

**JOURNAL OF**

# **AFRICAN LAW**

---

[1958] J.A.L.

Spring 1958

Vol. 2, No. 1

Edited by **A. N. ALLOTT**

## **CONTENTS**

<b>NOTES AND NEWS</b>	<b>1</b>
<b>ARTICLES</b>	
<i>Opinions of Assessors in Criminal Trials in East Africa as to     Native Custom</i>	Sir John Gray <b>5</b>
<i>Councils and Courts among the Tiv—Traditional Concepts     and Alien Institutions in a Non-Moslem Tribe of Northern     Nigeria</i>	D. W. Arnott <b>19</b>
<b>CASES</b>	
Privy Council	<b>26</b>
Court of Appeal for Eastern Africa	<b>52</b>
<b>REVIEWS</b>	<b>70</b>
<b>BIBLIOGRAPHY OF AFRICAN LAW</b>	<b>72</b>

---

**BUTTERWORTH & CO. (PUBLISHERS) LTD.  
LONDON**

## EDITORIAL COMMITTEE

- A. N. ALLOTT, Lecturer in African Law, School of Oriental and African Studies, University of London (*Managing Editor*).  
Professor J. N. D. ANDERSON, O.B.E., LL.D., Professor of Oriental Laws, University of London.  
Professor A. PHILLIPS, O.B.E., J.P., Professor of English Law, University of Southampton.  
Professor I. SCHAPERA, D.Sc., Professor of Anthropology, University of London.

## NOTES TO CONTRIBUTORS

1. Manuscripts should be typed in double spacing on one side of the page only.

2. They should be sent to:—

Dr. A. N. Allott,  
Department of Law,  
School of Oriental and African Studies,  
University of London,  
London, W.C.1.

3. It is regretted that no payment can at present be made to contributors; but authors of articles will receive 25 offprints free of charge.

4. Business communications (e.g., in regard to subscriptions or advertisements) should be sent to:—

Messrs. Butterworth & Co. (Publishers) Ltd.,  
88, Kingsway,  
London, W.C.2.,

and *not* to the Editor.

*Three issues a year*

*Annual Subscription . . . 42s., including postage*  
*Single copies . . . 15s. each*

**JOURNAL OF**

# **AFRICAN LAW**

---

**VOLUME 2**

**1958**



**BUTTERWORTH & CO. (PUBLISHERS) LTD.  
LONDON**

## BOARD OF ADVISERS

- The Hon. Sir ADETOKUNBO ADEMOLA, Kt, Chief Justice of the Federation of Nigeria.
- The Hon. Sir JOHN AINLEY, Kt, M.C., Chief Justice of Eastern Nigeria.
- The Hon. Sir ALGERNON BROWN, Kt, Chief Justice of Northern Nigeria.
- The Hon. Sir EDWARD DAVIES, Chief Justice of Tanganyika.
- The Rt. Hon. Lord DENNING OF WHITCHURCH, P.C., One of Her Majesty's Lords of Appeal in Ordinary.
- Professor A. GLEDHILL, Professor of Oriental Laws, University of London.
- Professor A. L. GOODHART, K.B.E., Q.C., Master of University College, Oxford.
- Professor R. H. GRAVESON, Professor of Law, University of London.
- The Hon. Mr. Justice I. R. GREENE, Chief Justice of the Somaliland Protectorate.
- The Rt. Hon. Lord HAILEY, O.M., P.C., G.C.S.I., G.C.M.G., G.C.I.E.
- Professor C. J. HAMSON, Professor of Comparative Law, University of Cambridge.
- Maj.-Gen. Sir RALPH HONE, K.C.M.G., K.B.E., M.C., T.D., Q.C., Assistant Legal Adviser, Commonwealth Relations Office and Colonial Office.
- Professor O. KAHN-FREUND, Professor of Law, University of London.
- The Hon. Sir ARKU KORSAH, Kt, C.B.E., Chief Justice of Ghana.
- Professor F. H. LAWSON, Professor of Comparative Law, University of Oxford.
- The Hon. Sir AUDLEY MCKISACK, Kt, Chief Justice of Uganda.
- The Hon. Sir KENNETH O'CONNOR, Kt, M.C., President of the Court of Appeal for Eastern Africa.
- Professor Sir DAVID HUGHES PARRY, Kt, Q.C., Director, Institute of Advanced Legal Studies, University of London.
- The Hon. Mr. Justice G. M. PATERSON, O.B.E., Q.C., Chief Justice of Northern Rhodesia.
- Sir KENNETH ROBERTS-WRAY, K.C.M.G., Legal Adviser, Commonwealth Relations Office and Colonial Office.
- The Hon. Sir RONALD SINCLAIR, Kt, Chief Justice of Kenya.
- The Hon. Mr. Justice T. C. SPENSER-WILKINSON, Chief Justice of Nyasaland.
- The Hon. Sir ROBERT TREDGOLD, P.C., K.C.M.G., Q.C., Chief Justice of the Federation of Rhodesia and Nyasaland.
- The Hon. Mr. Justice R. WINDHAM, Chief Justice of Zanzibar.
- Professor B. A. WORTLEY, O.B.E., Professor of Jurisprudence and International Law, University of Manchester.

## EDITORIAL COMMITTEE

- A. N. ALLOTT, Lecturer in African Law, School of Oriental and African Studies, University of London (*Managing Editor*).
- Professor J. N. D. ANDERSON, O.B.E., LL.D., Professor of Oriental Laws, University of London.
- Professor A. PHILLIPS, O.B.E., J.P., Professor of English Law, University of Southampton.
- Professor I. SCHAPERNA, D.Sc., Professor of Anthropology, University of London.

# INDEX

ARTICLES	PAGE
Allott, A. N.	Marriage and internal conflict of laws in Ghana ... .. 164
Anderson, J. N. D.	Reforms in family law in Morocco... .. 146
Arnott, D. W.	Councils and courts among the Tiv— traditional concepts and alien institu- tions in a non-Moslem tribe of Northern Nigeria ... .. 19
Gray, Sir John	Opinions of assessors in criminal trials in East Africa as to native custom ... .. 5
Hannigan, A. St. J. J.	Native custom, its similarity to English conventional custom and its mode of proof ... .. 101
Kerr, A. J.	The reception and codification of systems of law in Southern Africa ... .. 82
Knox-Mawer, R.	The jury system in British colonial Africa... 160
Konvitz, Milton R.	The Liberian Code of Laws ... .. 116
BIBLIOGRAPHY OF AFRICAN LAW	... .. 72, 136, 204
CORRESPONDENCE	... .. 202
LEGISLATION	
Basutoland	... .. 185
NOTES AND NEWS	
African customary law, 1858-1958	... .. 139
Commission of Enquiry:	
Federation of Nigeria. A Report on the Registration of Title to Land in the Federal Territory of Lagos	... .. 79
Constitutional progress in Basutoland	... .. 142
JUSTICE and the Rule of Law in British dependent territories	... .. 75
Land tenure in Uganda	... .. 1
Legal education in Ghana	... .. 145
Reform of company law in Ghana	... .. 140
The move towards codification	... .. 73
Urban land tenure in Northern Rhodesia	... .. 142
REVIEWS	
May M. Edel, <i>The Chiga of Western Uganda</i>	... .. 134
Lord Hailey, <i>An African Survey, revised 1956</i>	... .. 70

# CASES REPORTED, DIGESTED OR COMMENTED ON

## 1. ALPHABETICAL LIST

	PAGE
Abdulkarim <i>v.</i> Member for Lands and Mines [E.A.C.A. Tanganyika] ...	194
Acquah <i>v.</i> Aferi II [P.C. Ghana] ... .. .	40
Aryeh <i>v.</i> Ankrah [P.C. Ghana] ... .. .	26
Attorney-General <i>v.</i> Hayter [E.A.C.A. Kenya] ... .. .	193
Atta II <i>v.</i> Bonsra II [P.C. Ghana] ... .. .	33
Bhimjani <i>v.</i> Patel [E.A.C.A. Uganda] ... .. .	57
Busolo <i>v.</i> The Queen [E.A.C.A. Kenya] ... .. .	124
Commissioner of Income Tax <i>v.</i> Williamson Diamonds Ltd. [P.C. Tanganyika] ... .. .	26
Corbett Ltd. <i>v.</i> Floyd [E.A.C.A. Kenya] ... .. .	191
Forfie <i>v.</i> Seifah [P.C. Ghana] ... .. .	46
Goualin Ltd. <i>v.</i> Aminu [P.C. Nigeria] ... .. .	188
Kalsi <i>v.</i> Special Commissioner, etc., of Lands [E.A.C.A. Kenya] ... .. .	192
Khatijabai <i>v.</i> Zenab [E.A.C.A. Kenya] ... .. .	55
Kojo II <i>v.</i> Bonsie [P.C. Ghana] ... .. .	42
Kotak <i>v.</i> Ali Abdullah [E.A.C.A. Tanganyika] ... .. .	63
Lembemba <i>v.</i> Nswima [High Court. Northern Rhodesia]... .. .	127
Maryam <i>v.</i> Yona Muhuma Mnyamwezi [E.A.C.A. Zanzibar] ... .. .	199
Mensour Ahmed <i>v.</i> Regina [E.A.C.A. Kenya] ... .. .	62
Mityana Ginnors Ltd. <i>v.</i> Public Health Officer, Kampala [E.A.C.A. Uganda] ... .. .	190
Motibai Manji <i>v.</i> Khurshid Begum [E.A.C.A. Uganda] ... .. .	52
N'jie <i>v.</i> Edmondson [P.C. Gambia] ... .. .	40
Oja <i>v.</i> Ukpai [P.C. Nigeria] ... .. .	119
Pandya <i>v.</i> Regina [E.A.C.A. Tanganyika] ... .. .	122
Rufai <i>v.</i> Igbirra N.A. [ [1957] N.R.N.L.R. 178. High Court. Northern Nigeria] ... .. .	201
Shah Kachra Merag <i>v.</i> Gandhi & Co. [E.A.C.A. Kenya] ... .. .	126
Siraj Din <i>v.</i> Ali Mohamed Khan [E.A.C.A. Kenya] ... .. .	56
Tzamburakis <i>v.</i> Rodoussakis [P.C. Tanganyika] ... .. .	186

2. SUBJECT INDEX

	PAGE
<b>Assessor</b>	
discharge for personal interest—application of English law [ <i>Busolo v. The Queen</i> ] ... .. .	124
<b>Christian</b>	
application of Islamic law to [ <i>Maryam v. Yona Muhuma Mnyamwezi</i> ] ...	199
<b>Civil procedure</b>	
“Appearance” before a court [ <i>Shah Kachra Merag v. Gandhi &amp; Co.</i> ]	126
“Decree”, “order”, and “suit” [ <i>Mityana Ginners Ltd. v. Public Health Officer, Kampala</i> ] ... .. .	190
<b>Company</b>	
income tax—undistributed profits regarded as distributed dividends [ <i>Commissioner of Income Tax v. Williamson Diamonds Ltd.</i> ] ... .. .	26
<b>Conflict of laws</b>	
internal—application of customary law in urban area [ <i>Lembemba v. Nswima</i> ] ... .. .	127
internal—Christian parties—gift of hut—application of Islamic law [ <i>Maryam v. Yona Muhuma Mnyamwezi</i> ] ... .. .	199
<b>Contract</b>	
specific performance—anticipatory breach [ <i>Khatijabai v. Zenab</i> ] ...	55
<b>Court</b>	
“appearance” before [ <i>Shah Kachra Merag v. Gandhi &amp; Co.</i> ] ... .. .	126
first appellate—duty to review evidence upon which a conviction by a judge or magistrate sitting without a jury is based [ <i>Pandya v. Regina</i> ] ... .. .	122
inherent power to set aside a judgment delivered without jurisdiction [ <i>Forjie v. Seifah</i> ] ... .. .	46
<b>Criminal law</b>	
whether charge of stealing a sum of money can be sustained by proof of stealing of cheque [ <i>Mensour Ahmed v. Regina</i> ] ... .. .	62
<b>Criminal procedure</b>	
assessors—discharge of for personal interest—application of English law [ <i>Busolo v. The Queen</i> ] ... .. .	124
duty of first appellate court to review evidence upon which a conviction by a judge or magistrate sitting without a jury is based [ <i>Pandya v. Regina</i> ] ... .. .	122
<b>Crown lease</b>	
forfeiture of land for breach of condition [ <i>Kalsi v. Special Commissioner, etc., of Lands</i> ] ... .. .	192
<b>Crown proceedings</b>	
limitation period [ <i>Attorney-General v. Hayter</i> ] ... .. .	193

<b>Customary law</b>	PAGE
application in urban area—internal conflict of laws [ <i>Lembemba v. Nswima</i> ... ..]	127
application—repugnancy—order of chief lawful by Islamic law [ <i>Rufai v. Igbirra N.A.</i> ] ... ..	201
constitutional dispute under—distinguished from dispute as to title to land [ <i>Acquah v. Aferi II</i> ] ... ..	40
Ga—rights of succession of lineal descendants of first acquirer [ <i>Aryeh v. Ankrach</i> ] ... ..	26
judicial ascertainment [ <i>Aryeh v. Ankrach</i> ] ... ..	26
 <b>Decree</b>	
civil procedure—meaning [ <i>Mityana Ginners Ltd. v. Public Health Officer, Kampala</i> ] ... ..	190
 <b>Emergency Powers</b>	
retrospective legislation [ <i>Corbett Ltd. v. Floyd</i> ] ... ..	191
 <b>Estoppel</b>	
conduct and <i>res judicata</i> , by—title to land—duty of Paramount Stool to intervene in litigation by subordinate stool [ <i>Atta II v. Bonsra II</i> ] ...	33
 <b>Income Tax</b>	
company—undistributed profits regarded as distributed dividends [ <i>Commissioner of Income Tax v. Williamson Diamonds Ltd.</i> ] ... ..	26
 <b>Internal conflict of laws</b>	
application of customary law in urban area [ <i>Lembemba v. Nswima</i> ] ...	127
Christian parties—gift of hut—application of Islamic law [ <i>Maryam v. Yona Muhuma Mnyamwezi</i> ] ... ..	199
 <b>Islamic law</b>	
application to Christian parties [ <i>Maryam v. Yona Muhuma Mnyamwezi</i> ] ...	199
order of chief under—application—repugnancy [ <i>Rufai v. Igbirra N.A.</i> ] ...	201
 <b>Judgment</b>	
delivered without jurisdiction, power to set aside [ <i>Forfie v. Seifah</i> ] ...	46
null, power to review [ <i>Forfie v. Seifah</i> ] ... ..	46
 <b>Jurisdiction</b>	
distinction between constitutional dispute under customary law and dispute as to title to land [ <i>Acquah v. Aferi II</i> ] ... ..	40
Supreme Court, of—dispute affecting inter-tribal boundaries [ <i>Oja v. Ukpai</i> ] ... ..	119
power to review judgment that is a nullity [ <i>Forfie v. Seifah</i> ] ... ..	46
 <b>Land</b>	
boundaries—jurisdiction of Supreme Court [ <i>Oja v. Ukpai</i> ] ... ..	119
contract for transfer of mailo land by non-African to non-African—illegality—consent of Governor required [ <i>Motibai Manji v. Khurshid Begum</i> ] ... ..	52
crown lease—forfeiture for breach of condition [ <i>Kalsi v. Special Commissioner, etc., of Lands</i> ] ... ..	192
evidence of title [ <i>Acquah v. Aferi II</i> ] ... ..	40
evidence of title—concurrent findings of fact [ <i>Oja v. Ukpai</i> ] ... ..	119
evidence of title—traditional history [ <i>Kojo II v. Bonsie</i> ] ... ..	42



<b>Land</b> ( <i>continued</i> )	PAGE
succession by Ga customary law—rights of lineal descendants of first acquirer [ <i>Aryeh v. Ankrah</i> ] ... .. .	26
title to, dispute as to, distinguished from constitutional dispute under customary law [ <i>Acquah v. Aferi II</i> ] ... .. .	40
title to—limitation of actions—whether Indian or English law applies [ <i>Abdulkarim v. Member for Lands and Mines</i> ] ... .. .	194
title to, recital in deed as evidence of [ <i>Goualin Ltd. v. Aminu</i> ] ... .. .	188
title to— <i>res judicata</i> —estoppel by conduct—duty of Paramount Stool to intervene in litigation by subordinate stool [ <i>Atta II v. Bonsra II</i> ] ... .. .	33
 <b>Larceny</b>	
whether charge of stealing sum of money can be sustained by proof of stealing of cheque [ <i>Mensour Ahmed v. Regina</i> ] ... .. .	62
 <b>Lease</b>	
registered, claim for rent payable under—limitation of actions [ <i>Tzamburakis v. Rodoussakis</i> ] ... .. .	186
 <b>Libel</b>	
qualified privilege [ <i>N'jie v. Edmondson</i> ] ... .. .	40
 <b>Limitation of actions</b>	
claim for rent payable under a registered lease [ <i>Tzamburakis v. Rodoussakis</i> ] ... .. .	186
crown proceedings [ <i>Attorney-General v. Hayter</i> ] ... .. .	193
title to land—whether Indian or English law applies [ <i>Abdulkarim v. Member for Lands and Mines</i> ]... .. .	194
 <b>Native</b>	
definition of—Credit to Natives (Restriction) Ordinance—meaning of “Swahili” [ <i>Kotak v. Ali Abdullah</i> ] ... .. .	63
 <b>Order</b>	
civil procedure—meaning [ <i>Mityana Ginnors Ltd. v. Public Health Officer, Kampala</i> ] ... .. .	190
 <b>Privilege</b>	
qualified—libel [ <i>N'jie v. Edmondson</i> ] ... .. .	40
 <b>Rent</b>	
claim for rent payable under registered lease—limitation of actions [ <i>Tzamburakis v. Rodoussakis</i> ] ... .. .	186
 <b>Rent Restriction</b>	
No provision in local Ordinance that no order for possession to be made unless the court considers it “reasonable” so to do [ <i>Bhimjani v. Patel</i> ] ... .. .	57
majority decision by Rent Control Board [ <i>Siraj Din v. Ali Mohamed Khan</i> ] ... .. .	56
 <b>Res judicata</b>	
estoppel by conduct—title to land—duty of Paramount Stool to intervene in litigation by subordinate stool [ <i>Atta II v. Bonsra II</i> ] ... .. .	33

<b>Specific performance</b>	PAGE
anticipatory breach of contract [ <i>Khatijabai v. Zenab</i> ] ... ..	55
 <b>Stealing</b>	
whether charge of stealing sum of money can be sustained by proof of stealing of cheque [ <i>Mensour Ahmed v. Regina</i> ] ... ..	62
 <b>Succession</b>	
Ga customary law, under—rights of lineal descendants of first acquirer [ <i>Aryeh v. Ankraah</i> ] ... ..	26
 <b>Suit</b>	
civil procedure—meaning [ <i>Mityana Ginners Ltd. v. Public Health Officer, Kampala</i> ] ... ..	190
 <b>Swahili</b>	
meaning [ <i>Kotak v. Ali Abdullah</i> ] ... ..	63
 <b>Title to Land</b>	
dispute as to, distinguished from constitutional dispute under customary law [ <i>Acquah v. Aferi II</i> ] ... ..	40
evidence [ <i>Acquah v. Aferi II</i> ] ... ..	40
evidence—concurrent findings of fact [ <i>Oja v. Ukpai</i> ] ... ..	119
evidence—traditional history [ <i>Kojo II v. Bonsie</i> ] ... ..	42
limitation of actions—whether Indian or English law applies [ <i>Abdulkarim v. Member of Lands and Mines</i> ] ... ..	194
recital in deed as evidence of [ <i>Goualin Ltd. v. Aminu</i> ] ... ..	188
<i>res judicata</i> —estoppel by conduct—duty of Paramount Stool to intervene in litigation by subordinate stool [ <i>Atta II v. Bonsra II</i> ] ...	33