UNIVERSITY OF CAPE COAST

COOPERATION AND CONFLICT: A HISTORY OF THE JUDICIARY IN GHANA, 1853-1966

BRUNO OSAFO

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BY

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NOVEMBER 2022

DECLARATION

Candidate's Declaration

I hereby declare that this thesis is the result of my own original work and that no part of it has been presented for another degree in this university or elsewhere.

Candidate's Signature: …… Date: …….

Name: …….

Supervisors' Declaration

We hereby declare that the preparation and presentation of the thesis were supervised in accordance with guidelines on supervision of thesis laid down by the University of Cape Coast.

Principal Supervisor's Signature: ……Date: …….

Name: ……

Co-Supervisor's Signature: …… Date: ……

Name: ……

ABSTRACT

This thesis situates the judiciary in Ghana in a historical perspective from 1853, when the first Supreme Court for the Gold Coast was established, signifying the establishment of British judicial system, to the end of Dr. Kwame Nkrumah's reign in 1966 when he had, a little earlier, dismissed the first Ghanaian Chief Justice of independent Ghana. Using a qualitative approach, and utilizing both primary and secondary data, the study analyses the processes leading to the establishment and operations of British-styled courts in the Gold Coast and the relationship that existed between the judiciary and the executive arm of the colonial administration on the one hand, and between the British courts and the previously existing chiefs' courts, on the other. The study highlights the fact that some chiefs and people of the colony negatively reacted to the British courts, largely because the powers of the chiefs were encroached upon and gradually eroded. Some chiefs were arrested, imprisoned, and even exiled for challenging the activities of the colonial administration and the rulings of the British courts. The study also discusses the passage of ordinances that set up courts run by Ghanaians which augmented the activities of the understaffed British courts and further regulated, almost to their extinction, the operations of the chiefs' courts. The study argues that there existed a cordial relationship between the British-styled courts and the officials of the colonial administration while the relationship between the chiefs' courts and the same administration remained frosty. The relationship between the Local Courts and the Convention People's Party government that ruled the country from 1951 to 1966 deteriorated over the years as did the relationship between the executive and the judiciary.

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DEDICATION

To my sons, Cyril Akwasi Osafo and Worlanyo Kwame Osafo, and in Loving Memories of my mum, Madam Judith Agbeleze, and my wife, Mrs. Theresah Akosua Serwaa Osafo.

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LIST OF ABBREVIATIONS AND ACRONYMS

A.R.P.S.	-	Aborigines' Right Protection Society
A.W.A.M.	-	Association of West African Merchants
C.P.P.	-	Convention People's Party
G.C.P.	-	Ghana Congress Party
N.A.O.	-	Native Administration Ordinance
N.C.B.W.A.	-	National Congress of British West Africa
N.J.O.	-	Native Jurisdiction Ordinance
N.L.C.	-	National Liberation Council
N.L.M.	-	National Liberation Movement
N.P.P.	-	Northern Peoples Party
P.D.A.	-	Preventive Detention Act
P.R.A.A.D.	-	Public Records and Archives Administrative Department
U.G.C.C.	-	United Gold Coast Convention
U.P.	-	United Party
W.A.C.A.	-	West African Court of Appeal
W.A.S.U.	-	West African Students Union

CHAPTER ONE

INTRODUCTION

Background to the Study

The coming of Europeans to the shores of West Africa, and for that matter the Gold Coast (now Ghana), in the fifteenth century witnessed the establishment of British systems of government by the 19th century. This included the establishment of an Executive Council in 1850, the first Supreme Court in 1853 and a Legislative Council in 1857 in the Gold Coast.[1] These institutions were avenues through which the British crown administered the affairs of the territory through to the colonial period. The establishment of those institutions also further increased direct British rule of the territory. The judiciary dealt with legal matters and adjudicated cases in the colony. Before the establishment of the Executive and Legislative councils and the Supreme Court, the executive, judicial and legislative powers of governance were vested in the sole representative of the British, the Governor. Hence, he was the chief administrator, the chief judge and law maker. Over time, however, and with the expansion of British authority in the Gold Coast, the responsibilities of passing laws, settling disputes and administering the territory were separated and designated to different individuals or groups of people, although the Governor, and later the Chief Justice, was mostly a member of more than one organ of government.

[1] Martian Wight, *The Gold Coast Legislative Council*, (London: Faber & Faber Ltd., 1946), 17; A.A. Boahen, *Ghana: Evolution and Change in the Nineteenth and Twentieth Centuries* (Accra: Sankofa Educational Publishers Ltd., 2000), 42; D.E.K., Amenumey, *Ghana: A Concise History from Pre-Colonial Times to the 20th Century* (Accra: Woeli Publishing Services, 2008), 162-163; F.K. Buah, *A History of Ghana* (Oxford: Macmillan Education, 1998), 82-82.

With the attainment of independence from Britain in 1957, the new country, Ghana, inherited these colonial institutions of governance, including the judiciary. By that time, however, the arms of government had developed and were totally controlled by Ghanaians; with the exception of executive powers which were exercised by both Kwame Nkrumah (as Prime Minister) and Sir Charles Arden-Clarke (as Governor-General), an arrangement that continued until 1 July 1960, when the country attained republican status and hence was fully in the hands of Ghanaian rulers.

The judiciary of a nation is the arm of government which is tasked with the onerous duty of administering justice per the laws of the land and this responsibility is, mostly, enshrined in the constitution of the state. The judiciary has the power to adjudicate conflicts between the state and individuals, between institutions of the state and between individuals[2] and pronounce judgment on them based on their merits. It is also tasked with the responsibility of protecting individual rights, and other constitutionally autonomous institutions such as the Electoral Commission.[3] These functions of the judiciary are important and form part of the process of governance since justice "contributes in a fundamental way to social peace and contentment."[4] A chief Justice of India once posited that the judiciary "provides the people the necessary 'auxiliary precaution' required to ensure that the government functions in favor (sic) of the people, for their upliftment and for the

[2] Hilaire Barnett, *Constitutional and Administrative Law* (3rd ed.) (London: Cavendish Publishing Limited, 2000), 128; Emmanuel Kwabena Quansah, *The Ghana Legal System*, (Accra: Blackmask Ltd. 2011), 173-174; Benjamin T. Antiedu, *Reading the Law* (Accra: Pentecost Press Limited, 2019), 33; Bryan A. Garner (ed.), *Black's Law Dictionary* (10th Ed.) (Minnesota: Thomson Reuters, 2014), 977; Bryan A. Garner, *A Dictionary of Modern Legal Usage*, (New York: Oxford University Press, 1995), 485-486.
[3] Quansah, *Legal System*, 53.
[4] A. E., Boateng, *Government and the People: Outlook for Democracy in Ghana* (Accra: Buck Press, 1996), 91.

betterment of society."[5] Chapter Eleven of the 1992 Constitution of the Republic of Ghana details the composition, functions and jurisdiction of the country's judiciary.[6] It outlines the composition and power of the judiciary, and the need for an independent judiciary, and further specifies the jurisdiction of the levels of courts (from the highest court of the land, the Supreme Court, to the lowest court) that make up the judiciary.[7]

It has been argued that, of the three arms of government in Ghana, the judiciary is the only one that enjoyed the "greatest degree of continuity and stability since the colonial era."[8] Thus, while successive governments (the executive arm of government) were overthrown, and the legislature dissolved, on at least five occasions, in coups d'état in the country's 65 years of independence,[9] the judiciary was, largely, left intact through all those phases

[5] See Shri. K.G. Balakrishnan, "Relationship Between the Legislature, Executive and Judiciary," an Inaugural Address delivered by the Chief Justice at the Golden Jubilee Celebrations of the Kerala Legislative Assembly, April 26, 2008.
[6] *1992 Constitution of the Republic of Ghana*.
[7] See *1992 Constitution of the Republic of Ghana* for details of the membership, structure and power of the courts that make up the judiciary.
[8] Boateng, *Government and the People*, 91; Kwame Frimpong, "Some Dark Spots in the Post-Independence Administration of Criminal Justice in Ghana," in Henrietta J.A.N. Mensa-Bonsu, Christine Dowuona-Hammond, Kwadwo Appiagyei-Atua, Nii A. Josiah-Aryeh & Ama Fowa Hammond (eds), *Ghana Law since Independence: History, Development and Prospect* (Accra: Black Mask Ltd, 2007), 233.
[9] The government of Dr. Kwame Nkrumah and his Convention People's Party (CPP) was overthrown in a coup d'état in 1966, thus bringing an end to the First Republican government of Ghana. The Second Republican government of Prof. K.A. Busia and the Progress Party (P.P.) was also overthrown in a coup d'état in 1972. The country was, subsequently, brought under the military rule of the National Redemption Council (N.R.C.) from 1972 to 1975. The N.R.C. *junta*, under its leader Colonel I.K. Acheampong, was reorganised in October 1975 and thus became known as the Supreme Military Council (SMC) I. The regime was later overthrown in a palace coup in July, 1978 and the new military government became known as the Supreme Military Council (SMC) II. The reign of that government with its leader, General Frederick W.K. Akuffo, was later brought to an abrupt end in yet another forceful military takeover on 4 June 4 1979, paving the way for the Armed Forces Revolutionary Council (AFRC) to rule the country from June to September 1979 when it handed over power to an elected civilian government of the People's National Party (PNP). The PNP government was also ousted in yet another coup d'état on 31 December 1981 by what would become known as the Provisional National Defence Council (PNDC). See Robert Pinkney, *Ghana Under Military Rule: 1966-1969* (London: Methuen and Co. Ltd, 1972); Mike Oquaye, *Politics in Ghana, 1972-1979* (Accra: Tornado Publications, 2004), 98-138; Mike Oquaye, *Politics in Ghana (1982-1992): Rawlings, Revolution and Populist Democracy* (Accra: Tornado Publications, 2004), 1-10, 177-226; Boahen, *Ghana*, 206-240; Amenumey, *Ghana*, 244-279;

of military interventions, with the exception of the 1980s when the PNDC *junta* introduced some changes in the structure in the judiciary of Ghana.[10] This phenomenon signifies the importance and indispensability of the judiciary in Ghana and in any nation for that matter. The judiciary consists of courts, judges and magistrates and equivalent legal officers.[11] The judiciary of Ghana is not different from the judiciaries of other democracies the world over. The structure of the judiciary, generally, follows a similar pattern in which courts are classified based on their jurisdiction and functions. In post-colonial Ghana, the Supreme Court is at the top of the judicial structure. It is followed by the Court of Appeal, High Courts, Circuit Courts and Magistrate Courts.[12]

Whatever their grade or function may be, the independence and integrity of the judiciary are crucial for the adequate performance of its functions. The independence of the judiciary from any form of interference or control, from within its structure or externally, ensures that judges carry out their duties impartially and fairly. In the view of the Constitutional Commission that was established to make proposals for the 1969 Constitution:

> Law Courts of Ghana shall be the custodian and the bastion of the liberty and dignity of Ghanaians, the guardian of the Constitution, in short, the citadel of justice. The independence of Judges is an essential prerequisite to the

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Buah *Ghana*, 194-224; Kantanka, K. Donkoh Fordwor, *The Danquah-Busia Tradition in the Politics of Ghana: The Origins, Mission and Achievements of the New Patriotic Party*, (Accra: Unimax Macmillan Ltd., 2010), 92-111; A.A. Afrifa, *The Ghana Coup*: 24th February 1966 (Accra: Frank Cass and Company Limited, 1966); Rathbone (New York: Ghana Information Services, 1966); Pinkney, *Ghana*.

[10] Mike Oquaye, "Law, Justice and the Revolution," in E. Gyimah-Boadi (ed.), *Ghana Under PNDC Rule* (Wiltshire: Anthony Rowe Ltd., 1993), 154-175. See also Frimpong, "Dark Spots," 233.

[11] F.K. Buah, *Government in West Africa* (Accra: Readwide Publishers and FABS, 2005), 83.

[12] *1992 Constitution;* Boateng, *Government and the People*, 82.

> attainment of this objective, and it can be achieved only under certain accepted conditions.[13]

A former president of India, Kocheril Raman Narayanan (who ruled from 1997 to 2002), also noted that on the issue of the importance of the judiciary, that "the judiciary in India has become the last refuge for the people and the future of the country will depend upon the fulfilment of the high expectations reposed by the people in it"[14] and hence a "… scurrilous abuse of particular members of the judiciary or attacks which question the integrity of judicial institutions undermine public confidence in the courts and acceptance of their decisions."[15]

Statement of the Problem

The history of Ghana is replete with detailed, and in some instances, general historical analyses of the politics and development of the country from the colonial period to the present. Regardless of the crucial responsibilities they had, and still have, in the development of the state, and their complementary roles to each other in ensuring advancement of the country's democracy, there is a paucity of comprehensive studies on the history of the judicial arm of government and its relationship with the executive branch from 1853[16] to 1966.[17] There have been instances in Ghana's history when the two institutions have been accused of sabotaging each other with the authority they wielded and that adversely affected the relationship between them.

[13] See as cited in Quansah, *Legal System*, 173.
[14] Narayana as cited in Balakrishnan, "Relationship," 6.
[15] H.P. Lee as cited in in Balakrishnan, "Relationship," 7.
[16] 1853 was the year in which the first Supreme Court was established in the Gold Coast. That was after the passage of the Supreme Court Ordinance of 1853. The establishment of the court laid the foundation of the current judicial system of Ghana.
[17] The first Ghanaian post-colonial government which was led by Dr. Kwame Nkrumah was overthrown in a coup d'état in February, 1966. The government was accused of many infractions including its alleged control of the judiciary, to the extent of dismissing the first Ghanaian Chief Justice.

Oftentimes, the executive was most often guilty of the accusation. The executive branch of government from the colonial period to the independence era has also been accused of using subtle, and, sometimes, brutal schemes to interfere with the functions of the judiciary, an accusation the executive usually denied. Such methods included the manipulation of appointment, promotion and transfer of members of the bench and the threat of dismissal and the, actual, dismissal of judges by the executive.

This accusation of perceived or actual executive interference in judicial affairs is not peculiar to Ghana since the histories of some advanced democracies abound with many of such claims. A well-known example of executive interference with judicial independence in the history of the United States of America was what has become known as the "Midnight Judges."[18] This was one of the earliest allegations of tension between the executive and judicial branches in the history of the United States. The second president of the United States of America, John Adams (1797 – 1801), was accused of appointing forty-two (42) Federalist Justices the midnight before the end of his

[18] The "midnight judges" refers to a group of Federalist judges who were appointed by John Adams (President of the United States, 1797- 1801) on the eve of the expiration of his tenure as president. That was after he lost the elections of 1800 to the presidential candidate of the Democratic-Republican party, Thomas Jefferson. Adams and his party did not want to lose their influence over the judiciary due to the transfer of political power and so they passed the Judiciary Act of 1801 which expanded the number of federalist judgeships in the United States. President John Adams then nominated John Marshall as the next Chief Justice of America. He also nominated several other judges who were sympathetic to his party (the Federalist Party) and they were subsequently confirmed by the Senate. At the time, the size of the country and the increasing number of cases before the courts necessitated the appointment of more judges, but the timing raised suspicions. John Adams is purported to have noted that "[the Federalists] have retired into the judiciary as a stronghold. There the remains of Federalism are to be preserved and fed...." The appointments, therefore, sparked controversy and led to a legal battle between the Federalist Party and Jefferson's government. The legal conflict later resulted in a Supreme Court decision that established the principle of judicial review, giving the Supreme Court the authority to declare laws unconstitutional. See Clarence L. Ver Steeg and Richard Hofstadter, *A People and A Nation* (New York: Harper & Row Publishers, 1978), 162; John A. Garraty, *The American Nation: A History of the United States*, 9th ed. (New York: Addison-Wesley Educational Longman Inc, 1998), 165-166; George Brown Tindall and David Emory Shi, *America: A Narrative History*, 7th ed. (London: W.W. Norton & Company Ltd, 2007), 216.

tenure as president. The rationale behind this midnight appointment was ostensibly to make it difficult, if not impossible, for the Jefferson-led Republican party, which took over from the Federalists, to undo the policies of the outgoing administration.[19] President John Adams was also accused of using judges in the courts to pursue his vindictive agenda against critics and enemies.[20]Apart from the example from the United States of America, some African governments, especially those that had been described as autocratic, such as Tunisia, have been accused of interfering in the work of the judiciary even to the extent of trying to make the judiciary an extension of the executive's tool for the persecution of political opponents or the perpetuation of their hold on power.[21]

The judiciary has also been occasionally blamed by the executive for deliberately taking positions and giving rulings, especially in high profile cases, which were not in the interest of the government. It has, thus, been argued by some scholars and political observers that the seemingly unfriendly relationship that existed between the two institutions in Ghana, during the period under review was due to the aggressive posture of the judiciary against the executive. At the same time, the executive has also been blamed for its disrespectful treatment of the judiciary and the attempt to undermine the

[19] Tindall & Shi, *America*, 216
[20] *Ibid*, 214-215.
[21] See "Does New Decree mark the end of Judicial Independence in Tunisia?" https://www.aljazeera.com/news/2022/2/17/does-decree-11-mark-the-end-of-judicial-independence-in-tunisia, (Accessed 12/10/2022); "Tunisia: Presidential Decrees Undermine Judicial Independence and Access to Justice, says U.N. Expert," https://www.ohchr.org/en/press-releases/2022/07/tunisia-presidential-decrees-undermine-judicial-independence-and-access (Accessed 12/10/2022); "Tunisian President Sacks Dozens of Judges, Tightening Grip on Judiciary," https://www.france24.com/en/africa/20220601-tunisian-president-sacks-dozens-of-judges-tightening-grip-on-judiciary (Accessed 12/10/2022); "Tunisia: Arbitrary Dismissals a blow to Judicial Independence," https://www.amnesty.org/en/latest/ news/2022/06/tunisia-arbitrary-dismissals-a-blow-to-judicial-independence/(Accessed 12/10/2022).

rulings passed by courts of competent jurisdiction. The high-profiled case of the Kulungugu assassination attempt on the life of President Nkrumah in 1962 is emblematic. Many argue that Nkrumah's reaction to the court's decision ultimately set the tone for the tensions that would emerge between the judiciary and the executive branch of government in postcolonial Ghana.

There are knowledge gaps in the history of Ghana's judiciary from the early nineteenth century to 1966, with a particular focus on the relationship between the judiciary and the national executive, and a comprehensive research to fill the gaps in Ghana's judicial history is worthy of academic study. This work, thus, builds upon earlier research but subjects existing arguments to further scrutiny through the combination of diverse methodological approaches. In addition, this research moves beyond the supposed tensions and conflicts between these arms of government to explore the exchanges they engaged in through cooperation, whatever it may be. This thesis traces the history of Ghana's judiciary from the days of the European presence on the Gold Coast to 1966, when a coup d'état forcibly shortened the term of the government of the Convention People's Party. It critically examines the mandates of the executive and judiciary in Ghana and how their mandates promoted or adversely affected the discharge of the duties of the latter.

Literature Review

There is paucity of literature on the history of the Judiciary in Ghana on the one hand and the relationship between the executive and judiciary on the other during the period of study. The few works that exist provide limited, or sometimes fragmented, information about this relationship since they mostly examine the institutions in isolation. The few books which examine the

two institutions in some detail are done from the perspective of political science or law. Hence, they tend to focus on the powers and jurisdictions of the two institutions. They do not trace the history of the relationship that existed between the two institutions and the consequences of that relationship for national development.

Sir William Brandford Griffith's 1936 experiential Gold Coast account[22] provides a brief narrative about the metamorphic developments of Gold Coast British courts, their widening in-forts to out-forts jurisdictions as well as their backing and changing so-called constitutions of the colony - which definition, according to the Omnibus revision Ordinance No.3 of 1895, covered Asante, the Northern Territories, and the western portion of British Mandated Togoland.

Griffiths traces the emergence of British authority in the Gold Coast. He notes that the British initially recognized the political leadership and authority of traditional rulers (chiefs and kings) through their (the English) payment of annual grounds rents for the lands on which they erected their castles and forts. He, further, posits that the chiefs and people regarded the English, and of course all the other Europeans on the Gold Coast shores, as "mere sojourners"[23] who would return after their activities with the local people. While discussing the gradual introduction and, subsequent, imposition of British-style judicial system in the Gold Coast, Griffith admits that in the period from 1750 and 1807, the English forts had "no judicial officers…"[24] while cases between the local people and the English "were rare," as they

[22] William Brandford Griffith, *A Note on the History of the British Courts in The Gold Coast Colony, With a Brief Account of the Changes in The Constitution of the Colony*, (Accra: Government Printer, 1936), 1.
[23] *Ibid*, 2.
[24] *Ibid*.

received "little credit," the English had "no jurisdiction"[25] inland. Sir Brandford Griffith attempted to provide answers to questions such as when and how the English assumed jurisdiction in the Gold Coast and the reasons and methods through which such jurisdiction was extended into the interior. He also shed some light on the basis on which such authority was grounded as well as when and why the English brought judicial officers into the colony. The former Gold Coast Chief Justice argues that "Sir Charles McCarthy and Captain Purdon…placed over the tribes south of the Prah [sic] the protecting power of the British,"[26] George Maclean, the President of the Cape Coast Council of Merchants, perfected the external jurisdiction which had already been activated by the Company of African Merchants and which the local people had come to trust.[27] He indicates that George Maclean's judicial prowess culminated to his appointment as Judicial Assessor which elevated him to sit in court, on judicial matters, with the local rulers in the states within close proximity of the Cape Coast Castle.[28]

Griffith explains the fact that the British establishment of a Supreme Court in the Gold Coast Colony in 1853 and 1876, coupled with the annexation of Asante and the Northern Territories in 1902 extended British judicial authority to other parts of the Gold Coast including "…Ashanti [sic] and the Northern Territories as though they and the Colony formed a single territory."[29] Sir William Brandford Griffith's brief historical but holistic

[25] Griffith, *A Note*, 2.
[26] *Ibid*, 4.
[27] *Ibid*.
[28] "The Administration of George Maclean from 1830-1836," G.E. Metcalfe, *Great Britain and Ghana: Documents of Ghana History, 1807-1957*, (London: Nelson & Sons Ltd, 1964), 129-146. See also "Maclean and the British Government," Metcalfe, *Great Britain and Ghana*, 147-159; Boahen, *Ghana*, 34-42; Amenumey, *Ghana*, 100-116; Buah *Ghana*, 77-80.
[29] Griffith, *A Note*, 33

account of creeping English act of imperialism and colonization, while only a few pages, offer an insider's compelling disclosures and important pieces of evidence that complement the legal history of the Gold Coast. He was, however, not able to adduce any proof of the local people's conscientious consent to entirely give the English their political, and for the purposes of this research, judicial sovereignty, which thus suggests that the actions of the English amounted to giving legitimacy to an illegality, that was started by George Maclean[30] and which this thesis confirms. Brandford Griffith's work, however, provides some important primary material upon which this thesis reconstructs the history of Ghana's judiciary.

One of John Mensah Sarbah's contributions to the historiography of the judiciary during the British occupation discusses the career of George Maclean in the Gold Coast, with emphasis on his adjudicative powers. He traces the beginnings of the illegitimate introduction of European-style courts into the Gold Coast to the coming of George Maclean. Sarbah argues that to control affairs on the coast and maintain security for the merchants within the colony, George Maclean arrogated to himself powers that enabled him to quell local disturbances and settle disputes that had the potential to disrupt trade.[31] He, further, posits that Maclean, gradually, expanded his sphere of influence to areas that were not under his jurisdiction at the time. With time, his influence, particularly his judicial authority, over the territories increased so

[30] See Boahen, *Ghana*, 40-41; Amenumey, *Ghana*, 115-116; Buah *Ghana*, 80-82 for the appointment of Commander Hill and the subsequent signing of the Bond of 1844, between Asante and Fante chiefs, which sought to correct the illegality of Maclean's wok. George Maclean's earlier actions on the coast were contrary to his job description.

[31] John M. Sarbah, "Maclean and the Gold Coast Judicial Assessors," *Journal of the Royal African Society*, Vol. 9 No. 36, (July 1910), 349-359. Stable URL: http://www.jstor.org/stable715098. (Accessed: 21-02-2018).

much so that he became known as a Judicial Assessor or an Assistant to the "Native" Sovereigns and Chiefs of Countries adjacent to the Gold Coast, a position he held until 1847.[32] Thus, the position of Judicial Assessor was created in 1830 and it was not until 1853 when the first Supreme Court was established that the office of Chief Justice was created to replace that of the Judicial Assessor.[33]

Sarbah argues that Maclean asserted his judicial authority with the help of a military force in situations where "stubborn" chiefs disobeyed his orders, a situation that was quite rampant because Maclean was deliberate and focused on carrying through his authority and policies once he was convinced that he was right in his approach.[34] Sarbah proceeds to discuss the passage of ordinances, such as the Native Jurisdiction Ordinances, which sought to recognize the existence of two types of courts in the Gold Coast and also regulate the operations of the local courts.[35] Issues such as the procedure and processes of summons, trial, as well as which of the laws had pre-eminence over the other, and even how advocates should appear before the courts were all examined by the researcher.

Sarbah also identifies some challenges in the operations of the British courts. These included the application of English laws in the courts, the inadequate knowledge of some judges who presided over the courts, and some of the regulations that were introduced for the local courts. He posits that it was in an attempt to address some issues associated with the first Supreme Court Ordinance that David Chalmers consolidated the indigenous laws of the

[32] Sarbah, "Maclean," 349-359.
[33] Boahen, *Ghana*, 42-43.
[34] Sarbah, "Maclean," 348-358.
[35] *Ibid*.

territory and drafted the Supreme Court Ordinance of 1876 to the requirement and suitability of the Gold Coast to address miscarriage and administration of justice.[36] Sarbah interrogates the functions of courts and notes that the existence and the main function of courts were to preserve public peace and protect property and the routine reformation of the machinery of the social structure to keep pace with the operations and requirements of the community in the process of its development.[37]

While Sarbah's work, primarily, focuses on Maclean and some Judicial Assessors of the Gold Coast, this study undertakes a deeper look into the establishment of the British courts in Ghana and some of the transitions the court underwent. Sarbah's work provided the researcher with primary information on some of the Judicial Assessors and their orientation about the judiciary in the mid-nineteenth century as well as the reforms they introduced in the Gold Coast. It also provided the basis for a more detailed research into the reasons for the opposition of the chiefs to the introduction of European courts and the imposition of an assessor over the local courts.

In "The Supreme Court, A Hundred Years,"[38] Amissah examines the justice system in Ghana and discusses the installation of the Supreme Court in 1876 in the Gold Coast by the British colonial government. Amissah argues that one of the reasons for the establishment of the court was to make the application of English law in the colony simpler.[39] This had become necessary as the colonial authorities realised that a strict and wholesale application of

[36] Sarbah, "Maclean," 348-358.
[37] *Ibid*.
[38] A.N.E Amissah, "The Supreme Court, A Hundred Years Ago," in W. C. Ekow Daniels & G.R. Woodman (eds.), *Essays in Ghanaian Law: Supreme Court Centenary Publication 1876-1976* (Accra: Ghana Publishing Corporation, 1976), 1–31.
[39] *Ibid*, 1.

English laws in a territory several miles from England and, of course, with a totally different culture and values, was not the best to do.

Amissah further examines the Supreme Court Ordinance of 1876 which established the institution, its jurisdiction, appointments to the court and its composition. In probing the role and personalities of the court, Amissah argues that the Supreme Court at the time of its establishment was not an independent body from the executive branch of government as it is today. This was because the Chief Justice was a member of the Legislative Council which had been established earlier in 1874.[40] Amissah also asserted that Sir Brandford Griffith, who was the Chief Justice at the time and a member of the Legislative Council, consistently opposed the Native Jurisdiction Bill and thus frustrated the smooth operation of the Council.[41]

Some chief justices even drafted bills and advised governors on all legal issues. Apart from the fact that the chief justices were also members of the Legislative Council and so did not make the judiciary independent, the Governor also exercised some powers over the judiciary thus affecting what should have been the independent activities of the judiciary. These included the power to restrict the jurisdiction of the Supreme Court and the power to appoint members of the court. Again, the fact that the Governor submitted periodic reports on judges to the Colonial Council in London also had the tendency of making judges act in a manner so as to win favour of the governors.

Although Amissah's article only covers the colonial era and does not cover the entire period of and the issues of this thesis, it provides vital

[40] Amissah, "Supreme Court," 2.
[41] *Ibid*.

information on the formative years of the court system in Ghana, information which helped the researcher to understand the background of the post-colonial judicial system. Information from the article also helped the researcher to investigate into the nature of the relations that existed between the two branches of government to ascertain whether they were meant to be one and if that had any effect on the post-colonial relationship of those institutions.

S. K. B. Asante[42] reviews and critiques the potency of the country's inherited laws and the challenges they pose to Ghana's judicial dispensation. He identifies and examines certain rules and procedures in English Common Law and the Customary Law of the Gold Coast and questions the validity and appropriateness of the English Common Law with respect to the Ghanaian situation. He identifies certain aspects of the English Common Law and the Gold Coast Customary Laws that need to be expunged from the law books or modified to be more useful, and he discusses the role of the judiciary and the legislature in this important exercise.[43] With regard to the challenges that the "received" laws posed to the nation, Asante argues that the decisions of the colonial courts and the various ordinances passed during the British colonial presence in the territory showed that English laws were the generally applicable laws in all aspects of the life of the colonists even though a majority of the local people believed that property, inheritance, family and interpersonal relations should be regulated by customary law with some English juristic concepts.[44]

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[42] Samuel K. B. Asante, "Over A Hundred Years of a National Legal System in Ghana: A Review and Critique," *Journal of African Law*, Vol. 31, No. 1/2, 1987, 70-92. https://doi.org/10.1017/S0021855300009256. (Accessed: 22-04-2020).
[43] *Ibid*.
[44] *Ibid*.

Asante, further, decries the situation in which some obsolete, inequitable and inapplicable English laws which had undergone reforms in England itself remained on the statutes of Ghana until the 1960s when attempts were made to review some of them. He blamed the continuous existence of such obnoxious laws on the unwillingness of the judiciary and the legislature to effect the needed reforms.[45] He described the few reviews that had been made to some of those laws as isolated, cosmetic changes, and that the judicial practice in Ghana over the past hundred years (1876-1976) had blindly and unquestionably adhered to English laws and its principles of legal reasoning.[46]

Although Asante's work focused on some colonial laws and judicial practices that had been preserved over a period of a hundred years and does not, necessarily, trace the history and evolution of the judiciary in Ghana, with emphasis on cooperation and conflict between the executive and the judicial arms of government over the period of this thesis, it provides some insight and useful information on issues such as the laws that were applied in the colonial courts, the success or otherwise of the use of those laws, and the ordinances that were passed to strengthen or regulate the courts.

J. N. Matson[47] describes the indigenous traditional laws of the Gold Coast, its processes and procedures, particularly, among the Akan of southern Ghana before and after the coming into being of the Supreme Court in 1876, the subsequent infiltration of British common laws into the local customary laws and the struggle between the two to find a common ground for

[45] Asante, "Over A Hundred Years," 70-92.
[46] *Ibid*.
[47] J. N. Matson, "The Supreme Court and the Customary Judicial Process in the Gold Coast," *International & Comparative Law Quarterly* 2, no. 1 (January 1953): 47–59. https://doi.org/10.1093/iclqaj/2.1.47.

coexistence.[48] Matson shows in his work that the Akan had their own indigenous customary laws which recognised two categories of infractions of the laws of the land which determined the judicial proceedings that would be employed in a local court: those that caused harm to the community and its head, and those that caused harm to the individual. The former mostly dealt with spiritual rather than mundane affairs. Such acts, Matson iterates, were forbidden because they endangered the chief and his people and as such attracted swift punishment.[49] He however, explains that they contributed less to substantive law compared to that which related to mundane affairs. Matson called the other class of activities "civil matters" and emphasized that as a rule, the chief did not concern himself with any act that did not cause injury to the community. He also noted that, in most cases, "house matters," which referred to minor domestic issues, were settled by elders at home. When the disputing parties were from the same family group then the elder of that group settled the dispute.[50] He, however indicated that when the feuding parties did not share any close affinity then such cases were referred to the chief who, in most cases, also referred them to his linguist or sub chiefs to settle and report back to him. One must, however, note that the object of such disputes, whether they were adjudicated by an elder or a delegate of the chief, was to restore peace and to reconcile people and not merely to declare rights or to administer sanctions. Matson further revealed that when decisions were made by the court the wrong doer paid what was referred to as "tender of amends" to the offended party.[51]

[48] Matson, "Supreme Court," 47–59.
[49] *Ibid*.
[50] *Ibid*.
[51] *Ibid*.

Matson notes that the introduction of European courts in the colony and the subsequent establishment of a Supreme Court by the British was to control and deprive the chiefs of the colony of their judicial powers. This was evident in the fact that some of the judges of the British courts referred to the chiefs' courts as having no jurisdiction. He further observes that conflicts arose between the local courts and the British courts over jurisdiction and procedure since the local courts were unwilling to let go of its old ways.[52] Despite the fact that Matson's work provides valuable information on the institution of British-style court systems in the Gold Coast and how it co-existed with the local courts, it mainly focused on the Supreme Court and the customary procedures among the Akan ethnic group in Ghana, leaving out the other ethnic groups that had their own distinctive customs and traditions. In addition, the work does not cover the period of this research work and pays little attention to the evolution of the judiciary in Ghana.

Neal M. Goldman's PhD dissertation[53] discussed aspects of the judicial or legal history of the Gold Coast from 1874 to 1944. Primarily, he argues in his study that although Britain had an "honest desire"[54] to furnish the people of Gold Coast with good laws as well as provide them with a fairly balanced system of justice, they were met with numerous challenges which emanated from fierce and concerted opposition from the indigenous leaders and the educated elites.[55] These challenges, as Goldman explained, confounded and bedevilled the efforts of the colonial administration in their enactment of viable judicial policies, leading to the enactment of "inconsistent policies."

[52] Matson, "Supreme Court," 47–59.
[53] Neal M. Goldman, "Fallible Justice: The Dilemma of the British in the Gold Coast, 1874-1944," PhD. Dissertation, Department of History, City University of New York, 2016.
[54] *Ibid*, iv, and 2.
[55] *Ibid*, 6.

He noted that some of the policies included the passage of the Supreme Court Ordinance of 1876 and the 1935 Courts Ordinance. Others were the 1910 Native Jurisdiction Ordinance, the 1927 Native Administration Ordinance, as well as the palliative 1944 Native Courts Ordinance.[56]

Overall, Goldman establishes that the challenges to the enactment of the laws, together with the seemingly palliative impact of the inconsistent policies, put the colonial administration and judicial officers in a 'dilemma.' And while such developments did not only thwart the hope of Britain to implement fair laws as well as dispense inexpensive justice, they also resulted in a situation in which the British reduced the judicial powers of traditional authorities by a considerable extent. The focus of their power was challenged to ceremonial functions.

Goldman also discusses the issues of judicial independence, respect for the rule of law, race, and how they manifested in, and impacted, the implementation of customary laws and justice system in the Gold Coast. Conspicuously, it demonstrated Britain's objective in attempting to westernize the Gold Coast judicial system which was viewed as backward. Additionally, it sufficiently affirms the practical hurdles and the dilemma that the colonial government must have faced—as these Western ideas clashed with indigenous Gold Coast practices—in their attempt to de-indigenize the traditional judicial system. Even though Goldman's work significantly contributes to Gold Coast Colonial legal history, it covers a relatively shorter period of the judicial history of the Gold Coast and does not interrogate the state of the judiciary in the manner that this thesis does in the period before 1874 or after 1944.

[56] Goldman, "Fallible Justice," 15.

Gocking's[57] work plays an important role in the historiography of the judiciary of Ghana as he discusses some of the judicial and structural changes that took place in the operation of local tribunals in the southern coastal towns during the colonial era. Gocking makes the case that interventionist indirect rule was what reinforced a two-tiered judicial system in which the chiefly courts applied customary laws in their adjudication of cases while the British courts applied the English Common Law. Gocking argues that the existence of a dual court system made the British justice system possess enormous influence over the chiefly courts. For instance, he posited that the British courts were responsible for the trying of serious criminal cases while the local courts were only permitted to try civil cases.[58] This separation of judicial powers between the British and the southern coastal states, according to Gocking, was made official after the signing of the Bond of 1844. The only role the chiefly courts which were also referred to as the "Native Tribunals" could play in criminal cases after 1844 was apprehending, detaining, and sending offenders to the Commissioner of the District for trial. The "Native Courts" were only permitted to try cases such as land disputes, customary marriage issues, fetishism, witchcraft, and debt cases which the British courts could not adjudicate fairly.[59]

Gocking also examines some procedural changes in the operations of the local courts as he discussed the influence of the British courts on the local judicial system. He argues that procedures such as oath swearing changed due to the increasing number of Christians in various communities. Witnesses

[57] Roger Gocking, "British Justice and the Native Tribunals of the Southern Gold Coast Colony", *The Journal of African History*, Vol. 34, No. 1 (1993), 93-113, http://www.jstor.org/stable/183033 (Accessed 15/02/2018).
[58] *Ibid*, 94-95.
[59] *Ibid*, 95-97.

were then permitted to swear with the Bible. Other processes that were fashioned along the lines of procedures in British courts included the payment of fees before summons were issued. He asserted that all the changes in the local judicial system were made to prepare the ground for the effective integration of the courts into the colonial administrative system.[60] Roger Gocking's work provides vital information on some of the regulations issued in the Gold Coast by the British colonial authority, particularly, those that bordered on the operations of the judiciary, and the rationale behind those laws, since those are integral to understanding and explaining the operations of the court system - both the British and local courts - in the post-colonial era which forms part of this research. The work provides traces, for further interrogation in this thesis, of the motives behind the sustained reduction of the powers of local courts by the British colonial authorities.

Richard Rathbone[61] scrutinises how policies against chiefs affected traditional authorities in the early years of Ghana's nationalist government. He focuses on how the Convention People's Party (CPP) attempted to tackle, with some success or failure, the judicial roles of chiefs. Rathbone explains the nature of the dual judicial system in which the British tried serious crimes such as murder and arson in the British courts while most violent and property crimes were tried in local courts. Rathbone argues that some local courts were not fair in their trial of cases as they charged exorbitant fines on guilty parties in litigations in order to share the proceeds thereof amongst members of the

[60] Gocking, "British Justice," 110.
[61] Richard Rathbone, "Native Courts, Local Courts, Chieftaincy and the CPP in Ghana in the 1950s," Journal of African Cultural Studies, 13:1, 125-139, https://doi.org/10.1080/713674304,129. (Accessed 03/05/2022).

tribunal.[62] Rathbone states that such illicit fines alienated some local people from local courts because the people regarded them as corrupt and unfair in their operations.

Rathbone indicated that the colonial authorities attempted to reform local courts to make them more efficient and fair in their adjudication of cases. This, he argues, was done through the passages of ordinances such as the 1944 Native Authorities Ordinance. Rathbone posits that the Native Authorities Ordinance also intended to reduce the powers of chiefs and their courts by restricting their courts to adjudicate only cases bordering on rituals and tradition.[63] Rathbone discusses the fate of chiefs and their courts under the CPP government from 1951 and strongly suggests that the CPP took steps to undermine the independence and authority of local courts. He puts it bluntly that the government detested the chieftaincy institution and demonstrated its aversion to the chiefs' court by destooling some chiefs and empanelling pro-CPP persons on judicial panels of local courts.[64]

Richard Rathbone's "Kwame Nkrumah and the Chiefs: The Fate of 'Natural Rulers' under Nationalist Governments"[65] highlights the historiography of chieftaincy, and the history of chieftaincy in southern Ghana. Rathbone discusses the status of chiefs in the judicial system and in local government under Nkrumah's CPP government. He also reviews relevant matters including the virtual absence of records on the CPP government and the poor record keeping by Ghana's archival institutions; a

[62] Rathbone, "Native Courts," 127-132.
[63] *Ibid*., 128.
[64] *Ibid*., 135.
[65] Richard Rathbone, "Kwame Nkrumah and the Chiefs: The Fate of 'Natural Rulers' under Nationalist Governments," *Transactions of the Royal Historical Society*, 2000, Vol. 10 (2000), 45-63, https://www.jstor.org/stable/3679372 (Accessed 3/5/2022).

situation culminating to gap in our attempt to understand local political processes.[66]

Rathbone also describes what he argued were some of the anti-chieftaincy statements and actions enshrined in the CPP manifesto, in the 1951 election campaign to the 1958 bye-elections at Aflao, cabinet discourse and Cabinet Orders. Others were found in the CPP's media the *Accra Evening News*, as well as legal frameworks such as the 1958 Local Courts Act and Local Council Act, the 1959 Chiefs (Recognition) Act, the Constitution (Amendment) Act, and the Chieftaincy Act of 1961.[67] These statements and actions undermined the jurisdiction of chiefs, their revenue sources, their 'natural' power, accumulated authority, and status in the post-colonial state.

Nevertheless, despite tagging chiefs as "imperialist stooges,"[68] reducing their authority/powers, as Rathbone expounded, the CPP had only a pyrrhic because there were few qualified persons to replace chiefs in the judicial and local councils, and those pro — CPP persons empanelled exhibited malpractices. Prominent chiefs at the countryside, along with the National Liberation Movement and its supporters impeded the activities of the CPP government, a situation which left Nkrumah's "CPP government … in a cleft stick,"[69] to flounder, and be compelled to turnaround to rather domesticate chieftaincy instead of attempting to uproot it.[70] This development explains Rathbone's proposition "that chieftaincy's decline was not ordained by organic change, by natural processes, but was, rather, the outcome of the

[66] Rathbone, "Kwame Nkrumah and the Chiefs," 47.
[67] *Ibid*., 61.
[68] *Ibid*., 53.
[69] *Ibid*., 58.
[70] *Ibid*., 62.

documentable political processes of ten turbulent years [under Kwame Nkrumah's CPP government]."[71]

In "Law, Chieftaincy and Conflict in Colonial Ghana: The Ada Case,"[72] Inez Sutton discusses the situation in which increasing revenue from the salt trade, which was enhanced by the shortage of imported salt during the First World War combined with conflicts over the allocation of this revenue contributed to the rise of many stool disputes in Ada. He posits that such contentions led to an increase in cases of destoolments.[73] Sutton argues that the lack of a common constitution for the nine states of Ada posed a challenge in settling disputes that arose amongst them, and hence, the local people depended on the British courts for the redress of their issues, a situation that enabled the British courts and British officials to undermine the competence of traditional leaders and their courts. He opines that the traditional courts were considered to be incapable of solving disputes in Ada where the stool itself and the allocation of revenue to it were in constant dispute.[74]

Sutton also interrogates some of the challenges that were posed by the development of, and the reliance on the British courts, which replaced the multiplicity of African legal systems, for the adjudication of conflicts. He identifies the questions of the authority of those courts, the assessors' insufficient knowledge of the traditions and customs of the people, the inconsistencies between the laws applicable in the courts, and the degree of independence that the local courts enjoyed from the government as some of

[71] Rathbone, "Kwame Nkrumah and the Chiefs," 62.
[72] Inez Sutton, "Law, Chieftaincy and Conflict in Colonial Ghana: The Ada Case," in *African Affairs*, Vol. 83, No. 330 (Jan., 1984), 41-62, http://www.jstor.org/stable/721458. (Accessed: 19-01-2018)
[73] *Ibid*., 41.
[74] *Ibid*., 45.

the problems. Although Sutton's work focused on the Ada, who represented a small fraction of the degree of British influence on the justice system of the people of the Gold Coast, his work provides useful information on the jurisdiction, acceptance or otherwise of British interference in the local court system, and the challenges that were created by the interference which the researcher relied on to explore what the situation was in other parts of the Gold Coast.

Boahen,[75] Amenumey,[76] Buah[77] and Awoonor[78] all trace Ghana's history from pre-European times to the independence era, and in some instance, to the beginning of the Fourth Republic. Whereas they all discuss the general history of Ghana, they also explore the political developments in the country, particularly, under British colonial rule and through to independence. They all discuss, briefly and sparsely, the establishment of British rule in the Gold Coast and the institutions, including European-styled courts that were established, the reaction of some chiefs and people to the establishment and operations of the British courts, and the development of colonial courts in the colonial and postcolonial periods. The scholars provide useful nuggets of information on the evolutionary history of the judiciary in Ghana as well as the relationship that existed between the executive and judiciary during the colonial and postcolonial periods.

[75] Boahen, *Ghana*.
[76] Amenumey, *Ghana*.
[77] Buah, *Ghana*.
[78] Kofi Nyidevu Awoonor, *Ghana: A Political History*, (Accra: Woeli Publishing Services, 1990).

In *History of Ghana: From Prez Nkrumah to Prez Kufour*,[79] Asirifi-Danquah also traces the history of Ghana from the nationalist times to year 2001. In a very concise manner, the author gives some examples of the nature of the relationship between the executive and the judiciary from the presidency of Kwame Nkrumah to that of John Agyekum Kufour. Like the literature already reviewed above, the few distinct interactions the author covers were not cordial between the two arms of government. Discussing Nkrumah's administration of the newly independent country, Asirifi-Danquah captions a section of the chapter on Nkrumah's administration "Capricious use of Power." The author notes that Nkrumah arrogated to himself so much power that he became a dictator and abused the vast powers he had. He used these powers primarily against those he considered political opponents. One of these powers is highlighted by Article 44 of the 1960 Constitution, which gives the President the power to appoint and dismiss the Chief Justice of the Supreme Court. Article 51 of the constitution gives Nkrumah the power to appoint, transfer, and dismiss certain public officials, including members of the judiciary. The author notes that the draft constitution which was put to a plebiscite was not what finally came into existence in 1960. This thus begs the question whether the executive, surreptitiously, introduced some laws which gave it supremacy over the other arms of government and whether there are other instances of this tampering with authority vested by the Constitution. The book provides information which helped the researcher investigate the setting up of a special court to adjudicate the Kulungugu incident of 1963 and the impact of such as action on the independence of the judiciary.

[79] Asirifi-Danquah, *History of Ghana from Prez Nkrumah to Prez Kufuor* (Accra: Asirifi-Danquah Books Ltd., 2007).

In *Ghana's First Republic*, Trevor Jones notes that Nkrumah used some extensive powers worked against the judiciary. The author supports his assertion with the case in which Tawia Adamafio and others who were accused of being behind the assassination attempt on Nkrumah at Kulungugu (August, 1962) were freed by the special court that tried the case. He also notes that Nkrumah's reaction to the verdict was "angry and swift."[80] Two days after the verdict, the President sacked the then Chief Justice, Justice Kobina Arku Korsah, and passed a bill amending the Criminal Procedure Code to give him the power to overturn the court's verdict and order a retrial of the case.[81]

Trevor Jones' account may just be one aspect of the nature of the relationship between the executive and judiciary. The current project will thus further examine the nature of Nkrumah's relationship with the judiciary to determine whether it was only one of antagonism or otherwise. It will also explore the reasons behind the ill feeling that sometimes existed and examine whether the legislature helped the executive to encroach on the independence of the judiciary.

Peter T. Omari, in his book *Kwame Nkrumah: The Anatomy of an African Dictatorship*,[82] examines the constitutional and political history of Ghana in the first decade after independence. He discusses what he describes as Nkrumah's authoritarian rule by examining the policies and methods of government of the CPP. Omari recounts the Kulungugu bombing incident and argues that Adamafio, together with Ako Adjei and others, were accused of

[80] Jones Trevor, *Ghana's First Republic* (London: Methuen & Co. Ltd., 1976), 138.
[81] *Ibid*., 138-140.
[82] Peter Omari, *Kwame Nkrumah: The Anatomy of an African Dictatorship* (Accra: Sankofa Educational Publishers, 2000), 94-99.

masterminding that particular bombing and several other attempts to assassinate Nkrumah. As a result, there were calls from some leading CPP members, including Komla Gbedemah, for the President to have the accused arrested, convicted and executed in public because they were traitors.[83]

According to Omari, Kwame Nkrumah introduced repressive laws as a means of preventing people from publishing falsehood about him and also to adequately protect himself from the many attempts that were made on his life. One of such laws set up a Special Criminal Division of the High Court to try cases of treason, sedition and rioting and the rulings of that court could not be appealed. Omari adds that even though the bill's introduction in parliament was strongly opposed by opposition members of the House, the government explained that the courts would not to be used to imprison political opponents.[84]

Although Omari's work focuses only on the Nkrumah administration in Ghana's history, it provides useful information on the relationship that existed between the executive and the judiciary during that era. The information provided was cross-referenced with other information from other sources to understand the nature of the relationship that existed between the executive and judiciary under the CPP regime. This also allowed the researcher to investigate the causes of tension between the two institutions.

David Rooney[85] also discusses, although briefly, the relationship between the C.P.P government under Kwame Nkrumah and the judiciary. The author notes that Adamafio, Crabbe and Ako Adjei were accused of being

[83] Omari, *Kwame Nkrumah*, 94-99.
[84] *Ibid*, 92-94.
[85] David Rooney, *Kwame Nkrumah: Vision and Tragedy* (Accra: Sub-Saharan publishers, 2010).

behind the 1962 Nkrumah assassination attempt. The three were, thus, tried by a special court where the Chief Justice, Arku Korsah, and Justices Vane Lare and Akufo Addo heared the case. According to the author, the expected verdict of the trial by Nkrumah and some Pro-CPP sympathizers was that the accused would be pronounced guilty of the offence and so when the Chief Justice announced the verdict of "Not Guilty," it came as a surprise to Nkrumah. Nkrumah thus "over-reacted" and dismissed Arku Korsah just two days after the ruling.[86]

Nkrumah then ensured that the National Assembly passed a law to give him the authority to set aside any judgements of the nation's courts. Rooney argues that the destruction of the independence of the judiciary suggested that Nkrumah was on the path to becoming a dictator. This, therefore, attracted condemnation from the international community and some friends of Nkrumah.[87] The book provides clues on the possibility that the alleged interference of the president in the affairs of the judiciary was made possible by the assistance of the legislature. The researcher thus attempted to ascertain the truth of such an assertion and the possible justifications for it.

In "The Kulungugu Bomb Incident: A Watershed in Kwame Nkrumah's Political Administration," Inusah Awuni argues that the many assassination attempts made on the life of President Nkrumah made him take steps to protect himself. This, thus, led to the introduction of new laws and the strengthening of old ones in order to prevent violence committed by political opponents against the person of the President. Awuni further intimates that it was in light of this that Adamafio and others were hurled before Justice Arku

[86] Rooney, *Kwame Nkrumah*, 323.
[87] *Ibid*., 323-324.

Korsah's court for their alleged role in the Kulungugu bombing incident. Inusah noted that "…in the course of the trial … it was anticipated that they would in the long run be found guilty. Hence, a verdict less than guilty was going to be taken with a pinch of salt." He also adds that "Nkrumah had apparently been led to believe that the evidence against the accused was conclusive, and must necessarily result in a verdict of guilty." As a result, when the court acquitted the accused, Nkrumah dismissed the Chief Justice. Nkrumah also took steps to have the verdict overturned and the accused tried again for the same alleged offence and successfully convicted by a different court panel. The researcher postulates that the dismissal of the Chief Justice and the annulment of the verdict were not unconstitutional because the 1960 Constitution of Ghana at the time allowed that.

Although this article does not trace the history of the judiciary or critically examine the relationship between the executive and judiciary, it provides some information about the dismissal of the Chief Justice of the First Republic of Ghana. It also provides the researcher with leads to explore the reasons why Nkrumah, supposedly, interfered with the work of the judiciary, and also to ascertain whether the dismissal of the head of the judiciary in the country was to satisfy popular opinion just to flush out his perceived enemies within the CPP.

A. A. Afrifa[88] writes about Ghana's 1966 coup d'état, reflecting on Ghana's history from independence to the 1966, which he weaves this around his life. The author examines what he considered to be Nkrumah's interference in the activities of the judiciary and judicial decisions, and scrutinizes the

[88] Afrifa, *The Ghana Coup*.

dismissal of the Chief Justice and the setting aside of decisions by the courts as examples. The author also analyses the legal merits or otherwise of the powers that the president had to dismiss members of the judiciary and concludes that those powers and actions by Nkrumah were marks of dictatorship.[89]

It is possible that Afrifa, who was an architect of the overthrow of the CPP government, could be biased in his account just to justify his actions. That notwithstanding, his book provides some understanding of the mechanics of workings of the Nkrumah-led government, including his questioning of the legality or illegality of the actions of the President. The researcher latched on Afrifa's argument to explore the powers of the President under the 1957 and 1966 constitutions, as well as other powers assigned to him by other Acts by which he related with the judiciary the way he did.

Fordwor[90] assesses the roles played by the parties of the Danquah-Busia tradition in the political history of Ghana. The author devotes much attention to the survey of the political history of Ghana from the coming of the British through the period of colonialism, independence, and the first fifty years after the attainment of independence. The author also dedicates a few pages to discuss Dr. Busia and his Progress Party's relations with the Judiciary. He notes that the relation between the two institutions, in the Second Republic, was hostile. Fordwor contends that the conflict was the result of disagreements between the executive and judicial branches of government regarding the appropriate roles of each branch of government in

[89] Afrifa, *The Ghana Coup*.
[90] Fordwor, *The Danquah-Busia Tradition*.

their interactions."[91] The differences in opinion were due to the fact that the government "could not accept dictation from the courts when it came to the exercise of the powers of the executive,"[92] while on the other the "judiciary believed that it had been given a special function … and it was its responsibility to ensure that the rights given to people … were effectively protected."[93]

Donkoh argues that the tension between the two came to a head in the Sallah case when the executive and judiciary disagreed on the interpretation of a section of the 1969 Constitution. The author provides information on other instances where the executive and judiciary clashed or nearly clashed in the Second Republican government (1969-1972). It must be noted that the Second Republic came right after the overthrow of the First Republic which was accused, among other things, of interfering in the independence of the judiciary. Although the information and interpretations given by Fordwor covers a period beyond the terminal date of this thesis, it provides the researcher with understanding on the reasons for the infamous "No Court" pronouncement which seemed to have undermined the democratic credentials of the Danquah-Busia Tradition in Ghanaian politics.[94] This helped the research to explore and possibly interpret Dr. Nkrumah's relations with the judiciary which preceded the coming into power of Busia's Progress Party.

Maxwell Opoku-Agyemang provides some legal education on a wide range of subjects. Among the topics he discusses are the issues of Separation of Powers and Judicial Independence. He defines the principle of Separation

[91] Fordwor, *The Danquah-Busia Tradition*., 133-138.
[92] *Ibid*.
[93] *Ibid*.
[94] *Ibid*, 136-138.

of Powers as a philosophy aimed at dividing government agencies into three distinct departments to avoid despotism and tyranny.[95] This, he explained, was predicated on the fact that if power was concentrated in the hands of one person or a group of persons, there was the natural tendency to breed dictatorship and oppression.[96]

The author is quick to note that a complete Separation of Powers in contemporary practice is not practicable. He explains that there should be some form of interplay between the arms of government since a complete separation could lead to legal and constitutional deadlock Therefore, he assumes that there is a need to clearly allocate the major functions of the state and to promote checks and balances to ensure that no institution significantly interferes with the functioning of any other institution.

In discussing the issue of Judicial Independence, Opoku-Agyemang highlights some factors that could militate against the independence of the judiciary. He argues that the composition and empanelling of the Supreme Court as well as the appointment of justices to the superior courts could compromise the independence of the judiciary since the president appoints the Chief Justice and other justices of the Supreme Court. Thus, it is possible for him to pack the courts with justices who are sympathetic to the government or for the Chief Justice who owes his/her office to the President to empanel justices who will rule in favour of the government on a particular matter.[97]

Regardless of the fact that this book is written from a purely legal perspective and also focuses more on the Fourth Republic of Ghana, it provides vital information on the legal interpretations and applications of some

[95] Maxwell Opoku-Agyemang, *Constitutional Law and History of Ghana* (Accra: 2009), 218.
[96] *Ibid*.
[97] *Ibid*, 241-242.

important terms that relate to the two institutions of state. The book provides the needed legal understanding to better appreciate the situation from 1957 to 2007 for an efficient reconstruction of the past.

Hilaire Barnett[98] examines the principle of separation of powers as it relates to the fulfilment of the constitutional duties of the executive and judicial branches of state. She explains Separation of Powers as the doctrine that "...prescribes the appropriate allocation of powers, and limits of those powers, to differing institutions."[99] She notes that the doctrine has played an important role in the formulation of many constitutions around the world, including that of the United States of America, and the researcher is of the opinion that most constitutions that Ghana has had are no exceptions. The author hypothesizes that the importance of the doctrine is that, ideally, there should be a clear demarcation in the functions between the arms of government in order that none should have excessive power. It is also a means to put checks and balances between the institutions.[100]

Barnett's book is not a work of history because it was written from a legal standpoint. In addition, the book was written in the American and British context and, thus, provides examples and illustrations from the United States of America and Britain. This notwithstanding, the book provides invaluable information on the legal and constitutional rules that regulate the relationship between the executive and the judiciary should be. It provides information that enabled the researcher to examine the situation in Gold Coast/Ghana to determine the extent to which the principle of separation of powers was

[98] Barnett, *Constitutional and Administrative Law*, 122-124.
[99] *Ibid*. 123
[100] *Ibid*.

applicable during the period of study, and if so, to what extent it was applied.

Objectives of the Study

There are few works on the history of the judiciary and its relationship with the executive from pre-colonial Ghana to the end of the First Republic of Ghana, and a comprehensive review would lead to a better understanding of the history of the judiciary and the nexus that existed between the two institutions over the period. The study, therefore, sets out to achieve the following specific objectives:

1. To trace the origin and rationale behind the introduction and establishment of the British Judicial system in the Gold Coast (Ghana);
2. To examine the structure and mandate of the courts in the pre-colonial, colonial and post-colonial eras up to 1966;
3. To investigate the nature of the relationship that existed between the judiciary and executive in the country during the period of study;
4. To identify and interrogate instances of cooperation and or conflict, if any, between the judicial and executive arms of the colonial and post-colonial governments;
5. To highlight the reasons for the policies, ordinances and laws that were passed by successive administrations and how they fostered and/or impeded the functions and development of the judiciary in Ghana;
6. To discuss the reaction of the courts (the British and Local) to the policies that affected them;
7. To provide a comprehensive historical literature on the history of the judiciary in Ghana and its relations with the executive from 1853 to 1966.

Methodology and Sources of Data

This dissertation employed the qualitative multi-disciplinary method of historical research that combined archival research with oral history and visual analysis of photos and artists' impressions of early judicial practice in the Gold Coast. The researcher was intentional about the sources that were utilised to complete this dissertation. This is because of the commitment to reconstruct a past that gives credit to both local and colonial actors as well as the interventions that have shaped and affected the history of the judiciary and its relationship with the executive from the past that continues to impact contemporary developments. In particular, it is through the combination of diverse sources that the researcher is able to highlight local agency, especially, during the era when the British imposed their authoritarian regime on the Gold Coast. Given the nature of the judicial service and its limited interaction with the public, this research method helps to explain their story rather than stick with the often-elevated claims of the executive in the often-dramatic exchanges between the judiciary and the executive arm of government.

The archival research informs my research as it provides ample evidence for the formative years of the judicial service in what became Ghana following independence in 1957. The archival documents were acquired from the National Archives of Ghana, formally called the Public Records and Archives Administration Department (PRAAD). Here, materials accessed about judiciary helped demonstrate the beginning of the complex relationship between the two arms of government. The finding underscores the broader connections between colonial and postcolonial studies as we observe the extension of colonial policies and practices into post-independence Ghana.

Archival materials were also obtained from PRAAD, Accra and Cape Coast, and from the personal archives of individuals in Cape Coast and Accra.

Extensive archival material comprised correspondence between the British colonial administration on the Gold Coast and the Colonial Office in London, as well as internal correspondence between various departments of the Gold Coast colonial establishment, including the Provincial Commissioner's Office and the Governor of London. Additionally, there are proceedings of court trials and rulings in the Gold Coast. The communications provided information on the rationale behind the introduction of policies or the passage of laws that regulated the operations of the courts in the colony. Data about Local Courts, the Supreme Court, palaver and other judicial records was obtained from the ADM 11, ADM 23, CSO 4 and RG1 files. Digitized archival material from the Gold Coast colonial period was also obtained from the Department of History and Archaeology at the Norwegian University of Science and Technology (NTNU) in Trondheim, Norway. They include materials from the Blue Book of Reports (1936-1958), Governors' Annual Addresses (from1920 to 1945), the "B" Folders, and the "C & D" Folders which contain departmental reports from 1926 to 1940.

The researcher accessed newspapers from the University of Cape Coast Library and PRAAD-Cape Coast. A number of newspapers owned and published by Gold Coast nationalists such as the *Talking Drums* and *Evening News*, as well as those published in Britain, for example the *Daily Herald* and *Evening Standard Manchester Guardian,* and some state-owned post-colonial newspapers in Ghana provided valuable primary information on the judiciary and matters relating to them. As well, some state-owned newspaper, such as

the *Daily Graphic* provided the researcher with evidence of how the CPP government, occasionally, used the press to attack the judicial arm of government. The researcher carefully crosschecked information gathered from the newspapers since editorials and articles often tend to be geared towards the particular ideology of its proprietors or a political party and may thus not be objective.

Oral history research also constitutes another important method in historical reconstruction as far as African history, and, particularly the history of Ghana is concerned. One cannot overemphasize the importance of this source for our understanding of actors who are not regularly given attention by the bureaucrats who created the archive. For this reason, I conducted interviews among and across various sections of Ghanaian society. The interviewees included leading government officials, members of the Bench and the Bar, Political Scientists, Law lecturers, particularly Constitutional Law experts and other stake holders for information needed to understand how the executive and judicial branches of government worked. The researcher selected this group of people because of their knowledge on the matter under investigation since they either helped in formulating policies and laws which affected the activities and history of the judiciary, or they were actors or eyewitnesses.

I admit that this selection of informants is highly a top-down approach that limits participation from the everyday Ghanaian. However, given the nature of the topic under study, there was the need to focus on the practitioners or people connected with both the judiciary and the executive arms of government rather than on the public. Consequently, the researcher adopted

the purposeful sampling approach of choosing respondents to be interviewed for the writing of this thesis. Thus, the researcher selected this group of people because of their knowledge of the matter under investigation since they either helped to formulate policies and laws that affected the activities and history of the judiciary or were actors or eyewitnesses. In addition, the researcher adopted the structured and semi-structured interview styles in which interviewees responded to specific questions that the researcher put to them. The questions ranged from the origins and reasons for the establishment of British judicial systems in the Gold Coast to the nature of the relationship that existed between Ghana's judiciary and the executive from the mid-19th century to the end of the First Republic. Their responses to some of the questions, occasionally, engendered follow-up questions for clearer understanding.

The interviews were recorded on tape and later transcribed to make it easy to use. The interviews gave the researcher first-hand information about the history of the judiciary in Ghana. The researcher faced a vital challenge of getting access to some of the targeted respondents for interview. One reason for this limitation was the outbreak of the COVID-19 pandemic in the year 2020, with its attendant risks and social distancing protocols which greatly limited all forms of in-person communications for over a year. Nevertheless, the researcher, occasionally, responded to this challenge by resorting to the virtual format, especially, zoom, WhatsApp chat or phone calls with respondents who were comfortable with that option.

Visual analysis of photographs and artist's impressions constitute another data source for this dissertation. The artist's impression of the court

setting in Cape Coast, for example, offers a useful imagination into early twentieth century court structure and culture in the colonial period and the researcher was able to compare and contrast those scenarios with developments in the post-colonial era. Photographs of European judges of the Supreme Court of Ghana in the 1950s, for instance, from the Information Service Department in Accra also provided evidence that helps to support some of the researcher's claims and findings.

The researcher also utilised secondary sources for this study, even though secondary sources do not constitute a norm for a study like this. Judicial history, as a sub-field in Ghana studies, is still developing and not much work has been published. More importantly, they are not readily accessible to scholars in Ghana and thus point to the imbalances in resource materials for doctoral education in Ghana and Africa as compared to countries in the Global North. Nevertheless, the research accessed some such as journal articles and books which helped acquaint the researcher with some of information or arguments that have been presented on the issues under discussion. The secondary materials were obtained from the Balme Library, Institute of African Studies Library and the Law Library University of Ghana, Legon; the Sam Jonah Library, the Department of History Library and the Law Library at the University of Cape Coast; the Central Regional Library, Cape Coast; the Greater Accra Regional Library, the George Padmore Research Library, Accra; the Kwame Nkrumah University of Science and Technology Law Library, Kumasi and the Ghana School of Law Library, Accra. Articles published in journals and online magazines were also

consulted to provide useful information on the application of the laws in the Gold Coast.

Researcher recognizes that both oral and written documents have limitations, including the potential for omissions, intentional or inadvertent exaggeration, and falsification of facts. As a result, he carefully reviewed all data and written records collected from respondents and critiqued them both internally and externally to present accurate and reliable information.

Significance of the Study

This dissertation offers valuable contribution to contemporary calls by scholars including Joseph K. Adjaye, Mary Osei-Owusu, Terence Ranger, Esperanza Brizuela-Garcia, Trevor Getz et al, to reconstruct a past that is usable and relevant not just to practitioners in the academy but also to communities whose past record, we as historians, attempt to recuperate. Throughout this research, my motivation is to examine the genesis of the relationship between the executive and judicial arms of government in modern Ghana. In doing this, the overarching objective is to counter head-on what Chimamanda Ngozi Adichie describes as the "danger of the single story." A closer study of the sources reveals that both the executive and the judiciary have played important roles in Ghanaian politics. However, in the popular memories of many Ghanaians, they tend to know stories about the executive than they do of the judiciary. Thus, in the court of public opinion, members of the executive gain public sympathy because they are in constant communication with their constituents. On the other hand, the judiciary hardly engages with the public because of their professional code of ethics. In such a situation, how can the public have a nuanced account and a better

understanding of the relationship between these two powerful bodies of governance in order to make informed decisions?

My research offers an intervention to this knowledge gap but it does so with practitioners in mind. By serving as a pre-history to the often-dramatic relationship between the executive and the judiciary, this research could inspire further research into this growing field of legal history in Ghana and Africa. Ultimately, this work contributes to the burgeoning scholarship at the intersection of public history—meant to be usable to many different publics—and academic history— mostly written for scholars' consumption.

Beyond the public and the academy, this study will be beneficial to legal practitioners, politicians and members of the bench because it brings out the nuances of the relationship between the executive and judicial arms of government from 1853 to 1966, with a particular focus on the side of the judiciary. Such an explanation is useful because the prevailing narrative surrounding debates about the relationship between the judiciary and the executive, and in particular the conflicts that arose between them, mostly, presented the side of the executive since the judiciary, by convention, was/are typically silent on their activities and hence barely had their side of the tale being heard. That, often, portrayed them as the perpetrators in the acrimonious relationship they had with the executive.

Organisation of the Study

This thesis is divided into seven chapters, with an introductory and a concluding chapter. Chapter One is the introduction and covers background information, problem statement, literature review, methodology, and the objective of the study.

Chapter Two examines the arrival of various European nations on the West African coast in the 15th century. It discusses the reasons for the arrival of Europeans and the impact of their contact with local populations, especially the political implications of this encounter. This chapter also covers the establishment of British rule in the Gold Coast in the nineteenth century and the events that led to the establishment of the colony's Executive and Legislative Councils (both 1850) and a Supreme Court (1853).[101]

Chapter Three analyses the reasons for the establishment of the first Supreme Court on the Gold Coast in 1853. It also examines the composition, powers and functions of the Gold Coast Supreme Court and the expansion and activities of the British judicial system on the Gold Coast. Coast from 1850 to 1874.

Chapter Four discusses the judiciary under colonial rule when the political attention of the British government was focused back on the Gold Coast in 1874. Since 1874 marked the official beginning of formal British colonization of the Gold Coast, this chapter examines British activities in the Gold Coast Colony from 1874 to 1947, with particular emphasis on the evolution of a binary judicial system during that period.

Chapter 5 examines the growth and development of the Gold Coast judiciary from 1947 to 1957, and how post-World War II nationalist activities influenced the means of cooperation and conflict between government and the judiciary. The chapter also interrogates the state of the judiciary in the Gold Coast, particularly, between 1951 and 1957 when the colony attained some level of internal self-governance with Dr. Kwame Nkrumah as the leader of Government Business, and later, as Prime Minister.

[101] The Supreme Court was the name given to the British Judicial body that they established in the Gold Coast.

Chapter Six discusses the developments in Ghana after the attainment of independence with a specific focus on the judiciary under the C.P.P. administration from 1957 to 1966. The chapter investigates whether the CPP government departed from the executive and judicial processes that existed during the colonial era. It also examines the relationship between the judiciary and the executive arms of government and the changes that occurred in the judiciary during the period of the CPP administration from 1957 to 1966.

The conclusion in Chapter Seven presents the most important results of the study. The chapter discusses the history of Ghana's judiciary from the days of the European presence on the Gold Coast to his 1966, and describes the tasks of Ghana's executive and judiciary and how those tasks promoted, and in some instances, adversely affected the discharge of the duties of the latter.

CHAPTER TWO

EUROPEAN CONTACT AND HERITAGE IN THE GOLD COAST (1471 - 1850)

Introduction

This chapter examines the arrival of various European nations to the West African coast, particularly the Gold Coast, in the Fifteenth Century. It discusses the reasons for the advent of Europeans and some effects of this contact, particularly, the political consequences, on the Gold Coast. The chapter concludes with a discussion of the events that led to the establishment of British rule on the Gold Coast and the establishment of an Executive Council, Legislative Council, and Supreme Court[102] in the colony.

The Coming of the Europeans to Ghana[103]

Parts of Africa had had contact with the European world long before the fifteenth century AD. When Europeans began to be conscious of Africa, they knew only of supra-Saharan Africa, that is, the coast of the Barbary and its immediate interior as well as Egypt and the Red Sea coast.[104] In these initial stages, only the people of some of the Mediterranean Islands and a few states of what would become the Greek and Roman states knew of parts of North Africa. Later, through Europe's trade in spices with India and the Far

[102] The Supreme Court was the name given to the British Judicial body that they established in the Gold Coast.

[103] In this thesis, Ghana is used interchangeably with Gold Coast. This is because the country was known as the Gold Coast before March 6, 1957. Added to this is the fact that in most of the archival documents used in the reconstruction of this history, the country is referred to as the Gold Coast (or the Gold Coast and Ashanti and Northern Territories). These three entities have been known as Ghana since the independence of the country in 1957. Because most of the sources are quoted *verbatim* for clarity of facts and because in these sources the name Gold Coast is extensively used by the colonial authorities, the name has, therefore, been most often used in this story to avoid confusion. However, on some occasions, Ghana is used.

[104] J.D. Fage, *An Introduction to the History of West Africa* 3rd ed. (Cambridge: Cambridge University Press, 1962), 39. See also: Kevin Shillington, *History of Africa* (3rd ed.) (Palgrave Macmillan, 2012) 69-84.

East, Europeans' consciousness of Africa began to expand to include the coastal regions of the continent.[105] As far back as C.E. 1270, Genoese sailors from Italy sailed south-westwards into the Atlantic and reached the Canary Islands[106] and in C.E. 1291, another Genoese expedition set out to sail around Africa although it did not return.[107]

The most important European contact with Africa, however, was the one which occurred in the fifteenth century when the Portuguese led the search to find a sea route to Asia by going around Africa. This was to enable the European trading nations to have direct trade with Asia and not pass through the Muslim-controlled areas in eastern Europe and the Mediterranean world. The explorers also hoped that they could bring Christianity to the people they met. After capturing Ceuta in 1415,[108] the Portuguese arrived in Madeira in 1418. The Azores were first sighted in 1439, and Cape Blanco (White Cape) was circumnavigated in 1441. Dinis Díaz and Nuno Tristan arrived off the coast of Alguín in 1443, and Dinis Díaz arrived at the mouth of Senegal and Cape Verde (Green Cape) in 1444-1445. When Henry the Navigator[109] died in his year 1460, his captains were off the coast of Sierra Leone.

The first contact between Europe and Ghana occurred in January 1471, when two Portuguese explorers, Pedro de Escobar and João de Santarem, arrived near Shama on the Ghanaian coast.[110] The sailors noticed the abundance of

[105] Fage, *An Introduction*, 40-41.
[106] John, Carmichael, *Africa Eldorado: Gold Coast to Ghana* (London: Gerald Duckworth & Co. Ltd., 1993), 62, Fage, *An Introduction*, 42.
[107] Carmichael, *Africa Eldorado*, 62.
[108] G.T. Stride and C. Ifeka, *Peoples and Empires of West Africa: West Africa in History, 1000-1800*, (Edinburgh: Thomas Nelson and Sons Ltd.), 174.
[109] He was the son of the King of Portugal who was appointed the governor of Ceuta in 1415.He devoted the major part of his energies to organizing the exploration of the West Africa coast by Portuguese ships. He, therefore, earned from himself the name Henry the Navigator although he never sailed himself. See Fage, 43.
[110] Carmichael, *Africa Eldorado*, 68.

gold in the region and hence took large quantities of gold near the mouth of the Pra River.[111] The Portuguese continued to explore the coast of Africa and sailed into the Indian Ocean, but they remained interested in the area near the mouth of the Pra River because of its rich gold reserves.[112] This region, consequently, became known as Gold Coast until 1957 when the people attained independence from Britain and thus changed the name to Ghana. In December 1481, another Portuguese explorer, Don Diego de Azambuja, led an expedition that began building a fortress at Elmina, a few miles to the West of Shama.[113] One reason for the construction of the fort was to facilitate the stay of the Portuguese merchants at Elmina. The merchants needed a facility in which they would live while they traded with the indigenes. The fort also served as a warehouse where trade items, including European manufactured products, the gold and other merchandises they obtained from the people, were stored until they could be transported to Europe.[114]

The then chief of Elmina, Nana Kwamina Ansa (whose name the Europeans corrupted into Karamansa) and his people, opposed the construction of the fort for several reasons. One of the reasons was the apprehension of the indigenes that a permanent stay of the "strangers" could strain the friendship that existed between the two countries, Portugal and Elmina. The chief expressed this worry in a famous speech as follows:

> …. The passions that are common to all us men will therefore inevitably bring disputes; and it is far preferable that both our nations should continue on the

[111] Amenumey, *Ghana*, 99.
[112] *Ibid*, 100.
[113]Carmichael, *Africa Eldorado,* 70.
[114] See John Kwadwo Osei-Tutu and Victoria Ellen Smith, "Introduction: Interpreting West Africa's Forts and Castles," in John Kwadwo Osei-Tutu and Victoria Ellen Smith (eds.), *Shadows of Empire in West Africa: New Perspectives on European Fortifications* (Switzerland: Palgrave Macmillan, 2018), 2.

> same footing as they have hitherto done, allowing your ships to come and go as usual; the desire of seeing each other occasionally will preserve peace between us. The sea and land being always neighbours are continually at variance and contending who shall give way; the sea with great violence attempting to subdue the land, and the land with an equal obstinacy resolving to oppose the sea.[115]

Nana Kwamina Ansa and the people of Elmina, eventually, gave in to the persuasive request for a plot of land from Azambuja and his team of explorers. Construction of the fortress began in 1482 and was named Sao Jorge da Mina, later renamed Elmina Castle.[116] Anquandah posits that "when the Europeans were permitted to build permanent fort, it was on the condition that they would uphold the sovereignty of the local state."[117] This position, he argues, was evident in the fact that when the land was leased for the building of the castle and other similar European structures in subsequent years, "'notes' were prepared and given to the chiefs of the land entitling them to retaining fees payable by the European tenants."[118]

Many other European nations and traders were attracted to the Gold Coast because of the enormous wealth that accrued to the merchants and the monarch of Portugal from the fifteenth century trade in gold.[119] The majority of the new entrants came in primarily to trade in gold and other natural resources, while others came as Christian missionaries, adventurers, soldiers, among others. For example, in 1554, John Locke led a trip from England to buy gold in Shama.[120] He returned with other items such as ivory and pepper.

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[115] Carmichael, *Africa Eldorado*, 72.
[116] *Ibid*, 72-74. See Osei-Tutu and Smith, "Introduction," 2.
[117] James Kwesi Anquandah, *Castles and Forts of Ghana*, (Accra: Ghana Museums & Monuments Board, 1999), 18.
[118] *Ibid.*
[119] Osei-Tutu and Smith, "Introduction," 3.
[120] Carmichael, *Africa Eldorado*, 72-74.

This visit encouraged further British expeditions to become involved in trade along the Gold Coast. Therefore, the British established their first settlement in Cape Coast. In 1664, they settled in the Cape Coast Castle which had been built by the Swedes in 1653.[121] They later extended their influence to other towns such as Komenda, Anomabo, Kormantine, and Winneba. The presence of the British threatened the trade monopoly the Portuguese earlier enjoyed.[122]

The Dutch provided the greatest challenge to the Portuguese monopoly in the Gold Coast in the sixteenth century.[123] Their first contact with the Gold Coast was in 1598, when Dutch adventurers established a small trading post at Moree, not far from a Portuguese fort. In 1637, after three previous attempts had failed, the Dutch captured Elmina Castle from the Portuguese. They also captured the Portuguese stronghold of St. Anthony in Axim (1642) and drove the Portuguese from the Gold Coast.[124] Other European countries were also attracted to Gold Coast trade from the mid-17th century. In 1642, the Danes, for instance, arrived in the Gold Coast where they built the Christiansburg Castle at Osu and Fort Prinzenstein at Keta.[125] The Swedes also arrived in 1647, and the Brandenburgers arrived in 1682 from what is now Germany. It is worth noting that the Swedes and Brandenburgers did not stay on the Gold Coast for long[126] so their impact on the area was minimal. The Swedes, who built Fort Witzen at Takoradi around 1640 and a lodge at Christiansburg, Osu,

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[121] See John Kwadwo Osei-Tutu and Hermann W. von Hesse, "Illusions of Grandeur and Protection: Perceptions and (Mis)representations of the Defensive Efficacy of European-Built Fortifications on the Gold Coast, Seventeenth–Early Nineteenth Centuries" in John Kwadwo Osei-Tutu and Victoria Ellen Smith (eds.), *Forts and Castles, in Shadows of Empire in West Africa: New Perspectives on European Fortifications* (Switzerland: Palgrave Macmillan, 2018), 141-142.
[122] *Ibid*, 144
[123] *Ibid*.
[124] *Ibid*.
[125] *Ibid*, 140.
[126] Wight, *Gold Coast*, 16.

were expelled from the Gold Coast by the Danes in 1659. The Brandenburgers also built Grossfredrichsburg Fort at Pokuase (which was known as Princes Town by the Dutch)[127] in 1685 but left in 1709 because of poor trade.

The European companies which traded on the Gold Coast considered the areas in which they traded as their spheres of influence and they jealously protected those areas. As a result, the Danes had under their protection parts of present-day Greater Accra Region, Eastern Region, and Volta Region (consisting of parts Accra, Ada, Anlo, Krepi, Akuapem, Krobo and parts of Akyem) while the Dutch considered Elmina, Komenda, Assen, and Axim to be their own territories. The British also had control over the population of Cape Coast from the eighteenth century.[128]

By the mid-19th century, many European trading companies, with the exception of the British, Danish, and Dutch, had withdrawn from the Gold Coast. The departure of the others was because the trade in human beings in the infamous trans-Atlantic slave trade had been designated illegal, internationally, and hence trade along the coast of West Africa declined,[129] making it economically imprudent for such companies to continue to remain on the Gold Coast. However, the British, Danes, and Dutch believed that there were still economic opportunities in the territory.[130] Some of the trading companies also left the shores of the Gold Coast because they lost out in the competition for control of areas of influence in the region. The Dutch, for

[127] Osei-Tutu & von Hessen, "Introduction," 142. See also: Roberto Zaugg, "Grossfriedrichsburg, the First German Colony in Africa? Brandenburg-Prussia, Atlantic Entanglements and National Memory," in *Forts and Castles, in Shadows of Empire in West Africa: New Perspectives on European Fortifications* (Switzerland: Palgrave Macmillan, 2018), 33-46.
[128] Amenumey, *Ghana*, 106. See also Osei-Tutu and von Hesse, "Introduction", 139-144.
[129] David Owusu-Ansah, *Historical Dictionary of Ghana*, 4th ed. (New York: Rowman & Littlefield, 2014), 6.
[130] *Ibid.*

instance, expelled the Portuguese much earlier in 1642 and established their own monopoly over the trade in the region.[131] The Dutch, who were one of the only two remaining European tradition nations in the Gold Coast by 1850, also left in 1872,[132] thus leaving Britain as the only European power in the Gold Coast.[133]

Growth of British Influence in the Gold Coast

The British trading companies gained considerable authority in the Gold Coast even before they became the only European enterprise on the coast. They gradually gained dominance and arrogated to themselves political authority over the people of the Gold Coast as they interfered in the local politics of the people. An evidence of British intrusion in what was supposed to be local matters was their siding with the coastal states (mainly the Fante states) in the wars between the Asante and the people of the coast between 1823 and 1874.[134] Consequently, the British fought on the side of the Fante and some of the other coastal states against Asante in 1824, 1826, 1863, and 1873. Another evidence of the growing British control in the Gold Coast in the nineteenth and twentieth centuries was seen in the treaties and ordinances that they introduced to regulate the lives of the people. These include the signing of the Bond of 1844,[135] the passage of the Poll Tax Ordinance (1852), Native

[131] W.E.F. Ward, *A History of Ghana* (London: George Allen & Unwin Ltd, 1967), 81. See also Buah, *Ghana*, 68.
[132] Boahen, *Ghana*, 43.
[133] Owusu-Ansah. *Historical Dictionary*, 6. See also Toyin Falola (ed.), *Africa in the Twentieth Century: The Adu Boahen Reader*, (Trenton: Africa World Press, Inc. 2004), 86-89.
[134] *Ibid*, 208.
[135] Commander Hill was appointed Lieutenant Governor of the Gold Coast in 1843. He led some chiefs of the coast to sign the document on 6 March 1844. This was to regularise the jurisdiction of the British government on the coast of the Gold Coast. The chiefs who signed the document included Kwadwo Tibu of Denkyira, Kwesi Otu of Abora, Tibo Kuma and Gyambra (both of Asen) and Kwesi Anka of Domadze. The rest were Awusi of Dominase, Amoonu of Anomabo and Joseph Aggrey of Cape Coast. Other chiefs also signed the

Jurisdiction Ordinance (1883), Land Bills (1894/1897), and the Sedition Ordinance of 1934.

The chiefs, the educated elite and people of the Gold Coast opposed the passage and implementation of those laws because they were not in the interest of the people. Individuals and chiefs such as Kojo Tibu of Denkyira and Joseph Aggrey[136] of Cape Coast registered their protest against the activities of the British in the Gold Coast. The objection of the chiefs and people were sometimes brought before the Governor-in-chief but sometimes to the British monarch and parliament in London. Such objections were sent as far as to the Governor or even to the Governor-in-Chief of Her Majesty's West African Settlements.

Apart from chiefs and other individuals, some states on the Gold Coast also organized protests against the British. A group of Fante and non-Fante states formed what became known as the Fante Confederation in 1869 to oppose the activities of the British in the Gold Coast. Its membership also included non-Fante states such as Denkyira, Wassa, Twifo, Asen, and the Ahanta.[137] The Confederation was the "first attempt by Ghanaian leaders, since they came under European influence, to plan a policy of self-determination."[138] The desire to ensure greater security and suzerainty of

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document between March and December that same year. The signing of the Bond gave legal backing to and formalised the jurisdiction the British crown that was exercised on the Gold Coast before 1844. It also laid the foundation for the introduction of British legal system in the coastal states. The Bond never transferred the sovereignty of the coastal states to the British, as some scholars contend. See Boahen, *Ghana*, 40-42.

[136] King Aggrey challenged the authority of the British in state and had fierce confrontations with the Governor of the Gold Coast. The matters under contention included the power of the Governor to set aside judgments he (Aggrey) made in his court. The confrontation between the two, Aggrey and Governor Conran, led to the former being deposed and exiled by the governor. See David Kimble, *A Political History of Ghana: The Rise of Gold Coast Nationalism, 1850-1928*, (Oxford: Clarendon Press, 1963), 215-220; Boahen, *Ghana*, 46-48.

[137] Buah, *Ghana*, 87; Boahen, *Ghana*, 52.

[138] Buah, *Ghana*, 87.

member states and to end the "unending interference in the sovereignty and rights of the states and their people by the British"[139] were among the cardinal reasons for the formation of the Confederation.

The gradual, but sustained, imperialistic policies and activities of the British in the Gold Coast culminated in the official British colonization of the Gold Coast after 1874. The British in the Sagrante War of 1874 defeated the Asante, one of the most formidable opponents to British usurpation and encroachment on the powers of the chiefs and people of the Gold Coast. The defeat of Asante in 1874 and, later, in the Yaa Asantewaa War of 1900/1901 paved the way for the British annexation and control of the entire territory of the Gold Coast although it still encountered stiff opposition from the people. Other protest movements emerged to demand better policies of the British administration and/or the participation of the local people in the administration of the colony. Aborigines' Rights Protection Society of 1897[140] and the National Congress of British West Africa,[141] established in 1920, demanded the abrogation of some unfriendly policies of the British at different epochs in the history of the people of the Gold Coast.

The demands of those protest groups were given some impetus in the period after the Second World War when political parties were formed in the Gold Coast. In 1947, the United Gold Coast Convention (UGCC)[142] was established and two years later, in 1949, the Convention People's Party

[139] Vincent Okyere, *Ghana: A Historical Survey*, (Accra: Vinojab Publications, 2000), 79.
[140] George Padmore, *The Gold Coast Revolution: The Struggle of an African People from Slavery to Freedom* (London: Dennis Dobson Ltd, ND), 36-90); Buah, *Ghana*, 92-94; Boahen, *Ghana*, 62-66; Ward, *Ghana*, 357.
[141] Padmore, *The Gold* Coast, 47-53; Buah, *Ghana*, 145-146; Boahen, *Ghana*, 119-135; Ward, *Ghana*, 357.
[142] Dennis Austin, *Politics in Ghana: 1946-1969* (London: Oxford University Press, 1964) 52-52; S.N.O. Dabi-Dankwa, *Ghana's Ten Years (1947-1957) Struggle for Independence* (Accra: 2009), 5-9; Boahen, *Ghana*, 155-165; Buah, *Ghana*, 153-156; Padmore, *The Gold* Coast, 54-66; Ward, *Ghana*, 357.

(CPP)[143] was formed. The educated elites who led the political parties did not ask for the opportunity to participate in the governance of the colony as was the demands of earlier nationalists. They demanded an end to colonial rule and a transfer of power to the people of the Gold Coast. The two political parties, and others which were formed later, continued to put pressure on the British colonial authorities until the colony gained independence on 6 March 1957.

Legacies of European Contact

The coming of the Europeans and the subsequent colonization of the Gold Coast by the British had momentous effects on both the people of the Gold Coast and their foreign guests, particularly Britain. There were both positive and negative social, economic and political consequences of the encounter with the Europeans. The introduction of Christianity, formal education and Western healthcare systems were some of the social effects of European presence on the Gold Coast.[144] The economic sector saw the upgrading of transport and telecommunication systems and the introduction of new economic activities although some of those developments were not meant to benefit the locals. They rather facilitated the wanton exploitation of the resources of the land. It is informative to note that some of the economic activities of the Europeans contributed to the neglect or destruction of some local industries. Thus, the trade in slaves led to a considerable reduction in labour resources of the Gold Coast. The local economy was left in a sorry state because the healthy able-bodied men and women who would have worked on

[143] See J.G. Amamoo, *Ghana: 50 Years of Independence* (Accra: Jafnit Ent, 2007), 55; Austin, *Politics in Ghana*, 85; Boahen, *Ghana*, 166-172; Buah, *Ghana*, 155-158; Padmore, *The Gold* Coast, 67-86; Dabi-Dankwa, *Ghana's Ten Years,* 10-17.

[144] Kimble, *A Political History,* 125-168. See also A. A. Boahen, *African Perspective on Colonialism*, (Baltimore: John Hopkins University Press, 1987), 94-112; Boahen, *Ghana*, 102-118; Amenumey, *Ghana*, 168-188; Buah, *Ghana*, 138-143.

farms and in industries were captured and sold into slavery.[145] The cultivation of food crops also saw a decline after the abolition of the trans-Atlantic slave trade because missionaries in the colony introduced the local people to the cultivation of cash crops such as coffee, tobacco and cotton, to the neglect of food crops needed to feed societies.

The political space also experienced some changes during the period of European presence and, particularly, under British rule. The British colonial authorities introduced policies and passed a number of laws that defined the relationship between the colonisers and the colonised. The interests of the indigenes were, however, not considered in the passage and application of some of the policies and ordinances. This, therefore, accounted for the agitations by the indigenes and the demand for better policies, and later (after 1945) an end to colonial rule. The leaders of the new country, Ghana, adopted a number of the activities of the British in the Gold Coast after the territory attained independence. Consequently, not much has changed in the economic and social structures of the country after colonisation ended over six decades ago.

Another sector that the British colonial authorities bequeathed to the new nation was the political structures which they established and through which they administered the colony. The colonial authorities introduced an European system of government into the Gold Coast by the 19th century and this was evident with the establishment of an Executive Council (1850),[146] a

[145] Walter Rodney, *How Europe Underdeveloped Africa* (Abuja: Panaf Publishing, 2005), 96-107; 161-208.
[146] David E. Apter, *Ghana in Transition*, (New York: Atheneum, 1959), 137.

Legislative Council (1850),[147] and a Supreme Court[148] [Judiciary] (1853)[149] in the colony.

The seemingly hostile relations between the Fante with their British allies on the one hand and the Asante, on the other hand, led to the two parties engaging in a number of wars in the 19th century, as has been alluded to in the paragraphs above. In 1824, the Asante defeated a combined force of the British, Fante and other coastal states in the Battle of Nsamankow.[150] The Asante beheaded Sir Charles McCarthy, the British Governor and commander of the forces. The defeat of the British and the death of Sir Charles McCarthy caused the British to launch yet another attack on Asante in 1826[151] to avenge the defeat. The British came out the victors in this second war that was fought near Dodowa.[152]

After their victory, the British government decided to discontinue their economic activities in the Gold Coast because of what they considered to be the general state of insecurity in the territory because of conflicts. They contended that insecurity and conflicts did not enhance trading activities and hence the need to evacuate the colony. The British government, thus, left in 1828 but entrusted the control of their possessions (forts and castles) in the Gold Coast into the care of British merchants on the coast[153] because the British merchants

[147] H.W. Hayes Redwar, *Comments on Certain Ordinances of the Gold Coast Colony with Notes on a Few Decided Cases* (London: Sweet & Maxwell Ltd, 1909), 3.
[148] The first Supreme Court was established in 1853, but its jurisdiction was confined to the coastal settlements and hence was not a national institution. The Supreme Court Ordinance (1876) inaugurated the modern Ghanaian legal system which not only established a national judicial system but also prescribed the law and procedure be applied in this court system.
[149] *Ibid*. See also: Opoku-Agyemang, *Constitutional Law*, 66; Asante, "Over A Hundred Years," 70.
[150] Carl, C. Reindorf, *History of Gold Coast and Asante,* 3rd ed. (Accra: Ghana Universities Press, 2007), 184-192.
[151] Owusu-Ansah, *Historical Dictionary,* 6.
[152] Reindorf, *History of Gold Coast,* 193-195.
[153] Ward, *Ghana*, 189; Boahen, *Ghana*, 33; Amenumey, *Ghana*, 110-112; Buah, *Ghana*, 77.

were unwilling to abandon their trade activities in the territory. The merchants in London established a committee, the Committee of Merchants, to be responsible for managing British possessions through a Council of Merchants in Cape Coast. The Council,[154] which was a form of merchant-government, was also responsible for the general well-being of British traders in the Gold Coast. The merchant-government appointed George Maclean as its first President, a position he held until when the British government resumed direct control of its possessions.[155]

The departure of the Dutch from the Gold Coast in 1872 opened a new chapter in the political history of the Gold Coast since it paved way for the British to dominate the affairs of the territory. The British became the exclusive inheritors of a tradition of European commercial activity going back four centuries.[156] There was, therefore, the need to put in structures to ensure the proper administration of the territory, and a peaceful atmosphere for the successful conduct of trade and commerce. The British, subsequently, separated the Gold Coast from the British colony of Sierra Leone in 1850.[157] The Gold Coast thus got its own Governor, Executive Council and Legislative Council.[158] This development was, however, reversed when the Gold Coast was put back under Sierra Leone between 1866 and 1874. It was not until 1874 that the Gold Coast colony was made a separate and an "independent" dependency

[154] The Council appointed several British traders as Justices of Peace who had the responsibility of trying petty cases arising within the walls of the forts. The justices, however, did not have jurisdiction beyond the walls of the forts and castles. See Kimble, *A Political History*, 193.
[155] Buah, *Ghana*, 80; Boahen, *Ghana*, 40; Amenumey, *Ghana*, 115-116.
[156] Wight, *The Gold Coast*, 16.
[157] Metcalfe, *Great Britain and Ghana*, 212-214, doc 169. See also Wight, *The Gold Coast*, 17.
[158] Wight, *The Gold Coast*, 17; Boahen, *Ghana*, 42; Buah, *Ghana*, 82-83; Amenumey, *Ghana*, 162-163.

of the British Crown once again with its own political institutions which included Executive and Legislative Councils and a Supreme Court.[159]

The Executive Council

The Governor was the head of the Executive Council and, thus, the administrative head of a colonial territory and, in some cases, the adjoining protectorates and mandated or trust territories. He was appointed by the British Crown and was answerable only to the British government through the Secretary of State for Colonies. Initially, the Governor ruled alone, assisted by Directors[160] or departmental heads in the administration of the colony. The situation, however, changed with the establishment of the Executive Council, which advised him on policies and administration.[161] The Executive Council did not have a fixed composition of members in its early years,[162] as various merchants were occasionally invited to council meetings, especially in the absence of regular members.[163] For example, F. Swanzy and W.M Hutton were summoned to attend Council meetings in 1851, and C. Clouston from 1852 to 1853.[164]

In 1925, however, the Council consisted of the Governor as the head, and some British officials including the Colonial Secretary, Attorney General,

[159] Wight, *The Gold Coast,* 18; Amenumey, *Ghana*, 163; Buah, *Ghana*, 86-87; Boahen, *Ghana*, 57-59.
[160] The Directors were in charge of government departments such as agriculture, education, health, justice and indigenous affairs. Until late in the colonial days, nearly all the Directors were non-Africans.
[161] "Charter under the Great Seal of the United Kingdom to Provide for the Government for Her Majesty's Forts and Settlements on the Gold Coast" in Metcalfe, *Great Britain and Ghana*, 213.
[162] The Governor was given the power to "…summon as an Executive Council such persons as may from time to time be named or designated by us [the British Parliament] in any instructions under our signet and sign manual, addressed to him in that behalf." See "Charter under the Great Seal of the United Kingdom to Provide for the Government for Her Majesty's Forts and Settlements on the Gold Coast" in Metcalfe, *Great Britain and Ghana*, 213.
[163] Kimble, *A Political History,* 406.
[164] *Ibid.*

Financial Secretary, the Director of Medical Services, the Commissioner of Native Affairs and the Commander of the Colonial Army of the Gold Coast. The Chief Commissioner of Ashanti and the Chief Commissioner of the Northern Territories were made members of the Council after the defeat of Asante in 1874 and 1901.[165] Members of the Executive Council presented matters for the consideration of the Legislative Council. These included financial estimates, ordinances affecting various departments and the general laws of the Gold Coast Colony.[166] Educated Africans and chiefs introduced and presented some demands to the Executive Council for the development of the colonial structure and demands. The Alan Burns Constitution of 1943 made provisions for the appointment of Africans onto the Council. Consequently, Nana Sir Ofori Atta I, Paramount Chief of Akyem Abuakwa, and Sir Arku Korsah, a leading Gold Coast lawyer, were both appointed to the Council.[167]

Legislative Council

Another branch of the Gold Coast's colonial political and administrative structure was the Legislative Council, introduced in 1850. It has been widely argued that the establishment of legislative councils in British territories that later became colonies was intended to provide a representative body for these territories. This is because there is an inherent anomaly in a situation in which a democratic parliament has sovereignty over a group of people other than that which it represents.[168] Although, in theory, the Legislative Council was to help check arbitrary use of power by the Governor,

[165] Apter, *Ghana in Transition*, 136.
[166] *Ibid.* 138.
[167] Okyere, *Ghana*, 144.
[168] Kimble, *A Political History*, 404.

the reality was far from that, at least in the early years of its establishment.[169] The first Legislative Council consisted of the then Governor-General, Sir William R.W. Winniett, and "two other public officers within the said forts and settlements…."[170] Sir Winniett, therefore, became the first Governor of the Gold Coast and Chairman of the first Legislative Council of the territory.

The Legislative Council served as an advisory body to the Governor in the administration of the territory and he conferred with its members on matters of importance affecting the colony. The Council also functioned as the law-making body.[171] The regulations establishing the Legislative Council provided that the Governor, with the advice and consent of the Legislative Council, made laws for the peace, order, and good government of the colony.[172]

One challenge with the composition and function of the Council in its early years was the fact that first seventy-five years of its existence, the Governor appointed the members of the council,[173] and hence members owed their position to his benevolence. This made them serve at his pleasure since he appointed people sympathetic to the colonial authority as opposed to the interests of the local people. Another shortcoming of the Council was that its members were British officials or traders. It was, therefore, not representative enough since there were no African members to represent the interests of the people of the Gold Coast. Successive Governors, however, attempted to get some Gold Coasters on the Council. Consequently, some Africans were later

[169] Kimble, *A Political History*, 404.
[170] Wight, *Gold Coast*, 17.
[171] Apter, *Ghana in Transition*, 137.
[172] *Gold Coast Colony (Legislative Ordinance) Order in Council, 1925*, Sections 3 and 57. See also letter from Earl Grey to Sir William R.W. Winniett, in Metcalfe, *Great Britain and Ghana*, 213, doc 169.
[173] Kimble, *A Political History*, 404.

nominated as unofficial members of the Legislative Council.[174] Two merchants, Brodie Cruikshank, and a wealthy Ghanaian, James Bannerman, were appointed to sit on the Council between 1850 and 1853.[175]

The Council consisted of non-African members from 1874 until the appointment of James Bannerman in 1889[176] as the first African member. The practice of appointing members of the Legislative Council continued until 1925, when Governor Gordon Guggisberg introduced reforms to the colony's constitution. The new constitution of 1925 provided for an enlarged Legislative Council with elected members, rather than appointed ones. The Legislative Council had 30 members, which consisted of 15 official members and 14 unofficial members with the Governor presiding over meetings. Nine Africans, including six provincial and three municipal members, sat on the Council. The six provincial councillors were elected by the Joint Provincial Council, and the three municipal councillors were made up of elected members from Accra, Cape Coast and Sekondi municipalities.[177] Successive constitutions (1916, 1946 and 1950) ensured an enlarged Legislative Council with more African members.

The Legislative Council went through different phases of change and development from the time of its creation to 1957. The evolution and development[178] of the Legislative Council, which was later called Legislative

[174] Kimble, *A Political History*, 404.
[175] *Ibid*, 405.
[176] Apter, *Ghana in Transition*, 136.
[177] *Ibid.*
[178] The development of the Legislature was the result of the passage of new constitutions for the colony and also after independence. Consequently, the Clifford Constitution of 1916, Guggisberg Constitution of 1925 and the Burns Constitution of 1946 all attempted to introduce changes to the composition and functions of the Executive and Legislative Council. The 1951 Constitution, 1954 Constitution, the 1957 Independence Constitution and other

Assembly,[179] National Assembly and Parliament after independence, were necessitated by events in the economic and political landscape of the colony. Chief amongst the catalysts of change was the activities and demands of the Gold Coast nationalists including chiefs and African intelligentsia at the time.[180] What is evident in all the changes was that the Legislative Council did not ever have complete local jurisdiction during the colonial era. The Legislative Council remained under the authority of the Executive Council, which was also responsible to the Crown and the British Parliament. David Apter points out that the Legislative Council:

> was conceived not as a representative body, expressing public demands, but rather as an agency to advise, it was a communications centre in which the governor found out public attitudes by quizzing African members, and through whom information was transmitted to native authorities….[181]

Introduction of British Judicial System in the Gold Coast: 1830 - 1853

The peoples of the Gold Coast lived in clan groups, villages, communities, states and kingdoms with a family head, an *odekuro*[182] or chief as their head, as the case may be. The major function of the political authorities discussed earlier was to maintain law and order in the society.[183]All the states, therefore, had well-established institutions that included a judicial system that was responsible for adjudicating cases, particularly, that of conflict

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constitutions since then also introduced reforms to the legislature. See Amenumey, *Ghana*, 188-229; Buah, *Ghana*, 100-205; Kimble, *A Political History*, 404-451.

[179] Buah, *Ghana*, 159-160.

[180] Changes in the legislature included an increase in the number of members, an increase in the number of Africans, and later the introduction of electoral principles in the selection of its members. See Apter, *Ghana in Transition*, 136-141.

[181] Apter, *Ghana in Transition*, 137.

[182] *Odekuro* is an Akan word for a headman. He was in charge of the village and each village consisted of a number of lineages that formed a political unit. See K.A. Busia, *The Position of the Chief in Modern Political System of Ashanti*, (London: Oxford University Press, 1951), 63.

[183] G.K. Nukunya, *Tradition and Change in Ghana: An Introduction to Sociology*, 2nd ed. (Accra: Ghana Universities Press, 2003), 83.

and dispute resolution.[184] Among the Akan of Ghana, chiefs and their Councils of Elders handed down judgments in courts.[185] The Council of Elders consisted of representatives of the various clans that made up the village, or of the major territories that made up the kingdom. The principle behind this judicial system was to ensure that the ruler was not arbitrary in the discharge of his powers as the chief judge.[186] The people believed that the judgment of the judges (whether at the basic level or at the apex of the societies) encompassed religious sanctions because the chief's decisions were considered to be the decisions of the ancestors using the judge as a medium.[187]

There were mostly three levels of judicial authority in a typical African, and for that matter Ghanaian, judicial system. There was the village court, which had jurisdiction over minor civil and criminal offenses within the geographical boundaries of the village; the courts of divisional chiefs whose political domain comprised a number of villages or towns; and the paramount or chief's court.[188] The court of the divisional chief exercised appellate powers in cases decided in, and appealed from, the village or town court.[189] The king's court, thus, served as the supreme court of the land. J.E. Casely Hayford explains that:

> The king [chief] is the Chief Magistrate of the Community and…there are minor Courts exercising

[184] G.K. Acquah, "The Judicial Role of the Chief in Democratic Governance", in Odotei, I.K and Awedoba, A.K, (eds.), *Chieftaincy in Ghana: Culture, Governance and Development* (Accra: Sub-Saharan Publishers, 2006), 66. See also: Apter, *Ghana in Transition*, 104-108.
[185] *Ibid*. See also: Robert Addo-Fenin, "Chieftaincy, Colonialism, and the Atrophy of Traditional Governance in Ghana," in Hellen Laure and Kofi Anyidoho (eds.), *Reclaiming the Human Sciences and Humanities through African Perspectives Vol. I*, (Accra: Sub-Saharan Publishers, 2006), 685 and J.E. Casely Hayford, *Gold Coast Native Institutions* (London: Frank Cass and Company Ltd., 1903), 93.
[186] Addo-Fenin, "Chieftaincy, 685; Casely Hayford, *Gold Coast*, 93.
[187] Nukunya, *Tradition and Change*, 84.
[188] Casely Hayford, *Gold Coast*, 93.
[189] Acquah, "The Judicial Role," 104-108.

> concurrent, but not co-ordinate, jurisdiction with the King's [chief's] Court…. which is both a court of first instance and a Court of Appeal. In suitable cases, the King's [chief's] Court can require a matter before a minor court to be brought up before it for adjudication.[190]

The presence and activities of Europeans, particularly, the British, in the Gold Coast introduced the British judicial system into the territory, even though the start and expansion of this foreign justice organisation were gradual. The planting of the British judicial system, officially, started in 1843 when the British Parliament passed laws that formalized their activities in the Gold Coast. This was done through the passage of the British Settlement Act[191] and the Foreign Jurisdiction Act in 1843.[192] In 1844, an Order-in-Council was passed, consequent to the passage of the above-mentioned ordinances, requiring judicial authorities in the Gold Coast to observe local customs that were compatible with the principles of the laws of England. It was on the back of the Order in Council that Lt. Governor H. W. Hill reached an agreement with eight chiefs and other leaders of some coastal states on 6 March 1844.[193] The agreement[194] recognized British power and jurisdiction which, in fact, had been exercised in the territory adjacent to British forts and settlements[195] The Bond of 1844 declared, inter alia, that "the first object of law is the protection of individuals and property and that human sacrifice, *panyarring* … and other

[190] Casely Hayford, *Gold Coast*, 93.
[191] The British Settlement Act enabled Orders in Council to be made for the establishment of laws, institutions and ordinances for peace, order and good government in the colony. See The *British Settlements* Act, April 1843 in Metcalfe, *Great Britain and Ghana*, 189, doc 139; Opoku-Agyemang, *Constitutional Law*, 65.
[192] Foreign Jurisdiction Act authorized the exercise of political power acquired by agreement or use of territory that had not become part of British rule by cession or conquest. See *The Foreign Jurisdiction Act, 1843*, in Metcalfe, *Great Britain and Ghana*, 191, doc 141; Opoku-Agyemang, *Constitutional Law*, 65.
[193] Owusu-Ansah, 71. See also Apter, *Ghana in Transition*, 33-35; Buah, *Ghana*, 80-82; Kimble, *A Political History*, 194 and Amenumey, *Ghana*, 115-116.
[194] Later became known as the Bond of 1844. See Kimble, 194.
[195] Opoku-Agyemang, *Constitutional Law, 65*; Kimble, *A Political History*, 194.

barbarous customs are abominations and contrary to law."[196] The chiefs also agreed that British judicial officers should sit with chiefs in the trial of serious crimes.[197] The Bond also stipulated that murder, robbery, and other crimes and offenses were to be tried and investigated before the Queen's judicial officers and the Chiefs of the district, thereby bringing the customs of the country into conformity with the general principles of English law.[198] Thus, the Bond defined British legal jurisdiction in the Gold Coast, the Protectorate, in return for protection by the "British to the signatory states in the event of aggression from Asante."[199] The Bond, thus, gave the British a degree of authority over the states that signed it since it marked the beginning of their sanctioned interference in the judicial powers of the chiefs.[200]

It is informative to iterate that the British officials in the Gold Coast exercised considerable judicial authority over the chiefs and people adjacent the British forts and castles long before the signing of the Bond.[201] George Maclean,[202] in the 1830s, did much to extend the political and judicial influence of the British in the Gold Coast, albeit illegally since he did not have the authority and backing of the British government to do so .[203] Before taking over the position as President of the Council of Merchants in the Gold Coast, several British traders were appointed Justices of Peace and were responsible

[196] Opoku-Agyemang, *Constitutional Law*, 65.
[197] *Ibid*. See also: Boahen, *Ghana*, 40-41.
[198] Quansah, *Legal System*, 53.
[199] *Ibid*, 51 & Kimble, *A Political History*, 195.
[200] Read Boahen's analysis of the Bond in Boahen, *Ghana*, 40-44.
[201] Irina Sinitsina, "African Legal Tradition: J. M. Sarbah, J. B. Danquah, N. A. Ollennu," *Journal of African Law, Vol. 31, No. 1/2* http://www.jstor.org/stable/745515, 44.
[202] George Maclean was the Second President of the Committee of Merchants in the Gold Coast. He arrived in the Gold Coast in 1830 and administered the British possessions in the territory until 1843 when Commander Hill took over as Lieutenant Governor.
[203] Apter, *Ghana in Transition*, 33.

"…for the trial of petty cases arising within the walls of the fort…"[204] The said Justices of Peace did not have jurisdiction beyond the walls of the forts and castles.[205] The British Government handed over the administration of their possessions to the merchants on condition that the latter would "administer only the forts of Cape Coast and Accra[206]… [and] confine its jurisdiction only to the people living within the two forts and it was not to interfere in the affairs of the local states…."[207] Maclean, however, went beyond his mandate[208] to interfere in local politics of the people. He negotiated peace between the Asante and Fante,[209] settled disputes among the southern states and abolished some cultural practices that he considered did not foster peaceful coexistence in the Gold Coast.[210] Maclean held regular courts in the *Palavar* Hall of Cape Coast Castle to punish those found guilty of disturbing the peace.[211] He also introduced informal courts and stationed magistrates in Dixcove, Anomabu and Accra to help in the settlement of disputes.[212] He believed that peace and order could be realised if there was a proper and

[204] Kimble, *A Political History*, 193.
[205] *Ibid.*
[206] The fort in Accra was in reference to the James Fort.
[207]Letter from R.W. Hay to G. Barnes, R. Brown and M. Forster, 14 November 1828, in Metcalfe, *Great Britain and Ghana*, 122, doc 88. Note: Sir. G. Murray, Secretary of State for War and the Colonies from 1828 to 1830, instructed the writing of the letter.
Boahen, *Ghana*, 37-38.
[208] He acknowledged going beyond his mandate in his exercise of judicial authority over the local people. Griffith quotes Maclean as saying "…Yet, according to the rule and regulations, the power of the local authorities [the Committee of Merchants] do not extend a yard beyond the walls of the several forts…." See Griffith, *A Note*, 6.
[209] "The Peace Treaty with Ashanti, 27 April 1831", in Metcalfe, *Great Britain and Ghana*, 133, doc 98.
See also "Minutes of Council of Merchants at Cape Coast", 5 September 1831, in Metcalfe, *Great Britain and Ghana*, 134, doc 99, Ward, *Ghana*,187.
[210] He abolished *panyarring*, human sacrifice, attacks on traders and the trade in slaves. See Boahen, *Ghana*, 138-139; S.O. Gyandoh Jnr, "Liberty and the Courts: A Survey of the Judicial Protection of the Liberty of the Individuals in Ghana during the Last Hundred Years", in W.C.E. Daniels and G.R. Woodman (eds.), *Essays in Ghanaian Law: Supreme Court Centenary Publication, 1876-1976* (Accra: Ghana Publishing Corporation, 1976), 60.
[211] Francis Agbodeka, *African Politics and British Policy in the Gold Coast, 1868-1900* (Illinois: Northwestern University Press, 1971), 11.
[212] Griffith, *A Note*, 1.

impartial administration of justice. He was, therefore, prepared to enforce the British system of justice on the people of the coast even though he did not have the legal right to do so.[213] Sarbah argues that the Britain resolved ethnic unrest and personal disputes that often interfered with trade because they wanted to "foster trade and to protect their interest."[214] Maclean, subsequently, went on tours or sent members of his Council round the states to attend trials by chiefs and see to the impartial administration of justice.[215] He heard appeals from the chiefs and their subjects and imposed fines or prison sentences on those who were convicted.

Before the introduction of British courts, there were no judicial officers in the forts and, hence, Governors decided cases between Europeans and the local people "in the towns under the fort guns, although the latter was rare."[216] Maclean exercised certain irregular civil and judicial powers over the coastal population, with the tacit consent and acquiescence of the local people.[217] Those who infracted laws were forcefully brought into the fort by the police to

[213] Amenumey, *Ghana*,113. Maclean's justification for going beyond his limits was that "It will be admitted that the chief object of maintaining the forts and a local Government is to afford protection and encouragement to commerce. Nevertheless, no trade is carried on within the walls of the forts; the merchants or traders reside or have factories in the town, and at various stations throughout a considerable extent of the country… For example, the British resident merchants derive their chief trade …from Ashantee, the factories of which are about 100 miles distant from any British settlement, the intervening districts being inhabited by several tribes, all of whom are the hereditary enemies of the Ashantees. With what prospect of safety could an Ashantee trader traverse such as extent of country inhabited by people withheld by no moral restraint, and personally hostile to him if they were left to the guidance of their own lawless passion?" He argued that the effect of not exercising judicial authority over such communities would "be to throw the population back into the revolting state of society that existed before the abolition of slave trade, and thus would the labour of many years be thrown away, perpetual wars, rapine, murder, and oppression would take the place of that peace, good order, and security …which at present prevails and it would be frightful to contemplate the scene of human misery which would necessarily ensue…. For these reasons the jurisdiction of the forts over the surrounding districts as it is at present …ought to be confirmed by the authority…." See: Griffith, *A Note*, 7-8.

[214] Sarbah, "Maclean," 349-359.

[215] Boahen, *Ghana*, 39.

[216] Griffith, *A Note*, 2.

[217] H.W. Hayes Rewar, *Comments on Some Ordinances of the Gold Coast with Notes on a Few Cases* (London: Sweet & Maxwell Ltd, 1909), 2.

face trial. Amongst the cases dealt with were funeral sacrifices and putting persons to death because of witchcraft.[218] Petty debt courts were also established in different parts of the Protectorate by the British to adjudicate debt matters. The local people supported and patronized the British courts and accepted their rulings on various matters. Griffiths posits that "…the natives eagerly brought their own cases [to the petty debt courts]"[219] and that the people had confidence in the courts because "…the reputation of the courts for justice spread."[220] Boahen adds that, "Maclean's court became a species of lecture-room, from which the principles of justice were disseminated far and wide throughout the country."[221] The exercise of judicial authority was not only over the peoples and towns around Cape Coast as the same was replicated in communities in Accra, Dixcove, Tantum and other places where British forts and castles were found.[222] Magistrates in those towns disposed of petty cases, civil and criminal, but reserved all grave cases for President Maclean, Council of Merchants and the local elders to arbitrate. The President and members of the Council sat as assessors, guiding the judgment of the court.[223]

Boahen and Buah[224] argue that peace and order were restored to the Gold Coast because of the political and judicial work of Maclean, and because of his friendly relations with the Asante.[225] Consequently, trade[226] and

[218] Rewar, *Comments*, 2.
[219] *Ibid.*
[220] *Ibid*. When later in 1841 it was rumored that Dr. Madden, a Commissioner Sent from England, was about to release all prisoners of the court, a number of creditors congregated before the gates of the Cape Coast Castle armed with shackles and ready to seize their respective debtors on their release. Griffith, *A Note*, 9.
[221] Boahen, *Ghana*, 39; Sarbah, "Maclean," 349-359.
[222] Griffith, *A Note*, 9.
[223] *Ibid.*
[224] Boahen, *Ghana*, 39; Buah, *Ghana*, 80-82.
[225] Griffith, *A Note*, 9.

missionary activities[227] increased in the territory. One can argue that apart from the display of fairness in the administration of justice,[228] the people subjected themselves to the judicial system offered by Maclean because of the absence of a unified system of customary law that could sufficiently provide justice in matters of litigation involving people or states of different ethnicity or nations. Consequently, the people went to the unauthorised British magistrates[229] where there was what seemed to be a unified system of adjudication.[230] By the end of Maclean's term as President of the Committee of Merchants in 1843, he had succeeded in extending British jurisdiction from the Pra [River] in the West to the Volta [River] in the east [sic], and for about forty miles inland."[231]

Traditional Courts Abandoned

The introduction and administration of British judicial system by Maclean, albeit illegal, had adverse effects on the operations and survival of the traditional courts that existed before the coming of the Europeans. One reason was that many local people resorted to the magistrates' courts for redress. Sir Griffith notes that "…the natives practically deserted those courts

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[226] Maclean promoted palm oil production and ensured the abolition of the slave trade with European merchants. During Maclean**'s** term as governor, both imports and exports increased. When Maclean left office in 1843, oil palm became the Gold Coast's major export. The rise in economic activity attracted many British traders to the Gold Coast.

[227] The relative peace on the Gold Coast also greatly facilitated the spread of Christianity and Western education. The Wesleyan Methodist Missionary Society began and enjoyed help from Maclean as they spread Christianity in the Gold Coast**.**

[228] Griffith, *A Note*, 6.

[229] The justices of peace in the colony were not the creation of the British Parliament and did not have their support either. Maclean argued for the Home Government to "authorize the existing magistrates to act judicially in all cases or create a separate and competent court [for the Gold Coast" but that was not done until 1953. See: Griffith, 9. His argument was that the existing arrangement that limited the powers the justices and magistrates in the trial of offences, but had to depend on Sierra Leone, was not the best for the territory because the distance between Sierra Leone and the Gold Coast and other logistical and financial constraints made it impossible for cases to be sent there for trial. Griffith, *A Note*, 8.

[230] Griffith, *A Note*, 10.

[231] Gyandoh, "Liberty," 60; Sarbah, "Maclean," 349-359.

near the forts whilst natives from a distance resorted to the magistrates in any case in which they doubted their home court."[232] Local people referred only cases considered minor or unimportant for trial in the British courts to the courts of their chiefs or headsmen.[233]

The local authorities resented the erosion of their judicial authority and this was amply communicated in a dispatch sent by King Aggrey,[234] much later, to Governor Pine on 16 March 1865, long after Maclean's death. Aggrey notes that:

> …Governor Captain Maclean…in a peculiar, imperceptible, and unheard-of manner, wrested from the hands of our kings, chiefs and headmen, their power to govern their own subjects. The Governor, placing himself at the head of a handful of soldiers, had been known himself to travel to the remotest parts of the interior for the purpose of compelling kings, chiefs and headmen… to obey His Excellency's summons, or to comply with His Excellency's decrees. A blow was thus firmly, slowly and persistently struck, and the supreme authority, power, and even influence of the kings, chiefs and headmen, gave way to the powerful Governor Maclean.[235]

Aggrey again argued that Maclean and his Council took steps to create enmity between the local authorities and their subjects. He stated that:

> … in order to gain his point…the Governor spared no effort to adopt measures calculated to breed disaffection, disloyalty, disobedience and consequent estrangement in

[232] Griffith, *A Note*, 10.
[233] *Ibid.*
[234] John Aggrey was enstooled King of Cape Coast in February 1865. His confrontation with Governor R. Pine and the British judicial system came about when an African agent of one of the European firms, who was accused of attempting to poison his neighbor, refused to recognize the authority of Aggrey to summon him. The accused then appealed to the British court for refuge. Governor Pine said that he was prepared to recognize properly organized 'country' courts, saving always the right of appeal to the British courts. See Kimble, *A Political History,* 201-202 and "Letter from King Aggrey to Governor R. Pine," 16 March 1865, in Metcalfe, *Great Britain and Ghana*, 308.
[235] "Letter from King Aggrey to Governor R. Pine," 16 March 1865, in Metcalfe, *Great Britain and Ghana*, 308.

> the subject towards his lawful king. A king was regarded as not above the reach of the then established Court of Justice, and any one individual subject was placed on the same footing with his sovereign, as equally as the 'King is less than all'…. Complaints of every description from the subject were sustained against the king, and the king was not infrequently placed in the dock and fined or imprisoned or (hardly credible) flogged for trivial offences. Many a subject was encouraged and countenanced to throw off with impunity their very allegiance – an allegiance which could not well be disowned and ignored and denied without endangering the security of the king….[236]

Thus, the protest of kings, chiefs and headmen against the usurpation of their judicial powers was communicated to Governor Pine in clear and unambiguous words.[237] The expression of resentment against the imposition of British judicial system on the people of the Gold Coast did not yield much. On the contrary, future[238] British government policies and regulations increased colonial encroachment by the British government on the decision-making rights of Gold Coast chiefs

In 1839, some British traders in the Gold Coast sent uncomplimentary reports about Maclean to the British government. They accused him of "condoning the slave trade and slavery… [and] extending the exercise of

[236] "Letter from King Aggrey to Governor R. Pine," 16 March 1865, in Metcalfe, *Great Britain and Ghana*, 309. The criticism of the chief was not out of place since Maclean was criticized by some of his own compatriots for his high-handedness in dealing with chiefs and other functionaries who engaged in practices such as *panyarring* and human sacrifice that he forbade. See Gyandoh, "Liberty," 60-61.

[237] King Aggrey argued that "The [king's] court is not irresponsible. It is responsible to the king for its acts. Well, has it been said over and over again, that Cape Coast, in the eyes of the law, is not British territory. It is, therefore, necessary for me to be given to understand whether the proceedings complained of as unlawful are repugnant to Christianity and natural justice…. The king's court is not of yesterday. From time immemorial, it has existed, and it even existed before Cape Coast Castle itself was erected, and the ground on which the castle stands was originally taken from my ancestors at an annual rent…." See Metcalfe, *Great Britain and Ghana*, 309.

[238] See: Griffith, *A Note,* 11.

British authority illegally."[239] Therefore, in 1841, the Home Government, therefore, asked Dr. R.R. Madden to investigate allegations made against Maclean regarding conditions in British settlements on the Gold Coast. Dr. Madden's report was critical of the activities of George Maclean as President of the Committee of Merchants, particularly, the unlawful exercise of judicial and military powers in the communities around the British settlement.[240] Madden questioned the authority of George Maclean to exercise judicial power over the local people and recommended that he (Maclean) or any other British official be barred from doing so until such authority was explicitly conferred on him. Madden recommended that:

> The President of the Council of Government be immediately instructed to release all persons confined in the jail of Cape Coast, who are not amenable to our [British] laws and do not reside within our jurisdiction [forts and castles]; and to abstain in future from exercising legal or military control over such persons; and that the question be set at rest as to the extent of our jurisdiction beyond the soil on which our forts are situated, and whether the native towns within reach of their guns are to be considered subject to us.[241]

A special committee was, subsequently, set up in the House of Commons in 1842 to examine Dr. Madden's report on Maclean. The Committee recommended that, "the Crown resumed control of the Settlements."[242] It also suggested that the administration of justice in the Gold Coast should be regulated and all jurisdiction over people and areas beyond the influence and protection of British settlements should be considered discretionary[243] and

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[239] Amenumey, *Ghana*, 114. See also Boahen, *Ghana*, 40; Buah, *Ghana*, 80; Griffith, *A Note*, 10; Gyandoh, "Liberty," 61 and Okyere, *Ghana*, 65.
[240] Kimble, *A Political History*, 193-194 and Griffith, *A Note*, 10.
[241]"Dr. Madden's Summary of His Recommendations," in Metcalfe, *Great Britain and Ghana*, 170-171, doc. 133.
[242]Kimble, *A Political History*, 194.
[243] Griffith, *A Note*, 10.

should be made the "subject of distinct agreement, as to its nature, and limits with the native chiefs."[244] The Committee report also stated that "a judicial officer should be placed at the disposal of the Governor, to assist or supersede, practically or entirely, his judicial functions, and those now exercised by the Council [of Merchants] and the several commandants in their magisterial capacity."[245] This recommendation paved the way for the establishment in 1843 of the office of the Judicial Assessor, with the sole authority to dispense justice to the people within Britain's forts and castles.

Based on the Madden Report of 1841 and the recommendations of the House of Commons Select Committee of 1842, the British Crown resumed direct control over the administration of Gold Coast forts and castles in 1843.[246] The government, thus, put in place measures and passed a number of Acts to make the resumption of control official. The Acts were also to help the Crown government exercise better control over the activities of its appointees in the colony. The British government passed the British Settlement Act of 1843, and the Foreign Jurisdiction Act also of 1843. The British Settlement Act empowered the British monarch to "legislate by Order in Council for Her Settlements on the West Coast of Africa, and to delegate Her authority by commission under Her signet and sign manual to resident officers not being less than three."[247] In other words, the Act gave the British Crown power, by order of the Privy Council, to legislate for all British territories on the west coast of Africa and to delegate some of the monarch's powers, through the

[244] "Report of the Select Committee on West Africa, 1842," in Metcalfe, *Great Britain and Ghana*,179-183, doc. 135.
[245] Griffith, *A Note*, 11.
[246] Kimble, *A Political History*, 194; Griffith, *A Note*, 11; Metcalfe, *Great Britain and Ghana*, 189-191.
[247] Metcalfe, *Great Britain and Ghana*, 189-191.

signet ring or signature of the king, to those who represented him in those territories.

The Foreign Jurisdiction Act also of 1834 declared that "Her Majesty may hold, exercise, and enjoy any power of jurisdiction which she may have or hereafter have within any country out of Her domains in the same way as if she had acquired such power and jurisdiction by cession or conquest of territory."[248] This also meant that the Queen may hold, exercise and enjoy territorial powers which she may have or has after the coming into existence of this Act within any country outside her own territory in the same manner as if she had acquired such power and authority through cession or conquest of that territory. The Foreign Jurisdiction Act was, thus, passed to "remove Doubts as to the Exercise of Power and Jurisdiction by Her Majesty within diverse Countries and Places out of Her Majesty's Dominions, and to render the same more effectual."[249]

Maclean as Judicial Assessor

The British government did not fully accept the recommendations of the House of Commons Select Committee. Lord Edward George Stanley[250] implemented portions of the recommendations but revised others. For instance, he was determined to maintain the forts on the same restricted footing under the Committee of Merchants instead of separating the Gold Coast from Sierra Leone.[251] Maclean, therefore, continued to administer the Gold Coast settlements as President of the Committee of Merchants until

[248] Metcalfe, *Great Britain and Ghana*, 189-191.
[249] Kimble, *A Political History*, 194
[250] Lord Stanley was the Secretary of State for War and the Colonies.
[251] "Letter from G.W. Hope (Parliamentary Under-Secretary for the Colonies) to James Stephen, Colonial Officer, on 3 December 1942 in Metcalfe, *Great Britain and Ghana*, doc. 136, 187.

February 1844 when Commander H. W. Hill arrived to take the position of Lieutenant Governor.[252] George Maclean was, subsequently, appointed Judicial Assessor and magistrate[253] to the chiefs with explicit instructions to maintain the exercise of established jurisdiction in cases of crimes and misdemeanours between individuals and neighbouring tribes.[254]

Captain George Maclean's new designation was, in fact, not different from his previous position since his job was to do what he had been doing since 1830 – be a justice of peace in the territory but which he had done illegally by exceeding his authority as President of the Committee of Merchants. Lord Stanley advised that George Maclean should continue to work under the jurisdiction that he had established in cases of crimes and misdemeanours because a reversal of that could have devastating effect on maintaining peace and order in the area.[255] Apart from having the power to sit with chiefs on important cases, the jurisdiction of the Judicial Assessor was not clearly defined.[256] Redwar posits that "…instructions of a general character seem to have been issued by the local governor from time to time to the Judicial Assessor."[257] He continues that, "…from these instructions and the records of the Court it appears that the Assessor sat with native Chiefs and heard cases in which natives were concerned."[258] The colonial office made a budgetary allocation of Five Hundred Pounds (£500) for the running of the

[252] "Letter from Lord Stanley's Letter to Lieut.-Governor H.W. Hill", on 16 December 1843, in Metcalfe, *Great Britain and Ghana*,192-194, doc. 142. See also: Griffith, *A Note,* 13.
[253] *Ibid.*, 193.
[254] Kimble, *A Political History,* 194.
[255] Lord Stanley's Letter to Lieut.-Governor Hill, 16 December 193.
[256] *Ibid*. See also Redwar, *Comments*, 2-3.
[257] Redwar, *Comments,* 2.
[258] *Ibid.*

office of the Judicial Assessor and Magistrate.[259] There was also a Special Allowance of One Hundred and Twenty Pounds (£120) for the chief magistrate of the Protectorate. The inclusion of the special allowance was intended to prevent MacLean from suffering a loss of income due to the change in status.[260]

Those accused of committing crimes in areas adjacent to Cape Coast Castle were sent to the castle to carry out sentences handed down.[261] The Secretary of State for Colonies, however, cautioned the Judicial Assessor to be thorough to conduct investigations into cases brought before him and be magnanimous in the discharge of his executorial duties.[262] This caution is also evident in the Secretary of State's message to Governor Hill which indicated that if the Judicial Assessor was of the opinion that the death penalty was unavoidable in any case, the Governor should advise the Assessor that the sentence must be carried out by the local authorities and must be carried out in the state where the offender is located.[263] The warnings to, and limitations on the exercise of Maclean's powers were because the colonial authorities knew that the exercise of judicial powers on the Gold Coast had no legal backing and therefore they needed to be careful in exercising their influence. One can also argue that the caution was to make the local people find the British judicial system fair and, thus, accept it.

The colonial government turned down a request by Governor Hill for the appointment of separate assessors at each fort to ensure the administration

[259] "Lord Stanley's Letter to Lieut.-Governor Hill," 16 December 1943, in Metcalfe, *Great Britain and Ghana*, 94.
[260] *Ibid.*
[261] Griffith, *A Note*, 13.
[262] "Letter from Lord Stanley's Letter to Lieut.-Governor Hill," 22 November 1844, in Metcalfe, *Great Britain and Ghana*,199.
[263] *Ibid.*

of justice in those British facilities on the grounds of the huge operational cost that it would entail.[264] The Secretary of State rather advised that the Chief Judicial Assessor should make periodic trips to the forts to ensure that justice was delivered in all the cases that were brought before the British courts.[265] Subsequently, the Commandants acted as assistants to Maclean at the out-forts and dealt with all cases brought before them, except those of considerable importance, which they transferred to the Judicial Assessor in Cape Coast or the Judicial Assessor dealt with those cases at the out-fort.[266] Whichever way it was, the exercise of Maclean's judicial powers over the local people was permissible only if "the sovereign power [the chief] in each territory authorize[d] or permit[ed] the exercise of any jurisdiction within that territory, whether according to British laws or the laws there prevalent…."[267]

Maclean went on a long leave from July 1844 and was in the background until his demise 3 years later.[268] The Governor then appointed Brodie Cruickshank as the new Judicial Assessor of the British possessions and the territories adjoining the forts and castles on 1 October 1847 and he was succeeded by James Bannerman. James Coleman Fitzpatrick[269] then succeeded James Bannerman in 1850.[270] Brodie Cruickshank was expected to be guided by the standard established by Maclean in the adjudication of justice

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[264]Letter from Lord Stanley's Letter to Lieut.-Governor Hill, 30 December 1844, in Metcalfe, *Great Britain and Ghana*,199.
[265] *Ibid.*
[266] Griffith, *A Note,* 13.
[267] "Letter from Lord Stanley's Letter to Lieut.-Governor Hill," 16 December 1943, in Metcalfe, *Great Britain and Ghana*, 193.
[268] "Lord Stanley and the Judicial System," in Metcalfe, *Great Britain and Ghana*, 187 n.; Griffith, *A Note,* 13. Maclean died on 13 December 1847 and he was deeply mourned by the whole community.
[269] "James C. Fitzpatrick: Dispatches Regarding his Appointment as Judicial Assessor on the Gold Coast" *British Parliamentary Papers: Correspondence Concerning the Gold Coast and Surrounding Districts, 1850-73* (Shannon: Irish University Press, 1971), 95-192;
[270] Griffith, *A Note,* 13; Sarbah, "Maclean," 349-359.

in the colony. The Secretary of State for the Colonies noted in a dispatch to the Lieutenant–Governor that the system under which Maclean advanced the exercise of jurisdiction over local people was intended to guide the exercise of that power by future assessors.[271]

Conclusion

Although his term ended abruptly, George MacLean laid the foundations for the eventual British colonization of the Gold Coast. His exercise of judicial power, albeit illegally, and his subsequent appointment as Judicial Assessor, laid the foundations for the establishment of the British justice system on the Gold Coast. As a result, what began as a trading relationship between some European countries, including Britain, and the people of the Gold Coast developed from 1830 until Maclean's death. It became an era of political domination by intruders which included encroaching on the decision-making rights of the chiefs, the people's natural leaders. The foundation stone of modern-day judiciary in Ghana was laid in the Gold Coast in the mid-nineteenth century. The next chapter examines the development of the judicial system established on the Gold Coast from 1850 to 1947 and the reactions of chiefs and educated elites to this system.

[271] Griffith, *A Note*, 14.

CHAPTER THREE

THE FIRST SUPREME COURT: STRENGTHENING BRITISH JUDICIAL POWERS, 1850 – 1874

Introduction

1850 was a turning point in the political history of the Gold Coast. That year, the Danes ceded their Gold Coast holdings to the British Crown and left the Gold Coast shores.[272] As a result, the United Kingdom and the Netherlands were the only European countries with territories in Gold Coast. The colony was also separated from British Sierra Leone in 1850, and the former was administered as an "independent" territory,[273] with the establishment of separate institutions of administration – the Executive and Legislative councils. This chapter examines the reasons for the establishment of the first Supreme Court in the Gold Coast in 1853, just three years after its separation from Sierra Leone. It also reviews the composition, powers and functions of the Gold Coast Supreme Court, and traces the expansion and activities of the British judicial system in the Protectorate[274] from 1850 to 1874.

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[272] Convention between Her Majesty and the King of Denmark, for the Cession of the Danish Possession on the Coast of Africa to Great Britain, August 1850," in *Parliamentary Papers*, 43-44; "Convention for the Cession of The Danish Processions on the Coast of Africa to Great Britain," in Metcalfe, *Great Britain and Ghana*, doc 173, 218-219; J.J. Crooks, *Records Relating to the Gold Coast Settlements from 1750 to 1874* (London: Frank Cass, 1973), 321 and Brodie Cruickshank, *Eighteen Years on the Gold Coast* (London: Frank Cass & Co. Ltd., 1966), 206-207.

[273] "Charter under the Seal of the United Kingdom, to provide for the Government of Her Majesty's Forts and Settlements on the Gold Coast," in Metcalfe, doc 169, 212-214. See also Griffith, *A Note*, 14; and Rewar, *Comments*, 2.

[274] The term was used to refer to different geographical locations at different times. Before 1874, it was a reference to the coastal areas which had come under British influence. See David Owusu-Ansah, *Historical Dictionary of Ghana*, 4th ed. (New York: Rowman & Littlefield, 2014), 272.

From Judicial Assessor to Chief Justice

George Maclean's successors as the administrator of British possessions in the colony continued to entrench and expand British judicial powers in the Gold Coast. The immediate successor of Maclean was Brodie Cruickshank who was in turn succeeded by James Bannerman.[275] Cruickshank served as Judicial Assessor or adviser to the local chiefs from 1847 to 1853 and adjudicated over issues within the territorial jurisdiction of the British forts and castles. Maclean`s successors followed the path he had established in the adjudication of justice in the territories. As the Secretary of State, Lord Stanley, explained, they regarded Maclean's predetermined system as a guide for the exercise of the assessor's powers.[276] Sarbah provides a synopsis on the character and administration of Brodie Cruickshank that made him successful as Judicial Assessor in the Gold Coast. Sarbah explains that Cruikshank had excellent knowledge of the customary laws of the people law of the people [277] and that he (Cruikshank) was therefore able to apply that knowledge in the performance of his duties as Chief Justice. Sarbah further explained that Cruikshank understood the laws and customs of the people and the fact that he was also a merchant brought him into close contact with the people.[278] Evidence of the performance of Cruickshank is seen in an extract from Commander Hill's response to the former's resignation letter:

> In accepting your resignation of the acting Judicial Assessor-ship, I have much pleasure in expressing my obligations to you for continuing the duties of the office at my request on my assumption of the Government when I was aware that the urgency of your private affairs required

[275] Goldman, "Fallible Justice," 69.
[276] *Ibid*.
[277] Sarbah, "Maclean," 349-359.
[278] *Ibid*.

> your undivided attention. Feeling perfectly satisfied that this Government and all under its protection have greatly benefited by the zealous, able, judicious and impartial manner in which you have conducted the duties of your office, I much regret that the circumstances as stated in your communication prevent your retaining the appointment, thereby depriving me of the assistance and sound advice you have at all times so kindly and willingly afforded, and for which I feel personally obliged and beg to offer you my sincere thanks.[279]

Unlike Cruickshank, Judicial Assessors from the 1850s did not know much about the customs and traditions of the people in the areas they operated, largely because they were recruited directly from England. As a result, they tended to rely on and apply English Common Law, with clear disregard for the customary laws of the communities in which they worked.[280] Their limited knowledge of the customary laws of the indigenous people negatively affected the performance of their duties and often led to conflicts with some local authorities. The Assessors were, thus, regularly reminded by Governors and the officials, for instance, James Stephen,[281] not to drift towards the excessive dependence on an application of the British Common Law in their adjudication of cases. The judiciary of the Gold Coast under its first Chief Justice had its fair share of challenges, some of which are discussed in the ensuing paragraphs.

The period 1850 to 1874 witnessed an increase in commerce in the Gold Coast and that came with its attendant increase in commerce-related litigation as merchants and local chiefs competed to attract businesses to their

[279] Sarbah, "Maclean," 349-359.
[280] Goldman, "Fallible Justice," 70.
[281] James Stephen was, for a long time, the Permanent Undersecretary in the Colonial Office.

towns and ports.[282] The litigations necessitated the hiring of more magistrates and assessors to be stationed in the various towns to handle disputes arising mainly from trade. The recruitment and stationing of more Justices of Peace in major cities along the coast, however, proved difficult for the British officials because of inadequate funds to pay such personnel.[283] Kimble points out that no financial provision was made for the operation of the complex government institutions established in the Gold Coast after the colony was separated from Sierra Leone.[284] He adds that He added that the annual parliamentary grant was only £4,000[285] and other sources of income were small.[286]

Apart from the difficulty in raising funds to pay the necessary judges, it was even more difficult to fund social services such as hospitals, roads, schools and pharmacies[287] beyond the limits of the forts due to financial constraints in the British administration in the Gold Coast. Even though there were calls for increased budgetary allocations to the British forts and castles, Lord Grey[288] argued that monies for the provision of such services should be generated locally in the territory.[289] Gocking argues that Britain's purchase of Danish forts in the Gold Coast in 1850 was an attempt to increase income to make British possessions self-reliant.[290] He further surmises that the purchase

[282] Goldman, "Fallible Justice," 69-70.
[283] A. N. Allott, "Native Tribunals in the Gold Coast 1844-1927. Prolegomena to a Study of Native Courts in Ghana," *Journal of African Law*, Vol. 1, No. 3 (Autumn, 1957), 163-171.
[284] Kimble, *A Political History*, 169.
[285] Note that the government grant of £4000 for the administration of British possessions had not increased since 1830 when Maclean first took the job as President of the Merchants, even though the areas of influence and the size of administration had increased over the period. See Ward, *Ghana*, 189. Other sources of revenue in the year 1849 were as follows: customs duties, £52; lighthouse dues, £35; permit for landing goods and passports to canoe men, £18.7s.; fines and summons, £976.3s.; miscellaneous receipts, £24.2s. See Kimble, *A Political History*,169.
[286] Kimble, *A Political History*,169.
[287] Ward, *Ghana*, 196.
[288] He was the Secretary of State at the time.
[289] Kimble, *A Political History*, 169.
[290] "See Papers Respecting the Cession to Great Britain of Danish Possessions on the Gold Coast," in *Parliamentary Papers*, 17-46.

was to lessen the opportunities for smuggling, which undermined attempts to raise revenue by taxing imports and exports. It, however, turned out that there was still insufficient funds even after the British takeover of Danish forts.[291] The British Home Office, therefore, proposed that the local people should make some financial contribution which would be used to pay for the social and infrastructural projects in the area around the British possessions in the Gold Coast.[292] Secretary of State, Lord Gray, argued that if local people would have to agree to pay direct taxes if they wanted to enjoy the social benefits that they desired. [293]

A group of chiefs in the areas under British protection, consequently, assembled in Cape Coast on 19 April 1852, at the invitation of Governor Major S. Hill to discuss possible ways of raising revenue in the territory.[294] These chiefs and elders arrogated to themselves the powers of the Legislative Assembly with the authority to pass laws.[295] Accordingly, the chiefs and elders voluntarily agreed that the local people within the Protectorate should make a financial contribution to support the government. As a result, an annual sum of one shilling (1s.) per head for every man, woman and child within the Protectorate was agreed upon by the chiefs.[296] This imposition (of a

[291] Roger S. Gocking, *The History of Ghana* (London: Greenwood Press, 2005), 32.
[292] Kimble, *A Political History*, 169. See also A.B. Ellis, *A History of the Gold Coast of West Africa* (New York: Negro University Press, 1969), 217.
[293] Kimble, *A Political History*, 169.
[294] Ellis, *Gold Coast*, 217; Kimble, *A Political History*, 171 and Ward, *Ghana*, 196.
[295] Crooks, *Records*, 326.
[296] Crooks, *Records*, 325-328; Kimble, *A Political History*, 173 and Gocking, *Ghana*, 32. A similar meeting to that of the chiefs and elders in Cape Coast was held at Christiansburg Castle in Osu by chiefs from (Akra) Accra, Akyem, Akwapim and beyond the Volta River. The chiefs and elders in this second meeting supported the decision of the Cape Coast Assembly. See Ward, *Ghana*, 196.

direct tax) on peoples in the Protectorate became known as the Poll Tax Ordinance of 1852.[297] The Ordinance stated, inter alia:

> 4. That … the chiefs and head-men do, for themselves and their people, voluntarily agree to pay annually to the Government the sum of one shilling sterling per head, for every man, woman, and child residing in the districts under British protection.
> 6. That…the collection of his tax be confided to Officers appointed by His Excellency the Governor, assisted by the chiefs, who in consideration of annual stipends to be paid to them by the Government, agree to give, …their cordial assistance and the full weight of their authority in support of this measure…
> 11. That the revenue derived from this tax…be devoted to the public good in the education of the people, in the general improvement and extension of the judicial system, in affording greater facilities of internal communication, increased medical aid, and such other measures of improvement….[298]

The chiefs also agreed to assist designated officers in collecting the money.[299]

It has been argued, and this was indeed clearly captured in the Ordinance, that the chiefs and elders undertook to pay the tax because of the benefits that they and their subjects stood to gain from paying,[300] with the major incentive being their continued enjoyment of protection from the British.[301] Revenues from the taxes were to be used to pay stipends to chiefs, educate the people, generally improve and expand the judicial system, provide better facilities for internal communication, enhance medical assistance and promote the common interests of the citizenry.[302] A similar meeting of the chiefs and headsmen of the people of the Eastern Province of the Gold Coast at the Christiansburg Castle also ended with the chiefs agreeing to pay the

[297] Crooks, *Records*, 325; Allott, "Native Tribunals," 166; Ellis, *Gold Coast*, 217.
[298] Crooks, *Records*, 326-328.
[299] *Ibid*., 326-328.
[300] *Ibid*., 326.
[301] Ellis, *Gold Coast*, 217.
[302] Crooks, *Records*, 325; Ward, *Ghana*, 196-197.

tax.[303] Although the assembly of chiefs was not the Legislature and so did not have any legal authority to impose such tax on their people, their resolution received the sanction of the British Home Government with the Governor assenting to it.[304] It is instructive to note that collection of taxes went smoothly in the first year but was aggressively opposed in subsequent years and resulted in rioting by the people of Akyem, Akwapim, Krobo and Accra.[305] The determination of the local people not to pay the tax[306] in subsequent years affected revenue generation in the colony and hence affected the recruitment and posting of the much-needed magistrates in the major towns in the Protectorate.

There were no immediate changes to the Gold Coast's judicial structure after the territory was separated from Sierra Leone. Therefore, serious crimes were tried in Sierra Leone, which was the arrangement before the separation.[307] The British Parliament, however, passed yet another ordinance on 26 April 1853 titled "An Ordinance for the Establishment of a Supreme Court of Civil and Criminal Jurisdiction within Her Majesty´s Forts and Settlements on the Gold Coast,"[308] also known as the Supreme Court Ordinance of 1853.[309] The ordinance established a Supreme Court headed by a Chief Justice. The Chief Justice had the power to decide civil and criminal

[303] Reindorf, *History of the Gold Coast*, 332.
[304] Crooks, *Records*, 328.
[305] Kimble, *A Political History*, 175-181; Reindorf, *History of the Gold Coast*, 333-335; and Ellis, *Gold Coast*, 221-223.
[306] See Boahen, *Ghana*, 45-46, and Buah, *Ghana*, 82-83 for reasons why the Poll Tax Ordinance became unpopular and eventually failed.
[307] Kimble, *A Political History*, 195. It is important to add that Maclean had refused to observe this procedure. His reasons were that he had no means of communicating with Serra Leone, nor the funds to meet the expenses. See "Maclean's Letter to the Committee of Merchants," 30 November 1936 in Metcalfe, *Great Britain and Ghana*, 147-149.
[308] "The Supreme Court Ordinance, April 1853, in Metcalfe, *Great Britain and Ghana*, doc 189, 242-244; Allott, "Native Tribunals," and Ward, *Ghana*, 196.
[309] Griffith, *British Courts*, 15. See also Rewar, *Comments*, 4.

cases in British forts and settlements on the Gold Coast.[310] The Ordinance also stipulated that:

> The Supreme Court shall be holden (sic) and presided over by a Chief Justice…who shall …be a barrister-at-law of one of the Inns of Court at Westminster….
>
> The said Supreme Court shall …within the said forts and settlements, and within this jurisdiction, have cognizance of all pleas, civil and criminal, and jurisdiction in all cases whatsoever, ….and the said Chief Justice…shall have and exercise such and same jurisdiction and authority …as the judges of the Courts of Queen's Bench…in England…
>
> The said Supreme Court shall and may inquire of, hear and determine all treasons, piracies, murders, conspiracies, and such other offences, of what nature and kind whatsoever committed, or shall be committed …according to the common course of the laws of the realm of England, and not otherwise; and that all persons convicted of the same would be subject and liable to and shall suffer all such and same pains, penalties, and forfeitures, as by any law or laws in force.
>
> The said court shall be held at Cape Coast Castle or such other of her Majesty`s forts on the Gold Coast, and at such times and so often as the Governor and Commander-in-Chief of Her Majesty`s forts and settlements for the time being….
>
> That … the trial of such issue or issues may be heard by the said Chief Justice and a jury of not less than six men…whose unanimous verdict shall, to all intent and purposes, be as valid and binding as the verdict of 12 men who have been in the same case.[311]

By Section Three of the Ordinance, the Supreme Court was made a "Court of Record, and given a similar jurisdiction to that of the English Courts of the Queen's Bench."[312] This ordinance provided for the appointment of James Colman Fitzpatrick, then Judge Assessor, as the first Chief Justice of the

[310] Rewar, *Comments*, 3. See also Griffith, *British Courts*, 15.
[311] "The Supreme Court Ordinance, April 1853," Metcalfe, *Great Britain and Ghana*, doc 189, 242-244.
[312] Rewar, *Comments*, 3.

newly created Gold Coast Supreme Court.[313] The ordinance also introduced changes in the judicial system in the Gold Coast since it introduced a more regular court system under which trials were to be conducted in the English manner, before a jury, even though the Chief Justice was to assist the local chiefs in the adjudication of justice.[314] The Ordinance which established the first Supreme Court in the Gold Coast also made provision for aggrieved parties in a matter within the Protectorate to appeal the decision to the Chief Justice. An appeal was heard by an appellate body consisting of the Governor and members of the Legislative Council sitting with the Chief Justice.[315] Thus, there was a distinction between the jurisdiction of the court in the British territories (i.e., in the British forts and castles) and jurisdiction over people in the protected states and communities around the forts and castles. It is important to emphasize that the Judicial Assessor, who had been appointed Chief Justice, had jurisdiction over two areas: "…as Judicial Assessor appointed by the Crown, Mr. Fitzpatrick dealt with cases *outside* the forts; as Chief Justice appointed under Ordinance, he dealt with cases *within* the forts."[316]

The authority and role of the Judicial Assessor and Chief Justice were kept separate in the period after the creation of the Supreme Court. As a result, the Chief Justice sat alone in one court but in others he (as Judicial Assessor) sat with chiefs, or he sat alone on appeal cases from local courts with

[313] The Supreme Court Ordinance, April 1853, Metcalfe, *Great Britain and Ghana*, doc 189, 243; Griffith, *British Courts*, 15; and Kimble, *A Political History*, 196.
[314] Goldman, "Fallible Justice," 71; Kimble, *A Political History*, 196.
[315] "The Supreme Court Ordinance, April 1853," in Metcalfe, *Great Britain and Ghana*, doc 189, 243; Ward, *Ghana*, 196; Goldman, "Fallible Justice," 71.
[316] Griffith, *British Courts*, 15.

magistrates acting as his assistants.[317] Another distinction was that as Chief Justice, he administered justice based on English Law but made up the rules as he thought fit when he sat as Judicial Assessor.[318] The establishment of the Supreme Court of Gold Coast and activities of the officers of justice gradually undermined the authority of the courts of local chiefs. The usurpation of the judicial authority of local chiefs was further underscored by the provision of an Order in Council in 1865 which extended the authority and jurisdiction of the British court outside the walls of British forts and settlements in every case without co-operating with local chiefs. The Order in Council provided:

> (a) that all Courts and Magistrates authorised to act within the forts might exercise in the "Protected Territories" all power and jurisdiction in matters civil and criminal which Her Majesty might exercise without the co-operation of any native chief or authority, especially in bankruptcy, in the same way as if such matters had arisen within the first.[319]
> (b) that in all other matters, civil and criminal, in the Protectorate Territories, the Assessor to the native chiefs should have all power and jurisdiction acquired by her Majesty in such territories;[320]
> (c) that the Governor, might by Ordinance make regulations with respect to the exercise of the above-mentioned powers and jurisdiction, provided that equitable regard be paid to local customs;[321]

In sum, the effect of the Order was to give the Supreme Court, which formerly had authority only within the forts, jurisdiction outside the forts without the co-operation of any chief.[322] Kimble points out that although courts were instructed to take full account of local customs to the extent that they were

[317] Griffith, *British Courts,* 15.
[318] Griffith, *British Courts*, 15; and Goldman, "Fallible Justice," 72.
[319] Allott, "Native Tribunals," 167.
[320] Griffith, *A Note,* 16.
[321] *Ibid*, 16.
[322] See Griffith, *British Courts,*16; Kimble, *A Political History,* 198; and Goldman, "Fallible Justice," 71-72.

consistent with Christianity and natural justice, the influence of English law was rather widespread in the administration of justice.[323]

The distinction between the local courts and the British courts drifted into one with the coming into force of the 1856 Order in Council. Whereas the local courts restricted themselves to adjudicating civil matters, that changed from the late 1850s when that power was almost taken away from them entirely.[324] The Chief Justice and Judicial Assessor in 1865, Mr. W. Hackett, indicated that:

> he no longer sits in different courts, the natives have never sat with him, that it is impossible for any English judge sitting with a native chief to administer justice, and he particularly says that the only difference between his office and the office of a judge …is that in addition to his ordinary judicial duties he sits as an appellate court from the decisions of native courts.[325]

This change brought local chiefs into conflict with the Chief Justice and the Governor.[326] For instance, the objectivity and fairness of James Colman Fitzpatrick as Judicial Assessor and, later, Chief Justice was constantly questioned by the chiefs and elders of Cape Coast and, in some instances, some officials of the British government in the Cape Coast Castle. He was accused of arbitrariness on many occasions in the discharge of duties.

In August 1853, the chiefs and residents of Cape Coast petitioned the Lieutenant Governor of the Cape Coast Castle, Brodie Cruickshank, on matters relating to the work of the Judicial Assessor/Chief Justice (James Colman Fitzpatrick). They condemned the conduct of Mr. James Colman Fitzpatrick and accused him of engaging in activities which would bring

[323] Public Records and Archives Administration Department (PRAAD), ADM 5/3/16, 4.4.53, 12; Kimble, *A Political History,* 199.
[324] Allott, "Native Tribunals," 167.
[325] Griffith, *British Courts,* 15; and Goldman, "Fallible Justice," 72.
[326] Gocking, "British Justice," 5.

conflict between the British administration in the territory and the local authorities. They contended that his actions were likely to "…do away with that good understanding which had existed between them [the British and traditional leaders] from time immemorial, and … undo all the good that has been done by the British Government here for many years…"[327] The petitioners catalogued acts of the chief judge which they considered to be cruel, corrupt and unprofessional, and on the basis of which they demanded his removal. They claimed, among other things, that:

> ... a proof of this melancholy fact was exemplified in 1850 in his tyrannical treatment towards the people of Annomaboe (sic), which aroused the indignation of the populace against him, whose behaviour towards him on that occasion cast a great reflection upon his character. This might have led to disastrous results, had it not been for the interference of the late Governor Winniett…who disallowed the monstrous fine of 100oz. of gold dust, which he, Mr. Fitzpatrick, had imposed upon them for the usage he had received from them.
> That on reference to certain correspondence from the late Francis Swanzy, Esq., to the Colonial-office in 1850-51, respecting the misdoing of Mr. Fitzpatrick, especially the unparalleled cruelties and oppression which the chief of Bahynee (sic), of Apollonia, and his people suffered from his hands … it will be seen at large of what an unlawful extent he abused the authority vested in him as Governor and Judge of these settlements during the period already averted to.
> That during Mr. Fitzpatrick´s temporary absence in England…the duties of the judicial assessor's department were carried on by magistrates, the country enjoyed that peace and tranquility which it had lost ever since Mr. Fitzpatrick came into office.
> That on his return to the country he resumed his duties, he has become more arbitrary and arrogant, and presumes needlessly and unwarrantably to interfere with the native constituted authority, and the prerogative of the native kings

[327] "A Petition of the Chiefs and People of Cape Coast against James C. Fitzpatrick," 20 August 1853, in *Parliamentary Papers,* 130-131.

> and chiefs, which had never been resigned by them by any treaty or agreement with the government.[328]

The petitioners appealed to the Lieutenant Governor to transmit their petition in its entirety to the Secretary of State for the Colonies so that the Judicial Assessor would be removed from office.[329] Even while they awaited a response to their request, the petitioners resorted to protest by refusing to appear before the court of Fitzpatrick.[330] Brodie Cruikshank appears to have given some credibility to the accusations against Mr. Fitzpatrick by making some damning comments about Mr. Fitzpatrick in a cover letter to the Secretary of State. Lieutenant Governor Cruickshank admitted that there were challenges with the way Fitzpatrick discharged his duties as Judicial Assessor in the Gold Coast. Cruickshank wrote that:

> I consider the manner of this trial both unprecedented and injudicious, and very likely to excite a sensitive people, tenacious of forms and usage. Hitherto the manner of dealing with a delinquent king or chief has been to summon him before the governor or assessor, to reason with him, to reprimand him, to fine him, or even to imprison him, as the case might seem to demand; or he has just been tried of a jury of his peers, presided over by the governor or assessor; but to bring him to trial, as in the case in question, before a jury composed partly of his own subjects, and partly of Europeans, was, I do conceive, a great indignity. It was also injudicious.[331]

James Colman Fitzpatrick, in a response to the accusations made against him, denied any wrongdoing despite the admission by the Lieutenant Governor of the Cape Coast Castle that some wrong was done on the part of

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[328] "A Petition of the Chiefs and People of Cape Coast against James C. Fitzpatrick," 20 August 1853, in *Parliamentary Papers,* 130-131.
[329] *Ibid*.
[330] "Dispatch from Lt. Governor Cruickshank to the Duke of New Castle," 10 September 1853 in *Parliamentary Papers,* 134.
[331] *Ibid.*, 134.

the Judicial Assessor. Mr. Fitzpatrick alleged in a letter that many of the signatories of the petition were people who did not know or understand why they signed the petition. In addition, he claimed that some of the signatories to the petition signed the petition just to get back at him because they had a personal vendetta against him. In the letter, Mr. Fitzpatrick made the following counter-claims against the petitioners:

> As each of the charges was read, the complainant was called upon to make it. The first, a man Figmassie, was fined 100 ounces of gold in 1848 by Mr. Fitzpatrick for committing human sacrifice; he had killed one man and three women (as shown by the records of the court) on the grave of some relative; he stated his complaint at some length; he thought he should only have been fined 1oz. 8.
>
> The next, a man named Dutton, …in 1847 a number of persons came from Wassau (sic) to complain of extortion and attempted murder, on the part of a chief named Djiaoo (sic). They came to Dutton …and it was immediately after Mr. Maclean's death, Dutton said there was no judicial assessor and that he would settle the palaver for them; he then sent them to his farm in the bush and employed them for his own benefit, and sent messengers from time to time to Wassau (sic) for money…. In the year 1849, it came to the ear of Mr. Fitzpatrick how these people had been treated … he accordingly had Djiawoo (sic) and Dutton brought to trial and punished.
>
> The next one was a man named Coffee Lomah, a gold taker to a Mr. Hagun, who was imprisoned in 1850 for non-performance of a contract entered into with a Dutch subject for the purchase of Swedish iron bars….[332]

The signatories of the letter of defence argued that the aggrieved petitioners were people who were angry because they had been punished under the law by the Judicial Assessor and so were accusing him falsely because the latter upheld the law, much to their displeasure. They claimed that "this was the real cause of this petition and clamour for Mr. Fitzpatrick's removal because those

[332] "Letters Transmitted from Governor Hill to the Duke of Newcastle in Reference to Petition for the Removal of Mr. James C. Fitzpatrick," 26 October 1853, Sub-Enclosure 6, to Enclosure 2, in No. 14, in *Parliamentary Papers,* 147-49.

people knew that he would do his duty."[333] The letter further posited that Mr. Fitzpatrick had "administered justice impartially between all, rich or poor, high or low, and that his conduct was appreciated by the natives of the country [which] was shown on the trial of Chibbo (sic) and Gabrie (sic) … when all assembled …said they liked the English rule; that if they were fined or punished it was according to justice, not tyrannically…."[334] The Judicial Advisor described the claims against him as an exaggeration of things that happened on the Gold Coast.

It is worth emphasizing that Mr. Fitzpatrick was also accused, on a number of occasions, by Brodie Cruickshank and the families of British officials in the Gold Coast of taking possession of unrepresented estates[335] of the dead.[336] Hence, even though the Assessor had explanations for the charges in the petition against him, reports of his conduct by a colleague, the Lieutenant Governor, were indicting of his administration as Judicial Assessor and Chief Justice. Mr. James C. Fitzpatrick, subsequently, applied for twelve months leave of absence[337] after a prolonged period of fending off the barrage of accusations against him. He noted that his request was because of his "state of health."[338] His request was, however, denied because the Duke of Newcastle could not "…find any competent person willing to take your duties

[333] "Letters Transmitted from Governor Hill to the Duke of Newcastle in Reference to Petition for the Removal of Mr. James C. Fitzpatrick," 26 October 1853, 148.
[334] "Letters Transmitted from Governor Hill to the Duke of Newcastle," 149.
[335] Unrepresented estate refers to the estate of people who died intestate in the Gold Coast.
[336] See "Letter of Protest by Brodie Cruickshank against Mr. James C. Fitzpatrick´s Administration of the Estate of the Late James Hervey," Encl.1, in No.4, 25 July 1853, in *Parliamentary Papers,* 114; "Letter from Brodie Cruickshank to the Duke of Newcastle Complaining of Mr. James C. Fitzpatrick´s Administration of the Estate of the Late James Hervey," Encl.3, in No.4, 27 July, 1853, in in *British Parliamentary Paper,* 118.
"Letter from "Letter from the Acting Governor to the Duke of Newcastle Complaining of Mr. James C. Fitzpatrick´s Administration of the Estate of the Late Mr. Cloutson," Encl.1, in No.3, 2 August 1853, in *Parliamentary Papers,* 117.
[337] "Letter from James C. Fitzpatrick to the Duke of Newcastle," 23 March 1854, in *Parliamentary Papers,* 158.
[338] *Ibid.,* 158.

for a twelvemonth…."[339] The Judicial Assessor and Chief Justice, eventually, resigned in May 1854, after more than six years in charge of the judiciary.[340]

Two ordinances were introduced in 1858 to further establish the authority of British courts in the Gold Coast. These were the Rules of Court Ordinance and the Insolvency Ordinance. The Insolvency Ordinance imposed the provisions of the English Insolvency Act on the settlements in the British protected area.[341] It provided African creditors with the opportunity to seek redress under English law and that further undermined the customary courts since the local people preferred going to the British courts for redress. Consequently, the prominence and importance of the traditional rulers were further diminished.[342]

It is evident from the foregoing that by 1860, the British judicial system in the Gold Coast had been heightened at the expense of the courts of the chiefs and headmen. The Governor of the Gold Coast in 1857, Sir Benjamin C. C. Pine, observed that the interference with the judicial powers of chiefs had a harmful effect on British influence in the Gold Coast territory, even though he felt powerless to rein in the judges.[343] He notes that:

> …there has been too much interference with the authority of the native chiefs, and this is one of the causes of the decline of our influence. This interference has been exerted by ignoring the native tribunals, and by allowing the chiefs to be summoned before our[344] courts in comparatively trivial cases. The theory

[339]"Letter from F. Peel, Esq., M.P., to James C. Fitzpatrick Esq.," 28 April 1854, in *Parliamentary Papers*, 159.
[340] See: "Letter from James C. Fitzpatrick to the Duke of Newcastle," 19 May 1854, in *Parliamentary Papers*, 161.
[341] Goldman, "Fallible Justice," 72; and Kimble, *A Political History*, 5.
[342] Goldman, "Fallible Justice," 72.
[343] Confidential Letter from Lt. Governor Pine to Governor Labouchere in Sierra Leone, 31 August 1857, in Metcalfe, *Great Britain and Ghana*, doc 207, 262-264; and Goldman, "Fallible Justice," 73.
[344] Confidential Letter from Lt. Governor Pine to Governor Labouchere in Metcalfe, *Great Britain and Ghana*, doc 207, 262-264.

> that all subjects are equal in the eyes of the law requires modification in this country. We must not forget that our position required [us] to uphold, while we control, the native authorities….[345]

Lt. Governor Pine, however, had some suggestion and caution about the activities of the British in the territory. He stated that:

> …. If the country were directly subject to the Crown, and the British magistrates were scattered all over it, the sooner the native authority [were]destroyed, the better. But as this is not the case, we must be content to keep peace, to put down practices revolting to humanity, to protect life, to punish important crimes….[346]
>
> The exercise of the judicial authority…requires the ability of a statesman rather than the learning lawyer; and I cannot help thinking that Mr. Maclean, with his great tact and knowledge of native character, was better fitted to exercise it, than the most learned lawyer sent directly from England.[347]

Thus, it was apparent that the appointment of people with legal training to be in charge of the judiciary in the Protectorate did not improve the exercise of judicial authority. It rather made things worse since the "professionals" in the legal vocation did not possess the requisite skill to conduct their trade in the colony.

British Courts vs. Local Courts: King Aggrey of Cape Coast

Sir. C. C. Benjamin Pine provided some more information on the mode of operation of the British judicial which often resulted in conflict between the Chief Justice and the chiefs.[348] He indicated that:

> In purely judicial matters, the person complaining takes out a summons from the court against the defendant…and if not obeyed, constables, or, in some cases, a military party, are

[345] Confidential Letter from Lt. Governor Pine to Governor Labouchere in Metcalfe, *Great Britain and Ghana*, doc 207, 262-264.
[346] *Ibid.*
[347] *Ibid.*
[348] Pine's revelation about the nature and operation of the courts was contained in a confidential letter to Labouchere, Governor of Sierra Leone, who had oversight authority over the Gold Coast.

> sent to enforce it. In criminal cases…it is frequently necessary to send military parties to bring down the offenders. Again, in cases of a political character…it is sometimes necessary to send armed parties to the spot.
>
> Mr. Freeman mentions among the causes of discontent, that it has been usual, of late, to refer almost all cases, in which chiefs were concerned, to police courts of the coast towns…for the decision of questions, which ought to be and in former times were, settled by the friendly arbitration of the Governor himself.[349]

The chiefs and headmen of the territories in the Protected area, obviously, did not take kindly to the extension and consolidation of judicial authority by the British, particularly, the commandeering of the authority of the chiefs' courts. The natural leaders of the people challenged the existing condition because as Pine put it, the British court officials appropriated the rights and authority of the chiefs to adjudicate matters of contention.[350] A case in point was the conflict between King John Aggrey of Cape Coast and the British judicial system as was practised in the Gold Coast in the 1860s. The relationship between King Aggrey of Cape Coast and Governors Pine and Conran was hostile because the King acted in ways which were considered to be encroachment on British power.[351] Examples of those activities included King Aggrey's decision to imprison his subjects without appeal to British courts[352] and his intention to establish a small police force. The judicial powers of the king were called into dispute when a case before his court was overturned by

[349] "Confidential Letter from Lt. Governor Pine to Governor Labouchere, 31 August 1857," in Metcalfe, *Great Britain and Ghana,* doc 207, 263.
[350] *Ibid.,* doc 207, 263.
[351] See: "Letter from John Aggrey to Richard Pine, 16 March 1865" in Metcalfe, *Great Britain and Ghana*, doc 245, 308; Kimble, *A Political History*, 201-205.
[352] John Aggrey was enstooled as King of Cape Coast in 1865. He set up his own court which was presided over by Joseph Martin. An African agent of the European firm, summoned before the King Aggrey's court, refused to recognize its authority and, therefore, resisted arrest. See Metcalfe, *Great Britain and Ghana*, n. 308; Kimble, *A Political History*, 201-205.

the Chief Justice.[353] King Aggrey did not take kindly to the action of the Chief Justice and, thus, attempted to reassert his right to exercise his own justice under the walls of the castle.[354]

John Aggrey was enstooled King of Cape Coast in February 1865 and he proceeded to set up his own court which was presided over by one Joseph Martin.[355] One George Blankson Wood, an African agent of one of the European firms, refused to recognize the authority the King's court and hence disobeyed a summon to appear before the court and also resisted arrest. He, subsequently, appealed to the British court which granted his appeal even though he (George Blankson Wood) was not a British subject. The Governor justified his action against the decision of the king's court by declaring that he (the Governor) could not allow an "irresponsible" court to exercise the power of imprisonment in any case.[356] He further indicated that he would only encourage the operation of a court of arbitration or conciliation for the King of Cape Coast and others, whose powers he (the Governor) would define and who shall be responsible to the British courts of appeal.[357] Joseph Martin who was the judge at the King's court was summoned before the Judicial Assessor. He was charged and convicted for "technical assault" and was, therefore, fined £5 which was later paid by King Aggrey.[358] The power of the King of Cape Coast and all other chiefs in the Protectorate was severely curtailed and restricted by the

[353] Kimble, *A Political History*, 201-205.
[354] *Ibid.*, 193.
[355] He was the Magistrate at king Aggrey's court in Cape Coast. See Kimble, *A Political History*, 201-205.
[356] "Dispatch from Governor Pine to Right Honourable Edward Cardwell," 7 April 1865, in *Parliamentary Papers*, 356. The Governor's position was supported by Ord, who informed the Select Committee in 1865 that the British did not recognize the right of the King of Cape Coast or any other's right to imprison people throughout the Protectorate. See Kimble, *A Political History*, 202.
[357] "Dispatch from Governor Pine to Right Honourable Edward Cardwell," 7 April 1865, in *Parliamentary Papers*, 355-356.
[358] Kimble, *A Political History*, 202.

establishment and operation of the British courts and the orientation of the Governor of Cape Coast Castle. The Gold Coast chiefs were stripped of the power to imprison offenders within their jurisdictions since the power of imprisonment was vested only in the British court in the castle.[359] The influence of chiefs in their dominions was, therefore, destroyed and they were thus rendered powerless. The height of the humiliation of the chiefs was seen in their own imprisonment by British officials whenever the former were considered to have offended British laws.[360]

The Governor, the British institution in the Gold Coast and in Europe resorted to the use of what could best be described as "psychological blackmail" to get the chiefs to accept the state of affairs. Governor Richard Pine, for instance, stated in a letter to the Right Honourable Edward Cardwell that "…I spoke at length on these subjects, and urged all present that this was the moment for all others to decide whether I should report to you, Sir, that this portion of Western Africa decided to throw off the protection of England [because they refused to submit to the established British court system]…"[361] The Governor considered King Aggrey as the only one (ruler) in the Protectorate to refuse appeals, and that his actions deprived the people of Cape Coast of the aid and support that the British had provided to them.[362]

King Aggrey protested against the conduct of the colonial authorities to hear an appeal and thus overturn a decision of his court. He also resented

[359] Kimble, *A Political History*, 300-301.
[360] *Ibid.*
[361] This was in a confidential letter from Richard Pine to Edward Cardwell. Pine was reporting the proceedings of a meeting he had with some chiefs within the Protected area. See Dispatch from Governor Pine to Right Honourable Edward Cardwell, 7 April 1865 in *Parliamentary Papers*, 356.
[362] Dispatch from Governor Pine to Right Honourable Edward Cardwell, 7 April 1865 in *Parliamentary Papers*, 355-356.

the continuation of a litigation in the Judicial Assessor's court against the judge that he had appointed for his court. In a series of letters to communicate his displeasure to the Governor, King Aggrey traced the origins of British usurpation of the judicial power of the chiefs of the Gold Coast to the time of George Maclean. He accused Captain George Maclean of depriving kings, chiefs, and headmen of their authority to govern their own subjects.[363] King Aggrey argued in a letter to the Governor that:

> ... Governor Captain Maclean … in a peculiar, imperceptible, and unheard of manner, wrested from the hands of our kings, chiefs, and headsmen, their power to govern their own subjects. The Governor, placing himself at the head of a handful of soldiers, had been known …to travel to the remote parts of the interior for the purpose of compelling kings, chiefs, and headsmen…to obey his Excellency's summons, or to comply with His Excellency's decrees. A blow was thus firmly, slowly and persistently struck, and the supreme authority, power, and even influence of the kings, chiefs, and headsmen, gave way to the powerful Governor Maclean.
>
> …A white face, a red jacket, was, in consequence, a terror on the Gold Coast…and very kings were frightened into making concessions, compliances and obeisance as degrading in the regal office as affecting the royal character, authority and income. In order to gain his point…the Governor spared no efforts to adopt measures calculated to breed disaffection, disloyalty disobedience and consequent estrangement in the subject toward his lawful king. A king was regarded as not above the reach of the then established Court of Justice, and any one individual subject was placed on a footing with his sovereign, as equally as the 'King is less than all,' perhaps forgetting that it is only when the king has violated the fixed and essential principles of the constitution of a nation that a people, in the absence of any

[363] "Letter from King Aggrey to Governor Richard Pine," 16 March 1865, in Metcalfe, *Great Britain and Ghana*, doc 245, 308.

> higher tribunal to appeal to, might lawfully do themselves right.
>
> The Governor constituted himself as the people. Complaints of every description from the subject were sustained against the king, and the king was not infrequently placed in the dock and fined or imprisoned or (hardly credible) flogged for trivial offences. Many a subject was encouraged and countenanced to throw off with impunity their very allegiance – an allegiance which could not well be disowned and ignored and denied without endangering the security of the king…. Hence the threatened overthrow of the rights of the native kings and chiefs, hence the ´servility and delusion and puerile confidence in Governors and the indifference to liberty, deep-seated in the natives here on the Gold Coast generally; and hence the alleged continued practice…that the decisions of …of the kings and chiefs of Cape Coast and of the interior have been and are invariably subject to reversal…´[364]

The king further complained about the kind of judicial system exercised in the British courts and explained how efficient the local courts operated even before the coming of Maclean:

> If all the proceeding and the witnesses as required be transferred from my court to your Excellency and the Judicial Assessor, your Excellency or Judicial Assessor may be both party and judge…. The [king's] court … is not irresponsible. It is responsible to the king for its acts. Well has it been said over and over again, that Cape Coast, in the eyes of the law, is not British territory. It is, therefore, necessary for me to be given to understand whether the proceedings complained of as unlawful and repugnant to Christianity and natural justice….[365]

He traced the origin of his court and the objection that he and his people had about the gradual erosion of the independence of his court. He noted that:

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[364] "Letter from King Aggrey to Governor Richard Pine," 16 March 1865, in Metcalfe, *Great Britain and Ghana*, doc 245, 308-309.
[365] *Ibid.*, 309.

> The king's court [the native court] is not of yesterday. From time immemorial it has existed, and it even existed before Cape Coast Castle itself was erected, and the ground on which the castle stands was originally taken from my ancestors at an annual rent…. We have already protested against…the inhabitants of Cape Coast and other places being regarded as British subjects…. On what grounds your Excellency holds George Blankson Wood [the accused in the matter at hand] as a British subject, I cannot say and perhaps I dare not ask. If, as the Queen of England's representative, you are intended to act as my adviser, and if, as a special adviser, you had acknowledged George Blankson Wood as my subject and tender[ed] counsel where the proceedings complained of were repugnant to Christianity and natural justice, I might have conscientiously fallen into your views…
>
> I cannot but apprehend that serious results are likely to arise from the policy adopted by your excellency…. Meanwhile, I feel obliged to transfer the matter to Her Majesty's Government in England … especially as we understand a committee of the House of Commons will be assembled this session … to inquire into the state of affairs of the Gold Coast….[366]

The King was the first person in the Protectorate to publicly oppose British intrusion on the powers of chiefs on the Gold Coast.[367] He asked for the definition of the relationship between the local courts and that of the British magistrates, and between him and the other chiefs and the Governor.[368] Kimble states, and rightly so, that the opposition of King Aggrey illustrated evidently that British jurisdiction and the full power of the chief could not, ultimately, coexist and that it was only a matter of time before others learned that too.[369]

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[366] "Letter from King Aggrey to Governor Richard Pine," 16 March 1865, in Metcalfe, *Great Britain and Ghana*, doc 245, 309.
[367] Boahen, *Ghana*, 48.
[368] *Ibid.*, 47.
[369] Kimble, *A Political History*, 193.

The Governor argued that King Aggrey was ignorant, stubborn and insolent to him and insisted that he (the King) retracted and apologized for his disrespectful and offensive communication.[370] W. Hackett, who was the Chief Justice and Judicial Assessor at the time, expressed surprise about the position of King Aggrey. Hackett explained that Aggrey's posture was the first instance in which the supremacy of British tribunals on the Gold Coast had been disputed.[371] He, subsequently, advised the Governor not to be swayed by Aggrey's position and rather professed that:

> …the jurisdiction now claimed by the British Court is one which has been enjoyed and exercised by it, certainly ever since the time of Mr. Maclean, if not longer, and that the chiefs, headmen and natives of the protectorate generally have always acknowledged this jurisdiction. If the claims of the king of Cape Coast be conceded in this case, British influence in the Protected Territories is at an end, and the office of Judicial Assessor becomes particularly useless.[372]

The Judicial Assessor dismissed the conduct of King Aggrey as being an insignificant expression of the intrigues of a few discontented people among the townspeople and expressed conviction that the people of the Protectorate, generally, submitted cheerfully to British authority. He concluded by advising that the decision taken by the British court and the Governor on the present matter should be upheld since it was taken based on the jurisdiction which they already enjoyed.[373] It is quite ironic for Governor Pine, who seemed to have, earlier, bemoaned what he considered to be British

[370] "Dispatch from Governor Pine to Right Honourable Edward Cardwell," 7 April 1865, in *Parliamentary Papers*, 355.
[371] "Letter from W. Hackett to R. Pine," 22 May 1865, in Metcalfe, *Great Britain and Ghana*, doc 246, 309-310.
[372] *Ibid.*
[373] *Ibid.*, 310.

interference in the authority of chiefs, to denounce the authority and legitimacy of King Aggrey's court.

It is evident from the foregoing that the British judicial system had been fully established in the Gold Coast, albeit illegally, by the 1860s and was considered superior to the local courts. Unfortunate as that arrangement may seem, it is obvious that the claim of superiority of the offices of the Judicial Assessor and Chief Justice was not grounded on any law or acquired through conquest or secession. On the contrary, the high status of the British courts came through the subtle acts of Maclean and his successors which were not vehemently opposed by the kings, chiefs and headmen in the states along the coast. When asked whether the disregard of the right of traditional rulers to imprison their subject did not amount to "assuming the sovereignty of the chiefs,"[374] Colonel H. St. George answered in the affirmative and added that it was with the acquiescence of the chiefs. He was further asked whether his response to the question meant that the assent of the King of Cape Coast and other chiefs had been received. His reply was that the assent was "implied."[375] He added that the right has been assumed and never been contested. The King of Cape Coast is the first person who has ever, to my knowledge, doubted our right to protect the whole of the natives of Cape Coast from imprisonment at the hand of their masters.[376] The fact that he admitted that gaining the consent of the chiefs was implied is an indication that the British court in the Gold Coast was clearly acting arbitrarily and there was no legal backing to their arbitrariness. It had gone out of its mandate and that was what king Aggrey

[374] Kimble, *A Political History*, 202.
[375] *Ibid.*
[376] *Ibid.*

protested. King Aggrey refused to apologize to the Governor because he rejected the claim that his conduct was disrespectful. He rather accused the Governor of insulting him in his (the Governor's) letters.

The King further clashed with the Administrator of the Cape Coast Castle, Colonel E. Conran, in 1866 when the latter released several people imprisoned by the former following personal petitions to the British government. King Aggrey protested against that action in clear unequivocal terms. He wrote in a letter to Conran:

> The time has come for me to record a solemn protest against the perpetual annoyance and insults that you persistently and perseveringly continue to practice on me in my capacity as legally constituted King of Cape Coast… however much you wish to have me and my people under martial law, you will never have that pleasure… it is impossible for me to endure your tyranny, annoyances and abuse any longer, nor will I be subject to the disunion that you are daily endeavouring to create amongst my chiefs and elders.[377]

The Governor was unhappy with the position taken by Aggrey and, hence, renounced him as King of Cape Coast.[378] Subsequent events made the British governments consider King Aggrey to be an insubordinate person even though what he did was to be the spokesperson, not only protesting the British usurpation of the judicial powers of the chiefs but also the discontent of the townspeople about the presence of British troops which provoked riots.[379] King Aggrey launched protests against what was described as the "arbitrary system of British rule."[380] He was, eventually, accused of engaging in acts of

[377] Boahen, *Ghana*, 47.
[378] "Dispatch from Governor Pine to Right Honourable Edward Cardwell," 7 April 1865, in *Parliamentary Papers*, 355-456. See also Kimble, *A Political History*, 355-356.
[379] Kimble, *A Political History*, 212.
[380] *Ibid.*, 216.

sedition and was deposed, imprisoned and later exiled to Sierra Leone after prolonged bickering between him and the colonial officials on the Gold Coast.[381] Colonel E. Conran[382] also closed the King's court in 1866[383] because King Aggrey's actions were considered to be "an encroachment on the British monopoly of criminal jurisdiction in Cape Coast."[384] Defiance towards the capricious use of judicial power by the British was also demonstrated in Anomabo, Abora, Gomoa, Agona, Wassa and Accra. For instance, in 1866, the King of Anomabo, Kow Amonu, refused to pay a fine imposed on him by the Governor's judge until he was compelled to do so by Colonel Conran.[385]

The deportation of King John Aggrey of Cape Coast was an exhibition of how the British colonialists were intolerant of the scrutiny of their administration in general (including the judicial system) by chiefs and other leaders of the people, as subsequent events in the Gold Coast eventually demonstrated.[386] It is imperative to state that the preeminence that the British courts appropriated unto themselves was limited to the Protectorate only.[387]

Limited Occupation and the Abolition of the Supreme Court

A Select Committee of the British Parliament was constituted in 1865 to consider the state of British establishments in West Africa with special

[381] "Dispatch from Governor Pine to Right Honourable Edward Cardwell," 7 April 1865, in *Parliamentary Papers*, 355-456; Kimble, *A Political History*, 355-356.
[382] He was the Governor of the Cape Coast Castle at the time of Aggrey's deportation to Sierra Leone.
[383] Crooks, *Records*, 378-379.
[384] Gocking, "British Justice," 5.
[385] Boahen, *Ghana*, 48.
[386] Chiefs including Nene Mate Korle, Nana Sir Agyemang Prempeh I, Nana Yaa Asantewaa and, later, the educated elite in the territory were either imprisoned or sent to exile (in the later nineteenth and twentieth centuries) for questioning what they considered to be misrule by the British.
[387] Allott, "Native Tribunals," 6; Asante, "Over A Hundred Years."

attention to the Gold Coast.[388] The Committee's mandate was to "inquire in order to see whether these settlements were well ordered and regulated and whether they attained their object, or, on the contrary, did not rather obstruct it."[389] This evaluation of the state of the territories was necessitated by the Asante invasion[390] of the Protectorate in March 1863.[391] The invading Asante army rampaged across major towns on the coast and encamped in some coastal towns until their return in June that same year.[392] The British colonial authority in Cape Coast desired and actually took steps to undertake a reprisal attack against Asante but the Home Government was sceptical of the profitability or otherwise of such an action.[393] The planned invasion was eventually suspended by the Home Government on account of the loss of lives of a substantial number of British troops which had encamped at Manso and Praso.[394]

The abortive expedition provoked discussion in England about the cost and importance of engaging in military expeditions in the British

[388] See "House of Commons Debates," 21 February 1865, in Metcalfe, *Great Britain and Ghana*, doc 244, 305.
[389] "House of Commons Debates," 21 February 1865, in Metcalfe, *Great Britain and Ghana*, doc 244, 305.
[390] It has been argued that the reason for the invasion was the refusal of Governor Pine to return runaway Asante fugitives who sought refuge within the Protectorate which Pine admitted was the greatest sources of irritation and annoyance to the Asantehene. The actions of the British official led to a series of events which heightened tension between the British and Asante and eventually made the latter invade the coast in order to retrieve his prisoners. See "Dispatch from Governor Pine to the Duke of Newcastle" 10 December 1862, in Crooks, *Records*, 348-349. See also Ellis, *Gold Coast*, 224-228; W.W. Claridge, *A History of the Gold Coast and Ashanti Vol. I*, (London: Frank Cass & Co. Ltd, 1915), 502-503; Ward, *Ghana,* 81. Buah, *Ghana*, 212-220, and Kimble, *A Political History*, 199.
[391] Crooks, *Records*, 352-354, Dispatch from Governor Pine to the Duke of Newcastle" 15 April 1863. See also Boahen, *Ghana*, 43.
[392] Crooks, *Records*, 352-354, Dispatch from Governor Pine to the Duke of Newcastle" 10 June 1863, 356-358.
[393] Crooks, *Records*, 352-354, Dispatch from the Duke of Newcastle to Governor Pine" 22 August 1863, 360.
[394] "Letter from the War Office, Edward Lugard, to Lieutenant - Colonel Conran," 21 May 1864, in *Parliamentary Papers*, 344. See also Crooks, *Records*, "Dispatch from the Right Honourable Edward Cardwell, M.P., to the Officer Administering the Government of the Gold Coast, 23 May 1864, 362; *Parliamentary Papers*, "Dispatch from the Right Honourable Edward Cardwell, M.P., to the Officer Administering the Government of the Gold Coast," 23 May 1864, 345-346.

possessions.[395] As a result, the Home Government sent Colonel H. St. George Ord in October 1864, to the West African Coast[396] to "examine the … state of the public establishment …and ascertain how far they efficiently discharge the duties for which they are designed; consider whether any alteration or retrenchment can be judiciously introduced without impairing their efficiency."[397] He was also to investigate the financial conditions of these settlements and their systems of taxation.[398] Affrifah claims that many felt that the British presence on the Gold Coast was more of a burden than a benefit to British taxpayers.[399] The sole commissioner was also required to recommend ways and means by which the cost of maintaining Britain possessions on the Gold Coast could be reduced.[400] Colonel Ord arrived on the Gold Coast in January 1865 and submitted his report to the British Parliament in June of the same year. A select committee [401] of the House of Commons was then appointed to consider Ord's report[402] and advise the House on it. The resolution of the Select Committee included the following:

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[395] Kofi Affrifah, *The Akyem Factor in Ghana's* History (Accra: Ghana Universities Press, 2000), 190.
[396] Sierra Leone, The Gambia, Gold Coast and Nigeria.
[397] Crooks, *Records,* "Letter from Right Hon. Edward Cardwell to Colonel R.E. Ord," 5 October 1864, 366-367.
[398] *Ibid*. The issue of taxation was worth investigating because of the many complaints that the Secretary of State had received from the Gold Coast about the poll tax. See also: Kimble, *A Political History*, 181.
[399] Affrifah, *Akyem Factor*, 191.
[400] *Ibid.*
[401] The chairman of the committee was Mr. Charles Bowyer Adderley. He was a strong campaigner against extending British protection beyond the immediate area of forts and castles. See Affrifah, *Akyem Factor*, 191.
[402] Mr Ord reported that, among other things, hostility to the poll tax on the Gold Coast was likely due to resentment and a general feeling of disregard for government policy. He also criticized the use of revenues raised from the tax since the first year (1852). He was of the view that the collection of the poll tax would have been successful if the original intention of its promoters was followed through. See Kimble, *A Political History*, 181.

> That it is not possible to withdraw the British Government, wholly or immediately, from any settlements or engagements on the West African Coast….
>
> That all further extension of territory or assumption of Government, or new treaties offering any protection to native tribes, would be inexpedient; and that the subject of our policy should be to encourage in the natives the exercise of those qualities which may render it possible for us more and more to transfer to them the administration of all the Governments, with a view to our ultimate withdrawal from all, except, probably, Sierra Leone.
>
> That this policy of non-extension admits of no exception, as regards new settlements, but cannot amount to an absolute prohibition of measures which, in peculiar cases, may be necessary for the more efficient and economical management of the settlements we already possess.
>
> That the reasons for the separation of West African Government in 1842 having ceased to exist, it is desirable that a Central Government over all the four settlements should be re-established at Sierra Leone, with steam communication with each Lieutenant Government.
>
> That the evidence leads to the hope that such central control may be established with considerable retrenchment of expenditure, and at the same time with a general increase of efficiency….[403]

On the specific case of the Gold Coast, the Committee made the following findings and recommendations:

> That the protectorate of tribes about our forts on the Gold Coast assumes an indefinite and unintelligible responsibility on our part, uncompensated by any adequate advantages to the tribes. It is even the opinion of the Colonial Secretary of the Government that it has enervated and disunited the protected chiefs, and that, so far from training the chiefs to a better conduct of their affairs, it only leads them to lean on the English.
>
> It rests on no documentary evidence or conditions; excites vague expectations among the chiefs, and particularly engage the British Governments in maintaining weak tribes against their former sovereigns and in keeping peace among them all, or even in

[403] See "Resolution of the Select Committee," 26 June 1865, doc 248, in Metcalfe, *Great Britain and Ghana*, 311-312.

> compensating for losses mutually occasioned by invasions, and generally in administering a territory which we cannot even tax as subject.
>
> That the Protectorate [in the Gold Coast] should only be retained while the chiefs may be a speedily as possible made to do without it. Nothing should be done to encourage them to lean on British help, or to trust to British administration of their affairs, whether military or judicial. The judicial Assessor does not fulfil the first intention of his office, assisting the chiefs in administering justice, but supersedes their authority by decisions according to his own sole judgement. This office, instituted with the best intentions, seems, by the evidence of a commissioner from the native King of Cape Coast, to have led to the introduction of needless technicalities and expense, and the employment of attorneys when the natives had better speak for themselves.[404]

The committee also recommended that the headquarters of the British West African territories should be located in Freetown, the capital of Sierra Leone, to ensure efficient administrative oversight.[405] On the recommendation of a Select Committee, A Commission dated February 19 1866 revoked the Charter that had separated the Gold Coast from Sierra Leone in 1850. The Commission reassigned the Gold Coast to Sierra Leone and defined Her Majesty's settlements in the Gold Coast as all places and territories which may belong to the British Crown at any time in West Africa between the 5th degrees West of longitude and the 2nd degrees East longitude.[406] Subsequently, Major Samuel Wesley Blackall was appointed Governor-in-Chief responsible for all the Settlements on the west coast of Africa.[407] The Gold Coast, thus, had an Administrator and a Legislative Council which was charged with the daily running of the forts and castles. The office of the Executive Council was

[404] Griffith, *British Courts*, 17.
[405] Affrifah, *Akyem Factor*, 191.
[406] Griffith, *British Courts*,17.
[407] "Letter from E. Cardwell to Major S.W. Blackall," 24 February 1866, doc 255, in Metcalfe, *Great Britain and Ghana*, 314-315.

scrapped and reserved only for Sierra Leone. The Supreme Court, which had been established in the Gold Coast in 1853, was also abolished by the Sierra Leone Ordinance No. 7 of 1866.[408] Consequently, a new court system known as the Court of Civil and Criminal Justice of the Settlement of Gold Coast was established and it was to consist of and to be held by and before a Chief Magistrate.[409] This court had jurisdiction only over civil and criminal matters arising within the settlements, as was the original mandate of George Maclean. Each of the four British Settlements (Sierra Leone, The Gambia, Gold Coast and Lagos) had Courts of Civil and Criminal Justice established with the same name and similar jurisdiction.[410] It is essential to note that the Order-in-Council of 1856[411] remained unrevoked and, hence, magistrates "possessed jurisdiction in matters outside the forts, and use was made of these powers both by the Chief Magistrate and magistrates acting as Commandants at the out-forts."[412] By an Imperial Order-in-Council, the Judges of the leading West African settlement of Sierra Leone were constituted into the West Africa Court of Appeal[413] with the authority to receive, hear and determine appeals from the Courts of Civil and Criminal Justices within the British Settlements, provided the matter in contention exceeded £50.[414]

Elias avers that the creation of the West Africa Court of Appeal provided a provided a greater measure of intermediary power in judicial

[408] Rewar, *Comments*, 4. See also Griffith, *British Courts*, 17-18.
[409] Elias, "A Note" 32 and Rewar, *Comments*, 4.
[410] Elias, "Supreme Court Ordinance," 32.
[411] It provided all courts and magistrates empowered to act within the forts were entitled to all powers and jurisdiction in civil and criminal matters which Her Majesty may exercise without the co-operation of local chiefs or authorities, especially bankruptcy cases, in the same way as if such matters had arisen within the forts. see: Allott, "Native Tribunals," 167 & Griffith, *British Courts*, 16.
[412] Griffith, *British Courts*,18.
[413] Rewar, *Comments*, 4.
[414] Griffith, *British Courts*,18. See also Elias, "Supreme Court Ordinance," 32-33.

appeals than previous arrangements, where the Governor (who may not have been a trained lawyer or judge) had the final say on purely judicial matters.[415] The system appeared to have been made even more elaborate when an Order-in-Council No. 8 of 26 February 1867 established regulations for appeals from the Supreme Court to Her Majesty in Council.[416] Subsequently, a civil case from one of the Settlements of the minimal price of £300 could cross from the Courts of Civil and Criminal Justices thru the West Africa Court of Appeal in Sierra Leone and eventually to the Judicial Committee of Her Majesty´s Privy Council.[417]

Conclusion

The period from 1850 witnessed conscious and systematic attempts by the British to entrench their political dominance on the West African Coast with particular emphasis on the settlements in Sierra Leone, The Gambia, Gold Coast and Lagos. The Gold Coast experienced some major political developments with the establishment of important institutions of political administration and a Supreme Court. The establishment of a Supreme Court with full jurisdiction over local affairs in 1876 was a turning point in the Gold Coast's judicial history, consolidating what George Maclean had begun more than 20 years earlier. Some chiefs who protested the introduction and operations of a British court system were arrested, tried and imprisoned in the Cape Coast Castle. Even chiefs in the Accra and the Adangbe areas and beyond were not spared such ordeal.[418] It was, thus, evident that the British judicial system had come to stay in the Gold Coast and nothing was going to undo it. Any act of

[415] Elias, "Supreme Court Ordinance," 33.
[416] *Ibid*., 33.
[417] *Ibid.*
[418] See Reindorf, *History of Gold Coast*, 331.

resistance by the chiefs against the European courts was considered seditious and was met with equal force by the British colonial authorities. At best, the system was, occasionally, reviewed, but not scrapped. The highest European court in the land was eventually abolished, although it was repackaged and reintroduced a decade later. It is important to note that the short life of the Gold Coast's first Supreme Court in 1853 was not solely due to opposition from local chiefs and residents. On the contrary, it was, mainly, the result of British politics at home as well as policies in their West African settlements.

CHAPTER FOUR

THE JUDICIARY UNDER COLONIAL RULE (I): 1874 - 1947

Introduction

The "annexation" of the Gold Coast to the British colony of Sierra Leone minimized the intensity of the political and judicial activities of the British in the Gold Coast. The major activity of the British in the Gold Coast, at that time, was trade and hence the period between 1865 and 1874 mainly witnessed the passage of ordinances that were aimed at regulating the conduct of commerce in the land. The British passed laws such as the Smuggling Ordinance (No.6 of 1867) and the Spirit Licence (sic) Ordinance (No.7 of 1869). The political attention of the British was focused back to the Gold Coast from 1874 when the latter was separated from Sierra Leone once again. 1874 marked the official beginning of British colonization of the Gold Coast territory. This chapter examines British activities in the Gold Coast colony from 1874 to 1947, with particular emphasis on the evolution of a binary judicial system during that period.

The Defeat of Asante and the Redefinition of British Jurisdiction in the Gold Coast

The people of the Gold Coast protested in different ways and at different times against what seemed to be British encroachment on the authority of the chiefs and people of the land. A major force which was an obstacle to the extension of British dominance to the territories beyond the Pra River in the Gold Coast was the Asante state. The Asante, constantly, invaded the coast and fought against the British and their coastal allies (Fante, Wassa, Twifo, Assin) to ensure that their (the Asante) interests were protected and advanced. The two forces – the British and Asante – fought over cultural differences as

they did over economic and political interests.[419] the final result of their fractious relationship was the defeat of the Asante in 1874 by a combined force of British forces and their coastal allies,[420] thus breaking the power of the former and paving way for the British to extend their dominance in the Gold Coast[421] to the areas which were, hitherto, under Asante dominance.[422] The British, subsequently, abandoned the restricted occupation policy that they had adopted in 1865. Accordingly, they re-established a government in the Gold Coast that was to ensure and sustain peace in the colony to enable them to perpetuate their stay and their exploitation of its resources. The passage of a new charter on 24 July 1874 created the Gold Coast Colony which consisted of the Gold Coast and Lagos.[423] The Gold Coast Colony was described as all the places, settlements, and territories which may belong to the British monarch at any time and lie between the fifth parallel, that is, the various forts along the coast, originally owned by the British, and those which the British acquired from the Danes and Dutch; as well as the Protected territories outside the forts and castles.[424]

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[419] See "Letter from Sir Charles McCarthy to the Earl of Bathurst," 11 February 1823, in Metcalfe, *Great Britain and Ghana*, 82 – 87; "Letter from Sir Charles McCarthy to Commodore Filmore," 17 January 1824, in Metcalfe, *Great Britain and Ghana*, 88; Boahen, *Ghana*, 20-27; Buah, *Ghana*, 83-87; Amenumey, *Ghana*, 111; Edmund Abaka and Kwame Osei Kwarteng, *The Asante World* (Abingdon: Routledge, 2021), 21-87.

[420] Claridge, *A History of the Gold*, 100-169. See also Kimble, *A Political History*, 270-274, Boahen, *Ghana*, 29-33 and Buah, *Ghana*, 85-86.

[421] Kimble, *Political History*, 301 – 329; Affrifah, *Akyem Factor*, 227-23, Boahen, *Ghana*, 29-33 and Buah, *Ghana*, 85-86; Abaka and Kwarteng, *Asante*, 21-27; Amenumey, *Ghana*, 125-139.

[422] For reasons for the British invasion of Kumasi, the capital of Asante, see Affrifah, *Akyem Factor*, 227-23, Boahen, *Ghana*, 29-33 and Buah, *Ghana*, 85-86; Abaka and Kwarteng, *Asante*, 21-27; Amenumey, *Ghana*, 125-139.

[423] Kimble, *A Political History*,302; Griffith, *A Note* 19. Lagos (which later became known as Southern Nigeria) was separated from the Gold Coast and constituted into an independent colony by Letters Patent dated 13 January 1886. See Letter Patent, 13 January 1886 in Metcalfe, *Great Britain and Ghana*, doc 330, 420-421.

[424] Griffith, *British Courts*, 19.

The British colonial authorities introduced some measure to achieve the objectives stated above. This included the re-establishment of the Gold Coast Executive Council. They also gave the Legislative Council the power to enact laws for protected areas.[425] In 1876, the British government, through the Legislative Council, also re-established the Supreme Court which had been abolished in 1866.[426] The new Supreme Court replaced the existing local judicial tribunal that had been in place before 1876. Prior to 1876, judicial management of civil and criminal cases within the forts and settlements was in the hands of the Chief Justice of the Civil and Criminal Courts, while the Judicial Assessor adjudicated over appeals from cases that had been tried by the traditional rulers in the Protectorate.[427]

The Supreme Court Ordinance, 1876[428]

The first Supreme Court of the Gold Coast (1853) had jurisdiction over the coastal settlements (the Protectorate) and was, therefore, not a national institution in nature[429] but the second Supreme Court Ordinance (1876), on which the modern Ghanaian judicial system is built, established a central

[425] Boahen, *Ghana*, 57.
[426] Boahen, *Ghana*, 57; Kimble, *A Political History*,304; Griffith, *British Courts*, 19; Amissah, "Supreme Court, 1; T.O. Elias, "A Note on the Supreme Court Ordinance, 1876," in *Essays in Ghanaian Law: Supreme Court Centenary Publication*, ed. W.C. Ekow Daniels & G.R. Woodman (Accra: Ghana Publishing Corporation, 1976), 33; Quansah, *Legal System*, 55; "The Status of Native Courts in Gold Coast Colony," in *Journal of the Society of Comparative Legislation*, Vol. 9, No. 1 (1908), 167-179, http://www.jstor.org/stable/752192, (Accessed: 13-02-2018).
[427] Amissah, "Supreme Court," 20.
[428] The Governor of the Gold Coast enacted this ordinance on 31 March 1876. It was entitled "An Ordinance for the Constitution of a Supreme Court, and for other purposes relating to the Administration of Justice." See *Supreme Court Ordinance, 1876* (No. 4 of 1876), in Percy Alexander McElwaine, *The Laws of the Gold Coast*, Vol. I, (London: C.F. Roworth Ltd, 1954), 34; Amissah, "Supreme Court," 1; Elias, "Supreme Court Ordinance," 33-34; Redwar, 3.
[429] Asante, "Over A Hundred Years."

Supreme Court[430] of judicature for the Gold Coast Colony and the territories that the British might later gain control over even after the establishment of the court.[431] The Ordinance did not only establish a national judicial system but it also prescribed the laws and procedures to be applied in the court.[432] It can be argued that whereas the introduction of British courts into the Gold Coast was a channel through which British political sovereignty was established, the passing of the Supreme Court Ordinance of 1876 made the judiciary an instrument by which the people of the Gold Coast were reconciled to British rule.

The coming into force of the Supreme Court Ordinance of 1876 nullified the judicial structure that had been in operation in the colony before 1876. The new ordinance abolished the former British courts of the Chief Magistrate, the Assessor of the Native Chiefs (Judicial Assessor), and the Civil Commandants and Magistrates. In their place was instituted a central Supreme Court of Judicature for the Gold Coast colony and the territories of Lagos.[433]

The Need for a New Supreme Court

The passage and operationalization of the Supreme Court Ordinance of 1876 at the time it was introduced was not done arbitrarily. On the contrary, it was carefully done for the benefit of the British colonial administration that was being established in the Gold Coast. The Secretary of State for Colonies

[430] The word "Supreme Court" meant a High Court. Thus, even though the court was called the Supreme Court. Later, the British established the West African Court of Appeal (WACA) where appeals from the High Courts of the four British West African colonies - The Gambia, Gold Coast, Sierra Leone and Nigeria - were heard and then to the Privy Council when necessary. The name was later changed from Supreme Court to the High Court. Then the Court of Appeal and Supreme Court were established. Interview with Justice V.C.R.A.C Crabbe, former Justice of the Supreme Court of Ghana, 94 years, Mountcrest University College, Accra on 8 November 2017.
[431] Elias, "Supreme Court Ordinance," 34; Gocking, *Ghana*, 38.
[432] Asante, "Over A Hundred Years,"70-92.
[433] Gocking, *Ghana*, 38.

and the Earl of Carnarvon offered some justification for the establishment of the court when he addressed the members of the House of Lords in the British Parliament in May 1874. He argued that the introduction of the supreme court was to improve the state of the law in the territory. He posited that:

> …We have applied the English law there [in the Gold Coast] in all its technicalities and in all subtle processes. Now it is a mistake, and almost an absurdity, to apply to negroes the English laws of bankruptcy…. Yet this has been done with, I am told, the most dismal results…. Therefore, I look forward to a great simplification of this and other branches of law on the Gold Coast.[434]

The primary function of the Supreme Court was, therefore, not, necessarily, to allow the redress of disputes between individuals and the government or amongst individuals. Neither was it an avenue to provide for easier recovery of debts as was the situation in the period before 1876. The function of the court after 1876 was to mould the customs of the people of the Gold Coast to the general principles of British law for the "civilization" of the people of the Gold Coast. This argument was articulated by Chief Justice Sir William Brandford Griffith[435] as follows: "Every case brought to our courts would be a step gained in civilization;[436] every enforcement of one of our judgements would be a

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[434] Speech by the Earl of Carnarvon, House of Lords," 12 May 1874, in Metcalfe, *Great Britain and Ghana*, doc 302, 366.

[435] He was Chief Justice of the Gold Coast Supreme Court between 1895 and 1911.

[436] The thought that the colonisers and their auxiliary institutions were in the Gold Coast to civilise its people was a classic textbook mentality of the British colonial system. The concept of the Dual Mandate, as adopted by the British, refers to the idea that the British colonial government had a responsibility to both develop and modernise/ "civilise" their colonies wherever they may be. The civilising process involved the introduction of social and cultural changes in the colonies and all that was done while they continued to exploit the resources of the colonies. The British thought that bringing civilisation to their colonies provided them (the colonial powers) the justification to continue to rule over the territories they occupied since the policy would balance the interests of the coloniser and the colonised. Thus, while the coloniser exploited the resources of the territory/colony to their benefit, the colonised, in return, were developed/ "civilised." The "civilising" process, per the position of Griffith and Macleod, included the introduction of British legal and judicial systems to modernise the colony according to British values and norms. See Frederick D. Lugard, *The Dual Mandate in British Tropical Africa* (Abingdon: Frank Cass & Co., 1965). See also Thomas Pakenham, *The Scramble for Africa: White Man's Conquest of the Dark Continent from 1876 to 1912*

further step."[437] Chief Justice J. Macleod put it differently when he stated that: "The colony is young, and it is the duty of the Court (as far as it comes within its province) to make the foundations of the society stronger."[438] This primary function of the Supreme Court might have informed the decision of the Colonial Office and the colonial Government not to admit any of the local people to the Judicial Bench until they had shown themselves in total support of the aims of colonial policy. Consequently, the first Gold Coaster to be appointed a Puisne Judge of the Supreme Court was Mr. Woolhouse Bannerman from Accra.[439] He was appointed in April 1925, almost half a century after the establishment of the court.

The fact remains that the passage of the Supreme Court Ordinance of 1876 and the subsequent establishment of its auxiliary courts was an extension of the British imperial policy on the Gold Coast that was started by George Maclean in the early decades of the nineteenth century. Kimble rightfully posits that the main effect of the activities of the British in the Gold Coast (including the establishment of the Supreme Court) was to "…widen the sphere of influence of English law [in the Gold Coast]."[440]

Composition of the Supreme Court

The Supreme Court of the Gold Coast consisted of a Chief Justice and Puisne Judges (not exceeding four at any one time) who would be appointed by

(London: Abacus, 1991); Caroline Elkins, *Imperial Reckoning: The Untold Story of Britain's Gulag in Kenya* (New York: Henry Holt & Company, 2005); Dennis Laumann, *Colonial Africa, 1884-1994* (2nd ed.) (New York: Oxford University Press, 2019); and Gary B. Magee and Andrew S. Thompson (eds) *Empire and Globalisation: Networks of People, Goods and Capital in the British World, c.1850-1914* (Cambridge: Cambridge University Press, 2010).

[437] CO 96/342/2407: Enclos. 5.

[438] John. M. Sarbah, *Fante Customary Law*, 2nd Edition, (London: William Clowes and Sons Ltd, ND), 267.

[439] Goldman, "Fallible Justice," 179-180.

[440] Kimble, *A Political History*,304.

the Governor[441] of the colony.[442] The Supreme Court, as established, consisted of two levels of courts in one. Firstly, it was a trial court (Divisional Court), similar to the High Court of this day, that was presided over by one judge, even though it sometimes had two judges.[443] Appeals from the trial court were heard by a Full Court which functioned as a Court of Appeal.[444] The Full Court sat on pending appeals not less than four times in a year.[445] Provisions were made on 23 October 1877 for appeals to judgements from the Full Court in cases where the amount involved exceeded five hundred pounds (£500) to be heard by the Judicial Committee of the Privy Council in London.[446]

The judges of the Full Court were to have equal power, except where it was provided otherwise in the Ordinance. The Full Court was considered to be duly constituted by two or more judges. One of the judges should be the Chief Justice of the Supreme Court or his appointed representative.[447] In case of disagreement in passing judgement, the verdict of the Full Court was by majority votes of the judges but where there were only two judges, the Chief Justice or his representative had a casting vote.[448] Sittings of the Full Court

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[441] The appointment by the Governor was made upon the recommendation of the British monarch. See *Supreme Court Ordinance, 1876*; Amissah, "Supreme Court," 9.

[442] *Supreme Court Ordinance, 1876*, 35. See also: "Speech by the Earl of Carnarvon, 12 May 1874," in Metcalfe, *Great Britain and Ghana*, doc 302, 366; Amissah, "Supreme Court," 9. Note that the territory of Lagos was also to have a Judiciary headed by a Chief Justice with the support of not more than four Puisne Judges just as the Gold Coast; Elias, "Supreme Court Ordinance," 34. It is imperative to note that apart from the first Chief Justice, the Territories of Lagos had a separate Chief Justice and judges from that of the Gold Coast. See Amissah, "Supreme Court," 17.

[443] Amissah, "Supreme Court," 9; Opoku-Agyemang, *Constitutional Law*, 67.

[444] Amissah, "Supreme Court," 9 - 19; Elias, "Supreme Court Ordinance," 35; Griffith, *British Courts*, 20.

[445] Amissah, "Supreme Court," 21.

[446] *Supreme Court Ordinance, 1876*; Elias, "Supreme Court Ordinance," 35; Griffith, *British Courts*, 20; Kimble, *A Political History*,304; Gocking, *Ghana*, 38.

[447] *Supreme Court Ordinance, 1876*, 35; Amissah, "Supreme Court," 19; Elias, "Supreme Court Ordinance, 35.

[448] *Supreme Court Ordinance, 1876*, 35; Quansah, *Legal System*, 56. See also Amissah, "Supreme Court," 19; Elias, "Supreme Court Ordinance, 35.

were held in Accra and Cape Coast or any other locations that might be chosen by the Chief Justice under the rules of the court.

Jurisdiction of the Supreme Court

Both levels of courts, together, constituted the Supreme Court and they had jurisdiction over all civil and criminal cases in the Gold Coast colony[449] and thus served as the Superior Court of record of the colony.[450] It is, however, imperative to indicate that the establishment of the Supreme Court of the Gold Coast did not abolish the Chiefs' Courts[451] that existed before 1876 and that was a testament to the fact that the courts of the chiefs continued to be relevant in the judicial structure of the Gold Coast even though Governor Pine and some other British colonial officials had attempted to discredit them. Redwar suggests that the Supreme Court had jurisdiction over all civil and criminal, cases, and heard same, "…unless native litigants prefer to resort to the Courts of Native Chiefs, whose jurisdiction in native cases has been held…to remain untouched."[452] Amissah sums up the jurisdiction of the Supreme Court as follows:

> In addition to any other jurisdiction conferred by the Ordinance or other Ordinance of the Gold Coast Legislature, it was to possess and exercise, within the limits and subject to the Ordinance, all the jurisdiction, powers and authorities vested in or capable of being exercised by the High Court of Justice in England, except the jurisdiction and powers of the High Court of Admiralty. The jurisdiction included all Her Majesty's civil and criminal jurisdiction which at the commencement of the

[449] *Supreme Court Ordinance, 1876*; Elias, "Supreme Court Ordinance," 36-37; Griffith, *British Courts*, 20; Kimble, *A Political History*,304.
[450] *Supreme Court Ordinance, 1876,* 35; Quansah, *Legal System,* 57; Amissah, "Supreme Court," 21.
[451] Griffith, *British Courts*, 20; Redwar, *Comments*, 3.
[452] Redwar, *Comments*, 5.

> Ordinance or at any time afterward might be excisable in the Territories, near and adjacent to the Gold Coast Colony.
>
> The court was given the powers and authority…to appoint and control guardians of infants and their estates, and keepers of the persons and estates of idiots, lunatics and those of unsound mind unable to govern themselves.[453]

Section 14 of the Ordinance sought to operationalize the desire of the Secretary of State for Colonies (as presented to the members of the House of Lords) concerning the function of the court[454] since it prescribed the laws that should be applied by the court in the territory. The section specified that:

> The common law, the doctrines of equity, and the statutes of general application which were in force in England at the date when the Colony obtained a local legislature…shall be in force within the jurisdiction of the Court.[455]

It is evident that the section provided for the introduction of English law as the basic law in an African colony even though the application of such laws was to be done in "…so far only as the limits of local jurisdiction and local circumstances permit, and subject to any existing or future Ordinances of the Colonial Legislature…."[456] In addition to the introduction of English laws, the Ordinance also made provision for "local laws and customs, which were not repugnant to justice, equity and good conscience, to be applied by the court in suitable cases,"[457] particularly, in suits involving the local people. Section 19 of the Ordinance also stipulated that:

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[453] Amissah, "Supreme Court," 22. See also Quansah, *Legal System,* 57-58; Elias, "Supreme Court Ordinance," 34-35; Redwar, *Comments*, 6-7.

[454] This has been alluded to in the preceding paragraphs. See "Speech by the Earl of Carnarvon, House of Lords, 12 May 1874," Metcalfe, *Great Britain and Ghana*," doc 302, 366.

[455] Amissah, "Supreme Court," 22.

[456] Quansah, *Legal System,* 57-58. See also Amissah, "Supreme Court," 22.

[457] See *Supreme Court Ordinance, 1876,* 73; Elias, "Supreme Court Ordinance," 35; Sarbah, *Customary Laws*, 16.

> Such [native] laws and customs shall be deemed applicable in cases and matters where the parties thereto are Natives…and particularly, but without derogating from their application in other cases, in cases and matters relating to marriage and the tenure and transfer of real and personal property, and inheritance and testamentary disposition.[458]

With the introduction of English laws in the Gold Coast, local laws became known as the customary laws.[459] The customary laws were also enforceable in cases between local people and Europeans in so far as the court was of opinion that "substantial injustice would be done to either party by strict adherence to English law."[460]

Despite the proviso provided in the application of English laws in the colony, some judges and courts, occasionally, relied on their discretionary powers to apply English laws with little or no regard for the customary laws of the people involved. As a result, conflicts in the adjudication of justice sometimes occurred since some of the laws were not applicable in the Gold Coast.[461] This fact is evident in the opinion of a judge of the Gold Coast Supreme Court who postulated in 1909 that, "…It is sometimes a very difficult question to decide whether an English statute does or does not apply to the Gold Coast as a matter of law. In such a case, common sense and a knowledge of local circumstances are the best guides…."[462] S.K.B. Asante also puts it differently and more aptly:

> The very mode of applying English law in the Ghanaian situation posed formidable problems. Since post-1874 legislation in England was, as a rule, inapplicable to Ghana,

[458] See *Supreme Court Ordinance, 1876* (No. 4 of 1876), Section 19.
[459] Interview with Crabbe.
[460] *Supreme Court Ordinance, 1876* (No. 4 of 1876), Section 19.
[461] Redwar, *Comments*, 17-25; Asante, "Over A Hundred Years,"70-92.
[462] Redwar, *Comments*, 10.

> all legislative reforms effected in England after 1874 had no direct application in Ghana. Thus, obsolete and inequitable laws which had been abolished in England lingered on in Ghana. It required a creative and ingenuous judiciary or an imaginative legislature to follow the English initiative, but this was a rare phenomenon.[463]

Section 19 of the Ordinance specified that either or both parties in a case could choose that their litigation should be tried under English laws. It indicated that:

> No party shall be entitled to claim the benefit of any local law or custom if it shall appear either from express contract or from the nature of the transactions out of which any suit or question may have arisen, that such party agreed that his obligations in connection with such transactions should be regulated exclusively by English law.[464]

The Section, therefore, seemed to have reduced the circumstances under which local laws were applicable in the colony after the coming into force of the Supreme Court.

In sum, the Supreme Court Ordinance created a court system that had jurisdiction over a variety of cases and could apply a variety of legal systems as it sought to adjudicate peace amongst parties in litigation. English common law could be enforced where the social conditions of the country and the parties permitted it; English statutory laws were enforceable if they came with the express statutes of general application, and local laws were to be used if they did not conflict with natural justice and equity.

The Supreme Court Ordinance also made provision for the Chief Justice to admit and enroll barristers and solicitors to appear before the

[463] Asante, "*Over a* Hundred Years," 71.
[464] *Supreme Court Ordinance, 1876*, Section 19

courts.[465] The Chief Justice was empowered to admit any fit and proper person to practise before the court except in civil cases involving two parties who are illiterates.[466] Barristers and solicitors were, however, barred from practising in all the courts in Ashanti and the Northern Territories because of the fear that they might hamper the "development" of those territories and also increase the incidence of litigation.[467] The head of the Judiciary was also given the power to welcome regularly trained practitioners but he could also permit, temporarily, any other person of good character to appeal on behalf of a client in the capacity of barrister and solicitor. That could only be done if the number of trained practitioners in the colony were not sufficient to adequately help in the settlement of cases before the courts. Consequently, there emerged in the Gold Coast a sizeable number of lawyers, both Europeans and Africans, who would defend their clients before the courts. In 1887, there were only twelve Africans or people of African descent who were formally recognized as legal practitioners in the Gold Coast.

The activities of the African legal practitioners contributed to the development of the justice system in the colony since they helped to interpret customary laws to the judges of the courts, thereby helping in the determination of cases. Legal practitioners, thus, helped in redressing land cases as well as civil and criminal cases. With time, the number of African practitioners increased gradually to about fifty-one out of the fifty-nine practitioners in the colony by 1924.

[465] Elias, "Supreme Court Ordinance," 35.
[466] *Supreme Court Ordinance, 1876*, Order VIII.
[467] See CO 96/349/28857; CO/96/380/21569.

The first Chief Justice of the newly created Supreme Court of the Gold Coast was Sir. David Patrick Chalmers.[468] He was, until April 1876, the Queen's Advocate of the Gold Coast Colony for two years. He was appointed as the Chief Justice later that year at a salary of one thousand, eight hundred pound (£1,800) per annum.[469] In addition to his appointment, Mr. James Marshall and Mr. Thomas W. Jackson were also appointed as Puisne Judges at a salary of one thousand pounds (£1000) and nine hundred pounds (£900),[470] respectively.[471] Mr. Thomas W. Jackson was, however, unable to start working with the other two judges of the Supreme Court.[472] He was on sick leave in England at the time of his appointment. The Secretary of State, therefore, appointed Mr. W. Melton to act until Mr. Thomas Jackson assumed office. Melton had acted as Judicial Assessor in the Gold Coast for almost two years: between January 1875 and May 1877. Thomas W. Jackson returned to the Gold Coast in 1877 to assume duty as a judge of the Supreme Court.[473]

After the first appointments, the Governors of the Gold Coast had the power to fill vacancies in the judicial system by appointing judges[474] but the Chief Justices had a longer term of office than the Governors. For instance, the Gold Coast had only two Chief Justices from May 1895 to 1928 (Sir William Brandford Griffith, 1895 - 1911 and Sir Philip Crampton Symly, 1911-1928)[475]

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[468] Amissah, "Supreme Court," 10.
[469] *Ibid.*
[470] Amissah posits that the difference in the salaries of the two Puisne Judges was, firstly, because of the fact that M. Marshall was senior to Mr. Jackson. But it also demonstrated the flexibility with which the appointing authority determined the salaries of the judges. See Amissah, "Supreme Court," 10-11.
[471] Amissah, "Supreme Court," 10.
[472] *Ibid*, 15.
[473] *Ibid*, 16.
[474] *Ibid*, 34. See also *Supreme Court Ordinance, 1876*, 36
[475] Goldman, "Fallible Justice," 140 & 161; "List of Chief Justices," www.judicial.gov.gh, (Accessed: 17/04/2020 at 11:00 pm)

while there were as many as seven different Governors for the colony in that same period.

Other Courts Established under the Ordinance

Besides the Supreme Court, the British established some subordinate courts in the colony, namely, Divisional Courts and the Magistrates' Courts.[476] A Divisional Court was established in each of the provinces to adjudicate in disputes but, when necessary, several other Divisional Courts could sit concurrently in the same Province.[477] Puisne Judges were appointed by the Governor to head the Divisional Courts.

The Magistrates' Courts, which were also known as the Commissioners' Courts, were located in the districts[478] of the colony. They were chaired by District Magistrates/District Commissioners who had the "authority to exercise judicial powers as ex-officio Commissioners of the Supreme Court."[479] The District Commissioners and their deputies constituted Magistrates' Courts. There was one of such courts in every district.[480] The Divisional Courts and Magistrates' Courts exercised concurrent jurisdiction in civil and criminal cases[481] except cases decided in a Magistrates' Court of a particular Province only went on appeal in the Divisional Court of the same Province. Besides, magistrates could transfer cases they considered of grave importance to the Divisional Court for trial.[482] Both the Divisional and Magistrates' Courts were under the direct control of the Supreme Court.[483]

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[476] Quansah, *Legal System*, 60.
[477] *Supreme Court Ordinance, 1876,* Section 23 & 24.
[478] The Districts were smaller administrative units in the provinces.
[479] *Supreme Court Ordinance, 1876*, 50; Quansah, *Legal System*, 60.
[480] Elias, "Supreme Court Ordinance," 36.
[481] *Ibid.*
[482] *Ibid*.
[483] *Supreme Court Ordinance, 1876*, 50.

The courts placed importance on the trial of criminal cases (Assizes) over other matters. They, usually, held trials of such cases quarterly (that is on the first Monday in January, April, July and October)[484] but the Governor, periodically, could determine which Divisional Courts, either in the Eastern Province or Western Province,[485] should hear all pending criminal cases and dispose of them.[486]

The Divisional and Magistrates' Courts increased in number after 1901[487] because British authority was effectively extended to Asante and the Northern Territories with the passage of the Ashanti Administration Ordinance, 1902, which established a Chief Commissioner's Court for Ashanti. Similarly, the Northern Territories Administrative Ordinance, 1902, also created a Chief Commissioner's Court for the Northern Territories.[488] The volume of cases that went before the Divisional and Magistrates courts increased exponentially over the years even though the number of officials of

[484] Amissah, "Supreme Court," 25; Elias, "Supreme Court Ordinance," 36.
[485] The Ordinance split the colony into two judicial divisions – the Eastern Province and the Western Province. The Eastern Province consisted of the part of the colony to the East of a straight line drawn from Apam northwards while the Western Province consisted of the territories to the West of the demarcation. See *Supreme Court Ordinance, 1876*, Sections 23 & 24. For the administration of justice, the colony would later be divided into three Provinces – the Eastern, Central and Western provinces.
[486] *Supreme Court Ordinance, 1876*, 45.
[487] The British defeat of Asante in the Yaa Asantewaa War of 1900/1901 paved way for the extension of colonial rule to the north of the Gold Coast. Subsequently, the British officially annexed Asante as a Crown Colony and the Northern Territories as a Protectorate on 1 January 1902, and that led to the establishment of British judicial systems in the newly occupied territories. See "Ashanti Order in Council," 29 September 1901; "Northern Territories Order in Council," 26 September 1901 in Metcalfe, *Great Britain and Ghana*, 507-525; Buah, *Ghana*, 96-97; Gocking, *Ghana*, 40. The Orders-in-Council came into effect on 1 January 1902, and thus created three separate but related administrative territories – the Colony, Ashanti and the Northern Territories. See Kimble, *A Political History*,325.
[488] Kimble, *A Political History*,325.

the courts did not increase.[489] This, thus, put pressure on the limited number of staff at the courts.[490]

Flaws of the Supreme Court Ordinance

Key sections of the Ordinance suggest that the Legislature was to import the English Legal system into the Gold Coast and make it applicable for all cases in the territory. It is also evident from the above paragraphs that the customary laws could only be applied where they satisfied the English system of justice. The application of local laws was, therefore, discriminatory based on religion. The people of the Gold Coast were divided into two groups – mere locals and local people who had adopted Christian life. Thus, the colonial authorities argued that "if a native is educated man, living in a town, carrying on trade, and married to one woman by a Christian minister, it would be absurd to deal with him otherwise than under civilized [British] law."[491] This dichotomy in the classification of the local people and the selective application of different laws as the case applied created situations where none of the laws, both English or local laws, could be strictly applied in the colony. A typical example of this is seen in the case of *Des Bordes v. Des Bordes and Mensah* in 1884.[492] The suit was a divorce process of the local people who were Christians and married in a Wesleyan Chapel even though the chapel was not

[489] Public Records and Archives Administration Department (hereafter PRAAD), Cape Coast, RGI/3/30: Supreme Court: 1949 – 1968, "Letter from the Chief Justice to the Governor," 1 October 1949.

[490] See PRAAD, Cape Coast, RGI/3/30 for statistics of cases that went before Magistrate Courts in the southern part of the country in the first half of 1949:

Station	Criminal cases	Civil cases
Accra	4,792	1,342
Kumasi	4,348	495
Sekondi	2,797	598
Swedru- Cape Coast	1,841	199
Koforidua	2,520	86
Ho	1,417	101

[491] Colonial Office Minutes, CO 96/112/12406.

[492] Sarbah, *Customary Law*, 267-270.

registered or licensed as a place where a marriage could be solemnized, nor was a registrar present at the marriage as was required by the Marriage Act of England.[493] The case could not be determined under the Marriage Act of England or the local laws and customs because it did not meet the requirements of any of the two sets of justice systems.[494] Flaws in the application of laws by the courts, as stated in sections of the Supreme Court Ordinance, made the Legislative Council of the Gold Coast colony pass the Marriage Ordinance of 1884 to regulate laws governing marriage in the territory.[495] In 1895, the Acting Chief Justice of the Gold Coast, Justice Francis Smith, declared that such "conflicts" in the determination of the laws to use in the courts should be solved by the courts deciding cases on the facts that emerged from them.[496]

Another challenge in the work of the new Supreme Court was evident in the fact that the judiciary was not independent of the Executive arm of the colonial administration. The two arms were conjoined[497] and this was manifest in the fact that the Governor had the power to fill vacancies in the judiciary and also determine who should or should not be part of the colonial courts, a practice that had the potential of making the Governor's appointees do his bidding. There is no evidence that any Governor removed or suspended any official of the courts for unsatisfactory conduct and this could be attributed to the fact that the judiciary was, practically, not an independent body from the Executive but rather the three departments of Government (Executive, Legislature and Judiciary) were fused. Also, that majority of the members of

[493] Sarbah, *Customary Law*, 267-270.
[494] *Ibid.*
[495] See *An Ordinance for Regulating the Law of Marriage*, 19 November 1884, in Percy Alexander McElwaine, *The Laws of the Gold Coast*, Vol. III, (London: C.F. Roworth Ltd, 1954), 410-435.
[496] Redwar, *Comments*, 138.
[497] Amissah, "Supreme Court," 29.

the Judiciary started their Colonial Service careers as members of the Executive, either in the Gold Coast or in any of the British colonies, and that made them understand colonial practices and, consequently, co-operated with the Executive to achieve the aims of British policies in the Gold Coast.

The practice whereby Governors had the power to transfer judges from one Province to another, impose limitations on the class of cases the court had jurisdiction over,[498] and submit periodic reports on judges to the Colonial Office[499] was also a potential drawback to the independent functioning of the Judiciary from the Executive. The practice made judges feel indebted to the Governors and hence did not want to act in ways that could provoke the appointing authority which, consequently, have dire effects on their judgement.

The Chief Justice of the Supreme Court was "closely associated with both the Executive and the Legislature."[500] Justice William Brandford Griffith, for instance, was a member of the Legislative Council and played an active role until he withdrew from the Council in 1911 over a misunderstanding with some members of the Council.[501] The fact that Justice William Brandford Griffith was associated with two arms of the colonial government was not healthy for his independence and objectivity as the Chief Justice of the Supreme Court of the Gold Coast.

The Supreme Court Ordinance also granted a wide variety of judicial powers to District Commissioners who, although were members of the Executive branch of the colonial administration, acted as ex-officio

[498] *Supreme Court Ordinance, 1876*, Section 20; Amissah, "Supreme Court," 24,
[499] Kenneth Roberts-Wray, *Commonwealth and Colonial Law* (New York: F.A. Praeger, 1966), 482.
[500] Amissah, "Supreme Court," 29.
[501] *Ibid.*

commissioners of the Supreme Court.[502] This dual role played by District Commissioner as Executive officers and judges in the courts in the district, sometimes, made it difficult for them to be impartial in their adjudication of cases. Chief Justice Griffith admitted in 1901 that it was sometimes difficult for judges to be impartial in criminal cases. He asserts that:

> The Judge will in many cases have … taken steps to have the offender brought to justice [because] he will feel that he, as chief executive officer, is responsible for the peace of his district…an energetic and zealous officer may unconsciously in deciding a criminal case have an eye to the revenue (fines) and the work to be got out of convict prisoners. In these circumstances, it will be difficult for him not to be biased.[503]

Consequently, the impartiality of District Commissioners in their adjudication of cases that went before them in their courts was threatened.

The inaccurate interpretations that were made in the courts was another challenge that faced the courts since it contributed to wrongful convictions. Sarbah was dissatisfied with translators of local languages in the courts, some of which were faulty or unintentional distortions by the interpreter.[504] Sarbah, therefore, proposed the establishment of an institute to train competent people who would serve as interpreters in the courts. That proposal was accepted, with little variation, by the Chief Justice and hence measures were taken to ensure that interpretations in the courts were more accurate.[505]

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[502] Gyandoh Jnr, "Liberty," 64.
[503] CO 96/380/21572: Enclosure 3
[504] Justice Azu Crabbe, *John Mensah Sarbah, 1864-1910* (Accra: Ghana Universities Press, 1971), 53.
[505] Griffith, *British Courts*, 53.

Gold Coasters' Response to the New Courts

The people of the Gold Coast were predisposed toward the jurisdiction of the courts, at least in the early decades after their establishment. This is evident in the increase in patronage of the British courts. King-Farlow posits that "the Gold Coast is the land of 'palaver', and the people of the colony are amongst the most litigious in the British Empire, if not in the world."[506] He based his claim on the fact that the people of the colony patronized the courts in their numbers and records reflect the increase in patronage. The rise in the number of litigations was also because of the exercise of British political sovereignty which forbade opposing parties from settling their differences by a resort to the use of arms. Hence, such conflicts were taken to the courts for redress.

Other factors contributed to the rise of litigations in the Gold Coast resulting in the increasing numbers of cases that went before the courts. One was the forceful demarcation of the colony by the colonial government. The division of the colony into units, districts and provinces, for easy administration led to the division of the territory of people of the same ethnic group into different political/administrative zones. This, subsequently, resulted in the division of family lands into two or more parts, belonging to a different Province or District. This phenomenon contributed to an increase in land cases which were sent to the courts for determination.

The development of trade, the spread of education in the colony and the local clan system were some other factors that contributed to the interest of the local people in the British courts. The people of the Gold Coast seemed to have

[506] S. C. King-Farlow, *Gold Coast Judgements: 1915-1917* (Vol 1).

the trust that "strangers," who were assumed to be nonaligned or neutral in litigations, could better deliver fairer judgement on matters of contention and that was what the British courts represented even though that perception of neutrality by the petitioners was not always the case.

Yet another explanation for the seemingly high patronage of the British courts was that the Supreme Court Ordinance, specifically, stipulated that some cases could only be dealt with by the British courts. The Supreme Court, for instance, had exclusive jurisdiction in cases involving the devolution of property, succession, wills, divorce, and other matrimonial issues in Christian marriages or one contracted under the Marriage Ordinance, 1884.[507] An acting Chief Justice ruled in the case *Ackah v. Arinta* on 7 June 1893, that the obligations, rights and privileges of persons marrying under Christian rites must also be governed by English laws and were, therefore, within the exclusive jurisdiction of the Supreme Courts.[508]

The Supreme Court also had exclusive jurisdiction in land cases arising out of concessions taken under the Concessions Ordinance of 1900,[509] and that increased the volume of cases that went before the English courts for settlements. A substantial number of litigations were land related. As will be discussed in subsequent paragraphs, the Native Jurisdiction Ordinance, 1883, restricted the civil jurisdiction of the chiefs' courts to personal suits in which

[507] See *Supreme Court Ordinance*,37-38; *Marriage Ordinance*, 1884, 410-437; John Mensah Sarbah, *Fanti Law Report of Decided Cases on Fanti Customary Law*, (London: Wm. Clowes and Sons, 1904), 79 – 84.
[508] *Ibid.* See also Redwar, *Comments*, 157-164.
[509] See *Supreme Court Ordinance, 1876*, 40.

the debt, damage, or demand did not exceed the sum of twenty-five pounds (£25).[510] This amount was increased in 1910 to fifty pounds (£50).

The low rates of fees paid by litigants at the Supreme Court was another factor that attracted the people of the Gold Coast to the British courts. The deliberate policy of the colonial government to keep fees lower[511] than what was paid at the Local Courts had a luring effect on the indigenes. The Divisional Courts, Commissioners' Courts and the Magistrates' courts witnessed large patronage as compared to the courts of the chiefs. Under the Native Jurisdiction Amendment Ordinance, 1910, the Local Courts were permitted to charge a total of sixteen shillings and six pence (16/-6d) in fees in connection with a civil suit while a District Commissioner's Court charged seven shillings (7/-). The deliberate low fees charged in the British courts were aimed at enticing the people from their traditional rulers to the courts of the Commissioners and Magistrates and thus weaken the influence of the chiefs which eventually undermined their jurisdiction.

The admission of African barristers and solicitors to practice at the British courts was yet another factor that contributed to the popularity of the British courts in the Gold Coast.[512] The solicitors and barristers were not allowed in the Local Courts and hence operated only in the European courts.

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[510] "The Native Jurisdiction Ordinance," in Metcalfe, *Great Britain and Ghana*, 390-393; Lord Hailey, *Report on Native Administration and Political Development in British Tropical Africa*, (Nendeln: Kraus-Thomas Organization Ltd, 1979), 23.

[511] The charges of the courts as compared were as follows:

Categorisation of Fees	**Commissioner's Court**	**Native Court**
Fee paid for a summons:	four shillings (4/-)	two shillings and six pennies (2/6)
Fee paid for a service	one shilling (1/-)	two shillings and six pennies (2/6)
Fee paid for a subpoena	one shilling (1/-)	two shillings and six pennies (2/6)
Hearing fee	-	five shillings (5/-)
Councillor's fee	-	four shillings (4/-)

[512] King-Farlow, *Gold Coast*, "Introduction."

Consequently, they were interested in the advancement of the British courts since that helped them to continue to be relevant in society. They directed cases to the courts that they could appear before – the British courts – so that they would be able to make living as officers of the court. This, in turn, contributed to the growth and acceptance of the colonial judicial system by the indigenes of the Gold Coast.

The reported prejudice by some officers of the British courts, as has been pointed out in the paragraphs above, did not discourage the local people from accessing what they considered as justice from the new judicial system that had been established in the colony. Kurankyi-Taylor argues that the people of the Gold Coast accepted the situation of the combination of Executive and Judicial authority in one person and so they were not discouraged by the reported cases of predisposition by the judges.[513] He explains that the general comment of the people about the content of the criminal law was that "*Aban mera ye den*" which means "Government law is tough," and it did not refer to how justice was administered in the British courts.[514] Consequently, the people of the Gold Coast continued to patronize the English courts that had been established in the colony.

It can be concluded that government policies, the dwindling judicial powers of chiefs, the interests of some African lawyers, as well as British paramountcy all made the people consider the Supreme Court as a valuable institution to use. Accordingly, the people of the Gold Coast took cases from faraway places of the colony to the District Commissioner's Court and once in the courts, the judges had the opportunity to "civilize" the lives of the litigant.

[513] E. Kurankyi-Taylor, "Ashanti Indigenous Legal Institutions and their Present Role," (Ph.D. Dissertation, Cambridge, University of Cambridge, 1951), 468.
[514] *Ibid.*

The three administrative territories of the Gold Coast Colony – i.e., the Colony, Ashanti and Northern Territories – required three separate Ordinances to deal with specific aspects of their activities, even though the Ordinances could be very similar. For instance, separate ordinances were passed by the British colonial government to deal with the legal systems in the different sections of the Gold Coast. That state of affair was quite cumbersome and unsatisfactory for running the territories by the colonial government. Consequently, the government passed the Gold Coast Ordinance in November, 1935 to enable the passage of laws "…for the Gold Coast Colony and Ashanti as though they were a single territory….and for the enactment of laws for the Gold Coast Colony, Ashanti and the Northern Territories as though they were a single territory…"[515] The passage of the Gold Coast Ordinance was followed with the passage of the Courts Ordinance (No. 7 of 1935) which superseded the Supreme Court Ordinance of 1876, and it applied to the whole Gold Coast as a single territory and not the colony alone.[516] The Courts Ordinance contained most of the stipulations of the Supreme Court Ordinance of 1876. The major alteration in the practices of the courts per the new ordinance was that whereas the 1876 Ordinance provided for the Chief Justice and one or more Puisne Judge making New Rules of Courts, the new ordinance stipulated that New Rules should be made by the Chief Justice, a Puisne Judge and two advocates nominated by the Gold Coast Bar Association.[517]

[515] Griffith, *British Courts*, 30.
[516] *Ibid*, 30-31.
[517] *Ibid*, 34.

The Native Jurisdiction Ordinances

Even though the Supreme Court Ordinance, 1876 established a British-styled national courts[518] system for the Gold Coast territory with jurisdiction over civil and criminal cases, it did not abolish the courts of the kings, chiefs and headmen[519] of the various states in the territory that existed before its establishment.[520] This was in spite of the fact that Local Courts had been shorn of almost all the powers to enforce judgements.[521] Before the arrival of Europeans, all African societies had law courts for the settlement of disputes. These were, mostly, constituted in the chiefs' palaces. The competencies of traditional rulers in Africa, in general, and the Gold Coast, in particular, in the discharge of their judicial duties were not in doubt. Lord Hailey reported that "…but they [traditional authorities] have had far less difficulty in regard to their judicial responsibilities."[522] It was, therefore, not surprising that the colonial authorities officially incorporated local courts into the judicial institutions they established in the colonies. The Local Courts were allowed to remain even after the passage of the Supreme Court Ordinance of 1876 and the subsequent establishment of the various layers of courts in the colony.[523] From 1883,[524] the colonial government took steps to define the powers of the

[518] Asante, "Over A Hundred Years,"70.
[519] Subsequently known as the Native Courts or native tribunals.
[520] See Sarbah, *Customary Law*, 232; Griffith, *British Courts*, 20; Kimble, *A Political History*,305.
[521] Griffith, *British Courts*, 20.
[522] He was comparing the exercise of executive powers by traditional leaders in Africa with that of their judicial function. See Hailey, *Native Administration*, 23.
[523] *Ibid.*
[524] It must be emphasized that there was an earlier ordinance in 1878 to control the authority of chiefs in the Protectorate but it was never put into effect. It faced stiff opposition from the chiefs and was later repealed. The skewed perception of some British officials about the ability of the chiefs to administer justice also militated against the implementation of the 1878 ordinance. Governor H.T. Ussher, for instance, did not think that the chiefs, who had led their people long before the coming of the Europeans, were entitled to "much consideration in any scheme for the better government of 'their wretched people." He, therefore, did not to involve

Local Courts in civil and criminal cases and that resulted in the passage of the Native Jurisdiction Ordinance (N.J.O.) in 1883 which was subsequently amended in 1910 and 1924.[525]

It had become important for the colonial administration to pass the N.J.O. because of the misgivings it had about the competence, or the lack thereof, of some of the Local Courts to effectively dispense justice,[526] right from the period of arrival and settlement of the British on the shores of the territory, as has been discussed in previous chapters. The insufficient number of British personnel,[527] the inability of the British courts to attend to the large volume of cases that required judicial attention in the colony,[528] and the incompetence of the British courts to adjudicate in cases of witchcraft,

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the traditional leaders in the political, or judicial, administration of the colony. He described the chiefs as "useless, tyrannical and not to be trusted to administer justice." It was his absolute mistrust for the chiefs that led to his failure to implement the NJO of 1878 which had sought to involve, define and regulate the local tribunals in the advancement of the colonial judicial system. It was his successor, Sir Samuel Rowe, who repealed the defunct 1878 ordinance and re-enacted it in 1883. The restructured ordinance, however, had a major modification from the earlier one. It stipulated that the decisions in native courts could be appealed in the British courts. See "The Native Jurisdiction Ordinance, No. 8, 1878 No. 5, 1883," in Metcalfe, *Great Britain and Ghana*, doc 139, 390-393; A. N. Allott, "Native Tribunals in the Gold Coast 1844-1927, Prolegomena to a Study of Native Courts in Ghana", in *Journal of African Law*, Vol. 1, No. 3 (Autumn, 1957), 168, (Accessed: 24-8-2010); Goldman, "Fallible Justice," 286-277; Kimble, *A Political History*,460-461; Gocking, *Ghana*, 38.

[525] "The Native Jurisdiction Ordinance," in Metcalfe, *Great Britain and Ghana*, 390-393; Roger Gocking, "Colonial Rule and the 'Legal Factor' in Ghana and Lesotho," in *Africa: Journal of the International African Institute*, Vol. 67, No. 1 (1997), 61-85, (Accessed: 06-04-2018); Roger Gocking, "British Justice," 93-113. (Accessed: 15-02-2018); Allott, "Native Tribunals," 168; Kimble, *A Political History*,460; Lord Hailey, *An African Survey: A study of the Problems Arising in Africa South of the Sahara*, (London: Oxford University Press, 1938), 467.

[526] See also Goldman, "Fallible Justice," 261-277; Allott, "Native Tribunals," 167-168.

[527] This lack of personnel was what led to the introduction and operation of what became known as the Indirect Rule System in the Gold Coast and other British colonies. Indirect Rule was a system of British colonial rule in which traditional rulers were engaged as agents of the colonial government. This system was introduced by Lord F.D. Lugard in Northern Nigeria and later expanded to other British colonies. See Roger S. Gocking, "Indirect Rule in the Gold Coast: Competition for Office and the Invention of Tradition," *Canadian Journal of African Studies/Revue Canadienne des Études Africaines*, Vol. 28, No. 3,1994, 421-446. http://www.jstor.org/stable/485340,(Accessed: 21-02-2018); Goldman, "Fallible Justice," 281.

[528] Gocking, "Legal Factor," 64; Goldman, "Fallible Justice," 262-269.

"fetishism"[529] and what they considered as superstitious beliefs[530] were some other factors that informed the passage of the N.J.O. Thus, in as much as the N.J.O. was to define and regulate the judicial powers of the chiefs,[531] it was also meant to make up for the deficit in the elaborate British court system that had been established in the colony. The N.J.O. was to be applied in local courts where there was no Divisional Judge or District Commissioner at or near where the court proceedings took place. What it meant was that the N.J.O. would not be extended to every Local Court or state in the Gold Coast.

Jurisdiction of Local Courts under the N.J.O.

Even though some British officials were opposed to the continuous existence and operations of the chiefs' courts from the very beginning of European activities in the Gold Coast, others were predisposed to their existence and operation as being the appropriate legal system for the local people. But even those who accepted the Local Courts did so on the condition that the activities of such courts would be regulated and controlled to guarantee their efficient delivery of justice.[532] The N.J.O. of 1883 re-designated the paramount chiefs of the Gold Coast Colony as "Head Chiefs" and replaced their natural judicial authority with a deriative one.[533] That notwithstanding, the Ordinance empowered traditional rulers and their respective councillors, as authorized by the indigenous laws and customs, to

[529] The word is used loosely and mindful of the derogatory interpretations that the Europeans had for its use. The word, in this context, consists of spiritual activities such divination, invocation of curses, and other related practices withing the African traditional religious setting.
[530] Gocking, "British Justice," 96; Goldman, "Fallible Justice," 262.
[531] M.A.S. Owusu, *Prempeh II and the Making of Modern Asante*, (Accra: Woeli Publishing Services, 2009), 37.
[532] Allott, "Native Tribunals," 167.
[533] See Robert Addo-Fening, "Ghana under Colonial Rule: An outline of the Early Period and the Interwar Years," in *Transactions of the Historical Society of Ghana*, 2013, No. 15, Stable URL: https://www.jstor.org/stable/43855011.

form Local Tribunals which had jurisdiction over civil and some criminal cases in which all the parties were indigenes.[534] The chiefs' tribunal also had jurisdiction over cases in which a party to a case "…consents in writing to his case being tried by the Native Tribunal"[535] even if both parties were not local people.

Civil cases that the Local Courts had jurisdiction over included disputes arising out of the ownership and possession of land, customary marriage, "fetishism," succession, witchcraft, damage and debt cases that did not exceed twenty-five pounds (£25).[536] The criminal cases, on the other hand, comprised "all criminal charges and matters in which any person is accused of having, wholly or in part within a particular jurisdiction of the Tribunal, committed or been accessory to the committing of any of the offences which may from time to time be described in this rule."[537] These included offences such as arson, petty assault, slander, seduction, deliberately disobeying a chief's oath or insulting a chief. Gocking argues that the "chiefs' role in the adjudication of serious criminal matters consisted only of 'apprehending, detaining, and sending to the Commissioner of the district' those people who were suspected of such crimes."[538] The tribunal could punish the guilty parties in so far as those punishments were provided in the Criminal Code or customary laws and they were not oppressive and the fines not excessive. Addo-Fening notes that the chiefs could enforce punishments in "…such other methods of enforcing judgments" as were not "repugnant with natural justice

[534] "The Native Jurisdiction Ordinance," in Metcalfe, *Great Britain and Ghana*,391. See also Richard Rathbone, *Nkrumah and the Chiefs: The Politics of Chieftaincy in Ghana, 1951-1960*, (Ohio: Ohio University Press, 2000), 11; Hailey, *Native Administration*, 24.
[535] *Ibid.*
[536] *Ibid.* See also Gocking, "British Justice," 97.
[537] *Ibid.*
[538] Gocking, "British Justice," 97.

or with the principles of the law of England."[539] The N.J.O. further weakened the position and power of kings and chiefs in the Gold Coast who were the natural rulers of the people "…lost their autonomy in judicial matters and were reduced to an appendage of the Supreme Court."[540]

Although the amended N.J.O. in 1910 seemed to have increased the jurisdiction of Local Courts in criminal cases, the courts continued to deal mainly with civil matters.[541] Gocking further indicates that:

> Of the 29 cases which make up the extant record of the Cape Coast Native Tribunal from 1909 to 1912, only one concerns assault, one slander and one witchcraft, while the rest deal with matters ranging from unpaid debts (10), the return of brideprice (sic) [bride wealth] (6), seduction (4), land trespass (3), wife support (1), paternity (1) and one chiefly deposition.[542]

Contrary to the small numbers of criminal cases that went before the chiefs' courts, there were the many civil suites before those same courts. These cases largely involved issues of defamation. Of the 39 cases that went before the Accra local tribunal in 1925, 13 dealt with people accusing one another of witchcraft or fetishism.[543] The limited jurisdiction that was exercised by the Local Courts in criminal cases would persist until 1927 when the Native Administration Ordinance (N.A.O.)[544] was passed. The 1927 ordinance extended the jurisdiction of the chiefs' courts in criminal matters.[545] It is

[539] Addo-Fening, "Ghana Under Colonial Rule," 55.
[540] *Ibid.*
[541] Gocking, "British Justice," 97, 99. See also Allott, "Native Tribunals," 168-169.
[542] Gocking, "British Justice," 99; Hailey, *Native Administration,* 23.
[543] *Ibid*, 100.
[544] *Ibid*
[545] *Ibid*

noteworthy that the Local Tribunals still followed the traditional procedure for hearing and deciding issues in both civil and criminal matters.[546]

Weaknesses of the N.J.O.

The N.J.O. placed the Local Courts on a statutory basis but largely restricted and, in some instances, undermined the authority of the chiefs. The fact that a chief had jurisdiction over only matters involving people in his geographical/political area was a defect in the Ordinance and a great disregard of his natural authority. That clause implied that an individual who had migrated to another community was not necessarily under the jurisdiction of the Local Court of that community that he had gone to live in. Consequently, as people migrated to cocoa-producing communities as a result of the expansion of the cocoa industry,[547] they could choose not to subject themselves to the Local Court and lawyers made quick references to that. This was particularly in instances that they had reason to believe that they would not receive fair trial. Thus, when a stranger was sued in the Local Court, he or his lawyer almost always succeeded in having the case removed to the Supreme Court and that made the Local Courts insignificant.

The fact that the N.J.O. did not apply to all Local Courts in the Gold Coast[548] was another factor that hampered the successful operationalisation of the Ordinance. The N.J.O. of 1883 only applied to the states in the Protected

[546] Hailey, *Native Administration*, 23.
[547] There were even more large migrations in the last decades of the 19th century. This was necessitated by the introduction of the era of the "Legitimate Trade" – that is the trade in products such as palm oil, cotton, rubber, gum capol among others. For instance, people migrated from areas such as Krobo, Akuapem, Ga and Anum to work on lands in Akyem Abuakwa. See Addo-Fening, "Ghana Under Colonial Rule," 59.
[548] The chiefs and people of the interior were spared the ordeal of living under the NJO. See Kimble, *A Political History*,304.

Territories that were under the proclamation by the Governor-in-Council.[549] This made some of the chiefs resent being under the Ordinance as they rather wanted to remain free from colonial control.[550] The desire to remain free was due to the restrictions that the ordinance placed on the judicial authority of those who were under the law. Kimble notes that the tribunals in the areas where the N.J.O. operated "…became somewhat eclipsed by the paraphernalia of modern justice, especially in the coastal towns [such as Dixcove, Axim, Sekondi, Elmina, Cape Coast, Saltpond, Winneba, Accra, Ada and Keta] where District Commissioners were stationed."[551] It was not until 1910 that the N.J.O. was extended to cover all Local Courts.[552]

The British colonial administration and the British court system that was established in the colony did not recognize the decision of the Local Courts as *res judicata*.[553] Thus, even though the N.J.O. sought to recognize the courts of the chiefs, and gave them some powers to operate, albeit limited, this judicial authority was incessantly undermined as colonial authorities did not consider their verdicts as having substantially dealt with legal cases in the real sense of the law. That provided fertile ground for the Chief Commissioners and other judges of the British courts to rudely interfere in the affairs of the courts of the chiefs. Appeals from the tribunals had to be taken to the District Commissioner for hearing[554] and that weakened the legality and trustworthiness of the chiefs' court in the eyes of their subjects. The

[549] "The Native Jurisdiction Ordinance," in Metcalfe, *Great Britain and Ghana*, 390; Goldman, "Fallible Justice," 278.
[550] Allott, "Native Tribunals," 168.
[551] Kimble, *A Political History*,304.
[552] Allott, "Native Tribunals," 169; Gocking, *Ghana*, 40.
[553] *Res judicata* refers to a matter that has been adjudicated by a competent court and, therefore, may not be pursued further by the same parties. Allott, "Native Tribunals," 168.
[554] Crabbe, *Mensah Sarbah*, 41.

requirement that applications for appeals must go to the Secretary for Native Affairs also harmed the dispensation of justice because the process was time-consuming and cumbersome since it involved the exchange of various correspondences between the courts and the office of the Secretary for Native Affairs.[555] An Attorney-General of the Gold Coast reported in 1883 that there was no doubt that the situation "acted in some cases as a deterrent to appeal against wrong decisions"[556] obviously in the bid to avoid going through the arduous process of seeking justice.

Under Section 29 of the N.J.O., the Governor had the authority to suspend or dismiss a chief who appeared to have abused his power and that was also a defect of the N.J.O. which further undermined the sanctity and authority of the chiefs. The relevant Section of the Ordinance read that:

> The Governor in Council may suspend for a stated time, or may dismiss any chief who shall appear to him to have abused his power, or be unworthy or incapable of exercising the same justly, or for some other sufficient reason, and thereupon such chief shall be disqualified to exercise any power or jurisdiction, unless and until he be expressly restored by the Governor in Council; No suspension or dismissal shall take place unless the charge against such chief are communicated to him and he has made or has had sufficient opportunity of making his answer or defence thereto.[557]

The above stated provision, according to Justice Azu Crabbe, "…caused a great deal of controversy and uneasiness amongst the people of this

[555] Crabbe, *Mensah Sarbah,* 50.
[556] *Ibid.*
[557] "The Native Jurisdiction Ordinance," in Metcalfe, *Great Britain and Ghana*, 390-393; R Addo-Fening, "Colonial Government, Chiefs and Native Jurisdiction in the Gold Coast Colony 1844-1928", *Universitas*, Vol. 10, 1988, p. 137.

country…."[558] since the Section "…was viewed with grave suspicion by the people as it obviously interfered with the inherent right to destool a chief"[559] and "…provoked very serious discussions among the educated class of the community."[560]

Some educated Gold Coasters and chiefs called for amendments of some aspects of the N.J.O. John Mensah Sarbah proposed a solution to address a number of the defects in the Ordinance. He suggested to the Legislative Council that the existing Ordinance should be repealed and replaced with a new one. He posited that the new one should:

> "…apply to the whole Colony, [be] comprehensive, explicit, and complete in itself, which should define the powers and jurisdiction possessed by native chiefs, should regulate the exercise thereof, and the court fees and fines …, and should, by facilitating appeals from inferior local courts to that of an Omanhene, and thence to a Divisional Court, establish a perfect system of connection between the lowest and the highest tribunals in the colony."[561]

Sarbah was, subsequently, appointed a member of a Special Committee that was tasked to consider proposed amendments to the N.J.O. The proposed amendment came into force on 22 December 1951.[562]

Effects of the N.J.O. on Local Judicial Systems

The passage and application of the N.J.O. contributed to the increase in cases that went to the Supreme Court for trial. This was mainly because of the definition of who an indigene was under the ordinance as well as the restricted

[558] Crabbe, *Mensah Sarbah*, 41.
[559] Mensah Sarbah agreed with this position by the people. He indicated that that Section amounted to the government abusing its powers. *Ibid*, 41. See also Kimble, *A Political History*,305.
[560] Crabbe, *Mensah Sarbah*, 41.
[561] *Ibid*, 50-51.
[562] *Ibid*, 51-53.

civil and criminal jurisdictions that was given to the Local Court. An indigene was said to include "Mulattoes, and all persons resident in the Country other than those commonly known as Europeans."[563] Thus, the large number of Europeans, whose numbers had increased as a result of the development of trade, could not be sent before the Local Courts and could not summon anyone before the courts of the chiefs.

The Governor or any officer whom he may designate had the power to "…stop the further hearing of any civil or criminal case commenced or brought before any Native Tribunal and direct the case to be enquired of and tried by the Superior Native Tribunal if any, or by the [Supreme] Court, as shall be deemed expedient."[564] Consequently, even the restricted powers given to the natural rulers of the people of the Gold Coast could further whittle down, depending on the whims and caprices of the Governor or his appointed agent and that was a dent in the authority of the chiefs.

Further erosion of the judicial powers of the chiefs was seen in Section 23 of the Ordinance which stated that:

> The defendant in any case brought before any Native Tribunal may apply to the Commissioner for the removal of the proceedings, and if the Commissioner sees sufficient reason, he may stop the hearing or further hearing of the case before the Tribunal and direct that trial to be by the [Supreme]Court.[565]

That section additionally empowered persons who were before Local Courts to disregard the authority of the chief and rather resort to the British courts in

[563] "The Native Jurisdiction Ordinance," in Metcalfe, *Great Britain and Ghana*, 390.
[564] *Ibid*, 392.
[565] *Ibid.*

the land.[566] The loss of respect by some of the local people for their chiefs and the judicial powers of the Local Courts was aptly articulated by Chief Justice Hutchinson in 1892. He reported that the chiefs complained to him that the government had usurped their powers and that they had no means of enforcing their sentences and orders because of limits on the length of sentences that they could hand out. They also argued that they would lose public respect and obedience, have fewer cases brought to their court, and lose prestige and income as a result. The chiefs cited, among other things, their inability to defendants in logs without the government's written consent and the cost of keeping an expensive clerk to respond to government requests for records.[567]

It is imperative to argue that the passage of the N.J.O. was a "recognition" of the courts of the chiefs as an important institution in the administration of justice in the Gold Coast since the British court systems were incapable of adequately delivering justice in the myriad of issues that needed judicial attention. Some of the issues that the British courts considered to be superstitious beliefs were serious offences amongst the local communities, particularly "fetishism" and witchcraft, and such charges would invariably have called for purgation ordeals in the period before the establishment of the British courts.[568] Hence, admitting and allowing Local Courts to prosecute such cases was an important acknowledgement of African conceptions of justice. One must, however, not forget that the passage and application of the N.J.O. was also a subtle way by the British government to rule the people of the colony through agents who would be accepted by the people. Chief Justice Hutchinson underscored the centrality of the courts of

[566] "The Native Jurisdiction Ordinance," in Metcalfe, *Great Britain and Ghana*, 390.
[567] Goldman, "Fallible Justice," 282.
[568] Gocking, "British Justice," 97.

the chiefs to the administration of justice in the Gold Coast. He advised the colonial government not to take any action that would undermine the prestige and power of the chiefs. This was because the remote location of most litigants and witnesses made it impossible for British courts to conduct trials directly in any part of the colony without the assistance of local popular authorities.[569]

The NJOs of 1910 and 1924

Allegations of corruption against the local tribunals, including "gross perversions of justice" by extorting "almost incredible sums of money from litigants,"[570] were some of the reasons that necessitated the amendment of the N.J.O. of 1883.[571] It was argued that the alleged level of corruption[572] at the Local Courts had contributed to an increase in the practice of pawning in the areas where the courts operated. This was because the courts exacted hugely from litigants who could only settle their debts through the practice of pawning, and, in some instances, pannyaring, even though the two practices had been abolished.[573] The claims against the local courts did only come from British officials or some educated Africans but also from members of some *asafo*[574] companies who also accused some chiefs of extortions at the courts and a miscarriage of justice. Addo-Fening posits that the *asafo* groups, in addition to their traditional roles, also served as checks on the activities of

[569] Goldman, "Fallible Justice," 283.
[570] *Ibid*, 283-284; Crabbe, *Mensah Sarbah*, 50.
[571] Goldman, "Fallible Justice," 285.
[572] The courts were accused of imposing exorbitant fines on their clients. Proceeds from the fines were then shared out amongst chiefly members of the tribunals because they were mostly not remunerated. See Rathbone, *Nkrumah*, 49 Gocking, "Legal Factor," 66.
[573] Goldman, "Fallible Justice," 283.-284.
[574] *Asafo* companies were semi-military groups (mainly associations of commoners) that were organized to defend the state. They were also concerned with administrative matters such as the maintenance of law and order and public works in the state. See: Kwame Arhin, T*he Political System of Ghana: Background to Transformations in Traditional Authority in the Colonial and Post-Colonial Periods*, (A Publication of the Historical Society of Ghana, 2002), 33; Owusu-Ansah, *Historical Dictionary*, 52.

local tribunals; they put pressure on chiefs who abused their judicial powers.[575] He postulates that:

> As early as 1905 the Okyeman Council complained to Government about the increase in cases of contempt and disobedience of elders and chiefs and pleaded for sweeping powers to curb the insubordination of the youth. The same year, the State of Akwamu witnessed "practically the whole of the male population…who were neither chiefs nor members of their courts…." forming themselves into an *asafo kyenku*, purposely to "resist abnormal fines and extortion" in the Native Tribunals.[576]

He further indicates that the situation in the courts of Okyeman degenerated to the point where the *asafo* arrogated to itself the judicial powers of the chiefs. According to Addo-Fening:

> By 1919 the *asafo kyenku*, had arrogated to themselves the power of hearing cases and giving judgment as a protest against the imposition of heavy fines for breach of oaths.... Their tribunals issued an order forbidding people to obey summons from the Native Tribunals or swear chiefs' oaths.[577]

The activities of the *asafo* in Akyem Abuakwa were not peculiar to that state. Addo-Fening cites instances in Accra, Peki, Asante, Brong Ahafo where the *asafo* challenged the local tribunals and even stopped people from answering to summons from the court. He asserts that some chiefs were killed while others were destooled by the *asafo*.[578] This claim by Addo-Fening is validated by Rathbone who posits that "…. Commoners' associations, the *asafo* companies, were at the forefront of many destoolment attempts…."[579] It is worth emphasizing that the alleged corrupt activities of some of the tribunals

[575] Addo-Fening, "Ghana Under Colonial Rule," 59.
[576] *Ibid*, 60.
[577] *Ibid.*
[578] *Ibid.*
[579] Rathbone, *Nkruma*h, 24

were the result of the colonial administration leaving the institution of Local Tribunals unregulated and with little reform.[580] Governor Sir William Brandford Griffith, therefore, argued that the evils of pawning could only be cured by extending the Native Jurisdiction Ordinance throughout the colonies, carefully supervising the courts by the judicial authorities, and publishing a fixed list of fees and fines.[581] The tribunals were also accused of extortionate charges[582] and improperly detaining people solely on the basis of alleged insults of chiefs.[583]

A Commission was appointed by the colonial government on August 1, 1894 to explore the issues and make recommendations on the future of the N.J.O.[584] At the end of its work, the Commission recommended the passage and adoption of a new ordinance that would apply to all traditional courts in the Gold Coast.[585] After several amendments to the recommendation of the Commission, and the withdrawal of proposed amendment bills from the Legislative Council in the 1890s and early 1900s, a new N.J.O. bill was finally passed into law in 1910,[586] bringing every chief's court under its ambit.[587] The N.J.O. of 1910 restricted the Supreme Court in its administration of some aspects of justice as far as matters affecting the local people were concerned.[588] For instance, it enjoined the British courts in the colony to refer all cases that went before them but appeared to be cases properly cognizable

[580] Rathbone, *Nkruma*h, 48.
[581] Goldman, "Fallible Justice," 283.
[582] *Ibid*, 286.
[583] John Mensah Sarbah, *Fanti Law Report*, 2nd Ed. (London: William Clowes & Sons, Ltd., 1904) 180-181.
[584] Goldman, "Fallible Justice," 283; Kimble, *A Political History*, 464.
[585] *Ibid*, 287.
[586] Kimble, *A Political History*, 464-469.
[587] Gocking, *Ghana*, 40.
[588] *The Gold Coast Native Jurisdiction (Amendment) Ordinance, 1910 (No. 7)*, 26 August 1910. See also Griffith, *British Courts*, 24.

by a Local Tribunal to the chiefs' courts. The injunction was a departure from the discretionary powers that were given to the British courts in the 1883 Ordinance.[589] Section 17 of the 1883 Ordinance had stated that "the court may unless satisfactory reason to the contrary be shown refer the parties to a local tribunal but the 1910 Ordinance changed the word "may" in that Section, which was discretionary, to "shall" which was more obligatory."[590] Consequently, all land disputes were first heard in the local tribunals and might go on appeal at the higher courts. The same procedure was used in personal actions where the negligence or damage did not exceed £25.[591]

The N.J.O of 1924 was quite detailed and elaborate, just as the N.J.O. of 1910. It sought to correct the weaknesses of the 1886 Ordinance and the amendments in 1910, and make the local courts more efficient. However, despite the reforms that the amended N.J.Os introduced, there continued to be claims of corruption within the local courts. For example, the colony's governor at the time, Sir Shenton Thomas, made such a revelation in a speech to the Legislative Council in 1933, denouncing local courts as corrupt and inefficient.[592] He noted that "…a few of the tribunals have worked well…but it would be idle to deny that, in much of the country, there is much dissatisfaction at the manner in which the Ordinance had been enforced…it is not the duty of the Government to bolster up corrupt and inefficient tribunals …."[593] He, thus, argued that it was necessary for him to be empowered to

[589] Griffith, *British Courts*, 24.
[590] *Ibid.* See also "The Native Jurisdiction Ordinance," in Metcalfe, *Great Britain and Ghana*,390-393 and *Native Jurisdiction (Amendment) Ordinance*.
[591] Griffith, *British Courts*, 24.
[592] "Speech of Governor, Sir Shenton Thomas in the Legislative Council, 22nd March 1933," in Metcalfe, *Great Britain and Ghana*," doc 479, 635-636.
[593] *Ibid.*

properly monitor the functioning of the court.[594] The Governor assured the members of the Legislative Council that his decision to supervise the tribunals was to strengthen the institution of local authorities and not to undermine them. He indicated that:

> There can be no doubt whatsoever that … the most effective channel of communication between the Government and the people is through the Native Authorities, and nothing that I have said must be construed to mean that I wish to weaken the Native Authorities. On the contrary, I desire to strengthen them…and in future I intend to stand by their side, helping and advising them in the way of good government, so that eventually they may be better able to stand by themselves. [595]

As a result, in 1835, an ordinance was passed that made local courts subject to inspection and review by administrative authorities.[596] The traditional courts were made subject to inspection and review by the colonial administrators and those that were considered not to have performed creditably were severely dealt with by the colonial government.

NJOs and the Reaction of Chiefs and Educated Elites

The reaction of chiefs to the passage and implementation of the N.J.Os was definite and decisive just as King Aggrey and other traditional rulers[597] had challenged the subtle encroachment of their judicial authority in the past. The chiefs in the areas where the N.J.Os was applied opposed them primarily

[594] "Speech of Governor, Sir Shenton Thomas in the Legislative Council, 22nd March 1933," in Metcalfe, *Great Britain and Ghana*," doc 479, 635-636.
[595] *Ibid.*
[596] Hailey, *Native Administration*, 108.
[597] Kojo Tsibu of Denkyira, Kweku Ackah of Nzema, Atta Panin (1835- 59) and Atta Obuom (1859-87), both of Akyem Abuakwa, in the past, all defied attempts by the British administrators of the Gold Coast to appropriate their sovereignty. See Robert Addo-Fening, "Ghana Under Colonial Rule: An Outline of the Early Period and the Interwar Years," *Transactions of the Historical Society of Ghana*, 2013, New Series, No. 15, 46-47. See also Martha Alibah, *The European Presence in Nzemaland, 1550 – 1957*, (Accra: Woeli Publishing Services, 2014), 27-52; Boahen, *Ghana*, 45-48.

because the ordinances limited their judicial powers. Mair rightly posits that "the British administration was regarded from the outset with hostility and suspicion by the Gold Coast chiefs."[598] This claim is corroborated by Boahen who argues that the application of the NJOs "provoked uproar and protests, especially in the Protectorate."[599]

Boahen further indicates that the application of the N.J.O. in the 1880s was met with stiff opposition in places such as Wassa, Akyem, Peki, Krobo and Akuapem. The traditional rulers of those states either refused to abide by the limitations that were placed on them by the ordinance or defied sanctions from the colonial government against them for (the traditional rulers') flouting of the ordinances.[600] For example, the ruler of Akyem Abuakwa refused to follow the instructions of the N.J.O. and the colonial government forced him to sign a bond of one-hundred-pound sterling (£100) to comply with the government.[601]

Ababio, the chief of Adukrom Akuapem, was destooled by the colonial government in 1893 for leading a resistance against the implementation of the N.J.O. in his state.[602] The application of the N.J.O. in parts of what is now Volta Region of Ghana also culminated in a rebellion by the people of Tavievi in May 1888. The N.J.O. had brought the peoples of Tavievi, Adaklu and Waya under Kwadwo Dei of Peki and that arrangement forced the people of Tavievi to rebel. Similarly, the implementation of the ordinance was vehemently opposed by the chiefs and people in Kumasi. Mary Owusu posits that opposition to the application of the ordinance was massive and that

[598] L.P. Mair, *Native Policies in Africa*, (New York: Negro University Press, 1969), 158.
[599] Boahen, *Ghana*, 61.
[600] *Ibid*, 62.
[601] *Ibid.*
[602] *Ibid.*

stopped the execution of the law in Kumasi, even though it was applied in other administrative areas of Asante.[603] Boahen concludes that the British colonial government suppressed all the rebellions and protests against the implementation of the NJOs and thus succeeded in establishing its control over those areas by 1900.

By the application of the N.J.O., the chiefs were all deprived of the judicial powers which enabled them to pass verdicts on matters brought before them and passed whatever sentences they deemed fit – including long-term imprisonment, executions, and the declaration or cessation of warfare.[604] Addo-Fening succinctly postulates that the implementation of the N.J.O., in the end, marked the start of the crumble of the principal authority of the chiefs, and that accounted for the sturdy opposition to it by some traditional rulers.[605]

The defects in the N.J.O. were enough to instigate opposition against its implementation. Apart from some colonial officials, who opposed the N.J.O. because they did not consider the Local Courts capable[606] enough to administer justice, and some chiefs who complained about the diminishing authority of traditional rulers under the ordinance, opposition to the N.J.O. also came from some educated Africans.[607] Some of mixed-race Africans, as well as African merchants and lawyers, were as hostile to the chiefs' courts as the British.[608] In 1883, one J. Renner Maxwell petitioned the Secretary of State to prohibit passage of the N.J.O. because to him, the chiefs were

[603] Owusu, *Prempeh II*, 37-38.
[604] *Ibid.* See also Mair, *Native Policies*, 158-159; Buah, *Ghana*, 106-107.
[605] Robert Addo-Fening, "The Native Jurisdiction Ordinance, Indirect Rule and The Subject's Well- Being: The Abuakwa Experience C1899 -1912," *Research Review*, N. S. Vol. 6, No. 2 (1990): 29-44.
[606] For instance, a former Chief Justice and Governor of the Gold Coast, Sir. William Brandford Griffith, condemned the native courts, especially, for their severe punishments for debtor and he described them as 'a remnant of barbarism.' Kimble, *A Political History*, 464.
[607] Kimble, *A Political History*, 462.
[608] Goldman, "Fallible Justice," 280.

uneducated, "uncivilized,"[609] and had no will of their own.[610] He argued further that he did not believe that chiefs were competent enough to adequately execute their role as judges, and that the passage of the N.J.O would seem to prioritize ignorance and barbarism over education and civilization. John Mensah Sarbah, also argued that educated Africans should be employed in the administration of justice in the country and they should assist the chiefs in the hearing of cases in the courts.[611] One can safely deduce that Sarbah and other educated Ghanaians like him questioned the competence of the traditional rulers of the people in the discharge of their judicial functions because of their (the educated African's own interests). The discrediting comments about the competence of traditional rulers as judges could also be part of the attempt by the educated elite to be involved in the administration of the colony as they considered themselves as the "true heirs" of the British colonial officer when the latter exited the territory in future. Chiefs, and for that matter their tribunals, were accused of being corrupt[612] and hence were distrusted in the administration of their judicial responsibilities.

Kimble also contends that some educated Ghanaians protested the application of the ordinance on the basis of the fact that it eroded the powers of the chiefs and could be abused by the colonial authorities. The intelligentsia argued that the Governor should not have the power to suspend or remove chiefs without due recourse to the people who enstooled the chiefs.[613] Sarbah was one of the foremost and strongest opponents to the passage of the bill into

[609]His use of those words was typical of some biased colonial officials and Eurocentric scholars who considered African as being inferior in thinking and ability. They perceived Africans based in their own definitions of words such as literate and civilization.
[610] *Ibid.* See also Kimble, *A Political History*, 463.
[611] Crabbe, *Mensah Sarbah*, 41.
[612] *Ibid*, 280-283.
[613] Kimble, *A Political History*, 463.

an ordinance.[614] His campaign later received overwhelming support from other indigenes of the colony.[615] Kimble concludes that the need for the chiefs and the educated elite to present a united opposition against the N.J.O. laid the foundation for the cooperation between the chiefs and the intelligentsia in 1897 with the establishment of the A.R.P.S.[616]

The NJOs, nevertheless, served as the foundation for local administration until the passage of the Native Administrative Ordinance (N.A.O.) in April 1927.[617]

Native Administrative Ordinance, 1927

The Native Administrative Ordinance (N.A.O.) was introduced in 1927 under the leadership of Sir Gordon Frederick Guggisberg, when Nana Sir Ofori Atta, as chairman of the Committee of Chiefs who drafted the bill, introduced a private member's bill in the Legislative Council.[618] It was passed, supposedly, to solve some of the challenges that were inherent in the application of the NJOs and have been discussed in the paragraphs above. This Ordinance made the chiefs part of the judiciary of the country and their courts became integral to the judicial system in the colony. The chiefs and their courts remained vital in the judicial set-up until the 1957 Constitution of Ghana abolished their courts.[619]

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[614] Magnus Sampson, *Makers of Modern Ghana*, (Accra: Anowuo Educational Publications, 1969), 20.
[615] *Ibid.*
[616] *Ibid.* The Aborigines' Rights Protection Society (ARPS) was a group organized in Cape Coast in 1897. It was formed, primarily, to oppose the Land Bill of 1897 but it also campaigned against the lack of African representation in the Legislative Council, taxation, and jurisdiction. See Boahen, *Ghana*, 60-66; Buah, *Ghana*, 62-64; Amenumey, *Ghana*, 153-155.
[617] Hailey, *An African Survey*, 467; Crabbe, *Mensah Sarbah*,41; Kimble, *A Political History*,462.
[618] Interview with Crabbe. See also Kimble, *A Political History*,492; Boahen, *Ghana*,116; Buah, *Ghana*,107; Sampson, *Makers*, 31.
[619] Interview with Crabbe.

The Ordinance was applied to the whole Colony and repealed the N.J.O. of 1883.[620] Kimble suggests that the main objective of the NAO was to strengthen and, in some respects, expand the powers of the chief, especially in judicial matters.[621] Mr. Goldman seems to agree with Kimble's explanation that the ordinance was intended to elevate the status of chiefs and make them more accountable to the government for the proper performance of their assigned duties.[622] According to him, the aims of the colonial administration included the possibility of the law achieving the following:

- The regulation and placing on a sound basis of the powers and jurisdiction of the tribunals in their order of precedence and within their territorial limits with necessary powers for enforcing their judgements and verdicts
- The facilitation of the means for preventing and checking abuse in the tribunals by Government through its Commissioner.[623]

The N.A.O. limited the Supreme Court's jurisdiction in certain matters pending before the court. Sections 26 and 35 provide that the Supreme Court should have jurisdiction only in matters related to agricultural matters, both in the first instance and on appeal. The court was also barred from hearing cases concerning the election, installation, deportation or abdication of a chief, or touching on political constitutional relations that exist between chiefs in accordance with local custom. Section 58 also prescribed that the Local Tribunals shall have the exclusive right to have the first-instance jurisdiction in land cases.[624] This means that courts are vested with first-instance jurisdiction over litigation concerning land ownership, possession, and

[620] Sampson, *Makers,* 31.
[621] Kimble, *A Political History,*493. See also Allott, “Native Tribunals,” 169.
[622] Goldman, "Fallible Justice,” 283.
[623] Allott, “Native Tribunals,” 170.
[624] Griffith, *British Courts,* 27.

occupation, however, their obligations should be regulated by English law, in interpleader[625] cases and where the suit is in the nature of a set-off or counterclaim.[626] The Supreme Court's jurisdiction was also curtailed in matters relating to personal suits between indigenes where debts or damages did not exceed one hundred pounds (£100).[627] The local courts began to play an important role in criminal justice in the 1930s, with the extension of their jurisdiction in both civil and criminal cases. The N.A.O also empowered the paramount chiefs to maintain and manage prisons, known as "local state prisons." This regulation also authorised the courts to establish police forces, which gradually became part of the general police force. Additionally, lawyers were permitted to represent parties in local courts. These were all concessions that did not exist before the regulations took effect.[628]

One can, therefore, argued that the N.A.O. gave wider jurisdiction and administrative powers to chiefs.[629] It is important to note that the recognition of the need for local tribunals to keep a "police unit" and also own and operate prisons represented a significant departure from the situation in the second half of the nineteenth century. At that time, among the charges raised against King Aggrey of Cape Coast was the fact that he maintained a police unit and imprisoned his people which were both considered illegal by the British authorities. The reason for this dramatic turn of events cannot be farfetched – the British colonial authorities aimed at improving traditional government (by

[625] An equitable proceeding brought by a third person to have a court determine the ownership rights of rival claimants to the same money or property that is held by that third person.https://www.google.com/search?q=legal+meaning+of+interpleader+cases&rlz=1C5CHFA_enGH897GH897&oq=legal+meaning+of+interpleader+cases&aqs=chrome..69i57j33.12229j1j8&sourceid=chrome&ie=UTF-8#
[626] Griffith, *British Courts*, 27-28.
[627] *Ibid*, 28.
[628] Gocking, "Legal Factor," 74.
[629] Sampson, *Makers*, 31.

giving the chiefs some more power) to achieve the former's agenda of indirect rule in the colony.

The N.A.O. recognized various grades of courts with varying jurisdictions in the Gold Coast. Lord Haily reported that between 1940 and 1942, there emerged five types of Local Tribunals under the Native Administrative Ordinance. The courts, from the bottom to the top, were the *Odikro's*[630] tribunal, the *Ohene's*[631] tribunal, the *Omanhene's*[632] tribunal, the State Council and the Provincial Council tribunals.[633] The *Odikro's* tribunal was made up of an *Odikro* with his sub-chiefs, headmen or counsellors which had jurisdiction over civil suits in which the liability or damages did not exceed five pounds (£5). The tribunal's criminal jurisdiction extended to petty assault, defamation, disobeying a lawful oath, theft or insulting a chief. The court of the *Ohene* was above that of the *Odikro* and it was composed of the *Ohene* or his representative, his *Odikros,* headman, linguist and counsellors as was prescribed by the customary laws of the states. The *Ohene's* tribunal had jurisdiction over all criminal and civil matters that an *Odikro's* tribunal could deal with.[634] The civil jurisdiction of the court covered matters such as custody of children, ownership, possession and occupation of land and matrimonial matters under customary laws.[635] In addition to that, the *Ohene's* tribunal tried criminal cases which bothered on threats of causing unlawful harm on any

[630] Odikro meant the owner of the village. He was a headman and the head of a small political unit composed many lineages in a village. See K.A. Busia, *The Position of Chiefs*, 5-6; Rathbone, *Nkrumah*, 37; Addo-Fening, "Ghana Under Colonial Rule," 42-43.
[631] The *Ohene* was the chief of a state. He belonged to a particular clan and was responsible for the spiritual and secular wellbeing of his people. See Addo-Fening, "Ghana Under Colonial Rule," 43; David, Owusu-Ansah, *Historical Dictionary of Ghana,* 4th ed. (New York: Rowman & Littlefield, 2014), 251.
[632] He was the paramount chief of a state. Addo-Fening, "Ghana Under Colonial Rule," 43; Owusu-Ansah, *Historical Dictionary*,252.
[633] Hailey, *Native Administration*, 106. See also Goldman, "Fallible Justice," 288.
[634] Hailey, *Native Administration*, 105-106.
[635] *Ibid*, 106.

citizen of the land or being unlawfully in possession of property. The power of punishment of this court extended to a fine of ten pounds (£10) and imprisonment up to two months.[636] The court only had jurisdiction over indigenes only, unless non-locals consented in writing to have their civil disputes tried by it.[637]

Above the court of the *Ohene* was that of the *Omanhene*. It was the highest authority in each state.[638] This court consisted of the *Omanhene* or his representative who sat in court with his *ahenfo,*[639] *adikrofo, headsmen, linguists* and councillors. This court had jurisdiction over criminal and all matters that were heard by the court of the *Ohene* in addition to issues relating, but not restricted to, arson, malicious damage, spreading diseases and the possession of poison with the intent to destroying or endangering human life.[640] The civil powers of the court also covered the court of the *Ohene*. The difference, however, was that the *Omanhene's* court had jurisdiction over matters with damages not exceeding one hundred pounds (£100).[641]

The State Council differed from the *Omanhene's* court in the sense that while the latter could be composed by all or some of the members stated above (*Omanhene* with his *Ahenfo, adikrofo, headsmen, linguists* and councillors), the State Council was only duly constituted by all the members of the *Omanhene*'s court.[642] The State Council had jurisdiction over a vast variety of cases including those that were political in character. These included cases involving the litigation over the selection of an *Ohene* or *Omanhene*, the

[636] Hailey, *Native Administration,* 106.
[637] *Ibid.*
[638] Kimble, *A Political History,*493.
[639] *Ahenfo* is the plural of *Ohene.*
[640] Hailey, *Native Administration,* 106.
[641] *Ibid.*
[642] *Ibid.*

removal or maintenance of a deposed *Ohene* or *Omanhene*, improper detention of stool property and any cases before the other lower courts that were considered to be more suitably heard by the State Council.[643]

The courts of the Provincial Councils,[644] which were made up of the joint tribunals of three to five *amanhenefo* within a Province,[645] functioned as appeal courts in stool and inter-ethnic conflicts but the Governor retained power as the final arbiter.[646] The Court also had jurisdiction over "disputes of a constitutional nature, or relating to land or jurisdiction, arising between the *amanhenefo* of the province."[647]

The ordinance had some shortcomings that affected the local constitutions[648] of the people and caused problems in different states in the colony. The fact that state and district had the power to "transfer, review or re-hear cases in or from tribunals"[649] was a major setback on the autonomy of the tribunals. This resulted in the local people calling on their chiefs to withdraw from the Provincial Council that had been established because of the passage of the Native Administrative Ordinance. Some chiefs who failed to heed to the calls of their subjects were destooled by their respective states.[650]

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[643] Hailey, *Native Administration,*106-107.

[644] The restoration of the Asante nation in 1935 and the restoration of Prempeh II as Asantehene led to the creation of a body similar to the JPC for Ashanti the - area of present-day Ashanti, Bono East, Ahafo and Brong-Ahafo regions. The body became known as the Asanteman Council. See Owusu, *Prempeh II*, 48-68.

[645] *Amanhenefo* is the plural form of *Omanhene*.

[646] Kimble, *A Political History,*493.

[647] Hailey, *Native Administration,* 106.

[648] The Ordinance, did not consider the role of the queen mother, the *Asafo* groups and the people in the selection and removal of chiefs. This is because, per the law, chiefs could only be removed with the express approval of the Governor and that was in contravention of the customs of the people. The Chiefs were given enormous powers under the Ordinance and this created a possible situation of abuse of those powers against anyone who challenged the authority of the chiefs.

[649] Allott, "Native Tribunals," 169.

[650] For more on the defects of the 1927 Ordinance, see Kimble, *A Political History,*492-497; Allott, "Native Tribunals," 170.

The West African Court of Appeal

From 1876, the apex court of appeal in the Gold Coast was the Supreme Court which functioned as a High Court,[651] a Court of Appeal and a Supreme Court.[652] Thus, there were instances of possible conflict of interest when matters that had been decided by a Divisional Court, with the Chief Justice presiding, were laid on appeal before the Supreme Court, which constituted the Chief Justice and a Puisne Judge. This arrangement went on for almost five decades until concerns of conflict of interest were raised with the colonial government. The issue was brought to the fore by Gilbert K. T. Purcell in 1920. Purcell was the Chief Justice of Sierra Leone.[653] He argued that existing appellate courts across Sierra Leone, Nigeria and the Gold Coast had lost public confidence since their presiding judges (their Chief Justices) were reviewing their own decisions. He, therefore, proposed the establishment of a West African Court of Appeal (W.A.C.A.) which would meet twice in a year to listen to appeals in Freetown, Accra and Lagos.[654] British Prime Minister Winston Churchill, at the time, rejected the idea of W.A.C.A. The reason for this was that he believed that there were huge costs that the colonies would incur, costs that they were then unable to pay.[655] Winston Churchill, therefore, suggested an amendment of the Supreme Court rules of the four colonies to remove the requirement that the Chief Justice always sat on the Full Court and to add Circuit Judges from Ashanti and the Northern Territories as Puisne judges for

[651] When it functioned as a High Court it was a trial court which was presided over by one justice. But in some instances, there could be two Justices. See *Supreme Court Ordinance, 1876*, 37; Amissah, "Supreme Court," 9.
[652] Interview with Justice Crabbe; Amissah, "Supreme Court," 9.
[653] Goldman, "Fallible Justice," 227.
[654] *Ibid.*
[655] *Ibid.*

appellate purposes.[656] It, probably, was the thinking of Churchill that the Circuit Judges from Ashanti and the Northern Territories would be unattached to the matters before them and hence ensure some level of fairness in the trial process. But the issue of high cost did not deter nationalist groups such as the National Congress of British West Africa and individuals such as T. Hutton Mills from demanding and pushing for the establishment of the WACA.[657] After about 8 years of lobbying and compromises between the British West African colonies and the colonial government with its officers on the composition, jurisdiction and location of the proposed court, the WACA was established on 1 November 1928.[658] The ordinance which established the court was later amended with the passage of the West African Court of Appeal Ordinance (No. 11) in 1935. The new ordinance consolidated the three administrative zones – the Colony, Ashanti and Northern territories - in the Gold Coast.[659] Risley, the Colonial Office's legal adviser, said that a Court of Appeal for all of British West Africa would give the local people in all those territories greater confidence in the administration of "British justice" which they all recognized as the basis for peace, order and good government in West Africa.[660]

The court was to serve as a Supreme Court in the modern sense of the expression, to all four of their British West African colonies – The Gambia, Sierra Leone, Gold Coast and Nigeria.[661] Kimble and Buah argue that the establishment of WACA was an outcome of the demand by the National Congress of British West Africa (NCBWA) for the government to separate the

[656] Goldman, "Fallible Justice," 228.
[657] *Ibid.*
[658] There were three different ordinances for this WACA: one for the Colony, another for Ashanti and a third for the Northern Territories. See Griffith, *British Courts*, 28.
[659] *West African Court of Appeal Ordinance*, in Percy Alexander McElwaine, *The Laws of the Gold Coast*, Vol. I, (London: C.F. Roworth Ltd, 1954), 34.
[660] *Ibid*, 234.
[661] Interview with Justice Crabbe; Griffith, *British Courts*, 28.

judiciary from the political administration of the colony.[662] One can argue that the NCBWA demanded the establishment of a WACA because it was aware that the British colonial government had established a court in East Africa to serve its colonies in that geographic region. The East African Court of Appeal was created in 1902 to serve the British colonies of Kenya, Uganda, Malawi, Zanzibar, Somaliland and Tanganyika[663] even though none had been created for the British West African colonies.

With the establishment of the WACA, people who were unsatisfied with the decisions of the Joint Provincial Council had the right to go to an appeal to the WACA and further to the Privy Council if they were still not satisfied with the judgment of the WACA.[664] Thus, the court structure of the Gold Coast consisted of the local courts, the West African Court of Appeal and the Privy Council.[665] It was only in the 1950s that this structure was reviewed.

The WACA was composed of the "Judges of the Supreme Courts of the four Colonies and which was duly constituted by an uneven number of Judges not being less than three – except in certain cases where by consent, it may consist of only two Judges."[666] In 1930, the West African (Appeal to Privy Council) Order-in-Council was issued to make it possible for appeals from WACA to be sent to the Privy Council.[667] The passages of the West African Court of Appeal Ordinance (No. 11) of 1935 repealed the West African Court of Appeal Ordinance of 1928 and it applied to the entire Gold

[662] Kimble, *A Political History*,402; Buah, *Ghana*, 146.
[663] Bonny Ibhawoh, *Imperial Justice: Africans in Empire's Court*, (Oxford University Press, 2013), 7.
[664] Interview with Crabbe; Griffith, *British Courts*, 28.
[665] *Ibid.*
[666] Griffith, *British Courts*, 28.
[667] *Ibid.*

Coast colony (the Colony, Ashanti and the Northern Territories).[668]

The Courts Ordinance, 1935

The Courts Ordinance which was passed in 1935 superseded the Supreme Court Ordinance of 1876. The Ordinance applied to the entirety of the Gold Coast - the Colony, Ashanti and the Northern Territories – as a single territory.[669] The passage of the Courts Ordinance was informed by the outcome of a report by Grattan Bushe. Grattan Bushe was a legal adviser to the Colonial Office in the 1930s, who visited the British colonies in West Africa and reported on how British courts operated in those areas. His detailed report into flaws in the British court structure led to the introduction of new regulations to introduce reforms to the Gold Coast justice system. This Ordinance maintained the rules and procedures which were stipulated in the 1876 Ordinance but it contained some changes that were made to the constitution and structure in the Gold Coast. It also established new courts for the territory.[670] The Ordinance provided that Rules of Court be made by a new Rules of Court Committee which consisted of the Chief Justice, a Puisne Judge and two advocates who should be nominated by the Gold Coast Bar Association. That differed from the 1876 Ordinance, which provided that the Chief Justice and one or more Puisne Judges could make Rules of Courts.[671] The new provision gave nominees of the Bar Association of local or African descent the opportunity to participate in the work of the court, taking into account their people's customs and traditions.

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[668] "The West African Court of Appeal Ordinance," 1 July 1935, in Percy Alexander McElwaine, *The Laws of the Gold Coast*, Vol. I, (London: C.F. Roworth Ltd, 1954), 227. See also Griffith, *British Courts*, 34.
[669] Interview with Crabbe. See also Griffith, *British Courts*, 32.
[670] Griffith, *British Courts*, 33.
[671] *Ibid*, 34.

Griffith described the hierarchy and jurisdictions of courts under the Ordinance as follows:

> The Supreme Court of the Gold Coast, whose jurisdiction extended to Ashanti and the Northern territories as though they and the colony formed a single territory. But except in special circumstances, the Supreme Court has no jurisdiction in cases cognizable by a native tribunal, a Provincial Commissioner or the Chief Commissioner of Ashanti or the Northern territories. it is the Court of Appeal from the decisions of Magistrates' Courts other than in Togoland cases.
>
> Magistrates' Courts, which take the place of District Commissioners' Courts. District Commissioners performed both judicial and executive function; the policy now aimed at it to separate these functions. Appeals from Magistrates' Courts lie (sic) [lay] to a Divisional Court of the Supreme Court, except Togoland appeals, which go to the Commissioner of the Province.
>
> Provincial Commissioners' Courts, presided over by the Commissioner of the Province. These Courts hear appeals from the decisions of Native Tribunals; they also have the first-instance jurisdiction in certain land cases between Chiefs. The Provincial Commissioner of Togoland also hears appeals from the Togoland Magistrates' Courts. Appeals from this Court lie (sic) [lay] directly to the West African Court of Appeal.
>
> The Chief Commissioner's Court of Ashanti, presided over by the Chief Commissioner or by some person appointed by the Governor for the purpose. This Court has first-instance jurisdiction in Ashanti land cases in which a chief is a party, and hears appeals from native tribunals. Appeals from this Court lie direct to the West African Court of Appeal.
>
> The Chief Commissioner's Court of the Northern Territories, presided over by the Chief Commissioner or by some person appointed by the Governor for the purpose. This Court has first-instance jurisdiction in Northern territories land cases where a Chief is a party and heard appeals from native tribunals. Appeals from this Court lie direct to the West African Court of Appeal.[672]

[672] Griffith, *British Courts*, 33-34.

Native Courts Ordinance, 1944

In 1943, Gold Coast Governor Sir Alan Burns, constituted a committee of enquiry to investigate the conduct of indigenous courts in the colony. The committee, which was chaired by H.W.B Blackall, reported widespread deficiencies in the local court system which necessitated reforms in the tribunals. The recommendations of the Blackall Committee of 1943 on the nature and state of the courts were, therefore, incorporated into the Native Court Ordinance of 1944. [673]The Native Court Ordinance officially placed local courts under the control of the government to ensure more proper regulation and supervision.[674]

The Governor was given the power, under the Ordinance, to establish local courts in the country and also to appoint its members. The ordinance further divided the courts into four grades with provisions for fees to be charged and how evidence could be presented to the court. It also laid down clear regulations regarding the procedure to be employed by the courts in their trials as well as how appeals could be made. To ensure strict adherence to the standards of fairness in the trial of cases and the expectations of the government in the adjudication of cases in the colony, the Ordinance prescribed for routinely examination of the records of the courts to be done by District Commissioners. Besides to the examination of the record of the courts was created the office of the Judicial Advisor who had the power to order a retrial of a case, to overrule a court order, to cancel or reduce costs.

[673] Gocking, *Ghana*,77.
[674] *Ibid*, xxx.

Conclusion

The British colonial administration in the Gold Coast colony exercised extensive judicial authority before the restoration of the Supreme Court in 1876. This was done, in the years before 1876, through several poorly-organized courts and magistrates. The passage of the Supreme Court Ordinance, 1876, however, set aside the irregular judicial set up and replaced it with a unified court system. The ordinances and policies of the colonial authority created a dualistic legal system in the colony which eventually brought the country's customs into line with the principles of English law.

The structure and ways of administration of the judiciary were largely influenced by the new reorganization of English judicial system which had been introduced in 1873, few years before the establishment of the new Supreme Court in Ghana.[675] It is evident from the foregoing that the British colonial government paid particular attention to the establishment of elaborate machinery of justice in the Gold Coast, which is an indication of the determination by the British to ensure the success of their activities in the colony which success was largely dependent on the courts which were to guarantee justice and social harmony. The desire to strengthen the British judicial system contributed to the passage of the NJOs of 1883, 1910 and 1924 with the main aim of augmenting the activities of the understaffed British courts which had personnel with limited knowledge of indigenous customs and traditions which were key in any attempt to ensure social tranquility. It is imperative to state that there was a smooth shift from the local courts to the

[675] Elias, "Supreme Court Ordinance," 32.

British-styled courts of law in the colony. This undermined the judicial power of chiefs and their ability to enforce respect within their dominion.

The period after the Second World War marked a turning point in the demands and activities of nationalists in both English and French colonies the world over. The year 1947 was particularly significant in British colonies because it marked the beginning of a new phase of nationalist activities in the territories that would eventually lead to the gradual transfer of power from the British colonial officers to the local people of the colonies and the ensuing end of colonialism in the former British domains.[676] The following chapter will, therefore, examine the nationalist activities in the Gold Coast from 1947 and its consequences, with particular emphasis on political and judicial reforms, on the country.

[676] See Boahen, *Ghana*, 149-165; Buah, *Ghana*, 149-157; Amenumey, *Ghana*, 198-208; Gocking, *Ghana*, 75-81.

CHAPTER FIVE

THE JUDICIARY UNDER COLONIAL RULE (II): 1947 - 1957

Introduction

After World War II, a new wave of nationalist activity arrived in the British colonies of West Africa. This new phase of nationalism in the sub-region and in Ghana was quite different in form and list of demands as compared to its predecessors. The strategies employed by the nationalists of the post-1945 era were also drastically unalike what existed before. Scholars have adduced many and varied reasons[677] for the onset of activities that have been described by some as being a derivative of the earlier forms of nationalism (proto-nationalism).[678] It was nationalist activism after World War II (the final stage of the struggle for colonized peoples to regain autonomy) that led to the gaining of independence for many African countries, including the Gold Coast. It is important to emphasize that the Gold Coast was the first independent country south of the Sahara.[679]

This chapter examines the growth and evolution of the judiciary in the Gold Coast from 1947 to 1957 and how nationalist activities at the time influenced the collaborations and conflicts that existed between the judicial arm of government and the executive. The chapter also interrogates the state of the judiciary in the Gold Coast, particularly, between 1951 and 1957 when the colony attained some level of internal self-governance with Dr. Kwame

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[677] Gocking, *Ghana*, 81-88; Buah, *Ghana*, 143-155; Boahen, *Ghana*, 149-165. Amenumey, *Ghana*, 198-205; Austin, *Politics in Ghana*, 49-102

[678] Gocking, *Ghana*, 81-88; Melvin Goldberg, "Decolonisation and Political Socialisation with Reference to West Africa," *The Journal of Modern African Studies*, Vol. 24, No. 4 (Dec., 1986) 663-677, http://www.jstor.org/stable/161244 (Accessed: 11/06/2010); David E. Apter, "British West Africa: Patterns of Self-Government" *Annals of the American Academy of Political and Social Science*, Vol. 298, (Mar., 1955), 117-129, http://www.jstor.org/stable/1028712, (Accessed: 16/06/2010); Buah, *Ghana*, 145-158; Boahen, *Ghana*, 155-169.

[679] Apter, "British West Africa," 117-129.

Nkrumah as the leader of Government Business, and later, in 1952 as Prime Minister, while other sectors of government remained under British colonial officers.

The Road to Independence

The year 1947 marked the beginning of the end of British colonial rule in most territories in Africa and Asia. The British lost their colony of India in 1947 when that territory gained its independence under the leadership of Mahatma Gandhi. Almost a decade later, in March 1957, the British colony of the Gold Coast also gained independence under Dr. Kwame Nkrumah. Many scholars have given reasons why 1947 marked a watershed moment in nationalist activities in the Gold Coast. They identified the impact of the Second World War on the warring parties that were involved, as well as their African colonial soldiers who fought on behalf of their colonial masters, as a major catalyst for the birth and activities of the new form of nationalism that the Gold Coast witnessed.[680]

From 1947, political parties emerged on the Gold Coast to demand more than representation of Africans in the Legislative Council and the proper governance of the colony by the British. They wanted self-government. Consequently, the United Gold Coast Convention (U.G.C.C) and the Convention People's Party (C.P.P.)[681] were formed in 1947 and 1949,

[680] See Boahen, *Ghana*, 149-165; Buah, *Ghana*, 149-151; Gocking, *Ghana*, 75-88; Awoonor, *Ghana*, 133-140; Austin, *Politics in Ghana*, 49-102; Ward, *Ghana*, 322-352; Peter Kwame Agyekum, *The Gold Coast - Her March to the Independent State of Ghana: a Bird's Eye-view*, (Accra: New Times Corporation, 1988), 10-13; F.K. Buah *Government in West Africa*, (Accra: Readwide Publishers and FABS, 2005), 159-168; Goldberg, "Decolonisation and Political Socialisation," 663-677, Apter, "British West Africa,"117-129.

[681] The C.P.P. was founded by Dr. Kwame Nkrumah, a leading member of the UGCC who broke away from the first political party that was formed in the Gold Coast because of differences he had with the party he was General secretary of (the UGCC). His exclusion from the membership of the all-African committee (under the leadership of Justice H.C. Coussey) that was tasked to draft a new constitution for the Gold Coast further worsened the already

respectively. The main objective of the U.G.C.C. was to ensure that by all legitimate and constitutional means, the control and direction of the government passed into the hands of the people of the Gold Coast and their chiefs. Other political parties were formed later that joined the fight for independence. It is significant to note that some groups and individuals blazed the nationalist trail between the period of King Aggrey of Cape Coast in the 1860s and in 1947 when the first political party was founded in the Gold Coast. The Aborigines' Right Protection Society (A.R.P.S) which was founded in 1895, the National Congress of British West Africa (N.C.B.W.A.) of 1920, the West African Students Union (WASU) founded in 1925, and the Gold Coast Youth Conference which was organized 1929, and the West African Youth League which was formed by Isaac Theophilus Akunaa Wallace Johnson in 1934 were some of the groups/movements that preceded the establishment of political parties in the colony. The activities of the groups were organized and led often by some educated Africans (including Gold Coasters) such as Attoh Ahuma, Kobina Sekyi, Wallace Johnson, Nnamdi Azikiwe, J. B. Danquah, Dr. Bankole-Bright, J.E. Casely-Hayford, K.A. Korsah and F.V. Nanka Bruce.

The demands of the political parties and their forerunners forced the British colonial government to introduce some reforms in the administration of the colony. These reforms were seen in the political, economic and social spheres of the lives of the people and the various constitutional changes[682] that

strained relations between him and the other leading members of the UGCC. Kwame Nkrumah considered the members of the Coussey Committee to be too conservative to be able to draft the desired constitution for the people of the country.

[682] The colonial admiration passed a number of constitutions to govern the colony. The first constitution for the colony was passed in 1916 by Governor Clifford. The 1916 constitution, like the subsequent ones that were introduced, did not adequately address some of the

were introduced in the colony. The inclusion of Africans in the Executive Council and the expansion of the African membership in the Legislative Council were some of the outcomes of the demands by the nationalists.[683] The judiciary of the Gold Coast also went through some evolution and changes during this period. Some of the changes contributed to strengthening the efficiency and independence of the judicial arm of government while others perpetuated the colonial government's efforts to control the country's courts to the detriment of the desires of the chiefs and people of the land.

The judicial systems in the British colonies did not witness significant reforms by way of the passage of new ordinances during the Second World War and in the years immediately preceding it. The British empire was focused on executing and winning the war almost to the neglect of its dependencies and so did little or nothing, in some colonies, to introduce efficiency in the court systems there. In the Gold Coast, however, there was some correspondence, even during the period of the war, among the Judicial Adviser, the Chief Commissioner of the Colony, the Colonial Secretary, some chiefs and other relevant officers on the ways to improve the operations and activities of the Local Courts.[684] The colonial authorities and their representatives in the Gold Coast issued directives on a myriad of issues, including the court system. Most of the directives sought to spell out or, in

concerns of the people of the Gold Coast. Subsequently, they were replaced with newer, ostensibly improved, ones. There was, therefore, the introduction of the 1925, 1946, 1950, 1954 and, finally, the 1957 independence constitution of Ghana. See Maxwell Opoku Agyemang, *Constitutional Law and History of Ghana*, Accra: 2009; George Padmore, *The Gold Coast Revolution: The Struggle of an African people from Slavery to Freedom*, London: Dennis Dobson Ltd., ND), 87-105.

[683] Austin, *Politics in Ghana*, 1-11; Boahen, *Ghana*, 155-172.

[684] PRAAD, Cape Coast, RG1/2/42, "Direction for Working of Native Courts." Letter from the office of the Judicial Adviser to the Chief Commissioner of the Colony dated 5 April 1945. See also letters between the offices of the Chief Commissioner of the Colony and the Colonial Secretary dated 9 April, 1945 and 15 May 1945 on the issue of circulating guidelines for the operation of District and Native courts.

some cases, reiterate what the colonial authorities considered to be the properly accepted procedures that the courts and aggrieved parties in any litigation had to adopt in the adjudication of cases. The Judicial Adviser believed that the periodic issuance of directives regarding the working of Local Courts "should form a useful guide to those concerned in the development of Native Courts and should secure uniformity throughout the colony."[685] Consequently, issues such as procedures to follow when the parties in a case decide to go for arbitration, Executive control of Local Courts (through the District Commissioners), and the power of District Commissioners to stay the execution of a judgment passed by a Local Court were some of the directives that were given periodically to the courts.[686] The issuance of periodic directives, according to the Judicial Advisor, was to serve as "a useful guide to those concerned with the development of Local Courts and should secure uniformity throughout the Colony."[687]

Post-War Nationalism and Judicial Reforms

The introduction of policies by the colonial authorities and their setting up of committees to find ways of strengthening the judiciary during the Second World War, and the years immediately after, did not happen in isolation. The colonial policies were, in many ways, the result of some conditions in the Gold Coast at the time. The boycott of imported goods to protest the harsh economic conditions in the colony in January 1948,[688] the

[685] PRAAD, Cape Coast, RG1/2/42, "Letter from the judicial Advisor to the Chief Commissioner of the Colony, Cape Coast," 5 April 1945.
[686] PRAAD, Cape Coast, RG1/2/77, "Notes for Guidance for District Commissioners in matters affecting Native Courts in the Colony."
[687] PRAAD, Cape Coast, RG1/2/77, "Letter from the Judicial Advisor to the Commissioner of the Colony," 5 April 1945.
[688] This was organized in January 1948 under the auspices of Nii Kwabena Bonne III, the chief of Osu Alata, to protest the monopoly enjoyed by foreign traders from Syria, Lebanon,

28th February 1948 riots[689] in the colony and the subsequent threat of a declaration of Positive Action by Dr. Kwame Nkrumah[690] created tension in the Gold Coast and that drew the attention of the colonial government to the need to address some pressing concerns of the people of the Gold Coast. Boahen argues that the events of February 1948 shook "the British Government out of their complacency and shattered the myth of Ghana as a model colony whose people were perfectly content to remain under colonial

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India and Europe (including the United African Company, the Swiss Union Trading Company, A.G. Leventis and other European merchants) in the Gold Coast. The foreign traders from Europe had formed the Association of West African Traders (AWAM). The boycott was also to force down the prices of goods and end 'conditional sales' that were introduced by the AWAM. Conditional sale was a practice which compelled consumers of imported goods to buy items that they did not need before they could purchase the goods that they actually needed. Nii Kwabena Bonne III launched a campaign, and later, toured some major cities in the country to enlist support for the boycott of imported goods. "Report of the Commission of Enquiry into the Disturbances in the Gold Coast, 1948," (London: His Majesty's Stationery Office, 1948). See also "Report of the Commission of Enquiry into the Disturbances in the Gold Coast, 1948," in Metcalfe, *Great Britain and Ghana*, 682-686; Padmore, *The Gold Coast Revolution*, 62-63; Buah, *Ghana*, 152-153; Seth N.O. Dabi-Dankwa, *Ghana's Ten Years (1947-1957) Struggle for Independence as a Catalyst for Events in the Next 5 Decades – Ending 2009*, (Accra: Assemblies of God Literature Centre, 2009), 8-9.

[689] On 28 February 1948, a police contingent at the Christiansburg Castle (the seat of the colonial government at the time) opened fire on a group of Gold Coast ex-soldiers who had marched through some principal streets of Accra to protest worsening conditions in the colony after their return from the second World War. Their situation was largely the result of economic hardship in the colony and the failure of the British government to honour promises made of pensions and job opportunities to the soldiers who fought for the British Empire. The protest march, which was to end at the Christiansburg Castle with a petition presented to the Governor, ended in a rather brutal way as the ex-service men were fired upon by the colonial police force on guard at the Christiansburg Castle, leading to the death of three of the soldiers and injuring about twenty-nine other people. This incident triggered wider protests, widespread vandalism and the looting of shops belonging to foreigners in Accra and other principal cities in the colony – Nsawam, Koforidua, Akuse and Kumasi. The deplorable economic situation of the ex-soldiers and the colony were also made worse by some other economic and political conditions. PRAAD, Cape Coast, C.O. 964, "Report of the Commission of Enquiry into the Disturbances in the Gold Coast, 1948 (London: His Majesty's Stationery Office), 1948; "Report of the Commission of Enquiry into the Disturbances in the Gold Coast, 1948," in Metcalfe, *Great Britain and Ghana*, 682-686; Padmore, *The Gold Coast Revolution*, 62-63; Amenumey, *Ghana*, 205-207; Dankwa, *Ghana's Ten Years,* 8-9.

[690] Dr. Kwame Nkrumah and the CPP threatened to embark on what he described as Positive Action, if the colonial government continued to ignore the concerns of the people of the colony, including amending the Coussey Constitution. Positive Action was a non-violent protest against colonial rule. Padmore posits that the events from February 1948 through to the threat of a declaration of Positive Action in October, 1949, made the government institute "a series of prosecutions against C.P.P. editors in order to supress criticisms of their intransigent policy." See Padmore, *The Gold Coast Revolution*, 79; "What I mean by Positive Action," by Kwame Nkrumah, in Metcalfe, *Great Britain and Ghana*, 688-689; Agyekum, *The Gold Coast*, 31-36; Dankwa, *Ghana's Ten Years,* 15-16.

rule."[691] The government set up the Watson Commission under the chairmanship of Andrew Aiken Watson, to among other things, investigate the causes of the riots and general discontent in the colony.[692] It worked for several weeks and listened to testimonies of some Ghanaians to determine the causes of the political tension in the country. The Commission reported that the civil and political unrest in the country was caused by many political, social and economic grievances among the people of the Gold Coast. They included:

a. A feeling of political frustration among the educated Africans who saw no prospect of ever experiencing political power and who regarded the 1946 Constitution as a mere window-dressing designed to cover, but not to advance their aspirations;
b. A failure of government to realize that with the spread of liberal ideas, increasing literacy, and a closer contact with political developments in other parts of the world, the star of rule through the Chiefs was on the wane. The achievement of self-government in India, Burma and Ceylon had not passed unnoticed in the Gold Coast;
c. The announcement of the Government that it would remain neutral in the dispute which had arisen between the traders and the people of the Gold Coast over high prices of imported goods and which led to the organized boycott of January-February, 1948;
d. The alleged slow development of educational facilities in spite of growing demand, and the almost complete failure to provide any technical or vocational training;[693]

[691] Boahen, *Ghana*, 163.
[692] The other members of the Commission were Mr. A. Dalgleish and Dr. K. A. H. Murray with Mr. E. G. G. Hanrott of the Colonial Office as Secretary. See *Report of the Commission of Enquiry*.
[693] *Report of the Commission of Enquiry*; "Report of the Commission of Enquiry," in Metcalfe, *Great Britain and Ghana*, 682-686.

The Watson Commission also made some worrying findings regarding the structure and operation of the Gold Coast's local courts (with particular emphasis on the application of common law) and recommended reforms to that aspect of the justice system in the colony. It noted the following:

> The Native Courts administer customary Native Law. So far as our researches go that Law appears to be in the same state of uncertainty as English Equity in the days when it depended on the size of the Lord Chancellor's foot.
> If, as we hope, the Gold Coast is going to develop along modern lines, which we are assured is the desire of its inhabitants, then sooner or later customary law must merge or be fused into the general law of the country which, for commercial purposes, is based on English Law.
> Such merger or fusion can only be successfully achieved if the general body of customary law becomes known not only to those who administer it on day-to-day exigencies but also to the general body of the people. This can never happen while the administration of Native Courts remains a matter of vested interests or subject to the vicissitudes of the judges receiving customary " gifts."
> It is desirable in our view for the principles of customary Law to become established on some more permanent basis from which the subject may be assured of his rights by law and not by purchase. [694]

The commission also recommended the need to take over the administration of justice at local court level from traditional rulers and entrust it to people (mainly non-royal) trained in the judicial system (based on the British model).

It indicated that:

> … we recommend for consideration of those charged with law-making, the question of whether the time has not arrived when the jurisdiction of Native Courts might not be entrusted to African lawyers versed in customary laws and appointed by the Government to act as Stipendiary Travelling Magistrates. Such Magistrates would sit with two assessors drawn from the State in which the Court was being held. Principles would

[694] *Report of the Commission of Enquiry*, 72.

> emerge from their decisions which in time would produce an established body of customary law capable of assimilation into the general law to the benefit of the body politic. Equally, such a reform would improve the administration of Criminal Law in these Courts.[695]

The Commission concluded its enquiry and recommended the introduction of major constitutional reforms in the country to meet the aspirations of the people. Even though the colonial government denied and downplayed some of the findings of the Commission,[696] it went ahead to establish the Coussey Committee on Constitutional Reform in 1949 to consider the recommendations of the Watson Commission and make further recommendations on the type of government to establish in the Gold Coast. The Coussey Committee, which was chaired by Mr. Justice Henley Coussey[697] proposed, among other things, the establishment of a fully representative government with elected local authorities and Regional Councils. It also proposed the establishment of a Legislative Assembly[698] whose members should be elected, directly or indirectly, by popular vote. The Committee also proposed the reconstitution of the Executive Council[699] which would be responsible for the formulation of policies. In sum, the Coussey Committee

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[695] *Report of the Commission of Enquiry*, 72.

[696] See Metcalf, "Statement by His Majesty's Government on the Report of the Commission of Enquiry into the Disturbances in the Gold Coast," 1948, 686-688.

[697] The members of the Committee comprised of 40 influential personalities from all walks of life – chiefs, lawyers, businessmen, churchmen and politicians. See CO 96 820 2 "Constitution of the Colony and Ashanti," a confidential telegram from the Secretary of State for the Colonies to United Kingdom delegates in New York, 10 November 1950.

[698] The Legislative Assembly was to consist of 84 members of whom 75 would be Gold Coasters who would be elected by different procedures. See CO 96 820 2, Confidential telegram, 1950.

[699] The Executive Council would comprise of eleven (11) members who would be responsible for the day-to-day administration of the colony. Nine (9) of the members were to be with portfolios. Six (6) ministers would hold portfolios in agriculture, education, health, labour, commerce and industry. The Council would have three (3) ex-officio members on it. The three shall be the Chief Secretary, the Attorney General and the Financial Secretary. See CO 96 820 2, Confidential telegram, 1950. See also "The Gold Coast (Constitution) Order in Council, 1950" in S. O. Gyandoh Jnr & J. Griffiths, *A Source of the Constitutional Law of Ghana*, (Accra: Faculty of Law, University of Ghana, 1972), 87.

made comprehensive and far-reaching recommendations for further constitutional advancement in the colony.

The Committee submitted its recommendation to the Governor on 17th August 1949 and it was, subsequently, sent to the government in London for consideration. The colonial government agreed that a new constitution should be introduced as quickly as possible in the Gold Coast.[700] The result of the consideration of a draft constitution for the Gold Coast and the compromises[701] that were made thereof was the introduction of the 1950 Constitution.[702] The elections that were conducted under the new constitution saw the CPP winning the majority of seats and hence Dr. Kwame Nkrumah was asked by Governor Sir. Charles Arden Clarke to form a government.[703] Dr. Nkrumah, thus, became the Leader of Government Business in 1951 and, in 1952, he was made the Prime Minister of the country. The Executive Council had some Gold Coasters who were in charge of key portfolios in the government. They included Mr. Archie Casely Hayford in charge of the Ministry of Agriculture and Natural Resources, K.A. Gbedemah in charge of Health and Labour, and Kojo Botsio as the Minister for Education and Social Welfare. Others were Dr. Ansah Koi as Minister for Housing, Town and

[700] CO 96 820 2, Confidential telegram, 1950.

[701] Some of the recommendations of the Committee were opposed by Dr. Kwame Nkrumah and the CPP hence there was the need for various aspects of the proposed constitution to be considered and compromises made. For instance, even though the Committee proposed a two-chamber Legislative Assembly, the 1950 Constitution allowed for a single chamber assembly of a Speaker of Parliament and 84 members. CO 96 820 2, Confidential telegram, 1950. See also "The Gold Coast (Constitution), 1950" in Gyandoh Jnr & Griffiths, *Constitutional Law,* 87.

[702] The 1950 Constitution applied, for the first time, uniform constitutional provisions to the territories that constituted the Gold Coast at the time. It also introduced some radical reforms in the Executive and Legislative arms of government, replacing the Executive and Legislative councils with an Executive Council and a Legislative Assembly. See Opoku Agyemang, *Constitutional Law and History,* 73.

[703] Metcalf, "The Government of the Convention People's Party, 1951-1957, 703; Boahen, *Ghana*, 170-172; Amenumey, *Ghana,* 207-209; Padmore, *The Gold Coast Revolution*, 118-121.

Country Planning, and T. Hutton Mills as Minister for Commerce, Industry and Mines.[704]

Notwithstanding the political gains made by Dr. Nkrumah and the CPP in partially taking charge of the running of the government of the country from 1951, important ministries such as those of Defence and External Affairs, Finance and Justice remained under the control of Europeans.[705] The three ex-officio members of the Nkrumah-led cabinet were R.H. Saloway, who was in charge of Defence and External Affairs, P.F. Brannigan,[706] who was responsible for Justice, and R.P. Armitage, in charge of Finance.[707] Consequently, the British government remained in charge of the judiciary of the country and hence determined the kinds and levels of reforms that were introduced in that sector of government. It is also true that Dr. Nkrumah's C.P.P initiated some policy changes in the judiciary, with particular emphasis on the Local Courts.

The Structure of the Judiciary in 1950

There were three main levels in the framework of the judiciary of the Gold Coast in 1950. The Local Courts were at the bottom of the ladder. There were several grades of the Local Courts in the country and each of them exercised different powers and jurisdiction.[708] They were followed by the Magistrates' Courts and the Supreme Court. There were two grades of

[704]Padmore, *The Gold Coast Revolution*, 123-125; Dabi-Dankwa, *Ghana's Ten Years*, 22; Agyekum, *The Gold Coast*, 34-35.
[705] Agyekum, *The Gold Coast*, 34-35; Amenumey, *Ghana*, 209.
[706] His predecessors in the office of the Attorney-General, A.W. Lewey (1943-1948) and P.F. Branigan (1948-1951), had both been British colonial officers. See Richard Rathbone (ed), *British Documents on the End of Empire*, Series B. Vol.1, London: HMSO Publications Centre, 1992.
[707] Agyekum, *The Gold Coast*, 34-35.
[708] Chief Justice Mark Wilson, "Memorandum on the Proposed Reorganisation of the Machinery of the Supreme Court of the Gold Coast and the Courts Subordinate Thereto," 16 January 1950.

Magistrates' Courts as well and each grade had specific powers and jurisdiction. The two grades of the Magistrates' Courts were those presided over by "professionally qualified District Magistrates and those presided over by District Commissioners."[709] The Supreme Court sat in several territorial divisions for the trial of all criminal and civil matters.[710] There was a separate Lands Division of the court which functioned in areas specified by the Governor. Each judicial division (Local Courts, Magistrates' Courts, Supreme Court and the Lands Division) had a separate registry and a Registrar even though there was a Chief Registrar who had supervisory responsibility over all the registrars in the country.[711] It must be stated that the Supreme Court "exercised no control over the finance or the staff of the Native Courts."[712] Neither did the Supreme Court have any controls of supervision or review of the activities of the Local Courts.[713] The control and regulation of the Local Courts and the revision of their decisions were exercisable only by the Judicial Advisers and the District Commissioners.

The Chief Registrar was directly responsible to the Chief Justice for all matters relating to the administration and operation of both the Supreme Court and the Magistrates' Courts throughout the country. The Supreme Court was considered a department of Government and so maintained a departmental organization of which the Chief Registrar was the executive officer.[714] It goes without saying that the judiciary continued to remain "conjoined" to the executive arm of government, thus making it not an independent body. The

[709] Wilson, "Memorandum."
[710] *Ibid*.
[711] *Ibid*.
[712] *Ibid*.
[713] *Ibid*.
[714] *Ibid*.

Chief Justice was ultimately responsible for the efficient working of the judiciary. He undertook this task in addition to his statutory duties as Chief Justice and member of the judiciary. There were Puisne Judges who, even though in theory were not concerned with the administration of the courts, exercised some judicial responsibilities, especially, those stationed outside Accra.[715]

There was a complicated ladder of appeal from each court of first instance, varying in height and number of steps. There were Local Courts which exercised appellate functions over lower grade Local Courts while the Magistrates' and Supreme Courts exercised appellate powers in certain cases over Local Court decisions. It must be noted that in appeals from any Local Court to a Magistrate's Court, the latter must be a court constituted by a District Commissioner and not by a professionally qualified District Magistrate. The decisions of the Magistrates' Courts were also subject to appeal to the Supreme Court. In land cases, for instance, there could be an appeal from Local Courts to the Lands Division of the Supreme Court. Appeals could still be made to the West African Court of Appeal. This was, however, subject to conditions such as the cost of the subject matter. In certain cases, appeals could be made to the Privy Council in the United Kingdom which was the ultimate court of judicature within the structure of the British colonial court system.[716]

Improving Local Courts: 1950 – 1957

The need to reorganise the judicial system in the Gold Coast mainly stemmed from the state of Local Courts in the country by 1950. A Committee

[715] Wilson, "Memorandum."
[716] *Ibid*.

on Constitutional Reform which was constituted to examine issues of constitutional reforms made some findings on the state and activities of Local Courts in the country. It observed that the administration of justice by the courts had been one of the sources of tension and distrust of traditional authority among community members and has been a major source of destoolments in the past.[717] Even though the Committee further observed that some Local Courts had fallen into disrepute in some parts of the colony, it also highlighted the importance of Local Courts by stating that "it is only fair to say that in general, they have maintained a fairly high standard of efficiency as the small number of appeals from their judgement shows."[718] The Committee identified two schools of thought on how best to improve the state of the courts in the country since "the public generally desire[d] that the administration of justice in the Local Courts[719] be improved."[720] It indicated that:

> On the one hand, there are those who advocate the appointment of paid magistrates to preside over all Local Courts, these magistrates to be persons who have legal training and also have sound knowledge of Local Customary law. They need not be full-time in all cases. In land cases and other cases involving customary law, it is

[717] ADM 4/1/604 "Report of the Committee on Constitutional Reforms."
[718] *Ibid*.
[719] Native Court and Local Court referred to the same institution in this thesis. Even though the name "Local Court" was recommended as a replacement to "Native Court" by a committee chaired by Justice Arku Korsah in 1951, the proposed name found itself in some documents that were published before the publication of the recommendations. See Richard Rathbone, "Native Courts, Local Courts, Chieftaincy and the CPP in Ghana in the 1950s," *Journal of African Cultural Studies, 13:1, 125-139,* https://doi.org/10.1080/713674304,129. (Accessed 03/05/2022).
[720] ADM 4/1/604 "Report of the Committee on Constitutional Reforms."

> suggested that they should sit with lay members (for instance, chiefs) as Assessors.[721]

The Constitutional Review Committee noted that the appointment of magistrates would expedite the trial processes and hence ensure more efficiency in the judicial system. It also contended that such an appointment might also prevent most of the alleged corrupt abuses that the chiefs' courts had been accused of.[722] The other school of thought on the best way to reform the courts argued that:

> …the English system of lay magistrates, or Justices of the Peace, provides a more satisfactory model for the development of Local Courts in the country. Local men with local knowledge construing the law in the light of local needs would best ensure justice in petty cases. Those appointed to the bench of Local Courts must be respected locally and should generally be men and women of substance, stable character and sound wisdom.[723]

The Chief Justice at the time acknowledged the existence of this state of affairs when he noted that "…there are alleged to be different standards of judicial integrity and other radical faults which have resulted in a loss of confidence in the Native Courts by the people and brought some of them into serious dispute."[724] The Constitutional Reform Committee suggested a "complete integration of the two Courts scheme [that is Local Courts and the British-styled courts]"[725] to improve the standard of justice in the country. The Committee thus recommended that the following should be done:

> a. the practice in the Colony of appointing a special panel of adjudicators for the Local Courts should be

[721] ADM 4/1/604 "Report of the Committee on Constitutional Reforms."
[722] *Ibid*.
[723] *Ibid*.
[724] Wilson, "Memorandum."
[725] *Ibid*.

encouraged and that the members should be more and more people who are not members of the State Councils or local authorities of the areas concerned. There should be a fairly large panel of lay magistrates so that regular sessions can be arranged without imposing great a strain on individuals.

b. the appointing authority should be the Central Government but it is necessary that there should be a body of persons with local knowledge to advise the Government. We suggest, therefore, that the state Councils be the recommending bodies.
c. the lay magistrates should not be paid but they should receive allowances to cover out-of-pocket expenses so as to make it possible for men from all walks of life of the requisite character to be appointed.
d. There should be fewer grades of Local Courts than at present. These should have jurisdiction in criminal and civil cases equivalent to that enjoyed by the higher grades of the present Native Courts. The Local Courts should universally be used for all petty cases. Cases which are too difficult for lay benches, and those in which it may be inexpedient for a local bench to sit, should be transferred to, or heard in, Local Courts presided over by professional magistrates.
e. The Local Courts should be subject to the control of the Chief Justice and be supervised by judicial officers working under him. Appeals from Local Courts should lie directly to the Supreme Court.[726]

Despite the recommendations by the Committee on Constitutional Reform in 1949, the British colonial administration did not do much to reform the judiciary. A possible reason for the unreadiness or unwillingness to promptly introduce the much-needed reforms could be because of the possible cost that such reforms would put on the judicial system. By the early 1950s, the Local Courts were adjudicating a substantial number of cases in the Gold Coast. Rathbone indicates that:

> In 1950-51 alone, the country's 300 or so such courts heard more than 3,000 separate cases. Native Courts were thoroughly involved in the day-to-day life of many communities and, as importantly, in the everyday lives of the country's citizens as individuals. Native Courts had served as

[726] ADM 4/1/604 "Report of the Committee on Constitutional Reforms."

> the workhorses of the Gold Coast's justice system, and they were remarkably inexpensive beasts of burden.[727]

Rathbone's position on the importance of Local Courts in the judicial structure, which made a major reform of the courts an unattractive venture to the British officials even in the face of obvious deficiencies in the system, was corroborated by the Chief Justice, Mr. Mark Wilson, when he argued that:

> …if changes on these or similar lines as recommended by the special Committee (or Commission) …are accepted and put into operation, there will be a very great additional burden of supervisory and appellate work thrown on the Supreme Court. This will not only affect the judges, who will have to hear a very largely increased number of appeals from Native Courts, but will also greatly augment the work of the clerical staff who deal with appellate and revisional (sic) work and also that of the Registrars in the various Supreme Court registries who are directly concerned with the due dispatch of this work. It need hardly to be added that it would also greatly increase the burden of responsibility borne by the Chief Registrar, and finally by the Chief Justice, for the working of a greatly enlarged administrative and judicial machine.[728]

The Colonial administration took steps to ostensibly improve the delivery of justice within the Local Court system in the country. Recommendations for the restructuring of Local Courts and the other sectors of the judiciary in the 1950s were first made by a Committee on Constitutional Reform even though similar recommendations had been made years before.[729] The Committee on Constitutional Reform made the following specific proposals on the ways to improve the operations and functions of Local Courts:

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[727] Rathbone, "Native Courts,"132.
[728] Wilson, "Memorandum."
[729] For instance, the Coussey Committee suggested that the chiefs' courts should "be restricted to 'declaring' what the Committee called 'native customary laws' and to the settling of "constitutional disputes connected with stools.'" Rathbone, "Native Courts," 129. Rathbone argues that the "Coussey proposals were intended to relegate chiefs to the more marginal and ritual roles the Watson Commissioners had recommended.

a. the increasing and eventually complete separation of judicial from administrative functions in the new local authority areas;
b. the appointment to Local (formerly Native) Court panels of large numbers of lay magistrates who would receive no salary but only out-of-pocket expenses when attending the Courts;
c. the staffing of the Local Courts in large urban areas, where the work is heavy, by paid professionally qualified magistrates;
d. the reduction in the number of grades of Local Courts and the simplification of the complicated system of appeals referred to above by providing that all appeals shall lie direct to the Supreme Court;
e. the transfer of the control and supervision of the Local Courts to judicial officers directly responsible to the Chief Justice.[730]

In the light of the challenges facing the judiciary in the country and the recommendations made by the Committee on Constitutional Reform, the Chief Justice also made the following proposals to improve the existing court systems in the country:

a. the Supreme Court organisation should divest itself of all but the barest minimum of non-judicial functions and concentrate solely on purely judicial activities;
b. the finance and administration of the Supreme Court and of the subordinate courts should be completely taken over by the new Ministry of Justice;
c. the Chief Registrar, with the new title of Judicial Secretary, should be in charge of the Head Office, co-ordinate and control the activities of the Registrars of the Divisional and subordinate courts, act as Secretary to the Chief Justice and liaison officer between the Supreme Court and the Ministry of Justice and other Government departments and should also continue to act, for the present Registrar of the West African Court of Appeal;

[730] ADM 4/1/604 "Report of the Committee on Constitutional Reforms."

d. the Local (Native) Courts should be supervised by an augmented staff of Judicial Advisers, with similar qualifications to the present Judicial Advisers, under the direct control of the Chief Justice;
e. the establishment of Judges of the Supreme Court should be enlarged considerably to deal with the large additional volume of appeals which would come to the Supreme Court on the recommendation on the Committee on Constitutional Reform that appeal should lie direct to the Supreme Court from all Local Courts is accepted.[731]

Subsequently, the government established a Commission of Enquiry on Local Courts in 1950 to investigate the activities of Local Courts and make recommendations to improve them. Justice Arku Korsah was appointed Chairman of the Commission of Enquiry on Local Courts.[732] His appointment to that key position was significant because he, a Ghanaian, was in charge of investigating the activities of Local Courts and proposing reforms where necessary, in the policies that regulated those courts. That task was likely to be better handled by a Gold Coaster than the arbitrary manner in which European/non-African colonial administrators did the same in times past. Justice Arku Korsah invited other Ghanaians such as Mr. Edward Akufo-Addo, Nana Boakye Dankwa, the Akyempimhene of Kumasi,[733] and Naa J.A. Karbo, the Lawra Na as members of the commission.[734] Another member of

[731] ADM 4/1/604 "Report of the Committee on Constitutional Reforms."
[732] PRAAD, Cape Coast, RG1/2/77 "Commission of Enquiry on Native Courts," Confidential Letter from the Colonial Secretary to the Chief Commissioner Commission of the Cold Coast, 3 November 1950.
[733] Nana Boakye Dankwa was later replaced on the Commission by Mr. J. W. Poku. Mr Poku was the Chief Registrar at the Asantehene's Court. See It is unclear the reason(s) for the replacement. Regardless of the reason(s) for the change, one could safely argue that the substitute, the Chief Registrar at the Asantehene's Court, was also a worthy replacement who could champion reforms in the native courts that would not diminish the authority of chiefs in the native courts since that had the potential of adversely affect the judicial authority of his boss, the Asantehene.
[734] PRAAD, Cape Coast, RG 1/2/77, Confidential letter from the Chief secretary of the Governor to the Chief Commissioner of the Colony, 3 November 1950.

the Commission was the Senior Judicial Adviser, Mr. A.C. Russell.[735] It goes without saying that the overwhelming majority of Gold Coast members on the Commission offered an opportunity to make recommendations for the reform of the judiciary along the lines and demands of the nationalists of the time. The Commission later co-opted a representative of Southern Togoland when it visited the province during some of its sittings. This was to ensure that the interests of the many different sections of the colony were factored into any future reforms in the activities of Local Courts.[736] Mr. M.C.B Attoh was later recommended as a representative of Southern Togoland.[737] The Commission was tasked:

> To examine the existing Native Courts system in the light of (i) the views expressed in Section VII of Part III of the Report of the Committee on Constitutional Reform (Colonial No.248) and (ii) the recommendations as to the organisation of Local Government bodies made by the two Select Committees and the Northern Territories Committee; and to make recommendations for the re-organisation of the system of the Local Courts.[738]

The Commission held sittings in major cities of the country and listened to evidence from paramount chiefs, local authorities and some members of the public about the functioning of the courts in their localities. Paramount chiefs, local authorities and some members of the public were also invited to send

[735] Press Release No. 1108/50 "Statement to the Legislative Council Announcing the Appointment of a Commission to Examine the Existing Native Courts Systems," 11 December 1950.
[736] See letter from Mr. E.M. Hyde-Clark, Permanent Secretary at the Ministry of Local Government, to Justice Arku Korsah, 25 May 1951; letter from Mr. E.M. Hyde-Clark to Chief Commissioner of the Colony, 9 June 1951.
[737] See PRAAD, Cape Coast, RG1/2/77, Telegram dated 21 June 1951 from Ho District to the Chief Commissioner.
[738] PRAAD, Cape Coast, RG1/2/77, Press Release No.1108/50 by the Public Relations Department, Accra "Statement to the Legislative Council Announcing the Appointment of a Commission to examine the existing native courts system, 11 December 1950.

memoranda to the Commission on the same matter.[739] Submissions that were made before the Commission bordered on pertinent issues that would make the courts better than what they were. The issues raised by some individuals included the separation of the judiciary from the executive to ensure the independence and impartiality of the former, a re-definition of the jurisdiction of Local Courts to give them more power, and the composition of members of Local Courts in the country.[740] Major G. N. Burden's testimony before the Commission touched on the following salient issues:

> …that it was his impression that the people from the northern territories were satisfied with the existing court and that there was no appreciable pressure for the reform from below.
> The mechanical side of court work left much to be desired, that is to say, records could and should be improved. The best approach to this problem was through the training of registrars.
> The principle that the executive and the judiciary be separated as soon as practicable be accepted wholeheartedly. It is important that the people should be educated to support the change. If the people did not support each step, there is the danger that Local Courts would fall into disrepute.
> As regards the composition of the Local Court panel, it should be the responsibility of the Regional Administrator to put forward the names of persons for consideration by the Chief Justice….[741]

After conducting its work, the Commission recommended a wide range of reforms in the administration of Local Courts in the country. The Commission proposed that there should be a completely integrated court system with "all-purpose courts presided over by professional magistrates or lay justices having

[739] PRAAD, Cape Coast, RG1/2/77, Letter from Mr. A.C. Russell to the Chief Commissioner of the Colony, 21 March 1951. See also PRAAD, Cape Coast, RG1/2/77, Public Notice: Native Courts Commission issued by the District Commissioner of Koforidua on 30 March 1952.
[740] See PRAAD, Cape Coast, RG1/2/77, "Summary of Views Expressed by Major G. N. Burden (M.B.E.) to the Commission of Enquiry on the Native Court On 18 May 1951."
[741] *Ibid*. It is worth noting that Major G. N. Burden's submission was mainly on the nature of the courts in the Northern Territories.

jurisdiction over all persons."[742] This recommendation was not unique to the Gold Coast as there were signs of a movement in that direction in other British dependencies in Africa.[743] It, however, took many years before Local Courts were completely replaced with all-purpose magistrate courts in some of the territories.

The Commission also recommended that Local Courts should be referred to as 'Local Courts.'[744] According to Rathbone, the proposal for a name change was because the word native "was a word whose use had, with rare exceptions like that of this jurisdiction, fallen into disuse in the Gold Coast by the late 1930s." It is very unusual to encounter its use in official correspondence in the Gold Coast where 'Africans' or more precise ethnics were more usually deployed by the 1930s even in informal official correspondence.[745] This suggests something about the nature of the particular colonial regime the Gold Coast endured or enjoyed.

The report of the Commission, which was presented to the British government, was not entirely agreed upon by all the members. The Chief Judicial Adviser, Mr. Russel, disagreed with some sections of the findings and recommendations of the report. He, subsequently, wrote extensively to articulate his opposition. He further made counter recommendations on the aspects that he opposed. He indicated that aspects of the report were inaccurate as the other members of the Commission were partial in recording some

[742] See the record of a Judicial Advisers' Conference held in 1953 and published in the *Native Courts and Native Customary Law in Africa* (London: Her Majesty's Stationery Office, 1953), 19.
[743] *Ibid*.
[744] Rathbone, "Native Courts," 130.
[745] *Ibid*.

aspects of their findings.[746] For instance, he argued that some of the comments of the Chairman of the Commission suggested that he wished to place Local Courts under the control of the Chief Justice, a position he (Russel) was opposed. He argued further that there was a vast difference between judicial control and administrative control and, hence, the call for the separation of the judiciary from the executive was misplaced. He supported his argument against a complete decoupling of the judiciary from the executive by stating that:

> Authority (Administrative) control [of the judiciary] is recommended by the Coussey Committee, by the Colony and Ashanti Report on Local Government…and it is what the Gold Coast is accustomed to.
> I do not believe that the people of the Gold Coast wish to be divorced entirely from their Courts. If I am wrong, I would like the issue put to the country and I would be content to abide by a decision of the Legislative Assembly six months later.
> The Gold Coast is suffering from too many changes - a little steady improvement as opposed to an alteration should be encouraged.[747]

It is quite understandable for the Gold Coast members of the Commission to make observations and recommendations that Russel disagreed with. The people of the Gold Coast had always, since the days of King Aggrey[748] in 1865 or earlier, demanded that the colonial authority should stay away from interfering in their judicial powers, a position that the colonisers had consistently failed to appreciate even when they attempted to undertake reforms that ostensibly were aimed at giving the Local Courts more jurisdiction and power. Arguably the greatest opportunity for the people of the Gold Coast to define and govern their country's justice system came in 1951

[746] A.C. Russell, "Memorandum of Dissent: Native Court Commission, 1951," 30 September 1951, RG 1/2/77.
[747] *Ibid*.
[748] King Aggrey vehemently fought against the encroachment of his authority, including the jurisdiction of his courts by the representative of the British monarchy in Cape Coast. He engaged in a long-drawn conflict with Governor Pine until he was arrested and taken into exile in Sierra Leone in December 1866.

when Nkrumah was tasked with forming a government. That opportunity, however, was lost because some key portfolios, including the position of Chief Justice, were retained by the British officials in the country. And so the majority of Gold Coast members of the Commission seized just another opportunity to recommend a decoupling of the courts from the executive arm of the colonial government.

In the Northern Territories, the Chief Commissioner continued to be the authority responsible for the Local Court system there.[749] Even though the Korsah Commission recommended far-reaching reforms in the composition, operations and administration of Local Courts in Asante and the southern sector of the country, the same could not be said of the Northern Territories. Even Chief Justice, Sir Mark Wilson, did not expect drastic reform in the Northern Territories. He noted, in a discussion with members of the Korsah Commission, that "the present system in the Northern Territories should not be abolished forthwith as the area was comparatively undeveloped."[750] He rather advocated "a special treatment involving gradual innovation."[751]

Even though the CPP-led government could not, or did not directly introduce policy changes to reform the judiciary in the early 1950s, most of the recommendations of the Justice Arku Korsah-led Commission were accepted by the Colonial Native Law Advisory Panel. After considering the recommendations of the Commission and the dissenting position of the Senior Judicial Adviser, Mr. A.C. Russell, the Advisory Panel "acquiesce[d]

[749] Russell, "Memorandum of Dissent: Native Court Commission, 1951."
[750] *Ibid*.
[751] *Ibid*.

[themselves] in the general proposal of the Commission as they [stood]."[752] This was a position they held because they were of the view that "there has been general dissatisfaction with the present local courts…. The Panel agreed that the case for a radical change in the system was strong."[753] The Advisory Panel also suggested some directions on key issues in dispute between the Commission's report and Russel's position. On the issue of the control of Local Courts, the Panel agreed that "Judicial control of the Local Courts should be the responsibility of the Chief Justice and that would include the appointment of justices, stipendiaries… and the supervision of the judicial work of the courts."[754] That was a vindication of the position of the Commission of Enquiry and, in fact, the position of some educated Gold Coasters in the period before the 1950s. The The panel also considered the contentious issue of the jurisdiction of local courts and recommended that the government had to issue a proviso on whether the term "customary law" concerning the Northern Territories included Islamic law.[755]

Codifying Local Laws for Local Courts

The matter of which customary laws to adopt in the adjudication of justice and who/what the repositories of those laws should be was debated quite extensively amongst the European officials of the government (particularly the Acting Chief Justice)[756] and the Gold Coast members of the government. The colonial administration believed that a proper definition of

[752] PRAAD, Cape Coast, RG1/2/77 "Minutes of the 9th Meeting of the Colonial Native Law Advisory Panel held on Monday 16 June 1952 in Room 239, Church House."
[753] *Ibid*.
[754] *Ibid*.
[755] *Ibid*.
[756] The Acting Chief Justice was one J. Jackson. The Chief Justice at the time, Sir Mark Wilson, was on leave at the time when discussions on the findings and recommendations of the Korsah Commission were going on.

the local laws to use was important for the effective administration of justice at the local level. He posited that "apart from the reported decision of the West African Court of Appeal and the Supreme Court, which themselves are not readily accessible, the sole repository of native customary law lies in the memories of linguists and certain Chiefs in each State."[757] He, therefore, argued that a reorganization of Local Courts along the lines of the recommendations of the Korsah Commission would result in a situation in which the members of the new court would "be drawn from a body of persons who, if not wholly, then certainly very largely, will not possess that knowledge of native customary law requisite for the due administration of justice in these Courts,"[758] and hence, he opposed the codification of the customary laws. Even though the Acting Chief Justice opposed the codification of customary laws, he contended that "there must be available to them [the new Native Courts] in writing what is the existing native customary law in each State of the Colony and Ashanti, and in the Northern Territories"[759] since the justices of the courts, "whether they were lay men or legal practitioners, possess(sic)…only rudimentary knowledge of native customary law."[760] He further posited that each state in the Gold Coast should be "required by the Governor to record in writing declarations of what is the existing native customary law…and…not until the Governor-in-Council has

[757] PRAAD, Cape Coast, RG1/3/30 "The Korsah Report on the Future of Native Courts," Letter written by the Acting Chief Justice, J. Jackson, to the Permanent Secretary of the Ministry of Local Government and the Governor, 5 September 1952. It must be emphasized that this position was fiercely contested by other members of the British administration, including the Chief Regional Officer of Tamale, who argued that "…customary law is widely known and rarely disputed" by parties involved in a litigation. See "Letter from the Chief Regional Officer of the Northern Territories to the Permanent Secretary, Ministry of Local Government" 16 October 1952.
[758] *Ibid*.
[759] *Ibid*.
[760] *Ibid*.

been satisfied as to the truth and accuracy of such declaration can courts commence to function [in those states]."[761] He contended that the "question of choosing the best personnel for the Courts is not a question of politics, and whether a choice is democratic or autocratic, the sole test is that the person selected is of unimpeachable character, that he possesses a sound judgment and has a good knowledge of the law which he will be called upon to administer."[762]

The recommendations of the Justice Arku Korsah report for a complete overhaul of the independence, powers, and activities of Local Courts in the country attracted wide and varied views from various officers of the colonial administration. This, thus, triggered the writing of letters by various officers all proposing ways of implementing the recommendations made by the Commission. For example, the Permanent Secretary of the Ministry of Local Government questioned the practicality of the proposal by the Acting Court President saying it would cause significant delays in the commencement and operationalisation of the courts.[763] He noted that "even if customary law is not codified, [he was] of the opinion that the difficulties contemplated by the Acting Chief Justice can be largely overcome by providing that issues requiring an interpretation of the customary law should be resolved, either by the attendance of 'expert' witness, or by reference to a competent traditional authority for an opinion to be stated."[764] The Chief Regional Officer of Cape Coast also challenged the claim by the Chief Justice that linguists and certain

[761] PRAAD, Cape Coast, RG1/3/30 "The Korsah Report on the Future of Native Courts."
[762] *Ibid*.
[763] PRAAD, Cape Coast, RG1/3/30 "Commission on Native Courts," a letter written from the Permanent Secretary of the Ministry of Local Government to the Acting Chief Regional Officer of the Colony, Cape Coast, 30 September 1952.
[764] *Ibid*.

chiefs in each State are the only repositories of the customary laws of the people. He indicated that the laws were known by the general populace of the states since there was nothing esoteric about theme.[765] He noted that it was only in suits about land and succession to property that the uncertainty of the law was a hinderance since it was only in those cases that valuable property was at stake and that such cases could go to the Supreme Court on appeal.[766] The Chief Regional Officer of Cape Coast, however, agreed with the proposal on the basis that "it would be of great advantage to have a true and accurate record of customary law, particularly on these two topics of succession and land rights"[767] even though he argued that asking the states to present a list of their customary laws would be without any legal effect and quite difficult to execute considering the number of states in his region alone. These views of the Chief Regional Officer of Cape Coast were supported by his counterpart, the Chief Regional Officer of Ashanti.[768] He indicated that the said declaration, as suggested by the Acting Chief Justice, and adherence to it would delay the commencement of work by the Local Courts and "I do not think Native Court reform should await them."[769] Concerning engaging the services of people who were knowledgeable in customary laws in the administration of justice, the Chief Regional Officer noted that:

> In dealing with destoolment matters in my administrative capacity I have often selected an expert witness in Custom and

[765] PRAAD, Cape Coast, RG1/3/30 "Commission on Native Courts," a letter written by the Chief Regional Officer of Cape Coast to the Permanent Secretary of the Ministry of Local Government, 8 October 1952.
[766] *Ibid*.
[767] *Ibid*.
[768] PRAAD, Cape Coast, RG1/2/77, Commission of Enquiry on Native Courts," A letter written by the Chief Regional Officer of Ashanti to the Permanent Secretary of the Ministry of Local Government, 16 October 1952.
[769] *Ibid*.

> I have been impressed by the respect paid by conflicting parties to his opinion. I think that Local Courts would not find it unsatisfactory to do [the] same.[770]

It must be emphasized that the debate over how to reform the Local Courts was also largely fueled by the fact that the courts were still relevant in justice delivery in the country, even though they had their flaws, and hence they needed to be maintained and enhanced instead of being scrapped, which would have been the easiest way to deal with them. As indicated in a letter from the Eastern Regional Officer to the Permanent Secretary at the Ministry of Local Government, "Native Courts, like Tribunals which preceded them play an essential role in the day-to-day life of the people…. Whatever their imperfections, they afford judicial relief in the remotest places …."[771]

Attempts were made in 1951 to improve the existing judicial system to make it more efficient. This was in line with the demand for constitutional reforms in various sectors of the government, including the judiciary. The 1951 Constitutional Instrument on the judiciary clearly emphasised the importance of the judiciary and the need to preserve its independence from government control even as there was the need to ensure an appropriate relationship between the two institutions. The following proposals were made to ensure a more efficient and fair justice system in Ghana:

> that the status and conditions of service of judges should not be altered by a Constitutional Instrument;
> that the Chief justice of the Supreme Court should be appointed by the Governor after consulting the Prime Minister;

[770] PRAAD, Cape Coast, RG1/2/77, Commission of Enquiry on Native Courts," A letter written by the Chief Regional Officer of Ashanti to the Permanent Secretary of the Ministry of Local Government, 16 October 1952.
[771] PRAAD, Cape Coast, RG1/2/77, Commission of Enquiry on Native Courts," A letter written from the Eastern Regional Officer to the Permanent Secretary at the Ministry of Local Government, 29 March 1955.

> that a Judicial Service Commission should be created to deal with judicial appointments other than that of the Chief Justice…;
> that a judge of the Supreme Court appointed after the commencement of the new constitutional provision should not be removable except by the Governor on an address of the Assembly carried by not less than two-thirds of the members, praying for his removal on the grounds of misbehaviour or infirmity of body or mind;
> it is thought that the maximum age for the retirement of Judges should continue to be 62 years, and that this rule should be included in the Constitution. In order that there may be a reasonable degree of flexibility in the application of the rule there should be a proviso enabling the Governor, acting in his discretion, to permit a judge who has reached the age of 62 years to continue in office for a period not exceeding 12 months;
> they should be charged in the general revenue and assets of the Gold Coast, and should not be diminished during their term of office; the Judicial Service Commission should consist of the Chief Justice as Chairman, the Attorney General, the Senior Puisne Judge, the Chairman of the Public Services Commission and either a serving or retired Judge of the Supreme Court appointed by the Governor acting in his discretion;
> the appointment, promotion, transfer, termination of appointment, dismissal and disciplinary control of persons holding judicial offices, other than Judges of the Supreme Court, should be vested in the Governor acting initially after consultation with the Judicial Service Commission and, when this becomes an executive body, on its recommendation.[772]

Despite the recommendations that were made by the Korsah Committee and the subsequent reviews and suggestions that were made to them by Mr. A.C. Russell, Local Courts did not witness any tremendous reform throughout the

[772] See ADM 5/4/103, A Letter from the Governor of the Gold Coast to the Hon. Oliver Lyttelton, the Secretary of State for the Colonies, Hon. Oliver Saloway, detailing the Government's Proposals for Constitutional Reform, 9 April 1954. See also A Letter from the Governor of the Gold Coast to the Hon. Oliver Lyttelton, the Secretary of State for the Colonies, Hon. Oliver Saloway, in Metcalfe, *Great Britain and Ghana: Documents of Ghana History, 1807-1957* (Edinburgh: Thomas Nelson and Sons Ltd, 1964)721-723.

1950s. Two main reasons for this were the unavailability of funds and the lack of trained and qualified magistrates.

Constitutional Reforms, Manifestoes and the Judiciary in 1954

It is worth noting that some of the proposed recommendations to, ostensibly, strengthen the judiciary in 1950 found themselves in discussions on yet another constitutional reforms in 1953. As part of ongoing discussions and processes towards a proposed constitutional reform in the Gold Coast in 1953 was the issue of making the judiciary in the colony stronger than it was at the time. The colonial administration's draft white paper on proposed constitutional reforms gave some attention to recommended changes that would make the judiciary independent from any form of control, particularly control by the executive.[773] The government's white paper on the supposed constitutional amendments made some recommendations. It proposed that Supreme Court justices should remain in office as long as they demonstrated good behaviour and that Governors could only remove them with a two-thirds vote of the legislature. It also recommended that the salaries of Supreme Court judges should not be subject to an annual vote by parliament, but should be permanently deducted from Gold Coast revenue. The white paper suggested that appointments of judges in future should be made by the Governor, in consultation with the Prime Minister, and based on recommendations from the Judicial Service Commission. That was to ensure independence in the appointment. The said Judicial Service Commission should consist of the Chief Justice as Chairman, the Attorney General, the Senior African Member

[773] See "Letter from Sir. C. Arden-Clarke to W. L. Barnes on the Gold Coast White Paper on constitutional reform," CO554/255, No. 65, in Richard Rathbone (ed), *British Documents on the End of an Empire*, Series B. Vol.1, (London: HMSO Publications Centre), 1992, 52.

of the Public Service Commission and the Senior Puisne Judge. The Prime Minister was enjoined to respond to Parliament on issues affecting the judiciary.[774]

The proposed position of the colonial authorities on the independence of the judiciary was significant to reduce, if not completely eliminate, government control of the judiciary. One wonders whether those laudable proposed reforms were only being introduced at that time because the government of the Gold Coast from 1951 was, technically, in the hands of Dr. Nkrumah and his fellow Gold Coasters and hence the British colonial officials did not want Dr. Nkrumah (the executive) to control /manipulate the judiciary even though they (the colonizers) did so in the past.

Another aspect of the operations of the judiciary that could encourage corruption and, therefore, adversely affect the impartiality of the courts was the issue of the remuneration of Judges. The colonial authorities realized that there was the need to increase the salaries and pension of judges in order to attract "local barristers to the Supreme Court Bench."[775] They argued that that was necessary because, within a few years, recruitment for senior judicial positions would be from among suitable candidates in private practice. Upward adjustments in salaries and pensions had become even more urgent as existing salaries were considered insufficient to attract lawyers with the necessary reputation and qualifications to the Supreme Court's Bench.[776] As a result, the colonial authorities increased the salaries of judges to a non-

[774] "Letter from Sir. C. Arden-Clarke to W. L. Barnes on the Gold Coast White Paper on constitutional reform," CO554/255, No. 65.
[775] *Ibid.*
[776] *Ibid.*

pensionable salary of £3,000 per year, while the remuneration of the presiding judge increased to £3,200.

Even though the reforms were necessary for the survival and independence of the judiciary, it will be realized, in time, that they did little to insulate the judiciary from executive control. As a result, the CPP government would have several instances of conflicts with the judiciary (both British-style courts and local courts) from the 1950s through to 1966.

The 1954 Constitution established a Judicial Service Committee which consisted of the Chief Justice and 2 other Judges, the Attorney-General and the Chairman of the Public Services Commission.[777] The constitution also stipulated that the Chief Justice should be appointed by the Governor-General on the advice of the Prime Minister[778] while the judges and the other judicial officers were appointed on the advice of the Judicial Service Commission.[779] Even though the 1954 Constitution provided for some elaborate structure for the judicial arm of government, the appointment of a Chief Justice who was the head of the judiciary, by the Governor-General, made it likely for the former to do the bidding of the appointing authority for fear of losing his job if he went contrary to the Governor-General's desires (as was the case in the 19th century and would play out again in the 1960s). Subsequently, the judiciary could not be said to be an independent institution even at the dawn of Ghana's attainment of independence. The establishment of the Judicial Commission by the Constitution, however, was a positive step in making the judiciary more

[777] "The Gold Coast (Constitution) Order in Council, 1954" in Gyandoh Jnr & Griffiths, *Constitutional Law*, 115.
[778] This was a significant provision and a firmer move towards the realization of an eventual handing over of power by the British to the local leaders. This constitutional arrangement in Ghana was similar to that in the United Kingdom where the Prime Minister exercised the same function in the appointment of judges.
[779] "Order in Council, 1954"

efficient since the Commission was to play an advisory role and, hence, would help the administrative head of the judiciary in the conduct of his duties. The constitution also attempted to insulate the Judicial Service Commission from manipulation. It stated that:

> Every person, who otherwise than in the course of his duty, directedly or indirectly…. influences or attempts to influence any decision of the Judicial Service Commission or of any member thereof shall be guilty of an offence and shall be liable to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.[780]

The Constitution provided some security of tenure for judges. This, ostensibly, was to avoid the situation where the appointing authority of judges could arbitrarily dismiss any member of the bench because of personal reasons instead of on grounds of stated professional misconduct. The Constitution stipulated that judges of the Supreme Court were not removable except by the approval of the Legislative Assembly with not less than two-thirds of the members voting for the removal on grounds of misbehaviour or infirmity of body or mind.[781] Despite the challenges associated with the appointment of a Chief Justice, as pointed out above, the introduction of a seemingly stringent method of removing the head of the judicial arm of government, or any judge for that matter, was quite encouraging even though it could not prevent a government with an overwhelming majority of the members in the legislature from being capricious in its dealings with the judiciary. Sir Charles Noble Arden-Clarke was of the firm conviction that there would not be any need for

[780] "Order in Council, 1954."
[781] *Ibid.*

the constitutional provision for the removal of a Chief Justice.[782] The Governor-General further argued that the only time such a power would be applied would be when an insane judge refused to resign from his position and clung to his office. He was confident that there would be a unanimous vote in the Legislative Assembly for such a judge to be removed from power.[783]

The role of chiefs in the country, with particular reference to their courts and their adjudication of justice, came up repeatedly from the early 1950s. Apart from the many calls for the review of Local Courts because of their inherent challenges, there were also clashes between the political class and the chiefs on the rights and judicial authority of the latter. The political elites in the country, especially, members of the CPP government, appeared to be vehemently opposed to the judicial authority of chiefs. This opposition seemed to have stemmed from accusations by leading members of the CPP that some chiefs were actively engaged in party politics at the time.[784] The openly antagonistic relationship between some members of the CPP, on one hand, and the chiefs and their Local Courts, on the other hand, was reflected in the party manifestos of the main parties in the 1954 elections, with all of them promising to improve/enhance the role of chiefs when elected into power.

On the matter of chiefs and chieftaincy, the Northern Peoples Party (NPP) promised to restore chiefs to their position of being the "head of the people.[785] It assured the chiefs and traditional leaders that an NPP government would depart from the attitude of Dr. Nkrumah when he said that they, the

[782] PRAAD, Cape Coast, RG 17/1/59 "Memorandum from the Gold Coast Cabinet Ministers for onward Transmission to the Secretary of State," 1956.
[783] *Ibid*.
[784] The issue of the CPP and the chiefs have been discussed in subsequent paragraphs of this thesis.
[785] *Manifesto of the Northern Peoples Party (NPP)*, 12.

chiefs, "will run and leave their sandals behind."[786] The party promised that it would ensure that all "chiefs retrieve the dignity that they have lost since the inception of the CPP."[787] The party further promised to "Crystallise the position of Chiefs and make it venerable."[788] The NPP manifesto indicated that the party considered chiefs to be an essential part of the local administration system, and hence, they should be given some financial provision to enable them to perform their duties effectively.[789]

Even though the manifesto of the Ghana Congress Party (GCP) did not explicitly tackle the matter of chiefs and the operations of their courts in the country, it promised to, among other things, improve to improve the country's local government system, among other things. It stated that the party, if voted into office, would "…make it possible for traditional authorities and elected councillors to contribute harmoniously to the progress and good government of the localities…"[790] Even though there was no explicit mention of the judiciary and what a GCP government would do to improve it, it promised to ensure harmony between the traditional authorities (that is the chiefs) and the elected councillors to minimise the friction that existed between the groups under the government of the CPP and Dr. Kwame Nkrumah.[791]

The CPP, which had been accused by some chiefs of being anti-chieftaincy, promised to make chiefs more useful in society. It outlined steps to ensure that chiefs did not participate in party politics which, the manifesto

[786] *Ibid*. See also Osei Kwadwo, *An Outline of Asante History*, Part 1 (2nd ed.), (Wiamoase: O. Kwadwo Enterprise, 2000), 90.
[787] *NPP Manifesto*.
[788] *Ibid*.
[789] *Ibid*.
[790] *Manifesto of the Ghana Congress Party (GCP)*, (Accra: The West African Graphic Company Limited), 12.
[791] *Ibid*.

claimed, dented the dignity and integrity of the chiefs. The party manifesto also assured the electorate that the CPP was not out to destroy chieftaincy, as had been suggested by other political parties. On the contrary, the CPP aimed at making chieftaincy "adapt to democratic practices, by clearly defining the functions of the chiefs in…. society."[792] It was further argued that the abstinence of chiefs from partisan politics would also help them retain the allegiance and respect of their subjects, irrespective of their religious beliefs and political affiliation.[793]

The CPP and the Chiefs' Courts

It was almost certain, by the beginning of the 1950s, that the existence and operations of Local Courts in the country faced some challenges that required urgent attention for possible reforms. The anticipated reforms had the potential of minimising the institutional challenges of the courts, and even paving the way for a possible redefinition of the fate of chiefs and their courts in the judicial processes of the country. The CPP government, which came into office in 1951, however, did/could not[794] introduce legislation that could ensure reform of the country's local court system. Rathbone argues that between 1951 and 1954, despite an impressive collection of very detailed, informed and critical commentary from many different sources, the government avoided drafting legislation on local justice. That was even though all observations called for substantive changes in the local court

[792] *Manifesto of the Convention People's Party (CPP),* (London: The National Labour Press, Lid., 318 Regent's Park Road, 1954), 8.
[793] *Ibid*.
[794] Rathbone argues that the CPP government was of the opinion that "it was not appropriate that a caretaker Government should take decisions on issues which might prove highly controversial." See Rathbone, "Kwame Nkrumah and the Chiefs," 45-63.

system rather than the tinkering policies which were actually in place.[795] That notwithstanding, the CPP adopted some other means to correct the deficiencies in the institution.

The position and fate of chiefs, and by extension their courts, in the Gold Coast, seemed to have been threatened the more from the time Dr. Kwame Nkrumah assumed the position of the Leader of Government Business in 1951[796] - later to become the Prime Minister (from 1952) and President in 1960 when Ghana attained republican status. The relationship between the chiefs, their courts and the CPP became strained from 1951 and the two groups did not see eye-to-eye. Some of the chiefs believed that Dr. Nkrumah and his party were bent on stripping them of all their roles as natural leaders of their people. This suspicion of the chiefs was borne out of some utterances of Dr. Nkrumah and some leading members of his government which were followed by actions from elements of the CPP against the chiefs from 1951 onwards.[797] Rathbone shares in the assertion that the CPP was hostile to some of the chiefs in the country. He writes that:

> The CPP was certainly hostile to chieftaincy. Many of its rural branches were locked in abrasive combat with local chiefs and councils; some of such party branches had begun life as militant factions opposed to particular chiefs.[798]

The supposed attack on the chiefs apparently derived from the part they played in the general election of 1951 and the desire by some members of the C.P.P. to exact political vengeance against the chiefs.[799] The attack also

[795] Rathbone, "Kwame Nkrumah and the Chiefs," 45-63.
[796] *Ibid*.
[797] *Ibid*, 130. Rathbone, "Native Courts,"130.
[798] Rathbone, "Native Courts,"130.
[799] Osei Kwadwo argues that the action and utterances of some members of the CPP, before the elections of 1951, made the chiefs believe that the party was hostile to the institution of chieftaincy. Therefore "most of them [the chiefs] rallied behind the opposing party to the

appeared to be the result of a genuine wave of popular sentiment against the political role of chiefs in central and local government that angered the young men who had become aware of their power under the new C.P.P. government. Subsequently, several chiefs were dis-stooled by some supposed members of the CPP government while other chiefs were suspended from their positions. Nana Sir Tsibu Darku IX, the Omanhene of Assin Atandansu and one of the most prominent figures in the old Legislative Council was suspended as a paramount chief while some charges (about sixty-six in all) were investigated against him.[800] There was also a movement against the chief of Manya Krobo, Nene Mate Kole. In Asante, a chief was de-stooled after about 35 years on the stool. Rathbone puts it bluntly by stating that "CPP was certainly hostile to chieftaincy."[801]

Some leading members of the CPP government openly articulated their dislike for the chiefs after the 1951 general elections and even went on to predict the future of chieftaincy under the new government. J. Hagan might have spoken the minds of many when he contributed to the debate on the Local Government Ordinance on the floor of the Legislative Assembly in 1951. He argued that "For the past 107 years our chiefs have been exercising their rights…but that privilege has been abused...our confidence is now gone...their future is doomed...we want them to abstain themselves from

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CPP." See Kwadwo, *An Outline*, 90. It was ostensibly for this political move by the chiefs that some members of the CPP wanted to punish the chiefs.

[800] *Daily Mirror*, 22 March 1951. See also Padmore, *The Gold Coast Revolution*, 123.

[801] He, however, admits that there was some justification for the Government to check the activities of some errant chiefs in the country. He indicated that some of this hostility was completely understandable. Some chiefs acted arbitrarily and authoritarian, abusing their authority and resisting both broader accountability and inclusivity. See Rathbone, "Native Court," 130.

politics and wash their hands off financial matters."[802] The leader of the CPP and the Prime Minister of the country, Dr. Kwame Nkrumah, is reported to have told the chiefs that "they [the chiefs] will run and leave their sandals behind."[803] The disaffection by some members of the CPP and some government officials was met with equal opposition from some of the chiefs of the colony. Some of the chiefs and their people adopted a confrontational posture to meet the threats from the CPP head-on. Some newspapers in England, such as the *Manchester Guardian* and *Evening Standard*, reported on how the Chiefs and people of Akyem Abuakwa opposed the opening of a CPP office in Kyebi in 1951.[804] The *Manchester Guardian* also reported on the fractious relationship between some chiefs and the government and the activities of security personnel in the country who monitored resistance by the traditional leaders and residents of the Eastern Region. The newspapers reported that:

> Hundreds of steel-helmeted police with anti-rioting equipment last evening prevented rioting at Kibi, the capital of Akim Abuakwa state, one of the 63 such native states comprising the Gold Coast Colony, when Dr Kwame Nkrumah, Chairman of the Convention People's Party and leader of Government Business opened a party branch there which had been opposed by the chiefs in the area. The party rally ended without incident, but most of the people of the state boycotted it. Earlier the Chief of State had cabled to London asking that permission to hold the rally should be rescinded.[805]

[802] Rathbone, "Native Court," 130.
[803] See Manifesto of the NPP, 12.
[804] "Gold Coast Opposition to Dr. Nkrumah," *Manchester Guardian,* 23 July 1951.
[805] "Gold Coast Opposition," *Manchester Guardian,* See also "Riot threat Over Gold Coast Rally." *Evening Standard*, 21 July, 1951; "Riot Warning," *Evening News*, 21 July, 1951.

The chiefs and people of Akyem Abuakwa went to the extent of communicating their protest against a planned opening of a CPP office to the Secretary of State for the Colonies in London.[806]

Rathbone argues that the CPP's approach to the position of chiefs and the Local Courts in the 1950s was a delayed response to a needed overhaul of the Local Court system which was largely inefficient in the adjudication of justice.[807] The level of corruption in the local courts was such that some British officials believed in the modern elite's view that while some southern chiefs were undoubtedly impressively innovative and progressive, many were inherently corrupt and anachronistic.[808] Rathbone further argues that the CPP government has adopted legal tactic that allowed it to remove chiefs from these courts, especially chiefs who oppose the CPP, without altering the fundamental nature of the system itself until long after independence.[809] Rathbone also posits that the CPP largely achieved its desired political goal of limiting the legal powers of the chiefly class by altering the lists of those scheduled to hear cases in favour of its supporters.[810] This was done through the application of the Native Court Variation Orders which was used by the colonial authorities before the 1950s.

The CPP government also introduced, covertly, some "reforms" in the Local Court system through the office of the Minister of Local Government and by using some colonial laws that existed at the time. The minister used "his existing powers to 'vary', by Order, the composition of Native Court

[806] See Telegraph from the Governor of the Gold Coast, Sir Arden Clarke, to the Secretary of State for the Colonies, 20 July 1951. See also telegraph from the Governor of the Gold Coast to the Secretary of State for the Colonies, 23 July 1951.
[807] Rathbone, "Native Court," 131.
[808] *Ibid*.
[809] *Ibid*.
[810] *Ibid*.

Panels."[811] The Minister of Local Government had powers to select or approve the composition and membership of the panels of Local Courts from a long list of chiefs, chiefs' councillors and their clients.[812] This power allowed the CPP government to "legally" change the composition of the members of local courts without the need for any formal legal system.[813] What it meant was that Dr. Nkrumah's government ensured that "those administering justice were to be the nominees of the Minister…they were to be in large measure the nominees of local Convention People's Party branches."[814] Rathbone posits that the Minister for Local Government was already tinkering with the staffing of these courts long before the country gained independence in 1957 and after the 1954 general election.[815] That state of affairs[816] further weakened the role of chiefs in the administration of justice in Local Courts as those who were considered to be opposed to the government were not nominated by the Minister of Local Government. It is imperative to highlight that the combination of overt and covert (legal and illegal) use of power and authority

[811] Rathbone, "Native Court," 132.
[812] *Ibid*.
[813] *Ibid*.
[814] *Ibid*., 133.
[815] *Ibid*.
[816] Rathbone chronicles instances in which the CPP government used old colonial laws to determine the panels of Native Courts. He indicates that:
"In the Anlo Native Area Court, the Minister deleted six names all of which were those of chiefs. He then added the names of six members, none of whom were chiefs. In the Keta Court, three names were deleted including that of a chief, and three non-chiefs were added. In the Dzodje, Penyi, Ave-Aferingbe and Hevi Native Court, five members were removed of whom four were chiefs; five non-chiefs were then empanelled. Five of the names on the list of the Manya Krobo panel were deleted, including a chief and five non-chiefly names were imposed. The Dormaa Native Court saw five panel members, including two chiefs, struck off and the addition of five new names, only one of which was chiefly. In Djebian, three commoners and two chiefs were removed and six non- chiefs substituted. The Suisi Court lost three commoner and two chiefly panel members, who were replaced by a slate of five commoners. The Painqua and Akuse/Kpong Court lost three commoner members and two chiefs and, in their places, gained four non-chiefs. The Akwenor Court saw three chiefs and two commoners deleted and replaced with five non-chiefs. The Shaama court lost six chiefly and one commoner member and gained seven new members, none of whom were chiefs. A similar story comes out of the change to the Akwamu Native Court, which removed four chiefs and two commoners and added six new names, none of whom were chiefs." See Rathbone, "Native Court," 131.

by the CPP government to introduce some reforms in the Local Courts did not achieve much, initially. A typical case concerned the panel of a local court in Sekondi-Takoradi in which the Minister of Local Government removed 17 members (at least six of whom were traditional rulers) and replaced them with 12 others, of whom there was only one royal.[817] In 1953, the Minister changed the membership (mainly chiefs) of the panels of almost 20 Local Courts and replaced them with pro-CPP (non-royal) personnel.[818]

The period between the elections of 1954 and 1956 did not witness any drastic change in the CPP government's policy toward chiefs and the Local Courts. The Native Court Variation Order process, which had previously been beneficial to the government, continued to be used. The government continued its policy of replacing chiefs/royals on the panel of Local Courts with "lay" people who were known supporters of the CPP. In some instances, pro-CPP royals were either retained on the panels or were newly appointed onto them.[819] Rathbone indicated that:

> In the Manso Akroso Court, 14 names were deleted from the panel, five of whom can be identified as chiefs; 21 names were added to the list, of whom only three could be considered to be 'traditional'. Five names were removed from the Awutu Court panel, one of whom was a chief; eleven names were added to that list, and none of them was that of a chief. The Upper Denkyira Court panel lost 15 names, four of whom were chiefs, while 22 new individuals were placed upon that panel, none of whom were chiefs. On this occasion, Cabinet went on to approve major changes of the same kind to the Court panels of Northern Denkyira, Central Denkyira, Southern Denkyira, the Eastern and Western Gomoa Courts, the Western, Eastern and central Agona courts, and the Dangbe Court. So far as can be seen,

[817] Rathbone, "Native Court," 131.
[818] *Ibid*. 133-134.
[819] *Ibid*. 134.

> these new lists went by 'on the nod' and occasioned no discussion.[820]

It appears that two main reasons were responsible for the inability or the delay by the CPP government in undertaking the much-needed reforms in the Local Courts as had been recommended by the Watson Commission, the Coussey Committee and the Korsah Commission. The first one was the issue of cost. The CPP government, just as the colonial administration before it, reckoned that a proper reform of the Local Courts would be expensive. Rathbone argues that the cheapness of the chiefs' court system made it popular with the British.[821] He further claims that the CPP government recognized that there would be a significant additional capital revenue from the central fund to cover the much higher costs of a more effective and seriously reformed local court system[822] and that was a cost that the government was not prepared to bear at the time. The Minister of Local Government, in 1957, clearly stated the cost component of the proposed reforms in Local Courts and emphasised the need to delay such an exercise until the government was able to tackle them. He advised his colleagues in the Legislative Assembly that any action to implement the recommendations of the Commission on Local Courts, however desirable, should be deferred for the time being but notified that the position should be reviewed from time to time.[823]

In 1958, the Minister of Justice, Mr. Ako Adjei, who had taken over responsibility for Local Courts from the Ministry of Local Government, stated that local courts would exercise jurisdiction over the same territory as its predecessor and would differ from the Native Courts only in its name and the

[820] Rathbone, "Native Court," 135.
[821] *Ibid*.
[822] *Ibid*.
[823] *Ibid*.

persons who made up the court.[824] The CPP government, thus, agreed to a set of new Orders proposed by Mr. Ako Adjei which dealt with some Local Courts in the country. The minister provided new panels for those courts in Akyem, Kwahu, Akwamu, Ada and the Akuapim. The new lists had a total of 721 new nominees with only 50 of them being regarded as chiefs[825] and most of the new nominees were pro-CPP supporters. Mr. Ako Adjei also submitted another draft for courts in the Central and Western provinces. Only 8 out of the 139 nominees could be regarded as chiefs.[826] He justified the government's strategy of tinkering with the courts, stressing that the policy was consistent with his policy of having the membership of local courts transformed to conform with modern conditions.[827] However, Rathbone correctly concludes that financial concerns did, indeed, prevent the kind of comprehensive modernist reforms the CPP had hoped for in the local court system.[828]

In addition to the issue of cost was the age-old challenge of the limited number of qualified personnel needed to undertake any serious reform in the judicial sector. Even though there was a substantial number of lawyers in the country, there was an inadequate supply of experienced senior lawyers who were willing to take up appointments as stipendiary magistrates. The low salary of stipendiary magistrates, as has already been discussed in the paragraphs above, was also a factor that discouraged experienced lawyers from taking up such responsibilities. In describing the large size of personnel that would be required to achieve meaningful reform of Local Courts, the Minister of Local Government indicated in the cabinet in 1955 that "…If all

[824] Rathbone, "Native Court," 135.
[825] *Ibid*, 136.
[826] *Ibid*, 137. See also Rathbone, "Kwame Nkrumah and the Chiefs."
[827] Rathbone, "Native Court," 135.
[828] *Ibid*.

Native Court panels are to be abolished at once, I will have to appoint about 300 stipendiary justices …"[829] There was, therefore, the need to train more lawyers to fill the huge deficit in personnel to staff the courts if they were to be reformed. In 1946, only 12 of 136 Gold Coast students in schools in the United Kingdom studied law. Two years later, in 1948, only 29 of 253 Gold Coasters studying in the United Kingdom read law.[830] The urgent need for more lawyers to be trained for the colony was captured in the report of the Elliot Commission which recommended the establishment of a West African Faculty of Law in the 1940s. However, it was not until 1956 that the University College of the Gold Coast decided to establish a Law Faculty beginning in 1958.[831]

The reforms desired by the CPP and others would, however, prove slow and would be achieved only after the attainment of independence.[832] Even then, the Local Courts Act of 1958 which sought to introduce some reforms retained much of the basic structure of the old system of Local Courts.[833] Rathbone seems to corroborate this observation by indicating that:

> As late as 1958, a year after independence, the Minister of Justice, within whose portfolio the Local Courts system now fell, admitted to his colleagues that 'the reform of Native Courts [sic] has been proceeding unobtrusively by the reconstitution of Court panels, by the alteration of areas of jurisdiction, by improving the standards of knowledge and efficiency of registrars and by bettering the physical amenities of Courts.[834]

[829] Rathbone, "Native Court," 135.
[830] *Ibid*.
[831] PRAAD, Cape Coast, RG/17/1/81, "Legal Education," A note on the need for the introduction of Legal Education in Ghana. 16 March 1958.
[832] Rathbone, "Native Court," 133.
[833] William Burnett Harvey, *Law and Social Change in Ghana*, (Princeton: Princeton University Press, 1966).
[834] Rathbone, "Native Court," 136.

It must be emphasized that despite the seeming lack of popularity from sections of the government and the citizenry, the Local Courts played an important role in the administration of justice in the country. This was most recognizable in the remote areas of the country. The importance of Local Courts, irrespective of their operational shortfalls, was communicated by the Regional Officer of the Eastern Region. He argued that:

> Native Courts, like the Tribunals which preceded them play an essential part in the day-to-day life of the people of the Eastern Region. Whatever their imperfections, they afford judicial relief in the remotest places…. Most of them, through constant inspection by the Government Agent or the Senior Judicial Adviser, through the universal revision of panels which has been carried out during the last two years and through the recruitment of certified Registrars have learnt to maintain a fair standard. Where they fall below it, injustice can be and is speedily righted by the Government Agent or the Senior Judicial Adviser, both of whom not only possess adequate powers of Appeal and Review but are in touch with the people.[835]

One can safely conclude from the comment above by the Regional Officer of the Eastern Region that what was needed was for the Local Courts to be properly reformed so that they would be able to, efficiently serve the purpose for which they were established and that complete the scrapping of those courts would not be beneficial. It was just a matter of time before a semblance of the desired reforms were introduced.

The Supreme Court: 1947-1957

The Supreme Court of the Gold Coast, occasionally, issued directives to magistrates, judges, the courts, police and individuals or institutions that were connected to judicial processes in the Gold Coast. Such directives were

[835] D. P. Hardy "Report of the Commission on Native Courts," letter from the Regional Officer, Eastern Region, to the Permanent Secretary, Ministry of Local Government, 29 March 1955.

mostly issued by the Chief Justice of the Gold Coast, who was the head of the judiciary, to improve upon the administration of justice and all other related matters in the colony. The directives covered the hearing of appeals, the proper ways of detention of juveniles in the colony to the right steps and processes to be taken when deporting an "alien" from the country.[836] Other directives covered appeal proceedings in Magistrates' Courts, the sale of movables, application for and the issuance of Special Licences, Motor Traffic Offences and the trial of accused persons of unsound mind.[837]

The Supreme Court also established special courts, primarily, to adjudicate special cases while the regular courts were also mandated to deal with special kinds of cases that were brought before them for adjudication. Consequently, cases that involved juveniles, for instance, were given specific attention by the courts. This could be seen in the establishment of Juvenile Courts in parts of the country to consider cases involving juveniles. Juveniles who flouted the laws, and hence found themselves before any of the juvenile courts, were committed to the Boys Industrial Schools at Swedru and Maamobi in Accra upon conviction. The juvenile offenders were given residential educational and artisanal training in the schools.[838] The Supreme Court issued directives to other courts, the police and other officers involved in the administration of justice in the Gold Coast with the main aim of improving the justice delivery system in the colony. For instance, the

[836] Supreme Court (1949 - 1968) RG1/3/30, "Contribution Orders Re: Detained Juveniles," Judicial Circular No1/1949, 5 January 1949; "Deportation Orders under CAP 43," 6 January 1949.
[837] See "Sale Notice," 28 March 1949; "Special License Under Section 23 of Cap. 105," 16 June 1949; "Motor Traffic Offences," 18 October 1950; "Accused Person of Unsound Mind," 26 April 1951.
[838] "Contribution Orders Re: Detained Juveniles," Judicial Circular No1/1949, 5 January 1949).

Department of Social Welfare noticed an increase in the number of boys who were committed to the Boys Industrial School in Swedru and other parts of the colony. It was later realised that the astronomical rise was intentional because "…some parents and guardians have sought to obtain what they considered to be free educational and trade training for their children by encouraging them to commit offences which they hoped would lead to residence at the school."[839]

Over time, the schools were unable to adequately cater for the boys in their care due to financial constraints. Subsequently, the Supreme Court, under the then acting Chief Justice, issued directives to curb the deliberate practice of increasing the number of boys in the schools without a corresponding inflow of funds. The orders were also meant to commit parents or guardians of juveniles in the schools to contribute to the training of their wards. The directives included the following:

> In the areas where a probation service is established namely, the magisterial Districts of Accra, Sekondi and Kumasi, all juveniles who commit offences or who are found to be in need of care or protection are brought before the Juvenile Court and remanded to the Remand and Probation Home for purpose of a full pretrial investigation being conducted by the Probation Officer.
> This enquiry indicates to the Court which form of treatment is best suited to the requirements of the individual: - e.g., whether the parents or guardians can be ordered to exercise proper care and guardianship - whether the juvenile should be committed to the care or a Fit Person, or placed on probation under the supervision of a probation officer, or be trained for a period at the probation Home, or be committed for a longer period of training at the Industrial School, Swedru.
> In all cases where a juvenile is committed to the care of a Fit Person or committed to the Boys Industrial School, Swedru or

[839] "Contribution Orders Re: Detained Juveniles," Judicial Circular No1/1949, 5 January 1949).

> the Industrial Institution, Maamobi, Accra, an order may be made by the Court upon the parent or guardian to pay contribution towards the maintenance of the juvenile in question.[840]

The Supreme Court spelt out and, in some cases, reminded the lower courts of the requirements that they needed to fulfil before instructing that an individual be deported from the colony. For instance, it directed that "Magistrates state…the place or territory which the client is a native"[841] and that merely stating that the deportee was a French subject was not sufficient. The magistrate courts were also required to indicate the following in the certification they issued for the deportation of a convict:

a. That the convict was an alien;
b. That the convict admitted that he was an alien, or that the Magistrate was satisfied by evidence that he was an alien;
c. That he was convicted of an offence punishable by imprisonment without the option of a fine; The offence or offences must be distinctly stated ….;
d. That the magistrate recommended deportation;
e. That the deportation Order was made, either in addition to the sentence or in lieu of sentence.[842]

There were 15 District Magistrate courts in the Gold Coast by the end of 1949 with 12 of the courts being operational. The remaining 3 courts did not have magistrates in charge and hence were rendered inoperable for quite some time.[843] It is worth indicating that the judiciary remained largely under the administration of expatriates and this was evident in the fact that consideration of how vacancies in the three vacant magistrate courts could be filled included

[840] "Contribution Orders Re: Detained Juveniles," Judicial Circular No1/1949, 5 January 1949).
[841] "Deportation Orders under CAP 43."
[842] *Ibid*.
[843] "Letter from the Chief Justice to the Governor of the Gold Coast No.3671/24/CJ.31/1949," 1 October 1949.

"recruitment [of personnel] from England."[844] The District Magistrate Courts were located in the large cities of Accra, Sekondi, Kumasi, Swedru, Koforidua and Ho. These courts had jurisdiction over civil and criminal cases and hence tried large numbers of cases that were brought before them.[845]

The shortage of staff at the magisterial courts contributed to the large areas of operation that the existing magistrates were responsible over. The court in Accra, for instance, had two District Magistrates who visited Nsawam, Asamankesse, Kade, Dodowa and Ada to adjudicate matters that were brought to them. There were two District Magistrates in Kumasi too. They were in charge of cases in the greater part of Asante. The District Magistrate of Ho visited Kpando, Hohoe, Peki, Akuse, Somanya, Denu and Keta while the District Magistrate in Koforidua visited places such as Kobe, Tafo, Suhum, Mampong and Anyinam.[846] The District Magistrate of Swedru, in 1949, doubled as the magistrate for Cape Coast too owing to the shortage of staff.[847] He visited Winneba, Adam, Oda, Saltpond, Cape Coast, Elmina and Fosu. The District Magistrate of Sekondi had Tarkwa, Axim and Sekondi under his

[844] "Letter from the Chief Justice to the Governor of the Gold Coast No.3671/24/CJ.31/1949," 1 October 1949.

[845] Below were the cities in which Magistrate Courts were found with respective numbers of criminal and civil cases that were taken before them in a period of 6 months in 1949. See Letter from the Chief Justice to the Governor of the Gold Coast No.3671/24/CJ.31/1949, 1 October 1949.

Station	Criminal Cases	Civil Cases
Accra	4,792	1,342
Kumasi	4,348	495
Sekondi	2,797	598
Swedru	1,841	199
Koforidua	2,520	86
Ho	1,417	101

[846] Letter from, Mr. D. H. Shackles, the Chief Registrar of Courts to the Chief Justice of the Gold Coast, 29 September 1949.

[847] *Ibid*.

jurisdiction. Takoradi was added to his responsibilities because there was no courthouse there.[848]

Besides asking the few Magistrates in service to do more than they should have done, the shortage of staff at the District Magistrates courts also accounted for the few Magistrates being mostly denied their annual leave and, in some instances, those past the retiring age of 55years were kept in the judiciary to continue to serve. In instances where Magistrates were allowed to go on leave even though there were no replacements, the already overburdened Chief Commissioners were asked to fill in for them until the Magistrates returned. Some Magisterial Courts were even closed because there was no qualified staff to act in the absence of the substantive Magistrate.[849] The dire situation of inadequate staffing of the Supreme Court, especially, with regards to District Magistrates, in 1949, necessitated a request from the Colonial Secretary for the Commissioner of the Colony to redistribute the duties of administrators serving in his administration. The redistribution was to enable qualified administrative officers to help in the administration of justice by serving as District Magistrates.[850]

A major cause of the shortage of staff, particularly expatriate staff, at the Magisterial Courts was because of the "appreciably more generous salary scale and terms of service for magistrates in the East and Central African territories with those obtained here [in West Africa] .... As even in those territories with their better financial terms and much superior climate and

[848] Letter from, Mr. D. H. Shackles, the Chief Registrar of Courts to the Chief Justice of the Gold Coast, 29 September 1949.
[849] Letter from the Chief Justice to the Governor of the Gold Coast No.3671/24/CJ.31/1949; Letter from the Acting Chief Registrar to the Chief Commissioner of Cape Coast, 20 June 1950.
[850] Letter from the Colonial Secretary to the Commissioner of the Colony, 25 October 1949.

other attractions there are still vacancies…."[851] The Chief Registrar of the courts indicated that "…until the supply of suitable candidates greatly improves, we have little or no hope of recruitment from this [expatriates] source."[852] Attempts to fill the vacancies at the District Magistrates' courts with African lawyers was, initially, not successful mainly because the requirement that applicants must have three years' experience in private practice. Most applicants did not have that number of years of experience.[853] Some of the competent people who could be appointed as District Magistrates in the late 1940s included Mr. A. Howe, Mr. A.W. Davies, Mr. H.E. Devaux, Mr .W.H. Gillespie, Mr. J.C. Hooten, Mr. W.H.A. Hanschell and Mr. P.W.C. Dennis.[854] While some of these people did not possess the three years' experience in private practice which was required for their appointment and so could not be appointed, others were engaged in other departments of government and so could not be released for appointment as District Magistrates.[855] For instance, Mr. A. Howe and Mr. P.W.C. Dennis, Assistant District Commissioners for Koforidua and Kpandu, respectively, had so many responsibilities in their respective positions and so they could not be released to the office of the Chief Justice for reassignment.[856]

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[851] Letter from the Chief Registrar of the Courts to the Chief Justice of the Gold Coast 29 September 1949.
[852] *Ibid*.
[853] *Ibid*.
[854] *Ibid*.
[855] *Ibid*.
[856] "Vacancies in the District Magistracy," Letter from Mr. D.A. Sutherland, Acting Chief Commissioner, to the Colonial Secretary, 8 November 1949; See also a telegram from the District Office, Ho, to the Colonial Secretary, 15 November 1949. This telegram further outlines the schedule of Mr. P.W.C. Dennis which would make it impossible for him to be seconded to the office of the judiciary.

The Africanisation Project

The scarcity of enough qualified local personnel to occupy important positions in the civil and social services was a troubling situation for the British, but most especially, Gold Coasters. This worrying situation grew worse as the Gold Coast gradually drew closer to attaining independence. The leaders of the Gold Coast nationalists in the late 1940s and early 1950s always called for local participation in the administration of the country. This call was for all sectors of government, including positions of responsibility in the judiciary. Such calls were made by the nationalists, chiefs and the intelligentsia, to the various layers of the colonial administration. For instance, Nana Sir. Tsibu Darko IX had called for a review of Secretaries appointed by the colonial government to the ministries on the ground that the country needed local people to be appointed as Secretaries to those ministries.[857] Ako Adjei also questioned the rationale behind the creation of the position of a Senior Principal Assistant Secretary which was to be filled by local people and articulated the point that the local people were capable of being the Secretaries instead of being given the position of Senior Principal Assistant Secretaries. He questioned the reasons for what he considered discrimination in appointments and promotion in the civil and social services and extolled the competence of local people to do the work when appointed. He wrote:

> But what really does the Governor think about the people of this Country? Does he think that we are all daft? We are wiser and have more insight into the implications of Government policy than some of the high officials in the Administration think.[858]

He further indicated that:

[857] PRAAD, Cape Coast, CO/96/827/14, Ako Adjei, "The Nationalist View of Public Affairs," 1.
[858] *Ibid*.

> I am not impressed with the creation of the posts of Senior Principal Assistant Secretary, which posts are to be held by Africans in the Civil Service. That is discrimination. I am only interested in seeing that Africans are appointed as Secretaries to the several ministries.
>
> After all the Country belongs to Africans, and there is no reason why European officials should be promoted above the heads of Africans in the Civil Service, who are qualified to hold such posts. There should be no racial discrimination in the matter of appointments and promotions in the Civil Service. The plain blunt fact is that many African Civil Servants are far more efficient and hardworking than many of the European officers above them. This is the fact. Can the Governor come out and deny this fact?
>
> I want the Governor to know and realise that, since the last meeting of the Legislative Council, there has been a definite change in the political thinking and attitude of the people of this country. The young men and women are no longer interested in Dominion Status, which idea is now considered as outmoded as the Burns Constitution. They are now clamouring for complete national independence now, now, now. The new policy is that Britain should quit Ghana bag and baggage. Ghana for the Ghanaese (sic).[859]

The almost incontrovertible fact in the early years of the 1950s was that the British were going to leave the Gold Coast and that they would be replaced in the various ministries and agencies. The difficulty in continuing to find and recruit expatriates to work in the Gold Coast, and probably the sustained demand by the political and traditional leaders of the Gold Coast for proper inclusion in the governance system might have informed the Africanisation process that the British put in place. This was a process meant to identify and convince qualified and competent local people, home and abroad, to prepare to take up positions of responsibility in the various spheres of government. It must be stated that even though the Africanisation Committee was established in April of 1949 and concluded its work in December of the same year,

[859] PRAAD, Cape Coast, CO/96/827/14, Ako Adjei, "The Nationalist View of Public Affairs," 1.

discussions of the Committee's report, as well as the implementation of the contents of the report, continued into the mid-1950s. The outcome of its work was the gradual appointment of qualified local people to take up senior positions in the Civil and Administrative Service, including the judiciary. The Commissioner for the Africanisation drive in the Gold Coast, Mr. A. I. Adu, visited universities in the United Kingdom and elsewhere to meet and convince Gold Coast students who were studying in various universities abroad to return home after their studies.[860] On one of his trips to the United Kingdom, Mr. Adu wished "to meet Gold Coast students, both private and on scholarship, to bring to their notice the opportunities for careers in the Public Service of the Gold Coast, and the means to enter into them."[861] Such trips by Mr. Adu were organised with the assistance of the British Council and the Gold Coast Liaison Officers in the United Kingdom. Some leading Gold Coast politicians, including Dr. Kwame Nkrumah, contributed to the effort of recruiting qualified Gold Coasters to work in the various state and government agencies in the country. A newspaper publication of 1951 indicated that "…Kwame Nkrumah, the leader of the majority party and Minister of Communications and Works, is yet to visit the United States shortly to receive the Degree of Doctor of Laws…. He has said that he will try to encourage American Negroes to take up appointments here."[862] By May 1951, there were about 140,000 vacancies for senior officials in the civil department in the Gold Coast. These included doctors, engineers, agriculture specialists, veterinary

[860] See 1950, CO/96/827/14 *Africanization*, "Visit of Mr. A.I. Adu," an introductory letter from the Africanization Committee to the Office of the Secretary of States informing them of a planned tour by Mr. A. I. Adu to some universities in the United Kingdom.
[861] "American Negroes for Gold Coast? Official Appointment," a Newspaper Publication in the Gold Coast: Accra, May 22, 1951. See also CO/96/827/14 *Africanization*.
[862] *Ibid*.

officers, meteorologists, accountants, journalists, private secretaries and photographers.[863]

Although there seemed to be a severe challenge with finding the requisite Ghanaian human resource to fill the gaping vacuum that would be created in the civil and administrative services, including the judiciary, when the British (after many years of their occupation and dominance of all the administrative positions in what would soon become their former colony) left the shores of independent Ghana, there were plans in place to ensure that their absence would not bring the new nation to a halt. Qualified, and in some instances, competent Ghanaians filled the vacuum and excelled in their various positions. Consequently, in the judiciary, the Honourable Justice Arku Korsah, for instance, became the first Chief Justice of independent Ghana. He took over from Sir Mark Wilson as Chief Justice on 18 May 1950. At independence, most of the judiciary had been largely Africanised. The Africans who were on the bench of the Supreme Court of Ghana in 1956 included Sir Justice Arku Korsah (Chief Justice), Justice Manyo-Plange, Justice S.D. Quashie-Idun, Justice Nii Amaa Ollenu, Justice T.A. Dennis and Justice Adumoa-Bossman.

British and Local Courts in Muslim Areas

The tension between the existence and operations of Local Courts and the British-styled courts in Ghana started as far back as the 17th century. European and British colonial officials had reason to question the legitimacy and efficiency of Local Courts and so, occasionally, threatened and actually took steps to restrict the operations of those courts. They even went a step

[863] "American Negroes for Gold Coast? Official Appointment."

further to threaten to abolish the local or African courts, as some people referred to them. The threats and subsequent actions by the colonial authorities were strongly pushed back by the chiefs and elders who presided over Local Courts in their various communities. The result of such a tug of war was sometimes devastating on the chiefs who, often, were the weaker of the two belligerent parties. A major reason for the usually rancorous relationship was the fact that neither side seemed to be comfortable with the application of a set of laws/rules in the opposing courts. That is, the British authorities regarded some of the rules that were used in the Local Courts to be "repugnant" to the doctrine of equity and their common laws. The chiefs were also not satisfied with the rules/laws that the British courts employed in their adjudication of matters that were sent before them. There were occasions when the British courts applied Christian/British laws/principles in settling conflicts relating to divorce and the distribution of the property of a deceased person even though the said person was not a Christian or British for that matter.

The mostly unfriendly relationship that existed between the two types of courts was not limited to just the two examples above. There was the issue of the application of some local laws or British laws in places that were inhabited by Muslims and/or the operation of Islamic courts in some communities. The Judicial advisors of some British territories in Africa observed in 1953 that the application of Islamic laws or the operation of Islamic courts was a major problem in most of the British colonies in Africa. [864] The Chairman of a 1953 Conference of Judicial Advisers in British

[864] *Native Courts and Native Customary Law*, 3. The Judicial Advisers' Conference which was held in Uganda in 1953 was attended by Judicial Advisers from the United Kingdom, Nigeria, Sierra Leone, Gold Coast, Kenya, Uganda, Tanganyika (present day Tanzania), North Rhodesia (present day Zambia), Somaliland, Basutoland (present day Lesotho), Swaziland

territories in Africa indicated in his address to the delegates that "The Conference recognized that Islamic laws and the Courts in which it is administered pose special problems…."[865] The problems alluded to by the Chairman of the Conference were the incompatibility of the British courts and the Local/Islamic Courts, and the application of some set of laws in either of the courts in the Muslim communities in parts of Africa. He thus noted that:

> …though Islamic law is not – as has been suggested – wholly incompatible with and distinct from native customary law, and may in certain circumstances be fused into it, the conclusions which the Conference reached regarding the future development of native customary law and procedure in native courts would in many cases not be applicable to courts administering Islamic law.[866]

The conference observed that in places such as Northern Nigeria and elsewhere in the British colonies, where courts mostly applied Islamic laws, the Local Court Ordinances that were passed by the British authorities to prescribe the laws to be administered in Local Courts were the local laws and customs that were applicable in the areas of jurisdiction of the court. The Ordinances did not confer the power to administer Islamic laws on the courts.[867] The situation in the Gold Coast, where there was no rigorous application of Islamic laws was quite different. The local laws and customs and Islamic laws were both applied as different systems even though there were some instances of conflict of jurisdiction.[868] It is worth stating that local laws and customs in Muslim areas everywhere in the Gold Coast and the British

(now Eswatini) and the Anglo-Egyptian Sudan (it was a territory in southern Sudan which was jointly ruled by Egypt and Britain). The principal aim of the conference was to exchange information in the state of development of local courts and local customary laws in the British African colonies.

[865] *Native Courts and Native Customary Law*, 3.
[866] *Ibid*.
[867] *Ibid*. 33.
[868] *Ibid*.

colonies in Africa were influenced by local laws and customs. Some of the laws even assimilated, to different degrees, aspects of Islamic law.[869] The conference of Judicial Advisers also observed that in places where Islamic law was extensively applied,[870] it was applied with very few concessions to local customs, but where it was applied as local law and custom, for example, in Northern Nigeria, it represented a combination of Islamic law and local customs with some degree of variation according to the level of orthodoxy or otherwise of the particular court.[871] Appeals[872] from Muslim courts either went to the British courts or to a much higher Muslim court.

Independence at Last

The desires and aspirations of the people of Ghana in 1957 and many others in years past were for the colony to gain its freedom from British colonial rule. There was some semblance of internal independence from 1951 when Dr. Kwame Nkrumah and the CPP assumed the reigns of government. There was still so much that the local leaders could not do because of the restrictions that the British put on them. The political elite was divided on issues regarding the urgency of the attainment of independence and the type of political system an independent country should adopt, whether unitary or

[869] *Native Courts and Native Customary Law*, 33.
[870] Northern Nigeria, parts of Kenya, Zanzibar, Somaliland and Sudan.
[871] *Native Courts and Native Customary Law*, 33.
[872] In Kenya, cases concerning family law went to Qadi's court, and appeal laid to the Supreme Court with the Chief Qadi sitting as an assessor, while, in Zanzibar, appeals from the Qadi's courts went to the High Court, which may at its discretion consult expert Muslim opinion. In Somaliland, on the other hand, appeals from the Qadis' courts went only to the Chief Qadi, while in the Sudan there was a system of appeal ending with the High Sharia Court. In the coast areas of Tanganyika, the Liwalis courts were part of the local court system, with appeals up to the Central Court of Appeal. Elsewhere in Tanganyika, and in some areas of the Sudan, native courts often included or consulted a local Muslim scholar in cases involving the personal law of Muslim litigants and this was also true of non- Muslim courts in northern Nigeria and elsewhere in West Africa. In areas under Muslim rule where the people were African traditional practitioners, justice was administered by lay benches with Muslim assessors when required, while appeals went to the Emir and then to the District Officer. Mixed courts were established in cosmopolitan centres with benches representing Muslims and non-Muslims. See *Native Courts and Native Customary Law*, 34.

federal.[873] While the C.P.P government in power wanted a unitary system of government, the National Liberation Movement (NLM) and its allies, (Asanteman Council, the Northern People's Party (NPP), the Akim Abuakwa State, the Ghana Congress Party (GCP), the Muslim Association Party (MAP), the Togoland Congress, the Northern Territories Council, the Ghana Youth Federation) wanted a federal system of government.[874] The divergent views of Dr. Nkrumah's CPP and the leadership of the NLM on the type of government for the new nation grew wider and confrontational as the matter was discussed and debated in the Legislative Assembly from the mid-1950s. The Prime Minister "…denounced the N.L.M. as the work of an irresponsible minority" and all who supported a federal form of government' as "enemies of the country."[875] The situation degenerated into chaos and the British colony was in a state of constitutional crisis close to the time of its attainment of independence. The prolonged and entrenched positions taken by some interest groups in the country on the type and nature of government an independent Ghana should adopt almost threatened the attainment of the desired goal of independence.

The disagreement on the system of government that the new nation should adopt, the Ewe Question[876] and other matters that required the full attention of the governments in Accra and London, the chiefs, and the people of the colony, contributed to the late attainment of independence. It was not

[873] K.A. Busia, *Judge for Yourself, 1956,* (Accra: The West African Graphic Company Limited), 2; Jean M. Allman, *The Quills of the Porcupine: Asante Nationalism in an Emergent Ghana* (Madison: The University of Wisconsin Press, 1993), 16-51, 119-162; Austin, *Politics in Ghana*, 250-315.
[874] Busia, *Judge*, 3.
[875] *Ibid.*
[876] This had to do with the status of the Trans-Volta Togoland when the Gold Coast eventually attained independence. Whether the territory would join the independent state of Ghana or not was a matter of strong contention. See Austin, *Politics in Ghana,* 309-312; Buah, *Ghana*, 163-165; Amenumey, *Ghana,* 215.

until September 1956 "that the Prime Minister, Dr. Kwame Nkrumah, was able to announce the British Government's intention, subject to Parliamentary approval, to grant full Independence [to Ghana] on the 6 March 1957."[877] The surprise announcement by the Prime Minister was given a qualified welcome by Simon Diedong Dombo[878] who was the Deputy Leader of the opposition party in the Legislative Assembly. Eventually, the government and the opposition parties developed a cordial relationship which created a congenial atmosphere for some agreement to be reached on issues that the two groups disagreed on.[879] Consequently, the political leaders worked together towards the attainment of independence. This was partly achieved through the instrumentality of the Secretary of State for the Colonies, Sir Alan Lennox-Boyd, who first invited Dr. Kwame Nkrumah to London for further discussions[880] on how to resolve the crucial issues facing the colony, before later visiting the Gold Coast from 24th to 30th January 1957. He was able to calm the parties involved in the struggle in the country. The Secretary of State for Colonies assuaged the misgivings of the opposition parties on the nature of the government that was to be formed after independence. He also reassured the government of his support and that of the British government. As well, he encouraged the CPP government to accept many of the modifications by the

[877] CO 554 1162 Governor-General's Reports 1954-58, "Gold Coast: Review of Events Leading up to Independence, "A secret letter from the Governor-General, Sir Arden Clarks to Hon. Alan Lennox-Boyd, the Secretary of State for the Colonies, 17 April 1957.

[878] Prof. K.A. Busia, the Leader of the opposition group in the Legislative Assembly, was out of the country in Europe at the time that the announcement was made.

[879] The points of disagreements included the creation of a Council of State and of an Upper House, the powers and functions of Regional Assemblies and Regional Houses of Chiefs, and the procedure for amending the constitution. See CO 554 1162 Governor-General's Reports 1954-58.

[880] Dr. Nkrumah did not make it to London. He rather nominated Kojo Botsio to represent him.

opposition parties to the constitutional proposals that the government had made.[881]

The negotiations and mediations by Sir Alan Lennox-Boyd and other British officials created a favourable atmosphere for the attainment of independence. The atmosphere in the country on 5 March 1957 was tense[882] as the major preoccupation of the CPP Government, which had won a clear victory in the general elections of July 1956,[883] and the people of Ghana was the imminent expectation of freedom that they were to gain from the British the following day. Ghana, eventually, gained its independence from the British on 6 March 1957. The new leaders of the newly independent country of Ghana had much more control over every aspect of the nation's system of government, including the judiciary, with the first Ghanaian head of the judiciary being Sir. Justice Arku Korsah.

Conclusion

It is evident from the preceding paragraphs that the Judiciary in the Gold Coast was not meant to be an independent arm of the colonial administration of Ghana. This was the case even from 1951 when the country attained some level of internal self-governance with Gold Coasters in many key positions of government. The judiciary, under the leadership of the Chief Justice, was a part of the Legislative Council. Amissah cites the Governor-General's powers over the courts as were established at the time, including his submission of periodic reports on judges to the Colonial Office as evidence of the conjoined nature of the Executive and Judicial arms of the

[881] CO 554 1162 Governor-General's Reports 1954-58.
[882] *Ibid*.
[883] *Ibid*.

administration.[884] Even though the 1954 Constitution of the Gold Coast established the Judicial Service Commission and put in place measures to provide for some level of independence for the third arm of the realm, there remained some inherent weaknesses that mitigated against the independence of the institution. The insufficient number of Ghanaian personnel to adequately take over and run the courts even as the nation drew closer to independence and the challenges in the administration of Local Courts, with calls for drastic transformation or total scrapping of such courts, were some of the challenges that the fledgling judiciary of the Gold Coast was saddled with from the mid-1940s till the latter part of the 1950s.

Even though the contribution of the Local Courts in settling disputes of all kinds was not in doubt, the British colonial authorities and their successor, the CPP government, in the last decade before the attainment of independence, related to the courts as they deemed convenient to them. Consequently, there was cooperation between the courts, particularly, the chiefs' courts, and the colonial or CPP government but there existed an acrimonious relationship between the two arms of government as well. The CPP government, for instance, effected some changes in the composition of the Local Courts by making very smart and arguably constitutional use of existing colonial laws. This approach of the CPP government had the potential of stripping the chiefs of their judicial authority and even annihilating the institution of chieftaincy in the country. Rathbone rightly surmises that the rise of the NLM in 1954 might have been responsible for the CPP government's cautious approach in introducing fundamental reforms affecting the role of chiefs and later forcing

[884] Amissah, "Supreme Court," 29.

the government to create a submissive chieftaincy rather than a system for destruction through legislation and attrition.[885]

The Gold Coast, even at the dawn of independence from the British, continued to maintain and heavily depend on a dual court system which had been developed in the colony as early as the 1830s. Consequently, any form of inefficiencies in or attacks on the existence and operations of Local Courts in the 1950s, as was the situation, was a major drawback on the judicial arm of the government.

[885] Amissah, "Supreme Court," 138.

CHAPTER SIX

THE JUDICIARY UNDER THE CONVENTION PEOPLE'S PARTY: 1957- 1966

Introduction

A new chapter was opened in the life of the new nation called Ghana, as well as its inhabitants, when it gained independence from British colonial rule on 6 March 1957. The journey to independence was long and arduous and the effort of many different generations of nationalists. The hopes, dreams and expectations of the about five million people and chiefs of Ghana at the time of independence, and many more Africans on the continent and in the diaspora, were for the new nation to succeed in its course since it was the first African country south of the Saharan to gain independence. The British were also looking to see whether the argument that their departure from their former colony would lead to a decline in the efficiency of its administration, an acceleration in corruption and the institutionalization of a one-party state,[886] would indeed be manifested. Independence was an uncharted road, at least for the leaders of the country, with some conspicuous and some obscure hurdles that they had to contend with. It was, therefore, not surprising that Dr. Nkrumah on the night of independence declared at the Old Polo grounds that "…that new African is ready to fight his own battle and show that, after all, the black man is capable of managing his own affairs." He was aware of the magnitude of work ahead of the government and people of Ghana, and the high expectations of the multitudes who looked at Ghana for hope and inspiration.

[886]1957-58, CO 1032 136 Peter Smithers, "Administration and Politics in an Independent Gold Coast: Lessons from Latin American Pattern," A Confidential Report on the possible state of an independent Ghana written in 1956. It described the political situation the Gold Coast and the dilemma of the British authorities as to whether to grant or not to grant independence just a year before the colony actually gained its freedom from British domination.

This chapter discusses the development of the new African nation - Ghana - with a specific focus on the judiciary under its first African leader, Dr. Kwame Nkrumah and the C.P.P. administration from 1957 to 1966. The chapter investigates whether Dr. Nkrumah, as the Prime Minister and later the first President of independent Ghana, did anything different from the colonial government about the judiciary. It also examines the relationship that existed between the judiciary and the executive arms of government and the development and changes that occurred in the judiciary during the period.

The Political Scene in Ghana

The political situation in the early years of newly independent African countries (including Ghana) was similar to those of countries in Latin America. Except for Costa Rica, which could be said to have developed a parliamentary democracy that was akin to what existed in Europe, most Latin American countries developed a system that was some form of compromise between dictatorship and parliamentary democracy. Mexico, for instance, was dominated by a revolutionary party which was re-elected to the Federal legislature and presidency at the interval prescribed by its constitution. Any attempt by the smaller/insignificant rival parties to unseat it was doomed to fail. Thus, there developed a system of one-party rule in Mexico and most countries in Latin America.[887]

The situation in Ghana in the early years of independence was not quite different in terms of the strong-man rule of the government. Dr. Kwame Nkrumah and his C.P.P. administration gradually became less tolerant of any form of dissent from other political parties or interest groups in the country.

[887] 1957-58, CO 1032 136 Peter Smithers, "Administration and Politics in an Independent Gold Coast: Lessons from Latin American Pattern."

This trait of the C.P.P. government was seen even in the period before 1957 when the colony had not gained its independence.[888] A confidential document by British officials on the political state of Ghana indicated that "the dictatorial tendencies of the Gold Coast [C.P.P.] Government are already alarming."[889] The British authorities, therefore, predicted that the political situation in the country just before the attainment of independence, particularly, on the form of government the new nation should adopt (whether unitary or federal) had the potential to degenerate into chaos which would make the government resort to force to maintain order in the country.[890] It was also posited that Ghana could attain a stable one-party democracy.[891]

The country's gradual march to independence was saddled with some constitutional, geographical and even ethnic challenges that required prompt attention. For instance, the 1954 Constitution of the then Gold Coast had some challenges.[892] Consequently, in 1955, Dr. Nkrumah moved for the adoption of his government's White Paper on constitutional reforms in the country. There were also issues on the type of government the new nation should adopt at independence[893] as well as what has been described by some historians as the Ewe Question.[894] All those hurdles were successfully overcame by the leaders of the colony, through compromises and the introduction of more reforms, and so independence was attained on 6 March 1957.

[888] 1957-58, CO 1032 136 Peter Smithers, "Administration and Politics in an Independent Gold Coast: Lessons from Latin American Pattern."
[889] *Ibid*.
[890] *Ibid*.
[891] *Ibid*.
[892] Amenumey, *Ghana*, 215; Buah, *Ghana*, 160-163.
[893] Amenumey, *Ghana*, 213-215; Boahen, *Ghana*, 186-187; Buah, *Ghana*, 161-163.
[894] Amenumey, *Ghana*, 213-215; Boahen, *Ghana*, 182-183; Buah, *Ghana*, 163-165.

The Court System at Independence

The court system in the newly independent country of Ghana was, largely, one that the British colonial administration had bequeathed its former colony - Ghana. Basically, the judiciary remained divided into two main courts – the Local Courts which administered the customary laws of the majority Ghanaian population and the British-style courts which mainly adjudicated matters involving the few European members of the Ghanaian society.[895] The British-styled courts also heard cases involving some African members of the population. Before independence, the Local Courts in what was hitherto known as the Colony, Ashanti, Northern Territories and Togoland existed under separate legislations. There were the Native Courts (Colony) Ordinance, 1944;[896] Native Courts (Ashanti) Ordinance, 1935;[897] Native Courts (Northern Territories) Ordinance, 1935;[898] and the Native Courts (Togoland) Ordinance, 1949.[899] The ordinances were very similar; there very minor differences.

The jurisdiction of the Local Courts was mainly determined in terms of the person(s) or the subject matter that was before the court. Although the courts mainly dealt with issues involving people of African descent, they could also hear cases that involved non-Africans. This was possible when the parties involved in a litigation voluntarily subjected themselves to the court or were

[895] William Burnett Harvey, "The Evolution of Ghana Law since Independence," in *Law and Contemporary Problems,* Vol. 27, No. 4, African Law (Autumn, 1962), 581-604. (Accessed: 15-02-2018).
[896] Native Courts (Colony) Ordinance, No. 22 of 1944 as amended, CAP 98, Laws of the Gold Coast (1951).
[897] Native Courts (Ashanti) Ordinance, No. 2 of 1935 as amended, CAP 99, Laws of the Gold Coast (1951).
[898] Native Courts (Northern Territories) Ordinance, No. 31 of 1935 as amended, CAP 104, Laws of the Gold Coast (1951).
[899] Native Courts (Southern section of Togoland) Ordinance, No. 8 of 1949 as amended, CAP 106, Laws of the Gold Coast (1951).

directed to go before the court.[900] The Local Courts also exercised jurisdiction over issues relating to civil claims under customary law, some customary offences and minor offences under the Criminal Code. It is important to state that professional lawyers were not allowed to practise before the Local Court even though it was alleged that a group of people described as "bush lawyers" could practice.[901] Thus, Local Courts in self-governing Ghana, largely remained unaffected by the attainment of independence.

The Independence Constitution and the Judiciary

Part VII of the independence Constitution of Ghana provided for the structure and operation of the judiciary in the country. It maintained the Supreme Court as the highest court of the land with the Chief Justice as its head. The constitution stipulated that the Chief Justice of Ghana should be appointed by the Governor-General, the Queen's representative in Ghana (until 1960 when the Governor-General left the country after Ghana attained a republican status). The Governor-General was to act on the advice of the Prime Minister, while Puisne Judges of the Supreme Court were to be appointed by the Governor-General but on the advice of the Judicial Council Commission. The fact that the Chief Justice was appointed by the Governor-General, just as was provided by the 1954 Constitution, was a testament to the fact that the nation was still not entirely independent even in 1957 since the British remained, albeit in fewer numbers, and continued to direct some important aspects of what happened in the country. Even though there was no Court of Appeal at independence, the 1957 Constitution made provision for the creation of one. It also gave the justices of such a court (Court of Appeal) if it was

[900] Harvey, "Evolution of Ghana Law," 585.
[901] *Ibid*.

created, the same security of tenure as it gave the justices of the Supreme Court.[902] Thus, judges of both the Supreme Court and a future Court of Appeal could not be removed arbitrarily. Opoku-Agyemang rightly posits that the security of tenure that was provided for justices of the Supreme Court and the Court of Appeal "was to emboldened [sic] them to exercise their judicial review power granted the judiciary under …the constitution.[903] The 1957 Constitution also provided that the Governor-General could remove judges of the Supreme Court and a Court of Appeal by, first, addressing the National Assembly with not less than two-thirds of the members of the Assembly voting in favour of the removal of a justice of the courts on the ground of stated misbehaviour or infirmity of body or mind. Under the constitution, the Chief Justice was supposed to retire at 65 years but he could be allowed by the Governor-General to continue for a specific number of years, subject to mental and physical reviews.[904]

The constitution of independent Ghana also established a court structure that had the High Court below the Supreme Court and a Court of Appeal if one was established. Below these courts were the Magistrates' Court which served at the local level. The High Court had jurisdiction in major matters and also served as an appellate court for cases that were tried at the Magistrates' Courts. The Magistrates' Courts had appellate jurisdiction over all Local Courts in the country. The Supreme Court assumed jurisdiction over all appeals from all the courts in the country.[905] Thus, the Supreme Court replaced the West African Court of Appeal. Consequently, appeals from the

[902] *The Ghana Constitution (Order in Council),* 1957, 23; Opoku-Agyeman, *Constitutional Law*, 83.
[903] Opoku-Agyeman, *Constitutional Law*, 83.
904 *The Ghana Constitution, 1957*, 23; Opoku-Agyeman, *Constitutional Law*, 83.
[905] *The Court of Appeal Ordinance, No. 35 of 1957.*

Supreme Court of Ghana went straight to the Judicial Committee of the Privy Council.[906] It was not until 1960, when Ghana attained Republican status, that this arrangement was abolished, making the Supreme Court the final destination for all appeals from any court in the country.[907] One can argue that the decision by the new nation to withdraw from the West African Court of Appeal could have been because Dr. Nkrumah wanted to make the newly independent state truly independent of outside influences in all spheres including the administration of justice.

Establishing More Courts

To extend its adjudicatory functions to the many regions, districts and cities in the country, the judiciary set out to establish more High Courts[908] across the length and breadth of Ghana just a year after the country attained independence.[909] The decision to expand the courts and make them available and accessible to the many people who might need them was the outcome of a tour by the acting Chief Justice to some major cities in 1958. Mr. Justice William Bedford Van Lare[910] visited Ho, Tamale and Sunyani.[911]

Justice Van Lare and his entourage met with Regional Commissioners and district magistrates in the regions and cities that they visited. The team

[906] *The Ghana (Appeal to Privy Council) Order in Council, [I957] I STAT. INSTR. 1197 (No.1361).*
[907] Constitution of the Republic of Ghana, 1960, 21.
[908] PRAAD, Cape Coast, RG1/3/30 "Brief Notes of the Tour,"1958. Some cities in the country, for instance Takoradi and Accra, had High Courts already established in them before this time.
[909] PRAAD, Cape Coast, RG1/3/30 Supreme Court: 1949 - 1968 "Establishment of High Courts and the Provision of Courthouses in the Regions," A letter from Chief Registrar of the Courts to the Regional Commissioner, Cape Coast. 30 September 1954."
[910] Mr. Justice Van Lare was a Justice of the Supreme Court and the Court of Appeal of Ghana. He was acting as Chief Justice of Ghana because the substantive Chief Justice, Mr. Justice Arku Korsah, was then acting as Governor-General of the country.
[911] PRAAD, Cape Coast, RG1/3/30 Tour of the Country by the Acting Chief Justice Mr. Justice and Mrs. Van Lare (Accompanied by the Assistant/Chief Registrar - Mr. K.S. Yaasi) in Connection with the Establishment of High Courts at Ho, Tamale and Sunyani and the Building of Magistrate's Courthouses at Outlying Station, 1958

considered the needs of the regions/cities and took decisions on the best ways to solve problems that impeded making judicial services available and accessible to the people in the places where the team visited. The fact-finding team agreed on the fact that there was the need to construct judges' houses, courthouses which would contain High Courts, and quarters for magistrates and junior staff of the judiciary, as well as houses for the Crown Counsels in most of the areas that needed them. In some places, the team identified some existing buildings that were to be used, temporarily, as courthouses or bungalows until new structures could be put up for the judiciary.[912] Justice Van Lare held a meeting with Justice Arku Korsah, the substantive Chief Justice, in which the findings from the tour and related decisions were communicated to him. Most of the decisions taken on the tour were confirmed with very minor reviews to them.[913] On the matter of funding, Justice Arku Korsah stated that funds for the proposed court expansion projects would be obtained from sources other than the £200,000 that had been allocated to the Supreme Court.[914]

Justice Van Lare proceeded on a tour of other regions to ascertain the state of the magistrates' courts there. He went to the Eastern and Western regions where he inspected magistrates' courthouses in towns such as Anyinase, Kyebi, Somanya, Asamankese, and Asasewa. Other places that he visited included Saltpond, Elmina, Cape Coast, Asikuma, Fosu and

[912] PRAAD, Cape Coast, RG1/3/30 "Brief Notes of the Tour,"1958.
[913] PRAAD, Cape Coast, RG1/3/30 "Notes of a meeting Held in the Residence of His Excellency Sir. K. A. Korsah, Ag. Governor-General and Substantive Chief Justice to Consider the Establishment of High Courts at Ho, Sunyani and Tamale and the Supreme Court's Requirements under the Second Development Plan," 14 August 1958.
[914] PRAAD, Cape Coast, RG1/3/30 "Brief Notes of the Tour,"1958.

Takoradi.[915] The findings from those tours were different and varied. While the courthouses in some of the cities were in relatively good condition, some other towns either did not have courthouses or the existing structures were in deplorable condition.[916] The acting Chief Justice's second trip to the Northern part of the country in August 1958 also revealed the troubling state in which the courts operated. In Kpandae, for instance, he noticed that the local hall where the visiting Magistrate held courts was not fit for the purpose. Consequently, it was proposed that a new courthouse should be built Kpandae. The team continued to tour and inspected courthouses in Yendi, Bimbila, Bolgatanga, Salaga and Kpandae.[917]

The findings from the tours of the regions, just a year into independence, showed that the condition of courthouses and facilities for staff of the judiciary in the regions, districts and towns were generally unsatisfactory and required prompt action. Most of the structures had defects that posed grave danger to the court officials and parties who visited the facilities on a regular basis. The acting head of the judiciary, thus, realised that failure to boost the structural integrity of most courthouses could adversely affect the prompt and proper trial of cases before the courts.

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[915] PRAAD, Cape Coast, RG1/3/30 "Brief Notes of the Tour,"1958.

[916]The Acting Chief Justice observed that the Magistrate's chambers and the staff office in Suhum had been made unnecessarily very spacious but the accommodation for members of the public in the court was inadequate. He also observed that neither the witnesses' waiting-room nor cells had been provided. There was also no toilet facility for the visiting magistrate. In Saltpond, it was discovered that the Government Agent's courthouse needed rehabilitation. The decision was taken that the building should be taken over by the Supreme Court department and the necessary improvements made to it. There was no courthouse in Elmina. It was noted that the question of whether or not a courthouse should be built here would have to be examined in the future. The team observed that the magistrate's courthouse in the Cape Coast Castle was most unsuitable. One of the reasons for this observation was that the Legion Hall which was underneath the courthouse was very noisy and obviously disturbed the smooth hearing of cases. It was concluded that a new Magistrate's courthouse should be provided. See PRAAD, Cape Coast, RG1/3/30 "Brief Notes of the Tour,"1958.

[917] PRAAD, Cape Coast, RG1/3/30 "Brief Notes of the Tour,"1958.

Apart from the establishment of more High Courts in some regions, additional Magistrate Courts in areas that did not have enough. This was done to reduce the workload of the few existing courts in those areas. The Supreme Court, therefore, made proposals and took steps to ensure the construction of permanent buildings that would serve as High Courts and Magistrate Courts in the Northern Region (Tamale),[918] Sunyani[919] Kumasi[920] and Ho.[921]

Local Court Reforms

The earliest and, probably, major attempt to reform the Local Courts came in 1958 with the passage of the Local Court Act, 1958.[922] The main aim of the Act was to do away with the system whereby there existed Local Courts established by different ordinances for the four major sections of colonial Ghana – The Colony, Ashanti, Northern Territories and the Togoland. Consequently, the Local Court Act, 1958, created a nationally uniform system of Local Courts with the same jurisdiction as the Local Courts that preceded them. Attempts were also made to make the judiciary more accessible to people who did not live in cities and so could not access judicial services. More Local Courts were established in remote parts of the country between 1957 and 1966.[923] The decentralization of the court to rural communities did not only make the judiciary reachable to those who lived there, it also reduced

[918] PRAAD, Cape Coast, RG1/3/30 "Discussion at the Regional Commissioner's Office," 31 July 1958.
[919] PRAAD, Cape Coast, RG1/3/30 "Notes of a Meeting Held in the Office of the regional Commissioner, Western Ashanti, 1 August 1958, to Consider the Establishment of a High Court at Sunyani"
[920] PRAAD, Cape Coast, RG1/3/30 "Notes of Meeting Held at the Senior Magistrates' Chamber, Kumasi, Friday 1 August 1958"
[921] PRAAD, Cape Coast, RG1/3/30 Notes of a meeting held in the Office of the Regional Commissioner, Trans-Volta/Togoland Region to Consider the Establishment of a High Court at Ho, 12 August 1958
[922] Harvey, "Evolution of Ghana Law," 585.
[923] See *Local Courts Instrument, 1962 (L.I. 217*); *Local Courts (establishment) Order, 1963, (L.I. 300).*

the workload of the few existing High Courts which were already overwhelmed with litigation. Hence, Local Courts were established in many of the districts of all the regions in the country.[924]

Legal Education

The issue of the shortage of trained lawyers in the new nation attracted the attention of policy makers and the government. It was almost unanimously agreed that there was a need to train lawyers in the country to ensure that the legal profession was not adversely affected by inadequate trained professionals.[925] The small numbers of lawyers in the country in the early years of independence were, mainly, because the training of lawyers had to take place in the United Kingdom, thus making law practice almost the preserve of the wealthy.[926] still the training overseas was considered to be "unsatisfactory" because "it produces barristers, while what is needed in Ghana are solicitors, and because it also produces far too few lawyers …."[927]

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[924] **Volta:** Kpandu, Kpeve, Jasikan, Nkonya-Ahenkro, Krachi, Keta, Anloga, Dzodze, Akatsi, Sogakofe, Ho, Dzolokpuita, and Adidome.
Western: Sokondi, Tarkwa, Juabeso, Sefwi Wiawso, Bibiani, Akropong, Enchi, Prestea, Dompim, Axim, Half Assini**,** Agona Junction and Shama.
Eastern: Nkawkaw, Abetifi, Nsawam, Akropong, Somanya, Odumase, Ada Foah and Senchi.
Northern: Tamale, Savelugu, Yendi, Salaga, Damango, Nakerugu.
Upper: Zuarungu, Navrongo, Sandema, Lawra, Wa, Tumu and Bawku.
Brong-Ahafo: Berekum, Bechem, Kenyase, Goaso, Sunyani, Attebubu, Techiman, Wenchi, Nkoranza, Dormaa Ahenkro and New Drobo.
Central: Cape Coast, Swedru, Dunkwa, Twifu Praso, Elmina, Assin Fosu, Moree, Saltpond, Essarkyir, Asikuma, Nyakrom, Nsaba, Apam, Afransi, Winneba and Awutu.
Eastern: Accra, Amasaman, Dodowa, Koforidua, Manso, Oda, Akwatia Asanankese, Suhum, New Tafo, Begoro and Anyinam.
Ashanti: Kumasi (Manhyia), Obuasi, Akrokerri, Mampong, Ejura, Effiduasi, Nkawie, Abuakwa, Teppa, Manso/Nkwanta, Huntado, Offinso, Agona, Kuntanase/Aputuogya, Brofuyedru, Ejisu, Konongo, Agogo, Fomena, New Edubiasi**,** Bekwai and Dadiase. See *Local Courts Instrument, 1962* (L.I. 217); *Local Courts (establishment) Order, 1963*, (L.I. 300).

[925] For more information on the history of Legal Education in Ghana, see "Legal Education in Ghana" a paper prepared by William Burnette Harvey and presented on behalf of the Faculty of Law to the Academic Board of the University of Ghana," November 1962 in William Burnette Harvey, *Law and Social Change in Ghana*, 169-389.

[926] PRAAD, Cape Coast, RG/17/1/81, "Legal Education," A Note on the Need for the Introduction of Legal Education in Ghana. 16 March 1958.

[927] *Ibid.*

The issue of the scarcity of qualified lawyers in the country was of supreme importance to the survival of the judiciary and it was announced in the National Assembly by Dr. Nkrumah, the Prime Minister, that the C.P.P. government would introduce a bill that would enable the country to establish a Council on Legal Education to be responsible for the training and admission of qualified persons to the Ghana Bar.[928] Consequently, there was a draft cabinet paper in 1958, barely a year into independence, to that effect.

The Ghana School of Law was, thus, established and opened in December 1958 to train would-be legal practitioners.[929] Prof. J.H.A. Lang, the Director of Legal Education, noted that the first course for prospective lawyers[930] was restricted to Ghanaians because of the lack of accommodation facilities for foreigners.[931] Classes were held in the Supreme Court building on weekends between 5:00 pm and 7:00 pm because of lack of proper infrastructure for the new Law School. Prospective students of the school were required to "have a thorough knowledge of English, both written and spoken, and must have passed at least either West African School Certificate, the General Certificate of Education or some examination which the board considers is of equal standard."[932] The fee for a year's course was £50, payable in three instalments of £8 on enrolment, £16 at the beginning of the second term and £16 at the beginning of the third term. The installment payment of fees was designed to make it possible for the students' to be able to pay the

[928] "Ghana to Train Own Lawyers – Judges get Pay Rise," *Daily Graphic*, 3 March 1958.
[929] "Ghana Law School Opens Next Month: First Course Barred to Outsiders," *Daily Graphic*, 8 November 1958.
[930] The subjects for the first course were The Elements of the Law and the Constitution of the Judicial System and the Administration of Ghana, English Constitutional Law and Legal History and the English Law of Contract and the Law of Tort. Others were the English Criminal Law and Elements of the Land Law of Ghana. See "Ghana Law School Opens Next Month: First Course Barred to Outsiders," *Daily Graphic*, 8 November 1958.
[931] *Ibid.*
[932] *Ibid.*

£50, which was quite expensive at the time. Even though the idea of establishing the Ghana School of Law to train more locals to become lawyers and later judges to staff the courts was quite a laudable idea, the omnibus transfer of knowledge of courses in English law to lawyers and future judges of an African country, Ghana, was quite problematic. Some earlier pre-independence protests by some chiefs and people of the Gold Coast against the introduction and operation of British courts in the colony was their dissatisfaction with the omnibus transplant of English laws and their application in cases that went before those courts in the colony. Consequently, it seemed incongruous for these same people, who were now independent, to perpetuate a colonial practice they had earlier objected to. It could, however, be the case that the British-style judicial system which was, hitherto, vehemently opposed by some local people and their chiefs had, over time, become acceptable to them.

One major difficulty the Law School faced was that it could not produce as many lawyers as was needed in the space and time that they were needed. The high admission requirement into the university in Ghana was a bottle-neck that hamstrung legal education in the country. The admission into the university at the time was fixed at Higher School Certificate with an average pass of 160 candidates each year.[933] It was, however, expected that the legal education scheme would provide "whole and part-time instruction for those capable of taking the course, irrespective of technical academic qualification."[934] It was also hoped that legal education would provide a sufficient number of lawyers who were qualified as solicitors to provide

[933] PRAAD, Cape Coast, RG/17/1/81, "Legal Education."
[934] *Ibid.*

essential services for the development of Ghanaian-owned businesses and industries. In addition, it was hoped that the scheme would supply lawyers…for the Public Service…and in particular, for the proposed local courts which will be substituted for the existing local courts."[935]

The draft cabinet proposal also set up a Council for Legal Education which was to supervise legal education in the country. The Council comprised the Chief Justice as Chairman, the Minister of Justice, a Justice of the Appeal Court, the Speaker of the National Assembly, a Professor of Law from the University and the Attorney-General. Other members included some distinguished legal figures such as Sir Leslie MaCarthy, Sir Henly Coussey and Sir Emmanuel Quist, together with three or four representatives of the Ghana Bar.[936] The Council was tasked with the responsibility regulating legal education in the country.

The first batch of lawyers trained at the Ghana Law School graduated in June, 1963.[937] The nine (9) new lawyers were admonished by President Nkrumah to "serve the nation with humility, honesty, integrity and loyalty."[938] The President further noted that the new lawyers "were expected to identify yourselves with the people and with their hopes and aspirations and apply your knowledge and energies fully for their welfare and progress."[939] Since this was the pioneering group of locally trained lawyers in the country, President Nkrumah further charged them to "show by your work and the quality of the service you give to the state and the men who come to consult you that your

[935] PRAAD, Cape Coast, RG/17/1/81, "Legal Education."
[936] *Ibid.*
[937] "Lawyers must be Humble," *Daily Graphic*, Monday June 24, 1963.
[938] *Ibid*.
[939] *Ibid*.

education and training is as good as the best of its kind anywhere in the world."[940]

The Judiciary During Political Tension: 1957-1963

The political scene in Ghana in the early years after the attainment of independence could be described as tense. The relationship between the C.P.P. government and most of the opposition political parties in the country was strained, leading to some violent clashes between the two groups sometimes. Such volatile situations created a sense of insecurity in certain areas of the country and amongst some people. There were threats to lives and the destruction of property as well. In a document assessing the political future of Ghana when it attained independence from the British, the author, Peter Smithers, concluded that the new nation was likely to end up like most Latin American countries in the 1950s. Peter Smithers also pointed out some similarities between the leadership styles and the methods by which independence was achieved in most South American countries and in Ghana. He argued that there was the possibility of accusations of widespread corruption against the government and state officials and that would eventually lead the government to adopt dictatorial methods to discharge its function and also to defend itself against physical violence.[941] This was the case in South America and was likely to be the case in Ghana, Peter Smithers concluded.

The situation in Ghana after independence seemed to have followed the trajectory that Smithers had predicted in 1956. The alleged cases of

[940] "Lawyers must be Humble," *Daily Graphic*, 1963.
[941]Peter Smithers, "Administration and Politics in an Independent Gold Coast: Lessons from the Latin American Pattern," CO 1032 136: Paper on the future of the Gold Coast - 1957-58, July 1956.

violence and insecurity in the country were largely the result of accusations of corruption within the top echelons of the C.P.P. and alleged dictatorship by the Prime Minister, Dr. Kwame Nkrumah. These devolved into instances of violent struggles for power between "rival cliques" and "attempts at fresh 'liberation' and 'reform'" by members of the opposition parties in the country.[942] The C.P.P. government and Dr. Kwame Nkrumah were accused of assuming what was considered to be dictatorial posturing through some policies that they introduced[943] and also for the passage and application of laws such as the *Avoidance of Discrimination Act, 1957,*[944] the *Preventive Detention Act, 1958*[945] the *Deportation Act, 1957*[946] and the *Ghana Nationality Act.*[947] Consequently, some people or groups of people who were considered

[942] Smithers, "Administration and Politics."
[943] The Prime Minister denied being a dictator. See "Nkrumah: I am no Dictator," *Daily Graphic*, Friday June 21, 1957.
[944] Even though the law was passed, supposedly, to forbid the existence of parties which were founded on regional, tribal, or religious bases, some scholars have argued that it was actually designed to thwart the efforts of the many opposition parties in the country at the time. See *Avoidance of Discrimination Act, 1957 (No. 38 of 1957)*," in Emmanuel Doe Ziorklui (ed.), *Ghana: Nkrumah to Rawlings…A Historical Sketch of Some Major Political Events in Ghana from 1957-1993*, Vol. 1(Accra: Em-Zed Books Centre, 1993), 45-49; Dennis Austin, *Politics in Ghana*, 377; Rooney, *Kwame Nkrumah: Vision*, 195; Asirifi-Danquah, *History of Ghana*, 28; Gocking, *Ghana,* 123; Boahen, *Ghana,*194; Buah, *Ghana*, 184; Amenumey, *Ghana,* 228. As a result of the passage and application of the law, six of the opposition political parties in the country combined to form the United Party. See "The New Opposition: Six Parties to Combine," *Daily Graphic*, 7 October 1957; "Name for New Opposition," *Daily Graphic*, 14 October 1957.
[945] This law made it possible for people who were accused of acts endangering national security to be imprisoned for up to five years, without the right of appeal to the courts. See Austin, *Politics in Ghana*, 380-82; H. Kwasi Prempeh, "Presidential Power in Comparative Perspective: The Puzzling Persistence of Imperial Presidency in Post-Authoritarian Africa," *Hastings Constitutional Law Quarterly*, Vol. 35 No. 4, Summer 2008; J. B. Danquah, *The Ghanaian Establishment: its Constitution, its Detentions, its Traditions' its Justice and Statecraft, and its Heritage of Ghanaiasm* (Accra: Ghana Universities Press, 1997), 72-81; Rooney, *Kwame Nkrumah: Vision*, 210; Peter Omari, *Kwame Nkrumah: The Anatomy of an African Dictatorship* (Accra: Sankofa Educational Publishers, 2000), 178-189; Gocking, *Ghana*, 123; Boahen, *Ghana*,186, 194-196, 212, 221; Buah, *Ghana*, 184-185, 189; Amenumey, *Ghana*, 228; Asirifi-Danquah, *History of Ghana*, 29; Amamoo, *Ghana*, 113. See also "Osagyefo Promises a Review: Detainees May Be Held up for 20Yrs More If…" *Daily Graphic*, Monday, 26 March 1962.
[946] *Politics in Ghana*, 380-82; Amenumey, *Ghana*, 227; Asirifi-Danquah, *History of Ghana*, 28; Omari, *Kwame Nkrumah*, 52-53; Boahen, *Ghana*,192, 194-195; Buah, *Ghana*, 184, 189; Amenumey, *Ghana*, 227.
[947] Omari, *Kwame Nkrumah*, 69-70.

by the C.P.P. party as a threat to the government and/or the country suffered from the application of the laws. Some political opponents were imprisoned while others went into self-imposed exile for fear of being imprisoned or killed. There were several reports of attempts by opposition elements such as Mr. R.R. Amponsah and Mr. M.K. Apaloo to overthrow the C.P.P. government.[948] There were also instances of assassination attempts on the life of the President, Dr. Kwame Nkrumah,[949] and the government machinery blamed these instances of subversion on the opposition political parties and people who were sympathetic to the opposition.

Even though the government was accused of employing unconstitutional and, sometimes, brutal tactics in dealing with its political opponents, there were some instances in which alleged offenders of the laws were taken through seemingly constitutionally prescribed processes for them to face justice. Such processes included the accused people being arraigned before the courts of the land. It has been argued that the judiciary in post-colonial Ghana, particularly under Kwame Nkrumah's government, became susceptible to political pressure from the government which contributed to the institution of justice, gradually, losing its independence. This was mainly done through political manipulation and intimidation.

President Nkrumah, through the majority wielded by his party in the legislature, was able to pass laws that threatened the independence of the

[948] Austin, *Politics*, 380-381; Kwame Nkrumah, *Dark Days in Ghana* (Accra: Wrenco Ltd, Accra, 2017), 41; Abraham Kofi Sackey, *Ghana; A Tortuous Walk from Colonial Rule to Self-Government and After: An Observer's View* (Accra: Comert Impressions, 2009), 16. See also Boahen, *Ghana*, 195, Buah, *Ghana*, 185; Amenumey, *Ghana*, 229.

[949] "Plot to Overthrow Kwame Nkrumah," in Ziorklui, *Ghana*, a letter from Joe Yaw Manu to Dr. Kwame Nkrumah, 16 April 1962, 90-91; Gocking, *Ghana*, 123; "Ametefe's Attack on Nkrumah's Life," *Daily Graphic*, 6 January 1964; "One Killed, 56 Injured: Bomb Blast, Kwame safe," *Daily Graphic*, 2 August 1962; "Four Killed in Accra Explosion," *Daily Graphic*, Thursday 10 January 1963; "Bomb thrower is Located," *Daily Graphic*, Monday 7 January 1963; "Govt warns Togo," *Daily Graphic*, 24 December 1962.

judiciary and rendered the judgments of the courts null and void. They included the passage of *The Special Criminal Division (Specified Offences) Instrument, 1963* and the *Special Criminal Division (Amendment) Regulation, 1964*. Thus, the judiciary in the country seemed to have been under the scrutiny of President Nkrumah, much like the relationship between several African leaders and the judiciary in most post-colonial African countries at the time. H. Kwesi Prempeh notes that:

> Africa's courts could operate free of presidential control only in routine matters carrying no political import or consequence. Judges whose decisions challenged the omnipotence and official infallibility of the president were liable to be dismissed or have their decisions reversed.[950]

He further argues that presidents in post-colonial Africa enjoyed enormous power which enabled them to, literally, do whatever they pleased. The "founding fathers"[951] of the newly independent states of Africa, from the 1950s, created what could be described as "imperial presidencies" because these nationalist leaders and their followers arrogated to themselves some level of messianic importance and indispensability in the future progress of the new nations and hence held on to power indefinitely or made themselves presidents for life.[952] They did not share power with anyone.

Just like his contemporaries, Dr. Nkrumah was accused of being autocratic[953] because he fiercely opposed criticism and disagreement whether

[950] Prempeh, "Presidential Power."
[951] They included *Osagyefo* Kwame Nkrumah of Ghana; *Mwalimu* Julius Nyerere of Tanzania; Modibo Keita of Mali; Sekou Toure of Guinea; Houphouet-Biogny of la Cote d'Ivoire; *Mzee* Jomo Kenyatta of Kenya; *Ngwazi* Kamuzu Banda of Malawi; Kenneth Kaunda of Zambia and many more.
[952] Prempeh, "Presidential Power," 767.
[953] "Army Takes Over Govt," Friday, 25 February 1966; "We'll Try Kwame if…," Tuesday, 1 March 1966; "Ghana Free from Oppression," *Daily Graphic*, Thursday, 3 March 1966; "The Future is Bright: Be Loyal – Ankrah," *Daily Graphic*, Tuesday, 8 March 1966; "TUC Praises

from members of the opposition party or even from within his own ruling Convention People's Party. He was accused of, gradually, subverting the independence of the judiciary through intimidation, arbitrary dismissal of judges, and his personal interference with court decisions.[954] Nkrumah's opposition to criticisms led to the detention of hundreds of people under the P.D.A. while others escaped into exile for fear of being detained or even killed.[955] About 70 people were detained by the C.P.P. government between 1958 and 1960.[956] The number of people who were detained from 1960, when the nation attained republican status increased exponentially. This was largely because some members of the opposition United Party increased their criticism of what they regarded as a surge in the authoritarian posturing of the president and his, supposed, failure to manage the affairs of the country. Therefore, 174 people were detained between July and December 1960, alone, and by 1961, the number had reached 311. The number went higher to about 586 by 1963.[957] The detainees included J.B. Danquah,[958] Obetsebi Lamptey,[959]

New Regime," Wednesday, 2 March 1966; See also Agnes Akosua Aidoo, *Ghana*, 4-5; "Kwame Nkrumah," in *Africana: The Encyclopedia of the African and African American Experience*, Kwame Anthony Appiah & Henry Louis Gates (eds), (New York: Basic Civitas Books, 1999), 1441; *The Rebirth of Ghana: The End of Tyranny*, 26 March 1966, iii; Buah, *Ghana*, 189-193; Boahen, *Ghana*, 206-213; Amenumey, *Ghana*, 234-236;

[954] Aidoo, *Ghana*, 4-5.

[955] Buah, *Ghana*, 182-186; Boahen, *Ghana*, 184-186; Amenumey, *Ghana*, 230-231.

[956] "Detainees – 450 More Freed," *Daily Graphic*, Saturday, 26 February 1966. See also Boahen, *Ghana*, 212; Amenumey, *Ghana*, 230-231.

[957] Boahen, *Ghana*, 212; Amenumey, *Ghana*, 230-231.

[958] J. B. Danquah was not released despite many appeals that were made by him and others to the president for his discharge. He eventually died in detention at the Nsawam Prison on 4 February 1965, after being detained for thirteen months. See ""J.B. Danquah died under Nkrumah's PDA, don't belittle his role in independence struggle - Sekou Nkrumah" https://www.ghanaweb.com/GhanaHomePage/NewsArchive/JB-Danquah-died-under-Nkrumah-s-PDA-don-t-belittle-his-role-in-independence-struggle-Sekou-Nkrumah-1598183 (Accessed 10/08/2022). See also "Statement Issued at a Press Conference by the Executive of the United Party on 15 September 1961," in Danquah, *The Ghanaian Establishment*, 76-77, 80, 83-85, 89, 327-392; "Danquah Petitions Nkrumah for his release from Prison," in Ziorklui, *Ghana*,97; "Danquah writes to Nkrumah from Prison," in Ziorklui, *Ghana*,98; "Danquah Dies," in Ziorklui, *Ghana*,101; Fordwor, *The Danquahbusia Tradition*, 99-100.

[959] Obetsebi Lamptey also died in detention under the P.D.A. See "Obetsebi Lamptey now buried in Accra," *Daily Graphic*, Monday, 25 September 1967.

Mr. R. R. Amponsah, Mr. J.K. Lamptey, Mr. Victor Owusu, Mr. Fred Sarpong and Mr. Joe Appiah.[960] Some members of Dr. Nkrumah's C.P.P. were also detained for their opposition to the President. They included Mr. W.A. Wiafe and. P.K.K. Quainoo. Some leading members of the opposition U.P. and the C.P.P. government successfully escaped arrest and detention and went into exile. K.A. Busia, who was the leader of the main opposition party, Ekow Richardson and K.A. Gbedemah who was a former close associate of Nkrumah from the early 1950s were among those who went into exile for fear of being arrested.[961] Many others were also deported from the country under the *Ghana Nationality Act* for criticizing the President.[962]

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[960] Austin, *Politics in Ghana*, 380-382; Buah, *Ghana*, 182-186; Boahen, *Ghana*, 212; Amenumey, *Ghana*, 230-231.

[961] "Busia: I won't come to Ghana," *Daily Graphic*, Friday, 19 February 1965. See also Amamoo, *Ghana*, 119; Boahen, *Ghana*, 212; Amenumey, *Ghana*, 230-231.

[962] Bankole Timothy, a Sierra Leonean resident in Ghana and the acting editor of the *Daily Graphic* at the time was deported for being critical of president Nkrumah. His deportation was in relation to an article entitled "What's Next, Kwame…"? (See What Next, Kwame...? Asks Bankole Timothy", *Daily Graphic*, 22 June 1957, 5.) The article was published to question what he considered to be the manner in which Nkrumah was gradually imposing himself on the country and thus becoming authoritarian. It was published after the release of a portrait of Nkrumah's head embossed on new coins that were introduced, which the editor considered as a mark of a dictator. Nkrumah in an article entitled, "Why the Queen's Head is Coming off our Coins", published in the *London Daily Sketch*, explained that the decision to put his head on Ghana's currency was made by his Cabinet with his agreement because he felt it was only through this symbolism that Ghanaians, many of whom were illiterate, would know they were really independent. Bankole Timothy, in a response to Nkrumah's article, criticised him asserting that: "To have announced such an important statement about vital matters affecting Ghana in a sensation-seeking newspaper like the *London Daily Sketch* instead of in the National Assembly of Ghana, is a shocking slight on ALL of our M.P.s irrespective of our party affiliation." (*Ibid*.) The government thought that the best way to end this battle of words and criticism was to deport Bankole Timothy. It must be emphasized, however, that the deportation order on Bankole Timothy was later rescinded by the government. Another famous deportation case involved two men born and bred in Ghana, Alhaji Amadu Baba and Othman Larden Lallemie. The two were deported to Nigeria after Ghana attained independence because they were accused of being opposed to the C.P.P. before independence. They wrote critical articles condemning certain policies of the government in the press. In his bid to get rid of all potential enemies and critics of the government from the country, Nkrumah deported those two individuals due to their anti-C.P.P. stance. A special Act was passed purposely for the two, and thus, they were accordingly deported from the country in 1957. On 13 August 1962, a British journalist, Mrs. Mary Dorkenoo, who was the wife of a Ghanaian newspaperman, was expelled for spreading "false and alarming" reports on Ghana's economy in the London *Sunday Times*. Around the same time, two foreign priests (Anglican Bishop of Accra, Richard Roseveare, and the Anglican Archbishop of West Africa, Cecil Patterson) were deported from the country because of their comments about the government. Roseveare reportedly criticised the Young Pioneer movement which was the youth wing of

While not attempting to hold brief for the actions of the C.P.P. government, it is important to put things in context. It could be argued that some of the actions of the government, including the seemingly repressive laws that were passed and used against supposed critics of the administration became necessary due to the high political tension in the country at the time. While Nkrumah and his government appeared determined to build the young independent nation of Ghana, they were faced with a barrage of "criticisms" and acts that they regarded to be in opposition to the advancement that they sought to bring to the country. Nkrumah considered some actions of the opposition, the U.P., and even members of his party as acts of saboteurs who were only focused on what they could benefit from the country. It was argued that "destructive" opposition by some members of the U.P. to Nkrumah and the C.P.P. was because of the "…morbid fear for socialist policies which could rob them [members of the opposition party and some members of his C.P.P.] of these ill-gotten gains that have driven some of these men into working with the Busia [a leading member of the U.P.] clique for the overthrow of our socialist regime. Some of the 'detractors' of the government "prefer[ed] to remain inside the C.P.P. and do the havoc from within."[963] For instance, Buah suggests that information reached the government that the opposition U.P. was receiving logistical and monetary support from foreigners in an attempt to pile up ammunition which would be used to overthrow the

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the C.P.P. He said that members of this wing were indoctrinated with false ideas that Nkrumah was immortal and the redeemer of the country. Bankole corroborates this when he writes that Roseveare also described as godlessness the situation whereby the Young Pioneers were alleged to have been ordered by Nkrumah to sing daily some stanzas of the song "Nkrumah never dies." See Moses Danquah, *Ghana: One Year Old – A First Independence Anniversary* (Accra: 1957), 11; Bankole Timothy, *Kwame Nkrumah: The Man Who Brought Independence to Ghana*, (London: Longman Group Ltd., 1974), 46. See also Omari, *Kwame Nkrumah*, 95.

[963] "Ameteefe's Attack on Nkrumah's Life," *Daily Graphic*, 6 January 1964.

government.[964] The government, thus, might have promulgated as well as used a number of those repressive laws to fend off the frustrations and detractions that they faced from members of the opposition party. Buah seems to agree with this argument and notes that "being armed with these series of information [of a possible coup attempt by some members of the opposition with help from foreigners] the government became extra-vigilant."[965] He further states that it was after those reports that the P.D.A. was applied most extensively against all opponents of the government.[966] Omari argues that the P.D.A. might not have been as obnoxious in its intent as it was applied by the C.P.P. government. He explains that the existing legal machinery in 1958 was too slow to cope with the wave of political disturbances and issues of insecurity that confronted the country. Hence, the P.D.A was supposed to end political violence and crime in the country. He further posits that even though the Act successfully achieved its original intended purpose, it was later used as an instrument of blackmail.[967]

Apart from the hindrances[968] that the C.P.P. might have suffered from its opponents within and from without the country, including reports of failed attempts to overthrow the government,[969] there were direct assassination attempts on the life of Nkrumah. There were a lot of assassination attempts on the life of the President between 1961 and 1964,[970] and hence, by 1965,

[964] Buah, *Ghana*, 184.
[965] *Ibid.*
[966] *Ibid*, 184-185.
[967] See Omari, *Kwame Nkrumah*, 71.
[968] "Massive Police Hunt for Statue Bombers," *Daily Graphic*, Monday 6 November 1961.
[969] See "Plot to Overthrow Kwame Nkrumah," a letter from Sgd. Joe Y. Manu to Kwame Nkrumah," in Ziorklui, *Ghana*,90.
[970] "Ameteefe's Attack on Nkrumah's Life," *Daily Graphic*, 6 January 1964; "One Killed, 56 Injured: Bomb Blast, Kwame safe," *Daily Graphic*, 2 August 1962; Amenumey, *Ghana*, 235; Buah, *Ghana*, 185; Boahen, *Ghana*, 206-221; Amamoo, *Ghana*, 117; Fordwor, *The Danquahbusia Tradition*,104; Omari, *Kwame Nkrumah*, 95.

Nkrumah was living in extreme fear for his life. He is said to have enhanced the security around him and his family. He is also reported to have expanded his bodyguard into a battalion armed with the most modern weapons at the time.[971] The President's Own Guard (POG), as his security detail was known, was, supposedly, armed and advised by Soviet officers. Agnes Akosua Aidoo puts it this way:

> Long before his overthrow, Nkrumah had ceased to be popular…he had squandered the support and popularity which he enjoyed at independence…. For more than two years before his fall, Nkrumah lived in increasing fear for his life. He was too scared to appear in public, and he rarely ventured outside his triple-walled maximum security official residence – the Flag Staff House. He lived under very heavy protection by his personal security forces whom he recruited himself.[972]

Consequently, the provisions of the 1960 Republican Constitution of Ghana which gave the President enormous power was utilised to maximum effect. The state of seeming insecurity in the country which was blamed on the activities of the opposition political party and of saboteurs within the C.P.P, all gave Nkrumah a good justification to turn the country into a one-party state in 1964.[973]

The Judiciary and the P.D.A.

The Preventive Detention Act (P.D.A.) which the C.P.P. government introduced just one year[974] into independence enabled the government to imprison people who were considered enemies of the state for up to five years;

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[971] Amenumey, *Ghana*, 235; Aidoo, *Ghana*, 3; Fordwor, *The Danquahbusia Tradition*, 104.
[972] Aidoo, *Ghana*, 3.
[973] "Ghana Says Yes to the President – Kwame: I thank the People," *Daily Graphic*, Monday 3 February 1964; Fordwor, *The Danquahbusia Tradition*,103; Boahen, *Ghana*, 211; Amenumey, *Ghana*, 235;
[974] The Act was given a further five years of life in 1963 and that meant that persons detained under this law and whose release was almost due could have, and indeed, had their detention extended for another five years.

the law was later reviewed to ten years, without charge or trial.[975] The passage and extensive use of the P.D.A. was one of the reasons why the C.P.P. and Dr. Nkrumah were accused of being dictatorial and oppressive.[976] The P.D.A appeared to be an effective tool for Dr. Nkrumah and the government against their "enemies" and so it was renewed in June 1962 and again in May 1964 and it remained on the law books until it was repealed after the overthrow of Dr. Nkrumah and the C.P.P. government. It is worth stating that even though it seemed as though the use of the law undermined the independence and authority of the judiciary, the judiciary, ironically, played an integral role in the use of what seemed to be an obnoxious[977] and rather oppressive law. The courts were called upon to "validate" the use/abuse of the P.D.A. which it did. A classic case in point was the famous case of *Re: Akoto and 7 others*.[978]

The object of the P.D.A. was to restrain people from committing crimes which it was suspected they could commit in the future. Thus, its main aim was to prevent the commission of acts which may endanger public order and the security of the state. One of the many political protests and clashes between members of the C.P.P. in the Ashanti Region and members of the opposition party, including people who still considered themselves to be members of the defunct N.L.M. which had been abolished by the passage and coming into force of the *Avoidance of Discrimination Act (1959)*, occurred in

[975]"*Preventive Detention Act, 1964, Act 240*; "Osagyefo Promises a Review: Detainees May be Held up for 20Yrs More if…," *Daily Graphic*, Monday, 26 March 1962; Omari, *Kwame Nkrumah*, 53; Sackey, *Ghana*, 17. See also Augustine Osei Duah, "The Second World War: Detention/Internments in the Gold Coast: An Overview," in Edmund Abaka (ed.), *Africa and the Second World War: Africa's Forgotten Finest Hour* (Trenton: Africa World Press, 2022), 205-222.

[976] This perception may be true because some prominent member of the opposition died while in detention under the P.D.A. and thousands more spent several years in jail under the same law. Other people fled the country for fear of being arrested and detained under the P.D.A. and some chose not to be critical of the government lest they fell prey to the law.

[977] See Omari, *Kwame Nkrumah*, 71.

[978] Cited as *Re: Akoto and 7 others, [1961] Ghana Law Report (GLR)* 523-535.

the latter part of 1959. Even though the N.L.M. was formed to "oppose dictatorship and to protect Asante autonomy,"[979] it was perceived as a separatist movement "whose leaders wanted to keep the wealth of the Ashanti Region for the benefit of the Asante alone."[980] Consequently, many of the chiefs in the Ashanti Region who were members of the N.L.M. were destooled for what was considered to be their opposition to the government and that, partly, accounted for the many political clashes in the region.

On November 10 and 11, 1959, a Senior Linguist of the Asantehene and Chairman of the N.L.M., Baffour Osei Akoto, was arrested along with seven others. The seven were Peter Alex Danso, also known as Kwaku Danso, Osei Assibey Mensah, Nana Antwi Busiako, also known as John Mensah, Joseph Kojo Antwi-Kusi, also known as Anane Antwi-Kusi, and Benjamin Kwaku Owusu. The others were Andrew Kojo Edusei and Halidu Kramo.[981] The eight men were arrested and detained following a directive issued by the Governor-General and signed on his behalf by the Interior Minister per Section (2) of the *Preventive Detention Act, 1958 (No. 17 of 1958).*[982] The order for their arrest and detention was based on allegations that they had committed acts prejudicial to national security. They were accused of encouraging the commission of acts of violence in the Ashanti and Brong-Ahafo regions.[983] They were also alleged to have associated with persons who

[979] Allman, *The Quills of the Porcupine*, 8-18; Owusu, *Prempeh II*, 127.
[980] *Ibid*.
[981] *Re: Akoto and 7 others*.
[982] *Ibid*.
[983] See Baafour Osei Akoto, *Struggle Against Dictatorship: Autobiography of* Baafour *Osei Akoto* (Kumasi: Payless Printing Press, 1992), 63.

had adopted a policy of violence as a means of achieving political aims in the aforementioned regions.[984]

The accused were detained at the James Fort prison and were later moved to the Usher Fort prison without being given a trial and hence they applied for *habeas corpus ad subjiciendum*[985] from the High Court requesting to be tried under the General principles of Article 13 (1) of the 1960 Constitution. Their request was, however, dismissed by Justice Julius Sarkodie Addo.[986] The detainees then appealed the decision of the High Court at the Supreme Court and their counsel, J.B. Danquah, argued that the High Court had acted over its jurisdiction without making an order for a formal return. He further argued that under the *Habeas Corpus Act, 1816*, the High Court was required to look into the truth of the facts leading to the arrest and detention of the accused people. Danquah also contended that the Minister of the Interior, who signed the order on behalf of the Governor-General, acted out of malice and that the grounds upon which the eight men were detained did not fall within the meaning of the expression "Acts prejudicial[987] to the security of the State."[988]

J. B. Danquah, therefore, prayed the court to declare that the Governor-General was precluded from exercising the powers conferred on him by the Preventive Detention Act, 1958, order the arrest and detention of the accused

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[984] Akoto, *Struggle*, 63.

[985] According to the 9th Edition of the Black's Law Dictionary, *habeas corpus ad subjiciendum* is a writ directed to someone detaining another person and commanding that the detainee be brought to court. See also "The Habeas Corpus Act," in Danquah, *The Ghanaian Establishment*, 239-241; Omari, *Kwame Nkrumah*, 74.

[986] Akoto, *Struggle*, 63.

[987] These included activities that were prejudicial to:
(a) the defence of Ghana;
(b) the relations of Ghana with other countries; or
(c) the security of the state.

[988] *Re: Akoto and 7 others*. See also Akoto, *Struggle*, 64-65.

without trial - except in accordance with the Criminal Procedure Code, 1960. Danquah also contended that the law by which the appellants were detained was in excess of the powers conferred on Parliament by the Constitution of Ghana, specifically article 13(1). The order was, thus, contrary to the solemn declaration of fundamental principles[989] made by the President on the assumption of office. He concluded his argument by asserting that the P.D.A, not having been passed under a declaration of emergency, violated the Constitution of the Republic of Ghana.[990] Counsel for the eight men requested the court to determine the following:

i. Whether or not a formal return was necessary in determining the merit of the charge brought against the detainees?
ii. Whether or not the Court was bound to enquire into the truth of the facts alleged for the detention?
iii. Whether or not the minister of the interior acted out of malice?
iv. Whether or not the grounds upon which the appellants were detained fell under the P.D.A.?

[989] "Declaration of Fundamental Principles:" Article 13(1) of Part III of the 1960 constitution states, among others, that:
Immediately after his assumption of office the President shall make the following solemn declarations before the People –

> On accepting the call of the People to the high office of President of Ghana I ... solemnly declare my adherence to the following fundamental principles –
>
> That the powers of Government spring from the will of the People and shall be exercised in accordance herewith.
>
> That freedom and justice shall be honoured and maintained.
>
> That no persons shall suffer discrimination on grounds of sex, race, tribe, religion or political belief.
>
> That subject to such restrictions as may be necessary for preserving public order, morality or health, no person should be deprived the freedom of religion or speech, of the right to move and assemble without hinderance or of the right of access to court of law.

[990] *Re: Akoto and 7 others*.

v. Whether or not the Governor-General was precluded from exercising the powers conferred on him by the P.D.A.?
vi. Whether or not the P.D.A. was enacted in excess of powers conferred on Parliament by the Constitution of Ghana?[991]

After two years of legal battle, the Supreme Court[992] held in 1961 that a formal return was unnecessary and that the High Court could not enquire into the truth of the facts because Rule 14 of Order 59 of Supreme Court Civil Procedure Rules, 1954[993] provided that the judge may in his discretion, upon hearing of the application, order the release of the person restrained and the gaoler or constable shall cause the release of the person under restraint. The court further established that the law does not make it compulsory for the judge to order a formal return in every case. Since it was at the discretion of the judge, a formal return was unnecessary.[994]

The Supreme Court further held that the allegation of malice brought against the Minister for the Interior could not be supported or proved by the appellants for which reason it could not hold. The court established that the phrase "security of the state" does not only mean the defence of Ghana against foreign powers. The justices of the Supreme Court noted that although the *Habeas Corpus Act, 1816,* permitted the Court to enquire into the truth of the facts of a case contained in the return, there was an exception. That was when the detention order was made for the security of the state and the administrative discretion was vested in the person making the order.

[991] *Re: Akoto and 7 others*.
[992] The panel of justices who sat on the case were the Chief Justice, Mr. Justice Arku Korsah, Mr. Justice William Bedford Van Lare and Mr. Justice Akiwumi. See *Re: Akoto and 7 others*.
[993] Rule 14 of Order 59 of Supreme Court Civil Procedure Rules, 1954 holds that "on the hearing of the application the Judge may, at his discretion, order that the person restrained be released, and the order shall be a sufficient warrant to any gaoler, constable or other person for the release of the person under restraint."
[994] *Re: Akoto and 7 others*.

Accordingly, the court could not enquire into the truth of the fact because the detention was executed at the discretion of the President in accordance with the P.D.A. supported by the *Habeas Corpus Act, 1816*, which exempted an enquiry which involved detention relating to the security of the state.[995]

On the issue of whether the grounds upon which the appellants were detained fell under the P.D.A., the Supreme Court took the position that J.B. Danquah placed a narrow interpretation on the purpose of the P.D.A. The offences listed under Part IV, Chapter 1 of the Criminal Code, 1960, or under title 23 of the Criminal Code, Cap 9, which has now been repealed, provided that "offences against the safety of the State" included a large number of offences which had nothing to do with the defence of Ghana or with foreign countries but the Governor-General may make an order under the P.D.A. if he was satisfied that the order was necessary. The court held that the object of the P.D.A. was to prevent people from committing crimes which may endanger public order and the security of the state and so the Governor-General would be justified to activate the powers under the P.D.A. to prevent persons whom he was satisfied were conspiring to disrupt the governance of the state. Therefore, Danquah's interpretation that the security of the state meant defence of Ghana against foreign powers was a narrow one.[996]

On the question by Danquah as to whether or not the P.D.A. was enacted in excess of powers conferred on Parliament by the Constitution of Ghana, the court first established its original jurisdiction stated in Article 42(2) of the 1960 Constitution.[997] The court further observed that by the Constitution

[995] *Re: Akoto and 7 others.*
[996] *Ibid.*
[997] "The Supreme Court shall have original jurisdiction in all matters where a question arises whether an enactment was made in excess of the powers conferred on Parliament by or under

(Consequential Provisions) Act 1960, enacted by the same Constituent Assembly which enacted the *1960 Republican Constitution*, the *Preventive Detention Act, 1958,* was amended thus: In Section 2, in subsections (3), (4) and (5) of section 3, and subsection (2) of Section 4, for "Governor-General" in each place where it occurs substitute "President".[998] The court also posited that by Article 40 of the *Republican Constitution, 1960,* the laws of Ghana comprised, inter alia, enactments in force immediately before the coming into operation of the Constitution, a fortiori, the *Preventive Detention Act, 1958,* being a law in force in Ghana at the time the Constitution, was enacted and having been amended by the same body which enacted the said Constitution, it could not be denied that it must have been the intention of the people of Ghana by their representatives gathered in a Constituent Assembly to retain the *Preventive Detention Act, 1958* in full force and effect. The court established that the contention that the legislative power of Parliament was limited by Article 13 (1) of the 1960 Constitution, was, therefore, in direct conflict with express provisions of Article 20.[999] It was held that the P.D.A. did not constitute a violation of the 1960 Constitution of the Republic of Ghana. Consequently, it was neither invalid nor void.[1000]

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the Constitution and if any such question arises in the High Court or an inferior court, the hearing shall be adjourned and the question referred to the Supreme Court for decision." See jurisdiction of the Supreme Court under Part VI of the *Constitution of the Republic of Ghana, 1960.*

[998] *Re: Akoto and 7 others*.

[999] The effect of Article 20 of the Constitution which provides for "The Sovereign Parliament", was that subject to the following qualifications: Parliament could make any law it considered necessary. The only limitations to that Article were that (a) Parliament could not alter any of the entrenched articles in the constitution unless there had been a referendum in which the will of the people was expressed; (b) Parliament could, however, of its own volition, increase, but not diminish the entrenched articles; (c) the articles which were not entrenched could only be altered by an Act which specifically amended the Constitution.

[1000] *Re: Akoto and 7 others*. See also Dr. J.B. Danquah's "Address to the Supreme Court of Ghana on 13 February 1963, in Re the Appeal by R.R. Amponsah and Modesto K. Apaloo against the Refusal to Grant them Writs of Habeas Corpus," in Danquah, *The Ghanaian Establishment,* 237-238.

The petition of the applicants was dismissed by the Supreme Court based on the above arguments by the justices of the highest court of the country. It is worth stating that even though the detainees denied the grounds upon which they were arrested and detained, the Asantehene, on 12 January 1961, abolished the "Butuakwa Stool" which was the family stool occupied by his Chief Linguist, Baafour Osei Akoto.[1001] This action by the Asantehene was taken barely six months before the Supreme Court ruling on the *Re: Akoto and 7 others* case, which affirmed the government's alleged reasons for the arrest and detention of Baafour Osei Akoto and seven others under the P.D.A. The Asantehene announced that his decision to abolish the stool was because Baafour Osei Akoto "organized some young men who went and slaughtered sheep in river Subin without my [the Asantehene's] knowledge and consent which brought about the formation of the National Liberation Movement which he [Baafour Osei Akoto] was the leader."[1002] The Asantehene further indicated that even though the Butuakwa Stool[1003] was created by Asantehene Osei Bonsu in appreciation for Butuakwa's successful mission to seize and bring a golden stool that had been made by the people of the Gyaaman state, almost all the occupiers of the stool "had been causing some sort of trouble for the country."[1004] The Asantehene, therefore, concluded that the decision to abolish the Butuakwa stool was an immediate remedy to check future

[1001] See Akoto, *Struggle*, 68-70; "Otumfuo Scraps Akoto's Family Stool," *Daily Graphic*, Friday 12 January 1961.
[1002] *Ibid*.
[1003] Its occupant was made linguist of the Asantehene. See "Otumfuo Scraps," 1. See also Akoto, *Struggle*, 68-70.
[1004] *Ibid*. The Asantehene gave an instance of one Agyeman Kofi, who was the elder brother of Nana Prempeh I, who organized and caused a civil war in 1885 as a protest to the election of Nana Prempeh I as Asantehene.

incidents, instigated by its occupants, which had the potential of ruining the whole country.[1005]

One could conclude that even though those who were arrested and detained under the P.D.A., including Baafour Osei Akoto and the seven others, mostly denied engaging in acts that could be described to be subversion and prejudicial to the security of the state and hence accused the government of being autocratic and arbitrary in the exercise of its power, the actions of the Asantehene against his most senior linguist at the time seemed to have vindicated the official position of the C.P.P. government. Even the Asantehene

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[1005] "Otumfuo Scraps," 1.

See below Asantehene Sir Osei Agyemang Prempeh II's statement to the Kumasi State Council on the abolition of the Butuakwa stool. Culled from Akoto, *Struggle*, 68-70.

Chief and Elders,

I have an important announcement to make this morning to the council and that is, I have decided to abolish Butuakwa stool in my court. Butuakwa was made a linguist by my grand uncle King Osei Bonsu in appreciation of his (Butuakwa's) successful mission to Gyaaman. Adinkra, the King of Gyaaman made for himself a Golden Stool, an imitated one. When the news reached King Osei Bonsu, he despatched a delegation of four headed by Butuakwa to Gyaaman to demand the immediate surrender of the stool. Adinkra without hesitation surrendered the stool to Butuakwa who brought it safely to the king. Hence the creation of Butuakwa Stool. But since that time almost all the occupants of the Butuakwa Stool brought some sort of trouble to the country. In 1885, when my late uncle Nana Prempeh I was being elected as successor to his elder brother Agyeman Kofi, the then occupant of Butuakwa Stool by name Dwobeng organised and caused a Civil War to be fought in this country as a protest against the election. The Civil War spread all over Asante and lasted for three years, but he did not succeed. Dwobeng was married to one of Asantehemaa Nana Yaa Achiaa's daughters and a sister of my late uncle Nana Prempeh I. He had a son with her but during the Civil War, because of the resentment he held for Nana Ya Achiaa and her family, he locked up the child, his own son, in a room until he died of starvation. After the Civil War in which Nana Ya Achiaa and her supporters were victorious, Dwobeng was charged of homicide, brought before the Court, tried and found guilty and he was sentenced to capital punishment. Since then, all of his successors and members of his family have not been loyal to Nana Yaa Achiaa's family. They always try to revenge in their own way whenever possible. Appiah, Dwobeng's successor caused the Nkoranza war of 1892. He misrepresented facts of his mission to the Nkoranza people, the result of which was the Nkoranza war. The recent political unrest in this country about six years ago is fresh in our memory. It was Akoto, the present occupant of Butuakwa stool who organised some young men who went and slaughtered a sheep in River Subin without my knowledge and consent which brought about the formation of National Liberation Movement of which he was the Leader. History and experience had revealed that if immediate remedy is not found to check the future occurrence of things of this kind, the whole country will be ruined. I therefore abolish Butuakwa Stool as from today. I have taken this decision in the interest of the whole country as stated in the aforesaid explanations. Okyeame Afriyie, the Occupant of Boadu Stool will take over as from today the functions of Butuakwa Stool in addition to his normal duties in my Court. The Amanhene concerned will be notified in due course.

(Sgd) OSEI A. PREMPEH II

(ASANTEHENE)

disapproved of the conduct of his chief linguist and hence his (Baafour Osei Akoto's) destoolment. Such an argument would, however, be wrong since Baafour Osei Akoto was reinstated, after seven years, by the Asantehene, Otumfuor Sir Osei Agyeman Prempeh II.[1006] Otumfuor Agyeman Prempeh II indicated, seven years later, that "he sacrificed Baafour Osei Akoto, his former linguist and leader of the N.L.M., to save the Ashanti (sic) nation from being destroyed by Nkrumah's C.P.P. government."[1007] The Asantehene further indicated that:

> …he took a decision to abolish Akoto's family stool because of pressure which was brought to bear on him by Nkrumah… Nkrumah warned him to choose between Baffuor Akoto and him (Nkrumah). He said Nkrumah then started threatening him (Asantehene) with detention if he failed to remove Baffuor Akoto… I (Otumfuor) had no alternative but to give up Akoto to save the Ashanti (sic) nation from destruction.[1008]

The Asantehene's claim that he succumbed to pressure, obviously from Nkrumah and the C.P.P, seems to be corroborated by Osei Kwadwo who argued that the "…N.L.M. was led by Baafour Osei Akoto, a senior linguist of the Asantehene. It, therefore, implied that Asantehene had a hand in it."[1009] Thus, but for the later revelation of some external pressure on the Asante leader to sacrifice Baafour Osei Akoto on the altar of politics, it would have been strange for Manhyia to have rejected one of its very own. Events at Manhyia Palace after the overthrow of Nkrumah in 1966 (the reinstatement of Baafour Osei Akoto) only confirm the rocky relationship between the chiefs

[1006] See "Akoto is Reinstated," *Daily Graphic*, Tuesday, 29 November 1966; Akoto, *Struggle*, 79-81.
[1007] "Akoto is Reinstated," *Daily Graphic*, Tuesday, 29 November 1966. See also "Akoto Wasn't Chief Linguist." Letter from Mr. John Darkwah, the Secretary of the Kumasi Traditional Council, to the Editor of the *Ghana Pictorial* newspaper. 7 April 1967; "Paul Sey, "If Baffour Akoto 'Sacrificed to Save the Ashanti Nation,' then Asantehene Must Answer this!!!," *Ghana Pictorial*, Vol. IV, No, XIV, 1967.
[1008] Akoto, *Struggle*, 79-81.
[1009] Osei, *An Outline*, 90.

and Nkrumah and his People's Party in the 1950s, as has been discussed in the previous chapter. It was only after the overthrow of the C.P.P. government that the "lost liberties" of the Asantehene and other chiefs like him were restored.[1010]

The courts, particularly the Supreme Court, were accused by the victims of the government's actions and others who were sympathetic to them, of helping the executive arm of government to arbitrarily apply the P.D.A.[1011] This assertion was partly because although the applicants in the *Re: Akoto and 7 others* case argued that the solemn declaration prescribed by the republican constitution of the country and declared by the President (which stipulated that "no person should be deprived of freedom of religion or speech, of the right to move and assemble without hindrance…"),[1012] constituted the Bill of Rights of the citizenry, the Supreme Court decided otherwise.[1013] The court rather noted that "the solemn declaration of the Ghanaian President was similar to the Coronation Oath of the Queen of England"[1014] and as such the declaration imposed a "'moral' (but not a legal) obligation on the President that could be enforced in the courts."[1015] In other words, the Supreme Court ruled that the constitution of the Republic of Ghana did not confer any rights on Ghanaians.[1016] The court was accused of "slaughtering one of the objects of

[1010] "Chiefs Greet New Regime, *Daily Graphic*, Monday, 28 February 1966; "Support N.L.C. – Asantehene," *Daily Graphic*, Saturday, 12 March 1966; "Ex-Chief to be Re-enstooled," *Daily Graphic*, Wednesday, 6 April 1966; "133 Nkrumah Chiefs Sacked," *Daily Graphic*, Tuesday, 6 December 1966.

[1011] This was after members of opposition political party in parliament had tried, unsuccessfully, to prevent the passage of the Bill. See Omari, *Kwame Nkrumah*, 72-74. See also Mensa-Bonsu, et al, *Ghana Law*, 223.

[1012] Prempeh, "Presidential Power," 793.

[1013] Mensa-Bonsu, et al, *Ghana Law*, 224.

[1014] *Re: Akoto and 7 others.*

[1015] *Ibid.*

[1016] Prempeh, "Presidential Power," 793. see also *Re: Akoto and 7 others;* Mensa-Bonsu, et al, *Ghana Law*, 223.

law, the protection of the individual that the Bond [of 1844] sought to guarantee."[1017] Peter Omari goes further to directly accuse the judiciary of encouraging or failing to stop Dr. Nkrumah from ruling in a manner which was considered by some to be arbitrary. He deduced that the Supreme Court justices seemed unaware of their failure to uphold the constitutional rights of Ghanaians.[1018] Omari's position is in contrast to the ruling of the judges of the Supreme Court in the *Re: Akoto and 7 others* case.

Even though some rulings of the judiciary seemed to have legitimized what some considered to be the arbitrary and dictatorial rule of Nkrumah and his party, it is worth noting that the judicial arm of government at the time did not have much choice or power to firmly oppose or rule against some of the actions of the President. The President, under the 1960 Constitution, was vested with the power to take some unilateral actions including the appointment of the Chief Justice and other judges of the superior courts of Ghana.[1019] Thus, the Chief Justice and all other judges of the superior courts held their offices at the pleasure of Dr. Nkrumah.

The Judiciary under the 1960 Republican Constitution

The 1960 constitution created two categories of courts (the superior and inferior courts) which were vested with judicial powers of the country. The superior court was made up of the Supreme Court while the inferior courts consisted of courts that may be provided for by law.[1020] The Supreme Court, under the leadership of the Chief Justice, was the final court of appeal of the land since the republican constitution abolished the jurisdiction of the

[1017] Mensa-Bonsu, et al, *Ghana Law*, 224.
[1018] See Omari, *Kwame Nkrumah*, 76.
[1019] See Part VI 44 (1) & 45 (1) of the *1960 Republican Constitution of Ghana*.
[1020] *1960 Republican Constitution of Ghana*.

Privy Council. The constitution also empowered the Supreme Court to exercise judicial review since it had original jurisdiction in all matters. It, therefore, could determine whether an enactment was more than the powers conferred on parliament by the constitution.[1021] The constitution also provided that a Chief Justice must be appointed by the President from amongst the justices of the Supreme Court and such appointment could be revoked by the President at any time by an instrument under the Public Seal.[1022] While it was not new for the head of the executive branch of government, in this case, the President, to have the power to appoint a Chief Justice, it was troubling for the President to be given the power to revoke such an appointment of the Chief Justice at any time. That singular power of the President did not make the judiciary independent of the executive since a Chief Justice or any judge of the superior court, for that matter, was likely not to discharge his or her duties independently and impartially enough for fear of losing the job. This possibility was manifested just three years into the operation of the constitution when the Chief Justice was removed from office by Kwame Nkrumah.

Even though the constitution empowered the President to appoint other judges of the courts, it maintained the provision of the 1957 constitution which stipulated that a judge could be removed from post after two-thirds ($^2/_3$) majority of Members of Parliament had voted for his removal on the grounds of infirmity of mind or body.[1023] That section of the constitution was later

[1021] *1960 Republican Constitution of Ghana*.
[1022] *Ibid*.
[1023] *Ibid*.

amended to give the President the power to remove any judge at any time "for reasons which to him appear[ed] sufficient."[1024]

The President justified the need for the government/executive to control the judiciary. He argued on the floor of the Legislative Assembly that:

> I need to hardly emphasize the importance of the judiciary in a rapidly developing modern state. The judiciary is one of the component parts of the state, and in the eyes of the world is associated with the government of the country. In these circumstances government cannot evade ultimate responsibility for the actions of the judiciary and, therefore, it is considered necessary to control appointments in the way I have described.[1025]

This line of argument by the President could be akin to the posture of European settlers in the Gold Coast and, much later, European colonial authorities who thought that it was necessary to control the court systems which were presided over by chiefs and hence arrogated to themselves (the Europeans) such powers that did not exist. It was, therefore, not surprising that a former colonial judge, Mr. C.D.G. Harbord, came to the defence of President Nkrumah by stating that:

> The judges must act in accordance with what Parliament says. They should show proper respect for, and confidence in, what Parliament had decided and they should always carry out faithfully the intentions of Parliament. Judges must never comment in disparaging terms on the policy of Parliament, for that would be to cast reflections on the wisdom of Parliament, and would be inconsistent with the

[1024] Opoku-Agyeman, *Constitutional Law*, 93.
[1025] Omari, *Kwame Nkrumah*, 76.

> confidence and respect which should subsist between Parliament and the judges.[1026]

The position of Mr. Harbord is in contravention of the principle of judiciary independence from control from the executive or the legislature since the independence of the judiciary is important "both in relation to government according to law and in the protection of the liberties of the citizen against the executive."[1027]

Probably, the main reason why the judiciary seemed to have failed to safeguard the fundamental human rights of the appellants in the *Re: Akoto and 7 others* case and rather cleared the government of any wrongdoing lay in the fact that the country, at the time, practised the system of parliamentary supremacy which had been provided for by the constitution.[1028] The concept of parliamentary supremacy states that "parliament has, under the English constitution, the right to make or unmake any law whatever; and, further, that no person or body is recognised by law of England as having a right to override or set aside the legislation of Parliament."[1029] This, thus, meant that per the provisions of the 1960 Constitution, parliament was supreme and hence this made it impossible for any individual or body, including the courts/judiciary to declare any act of parliament to be unconstitutional. The Director of Public Prosecutions put it more unambiguously. He noted that:

> Parliament makes laws while the courts interpret and enforce them. Any attempt by the courts to encroach upon the province of Parliament is bound to lead to an unseemly and regrettable conflict between these two organs of state. It

[1026] Omari, *Kwame Nkrumah*, 76-77.
[1027] Hilaire Barnett, *Constitutional and Administrative Law*, 128.
[1028] See Article 20 of the *1960 Republican Constitution of Ghana.*
[1029] Opoku-Agyeman, *Constitutional Law,* 160. See also Barnett, *Constitutional and Administrative Law,* 209-262.

> is for the courts to declare what the law is, but it is also, without doubt, a matter for Parliament to say whether we should continue to be governed by that law…. In the event of a conflict precipitated (sic) between Parliament and the courts, the likely loser will be the courts.[1030]

Consequently, the judicial power to question Acts of parliament (the National Assembly) had been eroded by the constitution. It is imperative to note that an overwhelmingly large percentage of members of parliament from 1951 belonged to the ruling C.P.P. and so it was relatively easy for the government of Nkrumah to draft and introduce laws that were easily passed in the National Assembly using their superior numbers. Such dominance of the executive and legislative arms of government in any country is a potential cause for arbitrariness on the part of the government. It was, therefore, not surprising that Trevor Jones indicated that "Ostensibly parliament – that is, the National Assembly and the President acting jointly, possessed all the legislative powers of the state that were not specifically reserved by the constitution for the people…"[1031] The constitution of the CPP clearly defined the relationship that existed between the central committee (leadership) of the party and the party's members in the Legislative Assembly. It noted that:

> The Central Committee shall work in closest collaboration with all members of the party in the National Legislative Assembly. The Parliamentary Committee shall be under the direct supervision and control of the Party Leader, who will report to the National Executive and Central Committee on the work, activities, and general behaviour of all members of the party in the Assembly.[1032]

[1030] "The Content of an Indictment and C.O.P. vs Akowuah II: A Miscarriage of Justice [1965] Vol. II NO. RGL 130-137" in *University of Ghana Law Journal*.
[1031] Jones, *Ghana's First Republic,* 27.
[1032] Dennis Austin, *Ghana Observed: Essays on the Politics of a West African Republic* (Manchester: Manchester University Press, 1976), 38.

What this meant was that the Central Committee of the C.P.P. could, and most likely did, use its members in the National Assembly to get the party's agenda through the legislature. This included the introduction and passage of laws that gave the president "much powers than he was given by the constitution since loyalty to his [Dr. Nkrumah's] name can reach surprising limits…."[1033] Austin posits that "Parliament has been an extremely useful instrument of party policy,"[1034]

What might have worsened the situation in what could best be described as the 'legal paralysis' of the judiciary under the first republic was what Omari described as "spies among the judges of the higher courts" who informed the President about discussions amongst members of the bench to take bold stands in the cases that came before them."[1035] Omari notes that such spies "were arranging with Nkrumah about the allocation of spots left vacant by the sacked judges [to them, the government informers]."[1036] He concludes by stating that "such unhealthy, unprincipled ambition amongst a handful of the judges, and lack of courage among others, made it impossible for the Bench as a body to do its duty for the nation at a time of grave peril."[1037]

Kulungugu and the Removal of the Chief Justice, 1963

One of the most commonly known attacks on the life of President Kwame Nkrumah occurred on 1 August 1962 in the village of Kulungugu near Bawku.[1038] That event has, infamously, become known as the Kulungugu

[1033] Austin, *Ghana Observed,* 39.
[1034] *Ibid.*
[1035] Omari, *Kwame Nkrumah*, 78.
[1036] *Ibid*.
[1037] *Ibid*.
[1038] "One killed, 56 injured – Bomb Blast: Kwame safe," *Daily Graphic*, Thursday, 2 August 1962; "Bomb Prob Drama at police Headquarters: Soldier Jumps to his death," *Daily Graphic*,

bombing incident. Nkrumah supported and encouraged other nationalist leaders in other African countries in their struggle for independence from the colonized domination. He also took steps, including sponsoring nationalist struggles or, financially supporting newly independent nations to find their balance.[1039] These activities of President Nkrumah contributed to making him one of the most popular African heads of state and a champion of African unity at the time.[1040] It was in this spirit of African unity that Nkrumah visited his counterpart, President Maurice Yameogo, of Upper Volta (now Burkina Faso). After a C.P.P. conference in the Ashanti Region, Nkrumah travelled with a large contingent from Kumasi through Bawku to Tenkudugu, Upper Volta. The meeting with President Maurice Yameogo was to complete a formal commercial agreement between their two countries.[1041] Returning to Ghana after the meeting, Nkrumah's convoy made an unplanned stop in the village of Kulungugu. The schoolmaster in the village had assembled his school children along the road and so the convoy stopped for the President to inspect the line-up of the children.[1042] Adamafio recounts that "it was in the process of this ceremony that a hand grenade was thrown at [Dr.] Kwame [Nkrumah]."[1043] The explosion of the grenade killed a girl who was giving a bouquet of flowers to the President and fragments of the grenade hit the President in the back. In all, four people were killed and fifty-six others were

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Wednesday, 9 September 1962; Boahen, *Ghana*, 209; Buah, *Ghana*, 185; Amenumey, *Ghana*, 230.

[1039] Akyeampong, *Ghana's Struggle,* 75-79.

[1040] See Ward, *Ghana*, 429-432; Austin, *Politics in Ghana*, 395-400; Amenumey, *Ghana*, 232-234; Boahen, *Ghana*, 202-205; Buah, *Ghana*, 186-189.

[1041] See Tawia Adamafio, *By Nkrumah's Side: The Labour and the Wounds* (Accra: Westcoast Publishing House, 1982), 124; Rooney, *Kwame Nkrumah: Vision*, 299.

[1042] Adamafio, *By Nkrumah's Side*, 127.

[1043] Ibid. See also "One Killed, 56 Injured: Bomb Blast, Kwame safe," *Daily Graphic*, 2 August 1962; June, Milne, *Kwame Nkrumah: A Biography* (London: Panaf Books, 1999), 173.Nkrumah, *Dark Days*, 41; Rooney, *Kwame Nkrumah: Vision*, 299; Amamoo, *Ghana*, 122; Fordwor, *The Danquahbusia Tradition*, 96; Jones, *Ghana's First Republic*, 133.

injured but the President, narrowly, escaped death. He sustained minor injuries and was rushed to the hospital at Bawku for treatment.[1044] The question which is yet to be answered, convincingly, is who was/were the mastermind(s) of that bomb attack.

Even though the Kulungugu episode was not the first time that an assassination attempt had been made against the President, it resulted in Nkrumah sustaining physical injuries and so he took the incident quite seriously and, thus, decided his future actions with the incident in mind. Some leading members of Dr. Nkrumah's C.P.P. government were accused of being behind the attack, of course, with support from some members of the opposition political party.[1045] Consequently, Messers H. H. Cofie-Crabbe,[1046] Ebenezer Ako Adjei [1047] and Tawia Adamafio[1048] were arrested on 29 August 1962 as being complicit in the Kulungugu bombing.[1049] Two prominent

[1044] David Rooney, *Kwame Nkrumah: The Political Kingdom in the Third World* (New York: St. Martin's Press, 1989), 219. See also Harcourt Fuller, *Building a Nation: Symbolic Nationalism During the Kwame Nkrumah Era in the Gold Coast/Ghana* (Ann Arbor: ProQuest LLC 2014), 258; Adamafio, *By Nkrumah's Side*, 127; "One Killed, 56 Injured."

[1045] Amamoo, *Ghana*, 122-123; Fordwor, *The Danquahbusia Tradition*, 96-97; Jones, *Ghana's First Republic*, 133-140; Adamafio, *By Nkrumah's Side*, 127-133.

[1046] He was the Executive Secretary of the C.P.P.

[1047] Mr. Ebenezer Ako Adjei held the portfolio of Foreign Affairs in the Government at the time of his arrest and, before then, had held about six other Cabinet appointments.

[1048] Mr. Tawia Adamafio was the Minister for Information and Broadcasting and a close confidant of the president. The charge sheet in the Kulungugu bombing case described him in the following words: "Tawia Adamafio, was a well-known Cabinet Minister of the State and by all accounts a powerful one at that. His portfolio was Information and Broadcasting. But he also held at the same time responsibility for Establishment matters. Apart from these official responsibilities, he had made himself responsible, unofficially for many other matters: not many persons, high or low, could approach our President without his approval." See Treason Trial, "The State versus Robert Benjamin Otchere Joseph Yaw Manu Tawia Adamafio, Ako Adiei, Hugh Horatio Cofie-Crabbe," Full text of opening address by Attorney-General at the High Court (Special Criminal Division) in Accra on 9 August 1963. Supplement with *Ghana Today* of 14 August 1963.

[1049] See "The State versus Robert Benjamin Otchere." See also "Adamafio and Adjei Detained," *Daily Graphic*, Thursday, 30 Augustb1962; "Special Court Told: Adamafio Supplied Eight Grenades," *Daily Graphic*, Wednesday 13 March 1963, and "Court Told of Escape through Upper Volta – Manu: I Drove Busia Across Border." *Daily Graphic*, Tuesday, 26 September 1963. See also Adamafio, *By Nkrumah's Side,* 131; Rooney, *Kwame Nkrumah: The Political Kingdom*, 300; Jones, *Ghana's First Republic,* 135; Fordwor, *The Danquahbusia Tradition*, 96.

members of the opposition U.P, Messers Robert Benjamin Otchere[1050] and Joseph Yaw Manu,[1051] were also arrested and detained in the Nsawam Medium Security Prison in connection with the same incident. They were accused of being co-conspirators.[1052] Subsequently, all five men were charged with conspiracy to commit treason and treason.[1053]

The five accused men were put on trial before the Special Division of the High Court in 1963.[1054] The non-jury court was established by the C.P.P. government in 1961 when the National Assembly passed into law a bill that had been introduced into parliament by Nkrumah and the CPP government.[1055] The Special Court, as it was popularly known, had the power to impose the death sentence on people who were convicted of engaging in political offences. These included "offences taken from the country's Criminal Code and specified in the Act, as well as offences which would, from time to time, be specified by the President by legislative instrument."[1056] The specific offences included the following:

(a) conspiring or attempting to commit a specified offence,
(b) aiding or abetting the commission of a specified offence,

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[1050] Mr. Robert Benjamin Otchere was at a Member of the Parliament of Ghana at the time of his arrest and he belonged to the opposition political party, the United Party.
[1051] Mr. Joseph Yaw Manu was a former civil servant and a member of the United Party. It is said that at the time of his arrest, he was an employee of a foreign intelligence agency.
[1052] Amamoo, *Ghana*, 122-123; Fordwor, *The Danquahbusia Tradition*, 96-97;
[1053] See reason "Trial: The State versus Robert Benjamin Otchere, Joseph Yaw Manu, Tawia Adamafio, Ebenezer Ako Adjei and Hugh Horatio Cofie-Crabbe," Full text of opening address by Attorney-General at the High Court (Special Criminal Division) in Accra on 9 August 1963 for the facts of the case, as presented by the Attorney-General and the grounds upon which the five were charged. See also "Special Court Abolished: Treason Trial - Judgment is Nullified, two are free," *Daily Graphic*, Saturday 14 May 1966; "Ako Adjei and 7 Others to be Freed Today," *Daily Graphic*, Wednesday 7 September 1966.
[1054] It is commonly referred to as the Special Court.
[1055] See *The Criminal Procedure (Amendment) Act, 1961*; Kwadwo Afari-Gyan, "On the Constitutionality of Nkrumah's Special Court," in *Research Review* Vol. 6 No. 2 1990, 45-51; Fordwor, *The Danquahbusia Tradition*, 96-97; David Owusu-Ansah, *Historical Dictionary of Ghana* (4th ed) (Maryland: Rowman & Littlefield, 2014), iv; Rooney, *Kwame Nkrumah*, 138.
[1056] *The Special Criminal Division (Specified Offences) Instrument, 1963* (Accra: Government Printing Press, 25 January 1963). See also *The Criminal Procedure (Amendment) Act, 1961*.

(c) harbouring a person who has committed a specified offence.[1057]

The court was composed of three judges (a chairman and two other judges) who were appointed by the President and it could convict accused persons by a majority decision. The verdict of the court was not subject to appeal.[1058] According to the Interior Minister, Mr. Kwaku Boateng, the "denial of the right of appeal to convicted persons was to emphasise how gravely the Government viewed the conspiracies of these subversion elements."[1059] The court's decision was only subject to the president's prerogative of mercy. The Act which established the court stipulated that, offenders were to be brought before the court by the Attorney-General who was also given the power to transfer cases from other courts to the Special Court.[1060]

The Special Court was, ostensibly, set up to try offences against the state at the discretion of the President. Mensah-Bonsu *et.al.* argue that the court was established to try political offences such as treason, sedition and other offences against the peace of the country.[1061] This was done a few months after the government successfully suppressed a strike action organized by the railway workers union in 1961 because the industrial action "…paralyzed the transpiration system… [and] hit the nerve-center of the

[1057] "The State versus Robert Benjamin Otchere;" *The Special Criminal Division (Specified Offences).*
[1058] *The Special Criminal Division (Specified Offences).* See also *The Criminal Procedure (Amendment) Act, 1961*. See also Henrietta J.A.N. Mensah-Bonsu, "Political Crimes in the Political History of Ghana: 1948-1993," in Henrietta J.A.N. Mensah-Bonsu, Christine Dowuona-Hammond, Kwadwo Appiagei-Atua, Nii Josiah Aryeh and Ama Fowa Hammond, G*hana Law Since Independence: History, Development, and Prospects*, (Accra: Black Mask Ltd., 2007), 259; Fordwor, *The Danquahbusia Tradition*, 97; Afari-Gyan, "On the Constitutionality, 45; Mensah-Bonsu *et.al.*, G*hana Law*, 160.
[1059] Mensah-Bonsu *et.al.*, G*hana Law*, 160.
[1060] *The Special Criminal Division Regulations, 1963. L.I. 244*; *The Criminal Procedure (Amendment) Act, 1961*.
[1061] Mensah-Bonsu *et.al.*, G*hana Law*, 259.

economy."[1062] The leaders of the striking workers were, subsequently, arrested and detained under the P.D.A. The C.P.P. members of the National Assembly who supported the establishment of the court argued that such a court would expedite the trial process and eliminate technicalities in the law.[1063] It was further argued that there was the need to "cease to rely on ancient and archaic [court] procedures [and hence the need to establish the Special Court which sought] to design a procedure for the effective, speedy and expeditious trial of criminals."[1064] Paradoxically, Mr. Tawia Adamafio, who was the Minister of Information and Broadcasting at the time also argued in favour of the establishment of the court before which he would be tried a year later. He argued that:

> We know that people in this country sometimes believe that because there are technicalities in the law, they can do whatever they like and go free…. In the courts we do not get justice, we get law. It is justice we want and that is what is going to be created.[1065]

His comments highlighted the deficiencies in the judicial system in the country at the time. It showed that the courts at the beginning of the 1960s were not popular with the people because, as he put it, "…in the courts we do not get justice, we get law."[1066] Responding to a complaint that the denial of the right of appeal of the decision of the court was an erosion of the rights of the citizenry, the Interior and Local Government Minister assuaged the fears of those who foresaw a blatant infringement of their rights by the operation of such as court. He stated that:

[1062] Mensah-Bonsu *et.al.*, *Ghana Law*, 259.
[1063] Afari-Gyan, "On the Constitutionality, 46
[1064] *Ibid*.
[1065] *Ibid*, 46.
[1066] *Ibid*.

> But who is here that believes that our Government, presided over by Kwame Nkrumah who is so constitutional in all his deeds; so wise and kind as he has always been, representing at this moment, the great Party, the Convention Peoples' Party which is established in the cause of African Independence and freedom, could create a system of Court offensive to our motto: "Freedom and Justice" what can be more monstrous than that we dedicated to the cause of freedom could establish a court to fritter away the civil liberties of the subjects of this Republic? It is my contention Sir, that anybody who makes a statement to cast a shadow of doubt on the meaning of the Bill should forever be considered the most insidious enemy of our country.[1067]

Notwithstanding the seemingly reassuring words of the Interior and Local Government Minister, members of the parliament who opposed the establishment of the Special Court argued that the "bill sought to empower the President to specify offences by legislative instrument, [something] empowering him to create new criminal offences."[1068] A strong opponent of the bill, K. A. Gbedemah,[1069] argued that just like the P.D.A. which was passed in good faith and yet was abused as an "instrument of terrorism by which many people had been jailed,"[1070] the Special Court risked being used as a similar instrument by which "we may be pulled out of bed to face the firing squad after a summary trial and conviction."[1071] He indicated on the floor of the House that:

> In 1958, this House in order to ensure that the hard-won freedom of the people of this country should be safeguarded, in all sincerity, passed the Preventive Detention Act so that those who would by revolt and not through the ballot box overthrow the Government might be prevented from doing so…what do we find in the application of the Act? How many people are languishing

[1067] Mensah-Bonsu *et.al., Ghana Law,* 260.
[1068] Afari-Gyan, "On the Constitutionality, 46.
[1069] Even though K. A. Gbedemah was once a close confidant of Dr. Kwame Nkrumah and a leading member of the CPP from the late 1940s, he had fallen out with his former friend, the President, and had, thus, been relieved of his ministerial position in the C.P.P.
[1070] Afari-Gyan, "On the Constitutionality, 46.
[1071] *Ibid*.

> in jail today? … We passed the Bill in all sincerity to prevent saboteurs and revolutionaries from over-throwing the Government. It has become today an instrument of terrorism…. Today, we are being asked to pass another Bill which on the surface of it, reading the sections one after the other, it is justifiable in preventing people from violently overthrowing the Government. We are being asked to give authority for the creation of a special court – special court to be presided over by three judges who may be specially appointed for the purpose…. Why must we set up a special court? These are things we heard of in far distant lands. Little did we dream that in Ghana we would be setting up special courts.[1072]

Gbedemah identified some aspects of the draft bill that made it potentially risky to establish such as court. His major concerns with the Bill included the following:

i. the fact that the judges were to be specially appointed;
ii. that the opinion of two of them was sufficient "to send anyone before the firing squad:"
iii. that if there were a dissenting opinion, that it was not to be disclosed; that there was to be no appeal from the verdict of the court to a superior court; that there could be no appeal, even to the President;
iv. the absence of the right to counsel; and
v. the denial of a jury trial as required for other capital offences.[1073]

Gbedemah appealed against the passage of the bill in its current state. He explained that:

> Today, there are many people whose hearts are filled with fear - fear even to express their convictions. When we pass this Bill...the low flickering flames of freedom will be extinguished forever. We may be pulled out of bed to face the firing squad after a summary trial and conviction. There is no appeal and Hon. Members of the Parliament of Ghana are being asked to pass this bill into law. To-day [sic] we may think that all is well. It is not my turn, it is my brother's turn, but your turn will come sooner

[1072] Mensah-Bonsu *et.al.*, *Ghana Law*, 260-161.
[1073] *Ibid*, 161.

> than later. It will be better for hon. [sic] members to assert the supremacy of Parliament, the sovereignty of Parliament, and ask for the withdrawal of the Bill.[1074]

The pleas by Gbedemah, however, did not yield the result that he desired. Instead, some of his colleagues and members of the National Assembly from the C.P.P. verbally attacked him. The Bill was subsequently presented to the legislature under a certificate of urgency in October 1961. The Minister for Justice then presented justification for the establishment of the court. He argued that:

> Times change and Ghana must change with them: and with these changes must come modifications in the existing legal system. Whether it be civil or criminal ... recent events in the country have clearly demonstrated that prompt and vigorous action on the part of the Government is needed to defeat the machinations of certain subversive elements who since independence have been trying to effect a violent overthrow the lawfully constituted Government. The Government cannot look on unconcerned while these conspirators are working to throw the country into confusion and anarchy. In view of the gravity with which the Government views the conspiracies of these subversive elements there shall be no appeal from the decisions of the proposed Special Division of the High Court.[1075]

Later events will suggest that the Special Court might have been established for other reasons (such as what Gbedemah hoped that it would not be used for) instead of what its proponents and supporters indicated were the reasons for its creation. Afari-Gyan postulates that "…the Special Court was being set up to try what may be described as 'offences against the President.'"[1076] He further

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[1074] Mensah-Bonsu *et.al.*, *Ghana Law*, 161.
[1075] *Ibid*, 262.
[1076] *Ibid*. C.P.P. members of the National Assembly who participated in the debate on the bill focused on the need to protect the president with the passage of the bill. Mr. Kofi Baako, for instance, argued that "The Government is not the President but he is the rock on which the Government is built. The President is the Head of the Party, that is, the rock on which the government is built. He forms the Government and his spirit runs through the Government." See *The Criminal Code (Amendment) Act, 1961*. The Deputy Minister of Defence, Mr. W.K. Aduhene also argued that "Kwame Nkrumah is associated with this State as Jesus Christ is with Christianity." See also *The Criminal Code (Amendment) Act, 1961*. On his part, Mr. Kwaku Boateng argued that "Osagyefo Dr. Kwame Nkrumah…by his own lofty deeds and

explained that "by 1961, the government was heading towards a crisis of legitimacy. The country was facing serious economic problems, and the accompanying hardship gave rise to widespread discontent and a pronounced tendency towards strike action…. In these circumstances, the Special Court was no doubt conceived as a handy weapon to deal speedily with any form of dissidence."[1077] This position by Afari-Gyan seemed to have been confirmed by Mr. Kofi Baako who indicated during the debate of the bill that "the Special Court was intended to deal only with cases that were special that they (had) to be dealt with expeditiously by [a] special procedure."[1078] It was, therefore, not surprising that the five accused were arraigned before the Special Court, which was a division of the High Court, for trial. The successful establishment of the Special Criminal Division of the High Court, albeit done legally through parliamentary approval, was an encroachment on the independence of the judiciary by the executive arm of the state since the President had unfettered control over that court – including the powers to set aside decisions of the court. The subtle fusion of judicial and executive powers in one person, the President, was worse than the situation that existed during the colonial era when, even though the two arms were separate, members of the judiciary were also members of the legislature and even the executive. This situation was vehemently challenged by the nationalists who eventually gained independence for the country and even their forbears who challenged the status quo centuries before them.

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achievements has provided a real justification for this Amendment. There is positive evidence that everywhere in this country and elsewhere Osagyefo the President is acclaimed the hero…. Does this not stand to reason, therefore, that any act by any unscrupulous person to bring his honour and dignity into contempt and ridicule should be made an offence?" See *The Criminal Code (Amendment) Act, 1961*.

[1077] Afari-Gyan, "On the Constitutionality, 48.

[1078] *Ibid*.

It was almost certain that the outcome of the treason trial was already known to the President, members of the C.P.P. government and their teeming supporters/sympathisers who were incensed by the attempt to assassinate the President who was also the leader of their party. Their expectation was for the court to arrive at a guilty verdict and nothing less.[1079] Rooney posits that the government created strong feelings around the trial by using the "government-press and the usual coterie of sycophants,"[1080] and hence the announcement of a "guilty verdict was a foregone conclusion."[1081] Omari supports the claims by Rooney and indicates that the government used the press, before and during the trial, to push "inflammatory articles in open contempt of court."[1082] However, after fifty-one days of trial, the court presided over by Sir Justice Arku Korsah and consisting also of Justice W.B. Van Lare and Justice Edward Akufo Addo, came out with a verdict of "not guilty" for the three leading members of the C.P.P. – Mr. H. H. Cofie-Crabbe, Mr. Ebenezer Ako Adjei and Mr. Tawia Adamafio – on 9 December 1963. The court acquitted and discharged the three men of the charges of conspiracy to commit treason and treason.[1083] Mr. Robert Benjamin Otchere and Mr. Yaw Manu were, however, found guilty of the same charges and sentenced to death.[1084]

Dr. Nkrumah was outraged by the acquittal of his former colleagues because he had, apparently, been led to believe that the pieces of evidence

[1079] Jones, *Ghana's First Republic*, 138.
[1080] Rooney, *Kwame Nkrumah: The Political Kingdom*, 322.
[1081] *Ibid*.
[1082] Omari, *Kwame Nkrumah*, 97.
[1083] "Two to hang: Adamafio, Adjei, Crabbe Cleared," *Daily Graphic*, Tuesday, 10 December 1963; "I am Sorry – Manu," *Daily Graphic*, Tuesday, 10 December 1963. See also Omari, *Kwame Nkrumah*, 97; Rooney, *Kwame Nkrumah: The Political Kingdom*, 322; Gocking, *Ghana*, 136; Fordwor, *The Danquahbusia Tradition*, 97; Amamoo, *Ghana*, 122-123; Jones, *Ghana's First Republic*, 138; Austin, *Ghana Observed*, 87.
[1084] "Two to hang: Adamafio, Adjei, Crabbe Cleared," *Daily Graphic*, Tuesday, 10 December 1963; "I am Sorry – Manu," *Daily Graphic*, Tuesday, 10 December 1963. See also Omari, *Kwame Nkrumah*, 97; Fordwor, *The Danquahbusia Tradition*, 97.

against the accused were conclusive, and must necessarily result in a guilty verdict. Mensah-Bonsu *et. al.* posit that the absence of a right of appeal against the ruling of the Special Court, as stipulated by the Act that established the court, was based on the expectation that "there would be no acquittal"[1085] and that could have added to the disappointment of the president and his sympathisers of the verdict of the court. Amamoo suggests that the President "went on the state radio (the only one in Ghana then) and poured vituperative abuse on them [the judges] as agents and lackeys of the white colonialists, as being unpatriotic and enemies of the people."[1086] Two days after the verdict, the President, who was annoyed by the verdict of the court, dismissed the first Ghanaian Chief Justice of the country – Sir Justice Arku Korsah – and replaced him with Justice Julius Sarkodie Addo.

As if to validate his actions of dismissing the Chief Justice and also secure the future of his party and government, Kwame Nkrumah took steps to gain even more powers over the political system and, particularly, the judiciary, apart from the already extensive authority that he commanded under the 1960 Republican Constitution of Ghana. He, therefore, rushed a bill through parliament which gave the President the power, in the national interest, to set aside any judgment of the courts of the country through the National Assembly.[1087] In addition, a member of the ruling C.P.P. in the National Assembly, Mr. S.I. Iddrisu of Dagomba North, filed a private member's motion for Ghana to be made a one-party state.[1088] The motion was

[1085] Mensah-Bonsu *et.al.*, *Ghana Law*, 263.
[1086] Amamoo, *Ghana*, 123.
[1087] Rooney, *Kwame Nkrumah: The Political Kingdom*, 322; Fordwor, *The Danquahbusia Tradition*, 97.
[1088] "Parliament Meets next Tuesday: Make Osagyefo the Life President – MP," *Daily Graphic*, Thursday, 30 August 1962; "Osagyefo Refuses to be Life President," *Daily Graphic*,

adopted by the National Assembly[1089] and hence, in 1964, the C.P.P. government organized a referendum to determine "whether Ghana was to become a one-party state and whether the President should have the power to dismiss judges of the High Court at any time for reasons which appear[ed] to him sufficient."[1090] Even though the motion to turn the country into a one-party state was presented as a private member's motion, one would not be far from right to argue that Nkrumah and the C.P.P. might have had prior knowledge of the intentions of Mr. Iddrisu and supported the idea since Nkrumah had been an advocate for the adoption of the one-party state system in Africa and he did not mince words in communicating that idea whenever he had the opportunity.[1091] The President noted in his address to the National assembly that:

> …it is for this reason that the Western parliamentary system is being forsaken in Africa, and there is a growing tendency towards the establishment of one-party states, and rightfully so. Because of our egalitarian society, this development becomes natural and understandable.[1092]

He further argued that "the multi-party system which exists in Western countries is, in fact, a reflection of a social cleavage and the kind of class system which does not exist in Africa."[1093] Thus, it is probable that even though Nkrumah and the C.P.P. government preferred the introduction and

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Wednesday, 3 October 1962; Kofi Akordor, "Ghana after 49 Years," Daily Graphic, Monday March 6, 2006.

[1089] "Osagyefo Refuses to be Life President," *Daily Graphic*, Wednesday, 3 October 1962.

[1090] Austin, Politics in Ghana, 414-415. See also Government of Ghana Publication, *Referendum Order, 1963(L.I.329)*; Austin, *Ghana Observed*, 87; Boahen, *Ghana*, 211; Amenumey, *Ghana*, 229-230; Buah, *Ghana*, 185; Gocking, *Ghana*, 136; Danquah, *The Ghanaian Establishment*, 210-211; H.K. Akyeampong, *Ghana's Struggle for Democracy and Freedom* (Accra: Danquah Memorial Publishing Company Ltd), 97-99.

[1091] See last "Sessional Address delivered by Dr. Kwame Nkrumah at the Opening of Parliament" on 1 February 1966.

[1092] *Ibid*.

[1093] *Ibid*.

adoption of the one-party state system of government by the country, they chose to allow a private individual, Mr. S.I. Iddrisu, to introduce the motion for discussion in the National Assembly, seemingly to reduce the barrage of accusations that the opposition party levelled against the President as being autocratic and dictatorial.[1094] Amamoo opines that it was Nkrumah's "growing impatience at the frustrations and annoyances (sic) that he felt the minority political parties were putting him through"[1095] that made him organize a national referendum "to decide whether the country should be a One-Party state or not."[1096] The referendum on constitutional changes was held under Article 20 (2) of the 1960 constitution which gave the President the power to order a referendum to ascertain whether the citizens wished parliament to amend or repeal an entrenched section of the constitution. The outcome of the plebiscite was a resounding Yes[1097] vote in favour of amendments to the constitution.[1098] In 1964, Ghana became a one-party state, and the president was given additional powers to dismiss judges of the superior courts.[1099] Amamoo contends that "taking the results as a positive mandate[1100] to carry on

[1094] It is imperative to state that Dr. Kwame Nkrumah rejected the offer to be Life President when the National Assembly adopted another private member's motion to make Dr. Nkrumah president for life. The motion stood in the name of Mr. W.A. Amoro. See "Osagyefo Refuses to be Life President," *Daily Graphic*, Wednesday, 3 October 1962.
[1095] Amamoo, *Ghana*, 119.
[1096] *Ibid*. See also Akyeampong, *Ghana's Struggle,* 97-99.
[1097] The declared Yes votes were 2,605,682 (being 92.8% of votes cast) while the No votes were 2,452. See "Ghana Says 'Yes' to the President – Kwame: I thank the People," *Daily Graphic*, Monday 3 February 1964; "Referendum Results," *Daily Graphic*, Monday 3 February 1964; Boahen, Ghana, 211; Amenumey, *Ghana*, 290-230.
[1098] See "Ghana Says 'Yes' to the President – Kwame: I thank the People," *Daily Graphic*, Monday 3 February 1964; "Referendum Results," *Daily Graphic*, Monday 3 February 1964; Boahen, *Ghana*, 211; Amenumey, *Ghana*, 229-230.
[1099] "We enter One-Party State – Welbeck," *Daily Graphic*, Monday 3 February 1964.
[1100] This argument was seemed to have been supported by the Executive Secretary of the C.P.P., Mr. N.M. Welbeck when he indicated to an Italian sociologist, Dr. Danilo Dorch, on his visit to the C.P.P. national headquarters, that "…The recent nation-wide referendum…had demonstrated to the world that Osagyefo Dr. Kwame Nkrumah and the Party still commanded the entire loyalty and confidence of the people of Ghana." Mr. Welbeck further noted that "The party and Government were now moving all-out to bring the work and happiness

with his external and internal programmes, unimpeded, President Nkrumah… [tightened] the screws against those that he deemed, or was made to believe, were internal enemies, uncompromisingly opposed his policies."[1101]

Armed with the requisite legislative authority, Dr. Nkrumah annulled the decisions of the Special Court and declared the judgement in the case of *Ako Adjei and 7 Others* null and void.[1102] It must be noted that even though Act 91, which gave the President the power to annul the judgement of the court, was passed on 23 December 1963 its implementation was to take retrospective effect from 22 November 1961 when the Special Court became operational.[1103] The Act was later amended again to strip the Chief Justice of the power to constitute the court. Cofie-Crabbe, Ebenezer Ako Adjei and Adamafio and all the others were re-arraigned before a reconstituted Special Court on the same charges for re-trial.[1104] The reconstituted court, presided over by a new Chief Justice, Justice Sarkodie Addo, had 12 jurors, all of whom were members of the governing C.P.P.[1105] Omari indicates that Nkrumah was not the only person who was disappointed and infuriated by the verdict of the earlier court. He notes that the C.P.P. organized hundreds of protestors (mainly pro-C.P.P. groups or individuals) to storm the Supreme Court to express their disgust. He posits that:

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programme to reality. See "We enter One-Party State – Welbeck," *Daily Graphic*, Monday 3 February 1964.

[1101] Amamoo, *Ghana*, 119.

[1102] Rooney, *Kwame Nkrumah: The Political Kingdom*, 322; Gocking, *Ghana*, 136; Fordwor, *The Danquahbusia Tradition*, 97; Amamoo, *Ghana*, 122-123; Jones, *Ghana's First Republic*, 138.

[1103] Mensah-Bonsu et.al., G*hana Law*, 263.

[1104] Rooney, *Kwame Nkrumah: The Political Kingdom*, 322; Gocking, *Ghana*, 136; Fordwor, *The Danquahbusia Tradition*, 97; Amamoo, *Ghana*, 122-123; Jones, *Ghana's First Republic*, 138; Afrifa, *The Ghana Coup*, 141.

[1105] *Special Criminal Division (Amendment) Regulation, 1964. L.I.370*. See also Omari, *Kwame Nkrumah*, 99.

> Thousands of people marched, or were headed to the Supreme Court buildings in protest demonstrations against the verdict. The demonstrators included members of the Workers Brigade, Market Women's Organizations, Young Pioneers, Cooperative Societies… adult individuals and groups that could not truthfully say that they were being coerced to take part in such a display…[1106]

The attacks on the judicial arm of government also came from some senior members of government who took turns to verbally attack the courts or the person of the chief justice. Others also justified the seemingly, unpopular, reaction of the President to the verdict. According to the Attorney-General, the verdict was discriminatory since it appeared to him that the court only sought to acquit the three leading members of the C.P.P. and convict the other accused who were members of the opposition political party because the two had "no influential or important connection."[1107] In his attempt to explain and justify Nkrumah's actions, Ghana's High Commissioner to Nigeria, J. Owusu-Ansah, indicated that the Chief Justice should have informed the President before announcing the verdict of the court since that would enable the government to take the necessary precautions for the maintenance of law and order in the country.[1108] He noted that:

> The ex-Chief Justice… must have known that the judgment in the treason trial would be fraught with profound political consequences …this [failure to inform the President before the reading of the verdict] was a gross dereliction of duty which it would hardly have been in the national interest to gloss over…there is a special relationship between the office of the President and the Chief Justice. It is therefore necessary that the President should at no time have reason to doubt the political reliability of the Chief Justice.[1109]

[1106] Omari, *Kwame Nkrumah*, 98.
[1107] *Ibid*.
[1108] *Ibid*. see also Afrifa, *The Ghana Coup*, 128.
[1109] Omari, *Kwame Nkrumah,* 98. See also Mensah-Bonsu *et.al.*, *Ghana Law*, 263.

The position of the Ghana High Commissioner seemed to have been the position of government officials who made comments about the incident. The then Minister of Defence, Kofi Baako, indicated that:

> These special cases that are to be referred to this Special Division of the High Court are, by their very nature, cases in which the state is interested, directly interested, because they impinge upon the security of the state itself. Therefore, the judgments or verdict from these courts will invariably have political repercussions. It is for this reason that everything that the Government can do to ensure that the security of the state shall not be impaired or weakened by a decision of a special court, should be done. And that is what we are doing now.[1110]

Attacks on the justices also came from sections of the state-controlled newspapers - *The Evening News* and *The Ghanaian Times.* Both published editorials and articles which condemned the justices who presided over the case. The publications also sought to impugn the independence and integrity of the justices of the court. Some newspapers even called for the resignation of the judges, stating that they could not be trusted to be impartial and independent on the Supreme Court's Bench. It was, therefore, not surprising that all three justices retired, prematurely, from the Supreme Court bench.[1111]

Afrifa suggests that the re-trial was not fairly done by the court because the five men did not have defence representation. He indicated that "at the outset of the re-trail, four of the five defendants complained that they had been unable to obtain counsel to represent them, while the fifth stated that he had no means to employ a lawyer"[1112] and yet despite the lack of representation, the trial process proceeded.[1113] The lack of defence counsel for the accused,

[1110] *Report of the National Reconciliation Commission, Vol 4* Chapter 2, 2005, 87.
[1111] Omari, *Kwame Nkrumah*, 99.
[1112] *The Ghana Coup*, 142.
[1113] *Ibid*.

therefore, caused the scale of justice to tilt against them. Subsequently, all five men were found guilty by the Special Criminal Division of the High Court. The guilty verdict was arrived at by a jury[1114] and the five men were condemned to death.[1115] It was not surprising that the 12-member jury, were all members of the C.P.P., who would have been sympathetic to the cause of the President and the CPP government, and to have returned a unanimous verdict after they had retired for about 50 minutes. This was in addition to the fact that the "NOT GUILTY" verdict which was arrived at by the previous court was totally rejected by the President and hence necessitated the reconstitution of the court to try the matter for the second time. It would be odd for this new court to have gone the way of its predecessor. It can also be argued that for fear of losing his position just as his immediate past predecessor had, the new Chief Justice was not inclined to set the accused free for fear of incurring the displeasure of the President. Either of the above-stated considerations, that could have been made by the newly constituted court during the trial and the final determination of the fate of the accused, did not promote the independence of the judiciary and certainly did not promote the freedom and effectiveness of that arm of government.

The President, satisfied with the verdict, later commuted the sentences to 20 years imprisonment.[1116] Nkrumah informed the National Assembly that his decision to commute the sentence was carefully thought through and it was an expression of "our [the government's] confidence in our people and our respect for life that we do not stoop to emulate the imperialists, neo-

[1114] It was not out of place for the 12-member jury, who were all selected members of the C.P.P., to have returned a unanimous verdict after had retired for about 50 minutes.
[1115] "5 to die for Treason," *Daily Graphic*, Tuesday, 9 February 1965. See also Omari, *Kwame Nkrumah*, 99.
[1116] "10 won't be killed," *Daily Graphic*, Saturday, 27 March 1965.

colonialists and their agents, or those traitors who have served them."[1117] Omari postulates that President Nkrumah commuted the death sentences to twenty years' imprisonment after "having satisfied his vanity by showing where power lay."[1118]

The 1966 Coup D'état

President Nkrumah and his C.P.P. government were overthrown in a coup d'état[1119] on 24 February 1966, ending his leadership of the country from 1951.[1120] Nkrumah was in Vietnam on a peace mission when his government was toppled by a group of police and military officers. Leaders of the post-coup military government, the National Liberation Council (N.L.C.), accused Nkrumah and his government of numerous violations, including the alleged depletion of the country's foreign reserves, mismanagement of the economy,[1121] the abuse of the fundamental rights of the citizenry by some leading members of the C.P.P. government and the claim that Nkrumah had

[1117] "10 won't be killed," *Daily Graphic*, Saturday, 27 March 1965.
[1118] Omari, *Kwame Nkrumah*, 99.
[1119] It is worth indicating that even though the 1966 coup d'état in Ghana was the first in the country, it was not the first on the continent. Quite a number of newly independent African nations suffered forceful overthrow of their governments in the 1960s. Countries such as Togo (in 1963), Benin (in 1964) Algeria (in 1965) the Congo (in 1965), and Nigeria (in January 1966) all witnessed forceful and, in some instances, violent coups d'états. Thus, it was not surprising that the military and police men and officers in Ghana decided to follow what seemed to have become the established pattern on the continent in the early 1960s. The trend continued after the Ghana coup and by the end of 1970, there were a total number of thirty major coups d'état. See W.F. Gutteridge, *Military Regimes in Africa* (London: Methuen & Co. Ltd., 1975), 1.
[1120] "Kwame's Myth is Broken," *Daily Graphic*, Friday 25 February 1966; "All is Quiet," *Daily Graphic*, Friday 25 February 1966; "Army Takes Over Govt," *Daily Graphic*, Friday 25 February 1966; Afrifa, *The Ghana Coup*, 31-43; Robert Pinkney, *Ghana Under Military Rule; The Rebirth of Ghana*, 1-5; Aidoo, *Ghana*, 4-5. See also Boahen, *Ghana*, 222-226; Buah, *Ghana*, 189-193; Amenumey, *Ghana*, 236-238; Fordwor, *The Danquahbusia Tradition*, 101-106; Gutteridge, *Military Regimes*, 60.
[1121] Nkrumah denied all the accusations against him by members of the opposition and the military regime that was established after his overthrow. He argued that the "fabrication of the 'big lie' is essential on the planning of any usurpation of political power…and in the case of Ghana, that big lie told to the world …to form the basis for an all-out character assassination attempt. But these lies were … to provide an umbrella excuse for the seizure of power by neo-colonialist inspired traitors." See Nkrumah, *Dark Days* 83-122.

become a dictator.[1122] In a television and radio broadcast to the nation, a leading member[1123] of the coup d'état who later became a Head of State[1124] under the N.L.C. government, Major A.A. Afrifa, provided the rationale for the overthrow of the C.P.P. government as follows:

> When we overthrew the C.P.P. regime on the 24th of February 1966, our dear country had fallen into a sad state. Many Ghanaians languished in jails; some never returned to their homes and many had to seek refuge in exile. There was no freedom, there was no justice; the very foundations of our independence were undermined. The economy had been crippled by extravagance and corruption, and Ghanaians had been reduced to a state of languished desire. Our decision to wipe out tyranny, injustice and corruption by force of arms was a painful one. But it had to be taken and resolutely carried out because all other avenues were closed and it was the only means by which the people of Ghana could be rescued from their suffering, their sorrow and humiliation and desire. It had to be taken in the belief that the welfare of the nation was and will always be worth fighting for and dying for if the need be."[1125]

The N.L.C. also dismissed all Nkrumah's ministers and disbanded the C.P.P. The 1960 Constitution of the country was suspended and the National

[1122] See "Nkrumah Amassed ¢5.5M – Apaloo Report," *Daily Graphic*, Monday 16 January 1967; "The Fall of a Satan," *Daily Graphic*, Monday 11 March 1966; "We'll Try Nkrumah if…," *Daily Graphic*, Tuesday 3 March 1966; "Ghana free from Oppression," *Daily Graphic*, Monday, 3 March 1966; "£1,500 Car for Kankan Nyame," *Daily Graphic*, Thursday 31 March 1966; "Financial situation is serious," *Daily Graphic*, Thursday, 7 April 1966; "Apaloo Orders Legal Action against Nkrumah's girl: £12,758 is written off…," *Daily Graphic*, Wednesday 20 April 1966.

[1123] The members of the NLC included General J.A. Ankrah as Chairman and Mr. J.W.K. Harlley as Vice-Chairman. The rest were Col. A.A. Afrifa, Mr. B.A. Yakubu, Brigadier A.K. Ocran, Major-General E.K. Kotoka, Mr. A.K. Deku and Mr. J.E.O. Nunoo.

[1124] Brigadier A.A. Afrifa became head of the NLC junta on Wednesday 2 April 1969 after Lt. Gen. J.A. Ankrah resigned. See Dan Tetteh, "Afrifa now Heads NLC: Gen. Ankrah Steps Down," *Daily Graphic*, Thursday 3 April 1969.

[1125] "Radio and TV broadcast by Brigadier A.A. Afrifa, Chairman of the NLC," on 30 September 1969. See also "Kotoka, Afrifa and Harlley tell How and Why the Coup was Staged," *Ghana Pictorial*, Vol. IV No. 15, 1967.

Assembly was also dissolved.[1126] Despite the suspension of the constitution together with the dissolution of the C.P.P. and the National Assembly, the Establishment Proclamation of the N.L.C. maintained the existing courts of the country. The Proclamation stated that:

> Notwithstanding the suspension of the Constitution of the Republic of Ghana and subject to any decree that may be made by the National Liberation Council, all courts in existence immediately before the 24th day of February, 1966 shall, on and after that date, continue in existence with the same powers as they had immediately before the said date and also, all Judges and every other person holding any office or post in the Judicial Service immediately before the 24th day of February, 1966 shall on and after the said date continue in that office or post upon the same terms and conditions as before that date and shall discharge the same functions as were prescribed in relation to that office or post under any enactment immediately before the said date.[1127]

The fact that the N.L.C. regime overthrew Nkrumah's CPP government, dissolved the National Assembly and the C.P.P., abolished the 1960 republican constitution and yet maintained the judiciary in its form and personnel emphasizes the importance and sheer indispensability of that arm of government. The N.L.C. and the other military regimes that followed kept the judiciary and its structures,[1128] possibly, because dissolving the judiciary could result in grave negative consequences for the country. One of such would be a possible state of anarchy that the country would be thrown into as there would

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[1126] "Proclamation for the Constitution of a National Liberation Council for the Administration of Ghana and for other Matters Connected Therewith," culled from *Ghana* by Agnes Akosua Aidoo, 16.

[1127] *Ibid*. See also *The Rebirth of Ghana*, 2-3;

[1128] Albeit some of the juntas that came to power after the N.L.C. established additional quasi-judicial institutions, such as military tribunals, in the country to try political opponents. There were also instances where the traditional judiciary, as an institution, or some of its members (e.g., judges) were verbally or physically attacked by operatives of the military governments for the performance of their duties. See Oquaye, *Politics in Ghana, 1982-1992*, 127, 366-443; George Agyekum, *The Judges' Murder Trial of 1983* (Accra: Justice Trust Publications, 1999); Chris Asher, *Kidnap & Murder of the Judges & Rtd. Army Major: Rawlings & Kojo Tsikata Ordered Killings* (Accra: B. Co, 2003); Kevin Shillington, *Ghana and the Rawlings Factor* (London: Macmillan, 1991), 140-141.

be no courts to adjudicate conflicts that could ensue between individuals and or institutions. Another possible case of lawlessness could result from the abrupt termination of thousands of litigations that may be at different stages of hearing before the many courts located across the country and that may not help the state of security and safety of the country. While any military regime could have had enough personnel to perform the executive and legislative functions of government, it would be almost impossible for them to establish enough courts with personnel to hear all the cases in different parts of the country. For this reason, the judiciary was the only arm of government that survived the first military takeover in Ghana lived on into the birth of the Second Republic in 1969.

The forceful military takeover in 1966 seemed to have enjoyed popular support amongst people from all walks of life and in every part of the country. The media reported widespread jubilation over the overthrow of President Nkrumah.[1129] The jubilation was, ostensibly, for the end of an unpleasant era under the C.P.P government and the birth of a new dawn. The NLC, thus, took advantage of the favourable reception that they received from Ghanaians and began to rescind some of the policies of the previous regime which the people detested. The reforms that the N.L.C. undertook included the freeing of supposed political detainees,[1130] the "re-enstooling" of deposed chiefs[1131] and the sacking of what was described as "Nkrumah chiefs."[1132] The N.L.C. also repealed the dreaded P.D.A.[1133]

[1129] "They are full of joy," *Daily Graphic*, Saturday, 26 February 1966; "T.U.C praises new regime," *Daily Graphic*, Wednesday, 2 March 1966
[1130] "Detainees – 450 more free," *Daily Graphic*, Saturday, 26 February 1966.
[1131] "Ex-Chief to be Re-enstooled," *Daily Graphic*, Wednesday, 16 April 1966.
[1132] "133 Nkrumah Chiefs Sacked," *Daily Graphic*, Tuesday, 6 December 1966.
[1133] "P.D.A. Repealed," *Daily Graphic*, Wednesday, 16 April 1966.

The N.L.C. nullified the conviction of the ten men who were found guilty of treason and condemned to death by the Special Court. The men were, subsequently, freed from prison.[1134] The regime also abolished the Special Criminal Division of the High Court since its existence and operations were considered to be inconsistent with the principle of the freedom and independence of the judiciary from control from the executive or any other person/institution.[1135] All the above were done by the N.L.C. in an attempt to restore the freedom of the judiciary and also guarantee the tenure of judges. The military government further amended the Judicial Service Act and rejuvenated the Judicial Service Commission which was dissolved in 1959.[1136]

The N.L.C. undertook many reforms and introduced policies that were aimed at setting the nation back on the path of civilian rule.[1137] In a New Year's Eve Broadcast to the nation, Lt. General J.A. Ankrah indicated that:

> The National Liberation Council has made no secret of its intention to hand over to a civilian government as soon as practicable. In accordance with the intension (sic), the Council has, within the last few months taken definite steps towards a return to civilian rule….[1138]

An important step in the processes leading to the return to civilian rule was the drafting and promulgation of a new constitution, the 1969

[1134] "Ako Adjei and 7 Others to be Freed Today," *Daily Graphic*, Wednesday 7 September 1966; "Special Court Abolished: Treason Trial - Judgment is Nullified, two are free," *Daily Graphic*, Saturday 14 May 1966.
[1135] "Special Court Abolished: Treason Trial Judgment Nullified - two are free," *Daily Graphic*, Saturday, 14 May 1966; "Ako Adjei and 7 Others to be Freed Today," *Daily Graphic*, Wednesday 7 September 7, 1966.
[1136] See Clause 6 & 7 of the "Memorandum on Constitutional (Amendment) Bill." See also *Constitution (Amendment) Bill, 1959*.
[1137] Pamidy Amoah, "Time to Think of Civilian Rule: Saya Brigadier Afrifa," *Daily Graphic*, Tuesday, 24 October 1967; Pamidy Amoah, "Fix Date for Civil Rule," *Daily Graphic*, Wednesday, 8 November 1967; Boakye Ofori Atta, "Return to Civil Rule: Acceptable Constitution first – Ankrah," *Daily Graphic*, Saturday, 11 November 1967; Willie Halm, "NLC Regime to End Soon – Afrifa," *Daily Graphic*, Saturday, 9 December 1967; Elizabeth Ohene, "Special Opinion Poll: Majority want Civil Rule by 1970," *Daily Graphic*, Saturday, 9 December 1967; "Civilian Rule Date is Fixed," *Daily Graphic*, Thursday, 23 May 1968.
[1138] See New Year's Eve Broadcast by Lt. Gen. J.A. Ankrah, Chairman of the NLC on 31 December 1966. Culled from Ziorklui, *Ghana*, 155-156.

Constitution,[1139] which paved the way for political parties to be formed and elections[1140] conducted on 29 August 1969.[1141] The Progress Party (P.P.) with its leader, Dr. K.A. Busia, won a majority (105) of the seats in the legislature and thus had the mandate to form the next civilian government of the country.[1142] The N.L.C., subsequently, handed over power on 1 October 1969 and the P.P. formed the new civilian government, accordingly, ushering the county into the Second Republic.[1143]

Conclusion

The structure of the judiciary/courts after independence did not witness any significant change. The country continued to work with the dual judicial system whereby Local Courts existed side-by-side with the British-style courts with each having specific jurisdictions over the kinds of issues that it could adjudicate. New laws on the existence, structure and operations of the courts were enacted between 1957 and 1966 while existing laws were amended to define, redefine and regulate the activities of the courts of the country. Steps were also taken to make the judiciary more accessible to the many people who needed their services. Consequently, more High Courts were established in many more places in the country, especially the places where there were none. Existing courts were given some facelift with the renovation or expansion of

[1139] See *Constitution (Consequential and Transitional Provision) Decree, 1969, NLCD 406*. See also Eben Quarcoo, "Ghana's New Constitution Comes into Force," *Daily Graphic*, Saturday, 23 August 1969. For proposals for executive and judicial reforms made by the Ghana Aborigines Rights Protection Society to a Constitutional Commission to the NLC in 1966, see PRAAD, Cape Coast, RG1/13/6. Ghana Aborigines Rights Protection Society, 1948-1968.

[1140] See Elections and Public Offices Disqualification Decree, 1969. Culled from Ziorklui, *Ghana*, 207215.

[1141] Peregrino-Peters, "Election Date Fixed: Voting on August 29," *Daily Graphic*, Wednesday, 25 June 1969.

[1142] "Landslide Victory for Progress Party: 8 Undeclared Results," *Daily Graphic*, Monday, 23 August 1969.

[1143] Eben Quarcoo, "Busia Sworn in As New Premier," *Daily Graphic*, Thursday, 4 September 1969; "Busia Picks his Team," *Daily Graphic*, Monday, 8 September 1969.

old court houses and the construction of residential facilities for judges and staff of the judicial service. Even many more Local Courts were established in remote parts of the country far from the cities that had High Courts. In addition, the post-colonial judiciary of Ghana withdrew from the West African Court of Appeal, to which it had belonged for decades, and stopped appeals from going before the Privy Council in London, which was a colonial construct. The Supreme Court of Ghana was, therefore, established as the final court of adjudicature in the country. The court structure that was established by the 1960 constitution became, basically, the structure by which later constitutions of Ghana modelled the judiciary, of course, with few revisions.

The relationship between the judiciary and the two other arms of government – the executive and legislature – between 1957 and 1966 could be described as hostile. Nkrumah and his C.P.P. controlled both the executive and legislative arms of government and they tended to fend off any form of opposition to the government, party or the person of Nkrumah. Consequently, they passed some repressive laws and, occasionally, used force to fight the activities of dissenting views from people who were described by Nkrumah as neo-colonialist agents and saboteurs. The President and sympathisers of the C.P.P. government argued that government's highhandedness was justified since "the state must be protected and the regime defended against forces seeking to undermine the independence of the country."[1144] The government, occasionally, relied on the judiciary to be able to, effectively, confront the operations of its adversaries. The relationship between the government and the judiciary was cordial in so far as the actions of the latter favoured the former.

[1144] Sackey, *Ghana*, 88.

Hence, people were arrested and kept in jail for long periods because there were laws that enabled the government to do so and the judiciary interpreted those laws to suit the government's agenda. And for as long as that symbiosis existed, there was no problem.

But this friendly relationship sometimes degenerated into a hostile one when the judiciary acted in ways that the government or the President considered not to be in their interest. Consequently, the institution of the judiciary or individual officers of the courts – justices or judges – incurred the wrath of the president/government. The outcome of this unfriendly relationship was mainly the dismissal or transfer of certain individuals of the judiciary. The judiciary could, therefore, not be said to be independent in the period under review in this chapter. It is, however, important to note that the seeming interference in the independence of the judiciary by the government or its designated officers between 1957 and 1966 was mainly done within the laws of the land and so did not seem unconstitutional on the face of it. All that the government needed to do was to ensure that its overwhelming majority members in the National Assembly passed bills that the government or sympathisers of the government/president introduced to the parliament. Most of those bills empowered the president far beyond the provisions of the 1957 Constitution, and later, the 1960 Constitution, and armed with those laws, the president/government could, legally, inhibit the independence of the judiciary. The judiciary then could be described as "a toothless bulldog" but one should be cognisant that it was one of the arms of government that was mostly bullied by members of the executive and legislature when strong governments wanted to get their way in Ghana.

CHAPTER SEVEN

CONCLUSION

The people of what will later become known as the Gold Coast, and then much later, Ghana, had well-structured societies with specific social, economic and political systems. The political structure that existed before the arrival of Europeans from the fifteenth century (from 1471), and which might have been expanded with the European presence were mainly in three forms – centralized, non-centralised and theocratic state systems. They either organized themselves into political systems that were an amalgamation of several individual states into one unit under a chief or a king;[1145] several different states which were independent of each other but were also under the leadership of political figures;[1146] or the organization of communities under the control of spiritual heads. There were still other societies that were organized in small clan units under clan heads instead of a political or spiritual authority.[1147] Hence, there were states such as the Asante, Denkyira, Wassa, Assin, Akyem, Akwamu, the Dagomba and the Mossi states. Others included the Guan, the Ga, Adangbe and Ewe states.

All the forms of polities that existed in pre-European Ghana and beyond had developed systems of settling disputes and conflicts. The systems were established to settle disputes in order to ensure that wrong doers in the

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[1145] Boahen, *Ghana*, 7-27; Amenumey, *Ghana*, 1-81; Buah, *Ghana*, 1-42; A.A. Boahen, J.F. Ade Ajayi and Michael Tidy, *Topics in West African History* (2nd Ed.) (England: Longman Group U.K. Limited, 1986), 54-62; Affrifah, *Akyem Factor*, 1-18; Stride and Ifeka, *Peoples and Empires*, 253-273; J.F.A., Ajayi and Michael, Crowder (eds), *History of West Africa* (London: Longman Group Limited, 1971), 344-386.

[1146] Kodzo Gavua (ed), *A Handbook of Eweland: The Northern Ewes in Ghana*, Vol. II (Accra: Woeli Publishing Services, 2000), 59-69; D.E.K. Amenumey, *The Ewe in Pre-Colonial Times: A Political History with Special Emphasis on the Anlo, Ge and Krepi* (Accra: Sedco Publishing Limited, 1986), 1-20. See also Boahen, *Ghana*, 7-27; Amenumey, *Ghana*, 1-81; Buah, *Ghana*, 1-42.

[1147] See also Boahen, *Ghana*, 7-27; Amenumey, *Ghana*, 1-81; Buah, *Ghana*, 1-42.

community were punished and the vulnerable were protected. The overriding aim of the establishment of such local judicial systems was to promote peaceful coexistence in communities. The heads of the local court systems were usually clan/family heads, chief priests of communities, chiefs or kings of the states. There were properly laid out structures to ensure that justice was served for all parties in litigation and the courts operated, mainly, under the customs and traditions of the societies involved.

The coming of Europeans with its attendant consequences on the existing socio-economic and political lives of the people of Ghana was accompanied by the introduction of a new (British) judicial system which was imposed on the local people. The Europeans, particularly, the British, who remained longer after all others had left, claimed to have introduced their judicial systems for two main reasons. The first reason was to ensure nonviolent coexistence amongst the local people in order to promote trade and missionary activities in the territory. The second reason was to replace what they considered to be an ineffective and "corrupt" judicial system of the local people. Consequently, British officials such as George Maclean and Commander Hill, either legally or illegally, interfered in local politics and judicial systems in their attempt to introduce the British court system into the Gold Coast. The activities of those two officials, and the many others who came after them, received different responses at different times from the chiefs and people of the land. Whereas some chiefs on the coast, initially welcomed British jurisdiction over criminal and serious crimes which informed their signing of the famous Bond of 1844 with the British, other chiefs, also on the coast or elsewhere in the territory, vehemently opposed the operation of

British courts in their domain, particularly, when the existence and activities of such courts tended to contend with and undermine the chiefs' courts and even threaten the existence of the latter.[1148]

The battle lines were, thus, drawn and hence there were protracted protests, both verbal and physical, from some chiefs and their people in various parts of the Colony, and later, Ashanti, against what was considered to be the usurpation of the judicial powers of the traditional rulers by the British officials. Some of the chiefs even sent deputations to England to strongly register their displeasure against the operations of British courts. Many of the chiefs who challenged the legitimacy and jurisdiction of the British courts were arrested, imprisoned, fined or even deported for their defiance. While the British authorities and some locals regarded the local/chiefs' courts as being ineffective and corrupt, the protesting chiefs and people considered the British courts to be illegal and incompetent since the judges/judicial assessors were not knowledgeable in the traditions and cultures of the local people and so they could not properly manage the administration of justice. The struggle for survival of the two court systems continued for decades, largely to the disadvantage of local courts and their continued survival, but this eventually gave way for the co-existence of the two types of courts. The jurisdictions of the two types of courts were delineated and they heard cases from different groups of people in the Gold Coast. While the British courts heard cases involving serious crimes (e.g., murder, human sacrifices and panyarring) and cases that involved British, foreigners, and in some cases, local people who

[1148] Kimble, *A Political History*, 215-220; Boahen, *Ghana*, 46-48. See also "Letter from King Aggrey to Governor R. Pine," 16 March 1865, in Metcalfe, *Great Britain and Ghana*, 308; "Dispatch from Governor Pine to Right Honourable Edward Cardwell", 7 April 1865, in *Parliamentary Papers*, 355-456.

had converted to Christianity, the chiefs' courts dealt, primarily, with proceedings that involved local people and, mostly, matters of minor offences such as debt repayment, petty theft, and cases involving quarrels and witchcraft. Even though it seemed that a compromise between the British and the local people on which court(s) should exist and operate in the Gold Coast and the eventual establishment of a dual court system was a victory for both courts, the reality was far from that. While the chiefs'/local courts continued to exist and operate until Ghana's attainment of independence, their freedom and autonomy were extremely restricted by the colonial government and even by the first post-independent African government. This was done in the name of regulating the operations of the courts to make them more effective. In some instances where cases fell directly under the jurisdiction of the local courts, British officials sat in the trials with the chiefs to ensure "fairness" and "justice." Consequently, some decisions of the chiefs'/local courts were reversed by the British official sitting in or by the Governor. This state of affairs, thus, made local courts seem powerless by themselves. It was, however, true that there were some instances of proven incompetence or corruption by members of some local courts, and the same could be said of some of the British courts as well.

The operations of a dual system of adjudication continued with the British gradually expanding their control over the territory. The formal establishment of the three arms of government, the executive, legislature and judiciary, and the later passage of ordinances such as the Supreme Court Ordinance of 1853 demonstrated a firmer hold of the territory by the British and their desire to establish a fully-fledged colonial government structure in

the Gold Coast. Subsequently, more ordinances were passed to outline the court systems, define their composition and operations and also determine their jurisdiction. While the British courts increased in number and expanded in jurisdiction, the chiefs' courts continued to decline in number and authority. It was, however, evident that the local courts could not be completely phased out and replaced with British courts. This was because of the inadequate number of trained judges to staff the courts and the insufficient knowledge of the few existing judges in the traditions and customs of the people which was essential for the successful adjudication of most of the cases that went before the local courts.

The structure of the colonial administration was such that the head of the judiciary (the Chief Justice) was always a British official who was a member of the executive and legislative arms of government and, thus, mostly allowed for a cordial synergy in the operations of the three arms of government. The fact that the Chief Justice and other judges were appointed by the Governor, and therefore owed their continuous stay in office to him, contributed to the friendliness between the executive and judiciary since acts of senior judicial officers which were considered to be at variance with the wishes of the executive (the Governor) could result in the dismissal or transfer of the judge(s) concerned. The colonial government, therefore, passed regulations and reforms aimed at "improving" the judiciary and minimizing the tensions that continued to arise between local courts and the English courts during the first fifty years of the twentieth century.

The 1950s ushered in the first African government of the Gold Coast with Dr. Kwame Nkrumah becoming the first Leader of Government Business

(1951) and later Prime Minister (1952). This followed the activities of Gold Coast nationalists who demanded the active participation of Gold Coasters in the government of the colony and, much later, an end to colonial rule. Even though Dr. Nkrumah's cabinet was made up of a large number of Ghanaians, it did not have full control over every aspect of government. The Defence and Justice portfolios were still held by British officials. The period between 1951 and 1957 witnessed some conflict between the judiciary and the two other arms of government. This was quite understandable since, for the first time in the history of the Gold Coast, the three arms of government were not under the full and sole control of the British. It is also imperative to note that the British courts had become quite widely accepted by the local people and, in some instances, were preferred to the local courts by the growing number of urban dwellers. A good number of educated elites who had travelled abroad to be educated and trained as lawyers returned to the Gold Coast to practise in the British courts. Hence, there was no longer the question about the legitimacy and legality of the operations of British courts in the territory. The chiefs' courts which were referred to as Native Courts/Native Tribunals and later as Local Courts, however, continued to struggle for acceptance by some British officials and, surprisingly, CPP government officials, since allegations of incompetence and corruption of some of the local courts lingered on. This was made worse by the strained relationship that existed between the leadership and some members of the CPP government and the chiefs, and for that matter, the chiefs' courts.

Even though commissions of enquiry such as the one headed by Sir Kobina Arku Korsah in 1951, and the 1954 Constitution of the Gold Coast

introduced reforms and provisions to improve the operations of both courts, the antagonistic relationship that existed between Dr. Nkrumah/the CPP and some chiefs contributed to the government taking steps which undermined the authority of the affected chiefs and, by extension, their courts. The independence of both courts seemed to have suffered threats after 1957 when the Gold Coast gained its independence from the British. The Prime Minister, and after 1960 the President, with the help of the CPP majority in the National Assembly, sought to control the judiciary through what seemed to be legal means. The 1957 Constitution of Ghana, Acts of parliament from independence and the 1960 Republican Constitution of Ghana, all gave the president control over the judiciary. Thus, just as in the colonial era, judges owed their job to their continued loyalty to the president and his party. Anything short of that could result in their outright dismissal and that affected the functioning of the judiciary under the first republican government. The courts were also used/misused by the government to legitimize some of their (government's) actions and also to settle scores with supposed opponents of the state and those actions were justified by some supporters and leading members of the CPP who claimed that such measures were to ensure the maintenance of peace in the country. Thus, the judiciary did not fare any better between 1957 and 1966 since it lost its freedom and independence even though some reforms were introduced during the period.

This thesis demonstrates that the existing judicial system in Ghana is the creation of the Europeans (especially the British) who settled in and later colonized the Gold Coast from 1874 to 1957. The British courts which were established in the territory and the successive ordinances and policies that the

colonizers introduced to regulate them and the chiefs' courts that predated their formation were the results of a gradual, subtle, and largely illegal (not by law, conquest or renunciation), activities of George Maclean and other colonial officials came after him.

The thesis also argued that the increase in cases that went before the British-styled courts during the pre-colonial and colonial eras could not be taken entirely to mean a demonstration of an overwhelming approval of the local people to those courts since factors including colonial policies that prescribed that some cases could only go before the British courts, an increase in trade-related litigations at the time, and some suspicious tactics employed by the British to make their courts very alluring to the citizens were some of the reasons for the large numbers of cases that those courts adjudicated.

This research posits that the history of the judiciary in Ghana has been checkered and evolutionary and the judiciary, in the history of Ghana, underwent changes in its structure, jurisdiction and panel. It has also established that the judiciary, over the years, existed to resolve conflict and uphold social order in colonial and independent Ghana even though that had not been without stiff opposition from, and control by, successive governments – both colonial and independence administrations. It is evident from the historical facts that one major reason why governments wanted to control the judiciary was because of the vital role that the courts played and continue to play in society. The courts interpreted the laws that governed the people. They also applied laws in the adjudication of cases on their merit or otherwise. The judiciary was/is described as the conscience of the society/nation, ensuring that justice was/is delivered in any form of litigation

between individuals, individual and institution or between individuals and the state. Consequently, successive governments desired to and, in some instances, succeeded in controlling the judiciary with the hope of maintaining and shaping what they considered to be social peace in the Gold Coast, now Ghana.

The findings of this thesis prove that there were instances in which the judiciary had no choice but to act in ways that suggested its acquiescence to executive encroachment of its power. That was mainly the situation in the period from 1960 when the country operated under the 1960 Republican Constitution that established a system of parliamentary supremacy in the country. The courts, therefore, could not question or overturn the actions of the executive branch of government even when those actions adversely affected them.

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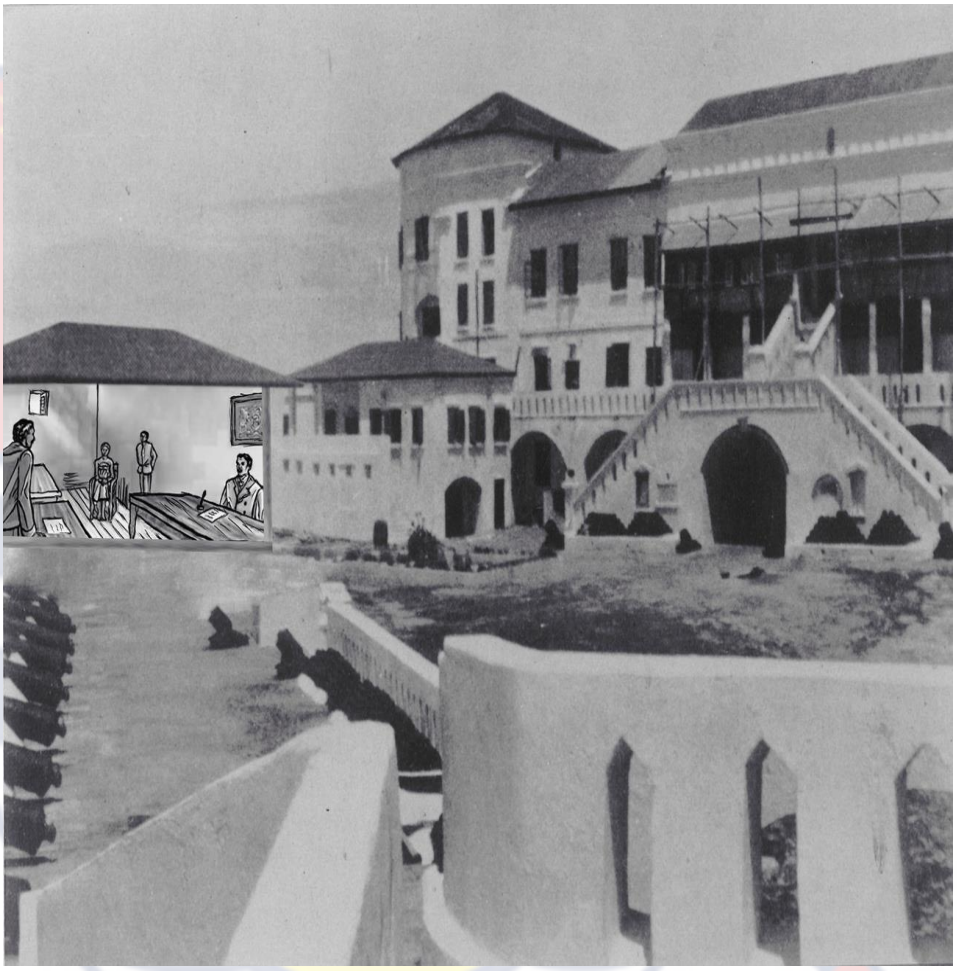
APPENDICES
APPENDIX A

Captain George Maclean: First Judicial Assessor of Gold Coast

Source: Information Service Department (ISD), Ref. No. IC/3061/23-26.

APPENDIX B

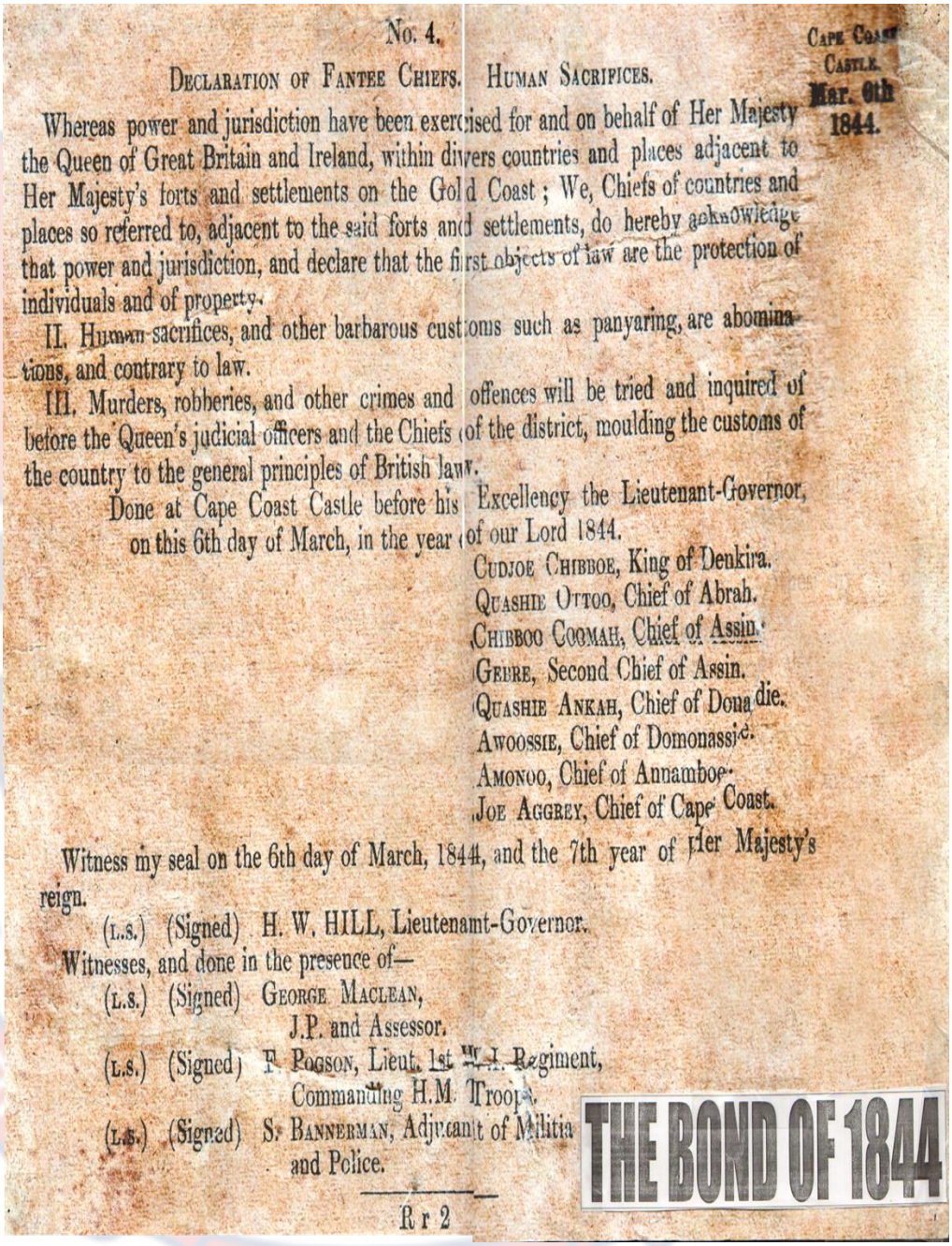
The Cape Coast Castle with an Artist's Impression of Court Proceedings in the Palaver Hall



Source: Information Service Department (ISD), Ref. No. IC/3061/23-26

APPENDIX C

A Section of the Bond of 1844



No. 4.

Cape Coast Castle. Mar. 6th 1844.

Declaration of Fantee Chiefs. Human Sacrifices.

Whereas power and jurisdiction have been exercised for and on behalf of Her Majesty the Queen of Great Britain and Ireland, within divers countries and places adjacent to Her Majesty's forts and settlements on the Gold Coast; We, Chiefs of countries and places so referred to, adjacent to the said forts and settlements, do hereby acknowledge that power and jurisdiction, and declare that the first objects of law are the protection of individuals and of property.

II. Human sacrifices, and other barbarous customs such as panyaring, are abominations, and contrary to law.

III. Murders, robberies, and other crimes and offences will be tried and inquired of before the Queen's judicial officers and the Chiefs of the district, moulding the customs of the country to the general principles of British law.

Done at Cape Coast Castle before his Excellency the Lieutenant-Governor, on this 6th day of March, in the year of our Lord 1844.

Cudjoe Chibboe, King of Denkira.
Quashie Ottoo, Chief of Abrah.
Chibboo Coomah, Chief of Assin.
Gebre, Second Chief of Assin.
Quashie Ankah, Chief of Donadie.
Awoossie, Chief of Domonassie.
Amonoo, Chief of Annamboe.
Joe Aggrey, Chief of Cape Coast.

Witness my seal on the 6th day of March, 1844, and the 7th year of Her Majesty's reign.

(L.S.) (Signed) H. W. HILL, Lieutenamt-Governor.

Witnesses, and done in the presence of—

(L.S.) (Signed) George Maclean, J.P. and Assessor.

(L.S.) (Signed) F. Pogson, Lieut. 1st W. I. Regiment, Commanding H.M. Troops.

(L.S.) (Signed) S. Bannerman, Adjutant of Militia and Police.

Rr 2

THE BOND OF 1844

APPENDIX D

Supreme Court Ordinance, 1876

CHAPTER 4.

McCarthy Cap. 4.

Ordinances Nos.
7 *of* 1935,
6 *of* 1939,
23 *of* 1944,
2 *of* 1945,
11 *of* 1945,
27 *of* 1945,
26 *of* 1946,
19 *of* 1949,
36 *of* 1949,
21 *of* 1950,
39 *of* 1951.

COURTS.
(*Gold Coast.*)

ARRANGEMENT OF SECTIONS.

PART A.—PRELIMINARY.

SUB-PART 3.—JUVENILE COURTS.

SECTION

PART D.—ASHANTI CHIEF COMMISSIONER'S COURT.

PART E.—NORTHERN TERRITORIES CHIEF COMMISSIONER'S COURT.

PART F.—LAW IN FORCE IN COURTS.

SECTION

PART G.—EVIDENCE.

PART H.—COMMISSIONERS FOR TAKING AFFIDAVITS, ETC., IN COURTS.

PART I.—OFFICERS OF COURTS.

PART J.—RECONCILIATION.

PART K.—PROTECTION OF JUDICIAL OFFICERS.

PART L.—RULES AND ORDERS OF COURT.

AN ORDINANCE TO MAKE FURTHER AND BETTER PROVISION FOR THE CONSTITUTION OF COURTS AND FOR OTHER PURPOSES RELATING TO THE ADMINISTRATION OF JUSTICE.

Date of commencement.

[1*st July*, 1935.]

Short title and application.

1. This Ordinance may be cited as "The Courts Ordinance," and shall apply to the Gold Coast.

PART A.—PRELIMINARY.

Interpretation.

2. In this Ordinance and in any ordinance in which this Ordinance shall be incorporated or applied the following words and expressions shall have or include the meanings

hereinafter attached to them, unless there be something in the subject or context repugnant to such meanings, that is to say:—

"Cause" shall include any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding; Cause.

"Cause of action" in suits founded on contract shall not necessarily mean the whole cause of action; but a cause of action shall be deemed to have arisen within the jurisdiction if the contract was made therein, though the breach may have occurred elsewhere, and also if the breach occurred within the jurisdiction, though the contract may have been made elsewhere; Cause of action.

"Chief" means a person elected and installed as a Paramount Chief, Divisional Chief or Chief in accordance with native customary law, a "Chief" as defined in the Native Courts (Ashanti) Ordinance, a "Head Chief" and a "Chief" as defined in the Native Courts (Northern Territories) Ordinance, and a "Divisional Chief," a "Divisional Sub-Chief," a "Chief," and a "Sub-Chief" as defined in the Native Courts (Southern Section of Togoland under United Kingdom Trusteeship) Ordinance; (*Amended by* 23 *of* 1944, s. 2.) Chief. Cap. 99. Cap. 104. Cap. 106.

"Committed for trial" includes every case of a person ordered to be tried on information, whether imprisoned or admitted to bail; Committed for trial.

"Court" includes the Supreme Court, and the Chief Justice and Puisne Judges of the Supreme Court, sitting together or separately, every Magistrate's Court and every Magistrate being engaged in any judicial act of proceeding or enquiry, the Chief Commissioners' Courts of Ashanti and the Northern Territories established under this Ordinance, and any Court declared by any other ordinance to be a Court under this Ordinance; (*Amended by* 39 *of* 1951, *s.* 2.) Court.

"Defendant" includes every person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings in a civil Defendant.

cause, and also every person charged under any process of the Court with any crime or offence;

District. "District" means a District constituted in the manner prescribed by section 21 of this Ordinance; (*Added by* 39 *of* 1951, *s*, 2.)

Division. "Division" means a Territorial Area in Ashanti or the Northern Territories, in respect of which a person is elected and installed as Head Chief in accordance with native law and custom;

Divisional Council. "Divisional Council" means the highest Native Council within the Division in all matters relating to the welfare and government of the Division in accordance with native law and custom;

Divisional Court. "Divisional Court" means a Divisional Court of the Supreme Court established under section 27;

Execution creditor. "Execution creditor" includes every person having title to enforce a judgment or order by process of execution;

Head chief. "Head Chief" means the person whose election and installation in Ashanti or the Northern Territories as such in accordance with native law and custom is recognised by the Governor and who is not subordinate to any other Chief or Head Chief;

Imperial laws. "Imperial laws" includes general Rules or Orders of Court made under any Imperial Act;

Judgment. Decree. "Judgment" and "Decree" shall be deemed synonymous terms;

Judgment debtor. "Judgment debtor" includes every person ordered by a judgment or order in a civil cause or matter to pay money, or to do or abstain from doing any act;

"Judicial Division" means a Judicial Division, the formation of which has been provided for by an order of the Chief Justice under section 22 of this Ordinance; (*Added by* 23 *of* 1944, *s*. 2.)

Magistrate. "Magistrate" includes a District Magistrate, or District Commissioner when performing any of the functions of a District Magistrate and any other officer when performing any of the magisterial functions of such a Commissioner; and the expression "Magistrate's Court" or "Court of a Magistrate" or "Court of the Magistrate" shall

be interpreted accordingly; (*Amended by* 39 *of* 1951, *s.* 2.)

"Matter" includes every proceeding in the Court not in a cause; Matter.

"Native" means a person of African descent: Provided that the expression shall not include any person who does not belong to a class of persons who have ordinarily been subject to Native Tribunals; Native.

"Native Court" means a Native Court under the Native Courts (Colony) Ordinance, the Native Courts (Ashanti) Ordinance, or the Native Courts (Northern Territories) Ordinance, and a Tribunal established under the Native Courts (Southern Section of Togoland under United Kingdom Trusteeship) Ordinance; (*Substituted by* 23 *of* 1944, *s.* 2.) Native Court. Cap. 99. Cap. 104. Cap. 106.

"Office copy" means a copy, either made under direction of the Court or produced to the proper officer of the Court for examination with the original, and examined by him therewith and in either case certified by him as correct; Office copy.

"Petitioner" includes every person making any application to the Court otherwise than as against any defendant; Petitioner.

"Plaintiff" includes every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether writ, petition, or otherwise; Plaintiff.

"Registrar" includes the Chief Registrar and every Registrar; Registrar.

"Sheriff" includes a Deputy Sheriff and any person lawfully authorised to execute the process of the Court; Sheriff.

"State" and "Paramount Chief" have the meanings respectively assigned to these terms in the Native Authority (Colony) Ordinance, 1944,* or as the case may be in the Native Courts (Southern Section of Togoland under United Kingdom Trusteeship) Ordinance; (*Amended by* 23 *of* 1944, *s.* 2, *and* 19 *of* 1949. State and Paramount Chief. Cap. 106.

* Scheduled under the Revised Edition of the Laws Ordinance, 1951 and see Cap. 64, s. 170.

Solicitor. "Solicitor" includes attorney;

Suit. "Suit" includes action, and shall mean a civil proceeding commenced by writ of summons or in such other manner as may be prescribed by Rules of Court, and shall not include a criminal proceeding.

PART B.—THE SUPREME COURT.

SUB-PART 1.—CONSTITUTION OF THE SUPREME COURT.

Establishment of the Supreme Court.

3. From and after the commencement of this Ordinance there shall be a Court which shall be called the Supreme Court of the Gold Coast, and shall constitute, under and subject to the provisions of this Ordinance, the Supreme Court of Judicature for the Gold Coast.

Constitution of the Court.

4. (1) The Supreme Court shall consist of the Chief Justice of the Gold Coast, and so many Puisne Judges as the Governor may, from time to time, appoint by letters patent under the seal of the Colony in accordance with such instructions as he may receive from Her Majesty, and also of the Chief Justices and Judges of the Supreme Courts of Nigeria and of the Colony of Sierra Leone and of the Judge of the Supreme Court of the Colony of the Gambia and the said Chief Justices and Judges of the Supreme Courts of Nigeria and of the Colony of Sierra Leone and Judge of the Supreme Court of the Colony of the Gambia shall be Puisne Judges of the Supreme Court of the Gold Coast.

(2) The Supreme Court shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of Chief Justice or of any Puisne Judge.

Qualification of Judges of the Supreme Court.

5. No person shall be appointed to be a Judge of the Supreme Court unless—

(i) he is qualified to practise as an advocate in a Court in England, Scotland, Northern Ireland or some other part of Her Majesty's dominions or in the Republic of Ireland having unlimited jurisdiction either in civil or criminal matters, and

(ii) he has been qualified for not less than five years to practise as an advocate or solicitor in such a Court. (*Added by* 6 *of* 1939, *s.* 2, *and amended by* 39 *of* 1951, *s.* 3.)

Precedence of Judges.

6. The Chief Justice of the Gold Coast for the time being shall be President of the Supreme Court, and the other Judges shall take precedence after him in the following order, namely—

(i) The Chief Justice of the Supreme Court of Nigeria;

(ii) The Chief Justice of the Supreme Court of Sierra Leone;

(iii) Other Puisne Judges of the Supreme Court holding permanent appointments as Judges according to the priority of their respective permanent appointments;

(iv) Acting Puisne Judges according to the priority of their respective acting appointments.

Powers and jurisdiction of Judges.

7. (1) All Judges of the Supreme Court shall have in all respects, save as is herein otherwise expressly provided, equal power, authority and jurisdiction.

(2) Any Judge of the Supreme Court may, subject to this Ordinance and any Rules of Court, exercise all or any part of the original and appellate jurisdiction, civil and criminal, vested by this Ordinance in the Supreme Court and for such purpose shall be and form a Court: Provided that in the case of the Chief Justice, in addition to and independently of the special powers otherwise expressly vested in him with respect to the transfer of causes and matters or otherwise, the said Chief Justice shall have and may exercise, in any place in the Gold Coast jurisdiction throughout the Gold Coast, and that with respect to any cause or matter arising in or with respect to any part of the Gold Coast, any other enactment or statutory provision notwithstanding.

Seal of Court.

8. The Supreme Court shall have and use, as occasion may require, a seal, having a device or impression of the Royal Arms, with the inscription "The Supreme Court of the Gold Coast." The seal of the Court shall be kept by

the Chief Justice, and a duplicate thereof by each of the Puisne Judges. The Chief Justice and Puisne Judges may entrust the seal or duplicates to such officers of the Court from time to time as they may respectively think fit.

Place of sitting.

9. The sittings of the Supreme Court shall usually be held in such buildings as the Governor shall from time to time assign as Court Houses for that purpose; but, in case the Supreme Court shall sit in any other building or place for the transaction of legal business, the proceedings shall be as valid in every respect as if the same had been held in any such Court House.

Vacancies and devolution of duties.

10. (1) Whenever the office of a Judge shall be vacant by death or otherwise, the Governor may appoint a fit and proper person to fill such office until Her Majesty's pleasure be known; and, in case of the temporary illness or absence of a Judge, or whenever a Judge is temporarily officiating in some capacity other than that appertaining to his own substantive office, the Governor, in his discretion, may appoint a fit and proper person to fill the office of such Judge until he shall resume the duties thereof: Provided that the Governor may at any time before its normal expiration terminate an appointment made under this subsection on the recommendation in writing of the Chief Justice certifying that it is necessary or desirable in the public interest that the appointment shall be so terminated.

(2) Until an appointment is made under subsection (1), the business of the Supreme Court shall devolve upon and be transacted as far as practicable by the remaining or continuing Judges; and when such continuing Judges shall be Puisne Judges, the senior of them shall have and exercise all the powers and authorities vested in the Chief Justice.

(*Section added by* 21 *of* 1950, *s.* 2, *and amended by* 39 *of* 1951, *s.* 4.)

Registrar of Divisional Courts.

11. A Registrar shall be attached to every Divisional Court, who shall perform such duties in execution of the powers and authorities of the Court, as may from time to time be assigned to him by Rules of Court, or subject thereto by any special order of the Court.

Duties of Registrars.

12. Subject to such rules or orders, the Registrar in each Divisional Court shall issue all summonses, warrants, precepts, and writs of execution, and shall register all orders and judgments, and shall keep a record of all proceedings of the Court, and shall have the custody and keep an account of all fees and fines payable or paid into Court and of all moneys paid into or out of Court, and shall enter an account of all moneys paid into or out of Court, and shall enter an account of all such fees, fines, and moneys as and when received in a book belonging to the Court, to be kept by him for that purpose, and shall from time to time, at such times as shall be required by the regulations of the Accountant-General's Department, or as may be directed by the Court, submit his accounts to be audited and settled by the Auditor, and shall pay into the Accountant-General's Department the amount of fines and fees in his custody, and, subject to such regulations or directions, such audits and payments shall take place at least once in every month.

Taxing Master.

13. Subject to such rules or orders as aforesaid, every Registrar shall be Taxing Master for the Court to which he belongs, and shall tax all bills or costs in accordance with the scale of fees for the time being in force, subject to review of such taxation by such Court.

Chief Registrar of the Supreme Court.

14. In addition to the Divisional Court Registrars referred to in section 11 there shall also be a Chief Registrar of the Supreme Court. The Chief Registrar may perform any of the duties and may exercise any of the powers of any Divisional Court Registrar; and every such Divisional Court Registrar shall (subject always to the control of the Court) be governed in respect of such duties and powers by the orders and directions of the Chief Registrar.

Sub-Part 2.—Jurisdiction of Supreme Court.

Supreme Court to have jurisdiction of High Court of Justice in England. 53 and 54 Vict. c. 27.

15. The Supreme Court shall be a Superior Court of Record, and in addition to any other jurisdictions conferred by this or any other Ordinance, shall, within the Gold Coast and subject as in this Ordinance mentioned, possess and exercise all the jurisdiction powers and authorities which are vested in or capable of being exercised by Her

Majesty's High Court of Justice in England: Provided that the Admiralty jurisdiction and authority of the Supreme Court shall be exercised by virtue and in pursuance of the provisions of the Colonial Courts of Admiralty Act, 1890.

Power to appoint guardians and committees of lunatics.

16. The Supreme Court shall, within the Gold Coast, have all and singular the powers and authorities of the Lord High Chancellor of England, with full liberty to appoint and control guardians of infants and their estates, and also keepers of the persons and estates of idiots, lunatics and such as being of unsound mind are unable to govern themselves and their estates. (*Amended by* 39 *of* 1951, *s.* 4.)

In probate, divorce, and matrimonial causes.

17. The jurisdiction hereby conferred upon the Supreme Court in Probate, Divorce and Matrimonial Causes and proceedings may, subject to this Ordinance and to Rules of Court, be exercised by the Supreme Court in conformity with the law and practice for the time being in force in England:

Provided that at any time during the progress of a suit for divorce or nullity of marriage, or before the decree is made absolute, any person may give information to the Attorney-General of any matter material to the due decision of the case, who may thereupon take such steps as he may deem necessary or expedient; and if from any such information or otherwise, the Attorney-General shall suspect that any parties to the suit are or have been acting in collusion for the purpose of obtaining the divorce or decree of nullity of marriage, as the case may be, contrary to the justice of the case, he may by leave of the Supreme Court intervene in the suit, alleging such case of collusion, and retain counsel and subpoena witnesses to prove it, and it shall be lawful for the Supreme Court to order the costs of such counsel and witnesses and otherwise arising from such intervention to be paid by the parties, or such of them as it shall see fit, including a wife if she have separate property; but it shall not be lawful for the Supreme Court to order any costs arising from any intervention to be paid by the Attorney-General, and the Attorney-General shall be entitled to be paid from the revenue of the Colony all reasonable costs which he may have incurred arising from

any such intervention after deducting any costs which may have been paid to him by the parties: And provided further that any rules and regulations for the time being for the Probate, Divorce, and Admiralty Division of the High Court of Justice in England with respect to the King's Proctor shall, subject to Rules of Court, apply to the Attorney-General.

Limitation of jurisdiction of Supreme Court.

18. Notwithstanding anything in this Ordinance contained the Supreme Court shall not exercise jurisdiction—

(*a*) in the Colony in any civil cause or matter which the Court considers to be properly cognizable by a Native Court in accordance with the provisions of section 58 of the Native Courts (Colony) Ordinance save and except in accordance with the proviso to such section; (*Amended by* 23 *of* 1944, *s.* 3, *and by* 39 *of* 1951, *s.* 6.) Cap. 98.

(*b*) in Ashanti in any civil cause or matter which the Court considers to be properly cognizable by a Native Court in accordance with the provisions of section 35 of the Native Courts (Ashanti) Ordinance, save and except in accordance with the proviso to such section; (*Amended by* 36 *of* 1949, *s.* 2.) Cap. 99.

(*c*) in the Northern Territories in any cause or matter subject to the provisions of section 36 of the Native Courts (Northern Territories) Ordinance, save and except in accordance with the proviso to such section, or in any cause or matter within the jurisdiction conferred on the Northern Territories Chief Commissioner's Court by sections 80 and 82 of this Ordinance; Cap. 104.

(*d*) in the Southern Section of Togoland under United Kingdom Trusteeship in any cause or matter subject to the provisions of section 58 of the Native Courts (Southern Section of Togoland under United Kingdom Trusteeship) Ordinance, save and except in accordance with the proviso to such section. Cap. 106.

Pending proceeding.

19. The Supreme Court shall, subject to the provisions of sections 18 and 88 and of the provisions of any other

ordinance, have jurisdiction in all proceedings begun and pending at the time of the coming into force of this Ordinance—

No. 4 of 1876. (*a*) in the Colony before the Supreme Court of the Gold Coast Colony established under the Supreme Court Ordinance;

Cap. 110. (*b*) in Ashanti before the Chief Commissioner's Court of Ashanti established under the Administration (Ashanti) Ordinance;

Cap. 111. (*c*) in the Northern Territories before the Chief Commissioner's Court of the Northern Territories established under the Administration (Northern Territories) Ordinance;

and such proceedings shall from and after that time be regulated by the provisions of this Ordinance as far as the nature and circumstances of each case admits.

Jurisdiction in land cases between Chiefs of the Colony and Ashanti and between Chiefs of Ashanti and the Northern Territories.

20. Notwithstanding anything in this Ordinance, the Supreme Court shall have exclusive jurisdiction to hear and determine—

(*a*) all suits relating to the ownership, possession or occupation of lands arising between a Paramount Chief or Chief of the Colony and a Head Chief or Chief of Ashanti; and

(*b*) all suits relating to the ownership, possession or occupation of lands arising between a Head Chief or Chief of Ashanti and a Head Chief or Chief of the Northern Territories.

(*Added by 27 of 1945, s. 2.*)

SUB-PART 3.—SITTINGS AND DISTRIBUTION OF BUSINESS OF SUPREME COURT.

Districts.

21. (1) The Governor may from time to time by orders published in the *Gazette* provide for the formation of districts and may in like manner revoke, alter, or amend any of such orders.

(2) All districts constituted under any Ordinance in force immediately prior to the commencement of this Ordinance shall be deemed to have been constituted under the provisions of this Ordinance. (*Substituted by 39 of 1951, s. 7.*)

Power of Chief Justice to form Judicial Divisions.

22. (1) For the purposes of the administration of justice, the Chief Justice, with the approval of the Governor, may by order under his hand provide for the formation of Judicial Divisions throughout the Colony and from time to time may in like manner amend, vary, alter or revoke any such order.

(2) Judicial Divisions shall be separate and distinct from any districts heretofore or hereafter formed by the Governor for administrative purposes under this or any other Ordinance, and shall not necessarily conform with the boundaries or descriptions of such districts. (*Amended by* 39 *of* 1951, *s.* 8.)

(3) Every order of the Chief Justice under this section, and every amendment, variation, alteration or revocation of any such order shall be published in the *Gazette*.

(*Added by* 23 *of* 1944, *s.* 4.)

Power of Chief Justice to assign Puisne Judges to particular Judicial Divisions.

23. (1) With a view to the more convenient distribution of the business of the Supreme Court, the Chief Justice may assign any Puisne Judge or Puisne Judges to any particular Judicial Division or Divisions of the Colony or to Ashanti or to the Northern Territories or to Ashanti and the Northern Territories for the purpose of exercising jurisdiction therein.

(2) A Puisne Judge who has under the provisions of subsection (1) been assigned to a particular Judicial Division or Divisions or to Ashanti or to the Northern Territories or to Ashanti and the Northern Territories may, so long as he remains so assigned, continue to exercise elsewhere within the Gold Coast the powers and jurisdiction of Judge of such Judicial Division or Divisions or of Ashanti or of the Northern Territories or of the Ashanti and the Northern Territories although he may be temporarily absent therefrom.

(*Amended by* 23 *of* 1944, *s.* 5.)

Lands Division.

24. (1) There shall be a Division of the Supreme Court, to be known as the Lands Division, which shall exercise within such area or areas as the Governor may from time to time by order specify, jurisdiction in all causes and

matters relating to the ownership, possession or occupation of lands, specifically assigned to the Lands Division by this or any other Ordinance. The Judges of the Lands Division, to be known as Land Judges, shall be, and shall be deemed always to have been, the Chief Justice and so many Puisne Judges as the Chief Justice may from time to time assign to the Lands Division. (*Amended by* 27 *of* 1945, *s.* 3.)

(2) For the more convenient despatch of business, a Land Court of the Lands Division of the Supreme Court (hereinafter called a "Land Court") may sit at any time and place within an area specified under subsection (1) of this section and shall (subject to the provisions of section 25 of this Ordinance) be fully constituted by a single Land Judge.

(3) The provisions of this or any other Ordinance relating to a Divisional Court in the exercise of its civil jurisdiction shall, unless the context otherwise requires, apply *mutatis mutandis* to the Land Court.

(4) Subject to the provisions of section 19 of this Ordinance a Land Court shall have exclusive original jurisdiction to hear and determine any cause or matter relating to the ownership, possession or occupation of land—

(*a*) where there is no Native Court competent to try the cause or matter;

(*b*) where the cause or matter has been transferred to the Land Court from a Native Court in accordance with the provisions of the Native Courts (Colony) Ordinance, or by the Native Courts (Ashanti) Ordinance;

Cap. 98.
Cap. 99.

(*Amended by* 27 *of* 1945, *s.* 3, *and by* 36 *of* 1949, *s.* 3.)

(*c*) where, immediately prior to the appointed day, any such cause or matter is pending—

(i) before a Provincial Council, or a Judicial Committee of a Provincial Council or a Joint Judicial Committee under the Native Administration (Colony) Ordinance;* or

(ii) before any State Council or Native Tribunal under the Native Administration (Colony) Ordinance* where there is no Native Court

* McCarthy Cap. 76, repealed by Ordinance 21 of 1944 which was scheduled under the Revised Edition of the Laws Ordinance, 1951, and see Cap. 64, s. 170.

competent to hear and determine the cause or matter ; or

(iii) in the Court of a Provincial Commissioner ; or

(iv) in the Supreme Court,

and in respect to the provisions of paragraph (*c*) of this subsection, the Land Court shall hear the cause or matter *de novo*.

For the purposes of this subsection " the appointed day " means such date as the Governor shall appoint for such purposes by notice published in the *Gazette*.

(*Section added by* 23 *of* 1944, *s.* 6.)

Assessors.

25. (1) A Land Court shall be fully constituted by any one of the Land Judges but, nevertheless, any cause—

(*a*) may be tried by the Land Judge with the aid of an assessor or of assessors if the Land Judge considers such a course to be desirable after hearing the representations of the parties as to such course; (*Amended by* 39 *of* 1951, *s.* 9.)

(*b*) shall be tried by the Land Judge with the aid of an assessor or of assessors if the Land Judge is of opinion that a question of native customary law is involved,

and in respect to every cause which is to be tried with the aid of an assessor or of assessors in accordance with the provisions of this subsection, an assessor, or such number of assessors as he thinks fit, shall be appointed by the Land Judge from the list of suitable persons prepared by the District Commissioner of the District in which the Judge is sitting :

Provided that nothing in this subsection shall apply to the trial of a cause by the Land Judge in the exercise of jurisdiction conferred upon him by an Ordinance other than this Ordinance, save where such other Ordinance provides that the Land Judge may sit with an assessor or assessors. (*Subsection substituted by* 2 *of* 1945, *s.* 2.)

(2) If, in the course of the trial of any cause for which an assessor or assessors have been so appointed, the assessor or any or all of the assessors is or are absent, the hearing and determination of the cause shall continue without the

assessor or assessors or with any remaining assessors, as the case may be, unless the Land Judge orders the proceedings to be stayed and to be recommenced with the assistance of a new assessor or of new assessors.

(*Subsection substituted by* 2 *of* 1945, *s.* 2.)

(3) Where in any cause the assessor, or any or all of the assessors, dissents or dissent from any decision of the Land Judge, the fact of such dissent shall be recorded in the proceedings, but the decision of the Land Court shall in all cases rest with the Land Judge alone. (*Amended by* 2 *of* 1945, *s.* 2.)

(4) Every assessor who attends and assists the Land Judge throughout the hearing and determination of a cause shall receive such remuneration as the Land Judge may decide, not exceeding three pounds per diem in respect of each day of attendance, and such remuneration shall be paid out of the general revenue of the Gold Coast.

(5) Nothing in this section shall be deemed to prejudice the power of the Land Judge to call in referees in any cause or matter in accordance with the provisions of section 87 (2) of this Ordinance.

(*Section added by* 23 *of* 1944, *s.* 6.)

Appeals from Land Court.

26. Any party who is aggrieved by a decision of the Land Court exercising its original or any appellate jurisdiction, may appeal to the West African Court of Appeal in like manner and subject to the like conditions as if the appeal were an appeal to the West African Court of Appeal from a Divisional Court.

(*Added by* 23 *of* 1944, *s.* 6; *amended by* 12 *of* 1951, *s.* 2.)

Divisional Courts.

27. For the more convenient despatch of business, Divisional Courts of the Supreme Court shall be holden in each Judicial Division and in Ashanti and in the Northern Territories, and every such Divisional Court may, subject to the power of transfer hereinafter enacted, exercise all or any part of the original jurisdiction, civil and criminal, vested in the Supreme Court. If necessary, several Divisional Courts may be held concurrently in the same Judicial Division or in Ashanti or in the Northern Territories. A Divisional Court of the Supreme Court shall be fully

constituted by any one of the Judges thereof, but may consist of two Judges. Any Puisne Judge assigned by the Chief Justice to exercise jurisdiction in any Judicial Division or in Ashanti or in the Northern Territories shall be qualified and empowered to sit in any Divisional Court of such Judicial Division or of Ashanti or of the Northern Territories. The Chief Justice shall be at all times qualified to sit in any Divisional Court in any Judicial Division or in the Divisional Court of Ashanti or in the Divisional Court of the Northern Territories. If the Divisional Court consists of two Judges and they disagree the judgment of the Court below shall be deemed and taken to be the judgment of the Divisional Court.

(*Amended by* 23 *of* 1944, *s.* 5.)

Power of Governor to appoint time of assizes.

28. (1) The Governor may from time to time by order appoint the places and times at which Divisional Courts shall be held for the trial of criminal and civil causes and the disposal of all other legal business pending. At such sittings (which shall be called the Assizes) all criminal causes shall as far as practicable be tried and determined in priority to any other business. (*Amended by* 39 *of* 1951, *s.* 10.)

(2) The Governor may by order revoke, alter, or amend any order made as aforesaid.

(3) Notwithstanding anything in this section contained, in Ashanti and the Northern Territories the Puisne Judges respectively assigned thereto may, subject to any directions by the Chief Justice, appoint the time and place at which any special Assize shall be held for the trial of criminal and civil causes and the disposal of all other legal business pending.

(*Subsection substituted by* 39 *of* 1951, *s.* 10.)

Gaol delivery.

29. All persons committed for trial shall be committed for trial at any Assizes then being held or at the next Assizes held in the Judicial Division or in Ashanti or in the Northern Territories, in whichever Division or territory as the case may be the offence ought by law to be tried, and, if more than one such Assize Court shall be held simultaneously, then at the Assize Court which may be directed in the commitment of such persons. Any trial

may be postponed if such postponement appear expedient for the interests of justice.

(*Amended by* 39 *of* 1951, *s.* 11.)

Appointment of a legal vacation.

30. The period of vacation in the Supreme Court prescribed from time to time by the Rules Committee under the powers conferred upon it by Section 125, shall be observed as a vacation in every Divisional Court of the Supreme Court :

Proviso.

Provided that this section shall not apply—

(1) to the trial upon information of criminal causes;

(2) to any cause or matter which is part-heard at the commencement of the vacation and which both parties and the Judge who is to hear the cause or matter agree shall be continued;

(3) to any cause or matter which both parties and the Judge agree shall be heard notwithstanding the vacation ;

(4) to any urgent application which may require to be immediately or promptly heard ;

(5) to the officers of the Divisional Courts.

(*Amended by* 36 *of* 1949, *s.* 4.)

Supreme Court open at all times for general business.

31. Subject to any appointment by the Governor, and to the provisions of section 30, the Supreme Court shall be open throughout the year in every Judicial Division and in Ashanti and the Northern Territories for the transaction of the general legal business pending therein other than the trial upon information of criminal causes, and may at any time hear and determine any cause or matter pending in Court other than the causes last aforesaid, upon such notice to the parties and otherwise as shall be determined by Rules of Court, or as shall seem just and reasonable.

Special Divisional Courts.

32. Subject to any appointment by the Governor, and except when required to sit in the West African Court of Appeal, it shall be lawful for any Judge assigned to exercise jurisdiction in any Judicial Division to appoint a special Divisional Court at any place therein for the trial of any

civil cause, or of any criminal cause, whenever circumstances render it in his opinion expedient so to do.

Adjournment of Court in Judge's absence.

33. In case the Judge before whom any Divisional or special Divisional Court is to be held shall from any cause be unable or fail to attend the same on the day appointed, and no other Judge shall attend in his stead, the Court shall stand adjourned *de die in diem* until a Judge shall attend or until the Court shall be adjourned or closed by order under the hand of a Judge.

SUB-PART 4.—POWER OF TRANSFER BY JUDGE OF SUPREME COURT.

Power of transfer by Chief Justice.

34. Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by the Chief Justice from a Judge to any other Judge of the Supreme Court or to a Magistrate's Court or from a Magistrate's Court to any other Magistrate's Court or to a Judge of the Supreme Court and such cause or matter may be transferred either entirely or in respect of any part thereof or procedure required to be taken therein: (*Amended by* 39 *of* 1951, *s.* 12.)

Provided that the power of transfer hereby granted shall not be exercised in any cause or matter before a Magistrate sitting in an appellate capacity from a decision of a Native Court.

Manner of its exercise.

35. The power of transfer shall be exercised by means of an order under the hand of the Chief Justice and seal of the Supreme Court, which may apply either to any particular cause or causes, matter or matters, in dependence, or generally to all such causes and matters as may be described in such order, and in the latter case may extend to future causes or matters as well as to such as may at the time of making such orders be in dependence. The Chief Justice may at all times cancel, alter, add to, or amend any such order:

Provided that the power of transfer may be exercised in any case of urgency by means of a telegraphic communication from the Chief Justice followed by a subsequent order as required by this section and such telegraphic communi-

cation shall have effect as if it were an order under the hand of the Chief Justice and the seal of the Supreme Court.
(*Proviso added by* 39 *of* 1951, *s.* 13.)

Any Divisional or Magistrate's Court may report causes for transfer.

36. Any Divisional or Magistrate's Court may, of its own motion, or on the application of any person concerned, report to the Chief Justice the pendency of any cause or matter, civil or criminal, which in the opinion of such Court ought for any reason to be transferred from such Court, to any other Court, Judge, or Magistrate. The Chief Justice if satisfied that a transfer is desirable shall direct in what mode and where the cause or matter shall be heard and determined.
(*Amended by* 39 *of* 1951, *s.* 14.)

Effect of order of transfer.

37. Every order of transfer shall operate as a stay or prohibition of proceedings in the Court or before the Judge or Magistrate to whom it may be addressed in any cause or matter to which the order extends or is applicable, and the process and proceedings in every such cause or matter, and an attested copy of all entries in the books of the Court relative thereto, shall be transmitted to the Court, Judge, or Magistrate to whom the same shall be transferred, and such cause or matter shall be heard and determined by or before the Court, Judge, or Magistrate, to whom the same shall be assigned by such order.

Power of transfer by Divisional Court.

38. It shall be lawful for the Judge of any Divisional Court to transfer any cause or matter in any Magistrate's Court in the Judicial Division in which he is exercising jurisdiction to any other Magistrate's Court in the same Judicial Division or, if such Judge is exercising jurisdiction in Ashanti or the Northern Territories, to transfer such cause or matter to any other Magistrate's Court in Ashanti or the Northern Territories respectively. Such power of transfer may be exercised as fully and shall be exercised with the limitations and in the same manner as it might or would be exercised by the Chief Justice; and any order of transfer so made shall be subject to the same incidents, shall operate in the same way and shall have the same force and effect as an order of transfer by the Chief Justice:

Proviso.

Provided that, where any application has been made to the Chief Justice for the transfer of a cause or matter or

where the Chief Justice has transferred any cause or matter, a Judge having knowledge of such application shall not exercise the power hereby conferred on him with respect to such cause or matter and, in the event of any inadvertent exercise of such power in the circumstances mentioned, any order of transfer made by a Judge shall be of no effect. (*Amended by* 39 *of* 1951, *s.* 15.)

Nothing in this section shall be deemed in any way to restrict or abridge the powers of transfer vested in the Chief Justice.

Sub-Part 5.—Appeals to Supreme Court.

Appellate jurisdiction, revisional jurisdiction and powers of supervision.

39. Subject to the provisions of this Ordinance and to Rules of Court made hereunder, and to any other ordinance for the time being in force, the Supreme Court shall in its appellate jurisdiction have power to hear and determine all appeals from the decisions of Magistrates' Courts in civil and criminal causes and matters given in the exercise of the original and appellate jurisdiction of the said Courts and may exercise full powers of supervision and revision in respect of all proceedings in such Courts.

Civil appeals from Magistrates' Courts.

40. An appeal shall lie to the Divisional Court of the Judicial Division from a Magistrate's Court if such Magistrate's Court is situate in the Colony, or, if such Magistrate's Court is situate in Ashanti or the Northern Territories to the Divisional Court of Ashanti or of the Northern Territories in the following causes—

(1) From all final judgments and decisions in respect of a sum of five pounds or upwards or determining directly or indirectly a claim or question respecting money, goods, and other property or any civil right or other matter of the amount or value of five pounds or upwards;

(2) By special leave of the Magistrate but not otherwise from all interlocutory orders and decisions made in the course of any suit or matter before the Magistrate:

Provided that no appeal shall lie except by special leave of the Magistrate making the order or of the Divisional Court

from an order made *ex parte* or by consent only or as to costs only.

Conditions precedent to appeal.

41. Subject to the provisions of section 42 the Divisional Court shall not entertain any appeal unless the appellant has fulfilled all the conditions of appeal imposed by the Magistrate as prescribed by Rules of Court.

Discretionary power of Divisional Court in entertaining appeal.

42. Notwithstanding anything hereinbefore contained the Divisional Court may, on any terms which it thinks just, entertain any appeal from a Magistrate from whom an appeal lies to the Divisional Court under this or any other Ordinance.

Criminal appeals.

43. The right of appeal to the Divisional Court from a Magistrate's Court shall in criminal causes and matters be exercised in accordance with and subject to the provisions of the Criminal Procedure Code.

Cap. 10.

PART C.—MAGISTRATES' COURTS.

SUB-PART 1.—CONSTITUTION OF MAGISTRATES' COURTS.

Establishment of Magistrates' Courts of summary jurisdiction.

44. (1) There shall be throughout the Gold Coast local courts of summary jurisdiction subordinate to the Supreme Court and presided over by a Magistrate which shall, subject to any law for the time being in force, exercise such jurisdiction as is hereinafter or in any other Ordinance provided for, within such area as is hereinafter prescribed. Such courts shall be called Magistrates' Courts.

Magisterial districts.

(2) The Governor may by order prescribe an area within which a court of summary jurisdiction shall exercise its jurisdiction. Such area shall be called a Magisterial District and a Magistrate appointed to preside in that court shall be called the District Magistrate of that Magisterial District.

Special courts of summary jurisdiction.

(3) The Governor may by order establish any other court of summary jurisdiction subordinate to the Supreme Court to exercise jurisdiction throughout the Gold Coast or in any defined local area or areas thereof in such causes and matters as may be specified in the order. Such court shall have such style and such powers and jurisdiction and shall be presided over by such Magistrate or Magistrates as may be specified in the order.

cation shall have effect as if it were an order under the hand of the Chief Justice and the seal of the Supreme Court.
(*Proviso added by* 39 *of* 1951, *s.* 13.)

Any Divisional or Magistrate's Court may report causes for transfer.

36. Any Divisional or Magistrate's Court may, of its own motion, or on the application of any person concerned, report to the Chief Justice the pendency of any cause or matter, civil or criminal, which in the opinion of such Court ought for any reason to be transferred from such Court, to any other Court, Judge, or Magistrate. The Chief Justice if satisfied that a transfer is desirable shall direct in what mode and where the cause or matter shall be heard and determined.
(*Amended by* 39 *of* 1951, *s.* 14.)

Effect of order of transfer.

37. Every order of transfer shall operate as a stay or prohibition of proceedings in the Court or before the Judge or Magistrate to whom it may be addressed in any cause or matter to which the order extends or is applicable, and the process and proceedings in every such cause or matter, and an attested copy of all entries in the books of the Court relative thereto, shall be transmitted to the Court, Judge, or Magistrate to whom the same shall be transferred, and such cause or matter shall be heard and determined by or before the Court, Judge, or Magistrate, to whom the same shall be assigned by such order.

Power of transfer by Divisional Court.

38. It shall be lawful for the Judge of any Divisional Court to transfer any cause or matter in any Magistrate's Court in the Judicial Division in which he is exercising jurisdiction to any other Magistrate's Court in the same Judicial Division or, if such Judge is exercising jurisdiction in Ashanti or the Northern Territories, to transfer such cause or matter to any other Magistrate's Court in Ashanti or the Northern Territories respectively. Such power of transfer may be exercised as fully and shall be exercised with the limitations and in the same manner as it might or would be exercised by the Chief Justice; and any order of transfer so made shall be subject to the same incidents, shall operate in the same way and shall have the same force and effect as an order of transfer by the Chief Justice:

Proviso.

Provided that, where any application has been made to the Chief Justice for the transfer of a cause or matter or

where the Chief Justice has transferred any cause or matter, a Judge having knowledge of such application shall not exercise the power hereby conferred on him with respect to such cause or matter and, in the event of any inadvertent exercise of such power in the circumstances mentioned, any order of transfer made by a Judge shall be of no effect. (*Amended by* 39 *of* 1951, *s.* 15.)

Nothing in this section shall be deemed in any way to restrict or abridge the powers of transfer vested in the Chief Justice.

Sub-Part 5.—Appeals to Supreme Court.

Appellate jurisdiction, revisional jurisdiction and powers of supervision.

39. Subject to the provisions of this Ordinance and to Rules of Court made hereunder, and to any other ordinance for the time being in force, the Supreme Court shall in its appellate jurisdiction have power to hear and determine all appeals from the decisions of Magistrates' Courts in civil and criminal causes and matters given in the exercise of the original and appellate jurisdiction of the said Courts and may exercise full powers of supervision and revision in respect of all proceedings in such Courts.

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(1) From all final judgments and decisions in respect of a sum of five pounds or upwards or determining directly or indirectly a claim or question respecting money, goods, and other property or any civil right or other matter of the amount or value of five pounds or upwards;

(2) By special leave of the Magistrate but not otherwise from all interlocutory orders and decisions made in the course of any suit or matter before the Magistrate:

Provided that no appeal shall lie except by special leave of the Magistrate making the order or of the Divisional Court

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42. Notwithstanding anything hereinbefore contained the Divisional Court may, on any terms which it thinks just, entertain any appeal from a Magistrate from whom an appeal lies to the Divisional Court under this or any other Ordinance.

Criminal appeals.

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Cap. 10.

PART C.—MAGISTRATES' COURTS.

SUB-PART 1.—CONSTITUTION OF MAGISTRATES' COURTS.

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Magisterial districts.

(2) The Governor may by order prescribe an area within which a court of summary jurisdiction shall exercise its jurisdiction. Such area shall be called a Magisterial District and a Magistrate appointed to preside in that court shall be called the District Magistrate of that Magisterial District.

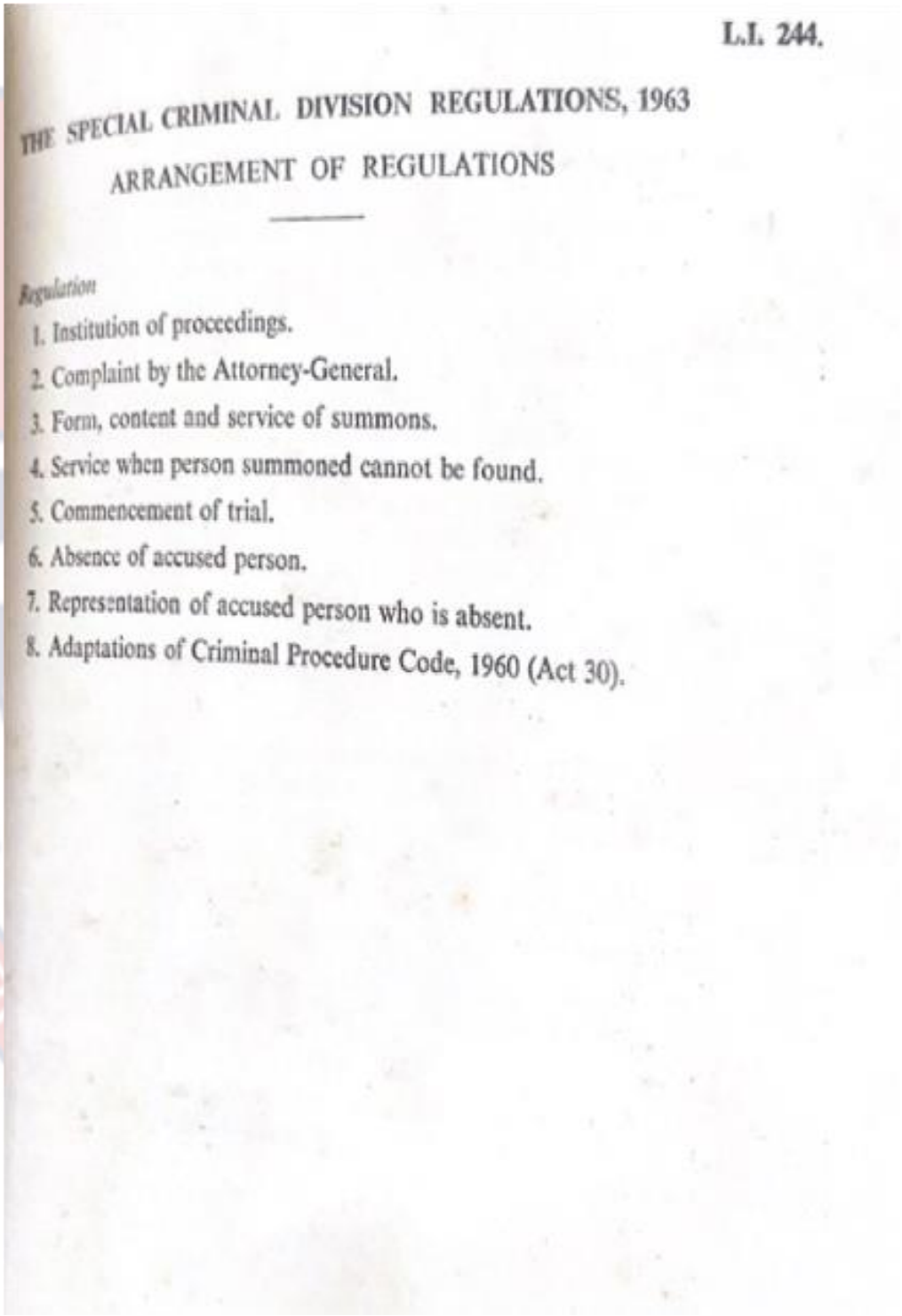
Special courts of summary jurisdiction.

(3) The Governor may by order establish any other court of summary jurisdiction subordinate to the Supreme Court to exercise jurisdiction throughout the Gold Coast or in any defined local area or areas thereof in such causes and matters as may be specified in the order. Such court shall have such style and such powers and jurisdiction and shall be presided over by such Magistrate or Magistrates as may be specified in the order.

Source: McElwaine, Alexander Percy, *The Laws of the Gold Coast, Ordinances of the Gold Coast, the Gold Coast Colony, Ashanti, the Northern Territories, and Togoland Under the United Kingdom Trusteeship Enacted on or before the 31st Day of December, 1951*, Vol. I, 1954.

APPENDIX E

The Special Criminal Division (Specified Offences) Instrument, 1963



L.I. 244.

THE SPECIAL CRIMINAL DIVISION REGULATIONS, 1963

ARRANGEMENT OF REGULATIONS

Regulation

1. Institution of proceedings.
2. Complaint by the Attorney-General.
3. Form, content and service of summons.
4. Service when person summoned cannot be found.
5. Commencement of trial.
6. Absence of accused person.
7. Representation of accused person who is absent.
8. Adaptations of Criminal Procedure Code, 1960 (Act 30).

THE SPECIAL CRIMINAL DIVISION REGULATIONS, 1963

IN exercise of the powers conferred upon the President by section 3 of the Criminal Procedure (Amendment) Act, 1961 (Act 91), and after consultation with the Chief Justice, these Regulations are hereby made this eighteenth day of January, 1963.

Institution of proceedings.

1. Criminal proceedings may be instituted before the Court in either of the following ways, that is to say,

(*a*) by the Attorney-General making a complaint and applying for the issue of a summons in the manner hereinafter mentioned; or

(*b*) by bringing a person arrested with or without a warrant before the Court upon a charge contained in a charge sheet specifying the name of the person charged, the charge against him and the time when and the place where the specified offence is alleged to have been committed. The charge sheet shall be signed by the Attorney-General.

Complaint by the Attorney-General.

2. (1) The Attorney-General may make a complaint that a specified offence has been committed by any person to a member of the Court, hereinafter referred to as the Judge.

(2) Every complaint shall be made orally or in writing, but if made orally shall be reduced into writing by the Judge and in either case shall be signed by the Attorney-General and the Judge.

(3) Upon receiving any such complaint the Judge may issue a summons to compel the attendance of the accused person before the Court.

Form, content and service of summons.

3. (1) Every summons issued by the Court shall be in writing, in duplicate, signed by the Judge or by such other officer as the Chief Justice may direct.

(2) Every summons shall be directed to the person summoned and shall require him to appear at a time or place to be therein appointed before the Court. It shall state shortly the specified offence with which the person against whom it is issued is charged.

(3) Every summons shall be served by a police officer or other public officer and shall, if practicable, be served personally on the person summoned by delivering or tendering to him one of the duplicates of the summons.

(4) The other duplicate summons shall be left with the Court.

(5) Every person on whom a summons is so served shall, if so required by the serving officer, sign the receipt therefor on the back of the other duplicate.

Service when person summoned cannot be found.

4. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served,

(a) by leaving one of the duplicates for him with some person apparently over the age of sixteen at his usual or last known place of abode or business, or

(b) by affixing one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides, or

(c) by publication of the summons in the *Gazette* or in some other journal or newspaper approved by the Court;

and thereupon the summons shall be deemed to have been duly served.

Commencement of trial.

5. When the accused comes before the Court on summons or otherwise, either originally or on an adjournment, then if the Attorney-General is present, the Court may proceed to hear and determine the case.

Absence of accused person.

6. Where the accused does not appear before the Court and it is proved that service of the summons has been effected in accordance with these Regulations, the Court may proceed to try the charge upon the basis that the accused has pleaded not guilty.

Representation of accused person who is absent.

7. The Court may allow an accused person who does not appear before the Court to be represented by an advocate, on sufficient explanation for the absence of the accused being given, if the Court is satisfied that such advocate has been instructed to represent the accused.

Judge to call upon accused to make his defence at close of prosecution case.

8. At the conclusion of the evidence led by the prosecution in support of the charge the Judge shall call upon the accused to make his defence to the charge and shall remind him of the charge and inform him that if he so desires, he may give evidence himself on oath or may make an unsworn statement and the court shall then hear the accused if he desires to be heard and any evidence he may adduce in his defence.

Addresses.

9. (1) The counsel for the prosecution may in opening the case for the prosecution, address the Court and the accused or his advocate may also address the Court at the commencement of the case for the defence.

(2) At the close of the case on both sides, the accused or his advocate shall be entitled to address the Court on the evidence adduced at the trial.

Issued 6/6/66 incorporating amendment made by L.I. 370 [R.P. 100].

L.I. 246.

THE SPECIAL CRIMINAL DIVISION (SPECIFIED OFFENCES) (NO. 2) INSTRUMENT, 1963

IN exercise of the powers conferred upon the President by paragraph (2) of section 6 of the Criminal Procedure (Amendment) Act, 1961 (Act 91), this Instrument is hereby made this twenty-third day of January, 1963.

Any of the following offences, namely,

(*a*) conspiring or attempting to commit a specified offence,

(*b*) aiding or abetting the commission of a specified offence,

(*c*) harbouring a person who has committed a specified offence,

shall, for the purposes of the said Act, be a specified offence.

By Command of the President.

KWAKU BOATENG
Minister of Interior.

Date of *Gazette* notification: 25th January, 1963

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Jury to consider their verdict.

11. (1) After the summing up, the jury shall consider their verdict and for that purpose they may retire.

(2) Except with the leave of the Judge no person other than a juror shall speak to or hold any communication with any member of the jury while the jury are considering their verdict.

Verdict of jury, etc.

12. When the jury have considered their verdict, the foreman or leader of the jury shall inform the Judge in respect of each charge—

(*a*) what their verdict is and the number of the members of the jury who support that verdict and those who do not; or

(*b*) where the members of the jury are equally divided in their opinions on the charge, that they are so divided.

Where jury are equally divided.

13. (1) Where the jury are equally divided in respect to any charge the Judge may require them to retire for further consideration.

(2) After such period as the Judge considers reasonable the jury may deliver their verdict or state that they are equally divided.

Action on verdict, etc.

14. (1) The Judge shall give judgment in accordance with the verdict of the jury.

(2) If the accused person is found not guilty the Judge shall record a judgment of acquittal.

(3) If the accused person is found guilty, the Judge shall pass sentence on him according to law.

(4) Where the jury are equally divided in respect of any charge the Judge shall after the lapse of such time as he thinks reasonable discharge the jury, and the accused person may, in respect of that charge, be tried with another jury."

SPECIAL CRIMINAL DIVISION (AMENDMENT) REGULATION, 1964

exercise of the powers conferred on the President by section f the Criminal Procedure (Amendment) Act, 1964 (Act 238) and r consultation with the Chief Justice, this Regulation is made s 22nd day of September, 1964.

The Special Criminal Division Regulations, 1963 (L.I. 244) are reby amended as follows—

(*a*) by the insertion immediately after regulation 7 thereof of the following new regulations :—

"Judge to call upon accused to make his defence at close of prosecution case.

8. At the conclusion of the evidence led by the prosecution in support of the charge the Judge shall call upon the accused to make his defence to the charge and shall remind him of the charge and inform him that if he so desires, he may give evidence himself on oath or may make an unsworn statement and the court shall then hear the accused if he desires to be heard and any evidence he may adduce in his defence.

Addresses.

9. (1) The counsel for the prosecution may in opening the case for the prosecution, address the Court and the accused or his advocate may also address the Court at the commencement of the case for the defence.

(2) At the close of the case on both sides, the accused or his advocate shall be entitled to address the Court on the evidence adduced at the trial.

(3) The counsel for the prosecution shall also be entitled to address the Court on the said evidence at the close of the case on both sides and his address shall, where the accused or his advocate addresses the Court under sub-regulation (2) of this regulation, be in reply to that address.

Judge to sum up to the jury.

10. The Judge shall, after the addresses (if any) made by the accused or his advocate and the counsel for the prosecution by virtue of sub-regulations (2) and (3) of regulation 9 or, if no address is made on either side, at the close of the case on both sides, sum up to the jury the law and evidence in the case.

SPECIAL CRIMINAL DIVISION (AMENDMENT) REGULATION, 1964

(d) the renumbering of regulation 8 thereof as regulation 15.

(e) by the substitution for sub-regulation (2) of regulation 15 thereof, as renumbered, of the following—

"(2) Without prejudice to the generality of the preceding sub-regulation, the following provisions of the said Code shall not apply to proceedings before the Court:—

subsection (3) of section 170, section 173, subsection (1) of section 174, section 175, subsections (1) and (2) of section 177 and section 271."

By Command of the President.

K. A. OFORI ATTA
Minister of Justice.

Date of *Gazette* notification: 25th September, 1964

APPENDIX F

Sir Justice Kobina Arku Korsah, the First Ghanaian Chief Justice of Ghana (1956-1963)

Source: Information Service Department (ISD), Ref. No. G/1006/1-4. 7 May 1956

APPENDIX G

Pictures Taken at the Supreme Court, Accra, After the Installation of Justice Kobina Arku Korsah as Chief Justice of Ghana.

Source: Information Service Department (ISD), Ref. No. R/2811/1-6. 19 April 1956.

APPENDIX H

Justice Julius Sarkodie-Addo

Source: Information Service Department (ISD), Ref. No. PS/2062/1-5.

APPENDIX I

The Supreme Court of Ghana Building

Source: Information Service Department (ISD), Ref. No. G/438/1-2, 1958.