

I, George Gilbert Daly, Clerk of the Court of the Resident Magistrate for the district of Mafeking, hereby certify that the above are the true proceedings in the case of Mpotsang versus Motseakhumo Mokgobi and that the said proceedings to the best of my knowledge and belief contain true notes of all evidence received by the said Court, objected to, or offered by either party, and rejected by the said Court, on the hearing of the said case.

Geo. Daly.

Clerk of the Court.

11/5/10.

To the Messenger of the Court.

SUMMON

Albert Charles Albert Welsh in his capacity as  
of  
Civil Commissioner for the District for Mafeking, and Badirile  
Montsioa, Paramount Chief of the Barolong residing at Mafeking,  
that laying aside all and singular business and excuses appear in  
person before this Court at MAFEKING, on the 9th day of August,  
1910, at 10 o'clock in the fore noon to testify and declare all  
and singular those things which they, or any of them, know in a  
certain case now depending in the said Court, between Mpotsang,  
minor son of the late Mokgatle, in his capacity as the legal  
representative of his said late father Mokgatle, Plaintiff, and  
Mokgobi Metsiokhumo (alias Atlhapa) in his capacity as the legal  
representative of the estate of his late father Metsiokhumo  
Mokgobi, Defendant, and that by no means omit to do so at their  
peril.

Serve on the said Albert Charles Albert Welsh a Copy of this  
Summons, and return to the said Court what you have done thereupon.

Geo. Daly.

Clerk of the Court.

Edward W. Joyce.

Defendant's Attorney.

Mafeking.

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RETURN.

On the 2nd day of August, 1910, I have duly served a copy of the  
within summons upon the within named witness personally at Mafeking  
at the same time exhibiting the original and explaining the nature  
and exigency thereof.

T. Aldred.  
Messenger R.M. Court.

On this the 8th day of August, 1910, I have duly served a copy of  
the within summons upon witness Baderile Montsioa by nailing same  
on the front door of his house after having made careful enquiry  
and having been informed that the said witness was temporarily  
absent.

T. Aldred.  
Messenger R. M. Court.

Office of the Civil Commissioner.

M A F E K I N G.

4th July , 1908.

Gentlemen,

Dispute between Baderile Montsioa & Motseakhumo.  
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With reference to your letter of the 2nd instant on the above subject I have the honour to enclose extracts from the letter you refer to.

I have the honour to be

Gentlemen,

Your obedient Servant

E.C. Welsh.

G.C.

Messrs, de Kock & de Kock.

MAFEKING.

Native Affairs Office.

CAPE TOWN.

11th June , 1908.

Dispute between Badirile and Motseakhumo.

Sir,

With reference to your letter No. D.13/711 of the 10th April last and previous correspondence relative to the above subject I am directed to inform you that the Prime Minister desires you to arrange that Badirile will attend at your office with his Councillors, and that you will then inform him (1) that the Government expects him as the paid child of the Government to use the ordinary and recognised channels of communication in matters of administrative difficulty, as has been previously pointed out to him; (2) that in so far as the representations made through his attorneys, Messrs. de Kock & de Kock, seek to establish a claim that Motseakhumo, who belongs to a different section of the tribe, is subject to his authority, the Government is not prepared to give any decision until it has ascertained exactly what settlement was arrived at when a somewhat similar dispute arose in respect of garden lands, as a result of which a line of demarcation was laid down by survey prior to the annexation of Bechuanaland, the Government being anxious that nothing should be done which would be at variance with the spirit of that decision or lead to dispute <sup>and</sup> ~~or~~ accentuate tribal feeling; (3) that apart from the merits of the dispute, as to which there may be no necessity to enquire further, Badirile and his Councillors, and also Motseakhumo, must know that the law as it now stands, and as it was at the time of annexation, lays down that the Governor may direct that measures may be taken for afforestation and for forest conservation in the Reserves, and may proclaim Regulations under which no resident therein can, except for purely domestic purposes, cut wood without a permit from the Civil Commissioner, and that anyone so cutting wood without a permit is liable to punishment; (4) that the Government has learned with dissatisfaction of the need that exists for taking measures to prevent the indiscriminate destruction of forest growth and at the same time afford means of

(2)

of avoiding dispute, but before Regulations are proclaimed for this purpose Government desires that he and his people should hear of the matter so that they may have full opportunity of submitting any representations they may wish to make for consideration.

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Resident Magistrate's Office

MAFEKING.

24th March , 1903.

To

the Chief Badirile Montsica,  
Mafeking Stadt.

I am informed that you met Chief Motseakhume on the 20th instant in connection with the dispute between you regarding the right your people claim to take wood from the portion of the Reserve occupied by Motseakhume's people, but that you were unable to come to any settlement.

It has further been reported to me that you informed Motseakhume's people that if he did not deliver up the waggons which he had seized, within six days, you would take them by force.

I hope this report is not true, but in any case I wish to warn you not to attempt to use force to recover these waggons. If you do, the consequences may be most serious to you and your people. The Government is prepared to carefully consider any disputes among the Barolong, but will not tolerate a resort to arms to enforce any claim.

E.C. Welsh.

Resident Magistrate.

1/22/1936

Cape

Minute,

Ministers have the honour to acknowledge the receipt of His Excellency the Governor's minute No. 831 of the 28th ultimo forwarding copy of a dispatch No. 90 of the 22nd idem from the High Commissioner, with enclosures, relative to the death of Wessels Montsioa, Chief of the Barolong, and the appointment of a successor to him.

Ministers beg to inform His Excellency, in reply to the High Commissioner's enquiry, that the Government intend to appoint Badirile Montsioa to be Chief of the Barolong, in the Division of Mafeking, in the same position as was previously held by his father Montsioa and his brother Wessels neither of whom, however, was recognised as Paramount Chief in so far as the Cape Colony is concerned.

Ministers take the opportunity of pointing out, in connection with the Resident Commissioner's dispatch to the High Commissioner, that this is apparently the first intimation that has been received by this Government of the late Wessels' recognition by the Government of the Bechuana Protectorate as Paramount Chief over the section of the Barolong tribe in that Colony.

While sensible to the fact that in view of the agreement that was arrived at when annexation took place and confirmed by the provisions of the B.B. Act, No. 42 of 1895, the Government are prevented from interfering with the jurisdiction of the Native Chiefs of Bechuanaland, they feel it only right to invite attention to the somewhat anomalous position in respect of the Chief who is a paid servant of this Colony, in which he resides, and at the same time is recognised by, and presumably subject to the control - to some extent - of another and different Administration.- Although there have possibly been no difficulties in the past arising out of this system of dual control, the point is one that Ministers think might well be brought to the notice of the High Commissioner.

T. Lynedoch Graham.

CIVIL - RECORD.

Case No. 31.

In the Court of the Resident Magistrate for the District  
of MAFIKING.

MPOTSANG

Plaintiff.

MAKGOBI MOTSEAKHUMO

Defendant.

Heard on Friday the 15th day of April, 1910, before  
Pieter Johannes Hugo, Esq. - Assistant Resident  
Magistrate for the said District.

£41 - 12 - 6 Damages.

Plaintiff by Mr. H.C. de Kock

Defendant " " Joyce.

Mr. Joyce on behalf of defendant files exception marked  
"A".

Postponed to 9/8/1910.



9th August , 1910.

EDWARD CHARLES ALBERT WELSH sworn states:-

I am the Civil Commissioner and Resident Magistrate for Mafeking.- I know that portion of the District known as the Molopo Native Reserve.- Pitsani is a portion of the Molopo Reserve.- Baderille is the only recognised Chief of the Molopo Native Reserve.- Baderille is the successor of Wessels.- There has been a correspondence regarding the appointment of Baderille a copy of a minute from Government to the High Commissioner copy put in.- There is no boundary between that portion of the Molopo Native Reserve known as Pitsani and the upper portion nearer Mafeking.-  
By Mr. de Keck:- Baderille has always claimed to have jurisdiction over Pitsani whereas the Pitsani Natives have always claimed that they are independent.- The present Defendant is today recognised as Headman.- Motseakhumo was a Union Chief.- The correspondence regarding a succession to Motseakhumo has been settled Government decreed that Motseakhumo is subordinate to Baderille.- Government came to this decision subsequent to the detention of the waggons.- The detention of the waggons commenced the correspondence as to the relative positions of the two men, Baderille and Motseakhumo.- I wrote the letter marked "C" handed in, I take it that Government has always considered that the Natives at Pitsani were subject to the jurisdiction of the Chief Baderille.- The Barolong have been split up into 4 sections.- If Baderille had been appointed Paramount Chief he would have jurisdiction over the Setlagoli Reserve Baderille does not claim jurisdiction over Phool ( Setlagoli Reserve); Phool is the Chief of Setlagoli, but has always claimed jurisdiction over Pitsani.- There is no dispute regarding the different sections of the same tribe, letter marked "D" produced.-

Re-exd:- Shortly after annexation 25th of April, 1887, Chiefs in Bechuanaland were appointed.-

SILAS MOLEMA sworn states:-

I am headman and councillor under Baderille Montsico.- I know the present Headman at Pitsani.- He is a successor

successor to his father.- I was present about two years ago when  
case was heard at Pitsani regarding the seizure of waggons.-  
was a member of that Court.- Baderille held the Court as Chief  
of the Molopo Native Reserve.- The people at Pitsani belong to the  
same tribe as the Barolongs under Baderille, but of a different  
section.- The Chief Baderille levied a fine at that Court but  
Motseakhumo did not pay the fine as he claimed that he was not  
under the jurisdiction of the Chief Baderille.- Motseakhumo's son  
was appointed Headman at Pitsani but am not able to say whether he  
took up the same attitude as his father.- Motseakhumo did not  
satisfy that judgment.- The four sections of the Barolongs that  
is, those residing at Kunana, Setlagoli, Pitsani and the Molopo  
Native Reserve, all came from the same stock.- Pitsani is a portion  
of the Molopo Reserve.- Baderille has no jurisdiction over the  
Setlagoli Native Reserve, but has jurisdiction over Pitsani as  
it falls in the Molopo Native Reserve.- I do not know that about  
the decision came why the Government regarding the relative  
positions of the two Chiefs, if Chief Baderille had received  
such a communication I would have known about it.- The present  
defendant adopted the attitude of his father regarding the detention  
of the waggons.-

Cross Exd:- Defendant brought the waggons in upon request from  
the Magistrate.-

Judgment:- Exception upheld as the parties belong to  
one and the same tribe and case dismissed with costs.

P.J. Hugo.

Assistant R.M.

2nd August, 1910.

Mr. Joyce on behalf of defendant files exception marked "A".  
Mr. de Kock on behalf of plaintiff objects to any further excep-  
tions inasmuch as the case was remitted to be tried on its merits.  
Case postponed to 9th August, 1910.

P.J. Hugo.  
Assistant R.M.

9th August, 1910.

Objection by Mr. de Kock overruled and exception  
entertained.

P.J. Hugo.

IN THE COURT OF THE RESIDENT MAGISTRATE  
FOR THE DISTRICT OF MAPEKING.

In the matter between

MPOTSANG, minor son of the late Mokgatlle, in his capacity  
as the legal representative of the estate of his said late  
father Mokgatlle,

Plaintiff

and

MOKGGOBI Motseakhumo ( alias ATLEHAPA ) in his capacity as  
the legal representative of the estate of his late father  
Motseakhumo Mokgobi.

Defendant.

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Defendant's Exception to Plaintiff's Summons.

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Defendant excepts to the summons on the following

grounds:-

Firstly: That both plaintiff and defendant are Barolonge, and,  
in terms of Section 11, Proclamation 32 of 1887, the late Chief  
Montsioa ( now succeeded and represented by Baderille ) was  
appointed their Chief, that consequently, in terms of section 31,  
B.E. Proclamation No. 2 of 1885 their said Chief has original and  
exclusive jurisdiction over them, therefore this Court's juris-  
diction is ousted in the matter.

Secondly: That certain matters in dispute ( including the subject  
of this action ) between Chief Baderille Montsioa and the late  
Motseakhumo Mokgobi ( now succeeded and represented by defendant )  
were submitted by the said Chief Baderille Montsioa to the  
Colonial Government for adjustment; that the said Colonial Govern-  
ment duly ~~called~~ caused investigation to be made in the matters  
and appointed a Commissioner to duly investigate such disputes;  
that the said Commissioner duly summoned the said Chiefs before him  
but has not yet delivered his report on the matter; that the matter  
is consequently in the position of lis pendens.

Wherefore defendant prays that the summons may be dismissed  
with costs.

Edward Walter Joyce.  
Defendant's Attorney.

IN THE COURT OF THE RESIDENT MAGISTRATE  
FOR THE DISTRICT OF MAPEKING.

Messenger of the Court

Summon MOKGOBI MOTSEAKHUMO ( alias ATLAHAPA ) in his capacity as the legal representative of the estate of his late father Motseakhumo Mokgobi, residing at Pitsani in the district of Mafeking hereinafter called the Defendant that he appear before the Resident Magistrate for this district, to be holden at Mafeking on the 15th day of April, 1910, at 10 o'clock in the forenoon, with his witnesses (if he have any) to shew why he hath not paid to Mpotlang, minor son of the late Mokgatlé, in his capacity as the legal representative of the estate of his said late father Mokgatlé duly assisted as far as need be by his step-mother and natural guardian Mpiri, of Modimola, in the district of Mafeking, (hereinafter styled the plaintiff), the sum of £41 - 12 - 6 which the said plaintiff complains that he owe him as and for damages.

And thereupon plaintiff complains and says that in or about the month of March, 1908, certain buck-waggon, with a load of wood thereon, the property of his said father ( then alive ) was seized by or at the instance of, the late Motseakhumo Mokgobi and subsequently after his death by his son the said defendant and delivery whereof was refused up to and until the 19th March, 1910,

when the said plaintiff accepted delivery; that the load of wood v alued at 15/- has not been delivered; that in consequence of the detention the non-use of the said waggon the same has depreciated and deteriorated in value to the extent of £1-5/-; that certain articles which were on the waggon at the time of seizure, namely 1 yoke and key of the waggon jack, valued respectively at 7/6d. and 5/- have disappeared and not been delivered by the defendant with the said waggon; that further owing to the detention of the waggon the said plaintiff in his said capacity has been unable to use the said waggon for a period of two years and more and has sustained loss and damage in consequence thereof in the sum of £39.

Wherefore the plaintiff in his said capacity claims the sum of £41 - 12 - 6 as aforesaid which said sum the defendant neglects and refuses to pay, wherefore the said plaintiff prays that he may be adjudged to pay the ~~costs of suit.~~ same with costs of suit.

And serve on the said defendant a copy of this summons and of the notice to produce hereunto annexed, and return you on that day to the said Court, what you have done on this summons. Mafeking the 5th day of April, 1910.

de Kock & de Kock  
Plaintiff's Attorneys.  
MAPEKING.

Geo. Daly.  
Clerk of the Court.

MARGOBI MOTSEAKHUMO sworn states:- I am the defendant in this action and am the son of the late Motseakhumo.- During his lifetime my father was Chief of Pitsani recognised as such by the Colonial Government and the people.- Some two or three years ago there was a dispute between my father and Chief Baderille regarding the boundary.- I remember one Makgotle whose waggon was detained.- My father acted in his capacity as Chief of Pitsani when he detained the waggon.- Prior to detaining the waggons my father called a meeting about the waggons.- The Pitso consisted of the Headmen and Councillors, of the tribe and the unanimous decision was that the waggons should be detained.- Baderille Montsioa was advised of this decision.-

Cross- Exd. by Mr. de Kock:- I am now the Chief and as such am representing my father.- I have been nominated by the people and as such- the matter has been reported to the Magistrate.- I recognise the appointment upon nomination by the Barolong but have not received sanction of the appointment from the Government.- The Colonial Government through the local Civil Commissioner demanded the return of the waggons from em.- This was after my father's death.- At first I refused to hand over the waggons.- I handed over the waggons on account of the pressure which was brought to bear by the Government.- I detained these waggons after my father's death as recognised Chief of the people of Pitsani.- I consulted the people and they agreed that the waggons should be detained.- I never acted upon my own responsibility in this matter.- I am the legal representative of my father's estate.- I have not heard anything about my position.-

Case postponed until 16th April, 1910.

P.J. Hugo.

Assistant R.M.

16th April , 1910.

EDWARD CHARLES ALBERT WELSH sworn states:-

I am Resident Magistrate for Mafeking.- I know the defendant in this action.- He is headman at Pitsani.- It is not correct when he says that he has been appointed Chief.- It is possible that the tribe may have nominated him as Chief but his appointment is only that of Headman.- I remember the detention of 4 waggons by the late Chief Motseakhumo.- If the Barolonge under Baderille have a right to cut wood at Pitsani then I would say that the detention of the waggons was illegal.- I suggested ~~to~~ but not demanded from defendant the return of the waggons .-

By Mr. Joyce:- I am of opinion that the detention of the waggons was a tribal dispute.- The present defendant is looked upon by the Government as the Head of that section of the tribe which was previously represented by the late Motseakhumo.- The subject of the detention of the waggons was fully reported to the Government.-

Judgment:-

Exceptions upheld and case dismissed with costs.

P.J. Hugo.

Assistant R.M.

IN THE COURT OF THE RESIDENT MAGISTRATE  
FOR THE DISTRICT OF MAPEKING.

"A"

In the matter between

MPOTSANG, minor son of the late Mogatle, in his capacity  
as the legal representative of the estate of his  
said late father Mogatle

Plaintiff.

and

MOKGOBI MOTSIOKHOMA (alias ATLHAPA) in his capacity as  
the legal representative of the estate of his late  
father MOTSIOKHOMA MOKGOBI.

Defendant.

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DEFENDANT'S EXCEPTION.  
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Defendant excepts to the summons on the ground that even if  
the allegations set forth therein are true and correct, the acts  
complained of were done and performed by his father, the late  
Motsiokhoma Mokgobi, in his capacity as Chief of the Natives  
residing on the Pitsani Native Reserve, and that therefore his  
father was not responsible therefor in his personal, private and  
individual capacity, and defendant cannot be held liable therefor  
as representing the private estate of his father, the late Mot-  
siokhoma Mokgobi.

Wherefore the defendant prays that the summons may be dis-  
missed with Costs.

Edward W. Joyce.

Defendant's Attorney.

1/- Stamp.

IN THE COURT OF THE RESIDENT MAGISTRATE  
FOR THE DISTRICT OF MAFEKING.

I, Mpotsang, minor duly assisted by my step-mother and natural guardian Mpiri and as the heir and legal representative of my late father Mokgalle do hereby ordain, nominate and appoint Messrs. de Kock & de Kock with power of substitution to be my lawful attorney and agent for me and in my name to institute proceedings of claim and demand against Mokgobi Metsiokhoma (alias Athapa) the legal representative of his late father Metsiokhoma Mokgobi according to law; also for me and in my name to apply, if need be, for a decree of Civil Imprisonment in the premises and to proceed to the final end and determination thereof; and, if need be, for me and in my name to enter into any of the Securities required and provided by rules No. 28, 34 of Schedule B to Act No. 20 of 1856, promising to approve of any legal steps which they may take in the premises on my behalf.

Given under my hand at Mafeking this 5th day of April, 1910.

his

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mark

MPOTSANG.

duly assisted by my step-mother

Mpiri her

0  
mark

As witnesses:-

James Molema.

P. Males.



IN THE COURT OF THE RESIDENT MAGISTRATE  
FOR THE DISTRICT OF MAFEKING.

1/- Stamp.

MPOTSANG versus MOKGOBI MOTSIOKHOMA

I the undersigned, Mokgobi Motsiokhoma in my capacity as the legal representative of the estate of my late father Motsiokhoma Mokgobi residing at Pitsani in the district of Mafeking, do hereby ordain nominate and appoint Edward Walter Joyce to be my lawful attorney and agent for me and ~~for~~ and in my name to defend proceedings of Claim and Demand instituted against me by Mpotsang, minor son of the late Mokgatle in his capacity as the legal representative of the estate of his said late father of Modimola in the district of Mafeking, according to law and to proceed to the final end and determination thereof, by virtue of these presents with power of substitution, promising to approve of any legal steps which he may take in the premises on my behalf.

Given under my hand at Mafeking this 13th day of April, 1910.

Mokgobi Motsiokhoma

his 0 mark.

As witnesses:-

Letch atebe

Gaoreku.

COURT OF THE RESIDENT MAGISTRATE  
FOR MAFEKING.

1/- Stamp.

To the Messenger of the Court.

Summon

EDWARD CHARLES ALBERT WELSH, Resident Magistrate and  
Civil Commissioner for the District of Mafeking at Mafeking

that laying aside all and singular business and excuses, he appear  
in person before this Court at Mafeking on the 18th day of April  
1910, at 10 o'clock in the fore noon and also that he produce at  
the time and place aforesaid all deeds and documents in his  
possession bearing on the hereinafter mentioned case and then and  
there to testify and declare all and singular those things which  
he knows in a certain case now depending in the said Court,  
between MPOTSANG, in his capacity as legal representative of his  
late father Mokgatle duly assisted as far as need be by his step-  
mother and natural guardian Mpiri of Modimela in the district of  
Mafeking, Plaintiff, and MOKGOBI MOTSIKHOHA (alias ATLHAPA)  
in his capacity as the legal representative of the estate of his  
late father Motsikhoma Mo-kgobi of Pitsani in the district of  
Mafeking, defendant, and that he by no means omit to do so at his  
peril.

Serve on him the said Edward Charles Albert Welsh a  
copy of this summons and return to the said Court what you have  
done thereupon.

Mafeking this 15th April, 1910.

de Kock & de Kock.

Plaintiff's Attorney.

Geo. Daly.

Clerk of the Court.

MAFEKING.

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RETURN.

On this the 15th day of April, 1910, I have duly served a  
copy of the within summons upon the within named witness personally  
at Mafeking at the same time exhibiting the original and explaining  
the nature and exigency thereof.

T. Aldred.  
Messenger R.M. Court.

15th June, 1910.

MPOTSANG v. MOKOOBI.  
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Mr. Justice Laurence said:- I think the Magistrate was in error in allowing this exception to the summons in the present case.- The action was brought by a representative of a deceased member of one native tribe against the representative of the deceased Chief of another tribe, both living in the district of Mafeking within the Colony and apparently amenable, as far as the subject matter of this case is concerned, to the ordinary Colonial law.- There seems to have been a dispute between the two tribes as to the ownership or the right to enjoy the benefits arising from the occupation of certain land in the neighbourhood of Pitsani Pothlogo. One tribe claimed the right to cut wood there and send their waggons to collect it and the other tribe said they had no such right.- In order to test the matter a certain waggon, the property of a member of one of the tribes, with a load of wood which had been collected, was impounded by the chief of the other tribe, and was detained by him in his lifetime, and remained in the possession of the defendant in this case, his legal representative, after his death.- It was ultimately given up before action was brought, but for this trespass and the resulting damage action was brought by the plaintiff, as legal representative of the deceased owner of the waggon.- Now the point which was made on the part of the defendant was that his father in seizing this waggon was acting on behalf of his tribe.- The seizure and detention of the waggon was apparently on the face of it an irregular and illegal act.- If there had been a trespass, the person whose land was trespassed upon had his remedy according to the law of the Colony.- He might have obtained an interdict against such trespass pending an action to assert his rights.- But this is not a trespass like a case of straying cattle for instance where there is the summary remedy of impounding.- On the facts as alleged in the summons, there was no right to seize the waggon in the present case and the person so seizing and detaining it was liable prima facie to an action for damages

damages for tort.- The only question raised on the exception is whether the defendant was exempt for that liability for trespass owing to the fact that the tort-feasor acted in a representative capacity and with the approval of the tribe of which he was the Chief. Now prima facie it is no defence to an action for tort, whether brought against an official or a private individual, for the person who committed the tort to plead that he acted on the instigation or direction of other people.- It would be difficult to bring an action against a whole tribe - almost as difficult as bringing an indictment against a nation - but whether it would or would not be difficult, or impossible, the person who in the ordinary process of law is responsible for the resulting damage - whatever redress or right to compensation, the defendant in the present case, according to native law or custom, may have against those on whose behalf it was done - is the person who actually committed the tort.- Therefore, so far as this exception is concerned, the Magistrate was wrong in allowing it.- There was nothing in the grounds of the exception, or in the evidence adduced, I think somewhat irregularly, in support of it, to render it a legitimate exception to the summons.- As to the question whether any exception could have been maintained that this was a personal action which lapsed either with the death of the father of the plaintiff or with that of the father of the defendant, I would say that in the first place it would seem that there was a continuing cause of action against the defendant personally.- He stated that he was the legal representative of his father and he has succeeded to the estate of his father.- Included in the property was this waggon which he was illegally detaining and, therefore, that might be a ground for recovering some damage for the subsequent detention.- This point however was not taken before the Magistrate and I do not wish in any way to be understood as encouraging the adoption of any such line of defence or suggesting that the principle in question would apply to an action of this nature.

(3)

In any case the Magistrate was wrong in holding that the summons was bad on the face of it on the ground of the absence of any personal liability and the case must therefore be sent back to be heard on the merits.- The costs of the appeal must be paid by the respondent.-

T. Midgley.

I, George Gilbert Daly, Clerk of the Court of the Resident Magistrate for the district of Mafeking, hereby certify that the above are the true proceedings in the case of Mpotsang versus Motseakhumo Mokgobi and that the said proceedings to the best of my knowledge and belief contain true notes of all evidence received by the said Court, objected to, or offered by either party, and rejected by the said Court, on the hearing of the said case.

Geo. Daly.

Clerk of the Court.

11/5/10.

To the Messenger of the Court.

SUMMON

Albert Charles Albert Welsh in his capacity as  
Civil Commissioner for the District <sup>of</sup> Mafeking, and Baderile  
Mentsica, Paramount Chief of the Barolong residing at Mafeking,  
that laying aside all and singular business and excuses appear in  
person before this Court at MAFEKING, on the 9th day of August,  
1910, at 10 o'clock in the fore noon to testify and declare all  
and singular those things which they, or any of them, know in a  
certain case now depending in the said Court, between Mpotsang,  
minor son of the late Mokgatle, in his capacity as the legal  
representative of his said late father Mokgatle, Plaintiff, and  
Mokgobi Motsiokhume (alias Athapa) in his capacity as the legal  
representative of the estate of his late father Motsiokhume  
Mokgobi, Defendant, and that by no means omit to do so at their  
peril.

Serve on the said Albert Charles Albert Welsh a Copy of this  
Summons, and return to the said Court what you have done thereupon.

Geo. Daly.

Clerk of the Court.

Edward W. Joyce.

Defendant's Attorney.

Mafeking.

-----  
RETURN.

On the 2nd day of August, 1910, I have duly served a copy of the  
within summons upon the within named witness personally at Mafeking  
at the same time exhibiting the original and explaining the nature  
and exigency thereof.

T. Aldred.  
Messenger R.M. Court.

On this the 3th day of August, 1910, I have duly served a copy of  
the within summons upon witness Baderile Mentsica by nailing same  
on the front door of his house after having made careful enquiry  
and having been informed that the said witness was temporarily  
absent.

T. Aldred.  
Messenger R. M. Court.

Office of the Civil Commissioner.

M A F E K I N G.

4th July, 1908.

Gentlemen,

Dispute between Baderile Montsica & Motseakhumo.  
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With reference to your letter of the 2nd instant on the above subject I have the honour to enclose extracts from the letter you refer to.

I have the honour to be  
Gentlemen,

Your obedient Servant

E.C. Welsh.

C.C.

Messrs, de Kock & de Kock.

MAFEKING.



Native Affairs Office.

CAPE TOWN.

11th June , 1903.

Dispute between Badirile and Motseakhumo.

Sir,

With reference to your letter No. D.15/711 of the 10th April last and previous correspondence relative to the above subject I am directed to inform you that the Prime Minister desires you to arrange that Badirile will attend at your office with his Councillors, and that you will then inform him (1) that the Government expects him as the paid child of the Government to use the ordinary and recognised channels of communication in matters of administrative difficulty, as has been previously pointed out to him; (2) that in so far as the representations made through his attorneys, Messrs. de Kock & de Kock, seek to establish a claim that Motseakhumo, who belongs to a different section of the tribe, is subject to his authority, the Government is not prepared to give any decision until it has ascertained exactly what settlement was arrived at when a somewhat similar dispute arose in respect of garden lands, as a result of which a line of demarcation was laid down by survey prior to the annexation of Bechuanaland, the Government being anxious that nothing should be done which would be at variance with the spirit of that decision or lead to dispute <sup>and</sup> ~~or~~ accentuate tribal feeling; (3) that apart from the merits of the dispute, as to which there may be no necessity to enquire further, Badirile and his Councillors, and also Motseakhumo, must know that the law as it now stands, and as it was at the time of annexation, lays down that the Governor may direct that measures may be taken for afforestation and for forest conservation in the Reserves, and may proclaim Regulations under which no resident therein can, except for purely domestic purposes, cut wood without a permit from the Civil Commissioner, and that anyone so cutting wood without a permit is liable to punishment; (4) that the Government has learned with dissatisfaction of the need that exists for taking measures to prevent the indiscriminate destruction of forest growth and at the same time afford means

of

(2)

of avoiding dispute, but before Regulations are proclaimed for this purpose Government desires that he and his people should hear of the matter so that they may have full opportunity of submitting any representations they may wish to make for consideration.

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Resident Magistrate's Office

MAFEKING.

24th March, 1908.

To

the Chief Badirile Montsioa,  
Mafeking Stadt.

I am informed that you met Chief Motseakhumo on the 20th instant in connection with the dispute between you regarding the right your people claim to take wood from the portion of the Reserve occupied by Motseakhumo's people, but that you were unable to come to any settlement.

It has further been reported to me that you informed Motseakhumo's ~~people~~ that if he did not deliver up the waggons which he had seized, within six days, you would take them by force.

I hope this report is not true, but in any case I wish to warn you not to attempt to use force to recover these waggons. If you do, the consequences may be most serious to you and your people. The Government is prepared to carefully consider any disputes among the Barolong, but will not tolerate a resort to arms to enforce any claim.

E.C. Welsh.

Resident Magistrate.

Office of the Prime Minister.

Cape of Good Hope.

Cape Town, 19th January, 1904.

1/22/938

Minute.

Ministers have the honour to acknowledge the receipt of his Excellency the Governor's minute No. 831 of the 28th ultimo forwarding copy of a dispatch No. 90 of the 22nd idem from the High Commissioner, with enclosures, relative to the death of Wessels Montsioa, Chief of the Barolong, and the appointment of a successor to him.

Ministers beg to inform His Excellency, in reply to the High Commissioner's enquiry, that the Government intend to appoint Badirile Montsioa to be Chief of the Barolong, in the Division of Mafeking, in the same position as was previously held by his father Montsioa and his brother Wessels neither of whom, however, was recognised as Paramount Chief in so far as the Cape Colony is concerned.

Ministers take the opportunity of pointing out, in connection with the Resident Commissioner's dispatch to the High Commissioner, that this is apparently the first intimation that has been received by this Government of the late Wessels' recognition by the Government of the Bechuana Protectorate as Paramount Chief over the section of the Barolong tribe in that Colony.

While sensible to the fact that in view of the agreement that was arrived at when annexation took place and confirmed by the provisions of the B.B. Act, No. 42 of 1895, the Government are prevented from interfering with the jurisdiction of the Native Chiefs of Bechuanaland, they feel it only right to invite attention to the somewhat anomalous position in respect of the Chief who is a paid servant of this Colony, in which he resides, and at the same time is recognised by, and presumably subject to the control - to some extent - of another and different Administration.- Although there have possibly been no difficulties in the past arising out of this system of dual control, the point is one that Ministers think might well be brought to the notice of the High Commissioner.

T. Lynedoch Graham.

2 copies of balance of evidence case  
Motuathukho

8/2/18



from Swindon

MoKgobi Mosekhumo, sworn states:

I am the defendant in this action and am the son of the late Mosekhumo. During his life time my father was Chief of Pitsani, recognized as such by the Colonial Government and the people. Some two or three years ago there was a dispute between my father and Chief Badirile regarding the boundary. I remember one MoKgale whose wagon was detained. My father acted in his capacity as Chief of Pitsani when he detained the wagon. Prior to detaining the wagons my father called a meeting about the wagons. The Pitso consisted of the Headman and Councillors of the tribe and the unanimous decision of the tribe was that the wagons should be detained. Badirile Moutsoa was advised of this decision.

Cross examined by Mr deKock.

I am now the Chief and as such representing my father I have been nominated by the people, and the matter has been reported to the Magistrate. I recognize the appointment upon nomination by the Barolong but have not received sanction of the appointment from the Government. The Colonial Government through the local Civil Commissioner demanded the return of the wagons from me. This was after my father's death. At first I refused to hand over the wagons. I handed over the wagons on account of the pressure which was brought to bear by the Government. I detained these wagons after my father's death as recognized Chief of the people at Pitsane. I consulted the people and they agreed that the wagons should be detained. I never acted upon my own responsibility in this matter. I am the legal representative of my father's estate. I have not heard anything about my position.

Case postponed until 16<sup>th</sup> April 1910.

(Sd) P. J. Hugo  
Asst R.M.

Silas Molema sworn states: I am Headman & Councilor under Badirile Montsoa. I know the present Headman at Pitsani. He is a successor to his father. I was present about two years ago when a case was heard at Pitsani regarding the seizure of wagons. I was a member of that Court. Badirile held the Court as Chief of the Molopo Native Reserve. The people at Pitsani belong to the same tribe as the Barolong under Badirile, but of a different section. The Chief Badirile levied a fine at that Court but Moseathumo did not pay the fine as he claimed that he was not under the jurisdiction of the Chief Badirile. Moseathumo's son was appointed Headman at Pitsani but I am not able to say whether he took up the same attitude as his father. Moseathumo did not satisfy that judgment. The four sections of the Barolong, that is, those residing at Kernana, Selagoli, Pitsani, and the Molopo Native Reserve, all came from the same stock. Pitsani is a portion of the Molopo Reserve. Badirile has no jurisdiction over Pitsani as it falls the Selagoli Reserve but has jurisdiction over Pitsani as it falls within the Molopo Native Reserve. I do not know that about the decision come to by the Govt regarding the relative positions of the two Chiefs - if <sup>Chief</sup> Badirile had received such a communication he would have known about it. The present defendant adopted the attitude of his father regarding the detention of the wagons.

Cross examined

Defendant brought the wagons in upon request from the Magistrate

15th June 1910.

Mpotang vs. Makgobi  
Mr Justice Lawrence said. - I think the Magistrate  
was in error in allowing this exception to the summons  
in the present case. The action was brought by the represent-  
ative of a deceased member of one native tribe against the  
representative of the deceased Chief of another tribe, both  
living in the District of Mafeking within the Colony and  
apparently amenable, as far as the subject-matter of this  
case is concerned, to the ordinary Colonial law. There  
seems to have been a dispute between the two tribes  
as to the ownership, or the right to enjoy the benefits  
arising from the occupation of certain land in the  
neighbourhood of Pitsoi Pothlogo. One tribe claimed  
the right to cut wood there and send their wagons to  
collect it and the other tribe said they had no such right.  
In order to test the matter a certain wagon the property of  
a member of one of the tribes with a load of wood which  
had been collected, was impounded by the Chief of the  
other tribe, and was detained by him in his life time,  
and remained in the possession of the defendant in this  
case, his legal representative after his death. It was  
ultimately given up before action was brought, but  
for this trespass and the resulting damage action was  
brought by the Plaintiff as legal representative of the  
deceased owner of the wagon. Now the point which  
was made <sup>on the part</sup> of the defendant was that his father in seizing  
this wagon was acting on behalf of his tribe. The seizure  
and detention of the wagon was apparently in the face  
of it, an irregular and illegal act. If there had  
been a trespass the person whose land was trespassed  
upon had his remedy according to the law of the  
Colony. He might have obtained an interdict against  
such



such trespass pending an action to assert his rights. But this is not a case like a trespass of straying cattle for instance where there is the summary remedy of impounding. On the facts as alleged in the summons there was no right to seize the wagon in the present case and the person so seizing and detaining it was liable prima facie to an action for damages for tort. The only question raised on the exception is whether the defendant was exempt from that liability for trespass owing to the fact that the tort-feasor acted in a representative capacity and with the approval of the tribe of which he was the Chief. Now prima facie it is no defence to an action for tort whether brought against an official or a private individual, for the person who committed the tort to plead that he acted on the instigation or direction of other people. It would be difficult to bring an action against a whole tribe - almost as difficult as bringing an indictment against a nation - but whether it would or would not be difficult, or impossible, the person who in the ordinary process of law is responsible for the resulting damage, whatever redress or right to compensation, the defendant in the present case, according to native law or custom, may have against those on whose behalf it was done, is the person who actually committed the tort. Therefore, so far as this exception is concerned, the Magistrate was wrong in allowing it. There was nothing in the grounds of the exception or in the evidence adduced, I think somewhat irregularly, in support of it, to render it a legitimate exception to the summons. As to the question whether any exception could have been maintained that this was a personal action which lapsed either with  
the

the death of the father of the Plaintiff or with that of the father of the defendant, I would say in the first place that it would seem that there was a continuing cause of action against the defendant personally. He stated that he was the legal representative of his father and he has succeeded to the estate of his father. Included in the property was this wagon which he was illegally detaining and therefore that might be a ground for recovering some damage for the subsequent detention. This point however was not taken before the Magistrate and I do not wish to be in any way understood as encouraging the adoption of any such line of defence or suggesting that the principle in question would apply to an action of this nature.

In any case the Magistrate was wrong in holding that the summons was bad on the face of it on the ground of the absence of any personal liability and the case must therefore be sent back to be heard on the merits. The costs of the appeal must be paid by the respondent.

(s) J. Midgley

Mokgobi Mosebathumo, sworn states:

I am the defendant in this action and am the son of the late Mosebathumo. During his life time my father was Chief of Pitsani, recognized as such by the Colonial Government and the people. Some two or three years ago there was a dispute between my father and Chief Badirile regarding the boundary. I remember one Mokgale whose wagon was detained. My father acted in his capacity as Chief of Pitsani when he detained the wagon. Prior to detaining the wagon my father called a meeting about the wagons. The Pitsani consisted of the Headman and Councillors of the tribe and the unanimous decision of the tribe was that the wagons should be detained. Badirile Mombisa was advised of this decision.

Cross examined by Mr de Kock.

I am now the Chief and as such representing my father I have been nominated by the people, and the matter has been reported to the Magistrate. I recognize the appointment upon nomination by the Barolong but have not received sanction of the appointment from the Government. The Colonial Government through the local Civil Commissioner demanded the return of the wagons from me. This was after my father's death. At first I refused to hand over the wagons. I handed over the wagons on account of the pressure which was brought to bear by the Government. I detained these wagons after my father's death as recognized Chief of the people at Pitsani. I consulted the people and they agreed that the wagons should be detained. I never acted upon my own responsibility in this matter. I am the legal representative of my father's estate. I have not heard anything about my position.

Postponed until 16<sup>th</sup> April 1910.

(Sd) P. J. Hugo

Act R.M.

Silas Moloma sworn states: I am Headman & Councilor under Badirile Mombasa. I know the present Headman at Pitsani. He is a successor to his father. I was present about two years ago when a case was heard at Pitsani regarding the seizure of wagons. I was a member of that Court. Badirile held the Court as Chief of the Molopo Native Reserve. The people at Pitsani belong to the same tribe as the Barolong under Badirile, but of a different section. The Chief Badirile levied a fine at that Court but Mokra Mumo did not pay the fine as he claimed that he was not under the jurisdiction of the Chief Badirile. Mokra Mumo's son was appointed Headman at Pitsani but I am not able to say whether he took up the same attitude as his father. Mokra Mumo did not satisfy that judgment. The four sections of the Barolong, that is, those residing at Kurnana, Seblagoli, Pitsani, and the Molopo Native Reserve, all came from the same stock. Pitsani is a portion of the Molopo Reserve. Badirile has no jurisdiction over ~~Pitsani as it falls~~ the Seblagoli Reserve but has jurisdiction over Pitsani as it falls within the Molopo Native Reserve. I do not know that about the decision come to by the Govt regarding the relative positions of the two Chiefs - if <sup>Chief</sup> Badirile had received such a communication he would have known about it. The present defendant adopted the attitude of his father regarding the detention of the wagons.

Cross examined

defendant brought the wagons in upon request from the Magistrate

15th June 1910

Mpotzang vs. Makgobe

Mr Justice Lawrence said. - I think the magistrate was in error in allowing this exception to the summons in the present case. The action was brought by the representative of a deceased member of one native tribe against the representative of the deceased Chief of another tribe, both living in the District of Mafeking within the Colony and apparently amenable, as far as the subject-matter of this case is concerned, to the ordinary Colonial Law. There seems to have been a dispute between the two tribes as to the ownership, or the right to enjoy the benefits arising from the occupation of certain land in the neighbourhood of Pitsoan Potlago. One tribe claimed the right to cut wood there and send their wagons to collect it and the other tribe said they had no such right. In order to test the matter a certain wagon the property of a member of one of the tribes with a load of wood, which had been collected, was impounded by the Chief of the other tribe, and was detained by him in his life time, and remained in the possession of the defendant in this case, his legal representative after his death. It was ultimately given up before action was brought, but for this trespass and the resulting damage action was brought by the Plaintiff as legal representative of the deceased owner of the wagon. Now the point which was made <sup>on the part</sup> of the defendant was that his father in seizing this wagon was acting on behalf of his tribe. The seizure and detention of the wagon was apparently on the face of it, an irregular and illegal act. If there had been a trespass the person whose land was trespassed upon had his remedy according to the law of the Colony. He might have obtained an interdict against

such trespass pending an action to assert his right.  
But this is not a case like a trespass of straying  
cattle for instance where there is the summary remedy  
of impounding. On the facts as alleged in the summons  
there was no right to seize the wagon in the present  
case and the person so seizing and detaining it was  
liable *prima facie* to an action for damages for tort.  
The only question raised on the exception is whether  
the defendant was exempt from that liability for trespass  
owing to the fact that the tort-feasor acted in a  
representative capacity and with the approval of the  
tribe of which he was the chief. Now *prima facie*  
it is no defence to an action for tort whether  
brought against an official or a private individual,  
for the person who committed the tort to plead that  
he acted on the instigation or direction of other people.  
It would be difficult to bring an action against a  
whole tribe - almost as difficult as bringing an  
indictment against a nation - but whether it would  
or would not be difficult, or impossible, the person  
who in the ordinary process of law is responsible for  
the resulting damage, whatever redress or right to  
compensation, the defendant in the present case, according  
to native law or custom, may have against those on  
whose behalf it was done, is the person who actually  
committed the tort. Therefore, so far as this exception  
is concerned, the Magistrate was wrong in allowing it.  
There was nothing in the grounds of the exception or in  
the evidence adduced, I think somewhat irregularly,  
in support of it, to render it a legitimate exception  
to the summons. As to the question whether any  
exception could have been maintained that this  
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the death of the father of the Plaintiff or with that of the father of the defendant, I would say in the first place that it would seem that there was a continuing cause of action against the defendant personally. He stated that he was the legal representative of his father and he has succeeded to the estate of his father. Included in the property was this wagon which he was illegally detaining and therefore that might be a ground for recovering some damage for the subsequent detention. This point however was not taken before the Magistrate and I do not wish to be in any way understood as encouraging the adoption of any such line of defence or suggesting that the principle in question would apply to an action of this nature.

In any case the Magistrate was wrong in holding that the summons was bad on the face of it on the ground of the absence of any personal liability and the case must therefore be sent back to be heard on the merits. The costs of the appeal must be paid by the respondent.

(20) J. Midgley

Rabotehu

Mno Picong

Eile ka tsatai ya 21 December gabotela  
 Mno Picong gatae Rele Mofshale ke botletse  
 Mofshale gatae oena Gantletse le Mofshale  
 le ke laele Gore Mofshale a ke shupetsa  
 likgomo cathe tsa batho ba ga Montsion le  
 batho bothe Basatshili le gore thusa go li  
 phutha

Mofshale a biletse bodnamase ba le 3 le  
 monna monna a lekgotta ya gagae thoko  
 ebong Kgosi Komane, Mosii, Thogegang  
 le Jan le bangae ba ga Gantletse  
 a ba rea a re ke itumelela thomelo e ga Gantletse  
 le kafa o tsileng go gapa Basatshili ka gane le  
 lilo tsa bone cathe, me ke ete ntsha bonake ba  
 le bangae ba me ba lekgotta go le shupetsa batho  
 le lilo tsa batho ba ga Montsion cathe ka le na  
 ga ke baiale, ka gane batho ba ga Montsion  
 ga bana molomo ope ga ba Chamlae ke go  
 thusisa ke motso ope, me ke ete itumelela fa  
 lo ka bolae Phetso Mofshale mona Basatshili  
 me fa losa molae lo a mo golega lo a moise ka  
 Latthakane, me tiro e lo e lire ka pela a ise  
 w tshabe

Thabane are motso e lo seka lo a molae  
 ga ke a laelan go bolae ope, lefu e le go tshaba  
 ga kake a tshaba gape ke Kgosi le fa lo romela  
 gore atle kraso o ka tse, me Mofshale a loela  
 bodnamase le ba lekgotta ya gagae go gapa likgomo  
 tsa batho ba ga Montsion le go shupetsa batho  
 ba ga Gantletse likgomo busu le lepoli tse li  
 thakanyang le tsa batho ba gagae, me Phetso a  
 gana go tsamaisa le bone, me badi ba boile go sa  
 go mochoaru



Seepeli Baepanye

Eiler Motta Dranyae (Dropticon) Gouttaetse le Drogottu le  
 Ba hangae <sup>le gane</sup> ba en kou laager du ka uttan Gouttaetse a raen  
 a raen Syman are ke neta gore oitse fa ke se ou  
 Dranyeseman keli ou Draburu ka gathe du ke kopu gore le  
 Deale hie ke ee go <sup>choava</sup> (fulusa) Saame le barolong ba hangae ba  
 ba ikantsing Dranyeseman go ba lele Drany Lotthatsane  
 gore onetthala en batho e nyelile le gore post esitsanae <sup>choava</sup>  
 ka uttan Draburu a gane are Saame go choavelu go fuluga  
 fa ese go ladela gore a phuthela batho bothe kon motang  
 on gage kon <sup>ke ife sentle fa</sup> Gouttaetse <sup>choava</sup> (fulusisa) Saame le  
 Barolong ba hangae ka thato ea gage Draburu le Draburu a gane  
 ke gaelelela sentle fa eiler Motta mangae ka bolelela Saame  
 fa Dranyane ou me Drathili a itilae ke batho ba go Gouttaetse  
 me Gouttaetse a droipisa ka gore o ka droptae ka gane  
<sup>Seane</sup>  
 Ina le Dranyane ou me pele licharaa kon gage me  
 ke bolelela licharaa ka na Jang? me Drapote as a seka a rulia  
 le Drabule a me a tere du Dranyane ganna koaltheo

cone ba bangae ba etu ison kiam Bthbe ba  
ba ngae ba etu salu mono Cattrakame

Inabum a netu thata gaeke gape batha ba onetse e  
gane ke bone ba <sup>uetoans</sup> gapang lekyamo ten onabum  
Dne Boratshili ka ba la ette ka bogola ba senoa  
ke Letsape ke etu ba siamisa kiu onolas, ettare ke  
Sena go phustha batha ba botthe ke etu Lisa litsete  
Cattrika onepha gore post-e le wamee le gore  
bogola ya lekyamo ten onabum bok hulla

<sup>peet-paahum</sup>  
Gouttete le onogotho ba gapile lenken le lipoti  
ten Boratshili ba ba gapile le Cattrakame li le 114  
<sup>peet-paahum</sup>  
onathupe thomelony le Bathobotthe

Gape Gouttete e gapile lenken le lipoti ka  
-watsa le seli li le 115

onosone a go Letsape le boratshili ba bangae  
a gapile le ka onabeli a korony dne Gouttete le  
batha ba gagae ba bele ba a lemule oneli

Kgasi Mesele le bana bu Lekgotta

Ere ka Tsatan ya nttaw ya kgole ea Phalane <sup>(October)</sup> ka batha  
lipitse li le 54 dne onorafengoa onorolong ka tomela  
le kaan go Gouttete ka onoleletu onafoko a, gore ene  
le onothupi ba nttaw lipitse li le shome <sup>ka 5, the oct 1901</sup> le Balekgotta  
ka beleletu Gouttete mono onafekeng <sup>ka 5, the oct 1901</sup> ka dne etthalaganyetse  
fa Pusho e ke leng dne go cone e batha lipitse li le  
kala dne <sup>non</sup> a ramela lipitse li le 10 go etu go etatsa  
ten rama onono, li the le bapalami ba cone, dne ke  
amogete lipitse ten go Bathobotthe fetu le ten  
ga onothupe onogolae, dne <sup>li le 7</sup> Gouttete a seta a ramela  
pitse e pu go thusa Pusho e kemo go cone le esang go  
keetsa tado ea ga Besele kgosi ea gagae le Balekgotta

Raboliba le lefoso Thwane

Kele Gouttoetse ka Coa Kou Raseng en Maburu ke Coa  
 go raen dragasi a Maburu kehe ba ntle tiro e ke ka e liray  
 gone kele Leburu gore go shupage fu ke metse Maburu  
 ke raen gore ke phuthe batho bothe ba eleng Baidang  
 Bora Tchili metse eotte ea bone ke eleri mono  
 Lethakane gore metthalu en batho le ea likgomo  
 e tloge bantse gore tsho le meelo ea me mo  
 Maburung e bonale, gore ke ete ke Choune batho  
 bora Tchili ere fu ke saba Choune ke ba bolae  
 me ke itumela go lo baledela lona bagaeche gore  
 topa ea me Maburu a e lumetse, me ke ete  
 Simolole tiro en ka low bobela

Keu go gapa Saane ka ele ene post-e tenay ka  
 ene le go gapa Baidang ba bangae bothe bon Tchili  
 gore metthalu e mentse e nyelole

Go ena Mokgotsoa Bolibe are Jansa Gouttoetse en  
 bule ke Coa drago Kou Raseng ke Coa go shupa maraka  
 a rona, me kare lefu lona Bora Palama lona bu tiro  
 en ke ete e lisa ke beli le Gouttoetse me ete ke birle  
 molomo o mo golo, ke itumetse Gouttoetse ka go bu a  
 Jalo ka a kibe eane ehe en dranyesemane me Jaanay  
 ka a ipolese fu ele Leburu Jaanay go liame me  
 tiro en rona e ete liama, ka na ke nta kele en Maburu  
 gaba, Taka Gouttoetse a bule ke ete en go gapa Saane  
 gore post-e seka en ethele e tsamaen me tiro le tsho  
 en rona ete bonala

<sup>Post-Babua</sup>  
Bathobotse le mothipe mo pucung

Gouttoetse a raen mothipe le bo monastere <sup>le bo pholego</sup> Siana  
 Jaanay ke lo baledela fu kele en Maburu, me Jaanay  
 kare lefu ele motho en ga Montsona kgotsa en  
 mothipe en o pitsoang ka Montsona ethele en  
 le gope kaa o ka eang gone, me metse eotte  
 en ga Montsona Saane le Kou Maratsane le gangae  
 le gangae ke ete a kofa ke en go e gapa batho ba eone

Moro abe Ecele ka ga Goutetse le  
Mothabani Rakololi Mokgothe

Ecele ka October, Ramogola a tsa mo go Letsame le babungoe Borra-  
 Ishidi a tsa le tsa le tsa ke Goutetse le Mokgothe go tse go  
 le tsa mo mo masimo go a le tsa ke mo mo tsa go  
 ka bonaka, go tse le tsa go a le tsa, abo a tsa le tsa  
 tsa go Rakololi le le tsa mo tsa go tsa le tsa chele  
 e tsa, mo tsa, go tsa mo Ramogola, mo masimo tsa  
 mo tsa le tsa ke tsa Goutetse le tsa, mo tsa  
 Rakololi o tsa le tsa ke Goutetse le Mokgothe go tsa  
 o le tsa le tsa tsa, mo le tsa o tsa ke tsa  
 o tsa le tsa tsa go Rakololi o le tsa le tsa  
 go tsa, le tsa o tsa ke tsa tsa go  
 ke tsa, tsa le tsa le tsa le tsa ke tsa  
 le tsa, ke Goutetse, Goutetse, mo tsa  
 tsa ke tsa mo tsa mo tsa mo tsa  
 ke mo tsa mo tsa, mo ke tsa tsa  
 ke le tsa le tsa ke tsa tsa tsa  
 mo tsa tsa ke tsa le tsa mo tsa  
 ke a le tsa mo tsa,

Ecele ka tsa le tsa Goutetse le Mokgothe le tsa  
 mo tsa ke tsa mo tsa go tsa go tsa le tsa  
 tsa tsa tsa le tsa mo tsa  
 mo, ke tsa tsa o tsa, ke tsa mo tsa  
 ele o tsa tsa tsa mo tsa le tsa  
 ke tsa, mo ke tsa tsa mo tsa go tsa go  
 tsa le tsa ke tsa, mo le tsa tsa  
 tsa le tsa le tsa tsa tsa tsa le tsa  
 tsa, mo tsa o tsa go tsa ke  
 tsa tsa ke tsa, tsa o tsa le tsa  
 tsa o tsa le tsa ke tsa o tsa  
 mo tsa ke tsa mo tsa tsa ke tsa  
 ke tsa mo, tsa ke tsa le tsa tsa

Kgathu Inyanga, Inophato, a holabala Gantathu le  
bithu ba gagae are Inotseokhuni are re thuseba ku bathu  
go en go Choa Phetthu le Inotseane gona go ba  
holaea, Ine Phetthu ke Ine leile Ine go Inotseokhuni  
Ine Cetebele le ketetse ku la me le mu le bana ba  
le bana le libotso tse li vter. Phetthu ke  
Ine thagete e le tshoane sa Inotseokhuni, re tse  
le linyane lina le lipoli tse ke li Inotseane ke  
Inotseokhuni tse Basa Pshili, tse linyane ba li  
ikgapela

Ezekiel, Inogotse, Jeremah, Lemausho, Inogotse orela

Erele ka tlatse ya 29 December ka tse na ka Phetsane re  
Cav Lettagole ke chote post ka tse na Ine o tse na go  
Orebotse Kgorealira pele ka re ite fa ele ene oke  
ke bolokang ku go ba ana le tsalano le Basa Pshili  
le Bogasi ya Inangeseaman, Ine e ile ke tse na  
ka fitthela a Leo, Ine Inogotse a re tse na a re  
fitthetse Ine tse na, are batho ba Ine ke a ba be-  
laela thala ga bana tsalano le Basa Pshili, gap  
le Phetsane e ba Inogotse eone, Ine erele Inogotse  
Ine Ine an gagae a tse na, Ine a fitthetse a item eledu  
tse na Inogotse a re linyane ka gore fitthetse gore  
ke. Le bana ke ope an Inotse, Ine ka Coa Ine  
Phetsane ke ise ke bana ke Inotse ope an gore fa ese  
Orebotse le Inogotse, Orebotse are Inotseokhuni le bathu  
ba gagae, ga ba linyane gona ba ya lefatshu bana le  
tshiamano lefatshu Ine ga ba lise lise Ine go Ine  
esale bogotagole, ga ke tse na Ine tse na an Ine  
gape erele Inabuni a ba tse na ba re ga se ba  
Inangeseaman ke batho fela ke Basa Pshili ke  
tse na se ke ba belaeang ka Shone

Resident Magistrate's office  
Mafeking 27<sup>th</sup> March 1908

To the Chief Badivile Mankwa  
Mafeking Stad.

I am informed that you met Chief Moseakhamo on the 20<sup>th</sup> instant in connection with the dispute between you regarding the right your people claim to take wood from the portion of the Reserve occupied by Moseakhamo's people, but that you were unable to come to any settlement.

It has further been reported to me that you informed Moseakhamo that if he did not deliver up the wagons he had seized within six days, you would take them by force.

I hope this report is not true, but in any case I wish to warn you not to attempt to use force to recover these wagons. If you do, the consequences may be most serious to you and your people. The Government is prepared to carefully consider any disputes among the Barolong, but will not tolerate a resort to arms to enforce any claim.

(sfd) E. C. Welch  
Resident Magistrate

that the law as it now stands and as it was at the time of annexation, lays down that the Governor may direct that measures may be taken for afforestation and for conservation in the Reserves, and may proclaim regulations under which no resident can, except for purely domestic purposes, cut wood without a permit from the Civil Commissioner, and that anyone so cutting wood without a permit is liable to punishment (4) that the Government has learned with dissatisfaction of the need that exists for taking measures to prevent the indiscriminate destruction of forest growth and at the same time afford means of avoiding dispute, but before regulations are proclaimed for this purpose Government desires that he and his people should hear of the matter so that they may have full opportunity of submitting any representations they may wish to make for consideration.

Native Affairs Office  
Cape Town 11 June 1908

Disputes between Basutoland and the Government

12

With reference to your letter No. 13711 of the 10th April last and previous correspondence relative to the above subject I am directed to inform you that the Prime Minister desires you to arrange that Basutoland will attend at your office with his Commissioner, and that you will then inform him (1) that the Government expects him as the part chief of the Government to see the ordinary and recognized channels of communication in matters of administrative difficulty as has previously been pointed out to him (2) that in so far as the representations made through his attorneys that the Government seek to establish a claim that Basutoland, who belongs to a different section of the tribe, is subject to his authority, the Government is not prepared to give any decision until it has ascertained exactly what settlement was arrived at when a similar dispute arose in respect of Basutoland, as a result of which a line of demarcation was laid down by survey prior to the annexation of Basutoland the Government being anxious that nothing should be done which would be of assistance with the spirit of that decision or lead to disputes and a consequent tribal feeling (3) that apart from the merits of the dispute, as to which there may be no necessity to enquire further, Basutoland and his Commissioner, and also the Government, were at that time



Office of the Civil Commission  
Mafeking 4<sup>th</sup> July 1908

U 187291

Gentlemen,

Dispute between Bahirulo-Montrose & Motzakhame

with reference to your letter of the 2<sup>nd</sup> instant on the  
above subject I have the honour to enclose  
extracts from the letter you refer to

I have the honour to be  
Gentlemen

your obedient servant  
(sp) E. Welsh

cc.

Messrs de Kock & de Kock  
Mafeking



the native Chiefs of Bechuanaland, they feel it only  
right to invite attention to the somewhat anomalous  
position in respect of the Chief who is a paid servant  
of their Colony in which he resides, and at the same  
time is recognized by and presumably subject to the  
control to some extent of another and different  
administration. Although there have possibly been  
no difficulties in the past arising out of this system  
of dual control, the point is one that ministers think  
might well be brought to the notice of the High  
Commissioner.

(10) J. Lymedoch Graham



1/20/1910

Office of the Prime Minister  
Cape of Good Hope  
Cape Town 19<sup>th</sup> January 1910

Minute

Ministers have the honour to acknowledge the receipt of His Excellency the Governor's minute N<sup>o</sup> 351 of the 28<sup>th</sup> ultimo forwarding copy of a despatch N<sup>o</sup> 90 of the 22<sup>nd</sup> idem from the High Commissioner, with enclosures relative to the death of Messel Montsosa Chief of the Barolong, and the appointment of a successor to him.

Ministers beg to inform His Excellency in reply to the High Commissioner's enquiry that the Government intend to appoint Radimbe Montsosa to be Chief of the Barolong in the division of Mafeking in the same position as was previously held by his father Montsosa and his brother Messel, neither of whom however was recognized as Paramount Chief in so far as the Cape Colony is concerned.

Ministers take the opportunity of pointing out in connection with the Resident Commissioner's despatch to the High Commissioner that this is apparently the first intimation that has been received by this Government of the late Messel's recognition by the Government of the Bechuanaland Protectorate as Paramount Chief over the section of the Barolong tribe in that Colony.

While sensible to the fact that in view of the agreement that was arrived at when annexation took place and confirmed by the provisions of the B.B. Act N<sup>o</sup> 42 of 1895, the Government are prevented from interfering with the jurisdiction of

the

2<sup>nd</sup> August 1910

Mr Joyce on behalf of defendant files  
exception marked A.

Mr deKock on behalf of Plaintiff objects  
to any further exceptions in as much as  
the case was remitted to be tried on its  
merits.

Case postponed until 9<sup>th</sup> August 1910

(20) P.J. Hugo

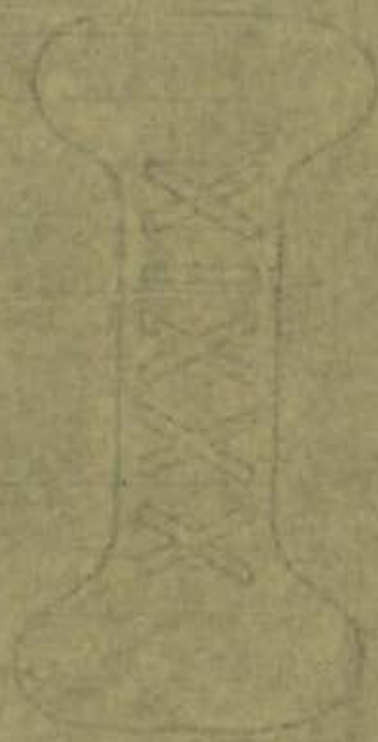
asst Rm.

9<sup>th</sup> August 1910

Objection by Mr deKock overruled  
and exception entertained

(20) P.J. Hugo

asst Rm.



Chief at Setlagole, but has always claimed jurisdiction over the same. There is no dispute regarding the different sections of the same tribe. Letter marked D produced & examined.

Shortly after annexation on 25th April 1887, Chiefs in Bechuanaland were appointed.

Judgment  
exception upheld as the parties belong to one and the same tribe, and case dismissed with costs.

(20) P. Hargo  
Asst Com



9th August 1910

Edward Charles Albert Welsh sworn that I am the Civil Commissioner and Resident Magistrate for Mafeking. I know that portion of the District known as the Molapo Native Reserve. Tetsam is a portion of the Molapo Reserve. Badirile is the only recognized Chief of the Molapo Native Reserve. Badirile is the successor of Hessel. There has been correspondence regarding the appointment of Badirile, a copy of a minute from Government to the High Commissioner put in. There is no boundary between that portion of the Molapo Native Reserve known as Tetsam and the upper portion nearer Mafeking  
By me De Kock

Badirile has always claimed to have jurisdiction over Tetsam whereas the Tetsam natives have always claimed that they are independent. The present defendant is to day recognized as Headman. Molsakhumu was a minor chief. The correspondence regarding a successor to Molsakhumu has been settled, Government decided that Molsakhumu is subordinate to Badirile. Government came to this decision subsequent to the detention of the wagons. The detention of the wagons commenced the correspondence as to the relative positions of the two men, Badirile and Molsakhumu. I wrote the letter marked 'C' handed in. I talk at that Government has always considered that the natives at Tetsam were subject to the jurisdiction of Chief Badirile. The Barolans have been split up into four sections. If Badirile had been appointed Paramount Chief he would have had jurisdiction over Sotlagala Reserve. Badirile does not claim jurisdiction over Phoe (Sotlagala Reserve) Phoe is the Chief

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Defendant's exception to Plaintiff's summons.  
Firstly, that both Plaintiff and Defendant are Barolong, and in terms of Section 11 Proc. 32 of 1887, the late Chief Montsisa (now succeeded and represented by Badirile Montsisa) was appointed their Chief, that consequently in terms of Section 31 B.B. Proc. 2. of 1885, their said Chief has original and exclusive jurisdiction over them, therefore this Court's jurisdiction is ousted in the matter.

Secondly, that certain matters in dispute (including the subject of this action) between Chief Badirile Montsisa and the late Motsoahuma Mat'gobi (now succeeded and represented by Defendant) were submitted by the said Chief Badirile Montsisa to the Colonial Government for adjustment; that the said Colonial Government duly caused investigation to be made in the matter and appointed a Commissioner to duly investigate such disputes; that the said Commissioner duly summoned the said Chiefs before him but has not yet delivered his report; that the matter is consequently in the position of "lis pendens" wherefore Defendant prays that the summons may be dismissed with costs.

(sgd) Edward W. Joyce  
Defendant's Attorney

Edward Charles Albert Welsh sworn states:

I am Resident Magistrate for Staffa. I know the defendant in this action. He is Headman at Pitcairn. It is not correct when he says he has been appointed Chief. It is possible that the Tribe may have nominated him as Chief, but his appointment is only that of Headman. I remember the detention of four wagons by the late Chief Moksiakhuana. If the Barolong under Radwile have a right to cut wood at Pitcairn then I would say that the detention of the wagons was illegal. I suggested to but did not demand from defendant the return of the wagons.

By me Joyce.

I am of a opinion that the detention of the wagons was a tribal dispute. The present defendant is looked upon by the Government as the head of that section of the Tribe which was formerly represented by the late Moksiakhuana. The subject of the detention of the wagons was fully reported to the Government.

Judgment

Exception upheld and case dismissed  
with costs.

(sgd) P. J. Hugo  
asst. Mag.

6<sup>th</sup> April 1910.



## Defendant's Exception

Defendant excepts to the summons on the ground that, even if the allegations set forth therein are true and correct the acts complained of were done and performed by his father the late Motiathuma MaKgoti, in his capacity as Chief of the natives residing on the Pitsoam Native Reserve and that therefore his father was not responsible therefor in his personal, private, and individual capacity and defendant cannot be held liable therefor as representing the private estate of his father the late Motiathuma MaKgoti.

Wherefore defendant prays that the summons may be dismissed with costs.

sd/ Edward W. Joyce

Defendant's attorney

Mafeking

Mokgobi Motsekhumo (alias Allapa) in his capacity as the legal representative of the Estate of his late father Motsekhumo Mokgobi, residing at Pitsoam in the District

Mafeking

15th

April

Mafeking

Friday

0 10

his minor son of the late Mokgabi in his capacity as the legal representative of the Estate of his said late father Mokgabi duly assisted as far as need be by his late mother and natural guardian Mpiri, of Modimola in the District of Mafeking.

41-12-6

And thereupon Plaintiff complains and says that in or about the month of March 1908 certain such wagon with a load of wood thereon, the property of his said father (then alive) was seized by or at the instance of the late Motsoa Phuma Mokgobi father of the said Defendant at or near Pitsoam aforesaid and illegally detained by the said late Motsoa Phuma Mokgobi and subsequently after his death by his son the said Defendant and delivery whereof was refused up to and until the 19th of March 1910 when the said Plaintiff accepted delivery. That the load of wood valued at 157 has not been delivered; that in consequence of the said detention and non-use of the said wagon the same has depreciated and deteriorated in value to the extent of £1.5.0; that certain articles which were on the wagon at the time of seizure namely one yoke and key of wagon were not delivered by the Defendant with the said wagon; that further owing to the detention of the wagon the said Plaintiff in his said capacity has been unable to use the said wagon for a period of two years and has incurred loss and expense in consequence thereof in the sum of £1.5.0. Wherefore Plaintiff in his said capacity claims the sum of 41-12-6 as aforesaid etc.

Mafeking

15th

April

Geo. Daly

De Kock v De Kock

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