23.1946

No. 63 of 1946.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT, SITTING AS A COURT OF APPEAL, JERUSALEM.

BETWEEN

MARGARETE LINZ née SPRINGER *Appellant*

AND

THE ELECTRIC WIRE COMPANY OF PALESTINE LTD. *Respondent.*

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

EXHIBITS.

* Article 12 in P/1 (b) included at request of Respondent, Appellant objecting.

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FROM THE SUPREME COURT, SITTING AS A COURT OF APPEAL, JERUSALEM.

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MARGARETE LINZ née SPRINGER - *Appellant*

AND

THE ELECTRIC WIRE COMPANY OF PALESTINE LTD. *Respondent.*

RECORD OF PROCEEDINGS.

In the District Court of Haifa.

No. 1.

No. 1.

STATEMENT OF CLAIM.

[*Not printed.*]

No. 2.

No. 2.

STATEMENT OF DEFENCE.

[*Not printed.*]

No. 3. Amended Statement of Claim, 21st January 1944.

No. 3.

AMENDED STATEMENT OF CLAIM.

1. The Plaintiff is a married woman whose maiden name was Miss Margarete Springer. Her address for service is c/o Dr. Alfred Werner & Co., Advocates, of Bovis House, New Business Centre, Haifa. The Defendant is a Company Limited by shares registered in Palestine whose business is the manufacturing of electric wires and cables and similar materials. The Defendant Company was first registered under the style The Palestine Electric Wire Co., Ltd., but its name was changed as above stated by a special resolution dated 24th April, 1936, and in accordance with section 25 of the Companies Ordinance, 1929.

2. The Plaintiff through her agent one Dr. Siegfried Levinger applied on the 19th April, 1935, to the Defendant for the allotment to her of 775 6% cumulative preference shares of LP.1 each of the Defendant by signing an application form supplied by the Defendant, a copy of which with a translation into English is attached hereto (Exh. P/1).

In the District Court of Haifa.

No. 3. Amended Statement of Claim, 21st January 1944, *conintued.*

According to the said application Plaintiff undertook to pay the Defendant the agreed price of LP.775 for the said preference shares in German Reichsmarks at an agreed rate of exchange through the medium of and out of funds standing to Plaintiff's credit with a local company styled Trust & Transfer Office " Haavara " Ltd. (hereinafter briefly referred to as " Haavara ").

3. Plaintiff accordingly on or about July 7, 1935, paid to the credit of Defendant with a bank in Germany the sum of Reichsmarks 11,039.24.

4. The Defendant by a letter dated September 10, 1935, purported to allot to Plaintiff 775 preference shares in pursuance of Plaintiff's aforementioned application.

On or about the same date and in accordance with section 93 of the Companies Ordinance, 1929, Defendant filed a return of allotment with the Registrar of Companies, Jerusalem, stating inter alia that 775 preference shares had been allotted to Plaintiff. A certified copy of the return of allotment is attached hereto (Exh. P/2).

5. In actual fact, however, plaintiff for the reasons following never received from the defendant 775 6 per cent. cumulative preference shares of LP.1 each or any preference shares.

6. Pursuant to clause IV of the Memorandum of Association of the Defendant dated September 25, 1934, a copy whereof certified by the Registrar of Companies is attached hereto (Exh. P/3), the capital of the defendant was at the material time LP.25,000 divided into 25,000 ordinary shares of LP.1 each.

7. On April 12, 1935, i.e. some days before Plaintiff's aforesaid application the defendant purported to create 11,000 6% cumulative preference shares of LP.1 each by a special resolution of the holders of the ordinary shares purporting to have been passed at " a separate meeting of the holders of the ordinary shares " of the defendant. A copy of the said resolution certified by the Registrar of Companies is attached hereto (Exh. P/4) and the material part of it reads as follows :—

> " That the original terms of the Company's Memorandum of Association be altered to the effect that the capital shall consist not solely of ordinary shares, but that LP.11,000 unissued shares shall be issued as preference shares. Such preference shares shall be entitled to a dividend in advance at the rate of 6% out of the net profits . . ."

8. Plaintiff maintains that in actual fact no such meeting as mentioned in the preceding clause or any other meeting of the members of the Defendant took place on April 12, 1935, or any other date, for the purpose of resolving upon the creation of 6% cumulative preference shares or at all, and in addition and in the alternative plaintiff submits that by passing a special resolution as aforesaid no 6% cumulative preference shares of the defendant were created or could have been created having regard to the provisions of the Companies Ordinance, 1929.

9. By a letter of plaintiff's advocates dated March 28, 1943, addressed to defendant plaintiff withdrew her application for LP.775 preference

shares on the ground that there had been a delay in a valid allotment of preference shares of almost eight years. Copy of the said letter is attached hereto (Exh. P/5).

10. Plaintiff claims now the refund to her by the defendant of the countervalue of the sum of Reichsmark 11,039.24 paid by her in respect of the said alleged 775 preference shares since she did not receive the consideration which she bargained for, or any consideration. Plaintiff will further claim that she is entitled to interest at the rate of 9% p.a. on the sum of RM.11,039.24 as from 7.7.1935, i.e. the date of the payment to the defendant of the said amount.

Plaintiff contends that the sum of RM.11,039.24 should be converted into Palestine Pounds at the rate of exchange obtaining immediately before the outbreak of the present war. Plaintiff maintains that the said rate of exchange, viz. the one obtaining on 1.9.1939, was RM.9.50 to the Palestine Pound. Calculated on this basis the countervalue of RM.11,039.24 amounts to LP.1,162.

Alternatively plaintiff submits that the rate of exchange might be taken to be RM.10.77 to the Palestine Pound, being the rate of exchange fixed by the order of His Excellency The High Commissioner dated 8.5.1940 (vide Palestine Gazette No. 1007 of 9.5.40 Suppl. II at page 678). Calculated on this alternative basis plaintiff's claim would amount to LP.1,025.

11. Wherefore plaintiff prays—

that judgment be given in her favour against the defendant for LP.1,162 alternatively for LP.1,025 alternatively for RM.11,039.24 to be converted into Palestine Pounds at the rate of exchange obtaining at the date of payment alternatively for such other amount of Palestine Pounds and calculated at such other rate of exchange as to this Honourable Court may seem just,

that the defendant be adjudged to pay legal interest at the rate of 9% per annum from 7.7.1935, alternatively from 28.3.43, being the date when payment was demanded, or alternatively from the date of filing this action, and that the defendant be ordered to pay plaintiff the costs of this action and advocates' fees.

12. This Honourable Court has jurisdiction to entertain the present action as the defendant is carrying on its business in Haifa.

13. The value of the subject of the matter exceeds LP.1,000 but does not exceed LP.2,000.

Advocate for Plaintiff :

Sgd. Dr. WALTER E. SCHREUER.

In the District Court of Haifa.

No. 4.

No. 4.

AMENDED STATEMENT OF DEFENCE.

[*Not printed.*]

No. 5. Amended Statement of Defence, 24th May 1944.

No. 5.

AMENDED STATEMENT OF DEFENCE.

1. The defendants will be represented in these proceedings by S. Horowitz & Co., Advocates, of Haifa, and their address for service will be at the offices of the aforesaid advocates, Yoel House, 64, King George V. Ave., Haifa.

2. Para. 1 of the Statement of Claim is admitted.

3. The defendants admit that on or about the 19th April, 1935 the plaintiff, through a certain Dr. Siegfried Levinger, signed the application referred to in para. 2 of the Statement of Claim. The defendants will refer to the said application for its true terms and effect.

4. The defendants will maintain that the said application was submitted pursuant to an arrangement between the defendants and Trust & Transfer Office " Haavara " Ltd. (hereinafter referred to as " Haavara ") to which the plaintiff was a party, by virtue of which the defendants, whose authorized share capital at the time was LP.25,000.– were to issue out of the said authorized share capital 11,000 shares of LP.1.– each to be designated as preference shares and to allot to the plaintiff in consideration of the payment by her to Haavara in Germany of a certain amount 775 of these shares, each of LP.1.– subject to certain adjustments whereby any balance would be allotted in the form of ordinary shares.

5. (A) In purported pursuance of the said arrangement and with the knowledge of the plaintiff the original provisions of the Memorandum of Association of the defendants in regard to the authorized share capital were modified and the original share capital of LP.25,000.– was declared to consist of 11,000 preference shares of LP.1.– each and 14,000 ordinary shares of LP.1.– each. The resolution modifying the original provisions of the Memorandum of Association of the Company in regard to the share capital of the Company was passed unanimously by the holders of all the shares of the Company then issued at an extraordinary general meeting of the Company held on the 12th April, 1935.

5. (B) Further and in any event the Resolution of the Company passed on the 12th April, 1935, and/or any other steps taken for the creation and/or allotment of the preference shares were approved and/or validated, if and insofar as the same may have required approval or may not have been valid and the conversion of the shares into preference shares and/or the creation of the preference shares and/or the allotment of the preference shares were and/or are in any event valid by the terms of their creation and/or by the terms of Resolutions passed by the Company and by the holders of the preference shares on the 14th day of May, 1944.

6. The defendants at the direction of Haavara and in purported pursuance of the said agreement allotted to the plaintiff 775 preference shares of LP.1.– each in the capital of the Company and 50 ordinary shares of LP.1.– each in satisfaction of the payment made by her to Haavara in Germany.

7. The said allotment was duly notified to the Registrar of Companies and share certificates were duly issued to the plaintiff No. 62 in respect of 775 preference shares of LP.1.– each credited as fully paid, numbered 20846–21620, and share certificate No. 33 in respect of 50 ordinary shares of LP.1.– each, numbered 11491–11540.

8. By a share transfer certificate executed by the plaintiff on the 28th September, 1941, the plaintiff transferred the said preference shares to "PIA" Palestine Independent Trust Association Limited in consideration of a certain amount duly paid to her and by a share transfer certificate of the same date the ordinary shares were transferred by the plaintiff to Dr. Siegmar Bromberger for a certain amount duly paid to her. The original share certificates of the plaintiff were returned for cancellation and were duly cancelled when the Board of Directors of the Defendants approved the aforesaid transfers. The said transferees were entered on the Share Register of the company as members of the company in lieu of the plaintiff in respect of the aforesaid holdings.

9. The aforesaid holdings were subsequently transferred by the aforesaid transferee to third parties who are now the registered holders of the said preference shares and ordinary shares.

10. The plaintiff ceased to have any interest in the aforesaid holdings on the date of the aforesaid transfers by the plaintiff.

11. Para. 5 of the Statement of Claim is not admitted. The payment, if any, which may have been made by the plaintiff in Germany, was effected pursuant to the arrangement between the plaintiff and Haavara, and the plaintiff at no time paid to the defendants the Reichsmarks referred to in para. 3 of the Statement of Claim or any other sum.

12. Para. 4 of the Statement of Claim is admitted and defendants will refer to the said letter for its true effect.

13. The plaintiff was allotted the shares applied for by her and continued to hold the said shares until she transferred them to third parties as aforesaid, and on such transfer being executed and the transferees entered on the Register of Members, the plaintiff ceased to have any interest in the shares or any right against the defendants in relation to the shares or any of them or any claims, whether on the basis of the allotment or otherwise and whether or not the said allotment was valid.

14. Para. 6 of the Statement of Claim is not admitted. The original share capital of the Company was LP.25,000.– divided into the aforesaid 25,000 ordinary shares of LP.1.– each, and by a resolution of the 12th April, 1935, referred to in para. 7 of the Statement of Claim it was resolved that the original terms of the Memorandum of Association be altered so that the share capital should consist of two classes of shares, namely that 11,000 shares of LP.1.– each then unissued shall be considered as

In the District Court of Haifa.

No. 5. Amended Statement of Defence, 24th May 1944, *continued.*

preference shares and the allotment was made pursuant to the said resolution. A meeting was duly held and the aforesaid resolution passed.

15. Whatever effect the said resolution may have had (and the plaintiff's contention in that behalf is not admitted), the plaintiff received the said shares, namely 775 preference and 50 ordinary shares in full satisfaction of any claim which she may have had against the Company in connection with any payment which may have been made by her to Haavara. The plaintiff could not then, nor could the plaintiff claim now the refund of any amounts, whether on the basis of her allegations as contained in the Statement of Claim or at all.

16. The plaintiff has wilfully withheld from the Court in these proceedings the material fact that she has disposed of her aforesaid holdings whatever their denomination or value may be and has surrendered her shares or share certificates for a consideration duly paid to her and that the aforesaid holdings were transferred and are now held by third parties who are satisfied with the legal status of their respective holdings, whatever the same may be.

17. It will be maintained that these proceedings are frivolous and vexatious and disclose no cause of action.

18. The defendants will maintain that the plaintiff is not entitled to make this claim, whether in its present form or at all, and that the plaintiff could not cancel or purport to cancel any allotments in respect of shares which are no longer in her name or after the transfer or purported transfer of the shares in which third parties have acquired rights.

19. In regard to para. 10 of the Statement of Claim, it is denied that the plaintiff has paid 11,039.24 Reichsmarks in respect of any shares in the Company or that she is entitled to the counter-value of any alleged payment or that the counter-value of such payment is the sum of LP.1,162.–, or that the plaintiff is entitled to any other amount, whether in the nature claimed in the Statement of Claim or at all.

20. The defendants will maintain that in any event the plaintiff is not entitled to claim interest either from the date 7.7.1935, or from the date 28.3.1943, or at all.

21. It is denied that plaintiff is entitled to the relief claimed or to any other relief.

22. It will be submitted that the plaintiff is estopped from making any claim against the defendants.

23. Except as herein expressly admitted, the defendants deny the allegations contained in the Statement of Claim as if the same were herein set out and denied seriatim.

24. It is prayed that plaintiff's action be dismissed with costs and advocates' fees.

Sgd. J. SALOMON,
Advocate for the Defendants.

Haifa,
24th May, 1944.

In the District Court of Haifa.

No. 6.
Reply,
24th June
1943.

No. 6.

REPLY.

1. Plaintiff joins issue with the defendant on its defence.

2. Plaintiff will further maintain the following :—

(A) With regard to para. (4) of the Statement of Defence plaintiff says that defendant is estopped from denying the receipt of the amount of RM.11,039.24, the price for the alleged preference shares from the plaintiff by having delivered to her the share certificate No. 62 in respect of alleged preference shares numbered 20846–21620 of LP.1.– each described therein as fully paid up preference shares.

(B) With regard to para. (6) of the Statement of Defence plaintiff denies that the alleged 50 ordinary shares of LP.1.– each the purported allotment of which is admitted, were the consideration for which plaintiff had paid the money or that they were part of such consideration.

In the alternative plaintiff will contend that the purported allotment of 50 ordinary shares is severable from the purported allotment of alleged preference shares.

Further plaintiff will claim that the said ordinary shares were issued by the defendant during the year 1935 as a dividend in specie, and/or as bonus shares out of a rebate received by the defendant in connection with dealings with third persons. Plaintiff will maintain that the defendant had no power under its Memorandum and Articles of Association to pay a dividend *in specie* or issue *bonus* shares and further that during the period in question the defendant's business was carried on at a loss. Plaintiff submits that in the circumstances described the issue and/or allotment of the alleged 50 ordinary shares is in law invalid.

(C) Plaintiff says furthermore with respect to para. (14) of the Defence that defendant in District Court Haifa Civil Case No. 217/41 (Regine Schlesinger *v.* The Electric Wire Company of Palestine Ltd., and others) has on 18.2.43, expressly admitted in writing that the resolution dated 12.4.35, by which the so-called preference shares were allegedly created, was not properly passed, that the allotment of such preference shares was void and the money received by the defendant in consideration therefore had to be refunded.

An admission by defendant to the same effect with regard to all such so-called preference shares which defendant had purported to allot to various persons in purported pursuance of the alleged resolution of 12.4.35, was made by defendant in a circular letter dated 4.3.43, addressed to the so-called holders of the shares in the defendant company as preference share holders. A copy of the said circular letter is attached hereto (P/6).

3. Regarding para. (16) of the Statement of Defence plaintiff has not withheld from the Court those facts which are true in this connection

In the District Court of Haifa.

No. 6. Reply, 24th June 1943, *continued.*

i.e. that she purported some time after July 20, 1939, to sell the so-called 775 preference shares but disclosed them in the penultimate paragraph of Exhibit P/5 to the Statement of Claim.

Plaintiff denies having signed two transfer deeds one in respect of the alleged preference shares and one for the alleged ordinary shares. She will maintain that on or before 20.7.39, bona fide believing in the existence of the alleged 775 preference shares and 50 ordinary shares she agreed to sell them to Holland Bank Union, Haifa, for a total amount of LP.120.– which she later received from the Bank. In compliance with that agreement she handed to Holland Bank Union one transfer deed in blank signed by her some time after July 20, 1939. She denies having had any dealings with both " PIA " Palestine Independent Trust Association Ltd., and Dr. Siegmar Bromberger.

By a letter of plaintiff's advocate dated 24.3.43, addressed to Holland Bank Union Haifa, a copy of which is attached hereto (P/7) plaintiff advised Holland Bank Union of the non-existence of the alleged preference shares in the light of defendant's admissions referred to above stating that in law no preference shares could therefore have been transferred by her. She indicated that it was not her intention to collect from the defendant the amount due to her and at the same time to retain the sum received by her in 1939 from the Bank.

4. Plaintiff further in relation to paras. (10) (13) and (16) of the Statement of Defence says that therein the terms " holdings " " shares " interests or rights in " shares " and " claims " have been mixed up. Plaintiff will maintain that she never had any interest in any holdings or preference shares in the defendant company, and that the alleged said holdings or shares did never exist. She denies that a transferee from her has acquired any preference shares in the defendant company. Plaintiff avers that she has at all material times been entitled to the refund by the defendant of the sum paid to it on the ground of total failure of the consideration for which the money was paid.

Plaintiff denies having ever assigned or transferred her said claim for the refund against the defendant of the money paid by her.

5. Plaintiff will maintain that defendant is estopped from averring that plaintiff assigned or transferred her claim against defendant for refund of the sum paid by her.

Sgd. Advocate for plaintiff :

Dr. WALTER E. SCHREUER.

No. 7.

SETTLEMENT OF ISSUES.

In the District Court of Haifa.

No. 7. Settlement of Issues, 8th July 1943.

For Plaintiff Dr. Schreuer.

For Defendant Mr. Lipschuetz.

Parties agree to the following issues.

1. Whether plaintiff's application of the 19th April, 1935 for allotment of preference shares was made in pursuance of an arrangement as alleged in para. 4 of the Defence ?

2. Is defendant estopped from denying receipt of RM.11,039.24 from plaintiff by virtue of delivering the share certificate referred to in para. 7 of Defence and para. 2 (c) of Reply ? If not did plaintiff in fact pay that sum to Defendant ?

3. Was the modification in the Memorandum of Association made in pursuance of the arrangement referred to in issue 1 and with the knowledge of plaintiff ? If so is it binding on plaintiff ?

4. Did the Company hold an extraordinary general meeting on 12.4.35 for the purpose of altering the share capital of the Company and if so is the resolution creating the 6% cumulative preference shares valid in law ?

5. Did plaintiff pay anything for the 50 ordinary shares ? If so is the allotment of 50 ordinary shares severable from the allotment of the cumulative preference shares ? In the alternative were they issued as dividend or bonus shares *in specie* as plaintiff's profits on the 775 6% cumulative preference shares and were they issued validly according to law ?

6. Was plaintiff entitled to withdraw her application for allotment of preference shares on 28.4.1943.

7. Has plaintiff validly transferred the shares allotted to her as stated in para. 8 of the Defence and if so can she still maintain her claim ?

8. Did plaintiff receive the 775 6% cumulative preference shares and 50 ordinary shares in full satisfaction of all amounts she paid to defendant ?

9. Is plaintiff estopped from making this claim ?

10. Is plaintiff entitled to the refund of the counter-value of the sum of RM.11,039.24, and if so at what rate of conversion ?

11. Whether the plaintiff is entitled to interest and if so at what rate and from what date ?

Case to be entered for trial.

Sgd. A. ATALLAH,

Judge.

In the District Court of Haifa.

No. 8.

PRESIDING JUDGE'S NOTES OF PROCEEDINGS.

No. 8. Presiding Judge's Notes. 18th February 1944 to 15th June 1944.

Civil Case No. 117/43.

BEFORE: THEIR HONOURS JUDGE SHEMS AND JUDGE NASR.

IN THE MATTER of:

MARGARETE LINZ née SPRINGER Plaintiff

Vs.

THE ELECTRIC WIRE COMPANY OF PALESTINE LTD. Defendants.

PRESIDING JUDGE'S NOTES OF PROCEEDINGS.

Hearing of 18.2.44.

For Plaintiff: Dr. Werner and Dr. Schreuer.

For Defendant: Mr. J. Salomon.

Dr. Werner: Plaintiff applied on 19.4.35 for 775 preference shares, paid RM.11,000. Defendant purported to allot to her the preference shares.

Additional issue: Whether the plaintiff is entitled to interest and if so, at what rate, and from what date.

Mr. Salomon: No objection.

This issue is added as issue 11 to the list of issues framed.

Dr. Schreuer takes on: Desires to produce copies of documents certified by Registrar of Companies.

1. Memorandum of Association of the defendant company signed by Registrar of Companies. Section 243 (4) of Companies Ordinance, marked P/1.

Mr. Salomon objects says he denies the signature of the Registrar.

Dr. Werner takes on:

Plaintiff's Evidence.

Witness Dr. Schreuer, Walter Edward: sworn: replies to Dr. Werner.

No. 8 (a). Walter Edward Schreuer, 18th February 1944. Examination.

I received from the Registrar of Companies through Dr. Katzenstein Memorandum of Association of the defendant company marked P/1 (a), P/1 (b) Articles of Association of the defendant company P/1 (b).

Special Resolution of 12th April, 1935 P/1 (c).

Statutory Report P/1 (d).

Balance Sheet and Profit & Loss Account dated 24.4.1936 P/1 (e).

Certificate of Change of Name of the defendant company 7th May 1936 P/1 (f).

Return of Allotment of shares P/1 (g).

Our office sent by post registered a letter dated 28th March, 1943, to the defendant company P/2 and I signed it marked P/2. This is office copy of it.

Cross-examination : Our firm did not at the time of writing the letter have a power of attorney from the plaintiff, but had instructions from her, may be written.

Mr. Salomon : applies for the production of instructions.

Dr. Werner : objects, letter contains something in addition to instructions. It is not relevant. Privileged.

Mr. Salomon : Applies to be allowed to argue this point during the day.

Dr. Werner : Point raised by Mr. Salomon and he should be prepared to argue it. The Court will hear parties on this point during the day. (Witness continues) : The plaintiff did not deposit money with us for the payment to the Holland Bank Union in connection with the preference shares, nor for payment to PIA.

Re-examination : An agent of the plaintiff approached me before the receipt of the written instructions. He was Dr. Siegfried Levinger.

Dr. Werner : Applies to hear a witness who has come from Jerusalem to enable him to go in time.

No. 8 (a). Walter Edward Schreuer, 18th February 1944, *continued*. Cross-examination. Re-examination.

Second Witness : Mrs. Frida Hamel : Sworn : Replies to Dr. Schreuer : I am Secretary of Dr. Werner & Co. I have seen in our office the minute book of the defendant company, and this copy is a correct copy from the original minute book, marked P/3. That was on 16th January, 1944. Meeting dated 24th April, 1936. I have also seen the original share certificate, number 62,775 shares preference shares in name of Miss Springer. This is copy marked P/4. I have also seen the original share certificate number 33,50 ordinary shares. This is copy of it, marked P/5. I have seen also the original of a balance sheet, profit and loss account of the defendant, of which this is a copy. The original is signed by Dr. Millner. I know his signature. P/6. I have also seen a copy of the minutes of the extraordinary general meeting of the company held on 12th April, 1935, of which this is a copy, marked P 7.

No. 8 (b). Frida Hamel, 18th February 1944. Examination.

Cross-examined : The number of the shares in P/4 preference shares 62,20,846 to 21,620.

Share Certificate in P/5, 11,491—11,540.

Cross-examination.

Third witness : Selig Eugen Soskin : Sworn—replies to Dr. Werner. I was one of the founders of the defendant company and had founder's shares. I subscribed to the Memorandum not so much that I remember that I attended a general meeting of the defendant company, may be I received an invitation to attend. But anyhow I did not attend. I think I did not go to a meeting where it is, LP 1.– interest. I have seen P/7 this morning at Dr. Werner's office. It contains a resolution.

It was not passed in my presence. I do not know personally Dr. Buxbaum. No. I did not meet him. There is no signature of Dr. Kuzmirek on P/7.

I was never together with all the gentlemen who appear in P/7. I do not know where the office of the defendant company was.

I do not know the address Arlosoroff Street 47, I have not been there. I do not know where it is.

No. 8 (c). Selig Eugen Soskin, 18th February 1944. Examination.

In the District Court of Haifa.

Plaintiff's Evidence.

No. 8 (c). Selig Eugen Soskin, 18th February 1944, Cross-examination.

Cross-examined: I know you Mr. Salomon for about 12 years. In 1935 I think your office in Jaffa Road in town or in the vicinity. I know Dr. Broido. In 1935 I lived in Haifa—I cannot recollect I was at his house, as far as I know we had no social connections. I cannot say that I was not at his house in 1935. I know German more or less, and English. Minute of meeting is in German Protocol. This document bears my signature. It is a protocol, marked D/1. It bears the date 12th April, 1935.

(Mr. Salomon produces a translation of it into German marked D/1 (A).)

Witness continues: I do not sign things which I do not consider as correct. I do not remember to have been with the 8 persons. I cannot say that I did not meet some of the gentlemen mentioned who signed D/1 and signed in their presence.

Re-examination.

Re-examined: I did not sign D/1 when all the 8 gentlemen mentioned therein were present together. I suppose I signed D/1 on the day which is mentioned in it. If it was sent to me by way of circular it may be a couple of days later. I do not remember whether anybody was present when I signed D/1.

Judge's Notes, *continued.*

Mr. Salomon refers to letter of instructions in Dr. Schreuer's evidence.

Mr. Salomon: Phipson, page 198 (see pages 4 and 5).

Joint interest page 200. Privilege of client and not of the lawyer.

Dr. Werner: Phipson, page 196. Letter of instructions is privileged. If client waives it, it is for her. Both parties agree that this point stands over until the evidence of the plaintiff has been heard.

No. 8 (d). Margarete Linz, 18th February 1944. Examination.

Fourth Witness: Margarete Linz: (before Springer) sworn and replies to Dr. Schreuer: I came to Palestine in 1933, and have been living here. Dr. Siegfried Levinger is my uncle. I had money in Germany. He was in Germany, but at a time he was in Palestine in 1935, and I gave him instructions. I had money with the Haavara and I wanted to draw money through the Haavara. Could not get it in cash. I signed for 775 preference shares of the Electric Wire Co. My uncle signed for the transfer from the Haavara to the Electric Wire Co. 775 preference shares. He should give money from Haavara to the Electric Wire Co. The amount was RM.11,000. He told me that he followed my instructions. I had correspondence with Haavara regarding the remittance of the money to the defendant. I threw that correspondence away. I did hear that the preference shares were invalid. My uncle informed me that the preference shares were not valid. I signed a transfer deed in respect of the preference shares to the Holland Union Bank, Haifa. I do not remember if the transfer deed was filed. I gave to the Holland Union Bank all the 775 preference shares transferred them to it in 1939. The transfer was to be to PIA. The transferee was the Holland Bank Union in the transfer deed. PIA got the preference shares later on. The price was LP. 120. When I signed the transfer deed in 1939, I had no doubt as to the validity of the preference shares. I received the LP. 120 from the Holland Bank Union. I got 50 ordinary shares from the company at the same time I got the preference shares; did not pay for them—gratis, it was a kind of bakshish. Did not receive any dividend in cash from the company. The LP. 120 I shall return to the Holland Bank Union in case I get the money in claim.

In the District Court of Haifa.

Plaintiff's Evidence.

No. 8 (d). Margarete Linz, 18th February 1944, *continued.* Cross-examination.

Cross-examined : I was told that the shares are invalid. That the preference shares are worth nothing at the time I sold the shares to the Holland Bank, I thought that they were of value, now I know they were worth nothing. If the defendant does not pay anything I would not pay anything to the Holland Union Bank. I claim at least LP.1000.– in this action. If I win I pay to the Holland Bank. I shall only pay the Holland Bank if I get the money from the Palestine Electric Wire Co. The firm Electric Wire told me that the 50 ordinary shares were bakshish. The word is my invention. I do not remember the word which Alfred Rosenberg told me. He told me that when I got the preference shares, and I understood that the 50 ordinary shares were a gift. I did not do any service for the company, and if I want to know the reason I shall ask the witness of Haavara. There is some connection between the 775 preference shares and the ordinary shares. I would not have got the ordinary shares if I had not bought the preference shares. I do not remember whether I paid for 12 ordinary shares, it may be this my signature on D/2. The bakshish were only 38 ordinary shares. For 11,000 Reichsmarks which I paid in Germany I got 775 preference shares and 38 ordinary shares. For the 12 ordinary shares I do not remember whether I paid for them in cash. I thought I paid for the preference shares. Never got any of the bakshish never thought of returning the bakshish shares. I do not know the percentage on the transfer. I am not sure whether I received a letter D/3. It was clear from every transfer of money by Haavara or other transfer that one would lose money. I do not remember the percentage of such expected loss. I do not remember that it was arranged or discussed that as the loss in Haavara transfer was more than 10% I would be compensated Co. in the form of ordinary shares. Threw all the documents in connection with the shares and Haavara which I received. Moved very often, do not remember when. More than 3, even more than 4 years ago. Did not find them, although lawyers asked for them.

Judge's Notes, *continued.*

Mr. Salomon : One more hour for the cross-examination.

Dr. Werner : 3 days.

Mr. Salomon : 3 days.

Adjourned for a further date to be fixed by the Registrar.

18.2.44 Sgd. A. SHEMS
Judge.

Adjourned until 4, 5 & 6th April, 1944, in presence of Messrs. Werner & Salomon. Serve on witnesses, if any.

Sgd. D. Yousef, Registrar
18.2.44

Hearing of 4.4.44 :

Dr. Werner.

Dr. Schreuer.

Mr. Salomon.

No. 8 (d). *continued.* Margarete Linz, 4th April 1944, Cross-examination.

Mrs. Margarete Linz reminded she is still on oath :

Replies to the questions of Mr. Salomon in cross-examination :

I sold both the ordinary and preference shares which I had acquired from the wire. They were so-called ordinary shares and so-called

In the District Court of Haifa.

Plaintiff's Evidence.

No. 8 (d). Margarete Linz, 4th April 1944, Cross-examination, *continued.*

preference shares. I got them through the Haavara from the Electric Wire Co. The Haavara paid to the company. My money was in Haavara and Haavara sent it to the Electric Wire Co. They transferred it to Electric Wire Co. The Haavara placed certain moneys to the credit of the company, and I got the shares. The shares originally received from the company 775 so-called preference shares and 50 ordinary shares, sold them to Holland Bank. I had no other shares. This is the agreement by which I sold 775 shares D/4 (A, B, C). I did not speak with Holland Bank. When I signed it, it was blank, except 125. I got this document from the company which I returned for cancellation D/5 (similar to P/4 original). I sold it at 125 pounds. I sold the ordinary shares to whom I do not know. I do not know whether I received LP.5. Sold to Dr. Siegmar Bromberger. Shares 11491/11540 by document D/6 A.B.C. When I sold the ordinary shares I gave the shares. This is share certificate D/7. I got both share certificates at the same time and they are dated 1st July, 1936. I do not know what happened to the shares. I did not offer to Mr. Bromberger to return the money nor to PIA. The LP.130.– has been used up. Actually I got less for the ordinary shares fifty for fifty pounds than 775 preference shares for LP.125.– I do not know what is their price to-day. I do not remember whether I received this letter. It may have been D/8. I transferred other moneys from Germany through Haavara shares which I still keep. Toval Co. shares, got nothing from Toval shares. Even if I had kept the shares and they are worth to-day LP.1.400 a share I would still say they are so-called preference shares. I did not personally attend meetings. Siegfried Levinger Uncle. My husband negotiated the sale of the shares on my behalf and with my agreement.

Re-examination.

Re-examined : I paid the Reichsmarks only for the preference shares. Alfred Rosenberg was Director of Electric Wire Co. at the time I acquired the shares. I sold the so-called preference shares to the Holland Bank. I did not have any dealings with PIA nor with Siegmar Bromberger.

My reason for saying that I would not return the money to Holland Bank, except if I get the money from the defendant Co., is, that I do not consider it fair not to return to the Holland Bank the money. The shares are worth nothing. I got money from the Holland Bank and would return it to them. It is LP. 125.–. I received from the Holland Bank the value of the preference and ordinary shares. LP. 125.– I did not receive any money from PIA. I did not receive any money from Bromberger. I signed the transfer note in blank, the amount was there but not the name. I signed the transfer deeds in 1939. The date must have been left blank. The date on D/4 C 12th August, 1940 is written by me.

Dr. Werner : To complete the evidence of Dr. Schreuer Record pages 4–10.

Dr. Schreuer :

Dr. Werner :

Mr. Salomon presses the production of the letter of instruction given by the plaintiff referred to on pages 4 and 5, 10.

Dr. Werner : no such procedure. Hals. 13, 737, 811.

This letter is not relevant. It is privileged. Hals. 13, 725, 800. Plaintiff was not asked whether she waived her privilege. Plaintiff is not a shareholder no joint interest but adverse.

Mr. Salomon : Document mentioned by other side when they spoke about instructions.

Ruling : The letter of instructions is one between advocate and client. It is privileged and no waiver has been made by either, the privilege still stands. The interests of the plaintiff and of the defendant company are not joint but adverse and conflicting. Mr. Salomon is overruled.

4.4.44 Sgd. A. SHEMS

Judge.

No. 8 (d). Margarete Linz, 4th April 1944, *continued.*

Both parties have nothing else to add on this point.

Fifth Witness : Dr. Siegfried Levinger, Yokneam, 73, Sworn— replies to Dr. Schreuer : " I am a retired physician. Uncle of Mrs. Linz. Some years ago 1935 I applied to the defendant company on behalf of the plaintiff to buy preference shares, I did not know how many, but for the money, Reichsmarks 11,000 and a few hundred reichsmarks. I did not apply to the company to acquire any ordinary shares. Dr. Rosenberg asked me to apply for ordinary shares, on behalf of the plaintiff and I said definitely no. The Reichsmarks were to be paid to the Electric Wire Co. through the Haavara. I did not speak to Haavara as to the mode of payment.

No. 8 (e). Siegfried Levinger, 4th April 1944. Examination.

Cross-examined : I never told Haavara that I placed the money to the credit of the defendant Co. Haavara had German money. I represented the plaintiff in the acquisition of the shares. In Palestine I did not pay to the defendant company. I do not know how the Haavara paid. I know that Haavara paid. I do not know the technical way how Haavara paid. For these shares plaintiff paid through Haavara, but she personally not. She got in touch with Haavara. She was in Palestine. I did not negotiate with Haavara but the plaintiff did. I had a Power of Attorney from the plaintiff and signed for her the application for the shares. I had also some little business with Haavara. Haavara gets commission. I think the 11,000 marks included commission. I am the father of Fritz Levinger. I applied for shares on his behalf. Mr. Rosenberg asked me to take ordinary shares and I took them only for my son. I sold them February, 1943. I did not get a letter from Haavara. I did not make any enquiries how the preference shares were created. I was not consulted in the sale of the preference shares by the plaintiff. In connection with I was at Dr. Werner and Co. Mrs. Linz first came to the office I do not know. I came because I heard that the shares are null and void from the case of Schlesinger and gave him instructions. Mrs. Linz gave him a Power of Attorney afterwards when I came to him I did not have a power of attorney from her. Mrs. Linz was not with me when I gave him instructions. We spoke about writing a letter to Holland Bank. The last instructions were given by the plaintiff. I was not present when she signed the power of attorney. I did not bring with me cash to be offered to the Holland Bank Union. I did not pay advocates' fees to Dr. Werner or Dr. Schreuer, when I gave him instructions but I agreed with him about fees. Afterwards he was paid. I had nothing to do with the sale of the shares of plaintiff. I do not know how much these shares are worth. I do not believe they are worth more than a pound. The shares are worth but the company does not pay something. . The company made profits. I sold the shares because

Cross-examination.

In the District Court of Haifa.

Plaintiff's Evidence.

No. 8 (e). Siegfried Levinger, 4th April 1944, *continued.* Re-examination.

No. 8 (f). Alfred Schreuer, 4th April 1944, Examination.

company made profits but did not distribute. May be the shares are worth. I did not buy Toval shares for plaintiff. She had debentures, bonds, she bought them.

Re-examined: Heard that the preference shares are null and void. Mr. Feuchtwanger told me so for the first time. He is the Manager of the Bank of Feuchtwanger General Bank Ltd. I asked Dr. Schreuer to get in touch with the plaintiff. I sold ordinary shares of the defendant co.

Sixth Witness: Dr. Alfred Schreuer sworn: replies to Dr. Werner. Censorship officer. I had business connections with the defendant company. I was one of the partners and founders of the company. I signed the memorandum of the company P/7. I cannot remember seeing the original of it. I was never together simultaneously with all the gentlemen mentioned at the bottom of P/7. I was not at any such meeting. I am sure, I do not believe I received an invitation to such a meeting.

Knew Aleinikoff met him in office of Mr. Kremener in 1934 and saw him later on not in office. Was never with him with the other gentlemen in one room. D/1 my signature on it. I signed it in my flat second storey 47, Arlosoroff same house of Rosenberg or Broido, signed either in my flat or flat of Mr. Broido or Mr. Rosenberg which are in the same house. More probably they brought it to me to sign. All the 8 persons did not sign at one time in my presence. When I signed D/1 either Mr. Broido or Mr. Rosenberg or both were present. Only these two gentlemen or either of them was present. When I signed D/1 I am not interested in the result of this case.

Cross-examination.

Cross-examined: Lawyer by profession. Experience in company matters. Got interested in this company while in Germany, and continued to be interested for several months after I signed D/1. This was supposed to be a protocol. It may be a minute of meeting. These 8 persons were the only members of the company at the time. I read it before I signed. I signed it voluntarily. It was supposed intended that everybody should sign it. The intention was to express the unanimous decision of the then shareholders of the company. It may be that Mr. Rosenberg or Mr. Broido may have signed in my presence. The office of the company was in Broido's flat 47, Arlosoroff St. I met Rosenberg or Broido twice or more, very often every day and had discussions about the business of the company. The creation of preference shares was discussed for several months before I signed this document. When I signed it, it was not a surprise. It was the terms of our discussions. It was after receiving advice that I signed it. I signed it on 12th April may be. Dr. Buxbaum signature is also on D/1. Nobody else was present apart from Rosenberg and Broido. It was intended to obtain the signature of the other subscribers. When I signed I was the first, second, or third. I am sure until now. I definitely remember, I did not say to Rosenberg or Dr. Broido that we must have the personal meeting of the persons to sign. I believed it was right. I took part in the attempt to acquire transfer of capital. There was a loss on transfer. It was about 14%. There was a discussion. D/9 was part of the agreement between the company and Haavara. Paragraph 5 of it read. I understood it to mean that as the subscribers anticipated a loss of 9% on the transfer and as the deduction was made on the basis of 15% the company would get a bonification 5%

No. 8 (f). Alfred Schreuer, 4th April 1944, Cross-examination, *continued.*

from the company. Para. 1 amounts to be credited in Palestine by virtue of the money paid in Germany. The Haavara agreed to 15% the people wanted only 9%. Para. 1 amount of shares. Para. 5. I am not sure whether an addition to the amounts para. 1 or deduction from the payments in Germany.

The company should refund the money, the company here was to compensate the people up to 5% this compensation was given in the form of ordinary shares. If a person has a credit of 775 pounds the bonification 5% would be LP.38.750. In round figure the equivalent would be about 38 or 39 shares. For 775 preference shares, the bonification about LP.38 or LP.39. The company actually passed on the shares to the subscriber.

In Schlesinger case she was registered as owner of the preference shares and she got from the company LP.1500 for 1500 shares and costs. She was registered as holder of the shares. She had not sold them to a third party. Until the Schlesinger case there was no doubt about the validity of the shares. Now the value of the shares is over a pound. The business of the company is now very good.

Re-examination.

Re-examined : Very superficial knowledge of English or Palestinian company law. Different from German law. In Europe interested in getting subscribers. This was not a material document, I thought it could be signed one after another. I had the impression that this was the correct method. Dr. Buxbaum I believe advised D/9 dated 4th June, 1935, see it now for the first time I believe. On the 4th June, 1935, still in business connections with company. The shares are not in the market. There is no official quotation for them.

No. 8 (g). Ludwig Mayer, 4th April 1944. Examination.

Seventh Witness : Dr. Ludwig Mayer : Sworn : replies to Dr. Schreuer. Economic adviser, licensed broker.

I was one of the founders and one of the directors of the defendant company, and am still a shareholder. I subscribed to the memorandum. P/7 I do not remember having seen the original of it. I do not remember having taken part in a meeting where all the gentlemen mentioned in it were present. I know Dr. Schreuer, Alfred, Dr. Broido, Mr. Rosenberg. Knew Aleinikoff. Know Dr. Soskin, Mr. Alexander Kremener. Do not know Dr. Buxbaum. The office of the company in 1935 April, in flat of Dr. Broido in 47 Arlosoroff Street. I was not in his flat together with the other 7 gentlemen I am sure.

D/1 is signed by me. I do not remember where I signed it, not in Broido's flat. Do not remember whether anybody had signed it before. It was not signed in my presence by the other gentlemen. I do not remember having received a notice of meeting of 12th April, 1935. Have correspondence from February, 1934, up to date, complete. Looked for the notice for the meeting of 12th April, 1935, but there is no such notice. Notice 16th February, 1935, in Buxbaum's office, Jerusalem to be 24th September.

Cross-examination.

Cross-examined : Not surprised to see on D/1 the signature of all the persons who were shareholders. The intention was that all should sign the decision, and its effect was it should have the effect of a decision of the shareholders at the time. It purports to be a minute of a meeting. When I signed I expected the others to sign it. The matter in it was not new, the details were not new. It was intended to be a resolution to make

In the District Court of Haifa.

Plaintiff's Evidence.

No. 8 (g). Ludwig Mayer, 4th April 1944, Cross-examination, *continued.*

11,000 preference shares. Signed it on the date stated there, I cannot say I signed it on that date. I would have signed it on another date. Quite usual procedure for directors to sign one after another not simultaneously. This protocol does not say that all were present. Protocol means minutes. I did not give much attention to it. It purports to be a protocol of a meeting. Besides Mr. Rosenberg and Dr. Broido there was no other person present, Dr. Schreuer possibly present, Kremener was not present, Soskin not present. Remained Director of the company to October, 1935. As a director was kept in contact with Haavara, contents of negotiations, but not in personal touch. Whether every shareholder actually got a certain percentage of ordinary shares as bonification, I do not know anything about it. The loss was to be first 10% in a certain particular case. I do not remember about the others. The value of preference shares of the defendant company. I do not think it is less than 100% at par. Would not put the ordinary share less 100%.

Re-examination.

Re-examined: At beginning of 1941, preference shares were sold at considerable loss, 30%, 50%. In meantime prices rise considerably, business has become much better.

Claim full amount.

Case settled by compromise. Ellern's Bank did buy shares.

Adjourn for to-morrow.

Sgd. A. SHEMS,
Judge.

Hearing of 5.4.44.

Dr. Werner & Dr. Schreuer.

Mr. J. Salomon.

No. 8 (h). Erwin Goldman, 5th April 1944, Examination.

Eighth Witness: Erwin Goldman: Sworn. Replies to Dr. Werner.

Tel Aviv Manager Supply Department Sick Fund, Kupat Holim, previously Secretary to Haavara Ltd. Tel Aviv and for the last two years in the employment of Haavara was the acting manager in Tel Aviv from March 1935 up to July 1942. This is a letter written to Miss Margarete Springer by the Haavara on 7.7.35, the translation of which is D/8, marked exhibit P/8. On the same day the Haavara wrote a letter to the Electric Wire Co. This is the office P/9 the contents of P/9 are correct. The money mentioned in P/9 was put at the disposal of Mr. Alfred Rosenberg in his capacity as representative of the defendant company. The defendant company in fact disposed of the money that is to say used up the credit in Germany. I checked it from the books of Haavara. The Haavara received the money 11,000 Reichsmarks from Miss Springer by paying it in Germany to the transfer account of Haavara for the purpose of paying it to the Palestine Electric Wire Co. Ltd.

D/8 is a copy of letter written by Haavara to the plaintiff, the contents of it are correct. The 9,493 marks were received by the defendant company. Transfer fees 14% 1,545.49 marks only 5% of these 14% remained as real transfer fees with Haavara. The balance 9% was put at the disposal of the defendant company.

Cross-examination.

Cross-examined: D/9 paragraphs 1 and 5—the original agreement between Haavara and the defendant company was that the transferor would lose 10% of the amount deposited by him in Germany. This would include 1% to Paltreu which is Haavara Branch in Germany, and

4% bonus to the defendant company. However, Haavara pointed out their usual deduction is 15% and they have to stick to the usual 15% loss to the transfer and because there were some transfers which were agreed between the transferors and the defendant company at 10% which includes 1% Paltreu the defendant company would get a further bonification of 5% making a total of 9% which would enable them to come to an agreement with the transferors by internal agreement as to the 10% originally agreed.

P/9 the deduction of 7,834.30 gives effect to the letter to paragraph 5 of D/9. Actually therefore the amount placed to the credit of the transferors would be with the defendant company LP.775 the equivalent of 9,493 Reichsmarks. Para. 5 of the letter LP.775 does not bring into account the 5% additional bonification allowed to the defendant company.

Haavara got subscription forms for 15%, 4% and 5% bonification was given by Haavara in respect of every person mentioned in P/9 including Margarete Springer. Haavara gave a deduction of 4% and 5% bonification on the total sum 156,685 marks which included 11,039 standing opposite the name of Margarete Springer. The figure 7,834.30 is Haavara net expenses. Actually the amount which we gave credit in Germany to the defendant company was the amount deposited by the transferor less than 5%. In return for this amount less 5% she was to get the equivalent of LP.775 in Palestine plus whatever may be passed on by the defendant company from the 5% bonification if she belonged to the 10% group. This was the request of the Electric Wire as their agreement with the transferors was at 10% loss. D/8 the LP.775 is on a loss of 14% because 1% to Paltreu. If they were to lose 10% as agreed with defendant company they would get the benefit of the addition of 5%.

Re-examination.

Re-examined : 11,039.24 Reichsmarks P/8 D/8 P/9 1% due to Paltreu was already deducted on arriving at the figure of 11,039.24 marks.

I do not know of any agreement between plaintiff and the defendant company as to the 5% bonus. P/8 D/8 from D/8 P/8 it can be said that the amount which in tne result came into the hands of the defendant company from the plaintiff's money was 11,039.24 less 5% is 10,487.28 marks.

No. 8 (i). Massoud Eff. Nabhani, 5th April 1944. Examination.

Ninth witness : Massoud Eff. Nabhani : Sworn replies to Dr. Schreuer.

Civil Case 217/41 District Court.

Plaintiff : Regina Schlesinger vs. Electric Wire Co. of Palestine Ltd., and Dr. Broido and Dr. Wilhelm Majerczik and Alfred Rosenberg.

There is a compromise, 18th February, 1943, and a consent judgment. Mr. Salomon objects to production of compromise in another case.

Dr. Schreuer : Not a single ground given that it is not admissible what weight it would carry. It is admissible.

Court : Company made certain admissions of fact.

Mr. Salomon overruled.

Witness continues " This is a certified copy of the compromise and consent judgment in that case P/10."

Cross-examination.

Cross-examined : Statement of claim, copy.

Mr. Salomon appl es to adjourn the cross-examination until copies of pleadings in the case 217/41 can be produced.

Adjourned till next hearing.

In the District Court of Haifa.

Plaintiff's Evidence.

No. 8 (j). Fritz Millner, 6th April 1944. Examination.

Tenth witness: Dr. Fritz Millner: Sworn replies to Dr. Schreuer.

Licensed Auditor, member of Bawly & Millner, Firm Auditor of Palestine Electric Wire Co. Since the foundation of the company in 1934 or 1935 still the auditor of the company. Financial statement. Balance sheet.

Mr. Salomon objects privilege.

Dr. Schreuer: No privilege between auditor and client. Balance sheet P/3 submitted to general meeting Phipson 7th Edn. 196.

Mr. Salomon: Best on evidence.

Court: Objection overruled.

Witness continues: This is the office copy of a balance sheet prepared by our firm for the defendant company showing its affairs as on 31st March, 1936. The balance sheet was prepared for the general meeting of the shareholders of the defendant company.

The balance sheet shows a net loss of LP. 1135.864 mils as on 31st March, 1936. There is an item of LP. 548.500 mils by which the net loss is augmented. This item is described as distributed as dividend to preference shareholders out of rebate received on transfer. LP. 547.500 may LP. 548.500 mils; I think LP. 547.500 is right. P/1 (E) is a copy of a balance sheet approved by the general meeting dated 29th April, 1936, showing the defendant's affairs on 31st March, 1936. There is an item on the asset side of the balance sheet amounting to LP. 548.500 paid to the preference shareholders out of rebate received on transfer. P/11 compared with P/1 (E) there is the same item of LP. 548.500 mils.

This money was paid to the preference shareholders.

P/1E, P/11 } balance sheets.

There are changes. Reason for the changes, I was not present at the general meeting.

P/11 was made by us, I saw the modifications of some items in the balance sheet and in the profit and loss statement and from these modifications I changed the original balance sheet to conform with the Resolution of the General Meeting. I have seen the minutes of the general meeting for 1936.

According to this resolution P/3 I made the modifications in P/1 (E) the new balance sheet; except for these modifications the balance sheets are the same.

P/1 (E) balance sheet. It does not show a profit. This sum of 548.500 appearing in both balance sheets paid to preference shareholders paid mostly in shares and partly in cash. In ordinary shares. One person received cash payment. Mrs. Linz did not receive cash, she received ordinary shares. I think about 38 out of the rebate, for 12 ordinary shares she paid in cash.

Cross-examination.

Cross-examined: Even now the balance sheet shows that as if payment was made to preference shareholders except one. The amounts were credited to the accounts. It should have shown shares issued to preference shareholders out of the rebate received from transfer. I think it is the same. One received in cash, a small amount, in Germany he received it 350 marks. In Palestine everybody received ordinary shares.

Balance sheet 1942–43 shows a substantial profit.

The preference shares are worth more than LP. 1.–

Re-examined : The general meeting of April 1936 specially directed that the item LP. 548.500 should be called paid preference shareholders of rebate received on transfer.

No. 8 (j). Fritz Millner, 6th April 1944, *continued.* Re-examination.

Eleventh Witness : Dr. Julius Siegel : Sworn replies to Dr. Schreuer.

Advocate : Was a preference shareholder of the Palestine Wire Electric Co. Ltd. I received from the defendant company this letter on 4th March, 1943, marked P/12. Before Palestine, practised in Germany. Company Law of England and Germany different. In Germany the statutes of the company are only one statutes of the company.

Cross-examined : Sold the preference shares to Ellern's Bank about 900 mils. 375 shares preference shares and 20 ordinary shares. Sold them to Ellern's Bank. She (sic) I applied 375 preference shares and received 375 preference shares and 20 ordinary shares because the conditions of transfer were better than they thought. Got them as a bonus. Got 20 ordinary shares and the preference shares may be at the same time, may be about the same time. Did not pay anything extra from these shares more than I intended to pay in Reichsmarks. I received this letter from Haavara D/10 (same as D/8). The calculation shows a loss of 14% P/8 on transfer may be, the amount to be credited in Palestine was after the loss. The transferor loses the deduction. After the deduction, credited by the company with LP. 375. Actually got 375 preference shares and 20 ordinary shares. The rate of loss was discussed and was less than 14%, and 1% for Paltreu in Germany and when it appears as 14% and 1% which was more than discussed I got bonification which was after the allotment of the preference shares.

No. 8 (k). Julius Siegel, 6th April 1944. Examination. Cross-examination.

Re-examined : When sold the preference shares to Ellern's Bank made a reserve not to be responsible that shares should not be in existence because risk whether they were valid or not the risk put on the other side. Sold it before the letter D/10.

Re-examination.

Judge's Notes, *continued.*

Twelfth Witness :

1.45

Dr. Schreuer—remaining witnesses not present in Court.

Witnesses 3.

Adjourned for a date to be fixed by Registrar.

5.4.44 Sgd. A. SHEMS, Judge.

Adjourned until 25th & 26th May, 1944, in presence of Messrs. Werner & Salomon.

5.4.44 Sgd. D. Yousef, Registrar.

Hearing of 25.5.44.

For plaintiff : Dr. Schreuer.

For defendant : Mr. Salomon and Mr. Rabinowitz.

Mr. Salomon : Files amended defence nothing further to ask from the 9th witness Massoud Eff.

No. 8 (l). Walter Fuerth, 25th May 1944 Examination.

Twelfth Witness : Walter Fuerth Sworn replies to Dr. Schreuer.

Holder of procuration of Holland Bank Union, Haifa. In securities Department. I have letter from Dr. Werner & Co., to the Holland Bank dated 24th March, 1942. Marked P/13.

In the District Court of Haifa.

No. 8 (l). Walter Fuerth, 25th May 1944, Examination, *continued.*

Question : Letter by Bank to husband of plaintiff.

Mr. Salomon objects : hearsay irrelevant.

Overruled—it is admissible in evidence. As to its relevancy or otherwise this issue be determined after the production of the letter.

This letter was sent to Mr. Ernest Linz by the Bank signed by me together with second manager P/14. Mr. Salomon objects to production of such letter, and states his objection applies to all such letters.

The bank sent Mr. Ernest Linz this purchase note P/15. What is written is true of course.

The transfer deed D/4 (B) was the actual transfer deed. When the bank received D/4 (B) I do not believe the price was filled in.

Cross-examination.

Cross-examined : Dealt with Mr. Linz particularly. The bank never buys such securities for itself usually. These shares we bought for other purchasers after having received assurance of purchasers. It must be clear to Linz that we did not buy on our account. P/14. Looked for purchaser and Linz must have known it. Did not buy them for our account. That is why form sent in blank. Generally we never give the name of the buyer. After the transfer Mrs. Linz wrote me a letter with a copy to Mr. Majerczik whom she believed the purchase D/11. On 7th August, 1939, the Bank replied to her that we could not disclose the name of the purchaser. This is a translation of the letter in German D/12.

The first approach to the Bank was by letter D/13.

We replied on 7th February, 1939, that the Bank would be prepared to look for a purchaser D/14. We acted as agents and not purchasers. In our offer 18th July we wrote to her that we have found a purchaser D/15.

We wrote a copy of the letter to the buyer passed the information in a letter P/13 to him PIA. The shares belonged to PIA. The Bank could not dispose of the shares even for LP.1,000.–. The preference shares to-day have a value over for about 110 120. Did not get anything with letter P/13 from Mrs. Linz or anybody on her behalf.

Re-examination.

Re-examined : When we received P/13 I passed the information to PIA, and did not get a reply.

No. 8 (m). Arthur Blumenthal 25th May 1944. Examination.

Thirteenth Witness : Mr. Arthur Blumenthal : Sworn replies to Dr. Schreuer.

Holder of procuration of Feuchtwanger Bank, 19 years. 7th July, 1935, rate of exchange of Reichsmarks to sterling. 12.25 reichsmarks to £1 sterling, this was international foreign exchange.

10th September, 1935. 12.30 Reichsmarks to £1 sterling.

1st September, 1939. 10.75 reichsmarks to £1 sterling.

London New York exchange quotation.

Cross-examination.

Cross-examined : From 1935 until today—one could buy in Palestine reichsmarks at these rates, but not today a Free Reichsmark. In Palestine free Reichsmarks could be bought. To buy blocked reichsmarks (1935) small difference between blocked and free 20 or 30%.

Blocked marks bought for use in Germany, blocked in Germany, could not get a block mark in Palestine nor a free mark. Credited in Germany with a certain amount of marks. To-day it is not legal to deal with marks.

Difference between the marks as quoted and as purchased.

The intrinsic value of the mark today in the sterling area is a matter of business. The fixing of reichsmarks is arbitrary act of state.

Re-examined: Bank of England fixed the rate of exchange of the sterling. Dr. Schreuer intends to rely on affidavit sworn to by Dr. Broido in answer to interrogatories. Affidavit 13th December, 1943 P/16 A P16B motion 314/43 in this case. Answers to questions I. III. IV. (2) (3) V. Rule 162 of the Civil Procedure Rules, 1938.

Affidavit by Dr. Broido 2nd February, 1944 P/17. Motion 451/1943. This concludes his case.

Mr. Salomon: Relies on cross-examination of Dr. Broido on answers to interrogatories.

Dr. Schreuer: Objects—Rule 162. Mr. Salomon can examine him in chief.

Mr. Salomon: Rule 276.

Dr. Schreuer: Odgers, 313.

Mr. Salomon is entitled to cross-examine Dr. Broido who swore the answers in reply to interrogatories delivered to him by the plaintiff and put in by the plaintiff.

Sgd. A. SHEMS,
Judge.

Dr. Adolf Broido, sworn, replies to Mr. Salomon:

Cross-examined: Director Manager of the Electric Wire Company of Palestine Ltd. Affidavit of 13th December, P/16.

Examined on oath in respect of meeting of 12th April, 1935, the offices of the company were in my flat 47 Arlosoroff street. In the same house lived two other members shareholders of the company. Dr. Alfred Schreuer and Alfred Rosenberg. At the time we had issued 8 original shares to the subscribers. On 12th April, 1935, a minute of meeting was prepared and is signed by all the persons who were shareholders of the company. D/1 is signed by every person who was a shareholder of the company at that time. A meeting was held on that day to consider the resolution. I was present at the meeting. Not all other were present. Dr. Schreuer, Mr. Rosenberg were present. We had this meeting after having discussed this matter with every shareholder. This document was understood by every one who signed that it was the minute of a meeting of that date. Since the passing of the resolution and until the Schlesinger case everybody acted on it as valid and subsisting. We forwarded annually return of allotment in which plaintiff was shown as preference shareholder of 775 shares and of 50 ordinary shares.

Meeting 14th November, 1937. I was present. Plaintiff was represented by Dr. Levinger. At this meeting of 14th November, the share capital of the company was increased by the issue of a further 5,000 shares, known as the ordinary B shares. All present voted affirmatively except Palestine Economic Corporation abstained from voting. At that meeting some of the articles of association of the company were also amended, 45.

P/7 Special Resolution of 12th April, 1936 and 14th November, 1937, D/16. Dr. Levinger for plaintiff agreed to all the resolutions of 14th November, 1937. The only other amendments passed on 14th May, 1944, D/17 amending the articles D/17.

In the District Court of Haifa.

Plaintiff's Evidence.

No. 8 (n). Adolf Broido, 25th May 1944, Cross-examination, *continued.*

On same day at 11 o'clock 14th May, 1944, another extraordinary general meeting was held, and this is a true copy of the minutes D/18. Resolutions passed as special resolutions.

On same day 11.30 there was a special meeting of the preference shareholders of the company. That meeting ratified this agreement between me purporting to act on behalf of the preference shareholders and the company. D/19 that same meeting after ratifying the agreement passed the second resolutions marked B as special resolutions. On that morning passed special resolution, the resolution marked A B.

And the preference shareholders passed a special resolution. The resolution in the 3 meetings were passed unanimously. Notices of the 3 meetings were sent gave more than 30 days of the day of meeting. Company considers now the preference shares as valid preference shares. Preference shareholders may become ordinary shareholders on certain premium. Preference voting right is limited, and so dividend. Ordinary shares higher in value than preference shares.

I am registered holder of the 50 ordinary shares originally issued to the plaintiff. Bought the shares from the General Trust Company 11491–11540.

These shares still bear the same numbers. The number of the shares is not changed.

The vendors surrendered their share certificate, and a new one was issued. Surrendered share certificate of the General Trust Co. Ltd. transfer deed form D.D/20.

The General Trust Corporation bought these very 50 shares from Dr. Siegmar Bromberger. These are the shares transfer, share certificate and form D. D/21.

The share transfer includes 20 other ordinary shares. These very shares were transferred by the plaintiff to Dr. Siegmar Bromberger.

D/6 is the share transfer certificate from plaintiff to Bromberger. Mrs. Linz did not apply to purchase the 50 shares from me. If she were to offer to me LP.10 a share, I would not sell them. I would not sell any shares of the company.

Continuation adjourned for to-morrow.

Sgd. A. SHEMS, Judge.

Adjourned to Thursday & Friday, 1st & 2nd June, 1944, in presence of counsel for both parties.

26.5.44. Sgd. D. YOUSEF, Registrar.

Hearing of :
1.6.44.
Dr. Schreuer.
Mr. Salomon and Mr. Rabinowitz.

Cross-examined : Dr. Adolf Broido reminded he is still on oath.

Replies to Mr. Salomon—Cross-examined.

Mrs. Linz got allotted to her 775 preference shares and 50 ordinary shares. In connection with this transaction she received 775 preference shares and 38 ordinary shares. And for the remaining 12 shares she paid in cash in Palestine Pounds in Palestine in July 1935. She paid LP.11.950 mils in cash for the 12 shares. In the share register the plaintiff was shown as entitled to the 775 preference shares on 7.7.35, and in regard

to the 38 ordinary shares the register also shows that she is entitled to them on 7.7.35. Present when plaintiff gave her evidence. She did not receive any of the ordinary shares gratis. She was entitled to the 38 ordinary shares for which payment had been made in Germany by Haavara marks. D/9. In the original arrangement applicants were to lose 9% and 1% to Paltreu, the Palestine Agency of Haavara.

A transfer of say 1,000 marks in Germany would be credited in Palestine in goods or securities with 10% less. This was at the date when the defendant company started discussions with the applicant for shares.

In the meantime Haavara changed its policy and deducted generally and including the present applicant 15% instead of 10% including Paltreu. On a 15% conversion into Palestine currency plaintiff would be entitled to 775 preference shares. D 8. Plaintiff paid in Germany

11,039.24	Reichsmarks
1,545.49	a loss of 14%
9,493.75	credit to plaintiff

LP.775

Rate of conversion 12.25.

Giving her 5% of 775 additional in ordinary shares 38 shares. We wrote to the plaintiff and she knew that the 5% was part of the original transaction for which she paid in Germany. She had a right to the 38 ordinary shares. Actually we did not get Reichsmarks or cash in Palestine, but a credit in a German Bank for which we could buy goods in goods, specified goods, specific goods. These were machinery for our factory. They were not free marks. This particular credit of marks was not quoted officially.

That credit is not available to-day. We used it up.

Until 1940 our company was working at a loss. By 1940 loss of LP.11,000 approximately and since then the factory making profit.

Remember the Schlesinger case. Compromised. By cancellation of allotment and payment of a certain amount to her. Compromised. The preference shares were of substance. I would have bought them at the price.

Re-examination.

Re-examined: Meeting of 12.4.35. Dr. Schreuer Alfred signed D/1 in my flat I do not think in his flat, and do not remember that we signed any document in his flat. Apart from myself, Dr. Schreuer and Rosenberg, it is possible that Dr. Ludwig Mayer was present.

Once Kremener. Aleinikoff came to our flat for a meeting. I cannot remember having been at Kremener to make him sign. But Dr. Buxbaum has not been in my office.

(Mr. Salomon declares that Dr. Schreuer may have a free hand in his re-examination.)

I do not know and cannot remember Dr. Soskin, Kremener and Aleinikoff were together on 12.4.35, with Dr. Alfred and Dr. Ludwig Rosenberg and myself.

The other subscribers knew of this meeting, I think they had notice. I wrote to them, and have no copy of this letter. Usually our company keeps copies of letters sent.

Meeting of 13th December, 1943. At that time our office was in my flat, and other letters of that date were also lost.

In the District Court of Haifa.

Plaintiff's Evidence.

No. 8 (n). Adolf Broido, 1st June 1944 Re-examination, *continued.*

Dr. Buxbaum was company lawyer. I do not remember giving him instructions to give notice. I asked him to prepare the draft of the resolution, and I presume that he did everything necessary for it to be passed.

The company was advised by its lawyer to take the view expressed in P/12 in connection with the validity of the preference shares P/12.

The sum paid by the addressees of those letters for those shares to the transferor to them was sometimes less and sometimes higher than that paid by the allottees to the company.

Assuming PIA was holder of the shares the company would have paid it LP.125 the price paid by it to the transferor. Nobody surrendered the shares. The preference shares were above par. Nobody accepted P/12. P/12 was sent to every registered preference shareholder.

Ellern's Bank brought an action to be put in the register of shareholders as a preference shareholder. The preference shares were doubtful. Their validity was questioned. This was in July, 1943. Ellern's Bank sold the shares and the transferee was accepted to be registered as the holder of the preference shares.

12.4.35, resolution ratified by a meeting of the company, 14th May, 1944, general meeting and special meeting. We did not think it necessary, but we thought it to do it in connection with increase of capital. The legal adviser advised us to do it, may be he did, and I did not understand it.

Present price of preference shares not quoted at any stock exchange. We see it from the transfer deed.

Preference shares were bought, there is an unofficial stock of exchange, and some securities are quoted every day.

In 1941, I do not know the price of preference shares, or 1942. The figure in the transfer deed is sometimes less than the actual value. In 1941 it was about par. The general public bought. I know Heinz Gruenebaum of Simson Co. Nobody of the directors of our company dealt with him for buying shares in our company.

I met plaintiff before she made her application for shares and Mr. Rosenberg and I told her of the loss of 9%. I met her I think in Haifa, and had a bit of social connection, she came to a café. Mrs. Linz put in a written application for shares. She had to. We answered her application for preference shares in a letter of allotment. The Ellern's Bank gave credit to our company which the company could use and use only for buying machinery, but the company could not draw any sum in cash.

The Haavara did not make any particular stipulation that we must pass ordinary shares.

Haavara converted the balance of the Reichsmarks after deducting 15% at a rate of 12.25 Reichsmarks to the pound, and I do not know what the official rate was in 1935.

Haavara may have its own rate of exchange.

Mr. Salomon : Closes case.

Judge's Notes, *continued.*

Mr. Salomon : Facts.

Co. formed with share capital of LP.25,000 Memorandum P/1A, paragraph 4 is capital clause.

(1a) Nothing that shares are divided into classes. Articles P/1B. Articles 44 and 45 and 48.

(b) Possibility of existence or right to exist of several shares classes of shares.

(2) Co. wanted to dispose of its shares and get consideration for them, it wanted to decide that of the original capital of 25,000—11,000 would be preference shares having accumulative share dividend.

Everyone who bought preference shares was to place in Germany marks and that was considered as payment in cash.

(3) 12th April, 1935, meeting of Co. shareholders held and passed a resolution D/1—purports to be a minute signed by every shareholder of the company at the time. 8 subscribers.

(4) Resolution filed with Registrar P/7.

Section 68 of Companies Ordinance. Meeting held. Broido absolutely sure 3 were present. Reasons to believe, Kremener, Mayer, Aleinikoff present. Broido Mayer was present—Buxbaum was not present. P/7 is minutes of or record of the resolution D/1.

(5) Resolution signed by all shareholders is as good as a resolution passed at a meeting by the shareholders after due notice.

(6) In re : Oxtet Motor Co. Ltd. 1921, 3 K.B. 32, 39. No notice given, but shareholders were present and passed a resolution and it was considered as valid. It is a matter which concerns the shareholders.

Parker Cooper Ltd. R. 1926 Ch. D. 975, 984, 985. no meeting but all shareholders signed the protocol.

Express Engineering, 1920 1 Ch. 470—Directors met and purported to pass a shareholders' resolution. All the shareholders agreed. 21 days notice dispensed. Special resolution notice dispensed.

(7) This special resolution was passed in order to obtain a credit in Reichsmarks. Plaintiff had to lose 10% including Paltreu. Plaintiff obtained 775 preference shares—38 ordinary shares D/9.

(8) D/9 Haavara's letter 9%—5% Prior to 7th July, 1935. P/9.

She paid cash for the 12 shares on the 25th July, 1937.

D/4 sent to all shareholders and to plaintiff. Request to hold in consideration for the credit opened for company in Germany for 11,039.24 Reichsmarks only 10% loss was agreed upon and allowed and for the balance at the rate of conversion fixed at 12.25 plaintiff got 775 preference shares and 38 ordinary shares. Allotment of the ordinary shares is inseparable for the allotment of preference shares and part of the same consideration 775. 775 multiplied by 5 equal 38.007—D/8—D/10. Dr. Schreuer's evidence—Goldman, Siegel.

38 shares was part of the agreement and not gratis.

(9) Plaintiff sold and transferred the preference and ordinary shares and she is not in possession of these shares. The shares 50 ordinary 11491 to 11540 sold and transferred by Transfer Deed to Siegmar Bromberger D/6A 28th September, 1941. Share certificate D/7 originally given to her surrendered and cancelled.

Siegmar Bromberger sold these shares in D/21 and now registered in name of Adolf Broido D/20.

Plaintiff has not offered to return the ordinary shares. They were validly issued and properly allotted. The ordinary shares have been traced to Adolf Broido.

Preference shares : 20816 to
21620 —

28th September, 1941, these shares are transferred LP 125 to PIA D/4 (B) Presumed they are in the name of PIA.

28th March, 1943, P/2 Holland Bank. There is no actual withdrawal of the application for allotment of shares P/13.

In the District Court of Haifa.

Judge's Notes, *continued.*

Not heard of any further reference to the Bank.

Holland was merely agent for plaintiff in selling the shares for her. Passed the letter to PIA.

Letters to Majerczik D/11 and D/12.

Plaintiff adopted the shares by accepting them—D/16 attending meetings seemed in alteration of articles of association 14th November, 1937.

Transferring the shares and obtaining consideration for them. She is estopped from claiming that the shares were not validly allotted.

(10) 1st stage allotment of shares to plaintiff.

(12) 2nd stage sale of shares by plaintiff.

(13) 3rd stage. 14th May, 1944 D/17–D/18–D/19.

Attempt to validate.

12th April, 1935,

3 meetings 10 o'clock.

Article 44 classes of shares.

Article 48 manner of alteration of shares.

At 10 o'clock amended articles passed.

11 o'clock passed a resolution confirming resolution of 12th April, 1935, and the minute P/7.

11.30 Meeting of the Special class preference shareholders.

D/19 adopted agreement and all resolutions passed that morning.

Adjourned for to-morrow morning 2.6.44 afternoon 3.30.

Hearing of 2.6.44.

3.30 afternoon.

Dr. Schreuer.

Mr. Salomon.

Mr. Salomon :

(14) Points :

1. Were the preference shares validly issued allotted on 12.4.35.

2. Assuming not validly issued or allotted, does the fact that they were allotted with ordinary shares or sold affect the matter.

3. Is not plaintiff estopped or too late.

4. What is the effect of the resolution of May 14th, 1944.

Companies Act : 1862
1907
1925
1929.

(15) 1st Hutton : Scarborough Cliff Co. 143 R.R., 263, 267 (middle), 268 note 4.

2nd Hutton : 143 R.R. 269 (overruled)

amendment of constitution as to shareholders' right cannot be made by special resolution and of management can be made by special resolution.

Resolution passed for the sake of plaintiff.

Harrison Mexican Rly. Co. 19 Equity cases 358, 365, 366 (1874)

It overrules the second Hutton case. 15 (A) Page 267 In re South Durham Brewery Co. 31 Ch. D. pages 261, 265, 266, 270, 271.

(16) Ashbury Railway 28 Ch. D. 56, 63, Riche 7 A.C. 653.

(17) An act which is outside the object matter of the company cannot be ratified.

Section 20 of companies Ordinance 1st Hutton case no power to issue preference shares—it was not originally contemplated.

In the District Court of Haifa.

Judge's Notes, *continued.*

(18) Ashbury Watson 30 Ch. D. 376 Memorandum.
(19) Anderson 7 Ch. D. Page 75, 99.
British and American Trustee Companies 1894 A.C. 399, 416, 417.
(20) Andrews Gas Co. 1897 1 Ch. D. 361 Lindley J. 366, 369.
Review Cases.
(21) Bridgewater Co. 39 Ch. D. 1, 11, 22 (1888)
is on all fours similar to the case. If not preference shares they are ordinary shares. Until original allottee removed from register she could apply to pay her money, but she is not on the register. Schlesinger was on the Register.
(22) Welsbach 1904 1 Ch. 87, 97, 98, objects may not be changed. But classes may be. In re Corp. 2 Ch. A.C. 714, 729, 730.
(23) New Zealand Banking Corporation 3.
Adjourned for to-morrow morning.
2.6.44.
Dr. Schreuer.
Mr. Salomon.
Mr. Rabinowitch.
Mr. Salomon: Alteration of objects: Welsbach.
(24) Assuming the act of 12th April, 1935, it was ratified New Zealand Corporation 3 Ch. Appeal cases 131, 138, 139, 141.
(25) Railway: 12 Ch. D. pages 98, 113, 115, 117 Illegal allotment—sold the shares.
She adopted the shares—she acted on them—Article 312 Mejelle.
(26) The irregularity if any (12th April, 1935) can be remedied.
Browne La Trinidad 37 Ch. D. 1, 17, 18.
Pepe City Society 1893, 2 Ch. D. 311, 313.
Allen. Reefs West African Co., 1900 1 Ch. 656, 672, 673.
Article 44) given a common-sense interpretation.
48)
East Benett, 1911 1 Ch. 163.
Different classes in Article 44 to mean a class.
Meeting of 12th April, 1935, in order.
Portuguese Consolidated Copper Mines, 45 Ch. D. 16, 29, 35.
Ratification of shares.
Wavery—Hydropathic Co. Ltd., 1895 Scotch Buckley 11th Edn. 665.
Empire Digest Vol. 9 page 273 note (t) page 227.
New Zealand South African case—Note (e).
(28) Assuming it is shares issued ultra vires—void. There can be no restitution and therefore nothing can be done. There can be no recission for he cannot restore the shares.
London—Henry—7 Equity cases 334.
There was no total consideration.
If partial she received some benefit she sold them for LP. 125.–. Chitty Contracts 18th Edn. page 76, 65.
Hunt Sils. 7 R.R. 739,741.
(29) Under ultra vires contract one cannot recover money paid in the form of money had and received. The claim is not for damages, but for money paid; unless as a trust and money can be traced. One cannot trace the money she paid it was paid for machinery. Sinclair Brougham—1914 A.C. 398, 414, top 415 top 418.
Defendant did not get money but a credit of a particular and limited type. Plaintiff paid money. Defendant cannot restore that credit, and it is not legal to restore that credit in Reichsmarks.

In the District Court of Haifa.

Judge's Notes, *continued.*

If to return.

Bound to return what received viz a credit which Company cannot return, a credit in Germany, or Reichsmarks which cannot be purchased. Illegality prevents restoration.

Plaintiff amended Statement of Claim, paragraph 10—Palestine Gazette. Trading with Enemy Ordinance Section 3 (4) (d).

No evidence as to value of blocked Reichsmarks—credit of the particular type in 1935 or 1939 judgment.

Circular letter—it is true that it was admitted in Schlesinger that the issue was ultra vires not properly issued or allotted not well advised.

Now better advised.

Addressed to person who are registered shareholders and were given option which was not availed of.

Mr. Salomon applies that Mr. Rabinowitch stays and that he be allowed to withdraw.

Dr. Schreuer :

(1) Action for money had and received.

Application made in Palestine on 19th April, 1935. D/8—P/8—P/9.

(1) Case against validity of the preference shares.

(2) Effect of such invalidity.

(3) Defences.

(4) Amount to which plaintiff is entitled.

2. There was no meeting at which the shares were resolved to be issued on 12th April, 1935.

Assuming there was a meeting—Resolution was ultra vires.

The Memorandum. The Companies Ordinance. And is a nullity in law—Clause 4 of the Memorandum P/1 (A).

" Ordinary " Shares : Vol. I, 335.

Section 7 of Companies Ordinance—43 not material for the moment. Must be altered by Special Resolution Section 66 (4). P/1 (C) Holders of Ordinary Shares. P/7 copy. There is no original of this Minute D/1.

P/1 (C) | compared, separate meeting of holders of ordinary shares.
P/7 | 12th April, 1935, Members meeting.
D/1 | Resolution of subscribers.

Evidence of Soskin—Schreuer—Mayer.

No meeting on 12th April, 1935, here contents of P/7 is not true.

P/16. P/17 paragraph 3.

P/7 not true not all members—Resolution considered. It was not passed.

Did not call Broido as his witness. He was company's writer (Sic) 146. Notice now given. Articles—Absence of notice for 12th April, 1935. P/16 (A) (B).

No meeting.

No resolution passed.

P/10 compromise.

P/12.

Section 68 (3).

Meeting was not duly held on the 12th April, 1935. D/1 was sent to every subscriber to express the unanimous consent decision of the other shareholders of the company.

Section 66 of Companies Ordinance. Re Patent D Boat Detaching Company Digest 444, L.T.R. 39,664.

Palmer I, 985.
Informal meeting ; matter intra vires.
Meet.
Agree.

Memorandum could not be altered by resolution of 12th April, 1935. If all the members of the company meet and agree to a particular course of action it is immaterial if no proper meeting, but matter must be intra vires, unanimous consent of all shareholders. Informal meeting, nor notice—change of constitution ultra vires.

P/10 admission of company.
P/12.

Adjourned for 7th June, 1944.

Sgd. A. SHEMS,
Judge.

Hearing of :
7.6.44.

Dr. Schreuer.
Mr. Salomon.

Dr. Schreuer : Preference shares—If they were not created they could not be issued.

No general meeting was held.

66 (4) Special Resolution—not even of all subscribers.

12th April, 1935, they could not change constitution of the Company.

Assuming Meeting : It was ultra vires the co. ordinance Memorandum of Association, wholly void ab initio.

P/1 (c). P/7—Section 7 of the companies ordinance—Alteration of capital clause—Section 43 of Ordinance.

(3) Whether the conversion is authorised of the 11,000 preference shares. 1 Hutton case—143 R.R. Restrained preference shares are ultra and void.

2nd Hutton case (overruled) South Durham Brewery—31 Ch.
261 Harrison Mexican Railway Co. 19 Equity cases, 358.
Andrew Gasmeter Case. 1897 1 Ch. 361, 363, 364, 369, 368.
British Navigation 31 1 Ch. 9, 1888.
Welsbach Case. 1904.

(4) Campbell *v.* Rofe. 91, 98 A.C. 1933.

New Article 44 of Articles of Association, Ordinary is not a surplusage New Article 44 in D/17 is again the memorandum. Hailsham Vol. 5 page 142–143 para. 259.

Section 37 of Companies Ordinance.

The resolution P/7 or P/1 (c) is ultra vires—The Company—What bearing has this on the application of plaintiff (10th September 1935) and allotment. The Co. had no power to issue something which was not in existence and the contract with plaintiff was void ab initio. 8 Hailsham p. 73.7 Letter of 28th March, 1943 withdrawal the application for preference shares entitled to withdraw the application—delay of valid allotment for shares Palmer, 44 14th Edn. No shares were in existence and consequently not allotted.

(5) Plaintiff is a creditor for the amount paid to her by the Co. Waverley, 139 Scotch case, 1911. Section 2 (2) of companies Ordinance—companies Act 1929 apply to U.K. Re : Artlet 1 Ch. 466. White Book, 221.

In the District Court of Haifa.

Judge's Notes. *continued.*

(7) Defences: P/1 (c) Resolution ratified validation. 14th May, 1944—nothing what happened on 12th April, 1935, could be ratified for there was no meeting.

P/7—P/1 (c) Palmer I 14th Edn. Ashbury Railway Carriage L.T.R. Vol. 33, 450–451. Ashbury 30 Ch. D. 376, 380.

Hailsham Vol. 8, page 73. Vol. 5 page 165 (p.).

(8) Acts ultra acts powers of directors which is not ultra vires the company—Hailsham 5, p. 313, paragraph 528. General meeting.

Browne Lat. 37 Ch. D. 17, 18.

5. In re Guardian—

Permanent Benefit
Building Society—1882, 23 Ch. 440–460.
Andrews Gas—364.

Recess:

Dr. Schreuer.

Mr. Salomon.

Dr. Schreuer: No evidence that arrangement with Haavara was made as alleged. D/3 was not proved—not addressed to plaintiff—and speaks of 75 preference shares—Goldman D/9.

Bonification of 5% Application—Letter of allotment 10th September, 1935, Oral evidence not admissible to alter the written agreement. The Co. had no power to issue shares of the original capital—Hailsham Vol. 8 Corporations 50 Ordinary shares.

12 ordinary shares paid in cash. D/2. Hailsham 7, page 287, 283, page 397, 394.

P/8 the preference shares were never in existence. 38 ordinary shares were no part of the consideration for the amount paid. She contracted only preference shares. Plaintiff received 38 ordinary shares as a bonus. The issue was again illegal and ultra vires. Interrogatories 3, 4 24th April 1936—P/3—P/16(B)—P/6—P/1 Mr. Millner's evidence. Was the Company allowed to pay dividend to preference shareholders in 1936. Article 102 of Articles of Association. Is the issue of bonus shares allowed—Section 95 of Companies Ordinance:

Palmer page 50, 712. P/6.

Adjourned for Monday, 12th June, 1944.

7.6.44. Sgd. A. SHEMS,
Judge.

Hearing of

15.6.44.

Dr. Schreuer.

Mr. Salomon.

Dr. Schreuer: Did the plaintiff pay money to the defendant.

(1) Preference shares—invalid in law:

(A) No meeting.

(B) Not passed as a special resolution.

(C) No notice.

(D) Meeting of subscribers of Memorandum and as such had not power to alter Memorandum, there were no other shareholders:

Ranken's case.

Re Patents 1879. 39 L.T. 664.

The company in general meeting must resolve.

Form of Meeting.

Mr. Rabinowitch now appears.

Resolution passed was ultra vires—The Companies Ordinance Sec. 7–43. Memorandum and Articles.

Mr. Salomon withdrew.

(E) No such shares in existence. They were ultra vires shares. The company had no power to create them. Original allottee is a creditor and the plaintiff is a creditor. The preference shares were not in existence. Hartland 1 Ch. D. 466. White Book 1939—2219.

(3) This is the cause of action.

Defences :

(4) (A) Ratification—Meeting 14th May, 1944 validated. Ashbury v. Watson 30 Ch. 376, 380. L.T.R. 43, 452. Such acts could not be ratified void ab initio. Hailsham, Vol. 8, 73 (corporation). It could not become intra vires of preference shares.

(5) (B) Mode of creation agreed to between defendant.

Haavara and plaintiff agreed to it.

No evidence as to such agreement or that plaintiff knew of it.

Even if agreed, agreement ultra vires company, preference shares, they could not be made by the company.

(6) (C) Total consideration.

Plaintiff asked only preference shares and paid money only for preference shares. Hailsham, Vol. 7, page 287.

(D) If it be held 38 ordinary shares were paid for they were unlawfully issued—P/9.

Defendant had canvassed for subscribers.

Haavara changed its policy from 9% to 14%. 1% to Haavara agent in Germany does not come here D/8 P/3 (sic) (paper is torn).

The defendant was given a rebate.

Balance sheets P/1 (E) and P/6.

(7) (E) Had the company power to issue ordinary shares as bonus P/3. But from profits.

The company development expenses. P/6 profits only since 1940. There are profits issue of bonus shares not allowed. 95 (1) Companies Ordinance. Palmers, page 50. Section 95 of Companies Ordinance—Bonus shares from dividends.

(F) Has the company power to issue bonus shares. Hoole—Western Railway Co.—3 Ch. (a) 362. Digest 10,1160, number 8206.

(8) 38 ordinary shares were not lawfully issued.

(9) And agreement with Haavara for the, not legal—void.

Welton Saffery 1897 A.C. 312, 385, 306.

They were retained by the plaintiff. They were lawfully existing but company could not give them gratuitously. Plaintiff would be liable to pay LP.38 for them. Re Rly. Time Tables 1893 62 L.J. Ch. Digest Vol. 9, 313—1943. Eddy 1893 3 Ch. 9.

(10) (A) The 38 shares did not form a part of the contract.

(B) They were unlawfully issued.

(C) 775 / 38 shares transferred.

(11) No benefit from defendant obtained—Benefit arising from contract with Holland Bank PIA. Plaintiff liable to be called upon by purchasers to return. Wilkinson 1845 7 Q.B. 27 Digest. An action for money had and received may be made at any time. Shares not in existence sale void.

In the District Court of Haifa.

Judge's Notes, *continued.*

Plaintiff got nothing for her money and entitled to get it from the defendant.

(12) Transfer of shares which did not exist at all. She was not a shareholder of preference shares and could not transfer what was not in existence. Transfer deeds to Holland Bank are null and void.

Has the transferee to receive dividends capital on winding up the company. Rly. Time Table 1889, 42 Ch. D. 98, 113, 117, 119.

In this case : share in existence.

In case share was not in existence. Home 1912 1 Ch. D 72 & 80.

(13) (D) Original allottee not shareholder—Transferee also not a shareholder : Allottee is therefore creditor.

(E) There were no shares to return. There were no shares and it is immaterial with whom they are. Hailsham 5, 465, 753.

(14) (F) Estopped to dispute the validity of the preference shares. Levinger her agent attended a meeting. No estoppel can arise from ultra vires act. 8 Hailsham 73.

(15) Return of payment made in Germany 11,039.24 RM. and 1%. 5% retained by Haavara drope it. Claims 10,487.28 Reichsmarks paid to defendant.

Foreign money recoverable—Privy Council 1/42 10. P.L.R. 271, 275, 276.

(16) Rate of conversion.

Date of maturity 7 P.L.R. 791, 194.

Civil Appeal 36/42. 9 P.L.R. 367. Date of payment.

Mizrahi H.C. 62/43. 10 P.L.R. 364.

C.A. 97/36 quoted in C.A. 17/40 P.L.R. 195. Claim for money had and received. Rate of conversion.

It is a constructive contract C.A. 79/36 date of payment. Rate of exchange 1007 Vol. 2,678 (1940) H.C. 62/43. (10 P.L.R. 366).

10,487.28 Reichsmarks.

10.77 Reichsmarks to one Palestine Pounds.

Capital LP.973.740.

Alternatively :

Obligation matured on 10th September, 1935. Purported allotment was made they were not in existence. From that date onwards entitled to claim.

12.30 Reichsmarks for the pounds—LP.852.625.

No blocked reichsmarks Grauman *v.* Treitel A.E.R. 1940 Vol. 2, 188, 200.

From when interest is payable. Section 2 (2) Companies Ordinance. No dividends received.

Interest on the . . . from 7th July, 1935. Money paid to defendant P/8–P/9.

Waverley case. Art. 112 Civil Procedure Code. 28th March, 1943. Protest P/2.

Interest : Payment 7th July, 1935.

Judgment reserved.

Sgd. A. SHEMS,

Judge.

In the District Court of Haifa.

Judge's Notes, *continued.*

Hearing of
28th July, 1944.
Dr. Schreuer : For plaintiff.
Mr. Lipschuetz : For defendant.
Judgment read in open Court.

Sgd. A. SHEMS,
Judge.

No. 9.

JUDGMENT.

No. 9. Judgment of the Presiding Judge (Shems, J.), 28th July 1944.

Civil Case No. 117/43.

IN THE DISTRICT COURT OF HAIFA.

Before : THEIR HONOURS JUDGE SHEMS AND JUDGE NASR.

In the case of :

MARGARETE LINZ née SPRINGER — Plaintiff

v.

THE ELECTRIC WIRE COMPANY OF PALESTINE LTD. — Defendant.

Judge Shems :

1. This is a claim for the recovery of money had and received on the ground that the plaintiff did not receive any consideration for the money claimed :

2. In her Statement of Claim the plaintiff states that on 19th April, 1935 she applied through her agent Dr. Siegfried Levinger to the defendant company for the allotment to her of 775 6% cumulative preference shares of LP.1–. each of the defendant company " by signing an application form supplied by the defendant." The application was made in the German language and the following is a translation of it into English :—

> " To the Palestine Electric Wire Company Ltd., Haifa, Hadat Hacarmel, 47, Arlosoroff Street.
>
> I Margarete Springer confirming this by my binding signature appearing below hereby apply for LP.775.– (in words seven hundred and seventy five Palestine Pounds) shares of your undertaking. Payment for the shares applied for by me will be effected by a corresponding amount of Reichsmark which I have paid into Special Account I with the General Reichs Account (Reichhaupt Konto) at Berlin of the Bank of the Temple Society and which was placed at the disposal of the Palestine Treuhandgesellschaft mit beschraenkter Haftung and/or Haavara of Tel-Aviv. My application is made on the strength of the approval by Haavara to the issue of your shares to persons having made payments into Special Account I.
>
> The right to allot the full amount of the shares or part thereof is reserved to you.

In the District Court of Haifa.

No. 9. Judgment of the Presiding Judge (Shems, J.), 28th July 1944, *continued.*

I shall acquire preference shares from you to which 6% cumulative dividends shall be due from the net profit. Thereafter the holders of Ordinary shares will receive 6% dividend whereas a surplus profit, if any, will be divided between holders of preference and ordinary shares in such manner that for each 2% additional dividend paid to holders of ordinary shares 1% superdividend shall be paid to the holders of preference shares, so however, that the maximum dividend for preference shares will not exceed 8%.

In the case of a winding up, if any, the preference shares will be satisfied in advance with 100% out of the available assets, then the holders of ordinary shares will receive 100% whereas the remainder of the assets will be divided in proportion of 1 : 2 between holders of preference and ordinary shares. The voting power of the holders of preference shares shall be 1 vote for 3 shares, that of the holders of ordinary shares 1 vote for 1 share.

A liability regarding payment of dividends will commence with the undertaking starting operations, at the latest one year after application for shares.

The transfer fees will be to my debit.

Simultaneously with this application I have forwarded to Haavara an irrevocable declaration according to the above to the effect that the countervalue will be placed at your disposal from my Special Account I.

I undertake not to dispose of the shares applied for by me during the first year from their acquisition.

Name : Margarete Springer.

Place of residence : Jerusalem.

Street : Abyssinian Street Batim Meshutafim Ariel Cohen's house.

Dated 19th April, 1935.

Signature on 50 mils Revenue Stamp

Sgd. Dr. SIEGFRIED LEVINGER,
Agent."

3. The plaintiff states that "according to the said application plaintiff undertook to pay to defendant the agreed price of LP.775.- for the said preference shares in German Reichsmarks at an agreed rate of exchange through the medium of and out of funds standing to plaintiff's credit with a local company styled Trust & Transfer Office "Haavara" Ltd. (hereinafter briefly referred to as "Haavara") Plaintiff accordingly on or about July 7th, 1935, paid to the credit of defendant with a bank in Germany the sum of Reichsmarks 11,039.24. The defendant by a letter dated September 10, 1935, purported to allot to plaintiff 775 preference shares in pursuance of plaintiff's aforementioned application. On or about the same date and in accordance with section 93 of the Companies Ordinance, 1929, defendant filed a return of allotment with the Registrar of Companies, Jerusalem, stating inter alia that 775 preference shares had been allotted to plaintiff." A certified copy of the return of allotment has been exhibited and is marked P/1 (g).

(4) The plaintiff avers that in actual fact she did not receive from the defendant the 775 6% cumulative preference shares of LP.1.– each or any preference shares, because according to Clause IV of the Memorandum of Association of the defendant company dated 25th September, 1934, the capital of the Company was at the material time LP.25.000 divided into 25,000 ordinary shares of LP.1.– each. The said clause IV of the Memorandum of Association, Exhibit P/1 (a), reads as follows: "The capital of the Company is LP.25.000 divided into 25,000 ordinary shares of LP.1.– each."

(5) On 11th April, 1935, that is to say, seven days before the date of the application referred to in paragraph 2 above, the defendant company, it is alleged by the plaintiff, "purported to create 11,000 6% cumulative preference shares of LP.1.– each, by a special resolution of the holders of the ordinary shares purporting to have been passed at "a separate meeting of the holders of the ordinary shares of the defendant." This resolution, Exhibit P/1 (c) reads as follows:—

"At a separate meeting of the holders of the ordinary shares of the above-named Company, duly convened and held at Haifa, Arlosoroff Street 47, on the 12th day of April, 1935, the following resolution was duly passed as a Special Resolution (as defined by the Companies Ordinance, 1929) of the Holders of the Ordinary shares of the company.

RESOLUTION.

"That the original terms of the company's Memorandum of Association be altered to the effect that the capital shall consist not solely of ordinary shares, but that LP.11,000.– unissued shares shall be issued as preference shares. Such preference shares shall be entitled to a dividend in advance at the rate of 6% out of the net profits. After them the ordinary shares will be given a dividend of 6%, and the surplus net profits will be distributed amongst the preference and the ordinary shares in such manner that for each more 2% dividends on the ordinary shares, one more per cent. dividend will be given on the preference shares provided that the total dividend on the preference shares shall not exceed the rate of eight per cent.

Accordingly, the preference shares will, in case of the company being wound up, first be satisfied with 100% out of the assets available; then 100% will be paid unto the holders of the ordinary shares; and the surplus of the assets will be distributed in such manner that the ordinary shares will receive double of the amount received by the preference shares. The preference dividends at the rate of 6% are cumulatively payable; but they become payable only as for the time after the business of the company has been commenced; i.e. they are first payable for the first business year. The commencement for the first business year is fixed for not later than one year after the subscription.

The voting right of the preference shares shall be one third of the voting right of the ordinary share."

This resolution was unanimously passed.

Dated this 12th day of April, 1935.

Sgd. ALFRED ROSENBERG, Director.

In the District Court of Haifa.

No. 9. Judgment of the Presiding Judge (Shems, J.), 28th July 1944, *continued.*

(6) The plaintiff submits that in actual fact no meeting of the ordinary shareholders " took place on 12th April, 1935, or on any other date for the purpose of resolving upon the creation of 6% cumulative shares or at all, and in addition and in the alternative plaintiff submits that by passing a special resolution as aforesaid no 6% cumulative preference shares of the defendant were created or could have been created having regard to the provisions of the Companies Ordinance, 1929."

(7) The relative provisions of the Companies Ordinance are Section 7 which reads as follows :—

> " A company may not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Ordinance."

(8) Section 20 of the Ordinance stipulates the method for altering the provisions of the memorandum of a Company in so far as its objects are concerned. Section 25 provides the procedure for changing the name of the company, and Section 43 deals with the power of the Company to alter its share capital. The provisions of Section 44 of the Ordinance as to the variation of the rights attached to the holders of special classes of shares are inapplicable, as all the shareholders assented to the Resolution which was unanimously passed.

(9) On 25th or 28th March, 1943, the plaintiff's Advocates addressed a letter to the defendant company in which she withdrew her application for the allotment to her of the " 775 preference shares on the ground," she alleges, " That there had been a delay in a valid allotment of preference shares of almost eight years." This letter is marked Exhibit P/13.

(10) The plaintiff claims in this case " the refund to her by the defendant of the countervalue of the sum of Reichsmarks 11,039.24 paid by her in respect of the said alleged 775 preference shares since she did not receive the consideration which she bargained for, or any consideration. Plaintiff further claims that she is entitled to interest at the rate of 9% per annum on the sum of RM.11,039.24 as from 7.7.1935, i.e. the date of the payment to the defendant of the said amount. Plaintiff contends that the sum of RM.11,039.24 should be converted into Palestine Pounds at the rate of exchange obtaining immediately before the outbreak of the present war. Plaintiff maintains that the said rate of exchange, viz. the one obtaining on 1.9.1939, was RM.9.50 to the Palestine Pound. Calculated on this basis the countervalue of RM.11,039.24 amounts to LP.1162.–. Alternatively plaintiff submits that the rate of exchange applicable might be taken to be RM.10.77 to the Palestine Pound, being the rate of exchange fixed by the order of His Excellency the High Commissioner dated 8.5.1940 (vide Palestine Gazette No. 1007 of 9.5.40 Suppl. II at p. 678). Calculated on this alternative basis plaintiff's claim would amount to LP.1025.–

(11) The " Plaintiff prays that judgment be given in her favour against the defendant for LP.1162.– alternatively for LP.1025.–, alternatively for RM.11,039.24 to be converted into Palestine Pounds at the rate of exchange obtaining at the date of payment, alternatively for such other amount of Palestine Pounds and calculated at such other rate of exchange as ' may seem just ' and interest at 9% from 7th July, 1935, the date when the plaintiff paid the amount to the credit of the defendant with a Bank in Germany, or from 28th March, 1943, the date when payment was demanded, and costs."

(12) In its defence the company admits "that on or about the 19th April, 1935, the plaintiff, through a certain Dr. Siegfried Levinger, signed the application referred to in paragraph 2 of the Statement of Claim." The defendant company contends "that the said application was submitted pursuant to an arrangement between the defendants and Trust & Transfer Office Haavara" Limited (hereinafter referred to as "Haavara") to which the plaintiff was a party, by virtue of which the defendants, whose authorized share capital at the time was LP.25,000.– were to issue out of the said authorised share capital 11,000 shares of LP.1.– each to be designated as preference shares and to allot to the plaintiff in consideration of the payment by her to Haavara in Germany of a certain amount 775 of these shares, each of LP.1.– subject to certain adjustments whereby any balance would be allotted in the form of ordinary shares. In purported pursuance of the said arrangement and with the knowledge of the plaintiff the original provisions of the Memorandum of Association of the defendants in regard to the authorized share capital were modified and the original share capital of LP.25,000 was declared to consist of 11,000 preference shares of LP.1.– each and 14,000 ordinary shares of LP.1.– each. The resolution modifying the original provisions of the Memorandum of Association of the company in regard to the share capital of the company was passed unanimously by the holders of all the shares of the company then issued at an extraordinary general meeting of the company held on the 12th April, 1935. Further and in any event the Resolution of the Company passed on the 12th April, 1935 and/or any other steps taken for the creation and/or allotment of the preference shares were approved and/or validated, if and in so far as the same may have required approval or may not have been valid and the conversion of the shares into preference shares and/or the creation of the preference shares and/or the allotment of the preference shares were and/or are in any event valid by the terms of their creation and/or by the terms of Resolutions passed by the company and by the holders of the preference shares on the 14th day of May, 1944. The defendant at the direction of Haavara and in purported pursuance of the said agreement allotted to the plaintiff 775 preference shares of LP.1.– each in the capital of the company and 50 ordinary shares of LP.1.– each in satisfaction of the payment made by her to Haavara in Germany. The said allotment was duly notified to the Registrar of Companies and share certificates were duly issued to the plaintiff No. 62 in respect of 775 preference shares of LP.1.– each credited as fully paid, numbered 20846–21620, and share certificate No. 33 in respect of 50 ordinary shares of LP.1.– each, numbered 11491–11540. By a share transfer certificate executed by the plaintiff on the 28th September, 1941, the plaintiff transferred the said preference shares to ' PIA ' Palestine Independent Trust Association Limited in consideration of a certain amount duly paid to her and by a share transfer certificate of the same date the ordinary shares were transferred by the plaintiff to Dr. Siegmar Bromberger for a certain amount duly paid to her. The original share certificates of the plaintiff were returned for cancellation and were duly cancelled when the Board of Directors of the defendants approved the aforesaid transfers. The said transferees were entered on the share register of the company as members of the company in lieu of the plaintiff in respect of the aforesaid holdings. The aforesaid holdings were subsequently transferred by the aforesaid transferees to third parties

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who are now the registered holders of the said preference shares and ordinary shares. The plaintiff ceased to have any interest in the aforesaid holdings on the date of the aforesaid transfers by the plaintiff." " The plaintiff," it is alleged, " ceased to have any interest in the shares or any right against the defendant in relation to the shares or any of them or any claims, whether on the basis of allotment or otherwise and whether or not the said allotment was valid."

(13) The defendant denies the payment by the plaintiff to its credit the sum of Reichsmark 11039,24 with a Bank in Germany, and contends that " the payment, if any, which may have been made by the plaintiff in Germany, was effected pursuant to the arrangement between the plaintiff and Haavara, and the plaintiff at no time paid to the defendants the Reichsmarks referred to in para. 3 of the Statement of Claim or any other sum."

(14) As to the share capital of the company, the defendant submits that " the original share capital of the Company was LP.25,000.– divided into the aforesaid 25,000 ordinary shares of LP.1.– each, and by a resolution of the 12th April, 1935, referred to in para. 7 of the Statement of Claim it was resolved that the original terms of the Memorandum of Association be altered so that the share capital should consist of two classes of shares, namely, that 11,000 shares of LP.1.– each then unissued shall be considered as preference shares and the allotment was made pursuant to the said resolution. A meeting was duly held and the aforesaid resolution was passed."

(15) The defendant submits that " whatever effect the said resolution may have had (and the plaintiff's contention in that behalf is not admitted), the plaintiff received the said shares, namely 775 preference and 50 ordinary shares in full satisfaction of any claim which she may have had against the company in connection with any payment which may have been made by her to Haavara. The plaintiff could not then, nor could the plaintiff claim now the refund of any amounts, whether on the basis of her allegations as contained in the Statement of Claim or at all." " The defendants maintain that the plaintiff is not entitled to make this claim, whether in its present form or at all, and that the plaintiff could not cancel or purport to cancel any allotment in respect of shares which are no longer in her name or after the transfer or purported transfer of the shares in which third parties have acquired rights."

(16) The defendant denies that the plaintiff is entitled to the relief claimed or to any other relief.

(17) The Plaintiff filed a reply to the defence in which she denied the allegations of the defendant.

(18) The following ten issues were agreed to by the parties.

(1) Whether plaintiff's application of the 19th April, 1935, for allotment of preference shares was made in pursuance of an arrangement as alleged in para. 4 of the Defence ?

(2) Is defendant estopped from denying receipt of 11039.24RM. from plaintiff by virtue of delivering the share certificate referred to in para. 7 of defence and para. 2 (c) of reply ? If not did plaintiff in fact pay the sum to defendant ?

(3) Was the modification in the Memorandum of Association made in pursuance of the arrangement referred to in Issue 1 and with the knowledge of plaintiff ? If so is it binding on plaintiff ?

(4) Did the Company hold an extraordinary general meeting on 12.4.35, for the purpose of altering the share capital of the Company and if so is the resolution creating the 6% cumulative preference shares valid in law ?

(5) Did plaintiff pay anything for the 50 ordinary shares ? If so is the allotment of 50 ordinary shares severable from the allotment of the cumulative preference shares ? In the alternative were they issued as dividend or bonus shares in specie as plaintiff's profits on the 775 6% cumulative preference shares and were they issued validly according to law ?

(6) Was plaintiff entitled to withdraw her application for allotment of preference shares on 28th March, 1943 ?

(7) Has plaintiff validly transferred the shares allotted to her as stated in para. 8 of the defence, and if so can she still maintain her claim ?

(8) Did plaintiff receive the 775 6% cumulative preference shares and 50 ordinary shares in full satisfaction of all amounts she paid to defendant ?

(9) Is plaintiff estopped from making this claim ?

(10) Is plaintiff entitled to the refund of the counter-value of the sum of 11,039.24 RM., and if so at what rate of conversion ?

(19) An eleventh issue was added by the Court on 18.2.44 (page 1 of the record) on the basis of the Amended Statement of Claim. It is as follows :—

Whether the plaintiff is entitled to interest, and if so, at what rate and from what date ?

(20) The plaintiff came to Palestine from Germany in 1933. She had money in Germany. Her uncle Dr. Siegfried Levinger was still in Germany but had been in Palestine in 1935 and the plaintiff gave him instructions to draw her money from Germany through the Haavara by the purchase of 775 preference shares in the defendant company. This he did, and the application for the shares dated 19th April, 1935, was signed by him as agent of the plaintiff. A share certificate number 62 for 775 preference shares 20846 to 21620 inclusive was issued in the name of the plaintiff, and is marked Exhibit P/4.

(21) The plaintiff's uncle paid the money to the credit of the defendant company through Haavara in Germany. Haavara acknowledged the account in their letter of 7th July, 1935, Exhibit D/8, which reads as follows :—

" Miss Margarete Springer
House Ariel Cohn
Collective Buildings
Abyssinian St.,
Jerusalem. 7.7.35

We beg to refer to your declaration of assignment of 28.5.35, and beg to inform you herewith that we have remitted to the firm ' The Palestine Electric Wire Co. Ltd., Haifa,' the amount of

RM. 11,039.24

in words : Reichsmark eleven thousand and thirty nine, 24,

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debiting your account with us with this amount according to the account as below :—

Put at your disposal	RM. 11,039.24
Less 14% transfer-fees	1,545.49
	RM. 9,493.75

at the rate of exchange of 25.6.35.—RM. 12.25.—LP.1—LP. 775.—

for which amount shares in the above firm have been put at your disposal.

We beg you to take note of the above and remain . . ." 10

(22) The defendant company through its representative in Germany Mr. Alfred Rosenberg used up this credit which was put at its disposal by Haavara from the plaintiff's money by the purchase of machinery. The amount received by the defendant company was RM. 9493.75. The amount paid by the plaintiff to Haavara was RM. 11,039.24 and 1% on it to Paltreu. Haavara charged 14% transfer fees amounting to RM. 1545.49, and the balance of RM. 9493.75 was put to the credit of the defendant company. The rate of exchange which prevailed at the date of the transfer was RM. 12.25 to one Palestine Pound. The amount of RM. 9,493.75 was therefore equal to LP. 775.—and on 7th July, 1935, the plaintiff was 20 shown in the register of the defendant company as entitled to 775 preference shares.

(23) Exhibit D/9 shows the procedure adopted in the transfer of money by Haavara and the percentage of the commission or transfer fees which were originally charged and those charged subsequently. From paragraphs 1 and 5 of this exhibit and the evidence of Erwin Goldman at pages 27 to 30 of the record and of Dr. Broido on pages 50 and 51, it is seen that according to one agreement between the defendant company and certain transferors the transferor would pay 10% as commission or transfer fees. This percentage was apportioned 1% to Paltreu which was Haavara's 30 branch in Germany, 4% bonification to the defendant company and 5% actual transfer fees to Haavara. By another agreement the transferors were charged 15%. The plaintiff belonged to the 10% group (see page 56 of the record) and consequently the transfer fees in respect of her money should be 10% or 9% and not 14% as she was charged by Haavara in Exhibit D/8. It is to be remembered that 1% had already been charged to Paltreu. The defendant company received from the Haavara in the case of the 10% group mentioned in Exhibit P/9, including the plaintiff whose name appears as number 8, a further bonification of 5% in addition to the 4% originally agreed to, and the defendant company was to account 40 with these transferors for the 5% they were overcharged by Haavara. The plaintiff was such a transferor, and 5% of the amount of LP.775 which was the countervalue of the RM.9493.75 put to the credit of the defendant company would be LP.38 in round figures. The defendant company allotted on the same date as the allotment of the 775 preference shares that is to say on 7th July, 1935, 38 ordinary shares of LP.1.– each in respect of this amount, and the plaintiff received them. The other transferors were similarly treated, except one who was in Germany and who was paid 350 marks in cash. The entry of this transaction appears in Exhibits P/1 (e) and P/11. The witness Mr. Millner in page 35 of the record stated 50

that this entry should have been clearly shown as shares issued to preference shareholders out of rebate received from transfer, and not as dividend paid to preference shareholders of rebate received on transfer.

(24) The plaintiff subsequently on 23.7.1935, applied to the defendant company to allot to her 12 ordinary shares for which she paid the amount of LP.12 or LP.11.950 in cash, and consequently the total number of ordinary shares issued to the plaintiff became fifty. The return of allotment, Exhibit P/1 (g), shows the name of the plaintiff as the 21st allottee.

(25) On 5th February, 1939, the plaintiff approached Holland Bank Union with a view to the sale of the 775 preference shares and 50 ordinary shares (Exhibit D/13), and ultimately she sold them through the bank. The Palestine Independent Trust Association Ltd., purchased the preference shares for LP.125 and the deed of transfer is Exhibit D/4 (B). The share certificate of the plaintiff in respect of these shares was cancelled (Exhibit D/5). The fifty ordinary shares were purchased by Dr. Siegmar Bromberger for LP.5.– and the deed of transfer in respect of them is Exhibit D/6 (A). The share certificate for these shares was also cancelled (Exhibit D/7 (H)). The ordinary shares were sold by Bromberger to the General Trust Corporation Ltd. (Exhibit D/21) who in turn sold them to Dr. Broido ; the latter is a director and manager of the respondent company (Exhibit D/20).

(26) A certain Regina Schlesinger was a preference shareholder in the defendant company. She questioned the validity of the preference shares issued to her in an action brought in this Court in case 217 of 1941, and as a result the parties settled, and the deed of compromise has been produced and is marked Exhibit P/10.

(27) These are some of the material facts which have arisen in this case.

(28) Dealing with the first issue as to whether the plaintiff's application of the 19th April, 1935 (Exhibit P/1), for the allotment of preference shares was made in pursuance of an arrangement between the defendant company Haavara, and the plaintiff, the evidence of Dr. Broido (page 56 of the record) is believed. He stated that he had met the plaintiff before she made her application, and he and Mr. Rosenberg explained to her she would have to pay 9% transfer fees, and the plaintiff applied for shares on the basis of these discussions. There was, however, no evidence produced to show that the plaintiff was made to understand that the authorized share capital of the defendant company at the time was LP.25,000, and that it was to issue out of the said authorized share capital 11,000 preference shares of LP.1 each and to allot to the plaintiff 775 of these shares in consideration of the payment by her to Haavara in Germany of a certain amount subject to certain adjustment whereby any balance would be allotted in the form of ordinary shares.

(29) The second issue has been dealt with above in paragraphs 21, 22 and 23. The plaintiff through her uncle in Germany paid to Haavara RM.11039.24 and 1% of it to Paltreu for the purpose of giving credit to the defendant company in Germany in this sum after deducting the transfer fees, and the sum actually put to the credit of the defendant company after deducting 14% as transfer or commission fees was RM.9493.75, and in addition thereto the defendant company was allowed 5% of the 14% transfer fees to account to the plaintiff who had to pay 9% only as transfer fees. The defendant company has in fact used up this credit, and is estopped from denying this fact.

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(30) As stated above in answer to the first issue, there was no evidence produced to establish the fact that the plaintiff was a party to any arrangement whereby the defendant company was to issue 11,000 preference shares of LP.1.– each out of the authorized share capital of LP.25,000, and consequently the allegation that the modification in the Memorandum of Association was made in pursuance of such arrangement cannot stand. This is the answer to the third issue.

(31) The fifth issue will be dealt with before the fourth. The fifth issue is whether the plaintiff had paid anything for the fifty ordinary shares, and whether the allotment of these shares is severable from the allotment of the preference shares, or whether they were issued as dividend or bonus shares in specie as plaintiff's profits on the 775 preference shares, and whether they were issued validly according to law. The answer to this issue is that the plaintiff had paid the sum of RM.11039.24 and 1% transfer or commission fees thereon to Paltreu. At the beginning she was charged transfer fees at the rate of 14% (see Exhibit D/8) which were RM.1545.49, and there was left to the credit of the defendant company RM.9493.75 but as she belonged to the 10% group (see Exhibit D/9), the 5% with which she was overcharged for transfer fees in the RM.1549.49 were brought to account in her favour by the allotment to her of the 38 ordinary shares of LP.1.– each. The defendant company calculated 5% of RM.9493.75 which sum was put to the credit of the defendant company (Exhibit D/8), making RM.474.68. The rate of exchange at the material time viz. 25.6.1935, was RM.12.25 to one Palestine Pound; therefore RM.474.68 were equal to LP.38 in round figures, and consequently the plaintiff was allotted the 38 ordinary shares of LP.1 each. In fact, and by paragraph 5 of Exhibit D/9, the defendant company had to account with the plaintiff the 5% of the 14% transfer fees with which she was overcharged by Haavara in their letter Exhibit D/8. The 14% were RM.1545.49. The 5% were RM.550.17, and converted into Palestine currency at the rate of RM.12.25 to one Palestine Pound, that would make LP.44 in round figures, and the defendant company should have allotted to her 44 ordinary shares at LP.1.– each and not only 38. That is to say, in fact the plaintiff had paid for the 38 ordinary shares RM.550.17 which were equal to LP.44. As to the other 12 ordinary shares, which the plaintiff subsequently acquired, she paid LP.12 or LP.11.950 in cash (vide Exhibit D/2 and the evidence of Dr. Broido on page 50 of the record).

(32) The allotment of the 38 ordinary shares were a part of the same transaction relating to the 775 preference shares and both sets of shares were allotted to her on the same day viz. 7th July, 1935 (Evidence of Dr. Broido on page 50 of the record). The allotment of all these shares was not severable. The remaining 12 ordinary shares were acquired subsequently on 23rd July, 1935, and their allotment is severable from the 775 preference shares and the first 38 ordinary shares. They were not issued as dividend or bonus shares, although the entries were made in this form by certain resolutions of the company (Exhibit D/3), the entry should have been shares issued to preference shareholders out of rebate received from transfer fees (see the Evidence of Dr. Millner at page 35 of the record).

(33) The fourth issue is whether the defendant company held on 12th April, 1935, an extraordinary general meeting for the purpose of

altering the share capital of the company, and whether this resolution creating the 6% cumulative preference shares was valid in law.

(34) The subscribers to the Memorandum of Association were eight persons viz.: (1) Dr. Broido, (2) Engineer Alfred Rosenberg, (3) Dr. Alfred Schreuer, (4) Dr. Ludwig Mayer, (5) Mr. Aleinikoff, (6) Dr. Soskin, (7) Mr. Kremener, and (8) Dr. Buxbaum (see the sixth page of Exhibit P/1(a)).

(35) Clause 4 of the said Memorandum of Association states that "the capital of the company is LP.25,000, divided into 25,000 ordinary shares of LP.1 each."

(36) Article 44 of the Articles of Association of the company Exhibit P/1(b) reads as follows:—

> "44. The Company may from time to time by special resolution increase its capital by the creation of new shares of such amount, to be divided into shares of such respective amounts and to be issued upon such terms and conditions and with such rights and privileges annexed thereto as by the special resolution creating the same shall be directed, and if no direction be given, as the Directors shall deem expedient."

(37) Article 45 is:—"Subject to any direction to the contrary that may be given by the special resolution sanctioning the increase of capital as aforesaid, all new shares shall before issue be offered to such persons as are under these Articles entitled to receive notices from the company of general meetings, in proportions as nearly as the circumstances admit to the number of existing shares held by them. Such offer shall be made by notice specifying the number of shares offered and limiting a time being not less than three weeks within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time or on the receipt of an intimation from the person to whom such offer is made that he declines to accept the shares offered, the Directors may dispose of them in such manner as they think most beneficial to the Company."

(38) Both these Articles are included in the subject of Increase of Capital.

(39) Article 48 deals with the modification of the rights of the shareholders, and reads as follows:—

> "48. Whenever the capital should be divided into different classes of shares, then all or any of the rights and privileges attached to each class may be modified, commuted, affected, abrogated, or dealt with by agreement between the company and any person purporting to contract on behalf of that class, provided such agreement is ratified in writing by the holders of at least three-fourths in nominal value of the issued shares of the class, or is confirmed by an extraordinary resolution passed at a separate general meeting of the holders of shares of that class, and all provisions hereinafter contained as to general meetings shall, mutatis mutandis, apply to every such meeting, but so that the quorum thereof shall be members, holding, or representing by proxy, one fifth of the nominal amount of the issued shares of the class."

(40) It is evident from the above that although the Memorandum states that the capital is LP.25,000 divided into 25,000 ordinary shares of LP.1 each, the Articles of Association contemplate the possibility of the existence of different classes of shares.

In the District Court of Haifa.

No. 9. Judgment of the Presiding Judge (Shems, J.), 28th July 1944, *continued.*

(41) On 12th April, 1935, a resolution was passed by the holders of the ordinary shares of the defendant company as a special resolution. It is Exhibit P/1 (c) and has been referred to in paragraph 5 above. It reads as follows :—

" That the original terms of the company's Memorandum of Association be altered to the effect that the capital shall consist not solely of ordinary shares, but that LP.11,000 unissued shares shall be issued as preference shares. Such preference shares shall be entitled to a dividend in advance at the rate of 6% out of the net profits. After them the ordinary shares will be given a dividend of 6%, and the surplus net profits will be distributed amongst the preference and the ordinary shares in such manner that for each more 2% dividends on the ordinary shares, one more per cent. dividend will be given on the preference shares provided that the total dividend on the preference shares shall not exceed the rate of eight per cent. Accordingly, the preference shares will, in case of the company being wound up, first be satisfied with 100% out of the assets available, then 100% will be paid unto the holders of the ordinary shares; and the surplus of the assets will be distributed in such manner that the ordinary shares will receive double of the amount received by the preference shares. The preference dividends at the rate of 6% are cumulatively payable; but they become payable only as for the time after the business of the company has been commenced; i.e. they are first payable for the first business year. The commencement for the first business year is fixed for not later than one year after the subscription.

The voting right of the preference shares shall be one third of the voting right of the ordinary shares."

This resolution was unanimously passed.

Dated this 12th day of April, 1935.

Sgd. ALFRED ROSENBERG, Director.

(42) The Minutes of that meeting are shown in Exhibit P/7 and are as follows :—

" At the meeting of the members of THE PALESTINE ELECTRIC WIRE COMPANY LIMITED, which was held in the company's office on April 12, 1935, after 21 days' notice thereof had been given, it was proposed by the Chairman and unanimously RESOLVED :

" Contrary to the original terms of the Memorandum of Association, the capital shall consist not solely of ordinary shares but LP.11,000 unissued shares shall be issued as preference shares. Such preference shares shall be entitled to a dividend in advance at the rate of 6% out of the net profits. After them the holders of the ordinary shares will receive a dividend of 6%; and the surplus net profit will be divided between the Preference and the Ordinary Shares in such manner that for each more two per cent. dividends on the Ordinary Shares one more per cent. dividend will be given on the Preference Shares, but the total dividend on the Preference Shares shall not be more than 8%. Accordingly, the Preference Shares will be satisfied in case of the Company being wound up, first with one hundred per cent.

out of the assets available; then one hundred per cent. will be paid unto the holders of the Ordinary Shares; the surplus of the assets will be divided in such manner that the Ordinary Shares will receive double of the amount received by the Preference Shares.

The Preference dividends at the rate of 6% are cumulatively payable; but any claim herefor will be accepted only as for the time after the commencement of business, i.e. it begins with the first business year. The commencement of the first business year is fixed for not later than one year after the subscription.

The voting right of the Preference Shares shall be one third of the voting right of the Ordinary Shares."

The resolution was confirmed to be passed as a Special Resolution.

At the meeting were present :

1. Dr. A. Broido
2. Alfred Rosenberg
3. Dr. Alfred Schreuer
4. Ludwig Mayer
5. Mr. Aleinikoff
6. Dr. S. E. Soskin
7. Alexander Kremener
8. Dr. A. Buxbaum."

(43) The signatories to the Minutes were the subscribers to the Memorandum of Association (see para. 34 above) and they were all the shareholders of the defendant company. The offices of the company were in the flat of Dr. Broido in 47, Arlosoroff Street. In the same house but in other flats there lived Dr. Alfred Schreuer and Mr. Alfred Rosenberg. On 12th April, 1935, Dr. Broido, Dr. Schreuer and Mr. Alfred Rosenberg met to consider the resolution and signed the minutes there and then. Dr. Ludwig Mayer may have been present also. The subject matter of the resolution was discussed previously with every other shareholder, and they all knew of the meeting to be held, although they did not all convene themselves by meeting together, but signed the minutes adopting the resolution. The resolution expressed the terms of the discussion. Dr. Soskin says he may have received a notice of the meeting, but in fact he did not attend, but admits to have signed the minutes D/1 (a), P/7, although not at the meeting.

(44) The point which arises in this regard is whether in point of form the resolution was lawfully passed. The plaintiff submits that a meeting of the shareholders was not duly convened as such in which the resolution was lawfully passed, and assuming it was so passed, the resolution was ultra vires the Memorandum of Association, and consequently the preference shares were not duly created and could not have been validly issued.

(45) The purpose of the meeting is to obtain the view of the shareholders to a proposed resolution. In this case the eight subscribers who were also the sole shareholders of the defendant company had previous to the formal meeting of three or four of them on 12th April, 1935, discussed the resolution and agreed to it. They signed it when it was passed to them, and in the circumstances the purpose of the meeting had been achieved, and the form of it is not in itself a good cause to declare the resolution agreed to as invalid.

(46) The case of Parker and Cooper Limited v. Reading ((1926) Ch. D. 975) is an authority to this proposition. It was held by Astbury J. (at page 984 3rd paragraph) " that where the transaction is intra vires and honest, and especially if it is for the benefit of the company, it cannot be

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No. 9. Judgment of the Presiding Judge (Shems, J.), 28th July 1944, *continued.*

upset if the assent of all the corporators is given to it. I do not think it matters in the least whether that assent is given at different times or simultaneously." He goes on and says that " I can find nothing in re George Newman & Co. ((1895) 1 Ch. 674, 684, 686) to prevent all the corporators from arranging to carry out an honest intra vires transaction entered into for the benefit of the company, even if they do not meet together in one room or place, but all of them merely discuss and agree to it one with another separately." The case of Salomon & Co. (1897 A.C. 22, 57) is also referred to and Lord Davey said in it " I think it an inevitable inference from the circumstances of the case that every member of the company assented to the purchase, and the company is bound in a matter of intra vires by the unanimous agreement of its members." In re Oxted Motor Company Limited 1921 3 K.B. 32 it was held that the shareholders of the company were entitled to waive the formalities as to notice of intention to propose a resolution as an extraordinary resolution.

(47) In any event the resolution, if intra vires the Company was ratified by the Company at a meeting held on 14th May, 1944, during the currency of these proceedings.

(48) The next point is whether the resolution was ultra vires the Memorandum of Association of the defendant company.

(49) It is not uncommon, though not usual, that certain companies whose capital is divided into different classes of shares with different rights attached to them define in the Memorandum the rights or certain of the rights attaching to each of the classes of the shares. The purpose " is to fortify the position of the class, for rights once unconditionally attached by the memorandum to a particular class of shares cannot be altered or infringed." In Ashbury *v.* Watson, 30 Ch. D. 376, the Memorandum of Association contained provisions as to priorities of shares, and it was held that the specification of the rights attaching to a certain class of shares in the Memorandum was regarded as a condition which was unalterable. If, however, the Memorandum provided for alteration, the rights may be so altered. This was the decision in re Welsbach Incandescent Gas Light Co. Ltd. (1904) 1 Ch. 87, and in Underwood *v.* London Music Hall Ltd. (1901), 2 Ch. 309.

(50) In Andrews *v.* Gas Meter Company (1897), 1 Ch. 361 it has been held that a company under its Articles as originally framed or as altered by a special resolution issue any of its shares whether forming part of its original capital or newly issued as preference shares. In the case of the defendant company the Memorandum merely states that the capital is LP.25,000 divided into 25,000 ordinary shares of LP.1 each. An ordinary share entitles its owner to an equal proportional participation in the management and profits during corporate life and in the net assets in case of winding-up. The preference share, on the other hand, entitles its owner to some preference in the distribution of dividends and in the assets of the company. It is clear that in this case as the shares were described or specified as ordinary, no special or particular right was attached to them. In effect, the word " ordinary " has not added anything as a specific right attaching to the shares of the Company. It did not make it a condition that there shall be equality amongst the shareholders. Consequently, the decisions in Ashbury *v.* Watson, 30 Ch. D. 376 ; Welsbach Incandescent Gas Light Co. (1904), 1 Ch. 87 ; and Underwood *v.* London Music Hall Limited (1901), 2 Ch. 309 have no application in this case.

(51) The facts in the case of Andrews *v.* Gas Meter Company (1897), 1 Ch. 361, are, however, nearer to the facts of the defendant company. It overruled the second case of Hutton *v.* Scarborough Cliff Hotel Co. (1865) which had the effect of tightening to a large extent the activities of companies, and held that a company has to specify in the Memorandum merely the amount of the original capital and the number of shares into which it is divided, but the rights of the shareholders in respect of their shares and the terms or circumstances in which additional capital may be raised need not be included in the Memorandum. "These are matters which may be regulated by the Articles of Association, indeed are more properly so regulated than by the Memorandum, and are therefore matters which may be determined by the company by virtue of its Articles as originally framed or as altered by special resolution, and the company may issue any of its shares, whether forming part of its original capital or newly issued, as preference shares."

(52) In the circumstances, the word "ordinary" in Clause IV of the Memorandum of Association of the defendant company does not attach any special right or privilege to the shareholders which has to be particularly safeguarded by its specification in the Memorandum, and consequently the company may regulate the issue of the shares and the various classes thereof in its Articles of Association either as originally framed or as altered by a special resolution. There was a special resolution (Exhibit P/1 (c)) passed, all the shareholders assented to it, and consequently the preference shares issued as a consequence of this resolution were validly issued.

(53) Further, the Memorandum and Articles of Association and the Resolution of the 12th April, 1935, were filed with the Registrar of Companies, and were open for public inspection. The plaintiff is presumed to have had constructive notice of their contents and accepted the preference shares issued on the basis of them. This principle was recognised prior to the English Act of 1862 in the case of Ernest *v.* Nicholls (1857), 6 H.L.C. 401, and was followed subsequently in Sewell's case L.R. 3 Ch. App. 131, Campbell's case L.R. 9 Ch. App. 1, Mahony *v.* East Holyford Mining Company, L.R. 7 H.L. 869, 893; Griffith *v.* Paget, 6 Ch. D. 517, Oakbank Oil Company *v.* Crum, 8 App. Cas. 65, 71; Marshall *v.* Glamorgan Iron & Coal Company, 7 Eq. 137; Barrow Haematite Steel Company, 39 Ch. D. 582; Argus Life Assurance Company, 39 Ch. D. 571; County of Gloster Bank *v.* Rudry etc. Company, (1895) 1 Ch. 629; Owen and Ashworth Claim (1901), 1 Ch. 115.

(54) Even and supposing that the shares were not validly issued, the plaintiff cannot after such a long period from July, 1935, until March, 1943, contest the validity of the shares held by her and disposed of by her for consideration.

(55) The compromise in the Schlesinger case, Exhibit P/10, the Circular Letter D/10 and the resolution passed on 14th May, 1944, Exhibit D/19, do not affect the fact of the validity of the resolution of 12th April, 1935, and in the words of Mr. J. Salomon Counsel for the Defendant Company, he says he has since become wiser.

(56) The answer to the fourth issue is that notice of the meeting to take place on 12th April, 1935, was sent to the shareholders, three or four out of eight attended the meeting and signed the minutes passing the

In the District Court of Haifa.

No. 9. Judgment of the Presiding Judge (Shems, J.), 28th July 1944, *continued.*

resolution, and all the other shareholders subsequently signed the resolution as passed. This is sufficient consensus of all the shareholders as the act of the Company, and the resolution passed was intra vires the company, and the preference shares issued by virtue of this resolution were validly issued.

(57) In the circumstances the plaintiff was not entitled to withdraw her application for allotment of the preference shares on 25th March, 1943 (Exhibit P/13). This is the answer to the sixth issue.

(58) As regards the seventh issue, the plaintiff has transferred the shares allotted to her, both the preference shares and the ordinary shares. The transfer of these shares was a valid transfer, and the change of ownership was duly effected in the registers of the defendant company. In these circumstances, and on this ground also the plaintiff's claim cannot be maintained.

(59) The eighth issue is whether the plaintiff received the 775 preference shares and 50 ordinary shares in full satisfaction of all amounts she paid to defendant. The answer to this issue is that the plaintiff received 775 preference shares and 38 ordinary shares in full satisfaction of the amount paid by her in Germany to Haavara to be put to the credit of the defendant company.

(60) In view of the facts established in this case, in that the preference shares were lawfully issued and the plaintiff duly received them, she cannot maintain her claim in these proceedings, and is estopped from making it. This is the answer to the ninth issue.

(61) It follows that the plaintiff is not entitled to the countervalue of the sum of RM.11,039.24 or to interest thereon. This is the answer to the tenth and eleventh issues.

(62) In the result the claim of the plaintiff is dismissed with costs to include advocate's fees for instruction and attendance fixed at an inclusive figure of LP.60.

Sgd. A. SHEMS,
Judge.

Delivered this 28th day of July, 1944, in the presence of Dr. Schreuer for the plaintiff & of Mr. Lipscheutz for the defendant company.

A. SHEMS,
Judge.

* * * * * *

No. 10. Judgment of Nasr, J., 28th July 1944.

No. 10.

JUDGMENT.

Judge NASR

The question lying at the root of all questions in this case is whether the resolution passed on 12.4.35, was validly passed and whether it was intra vires the company.

As to its validity in view of the unanimous agreement of all shareholders as evident from Exhibit P/7, it is immaterial whether that agreement

was reached at one and the same time or in one or different places. It is immaterial likewise in view of the subsequent unanimous agreement of all shareholders whether prior notice to convene a meeting for the purpose of passing the resolution was sent to the shareholders or not. Re Oxted Motor Company Limited, 3 K.B. 1921, and Parker and Cooper Ltd. *v.* Reading, 11 Ch. 1926, are direct authorities on this point.

I have next to consider whether the company in passing this resolution exceeded its powers as defined by the Memorandum and Articles of Association. Clause (4) of the Memorandum stipulates that the capital of the Company is LP.25,000 divided into 25,000 ordinary shares of LP.1 each. Article 44 of the Articles of Association stipulates that the Company may from time to time by special resolution increase its capital by the creation of new shares of such amount to be divided into shares of such respective amounts and to be issued upon such terms and conditions and with such rights and privileges annexed thereto as by special resolution creating the same shall be directed and if no direction be given as the Directors shall deem expedient.

Dr. Schreuer for plaintiff has asked us to treat the word " ordinary " in clause (4) with special significance and to go to the extent of saying that even if certain provisions in the Articles of Association contemplate creation of shares other than ordinary shares, such provision would be in express conflict with the terms of the Memorandum and must be disregarded. Dr. Schreuer wants us to hold in other words, that if all shareholders are by the terms of the Memorandum put on an equality basis, they shall so remain placed during the life time of the company. That contention, although at one time, when the second case Hutton *v.* Scarborough Cliff Hotel (Rev. reports 143, page 263) was decided was held to be acceptable, is now in view of later decisions, unacceptable. The decision in the Hutton *v.* Scarborough Cliff Hotel case was not followed in Harrison *v.* Mexican Rly. Co., 19 Equity, page 358, and was later expressly overruled in the Andrews *v.* Gas Meter Co. Case, 1 Ch. 1897 (page 361). On the authority of these two cases where the Articles of Association empower the company to issue preference shares, notwithstanding that this power is not provided for in the Memorandum, such preference shares, if issued, are valid.

I consider that Article 44 of the Articles of Association empowers the company to issue preference shares by special resolution. That article is, in no way, in conflict with clause (4) of the Memorandum which, whether the word " ordinary " before the word " shares " is there or not, places all shareholders on an equality basis. To hold that this basis must be retained and is incapable of change during the whole life of a company would be extremely unsound and would amount to an unwarranted limitation of companies' activities.

To my mind, the resolution passed on 12.4.35, was passed in accordance with the powers conferred on the company by clause 44 and is intra vires.

The plaintiff's case should be dismissed on the terms already indicated.

Given this 28th day of July, 1944.

Sgd. A. NASR,
Judge.

In the Supreme Court sitting as a Court of Appeal.

No. 11. Notice of Appeal, 13th August 1944.

No. 11.

NOTICE OF APPEAL.

Haifa, 13th August, 1944.

IN THE SUPREME COURT SITTING AS A COURT OF APPEAL, JERUSALEM.

Civil Appeal No. 356/44.

BETWEEN :

MARGARETE LINZ née SPRINGER *Appellant*

AND

THE ELECTRIC WIRE COMPANY OF PALESTINE LTD. *Respondents.*

The Appellant is a married woman without occupation and is residing at Najjar's House, Jaffa Road, Romema, Jerusalem. Her address for service is c/o her above named advocates.

The Respondents are a company limited by shares, registered in Palestine, whose business is the manufacturing of electric wires and cables and similar materials. Their address is at 5, Herzlia Street, Haifa.

2. An Appeal is hereby lodged from the judgment and decree given by the District Court of Haifa (Their Honours Judge Shems and Judge Nasr) on the 28th day of July, 1944, in Civil Case No. 117/43 by which Appellant's action in the aforesaid case was dismissed with costs and which has not so far been served upon the Appellant.

3. The following grounds of appeal are with due respect submitted.

(a) The District Court erred in not holding that the Respondents had no power to issue 11,000 6% cumulative preference shares out of the original authorized capital having regard to clause IV of the Respondents' Memorandum of Association, by virtue of which the original authorized capital was divided into 25,000 ordinary shares, i.e. into one single class of shares having equal rights inter se.

(b) Alternatively, the District Court erred in failing to hold that the Respondents under their Articles of Association as they stood at all material times, had no power to issue preference shares out of the original authorized capital without first altering the Articles of Association which was not done.

(c) The District Court should have held, that the meeting, if any, allegedly held by the Respondents on 12.4.1935, at the Respondent's office was not lawfully held and/or convened and the finding of His Honour Judge Shems that the notice convening the alleged meeting was sent to the shareholders is not supported by any evidence.

(d) The District Court should have held that the alleged resolution dated 12.4.1935 was invalid it having been neither proposed nor passed as a Special Resolution.

(e) The District Court should have held that Appellant on 25.3.1943 was entitled to withdraw her application for 775 6%

cumulative preference shares on the ground of a delay for almost 8 years of a valid allotment of valid preference shares.

(f) Their Honours erred in not holding the Appellant to be a creditor of the Respondents as a result of the non-existence in law of the alleged preference shares.

(g) The District Court erred in holding that the Appellant was debarred by lapse of time and/or estoppel from challenging the validity of the alleged preference shares.

(h) The Court below should have held that the alleged preference shares, having been created ultra vires the Respondents, are in law non-existent and that the transfer by Appellant of the alleged preference shares to PIA Palestine Independent Trust Association Limited through Holland Bank Union was nugatory in law and does not affect Appellant's rights against the Respondents.

(i) The Court below erred in holding that in consequence of Appellant's constructive knowledge of the contents of Respondent's Memorandum and Articles of Association the invalid resolution of 12.4.1935 was rendered lawful and valid.

(j) Upon the evidence and the facts found by the Court below the District Court erred in drawing the inference that the allotment by Respondents of 38 ordinary shares to the Appellant was not severable from the purported allotment to her of alleged 775 preference shares.

(k) The Court below erred in allowing the Respondents to cross-examine their witness, Dr. A. Broido, though he was not a hostile witness and, consequently, his evidence should not have been relied upon.

4. It is, therefore, prayed that the judgment of the District Court Haifa dated 28.7 44 be set aside, judgment be entered for the Appellant for the sum of LP. 973.740 alternatively for the sum of LP. 852.625, alternatively for the amount of Reichsmarks 10,487.28 to be converted into Palestine Pounds at the rate of exchange obtaining at the date of payment or alternatively for such other amount of Palestine Pounds and calculated at such other rate of exchange as to Their Lordships may seem just, with interest at the rate of 9% as from 7.7.1935, alternatively 28.3.1943, alternatively from the date of filing the action, and that the Respondents be adjudged to pay the Appellant's cost and advocates' fees in the Court of Appeal and the District Court.

5. This Notice of Appeal is accompanied by:

(i) One copy thereof for service on the Respondents.

(ii) Two certified copies of the decree given by the District Court.

(iii) An application to the Chief Registrar to fix the amount to be paid into Court by Appellant as a security for Respondents' costs.

(iv) A notification that the amount fixed by the Chief Registrar was paid by the Appellant.

(v) A non-enemy declaration.

Sgd. Advocate for the Appellant.

DR. WALTER E. SCHREUER.

In the Supreme Court, sitting as a Court of Appeal.

No. 12. Judgment, 7th February 1945.

No. 12.

JUDGMENT.

Civil Appeal No. 356/44.

IN THE SUPREME COURT
Sitting as a Court of Civil Appeal.

Before : Mr. Justice SHAW and Mr. Justice FRUMKIN.

In the Appeal of :

MARGARETE LINZ née SPRINGER Appellant

V.

THE ELECTRIC WIRE CO. OF PALESTINE LTD. Respondents.

Appeal from the judgment of the District Court of Haifa dated 28.7.44 in Civil Case No. 117/43.

For Appellant : Dr. Walter E. Schreuer.

For Respondents : Mr. J. Salomon and Mr. Rabinowitz.

The respondent is not called upon to reply.

This is an appeal from the judgment dated 28.7.44 of the District Court of Haifa in Civil Case 117/43, dismissing the claim of appellant for the recovery of money paid to the respondent Company. The case for the appellant was that she did not receive the consideration which she bargained for or any consideration.

The appellant has been represented by Dr. Schreuer and the respondent Company by Mr. Salomon and Mr. Rabinowitz.

Several grounds of appeal have been argued before us, and most of these raise, in one form or another the question of the validity of the shares which were described as preference shares. Dr. Schreuer has argued strongly that the Company had no power to issue the 775 6% cumulative preference shares which it purported to allot to the appellant in 1935, and he has advanced various reasons why the company could not do so. Having heard Dr. Schreuer, we have come to the conclusion that the question whether the preference shares were valid or not is one that we need not decide, because in our judgment the appeal must fail, in any event, on other grounds which we shall state.

The facts which led up to the present case have been fully outlined in the judgment of Judge Shems, and we do not consider it to be necessary to set them out at length. Briefly, the position was that the appellant, who wished to transfer funds from Germany to Palestine, made an arrangement whereby she should hand over, in Germany, Reichsmarks to the credit of a body known by the name of " Haavara," and obtain in exchange preference shares of the respondent Company in Palestine. The Reichsmarks were to be converted into Palestine currency at a certain rate of exchange, and the appellant was to be charged 9% on account of transfer fees. In accordance with this arrangement, the appellant paid the sum of RM.11,039.24, and the defendant Company purported to allot to the appellant 775 preference shares in respect of which she had made an application on 19.4.35. The case for the appellant is that these

so-called preference shares were absolutely valueless because the respondent Company had no power to issue them, and that she has received no consideration at all for the money which she paid in Germany.

Paragraph 10 of the appellant's amended statement of claim contains the following passage :

> " Plaintiff claims now the refund to her by the defendant of the countervalue of the sum of Reichsmarks 11,039.24 paid by her in respect of the said alleged 775 preference shares since she did not receive the consideration which she bargained for, or any consideration."

And Issue No. 8 of the agreed issues is as follows :

> " Did plaintiff receive the 775 6% cumulative preference shares and 50 ordinary shares in full satisfaction of all amounts she paid to defendant ? "

The 50 ordinary shares referred to in this Issue were made up of two lots of 38 and 12 ordinary shares respectively. The 38 ordinary shares were allotted on the same date as the 775 preference shares, in order to refund to the appellant an additional 5% charged by Haavara in respect of transfer fees. The appellant's case is that the 38 shares were a gift to her, but the Court below held, and we agree with that finding, that this formed part of the consideration for the money which the appellant had paid in Germany, and that they were allotted to her in order that the charge on account of transfer fees should not exceed what she had been told that it would be, namely 9%. The other 12 ordinary shares were purchased by the appellant, and they form no part of the consideration.

It is clear that if the appellant received valuable consideration for her Reichsmarks, she cannot succeed in her claim. It is admitted that the appellant in 1939 sold the 775 preference shares, to the Palestine Independent Trust Association Ltd., for the sum of LP.125. She also sold the 50 ordinary shares to Dr. Siegmar Bromberger for LP.5. The share certificates of the appellant, in respect both of the 775 preference shares and of the 50 ordinary shares, were cancelled. So the appellant is no longer in possession of the share certificates, and she is not in a position to return them to the respondent Company.

Now, whether or not the preference shares were validly issued, the fact remains that the appellant transferred them for value. It is not suggested that the Company was acting deceitfully when it issued the share certificates. Their issue was approved by all of the shareholders of the company, without any exception. Nor is it suggested that the Company did not intend to honour the share certificates. Had the Company been wound up, the holder of such share certificates would have been able to claim as a creditor. In 1941, when a certain Regina Schlesinger questioned the validity of preference shares which had been allotted to her by the respondent Company, and sued the Company, the case was settled and Regina Schlesinger obtained payment. If the appellant had not parted with the share certificates, it is admitted that she could now have obtained for them considerably more than she gave.

The appellant must be held to have had constructive notice of the Memorandum and Articles of Association of the Company, and we consider

In the Supreme Court sitting as a Court of Appeal.

No. 12. Judgment, 7th February 1945, *continued.*

that if she wished to take exception to the share certificates, the time to do so was before she accepted them, or at least while they were still in her hands. Having negotiated them for value she cannot now say that she received no consideration. The consideration may have been different to that which she expected to get, but it was nevertheless valuable consideration. So far as the 38 ordinary shares are concerned, they, in any case, were validly issued, and formed part, although only a small part, of the consideration. We feel a great deal of sympathy with the appellant, who has received so little in exchange for her Reichsmarks, but in law she has no case, as she did receive consideration which she accepted in full satisfaction of the amounts paid by her to the respondent Company. The appellant having based her claim on the lack of consideration, and as we have found that there was consideration, it is not necessary to deal with the other grounds of appeal in regard to the issue of the preference shares.

We dismiss the appeal with costs to the respondent Company on the lower scale, to include LP.15 advocate's fees for attendance at the hearing.

Delivered this 7th day of February, 1945.

Sgd. D. V. SHAW,
British Puisne Judge.

Sgd. G. FRUMKIN,
Puisne Judge.

IN THE SUPREME COURT, SITTING AS A COURT OF APPEAL.

No. 6 of 1945.

BETWEEN

MARGARETE LINZ née SPRINGER — Appellant

AND

THE ELECTRIC WIRE CO. OF PALESTINE LTD. — Respondent.

No. 13.

No. 13.

APPLICATION for Leave to Appeal to His Majesty in Council.

[*Not printed.*]

No. 14.

No. 14.

ORDER granting Conditional Leave to Appeal to His Majesty in Council.

[*Not printed.*]

No. 15.

No. 15.

APPLICATION for Final Leave to Appeal to His Majesty in Council.

[*Not printed.*]

No. 16.

ORDER granting Final Leave to Appeal to His Majesty in Council.

In the Supreme Court sitting as a Court of Appeal.

No. 16. Order granting Final Leave to Appeal to His Majesty in Council, 14th May 1945.

PRIVY COUNCIL LEAVE APPLICATION.

No. 6/45.

IN THE SUPREME COURT SITTING AS A COURT OF CIVIL APPEAL.

Before : The Chief Justice (Sir William FitzGerald).
Mr. Justice Frumkin and Mr. Justice Abdulhadi.

In the application of :

MARGARETE LINZ (née SPRINGER) Applicant

v.

ELECTRIC WIRE CO. OF PALESTINE Respondent.

Application for leave to appeal to His Majesty in Council from the judgment of the Supreme Court in C.A. 356/44 dated 2.7.45.
For Applicant : Dr. Walter Schreuer.
For Respondent : Mr. E. Gavison.

ORDER.

WHEREAS by order of this Court dated the 16th day of March, 1945, the applicant was granted conditional leave to appeal to His Majesty in Council, subject to the following conditions :

(i) That the appellant do enter within six weeks of the date of this order into a bank guarantee from one of the three banks Barclays, Ottoman, or Anglo-Palestine, in a sum of LP.300 effective for three years or more, for the due prosecution of the appeal and the payment of all such costs as may become payable to the respondent in the event of the appellant not obtaining an order granting her final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the appellant to pay the respondent's costs of the appeal (as the case may be) ;

(ii) That the appellant to take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England within six weeks of the date of this order.

AND WHEREAS the applicant has fulfilled the said conditions in that she has filed a bank guarantee in Court in the sum of LP.300, as prescribed and has filed a list of the documents which should constitute the file to be despatched to England, and has further applied for the settlement thereof, and the parties have appeared before the Chief Registrar of this Court for the settlement thereof, which record has been settled.

NOW THEREFORE the Court orders, and it is hereby ordered, in pursuance of Article 21 of the Palestine (Appeal to Privy Council) Order in Council, that final leave to appeal to His Majesty in Council be granted to Applicant.

Given this 14th day of May, 1945.

Sgd. ABDULHADI Puisne Judge — Sgd. G. FRUMKIN Puisne Judge — Sgd. W. J. FITZGERALD Chief Justice.

Exhibits.

EXHIBITS AND DOCUMENTS.

P/1 (a). Memorandum of Association of the Palestine Electric Wire Co. Ltd., 25th September 1934.

P/1 (a).

MEMORANDUM OF ASSOCIATION of the Palestine Electric Wire Company Limited.

I. The name of the Company is THE PALESTINE ELECTRIC WIRE COMPANY LIMITED.

Clause II thereof [*Not Printed.*]

III. The liability of the members is limited.

IV. The capital of the Company is LP.25,000 divided into 25,000 Ordinary shares of LP.1 each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, Addresses and Description of Subscribers :		Number of Shares taken by each Subscriber :	Witnesses to the Signatures.
1. Dr. A. Broido	Haifa	1	
2. Dipl. Ing. Alfred Rosenberg	,,	1	Dr. Ludwig
3. Dr. Alfred Schreuer	,,	1	Mayer
4. Dr. Ludwig Mayer	,,	1	Dr. A. Broido
5. M. Aleinikoff	,,	1	I. Shapiro
6. Dr. S. E. Soskin	,,	1	Dr. Walter Schreuer
7. Alexander Kremener	,,	1	Dr. A. Broido
8. Dr. Adalbert Buxbaum, Jerusalem		1	Herman Cohen

Dated this 25th day of September, 1934.

P.1 (b). Articles of Association of the Palestine Electric Wire Co. Ltd., Undated

P/1 (b).

ARTICLES OF ASSOCIATION of the Palestine Electric Wire Company Limited.

PRELIMINARY.

1. The regulations for the management of a company limited by shares contained in Table A of Schedule III of the Companies Ordinance, 1929, shall not apply to the Company.

2. In these presents, unless the context otherwise requires, expression defined in the Companies Ordinance 1929, or any modification thereof in force at the date at which these regulations become binding on the Company, shall have the meaning so defined ; provided that

"The directors" always means only the directors for the time being ;

" The register " means the register of members to be kept pursuant to Section 29 of the Companies Ordinance, 1929 ;

" The Office " means the registered office for the time being of the Company ;

" The seal " means the Common Seal of the Company ;

" Month " means calendar month ;

" In writing " and " Written " include printing, lithography, and other modes of representing or reproducing words in a visible form ;

Words importing the singular shall include the plural, and vice versa and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

Articles 3–11.

[*Not printed.*]

SHARES.

12. Save as herein otherwise provided the Company shall be entitled to treat the registered holder of any share as the absolute owner thereof, and accordingly shall not, except by an Order of Court, be bound to recognize any equitable or other claim to, or interest in, such share on the part of any other person.

Articles 13–34.

[*Not printed.*]

TRANSFERS.

35. No transfer shall be registered unless a proper instrument of transfer has been delivered to the Company. The instrument of transfer of any share shall be signed both by the transferor and transferee, and the transferor shall be deemed to remain the holder of such shares until the name of the transferee is entered in the register in respect thereof.

Articles 36–43.

[*Not printed.*]

INCREASE OF CAPITAL.

44. The Company may from time to time by special resolution increase its capital by the creation of new shares of such amount to be divided into shares of such respective amounts and to be issued upon such terms and conditions and with such rights and privileges annexed thereto, as by the special resolution creating the same shall be directed, and if no direction be given, as the Directors shall deem expedient.

45. Subject to any direction to the contrary that may be given by the special resolution sanctioning the increase of capital as aforesaid, all new shares shall before issue be offered to such persons as are under these articles entitled to receive notices from the Company of general meetings, in proportions as nearly as the circumstances admit to the number of existing shares held by them. Such offer shall be made by notice specifying the number of shares offered and limiting a time being not less than three weeks within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time or on the

Exhibits.

P/1 (b). Articles of Association of the Palestine Electric Wire Co., Ltd., Undated, *continued.*

receipt of an intimation from the person to whom such offer is made that he declines to accept the shares offered, the Directors may dispose of them in such manner as they think most beneficial to the Company.

46. Subject to any direction to the contrary that may be given by the special resolution sanctioning the increase of capital as aforesaid, and any capital raised by the creation of new shares shall be considered part of the ordinary capital and shall be subject to the provisions herein contained with reference to the payment of calls and instalments, transfers and transmission, forfeiture, lien, and otherwise, as if it had been part in the original capital.

ALTERATION OF CAPITAL.

47. The Company may by special resolution—

(A) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares ; or

(B) by sub-division of its existing shares or any of them divide the whole, or any part, of its share capital into shares of smaller amount than is fixed by its Memorandum of Association, but only in such manner that in such sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it had been in the case of the share from which the reduced share was derived ; or

(C) Cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled ; or

(D) Reduce its capital in any manner authorized by the Law of Palestine.

MODIFICATION OF RIGHTS.

48. Whenever the capital should be divided into different classes of shares, then all or any of the rights and privileges attached to each class may be modified, commuted, affected, abrogated, or dealt with by agreement between the Company and any person purporting to contract on behalf of that class, provided such agreement is ratified in writing by the holders of at least three-fourths in nominal value of the issued shares of the class, or is confirmed by an extraordinary resolution passed at a separate general meeting of the holders of shares of that class, and all provisions hereinafter contained as to general meetings shall, *mutatis mutandis*, apply to every such meeting, but so that the quorum thereof shall be members holding, or representing by proxy, one fifth of the nominal amount of the issued shares of the class.

Articles 49–54.

[*Not printed.*]

GENERAL MEETINGS.

55. The statutory general meeting of the Company shall be held at such time being not less than one month nor more than three months from the day on which the Company was granted permission to commence business and at such place as the Directors may determine, and the provisions of the Companies Ordinance, 1929, with respect to such meeting and the matters preliminary thereto shall be duly observed.

56. Other general meetings of the Company shall be held once in every year at such time and place as may be prescribed by the Company in general meeting, and if no such time nor place shall have been prescribed, at such time and place as may be determined by the Directors. Such general meetings shall be called ORDINARY MEETINGS, and all other meetings of the Company shall be called EXTRAORDINARY MEETINGS.

57. The Directors may, whenever they think fit, and they shall on the requisition of the holders of not less than one tenth of the issued capital of the Company upon which all calls or other sums then due have been paid, proceed to convene an extraordinary general meeting of the Company; and in the case of such requisition the following provisions shall have effect:

(1) The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the office, and may consist of several documents in like form, each signed by one or more requisitionists;

(2) If the Directors of the Company do not proceed to cause a meeting to be held within sixty days from the date of the requisition being so deposited, the requisitionists or any of them representing more than one-half of the total voting rights of all of them may themselves convene the meeting, provided that such meeting shall never be held if three months from the said date already have expired;

(3) If at any such meeting a resolution requiring confirmation of another meeting is passed, the Directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution and, if thought fit, of confirming it as a special resolution; and if the Directors do not convene the meeting within thirty days from the date of the passing of the first resolution, the requisitionists or any of them representing more than one-half of the total voting rights of all of them may themselves convene the meeting, and any such meeting shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by Directors.

58. Any general meeting, other than a meeting for the passing of a special resolution, shall be called by seven days' notice, and a meeting for the passing of a special resolution by not less than twenty-one days' notice, specifying the place, day and hour of the meeting and in case of special business, the general nature of the business. Such notice may either be published in a newspaper circulating in the area in which the Company carries on its business or be sent by ordinary mail to all its members entitled to receive such notice.

59. The accidental omission to give any such notice to any of the members or the non-receipt of any such notice by any of the members shall not invalidate any resolution passed at any such meeting.

PROCEEDINGS AT GENERAL MEETINGS.

60. All business shall be deemed special that is transacted at an extraordinary meeting and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the

Exhibits

P/1 (b). Articles of Association of the Palestine Electric Wire Co. Ltd., Undated, *continued.*

accounts, balance sheets, and the ordinary report of the Directors and Auditors, the election of Directors and other officers in place of those retiring by rotation, and the fixing of the remuneration of the Auditors.

61. Five members personally present or the holders of not less than one-fifth of the capital for the time being of the Company present personally or by proxy shall be a quorum for a general meeting, and no business shall be transacted at any general meeting unless such quorum of members is present at the time when the meeting proceeds to business.

Articles 62–64.

[*Not printed.*]

65. The declaration by the Chairman that a resolution has, on a show of hands been carried, or unanimously carried, or by a particular majority, or lost, and an entry to that effect in the minute-book of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution being necessary.

Articles 66–70.

[*Not printed.*]

71. The Directors shall duly comply with the requirements of Section 67 of the Companies Ordinance, 1929, within the time therein prescribed.

VOTES OF MEMBERS.

72. Subject to any special rights or restrictions for the time being attached to any special class of shares in the capital of the Company, on a show of hands every member present shall have one vote, and upon a poll every member present shall have one vote in respect of every share held by him.

Articles 73–97.

[*Not printed.*]

MINUTES.

98. The Directors shall cause minutes to be duly entered in books provided for the purpose—

(A) of all appointment of officers ;

(B) of the names of Directors present at each meeting of the Directors and of any committee of Directors ;

(C) of all orders made by the Directors and committees of Directors ;

(D) of all resolutions of general meetings and of meetings of the Directors and committees.

And any such minutes of any meeting of the Directors or of any committee or of the Company, if purporting to be signed by the Chairman of such meeting, shall be receivable as prima facie evidence of the matters therein stated.

The minute-books shall be kept at the office and shall be open to the inspection of members upon such terms and conditions as the Directors may think fit.

Article 99.

[*Not printed.*]

DIVIDENDS.

100. The Company in general meeting may declare dividends, but no dividends shall exceed the amount recommended by the Directors.

101. The Directors may, at their discretion, pay such interim dividends to the members from time to time as appear to them to be justified by the profits of the Company.

102. No dividends shall be paid otherwise than out of profits.

103. No dividends shall be paid otherwise than on fully paid-up shares.

104. No dividends shall carry interest as against the Company.

105. The Directors may deduct from any dividend, bonus or other moneys payable in respect of any shares held by a member, either alone or jointly with any other person, all such sums of money, if any, as may be due and payable by him, either alone or jointly with any other person, to the Company on any account whatsoever.

106. The Directors may, before recommending any dividend, set aside out of the profits of the Company such sums as they think proper as a reserve or reserves which shall, at the discretion of the Directors, be applicable for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the Company may be properly applied, and pending such application may, at their like discretion, either be employed in the business of the Company or be invested in such investment as the Directors may think fit.

107. If several persons are registered as joint holders of any share, any one of them may give effectual and valid receipts for any dividend paid on the share.

Articles 108–113.

[*Not printed.*]

NOTICES.

114. Save as aforesaid, a notice posted up in the office shall be deemed to be well served upon those members whose address is not registered, provided that it is so posted up at least twenty-four hours.

115. The provisions of the last two preceding Articles shall be interpreted subject to the provisions of Article 58 hereof.

Articles 116–118.

[*Not printed.*]

Exhibits.

P/1 (c).
Resolution of Shareholders of Palestine Electric Wire Co. Ltd., 12th April 1935.

P/1 (c).

RESOLUTION of Shareholders of Palestine Electric Wire Co. Limited.

THE COMPANIES ORDINANCE, 1929.

COMPANY LIMITED BY SHARES.

RESOLUTION

Of the Holders of the Ordinary Shares of the Palestine Electric Wire Company Limited, passed on the 12th day of April, 1935.

At a separate Meeting of the Holders of the Ordinary Shares of the above-named Company duly convened and held at Haifa, Arlosoroff Street, 47, on the 12th day of April 1935, the following resolution was duly passed as a Special Resolution (as defined by the Companies Ordinance 1929) of the Holders of the Ordinary Shares of the Company.

RESOLUTION.

" That the original terms of the Company's Memorandum of Association be altered to the effect that the capital shall consist not solely of ordinary shares, but that LP.11,000 unissued shares shall be issued as preference shares. Such preference shares shall be entitled to a dividend in advance at the rate of 6% out of the net profits. After them the Ordinary Shares will be given a dividend of 6%, and the surplus net profits will be distributed amongst the preference and the ordinary shares in such manner that for each more 2% dividends on the ordinary shares, one more per cent. dividend will be given on the preference shares provided that the total dividend on the preference shares shall not exceed the rate of eight per cent.

" Accordingly, the preference shares will, in case of the Company being wound up, first be satisfied with 100% out of the assets available ; then 100% will be paid unto the holders of the ordinary shares ; and the surplus of the assets will be distributed in such manner that the ordinary shares will receive double of the amount received by the preference shares. The preference dividends at the rate of 6% are cumulatively payable ; but they become payable only as for the time after the business of the Company has been commenced ; i.e. they are first payable for the first business year. The commencement for the first business year is fixed for not later than one year after the subscription.

" The voting right of the preference shares shall be one third of the voting right of the ordinary share."

This resolution was unanimously passed.

Dated this 12th day of April, 1935.

(Sgd.) ALFRED ROSENBERG,
Director.

Exhibits.

P/1 (d).

P 1 (d).

STATUTORY REPORT of the Palestine Electric Wire Company Limited.

[*Not printed.*]

P/1 (e). Balance Sheet and Profit and Loss Account, 29th April 1936.

P 1 (e).

BALANCE SHEET and PROFIT AND LOSS ACCOUNT.

PALESTINE ELECTRIC WIRE COMPANY LTD.

BALANCE SHEET AS AT 31ST MARCH, 1936

(as confirmed by Annual General Meeting on the 24th April 1936)

LIABILITIES

AUTHORIZED CAPITAL			
11000 Preference Shares of LP.1.– each ..	11,000		
14000 Ordinary Shares of LP.1.– each ..	14,000		
	25,000		
ISSUED AND PAID-UP CAPITAL			
11000 Pref. Shares of LP.1.– each ..	11,000		
6309 Ord. Shares of LP.1.– each	6,309		
2000 Ord. Shares of LP.1.– each with rights restricted by Agreement ..	2,000		
	19,309.		
Less: due by Ord. shareholders	2,000.	17,309	
CREDITORS		1,729.630	
Reserve for building expenses, insurance claims, differences in exchange etc.		250.	
		19,288.630	

ASSETS

CASH			3.292
BANK			790.557
DEUTSCHE BANK UND DISCONTOGESELLSCHAFT, BERLIN			1,915.861
DEBTORS	462.012		
CLAIM AGAINST INSURANCE CO. in GERMANY (the claim has not yet been confirmed) ..	116.870		
			578.882
PLOT OF LAND, leased for 99 years			600.000
PARTICIPATION ROAD			60.000
FACTORY BUILDING			3,159.808

Exhibits.

P/1 (e). Balance Sheet and Profit and Loss Account, 29th April 1936, *continued.*

PLANT AND MACHINERY			8,315.866
PRELIMINARY EXPENSES			
(a) shares issued for services rendered ..		2,000.–	
(b) Registration, travelling & sundry exp. etc. ..	867.572		
less written off	567.572		
		300.–	
			2,300.
DEVELOPMENT EXPENSES		1,015.864	
Paid to Pref. Shareholders out of rebate received on transfer		548.500	
			1,564.364
			19,288.630

Directors :

(sgd.) Dr. A. BROIDO

Dr. Z. WILHELM MAJERCZIK.

We have examined the Accounts and Balance Sheet with the Books and the vouchers of the Company and having received all the information and explanations we have required report that the above Balance Sheet is properly drawn up so as to exhibit a true and correct view of the Company's affairs on the 31st of March 1936 according to the best of our information and the explanations given to us and as shown by the books of the Company.

29th April, 1936

(sgd.) F. MILLNER
BAWLY & MILLNER
Public Auditors.

PALESTINE ELECTRIC WIRE COMPANY LTD.

PROFIT AND LOSS ACCOUNT

GENERAL EXPENSES	856.372	
COMMISSIONS	305.500	
INSURANCE PREMIUMS	109.838	
INTERESTS	30.	
TRANSFER EXPENSES	69.528	
WRITTEN OFF O/A OF PRELIMINARY EXPENSES	567.572	
TRANSFERRED TO RESERVE ACCOUNT ..	250.	
	LP.2,188.810	
REBATE ON TRANSFER		1,151.154
INTEREST & DIFFERENCES IN EXCHANGE ..		21.792
DEVELOPMENT EXPENSES		1,015.864
		LP.2,188.810

P 1 (f).

Exhibits.

P/1 (f).

CERTIFICATE OF CHANGE OF NAME of the Palestine Electric Wire Co. Limited.

[*Not printed.*]

P/1 (g).

P/1 (g). Return of Allotments. 30th August 1935.

RETURN OF ALLOTMENTS.

COMPANIES ORDINANCE 1929.

RETURN OF ALLOTMENTS OF THE PALESTINE ELECTRIC WIRE COMPANY LIMITED.

Board meeting held on the 30th August, 1935.

Made pursuant to Section 93 of the Companies Ordinance, 1929.

Number of Preference Shares allotted payable in cash		11000
Number of Ordinary Shares allotted payable in Cash		6301
Nominal amount of the Pref. Shares so allotted	LP.	11000
Nominal amount of the Ord. Shares so allotted	LP.	6301
Amount paid or due and payable on each Pref. Share	LP.	1
Amount paid or due and payable on each Ord. Share	LP.	1
Number of shares allotted for consideration other than cash		2000
Nominal amount of the shares so allotted	LP.	2000
Amount to be treated as paid on each such share	LP.	1

The consideration for which such shares have been allotted is the services rendered to the Company by the allottees in carrying into effect all preliminary work, inter alia in elaborating the complete plant, in procuring and purchasing the machines and raw materials needed.

NAMES AND ADDRESSES OF THE ALLOTTEES OF SHARES IN THE PALESTINE ELECTRIC WIRE COMPANY LIMITED.

Surname	Forename	Address	Number of Preference Shares Allotted	Number of Ordinary Shares Allotted
Broido	Dr. Adolf	Haifa	—	1500
Rosenberg	Alfred	Haifa	—	1500
Majeczik	Dr. Wilhelm	Haifa	—	100
Herzfeld	Dr. Beni	Strasbourg (France)	—	2000
Moerel	Mauritz H. E.	Leiden (Holland)	—	250
Van Oss	Margarete L.	Oegstgeest (Holland)	—	100
Levinger	Fritz	Cheftzibah-Bet-Alpha	—	300
Lichtenstein	Israel	Tel-Aviv	—	500

Exhibits.

P/1 (g). Return of Allotments. 30th August 1935, *continued.*

Surname	Forename	Address	Number of Preference Shares Allotted	Number of Ordinary Shares Allotted
Marx	Willy	Tel-Aviv	—	1500
Ascher	Walter	Tel-Aviv	500	25
Isaak	Dr. Leo	Tel-Aviv	500	25
Strauss	Rudolf	Benyamina	800	40
Schlesinger	Regina	Haifa	1500	75
Siegel	Dr. Julius	Haifa	375	20
Kaufman	Dr. Hans	Haifa	400	20
Wasserman	Otto	Haifa-Achusa	400	20
Schmukler	Walter	Haifa-Achusa	400	20
Weil	Julius	Haifa	500	25
Heimann	Charlotte	Haifa	700	50
Tuchmann	Anneliese	Jerusalem	280	14
Springer	Margerete	Jerusalem	775	50
Daniel	Clara	Tel-Aviv	500	—
Bamberger	Dr. Isaac	Jerusalem	1000	50
Wilinski	Dr. Erich	Haifa	500	25
Heinberg	Meir	Tel-Aviv	300	15
Sternfield	Moritz	Rishon-le-Zion	300	15
Sternfield	Kaete	Rishon-le-Zion	600	30
Bloch	Felix	Karkur	250	12
Schwager	Siegmund	Pardess Hanna	250	12
Kalish	Kurt	Haifa	170	8
			11000	8301

(Sgd.) MAJERCZIK

(Sgd.) BROIDO

D/1.

D/1. **MINUTE re Alteration of Memorandum of Defendant in the German Language.**

[*Not printed.*]

D 1 (a).

Exhibits.

MINUTE re Alteration of Memorandum of Defendant.

D/1 (a). Minute of Alteration of Memorandum of Defendant (Translation from D/1), 12th April 1935.

12th April, 1935.

PROTOCOL.

CHANGE OF ARTICLES.

We, the subscribers of the Memorandum and of the Articles of Association of

THE PALESTINE ELECTRIC WIRE COMPANY LIMITED

and the present sole members of the Company resolve the following change of the Memorandum.

Contrary to the original terms of the Memorandum of Association the capital shall not consist solely of Ordinary shares but LP.11,000.– shall be issued as Preference Shares.

Such Preference Shares shall be entitled to a dividend in advance at the rate of 6% out of the net profits.

After them the holders of the ordinary shares will receive a dividend of 6% and the surplus net profits will be divided between the preference and the ordinary shares in such manner that for each more two per cent. dividends on the ordinary shares one more per cent. dividend will be given on the preference shares, but the total dividend on the preference shares shall not be more than 8%.

Accordingly the preference shares will be satisfied in case of the Company being wound up, first with one hundred per cent. out of the assets available ; then one hundred per cent. will be paid unto the holders of the ordinary shares ; the surplus of the assets will be divided in such manner that the ordinary shares will receive double of the amount received by the preference shares.

The preference dividends at the rate of 6% are cumulatively payable, but any claim herefor will be accepted only as for the time after the commencement of business, i.e. it begins with the first business year. The commencement of the first business year is fixed for not later than one year after the subscription.

The voting right of the preference shares shall be one third of the voting right of the ordinary shares.

(1) (sgd.) Dr. A. Broido. (2) (sgd.) Alfred Rosenberg.

(3) (sgd.) Dr. Alfred Schreuer. (4) (sgd.) Ludwig Mayer.

(5) (sgd.) M. Aleinikoff. (6) (sgd.) Dr. S. E. Soskin.

(7) (sgd.) Alexander Kremener. (8) (sgd.) Dr. A. Buxbaum.

Exhibits.

P/7.

P/7. Minute of a Meeting of Members of Defendant, 12th April 1935.

MINUTE of a Meeting of Members of Defendant.

At the meeting of the members of THE PALESTINE ELECTRIC WIRE COMPANY LIMITED, which was held in the Company's office on April 12, 1935, after 21 days' notice thereof had been given, it was proposed by the Chairman and unanimously RESOLVED :—

"Contrary to the original terms of the Memorandum of Association, the capital shall consist not solely of ordinary shares but LP.11,000 *unissued* shares shall be issued as preference shares. Such preference shares shall be entitled to a dividend in advance at the rate of 6% out of the net profits. After them the holders of the Ordinary Shares will receive a dividend of 6% and the surplus net profits will be divided between the Preference and the Ordinary Shares in such manner that for each more two per cent. dividends on the Ordinary Shares one more per cent. dividend will be given on the Preference Shares, but the total dividend on the Preference Shares shall not be more than 8%.

Accordingly, the Preference Shares will be satisfied in case of the Company being wound up, first with one hundred per cent. out of the assets available; then one hundred per cent. will be paid unto the holders of the Ordinary Shares; the surplus of the assets will be divided in such manner that the Ordinary Shares will receive double of the amount received by the Preference Shares.

The Preference dividends at the rate of 6% are cumulatively payable; but any claim herefor will be accepted only as for the time after the commencement of business, i.e. it begins with the first business year. The commencement of the first business year is fixed for not later than one year after the subscription.

The voting right of the Preference Shares shall be one third of the voting right of the Ordinary Shares."

The resolution was confirmed to be passed as a Special Resolution.

At the Meeting were present :

1. Dr. A. Broido.
2. Alfred Rosenberg.
3. Dr. Alfred Schreuer.
4. Ludwig Mayer.
5. Mr. Aleinikoff.
6. Dr. S. E. Soskin.
7. Alexander Kremener.
8. Dr. Adalbert Buxbaum.

In the chair was Dr. A. Broido.

Dated April 12, 1935.

(sgd.) Dr. Broido,
Chairman.

Exhibits.

P/8.

P/8.

LETTER, Trust and Transfer Office, Haavara Limited to Plaintiff.

(Translation from the German).

Miss Margerete Springer,
Jerusalem,
Abyssinian Street,
Beth Ariel Cohen,
Batim Meschutafim.

S/Kfm.

No. 3388 7.7.35.
I/1450.

We beg to refer to your declaration of assignment of 28.5.35 and beg to inform you herewith that we have remitted to the firm " The Palestine Electric Wire Co. Ltd. Haifa " the amount of RM.11,039.24 (in words Reichsmark Eleven thousand & thirty nine, 24) debiting your account with us with this amount, according to the account as below :

Put at your disposal	RM.11,039.24
less 14% transfer fees	RM. 1,545.49
	RM. 9,493.75

at the rate of exchange of 25.6.35 =
RM.12.25 equal LP.1.000
LP.775.000

for which amount shares in the above firm have been put at your disposal.

We beg you to take note of the above and remain

Yours faithfully,
TRUST AND TRANSFER OFFICE " HAAVARA " LTD.
(sigd.) ???

P/9.

LETTER, Trust and Transfer Office, Haavara Limited to Defendant.

P/9. Letter, Trust & Transfer Office, Haavara Ltd. to Defendant, 7th July 1935.

(Translation from the German).

TRUST AND TRANSFER OFFICE " HAAVARA " LTD., TEL-AVIV.
The Palestine Electric Wire Co. Ltd.
P.O.B. 443,
Haifa.

No. 3399.

S/Kfm. Tel-Aviv 7.7.35.

Please find enclosed 21 copies of our letters of to-day to the subscribers of the preference shares of your company regarding their

Exhibits.

P/9. Letter, Trust & Transfer Office, Haavara Ltd. to Defendant, 7th July 1935. *continued.*

credits on special account I and wish to render you below our statement of account in respect of the amount which is at your disposal with us as follows :—

1/1559	Felix Bloch	RM.	3561.04
1/ 886	Siegmund Schwager		3561.04
1/1486	Dr. Kurt Kalisch		2421.51
1/ 911	Dr. Isaac Bamberg		14244.17
1/1705	Kaete Sternfeld		8546.51
1/1843	Moritz Sternfeld		4273.25
1/1540	Meier Heinberg		4273.25
1/ 823	Regina Schlesinger		21366.27
1/1128	Julius Weil		7122.09
1/1227	Dr. Erich Wilinski		7122.09
1/ 536	Klara Daniel		7122.09
1/1023	Dr. Leo Isaac		7122.09
1/ 780	Walter Ascher		7122.09
1/1321	Dr. Hans Kaufmann		5697.67
1/ 880	Otto Wassermann		5697.67
1/ 731	Walter Schmukler		5697.67
1/1450	Margarete Springer		11039.24
1/ 776	Rudolf Strauss		11395.34
1/1494	Frau Heinr. Heinmann (Charlotte) ..		9970.93
1/1799	Dr. Julius Siegel		5341.56
1/ 611	Anneliese Tuchmann		3988.37
		RM.	156685.94
	less 15% transfer fees, less 1% paid already by the depositors in Berlin, less 9% bonus in pursuance of our letter of 4.6.35, therefore in total 5% transfer fees		7834.30
		RM.	148851.64

at the rate of 12.25 = LP.12,151.154.

In respect of the last mentioned amount letters of credit were given to the Deutsche Bank and Disconto Gesellschaft Berlin for the disposal by your director Mr. Alfred Rosenberg C.E. Please find enclosed copy of our to-day's letter to the Bank of the Temple Society in this matter.

Please acknowledge receipt of this letter.

Yours faithfully,

(sgd.) LIWNI, E. SEGALL

TRUST AND TRANSFER OFFICE HAAVARA LTD.

Exhibits.

D/9.
Letter, Trust & Transfer Office, Haavara Ltd. to Defendant, 4th June 1935.

D.9.

LETTER, Trust and Transfer Office, Haavara Limited to Defendant.

(Translation from the German.)

Haavara Limited.

The Palestine Electric Wire Co., Ltd.
P.O.B. 443, Haifa. 4.6.35.

Dr. G/Or.

Subscription for preference shares by payers of special account I.

We refer to the interview of 3.6. between your Mr. Rosenberg and our Dr. Goldman and confirm the contents thereof as follows:—

1. At present the following subscriptions from you are at hand:—

1.	Regina Schlesinger	LP.	1.500
2.	Julius Weil	,,	500
3.	Dr. Hans Kaufmann	,,	400
4.	Otto Wassermann	,,	400
5.	Walter Schmukler	,,	400
6.	Dr. Erich Wilinski	,,	500
7.	Klara Daniel	,,	500
8.	Margarete Springer	,,	775
9.	Dr. Leo Isaac	,,	500
10.	Walter Ascher	,,	500
11.	Rudolf Strauss	,,	800
12.	Charl. Heimann	,,	700
13.	Dr. Julius Siegel	,,	375
14.	Anneliese Tuchmann	,,	280
15.	Rosa Busse	,,	500
16.	Dr. J. Bamberger	,,	250
		LP.	8.880

We have already received the declaration of assignment in respect of the said amounts from the afore-mentioned subscribers with the exception of those of Mrs. Busse and Dr. Bamberger. Please see to it that these will be handed in soon.

As the authorisation to use special account I payments for subscription of preference shares in your Company was given for the amount of LP.11,000.–, an amount of LP.2,120.– is still open for such subscription of preference shares.

As you have chosen in your declaration of assignment the date of 25.6.35, as the material date for the conversion of Reichsmarks into pounds, we request you to take care that we be in possession till that date of the subscription papers and declarations of assignment for the amounts still outstanding in order that there may be no delay in the transfer in the books which you require urgently.

2. You had informed us in your letter of 31.5 that Mr. Oskar Hirsch has withdrawn his subscription and we had already requested you to cause

Exhibits.

D/9.
Letter, Trust & Transfer Office, Haavara Ltd. to Defendant, 4th June 1935, *continued.*

Mr. Hirsch to give us the relative information directly to enable us to return the subscription form and the declaration of assignment for our discharge.

3. By reason of the contents of your letters of 29th and 31st ult., and of the oral conversations, we have obligingly agreed to be content with the concessions made in our letter of 20.5 of this year, i.e. to release Haavara Marks in respect of declarations of subscriptions duly made and in our hands for the agreed acquisitions in Germany without insisting, as originally stipulated, that payments be to hand in free Palestine money on the ordinary shares, up to the value of the amounts of Haavara Marks to be released.

4. As you have informed us you want immediately, upon the convening of the statutory meeting to demand payment on the part of the free Palestine subscribers so that a sum of about LP.5,500 be paid. You assume that this will be at the end of June or beginning of July of this year.

5. Regarding the question of the deduction of expenses, we have already informed you that we must insist on a rate of 15% for reasons of uniformity of treatment of such projects.

We have, however, declared ourselves obligingly ready also to increase correspondingly to 9% the rate of bonus to be granted to you which at the original rate of expenses of 10% was fixed at 4%, so that you will be able to refund 5% difference by an internal arrangement to such subscribers who have made a rate of expenses of 9% besides the 1% for Paltreu a condition of their subscription.

6. To carry out the payment in Germany we shall, as we have already told you, open a credit in the amounts to be transferred in the books, i.e. in the amount of the declarations of assignment to hand in favour of your firm with the Kommerz and Privat Bank, Berlin, unless you indicate to us another place in lieu of the one at present desired by you.

To the extent to which you wish to make payments to German firms from whom you have ordered machinery, etc., it will be necessary to produce a pro-forma invoice of these firms to the bank in question, this pro-forma invoice should contain besides the date of the goods delivered, the price and other conditions, also the undertaking of the supplying firm for delivery to Palestine. Against such pro-forma invoice the bank will pay out the amount necessary from time to time to the supplying firms.

As you informed us that you are very interested in obtaining information from us as soon as possible, regarding the opening of the credit, we shall as soon as the other conditions are extant, cable an Order to the Bank and also possibly inform your Mr. Rosenberg who will be at the time in Germany. As you stated, the costs of cabling will be at your account.

Yours faithfully,

TRUST & TRANSFER OFFICE HAAVARA LIMITED.

D 8.

Exhibits.

D/8.

LETTER by Trust and Transfer Office " Haavara " Limited to Plaintiff.

[*Not printed.*]

D 10.

D/10.

LETTER by Trust and Transfer Office Haavara Limited to Dr. Julius Siegel.

[*Not printed.*]

D/2.

D/2. Application by Plaintiff to Defendant re allotment of 12 ordinary shares, 23rd July 1935.

APPLICATION by Plaintiff to Defendant re allotment of 12 Ordinary Shares.

Application Form

To The Palestine Electric Wire Co. Ltd., Haifa, Palestine.

Gentlemen,

Having paid to you (or : to your Bankers Messrs. The Anglo-Palestine Bank Ltd., Haifa, Account No. 135) the sum of LP.12.– (Palestine Pounds Twelve only) I request you to allot me that number of Shares and I hereby agree to accept the same or any smaller number that may be allotted to me ; and I authorize you to register me as the holder of the said shares.

Name in full : Margarete Springer

Address : Jerusalem, Abyssinian Street,

Description or Occupation ——

Date : 23rd July, 1935.

Signature : (Sgd.) Margarete Springer.

Exhibits.

D/3. Letter by Defendant without address. 23rd July 1935.

D 3.

LETTER by Defendant (without address).

(Translation from the German.)

Copy. 23rd July, 1935.

After Haavara has accepted your letter of assignment and has credited us with the respective countervalue LP.75 (seventyfive Palestine Pounds) preference shares of our Company will be allotted to you. Over and above this and by way of partial compensation for the transfer deduction of 14% we will allot to you a further LP.38 (thirtyeight Pal. Pounds), i.e. 5% of the above sum, ordinary shares of our company. For these ordinary shares no additional payment need, therefore, be made.

On the assumption that you may possibly wish to bring to a round number or increase your portion in ordinary shares, we forward to you herewith an application form with the request to state thereon how many ordinary shares in all you wish to acquire, and simultaneously and if you wish to have more than the abovenamed amount, remit the amount of the difference to our account No. 135 with the Anglo-Palestine Bank, Haifa.

For your information we beg to advise you that the construction of the undertaking is already under way and that at present the machinery and the hall construction are being purchased.

From the total capital of the company only an amount of about LP.1,800.– in ordinary shares is still open.

Yours faithfully,
THE PALESTINE ELECTRIC WIRE CO. LTD.

P/11. Balance Sheet and Profit & Loss Account of Defendant as at 31st March 1936.

P 11.

BALANCE SHEET and PROFIT AND LOSS ACCOUNT of Defendant as at 31st March 1936.

PALESTINE ELECTRIC WIRE COMPANY LIMITED

BALANCE SHEET as at 31.3.1936

LIABILITIES

	L.P.	L.P.
AUTHORISED CAPITAL		
11000 Pref. Shares of LP.1.– each ..	11,000	
14000 Ord. Shares of LP.1.– each ..	14,000	
	25,000	
ISSUED AND PAID-UP CAPITAL		
11000 Pref. Shares of LP.1.– each ..	11,000	
8309 Ord. Shares of LP.1.– each ..	8,309	
	19,309	
Less due by Ord. Shareholders	2,000	
		17,309
CREDITORS		1,188.930
RESERVE for insurance claims differences in exchange etc.		250.
		18,747.930

Exhibits.

P/11. Balance Sheet and Profit & Loss Account of Defendant as at 31st March 1936, *continued.*

ASSETS

	L.P.	LP.
CASH		3.292
BANK		790.557
DEUTSCHE BANK & DISCONTO GES. BERLIN		1,915.861
DEBTORS	462.012	
CLAIM AGAINST INSURANCE CO. IN GERMANY (the claim has not yet been confirmed)	116.870	
		578.882
FACTORY BUILDING		3,159.808
PLANT & MACHINERY		8,315.866
PRELIMINARY EXPENSES	2,867.572	
less written off	567.572	
		2,300.000
NETT LOSS	1,135.864	
Distributed as dividend to Pref. Shareholders out of rebate received on transfer	547.800	
		1,683.664
		18,747.930

We have examined the Accounts and Balance sheet with the Books and the Vouchers of the Company and having received all the informations and explanations we have required report that the above balance sheet is properly drawn up so as to exhibit a true and correct view of the Company's affairs at the 31st of March, 1936 according to the best of our information and the explanations given to us and as shown by the books of the Company.

16th April, 1936.

(Sgd.) Dr. F. MILLNER
BAWLY & MILLNER
Public Auditors.

PROFIT AND LOSS ACCOUNT

GENERAL EXPENSES	LP.856.372
COMMISSIONS	305.500
INSURANCE PREMIUMS	109.838
RENT AND PARTICIPATION ROAD	150.000
TRANSFER EXPENSES	69.528
WRITTEN OFF O/A OF PRELIMINARY EXPENSES	567.572
TRANSFERRED TO RESERVE ACCOUNT	250.000
	LP.2,308.810
REBATE ON TRANSFER	1,151.154
INTEREST AND DIFFERENCES IN EXCHANGE	21.792
NET LOSS	1,135.864
	LP.2,308.810

Exhibits.

P/6.

P/6. Balance Sheet & Profit and Loss Account of Defendant, 16th April 1936.

BALANCE SHEET and PROFIT AND LOSS ACCOUNT of Defendant as at 31st March 1936.

PALESTINE ELECTRIC WIRE COMPANY LIMITED

BALANCE SHEET AS AT 31ST MARCH 1936

LIABILITIES

	L.P.	L.P.
AUTHORIZED CAPITAL		
11000 Pref. Shares of LP.1.– each ..	11,000	
14000 Ord. Shares of LP.1.– each ..	14,000	
	25,000	
ISSUED AND PAID-UP CAPITAL		
11000 Pref. Shares of LP.1.– each ..	11,000	
8309 Ord. Shares of LP.1.– each ..	8,309	
	19,309	
less due by Ord. Shareholders	2,000	
		17,309
CREDITORS		1,189.630
RESERVE for insurance claims differences in exchange etc.		250.000
		18,748.630

ASSETS

	L.P.	L.P.
CASH		3.292
BANK		790.557
DEUTSCHE BANK & DISCONTO GES. BERLIN ..		1,915.861
DEBTORS	462.012	
CLAIM AGAINST INSURANCE CO. IN GERMANY (the claim has not yet been confirmed) ..	116.870	
		578.882
FACTORY BUILDING		3,159.808
PLANT & MACHINERY		8,315.866
PRELIMINARY EXPENSES	2,867.572	
less written off	567.572	
		2,300.000
NET LOSS	1,135.864	
Distributed as dividend to pref. shareholders out of rebate received on transfer ..	548.500	
		1,684.364
		18,748.630

Directors.

We have examined the Accounts and Balance Sheet with the books and the Vouchers of the Company and having received all the informations

Exhibits.

P/6. Balance Sheet & Profit and Loss Account of Defendant, 16th April 1936, *continued.*

and explanations we have required report that the above Balance sheet is properly drawn up so as to exhibit a true and correct view of the Company's affairs at the 31st of March 1936 according to the best of our information and the explanations given to us and as shown by the books of the Company.

(sgd.) Dr. F. MILLNER
BAWLY & MILLNER
Public Auditors.

16th April, 1936.

PROFIT AND LOSS ACCOUNT

GENERAL EXPENSES ..	LP.856.372
COMMISSIONS	305.500
INSURANCE PREMIUMS	109.838
RENT AND PARTICIPATION ROAD	150.000
TRANSFER EXPENSES	69.528
WRITTEN OFF O/A OF PRELIMINARY EXPENSES ..	567.572
TRANSFERRED TO RESERVE ACCOUNT	250.000
	2,308.810
REBATE ON TRANSFER	LP.1,151.154
INTEREST AND DIFFERENCES IN EXCHANGE	21.792
NET LOSS	1,135.864
	2,308.810

Attached to balance sheet of Palestine Electric Wire Co. Ltd. as at 31.3.1936.

Dated 16.4.1936.

P/3.

P/3. Minutes of General Meeting, 24th April 1936.

MINUTES of the Ordinary General Meeting of the Palestine Electric Wire Company Limited, held at the Offices of the Industrial and Financial Corporation of Palestine Limited, Joseffof Building, Ben-Yehuda Street, Jerusalem, on Friday, April 24th 1936, at 11.45 a.m.

The following members were present or represented :—

	No. of Shares.		*No. of Votes.*
	Ordinary.	*Preference.*	
Dr. Alfred Broido	1,500		1,500
Dr. Ing. B. Herzfeld	2,000		2,000
Alfred Rosenberg	1,500		1,500
Dr. Ing. Wilhelm Majerzcik	500		500
Mr. Julius Weil	25	500	191
Charlotte Heimann, represented by Dr. A. Broido	50	700	283
Total number of votes represented			5,974

Exhibits.

P/3. Minutes of General Meeting, 24th April 1936, *continued.*

As by virtue of Article 61 of the Articles of Association of the Company the number of the members present and the proportion of the capital of the Company represented by them meet with the necessary requirements the meeting was declared constitutionally entitled to carry on the business of the day.

The Secretary read the notice convening the meeting on which the following agenda had been fixed :—

1. Directors' Report.
2. Reading and approval of the Balance Sheet as at 31.3.36.
3. Auditors' Report.
4. Election of Directors.
5. Election of Auditors.
6. Remuneration of Auditors.

The Chairman, Dr. Majerzcik, submitted the balance sheet and the profit and loss account and stated that it was expected that the Company would start production in the month of May. The balance sheet and profit and loss account were adopted with the following modifications. The road participation and the plot leased for 99 years have to be considered as assets. The item " Net Loss " both in the balance sheet and profit and loss account to read " Development Expenses " and the item of LP.548.500 in the balance sheet to be designated as " Paid Preference Shareholders out of rebate received on transfer." Mr. Alfred Rosenberg moved that with these modifications the balance sheet and profit and loss account be adopted. This motion was seconded by Mr. Weil and passed unanimously.

On the motion of Mr. Weil, seconded by Mr. Rosenberg, the Auditors report was read and unanimously adopted.

Election of Directors : The Chairman announced that the present outgoing Directors were :—

Dr. Wilhelm Majerczik.
Dr. A. Broido.
Dr. B. Herzfeld.
Mr. Alfred Rosenberg.

The outgoing Board proposed to the General Meeting that Mr. Israel Lichtenstein be elected to the Board and the members of the outgoing Board present themselves for re-election.

On the motion of Mr. Weil, seconded by Dr. Broido, Messrs. Bawly and Millner were re-elected as Auditors of the Company, which motion was passed unanimously.

Remuneration of Auditors : Dr. Broido moved that the new Board be empowered to fix the remuneration of the Auditors : this motion being seconded by Mr. Weil and passed by a unanimous vote.

There being no further business the Chairman declared the meeting adjourned at 1 o'clock p.m.

(sgd.) Dr. Ing. Wilhelm Majerczik,
Chairman.

Exhibits.

P/4.

SHARE CERTIFICATE No. 62 of Defendant.

P/4. Share Certificate No. 62 of Defendant, 1st July 1936.

" 1 "

No. 62 17/1 " G " Shares 775

SHARE CERTIFICATE

THE ELECTRIC WIRE CO. OF PALESTINE LTD.

Capital of LP.25000 divided into 25000 shares of LP.1– each

This is to certify that Margarete Springer of Jerusalem is the registered proprietor of 775 preference shares of LP.1.– each fully paid, numbered 20846 to 21620 incl. in the above named Company, subject to the Memorandum and Articles of Association thereof.

Given on the common seal of the Company this 1st day of July, 1936.

Directors: (sgd.) MAJERCZIK, DR. BROIDO

Secretary (sgd.) DR. MAX KUSMIREK

(Seal of the Company)

NOTE: No transfer of the abovementioned shares can be registered without the production of this certificate.

CANCELLED

P 5.

SHARE CERTIFICATE No. 33 of Defendant.

P 5. Share Certificate No. 33 of Defendant, 1st July 1936.

" 2 "

" H "

No. 33 Shares 50

SHARE CERTIFICATE

THE ELECTRIC WIRE CO. OF PALESTINE LTD.

Capital LP.25000 divided into 25000 shares of LP.1.– each

This is to certify that Margarete Springer of Jerusalem is the registered proprietor of 50 ordinary shares of LP.1.– each fully paid numbered 11491 to 11540 incl. in the above-named Company, subject to the Memorandum and Articles of Association thereof.

Given on the common seal of the company this 1st day of July, 1936.

Directors: (sgd.) MAJERCZIK, DR. BROIDO

Secretary: (sgd.) DR. MAX KUSMIREK

(Seal of the Company)

NOTE: No transfer of the abovementioned shares can be registered without the production of this certificate.

CANCELLED

Exhibits.

D 5.

D/5. **SHARE CERTIFICATE No. 62 of the Defendant in the name of Plaintiff in respect of 775 Preference Shares of LP.1.– each, fully paid.**

[*Not printed.*]

D 7. D 7.

SHARE CERTIFICATE No. 33 of the Defendant in the name of Plaintiff in respect of 50 Ordinary Shares of LP.1.– each, fully paid.

[*Not printed.*]

D/13. D/13.

POSTCARD from Dr. Ernst Linz to Holland Bank Union, Haifa.

[*Not printed.*]

D/14. D/14.

LETTER Holland Bank Union to Dr. Ernst Linz.

[*Not printed.*]

Exhibits.

D/15.
Letter, Holland Bank Union to Dr. E. Linz, 18th July 1939.

D/15.

LETTER, Holland Bank Union to Dr. E. Linz.

(Translation from the German).

HOLLAND BANK UNION.

Haifa, 18th July, 1939.

By " Aviv."
Dr. Ernst Linz,
House Dr. Wolfsohn,
King George Ave.,
Jerusalem.

Stock Department.

With reference to our previous correspondence we beg to inform you that we are to-day in a position to offer you 19% for

nom. LP.375.– pref. sh. Electric Wire Co. of Palestine

If you are only prepared to sell the whole stock, we should be able to take over from you

nom. LP.775.– Pref. Sh. Electric Wire Co. of Palestine

nom. LP. 50.– Ord. Sh. ,, ,, ,, ,,

for a total amount of LP.115.–. As our purchaser has made his offer only until a certain term, we ask you to let us have your reply immediately (by " Aviv " or by telephone).

With best regards,

Yours faithfully,

HOLLAND BANK UNION,
Haifa Branch.

Jer. 19.7.39.

Hereby returned.

We agree to the above and ask to transfer the LP.115.– to Feuchtwanger Bank, Jerusalem.

Yours faithfully,

Sgd. MARGARETE LINZ,
DR. LINZ.

Exhibits.

P/14.
Letter, Holland Bank Union, Haifa, to Dr. Ernst Linz, 20th July 1939.

P/14.

LETTER, Holland Bank Union, Haifa, to Dr. Ernst Linz.

(Translation from the German.)

Haifa, 20th July, 1939.

Holland Bank Union,
Haifa Office.

Dr. Ernst Linz,
House Dr. Wolfsohn,
King George Avenue,
Jerusalem.

Securities Department.

We received your communication of the 19th instant, and advise you that we have succeeded to obtain still a somewhat higher price for your securities.

We took notice of having bought from you

nom. LP. 775.–	Pref. Shares Electric Wire Co. of Palestine Ltd. at 15%	= 116.250
nom. LP. 50.–	Ord. Shares Electric Wire Co. of Palestine Ltd. at 7½% ..	= 3.750

regarding which we hand you our account separately. Please find enclosed a transfer deed for the above-mentioned item which the registered owner of the shares Margarete Springer will have to sign (at the spot marked). The signature should be confirmed by a Bank or notary etc. (at the spot marked with two crosses). As soon as you will return to us the transfer deed duly signed, we shall remit at your instructions the counter-value to Messrs. I. L. Feuchtwanger General Commercial Bank Ltd., for your benefit.

We remain,

Yours faithfully,

(Sgd.) HOLLAND BANK UNION,
Haifa Office.

Exhibits.

P/15.
Letter, Holland Bank Union, Haifa, to Dr. Ernst Linz, 20th July 1939.

P/15.

LETTER, Holland Bank Union, Haifa, to Dr. Ernst Linz.

Holland Bank Union,
Haifa Office.

Haifa, 20th July, 1939.

Dr. Ernst Linz,
House Dr. Wolfsohn,
King George Avenue,
Jerusalem.

Dear Sir,

We confirm having BOUGHT from you in accordance with your instructions of the 19th inst., and our to-day's separate letter :—

AMOUNT.	DESCRIPTION.	RATE.	EQUIVALENT.
LP. 775.–	pref. sh. Electric Wire Co. of Palestine registered	15%	LP. 116.250
LP. 50.–	ord. sh. Electric Wire Co. of Palestine registered	7½%	LP. 3.750
	We debit your safe custody account with us for the above stock.		
			u.u.r. LP. 120.—

We shall remit this amount to Messrs. I. L. Feuchtwanger General Commercial Bank Ltd., Jerusalem, for your account after having received the duly signed transfer deed with certified signature of Margarete Springer, as per our to-day's letter.

Val. after receipt transfer deed.

Yours faithfully,

(Sgd.) HOLLAND BANK UNION,
Haifa Office.

Exhibits.

D/11.

Letter, Ernst Linz to Holland Bank Union, with enclosure, 4th August 1939.

D/11.

LETTER, Ernest Linz to Holland Bank Union, with Enclosure.

(Translation from the German.)

Dr. Ernst Linz.

SECURITIES.
Jerusalem 4.8.39
King George Ave.,
House of Wolfsohn.

Holland Bank Union,
Haifa.

Gentlemen,

I shall refer again to the matter of the shares of Electric Wire.

For your information I hereby enclose copy of a letter which I have there written to Dr. Majerczik. I ask for its return. Dr. M. this day informed me, that he has not been the purchaser of the shares in question.

If you, as I assume, do not want to name the purchaser to me, I only have the request that you shall forward the contents of my letter, addressed to Dr. M. to the respective purchaser. Then the letter shall have been sent to the real purchaser of the shares. You may understand my point of view so well, that may be you will yourselves do your best that a further reasonable amount shall be subsequently paid to me.

I believe that this is reasonably fair and just. Anyhow, I thank you in advance, that you will do your best for me in my favour.

Expecting your further news in the matter.

Yours faithfully,

(Sgd.) Dr. LINZ.

D/11 (Enclosure).

(Translation from the German.)

Copy of a letter from Dr. Ernst Linz to Dr. Majerczik, regarding El. Wire.

Jerusalem, 26th July, 1939.

King George Ave., House Wolfson.

Dr. Majerczik,
Haifa.

Dear Sir,

Permit me to approach you in the following matter:

I sold to you through Holland Bank Union LP.775.– preference and LP.50.– ordinary shares of Electric Wire, at a total amount of LP.120.–.

We have sold, because we are in need of the profits of our modest fortune, because the said shares have been without dividends for years, and because it is at least doubtful whether the shares will pay dividends within reasonable time. In view of the fact that besides you, there was no purchaser interested in these papers, I was obliged under these circumstances, to accept the offer of Holland Bank Union without hesitation, in order not to risk the final conclusion of the transaction.

Exhibits.

D/11. Letter, Ernst Linz to Holland Bank Union, with enclosure, 4th August 1939, *continued.*

The last balance sheet with business report of the Company is here at hand. Even taking all adverse circumstances mentioned therein in very pessimistic consideration, one still comes to the conclusion to take as the rate of exchange of these shares with regard to the effectual and inner value (as at present) :

40% for the preference and 15% for the ordinary shares.

In view of the fact that some time ago you made some remark to my uncle, Dr. Siegfried Levinger (Haifa) which were relatively optimistic as regards the chance for the future of the Company in view of the increased turnovers, I may well assume that even you do not expect any further decrease from the present circumstances. But even if, contrary to all expectations, this should be the case, even then the value of the shares would by far not be as low, as it has been accounted for to me on the occasion of the sale.

Under these circumstances, I should leave it to your consideration, dear Dr. Majerczik, whether you would not deem it fair to pay to us subsequently a further amount to be fixed by you. Of course, it is not necessary to remark, that we have no legal claim for such payment. Also, I should not have approached you with my request of to-day if it was not for the following three circumstances :—

(1) The fact that we were forced to sell in order to obtain an interest on capital.

(2) The fact, that you were the only party interested (for a long time I have unsuccessfully tried to sell elsewhere).

(3) The fact that the inner and real value of the shares, at present as well as in the near future, even if, contrary to all expectation the running business year shall again be unfavourable, though you personally are of another opinion, lies by far above the rate of exchange paid by you.

I should like to believe that these three facts shall cause you to think the whole matter over again and to decide in favour of my request. Thanking you in advance, therefore, I am expecting your esteemed further news.

Yours faithfully,

* * * * *

Exhibits.

D/12.

LETTER, Holland Bank Union to Dr. E. Linz.

(Translation from German.)

D/12. Letter, Holland Bank Union to Dr. E. Linz, 7th August 1939.

7th August, 1939.

Dr. Ernst Linz,
House Wolfson,
King George Ave.,
Jerusalem.

Stock Department.

In reply to your letter of the 4th instant, we beg to inform you that we are unable to comply with your wishes.

We can of course not disclose to you the name of the purchaser of your

Electric Wire Shares

without committing breach of a bank secret. We must also refuse to remit the contents of your letter to the respective person, as it is absolutely uncustomary to approach the purchaser again after the conclusion of a business transaction and to ask for a subsequent increase in the agreed purchase price.

The real state of affairs was, that you had asked us repeatedly, to sell the pieces for you. Although for a long time there was no serious request for these pieces we have finally succeeded in finding a purchaser, so that we were able to offer you a price of LP.115.— for the whole lot. This offer has been immediately accepted by you. Meanwhile we even could get a price for you, which was higher by LP.5.—.

In view of the fact that for a long time there was no request at all for the above-mentioned papers, the price obtained seems to us absolutely satisfactory, even from your point of view. If there is no purchaser for a paper, then even the statement of an " inner value " seems to be illusory. Besides your assumption of an " inner value " if 40% for the preference shares and of 15% for the ordinary shares may at least be deemed as very doubtful.

We hope that with the above we have cleared up the situation, and remain,

Yours faithfully,

HOLLAND BANK UNION,

Haifa Branch.

Enclosed we
return to you
your letter addressed
to Dr. Majerckik (copy).

* * * * *

Exhibits.

D 4 (a).

D/4 (a).

FORM D signed by Plaintiff and " PIA " Independent Trust Association Limited for use in connection with securities transferable by Deed. Trading with the Enemy Ordinance 1939. Defence (Finance) Regulations, with regard to 775 alleged Preference Shares of the Defendant.

[*Not printed.*]

D 4 (b).

D/4 (b). Transfer Deed executed by Plaintiff to PIA re 775 alleged preference shares of Defendant, 28th September 1941.

TRANSFER DEED executed by Plaintiff to " PIA " re 775 alleged Preference Shares of Defendant.

Seal : Palestine Stamp Duty 500 mils

Seal : Palestine Stamp Duty 250 Mils

I, Margarete Springer
in consideration of the sum of (see note at foot) LP.125.– (one hundred and twenty five Palestine Pounds)
paid by
" PIA " Palestine Independent Trust Association Ltd., Jerusalem,
hereinafter called the said Transferee,
Do hereby bargain, sell, assign, and transfer to the said Transferee
LP. seven hundred seventy-five preference shares of the Electric Wire Co. of Palestine Ltd. share numbers : 20846 to 21620
of and in the undertaking called The Electric Wire Co. of Palestine Ltd.
DO HOLD, unto the said Transferee, Executors, Administrators and Assigns, subject to the several conditions on which held the same immediately before the execution hereof ; and the said Transferee do hereby agree to accept and take the said subject to the conditions aforesaid

As witness our hands and Seals, this 28th day of September, 1941 in the Year of our Lord One thousand nine hundred and fortyone.
Signed, sealed, and delivered by the abovenamed Margarete Springer in the Presence of

(Signature of witness) Kurt Kronberger

Margarete Springer (seal)

Address, Jerusalem

Occupation, Manager Jerusalem Branch

Seal : I. L. Feuchtwanger
General Commercial Bank Ltd.

Exhibits.

D/4 (b). Transfer Deed executed by Plaintiff to PIA re 775 alleged preference shares of Defendant, 28th September 1941, *continued.*

Signed, sealed, and delivered, by the above-named in the presence of

(Signature of witness)

Address,

Occupation, (seal)

Signed, sealed, and delivered, by the above-named "PIA" Pal. Independent Trust in the Presence of

(Signature of witness)

Assoc. Ltd.
Seal : Holland Bank Union
2 Signatures illegible

"PIA"
Palestine Independent Trust Association Ltd.
(Seal)
Ernst Kahn
Georg Samuel

Signed, sealed, and delivered, by the above-named in the Presence of

(Signature of witness)

Address,

Occupation, (Seal)

D/4 (c).

D/4 (c).

FORM D signed by Plaintiff and "PIA" Independent Trust Association Limited, for use in connection with securities transferable by Deed. Trading with the Enemy Ordinance 1939. Defence (Finance) Regulations, with regard to 775 alleged Preference Shares of the Defendant.

[*Not printed.*]

Exhibits.

D 6 (a).

D/6 (a). Transfer Deed by Plaintiff to Dr. Siegmar Bromberger re 50 ordinary shares of Defendant, 28th September 1941.

TRANSFER DEED by Plaintiff to Dr. Siegmar Bromberger re 50 Ordinary Shares of Defendant.

(Seal) Palestine Stamp Duty
20 mils.

I, Margarete Springer
in consideration of the sum of (See Note) of LP.5.– (five Pal. Pounds) paid by
Dr. Siegmar Bromberger Jerusalem
hereinafter called the said Transferee,
Do hereby bargain, sell, assign, and transfer to the said Transferee
LP. fifty Ordinary shares of Electric Wire Co. of Palestine Ltd. Shares Numbers 11491 to 11540
of and in the undertaking called
the Electric Wire Co. of Palestine Ltd.
Do hold unto the said transferee Executors, Administrators and Assigns, subject to the several conditions on which held the same immediately and the said Transferee, do hereby agree to accept and take the said subject to the conditions aforesaid

AS WITNESS our Hands and Seals, this 28th day of September in the year of our Lord One Thousand Nine hundred and fortyone.

Signed, sealed and delivered, by the above-named Margarete Springer
In the Presence of
Signature : Kurt Kronenberger Margarete Springer (seal)
Address : Jerusalem
Occupation or Description | Manager Jerusalem Branch
I. L. Feuchtwanger
General Commercial Bank Ltd.

Signed, sealed, and delivered, by the above-named Dr. Siegmar Bromberger
In the presence of
Holland Bank Union Dr. Siegmar Bromberger,
Signature (seal)
2 signatures illegible
Address :
Occupation or Description |

Signed, sealed, and delivered, by the above-named
In the Presence of
Signature :
Address :
Occupation or Description | (seal)

Exhibits.

D/6 (b).

D/6 (b). **FORM D for use in connection with Securities transferable by Deed. Trading with the Enemy Ordinance 1939. Defence (Finance) Regulations in connection with 50 Ordinary Shares of the Defendant signed by Plaintiff and Dr. Siegmar Bromberger.**

[*Not Printed.*]

D/6 (c).

D/6 (c).

FORM D for use in connection with Securities transferable by Deed. Trading with the Enemy Ordinance 1939. Defence (Finance) Regulations, in connection with 50 Ordinary Shares of the Defendant signed by Plaintiff and Dr. Siegmar Bromberger.

[*Not Printed.*]

P/10.

P/10.

Compromise between Regina Schlesinger and Defendant and consent judgment, 18th February 1943.

COMPROMISE between Regina Schlesinger and Defendant and Consent Judgment.

IN THE DISTRICT COURT OF HAIFA.

Haifa, 18th February, 1943.
Civil Case No. 217/41.

Between REGINA SCHLESINGER, of Sieff Settlement, Nave Shaanan, Haifa, through her advocates, Dr. ALFRED WERNER and Dr. WALTER E. SCHREUER, of Bovis House, New Business Centre, Haifa — Plaintiff

and

1. THE ELECTRIC WIRE COMPANY OF PALESTINE LTD., of Factory Site, Haifa Bay, Haifa ;
2. DR. ALFRED BROIDO, of 5 Herzlia Street, Haifa ;
3. DR. WILHELM MAJERCZIK, of Majerczik's House, Mount Carmel, Haifa ;
4. ALFRED ROSENBERG, of 47, Arlosoroff Street, Hadar Hacarmel, Haifa, through Messrs. S. HOROWITZ & Co., Barristers-at-Law, Haifa — Defendants.

COMPROMISE.

The first Defendants admit that the resolution dated the 12th day of April, 1935 purporting to alter the provisions of the Memorandum of Association of the Palestine Electric Wire Company Limited—now known as The Electric Wire Company of Palestine Limited—(hereinafter referred to as the "Company"), whereby the 11000 shares of LP.1 each in the capital of the Company then unissued should be issued as Preference Shares and thereby purporting to convert them into Preference Shares, was not properly passed and that in the circumstances the allotment to the Plaintiff, Regina Schlesinger, of 1,500 shares as Preference Shares of LP.1 each in the capital of the Company declared as fully paid was void.

2. The Plaintiff confirms that the said resolution was passed as aforesaid by the Company and its Directors bona fide and that she has no claim

or demand whatsoever against the Company or its Directors in respect of the said allotment or otherwise howsoever, whether by way of damages, dividends, interest or otherwise, except for the sum of LP.1,307.080 and LP.300 respectively, as in paras. 3 and 4 indicated.

3. The parties hereto confirm that the sum of LP.1,307.080 shall be taken as the consideration paid by the Plaintiff to the first Defendants for the aforesaid 1,500 shares purporting to be Preference Shares in the capital of the Company.

4. The Plaintiff and the first Defendants accordingly agree that the said allotment shall be considered as void ab initio and the first Defendants hereby agree to refund to the Plaintiff the sum of LP.1,307.080 the aforesaid consideration, and to pay to the Plaintiff an additional sum of LP.300 in settlement of interest on the aforesaid sum of LP.1,307.080 as from the date of the institution of the proceedings in Civil Case No. 217/41, Haifa District Court, as well as costs and advocate's fee and the Plaintiff will accept the aforesaid total sum of LP.1,607.080 in full settlement and discharge of any claim which she has or may have against the first Defendants or otherwise, whether in respect of any of the matters mentioned in the Statement of Claim or in any other manner in connection with her application for the allotment of the said shares or otherwise in connection therewith, and the Plaintiff confirms that on such payment she will have no claim against the Company or its Directors, whether the Defendants in the above proceedings or otherwise, nor will she have any claim to the said Preference Shares.

5. The Plaintiff hereby confirms that she has no claims against the second, third or fourth Defendants or any of them, whether in the manner suggested in the Statement of Claim or otherwise in relation to the subject matter of the above proceedings.

6. The parties hereto agree that the above terms shall be submitted by them to Court for confirmation and that judgment be given accordingly as a consent judgment.

(sgd.) J. SALOMON,
for THE ELECTRIC WIRE CO. OF PALESTINE LTD.

(sgd.) W. SCHREUER,
for REGINA SCHLESINGER.

The parties by their Counsel having declared that the aforesaid represents the agreement between them and having asked the Court to enter judgment confirming the same and pursuant to the terms thereof, judgment is accordingly entered confirming the afore-recited compromise and directing pursuant thereto—

(A) that the first Defendants pay to the Plaintiff the respective sums of LP.1,307.080 and LP.300 in settlement as in the aforesaid compromise recited ;

(B) that the action against the second, third and fourth Defendants be dismissed ;

(C) except as in the afore-recited compromise specified no party shall be entitled to any costs.

(sgd.) S. WELDON,
Relieving President.

Haifa, 18th February, 1943.

Exhibits.

P/12.
Letter, Defendant to Dr. Julius Siegel, Haifa, 4th March 1943.

P/12.

LETTER, Defendant to Dr. Julius Siegel, Haifa.

The Electric Wire Company of Palestine Ltd.

Haifa, 4/3/1943.
AB/BB/711.

Dr. Julius Siegel,
Mt. Carmel,
Haifa.

Sir,

The Board of Directors of our Company has for some time past been considering the position of the registered holders of the shares in the Company as Preference Shareholders in the light of certain proceedings lodged by Regina Schlesinger against the Company in the District Court of Haifa under No. 217/41.

In the said action the Plaintiff, Regina Schlesinger contended that the resolution passed by the Company on the 12th April 1935 purporting to alter the original terms of the Company's Memorandum of Association to the effect that the capital of the Company shall consist not solely of ordinary shares but that 11,000 unissued shares shall be issued as Preference Shares was not properly passed and that the allotment of Preference Shares made subsequently was invalid.

The said proceedings have been pending for some time and they were about to come up for hearing on the 18th February 1943. However, before the date of the hearing of the case the position was reviewed by the Company in consultation with its legal advisers, and it was decided that in the circumstances disclosed the Company ought to compromise the claim and admit the same and return to the claimant the amount invested by her in addition to a certain payment on account of the costs of the action. The said compromise was approved by the Court in the said proceedings on the 18th February 1943.

In the light of the above it has been decided that the Company cannot maintain that the conversion of the shares was validly made or that the allotment was regular and the Company will therefore return to the registered Preference Shareholders the amounts paid by them in respect of the shares.

In the circumstances we shall be pleased if you will inform us what amount has been paid by you for the Preference Shares which you now hold and details of your holdings, so that the same may be settled by us as soon as possible, as the Company is anxious to regularise the position without delay.

Yours faithfully,

THE ELECTRIC WIRE CO. OF PALESTINE LTD.

(Sgd.) BROIDO. (Sgd.) MAJERCZIK.

P/13.

LETTER, Dr. Alfred Werner & Co. to Holland Bank Union, Haifa.

P/13. Letter, Dr. Alfred Werner & Co. to Holland Bank Union, Haifa, 24th March 1943.

Messrs. Holland Bank Union,
Bovis House,
Haifa.

24th March 1943.

Dear Sirs,

We are addressing you on behalf of our client Mrs. Margarete Linz née Springer of Jerusalem and desire to draw your attention to the following matter :

Some time after July 20th 1939 our client through her husband Dr. Ernst Linz attempted to sell and transfer to you 775 6% cumulative Preference Shares of the Electric Wire Company of Palestine Ltd., and delivered to you a transfer deed in blank signed by her in respect thereof. You paid to our client or her husband thereafter LP.116.250 for the shares.

In 1941 it was contended in certain proceedings which were pending before the District Court of Haifa in Civil Case No. 217/41 in the case of Regina Schlesinger *v.* The Electric Wire Company of Palestine Ltd., and others that in actual fact the so-called preference shares were invalid and non-existent and their allotments to the so-called shareholders void. The Defendants in the said case, in the compromise eventually reached between the parties to the action and which was confirmed by the Court, admitted this expressly and did so also later by a circular letter of 4.3.43, addressed to various persons.

From this it results that our client was actually not a preference shareholder in the said company and did not and could not transfer preference shares to you.

On behalf of our client we have written to the Company and enclose for your guidance a copy of this letter which is self-explanatory.

Now we wish to make it clear that our client does not desire to collect from the Company the amount due to her from it and at the same time to retain the sum she received from you in 1939.

We shall, therefore, approach you again in the matter as soon as further development of the matter will warrant this.

Yours faithfully,

(for) Dr. ALFRED WERNER & Co.,

(Sgd.) W. SCHREUER.

Exhibits.

P/2.
Letter, Werner to Defendant, 28th March 1943.

P/2.

LETTER, Werner to Defendant.

28th March, 1943.

REGISTERED

The Electric Wire Co.,
of Palestine, Ltd.,
5, Herzlia Street,
Haifa.

Dear Sirs,

We have been instructed by our client Mrs. Margarete Linz née Springer of Jerusalem to approach you in the following matter :

You will recollect that on 19th April, 1935, Dr. Siegfried Levinger on behalf of our client applied for 775 6% cumulative preference shares of LP.1.– each in your Company to be paid for out of our client's funds in German Reichsmarks.

In fact, on or about July 7, 1935, payment of those shares was made by our client and the amount of Reichsmarks 11,039.24 was remitted to your credit with a bank in Germany through the medium of the Trust and Transfer Office " Haavara " Ltd.

On or about September 10, 1935, our client received from you a letter purporting to allot to her 775 Preference Shares of LP.1.– each in pursuance of her above application for preference Shares. The alleged allotment was made at a meeting of your Board of Directors of August 30, 1935, and a return of allotment was thereafter filed by you with the Registrar of Companies, Jerusalem, accordingly.

Yet, for the following reasons our client has actually never received from you 775 6% cumulative preference shares of LP.1.– each or any preference shares.

By the Memorandum of Association of your Company 25,000 ordinary shares of LP.1.– each were created at the time. Thereafter, namely on April 12, 1935, you purported to create 11,000 6% cumulative preference shares of LP.1.– each out of the total of 25,000 ordinary shares, part of which was then unissued, by a special resolution allegedly passed at a so-called separate meeting of the holders of the ordinary shares, setting out the rights and privileges of the alleged preference shares and purporting thereby to alter the original terms of your Company's Memorandum of Association.

In actual fact, however, no general meeting or any meeting of shareholders took place on April 12, 1935, or on any other date for the purpose of resolving upon the creation of preference shares.

Exhibits.

P/2.
Letter, Werner to Defendant, 28th March 1943, *continued.*

Apart from this the said resolution had not and could not have the effect of altering clause IV of the Memorandum of Association being contrary to sections 7 and 43 of the Companies Ordinance, 1929. It is therefore, *ultra vires* the Company and wholly and incurable void. As a result of this your Company never created any preference shares, nor could same be allotted to our client and the purported allotment of preference shares is also *ultra vires* the Company and void.

Now we have been authorized by our client to state that she withdraws her application for preference shares in your Company, there being a delay of a valid allotment of almost eight years. She will repudiate any allotment of shares you may be advised to make in the future.

From the foregoing it results that your Company is bound to refund to our client the countervalue in Palestine Pounds of RM.11,039.24 which calculated at the official rate of exchange of RM.10.77 for the Palestine Pound amounts to LP.1,025.–

It is true that some time after July 20, 1939, our client purported to sell and transfer the so-called preference shares which she believed to hold, to Holland Bank Union, Haifa. In view of the fact, however, that the so-called preference shares were non-existent, and their purported allotment was void, as you yourselves admitted in District Court Haifa Civil Case No. 217/41 (R. Schlesinger *v.* you and others) and in a circular letter dated 4.3.43, addressed to various persons, no preference shares were transferred or could have been transferred to Holland Bank Union, Haifa. On the other hand our client never transferred her existing claim for the refund to her of the amount paid to you and you are, therefore, still liable to her for the amount above indicated.

For these reasons we have to demand from you the payment to us of the sum of LP.1,025.– together with 9% legal interest as from the date of receipt of this letter. Unless this sum is paid to us within 7 (seven) days from to-day, we shall be compelled to institute action against you in the competent Court and this will cause you inconvenience and expenditure.

Yours faithfully,

Dr. Alfred Werner & Co.,

(Sgd.) W. SCHREUER.

Exhibits.

P/16 (a).

INTERROGATORIES delivered on behalf of Plaintiff to Defendant.

P/16 (a). Interrogatories delegated on behalf of Plaintiff to Defendant, 18th November 1943.

Haifa, 18th November, 1943.

IN THE DISTRICT COURT OF HAIFA.

Civil Case No. 117/43.
Motion 314/43.

BETWEEN

MARGARETE LINZ *Plaintiff*

AND

THE ELECTRIC WIRE CO. OF PALESTINE LTD. *Defendant.*

INTERROGATORIES ON BEHALF OF THE ABOVE-NAMED PLAINTIFF FOR THE EXAMINATION OF THE ABOVE-NAMED DEFENDANT.

I. Is it not a fact that on April 12, 1935, no meeting of the members of the Defendant took place? If you say that there was a meeting, please state where it was held, how many and which members were present, whether and, if so, when and through which medium the notice convening the meeting was given, what was the period of the notice, and whether the meeting was convened as an ordinary or extraordinary meeting or as a separate meeting of the holders of the ordinary shares?

II. Was not the sum of RM.11,039.24 remitted to your credit with the Deutsche Bank and Disconto Gesellschaft, Berlin, on or about 7.7.35? Was the remittance made by plaintiff? If your reply to the latter question is no, state whether the said remittance was made by Haavara Ltd.? If you say that the remittance was made by Haavara Ltd., state whether it was made at the instance of for the benefit of Plaintiff? If your answer to the last question is in the negative, state at whose instance and for whose benefit the remittance was made. Did not the said Deutsche Bank and Disconto Gesellschaft, Berlin, credit you for the said sum on Reichsmarks Account and in Reichsmarks only? Did not the sum of LP.11,522.800 referred to in your Statutory Report filed with the Registrar of Companies as being "paid with the Deutsche Bank and Disconto Gesellschaft, Berlin" represent the countervalue of the said Reichsmarks and other amounts of Reichsmarks remitted to the said Bank and credited to you in consideration for purported allotments by you of alleged preference shares?

III. (1) Did not the Defendant hold an ordinary general meeting on 24.4.1936? If your answer is in the affirmative, was not a balance sheet dated 16.4.1936 and a profit and loss account signed by Dr. F. Millner on behalf of Bawly and Millner Public Auditors showing the affairs of the Defendant as at 31.3.1936 placed before the meeting for its approval? If your answer to the last question is in the affirmative state whether it was not resolved by the general meeting to adopt the said balance sheet only subject to modifications? If your answer to the last question is yes,

Exhibits.

P/16 (a). Interrogatories delegated on behalf of Plaintiff to Defendant, 18th November 1943, *continued.*

was not another balance sheet showing the Defendant affairs as at 31.3.1936 prepared in accordance with the said resolution ? If your answer to the preceding question is yes, was not the new balance sheet dated 29.4.1936, and signed by Dr. A. Broido and Mr. A. Rosenberg as directors and Mr. F. Millner on behalf of Bawly & Millner, Public Auditors ?

(2) If your answer to the first question of para. (1) above is in the affirmative, was not a minute of the proceeding of the general meeting made ? If you answer the last question in the affirmative, is it not true that the original of the minute of the general meeting of 24.4.1936 is not now in your possession but was lost ? If you say that the original minute was not lost, state what has become of it. If you say that the original minute was lost, have you not a copy of it ? Were not copies of the minute of the meeting of 24.4.1936 sent to Defendant's members ? If you say you have a copy does not in your copy appear the following passage :—

> " The Chairman, Dr. Majerczik, submitted the balance sheet and the Profit and Loss account and stated that it was expected that the Company would start production in the month of May. The balance sheet and profit and loss account were adopted with the following modifications : The road participation and the plot leased for 99 years have to be considered as assets. The item ' Net Loss,' both in the balance sheet and profit and loss account to read ' Development expenses ' and the item of LP.548.500 in the balance sheet to be designated as ' Paid Preference Shareholders out of rebate received on transfer.' Mr. Alfred Rosenberg moved that with these modifications the balance sheet and profit and loss account be adopted. This motion was seconded by Mr. Weil and passed unanimously."

IV. (1) . . .

(2) Is it not a fact that the sum of LP.548.500 appearing among the assets in the balance sheets dated 16.4.1936 and 29.4.1936, was not paid in cash to the alleged preference shareholders ? If your answer is that it was so paid state whether you allege that the Plaintiff too has received part thereof, and, if you assert this, state what was the amount ?

(3) Were not in consideration of the said sum of LP.548.500 or part thereof alleged ordinary shares allotted to the alleged preference shareholders.

(4) If your reply to the preceding question (3) is in the affirmative, were not 50 alleged ordinary shares of LP.1 each allotted to Plaintiff in consideration of a part of the said sum of LP.548.500 ?

V. Did you not on or about 4.3.43, make an offer to all persons registered in your register of members as preference shareholders to return them the amounts paid by them in respect of the said alleged shares ?

The Defendant through its Director Dr. Adolf Broido is required to answer the above interrogatories.

Advocate for Plaintiff :

(sgd.) DR. WALTER E. SCHREUER.

Exhibits.

P/16 (b). Affidavit in answer to Interrogatories, 13th December, 1943.

P/16 (b).

AFFIDAVIT in answer to Interrogatories.

Civil Case No. 117/43.

IN THE DISTRICT COURT OF HAIFA.

Between MARGARETE LINZ - - Plaintiff

and

THE ELECTRIC WIRE CO. OF PALESTINE LTD. Defendant.

ANSWER TO INTERROGATORIES.

The answer by Dr. Adolf Broido, Managing Director of the above mentioned Defendant Company, to the interrogatories for his examination by the above named Plaintiff.

IN ANSWER to the said interrogatories, I, the above named Dr. ADOLF BROIDO, make oath and say as follows :—

I. I cannot recollect personally what happened on 12th April, 1935, but according to the Minutes of the Company an Extraordinary General Meeting took place on that date at which all share holders were present at the Office of the Company. As far as I remember, the notices convening the meeting were prepared and sent by the Company's advocate, Dr. Buxbaum.

II. My answer to the first question is " No."
My answer to the second question is " No."
My answer to the third question is " No."

III. (1) My answer to the first question is " Yes."
My answer to the second question is " Yes."
My answer to the third question is " Yes."
My answer to the fourth question is " Yes."
(2) My answer to the first question is " Yes."
My answer to the second question is " No."
The original of the Minute is in my possession.

IV. (2) Part of the sum of LP.548.500 was paid in cash.
The plaintiff did not receive her part in cash.
(3) My answer is " Yes."
(4) My answer is " No."

V. My answer is " Yes."

All the above answers are made to the best of my information memory and belief.

Sworn to this thirteenth day of December, 1943, by Dr. Adolf Broido, before me

(sgd.) Dr. A. BROIDO.

(sgd.) D. H. YOUSEF,
Registrar.

P 17.

Exhibits.

P 17. Affidavit as further answer to Interrogatories, 2nd February 1944.

AFFIDAVIT as Further Answer to Interrogatories.

Civil Case No. 117 43.

IN THE DISTRICT COURT OF HAIFA.

Between MARGARETE LINZ Plaintiff

and

THE ELECTRIC WIRE CO. OF PALESTINE LTD. Defendant.

FURTHER ANSWER TO INTERROGATORIES.

This is a further answer by Dr. Adolf Broido, Managing Director of the above-mentioned Company, to the interrogatories for his examination by the above-named Plaintiff pursuant to the order of this Honourable Court in Motion 451/43 dated 20th January, 1944.

2. I, ADOLF BROIDO, hereby make oath and say as follows :—

i. I was informed on the 27th instant, that I was required to make a further answer to part of interrogatory No. 1 dealt with in my affidavit of the 13th December, 1943. I thereupon proceeded on the 28th January, 1944 to Jerusalem in order to make enquiries from Dr. A. Buxbaum, who was the advocate of the Company in 1935, and to inspect the Registrar of Company's file in regard to the matters affecting interrogatory No. 1.

ii. In the course of my search I found the original document dated 12th April, 1935, of which I attach copy marked "A.B.1" and a translation thereof marked "A.B.2." The said document A.B.1 bears the signatures of the persons mentioned therein.

iii. The document attached hereto and marked A.B.3 is a copy of the resolution filed with the Registrar of Companies. I have to add that in the original document in the Registrar's file the words "extraordinary general" were substituted in pencil for the word "separate" which is contained in the original.

iv. When replying to the interrogatories of 13th December 1943 I was not in possession of, nor could I trace among the Company's files the document referred to above as A.B.1. I was not aware of the fact that it was in the possession of Dr. A. Buxbaum.

3. From the facts as they appear to me now, I can confirm that a meeting actually took place on 12th April, 1935 at which certain persons were present and the resolution in question considered. I cannot confirm at this stage from memory how many members were actually present. It would seem that if and in so far as any members were not present, the document referred to as A.B.1 was considered as sufficient and as dispensing with their personal attendance.

4. I cannot personally testify whether or through which medium any notice convening the meeting was given. I have now inquired about it from Dr. A. Buxbaum who, I believed and presumed, had sent the notices, as he was at the time dealing with all legal matters affecting the Company, including the question of the Preference Shares. He informed me that he cannot tell me whether notices were sent and in what manner

Exhibits.

P/17. Affidavit as further answer to Interrogatories, 2nd February 1944, *continued.*

and what was the period given in the notices, if the notices were sent. Accordingly, I am in no better position and cannot state when and through which medium the notices, if any, convening the meeting were given and what was the period of the notice.

5. I am advised and verily believe that the resolution was intended to be a Special Resolution and that in the circumstances the meeting was to be an extraordinary general meeting.

Sworn to at Haifa this 2nd day of February, 1944 by Dr. Adolf Broido, (sgd.) ADOLF BROIDO.

Before me

(sgd.) D. H. YOUSEF,
Registrar.

D/19. Notice convening an Extraordinary General Meeting of Defendant for 14th May 1944, at 10 a.m. signed by Willy Marx. 11th April 1944.

D.19.

NOTICE convening an Extraordinary General Meeting of Defendant for 14th May 1944 at 10 a.m., signed by Willy Marx.

A.

THE ELECTRIC WIRE COMPANY OF PALESTINE LTD.

TAKE NOTICE that an Extraordinary General Meeting of the above Company will be held at the House of Dr. Majerczik, 6 Rahel Street, Mount Carmel, Haifa, at 10 a.m. on the 14th day of May, 1944, for the purpose of considering and if thought fit approving the following resolution as Special Resolution :—

1. That the share capital of the Company shall be increased up to LP.100,000.– by the creation of 70,000 Ordinary Shares of LP.1– each and numbered 30001—100000.

2. That any of the Ordinary Shares hereby created which shall be taken up by the Pirelli Group under the proviso to Art. 45 of the Articles of Association of the Company shall when so taken up be designated as "B" Ordinary Shares and shall rank pari passu with and be otherwise considered in every respect as the "B" Ordinary Shares created by the Resolution of the Company passed at the Extraordinary General Meeting of the Company on the 14th November 1937.

3. That the following article shall be substituted for Article 44 :—

"44. The Company may from time to time by Special Resolution, whether all the shares for the time being authorised shall have been issued or all the shares for the time being issued shall have been fully called up or not, increase its share capital by the creation of new shares, such new capital to be of such amount and to be divided into shares of such respective amounts and (subject to any special rights for the time being attached to any existing class of shares) to carry such preferential, deferred or other special rights (if any) or to be subject to such conditions or restrictions (if any) in regard to dividend, return of capital, voting or otherwise as the General Meeting resolving upon such increase direct, and if no direction be given, as the Directors shall deem expedient."

Exhibits.

D/19. Notice convening an Extra-ordinary General Meeting of Defendant for 14th May 1944, at 10 a.m. signed by Willy Marx. 11th April 1944. *continued.*

4. That the following shall be inserted after Article 44 :—

"44A. The Company may from time to time by special Resolution, whether all the shares for the time being authorized shall have been issued or all the shares for the time being issued shall have been fully called up or not, divide the shares in the capital for the time being, whether original or increased, into several classes with any preferential, special, qualified or deferred rights, privileges, conditions or restrictions attached thereto as, subject to the provisions of Art. 48 and 48 (A) hereof may by such special Resolution be determined."

5. That the following article shall be substituted for Article 45 :—

"45. The Company in general meeting may, before the issue of new shares, determine that the same, or any of them, shall be offered in the first instance, and either at par or at a premium, to all the then holders of any class of shares, in proportion to the amount of the capital held by them or make any other provisions as to the issue and allotment of the new shares ; but, in default of any such determination, or so far as the same shall not extend the new shares may be dealt with as the Directors shall deem expedient. Provided always that so long as the Pirelli General Group shall be the holders of all the 'B' Ordinary shares, any new capital shall in the first instance be offered to the Pirelli General Group, until the Pirelli General Group shall be entitled by virtue of their shareholding to 40% of the total votes of all the shareholders at a General Meeting of the Company. The time within which the said offer can be accepted or refused, shall be thirty days."

6. That the following article shall be substituted for Article 48 :—

"48. All or any of the rights and privileges attached to any class of shares may be modified, abrogated, or dealt with with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a General Meeting of the holders of the shares of the class, and all the provisions of these Articles relating to general meetings shall, mutatis mutandis, apply to such meeting, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-fifth of the issued shares of the class. This clause is not by implication to curtail the power of modification which the Company would have if the clause were omitted."

By Order of the Board,

(Sgd.) WILLY MARX,

Secretary.

Haifa.

11th April, 1944.

* * * * *

Exhibits.

AGREEMENT between Adolf Broido and Defendant.

Agreement between Adolf Broido and Defendant, 11th April 1944.

AN AGREEMENT made the 11th day of April 1944 between ADOLF BROIDO, of Haifa, on behalf of the holders of the Preference Shares in the Company below-mentioned, of the first part and THE ELECTRIC WIRE COMPANY OF PALESTINE LIMITED (hereinafter referred to as "the Company") of the second part

WHEREAS certain doubts have been raised as to the position of the Preference Shares of the Company created by a resolution of all the shareholders of the Company on the 12th April, 1935;

AND WHEREAS it is desired to settle any doubt or difficulty in regard to the said shares by declaring and confirming that the said shares were validly created and/or are in any event valid Preference Shares for all intents and purposes;

NOW THEREFORE IT IS HEREBY AGREED AND CONFIRMED as follows:—

1. THE Preference Shareholders hereby declare and confirm that the shares registered in their name as Preference Shares were duly and validly created and allotted and that in any event they hold the same and consider the same as Preference Shares having the rights and privileges originally assigned to them by the Resolution of 12th April, 1935.

2. TO set aside any doubt or difference in regard to the validity of the creation and/or allotment of the said preference shares the Company will convene an Extraordinary General Meeting of the Company and an Extraordinary General Meeting of the Preference Shareholders for the purpose of passing the resolution shown on the attached documents marked "A" and "B".

3. THE Company hereby undertakes to convene the said meetings and the Preference Shareholders hereby agree to vote at the said meeting in favour of the said Resolutions.

4. THIS agreement shall bind all the Preference Shareholders in the Company and also their respective successors in title, owners for the time being of their shares.

IN WITNESS whereof the parties hereto have hereunto set their respective hands the day and year first hereinbefore written.

Sgd. DR. W. MAJERCZIK, Chairman
For THE ELECTRIC WIRE CO. OF PALESTINE LTD.
Sgd. DR. BROIDO.

For the Preference Shareholders

Revenue Stamp of 50 mils.

Sgd. DR. BROIDO.

Ratified:

2 signatures illegible.

Ratified:

Sgd. GRUENBAUM
For and on behalf of
SIMSON & CO. LTD.

Revenue Stamp of 50 mils.

D 16.

Exhibits.

D/16. Compilation of alterations of Memorandum and Articles of Association of Defendant made after incorporation of Defendant Company but prior to 14th May 1944. Undated.

COMPILATION of alterations of Memorandum and Articles of Association of Defendant made after incorporation of Defendant Company but prior to 14th May 1944.

THE PALESTINE ELECTRIC WIRE COMPANY LTD.

ARTICLES OF ASSOCIATION.

Alterations.

12th April, 1935.

SPECIAL RESOLUTION :

I

" Contrary to the original terms of the Memorandum of Association, the capital shall consist not solely of ordinary shares but LP.11,000 *unissued* shares shall be issued as preference shares. Such preference shares shall be entitled to a dividend in advance at the rate of 6% out of the net profits. After them the holders of the Ordinary shares will receive a dividend of 6% and the surplus net profits will be divided between the Preference and the Ordinary shares in such manner that for each more two per cent. dividends on the ordinary Shares one more per cent. dividend will be given on the Preference Shares, but the total dividend on the preference shares shall not be more than 8%.

Accordingly, the preference shares will be satisfied in case of the Company being wound up, first with one hundred per cent. out of the assets available ; then one hundred per cent. will be paid unto the holders of the ordinary shares ; the surplus of the assets will be divided in such manner that the ordinary shares will receive double of the amount received by the preference shares.

The preference dividends at the rate of 6% are cumulatively payable ; but any claim herefore will be accepted only as for the time after the commencement of business, i.e. it begins with the first business year. The commencement of the first year is fixed not later than one year after the subscription.

The voting right of the preference shares shall be one third of the voting right of the Ordinary Shares."

II

Alterations.

24th April, 1936.

SPECIAL RESOLUTION :

" That the name of the Company being changed from the PALESTINE ELECTRIC WIRE COMPANY LIMITED to

" THE ELECTRIC-WIRE COMPANY OF PALESTINE LTD."

III

14th November, 1937.

SPECIAL RESOLUTIONS :

1. " RESOLVED that the Capital of the Company shall be increased to LP.30,000 by the creation of 5,000 shares of LP.1 each. The said new shares shall be numbered 25001 to 30000 inclusive, and shall be known as the ' B ' Ordinary Shares.

Exhibits.

D/16. Compilation of alterations of Memorandum and Articles of Association of Defendant made after incorporation of Defendant Company but prior to 14th May 1944. Undated, *continued.*

2. " RESOLVED that the said 5000 ' B ' Ordinary Shares shall be allotted equally between British Insulated Cables Limited, whose registered office is at Prescot in the County of Lancaster, England ; Callender's Cable and Constructions Company Limited, whose registered office is at Hamilton House, Victoria Embankment, in the City of London, England ; W. T. Henley's Telegraph Works Limited, whose registered office is at 11, Holborn Viaduct in the City of London ; and Pirelli-General Cable Works Limited, whose registered office is at Pirelli House, 343/345 Euston Road in the County of London, England. The last mentioned four Companies are hereinafter referred to as the ' Pirelli-General Group.'

3. " RESOLVED that the ' B ' Ordinary Shares shall rank *pari-passu* with the existing Ordinary Shares in regard to voting rights and participation in profits and capital.

4. " RESOLVED that so long as the Pirelli-General Group shall be holders of all the ' B ' Ordinary Shares, any new capital shall in the first instance be offered to the Pirelli-General Group until the Pirelli-General Group shall be entitled by virtue of their share holding to forty per cent. of the total votes of all the shareholders at a general meeting of the Company. The time within which the said offer can be accepted or refused shall be thirty days, and that accordingly Article 45 of the Articles of Association of the Company shall be amended by the addition thereto of the following proviso :

> " ' Provided always that so long as the Pirelli-General Group shall be the holders of all the " B " Ordinary Shares any new capital shall in the first instance be offered to the Pirelli-General Group until the Pirelli-General Group shall be entitled by virtue of their share holding to forty per cent. of the total votes of all the shareholders at a general meeting of the Company. The time within which the said offer can be accepted or refused shall be thirty days.'

5. " RESOLVED that Article 58 shall be deleted and a new Article substituted as follows :—

> " ' 58. Any General Meeting, including a Meeting for the passing of a Special Resolution, shall be called by thirty days' notice specifying the place, day and hour of the Meeting, and in case of special business the general nature of the business. Such notice may either be published in a newspaper circulating in the area in which the Company carries on its business or be sent by ordinary mail to all its members entitled to receive such notice. So long as the Pirelli-General Group shall be holders of all the " B " Ordinary Shares, notice of General Meetings shall, notwithstanding anything herein contained, be sent to the Pirelli-General Group and be served in the manner indicated in Article 114.'

6. " RESOLVED that the following Article shall be added to the Articles of the Company and numbered Article 82A, namely :—

> " ' The holders of the " B " Ordinary Shares shall so long as such shares are held by the Pirelli-General Group or any of them be entitled to nominate a Director of the Company who shall be a person to whom the other Directors can raise no reasonable objection

and such Director shall not be bound to hold any qualification and Articles 83 and 89 shall be modified accordingly. The Director so nominated may from time to time be removed by the holders of the "B" ordinary shares by notice to the Company and another Director substituted in his stead. The Director so nominated by the Pirelli-General Group shall not be removable by the Company.'

7. "RESOLVED that Article 89 of the Articles of Association shall be amended by the addition thereto of the following words :—

"'Provided that the provisions of sub-section (E) hereof shall not apply to a Director nominated under Article 82A.'

8. "RESOLVED that Article 114 of the Articles of Association be deleted and a new Article inserted as follows :—

"'114. All notices to be served and all communications to be made by or to and all consents and nominations to be given by the Pirelli-General Group to the Company shall be under the signature of a Director or the Secretary for the time being of Pirelli-General Cable Works Limited and the Company shall be entitled to treat all notices, communications, consents or nominations so signed as being signed on behalf of all members of the Pirelli-General Group. In like manner all notices and communications to be sent by the Company to the Pirelli-General Group shall be addressed to the Secretary for the time being in England who shall be deemed to receive the same on behalf of all members of the Pirelli-General Group. All notices and communications sent by the Pirelli-General Group to the Company shall be addressed to the Managing Director of the Company and its registered office for the time being in Palestine who shall be deemed to receive the same both on behalf of the Company and all the Directors. All notices and communications shall if sent by post be deemed to have been received in due course of post and it shall only be necessary to prove the posting thereof. Save as aforesaid, a notice posted up in the office shall be deemed to be well served upon those members whose address is not registered provided that it is so posted up at least twenty-four hours.'"

RESOLUTION No. 9 to be Re-drafted.

9. "RESOLVED that 2000 of the existing ordinary shares, namely those numbered from 501 to 1500 and from 2001 to 3000 shall not be entitled to participate in the assets of the Company in the event of the Company going into liquidation before the 1st April, 1942 and that the said shares shall not be entitled to receive dividends in any one year prior to April 1st, 1942 until and unless all other ordinary shares will have received a dividend of 5% for such year and an article should therefore be added after the article 116 to be known as 116A which shall read :—

"'116A. In the event of the Company's winding up before April 1st, 1942, the shares numbered from 501 to 1500 and from 2001 to 3000 shall not be entitled to participate in the Assets of the Company.'"

Exhibits.

D/17.

D/17. Special Resolution passed at Extra-ordinary General Meeting of Defendant convened for 14th May 1944 at 10 a.m., signed by Dr. W. Majerczik.

SPECIAL RESOLUTION passed at Extraordinary General Meeting of Defendant convened for 14th May 1944 at 10 a.m., signed by Dr. W. Majerczik.

The Companies Ordinance.

Special Resolutions of the ELECTRIC WIRE COMPANY OF PALESTINE LIMITED.

Pursuant to Section 67.

Passed on the 14th day of May, 1944.

At an Extraordinary General Meeting of the members of the above Company, duly convened and held at the House of Dr. Majerczik, 6 Rahel Street, Mount Carmel, Haifa, at 10 a.m. on the 14th day of May, 1944, the following Special Resolutions were duly passed :—

1. That the share capital of the Company shall be increased up to LP.100,000.– by the creation of 70,000 Ordinary Shares of LP.1.– each and numbered 30001 to 100000.

2. That any of the Ordinary Shares hereby created which shall be taken up by the Pirelli General Group under the proviso to Art. 45 of the Articles of Association of the Company shall when so taken up be designated as " B " Ordinary Shares and shall rank pari passu with and be otherwise considered in every respect as the " B " Ordinary Shares created by the Resolution of the Company passed at the Extraordinary General Meeting of the Company on the 14th November, 1937.

3. That the following article shall be substituted for Article 44 :—

" 44. The Company may from time to time by Special Resolution, whether all the shares for the time being authorised shall have been issued or all the shares for the time being issued shall have been fully called up or not, increase its share capital by the creation of new shares, such new capital to be of such amount and to be divided into shares of such respective amounts and (subject to any special rights for the time being attached to any existing class of shares) to carry such preferential deferred or other special rights (if any) or to be subject to such conditions or restrictions (if any) in regard to dividend, return of capital, voting or otherwise, as the General Meeting resolving upon such increase direct, and if no direction be given, as the Directors shall deem expedient."

4. That the following shall be inserted after Article 44 :—

" 44A. The Company may from time to time by Special Resolution whether all the shares for the time being authorised shall have been issued or all the shares for the time being issued shall have been fully called up or not, divide the shares in the capital for the time being, whether original or increased, into

Exhibits.

D/17. Special Resolution passed at Extra-ordinary General Meeting of Defendant convened for 14th May 1944 at 10 a.m., signed by Dr. W. Majerczik, *continued.*

several classes with any preferential, special, qualified, or deferred rights, privileges, conditions or restrictions attached thereto as, subject to the provisions of Art. 48 hereof may by such Special Resolution be determined.

5. That the following article shall be substituted for Article 45 :—

"45. The Company in General Meeting may, before the issue of new shares, determine that the same, or any of them, shall be offered in the first instance, and either at par or at a premium, to all the then holders, of any class of shares, in proportion to the amount of the capital held by them or make any other provisions as to the issue and allotment of the new shares ; but, in default of any such determination, or so far as the same shall not extend, the new shares may be dealt with as the Directors shall deem expedient. Provided always that so long as the Pirelli General Group shall be the holder of all the 'B' Ordinary Shares, any new capital shall in the first instance be offered to the Pirelli General Group, until the Pirelli General Group shall be entitled by virtue of their shareholding to 40% of the total votes of all the shareholders at a General Meeting of the Company. The time within which the said offer can be accepted or refused shall be thirty days."

6. That the following article shall be substituted for Article 48 :—

"48. All or any of the rights and privileges attached to any class of shares may be modified, abrogated or dealt with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a General Meeting of the holders of the shares of the class and all the provisions of these Articles relating to General Meetings shall, mutatis mutandis, apply to such meeting, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-fifth of the issued shares of the class. This clause is not by implication to curtail the power of modification which the Company would have if the clause were omitted."

(Sgd.) Dr. W. MAJERCZIK,

Chairman.

* * * * * *

Exhibits.

D/18.

D/18. Special Resolution passed at Extra-ordinary General Meeting of Defendant convened for 14th May 1944, at 11 a.m., signed by Dr. W. Majerczik.

SPECIAL RESOLUTION passed at Extraordinary General Meeting of Defendant convened for 14th May 1944 at 11 a.m., signed by Dr. W. Majerczik.

THE COMPANIES ORDINANCE

Special Resolution of :

THE ELECTRIC WIRE COMPANY OF PALESTINE LTD.

Pursuant to Section 67

Passed on the 14th May, 1944.

At an Extraordinary General Meeting of the members of the above Company duly convened and held at the House of Dr. Majerczik, 6, Rahel Street, Mount Carmel, Haifa at 11 a.m. on the 14th day of May, 1944, the following resolutions as Special Resolutions were duly passed :—

1. That this meeting confirms the unanimous resolution of the shareholders of the Company dated the 12th day of April, 1935, and reading or having the effect following :—

NOTE. On the Original document there appear both the original version in German and the translation into English. The English translation only is reproduced here.

(Translation from German.)

" Protocol

re Alteration of Memorandum

XXX

We, the subscribers of the Memorandum and of the Articles of Association of the PALESTINE ELECTRIC WIRE COMPANY LIMITED and so far the only members of this Company resolve (upon) the following alteration of the Memorandum.

Contrary to the Original Memorandum the capital shall not consist of Ordinary Shares throughout but LP.11,000.– shall be issued as Preference Shares.

These Preference Shares shall be entitled to a dividend of 6% in advance from the net profit. Thereafter the Ordinary Shareholders shall be entitled to 6 per cent. dividend whilst in the event of there being a surplus net profit each shall be distributed between the holder of the Preference Shares and of the Ordinary Shares so that for each addition two per cent. dividends allotted to the Ordinary Shareholders one per cent. additional dividend will be allotted to the Preference Shareholders provided that the maximum total dividends of the Preference Shares shall not exceed eight per cent. Correspondingly, the Preference Shares shall in the event of a liquidation be satisfied with 100 per cent. out of the available assets, then 100 per cent. will be put at the disposition of the holders of the Ordinary Shares, whilst the surplus of the assets will be distributed in such a manner that an Ordinary Share will receive double the amount received by a Preference Share.

The Preference Dividend of six per cent. is cumulatively payable in arrears but this claim commences only in respect of the period after the commencing of business i.e. for the first business year. The commencement

Exhibits.

D/18. Special Resolution passed at Extra-ordinary General Meeting of Defendant convened for 14th May 1944, at 11 a.m., signed by Dr. W. Majerczik, *continued.*

of the first business year is fixed at latest one year after the subscription. The voting right of the Preference Share will be one third of the voting right of the Ordinary Share.

(Sgd.) Dr. A. Broido, Dr. Alfred Schreuer, M. Aleinikoff, Alexander Kremener, Dipl. Ing. Alfred Rosenberg, Dr. Ludwig Mayer, Dr. S. E. Soskin, Dr. A. Buxbaum."

2. That the shares created or purported to be created as Preference Shares by virtue of the aforesaid resolution of the 12th day of April, 1935, shall be and shall always be deemed to have been preference shares having the rights and privileges more fully described in the said resolution, and that the said preference shares shall be considered as validly created and as subsisting notwithstanding any possible irregularity in the manner of their creation or otherwise except in regard to any shares the issue or allotment of which may have been cancelled by compromise made prior to the date of the passing of this resolution."

3. Any holder of the aforesaid Preference Shares may at any time on or before the 31st December, 1948 convert his preference shares, or any of them, into ordinary shares, ranking in all respects pari passu with the 14,000 original ordinary shares, and the following provisions shall apply to such conversion, that is to say :

(a) The holder who desired so to convert must give to the Company notice in writing, and such notice must specify by number the shares he desires to convert, and must be accompanied by the certificate relating thereto and by 200 mils in cash or by bankers cheque in respect of each share desired to be converted.

(b) Upon receipt of notice, certificate and payment as aforesaid the company shall record the conversion in its register of members, and thereupon the conversion shall take effect, and a fresh certificate or certificates shall be issued in respect of such of the shares so converted.

4. Nothing contained in any of the Resolutions marked 1, 2, 3 above, or any other Resolution of the Company or of the Board of Directors shall in any way be deemed an admission that the aforesaid resolution of the 12th April, 1935 is in any way deficient or defective, or that it was not lawfully or validly passed, or that the aforesaid Preference Shares were not lawfully or validly created, as the aforesaid resolutions are intended to set aside any doubt or to regularize any irregularity (if any) which may exist in relation to the said Preference Shares or their creation."

(Sgd.) Dr. W. MAJERCZIK,

Chairman.

Exhibits.

D/20.

D/20. **TRANSFER DEED regarding 50 Ordinary Shares of Defendant signed by General Trust Corporation Limited and Dr. Adolf Broido.**

[*Not printed.*]

SHARE CERTIFICATE of Defendant in the name of General Trust Corporation Limited in respect of 50 Ordinary Shares. Form D for use in connection with securities transferable by Deed. Trading with the Enemy Ordinance 1939. Defence (Finance) Regulations, signed by General Trust Corporation Limited.

[*Not printed.*]

D/21. D/21.

TRANSFER DEED regarding 50 Ordinary Shares of the Defendant signed by Dr. Siegmar Bromberger and the General Trust Corporation Limited.

[*Not printed.*]

SHARE CERTIFICATE of Defendant in the name of Dr. Siegmar Bromberger in respect of 50 Ordinary Shares.

[*Not printed.*]

FORM D for use in connection with securities transferable by Deed. Trading with the Enemy Ordinance 1939. Defence (Finance) Regulations, signed by Dr. Siegmar Bromberger.

[*Not printed.*]
