of opinion that inasmuch as the plaintiff was not the proper person to sue in the capacity disclosed on the writ, because his authority to do so was directly challenged by the people of the Sempes and Akumajes Quarters of James Town, but may have the right to sue in some other capacity, the plaintiff-respondent ought to be non-suited.”

Their Lordships think that this is insufficient. If there was any capacity disclosed in the course of the action which would have enabled the plaintiff to have maintained his suit he ought not to have been non-suited, but the Court ought to have allowed all the necessary amendments that were required for the purpose of enabling the use of evidence that had been obtained for the purpose of settling the real controversy between the parties. It appears that this has not been done, and their Lordships, therefore, have no alternative but to remit this action once more to the Court of Appeal in order that it may be fully and properly determined. If upon the rehearing, the judgment of the Court of Appeal is fully stated, it may be that it will satisfy the parties, and prevent further dispute; but if it does not, this Board will then have the advantage of being able to examine

and to criticise a judgment which will contain a statement of the views which the learned Judges have held, and the reasons which have led to their conclusions. Their Lordships therefore propose that the judgment of the Court of Appeal should be set aside. They do not mean by that that they have formed the opinion that the judgment upon the merits was wrong, but that upon the materials before them it is impossible for them to say that this judgment should remain, and it is essential that the matter should be reheard. The case must, therefore, be remitted to the Court of Appeal in order to obtain a judgment which will state the facts and the principles of law and custom upon which such judgment is based. There must also be a direction to the Court that if the plaintiff is in possession, or has any interest, whether personal or representative, entitling him to sue in respect of the alleged cause of action, his right to succeed ought to be determined in this action, and all the necessary and formal amendments of the proceedings should be allowed to enable this to be done. The costs of this appeal, as taxed by the Registrar, will follow the event of the re-hearing.

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In the Privy Council.

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MANCHE KOJO ABABIO IV.

v.

QUARTERY AND ANOTHER.

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DELIVERED BY

THE LORD CHANCELLOR.

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