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GH462

Judgment
37/1956

Privy Council Appeal.
No. 18 of 1953.

In the Privy Council.

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL
(NIGERIAN SESSION).

BETWEEN

CHIEF JOSEPH WOBO, CHIEF WALI WOKEKORO,
CHIEF SAMUEL ATAKO, PHILIP CHINWA, BROWN
AGUMAGU, VICTOR AMADI, APPOLOS AMADI,
AMADI WANODI, AMADI OPARA, WOBO CHARA
(Plaintiffs)

Appellants

AND

THE ATTORNEY-GENERAL OF NIGERIA (Defendant) .

Respondent.

RECORD OF PROCEEDINGS

INSTITUTION OF ADVANCED
LEGAL STUDIES
20 FEB 1957
LONDON

A. L. BRYDEN & WILLIAMS,
53 VICTORIA STREET,
LONDON, S.W.1,

Solicitors for the Appellants.

BURCHELLS,
68 VICTORIA STREET,
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Solicitors for the Respondent.

In the Privy Council.

UNIVERSITY OF LONDON
LONDON

ON APPEAL
FROM THE WEST AFRICAN COURT OF APPEAL
(NIGERIAN SESSION).

20 FEB 1957

UNIVERSITY OF LONDON
LONDON
LAW SCHOOL
LEGAL STUDIES

BETWEEN

CHIEF JOSEPH WOBO, CHIEF WALI WOKEKORO,
CHIEF SAMUEL ATAKO, PHILIP CHINWA, BROWN
AGUMAGU, VICTOR AMADI, APPOLOS AMADI,
AMADI WANODI, AMADI OPARA, WOBO CHARA
(Plaintiffs)

46076

Appellants

AND

THE ATTORNEY-GENERAL OF NIGERIA (Defendant) *Respondent.*

RECORD OF PROCEEDINGS

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ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL
(NIGERIAN SESSION).

BETWEEN

10 CHIEF JOSEPH WOBO, CHIEF WALI WOKEKORO,
CHIEF SAMUEL ATAKO, PHILIP CHINWA,
BROWN AGUMAGU, VICTOR AMADI, APPOLOS
AMADI, AMADI WANODI, AMADI OPARA,
WOBO CHARA (Plaintiffs) *Appellants*

AND

THE ATTORNEY-GENERAL OF NIGERIA (Defendant) *Respondent.*

RECORD OF PROCEEDINGS

No. 1.

STATEMENT OF CLAIM.

IN THE SUPREME COURT OF NIGERIA.
The Port Harcourt Judicial Division.

20 Between CHIEF JOSEPH WOBO, CHIEF WALI
WOKEKORO, CHIEF SAMUEL ATAKO,
PHILIP CHINWA, BROWN AGUMAGU,
VICTOR AMADI, APPOLOS AMADI,
AMADI WANODI, AMADI OPARA, WOBO
CHARA Plaintiffs

and

THE ATTORNEY-GENERAL Defendant.

STATEMENT OF CLAIM.

1. The Plaintiffs are the Representatives of the people, and successors
of the Chiefs and headmen of Abali and Ogbum Diobu, Ahoada Division,
30 in the Protectorate of Nigeria.

2. The Defendant represents the Governor of Nigeria, Resident
Rivers Province, Local Authority, Port Harcourt, and the Planning
Authority, Port Harcourt.

*In the
Supreme
Court.*

No. 1.
Statement
of Claim,
1st
February
1949.

*In the
Supreme
Court.*

No. 1.
Statement
of Claim,
1st
February
1949,
continued.

3. Prior and up to the year 1911 the area now known as Port Harcourt was known as Obomotu and the Plaintiffs and their ancestors, as lawful owners, had lived and farmed in that area without any hindrance or interference from any people whatsoever.

4. In the year 1911 (*circa* 11th May) a certain British Marine Navigator, by name D. L. Harcourt sought and obtained a resting place at Obomotu from the Plaintiffs' predecessors in title.

5. In the year 1913, Alexander George Boyle, Deputy Governor of the Colony and Protectorate of Southern Nigeria sought from the Chiefs and people of Diobu the sale of Obomotu to the Crown, but the Diobu people 10 refused, but only allowed the Government some portion for settlement.

6. By an agreement dated 18th day of May, 1913, between the said Alexander George Boyle and representatives of Diobu, Omo Eme, Omo Amassi, Omobiakpan, Oguniba, and Okrika villages the said Alexander George Boyle Deputy Governor of the Colony and Protectorate of Nigeria purported to purchase Obomotu from the Diobu people at a price of £2,000. The representatives of Diobu refused the offer and further refused to accept any money for sale of the land Obomotu, and continued so to refuse acceptance of any money, or to sale the land Obomotu to the Crown until October, 1927. 20

7. In June, 1925, in order to induce the Chiefs and headmen of Diobu to agree to the sale of their land Obomotu, the Government, through the Acting Resident (Mr. O. W. Firth) Owerri Province, offered to erect storey buildings for Chiefs Wobo, Atako, Chinwa, Wokokorom, Agumagu, Headman Ajoku Amadi, Ogbonna Aliku etc. of total estimated value of £1,900 but the Diobu Chiefs and headmen refused and opposed any further extension of the township boundary beyond No. 1 Railway Gate.

8. In June, 1927, the Government appointed Captain G. W. Cooke, District Commissioner, Degema, Arbitrator between the Government and the Diobu people. 30

9. By a report No. DC470A/652 of 5th June, 1927, the arbitrator found as of fact that Obomotu or Port Harcourt was "bounded on the North by Railway Gate No. 1, South by Nwatugbo Creek, West by Bonny River, East by Amadi Creek and is 3.5 square routes (*sic*) with economic resources amounting to five thousand pounds."

10. The arbitrator, Captain Cooke, made every attempt to persuade the Plaintiffs' ancestors to remove the boundary from No. 1 Railway Gate and extend the township boundary but the Plaintiffs' ancestors refused.

11. In 1913 the Plaintiffs' ancestors had refused an annual grant of £500 unless specific undertaking was given that the township boundary 40 would not extend beyond No. 1 Railway Gate and that their town would not be sold to any European, and the arrears from 1913 would be treated as compensation for the damage done to their crops etc., by the Government.

12. The Arbitrator gave the Plaintiffs' ancestors the assurance that the arrears from 1913 to 1927 inclusive would be paid them as compensation and an annual grant of £1,500 paid them for leasing the land to Government.

13. On the strength of that assurance the Plaintiffs' predecessors in title, on October, 1927, received the sum of £7,500 the arrears for 15 years at £500 per annum as compensation.

*In the
Supreme
Court.*

14. Up to February, 1928, by a letter No. OW.126/452 dated 30th February, 1928, to the Maidaki Abusa Seriki Hausa, Port Harcourt, the Acting Resident G. C. Cordney acknowledged that the land outside No. 1 Railway Gate was Diobu land and that Government had no land there to lease out.

No. 1.
Statement
of Claim,
1st
February
1949,
continued.

15. Despite the persistent refusal of the people of Diobu to sell their
10 land to any European or to the Nigerian Government without the knowledge and consent of Diobu people a supplementary agreement to that of 1913 dated 2nd day of May, 1928, was made between Chiefs Wobo, Ejebulam, Obonda, Aluku, Wokekoro, Atako and headmen Ajoku and Chinwa, all illiterate persons on one part and Sir Graeme Thomson Governor and Commander-in-Chief of Nigeria purporting to have sold Diobu land for the lump sum of £7,500 and an annual payment of £500.

16. The Plaintiffs claim that no purchase money of £7,500 was paid to their predecessors on 2nd day of May, 1928 ; but that the only sum paid to their predecessors was the sum of £7,500 on October, 1927, being the
20 arrears for 15 years from 1913 to 1927 which was compensation in accordance with the arbitrator's recommendation mentioned in paragraph 12 above.

17. The Plaintiffs further claim that if in fact the supplementary agreement was entered into by the said Chiefs and headmen of Diobu mentioned in paragraph 15 above, then such an agreement is vitiated and invalidated by the fraud referred to in paragraph 7 above.

18. From 1928 up to 1930 the Plaintiffs received annual payment of £500 on the understanding that the Government would carry out the recommendations of the Arbitrator to pay the Plaintiffs the annual sum
30 of £1,500 ; but the Government was not prepared to carry out that recommendation and the Diobu people in 1931 refused to accept any further payment until the balance due to them was paid and the said Government carried out the accepted recommendations of the Arbitrator.

19. In the same year, 1931, His Excellency, Sir Donald Cameron the Governor met the Chiefs and representatives of Diobu and begged and persuaded them to accept for the time being the £500 annual payment as acceptance would not affect their claim against the Government, and that they should seek their remedy in the Courts in due course.

20. Ever since the Plaintiffs began to accept the said sum of £500 per
40 annum, the Government by their servants or agents (e.g. the Local Authority Port Harcourt, the Planning Authority Port Harcourt) have by various acts trespassed on Diobu land, by extending the township boundary beyond No. 1 Railway Gate, without the knowledge and consent of the Diobu people.

21. The Plaintiffs have by various petitions, resolutions and representations protested against the act of the Government by their agents

*In the
Supreme
Court.*

No. 1.
Statement
of Claim,
1st
February
1949,
continued.

particularly the Local Authority and the Planning Authority Port Harcourt, in encroaching on the lands of the Diobu people but obtained no redress.

22. On the 6th February, 1947, after all representations to the Government against the unjust actions of its servants or agents had met with no success, the Plaintiffs petitioned the Right Honourable the Secretary of State for the Colonies, but again the Plaintiffs received reply from the Resident Rivers Province informing them that the Secretary of State was not prepared to interfere in the matter.

23. Despite the complaints and representations of the Plaintiffs 10 against the various acts of trespass and encroachment on their land by the agents of the Government, the Plaintiffs have been served various notices to quit their homes, in the area where they and their ancestors have lived from time immemorial, to abandon the sacred shrines, holy places, and last resting places of their ancestors as this is now Crown land.

24. For all the various acts of trespass complained of, the Plaintiffs claim as representatives of Abali and Ogbum Diobu :—

(A) Declaration against the Defendants their servants or agents, that the Plaintiffs are the rightful owners of all the land situate in the Rivers Province, now known commonly as Port Harcourt in 20 English language but in Diobu dialect of Ibo language Obomotu or Igwe Ocha.

(B) The sum of £30,000 compensation and damages for trespass by the Defendants their servants or agents in wrongfully entering the areas known as Diobu layout and Creek Road New block area, and destroying therein crops, plants, houses, etc., belonging to the Plaintiffs.

(C) The sum of £23,000 due to the Plaintiffs from 1928 to date being arrears of annual payment on the basis of £1,500 per annum for the area of 3.5 square miles granted to the Defendants, bounded 30 on the North by Railway No. 1 Gate, on the South by Nwatugbo Creek, West by Bonny River, and East by Amadi Creek.

(D) Cancellation of all alleged previous agreement or agreements purporting to have transferred the rights of the said Abali and Ogbum Diobu over their lands to the Defendants, these agreements being defective and tainted by fraud, and a new and equitable agreement to be concluded between the Plaintiffs and Defendants.

25. The Plaintiffs also claim an injunction to restrain the Defendants their servants and/or agents from further trespass upon the said Diobu Lay-out area and Creek Road New Block Area, or further encroachment on 40 the Plaintiffs' lands.

Dated at Aba the 1st day of February, 1949.

(Sgd.) J. ANUCHA WACHUKU,
Solicitor for the Plaintiffs.

Let right be done.

(Sgd.) J. S. MACPHERSON,
Governor.

Lagos, 19th March, 1949.

No. 2.

STATEMENT OF DEFENCE.

*In the
Supreme
Court.*No. 2.
Statement
of Defence,
4th May
1949.

1. The Defendant makes no admission as to paragraph 1 of the Statement of Claim.

2. In reply to paragraph 2 of the Statement of Claim the Defendant represents the Governor of Nigeria and the Resident of Rivers Province and no other person.

3. The Defendant makes no admission as to paragraphs 3 and 4 of the Statement of Claim.

10 4. The Defendant admits that on May 18th, 1913, an agreement (hereinafter in this defence called "the principal agreement") was made between the Chiefs and Headmen of Diobu, Ome Eme, Ome Amassi, Omobiakpan, Oguniba and Okrika lands and villages and their representatives on the one part, and Alexander George Boyle, Deputy Governor of the Colony and Protectorate of Southern Nigeria, for and on behalf of His Majesty the King, on the other part. By this agreement the said Chiefs and Headmen in consideration of a sum of money, granted and sold to the said Alexander George Boyle all the right title and interest to which they and their people were entitled by native law and custom in that piece or
20 parcel of land more particularly delineated in the following particulars:—

PARTICULARS.

30 All that piece or parcel of land bounded on the south by the waterway known as the Primrose Creek or Bonny River for a distance of three and a half miles more or less, on the west for a distance of five and a half miles more or less again by the waterway known as the Primrose Creek or Bonny River thence in a northerly direction for a distance of one mile eight hundred yards more or less by the west bank of the Creek known as the Ilechi Creek following the bends of the said Creek to a boundary post marked "A" at Ilechi Waterside thence for a distance of one mile one thousand and seventy three
yards due north to a boundary Post marked "B" on the North by a straight line measuring approximately five miles more or less from the boundary Post marked "B" in a direction due east to a boundary Post marked "C" on the Creek known as the Woji Creek on the east by the said Woji Creek for a distance approximately of one and a half miles more or less thence by the waterway known as the Okrika Creek for a distance of six and a half miles more or less to the Southern boundary referred to above containing in all an area of twenty five square miles more or less.

40 5. By the terms of the principal agreement the said Alexander George Boyle agreed to pay and the said Chiefs of Diobu agreed to accept the sum of £2,000 as their portion of the purchase price for such land which sum the said Alexander George Boyle was at all times ready and willing to pay.

6. The said Alexander George Boyle as purchaser and in pursuance of the terms of the said principal agreement entered into possession of the said land.

*In the
Supreme
Court.*

*No. 2.
Statement
of Defence,
4th May
1949,
continued.*

7. The Defendant denies that the Diobu people refused to sell the said land.

8. Save as is here expressly admitted the Defendant denies each and every allegation contained in paragraphs 5, 6 and 11 of the Statement of Claim.

9. The Defendant makes no admission as to paragraph 7 of the Statement of Claim.

10. The Defendant denies that the boundary to the land, the subject matter of the principal agreement ever passed through No. 1 Railway Gate. The Defendant makes no admission as to any allegation contained in paragraphs 8, 9, 10 and 12 of the Statement of Claim. 10

11. The Defendant admits that on the 2nd of May, 1928, an agreement was made between the Chiefs and Headmen of Diobu for and on behalf of themselves and their successors and Sir Graeme Thomson Governor of Nigeria. This agreement was supplemental to the principal agreement and varied the terms of such principal agreement.

12. By the said supplemental agreement it was agreed that instead of the sum of £2,000 which was payable to the Chiefs and Headmen of Diobu under the principal agreement there should be substituted the sum of £7,500 to be paid immediately and a further sum of £500 per annum to be paid on the 18th day of May in each year commencing on May 18th, 1928. In consideration of such sums to be so paid the parties to such supplemental agreement agreed that the principal agreement should remain in full force and effect and should be read in conjunction with the said supplemental agreement. 20

13. The Chiefs and Headmen of Diobu executed such supplemental agreement on October 29th, 1927 at Port Harcourt when they received the sum of £7,500 which sum was paid as the purchase price under such agreement. Such agreement had not been formally executed by the Governor on that date but was so formally executed on the aforesaid 2nd of May, 1928. 30

14. On May 18th, 1928 the sum of £500 was paid by the Crown and accepted by the Plaintiffs in pursuance of the said supplemental agreement. A similar sum has been paid and accepted in pursuance of such supplemental agreement on or about each successive 18th day of May up to and including May 18th, 1947. In pursuance of the terms of such supplemental agreement the Defendants tendered the sum of £500 on or about May 18th, 1948 which sum was refused by the Plaintiffs. The Defendants are ready and willing to pay such sum to the Plaintiffs in pursuance of the supplemental agreement. 40

15. Save as is here expressly admitted the Defendant denies each and every allegation contained in paragraphs 13, 15 and 16 of the Statement of Claim.

16. On May 2nd, 1928 an indenture was executed by Sir Graeme Thomson, Governor of Nigeria and Chiefs Wobo representing himself, the Chiefs and Headmen of Diobu and their successors whereby a portion of the land, the subject matter of the principal agreement and which

portion is more particularly described in the said indenture was reconveyed to Chief Wobo for himself and the people of Diobu. The grantee, Chief Wobo executed this indenture on October 29, 1927.

*In the
Supreme
Court.*

17. The Defendant makes no admissions to paragraph 14 of the Statement of Claim.

No. 2.
Statement
of Defence,
4th May
1949,
continued.

18. In reply to paragraphs 7 and 17 of the Statement of Claim the Defendant has been guilty of no fraud which would invalidate or vitiate such supplemental agreement or at all.

19. The Defendant denies that the Government promised to pay to the Plaintiffs an annual sum of £1,500 or at all. The Defendant denies any act of trespass to the land of the Plaintiffs by any agent or servant of the Defendant or at all.

20. The Defendant denies each and every allegation contained in paragraphs 18, 19 and 20 of the Statement of Claim.

21. The Defendant makes no admissions as to any allegation contained in paragraphs 21 and 22 of the Statement of Claim.

22. The Defendant makes no admissions as to paragraphs 23, 24 and 25 of the Statement of Claim.

23. By virtue of section 29 of the Crown Lands Ordinance (Chapter 84) the Defendant avers that that piece or parcel of land referred to in the particulars annexed to paragraph 4 of this defence excluding that portion of land the subject matter of the indenture referred to in paragraph 16 of this defence is Crown Land.

Dated the fourth day of May, 1949, at Crown Counsel's Chambers, Enugu.

(Sgd.) G. G. BRIGGS,
Crown Counsel
Counsel for the Defence.

No. 3.

30 **MOTION ex parte and Affidavit to sue in Representative Capacity.**

TAKE NOTICE that this Honourable Court will be moved on Monday the 20th day of November, 1950, at 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the Plaintiffs for an Order for Plaintiffs to sue in a representative capacity and for such further order as the Court may deem fit.

This motion is brought under Order IV Rule iii of the Supreme Court Rules.

Dated the 20th day of November, 1950.

(Sgd.) CHUBA IKPEAZU,
Plaintiffs' Solicitor.

40

No. 3.
Motion
ex parte
and
Affidavit to
sue in
Representa-
tive
Capacity,
20th
November
1950.

AFFIDAVIT IN SUPPORT OF MOTION.

*In the
Supreme
Court.*

No. 3.

Motion
ex parte
and
Affidavit to
sue in
Representa-
tive
Capacity,
20th
November
1950,
continued.

WE NWOGU CHINWA, WALI CHIOKWA, JOSHUA AMADI, PETER NWOKE, JOHN OGBONDA, and FRANK NWANODI of Abali and Ogbum Diobu, British Protected Persons, residing at Diobu, Port Harcourt, farmers make oath and say as follows :—

1. That we are natives of Abali and Ogbum Diobu.
2. That in December, 1948, a meeting of all the community of Abali and Ogbum Diobu was held to discuss about the above action at which meeting we were present.
3. That it was decided at the meeting that this above action should 10 be taken.
4. That the above Plaintiffs were appointed and authorised by the people as a whole to bring this action on behalf of the people of Abali and Ogbum Diobu.
5. That we make this affidavit in support of a motion here attached.

Sworn at the Supreme Court Registry,
Port Harcourt this 20th day of
November, 1950, the above having
been interpreted in Ibo to the
deponents who appeared perfectly to
understand the same by me

20

(Sgd.) J. J. UGORJI
Sworn Interpreter.

Nwogu Chinwe (X) H.R.T.I.
Wali Chiokwa (X) H.R.T.I.
Joshua Amadi (X) H.R.T.I.
Peter Nwoke (X) H.R.T.I.
John Ogbonda (X) H.R.T.I.
Frank Nwanodi (Sgd.)

Before Me,

(Sgd.) C. Obiesie Oduah
Commissioner for Oaths.

30

COURT NOTES AND ARGUMENTS

Monday the 20th day of November, 1950.

Ex parte motion to sue in representative capacity.

Ikpeazu and *Wachuku* for motion.

ORDER in terms of notice of motion with the addition that this order shall be advertised in the *Eastern Nigeria Guardian*, the *West African Examiner* and *People Press* three times at intervals of two days.

(Sgd.) M. J. ABBOTT.

*In the
Supreme
Court.*

No. 4.
Court
Notes and
Arguments,
20th
November
1950.

10 *Ikpeazu* applies to amend Statement of Claim in para. 24 (D) by (1) deleting the words "These agreements being defective and tainted by fraud" and substitution thereof of the words "in that the parties were not *ad idem*" (2) deleting the words "and equitable."

Madarikan points out that at last hearing *Wachuku* said allegation of fraud in para. 17 of Statement of Claim was persisted in.

Ikpeazu says he has not had time to read the Statement of Claim and did not know that fraud was alleged elsewhere. He now applies for further amendment by deleting allegations or mention of fraud wherever it appears in Statement of Claim. He does not know if *Wachuku* agrees
20 with this. I ask this question because of *Wachuku's* persistence in allegations of fraud at last hearing. *Wachuku* on being asked direct if he agrees with the application of *Ikpeazu* says that he does and has changed his mind since the last hearing. *Ikpeazu* asks to delete para. 17 of Statement of Claim.

Madarikan does not oppose this second amendment or the first.

Statement of Claim amended as asked in paras. 24 (D) and 17. Question of costs of amendment to be dealt with later.

Ikpeazu now says that if order on motion is to be advertised there should be an adjournment to allow any possible interested person to
30 object or be brought into the action. I point out that this motion could have been made at any time during the past 5 months and any adjournment will involve Plaintiffs in further heavy costs. Therefore I suggest Plaintiffs should indemnify Defendants against any further actions.

Although the motion is *ex parte* I ask views of Crown Counsel. He agrees that para. 4 of Affidavit does not give sufficient particulars. In the circumstances, I vary my order to this extent that there will be an order in the terms of Notice of Motion, the Plaintiffs, before the order is drawn up, will sign an indemnity in favour of Defendants to indemnify them against any other actions, claims and demands by any
40 of the people of Abali and Ogbum Diobu arising out of the same facts as are pleaded in this case. Terms of indemnity to be agreed by Plaintiffs' and Defendant's counsel. This order is essential as affidavit in support of motion does not show definitely enough that deponents represent *all* the people of Abali and Ogbum Diobu.

Adjourned pending disposal of P/23/50.

*In the
Supreme
Court.*

Continued. Counsel as before.

Plan is agreed.

No. 4.
Court
Notes and
Arguments,
20th
November
1950,
continued.

Ikpeazu thinks he will call "about six" witnesses. He cannot be more definite than that. They are all here except one, the Surveyor, who is sick.

Ikpeazu indicate that his clients will appeal against order on motion and submits that this involves adjournment of case.

Madarikan suggests case be proceeded with.

Order on Motion can be divided into two parts.

(1) That Plaintiffs sue in representative capacity. 10

(2) Indemnity—if W.A.C.A. reverses this part of order Plaintiffs are in order and Crown may be exposed to further actions.

Order: The action must proceed. Plaintiffs have leave to sue in a representative capacity and that is what they asked for. The action will proceed without prejudice to the appeal to be lodged by Plaintiffs against my order on the *ex parte* motion.

(Sgd.) M. J. ABBOTT.

Ikpeazu refused to proceed with the action so long as the order as to indemnity remains, in spite of being informed of my order immediately above, but says he wishes to appeal against that part of the order on the *ex parte* motion which imposes the indemnity. He says he will file motion for conditional leave to appeal immediately. 20

Madarikan applies that action be struck out. Adjourned further till 12 noon for *Ikpeazu* to consider this application.

(Sgd.) M. J. ABBOTT.

On resuming, counsel as before.

Ikpeazu has now filed two motions which *Madarikan* agrees to deal with today.

No. 5.

ORDER on ex parte Motion.

In the
Supreme
Court.

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Port Harcourt Judicial Division.

Suit P/6/1949.

Between CHIEF JOSEPH WOBO AND NINE OTHERS Plaintiffs

and

THE ATTORNEY-GENERAL . . . Defendant.

No. 5.
Order on
ex parte
Motion,
20th
November
1950.

UPON MOTION (*ex parte*) in the above case coming up on the
10 20th day of November, 1950, at Port Harcourt ;

AND AFTER HEARING C. Ikpeazu, Esq., of counsel for the
Plaintiffs, in support of the motion ;

IT IS HEREBY ORDERED THAT the Plaintiffs be and are hereby
allowed to prosecute the above case in their representative capacity ;

IT IS ALSO ORDERED THAT the Plaintiffs do sign an indemnity
in favour of the Defendants to indemnify them against any other actions,
claims and demands by any of the people of Abali and Ogbum Diobu
arising out of the same facts as are pleaded in this case ; and that the
form of this indemnity be agreed upon by Plaintiffs' and Defendant's
20 counsel.

Given at Port Harcourt under the Seal of
the Court and the hand of the Presiding
Judge this 20th day of November, 1950

(Sgd.) C. OBIESIE ODUAH,
Registrar.

No. 6.

COURT NOTES.

No. 6.
Court
Notes,
19th July
1951.

Before—

HIS HONOUR MR. JUSTICE OLUMUYIWA JIBOWU, Puisne Judge.

30 Thursday the 19th day of July, 1951.

Ikpeazu (*Wachuku* with him) for the Plaintiffs.

Madarikan, Crown Counsel, for the Defendant.

Ikpeazu asks for leave to amend the Statement of Claim by restoring
paragraph 17 and amending the paragraph by deleting the words " by the
fraud referred to in paragraph 7 above " and substituting the words " in
that the parties were not *ad idem*."

Madarikan has no objection. Amendment is granted.

Ikpeazu opens Plaintiffs' case.

*In the
Supreme
Court.*

No. 7.

EMMANUEL FILA HART.

*Plaintiffs'
Evidence.*

Examined by Ikpeazu.

1st Plaintiffs' witness—EMMANUEL FILA HART, male, Ijaw, sworn on the Bible, states in English language as follows :—

No. 7.

Emmanuel
Fila Hart,
19th July
1951.

Examina-
tion.

" A "

" B "

" C "

" D "

" E "

I am 3rd class Lands Clerk in the Office of the Resident, Rivers Province. I am instructed by the Resident to appear and produce documents from his custody. We have not got Captain Cooke's Inspection Notes on Diobu land. His recommendation as to how much to pay for Diobu land cannot be traced in the office. We cannot trace any letter 10 written by the Resident, Owerri, to one Maidaki in February, 1928. I tender a copy of the Resident's letter to the Lands Officer, Port Harcourt, dated the 11th May, 1929, marked Exhibit " A " ; also letter No. M. P. O.W.286/1928 to the Lands Officer, Port Harcourt, marked Exhibit " B. " Also Colonel Moorhouse's memorandum No. C.22/22, marked Exhibit " C " ; also Superintendent of Agriculture's valuation of Diobu land, marked Exhibit " D " ; also notes of the meeting held at Port Harcourt by His Excellency the Governor on September 20th, 1932, marked Exhibit " E. " We have not got letter No. OW/B/S.P.S. 393/1 from the Lands Officer, Port Harcourt to the Resident, Owerri. 20

(N.B.—*Ikpeazu* seeks to put in a Memorandum containing an advice given to Government on Diobu land question by the Acting Attorney-General in 1922.

Madarikan objects to the production of this document on the ground of public policy. He asks the Court for time to produce the Chief Secretary's certificate which is not now available and the matter is therefore left over until later.)

There are 515 plots on Diobu D. area. The area is from Bonny River northwards to Diobu Halt, eastward and southward to the sea, westward to near mile 2 on Owerri Road. Harbour Road is included. 30 The area starts from Railway Gate No. 1 and is known as Diobu Layout. The largest plots in the section measuring 100' × 50' are given out at £1 per annum. Not all the plots have, as yet been allocated. Allocation of the plots started in 1948. I cannot tell the dimensions of each of the 515 plots. I am not in a position to say the number of plots on Port Harcourt, known before as Obomotu.

N.B.—*Witness to stand down, to be recalled later.*

No. 8.

OSMOND JAMES OSADEBE.

*In the
Supreme
Court.**Examined by Ikpeazu*

2nd Plaintiffs' witness—OSMOND JAMES OSADEBE, male, Ibo, sworn on the Bible, states in English language as follows :—

*Plaintiffs'
Evidence.*

No. 8.

Osmond
James
Osadebe,
19th July
1951.Examina-
tion.
" F "
" G "

I am the Assistant Registrar, Lands Department, Enugu. I tender the original agreement between the Chiefs and headmen and the Government, marked Exhibit " F." I tender also an agreement between Chiefs Wobo, Ejebuwan etc. of Diobu and the Governor dated 2nd May, 1928, marked Exhibit " G." I am not in possession of Captain Cooke's report of 1928. Port Harcourt is divided into Government Residential Area and Non-European Location. I do not know the acreage of the areas. We have plans of Port Harcourt in our office but they are not in Court. The plans will show the division of Port Harcourt and its acreage.

Cross-Examined by Madarikan. I tender the original agreement between the Governor and Chief Wobo in respect of grant of land at Port Harcourt, marked Exhibit " H." There was a section of the Lands Department under the control of the District Officer, Port Harcourt, but there is now a Town Planning Office instead. Port Harcourt Town Planning Authority now deals with all land matters in Port Harcourt.

Cross-
examina-
tion.
" H "

No. 9.

PHILIP CHINWA.

No. 9.
Philip
Chinwa,
19th, 20th
July 1951.*Examined by Wachuku*

3rd Plaintiffs' witness—PHILIP CHINWA, male, Ibo, sworn on the Bible states in Ibo language as follows :—

Examina-
tion.

I am a native of Diobu and one of the Plaintiffs in this case. I and the other Plaintiffs represent Diobu people. About four years ago, Diobu people held a meeting and we were appointed to represent them.

I know all about the subject matter of this action I remember when a European first came here. I was then clearing bush with Ezekiel Amadu, Amade Wawem, Simon Atako and many other people. Two Europeans came up with a police constable, and a dog. We were frightened and so ran home. They landed at Ajaocha, now the site of the " Coal tip " where we have a wharf. The Europeans came to Chief Atako. One of them spoke through the policeman and asked for land to settle. Chief Atako refused. The European said they would go away but would come back again. They returned about 3 weeks later. There was then a meeting of Diobu men. The European who spoke before again asked for land to settle on from where he could go to Umukuruso and Isiopo. He asked us to come to the waterside where he had built some huts. He told us he was going to use the place as his rest house and our people agreed. We later discovered that his name was Harcourt.

*In the
Supreme
Court.*

*Plaintiffs'
Evidence.*

No. 9.
Philip
Chinwa,
19th, 20th
July 1951.

Examina-
tion,
continued.

“ F ”

About 2 years later the European and his boys cleared the bush and made a road to our place. The European took me about in his launch and asked for the names of the different places on the waterside. Chief Wobo and his son Joseph also went in the launch with us. The 1st and 2nd Plaintiffs are the two others. Ajoko Amadi, now dead, also went with us in the launch. Harcourt also asked us for the owners of the land on the waterside.

Later on a man said to be Governor came and offered to buy our land Obomotu, now known as Port Harcourt. Our people refused to sell as we did not sell our lands. He came to us several times and tried to persuade us to sell the land, but we refused. To my knowledge no agreement of sale was entered into by our chiefs. I know our native law and custom. It is not our custom to sell our lands. Diobu land is communal and every Diobu man is entitled to work on the land. Obomotu belonged to all Diobu people. Everybody should be present whenever any agreement is to be signed. People who were supposed to have executed Exhibit “ F ” are not Diobu people. We got a certified copy of the agreement three years ago. Our people did not agree to sell the land for £2,000 nor did we receive the money. I know Acting Resident Firth of Owerri. He came and summoned a meeting of our people about 20 years ago. He asked the chiefs to agree to sell Obomotu ; he offered to build them storey houses if they agreed ; the chiefs refused to sell and rejected his offer to build them storey houses. Up to that time our people accepted no purchase price for Obomotu. In 1927 our people accepted money from the Government. Then a District Officer, named Cooke, came from Degema to make peace between us and the Government. He asked us to show him the extent of the land we were willing to allow Government to have. We took him to Miller Brothers' premises and showed him the place as the boundary beyond which the Government should not go. He told us it was not sufficient and took us to the Railway Gate at the level crossing on Owerri Road. We refused to extend the land to the Railway Gate. We then cleared bush from the Railway Gate to the European Club, down to Amadi Creek to behind the P.W.D. down to the Hospital then to Watugbo creek, to Bonny River and back to the Railway Gate. He promised to come back within 2 weeks to see chief Wobo and communicate to him his findings. When he came back he told us to allow Government to have land up to the Railway Gate on payment of £1,500 per annum. The offer was refused. Our people later on received £7,500 from Government as compensation for our crops on the land acquired by Government. It was said to be compensation at £500 per annum from 1912-1927. The Government called it Rent but we took it as compensation.

(Sgd.) O. JIBOWU,
Judge.

19/7/51.

Friday the 20th day of July, 1951.

PHILIP CHINWA, warned that he is still on his oath, continues :—

In 1927 the Resident invited us to his office and said he was going to pay us compensation for crops trees and houses destroyed on our land and rent. We agreed. In 1928 we were paid £500 ; the same amount of money was paid to us in 1929. In 1931 we refused to accept the £500.

We did not accept Captain Cooke's offer of £1,500 per annum. We refused £500 in 1931 as we wanted to be sure that it was compensation for crops destroyed. In 1931 Governor Cameron invited us to the Resident's Office and asked why we had refused to accept the £500. We told him we were told in 1927 that we would be paid compensation for our crops etc. on the land and substantial rent. We were not told what the substantial rent would be ; we were only promised a reasonable amount. Captain Cooke told us we would be paid £1,500 every year.

10 The Governor told us he could not do anything more for us and that we could go to Court. Between 1931 and 1948 we wrote to the Governor to say that our compensation was inadequate. I tender two of the replies to our letters to Government, marked Exhibits " J and J 1 " respectively. Barristers Solanke, Akerele and Alakija wrote some letters for us. We wrote to the Secretary of State. We received a reply through the Local Authority. I tender the reply, marked Exhibit " K." We have had no negotiation with Government in respect of land beyond Railway Gate No. 1. We have houses, tenants and farms on the land beyond the Railway Gate. Without obtaining permission we let lands to strangers ; the strangers pay us tribute in palm wine.

20 The land between Barrack Road and the Hospital was granted to the Government. The Government has extended Port Harcourt township beyond the Barrack and the hospital up to Ohiamati Creek and have let out the land in plots. The Government have also built houses and let out plots beyond the European Club House. They have also let out land beyond the No. 1 Railway Gate in plots. We did not give Government permission to do this. The Government gave us notice to quit but we sent the notices back. This was about 4 years ago. Our ancestors built some of the houses and lived there. We have farms on the land Government had taken from us beyond the Railway Gate. We have to
30 beg other people to give us land to farm. We therefore ask the Court to declare that we are the owners of Port Harcourt or Obomotu. We want the Court to cancel our old agreements to enable us to make new ones. We claim also balance of £1,000 a year rent from 1928—1948, and damages for trespass on our lands, and also an injunction to restrain the Government from further trespass.

Cross-Examined by Madarikan. I am also known as Philip Onyeche Chinwa. I know Amadi Chinwa ; he is my uncle.

40 About 40 years ago Harcourt came to Obomotu. I was then about 17 years old. Joseph Wobo is about 3 years older than I. My father was alive in 1911 when Harcourt came here. There were elderly people in my house then. Many elderly people discussed the affairs of our community. I was present at all the discussions held in 1911. Harcourt took me round in his launch. About five Diobu men were in the launch. This was about 1913. Yes, I want the Court to believe that I was an important member of our community then as I was very smart. Joseph Wobo's father died in 1932. Chief Atako at first refused to give Harcourt land but subsequently gave him land on which to build his Rest House.

My father Chinwa was a Chief but he was put down in Government Book as Headman Chinwa. He was alive in 1928. Then it was my father

*In the
Supreme
Court.*

*Plaintiffs'
Evidence.*

No. 9.
Philip
Chinwa,
19th, 20th
July 1951.

Examina-
tion.

continued.

" J "

" J1 "

" K "

Cross-
examina-
tion.

*In the
Supreme
Court.*

*Plaintiffs'
Evidence.*

No. 9.

Philip
Chinwa,
19th, 20th
July 1951.

Cross-
examina-
tion,
continued.

" F," " G,"
" H "
" G "

who should attend to our public affairs unless he instructed me to see to it. The Governor did not offer any price for our land in 1913. I know about all the meetings I attended. I attended all. I attended with my father. Whenever he was unable to go, he used to ask me to attend. I heard of Exhibits " F, G and H " only about 3 years ago. I want the Court to believe that I attended all the meetings and yet did not know about the agreements. I never heard that Government gave my people a Treasury Voucher for £2,000 in 1913.

A European came in 1923 as Arbitrator but I do not know his name. The arbitration lasted 2 or 3 days. We did not agree with his proposals, so he left. We received £500 yearly up to 1931. Between 1931 and 1947 we received £500 yearly. 10

In 1927 Diobu received £7,500. My father was a signatory to Exhibit " G." The agreement Exhibit " G " is not correct when it says the money was purchase price. The money was paid not on the day the agreement was executed. We received £300 also in 1927; it was compensation for 60 houses demolished. The £7,500 was also in respect of houses demolished. The Railway demolished the other houses for which £300 was paid.

Governor Cameron came here in 1931 and held a meeting on a Sunday with the Diobus; I was present at the meeting which took place in the Resident's Office. He promised to make an economic survey of the land in dispute. Exhibit " J " refers to the result of the survey. By consent, letter to which Exhibit " J " is the reply is put in evidence and marked Exhibit " J2." (N.B.—Exhibit " J2 " is read over to the witness.) Yes Lawyer Alakija wrote the letter. My father made his mark on the latter in the presence of G. B. O. Chinwa whom I know. Reference is made in the letter to the 1928 agreement. My father and I know about it. Exhibit " J1 " is the reply to the letter now read out to me and marked Exhibit " J3." In Exhibits " J2 " and " J3 " we asked Government to increase £500 being paid yearly. We did not then suggest that £7,500 paid was compensation and not the purchase price. In 1937 Government had already occupied land beyond Barrack Road and the European Club. They had not then gone beyond the Railway Gate No. 1. We made no reference to the alleged trespasses in our petitions. Our tenants pay us tribute in palm wine, according to our custom. Anyone wanting land from us must negotiate with people appointed by the people as their representatives. 20 30

Re-
examina-
tion.

Re-examined by Ikpeazu. Captain Cooke promised us a rent of £1,500 per annum. At first we refused to accept it. He offered us compensation for the demolition of our houses and we accepted his offer. Nothing was paid until 1927 when we were paid £7,500. Government told us the money was rent as from 1912 at £500 per annum. We did not accept it as rent for the period 1912–1927. We accepted it only as part rent. " Everybody " is to be present at the meeting at which public affairs are to be discussed. Then the meeting appoints representatives. The representatives are to negotiate for the community in accordance with our custom. It is imperative that they should act in accordance with our custom. I first saw the agreement of 1913 in 1948 and the one of 1927 about four years ago. 40 50

Cross-examined by Court. The man who was Chief Wobo in 1913 is dead ; he was alive in 1927. The man who was Chief Ejebuwan in 1913 is now dead ; he was alive in 1927. Chief Obonda Aluku was chief in 1913 ; he died in 1926. The man who was Chief Wokekoro in 1913 died before 1927 ; he was succeeded as Chief Wokekoro by his son Wali. The same man was Chief Atakos in 1913 and 1927. Ajoko Amadi was headman in 1913 and in 1927. Chinwa was also headman in 1913 and 1927.

*In the
Supreme
Court.*

*Plaintiffs'
Evidence.*

No. 9.

Philip
Chinwa,
19th, 20th
July 1951,
continued.

The 1st Plaintiff is the son of Chief Wobo who was Chief in 1913 and 1927. The 2nd Plaintiff succeeded his father as chief. The 3rd Plaintiff is the son of Chief Atakos. I am a son of headman Chinwa. The 6th Plaintiff is a brother of headman Ajoko Amadi. The 7th Plaintiff is not a relation of Ajoko Amadi. I am surprised to hear that the same chiefs signed Exhibits " F " and " G." The seven chiefs and headmen who signed the agreements were our chiefs. I am surprised to hear that the chiefs purported to sell Diobu land by Exhibits " F " and " G."

Cross-
examina-
tion.

" F," " G "
" F," " G "

Okrika Creek is a boundary of the land we claim now. The land granted to Government does not extend to Okrika Creek. I lived in the same house with my father ; he did not tell me about the agreements. Allagoa was the interpreter in 1927 ; he interpreted for us when the 20 £7,500 was paid. I know also Kalabari interpreter Yellowe.

No. 10.

SAMUEL ATAKO.

Examined by Ikpeazu.

4th Plaintiff's Witness—SAMUEL ATAKO, male, Ibo, sworn on the Bible, states in Ibo language as follows :—

I am a native of Diobu. I am the 3rd Plaintiff ; we were authorised by our people to take this action. I know Obomotu, now known as Port Harcourt. It is occupied by the Government. I know how Government came to be on the land.

30 About 40 years ago, two white men came to Obomotu. Harcourt and Hargrove were the men. I saw them arrive. They came to Diobu to discuss about Obomotu land. They asked for a piece of land by the site of the present wharf for a Rest House. Our people agreed and they put up sheds by the waterside.

Later on some white people offered to pay 20 bags of money (£2,000) for Obomotu. Our people refused to sell. The area required is bounded by Watugbo Creek, Railway Gate No. 1, European Club, Amadi Creek, Bonny River. The matter was discussed at Diobu and Port Harcourt. I attended the meetings with my father. Lands are never sold ; that is 40 our custom.

No. 10.
Samuel
Atako,
20th, 21st
July 1951.

Examina-
tion.

*In the
Supreme
Court.*

*Plaintiffs'
Evidence.*

No. 10.
Samuel
Atako,
20th, 21st
July 1951.

*Examina-
tion,
continued.*

" F "
" F "
" F "

Two of the people who executed Exhibit " F " were not our people ; they are Ejebuwan and Aluku. They are Diobu people but they had no interest in Obomotu land. The signatories to Exhibit " F " had no authority to sell our land. Our native law and custom did not permit of sale of land. The chiefs who executed Exhibit " F " could not sell our land. No money was paid to our people as purchase price. The District Officer at Degema, Cooke by name, came to discuss the matter with us about 14 years later. Resident Firth also spoke to us about the matter; he promised to build storey houses for our chiefs if they would sell the land. The chiefs refused to sell. Captain Cooke stated that he wanted to make peace between us and Government. He asked us to give Government a place to settle and that Government would pay us yearly rentage. 10

(Sgd.) O. JIBOWU,
Judge.
20.7.51.

Saturday the 21st day of July, 1951.

SAMUEL ATAKO, warned that he is still on his oath, continues :—

We agreed to give Government land up to the shop of Miller Brothers ; he did not agree. We then offered to give Government land up to No. 1 Gate, Amadi Creek, P.W.D., the Hospital and Barracks, Watugbo Creek, Bonny River ; he agreed. He promised us £1,500 rent per annum. We accepted the offer. We are now in 1951. Our discussions with Captain Cooke took place in 1927. Captain Cooke told us that £1,500 would be paid for every year the Government had been on the land up to 1927. Seventy-five bags of money were paid us that year as also 3 other bags of money. We were told that the 75 bags of money were part of the money promised us by Captain Cooke and that the 3 bags of money were compensation paid in respect of houses destroyed during Railway Construction. The 75 bags of money represented part rent for 15 years. We asked for the balance of 10 bags of money for every year of the 15 years. We were told to accept the 75 bags without prejudice to our claim for the balance. We therefore accepted the 75 bags. 20 30

The Government did not tell us how long they were going to keep the land. We did not discuss the question. The balance for the 15 years up to 1927 was not paid to us. Since then we were paid 5 bags of money yearly. The money, we were told, was rent for land. We told Government that the money was inadequate and did not satisfy us. We wrote petitions to the Government. Exhibit " J3 " is one of them. I signed Exhibit " J3 " in 1937. Our people did not make Exhibit " G." The £7,500 paid to us was rent and not purchase price. The land given to Government did not extend beyond No. 1 Railway Gate. The land beyond the Railway Gate belongs to us. We live on it ; we farm on it also. We pay no rent to Government in respect of the land. 40

" J3 "
" G "

The Government has built on one side of the land. They started to build on the land about three years ago. The houses were built without our permission.

The Government had also gone on our land beyond the barracks. The area is known as the new block and it extends to Gborokiri. Many houses have been built in the area by Government without our permission. The Government also went on the land in which the Marine and Magazine are without our permission. The Government has also built houses between the European Club and the European Hospital. We ask the Court to declare that we, the Diobus, are the owners of Obomotu and that Government extensions are trespasses on our land for which we are entitled to damages. We ask the Court also to restrain the Government from further trespass on our land. We claim £3,000 compensation for the trespass. We claim also arrears of rent up to 1947 at the rate of £1,500 per annum. We want the Court to cancel our agreements with Government.

In the Supreme Court.
Plaintiffs' Evidence.
 ———
 No. 10.
 Samuel Atako,
 20th, 21st
 July 1951.
 ———
 Examination,
continued.

Cross-Examined by Madarikan. My father was Chief Atakos; he died in 1931. Philip Chinwa and I are of the same age. I first knew of Exhibit " F " three years ago. I knew about Exhibit " G " four years ago. I can sign my name. I signed Exhibit " J2." It was read over and interpreted to me and others by G. B. O. Chinwa. I was one of the people who instructed Lawyer Alakija to write Exhibit " J2." It was written on the 19th July, 1934. I do not know if Exhibit " G " is the agreement referred to in Exhibit " J2." The document referred to might be Exhibit " G." We did not suggest in Exhibit " J2 " that the signatories were not *ad idem* with Government as to the terms of the agreement. I signed also petition Exhibit " J3." In it we asked Government for increase in the yearly rent. We did not suggest in the petition that the chiefs who executed Exhibits " F " and " G " did not understand the terms of the agreement.

Cross-examination.
 " F "
 " G "
 " J2 "
 " J2 "
 " G,"
 " J2 "
 " G "
 " J3 "
 " F," " G "

There was a place called Rubem in 1911. The meaning of Rubem is sea. Ajaocha means white sand.

I was in Court when Philip Chinwa gave evidence. I heard him tell the Court that he went with Harcourt in his launch. I was in the launch with my father. Wokekoro, Philip, Chief Wobo, Joseph Wobo, Ajoko Amadi were also in the launch. There might be other people whose names I do not remember. All the people whose names I have mentioned are Diobu men. I heard Philip say there were only 5 Diobu men in the launch.

The Policemen in the launch were armed. We returned home that day in the evening. In 1913 some Europeans offered to buy Obomotu for £2,000. The limit of the land by the Hospital is Watubo Creek. I referred to Resident Firth in my evidence. I can read English. I learnt to read in 1934. I was about 17 years old in 1911. My father was then alive; he was an old man. He had grey hairs. My father did not sign any agreement made with Government. I am not surprised that the signatories on Exhibits " F " and " G " are the same. Any one can write the name of another and put X mark against the name.

" F," " G "

I knew District Interpreter Yellowe. I hear the affidavit as to execution of Exhibit " F " read over to me. Edjebuwan and Aluku are Diobu people.

" F "

*In the
Supreme
Court.*

*Plaintiffs'
Evidence.*

No. 10.
Samuel
Atako,
20th, 21st
July 1951.

*Cross-
examina-
tion,
continued.
" H "*

I know Mr. Allagoa, Interpreter. I hear his affidavit on Exhibit " H " read. I still maintain that the chiefs' marks were forged as two of the signatories were not our own people. I heard Philip Chinwa give evidence that the £7,500 paid was compensation for the houses, crops and trees destroyed on our land but as Government called it rent, I called it rent also. Balance of £15,000 was due to us in 1927 when we received £7,500. We have no written paper in support of our claim for £1,500 yearly rent. Government offered us £1,500 per annum through Captain Cooke. We did not refer to the amount of £1,500 in any of our petitions to the Government, but we told Governor Cameron verbally about it, and he told us to go to Court. The Resident gave us notice to quit land beyond No. 1 Gate in 1947, within a year. We were asked to remove our crops from the land. Amadi Creek is one of the boundaries of the land we granted to Government. I told the Court that extension beyond the Barrack at Port Harcourt was by force. Government went on the land without our permission. The Chiefs and Elders with the young men of the town have to take part in looking after the affairs of the town. All members of the community have to take part in the negotiation for sale of our land. 10

" F "

I do not know if the signatures on Exhibit " F " are genuine. I attended all the meetings with my father. It is true that Captain Cooke offered us £1,500 which we accepted. 20

*Re-
examina-
tion.*

Re-Examined by Ikpeazu. One Palmer in the Resident's Office brought out a book for us to see Captain Cooke's Report but the Resident closed the book. This was in 1947.

*Cross-
examina-
tion.
" J2 "*

Cross-Examined by Court. I do not know Government and my people had entered into any agreement. I hear paragraph 4 of Exhibit " J2 " read out to me.

(N.B.—The witness refuses to answer the question whether he still says that he did not know that his people and Government had entered into an agreement.) 30

(Sgd.) O. JIBOWU.

Judge.

21/7/51.

No. 11.
WALI WOKEKORO.

Tuesday the 24th day of July, 1951.

Solomon Lumati is sworn in as Ibo Interpreter—Diobu dialect.

Examined by Ikpeazu.

5th Plaintiffs' witness—Wali Wokekoro, male, Ibo, sworn on the god of iron, states as follows :—

I am the 2nd Plaintiff. I am one of the people authorised to bring this action. I know the land Obomotu. I know Government occupies
10 Obomotu land. About 40 years ago two white men asked for our permission to settle at Aja Ocha. They wanted only a small piece of land to build their Rest House. We gave them the permission sought.

About 2 years later, they said they wanted to buy our land and offered £2,000. We refused the offer as we did not sell our land. It was not our custom to sell our land. The money was not paid to us. Chief Wokekoro was my father. I was present at all the discussions about the land. The white man promised to build us nice houses if we accepted £2,000 for our land but we still refused his offer. The Government then took our land, pulled down our houses and destroyed
20 our crops.

A Captain Cooke later came to us as an arbitrator between us and Government. We walked round the area already occupied by Government. He wanted an extension beyond No. 1 Gate. We agreed that No. 1 Gate should be Government boundary on one side. The boundary continued to Amadi Creek and to the P.W.D., to the Hospital to Watugbo. The land given to the Government did not extend beyond No. 1 Gate. Captain Cooke told us we would be paid £1,500 yearly by Government. We did not agree to sell the land but to lease it. We were afterwards paid £7,500 as compensation. Captain Cooke told us that the receipt of
30 £7,500 would not debar us from demanding and getting £1,500 as annual rent. We subsequently received annual rent of £500. We told Government that £500 was not sufficient. We asked for the balance of £1,000 as Captain Cooke had promised us £1,500 per annum. When the balance was not paid we stopped receiving £500 per annum.

I succeeded my father. My name is Wali Wokekoro. I did not put my mark on any agreement with Government in 1928. We then took action against Government as we did not agree to accept £500 a year. We live and farm on the land beyond the No. 1 Gate as the land is ours. We have tenants on the land to whom we gave land on payment
40 of rent. They did not obtain permission from anybody else to go on the land. We ourselves did not obtain any permission from Government to live and farm on the land. We did not pay any rent to Government for the land.

Cross-Examined by Madarikan. Government gave us written notice of their intention to acquire our land beyond No. 1 Gate as from 1948. The Notice was read to us and we did not take it from Government.

*In the
Supreme
Court.*

*Plaintiffs'
Evidence.*

No. 11.

Wali
Wokekoro,
24th July
1951.

Examina-
tion.

Plaintiffs'
Evidence.

No. 11.
Wali
Wokekoro,
24th July
1951.

Cross-
examina-
tion,
continued.
" J2 "

Re-
examina-
tion.
" G "

We wrote a petition to Government in 1934 through Lawyer Alakija. It was not read over to us by Chinwa. We went home after instructing him to write. He took down our names when we instructed him. The petition was not read over to us by G. B. O. Chinwa. I put my mark on it. I know 4th Plaintiff's witness Samuel Atako. He and I and others went together to Alakija. I do not remember if the petition was read over and interpreted to us. When £7,500 was paid, we were told we would be paid £500 yearly. I know about the agreement of 1928. Only four years ago. I was one of the men who wrote a petition to Government through lawyer Alakija. I do not remember instructing our lawyer about paragraph 4 of Exhibit " J2." We told our lawyer about the agreement he referred to in the petition. 10

Re-Examined by Wachuku. I signed no agreement either in the presence or absence of the Governor. It is not true that Allagoa interpreted the agreement to me and others. I was not present when the agreement was prepared. I knew about Exhibit " G " four years after we received the money.

No. 12.
Joseph
Wobo,
24th, 25th
July 1951.

Examina-
tion.

No. 12.

JOSEPH WOBO.

Examined by Wachuku :

20

6th Plaintiff's Witness—JOSEPH WOBO, male, Ibo, sworn on the god of iron, states in Ibo language as follows :—

I am a son of the late Chief Wobo. I know about the subject matter of this action. I am one of the persons appointed by our people to prosecute this action. About 40 years ago some Europeans came to our town and asked for land to build a Rest House on. I had then taken a wife and had an issue.

My father was then alive. One of the Europeans was named Hargrave. Our people refused at first to give them land. They went away and returned later to renew their application. By that time they cleared the bush by the waterside. " Rubem " means " sea " and " Aja ocha " " white sand by the seaside." The present wharf is the site of the place brushed by the white men. They asked us to give or sell the land and we refused. We later gave them land extending from Kingsway Stores to the wharf, as they were persistent in their application. They asked us to sell the land to them for £2,000. We refused to sell as we did not know them and as it was not our custom to sell land. They offered to build storey houses for the chiefs if they would sell the land to them. The chiefs refused to yield. The whitemen continued to clear the land. 30

One Firth offered us money for the land and we refused. Later on Captain Cooke came. He told us he had come to settle the difference between us and Government. We agreed to give land to Government 40

up to Miller Brothers, now Kingsway Stores. He asked for extension to No. 1 Gate. We agreed as Cooke said that Government would pay us £1,500 rent yearly. The land we agreed to give Government was bounded by Ajaocha, No. 1 Gate, Azu or Agbore, now European Club House, Omonem, Amadi Creek, Sombi now site of the P.W.D., Barracks Road, the site of the Hospital and Watugbo river.

*In the
Supreme
Court.*

*Plaintiffs'
Evidence.*

No. 12.

Joseph
Wobo,
24th, 25th
July 1951.

The Government paid us no money until Captain Cooke intervened. After the intervention our people received £7,500 from Government. At this time the Government abandoned the idea of buying our land and
10 proposed to lease the land. The £7,500 was said to be compensation at first but it was later said to be part of the rent payable to us.

Examina-
tion,
continued.

Captain Cooke was the District Officer at Degema. At the time, we were under Degema. We did not bargain with Captain Cooke about our land beyond No. 1 Gate. The Government did not get our permission before they went on land behind the Barracks and the Hospital, known as Emern. Government has taken over the place and laid it out in plots. We were annoyed and so took this action. The Government have also taken over our land beyond No. 1 Gate and let it out in plots. They did not get our permission to do this. We still live and farm on the remaining
20 land not yet taken up by Government. We have strangers farming on the land on payment of rent ranging up to £1. The place where we live is being threatened.

In 1928 some Hausamen came to my father and told him certain things. The Government did not tell us what the £7,500 represented. We thought it was compensation. We were told later that it was not compensation but rent. In our summons we asked that certain agreements be declared null and void and cancelled and that a new one should be made. We knew about the agreements when we went to instruct Lawyer Alakija. We were told about the agreements after we had been paid
30 £7,500. It was four years later. I did not see the agreements then. The Resident told us about the agreements, when we refused to accept £500 a year. He did not produce the agreements to us. We petitioned Government to pay us reasonable money for our land. The petition written by lawyer Alakija was one of them.

We instructed lawyer Alakija to write the petition. We did not give the lawyer particulars about the agreement he referred to in the petition. We were not satisfied with the £500 paid to us yearly as we had been promised £1,500 yearly by Captain Cooke. The dissatisfaction led to our petitions. We claim as per our writ of summons.

40 *Cross-Examined by Madarikan.* My father Chief Wobo died about 10 years ago. I do not make any note of it. My father and others instructed lawyer Alakija and not I and others. I was present when my father and others instructed the lawyer. I took part in the negotiations. All Diobu instructed the chiefs to write the petition. The chiefs gave lawyer Alakija instructions.

Cross-
examina-
tion.

(Sgd.) O. JIBOWU,
Judge.

24/7/51.

Wednesday the 25th day of July, 1951.

*In the
Supreme
Court.*

JOSEPH WOBO, warned that he is still on his oath, states as follows :—

*Plaintiffs'
Evidence.*

No. 12.
Joseph
Wobo,
24th, 25th
July 1951.

Cross-
examina-
tion,
continued.
“ G ”
“ J2 ”

Yes, all Diobu people instructed our chiefs and headmen to instruct lawyer Alakija to petition Government on our behalf. My father was one of the chiefs who gave lawyer Alakija instructions. (N.B.—Exhibit “ G ” is read over to the witness). I do not know how lawyer Alakija got the particulars about Exhibit “ J2.” He told us he was going to the Resident’s Office ; he probably got the particulars there. He did not subsequently tell us anything more about the agreement. I want the Court to believe that the lawyer did not tell us anything about the agreement. I told the Court yesterday that I first knew about the agreement in 1931, and that was from what the Governor told us. 10

The year after we were paid £7,500 when we protested against payment of £500, we were told it was in accordance with our agreement. That was in 1928. We were told it was an agreement between our people and Government. We then pressed to get the agreement ; we, however, got a copy of the agreement only four years ago. We asked for the names of the chiefs who executed the agreement and refused to accept the £500 until that information was given to us. We received the £500 subsequently.

We instructed Mr. Alakija to write and say that we had received 20 rent up to 1934. We were given the names of the chiefs and headmen who signed the alleged agreement, but the chiefs and headmen denied signing any agreement. We were not told the names of the chiefs and headmen before we went to lawyer Alakija. Chief Wobo, Wali Wokekoro and Chinwa were among the chiefs and headmen who instructed lawyer Alakija to write the petition Exhibit “ J2.” I do not know G. B. O. Chinwa. I do not know any Chinwa besides the one who signed the agreement.

“ J2 ”

I heard Alakija read the petition but I did not understand what he was reading. He read it in English. Our people did not understand 30 English. It is a long time now and I cannot remember whether there was a man interpreting what he was reading to our people. It is true that Captain Cooke promised us £1,500 yearly. We instructed Alakija to refer to the amount of £1,500. A letter was brought notifying us of Government’s intention to acquire our land on the other side of No. 1 Gate. It was read to us and we refused to take the letter from the bearer. I took part in the negotiation with the Europeans.

Re-
examina-
tion.

Re-Examined by Wachuku. I followed my father to the meetings where the discussions and negotiations were going on. I did so because I was his first son and must know what was going on. I knew Allagoa 40 on the day we were paid £7,500.

Cross-
examina-
tion.

Cross-Examined by Court. There was order in our community. We had chiefs and headmen. Anything affecting the interest of our community was discussed with our chiefs. It is for the young men of our community to assemble with the elders and it is the young men who ask the strangers what they want. Our community asked the chiefs and headmen to instruct Alakija to write petition Exhibit “ J2 ” on our behalf.

“ J2 ”

No. 13.

DANIEL AMECHI.

*In the
Supreme
Court.**Examined by Ikpeazu :*

7th Plaintiffs' witness—DANIEL AMECHI, male, Ibo, sworn on the Bible, states in pidgin English as follows :—

*Plaintiffs'
Evidence.*

No. 13.

I am a native of Okigwe. I am a carpenter. I live at Ulogbomdio ; it is some distance from No. 1 Gate on Aba Road. I live in my own house. I built the house in 1933. I was living in Frank Nnodi's house. He is a Diobu man. I gave him and his people a goat, palm wine and cigarettes and they gave me the land on which I built. Government did not worry me. I pay no rent to Government.

Daniel
Amechi,
25th July
1951.Examina-
tion.

Cross-Examined by Madarikan. I do not know my age. I was not an apprentice in 1933. I served my former master as journey man for 4 years after I had completed my course. Nnodi is not related to me. I went to live with him in 1933. I built my house the same year.

Cross-
examina-
tion.

No. 14.

ILIGAMI IGBOKWE.

No. 14.
Iligami
Igbokwe,
25th July
1951.*Examined by Ikpeazu :*

8th Plaintiffs' witness—ILIGAMI IGBOKWE, male, Ibo, sworn on the god of iron, states in Ibo language as follows :—

Examina-
tion.

I am a native of Orlu ; I am a palm wine seller. I live at Diobu Halt beyond No. 1 Gate.

I live in my own house. I built it about 6 years ago. My first house fell down and I had to build a new one. I built the first house 15 years ago. The people of Ogbum and Agbali gave me land to build. I gave them palm wine. No one has interfered with me. I did not ask for the permission of Government before I went on the land and I pay no rent to Government.

Cross-Examined by Madarikan. The chiefs and elders of Ogbum and Agbali gave me the land on which I built. Ogbum and Agbali people are also Diobu people.

Cross-
examina-
tion.

Re-Examined by Ikpeazu : Young men are included in chiefs and elders.

Re-
examina-
tion.

Cross-Examined by Court : The chiefs, elders and young men gave me the land.

Cross-
examina-
tion.

In the
Supreme
Court.

No. 15.

EMMANUEL FILA HART (Re-called).

Plaintiffs'
Evidence.

Examined by Ikpeazu :

1st Plaintiffs' witness—EMMANUEL FILA HART, recalled and warned that he is still on his oath continues :—

No. 15.
Emmanuel
Fila Hart
(re-called),
25th July
1951.

Examina-
tion.

Lands from Railway Gate No. 1 northwards are plotted A, B, C and D. The whole area, A, B, C and D is divided into 846 plots. A, B and C areas contain 313 plots. The highest rental payable in D area is £1 a year. A, B and C areas are non-European locations. Last year total rents of Port Harcourt Crown Land including Diobu A, B, C and D amounted to 10 £13,954 11s. 9d. There are many plots not yet allocated in areas A, B, C and D. I am not aware that rents have been raised threefold.

There are 149 plots in Government Residential Area and of these 71 have Government buildings on them ; for these no rents are paid. The rest are occupied by Commercial firms, missionaries and private individuals ; on these rents are paid.

Government Residential Area includes the sites of the two Courts and Offices. The sites of the Courts and Offices are divided into plots. Customs and the site of the Masonic Hall are known as rental zone. Rents are paid for the private buildings in this zone. No rents are paid for 20 Government Offices.

There are Churches and Schools in the Native Location. Nominal rents are paid for these. The R.C.M. occupy a whole block at 1/- per annum.

St. Cyprians Church and Schools, and St. Peters Church each pays 1/- per annum. Methodist Church and School pay 1/- per annum. Banham Church and School pay 1/- per annum. Baptist Church and School pay 1/- per annum. U.N.A. Church and School pay 1/- per annum. The Salvation Army and School pay 1/- per annum. A.M.E. Zion Church pays 1/- per annum. Christ Army Church and School pay 1/- per annum. 30 Holy Rosary and School pay 1/- per annum. Stella Maris College pays 1/- per annum. R.C.M. School at the new layout pays 1/- per annum. Baptist High School 1/- per annum.

The above charitable institutions pay only nominal rents. If the areas were plotted out and nominal rents are collected thereon substantial rents would be payable. Stallages are collected from the markets ; these amounted last year to £5,246 13s. In 1949 they amounted to £5,130 14s.

There are some plots in Creek Road Extension which have not yet been taken up. There are 265 plots in that area but I cannot say how many plots are yet unallocated. 40

N.B.—Mr. Ikpeazu withdraws the Attorney-General's Advice which he sought to put in evidence. The Chief Secretary's Certificate is no longer required.

Cross-
examina-
tion.

Cross-Examined by Madarikan : The Planning Authority Port Harcourt costs Government £15,000 per annum. I have not got the other figures in Court but can produce them to-morrow.

N.B.—Witness to stand down till to-morrow.

No. 16.

MOBOLAJI OLATUNJI ABIOSE.

*In the
Supreme
Court.**Examined by Ikpeazu :**Plaintiffs'
Evidence.*

9th Plaintiffs' witness—MOBOLAJI OLATUNJI ABIOSE, male, Yoruba, sworn on the Bible, states in English language as follows :—

No. 16.

Mobolaji
Olatunji
Abiose,
25th July
1951.

I am a Development Officer, Port Harcourt. We have Government Residential Area in Port Harcourt. I have not got a plan of Port Harcourt. I know the Creek Road Extensions. Some of the plots in the area still remain unallocated. I cannot say offhand how many they are. There are 10 open spaces in town and is also a Park, known as Jubilee Park. There is a motor park. No fees are paid for the parks.

Examina-
tion.

Cross-Examined by Madarikan. The expenditure of the Land section of my Department is about £15,000 a year. It does not include the salaries of Senior Service men in the Department. There are two Development Officers, one District Officer is chairman of the Town Planning Authority. One of the Development Officers is on £750 p.a. with £250 expatriation ; the other is on £530 p.a. The D.O's salary is £540 p.a. Government took over Diobu D area in 1948. Before entering the land, the Government planned the area under Cap. 155 Laws of 20 Nigeria. A scheme was published in the Gazette of 22/4/48 under section 16 of the Ordinance. The Notice of the scheme was advertised in the Press. We received one objection by a representative of the Diobu. I tender it, marked Exhibit "L."

Cross-
examina-
tion.

" L "

In 1948 the land section of our Department was part of the District Office. On land matters some files passed between the Resident's Office and the District Officer's Office. The Resident, Rivers Province wrote a letter to the Diobus in 1947 giving them a year's notice to quit. Notices were returned to the Resident. All improvements on Port Harcourt land were made by Government. Government built the port but I do 30 not know when. The D.O., or chairman gets a salary of £540 per annum plus £150 expatriation allowance. The Creek Road Extensions started in 1947. Plots in the area were allocated in 1948. That part of the town was planned under Nigeria Town and Country Planning Ordinance. A scheme was published in the Nigeria Gazette No. 17 of the 11th March, 1948 ; Government Notice No. 431 refers. It was also published in Gazette of the 8th April, 1948. Government Notice No. 564. The scheme was under section 16 of the Ordinance. There was no objection received. I cannot say for certain whether the notice was advertised in the local press.

40 *Re-Examined by Ikpeazu.* My department spends roughly £15,000 a year on the development of Port Harcourt. It includes salaries, stationeries and equipments. There is only one Departmental House ; it was included in last year's expenditure. We are responsible for the division of lands into plots and for allocation of the plots. We administer all crown lands in Port Harcourt. This involves administrative expenses. Improvements include laying out of roads, sinking of wells, reclaiming swampy areas, laying out the areas into plots. Electric supply is improvement but is not part of my work or my duty. The people in

Re-
examina-
tion.

*In the
Supreme
Court.*

*Plaintiffs'
Evidence.*

No. 16.
Mobolaji
Olatunji
Abiose,
25th July
1951.

Re-
examina-
tion,
continued.
" L "
" L "

Port Harcourt pay tax. I do not know John Akugbo. I was Inspector of Lands in 1948. I was in charge of the Lands Section of the office. The Local Authority and the Planning Authority had one office in 1948. I cannot say whether Exhibit " L " came by post. I do not know John Akugbo personally, but we dealt with him through the address he gave. I gathered from Exhibit " L " that he represented Diobu people. He did not say he was instructed by Diobu people to write the letter.

(Sgd.) O. JIBOWU,
Judge.

25/7/51. 10

No. 17.
Jeremiah
Ume,
26th July
1951.

Examina-
tion.

" M "

Cross-
examina-
tion.
" M "
" F "
" M "
" F "
" M, " F "
" H, " M "
" H "

No. 17.
JEREMIAH UME.

Thursday the 26th day of July, 1951.

Examined by Ikpeazu :

10th Plaintiffs' witness—JEREMIAH UME, male, Ibo, sworn on the Bible, states in English language, as follows :—

I am licensed Surveyor living at Aba. I know the Plaintiffs. I made a survey for the Plaintiffs in 1949 in connection with this case. I tender the plan I prepared ; marked Exhibit " M."

Cross-Examined by Court. The creek at the south of the land shown 20 in Exhibit " M " is Bonny River. The creek on the extreme west is Okrika Creek. I see the plan on Exhibit " F." I have compared it with plan Exhibit " M." The western, southern and eastern boundaries on both agree. The northern boundary of the plan in Exhibit " F " will coincide with the red line marked X X at the top of plan Exhibit " M." Both Exhibits " F " and " M " relate to the same land. I see the plan on Exhibit " H." The area hatched red on " M " corresponds to the area edged pink in Exhibit " H."

MOBOLAJI OLATUNJI ABIOSE (Re-called).

Re-Examined by Ikpeazu :

9th Plaintiffs' witness—MOBOLAJI OLATUNJI ABIOSE, warned that he is still on his oath continues :—

Diobu D area was already Crown Land before the planning scheme was made. Land may be acquired under Public Lands Acquisition Ordinance and it may be acquired under Nigeria Town and Country Planning Ordinance. I tender a plan of Port Harcourt, marked
10 Exhibit " N."

Cross-Examined by Court. I mark areas known as Diobu A, B, C and D on Exhibit " N" as A, B, C and D. The areas A, B, C and D are outside the area edged pink in the plan on Exhibit " H."

EMMANUEL FILA HART (Re-called).

Cross-Examined by Madarikan :

1st Plaintiffs' witness—EMMANUEL FILA HART, warned that he is still on his oath, continues :—

I tender a statement of expenditures of Port Harcourt Township for
20 1948—1950—marked Exhibit " O." Expenditures for 1948 and 1949 are summarised on the left side of the exhibit. In January, 1947, the Plaintiffs and others were given a year's notice to quit. The notices were forwarded to the Local Authority, Port Harcourt, for service on the addressees. Letter now shown to me and marked " P " for identification is a copy of the notice to the Plaintiffs. I represent the Resident, Rivers Province. In 1913 from the office file, one Mr. Hargrove represented Government when Port Harcourt was being acquired. Six native communities were concerned in the agreement Exhibit " F." Only the
30 Diobu community have had any dispute with Government. According to Exhibit " F " the Diobus were to be paid £2,000 and a payment voucher for that amount was made ; but we have no record from the Treasury that the voucher was cashed. In 1923 there was a meeting between Colonel Moorhouse and the Diobus at the Residency. There is a Planning Authority in Port Harcourt. The body was constituted under Nigeria Town and Country Planning Ordinance. It is this body that allocated plots in Diobu D area and in the Creek Road extensions. The Resident, Rivers Province, has nothing to do with allocation of plots as Resident. The Governor also has nothing to do with the allocation of the plots. Port Harcourt Planning Authority allocated the plots in 1948.

40 *Re-Examined by Ikpeazu.* In 1948 the areas were declared planning areas. Diobu D area was not acquired by virtue of the Planning Scheme, which has to do with planning and development. I am not in a position to say whether the voucher was delivered to the Diobus. I have not a record of the meeting of 1923 between Colonel Moorhouse and the Diobus.

PLAINTIFFS' CASE.

*In the
Supreme
Court.*

*Plaintiffs'
Evidence.*

No. 18.
Mobolaji
Olatunji
Abiose
(re-called),
26th July
1951.

Re-
examina-
tion.
" N "
Cross
examina-
tion.
" N," " H "

No. 19.
Emmanuel
Fila Hart
(re-called),
26th July
1951.

Cross-
examina-
tion.

" P "

" F "

" F "

Re-
examina-
tion.

*In the
Supreme
Court.*

No. 20.

UME UDONSI UJA.

*Defendant's
Evidence.* *Examined by Madarikan*

1st Defence witness—UME UDONSI UJA, male, Ibo, sworn on the Bible, states in English language as follows :—

No. 20.
Ume
Udonisi
Uja,
26th July
1951.

I am a clerk in the District Office. It was prior to 1947 known as Local Authority's office. Mr. V. K. Johnson was then in charge.

*Examina-
tion.*

In January, 1947, I went with Mr. V. K. Johnson, a Building Inspector Jaja, boundary man named Ajibola to Diobu. The chiefs were assembled. Chief Joseph Wobo, Amadi and Atako were among the number. The Local Authority told them he had been asked by the Resident to deliver a notice to them. The chiefs had their own interpreter who interpreted what the Local Authority said to them. The Notice was read by the Local Authority and the clerk interpreted it to the clerk. The notice was handed to the clerk. 10

" P "

Later on the chiefs came up in a rage and said they were not accepting the notice. One of the chiefs took it from the clerk and threw it in front of us. The Local Authority and I then left. We left the notice on the ground. So far as I know the notice was not sent back to our office. I tender a copy of the notice, marked Exhibit " P." (The original is not produced on notice). 20

*Cross-
examina-
tion.*

Cross-Examined by Ikpeazu. The Diobu chiefs refused to accept the notice and stated that they had no where to go. They said that their fore-fathers entered into agreement with Government in ignorance. They said the land was theirs and that Government had no right to evict them from their land.

No. 21.

Alphonso
Chike Ogo,
26th July
1951.

No. 21.

ALPHONSO CHIKE OGO.

2nd Defence witness—ALPHONSO CHIKE OGO, male, Ibo, sworn on the Bible, states in English language as follows :— 30

*Examina-
tion.*

I am a Government Surveyor. I drew a plan of Port Harcourt which I now tender, marked Exhibit " Q." I see the plan on Exhibit " F." It is identically the same as Exhibit " Q," which is on a larger scale. I have seen Exhibit " H " before. I saw the plan on it. The area coloured pink on Exhibit " H " is shown on Exhibit " Q " and edged green. The same scale used in Exhibit " M " is used in Exhibit " Q."

*Cross-
examina-
tion.*

Cross-Examined by Court. The outline of the plan on Exhibit " M " is the same as in Exhibit " Q."

" M "
" Q "

No. 22.

SAMSON OBIORA.

Examined by Madarikan.

3rd Defence witness—SAMSON OBIORA, male, Ibo, sworn on the Bible, states in English language as follows :—

I am an Inspector of Lands in the Office of the Planning Authority, Port Harcourt. I can read plans. I know Diobu D area and Creek Road Extensions in Port Harcourt. They are within the area marked pink in Exhibit “Q.” The area edged pink in Exhibit “Q” is Crown
10 Land.

DEFENDANT’S CASE.

In the Supreme Court.

Defendant’s Evidence.

No. 22.

Samson Obiora, 26th July 1951.

Examination.
“ Q ”

No. 23.

CLOSING ADDRESSES OF COUNSEL.

Madarikan addresses the Court. Claim by Plaintiffs under Petition of Right Ordinance. Plaintiffs’ claim embodied in paras. 24 and 25 of their Statement of Claim. Plaintiffs’ case is that in 1911 Port Harcourt came to Aja Ocha with a policeman and a dog. Two years later Hargrove and Harcourt came and asked for a site for their Rest House. None of the Plaintiffs could say anything about Exhibit “F.” The 6th Plaintiffs’
20 witness Chief Wobo however referred to £2,000 which is consideration shown in Exhibit “F.” He however, stated that Diobu people refused the offer of £2,000. There is a gap in the Plaintiffs’ evidence as to what took place between 1913 and 1927 when they alleged Captain Cooke offered to pay them rent of £1,500 per annum. The offer was said to have been accepted and that they received £7,500 being compensation for crops destroyed according to some witnesses and being part payment of rent due according to other witnesses. Three hundred pounds was also said to have been received as compensation for 60 houses demolished by Government. The Plaintiffs agreed that they received £500 annually
30 from 1927–1947.

There is evidence that petitions were written by the Plaintiffs to Government for increase of rent, two of the petitions are Exhibits “J2 and J3.”

The Defendant’s case rests on Exhibits “F, G and H.” Paragraph 2 Statement of Claim alleges that the Defendant represents four people, viz. :—Governor, Resident, Local Authority, Port Harcourt and the Planning Authority, Port Harcourt. In para. 2 of Defence, the Defendant denied representing four people and alleged he represented Governor and Resident Rivers Province.

40 The Plaintiff has not called any evidence to show that the Defendant represents the Local Authority and the Planning Authority in Port Harcourt. He asks the Court to find that the Attorney-General represents the Governor and the Resident and no other persons. He is therefore addressing himself to what was done by Governor, Resident, their agents and servants.

No. 23.
Closing Addresses of Counsel, 26th, 27th July, 1951,

“ F ”

“ F ”

“ J2,”

“ J3 ”

“ F,” “ G ”

“ H ”

*In the
Supreme
Court.*

No. 23.

Closing
Addresses
of Counsel,
26th,
27th July,
1951,
continued.

" F "

" H "

" H "

" J2 "

" G "

There is Port Harcourt Planning Authority established under Cap. 155 Laws of Nigeria. Sections 4 and 7 of the Ordinance make provisions for the name of such a body. The Port Harcourt Planning Authority got its name under the Ordinance.

He proposes to deal with Plaintiffs' witnesses. Refers 1st-4th Plaintiffs. None of them was able to give evidence about Exhibit " F." With regard to Exhibit " H," Chief Wobo, the 6th Plaintiffs' witness, stated that he heard about the agreement in 1928 ; that it took the Diobu people 19 years to get a copy of the agreement, although they pressed for a copy. He, however, stated that they refused to receive £500 from 10 1928 until the names of the chiefs who executed Exhibit " H " were disclosed. He agreed that money was received before Exhibit " J2 " was written in 1934 and still suggested that the names of the chiefs had not been disclosed before the petition was written. This witness refused to answer questions directly and his only answer was that the chiefs never signed the 1928 agreement. The Court will remember the observation it made that truth is foreign to the witness' nature. He asks the Court to disregard the evidence of the witness in so far as it tended to establish that Exhibit " G " was not executed by the Diobu chiefs and headmen mentioned therein. 20

His father was alive at the time and so his father and not himself would know all about the transaction. He refers to the witness's evidence that in 1934 the young people of Diobu instructed their chiefs and headmen to petition Government through Mr. Alakija. He asks the Court to infer that the proper procedure when there was to be any transaction about their land was for the chiefs and headmen to act as mouthpiece of the community and that it was not for the whole community to be present, otherwise there would be no order in their transactions.

The 2nd Plaintiff and 5th Plaintiffs' witness, Wali Wokekoro, was one of the signatories to Exhibit " G " and son of Chief Wokekoro ; he 30 had succeeded his dead father by 1928. He executed Exhibit " G." Of all the signatories to Exhibits " F " and " G " only Wali Wokekoro is alive. He was an eye witness of what took place in 1928. The Court to take note that he was told he was lying during cross-examination.

Coming to Samuel Atako, 4th Plaintiffs' witness, he was asked if he could read and write and he said he learnt to read and write in 1934 before they petitioned the Governor. He wanted the Court to believe that the chiefs who signed Exhibits " F " and " G " did not understand the terms " J2," " J3 " of the agreement hence they did not refer to them in Exhibits " J2 and J3."

The 4th Plaintiff, Philip Chinwa, 3rd Plaintiffs' witness, he was only 40 17 years old in 1913 ; his father was one of those who executed Exhibits " F " and " G." He denied knowledge of Exhibit " G " until 4 years ago although he alleged that he was present at all the meetings in connection with the land matter.

These are the four main witnesses.

Regarding claims in paras. 24 and 25 of the Statement of Claim, he refers to 24 (D).

He submits that the time to consider whether parties were " *ad idem* " to an agreement is the time of execution. The fact that a party to an agreement wishes the terms varied is not proof that the parties were not " *ad idem* ." When the agreement was executed. The Plaintiffs challenged Exhibit " F " because, they alleged, they did not know when it was made. The onus of proving that the parties were not " *ad idem* " is on the Plaintiffs. They have not discharged this burden. He therefore asks that Exhibit " F " be declared valid. The same argument, he
10 submits, applies to Exhibit " G. " It might have been otherwise if Wali Wokekoro had stood the test of cross-examination.

There was an allegation that Captain Cooke offered to pay them £1,500 per annum. No documentary evidence was produced in support. He asks the Court to find that such an offer was never made to them.

Exhibit " G " is a deed and the parties to it were exactly the same parties to Exhibit " F, " with exception of Wali Wokekoro. The chiefs and headmen in each case acted for themselves and the people of Diobu. Exhibit " G " is a deed varying terms of Exhibit " F " which it recites. The signatories to Exhibit " G " accepted Exhibit " F " as their agreement ;
20 it cannot be denied that Exhibit " F " was their agreement. Exhibit " J2 " was written on behalf of the chiefs and people of Diobu. It was signed by three of the Plaintiffs, viz. : 2nd, 3rd and 4th Plaintiffs.

In Exhibit " J2 " reference was made to Exhibit " G " as agreement made between them and Government. He submits that the Plaintiffs cannot now deny the existence of Exhibit " G. " The admission made in Exhibit " J2 " with respect to Exhibit " G " binds Diobu people.

It may be argued that the consideration in Exhibit " F " is inadequate. The law is clear that the Court will not inquire into the question of adequacy of consideration ; parties are to be left to make their own bargain. This applies both at Common Law and in Equity. The point may be raised if fraud is alleged and people are in judiciary relationship to each other.
30 The Plaintiffs have withdrawn their allegation of fraud against the Defendant. Refers to *Harrison v. Guest*, 12 English and Empire Digest, p. 205.

He submits that what is required is a price. Administrative Officers have unfortunately used the word " Rent " for payment made under Exhibit " G. "

(Sgd.) O. JIBOWU,
Judge.
26/7/51.

40

Friday the 27th day of July, 1951.

Mr. Madarikan continues :—

He submits that whatever words were used by Administrative Officers, regard must be had to the wording of Exhibits " F " and " G. "

" F, " " G "

Submits that the Court has no power to make a new agreement for the parties.

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continued.
"J2," "J3"

Re para. 24 (c) of Statement of Claim, the Plaintiffs have not claimed arrears from 1913 to 1928 although their evidence suggested that £15,000 arrears were due when they were paid £7,500 in 1928. If the Plaintiffs are serious about this claim, the Court will ask itself why the huge sum of money has not now been claimed by the Plaintiffs. The evidence about this claim is based on an alleged promise of Captain Cooke in 1927. Exhibits "J2" and "J3" asked for increase of rent and not for a liquidated sum of money due to them. There is no documentary evidence regarding the alleged promise. He asks the Court to find that no such promise was made and that £7,500 was paid in accordance with the provisions of Exhibit "G." 10

"G"
"F," "G" "F" and "G" are valid. The question is whether Port Harcourt was sold to Government in 1913.

"F" Messrs. Ume and Ogo have given evidence and they are both agreed that the plan on Exhibit "F" is the same as on Exhibits "M" and "Q." "M," "Q," Exhibit "H" is a surrender of a portion of the land by Government to "H" the Plaintiffs. The portion surrendered in Exhibit "H" are shewn "H" in Exhibits "M" and "Q." The Plaintiffs alleged that only the portion "M," "Q" marked yellow on Exhibit "M" was conveyed to Government. The land "M" in dispute is edged pink in Exhibit "Q." He asks Court to find that it "Q" is Crown Land. 20

"F" Exhibit "F" bears an affidavit sworn by Gabriel Yellow to the effect that he read and interpreted the agreement to the signatories at the time "G" of execution. The same applies to Exhibit "G"—there is attached to the exhibit an affidavit by F. O. Allagoa.

"F" Exhibit "F" describes the land conveyed. Primrose or Bonny River and Iechi Creek were mentioned and the signatories must have known where they were. Woji Creek and Okrika Creeks were also mentioned. The signatories must therefore have known the extent of "G" the land they were selling to Government. The same creeks were mentioned "G" by name in Exhibit "G." It is urged that as the signatories executed Exhibit "G" in October, 1927, and the document bears date of 2nd May, "G" 1928, the exhibit is faulty. The Chiefs executed the agreement in 1927 and the Governor in May, 1928. Allagoa's affidavit rebuts the presumption that both parties signed the same day. 30

"P" *Re* 24 (B) Statement of Claim: Claim for trespass—evidence shows that Port Harcourt Planning Authority allocated plots land out in Diobu layout and in the Creek Road Extensions. The Attorney-General does not represent the Planning Authority for the purpose of this action. 40 The proper Defendant would have been the Port Harcourt Planning Authority. No evidence that the servants or agents of the Governor or Resident had trespassed on the lands in dispute. Submits no trespass. Diobu Lay-out is part of Crown Land. Exhibit "P" gave notice to Plaintiffs. It was at the expiration of the notice that the Port Harcourt Planning Authority entered on the land. With regard to Creek Road Extension, notice was in Gazette under Cap. 155 Laws of Nigeria. No objection was received. No proof therefore of trespass. No proof of damages.

Re para. 25 of Statement of Claim, no trespass, no injunction. He asks the Court to dismiss action.

No. 23.
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continued.
" F," " G "
" F "
" G "

Ikpeazu replies : The Crown case rests on Exhibits " F " and " G ." The Court must require satisfactory proof of the exhibits as to the contents, intentions and manner of execution. There is evidence that the grantors were illiterate persons. It was alleged in the Statement of Claim that the parties were not *ad idem* with regard to the purport of the agreements. Referring to Exhibit " F," it is necessary that evidence be led to establish that Yellow interpreted the document. This applies also to oath of

10 Allagoa in respect of Exhibit " G."

Refers to Omanhene Kwamin's case reported to 5 W.A.C.A. 1. He submits that in view of the fact that the Plaintiffs alleged that they were not *ad idem*, and Allagoa was within reach, he should have been called. He submits that the chiefs were supposed to make only marks and not thumb impressions. Suggests that the marks were made by Yellow in Exhibit " G." The X marks do not show that they concurred in the making of the marks.

There is inconsistency in the date of execution. Page 83 Exhibit " G " contains Allagoa's affidavit; the agreement recites a different date.

20 Submits this was not the agreement signed by the signatories in October, 1927. Same arguments, he says, apply to Exhibit " F." As to the intentions of the parties, he refers to Exhibit " F " which talks about sale. The signatories did not accept the money reserved. No evidence that the voucher was handed over to the signatories. Fifteen years later something was done. Lapse of time evidence that the people did not agree to sell their land. Exhibit " G " says £7,500 to be paid immediately and £500 on 18th May of each year thereafter. Suggests that this does not make intention of Government clear. The purchase price must be definite and certain.

30 Submits that Exhibit " G " does not comply with this rule of law.

Refers to Exhibit " A " written by Resident, Owerri, Port Harcourt, and said that intention of Government was to lease and £500 was regarded as rent by both parties. The people understood from Cooke that land was required on lease on annual payment of rent.

Plaintiffs' intention was to give out land on rent and not on sale. Native law and Custom did not permit of sale of land. Agreement Exhibits " F " and " G " did not carry out the intentions of the parties.

40 Submits that Exhibit " G " is not a sale, nor is it a lease. Government can acquire land under Public Lands Acquisition Ordinance and Nigeria Town and Country Planning Ordinance.

The people could not sell their land under native law and custom and that evidence has not been controverted. This is borne out by their refusal to receive the money. Exhibit " G " recognised that they were buying from the people the rights, title and interests conferred on them by native law and custom. Under native law and custom they could not sell the land.

Re Exhibit " J2 " the Diobu people admitted that Exhibit " G " existed between them, and Government. They asked Government to

" G "
" G "
" F "
" F "
" G "
" G "
" A "
" F," " G "
" G "
" G "

" J2," " G "

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continued.
" G "

increase rent payable thereon. There is evidence that prior to 1934 the Plaintiffs resisted £500 on the ground that it did not amount to what was promised them by Captain Cooke.

There was evidence that they were asked to accept £7,500 without prejudice to their other claims. They put their claims before their lawyer so that he might write a petition to Government for them.

There is evidence that they were not aware of Exhibit " G " and that Alakija agreed to make inquiry and then put up their case. They have stated in the box that they are not accountable for the choice of words of their lawyer—they understood the agreement to reserve to them rent of £500 every year. They did not understand the terms of the agreement. The same argument applies to Exhibit " J3 " para. 4. They still regarded the land as theirs and money payable thereon to be rent. Their intentions were therefore not expressed by Exhibits " F " and " G." Did the people intend to sell or lease their land and did they in fact sell or lease and did they understand their agreement with Government ?

He asks the Court to say that the Plaintiffs did not understand the agreements and were not *ad idem* and that the Court should therefore cancel the agreements. Does Defendant represent Local Authority and Port Harcourt Planning Authority ? He submits that possession of the place was authorised in the first place by the Governor because he appointed the Town Planning Authority and, in effect, authorised the trespass. Government had taken possession of the land and made extensions before the Town Planning Authority took over. There were Government Quarters between Railway Gate No. 1 and Amadi Creek before planning scheme came into operation. This was a trespass. He asks Court to grant more money if it is satisfied that more than £23,000 claimed is due ; to hold that the Diobus never agreed to sell their land ; that the agreements conveyed nothing and that judgment should be entered for the Plaintiffs.

Judgment is reserved till the 4th August, 1951.

(Sgd.) O. JIBOWU,
Judge.

27/7/51.

No. 24.
JUDGMENT.

*In the
Supreme
Court.*

Saturday the 4th day of August, 1951.

No. 24.
Judgment,
4th
August
1951.

This is an action under the Petition of Rights Ordinance and the Plaintiffs, as representatives of Abali and Ogbum Diobu, claim :—

10 “(A) Declaration against the Defendant their servants or agents, that the Plaintiffs are the rightful owners of all the land situate in the Rivers Province, now known commonly as Port Harcourt in English language but in Diobu dialect of Ibo language Obomotu or Igwe Ocha.

(B) The sum of £30,000 compensation and damages for trespass by the Defendants their servants or agents in wrongfully entering the area known as Diobu lay-out and Creek Road, New Block Area, and destroying therein crops, plants, houses, etc., belonging to the Plaintiffs.

20 (C) The sum of £23,000 due to the Plaintiffs from 1928 to date being arrears of annual payment on the basis of £1,500 per annum for the area 3.5 square miles, granted to the Defendants, bounded on the North by Railway No. 1 Gate, on the South by Nwatugbo Creek, West by Bonny River, and East by Amadi Creek.

(D) Cancellation of all alleged agreement or agreements purporting to have transferred the rights of the said Abali and Ogbum Diobu over their lands to the Defendants, these agreements being defective and tainted by fraud, and a new and equitable agreement to be concluded between the Plaintiffs and Defendants.

30 (E) An injunction to restrain the Defendants, their servants and/or agents from further trespass upon their said Diobu Lay-out area and Creek Road New Block Area, or further encroachment on the Plaintiffs' lands.”

The Plaintiffs filed a Statement of Claim paragraphs 24 and 25 of which contains the above claims. On the 20th day of November, 1950, the learned Senior Counsel for the Plaintiffs asked for amendment of the Statement of Claim by deleting paragraph 17 and by amending paragraph 24 (D) by (1) deleting the words “these agreements being defective and tainted by fraud” and substituting therefor the words “in that the parties were not *ad idem*,” and (2) deleting the words “and equitable.” The amendments were granted.

40 On the 19th July, 1951, the learned Senior Counsel for the Plaintiffs applied for further amendment of the Statement of Claim by restoring paragraph 17 and amending it by deleting the words “by the fraud referred to in paragraph 7 above” and substituting therefor the words “in that the parties were not *ad idem*.” The amendment was granted, and so paragraph 17 of the Statement of Claim now reads: “The Plaintiffs further claim that if in fact the supplementary agreement was entered into by the said Chiefs and Headmen of Diobu mentioned in paragraph 15 above, then such an agreement is vitiated and invalidated in that the parties were not *ad idem*.”

*In the
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Court.*

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continued.

The amended paragraph 24 (D), which is Plaintiffs' claim (D) now reads: "Cancellation of all alleged previous agreement or agreements purporting to have transferred the rights of the said Abali and Ogbum Diobu over their lands to the Defendants, in that the parties were not *ad idem*, and a new agreement to be concluded between the Plaintiffs and Defendants.

The Defendant filed a Statement of Defence.

The Plaintiffs' case is that their ancestors owned Obomotu, which is now known as Port Harcourt; that as such owners their ancestors lived and farmed on the land without let or hindrance; that in 1911, a British Marine Navigator named D. L. Harcourt, came to Obomotu and was given a place for a Rest House at his own request; that in 1913 Alexander George Boyle, Deputy Governor of the Colony and Protectorate of Southern Nigeria, asked the Chiefs and people of Diobu to sell Obomotu to the Crown, and that the Diobu people refused, but granted a portion of the land for settlement; that the aforesaid Deputy Governor Boyle entered into an agreement dated the 18th May, 1913, with representatives of Diobu and other people for the purchase of Obomotu for £2,000 and that Diobu people refused the offer and refused to accept money for the sale of Obomotu to the Crown; that in 1925, in order to induce the chiefs and headmen of Diobu to agree to the sale of Obomotu, the Government offered, through Acting Resident, Mr. O. W. Firth, to erect storey buildings for Diobu Chiefs and Headmen to the value of £1,900, but the Chiefs and Headmen rejected the offer and opposed the extension of the township boundary beyond No. 1 Railway Gate; that in 1927, Government appointed Captain S. W. Cooke to arbitrate between them and Government; that the arbitrator in his report No. DC. 470A/652 of 5th June, 1927, found as a fact that Obomotu or Port Harcourt was bounded on the North by Railway Gate No. 1, on the south by Nwatugbo Creek, on the west by Bonny River and on the east by Amadi Creek; that he also stated that the economic resources of the township amounted to £5,000; that the arbitrator tried to persuade their ancestors to extend the township boundary beyond No. 1 Railway Gate and that their ancestors refused; that in 1913 their ancestors refused an annual grant of £500 unless an undertaking was given that the township boundary would not extend beyond No. 1 Railway Gate, and that their town would not be sold to any Europeans, and that the arrears from 1913 would be treated as compensation for the damage done to their crops etc. by the Government; that the arbitrator gave their ancestors the assurance that the arrears from 1913-1927 would be paid to them as compensation and that an annual grant of £1,500 would be paid to them for leasing the land to Government; that on this assurance the Plaintiffs' predecessors in title received, in October, 1927, the sum of £7,500, being arrears for 15 years from 1913 at £500 per annum, as compensation; that by a letter No. OW. 126/452 dated the 30th February, 1928, to Maidaki Abusa Seriki Hausa, Port Harcourt, the Acting Resident G. G. Cordney, acknowledged that the land outside No. 1 Railway Gate was Diobu land, and that the Government had no land there to lease out; that in spite of the refusal of Diobu people to sell their land to any European or to the Nigerian Government without the knowledge and consent of Diobu people, a supplementary agreement to that of 1913 dated 2nd May, 1928,

was made between Chiefs Wobo, Ejebulam, Obonda, Aluku, Wokekoro, Atako and Headmen Ajoku and Chinwa, all illiterate persons of the one part and Sir Graeme Thomson, Governor and Commander-in-Chief of Nigeria, purporting to have sold Diobu land for the lump sum of £7,500 and an annual payment of £500 ; they claim that no purchase money of £7,500 was paid to their predecessors on 2nd day of May, 1928, and that the sum of £7,500 paid to them in October, 1927, was in respect of arrears of compensation for 15 years from 1913-1927 recommended by the arbitrator ; that if, in fact, the supplementary agreement was entered into by the Chiefs and Headmen of Diobu aforesaid, such agreement is vitiated and invalidated because the parties were not *ad idem* ; that the Plaintiffs received the annual payment of £500 between 1928 and 1930 on the understanding that Government would implement the recommendation of the arbitrator for £1,500 annually and that in 1931 they refused to accept any further payment until the balance due was paid and until the Government carried out the accepted recommendations of the arbitrator ; that in 1931, Governor Cameron begged and persuaded them to accept the annual payment of £500 for the time being and told them that their receipt of the money would not prejudice their claim against Government for which they might seek their remedy in the Courts ; that since the Plaintiffs started to receive the annual payment of £500, the Government by their servants or agents, e.g., the Local Authority, Port Harcourt, the Planning Authority, Port Harcourt, have trespassed on Diobu land by extending the township boundary beyond No. 1 Railway Gate, without the knowledge and consent of Diobu people ; that the Diobu people got no redress though they protested by various petitions, resolutions and representations against the acts of Government by their agents, particularly the Local Authority and the Planning Authority, Port Harcourt, that as they got no redress locally they sent a petition to the Secretary of State for the Colonies, who replied that he was not prepared to intervene ; that in spite of their representations and complaints, they were served with various notices to quit their homes in the area where their ancestors have lived from time immemorial, to abandon the sacred shrines, holy places and the resting places of their ancestors, which Government claims as Crown Land.

The Defendant is said to represent His Excellency the Governor of Nigeria, the Resident, Rivers Province, the Local Authority and the Planning Authority, Port Harcourt.

The Defendant admits that he represents His Excellency the Governor of Nigeria and the Resident, Rivers Province, but denies that he represents any other person. The Defendant also admits the agreement dated May 18th, 1913, later on described as the principal agreement, to which the Plaintiffs referred, whereby the Chiefs and Headmen of Diobu, Omo Eme, etc., in consideration of a sum of money, granted and sold to Deputy Governor Boyle all the right, title and interest to which they and their people were entitled by Native Law and Custom in the land in question whose boundaries are delineated in the particulars attached. The boundaries enclose an area of 25 square miles more or less.

By the agreement, he alleges, the Deputy Governor agreed to pay the Chiefs and Headmen £2,000 as their portion of the purchase price and that he was at all times ready and willing to pay the amount.

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continued.

In pursuance of the agreement, he further alleges, the said Deputy Governor entered into possession of the said land. The Defendant denies that the Diobu people refused to sell the land.

The Defendant denies that the boundary of the land in question ever passed through No. 1 Railway Gate. He admitted that the Chiefs and Headmen of Diobu, for and on behalf of themselves and their successors, entered into an agreement on the 2nd May, 1928, with Sir Graeme Thomson, Governor of Nigeria, and that the agreement, which was supplemental to the principal agreement, varied the terms of the principal agreement by substituting £7,500 to be paid immediately 10 and a further sum of £500 payable annually on the 18th May in each year as from the 18th May, 1928, for £2,000 payable to the Diobu Chiefs and Headmen under the principal agreement.

He further states that in consideration of such sums to be paid, the parties to the supplemental agreement agreed that the principal agreement should remain in full force and effect and should be read in conjunction with the supplemental agreement.

He further alleges that the Chiefs and Headmen of Diobu executed the supplemental agreement on October 29th, 1927, at Port Harcourt when they received the sum of £7,500 which was paid as purchase price 20 under the agreement, and that the Governor formally executed the agreement on the 2nd May, 1928.

He alleges further than the Defendant paid and the Plaintiffs accepted £500 paid on the 18th May, 1928, in pursuance of the said supplemental agreement, and that the Plaintiffs accepted similar amount paid on about each successive 18th day of May thereafter up to the 18th May, 1947; that the sum of £500 was tendered by the Defendant to the Plaintiffs on the 18th May, 1948, but was refused; that the Defendant is ready and willing to pay the said sum of money to the Plaintiffs in pursuance of the supplemental agreement. 30

The Defendant further alleges that by an indenture dated the 2nd May, 1928, a portion of the land sold under the principal agreement was reconveyed by Sir Graeme Thomson, Governor of Nigeria, to Chief Wobo representing himself, the Chiefs and Headmen of Diobu and their successors, and that Chief Wobo executed the indenture on the 29th October, 1927.

The Defendant denies that the Government promised to pay the Plaintiffs an annual sum of £1,500 or at all and denied also any acts of trespass to the land of the Plaintiffs by any agent or servant of the Defendant or at all. 40

The other allegations contained in Plaintiffs' Statement of Claim are either denied or not admitted.

The Defendant avers that, by section 29 of the Crown Lands Ordinance, Cap. 84, Laws of Nigeria, the whole land referred to in the particulars annexed to paragraph 4 of the Statement of Defence, excluding the area reconveyed by the indenture of the 2nd May, 1928, is Crown Land.

The first four Plaintiffs gave evidence in support of their claims and six other witnesses, namely, Emmanuel Fila Hart, Osmond James Osadebe, Daniel Amechi, Iligami Igbokwe, Mobolaji Abiose and Jeremiah Ume, were called by the Plaintiffs. 50

Emmanuel Fila Hart, the 1st Plaintiffs' witness, a clerk in the Resident's Office, tendered a letter, dated 11th May, 1928, Exhibit "A," from the Resident Owerri Province, Port Harcourt, to the Land Officer, Port Harcourt, a memorandum dated 22nd August, 1929, marked Exhibit "B" from the Resident, Owerri Province, Port Harcourt, to the Land Officer, Port Harcourt, a memorandum dated 21st January, 1923, from Colonel Moorhouse to the Secretary Southern Provinces, marked Exhibit "C," a memorandum dated the 17th May, 1932, marked Exhibit "D," from the Superintendent of Agriculture, Umuahia, to the Resident, Owerri Province, Port Harcourt, notes of a meeting held at Port Harcourt by His Excellency, the Governor on Sunday September 20th, marked Exhibit "E," a statement of Port Harcourt Township Expenditure for 1948-1950, marked Exhibit "O."

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"A"
"B"
"C"
"D"
"E"
"O"

He testified, *inter alia*, that from the file he saw that a Mr. Hargrove represented the Governor in 1913 when Port Harcourt was being acquired.

He testified also that six communities were concerned in the agreement Exhibit "F" and that Diobu is the only community which has had a dispute with Government.

He stated further that a payment voucher was made by the Treasury for the £2,000 payable under agreement Exhibit "F," but that there is no record from the Treasury that the voucher was cashed and he could not say whether the voucher was delivered to the Diobus.

According to him, the Planning Authority, Port Harcourt, allocated plots in Diobu D area and in the Creek Road Extensions and he stated that neither the Governor of Nigeria, nor the Resident, Rivers Province, has anything to do with the allocations.

He further testified that in January, 1947, the Plaintiffs and others were given a year's notice to quit and that the notices were forwarded to the Local Authority, Port Harcourt, for service on the addressees. He identified Exhibit "P" as a copy of the notices.

Osmond James Osadebe, Assistant Registrar, Lands Department, Enugu, tendered (A) the original agreement made on the 18th May, 1913, between the Chiefs and Headmen of Diobu and others with Alexander George Boyle, marked Exhibit "F," (B) the Deed of Agreement, dated the 2nd day of May, 1928, and made between Chiefs Wobo, Ejebuam, Obonda Aluku, Wokekoro, Atako and Headmen Ajoko and Chinwa for and on behalf of themselves the chiefs, headmen and people of Diobu and Sir Graeme Thomson, the Governor and Commander-in-Chief of Nigeria, marked Exhibit "G," and (C) an indenture, dated the 2nd May, 1928, and marked Exhibit "H," between Sir Graeme Thomson, Governor of Nigeria, and Chief Wobo.

"F"
"F"
"P"
"F"
"G"
"H"

Samuel Amechi testified that he is a tenant of a Diobu man named Frank Nnodi who, in concert with his people, gave him the land on which he built a house in 1933, when he gave them a goat, palm wine and cigarettes. He pays no rent to Government and he has not been disturbed in his house by Government.

Illigami Igbokwe, a native of Orlu and a palm wine seller living at Diobu Halt, testified that the chiefs, elders and young men of Ogbum and

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Agbali gave him land on which he built a house 15 years ago. The old house fell and he built a new one about six years ago. He stated that no one has interfered with him, and he pays no rent to Government.

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continued.

" L "

Mobolaji Abiose, Development Officer, Port Harcourt, testified, *inter alia*, that Government took over Diobu D area in 1948, and that before entering the land, a scheme was published in the *Nigeria Gazette* of the 22nd April, 1948, under the Nigeria Town and Country Planning Ordinance. Notice of the scheme, he testified, was published in the local press. He tendered a letter, Exhibit " L," which he said was letter of objection received from one John Akugbo who, in his opinion, was a representative of Diobu people. He further testified that the Resident, Rivers Province, wrote a letter to the Diobu in 1947, giving them a year's notice to quit. According to him, the notices were returned to the Resident. The Creek Road Extensions, he stated, started in 1947, and that that part of the town was planned under the Nigeria Town and Country Planning Ordinance. Notice of the scheme of the planning was published in *Nigeria Gazette* No. 17 of 11th March, 1948, and also in *Gazette* of 8th April, 1948. No objection was received but he could not say for certain whether the notice was published in the local press. With regard to John Akugbo, he did not know him personally, and he drew the inference that he represented Diobu people from the contents of Exhibit " L." 10 20

" L "

" N "

" H "

He tendered a plan of Port Harcourt, marked Exhibit " N," and marked the positions of Diobu A, B, C and D areas on it. He further stated that the areas are outside the area edged pink on Exhibit " H." He stated that Diobu D area was already Crown Land before the planning scheme was made. Lands, according to him, could be acquired under Public Lands Acquisition Ordinance and under the Nigeria Town and Country Planning Ordinance.

" M "

" F," " M "

" M "

" M "

" H "

" M "

Jeremiah Ume, a licensed Surveyor, tendered plan Exhibit " M," which he made for the Plaintiffs in 1949 for the purpose of this case. He compared the plan on Exhibit " F " with Exhibit " M " and declared them to be the same, although Exhibit " M " is on a larger scale. In his view, the area he hatched red on Exhibit " M " corresponds to the area edged pink in the plan in Exhibit " H." 30

The creeks at the southern and eastern ends of Exhibit " M " were not named, but the witness stated that the eastern creek is Okrika Creek and the southern one Bonny Creek, and he wrote the names on the plan in red lead pencil accordingly.

Although the first four Plaintiffs gave evidence, they did not do so in the order their names appeared on the writ of summons. 40

Philip Chinwa, the 4th Plaintiff, gave evidence as the 3rd Plaintiffs' witness; Samuel Atako, the 3rd Plaintiff, gave evidence as the 4th Plaintiffs' witness; Wali Wokekoro, the 2nd Plaintiff, gave evidence as the 5th Plaintiffs' witness and Joseph Wobo, the 1st Plaintiff, gave evidence as the 6th Plaintiffs' witness.

" F "

" G "

" F "

Philip Chinwa admitted that he is a son of the man described as Headman Chinwa in Exhibits " F " and " G." Samuel Atako admitted that his father Chief Atako was supposed to have executed Exhibits " F " and " G." Wali Wokekoro admitted being the son of Chief Wokekoro who was shown as a signatory to Exhibit " F." His own name appeared

on Exhibit " G " as a successor to his late father, but he denied executing the deed. Joseph Wobo admitted that Chief Wobo whose name appeared as a signatory to each of Exhibits " F " and " G " was his father. So that the four Plaintiffs each succeeded his late father.

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The evidence of the four Plaintiffs agreed that about 40 years ago two Europeans, said to be Harcourt and Hargrove by Samuel Atako, came to Port Harcourt, then known as Obomotu and were given land on which to build their Rest House.

10 The four of them agreed that about two years later there was negotiation by some Europeans to buy Port Harcourt, but their evidence differed as to the identity of the white men.

Philip Chinwa stated that a white man said to be Governor offered to buy Obomotu, and Samuel Atako stated that some white men made the offer. Wali Wokekoro's evidence suggested that the two white men who wanted to buy Obomotu were the two men who were allowed to settle at Aja Ocha, and the evidence of Joseph Wobo was to the same effect.

Philip Chinwa alleged that no price was offered for the land, whereas Samuel Atako, Wali Wokekoro and Joseph Wobo agreed that £2,000 was offered as purchase price.

20 The four of them, however, agreed in their evidence that the offer was rejected.

Philip Chinwa testified that no agreement of sale was entered into by their chiefs, and stated further that the men who executed agreement Exhibit " F " were not Diobu men. Samuel Atako also testified that Chief Ejebuwan and Chief Aluku, who executed Exhibit " F," were not their people, but he admitted subsequently that they were Diobu men, but suggested that they had no interest in Obomotu.

" F "
" F "

30 Philip Chinwa and Samuel Atako alleged that Resident Firth offered to build houses for their chiefs about 26 years ago in order to induce them to agree to sell Obomotu, but Wali Wokekoro and Joseph alleged that the men who offered to build the houses were the two white men given land. Joseph Wobo further stated that Firth offered money for the land and that his offer was refused.

The four of them alleged that Captain Cooke, District Officer, Degema, came as arbitrator between them and Government in 1927 and that, at his request, the land given to Government was extended from the site of Miller Brothers' shop, now known as Kingsway Stores, to No. 1 Railway Gate on the understanding that they would be paid yearly rent of £1,500.

40 They all agreed that Diobu people were paid £7,500, which Philip Chinwa stated that Government called Rent while they took it to be compensation. Samuel Atako stated that the money was said to be a part of the money promised by Captain Cooke.

Wali Wokekoro called the money compensation and Joseph Wobo stated that the money was at first called compensation, and later on Rent.

Wali Wokekoro stated that they agreed to lease the land to Government. Joseph Wobo alleged that after the intervention of Captain Cooke, the Government abandoned the idea of buying the land and proposed to lease it. Samuel Atako alleged that they were also paid £300 as compensation for their houses which were destroyed. Wali

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Wokekoro testified that since 1927 the Diobus have received £500 annual rent from Government and that they told the Government that the amount was insufficient. He alleged that they demanded the balance of £1,000 a year on the basis of £1,500 promised them by Captain Cooke and that they stopped receiving the annual sum of £500 when the arrears were not paid. He further alleged that this action was taken as they did not agree to £500 a year.

He, however, stated that when they were receiving the sum of £7,500, they were told they would be paid £500 yearly.

In regard to this payment of £500 yearly, Samuel Atako testified 10 that they have received £500 yearly since 1927 and that they told Government that it was inadequate. Philip Chinwa's version is that they were paid £500 in 1928 and in 1929 and that they refused to accept the money in 1931 because they wanted to find out whether it was compensation for their crops. He alleged that in 1931 Governor Cameron sent for them and asked why they had refused the annual payment of £500, and that they told him that they had been told in 1927 that they would be paid compensation and a substantial rent which was not specified; that they were promised only reasonable rent, and that the Governor told them to go to Court. 20

On this point, Joseph Wobo's evidence is that in 1928, which was the year after they were paid £7,500, they protested against £500 and that they were told it was in accordance with their agreement that they pressed for the agreement but never got a copy of it until 4 years ago. He alleged that they refused the amount of £500 until the names of the chiefs who executed the agreement were disclosed and that the names were not disclosed until they instructed their Solicitor, Mr. O. A. Alakija to write a petition to Government. The four of them admitted that they instructed lawyer Alakija to write Exhibit "J2" and Philip Chinwa and Samuel Atako also admitted that they also wrote petition Exhibit "J3." 30

With regard to Exhibit "J2," Philip Chinwa stated that his father made his mark on it in the presence of Chinwa.

Samuel Atako stated that it was read over and interpreted to him and the others before he signed it, but Wali Wokekoro stated that it was not read before he put his mark on it. He alleged that they went home after giving the lawyer instructions, but he later stated that he did not remember if it was read and interpreted.

Joseph Wobo stated that he heard their lawyer reading it in English which they did not understand and that he could not remember if it was interpreted to them. 40

Paragraph 4 of the Petition Exhibit "J2" refers to agreement Exhibit "G." Wali Wokekoro admitted that they told their lawyer about Exhibit "G," whereas Samuel Atako stated that he did not know that Exhibit "G" was the agreement referred to in their petition. He further suggested that the names of the signatories to Exhibits "F" and "G" were forged and that he did not know if his people and Government entered into any agreement. He, however, admitted that he signed Exhibit "J2." Philip Chinwa testified that he and his father, who signed Exhibit "G," knew about Exhibit "G," but that was after he had stated that he heard of Exhibits "F," "G" and "H" only three 50

years ago. Wali Wokekoro further alleged that he did not put his mark on Exhibit "G," that he knew about it 4 years after they received £7,500, and that it was not true that Allagoa interpreted Exhibit "G" to the signatories.

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Joseph Wobo made contradictory statements about Exhibit "G." He, at first, stated that he knew about Exhibit "G" when they went to lawyer Alakija, but he subsequently stated that he knew about it four years after they received the £7,500. He further alleged that the signatories to Exhibit "J2" did not give lawyer Alakija particulars about the agreement referred to in Exhibit "J2," which he suggested the lawyer probably got from the Resident's Office, and that the lawyer did not tell them the result of his inquiries.

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"G"
"G"
"G"
"J2"
"J2"

Philip Chinwa admitted that in Exhibits "J2" and "J3" they asked Government to increase rent of £500 and that there was no reference in either of the petitions to £1,500 promised by Captain Cooke.

"J2," "J3"

Samuel Atako admitted there was no reference in their petitions to Government to the £1,500, but alleged that they told Governor Cameron verbally about it, and that he told them to go to Court.

Joseph Wobo alleged that their lawyer was told to refer to the sum of £1,500 in Exhibit "J2."

"J2"

The four Plaintiffs who gave evidence testified that the land granted to Government lies between Railway Gate No. 1, Amadi Creek, the sites of P.W.D. and Hospital, Watugbo Creek, to which Philip Chinwa and Samuel Atako added Bonny River. Philip Chinwa testified that Government went beyond the alleged boundary in 1937 but admitted there was no mention of the alleged trespass in Exhibits "J2" and "J3."

"J2," "J3"

The four Plaintiffs gave evidence that the Government has extended the Township beyond No. 1 Railway Gate and also beyond the Barracks and the Hospital without the permission of the Diobu owners.

Samuel Atako also claimed that the Government has also trespassed on the sites of the Marine and Magazine and on land between European Club and the Hospital.

Philip Chinwa and Samuel Atako admitted that about four years ago, they were given notice to quit some land beyond No. 1 Railway Gate, but Wali Wokekoro and Joseph Wobo obviously took the notice which they admitted was read to them as notice of intention to acquire land beyond No. 1 Railway Gate, and they all agreed that they refused to accept the notice.

They all stated that it is against their native law and custom to sell their land.

Philip Chinwa testified that people appointed by their community as their representatives could negotiate on behalf of their community.

Joseph Wobo also gave evidence that the whole of Diobu community empowered their chiefs to instruct lawyer Alakija to write Exhibit "J2."

"J2"

For the defence three short witnesses, Ume Uja, Alphonso Ogo and Samson Obiora were called. Ume Uja, a clerk in the District Office, Port Harcourt, testified that he accompanied the Local Authority, Mr. V. K. Johnson, Building Inspector Jaja and Boundary-man Ajibola to Diobu where the chiefs were assembled; that the Local Authority told

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the chiefs through the chiefs' clerk who acted as interpreter, that he, the Local Authority, had been sent by the Resident to deliver a notice to them ; that the notice was read by the Local Authority and interpreted to the chiefs by their clerk, after which the notice was handed to the clerk for them ; that the chiefs later on came up in a rage and told the Local Authority that they were not accepting the notice ; that one of the chiefs, among whom were chiefs Wobo, Atako and Amadi, took the notice from the clerk and threw it on the ground ; that the Local Authority left leaving the notice on the ground.

" P " The notice, to his knowledge was not sent back to their office. He 10
tendered a copy of the notice, marked Exhibit " P." On the occasion he heard the chiefs say that they had nowhere to go ; that their forefathers entered into agreement in ignorance and that the Government had no right to evict them because the land was theirs.

" Q " Alphonso Ogo, Government Surveyor, drew and tendered a map of
" F," " Q " Port Harcourt which was marked Exhibit " Q." He compared the plan
" Q " on Exhibit " F " with the plan Exhibit " Q " and found them to be
" H " identical, though Exhibit " Q " is drawn on a larger scale. He stated that
" Q," " M " the area coloured pink on the plan on Exhibit " H " is the same as that
edged green on Exhibit " Q." He declared Exhibits " Q " and " M " 20
to have been drawn to the same scale and that the outlines of both are the same.

" Q " Samson Obiora, Inspector of Lands in the Port Harcourt Planning
" Q " Authority's Office knew Diobu D. area and the Creek Road Extensions
and stated that they are within the area edged pink on Exhibit " Q." The area edged pink on Exhibit " Q," he stated, is Crown land.

On the pleadings and evidence before the Court the questions which this Court is called upon to determine are :—

1. Whether Diobu people sold or leased Obomotu, now known as Port Harcourt to the Crown and on what terms. 30
2. What is the extent of the land sold or leased ?
3. Has the Crown trespassed on Diobu land by making the Diobu layout ? and
4. Has the Crown trespassed on Diobu land by the Creek Road Extension ?

" F," " G," The learned Crown Counsel, who appears for the Defendant, properly
" H " submitted that the Defendant's case rested chiefly on Exhibits " F," " G " and " H " and it will therefore be necessary to examine the documents in detail.

" F " Exhibit " F " is an agreement dated the 18th May, 1913, and made 40
between Chief Wobo, Chief Ejebuwan, Chief Aluku, Chief Wokekoro, Chief Atako, Headman Ajoko Amadi, Headman Chinwa representing Diobu people, representative chiefs of Omo Eme, Chiefs of Omo Amassi, Chiefs of Omobiakpan, Chiefs of Oguniba, Chiefs of Okrika lands and villages, of the one part and Alexander George Boyle, C.M.G., Deputy Governor of the Colony and Protectorate of Southern Nigeria, for and on behalf of His Majesty the King, of the other part. The agreement recites that certain land is required for the service of the Colony and Protectorate of Nigeria and gives a description of the land which is enclosed by Primrose

Creek or Bonny River, Ilechi Creek, a point North of Ilechi waterside, Woji Creek, Okrika Creek which is delineated on the plan attached to the agreement.

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Reference to the plan at page 11 (Record, p. 73) of Exhibit " F " will show the positions of the boundaries above recited. From the plan it appears that at the time Omo Eme, Omo Amassi, Omobiakpan and Oguniba people occupied land at the top end of the land required by Government, and that land on the eastern side thereof, near Okrika Creek, was occupied by Okrika villages.

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" F "

10 Diobu and Diobu farms are also shown on the plan.

The agreement further recites: " And as there are many native occupiers on the land so required and as it is just and expedient that all such native occupiers should be paid compensation for their right title and interest upon the land so required."

20 The agreement then recites that the Chiefs, Headmen and others in the schedule attached thereto agree in consideration of the payment of the sum of money set out against their several names in the schedule on behalf of themselves and their people, to grant and sell unto the said Alexander George Boyle, C.M.G., Deputy Governor of the Colony and Protectorate of Southern Nigeria, all the right title and interest to which they and their people were entitled by native law and custom in the said land, and they further agreed that they would meet and settle any claims should any person or persons dispute their sole right to the disposal of all interests in the said land, and by the acceptance of the payments of the monies set out in the schedule attached thereto they declared themselves to be the sole possessors of all the interests in the said land and agreed to hold themselves solely responsible for all claims which might thereafter be made in respect of the land.

30 Pages 8-10 (Record, pp. 76-78) of Exhibit " F " contains the schedule setting out the names of the towns or communities, amount of money due to each and the signatures of chiefs and headmen of each community.

At page 8 (Record, p. 76) the sum of £2,000 was set against Diobu, and Diobu chiefs' marks were made against it.

£150 was set against Omo Eme for which their chiefs signed.

£100 against Omo Amassi for which their chiefs signed.

£100 was set against Omo-biakpan for which their chiefs signed.

£300 against Oguniba for which their chiefs signed, and £3,000 against Okrika land and villages for which their chiefs also signed. The total amount payable under the agreement was £5,650.

40 With the exception of Chief Daniel Kalio of Okrika, all the signatories to the agreement were illiterate.

Gabriel Yellow swore to an affidavit on the 31st July, 1913, before the District Commissioner to the effect that he interpreted the agreement to the illiterate signatories and that they appeared to understand its provisions before they executed the agreement in his presence. The marks and signatures of the signatories were witnessed by the District Commissioner, Degema, among others.

Pages 3-4 (Record, p. 74) bear a certificate by G. A. Yellow as to the execution of the agreement by Chief Wobo, Chief Ejigbuwan, Chief Aluku,

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Chief Wokekoro, Chief Atako, Headman Ajoko Amadi and Headman Chinwa. Exhibit " F " was duly registered as No. 16 of 1913 at pages 201-211, Register of Deeds, volume 7, kept at Calabar.

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continued.
" F "
" G "

Exhibit " G " is an agreement made the 2nd May, 1928, between Chiefs Wobo, Ejebuwan, Obonda Aliku, Wokekoro, Atako, and Headman Ajoko and Chinwa for and on behalf of themselves the chiefs, headmen and people of Diobu thereafter called the chiefs and headmen (which expression shall include the said chiefs headmen and people and their successors in offices and their heirs, executors and administrators) of the one part, and Sir Graeme Thomson, Knight Commander of the Order of Bath, Governor and Commander-in-Chief of Nigeria (hereinafter called the Governor which expression shall include his successors in office) of the other part. 10

" F "

The agreement was said to be supplemental to the agreement registered as No. 16 of 1913 in Vol. 7 of the Registry of Deeds, Calabar (thereafter called the principal agreement) dated the 18th May, 1913, that is to Exhibit " F."

It was recited that the Chiefs and Headmen and the Governor desired to vary the terms of the principal agreement as follows : " The purchase money to be paid to these chiefs and headmen shall be an immediate payment of the sum of £7,500 and thereafter a sum of £500 per annum payable on the 18th day of May, in each year commencing on the 18th day of May, 1928, and continuing for all time hereafter instead of the purchase money fixed by the original agreement." 20

It was further agreed that the chiefs and headmen would indemnify the Governor against all claims and demands in respect of the said purchase money by themselves and their people or any person or persons claiming through or under them.

It was further agreed that " subject to the variations herein contained, the principal agreement shall remain in full force and effect and should be read and construed to be enforceable as if the terms of these presents were inserted therein by way of addition or substitution as the case may be." 30

The agreement was signed and sealed by the Governor and Chiefs Wobo, Ejibuwan, Obondu Aluku, Wokekoro, Atako, Headman Ajoko Amadi and Chinwa put their marks and seals thereon.

Page 4 (Record, p. 84) of the exhibit bears a certificate by F. O. Allagoa that he correctly read over and interpreted the agreement to the chiefs and headmen who appeared clearly to understand the same.

The execution of the agreement was witnessed by an Assistant Chief Clerk whose name I cannot decipher and by Njemanze, Chief Inspector of Police and O. W. Firth, Acting Resident, Owerri Province. 40

F. O. Allagoa swore to an affidavit on the 29th October, 1927, to the effect that he saw the chiefs and headmen execute the agreement which he read over and interpreted to them at the time of execution and that they appeared to understand its provisions.

O. W. Firth, Acting Resident, also made a certificate of proof of due execution of the agreement on the 29th October, 1927. The agreement was duly registered as No. 35 at page 230 in volume 99 of the Lands Registry in the Office at Lagos.

Before referring to Exhibit "H," I would point out that with the exception of Wokekoro the same chiefs, who entered into agreement Exhibit "F," executed agreement Exhibit "G." Chief Wokekoro who was a signatory to Exhibit "F" had died before Exhibit "G" was executed, but his son Wali Wokekoro, who succeeded him, executed it with the other chiefs and headmen.

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10 By an indenture dated the 2nd May, 1928, the Governor, Sir Graeme Thomson, for and on behalf of the Government of Nigeria, granted unto Chief Wobo, representing himself, the chiefs headmen and people of Diobu the land coloured red on the plan attached to the agreement. Exhibit "H" is the indenture and it was registered as No. 23 at page 23 in volume 225 of the Lands Registry in the Office at Lagos.

"H"
"F," "G"
"F," "G"
"H"

20 There can be no doubt from Exhibit "F" that Deputy Governor Boyle offered to buy Obomotu from the Diobus at the price of £2,000, and the evidence of Philip Chinwa that no price was offered is incorrect. Exhibit "F" also gave the lie to the evidence of Philip Chinwa, Samuel Atako, Wali Wokekoro and Joseph Wobo that their chiefs did not agree to sell Obomotu or Port Harcourt to the Government. Exhibit "F" is an agreement of sale of Obomotu and other lands according to the description and plan of the land on the exhibit. The agreement was confirmed and varied as to the purchase price by Exhibit "G."

"F"
"F"
"F"
"G"

It is clear that the purchase price of £2,000 reserved in Exhibit "F" was not paid. There is evidence that a voucher was prepared but there is no evidence of its delivery and payment. I shall deal later with the Plaintiffs' reasons for non-payment.

"F"

Now, Exhibit "G" reserves a purchase price of £7,500 and a yearly payment of £500 from 18th May, 1928, and the Plaintiffs admitted receipt of £7,500 in 1927 and of £500 in 1928 to 1947.

"G"

30 In spite of the evidence suggesting that the £7,500 paid was not purchase price and that the £500 paid to them annually was not the yearly payment reserved by Exhibit "G," we find that the Diobu Chiefs Wobo, Samuel Atako, Wali Wokekoro, Agumagu, Wanodi, Ajoku Amadi, Chinwa and Headman Amadi Opara as representatives of Diobu people instructed lawyer Alakija to write petition Exhibit "J2" to His Excellency Sir Donald Cameron, Governor and Commander in Chief of the Colony and Protectorate of Nigeria, on the 19th July, 1934, paragraph 4 of which reads as follows:—

"G"
"J2"

40 "That owing to the need for educating our children and descendants, and owing to the fact that our main source of income is our land rent, we respectfully pray that Your Excellency may graciously grant that the term of the agreement between Government and ourselves as contained in the written instrument No. A.17 Vol. 1 of the 2nd May, 1928, be subject to another revision, variation and modification."

The document referred to is the agreement Exhibit "G," which is marked "A.17 Vol. 1—Owerri Province."

"G"

By this reference there can be no doubt that the Chiefs and Headmen who instructed Mr. O. A. Alakija to prepare the petition and who signed or made their marks on it, not only know about the existence of Exhibit "G,"

"G"

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but also accepted it as their act and deed. As Exhibit " G " incorporates Exhibit " F," it stands to reason that they then acknowledged the existence of Exhibit " F."

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continued.

" G," " F "
" F "
" J2 "
" G "

In view of Samuel Atako's evidence that Exhibit " J2 " was read over and interpreted to them by G. B. O. Chinwa before he signed it and of the fact that the other signatories went together with him, it is clear that the signatories knew the contents of the petition before they put their names to it and got it forwarded. Wali Wokekoro definitely told a terrible lie when he denied that he executed Exhibit " G " and Joseph Wobo is no less a liar when he suggested that they did not give Mr. Alakija the particulars of the agreement referred to; that he went to the Resident's Office for information about the agreement and did not communicate his findings or discoveries to them. I entirely disbelieve his evidence that his father did not execute Exhibits " F " and " G." Philip Chinwa lied when he told the Court that their chiefs did not enter into any agreement of sale, and when he testified that the men who executed Exhibit " F " were not Diobu men. Samuel Atako also told a lie when he alleged that Ejebuwan and Aluku were not Diobu men who were interested in Obomotu and his allegation that the signatures or marks on Exhibits " F " and " G " are forgeries is entirely without foundation. 10

" F," " G "

" F "

" F," " G "

" J2 "

The admission made in para. 4 of Exhibit " J2 " binds the signatories and all Diobu people. 20

" F," " G "

Exhibits " F " and " G " show beyond doubt that Diobu chiefs and headmen on behalf of themselves and their people entered into agreement to sell and did sell Obomotu or Port Harcourt to the Government for valuable consideration.

There is no proof beyond the mere allegation of the Plaintiffs that Captain Cooke promised Diobu people £1,500 per annum, nor is there any proof that the Government at any time agreed to pay £1,500 yearly. If it was true that Captain Cooke promised them the amount alleged, I am sure the Diobus would have referred to it in at least one of their petitions Exhibits " J2 " and " J3 " to the Governor. 30

" J2,"
" J3 "

" G "

In " J2," paragraphs 2 and 4, they merely asked His Excellency to revise, vary or modify the terms of Exhibit " G " by increasing the amount of £500 paid to them yearly, which they called Rent.

" J3 "

In Exhibit " J3," paragraph 4, they asked for increase of the yearly rent. I agree with the learned Crown Counsel that a liquidated sum of money would have been asked for instead of their asking His Excellency just to increase the yearly rent, if they believed themselves to be entitled to £1,500 yearly instead of £500. 40

" E "

Philip Chinwa alleged that His Excellency Governor Cameron was told about the £1,500, but the notes of the meeting held at Port Harcourt by His Excellency the Governor on Sunday, 20th September, 1931, Exhibit " E " does not support the allegation. The Exhibit shows that representatives of the people of Diobu complained to His Excellency that they were not being paid sufficient rent for the land acquired by Government at Port Harcourt and there was no mention of the alleged promise of £1,500 per annum. If there had been some truth in the alleged promise the meeting with the Governor was their best opportunity of complaining to the Governor that the promise to pay them £1,500 had not 50

been implemented. On the contrary, they only complained that they were not getting enough money for the land acquired by Government. I have no doubt whatever that the Plaintiffs' allegation about the alleged promise of £1,500 per annum is untrue and that in 1931, when they met the Governor and in 1934 and 1937 when they petitioned His Excellency, the idea of claiming that they had been promised £1,500 per annum instead of £500 payable under Exhibit " G " had not occurred to them.

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" G "

I have no hesitation in holding that Samuel Atako told a deliberate lie when he stated that when they were paid £7,500 in 1927, they were told
10 it was a part of the money due to them at the rate of £1,500 per annum promised.

The fact that the Plaintiffs' present claim did not include the supposed arrears up to 1927 at the rate of £1,000 a year is a pointer to the untruthfulness of the witness and I am satisfied that Wali Wokekoro's evidence that the arrears of £1,000 yearly had been demanded is a pure fabrication. His evidence that they were told they would be paid £500 yearly when receiving the sum of £7,500 sounds like the truth as such payment would be in accordance with the provisions of Exhibit " G."

" G "

Exhibit " E " also gives the lie to the allegation of the Plaintiffs
20 that a boundary of the land granted to the Government was No. 1 Railway Gate. If that point had been an agreed and fixed boundary, it would not have been necessary for the representatives of the Diobus to ask His Excellency the Governor that the boundary should be at the level crossing where Owerri Road leaves the Township, which is the place where the Railway placed a gate which is known as No. 1 Railway Gate.

" E "

It appears to me from the evidence of Ume Uja, 1st Defence Witness, that the Diobus up to 1947 January acknowledged that their chiefs had entered into binding agreement with Government, but they believed that their ancestors who entered into the agreement did so in ignorance and that
30 when they decided to come to Court they made up their minds to repudiate the agreements which they acknowledged in paragraph 4 of Exhibit " J2."

" J2 "

It is, therefore, not necessary for the Defendant to call evidence as to the execution of Exhibits " F " and " G " which the Plaintiffs themselves had acknowledged as their agreement and I find no force in the submission of the learned Senior Counsel for the Plaintiffs on the point.

" F," " G "

I shall now deal with the question of non-payment of the £2,000 reserved as purchase price in Exhibit " F." The Plaintiffs gave evidence
40 that the money was not accepted because the Diobu chiefs did not agree to sell their land and that that was why the matter remained in abeyance till 1927. If this was so, then it becomes difficult to understand why people who were not willing to sell their lands in 1913 entered into agreement Exhibit " G " in 1927 confirming the agreement of Sale Exhibit " F " and varying the purchase price as already mentioned. In view of the fact that the Diobu chiefs who represented all Diobu people in 1934 admitted that they made agreement Exhibit " G " with Government, the argument that they refused to accept £2,000 purchase price because they were not willing to sell becomes untenable, and the only reasonable explanation that I can find is that after executing Exhibit " F," the
50 Diobu chiefs probably thought they were not getting enough money for their land, especially when Okrika people were to get £3,000 which was

" F "

" G," " F "

" G "

" F "

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" G "
" J2 "
" G "

£1,000 more than they were to get, and that after negotiations had been made and they had got the Government to agree to pay them £7,500 down and £500 yearly for ever, they agreed and entered into agreement Exhibit " G," which was subsequently confirmed by them in 1934 in Exhibit " J2."

As between the Plaintiffs and the Defendant, the Plaintiffs could not produce any evidence that before Exhibit " G " was executed there was agreement that they should be paid £500 yearly. The only agreement that stipulates for £500 yearly is Exhibit " G," and the evidence, which suggested that £7,500 was 15 years rent at £500 per annum and contradicted the suggestion that the amount was a part of the rent payable at £1,500 a year, is untrue. 10

" A," " B,"
" C," " D "
" C "

The Plaintiffs and or their agents, no doubt, had access to official records otherwise they could not have known the contents of letters passing between departments of Government, which had not been copied to them, and would not have been in a position to give notice for the production of Exhibits " A," " B," " C " and " D." Exhibit " C " is a letter addressed to the Secretary, Southern Provinces (S.S.P.) by H. C. Moorhouse and it bears date 21/1/23. This letter discussed what should be the terms of the new agreement with the Diobus and it cannot be doubted that the terms contained in Exhibit " G " were the final agreements come to by both parties. Exhibit " C " cannot therefore be considered as disproving the final agreements as contained in Exhibit " G " which the Diobus had confirmed in Exhibit " J2 " as their agreement with Government. 20

" G "
" C "
" G "
" J2 "

" A," " B,"
" D "
" G "
" H "

The remaining three Exhibits " A," " B " and " D " were written in 1929 and in 1932, that is after Exhibit " G " had been executed.

Exhibit " H " is a letter from the Resident, Owerri Province, Port Harcourt, to the Land Officer, Port Harcourt. 30

" B "
" D "
" G "

Exhibit " B " is a memorandum from the Resident, Owerri Province to the Land Officer, Port Harcourt, and Exhibit " D " is a memorandum from the Superintendent of Agriculture Umuahia, to the Resident Owerri Province, Port Harcourt on the valuation of Diobu land. These three exhibits having been written after the execution of Exhibit " G " cannot be received to contradict the terms of the executed agreement.

" A "
" G "
" G "

There is no doubt that in Exhibit " A " the Resident, Owerri Province, wrote that the Diobus were paid rent for 15 years amounting to £7,500 and compensation of £300 on the 28th October, 1927. I suppose the purchase price reserved in Exhibit " G " was calculated on the basis of £500 a year, which brought the amount to £7,500, but it is wrong to call the payment which was made under agreement Exhibit " G " rent, as Exhibit " G " is not an agreement of lease nor does it reserve any rent. 40

" G "
" G," " J2 "
" J,"
" J1 "
" J3 "
" G "

The Plaintiffs did not suggest, nor is there proof, that a new agreement was entered into between them and the Government after the execution of Exhibit " G," and the fact that the word " Rent " was loosely used to describe the annual payment of £500 reserved in Exhibit " G " in Exhibit " J2," in the reply thereto Exhibit " J," in Exhibit " J3 " and in the reply thereto Exhibit " J1 " does not, and cannot, vary the terms of the agreement Exhibit " G " which is still in force. 50

The law is that parol evidence cannot be given to add to, vary or contradict a deed or other written instrument. When an agreement has been reduced into writing, the parties are bound by their written agreement and neither party can adduce evidence to show that his intention was mis-stated in the agreement.

Exhibit " G " purports to be and is a deed of sale and the evidence adduced by the Plaintiffs to show that a lease was intended cannot vary the written agreement.

10 The learned Counsel for the Plaintiffs submitted that Exhibit " G " is defective and is neither a deed of sale nor a deed of lease and that the price is not definite and certain because no fixed sum was put down as the price.

In an agreement of sale three elements must be present and certain, viz., the parties, the thing or property to be sold, and the price to be paid for it.

In this case, there is no question about the parties ; the land to be sold is described in the deed and a plan thereof attached, which leaves no room for doubt about the land to be sold and bought.

20 Now with regard to the price, it is for the parties to have a definite agreement as to what the price shall be. The price is definite and certain when one perusing the agreement can see what the price agreed upon is. In my view, the price reserved in Exhibit " G " is obvious, definite and certain, and it is " an immediate payment of the sum of £7,500 and there-
after a sum of £500 per annum payable on the 18th day of May in each year commencing from the 18th May, 1928, and continuing for all time hereafter," " G "

30 It is no doubt unusual to contract to pay purchase price in this manner, but the novelty of it does not detract from its validity and legality. Parties to a contract are at liberty to contract for the price in any manner they please as long as the price can be ascertained and is ascertainable. Here the Government said to the chiefs and headmen of Diobu, in effect, " I want to buy your land and I shall pay you £7,500 down and £500 yearly as from the 18th May, 1928, forever," to which the chiefs and headmen said, in effect, " We agree to sell our land to you on the terms you offer."

The Government knew what they have to pay for the land being acquired and the chiefs and headmen knew what they were going to get for the land they were selling. I therefore, find as a fact that the price reserved is definite and certain.

40 This brings me to the question of adequacy of the consideration which was raised in Plaintiffs' petition to Government and raised by placing before the Court figures to show how much is being realised by the Government from the transaction.

As I have already stated, it is the duty of the parties to a contract to fix the price or consideration for their bargain. Having once fixed it, they are bound by it, but their agreement can be varied by mutual agreement as was done in this case by varying the purchase price from £2,000 to £7,500 plus £500 annual payment for ever.

50 It is not for the Court to consider whether the contract price reserved by mutual agreement is adequate or not, all the Court has to look for is whether there is any consideration to support the agreement.

*In the
Supreme
Court.*

No. 24.
Judgment,
4th
August
1951,
continued.
" G "
" G "

*In the
Supreme
Court.*

No. 24.

Judgment,
4th
August
1951,
continued.

In *Simons v. Land*, 1849, L.T.O.S. 74, it was held that the Court will not look at the smallness of the consideration in an agreement. If, upon the face of the agreement, there be a consideration, however small, it is sufficient.

Inadequacy of consideration alone is not sufficient to vitiate a sale, *Longmate v. Ledger* 2 L.T. 256. See also *Bainbridge v. Firmstone* 1838, 3 Ad. & El. 743.

I shall now deal with Plaintiffs' Senior Counsel's submission about what he called inconsistency in the dates of execution and the date on each of Exhibit " F " and Exhibit " H " and their effect. 10

" F," " H "
" F "

I take Exhibit " F " first. The oath of proof on this exhibit shows that the Chiefs and Headmen of Diobu executed the document on the 18th day of April, 1913, whereas the document bears date of 18th May, 1913.

" H "

In the same way, the date on the deed Exhibit " H " is 2nd May, 1928, whereas the oath of proof on the deed shows that the chiefs and headmen of Diobu executed the deed on the 29th October, 1927.

" G "

The submission of the learned counsel that Exhibit " G " dated 2nd May, 1928, is not the agreement the Diobu chiefs and headmen entered into in October, 1927, is answered by the certificate on Exhibit " G " to the effect that the exhibit is the instrument marked " A " referred to in the affidavit of Francis Assamode Allagoa sworn before the Acting Resident O. W. Firth on the 29th October, 1927, and the document does bear the letter " A." 20

" F "

" H "

Exhibit " F " is an instrument under hand only as it was not sealed, but Exhibit " H " is a deed duly sealed by the signatories. An agreement in writing must be signed by the party or parties to be charged therewith in order to authenticate it and a deed has to be sealed by the parties thereto.

" A deed takes effect from delivery and any other written instrument from the date of execution, and though the date expressed in the instrument is *prima facie* to be taken as the date of delivery or execution, yet this does not exclude extrinsic evidence of the actual date; and the actual date when proved, prevails, in case of variance, over the apparent date." 30

Halsbury's Laws of England, Hailsham Edition, section 332, page 267.

Pollock C.B. in *Jane v. Hughes*, 24 L.T.O.S. 116, held: " The deed must be taken to speak from the time of its execution "; and the Court in *Taylor v. McCalmont*, 1885, 26 L.T.O.S. 93 held: " The deed speaks from the time not of its date but of its delivery."

I shall refer also to section 236 of volume 10, Halsbury's Laws of England, Hailsham Edition, page 194, which reads: " A deed takes effect from the time of its delivery and not from the date on which it is herein stated to have been made or executed; and a party to a deed is not estopped by any statement in the deed as to the day or time of its execution from proving that it was delivered at some other time. A deed may be good although it has no date or bears a false or an impossible date." 40

" F," " G "
" G."

This is the principle that should be applied to Exhibits " F " and " G."

" F "

" G "

Exhibit " F " therefore becomes binding on the day it was signed by the signatories and Exhibit " G " from the date of its execution, when in accordance with the terms of the deed, the Plaintiffs were paid £7,500.

The Plaintiffs originally alleged fraud against the Defendant, and the fraud was suggested to be in the form of an offer of bribe to the chiefs and headmen who executed the supplemental agreement, Exhibit "G." In spite of the fact that the allegation of fraud was withdrawn, evidence was given by the Plaintiffs that Resident O. W. Firth offered to build storey houses for the chiefs and headmen if they would agree to sell Obomotu to the Government.

*In the
Supreme
Court.*
No. 24.
Judgment,
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1951,
continued.
" G "

The evidence of Philip Chinwa, Samuel Atako, Wali Wokekoro and Joseph Wobo are contradictory and I entirely disbelieve their story as
10 I am satisfied nothing of the sort happened, and that the Diobu Chiefs and Headmen who executed the agreement did so of their free will, uninfluenced by any offer of a bribe. Exhibit "J2" makes it clear that the allegation contained in paragraph 15 of the Statement of Claim that Exhibit "G" was entered into by the Diobu Chiefs and Headmen without the knowledge and consent of the Diobu is untrue. Exhibit "J2" also explodes the allegation that, in executing Exhibit "G," the parties were not *ad idem*, or did not agree as to the terms of the agreement they were entering into.

" J2 "
" G "
" J2 "
" G "

Philip Chinwa, Samuel Atako, Wali Wokekoro and Joseph Wobo all
20 made much of their native law and custom which, they alleged, forbade the sale of their land, and for which reason, they alleged, their chiefs and headmen refused to sell Obomotu to Government.

It is possible that their customary laws did not permit of their lands being sold before the advent of the British Government, but I do not consider the native law and custom so inflexible as not to be capable of exception in the case of the Government in the light of the evidence before the Court. I am satisfied from the evidence of Philip Chinwa and of Joseph Wobo that matters affecting their Community had to be discussed by the people with their chiefs who would be instructed by the
30 people to take necessary action.

I am satisfied that the Diobu people after discussing the question of selling Diobu land to Government empowered their chiefs and headmen to negotiate the sale with Government agents or representatives, which they did in the same way as they empowered their chiefs and headmen to instruct lawyer Alakija to write Exhibit "J2" to the Government.

" J2 "

The Chiefs, Headmen and people of Diobu, without doubt, either flouted their native law and custom or made an exception to it when they entered into agreement Exhibit "H" which they subsequently confirmed in Exhibit "J2."

" H "
" J2 "

I have already dealt with Exhibit "F" showing that six communities including the Diobu Chiefs and Headmen executed the agreement. I accept the evidence of the Plaintiffs' 1st witness Emmanuel Fila Hart, that only the Diobu people have had any dispute with Government. The six communities sold their respective areas in the land covered by the plan on Exhibit "F." After considering all the evidence in this case, I am satisfied that the agreement between the Plaintiffs and the Defendant was for the sale, and not the lease, of Obomotu or Port Harcourt and that the purchase price is as set out in Exhibit "G."

" F "
" F "
" G "

With regard to the extent of land sold, I reject the evidence of the
50 Plaintiffs as regards the boundaries in view of the plan on Exhibit "F"

" F "

*In the
Supreme
Court.*

No. 24.
Judgment,
4th

August
1951,
continued.

" F," " G "

and the description of the land sold in Exhibits " F " and " G," which show that the land sold was bounded on the south by Bonny River, on the west by Bonny River and Ilechi Creek, through Ilechi waterside up to a point B, by the lands occupied by Omo Eme, Omo Amassi, Omo Biakpan people up to a point C on Woji Creek down to Okrika Creek, which joins Bonny River in the south.

The Diobu land was between Bonny River, Ilechi Creek and the lands occupied by the Okrika people, the Omo Eme people, Omo Amassi people, Omo Biakpan and Oguniba people; the whole of Diobu land described above was the land sold by the Diobus to Government. 10

" H "

" F," " G "

" H "

" F," " M "

" F "

" M "

By Exhibit " H " part of the land sold to Government by Exhibits " F " and " G " was granted back to Diobu people through Chief Wobo. I accept the evidence of Jeremiah Ume, 10th Plaintiffs' witness, that the area coloured red on Exhibit " H " corresponds to the area hatched red in lead pencil on plan Exhibit " M." I accept his evidence further that the plan on Exhibit " F " and plan Exhibit " M " both relate to the same land; that the eastern, southern and western boundaries on both agree, and that the northern boundary of the plan in Exhibit " F " coincides with the red line marked x-x at the top of Exhibit " M."

" N "

" H "

" H "

" H "

The Plaintiffs' 9th witness, Mobolaji Abiose, tendered a plan of 20 Port Harcourt, marked Exhibit " N." on which he marked Diobu areas A, B, C and D. He testified that the areas A, B, C, D fall outside area edged pink on Exhibit " H." (N.B.—This is the same area described as red in Exhibit " H," but it appears now more like pink than red.) In other words, the areas are not a part of the land granted back to the Diobu people by Exhibit " H." I accept this evidence.

" F "

" Q "

" H," " Q "

" Q," " M "

I accept also the evidence of Alphonso Ogo, Defendant's 2nd witness, that the plan on Exhibit " F " is identically the same as plan Exhibit " Q " which is drawn on a larger scale; that the area coloured pink on Exhibit " H " is the area edged green on Exhibit " Q "; that Exhibits 30 " Q " and " M," drawn on the same scale, are the same in outline.

" Q "

I am satisfied from the evidence of Samson Obiora, Defendant's 3rd witness, that Diobu D area and the Creek Road Extensions fall within the area edged pink in Exhibit " Q," and that the whole area is Crown Land.

" P "

" P "

The evidence shows that the Diobus were given a year's notice to quit in January, 1947. This notice was admitted by the Plaintiffs. Exhibit " P " is a copy of the notice which shows that Government permitted the Diobus to remain on the land after it had been acquired by Government. As owner of the land, the Government was entitled 40 to give the Diobus notice Exhibit " P " to quit within a year. In entering upon the land at the expiration of the period of one year, the Government has not been guilty of any trespass for which the Plaintiffs can claim damages.

The evidence of the 7th and 8th Plaintiffs' witnesses, Daniel Amechi and Iligani Igbokwe, only show they are tenants to Diobu people. Their landlords were allowed by Government to remain on the land acquired by Government until the land was required for use by Government, and they could therefore sublet the land unless prevented from doing so, about which there is no evidence. As both of these witnesses testified 50

that they have not been interfered with or disturbed, it is likely that their holdings fall outside the area now in dispute. Should it happen to fall within the area in dispute, their position is no better than that of their landlords.

*In the
Supreme
Court.*

No. 24.
Judgment,
4th
August
1951,
continued.

"L"

The evidence of Mobolaji Abiose, Plaintiffs' 9th witness, is clear that Diobu D area was declared a Town Planning Area and that a scheme under the Nigeria Town and Country Planning Ordinance was published in the Nigeria Gazette and published in the local papers. Government Notice No. 642 at page 314 of Nigeria Gazette No. 25 Vol. 35 of 22/4/48 confirms
10 this, and the letter of objection from John Akugbo, Exhibit "L," confirms that notice of the scheme came to the knowlegde of the people affected.

John Akugbo wrote as if he was one of the Diobu people served with notice of the scheme, but he nowhere in the letter stated that he was authorised to write the letter by Diobu people and I therefore consider the inference of the witness Mobolaji Abiose, not justifiable that he was a representative of Diobu people.

With regard to the Creek Road Extensions, I accept Mobolaji Abiose's evidence that the extension started in 1947 and that the area was planned under the Nigeria Town and Country Planning Ordinance. Government
20 Notice No. 431 in Nigeria Gazette No. 17 Vol. 35 of 11th March, 1948, and Government Notice No. 564 in Nigeria Gazette No. 22 Vol. 35 of the 8th April, 1948, confirms his evidence.

I accept his evidence that no objection was received. I have already found that the area was and is still Crown Land, and so if any one is to complain about the works done there by the Port Harcourt Town Planning Authority, it is the Government, and not the Plaintiffs whose interest in the land had been acquired by Government.

Any claim for compensation and damages occasioned by the execution of a planning scheme shall be made to the Town Planning Authority
30 according to the provisions of section 39 of the Nigeria Town and Country Planning Ordinance, and any action in Court about the matter is, according to Section 45, to be taken against the Town Planning Authority.

I therefore agree with the submission of the learned Crown Counsel that the Plaintiffs' claim for anything done by the Port Harcourt Town Planning Authority should have been taken against the Town Planning Authority and not against the Governor. The question is only of academic interest since I have found as a fact that the Plaintiffs have no right to sue for trespass to land that is no longer theirs and about which they have led no evidence that they were in possession at the alleged time.
40 I would like to add that the report referred to in paragraph 9 of the Plaintiffs' Statement of Claim was not produced in evidence nor was the letter referred to in para. 14 of the Plaintiffs' Statement of Claim tendered in evidence.

In view of my findings above, the Plaintiffs' claim fail, and their action is dismissed with costs assessed at two hundred and fifty guineas.

(Sgd.) O. JIBOWU,
Judge.

4/8/51.

*In the
West
African
Court of
Appeal.*

No. 25.
NOTICE AND GROUNDS OF APPEAL.

IN THE WEST AFRICAN COURT OF APPEAL.

No. 25.
Notice and
Grounds of
Appeal,
13th
October
1951,

BETWEEN

Between 1. Chief JOSEPH WOBO,
2. Chief WALI WOKEKORO,
3. Chief SAMUEL ATAKO,
4. PHILIP CHINWA,
5. BROWN AGUMAGU,
6. VICTOR AMADI, 10
7. APPOLOS AMADI,
8. AMADI WANODI,
9. AMADI OPARA,
10. WOBO CHARA Plaintiffs/Appellants

and

THE ATTORNEY-GENERAL . Defendant/Respondent.

TAKE NOTICE that the Plaintiffs/Appellants being dissatisfied with the whole decision of the Supreme Court of Port Harcourt contained in the judgment of His Lordship Mr. Justice O. Jibowu dated the 4th day of August, 1951 do hereby appeal to the West African Court of Appeal upon 20 the Grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

The names and addresses of the persons directly affected by the appeal are set out in paragraph 5.

GROUND'S OF APPEAL

1. *Misdirection :*

The Learned Trial Judge misdirected himself in the following passages of his judgment :—

“ F,” “ G ”

“ Exhibits ‘ F ’ and ‘ G ’ ” show beyond doubt that Diobu Chiefs and headmen on behalf of themselves and their people 30 entered into agreement to sell and did sell Obomotu or Port Harcourt to the Government for valuable consideration.

2. *Misdirection :*

The Learned Trial Judge misdirected himself in the following passage of his judgment :—

“ F,” “ G ”

“ It is, therefore, not necessary for the Defendants to call evidence as to the execution of Exhibits ‘ F & G ’ which the Plaintiffs themselves had acknowledged as their agreement and I find no force in the submissions of the Learned Senior Counsel for the Plaintiffs on the point.” 40

3. *Misdirection :*

“ There is no doubt that in Exhibit ‘ A ’ the Resident Owerri Province wrote that the Diobus were paid rent for 15 years amounting to £7,500 and compensation of £300 on the 28th October, 1927. I suppose the purchase price reserved in Exhibit ‘ G ’ was calculated on the basis of £500 a year, which brought the amount of £7,500, but it is wrong to call the payment which was made under agreement Exhibit ‘ G ’ rent, as Exhibit ‘ G ’ is not agreement of lease nor does it reserve any rent.”

*In the
West
African
Court of
Appeal.*

No. 25.
Notice and
Grounds of
Appeal,
13th
October
1951,
continued.

10 4. *Misdirection :*

The Learned Trial Judge misdirected himself when he held as follows :—

“ In my view, the price reserved in Exhibit ‘ G ’ is obvious, definite and certain and it is an immediate payment of the sum of £7,500 and thereafter a sum of £500 per annum payable on the 18th day of May in each year commencing from the 18th May, 1928, and continuing for all time hereafter.”

“ It is no doubt unusual to contract to pay purchase price in this manner, but the novelty of it does not detract from its validity.”

“ A ”
“ G ”
“ G ”
“ G ”

20 5. *Misdirection :*

The Learned Trial Judge misdirected himself in the following passages of his judgment :—

“ It is possible that their customary laws did not permit of their lands being sold before the advent of the British Government, but I do not consider the Native Law and Custom so inflexible as not to be capable of exception in the case of the Government in the light of the evidence before the Court.”

6. *Misdirection :*

The Learned Trial Judge misdirected himself as to the proper construction of Exhibit “ J2 ” when he said as follows :—

“ By this reference, there can be no doubt that the Chiefs and headmen who instructed Mr. O. A. Alakija to prepare the petition and who signed or made their marks on it, not only knew about the existence of Exhibit ‘ G ’ but also accepted it as their act and deed.”

“ J2 ”

“ G ”

7. Judgment against the weight of evidence.

4. RELIEF SOUGHT FROM THE WEST AFRICAN COURT OF APPEAL.

(A) Declaration against the Defendants their servants or agents, that the Plaintiffs are the rightful owners of Obomotu land.

(B) Damages for trespass.

40 (C) Arrears of annual payment.

(D) Cancellation of Exhibits “ F ” and “ G ” in that the parties were “ F,” “ G ” not *ad idem*.

(E) Injunction against the Defendant for further trespass.

*In the
West
African
Court of
Appeal.*

5. PERSONS DIRECTLY AFFECTED BY THE APPEAL.

No. 25.
Notice and
Grounds of
Appeal,
13th
October
1951,
continued.

NAME	ADDRESS
1. Chief JOSEPH WOBO	} Plaintiffs/ Appellants } Diobu— Port Harcourt.
2. Chief WALI WOKEKORO	
3. Chief SAMUEL ATAKO	
4. PHILIP CHINWA	
5. BROWN AGUMAGU	
6. VICTOR AMADI	
7. APPOLOS AMADI	
8. AMADI OPARA	
9. AMADI WANODI	
10. WOBO CHARA	
2. THE ATTORNEY-GENERAL	Defendant/ Respondent } Attorney-General's Chambers Lagos.

10

Dated this 13th day of October, 1951.

(Sgd.) CHUBA IKPEAZU,
Appellants' Solicitor.

No. 26.
Court
Notes of
Arguments,
29th, 30th
April,
1st May
1952,

No. 26.
COURT NOTES OF ARGUMENTS.

IN THE WEST AFRICAN COURT OF APPEAL. 20
Holden at Lagos, Nigeria.

Tuesday the 29th day of April, 1952.

Before—

THEIR LORDSHIPS SIR STAFFORD WILLIAM POWELL FOSTER-SUTTON, President; JOSEPH HENRI MAXIME DE COMARMOND, Ag. Chief Justice, Nigeria; SIR JAMES HENLEY COUSSEY, Justice of Appeal, Gold Coast.

W.A.C.A. 3745.

CHIEF J. WOBO & Ors. Appellants
and 30
THE ATTORNEY-GENERAL Respondent.

Mr. J. I. C. Taylor—with him *Mr. J. A. Wachuku* & *Mr. Ikpeazu* for Appellants.

Mr. De Winton for Respondent.

Taylor :

Applies under rule 30 W.A.C.A. Appeal Rules to put in further evidence.

We rule it—the application must be by motion upon notice.

De Winton agrees to accept short notice.

Proceeds with appeal.

40

Refers to grounds of appeal.

Reads judgment p. 46—from line 27—to p. 53 of record.

Exhibit "F" made in 1913, p. 72. Exhibit "G" was made in 1927—

p. 73—line 25. Consideration—

p. 76—£2000—p. 29 of record.

Line 29 to 32—Evidence that £2,000 was not paid—

Note.—This was in effect—admitted.

Refers to p. 51. line 37—

10 Trial Judge deals with non-payment of £2,000.

Submits—that trial Judge misdirected himself in so finding—the Plaintiffs said that they did not accept the £2,000 because "F" purported to be a sale.

Nothing was done by Government for 14 years after "F"—Government was in possession before 1913—i.e. Exhibit "F." This amounts to abandonment—and "G" could not bring it alive—even by agreement between the parties.

Fisher Ltd. v. Eastwoods Ltd. 1936 Vol. 1. A.E.R. p. 421 at p. 425.

20 Fact that there is a new consideration in "G" does not alter the position.

"G" only amounts to a tenancy at will.

Taylor—is asked if he has a case which refers to the sale of land—Admits that *Fisher v. Eastwoods* is a case of sale of goods—

A. Consideration in Exhibit "G"—

If it can be said that it is a contract for sale then it is void for uncertainty :

(1) as regards purchase price ; and

(2) the area conveyed by the Diobu Chiefs.

30 B. The circumstances surrounding the making of Exhibit "G" coupled with my submission "A" make it only a tenancy at will.

Halsbury Laws of England 1st Edition p. 291. "Contract of Sale."

No time for completion therefore it is void on that account, i.e. no time stated when purchase money to be paid.

C. Area to be conveyed is not definite.

(Intld.) S. F. S.,
P.

Wednesday the 30th day of April, 1952.

Counsel as before.

Taylor :

40 Consideration—uncertain—

If purchaser failed to pay an instalment—after paying the £7,500—then submits vendor could rescind the contract—failure to pay any instalment then could rescind.

Note.—Surely could sue and attach the property.

*In the
West
African
Court of
Appeal.*

No. 26.
Court
Notes of
Arguments,
29th, 30th
April,
1st May
1952,
continued.
"F," "G"
"F"

"F"
"F"
"G"

"G"
"G"

"G"

"G"

*In the
West
African
Court of
Appeal.*

No. 26.

Court
Notes of
Arguments,
29th, 30th
April,
1st May
1952,
continued.
" B "
" F, " " G "
" C "
" E "
" A, " " J "
" E "
" J1 "
" H "

One of the essential ingredients is taking possession and purchase price payment of.

Now deals with submission " B. "

Taylor :

Object of tendering the administrative documents was to explain the effect of the agreement regarding payment—both as to " F " & to " G. "

Reads paragraph 9 of Exhibit " C " dated 21 : 1 : 23, and paragraph 14. Document written by Defendant's agent.

Exhibit " E. "

10

Exhibit " A, " Exhibit " J " p. 93, paragraphs 2 & 3.

Note Exhibit " E " was written on 20th September, 1931. See Exhibit " J " p. 93.

Second letter of Exhibit " J1 " dated 13th May, 1938.

" *Rent* " :

Note paragraph 24 (c) has reference to land in Exhibit " H. "

" F, " " G " " F " & " G " Agreements for Sale and purchase or is their legal effect—merely tenancy at will.

" J2, " " J, "
" J1 "

Refers to " J2 " p. 92. Reply " J " & " J1. "

20

Taylor now says he wishes to argue the question " were the parties *ad idem.* "

Until final payment person is a tenant at will. Cites *Doe demise Tomes v. Chamberlaine* Vol. 5 Meeson and Welsby's Reports p. 15, also Cites Vol. 8 Meeson & Welsby's Reports p. 118. *Howard v. Shaw*—1943. 1 A.E.R. p. 578.

Submits that a payment of an annual amount for ever is nothing more than payment by instalments.

Submits—Taking paragraphs 5, 11 & 12 of defence the Defendants are estopped from now saying that they intended to create a tenancy. Therefore if construction is a " tenancy " the agreements must be set aside. 30

Submits that appeal should be allowed and case be remitted back for assessment of damages for trespass—

Cites *Lewis v. Beard* Vol. 13 East's Reports p. 210. On question—Can a tenant at will commit a trespass—Trespass alleged is act of Defendant sending notice and the eviction. Notice p. 96–97. Now—Submits legal construction of agreement is " tenancy at Will, " but since Defendants intended a purchase the minds of the parties were not *ad idem* and the agreement should be set aside—and damages for trespass awarded.

So far as Plaintiffs are concerned area is indefinite.

40

" F, " " G " *Note.*—but see description in " F " & " G "—admits it is capable of ascertainment, but not from description in " F " & " G "—outside evidence would be required.

Ground 2 p. 58. Misdirection—Judgment p. 51, lines 30–31.

Vol. 5 W.A.C.A. Reports p. 2.

Onus was on Defendants to prove the contrary to our Evidence that we did not understand nature of " F " & " G "—

Note.—*Atta v. Kwamin v. Kobina Kufom*—P.C.

Taylor :

Refers to difference in dates pp. 83, 84 and 85 of record. No evidence to show agreement was not made in May, 1926.

Submits a pity that such an agreement should be made with such people without their having independent advice.

De Winton :

10 Are " F " & " G " valid as conveyances on sale—

" F " is valid—clear and unambiguous. Not an agreement to sell—was a conveyance—if it was merely an agreement to sell there would have been conditions for completion and it is unlikely that they would have entered into possession and done nothing more until 1926.

Payment of the £2,000 p. 29 of record—voucher was made out and there is the receipt at p. 76. Exhibit " F."

But note p. 84—" G ' instead of " see also evidence at p. 29.

20 Submits " G " confirms sale in " F " and that " H " is strong evidence in Defendant's favour. " G " has been treated by the parties as a final transaction—" J2 " p. 92. line 28 and on—they would hardly ask for the revision of an uncompleted agreement.

Government was in possession until now—from 1928. Government was in occupation of quite a large section of the land long before 1926. p. 21, line 18, of record. P. 15 line 46—See also P. 2 Statement of Claim.

Note.—See admission paragraph 6. Statement of Claim lines 17 and 18.

Possession by Government, i.e. occupation by Government under 1913 agreement—p. 14, line 28 of record.

30 " F " is a sale—conveyance—" G " varies, and by necessary implication confirms " F " as a conveyance—sale. After " G " the consideration was paid and accepted.

If " F " & " G " are assurances learned friend's argument that these documents are void because the consideration is not certain cannot be sustained—Even if they were only agreements for sale.

It is common practice for land in England to be sold in consideration for a rent.

Refers to Encyclopedia of Forms and Precedents Vol. 12. p. 598—Rentcharge—

Land properly described—there is nothing to prevent persons agreeing to sell and conveying their interest in Blankacre—whatever that may be.

40 In no circumstances can we be deemed to be tenants at will. If we were there under a fully executed assurance whether we paid purchase money or not the legal title in the land had passed to us and we would have full rights of ownership. If it is an agreement for sale—it has been part performed I can enforce my Equity and I am in a much better position than a tenant at will.

*In the
West
African
Court of
Appeal.*

No. 26.
Court
Notes of
Arguments,
29th, 30th
April,
1st May
1952,
continued.
" F," " G "
" F," " G "
" F "

" F "

" G," " F "
" H "
" G "
" J2 "

" F," " G "
" F "
" G "

" F," " G "

*In the
West
African
Court of
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No. 26.

Court
Notes of
Arguments,
29th, 30th
April,
1st May
1952.

continued.
"F," "G,"

Were the parties *ad idem*—In their evidence they never suggested that they were not *ad idem* on the terms of "F" & "G"—their general contention was that they had not executed these agreements. They made certain allegations about the receipt of money and the purposes for which it had been received—e.g. p. 21 lines 35 and 36.

"I did not put my mark on any agreement with Government in 1928."

Page 19—line 42. Page 23, lines 9 and 10.

Instead of coming and saying we did not know what we were doing—they denied ever being parties to them—so we get no help from the 10 Plaintiffs as to why they were not *ad idem* on these agreements.

It was rent but not for demise i.e. lease—In England would be called a "rent charge."

Appellants' case was we never signed documents—not then open to them to say we were not *ad idem*.

"A," "B," Note.—See Stroud—"Fee Farm"—p. 705. No reliance should be placed
"C" on "A," "B" or "C"—because they were an attempt to explain
"F," "G" "F" & "G" which are clear and unambiguous. On other hand
"H," "J2" there is "H" also "J2" which was—and was so held to be—
"G" an acknowledgment of "G"— 20

De Winton refers to Cheshire's Modern Real Property.

30.4.52. (Intld.) S. F. S.,
P.

Thursday the 1st day of May, 1952.

Counsel as before.

De Winton :

"F" Now says "F" was not under seal—but it was intended to be an
"G" assurance effect—to convey rights in Equity to respondents, and it was
confirmed by "G" which was under seal—Effect conveyance.

"G" Line 27, page 92, there is an admission that they knew about 30
Exhibit "G." Shows they knew about it for something like 16 years—
Judge so found—too late now to come to Court and complain—*Ad idem*.

"F" Page 29. Other persons concerned in "F" have not complained—
shows others in same area know about it.

Documents not complicated—

Quite simple.

"F," "G" No authority for proposition that we should have proved—apart
from endorsement on "F" & "G"—that they were read over and
explained—

"G" *Their case was no execution*—Complete ignorance of any such documents 40
p. 14—and p. 17 lines 11–13 and line 18—there is an admission that
Allagoa did interpret "G" when the £7,500 was paid.

"F," "G" Affidavits were proved by a Certificate under section 5 of the Land
Registration Ordinance—"Certificate of proof" "F" p. 79. "G"
p. 85—plus Oath of Interpretation.

Presumption—laches plus fact that trial Judge did not believe Appellants—

If Court finds “ F ” & “ G ” contracts of sale and are not assurances—they still would not be entitled to a declaration of title because Respondent would be entitled to specific performance.

Doctrine of *Walsh v. Lonsdale* should be applied here just as in the case of a lease. Principle is exactly the same.

Submits appeal should be dismissed.

Wachuku :

10 Equitable point not raised at trial.

On question whether “ F ” & “ G ” were a sale—See Schedule to “ F ” p. 76.

P. 49—Judgment—Trial Judge found as a fact that £2,000 was not paid.

Refers to p. 73 of record—line 22. Exhibit “ G ” being a *Deed* should have a Habendum—“ G ” is merely an agreement for sale.

Parties were not *ad idem*, therefore, we are entitled to cancellation—and to a declaration of title.

Cheshire p. 177. Sixth Edition.

20 There is abundant evidence that they did not understand—

On strength of all the evidence I ask the Court to allow appeal.

C. A. V.
1.5.52. (Intld.) S. F. S.,
P.

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West
African
Court of
Appeal.*

No. 26.

Court
Notes of
Arguments,
29th, 30th
April,
1st May
1952.

continued.
“ F,” “ G ”

“ F,” “ G ”

*In the
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No. 27.
Judgment,
9th June
1952

No. 27.

JUDGMENT.

IN THE WEST AFRICAN COURT OF APPEAL.
Holden at Lagos.

Monday the 9th day of June, 1952.

Before Their Lordships :

SIR STAFFORD FOSTER SUTTON, President.
JOSEPH HENRI MAXIME DE COMARMOND, Ag. Chief Justice,
Nigeria.
SIR JAMES HENLEY COUSSEY, Justice of Appeal. 10

W.A.C.A. 3745.

CHIEF JOSEPH WOBO & 9 Others . Plaintiffs/Appellants

and

THE ATTORNEY-GENERAL . . Defendant/Respondent.

JUDGMENT.

(Delivered by Sir STAFFORD FOSTER SUTTON, P.)

This was an action brought by the Plaintiffs/Appellants against the Attorney-General, Defendant/Respondent, under the Petitions of Right Ordinance, 1915 (now Cap. 167 the Revised Edition).

The Appellants sued as representatives of the people, and successors 20 of the Chiefs and headmen, of Abali and Ogbum Diobu. They claimed, *inter alia*, for a declaration that they are the rightful owners of all that land situate in the Rivers Province, commonly known as Port Harcourt, and for cancellation of two agreements dated 18th May, 1913, and 2nd May, 1928, Exhibits " F " and " G," respectively, on the ground that the parties were not *ad idem* when the two documents were executed.

The action came for trial before Jibowu, J., who after reviewing and analysing the evidence, dismissed the Appellants' claim and gave judgment for the Respondent.

The grounds of appeal raised a number of points, but before us 30 Appellants' Counsel confined himself to submitting, firstly, that Exhibits " F," " G " " F " and " G " are not agreements for sale, and, secondly, that the parties were not *ad idem*.

" F " The agreement dated the 18th May, 1913, Exhibit " F," is expressed to be made between five Chiefs, and two headmen representing the Diobu people and representatives of other people occupying other areas of land with which we are not concerned on this appeal, of the one part, and Alexander George Boyle, Deputy Governor of the Colony and Protectorate of Southern Nigeria, for and on behalf of His Majesty the King, of the

other part. The agreement recites that certain land is required for the services of the Colony and Protectorate, gives a description of the land and then goes on to recite that the Chiefs, Headmen and others mentioned in the schedule attached, to the agreement, in consideration of the payment of the sum of money set out against their several names in the schedule agree, on behalf of themselves and their people, to grant and sell unto Alexander George Boyle, Deputy Governor of the Colony and Protectorate of Southern Nigeria, all the right title and interest to which they and their people are entitled by native law and custom in the land described in the agreement, and to declare that at the date of the agreement they are the sole possessors of all interests in the land and agree to hold themselves responsible for all claims which may thereafter be made in respect of it.

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continued.

At page one of the schedule to the agreement the receipt of the sum of £2,000 is acknowledged by the five Chiefs and two Headmen of Diobu, and it is stated to be "in full discharge of all our claims under the foregoing agreement."

The agreement dated 2nd May, 1928 (Exhibit "G"), with the exception of Chief Wokekoro Wali who succeeded Chief Wokekoro, deceased, was executed by the same Chiefs and Headmen of Diobu as were expressed to be parties to the agreement Exhibit "F," and the other party to it was the then Governor of Nigeria. The agreement recites that it is supplemental to Exhibit "F" and that the Chiefs and Headmen and Governor desire to vary the terms of the principal agreement (Exhibit "F") in the manner hereafter appearing, and it then reads as follows:—

"NOW IT IS HEREBY AGREED as follows:—

The purchase money to be paid to those Chiefs and Headmen shall be an immediate payment of the sum of £7,500 and thereafter a sum of £500 per annum payable on the 18th day of May in each year commencing on 18th day of May 1928 and continuing for all time hereafter instead of the purchase money fixed by the original agreement.

AND IT IS FURTHER AGREED and the Chiefs and Headmen hereby indemnify the Governor against all claims and demands in respect of the said purchase money by themselves and their people or any person or persons claiming through or under them.

LASTLY, subject only to the variations herein contained, the principal agreement shall remain in full force and effect and shall be read and construed and be enforceable as if the terms of these presents were inserted therein by way of addition or substitution as the case may be."

On behalf of the Appellants Mr. Taylor argued that after the execution of the agreement dated 18th May, 1913 (Exhibit "F"), the Government took no further action in the matter for a period of 14 years, that the purchase money of £2,000 was not paid, that the Government's conduct amounted, in law, to an abandonment of the contract, and that the agreement dated 2nd May, 1928 (Exhibit "G"), could not revive the earlier agreement even if the parties consented to its doing so. In support of this contention he cited the case of *Fisher v. Eastwoods* (1936), 1 A.E.R.

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Appeal.*

No. 27.
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9th June
1952,
continued.
" F "
" F "
" F "

The learned trial Judge found as a fact that although the receipt of the sum of £2,000 was acknowledged in the schedule to Exhibit " F," it was not paid, and there is no doubt that the finding was a correct one.

The trial Judge expressed the view that the non-payment was probably due to the fact that the Plaintiffs, after executing Exhibit " F," refused to accept the money because they felt it was insufficient, and that appears to me to be a reasonable conclusion to draw from the evidence.

It is clear, however, that the Government did enter into possession of some of the land affected by Exhibit " F." Paragraph 6 of the Statement of Defence alleges that they did enter into possession of the land, 10
paragraph 5 of the Statement of Claim avers that the Government were " only allowed . . . some portion for settlement," and the evidence of Plaintiffs' witness Emmanuel Fila Hart supports that proposition. Moreover, during the course of the arguments before us, it was admitted by both Counsel that the Government had entered into possession of some of the area of land covered by Exhibit " F " before the parties entered into the agreement Exhibit " G."

" F "
" G "

In *Fisher v. Eastwoods* it was held, on the facts of that case, that the Plaintiff had elected to treat the contract as at an end by reason of acts of his which were inconsistent with its continuance. In his judgment in that 20
case Branson J. said : " I think the real question I have to decide here is not the purely legal question as to whether this contract was allowed to lapse by the effluxion of a reasonable time, but the practical question as to whether the parties have or have not abandoned the contract and treated it as at an end."

Apart from the fact that the Government entered into possession of 30
" F," " G " some of the land pursuant to Exhibit " F," Exhibit " G " incorporates " the principal agreement " Exhibit " F," subject only to the variations contained in Exhibit " G," and it was, as I have already said, executed, with the exception of Chief Wokekoro, deceased, who was replaced by Chief Wokekoro Wali, by the same Chiefs and Headmen of the people of Diobu who executed Exhibit " F." I am unable, therefore, to agree with the suggestion that there was any abandonment of the contract.

" F "

Mr. Taylor also submitted that a payment of an annual amount of 40
" G " £500, for ever, as provided for in Exhibit " G," " is nothing more than payment by instalments " and that until final payment the Government are merely tenants at will. He cited two cases which he submitted supported his contention, *Tomes v. Chamberlaine*, 5 Meeson & Welsby, p. 15, and *Howard v. Shaw*, 8 Meeson & Welsby, p. 118. In my view those cases do not support the proposition contended for. All they decided was that where a party is let into possession under an agreement of purchase, which afterwards goes off, he becomes merely a tenant at will.

" G "

It was also contended that Exhibit " G " was void for uncertainty, (i) as regards purchase price, and (ii) the area of land conveyed by the Diobu Chiefs.

It appears to me that you could hardly have anything more definite than the purchase price provided for in that document. It provides for an " Immediate payment of the sum of £7,500 and thereafter a sum of £500 per annum payable on the 18th day of May in each year commencing on the 18th day of May, 1928, and continuing for all time thereafter." 50

There is nothing to prevent a vendor of land from agreeing to accept a lump sum down and an annual sum from the purchaser in perpetuity instead of a larger lump sum down.

In the West African Court of Appeal.

No. 27. Judgment, 9th June 1952, continued.

The complaint that the area affected by Exhibits " F " and " G " is insufficiently described is not, in my opinion, well founded. The former document contains a detailed description of the boundaries of the land and the area is also defined on a plan attached to the agreement. Moreover, Jeremiah Ume, a licensed Surveyor, called as a witness by the Plaintiffs, gave evidence that he made a survey of the land for the Plaintiffs in 1949, that he had compared the plan attached to Exhibit " F " with the plan he made pursuant to his survey, Exhibit " M," and that both plans relate to the same land. Exhibit " G " merely repeats the description of the boundaries contained in Exhibit " F."

" F," " G "
" F "
" M "
" G "
" F "

The learned trial Judge made a clear finding of fact against the Plaintiffs on their plea that the parties were not *ad idem* when Exhibits " F " and " G " were entered into, and in my view it would be difficult to support any other conclusion. Both documents contain an " Oath of Proof " sworn to, in the case of Exhibit " F," before a District Commissioner, and in the case of Exhibit " G," before the Acting Resident, testifying that they had been read over and interpreted to the Chiefs and Headmen of Diobu who executed them and that they appeared to understand them. Although one of the Plaintiffs, Philip Chinwa, gave evidence that no agreement of sale was entered into by the Chiefs of Diobu and that the " People who were supposed to have executed Exhibit ' F ' are not Diobu people," he later admitted in answer to the Court that " The seven Chiefs and Headmen who signed the agreements were our Chiefs," and that F. O. Allagoa who made the " Oath of Proof " in Exhibit " G " " interpreted for us when the £7,500 was paid."

" F," " G "

" F "
" G "

" F "

" G "

It seems to me clear that the real objection of the Chiefs and Headmen of Diobu to Exhibit " F " was in connection with the amount they had agreed to accept by way of purchase price and that Exhibit " G " represents a compromise as to price, reached as a result of negotiations carried on over a period of years. It also appears that the parties regarded Exhibits " F " and " G " as a conveyance of the land now in dispute, because by Exhibit " H," executed on the 2nd May, 1928, the Governor of Nigeria purported to make a grant of 3.5 square miles of the land in question to the Chiefs, Headmen and people of Diobu, and Chief Wobo acknowledge the grant. Moreover, in their petition to the Governor, Exhibit " J2," the Chiefs and people of Diobu complain that the annual payment of £500 is insufficient for their needs, acknowledge Exhibit " G," and ask for " another revision variation and modification." In this connection it is relevant to observe that the Plaintiff Joseph Wobo admitted in his evidence that " all Diobu instructed the Chiefs to write the petition. The Chief gave lawyer Alakija instructions."

" F "
" G "

" F," " G "
" H "

" J2 "
" G "

On behalf of the Respondent Mr. De Winton submitted that Exhibits " F " and " G " are assurances and we were invited to so hold.

" F," " G "

By Exhibit " F " the Chiefs and Headmen of Diobu agree on behalf of themselves and their people " to grant and sell," and Exhibit " G " refers to Exhibit " F " as an agreement " for the sale and purchase."

" F "
" G," " F "

In my view those words cannot be said to operate as a transfer of the

*In the
West
African
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1952,
continued.
"F," "G,"
"H"

land in question to the Government, but the two agreements do, in my opinion, constitute a binding contract for sale, and there has clearly been part performance of it.

It follows, therefore, that in my view the Plaintiffs were not entitled to any of the relief asked for in their statement of claim. They hold the land described in Exhibits "F" and "G," less any of such area covered by Exhibit "H," as trustees for the Governor, and if required so to do are bound to execute a conveyance of the land in question in his favour.

For the reasons I have given I would dismiss this appeal with costs.

(Sgd.) S. FOSTER SUTTON, 10
President.

de Comarmond, Ag. C. J. Nigeria, "I concur."

(Sgd.) M. de COMARMOND,

Coussey, J. A., "I concur."

(Sgd.) J. HENLEY COUSSEY,
Justice of Appeal.

We fix the costs at £38.5.0. (Intld.) S.F.S.
P.

No. 28.
Order on
Appeal,
9th June
1952.

No. 28.

ORDER ON APPEAL. 20

IN THE WEST AFRICAN COURT OF APPEAL.
Holden at Lagos, Nigeria.

Suit No. P/6/49.
W.A.C.A. 3745.

On appeal from the judgment of the Supreme Court in the Port Harcourt
Judicial Division.

(L.S.
(Sgd.) S. FOSTER SUTTON, President.

Between CHIEF JOSEPH WOBO and Nine
Others Plaintiffs/Appellants

and 30

THE ATTORNEY-GENERAL . Defendant/Respondent.

Monday the 9th day of June, 1952.

UPON READING the record of appeal herein and after hearing Mr. J. I. C. Taylor (Messrs. J. A. Wachuku and Chuba Ikpeazu with him) of counsel for the Appellants and Mr. De Winton, Crown Counsel, of counsel for the Respondent :

IT IS ORDERED that this appeal be and hereby is dismissed :

AND THAT the Appellants, Chief Joseph Wobo and nine others, do pay to the Respondent, the Attorney-General, costs of the appeal fixed at £38.5.

(Sgd.) W. H. HURLEY, 40
Deputy Registrar.

No. 29.

ORDER IN COUNCIL granting Special Leave to Appeal.

(L.S.)

AT THE COURT AT BUCKINGHAM PALACE

—————
The 28th day of May, 1953
—————

Present

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD CHANCELLOR PRIME MINISTER LORD PRESIDENT VISCOUNT SWINTON SECRETARY Sir DAVID MAXWELL FYFE	Mr. SECRETARY LYTTTELTON Mr. SECRETARY STUART Sir ALAN LASCELLES Sir OWEN DIXON
--	--

*In the
Privy
Council.*

No. 29.
Order in
Council
granting
Special
Leave to
Appeal,
28th May
1953.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 11th day of May 1953 in the words following, viz. :—

“ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of (1) Chief Joseph Wobo (2) Chief Wali Wokekoro (3) Chief Samuel Atako (4) Philip Chinwa (5) Brown Agumagu (6) Victor Amadi (7) Appolos Amadi (8) Amadi Wanodi (9) Amadi Opara (10) Wobo Chara Representing the people of Diobu in the matter of an Appeal from the West African Court of Appeal between the Petitioners Appellants and the Attorney General for Nigeria Representing the Governor of Nigeria and the Resident Owerri Province in the Protectorate of Nigeria Respondent setting forth (amongst other matters) : that the Petitioners desire special leave to appeal against a Judgment of the West African Court of Appeal holden at Lagos Nigeria dated the 9th June 1952 : that the Petitioners on the 1st February 1949 brought an action under the Petitions of Right Ordinance (c. 167 Laws of Nigeria 1948 Revision) in the Supreme Court of Nigeria against the Respondent claiming (*inter alia*) a Declaration that they were the rightful owners of all the land situate in the Rivers Province now commonly known as Port Harcourt : that in substance the case set up by the Defence was founded upon an alleged agreement (Exhibit ' F ') of the 18th May 1913 and an alleged supplemental agreement (Exhibit ' G ') of the 2nd May 1928 : that the Supreme Court on the 4th August 1951 dismissed the Petitioners' claim with costs : that in the course of its Judgment the Supreme Court found that all the Petitioners and their predecessors-in-interest who signed or are alleged to have signed Exhibit ' F ' and Exhibit ' G ' were illiterate : that the Petitioners submit that the Supreme Court in reaching its decision misdirected itself inasmuch as it does not seem to have borne in mind its

*In the
Privy
Council.*

No. 29.
Order in
Council
granting
Special
Leave to
Appeal,
28th May
1953.

finding of illiteracy : that the Petitioners appealed to the West African Court of Appeal and Judgment dismissing the Appeal was delivered on the 9th June 1952 : that the Court of Appeal held that the Supreme Court had made a clear finding of fact against the Petitioners on their plea that the parties were not *ad idem* when Exhibits 'F' and 'G' were entered into and upheld this alleged finding : And humbly praying Your Majesty in Council to grant the Petitioners special leave to appeal against the Judgment of the West African Court of Appeal dated the 9th June 1952 and for such further or other relief as to Your Majesty in Council 10 may seem fit :

“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment of the West African Court of Appeal dated the 9th day of June 1952 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs : 20

“ AND THEIR LORDSHIPS do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioners of the usual fees for the same.”

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution. 30

Whereof the Governor or Officer administering the Government of Nigeria for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

(Sgd.) W. G. AGNEW.

Exhibits.

EXHIBITS.

*Plaintiffs'
Exhibits.*

PLAINTIFFS' EXHIBIT "F."—Agreement between Chief Wobo and Others and the Deputy Governor of Southern Nigeria.

F.
Agreement
between
Chief Wobo
and Others
and the
Deputy
Governor of
Southern
Nigeria,
18th May
1913.

AGREEMENT made the eighteenth day of May in the year of our Lord one thousand nine hundred and thirteen between the CHIEFS and HEADMEN set out in the Schedule to this Agreement (and all others set out therein) 40 for and on behalf of themselves and their people, and ALEXANDER GEORGE BOYLE, Companion of the Most Distinguished Order of Saint Michael and Saint George, Deputy Governor of the Colony and Protectorate of Southern Nigeria for and on behalf of His Majesty the King.

The District of Degema in the Colony and Protectorate of Southern Nigeria is part of His Majesty's Dominions. Certain land is required therein for the Services of the Colony and Protectorate as follows :—All that piece or parcel of land bounded on the south by the waterway known as the Primrose Creek or Bonny River for a distance of three and a half miles more or less, on the west for a distance of five and a half miles more or less again by the waterway known as the Primrose Creek or Bonny River, thence in a northerly direction for a distance of one mile eight hundred yards more or less by the west bank of the Creek known as the

10 Ilechi Creek, following the bends of the said Creek, to a Boundary Post marked " A " at Ilechi Waterside, thence for a distance of one mile one thousand and seventy-three yards due north to a Boundary Post marked " B," on the north by a straight line measuring approximately five miles more or less from the Boundary Post marked " B " in a direction due east to a Boundary Post marked " C " on the Creek known as the Woji Creek, on the east by the said Woji Creek for a distance approximately of one and a half miles more or less, thence by the waterway known as the Okrika Creek for a distance of six and a half miles more or less to the southern boundary referred to above, containing in all an area of twenty-five square

20 miles more or less, and which is more or less accurately set out and described on the plan attached to this Agreement and coloured pink, AND as there are many native occupiers on the land so required and as it is just and expedient that all such native occupiers should be paid compensation for their right title and interest upon the land so required, WE the Chiefs and Headmen and others in the Schedule attached to this Agreement do agree that in consideration of the payment of the sum of money set out against our several names in the Schedule on behalf of ourselves and our people to grant and sell unto the said Alexander George Boyle, Companion of the Most Distinguished Order of Saint Michael and

30 Saint George, Deputy Governor of the Colony and Protectorate of Southern Nigeria, all the right title and interest to which we and our people are entitled by native law and custom in the said land, AND WE AGREE FURTHER that should any person or persons dispute our sole right to the disposal of all interests in the said land any claims they may make shall be met and settled by us, who by the acceptance of the payments of the monies set out in the Schedule attached hereto do hereby declare ourselves to be at the date of this Agreement the sole possessors of all interests in the said land and agree to hold ourselves solely responsible for all claims which may hereafter be made in respect of it.

40 (Diobu)

Chief Wobo	His	X	mark
Chief Ejebuwan	His	X	mark
Chief Aluku	His	X	mark
Chief Wokekoro	His	X	mark
Chief Atakos	His	X	mark
Headman Ajoko Amadi	His	X	mark
Headman Chinwa	His	X	mark

Witnesses

Before us

50 (Sgd.) HARGROVE
District Commissioner.

Exhibits.
—
Plaintiffs'
Exhibits.
—
F.
Agreement
between
Chief Wobo
and Others
and the
Deputy
Governor of
Southern
Nigeria,
18th May
1913,
continued.

Exhibits.	Chief Marian Braid of Bakana	His	X	mark	
—	Chief Lulu Will Braid of Bakana	His	X	mark	
<i>Plaintiffs'</i>	Chief Bagsham Yellow	His	X	mark	
<i>Exhibits.</i>	Chief Wm. Davies Braid	(Sgd.)			

F.
Agreement
between
Chief Wobo
and Others
and the
Deputy
Governor of
Southern
Nigeria,
18th May
1913,
continued.

(Sgd.) PAUL OGUDIRE
A/ C/ C.
Omokoroshi.

And I certify that the above Agreement was correctly read over and interpreted by me to Chiefs, Wobo, Ejebuwan, Aluku, Wokekoro, Atakos, and Headmen Ajoko Amadi and Chinwa, all of Diobu, who appeared to clearly understand the same and made their marks thereto in my presence, and in the presence of Chiefs Marian Braid, Lulu Will Braid and Bagsham Yellow, whose marks I hereby witness, and Chief William Davis Braid, Paul Ogudire, Assistant Native Court Clerk, Omokoroshi, and Hargrove, District Commissioner. 10

(Sgd.) G. A. YELLOW,
District Interpreter,
Degema.

(*Omo Eme*)

Chief Chima of Omo Eme	His	X	mark	20
Chief Otu Inya of Omo Eme	His	X	mark	
Chief Amadi of Omo Eme	His	X	mark	
Chief Amadi Baluku of Omo Eme	His	X	mark	
Chief Woke of Omo Eme	His	X	mark.	

Witnesses

Before us

(Sgd.) R. H. W. HUGHES
Commander "Ivy"

(Sgd.) HARGROVE
D.C.

30

And I certify that the above Agreement was correctly read over and interpreted by me to Chiefs Chima, Otu Inya, Amadi, Amadi Baluku and Woke, all of Omo Eme, who appeared to clearly understand the same and made their marks thereto in my presence and in the presence of Commander R. H. W. Hughes of the Government Yacht "IVY" and . . . Hargrove, District Commissioner.

(Sgd.) G. A. YELLOW,
District Interpreter.
Degema.

(*Omo Amassi*)

Chief Adele of Omo Amassi	His	X	mark	40
Chief Walu Amadukwe of Omo Amassi	His	X	mark	

(*Omobiakpan*)

Chief Ejerimele of Omobiakpan	His	X	mark
Chief Onyengorum of Omobiakpan	His	X	mark
Chief Ojoko of Omobiakpan	His	X	mark

(Oguniba)

Chief Ngawa of Oguniba
 Chief Amadi of Oguniba
 Chief Dike of Oguniba

His X mark
 His X mark
 His X mark

Exhibits.
 ———
 Plaintiffs'
 Exhibits.
 ———

Witnesses

Before us

(Sgd.) DAVID TYSON,
 Chief Engineer, "Ivy."

(Sgd.) HARGROVE,
 District Commissioner.

10

F.
 Agreement
 between
 Chief Wobo
 and Others
 and the
 Deputy
 Governor of
 Southern
 Nigeria,
 18th May
 1913,
continued.

And I certify that the above Agreement was correctly read over and interpreted by me to Chiefs Adele and Walu Amadukwe of Omo Amassi, Chiefs Ejerimele, Onyengorum and Ojoko of Omobiakpan, and Chiefs Ngawa, Amadi and Dike of Oguniba, who appeared to clearly understand the same and made their marks thereto in my presence and in the presence of David Tyson, Chief Engineer of the Government Yacht "Ivy" and Hargrove, District Commissioner.

(Sgd.) G. A. YELLOW,
 District Interpreter,
 Degema.

20

(Okrika Lands & Villages)

Chief Daniel Kalio	(Signed)
Chief David Aluwa Koko	His X mark
Chief Okorio Okojiagu	His X mark
Chief Iyenemika	His X mark
Chief Amiejubodiema	His X mark
Chief Okuru	His X mark
Chief Okpo	His X mark
Chief Orieki	His X mark
Chief Kurosiediema	His X mark
Chief Idango	His X mark
Chief Sowarunim	His X mark
Chief Amengo	His X mark
Chief Biotari	His X mark
Chief Toipirima	His X mark
Chief Iyoyo	His X mark
Chief Igbisikalma	His X mark
Chief Fimia	His X mark
Chief Eresofiari	His X mark.

30

40 Witnesses

Before us

(Sgd.) HARGROVE,
 District Commissioner.

(Sgd.) E. S. OGANG,
 C. N. C. Okrika.

And I certify that the above Agreement was correctly read over and interpreted by me to Chiefs David Aluwa Koko, Okrio Okojiagu, Iyenemika, Amiejubodiema, Okuru, Okpo, Orieki, Kurosiediema, Idango, Sowarunim,

Exhibits. Amengo, Biotari, Toipirima, Iyoyo, Igbisikalma, Fimia and Eresofiari, who appeared to clearly understand the same and made their marks thereto in my presence and in the presence of Hargrove, District Commissioner and Ephraim Stephen Ogang, Clerk to the Okrika Native Council.

Plaintiffs' Exhibits.
F.
Agreement between Chief Wobo and Others and the Deputy Governor of Southern Nigeria, 18th May 1913, continued.

(Sgd.) G. A. YELLOW,
District Interpreter,
Degema.

Signed by the above-named Alexander } (Sgd.) ALEXANDER
George Boyle in the presence of :— } GEORGE BOYLE.

10

(Sgd.) P. C. CAMERON,
Priv. Asst. Secy.

SCHEDULE REFERRED TO IN THE FOREGOING AGREEMENT.

WE, Chiefs and Headmen of the Towns and Communities set forth in the Schedule below, hereby acknowledge the receipt on behalf of ourselves and our people of the sums of money set forth against our several names and communities, in full discharge of all our claims under the foregoing Agreement :—

Town or Community	Amount	Signature of Chiefs and Headmen
Diobu	Two thousand pounds £2,000	Chief Wobo His X mark. 20 Chief Ejebuwan His X mark. Chief Obonda Aluku His X mark. Chief Wokekoro His X mark. Chief Atakos His X mark. Headman Ajoko Amadi His X mark. Headman Chinwa His X mark. Before us, 30 (Sgd.) G. A. YELLOW D.I. (Sgd.) E. S. OGANG C.N.C. Okrika. Witnesses to the above marks.
Omo Eme	One hundred and fifty pounds £150	Chief Chima His X mark. Chief Otu Inya His X mark. Chief Amadi His X mark. Chief Amadi Baluku His X mark. 40 Chief Woke His X mark. Before us, (Sgd.) ? (Sgd.) G. A. YELLOW Witnesses to the above marks.
	Forward £2,150	

Town or Community	Amount		Signature of Chiefs and Headmer.	Exhibits.
10 Omo Amassi	Forward One hundred pounds	£2,150 £100	Chief Adele His X mark. Chief Walu Amadukwe His X mark. Before us, (Sgd.) DAVID TYSON Ch. Engr. "Ivy." (Sgd.) G. A. YELLOW D.I. Witnesses to the above marks.	Plaintiffs' Exhibits. F. Agreement between Chief Wobo and Others and the Deputy Governor of Southern Nigeria, 18th May 1913,
20 Omobiakpan	One hundred pounds	£100	Chief Ejerimele His X mark. Chief Onyengorom His X mark. Chief Ojoko His X mark. Before us, (Sgd.) DAVID TYSON Ch. Engr. "Ivy." (Sgd.) G. A. YELLOW D.I. Witnesses to the above marks.	<i>continued.</i>
30 Oguniba	Three hundred pounds	£300	Chief Ngawa His X mark. Chief Amadi His X mark. Chief Dike His X mark. (Sgd.) DAVID TYSON Ch. Engr. "Ivy." (Sgd.) G. A. YELLOW, D.I. Witnesses to the above marks.	
40 Okrika Lands and Villages including :— Biekiri, Abokiri, Balemaka Abokiri, Akaikoroma, Azubie, Abuloma, Toipirima, Fiyenemika, Iyoyo, Atubokiki, Igbisikilama, Idango, Fimie, Amiejubodiema, Gbelabo, Okuru Town, Amadi Town,	Three thousand pounds	£3,000	Chief Daniel Kalio (Sgd.) Chief David Aluwa Koko His X mark. Chief Okorio Okojiagu His X mark. Chief Fyenemika His X mark. Chief Amiejubodiema His X mark. Chief Okuru His X mark. Chief Okpo His X mark. Chief Orieki His X mark. Chief Kurosiediema His X mark. Chief Idango His X mark. Chief Sowarunmin His X mark. Chief Amengo His X mark. Chief Biotori His X mark.	
50	Forward	£5,650		

	Chief Adele of Omo Amassi	1st May, 1913.	Exhibits.
	Chief Walu Amadukwe of Amassi	do.	—
	Chief Ejerimele of Omobiakpan	do.	<i>Plaintiffs'</i>
	Chief Onyengorum of Omobiakpan	do.	<i>Exhibits.</i>
	Chief Ojoko of Omobiakpan	do.	—
	Chief Ngawa of Ogunibia	do.	F.
	Chief Amadi of Ogunibia	do.	Agreement
	Chief Dike of Ogunibia	do.	between
	Chief David Aluwa Koko of Okrika	2nd May, 1913.	Chief Wobo
10	Chief Okorio Okijiagu of Okrika	do.	and Others
	Chief Fyenemika of Okrika	do.	and the
	Chief Amiejubodiema of Okrika	do.	Deputy
	Chief Okuru of Okrika	do.	Governor of
	Chief Okpo of Okrika	do.	Southern
	Chief Orieki of Okrika	do.	Nigeria,
	Chief Kurosiediema of Okrika	do.	18th May
	Chief Idango of Okrika	do.	1913,
	Chief Sowarunima of Okrika	do.	<i>continued.</i>
	Chief Amengo of Okrika	do.	
20	Chief Biotari of Okrika	do.	
	Chief Toipirima of Okrika	do.	
	Chief Iyoyo of Okrika	do.	
	Chief Igbisikialma of Okrika	do.	
	Chief Fimia of Okrika	do.	
	Chief Eresofiari of Okrika	do.	

(Sgd.) GABRIEL YELLOW.

Sworn at Degema this 31st day of July, 1913.

Before me

30 D.C.'s
Stamp

(Sgd.) JOHN WHITEHEAD,
District Commissioner.

CERTIFICATE OF PROOF.

This instrument was proved before me by the oath of the within named Gabriel Yellow to have been duly executed by the within named persons on the following dates :—

	Chief Daniel Kalio	2nd May, 1913.
	Chief Wobo of Diobu	18th April, 1913.
	Chief Ejebuan of Diobu	do.
	Chief Aluku of Diobu	do.
	Chief Wokekoro of Diobu	do.
40	Chief Atakos of Diobu	do.
	Headman Ajoko Amadi of Diobu	do.
	Headman Chimua of Diobu	do.
	Chief Chima of Omo Eme	26th April, 1913.
	Chief Otu Inya of Omo Eme	do.
	Chief Amadi of Omo Eme	do.
	Chief Amadi Baluku of Omo Eme	do.
	Chief Woke of Omo Eme	do.

Exhibits.	Chief Adele of Omo Amassi	1st May, 1913.	
Plaintiffs' Exhibits.	Chief Walu Amadukwe of Omo Amassi	do.	
	Chief Ejerimele of Omobiakpan	do.	
	Chief Onyengorum of Omobiakpan	do.	
F.	Chief Ojoko of Omobiakpan	do.	
Agreement between Chief Wobo and Others and the Deputy Governor of Southern Nigeria, 18th May 1913, continued.	Chief Ngawa of Ogunibia	do.	
	Chief Amadi of Ogunibia	do.	
	Chief Dike of Ogunibia	do.	
	Chief David Aluwa Koko of Okrika	2nd May, 1913.	
	Chief Okorio Okijiagu of Okrika	do.	10
	Chief Fyenekika of Okrika	do.	
	Chief Amiejubodiema of Okrika	do.	
	Chief Okuru of Okrika	do.	
	Chief Okpo of Okrika	do.	
	Chief Orieki of Okrika	do.	
	Chief Kurosiediema of Okrika	2nd May, 1913.	
	Chief Idango of Okrika	do.	
	Chief Sowarunim of Okrika	do.	
	Chief Amengo of Okrika	do.	
	Chief Biotari of Okrika	do.	20
	Chief Toipirima of Okrika	do.	
	Chief Iyoyo of Okrika	do.	
	Chief Igbisikalma of Okrika	do.	
	Chief Fimia of Okrika	do.	
	Chief Eresofiari of Okrika	do.	

Given under my hand
and Official seal

D.C.'s
Seal

(Sgd.) JOHN WHITEHEAD,
D. C.

July 31st 1913. 30

I, ERNEST GARDINER SMITH Principal Registrar of Deeds for the Eastern Province of the Protectorate of Southern Nigeria under and by virtue of the powers vested in me by the "Land Registration Ordinance" do hereby extend the time for registration of this instrument under the Land Registration Ordinance (No. 15 of 1907) until this date.

Given under my hand this 14th day of August, 1913.

(Sgd.) E. G. SMITH,
Principal Registrar of Deeds, E.P.

This instrument was delivered to me for registration by the Principal Registrar of Deeds Calabar at 8.58 o'clock in the forenoon this 14th day 40 of August, 1913.

(Sgd.) COSET FORSTER AILERIN,
Registrar of Deeds, E.P.

This instrument is registered as No. 16 of 1913 and is engrossed on pages 201 to 211 Register of Deeds Volume 7.

(Sgd.) COSET FORSTER AILERIN,
Registrar of Deeds, E.P.

PLAINTIFFS' EXHIBIT "C."—Memorandum by Colonel H. C. Moorhouse.

Exhibits.

C. 22/22.

Plaintiffs'
Exhibits.

S. S. P.,

I went into this matter with the Resident and the Diobu Chiefs.

C.

2. In a discussion I had with the G.M.R. before leaving Lagos, the following proposals which would meet all probable Railway requirements were put forward :—

Memoran-
dum by
Colonel
H. C.
Moorhouse,
21st
January
1923.

(A) That we should include in the new Agreement the whole area marked " D " on the plan.

10 (B) Site in the area marked " E " on the plan 2,000 ft. in length and 500 ft. in width along the railway line for the purpose of a cattle siding. (The exact position of the siding to be determined after consultation with the Div : Supt., Port Harcourt).

(C) An area contiguous or adjacent to the siding site (B) above to be laid out as a Native town for a Hausa settlement in connexion with the cattle trade.

(D) All other requirements would be met by the usual 100 ft. strip along the railway line in the areas " E " and " F."

20 3. It was with these proposals in view that I opened the discussion with the Diobu Chiefs. It was at once apparent that they were bitterly opposed to any extension in the area " D " beyond the present Township boundary. A considerable number of Diobu live in that area and it is their best farming land. During the discussion it became obvious that there was a misunderstanding as to the extent of the Diobu land. After enquiry I find that the Diobu land is all contained in the area " D " and " E " and a small area near the Railway line in " F." I am convinced that it would be a real hardship to the Diobus to include the whole of the area " D."

30 4. After full consideration of probable railway requirements, and the necessity for providing for an area for an extension of the Native Town, I put forward the following proposals for inclusion in the new Agreement :—

The area edged in blue on the plan and lettered " A " to " K."

The area at present covered by the Township boundary.

5. The reasons for making these recommendations are :—

(A) That the land in " E," while equally suitable to the land in " D " for the lay-out of a native town, is not so thickly inhabited nor such good farming land.

40 (B) That the area in " E " as demarcated and excluding the railway siding, will give as much ground for a further extension of the native town as is taken up by the present native town.

6. I propose that all land in the area so marked which lies to the West of the Diobu stream should be earmarked for railway purposes, and the extension of Merchants plots ; but if the G.M.R. considers that sufficient land has not been allowed West of the railway the line " J.K.," which is an arbitrary one, can be moved as far West as is considered necessary.

7. In addition, the whole waterside boundary from the mouth of the Ilechi creek round the area " D " to where the Diobu creek meets the main creek will be retained. I can myself see no reason to retain the

Exhibits.
 ———
 Plaintiffs'
 Exhibits.
 ———

C.
 Memorandum by
 Colonel
 H. C.
 Moorhouse,
 21st
 January
 1923,
continued.

water frontage on the Ilechi creek itself, but if, for reasons of which I am unaware, it is considered desirable, a line could be run from the point " K " to any point on the creek South of the present pillar marking the Ilechi waterside market which I strongly urge should be left to the Diobus. A line running due West from " K " would I think, meet all possible requirements at the mouth of the creek, and leave a considerable area of farm land available for the Diobus.

8. I informed the Diobus of the terms of H.E.'s minute in 03269/41 of Dec : 20th 1922. As regards the payment of compensation for houses and trees destroyed in the area at present occupied, they have agreed to accept a sum to be divided among the people whose houses were actually destroyed calculated on a fixed amount per house ; the number of houses destroyed was sixty and I suggested £5 per house, they asked for £10 but eventually came down to £8. In view of the time that has elapsed since the houses were destroyed, I think we might accept that figure. 10

The question of compensation for trees presents more difficulty but the Diobus are preparing a claim which will be gone into by the Resident, this however need not delay the general settlement.

9. Until the question of the area was settled, I could not make any offer to the Diobus as to the amount of the annual rent but, after consulting the Resident, I am inclined to think that £500 per annum would be a fair sum for the loss to them of their farming rights and disturbance over the area which we have already occupied and propose to occupy. 20

10. If my proposals are approved, I think it most advisable that a detailed survey of the new area should be made as soon as possible ; the houses being numbered and valued, so that as it becomes necessary to destroy them compensation can at once be paid.

11. There is no immediate necessity to lay out the new area as the area of the present native town is by no means exhausted and it would probably facilitate the work of the Sanitary Authorities in preparing the lay-out if the detailed survey alluded to in the previous paragraph was in their hands. 30

12. In this Minute I have only dealt with the Diobu Lands which, with the small exception mentioned in paragraph 3, lie entirely in areas " D " and " E ", the land in the area " F " concerns the other signatories to the original Agreement who have accepted payment, and no action appears to be required with regard to it, at all events, at present.

13. I am returning to Port Harcourt on February 11th and it would greatly facilitate matters if, before that date, I could be informed by telegram whether these new proposals are approved or, if modified, the map with the modifications marked thereon could be sent to me by that date. 40

14. I would also request that if the proposals for compensation for the houses already destroyed—£480—and an annual rental not exceeding £500 per annum are approved, that arrangements may be made with the Treasury to enable me to pay the compensation and the back rent for 9 years as soon as the Agreement is signed by the Chiefs.

(Sgd.) H. C. MOORHOUSE,
 21/1/23.

PLAINTIFFS' EXHIBIT "G."—Supplementary Agreement between Chief Wobo and Others and the Governor of Nigeria.

This is the instrument marked "A" referred to in the affidavit of Francis Assamode Allagoa sworn before me this 29th day of October 1927.

(Sgd.) O. W. FIRTH,
Acting Resident.

Exhibits.

—
Plaintiffs'
Exhibits.
—

G.
Supple-
mentary
Agreement
between
Chief Wobo
and Others
and the
Governor of
Nigeria,
2nd May
1926.

10 AN AGREEMENT made the 2nd day of May 1926 Between Chiefs WOBO, EJEBUWAN, OBONDA ALUKU, WOKEKORO, ATAKOS and Headmen AJOKO and CHIMUA for and on behalf of themselves the chiefs headmen and people of Diobu hereinafter called the chiefs and headmen (which expression shall include the said chiefs headmen and people and their successors in office and their heirs executors and administrators) of the one part and Sir Graeme Thomson Knight Commander of the Most Honourable Order of the Bath Governor and Commander-in-Chief of Nigeria hereinafter called the Governor (which expression shall include his successors in office) of the other part.

20 WHEREAS these presents are supplemental to an Agreement registered as No. 16 of 1913 in Volume 7 of the Registry of Deeds at Calabar (hereinafter called the principal agreement) dated the 18th day of May 1913 and made between the Chiefs and Headmen and certain other chiefs, headmen and other persons as in the Schedule thereto set out of the one part and Alexander George Boyle Companion of the Most Distinguished Order of Saint Michael and Saint George Deputy Governor of the Colony and Protectorate of Nigeria of the other part for the sale and purchase upon the terms therein mentioned of the land situate in the district of Degema and bounded on the south by the waterway known as the Primrose Creek or Bonny River for a distance of three and a half miles more or less, on the west for a distance of five and a half miles more or less again by the waterway known as the Primrose Creek or Bonny River, 30 thence in a northerly direction for a distance of one mile eight hundred yards more or less by the west bank of the Creek known as the Ilechi Creek, following the bends of the said Creek, to a Boundary Post marked "A" at Ilechi Waterside, thence for a distance of one mile one thousand and seventy three yards due north of a Boundary Post marked "B," on the north by a straight line measuring approximately five miles more or less from the Boundary Post marked "B" in a direction due east to a Boundary Post marked "C" on the Creek known as the Woji Creek, on the east by the said Woji Creek for a distance approximately of one and a half miles more or less, thence by the waterway known as the Okrika 40 Creek for a distance of six and a half miles more or less to the southern boundary referred to above, containing in all an area of twenty five square miles more or less.

AND WHEREAS the Chiefs and Headmen and the Governor desire to vary the terms of the principal agreement in the manner hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:—

The purchase money to be paid to those Chiefs and Headmen shall be an immediate payment of the sum of £7,500 and thereafter a sum of

Exhibits. £500 per annum payable on the 18th day of May in each year commencing
 Plaintiffs' on 18th day of May 1928 and continuing for all time hereafter instead
 Exhibits. of the purchase money fixed by the original agreement.

G.
 Supplementary
 Agreement
 between
 Chief Wobo
 and Others
 and the
 Governor of
 Nigeria,
 2nd May
 1926,
 continued.

AND IT IS FURTHER AGREED and the Chiefs and Headmen hereby indemnify the Governor against all claims and demands in respect of the said purchase money by themselves and their people or any person or persons claiming through or under them.

LASTLY, subject only to the variations herein contained, the principal agreement shall remain in full force and effect and shall be read and construed and be enforceable as if the terms of these presents were inserted 10 therein by way of addition or substitution as the case may be.

IN WITNESS whereof the parties aforesaid have hereunto set their hands and affixed their seals the day and year first herein written.

Signed Sealed with the Public
 Seals of Nigeria and delivered
 by the Governor in the
 presence of :
 (Sgd.) C. A. L. CLIFFE,
 Private Secretary. (Sgd.) GRAEME THOMSON (L.S.)

Signed by the making of their
 marks, the foregoing having
 been read over and inter-
 preted to them when they
 appeared to understand
 same, and sealed by the said
 Chiefs and Headmen in the
 presence of :
 (Sgd.) ? ?
 Asst. Chief Clerk. Chief Wobo His X Mark (L.S.) 20
 Chief Ejebuwan His X Mark (L.S.)
 Chief Obonda Aluku His X Mark (L.S.)
 Chief Wokekoro Wali His X Mark (L.S.)
 The Successor as Chief to Wokekoro
 since dead.
 Chief Atakos His X Mark (L.S.)
 Headman Ajoko
 Amadi His X Mark (L.S.)
 Headman Chimua His X Mark (L.S.)
 (Sgd.) J. O. NJEMANZE, Chief I. of Police. 30
 (Sgd.) O. W. FIRTH,
 Acting Resident,
 Owerri Province.

I certify that the above agreement was correctly read over and interpreted by me to the above Chiefs and Headmen who appeared clearly to understand the same.

(Sgd.) F. O. ALLAGOA,
 Interpreter.

OATH OF PROOF.

I, FRANCIS OSSAMADE ALLAGOA of Port Harcourt make oath and say that on the 29th day of October 1927 I saw the persons whose names are specified below duly execute the instrument now produced to

me and marked " A " and that the said persons cannot read and write and that the said instrument was read over and interpreted to them by me at the time of execution and that they appeared to understand its provisions :

Chief Wobo of Diobu
 Chief Ejebuwan of Diobu
 Chief Abonda Aluku of Diobu
 Chief Wokekoro of Diobu by Wali his successor
 Chief Atakos of Diobu
 Headman Ajoko Amadi
 Headman Chimua.

10

Sworn at Port Harcourt this 29th day of } (Sgd.) F. O. ALLAGOA.
 October, 1927

Before me,
 (Sgd.) O. W. FIRTH,
 Acting Resident.

Exhibits.
 ———
 Plaintiffs'
 Exhibits.

G.
 Supplementary
 Agreement
 between
 Chief Wobo
 and Others
 and the
 Governor of
 Nigeria,
 2nd May
 1926,
continued.

CERTIFICATE OF PROOF.

This instrument was proved before me by the oath of the within named Francis Ossamade Allagoa to have been duly executed by the within named persons on the 29th day of October 1927 :

20

Chief Wobo
 Chief Ejebuwan
 Chief Abonda Aluku
 Chief Wokekoro by Wali his successor
 Chief Atakos
 Headman Ajoko Amadi
 Headman Chimua.

Given under my hand and official Seal this 29th day of October 1927.

(Sgd.) O. W. FIRTH,
 Acting Resident.

30 In the opinion of the Commissioner of Stamp Duties the within instrument is not chargeable with stamp duty.

J. L. SPEAK, 2.5.28.
 Commissioner of Stamp Duties.

This instrument was delivered to me for registration by Robert Akinwande Georgestone Smith of Lands Office, Lagos at 11 o'clock in the forenoon this 4th day of May 1928.

J. L. SPEAK,
 Deputy Registrar.

40 This instrument is registered as No. 35 at page 230 in volume 99 of the Lands Registry in the office at Lagos.

J. L. SPEAK,
 Deputy Registrar.

Exhibits. **PLAINTIFFS' EXHIBIT "H."**—Grant to Chief Wobo by the Governor of Nigeria.

Plaintiffs' Exhibits.

H.
Grant to
Chief Wobo
by the
Governor of
Nigeria,
2nd May
1928.

THIS INDENTURE made the 2nd day of May 1928 Between Sir GRAEME THOMSON, Knight Commander of the Most Honourable Order of the Bath, Governor and Commander-in-Chief of the Colony and Protectorate of Nigeria, for and on behalf of the Government of Nigeria (who and whose successors in Office are hereinafter designated and included in the term "the Governor") of the one part and Chief WOBO as representing himself, the Chiefs, Headmen and people of Diobu hereinafter called the grantee of the other part WITNESSETH that the Governor in pursuance of the powers conferred by the Crown Lands Ordinance and all other powers thereunto 10
him enabling grants unto the grantee ALL that parcel of land situate at Port Harcourt in the Province of Owerri containing about 3.5 square miles more particularly marked and delineated on the plan set out in these presents and thereon coloured red To HOLD unto and to the use of the grantee, his successor in office, the Chiefs Headmen and people of Diobu and his and their heirs and assigns for ever free of all covenants and conditions whatsoever implied by virtue of the Crown Lands Ordinance and the Regulations thereunder.

IN WITNESS whereof the Governor has hereunto set his hand and affixed his Seal and the Grantee has made his mark and set his Seal the 20 day and year first herein written.

Signed, sealed with the Public Seal of Nigeria and delivered by the Governor in the presence of :— } (Sgd.) GRAEME THOMSON.
(L.S.)
(Sgd.) C. A. L. CLIFFE,
Private Secretary.

Signed by the making of his mark, the foregoing having been read over and interpreted to him, when he appeared to understand same, and sealed by the Grantee in the presence of :— } Chief Wobo His X Mark.
(L.S.) 30

(Sgd.) ? ?
Asst. Chief Clerk.
(Sgd.) J. O. NJEMANZE,
Chief I. of Police.
(Sgd.) O. W. FIRTH,
Acting Resident,
Owerri Province.

I certify that the above agreement was correctly read over and interpreted by me to the above Chief who appeared clearly to understand the same. 40

(Sgd.) F. O. ALLAGOA,
Interpreter.

In the opinion of the Commissioner of Stamp Duties the within instrument is not chargeable with stamp duty.

J. L. SPEAK,
2.5.28.
Commissioner for Stamp Duties.

This instrument was delivered to me for registration by Robert Akinwande Georgestone Smith of Lands Office, Lagos at 10.50 o'clock in the forenoon this 4th day of May 1928.

J. L. SPEAK,
Deputy Registrar.

Exhibits.
—
Plaintiffs'
Exhibits.

This instrument is registered as No. 23 at page 23 in volume 225 of the Lands Registry in the office of Lagos.

H.
Grant to
Chief Wobo
by the
Governor of
Nigeria,
2nd May
1928,
continued.

PLAINTIFFS' EXHIBIT "A"—Letter from Resident, Owerri Province, to Land Officer, Port Harcourt.

10

No. OW. 114/1925.
11th May, 1929.

A.
Letter from
Resident,
Owerri
Province,
to Land
Officer, Port
Harcourt,
11th May
1929.

MEMORANDUM.

From
The Resident,
Owerri Province,
Port Harcourt.

To
The Land Officer,
Port Harcourt.

CROWN LAND, PORT HARCOURT—NOTICE TO QUIT IN ONE YEAR'S TIME.

In reply to your Memorandum No. OW.B/S.P.S. 393/1 of the 29th April, 1929, I have to inform you that payment of rent and 20 compensation was made to the people of Diobu as follows:—

Rent for 15 years	..	£7,500
Compensation	300
		£7,800
		£7,800

2. These amounts were paid on the 28th October 1927 upon Port Harcourt Payment Vouchers Nos. 382 and 383 respectively.

3. The Diobu people are, therefore, not entitled to any further compensation.

(Sgd.) ? ?
for Resident.

Exhibits. **PLAINTIFFS' EXHIBIT "B."**—Letter from Resident, Owerri Province, to Land Officer, Port Harcourt.

Plaintiff's Exhibits.

M.P. No. OW : 286/1928
22nd August, 1929.

MEMORANDUM

B.
Letter from Resident, Owerri Province, to Land Officer, Port Harcourt, 22nd August 1929.

From The Resident Owerri Province, Port Harcourt. **To** The Land Officer, Port Harcourt.

DIOBUS ON CROWN LAND AT PORT HARCOURT

NOTICE TO QUIT IN ONE YEAR'S TIME

10

With reference to your memorandum No. OW : B.393/17 of the 9th of August, 1929, I have gone through the Agreement registered No. 16/13 also the Agreement registered No. 35 Vol. 99 Lands Registry Office Lagos both of which quote one and the same boundaries.

2. In January 1923 Col. Moorhouse minuted the following :—

“ 2. In a discussion I had with the G.M.R. before leaving Lagos, the following proposals which would meet all probable Railway requirements were put forward :—

(A) That we should include in the new agreement the whole area marked ‘ D ’ on the plan. 20

(B) Site in the area marked ‘ E ’ on the plan 2,000ft. in length and 500ft. in width along the railway line for the purpose of a cattle siding. (The exact position of the siding to be determined after consultation with the Div. Supt., Port Harcourt.)

(C) An area contiguous or adjacent to the siding site (B) above to be laid out as a Native Town for a Hausa settlement in connexion with the cattle trade.

(D) All other requirements would be met by the usual 100ft. strip along the railway line in the areas ‘ E ’ and ‘ F.’

“ 3. It was with these proposals in view that I opened the discussion with the Diobu Chiefs. It was at once apparent that they were bitterly opposed to any extension in the area ‘ D ’ beyond the present Township boundary. A considerable number of Diobu live in that area and it is their best farming land. During the discussion it became obvious that there was a misunderstanding as to the extent of the Diobu land. After enquiry I find that the Diobu land is all contained in the areas ‘ D ’ and ‘ E ’ and a small area near the railway line in ‘ F.’ I am convinced that it would be a real hardship to the Diobus to include the whole of the area ‘ D.’

* * * * *

“ 12. In this minute I have only dealt with the Diobu land which, with the small exceptions mentioned in paragraph 3, lie entirely in areas ‘ D ’ and ‘ E ’ the land in the area ‘ F ’ concerns the other signatories to the original Agreement who have accepted payment, and no action appears to be required with regard to it, at all events, at present.” 40

3. Later Col. Moorhouse held a meeting with the Diobu Chiefs and elders on the morning of February 14th 1923 when he minuted as follows :—

“ They had been previously shown by the Resident the boundaries of the land that Government were going to take up and clearly understood them.”

10 In September 1923, Col. Moorhouse held another meeting which I was personally present at but of which no copy of his comment was sent to this office. To the best of my memory the only area discussed and referred to were those belonging to the Diobu people namely areas A, B, C, D, E and G in plan 263 and that small portion of F which was thought to be the property of the Diobu people. Nothing resulted at this meeting as the Chiefs refused to discuss the matter with Col. Moorhouse unless the Chief Justice attend as an Arbitrator but the Chief Justice was unable to attend when the meeting came to no decision upon which he could act as an Arbitrator. Matters were therefore left in the same position as they were prior to the arrival of Col. Moorhouse.

20 4. From the above, and the several discussions that I have had with the Diobu Chiefs in later years, I am convinced that the area marked “ E ” in blue pencil on the plan returned herewith has never been completely given up but the Northern portion of it owned by the Diobu was undoubtedly given up by Col. Moorhouse’s Agreement. Whether we shall be able to demarcate the line of the Diobu boundary or not I cannot say but before we take further steps in giving notice to Squatters it will be necessary to fix this line. Once having done this all Squatters, on land in the area “ E ” previously owned by signatories of the original Agreement other than the land of Diobu, should be given a year’s notice to quit.

(Sgd.) ? ?

Resident.

30 **PLAINTIFFS’ EXHIBIT “ E.”—Notes of a Meeting held at Port Harcourt by the Governor, 20th September 1931.**

40 His Excellency granted an interview to representatives of the people of Diobu. The deputation complained to His Excellency that they were not being paid sufficient rent for the land acquired by Government at Port Harcourt. They also asked that the boundary of Government Land should be at the level crossing where the Owerri road leaves the Township. His Excellency informed them that Government had treated them most generously and that he considered they were most ungrateful. They must realise that the £500 a year which was paid to them was in reality paid by other native tax payers and that if they still refused to accept the rent His Excellency would use the money for the benefit of other natives. As, however, they did not consider the rent an economic one His Excellency would order an economic survey to be made of the land acquired by Government in order to ascertain its annual value as farm land, but that the people must clearly understand that the result of such survey might be adverse to their expectations.

Exhibits.
—
Plaintiffs’ Exhibits.

B.
Letter from Resident, Owerri Province, to Land Officer, Port Harcourt, 22nd August 1929, *continued.*

E.
Notes of a Meeting held at Port Harcourt by the Governor, 20th September 1931.

Exhibits. **PLAINTIFFS' EXHIBIT "D."**—Memorandum from the Superintendent of Agriculture to Resident, Owerri Province.

Plaintiffs' Exhibits.

No. 490/94/32.
17th May, 1932.

D.

Memorandum from the Superintendent of Agriculture to Resident, Owerri Province, 17th May 1932.

MEMORANDUM.

From The Superintendent of Agriculture, Umuahia. To The Resident, Owerri Province, Port Harcourt.

VALUATION OF DIOBU LAND PORT HARCOURT.

10

Reference my Memorandum No. 432/94/32 of 29th April, 1932, and previous correspondence, in compliance with instructions from the Assistant Director of Agriculture an economic survey of the Diobu Land at Port Harcourt has been made and figures calculated for the agricultural value of that land.

2. Since there is no precedent for an undertaking of this sort it seems desirable to record here the basis upon which the calculations have been made.

3. The renting of land is a common practice in many parts of the Eastern Provinces but leases do not normally extend over a period of 20 years. The custom is to lease an area of land on the termination of its usual bush fallow. The tenant crops it for one year after which it reverts to bush for a period usually varying between five and seven years. The rent paid for the land varies between five and fifteen shillings per acre, the figure depending not so much on the type of land as on the amount of land available.

4. The land with which we are concerned at Port Harcourt compares with that which is rented elsewhere at ten shillings per acre for the one farming year of the rotation. The rotation on the Diobu land includes one year's farming and seven years' bush. A true figure for rental over 30 a period of years is therefore 1s. 3d. ($=\frac{10}{3}$ shillings) per acre.

5. The standard figure adopted by the Agricultural Department some years ago for the valuation of oil palms was a maximum of two shillings and sixpence each for first class trees in full bearing. (This is for the full, not annual, value.) Prices for produce have fallen so much during the past few years that this figure should now be reduced by half and, in order to include good, bad and indifferent trees in the land under consideration a standard value of one shilling each has been adopted. Assuming sixty years as the average life of a palm, this represents an annual depreciation of 0.2 pence. Adding to this interest on the capital value 40 of the tree at 5% (0.6 pence) we arrive at a total annual value of 0.8 pence per tree.

6. The Diobu land includes a large area of swamp (9,103 acres) having no farming value and growing no economic trees.

7. The hard land is represented in red in the attached map and the rivers and swamp in blue. For the purpose of valuation the hard land is divided into two sections, viz. :—

Section A. 4,728 acres to the East of the Waja River.

Section B. 2,802 acres to the West of the Waja River.

8. There are scattered throughout the areas of hard land some coconut and raphia palms. It is impossible to gauge the number of these present and an estimated annual value of 0·25 pence per acre is allowed for them.

10 9. The estimated annual rental value is as follows :—

		£	s.	d.	£	s.	d.
Area A.	4728 acres @ 1s. 3d.	295	10	0			
	4728 acres Oil Palms 4 palms per acre						
	@ 0·8d. each	63	0	10			
	4728 acres Coconut and raphia palms						
	@ ¼d. per acre	4	18	6			
						363	9 4
Area B.	2802 acres @ 1s. 3d.	175	2	6			
	2802 acres Oil Palms 6 palms per acre						
	@ 0·8d. each	56	0	10			
	2802 acres Coconut and raphia palms						
	@ ¼d. per acre	2	18	5			
						234	1 9
	Total ..					£597	11 1

(Sgd.) D. H. BROWN.
(Sgd.) J. W. WALLACE.
Superintendents of Agriculture,
Umuahia.

Exhibits.

Plaintiffs' Exhibits.

D.

Memorandum from the Superintendent of Agriculture to Resident, Owerri Province, 17th May 1932, continued.

20

Exhibits. **DEFENDANT'S EXHIBIT "J2."**—Petition from O. A. Alakija to the Governor.

Defendant's Exhibits. O. A. Alakija, B.C.L., M.A. (Oxon),
Barrister-at-Law,

Solicitor of the Supreme Court of Nigeria,
P.O. Box 40.

J2.
Petition
from O. A.
Alakija to
the
Governor,
19th July,
1934.

Lulu Chambers,
Aggrey Road,
Port Harcourt,
Nigeria.

His Excellency,
Sir Donald Cameron, K.C.M.G., K.C.B.,
Governor & Commander-in-Chief of the
Colony and Protectorate of Nigeria.

19th July, 1934. 10

Re the petition of the chiefs and people of Diobu MAY IT PLEASE
YOUR EXCELLENCY.

THE HUMBLE PETITION of your humble Servants through
their Solicitor Mr. O. A. ALAKIJA humbly and respectfully
showeth :—

1. That we are His Majesty's loyal protected Subjects.
2. That we your humble servants receive annual rent of £500.0.0
for the lease of our land as included within the area known as Port Harcourt
Township. 20
3. That this sum is absolutely inadequate at the present day and
would continue to be so in the future for various reasons.
4. That owing to the need for educating our children and descendants,
and owing to the fact that our main Source of income is our land rent, we
respectfully pray, that Your Excellency may graciously grant that the
term of the agreement between the Government and ourselves as contained
in the written instrument No. A.17 Vol. 1 of the 2nd day of May 1928 be
subject to another revision variation and modifications.
5. That this is our third petition in this matter which is of grave
importance to us, and on which hangs the destiny and future of our people. 30
6. We therefore pray that Your Excellency may enter into our
feelings in this matter.

And your humble petitioners as in duty bound will ever pray.

I have the honour to be,

Sir,

Your obedient servant,

(Sgd.) O. A. ALAKIJA,

Solicitor (for your humble petitioners).

Chief Wobo repr.	(Sgd.) SUNDAY.	
Chief Samuel Atako	(Sgd.) SAMUEL ATAKO.	40
Chief Wali Wokekorom	His X Mark.	
Chief Agumagu	His X Mark.	
Chief Amadi Wonodi	His X Mark.	
Chief Ajoku Amadi	His X Mark.	
Chief Chinwa	His X Mark.	
Headman Amadi Opara	His X Mark.	

Witness to marks and signatures,

(Sgd.) P. B. O. CHINWA.

PLAINTIFFS' EXHIBIT "J."—Letter from the Acting Chief Secretary to the Government of Nigeria to O. A. Alakija.

No. 03269/349.

Chief Secretary's Office,
Nigeria,

Lagos, 12th September, 1934.

Exhibits.

Plaintiffs'
Exhibits.

J.

Letter from
the Acting
Chief
Secretary
to the
Govern-
ment of
Nigeria to
O. A.
Alakija,
12th
September
1934.

Sir,

I am directed by the Governor to acknowledge the receipt of your letter dated the 19th of July, covering a petition from the chiefs and people of Diobu on the subject of the rent received by them in respect of the land held from them by Government.

2. I am to invite your attention to the fact that at an interview granted by His Excellency on the 20th of September, 1931, to representatives of the people of Diobu he informed them that as they did not consider the rent which they received to be sufficient, he would order an economic survey to be made of the land acquired by Government in order to ascertain its annual value as farm land. His Excellency further informed the people that the result of such survey might be adverse to their expectations.

3. This survey, which covered the whole area retained by Government under the supplementary agreement of the 2nd of May, 1928 (registered as No. 35/28 in page 230 Volume 99 in the Land Registry at Lagos), was duly carried out in May, 1932, by officers of the Agricultural Department, and showed the economic value of the whole area to be £597 11s. 1d. per annum.

4. The persons concerned were thereafter informed that Government would abandon all claim to that portion of land lying between the Waja River (Amadi Creek) and the Woji River, an area of 4,728 acres of economically valuable land in addition to a considerable area of swamp.

5. The annual economic value of the land to which Government abandoned its claim, which was part of that held under the agreement of 1913, to which the title was reaffirmed by the agreement of 1928, was found to be £363 9s. 4d. of land, therefore, the total economic value of which was shown to be £597 per annum, the Government retained only a part, value at £234 per annum.

6. Despite the reduction in the area retained by Government no reduction was made in the rent of £500 payable to the Diobus, as agreed upon under the supplementary agreement of the 2nd of May, 1928. The Diobus are therefore receiving the sum of £500 per annum, in perpetuity, in respect of land the annual economic value of which is less than half that amount.

7. I am to say that in His Excellency's opinion the Diobus have received equitable treatment and that he is unable to reopen the subject.

I have the honour to be,

Sir,

Your obedient Servant,

(Sgd.) G. H. FINDLAY,

Acting Chief Secretary to the Government.

O. A. Alakija, Esq.,
Barrister-at-Law,
Aggrey Road,

P.O. Box 40,

Port Harcourt.

50

Exhibits. **DEFENDANT'S EXHIBIT "J3."**—Petition from Chief Wobo and Others to the Governor.

Defendant's Exhibits.

Diobu,
Port Harcourt.
15th September, 1937.

J3.
Petition
from
Chief Wobo
and Others
to the
Governor,
15th
September
1937.

To His Excellency,
The Governor and Commander-in-Chief,
At Port Harcourt.

Through the Resident Owerri Province,
Port Harcourt.

Copy the District Officer,
Ahoada Division.

10

MAY IT PLEASE YOUR EXCELLENCY,

THE HUMBLE PETITION of we the undersigned Chiefs,
representing Diobu in the neighbourhood of Port
Harcourt, respectfully showeth :—

That we are seizing this opportunity to welcome Your Excellency and
Lady Bourdillon on this your visit.

That your first visit to this place being so short noticed to us, we were
unable then to present ourselves before Your Excellency thereby placing
our grievances before you for Your Excellency's kind and paternal
consideration, we therefore consider it worth while to do so on this your
present visit with full hope that our supplications will be favourably
considered. 20

That we are the land-owners of Port Harcourt and that we now desire
Your Excellency's benevolence for an increase on the yearly rent paying
to us for our land by the Government.

That we are placed under Ahoada Division which is 47 miles to and
from our Town and this your humble petitioners pray for revision that we
be placed under Port Harcourt and to be allowed to have and own our
Native Court. 30

That in view of the foregoing and as loyal subjects of the British
Empire and under British Flag we crave Your Excellency's indulgence
and humbly implore that this our humble requests be given your
sympathetic consideration for which we shall in duty bound ever pray,
" God save the King."

Chief Wobo	His	X	Mark	
Chief S. Atako	(Sgd.)			
Chief Amadi Wonodi	His	X	Mark	
Chief Wali Wokekorim	His	X	Mark	
Chief Amadi Chinwa	His	X	Mark	40
Chief Aguma	His	X	Mark	
Chief Ajoku Amadi	His	X	Mark	
Chief Ofoh Anume	His	X	Mark	

The above petition was written by me at the request of the petitioners
and they all appear to understand.

(Sgd.) ? ?
Club Road, Port Harcourt.

PLAINTIFFS' EXHIBIT "J1."—Letter from District Officer to Chief J. Wobo and Others enclosing one from Acting Chief Secretary to the Government.

Exhibits.

—
Plaintiffs'
Exhibits.
 —

No. 288/Vol. II/318.
 District Office,
 Ahoada.

21st June, 1938.

Chief Wobo & Ors. of Diobu,
 c/o Native Court Clerk,
 Obia.

J1.
 Letter from
 District
 Officer to
 Chief
 J. Wobo
 and Others
 enclosing
 one from
 Acting Chief
 Secretary
 to the
 Govern-
 ment,
 21st June
 1938.

Gentlemen,

10 With reference to your petition dated 15th September, 1938,
 addressed to His Excellency the Governor of Nigeria, I beg to forward
 you herewith a reply and attachment from the Chief Secretary to the
 Government.

2. Please acknowledge receipt.

I have the honour to be,
 Sir,

Your obedient Servant,
 (Sgd.) ? ?

District Officer.

Letter No. 03269/362
 20 of 13th May, 1938.
 & Letter No. 03269/349
 of 12th Sept., 1938.

No. 03269/362.
 Nigerian Secretariat,
 Lagos,
 13th May, 1938.

Sir,

30 With reference to the petition dated the 15th of September, 1937,
 and addressed to His Excellency by you and seven others of Diobu, I am
 directed by the Governor to inform you that as regards the question of
 the rent paid to you by the Government His Excellency has nothing to
 add to the decision on the same subject which was conveyed to your
 Solicitor in my letter No. 03269/349 of the 12th of September, 1934. A
 copy of that letter is enclosed for ease reference.

2. With regard to the request that your village should be included
 in the Township of Port Harcourt I am to say that that is a matter which
 you should put before the Resident, who, will make such recommendations
 as he may consider to be necessary through the Chief Commissioner.

3. Consideration as to whether or not a Native Court should be
 40 established for the Diobu Village must await submission of the Intelligence
 Report on the area which, it is understood, is in course of preparation.

I have the honour to be,

Sir,
 Your obedient Servant,
 (Sgd.) ? ?

for Acting Chief Secretary to the Government.

Chief Wobo,
 Diobu Village,
 Port Harcourt.

u.f.s. Through the Hon : Secretary,
 Southern Provinces, Enugu.

Exhibits. **DEFENDANT'S EXHIBIT "P."**—Letter from Resident, Owerri Province, to Chief J. Wobo and Others.

Defendant's Exhibits. **COPY.**

No. C.275/335.

P.
Letter from
Resident,
Owerri
Province,
to Chief
J. Wobo
and Others,
17th
January
1947.

Resident's Office,
Owerri Province,
Port Harcourt,
17th January, 1947.

Sir,

I have the honour to refer to the document signed by Mr. O. W. Firth, 10
Acting Resident, Owerri Province on 29th October, 1927 in which Chief
Wobo and the Chiefs and Headmen of Diobu were informed that they might
farm the land acquired by Government outside the Township area until
such time as Government requires to use the said land and that they will
receive twelve months' notice of the intention of Government to use this
land.

2. I hereby give you twelve months' notice of Government's intention
to make use of all land acquired by Government outside the Township
area at Port Harcourt and that all farming on this land must cease and all
crops be removed by the 17th January, 1948. 20

3. I also hereby give you notice and warning that no compensation
will be paid by Government in respect of any buildings erected on this
land after the date of this letter.

4. I am to request that you will acknowledge the receipt of this
letter at your earliest convenience.

I have the honour to be, Sir,
Your obedient Servant,
(Sgd.) D. A. F. SHUTE
Resident, Owerri Province.

Chief Wobo
Chief Wali Wokekoro
Chief Brown Aguna
Chief Samuel Atako
Chief Appolos Amadi
Chief Victor Amadi
Chief Amadi Wonodi
Chief Amadi Opara
Chief Amadi Chiwo
Chief Wobo Achara.
Diobu, c/o P.O. Box 140, Port Harcourt. 30 40

OFFICIAL NOTICE.

WHEREAS by an agreement made on 29th day of October, 1927
between the Acting Resident, Owerri Province and Chief Wobo and the
Chiefs and Headmen of DIOBU at the Residency, Port Harcourt, it was
agreed that the said Chiefs and Headmen of Diobu might farm the land
acquired by Government outside the Township area of Port Harcourt

until such time as the Government required to use the said land and that they would receive twelve months' notice of Government's intention to use the said land.

NOTICE IS HEREBY GIVEN in accordance with the terms of that agreement that as from 17th day of January, 1948 Government intends to make use of the said land acquired by Government outside the Township area of Port Harcourt.

AND THAT all farming on the said land must cease and all crops be removed by the 17th day of January, 1948.

10 AND WARNING IS HEREBY GIVEN that no compensation will be paid by Government in respect of any building erected on the said land after the date of this Notice.

By Order
(Sgd.) D. A. F. SHUTE
Resident
Owerri Province.

Port Harcourt.
17th January, 1947.

Exhibits.

Defendant's Exhibits.

P.
Letter from Resident, Owerri Province, to Chief J. Wobo and Others, 17th January 1947,
continued.

20 PLAINTIFFS' EXHIBIT "K."—Letter from Resident, Rivers Province, to Chief J. Wobo and Others.

No. R.P.286/1928/183.

Resident's Office,
Rivers Province,
Port Harcourt,
18th March, 1948.

Plaintiffs' Exhibits.

K.
Letter from Resident, Rivers Province, to Chief J. Wobo and Others, 18th March 1948.

Gentlemen,

30 I have the honour to refer to your petition addressed to the Secretary of State, dated 6th February, 1947 and am directed to inform you that the Secretary of State has received and considered your petition and that he is not prepared to intervene in the matter.

I have the honour to be, Gentlemen,
Your obedient Servant,
(Sgd.) ? ?
Resident.
Rivers Province.

Chief Joseph Wobo and nine others,
of Diobu Improvement League,
c/o Mr. A. O. Amadi,
Kingsway Stores,
Port Harcourt.

40

Exhibits. **PLAINTIFFS' EXHIBIT "L."—Letter from J. Akugbo to Port Harcourt Planning Authority.**

Plaintiffs' Exhibits.

John Akugbo,
47 Creek Road,
Port Harcourt,
31st May 1948.

L.
Letter from
J. Akugbo
to Port
Harcourt
Planning
Authority,
31st May
1948.

The Planning Authority,
Port Harcourt,
c/o Local Authority,
Port Harcourt.

10

Sirs,

Having read through the Planning Scheme of the Diobu " D " layout, I have these objections to make according to the latest notice served on us.

My understanding in the statement that " compensation will be paid for all buildings demolished under the Scheme and all house-holders dispossessed will be offered plots in the layout on the terms set in the Scheme is that buildings will be demolished before the paying of compensation and offering of plots ; and that all dispossessed householders who accept to take up plots in the layout must pay the yearly plot rent of one pound. That statement also gives the idea that the offering of plots is strictly only to dispossessed householders and to no one else among the Diobu natives, and that compensation will be paid only for houses demolished and not for fruit trees as no mention is made about them in the Planning Scheme. 20

My reason for raising these objections is because, such Plan carried out will create great discomforts for us. For where are we to live after the demolition of our houses before rebuilding them on the plots to be offered ?

Therefore I beg to suggest that what should first be done is to pay the compensation for all the houses within Diobu " D " layout and then the offering of plots. The demolition of houses to follow after the expiration of an agreed period of time to rebuild and quit. 30

I also suggest that persons residing with their relatives and those abroad, who have no houses now within the Diobu " D " layout should not be precluded ; also that compensation for fruits trees be not ignored. And that the allocation of plots should be free and that compensation for houses should be such as would cover the cost of buildings according to the building rules.

These suggestions are made because the vast majority of us are not merely poor but also destitute, having no helpers. Just imagine as men of humane disposition, how the sufferings of such needy ones will be highly aggravated if these suggestions be defeated ; the result of which will be that we are all done for : miserable, homeless, deprived of our former houses and ruled out of the new plot allocations. 40

I hope you will use your good office to kindly consider this my humble suggestion.

I am, Yours Sincerely,
(Sgd.) J. AKUGBO.

Privy Council Appeal.
No. 18 of 1953.

In the Privy Council.

ON APPEAL
FROM THE WEST AFRICAN COURT OF APPEAL
(NIGERIAN SESSION).

BETWEEN
CHIEF JOSEPH WOBO, CHIEF WALI WOKEKORO,
CHIEF SAMUEL ATAKO, PHILIP CHINWA, BROWN
AGUMAGU, VICTOR AMADI, APPOLOS AMADI,
AMADI WANODI, AMADI OPARA, WOBO CHARA
(Plaintiffs) *Appellants*

AND
THE ATTORNEY-GENERAL OF NIGERIA (Defendant) . *Respondent.*

RECORD OF PROCEEDINGS

A. L. BRYDEN & WILLIAMS,
53 VICTORIA STREET,
LONDON, S.W.1,
Solicitors for the Appellants.

BURCHELLS,
68 VICTORIA STREET,
LONDON, S.W.1,
Solicitors for the Respondent.