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Revisiting Gender and Marriage: Runaway Wives, Native Law and Custom and the Native Courts in Colonial Abeokuta, Southwestern Nigeria

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Introduction

In 1916 a man named Sumonu Animasawun appeared before the Native Court in Ake, Abeokuta, a major city in southwestern Nigeria, with a claim against Nimota Abebi, in a case categorized by the court as a "refund of dowry." In his testimony, Sumonu claimed: "My wife Nimota a native of Ijaiye, Abeokuta left me on the 10th of March 1908 for Lagos. She left with my permission with the hope that she will return the third day as she promised. When I got home from the business, I noticed that the door of her room was not closed. I went in and saw that she had gone with all her belongings. Afterwards, I reported the situation to the police on the 10th of March 1908 at about 10.35p.m. since then I did not hear or know her whereabout until about 6th September, when I was informed that she is at Ilesha with the present husband who took her away about eight years ago. I claim the dowry expended on her".[1] In responding to the allegation, Nimota gave a counter testimony. She claimed that she ran away because she never really loved Sumonu. According to her, "I was forced to marry him by my father, and now I found someone I love."[2] Nimota's testimony illustrates the central aspect of courtroom debates over marriage in early colonial Abeokuta, striking a difficult balance between familial consent and female consent in marriage and the strategies employed by women to overturn indigenous norms surrounding marriage.

Nimota's bold affirmation of her emotional and marital preferences—in a court presided over by old African men—the so-called defenders of African custom—highlights the importance of marital consent in the lives of young women at the time. It also emphasizes the changing circumstances of the twentieth century when young women increasingly appealed to new understandings of marriage, with the establishment of the native courts. Nimota's decision to reluctantly submit to her father's wish of marrying his chosen man reveals an important aspect about traditional marriage which has little receptive to women's choices and voices; Nimota's "I was forced to marry him by my father" is significant here. Customarily, marriage was an arrangement between families led by senior men (fathers and uncles) who often argued that women had no choices in marriage.[3] Nimota's running away reveals another fact about traditional marriage; it puts pressure on women "to marry and remain married."[4] Importantly, Nimota's running away reveals her challenge and defiance to that order. Although it is unclear when Nimota married Sumonu, her decision to run away in 1908 is significant and cannot be separated from the extension of British power and the establishment of the colonial courts.

Since the 1970s, Africanist scholars, including Oyeronke Oyewunmi, Kristin Mann, Judith Byfield, and Nwando Achebe, among others have engaged with change and continuity of gender practices and traditional institutions under colonial rule. However, their scholarship has either ignored Abeokuta or overlooked significant social economic dynamics. Unlike existing scholarship which have focused on colonial courts, customary law and conjugal practice, this essay focuses on women and colonial courts in twentieth century Abeokuta. It considers the phenomenon of runaway wives, why they abandoned their matrimonial homes and the impact of the establishment of the native courts on gender and marital relations. To achieve this purpose, I mine previously untapped documents, including court cases from the Ake Abeokuta native court from 1905 to 1906 to argue that ambiguous customary law

allowed Abeokuta women to express controversial alternatives to existing norms of family, marriage, and marital relations.

Research on gender, marriage and the colonial courts in Africa have unveiled issues related to power and control in marriage and how the intervention of states and local authorities was modified during the colonial period. These studies have explored, and catalogued strategies women evolved in response to the colonial era's shifting terrain in gender and marital relations including approaching the courts for divorce.[5] These studies have further demonstrated that the process of defining customary law in colonial Africa was marked by simultaneous moments of rigidity and ambivalence which created spaces for men and women to propound different visions of marital and sexual relations. Jean Allman and Victoria Tashjian drew on Asante court records to trace how men and women fought over the meaning of marriage, the distribution of conjugal property, and how men fought each other over the custody of women.[6] Also, Emily Burrill employed Mali court records to examine how people struggled over rights in marriage. She argued that the institution of marriage played a central role in how empires defined their colonial subjects as gendered person with particular rights and privileges.[7] In Central Africa, Racheal Jean-Baptiste's study of colonial Libreville employed surviving colonial court records in Gabon to examine how Libreville and Estuary residents strategically sought to adjudicate domestic conflict. With court records Jean-Baptiste highlights how women and men negotiated the roles of pleasure, respectability, and legality in having sex within and outside kin-sanctioned marriage.

Despite such diversities and complexities, scholarship on marriage in colonial Nigeria has overlooked the implication of colonial court politics on gender and marital relations. In 1996, Judith Byfield published an article entitled "Women, Divorce and the Emerging Colonial State in Abeokuta (Nigeria) 1892-1904." Her article contributed to the expanding literature on women and colonial regimes in Africa. Using marital cases brought before Railway Commissioners Byfield demonstrated that gender was "very much a part of the fabric of colonial state formation".[8] Like the early Yoruba sociologist, N.A Fadipe, Byfield concluded that marriage came under great stress during the colonial period as significant numbers of women left unsatisfactory unions. Fadipe accounted for the changes brought about by the building of the railroad in Abeokuta; these changes created new economic transformations that offered men and also women new perspectives that affected marital relations.[9] Confirming Fadipe, Judith Byfield writes, "Railway workers possessed certain economic advantages that made them attractive marriage prospects. […] A woman who aligned herself with a railway worker could potentially receive a tidy sum of money to establish her trade".[10] The result was the rise of the phenomenon of wives and daughters leaving homes to establish unions with those workers; those women soon found in the Railway Commissioners an "alternative judicial arena" to justify and legalize their new unions. Byfield explained that the Railway Commissioners established themselves "as a court of appeal for women seeking divorces and others who did not expect favorable hearings before the Alake (king of Egba land) and other Egba chiefs".[11] Byfield's exploration of the marital disputes brought before the Railway Commissioners in Abeokuta between 1892 and 1904 shows that both married and unmarried women sought out Railway Commissioners willing to champion their causes. She engaged the reasons of this as part of interventionist politics of the Lagos government to impose its authority over Abeokuta, which was independent from the rest of Nigeria at that time. According to Byfield, colonial intervention accelerated the phenomenon of wives leaving matrimonial and increased divorce rates which, on the other hand, allowed women agency in marriage.

This article expands on these lines of inquiry by exploring the phenomenon of the rise of divorce, of wives leaving matrimonial homes, the effect of colonial intervention and the establishment of the colonial courts on marital relations. By examining different data—court records—and a different period (1905-1957), it aims to expand Byfield's argument. It shows that women were among the early actors who rushed to the newly established courts asking either to end marriages or to legalize new unions. The new court, as did the Railway Commissioners, continuously responded favorably to the words of women; consequently, thousands of disputes made their way to the courts. It demonstrates that courts facilitated divorce proceedings, and women seized the opportunity to end unwanted and unsuccessful marriages, to establish new unions of their choices challenging the authority of the senior members of their lineage, and to regulate the new unions they founded after leaving parents' or matrimonial homes. The chain reaction of this development was intense as it undermined the social control elder men and women held over younger women and subsequently altered marriage customs across Abeokuta. Women's actions inserted modifications in marriage and redefined the terms of marital relations in a way which allowed their choices and voices to be heard and respected. By requesting to end marriages or by leaving matrimonial homes, establishing other unions, and approaching the courts to legalize them, these women did not reject marriage outrightly; rather, they condemned marriages on senior men's terms. Also, by making use of the court, which was responsive to their claims, women redefined marriage and defended their rights in marriage as they understood them. So we see that the rise of divorce already questioned by Byfield about an earlier period continued for a longer time, during which women earnestly continued to defy their marginalization in marital relations, as evidenced through their claims representing grievances and preferences about marriage collected from the court records over a period extending from 1905 to 1957.

The records are deposited at the main library of the Obafemi Awolowo University in Nigeria and covers much of Southwestern Nigeria—the region inhabited by the Yoruba-speaking population. The records for Abeokuta spanned 1905 to the end of colonial rule. They were transcribed and translated by hand by the court clerks, from Yoruba to English. The records hardly survive the climate, as neglect and insects have erased some names and substantial portions of the proceedings and judgements have been lost or destroyed. The records from 1905-1913 are proceedings from the early court referred to as the Mixed court but commonly branded as the native court. The years of these records are the closest in time to a pre-colonial period as well as to a period when British influence in Abeokuta was informal. The cases from 1914-1957 were heard after the disruption of Abeokuta's independence in 1914.

Marriage, and the Colonial Courts in Abeokuta

From the mid-nineteenth century, Abeokuta witnessed enormous socio-political changes because of many developments: the introduction of Islam and growth of Christianity, the abolition and decline of domestic slavery, the imposition of British rule and the integration of Abeokuta into the world economy. Islam and Christianity, the two external religions in the region introduced new ideals of marriage. Christianity espoused monogamous type of marriage, while Islam supported polygamy. Distinct expectations about domestic relationships and roles, legal rights and duties characterised these forms of marriage. At the centre of these developments was the Yoruba marriage, which was influenced by different expectations about spousal and family roles and legal rights and duties. Consequently, each form of marriage was undergoing tremendous changes.[12] Marriage customs in Yorubaland was also greatly transformed with the introduction of colonial laws and colonial legal

institutions. The most significant change to Yoruba marriage was the opportunities for separation and remarriage. The Marriage Ordinance of 1884 was the first in a series of ordinances that empowered women to apply to the court for divorce. Questions about what form of marriage a couple would be interested in and what constituted marriage under native law and custom and attempts to define the grounds for divorce and fine-tune the legal process for achieving it preoccupied the members of the community, who debated them publicly and struggled to resolve them in their private lives.[13] At the heart of the marriage conundrum was the need for the formation of "a happy marriage" and maintenance of the conflict between men and women over changing marital norms.

Yoruba marriage is a contract between two families rather than of two individuals. In the past, it took place over an extended period in a series of stages. For some women, the journey to matrimony began at birth or early childhood. It was the business of the female family members either older wives or daughters of the lineage to find good wives for male relatives. When they found a good young girl, they informed the male members who at first informally interact with the girl's parents about their intentions. If the girl's family accepted the idea, an extensive process of investigations *iwaadii* followed. Both families investigated each other to verify that they were a moral and desirable family, free from blemish, physical illnesses such as leprosy, epilepsy, family diseases and mental illness. Families also investigated each other's reputation to ensure that they were not bankrupt, not guilty of any crime against the community, such as murder, had no members convicted, banished, or executed for crimes and have a friendly relationship with neighbours.[14] Both families also ensured that they were not related. If both families were satisfied with the findings of the investigations, they proceeded to consulting the family gods and local priest diviners before making a final decision. If the response from the gods were positive and both families gave their approval, an official betrothal takes place.[15]

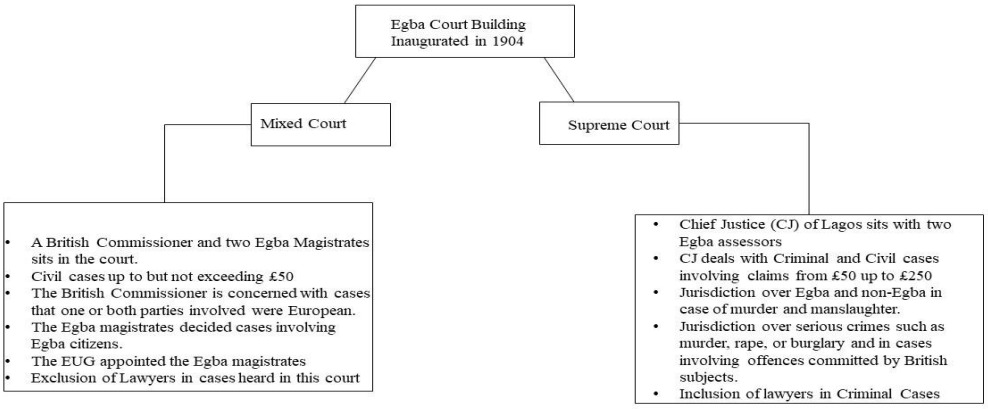
The first stage of betrothal was the engagement known as *ijohun or isihun.* During this ceremony the groom's family paid the first part of the bridewealth known as *owo ori*. This comprised several agricultural produces, local alcohol such as gin, and money (the amount would have been agreed upon by both families). Ijohun guaranteed the groom's exclusive sexual access to the girl and legal rights over all children born by the women.[16] From that period any sexual misbehaviour on her part was seen as adultery. After Ijohun, the prospective husband rendered services to the bride's parents as part of the bridewealth. This service includes free manual labor to the bride's family, clearing land for farming, supplying firewood, building, thatching roofs, and other general house repairs to show his devotion and reliability to the family. [17] He was also expected to contribute to the financial undertakings of his prospective in-laws. When the bride reached adulthood around ages eighteen to twenty, the fiancé paid the *idana* known as the final bridewealth before the wedding. This also comprised of agricultural produce and money and pronounced the union of the two families. After this has been settled, the bride moved permanently to her matrimonial home in a wedding ceremony known as *igbeyawo*.[18]

By the turn of the twentieth century, all Yoruba states except Abeokuta lost their separate identities as political and judicial units to British control through the signing of treaties of commerce and friendship. The treaties opened the hinterland to foreign trade and economic exploitation by granting freedom of trade. During its independence, Abeokuta experimented with a distinct system of government, the Egba United Government (EUG) that implemented public infrastructural projects like electricity and water supply and broadened the tax base. The arrival of the railway in 1900 further opened the hinterland to increasing

trade with European merchants. The increasing tempo of economic activities in Abeokuta and the migration of European and African traders into the city accentuated the problem of law and order.[19] The increased presence of the personnel of the railway commission introduced new dynamics into the administration of justice in Abeokuta. The British head of the Railway Department called a commissioner served as an appellate court. Marriage was a vital domain of contestation in which women consistently sought the support of the commissioners. Consequently, the railway commissioners witnessed a struggle with the Egba government over different conceptions of justice and rights in marital disputes.

The railway commissioners operated within the jurisdiction of ideas drawn from British law and principles of a 'civilizing mission', while the Egba government worked within the framework of customs drawn from native law. Thus, plaintiffs and defendants were confronted with a legal system that was complex and fraught with conflicting interpretation. These tensions emerged early in Abeokuta and led to the need to incorporate the native system of justice into the workings of the colonial administration. The colonial government was particularly interested in centralizing the judicial system and exercising some influence over the dispensation of justice—i.e. reducing the legal authority of the *Ogboni* and Council of Chiefs as well as individual chiefs who held private courts. In 1904, the Egba United Government (EUG) and the Lagos government signed a legal agreement that conceded the Egba judicial sovereignty. The agreement created a dual system where both the Egba and British representative sat.[20] A five-judge panel of the Supreme Court composed of two native judges, two English-speaking Magistrates, and the Chief Justice of Lagos heard several cases.[21] Minor cases were heard in the Mixed Court, where the British commissioner and two Egba magistrates appointed by the EUG gave the decisions.[22]

Figure 1: Egba Court System, 1904-1913



By 1913, Frederick Lugard governor (later governor-general) of Nigeria decided that the independence of Egba state would end.'[23] Clearly, Lugard was not satisfied with the existence of an autonomous state within a colonised territory, which ran contrary to his vision of a united Nigeria under British control. His opinion about events in Abeokuta was, however, not sufficient to terminate Egba independence. An uprising in Abeokuta in 1914 therefore provided him with enough grounds to argue the pointlessness of continued independence of Abeokuta. The 1914 Ijemo uprising was the beginning of the end for the

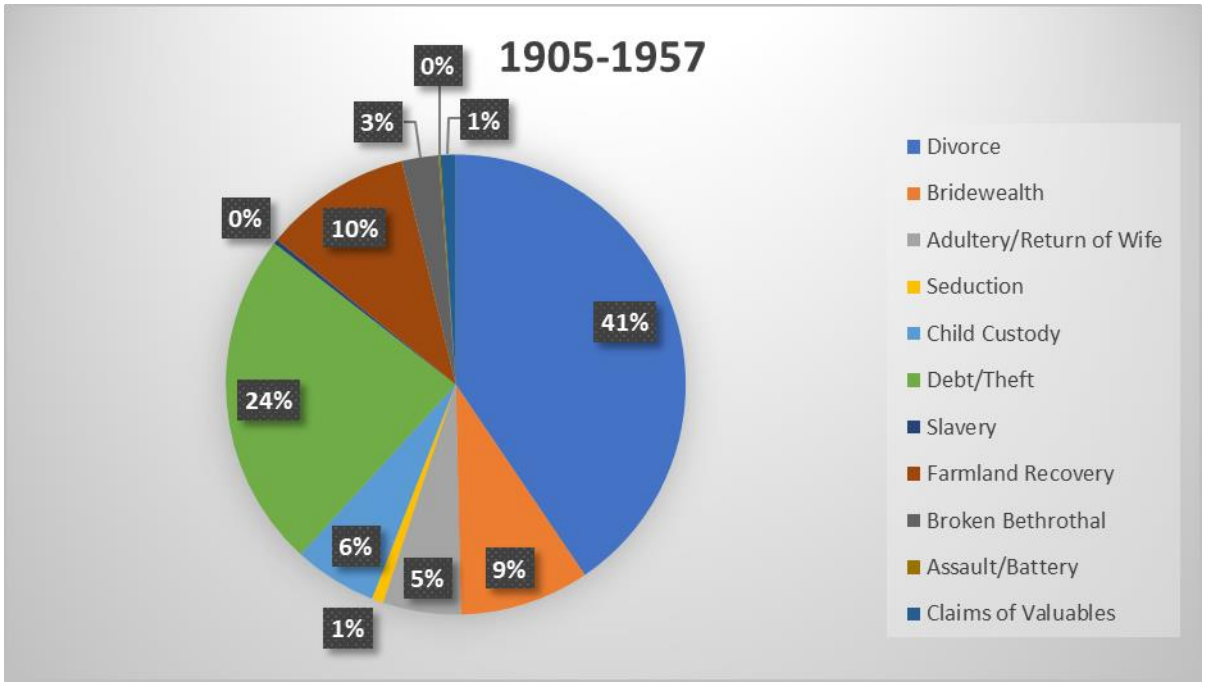
obviously compromised independence of Abeokuta and the much-awaited opportunity for Lugard to demonstrate that the people were incapable of self-governance—a justifiable basis to revoke the 1893 treaty and declare Egbaland part of the protectorate of Nigeria. In this situation, the Alake remained the head of the Egba administration, but with no legislative function, and Egba became part of the protectorate judicial system.

Upon the annexation of Abeokuta, the territory automatically came within the ambit of the Native Court Ordinance of 1914. This legislation was an adaptation of the northern Nigeria model, which created four grades of native courts. The 'A' grade courts were those of a paramount ruler and his advisers or an Alkali court (as obtained in the predominantly Muslim north). The 'B', 'C', and 'D' grade courts were those of varying jurisdictions operated by lesser chiefs or officials. Most of the 'A' level courts were located in the north although there were some established in the western region. Abeokuta had an 'A' grade court headed by the Alake and the rest of the territory was divided into areas of jurisdiction for the lesser courts that would comprise two chiefs and an educated president. The chiefs were selected from a group of twenty-four, to sit a month at a time, while the president, who was to be responsible for the recording of judgements, was to be a permanent member.

Women Litigants in the New Courts

Between 1905 and 1957, the Ake, Abeokuta courts heard a total of 37,472 cases. The diversity of the categories shows how quickly Egba litigants used the legal system for their own ends.

Figure 2 Occurrence of Civil Cases Heard in the Ake Native Court between 1905-1957



Consulting the data from the court records shows that women brought more requests for divorce while men were the main litigants in the cases of refund of bridewealth, adultery and return of wife. The trend of women requesting divorce started earlier, when women used the District Commissioners as an "alternative judicial arena" to satisfy their aspirations for change in marital matters. The trend continued with the establishment of the new courts. Colonial administrators noted in their quarterly and annual reports how the numbers of marriage-related cases they adjudicated inundated their day-to-day administrative functions. For example, the District Officer Ile-Ife, Mr. Cox, relayed in a letter to the Resident Oyo Province, H.F.M. White

> ''It is becoming more and common for women who have left their husbands and gone to another district to send money orders and postal orders to District offices with a request that they may be forwarded to a Native Court for payment of fees and refund of dowry. A considerable amount of work results from this practice which to my mind is entirely unjustifiable. What it amounts to is that District Offices are being used as agencies for 'wayward wives.'' [24]

Similarly, in 1912 the District Officer of Abeokuta wrote,

> "In my short experience in this district, action for divorce is almost invariably brought by the wife after she has wronged her husband or has found someone whom she likes better. In some cases, however the husband is compelled to bring the action, but as a rule, only when the wife has left him for some time and has not acted herself nor returned the dowry.[25]

The reports of the district officers show that the new courts were soon approached by Egba women to settle their marital disputes. They also provide an idea about how the officers viewed those women, "'wayward wives'" who "wronged" their husbands, but who were creating "unjustifiable" work in the "District Offices."

The grounds on which divorce could be granted varied widely. In Abeokuta, the following were listed as legitimate reasons in 1910: ill-treatment, female barrenness, and male impotence, disease of a permanent nature such as leprosy, desertion, adultery, habitual laziness, and neglect of work. By 1926, the grounds were expanded to include a betrothal that occurred before the parties were of marriageable age.[26] These were not the only reason for which divorce was granted. The arguments in the cases explored were diverse in nature, and divorce was almost always granted. Sample arguments in cases involving women as plaintiffs or as defendants are described below. Women got divorce through the courts for such reasons as lack of harmony and compatibility in their couples. Some women alleged dislike of their husbands as reasons for divorce. In 1908 a woman from Ago-oko, Abeokuta, rejected her husband, saying "I am tired of staying with him, I would like to move in with another husband".[27] This early court, presided over by a British Commissioner and two Egba magistrates in attendance, granted her request for divorce. In a complaint to the Alake in the Grade A Native court in 1919, Remilekun's only reason to request divorce was, "she does not want Ajayi her husband anymore".[28] In 1944, a woman asked the court for divorce because "he used to insist on having intimacy with me at all hours of the day and night, he is an extraordinary man, if I continued to live with him, he would kill me with sex'.[29] These women were all successful in their requests for divorce.

Women appeared before the court to request divorce from their husbands so that they could marry their lovers. There were several instances where women, who had left matrimonial homes for the home of lovers, approached the court before their husbands. In 1926, Abeni left her husband to live in the home of her lover. She then sought the protection of the District Officer when a chief, the husband's brother, demanded her return. Her lover

offered to reimburse the bridewealth so that he could marry her. Presenting her case in the court, the woman stated, 'I want a divorce, I want to refund the dowry paid on me, I don't want my husband anymore.' Abeni did not deny the accusations of adultery during the court hearings but countered that she wanted a divorce on the grounds that her husband was brutal. The court granted her request and asked the lover to refund the husband's bridewealth.[30] Similarly, in 1915, Adeyinka, who was living in Itoku, Abeokuta, with a man she called her "concubine," stated that she was ready to refund her husband's bridewealth and pay seduction fee because she was pregnant by her new lover: "I don't want my husband again, I have conceived for another man".[31]

Before the courts, some women testified leaving their husbands because of maltreatment and physical abuse. In 1906, Ayisat testified that ''the defendant [her husband] ill-treated me and did not maintain (care) me, despite other punishments, as I could not bear it any longer, I ran away from his house and decided not to go back''.[32] Similarly, in 1907 a woman named Abebi Ijaodola, argued: ''I will not go back to him. He is a man of undesirable character, in that he is too much indulged in drunkenness and as a result he used to ill-treat me, not able to bear this I ran away and not willing to go back''.[33]

Ideas and legal conceptions about adultery in Yorubaland were clearly gendered. Husbands could engage in illicit sexual relations with legal and social exemption while adultery on the part of the woman could end her marriage if the husband took legal action against her. Yet between wives and husbands, this was not always the situation. Wives protested husbands' extramarital relationships. The 1955 petitions of two married women named Awawu and Mojisola illuminate instances where women expressed resentment over their husband's infidelity.[34] Awawu and Mojisola listed allegations of adultery on the part of their husbands as reasons why they wanted divorce. They further explained that these extra marital relationships have prevented their husbands from taking care of them and their children.[35] Both cases suggest that wives protested husbands' extramarital relations not only because of disrespect, but also on the issue of marriage finances. The native court records tell stories of women who engaged in extra-marital affairs because of sexual deprivation and poor finances.

Women argued that under certain circumstances a wife could rightfully desert her husband and commit adultery. Such was the situation of childless women. Based on their actions, these women argued that they could unilaterally end a childless marriage and look for a fertile man. Olawunmi in 1950 left her husband Ojerinde who married her with an expensive bridewealth (he took pains and time to explain this to the court) because they had no children.[36] The accused man had taken her in, knowing that she was already married. Olawunmi defended her actions:

> The defendant is my husband. He is infertile; I know this because I am unable to get pregnant. This reason made me desert him and live with the accused for two months. I then moved to my mother, but I am pregnant for the defendant. I do not wish to go back to the plaintiff because of his situation [infertility].[37]

Olawunmi and the defendant agreed that a husband's infertility was a reason for desertion and that a marriage needed children. The plaintiff disagreed. He argued that bridewealth outweighed all other considerations. Having confirmed her husband's infertility, Olawunimi assumed the marriage was over.

Women also ended marriage when they established extra-marital affairs with other men. The new lover would then reimburse the first husband's bridewealth. In such cases, the aim of the husband was to establish that he was the legal husband, claim a refund of bridewealth and in most cases to punish the woman. This situation is illustrated with a 1944

adultery case between Joseph Kehinde (plaintiff) vs. Sodipo (first defendant) and Fowotade (second defendant). The plaintiff explained:

> Defendant number two is my wife, in the year 1929, she was delivered of twin for the first defendant without divorcing me. I sued him for adultery. In the year 1942 defendant, two again gave birth to another set of twin children for the first defendant. They have started living together as man and wife in first defendant's house. If the birth of the first twin children was by accident what about the second set of twin children? I have taken this action to get a refund of my dowry and to make both defendants face the consequences of their action. I do not want defendant back. I only want my dowry which I paid as her lawful husband.[38]

Besides turning to the court to request for divorce, running away from the matrimonial home was one strategy women developed in response to the colonial era's shifting landscape in gender and marital relations. By running away and establishing another union, these women did not reject marriage out rightly; rather, they resorted to running away to end unhappy marriages and to reject marriages on senior men's terms. These women defended their rights in marriage as they understood them. The disputed category of divorce and refund of bridewealth were different from cases of "runaway wives" although running away from the matrimonial home could and did lead to divorce and refund of bridewealth.[39] The strategy of running from matrimonial home was not only employed by wives of ordinary men. There were several petitions and reported cases of runaway wives of the kings and chiefs. These categories of cases were not limited to Abeokuta. The wives of two prominent chief figure as defendants in two cases: Oluwo of Iwo and the Bale of Ibadan in 1920, went to court to sue for the return of their wives.[40] These cases demonstrates that elite divorce was also common.

Men Litigants in the New Courts

Husbands and fiancés were the plaintiffs in cases of runaway wives. Husbands wanted the court to force their wives to return to their conjugal homes; fiancés wanted their brides to perfect the marriage. These men were in courts because their wives and fiancées had absconded. Just like the divorce cases, these cases were instigated by women's actions because wives ran away from their matrimonial homes and fiancées ran away and refused to conclude marriage arrangements. Even in these cases the judgments largely supported women's choices. In cases where husbands wanted to force the return of their wives, the court ruled in favor of divorce, thus supporting the woman's decision not to return to her matrimonial home. On 5 March 1905, Yesufu Oguniyi brought suit against his wife Amope, asking the Ake native court to require that his wife return to the conjugal home. This was the very first case heard at Ake native court in which a husband as plaintiff sought the power of the court to force his wife to return to him. Instead of forcing the plaintiff's wife to return, the court ruled in favour of the defendant and granted her a divorce and requested that she return the bridewealth to the husband. During the period of the court, there was no recorded judgement where the court ruled in support of the husband for the return of the wife.

Many men were in court in response to their wives leaving homes. In 1915 a man named Gabriel sued Solomon in a case labeled as £3 damages for adultery with plaintiff's wife named Mariam. The plaintiff explained: "the woman Mariam is my wife; she ran away from home to the defendant. We previously lived together in the same area and before we moved away, I observed the moving of Mariam and defendant to be susceptive. When she was missing from home, I made enquiries and I found out she ran away to be with

defendant.'' Responding to the allegations, Mariam explained: ''I ran away to defendant because I don't want plaintiff anymore, I have known defendant a long time now and we have been having connection." The court ruled in favor of Mariam for divorce on the condition that she and her lover would compensate the husband by refunding the bridewealth he expended and paying damages for adultery.[41]

Most men approached the courts because their wives and fiancées had deserted them and demanded their return. Yet continually, the courts listened to the women's defenses of their actions and continuously sided with them. In 1912, a man named Ayinla approached the court to help force his wife Idiatu to return to their matrimonial home. Idiatu claimed: "I ran away because I was maltreated by the plaintiff and I am not willing to return back to him, I want a divorce." Without requiring proof from Idiatu, the court ruled for divorce in her favor.[42] Likewise, a young woman identified as Muibatu ran away from consummating her marriage, and the aggrieved fiancé Adesegun approached the court after his attempts to force his brides' kin to fulfill their pledges of marriage. In this case, Adesegun sued his fiancée and her father. Defending her actions before the court, Muibatu stated: "I don't want plaintiff as husband anymore, I ran away to prevent the marriage, now I want to be with someone else".[43] The court ruled in favor of Muibatu against the wishes of the fiancé and her family and ordered the refund of bridewealth expended by Adesegun.

Men approached the courts in response to women's actions mostly in bridewealth refund and return of wife. The first two cases brought before the Ake court in July 1905 dealt with husbands seeking to recover their bridewealth from their fathers-in-law because their wives or brides refused to live with them. Salami of Iporo, Ake Abeokuta, sued his father-in-law, Abiodun, requesting the recovery of the £10.00 he expended as bridewealth because Abiodun's daughter had refused to live with him.[44] Similarly, Ajibola of Ijeun, Abeokuta, brought a case against his prospective father-in-law, Oyelami, because his daughter refused to join her huband. Ajibola sought to recover the £15.00 bridewealth.[45] In both cases the court ruled in favor of the women's decision and ordered a divorce and the refund of the bridewealth.

While husbands were recognised as plaintiffs in nearly all adultery cases before the native courts, what brought men to court was that their wives started a sexual relationship crisis by allegedly having had sexual intercourse with other men. Husbands, who appeared before the court in cases of adultery, stressed the main affront as being not just their wives' unlawful sexual relations with the other men, but also that the women had abandoned their conjugal homes to live with their lovers and continued to do so irrespective of their repeated appeals for their wives to return. Such was the case of Abudu Lasisi who brought charges of adultery against his wife Aduke and Lamidi, her lover. The husband charged that the wife had abandoned him and their children two years ago to live with her new lover.[46] In supporting his claim, Abudu Lasisi repeatedly stressed that he had completed bridewealth payments, thereby making him her only legitimate lover. He further explained that Aduke's sexual irresponsibility was not only a damage to him, but it was harmful to the children she abandoned. The court ordered Lamidi to compensate Abudu Lasisi £4.[47] Husbands like Abudu Lasisi brought their wives and their lovers to court as a last resort, after exploring other means of settling the conflict such as appealing to family members to intervene.

Several men also attempted to reclaim wives who had left several years earlier, by requesting and laying claim to the children of the unlawful marriages, and to ask for a refund of the bridewealth in pounds and shillings. Many men presented cases of adultery and seduction as a way of maintaining compensations against those who had seduced and taken

away their wives. Adultery cases reveal the complex demeanour around which some wives engaged in extramarital sex, from tangible reasons to affective and irrational ones. In a 1930 case a wife identified as Rabiatu whose lover was asked to pay damages of £5.10/- fine for adultery attested that she had engaged in adultery with the defendant because he helped her financially to sustain her trading business which was vital to the upkeep of her household. Her husband worked as a labourer, a job which took him away from home every fortnight. He caught her when he paid an unexpected visit to the house. She justified the affair by asserting that her lover also supplied goods for her to sell and, with no financial support from the husband, she alone was responsible for feeding the children; thus, she gave sex in appreciation and for companionship.[48]

In some adultery cases, husbands gave a very detailed description in setting out their complaints. They began by itemising the bridewealth they had given and then sought to ascertain that their wives committed adultery and now lived with the accused men. The testimony of Samuel Akiade of Ibara in August 1944, adultery case is instructive:

> Adetayo [defendant] took my wife Omolayo whom I spent 70£ with so many gifts—clothes, shoes, jewellery—as dowry. My wife has two children for me; she left one with me the other is with her and the defendant. I have been well informed that she is living with the accused. I took my time to track her movement. Before I took this court action, I visited the house of the defendant to ask for her but was told she just went out. I also spoke to an occupant of the same house who confirmed that she lived there. The accused took her away from my house.[49]

In several other cases husbands offered few details in setting out their complaints. The testimony of Musibau is informative. After giving a detailed explanation of what he expended on Abioye as bridewealth he had virtually nothing to say about the situation of the dispute, except that his wife committed adultery and had left him.[50]

At the other times, accused men and adulterous wives tried to divert the cases onto new paths. Rather than becoming trapped down in the questions of bridewealth, they moved on to challenge the plaintiff's interpretation of marriage. They presented questions about when a wife could legitimately abandon her husband and when a woman could rightfully abscond with a young man. Husbands and wives impelled court judges to look beyond the exchange of bridewealth to other significant aspects of marriage, a woman's consent. The 1954 adultery case between Bolaji (the complainant) and Tijani (accused) summarises these debates.[51] Bolaji had given bridewealth for Rolake (her father testified), but Tijani later took her 'and kept her as his wife'. Tijani confessed that they had eloped when she was living at home, and therefore before she had been married, suggesting that he could not be guilty of adultery. He said, 'he did not know if she was presently married'. Rolake herself redefined the debate, she argued:

> I have never been married to Bolaji. I went to the accused when I was very young. I was with Tijani for one year after which my father came for dowry. Tijani had none but promised to come to my father soon, my father left. The second time my father came with his brother who works in the native court to threaten Tijani and take me away from him. When I reached home, I was informed that I would be taken to a chief's place, the one who can pay my dowry. I ran away back to Tijani. I came from the house of Tijani to court today. I have sworn on Cutlass [god of iron], I had never seen Bolaji before or lived with him.[52]

Rolake could not contest the details: Bolaji had given bridewealth, and Tijani had not been able to provide any. She had not consented to marry Bolaji and had avoided meeting him. In contrast, she detailed her long dedication to Tijani—how long she had lived with him. In

doing so, she requested the court to deliberate who her legitimate husband was; the man she had lived with for over a year or a man she does not know.

Seduction was another reason why men were in court. These men brought cases not against their wives and fiancées, but most often against other men who seduced their wives and fiancées. In 1945, Yesufu Ajayi brought Dada, a tailor by profession, to the native court over what the court labelled 'damages for seduction with plaintiff's wife'. Yesufu explained:

> Dada has been troubling my wife long ago and my wife used to tell me each time that Dada troubles her. Eight days ago, Dada went to my wife on the farm and had a connection [sex] with my wife.[53]

Supporting Yesufu's explanation was the woman at the centre of the dispute Folayemi, Yesufu's wife, she explained:

> The plaintiff is my husband and defendant village is on the way to my father's village. One day I was going to our village I met the defendant on the way he said he wants to befriend me. I gave no answer but went and informed my mother; my mother said I must not listen to him. On my arrival at my husband's village, I told him, he said I must not go near him. I was on the farm eight days ago when defendant came upon me he held me by the hand, and I was unconscious, then he knew me carnally when I regained my sense, I noticed that my abdomen was wet with semen. I got up and asked him, 'you cohabit with me?' Defendant pulled me and asked me that I must not inform my husband. I responded that I would tell my husband. This happened under the cocoa tree.[54]

Defending himself, Dada denied the allegations that 'he did not cohabit with Folayemi in any cocoa farm'. The lack of emphasis on personal consent makes the implication of sexual attacks of this nature difficult to access.

There were several petitions and reported cases of seduction of the wives of the kings and chiefs across Yorubaland. In 1923 F.H. Rosedale, the District Officer, Ibadan wrote to the Alake of Abeokuta informing him of an Egba man 'who was accused of seducing of one of the Bale's wives. The DO further stated that four other wives of the Bales have been seduced by Egbas. The aim of the memo was to 'ask the Alake what he thinks of their actions before the court takes a decision.'[55] In almost all seduction cases the court ruled in favour of the husband and instructed the seducer to pay compensations to the husband and/or refund of bridewealth if the husband or wife requested for divorce. Court transcribers used the phrases 'original husband', 'seduced husband' to describe the efforts by lovers to convince wives to transform seduction attempts into legal unions. These detailed manifestations of sexual aggression by women and men which took place in colonial Abeokuta and Yorubaland must be seen in the context of the various changes that had overtaken the different communities in the course of the twentieth century. New circumstances had arisen for which there were no established rules or sanctions and in which an occupying force was attempting to impose its own rules, based on unfamiliar notions of civilisation and modernisation which were difficult to reconcile with prevailing rules on sexual morality.

Taken together, women's actions in bringing divorce proceedings against their husbands, abandoning their matrimonial homes, or refusing to honor and conclude marriage arrangements with their fiancés substantiate the questions about marriage appearing a central point of dispute in the colonial courts and that women were the main actors whose choices were respected regardless. Clearly, the actors in the litigation heard by the new courts in Abeokuta were women, and surprisingly, the courts continually ruled in their favour whether they were plaintiffs or defendants and whether their claims were covered or not by native law and custom. An important question that immediately emerges from the situation is why the

courts were favourably disposed to the claims of the women even when they were not justified. Investigating the matter has allowed some clarifications.When the native courts opened for operation in April 1905, two cases of "return of wife" were appealed. Yusuf Layiwola brought suit against his wife, Mojisola Sariatu, to request her to return to their matrimonial home. Yusuf had given Mojisola permission to visit her parents; Mojisola however refused to return to her husband telling the court that "she no longer wants or loves him." The court ruled in favor of the plaintiff who also had the support of Mojisola's father.[56] Mojisola approached the District Officer to appeal the case, using the same arguments she presented before the judges of the native court. Deciding on the case, the District Officer reversed the judgment of the native court, which had ordered the defendant to return to her husband's home, and instead granted Mojisola's request for divorce on the precondition that she should refund £7.10, expended as bridewealth to her husband. [57]

The British administrator's repeal of the native court's ruling is important; it sent a warning to the Egba judges and court presidents of the native courts about the intentions of British. The appointed judges were apparently seeking to learn on the job. They wanted to apply "native law and custom," the guiding principle of the system of indirect rule. The fact that the British district officer overturned their judgment sent a clear signal that they should be observant of the British 'support' of women. The reasons of the contradictions of the courts decisions in settling marital disputes were not a secret subject. A British political officer in Abeokuta captured the contradiction of applying custom under the authority of the colonial state when he noted that the 'African' judges granted divorce and awarded damages without attempting to dissuade parties or to refuse divorce because the presiding 'African' judge was uncomfortable with having the wives appeal to the 'European' officials. [58]

A final word about the hidden motivations behind the British 'support' of women proves necessary. British administrator's advocacy on behalf of women cannot be separated from the larger political concerns, "civilizing mission," the rationale for colonization. Underlying the support of women lies the British need to justify the claims of the civilizing mission, through providing support to "oppressed women," which also constituted part of the larger political program aimed to impose the authority of the indirect ruler on the colony. In order to champion and congratulate their efforts in 'saving' women from 'authoritative' fathers and 'brutal' husbands, colonial officials facilitated divorce when having been the first to tag these women as promiscuous and licentious. The early reports of the colonial administrators referring to these women provide the evidence about how British officers defined those women and how they intended to 'support' their claims. The reports cited earlier are significant in this context. Those British District Officers complained about the "unjustifiable," "considerable amount of work" resulting from women's uses of the "District Offices" which they protested turned into "agencies for 'wayward wives'" who "wronged their husbands." Another significant evidence about the British view of those women can be gleaned from a memo by a district officer requesting the help of a Resident about how to deal with the complaints of chiefs' "runaway wives." After describing the complaints of the wives about "marriages which have never been consummated, and of neglect due to lack of intimacy" the officer admitted, "The profligacy of his [chief] wives is a real one".[59] Obviously, obeying to the same patriarchal principles of the chiefs, the district officer could not understand the needs of wives through marriage so that when they left marital homes where their marital needs were neglected, their "profligacy" was "real" for both indirect ruler—British officer—and direct ruler—chief.

Conclusion

However, indifferent to prejudice and very much aware of the contradictions of the court and their reasons as well as of the hideous motivations of the indirect ruler, women pushed the boundaries to bring change in their marital relations and in their social life too. The predominance of marital cases with women as major agents in the courts demonstrates two important facts about the changing circumstances of the twentieth century for women in Abeokuta. First, the predominance of cases having to do with runaway wives reveals young women's challenge to the societal controls placed on them at the time. Those escapades allowed women to start marital relations of their choices. Second, the cases reveal women's redefinition of marriage inserted through the platform of the court, a legal official institution. The women who abandoned legal husbands to establish new unions and then approched the court to legalize new unions, or those who boldly admitted 'adultery', or those who exposed husbands' brutality or excessive sensuality, or even those who defied husbands' infidelity before a court seem to deliberately want to ridicule the court and its all-male stuff. Speaking about private marital relations, challenging the gendered morals of their society, these women seem to indirectly mock the legal system which was contradictory enough to claim allegiance to native law and custom while obeying to the authority of the indirect ruler. They seem to have used both the indirect ruler and the odedient dutiful direct ruler to insert their new definition of marital relations. Redefined according to women's understanding, marriage became a union based on mutual attraction, mutual understanding, and harmony, with fidelity required from both women and men who could break the union if it failed for any unexpected reason, even those not covered by custom law which had consequently changed through women's intervention.

Endnotes

[1] Hezekiah Oluwasanmi Library (HOL), Obafemi Awolowo University, houses the civil and criminal records of the Ake Native Court. Only the civil records have been examined for this research. It is cited as HOL, ANCCR (Ake Native Court Civil Records) and HOL, ANCR (Ake Native Court Records) throughout this paper. HOL ANCCR 1916, 200

[2] HOL ANCCR 1916, 200

[3] National Archives Ibadan (NAI), Egba Council Records (E.C.R) 1901-1933, 37, 44-45; and NAI Oyo Provincial File 1/1205, Divorce Cases in Native Courts, 140; For example, in a 1909 and 1916 marital dispute, a father and paternal uncle argued that their words meant law to their daughters because ''they have no right to decide whom to marry'' see HOL ANCR 1909, 182; HOL ANCR 1916, 190

[4] Judith Byfield, "Women, Marriage, Divorce and the Emerging Colonial State in Abeokuta (Nigeria) 1892–1904." *Canadian Journal of African Studies* 30, 1 (1996): 32-51 (p.3 here)

[5] Kristin Mann, *Marrying Well: Marriage, Status and Social Change among the Educated Elite in Colonial Lagos* (Cambridge: Cambridge University Press, 1985); Thomas McClendon, *Genders and Generations Apart: Labor Tenants and Customary Law in Segregation-Era South Africa, 1920s to 1940s* (Portsmouth: Heinemann, 2002); Emily Burrill, *States of Marriage: Gender, Justice, and Rights in Colonial Mali (*Ohio: Ohio University Press, 2015); Saheed Aderinto, *When Sex Threatened the State: Illicit Sexuality, Nationalism, and Politics in Colonial Nigeria, 1900-1958 (*Chicago: University of Illinois Press, 2014); Jean Allman and Victoria Tashjian, ''*I Will Not Eat Stone'': A Women's History of Colonial Asante* (Portsmouth, NH: Heinemann, 2000); Caroline Bledsoe, *Women and Marriage in Kpelle Society (*Stanford: Stanford University Press, 1980); Barbara Cooper, *Marriage in Maradi: Gender and Culture in a Hausa Society in Niger, 1900-1989 (*Portsmouth: Heinemann, 1997); Rachael Jean-Baptiste, *Conjugal Rights: Marriage, Sexuality, and Urban Life in Colonial Libreville, Gabon (*Ohio University Press, 2014); Kaplan, Flora Edouwaye. "Runaway Wives," Native Law and Custom in Benin, And Early Colonial Courts, Nigeria" in *Queens, Queen Mothers, Priestesses, and Power*, ed. Flora Kaplan, (Annals *of the New York Academy of Sciences* Vol. 810, 1997); Richard Roberts, *Litigants and Households: African Disputes and Colonial Courts in the French Soudan, 1895-1912* (Portsmouth, New

Hampshire: Heinemann, 2005); Brett Shadle, ''*Girl Cases'': Marriage and Colonialism in Gusiiland, Kenya, 1890-1970 (*Portsmouth, NH: Heinemann, 2006)
[6] Allman and Tashjian, *I Will Not Eat Stone*.
[7] Burrill, *States of Marriage*.
[8] Byfield, *Women Marriage Divorce*, 33
[9] Nathaniel Fadipe, *The Sociology of the Yoruba* (Ibadan: University of Ibadan Press, 1970)
[10] Byfield, *Women, Marriage, Divorce*, 41.
[11] Ibid, 47
[12] Mann, *Marrying Well*
[13] Friday Mbon, "Response to Christianity in Pre-Colonial and Colonial Africa: Some Ulterior Motives," *Mission Studie*s 4.1 (1987): 42-54; James O'Connell, "Government and Politics in the Yoruba African Churches: The Claims of Tradition and Modernity," *Odu* 1.2 (1965): 92-108; "Minutes of a special meeting in Abeokuta, October 30, 1865," in Correspondence between the Colonial Government and Native Authorities, 1851-72, Church Missionary Archives (hereafter CMS) Yoruba Mission CA2/O7/26, refers in passing to the problems I highlighted.
[14] Moore Ajisafe, The Laws and Customs of the Yoruba people (General Books Reprint, 2010) 24; Fadipe, *Sociology of the Yoruba*, 70-71
[15] Samuel Johnson, *The History of the Yorubas: From the Earliest Times to the Beginning of the British Protectorate* (Cambridge University Press, 2010) 113; Akintoye Stephen Adebanji, *A history of the Yoruba people*. (Amalion Publishing, 2010) Oyèrónkẹ́ Oyěwùmí, *The Invention of Women: Making an African Sense of Western Gender Discourses* (University of Minnesota Press, 1997) 59; Ajisafe, *Laws and Customs*, 26
[16] Fadipe, *Sociology of Yoruba*, 60-61; Ajisafe, *Law and Customs*, 26; Johnson, *History of the Yorubas*, 113
[17] Fadipe, *Sociology of Yoruba*, 74
[18] Johnson, *History of the Yorubas*, 114
[19] Byfield, *Women, Marriage, Divorce*, 38.
[20] Agneta Pallinder-Law, "Government in Abeokuta 1830-1914, with special reference to the Egba United Government 1898-1914" (PhD thesis, University of Gothenburg, 1973), 85-86; Byfield, "*Women, Marriage, Divorce*" 38.
[21] Ibid
[22] Pallinder-Law, "*Government in Abeokuta,"* 98, 108; Byfield, "*Women, Marriage, Divorce*" 38-39.
[23] Pallinder-Law, *Government in Abeokuta*, 159.
[24] NAI, Ibadan Division File 1 Vol. 1 Native Courts Divorce Rules, Registration of Marriages, 154-56
[25] NAI Oyo Provincial File 1205 Vol.1, 40.
[26] National Archives Abeokuta (NAAb) Egba Council Records (E.C.R) 1901-1933, 62
[27] HOL ANCCR 1908, 67
[28] NAAb E.C.R 1/2/7 1919-1920, 13
[29] HOL ANCCR 1944, 100
[30] HOL ANCCR 1926, 76
[31] HOL ANCCR 1915, 67
[32] HOL ANCCR 1906, 70.
[33] HOL ANCCR 1907, 70
[34] NAI, ECR, 1/1/40, 212, 246
[35] Ibid.
[36] HOL, Ake Native Court, Civil Record Book 1950, 99
[37] Ibid.
[38] HOL, Ake Grade 'B' Native Court, Civil Record Book 1944, vol. 71, 44.
[39] These cases were not clearly labelled by the courts as 'runaway wives', they were often labelled as 'divorcement' or refund of 'dowry'. These categories became clearer when I started sorting the court records in 2017.
[40] NAI, Oyo Prof. 1324/1, Adultery with wives of and runaway wives of Chiefs in Oyo Province, 70-75
[41] HOL ANCCR 1915, 200
[42] HOL ANCCR 1912, 56
[43] HOL ANCCR 1912, 90
[44] HOL ANCCR 1905, 184.
[45] HOL ANCCR 1905, 187
[46] HOL ANCCR 1932-1933, 1-3
[47] HOL ANCCR 1932-1933, 1-3

[48] HOL, Ake Grade 'B' Native Court, Civil Record Book 1930, vol. 22, 300-301.
[49] HOL, Ake Grade 'B' Native Court, Civil Record Book 1944, vol. 73, 144.
[50] HOL ANCCR 1953, 89
[51] HOL, Ake Grade 'B' Native Court, Civil Record Book 1954, vol. 80, 95.
[52] Ibid.
[53] HOL, Ake Grade 'A' Native Court, Civil Record Book 1945, vol. 54, 236.
[54] Ibid
[55] NAI, Oyo Prof. 1324/1, Adultery with wives of and runaway wives of Chiefs in Oyo Province, 50.
[56] HOL ANCCR 1905, 400
[57] NAI Abe Prof Letter book 1905-1906, 30
[58] NAI Oyo Prof File 1205 Vol. 1, 127-128
[59] NAI, Oyo Provincial File 1324 Vol. 1, 1920,70-75