PRINCIPALES OF CUSTOMARY LAND LAW IN GHANA. By N. A. Ollennu. [London: Sweet & Maxwell. 1962. xxvi + 272 pp. (incl. index). £2 10s. 0d.]

This book, the second in the series Law in Africa, grew out of a few lectures on the basic principles of customary land law in Ghana which the author gave at the invitation of the Council of Legal Education, Ghana. He was told that the lectures should be as authoritative a statement of the basic principles as possible. In an attempt to comply with this condition, it was thought that judgments of the Courts should be the main basis for the statement of the principles. Hence what Mr. Justice Ollennu deals with is, in the main, case law based on or adapted from certain rules of customary origin, and this may, in many instances, be a very different thing from customary law.

Section 18 of the Interpretation Act, 1960, attempts a statutory definition of customary law and provides that "customary law as comprised in the laws of Ghana consists of rules of law which, by custom, are applicable to particular communities in Ghana....". It may therefore be more correct to speak of Akan customary law or Ga customary law than of the customary law of Ghana. There is, however, a form of legislation contemplated in sections 62 and 63 of the Chieftaincy Act, 1961, which seeks to "assimilate" rules of customary law to the "common law". An assimilated rule, when made of general application, is to be known as "a common law rule of customary origin". Section 17 of the Interpretation Act states that the common law consists "in addition to the rules of law generally known as the common law, of the rules generally known as the doctrines of equity, and of rules of customary law included in the common law in any enactment providing for the assimilation of such rules of customary law as are suitable for general application". Professor Lang in the Introduction to the book argues that the effect of these provisions is that the rules of customary origin, which are now considered to be of general application by virtue of judgments of the superior courts of Ghana, must continue to be called "customary law", to distinguish them from rules assimilated to the common law by means of the legislative process provided in the Chieftaincy Act, and those comprised in the statutory definition of common law (p. xiv). This reviewer is not convinced and believes that this is a misapplication of the term 'customary law' (though such misapplication is not rare) and may not be in accord with the substance of section 18 of the Interpretation Act. Anyway, Professor Lang is entirely correct when he makes the factual statement that it is with *this customary law* that Mr. Justice Ollennu was concerned in his lectures and in his book.

Customary law, the greater part of which may be unwritten, is flexible law. If carefully and properly applied in accordance with its own principles, it can adapt itself to social changes more readily than codified or case law. As it is not contained in codes, the usual protracted process of legislative amendment is not required to alter it; as it is not formulated in case-law, it does not aim at finding a precedent, either as a basis or guide, in dealing with new situations. The judges of the customary courts choose to forget past decisions which seem unsuitable to the present situation. They do not set themselves to the task of writing qualifying judgments or finding new arguments with a view to doing justice in the application of an archaic rule. They interpret the basic rules of their society and apply them to the case before the Court. In doing so, they may adapt a basic rule, but they do not consider themselves as propounding a new rule. The adaptation will make for changes necessitated by progress in social evolution. All the same, these judges who are generally headmen or chiefs, are there to uphold the norms of their community. So the changes they effect are attuned to the needs of the community in a changing society. When customary law is constrained in the strait jacket of a law report, bound by judicial

precedent, it is denied its right to breathe the communal air which sustains its life. The result is that it almost ceases to live.

Within the framework which Mr. Justice Ollennu has chosen for himself, he has done very creditable work and has produced an authoritative treatise. Under section 67 of the Courts Act, 1960, questions relating to the existence or content of customary laws are questions of law for the courts, and the courts will consider, *inter alia,* the writings of experts. Here is a book which, one can be sure, they will gladly consider.

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