## JOURNAL OF

## AFRICAN LAW

[1959] J.A.L. Autumn 1959 Vol. 3, No. 3

## Edited by A. N. ALLOTT

#### CONTENTS

NOTES AND NEWS		145
ARTICLES		
Waqfs in East Africa	J. N. D. Anderson	152
The Recording of Customary Law Fifteenth and Sixteenth Centuries a African Customary Laws		165
Law Reporting in the Sudan	W. L. Twining	176
CASES		
Privy Council		179
Court of Appeal, England		191
Court of Appeal for Eastern Africa		192
Uganda High Court		208
CORRESPONDENCE		210
REVIEWS		212
BIBLIOGRAPHY OF AFRICAN LAW		215

## **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.

JAMES S. READ, Lecturer in African Law, School of Oriental and African Studies, University of London (Assistant Editor).

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 3

# LONDON BUTTERWORTHS

BUTTERWORTH & CO. (PUBLISHERS) Ltd. LONDON: 88 Kingsway, W.C.2 ENGLAND:

AFRICA: BUTTERWORTH & CO. (AFRICA) Ltd. DURBAN: 33-35 BEACH GROVE

AUSTRALIA: BUTTERWORTH & CO. (AUSTRALIA) Ltd.

SYDNEY: 6-8 O'CONNELL STREET MELBOURNE: 430 BOURKE STREET BRISBANE: 240 QUEEN STREET

CANADA: BUTTERWORTH & CO. (CANADA) Ltd. TORONTO: 1367 DANFORTH AVENUE, 6

NEW ZEALAND: BUTTERWORTH & CO. (NEW ZEALAND) Ltd. WELLINGTON: 49-51 BALLANCE STREET AUCKLAND: 35 High Street

BUTTERWORTH INC. U.S.A.:

WASHINGTON: D.C.: 7235 WISCONSIN AVENUE, 14

Printed by THE THANET PRESS, Union Crescent, Margate.

#### **BOARD OF ADVISERS**

The Hon. Sir Adetokunbo Ademola, Kt, Chief Justice of the Federation of 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, P.C., One of Her Majesty's Lords of Appeal in Ordinary.

Professor A. GLEDHILL, Professor of Oriental Laws, University of London.

Dr. A. L. GOODHART, K.B.E., Q.C., 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.

Major-General 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. Mr. Justice Mahon, Chief Justice of Zanzibar.

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.

The Hon. Sir George Paterson, O.B.E., Q.C., Chief Justice of Northern Rhodesia.

Sir Kenneth Roberts-Wray, K.C.M.G., Q.C., Legal Adviser, Commonwealth Relations Office and Colonial Office.

The Hon. Sir RONALD SINCLAIR, Kt, Chief Justice of Kenya.

The Hon. Sir Thomas 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 WISEMAN, Chief Justice of the Gambia.

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; Director of Institute of Advanced Legal Studies, University of London.

Professor A. Phillips, O.B.E., J.P., Professor of English Law, University of Southampton.

J. S. Read, Lecturer in African Law, School of Oriental and African Studies, University of London (Assistant Editor).

Professor I. Schapera, D.Sc., Professor of Anthropology, University of London.

### INDEX

Articles							:	PAGE
Anderson, J. N. D.	Wa	qfs in Ea	st Afri	ca				152
Lloyd, P. C.		ne notes	on the	Yoruba	rules e	of succ	ession	_
	Fan	and on aily prop				uba		7 105
Phillips, A.		rriage ar						93
Read, J. S.		stitution						93
, g		constitu ments i	tional	and		al dev	elop- 	39
Russell, F. F.	Erit	rean cus	tomary	law		•••		99
Simmance, A. J. F.	The	adoptio	n of ch	ildren	among	the K	ikuyu	•
_		of Kian	nbu Di	strict	•••	•••	•••	33
Twining, W. L.		reporti	_			•••	•••	176
Vanderlinden, J.	The	recordi during centurio	the s and	fifteent the rec	h and	l sixt	eenth	
		customa	ary law	•••	•••	•••	•••	165
BIBLIOGRAPHY OF AFRICAN	Law	•••		•••			79, 143	, 215
Correspondence		•••	•••	•••	•••			210
LEGISLATION								
Western Region of Nige	ria	•••				<i>.</i>		116
Notes and News	. 1 6							0-
African law in the Unite			•••	•••	•••		•••	81
Conflict of laws in Nort		•	•••	•••	•••	•••	•••	85
Legal education in Nige			 Tanı	 A C	•••	•••	•••	84
London Conference on						•••	•••	148
Progress in African lega			 land ta	 	 Vanu	• • • •	•••	145
Report of Working Part The International Afric				nure m	=		•••	2
The law of Buganda: se				one.	•••	•••	•••	146
The reform of the law of		•						90
The Restatement of Afr				a				149
The researchent of this	10411 1	<b>44.</b> 110	jeet	•••	•••	•••	•••	.49
Reviews								
Ali bin Hemedi el Buhr	ity, Λ	(ikahi	•••		•••			139
E. Bustin, La décentrali politiques en Afrique				et l'évo	lution o	des stri 	ctures 	75
S. A. de Smith, Judicial	revier	v of adm	inistrati	ve action	n	•••		212
C. W. W. Greenidge, S.	lavery		•••					141
Hamed bin Saleh El-Bu	ısaidy	, Ndoa n	a talako	ı				76
C. Leys, European politics	in So	uthern Rh	odesia				•••	136
W. J. M. Mackenzie, F.	ree el	ections	•••	•••			•••	138
C. K. Meek, Land tens	ure an	d land d	administ	ration	in Nige	ria an	d the	
Cameroons	• • •	•••	•••	•••	•••	•••	•••	75
Sir A. Russell, The magi	strate		•••	•••	•••	•••	•••	213

### CASES REPORTED, DIGESTED OR COMMENTED ON

1. ALPHABETICAL LIST			
AG. v. Block [E.A.C.A. Kenya]			PAG
Abarbialm a Da Mara [D.C. Vanua]		•••	13
Andrea v. The Owen IR A C A Tonnerville		•••	17
Annalysis 7th Resembles ID C. Minerial	•••	•••	7 6
D. L Mark by Citical Classes I I man dell	•••	•••	20
Bukenya v. Mutebi [riigh Court. Uganda] Bwavu Mpologoma Growers v. Gasston [E.A.C.A. Uganda		•••	19
Chur v. Devonshire Stores Ltd. [E.A.C.A. Kenya]	-	•••	_
	•••	•••	19
City Council of Nairobi v. Ata Ul Haq [E.A.C.A. Kenya]	•••	•••	19
Danji v. The Queen [E.A.C.A. Kenya]	. 767. 	Court	13
Ilahi v. Gathuthi Hotel [P.C. Kenya]			11
Kanji v. Gailey and Roberts Ltd. [P.C. Tanganyika]	•••	•••	11
Mandavia v. Commissioner of Income Tax [P.C. Kenya]		•••	_
Manyaki v. The Queen [E.A.C.A. Tanganyika]	•••	•••	7
Mohamed Haji Abdulla v. Ghela Manek Shah [P.C. Keny	 ام	•••	6
to the second of	_	Manii	U
Mohamedali Jaffer Karachiwalla v. Noorally Rattanshi [P.C. Kenya]	Kajan	manji 	6
Norman v. Overseas Motor Transport (Tanganyika) Lt Tanganyika]		A.C.A.	19
Nwabisi v. Idigo [P.C. Nigeria]		•••	18
Owens v. Owens [E.A.C.A. Kenya]	•••	•••	20
Ramji v. Ramji [P.C. Tanganyika]			11
Ramus v. Donaldson [E.A.C.A. Tanganyika]		•••	20
Re G.M. [Supreme Court. Kenya]		•••	7
Riddlesbarger v. Robson [E.A.C.A. Kenya]		•••	12
Farmohamed v. Lakhani & Co. [E.A.C.A. Uganda]	•••	•••	
i amonanicu v. Lamani e. Co. [L.A.C.A. Oganda]	•••	•••	13
2. SUBJECT INDEX			
Administrative Law			
right of Attorney-General to sue for enforcement of a created by a planning ordinance [AG. v. Block]		right 	13
Appeal			
application to adduce further evidence [Tarmohamed v. L.		_	13
power of appellate court to reverse trial judge's fin [Akerhielm v. De Mare]	aing o	i lact	179
Assessors			
summing up to—criminal procedure [Andrea v. The Que	en]	•••	7
Attorney-General			
right to sue for enforcement of public right created ordinance [AG. v. Block]	by pla	nning	12

Conflict of Laws	PAGE
registration of foreign judgment—judgment debtor not receiving notice of proceedings in original court [Ramus v. Donaldson]	201
tort—libel—whether Supreme Court of Kenya has jurisdiction over foreigners in respect of a tort committed outside the Colony [Riddlesbarger v. Robson]	120
Contract	
breach of express term—"roadworthy conditions" [Norman v. Overseas  Motor Transport (Tanganyika) Ltd.]	197
breach—measure of damages—specified standard and approval by agent [City Council of Nairobi v. Ata Ul Haq]	194
undertaking to meet pecuniary liability of another [Kanji v. Gailey and Roberts Ltd.]	119
whether "complete or final" [Tarmohamed v. Lakhani & Co.]	135
Copyright	
action for infringement—whether tax payable on lost profits must be taken into account [Bwavu Mpologoma Growers v. Gasston]	198
Court	
constitution of on hearing of criminal appeal [Danji v. The Queen]	134
Criminal appeal constitution of court on hearing [Danji v. The Queen]	134
Criminal procedure	
power of court to call further evidence [Manyaki v. The Queen] summing up to assessors [Andrea v. The Queen]	70 71
Damages	
action for infringement of copyright—whether tax payable on lost profits must be taken into account [Bwavu Mpologoma Growers v. Gasston]	0
v. Gasston]	198 194
Deceit	
whether court's or defendants' understanding of an untrue representation to be considered in testing honesty of defendants' belief it was true [Akerhielm v. De Mare]	179
Defamation	
whether libel referred to plaintiff—whether words complained of capable of a defamatory meaning [Awolowo v. Zik Enterprises]	65
Divorce	
possibility of conflicting decrees in Kenya and in England [Owens v. Owens]	207
Evidence	
further, power of court to call [Manyaki v. The Queen]	70
Habeas Corpus	
Protectorate—jurisdiction of High Court to issue writ overseas (Ex parte Mwenya]	191
Income Tax	
procedure for return of income [Mandavia v. Commissioner of Income	60

Infant	PAGE
custody—position of guardian in Kikuyu law [Re G.M.]	72
Interpretation	
Ordinance, of, in pari materia with English Act—whether English decisions before the date of a code relevant in interpreting the code [Ramus v. Donaldson]	201
Judgment debtor	
not receiving notice of proceedings in original court [Ramus v. Donaldson]	201
Jurisdiction	
divorce—possibility of conflicting decrees in Kenya and in England [Owens v. Owens]	207
High Court, of, to issue writ of habeas corpus overseas (Ex parte Mwenya]	191
Principal Court of Buganda—claim for goods sold [Bukenya v. Mutebi]	208
Kikuyu Law infant, custody of—position of guardian [Re G.M.]	72
Land	
sale of—by native tribe—abandonment by Crown—acts of ownership and occupation [Nwabisi v. Idigo] sale of—duty owed by vendor to purchaser [Mohamed Haji Abdulla v. Ghela Manek Shah]	182 66
Landlord and Tenant suit for possession [Ilahi v. Gathuthi Hotel]	119
Libel	
tort committed outside Kenya—conflict of laws [Riddlesbarger v. Robson]	120
whether referring to plaintiff—whether words complained of capable of a defamatory meaning [Awolowo v. Zik Enterprises]	65
Mortgage	
enforcement of security [Mohamedali Jaffer Karachiwalla v. Noorally Rattanshi Rajan Nanji]	66
Partnership joint Hindu family [Ramji v. Ramji]	119
Privy Council	
distinction between concurrent findings of fact and concurrent inferences from facts in courts below [Nwabisi v. Idigo]	182
Sale	
land, of—by native tribe—abandonment by Crown—acts of ownership and occupation [Nwabisi v. Idigo]	182
land, of—duty owed by vendor to purchaser [Mohamed Haji Abdulla v. Ghela Manek Shah]	66
Stamps	
admission of unstamped document by trial judge [Chur v. Devonshire Stores Ltd.]	192
Tort	-
committed outside Kenya conflict of laws [Piddlechauger v. Pohean]	