49, 1946

No. 72 of 1945.

In the Privy Council.

APPELLANTS' CASE

ON APPEAL

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

BETWEEN

KHALIL RAJAH KHALIL and Others (Plaintiffs) *Appellants*

AND

TOVA RUTMAN OF HUDERA and Others (Defendants) *Respondents.*

Case for the Appellants.

1. This is an appeal from the judgment of the Supreme Court of Palestine, sitting as a Court of Appeal at Jerusalem, dated 21st July 1943 (Gordon-Smith C.J. and Copland J.) allowing an appeal by the Respondents from a decision of the Settlement Officer Haifa Settlement Area, dated 30th March 1943, in Case No. 1/Kefar Brandeis. Record. pp. 175–182. pp. 157–164.

2. The Appellants are inhabitants of the village of Raml Zeita, situate in the sub-district of Tulkarm. Their claim in the action was to be registered for their appropriate shares as owners in village Masha (Common ownership) of certain lands forming part of the village and formerly known as Khor el Wasa', but now known as Kefar Brandeis. The Respondents as defendants in the action claimed to be the owners of the lands in question. The decision of the Settlement Officer was in favour of the Appellants so far as the Respondents were concerned, the Respondents being some of the defendants in the action. The Supreme Court reversed the decision and gave judgment for the Respondents. pp. 1, 92–156. p. 160. p. 177.

3. The dispute as to the ownership of Khor el Wasa' is one of long standing. There has been litigation on the subject in the Palestine Courts from time to time since 1922, and the matter has already been once before the Privy Council (P.C. appeal 19/35). Accordingly the case is somewhat complicated. But ultimately it will be found, in the Appellants' submission, that the point of substance for decision in this appeal is as follows: Had the Settlement Officer power and was he in his judgment in the action (Case No. 1 Kefar Brandeis) entitled to disregard an Order p. 406. p. 160.

Exhibit No. 16. of the Land Court at Haifa dated 6th April 1925, made in an action to which the Appellants were not parties, which Order, as the Settlement Officer found, was procured by fraud, and fraud of a kind which purported to give jurisdiction to the Court when in fact it had no jurisdiction? The Supreme Court of Palestine held that the Settlement Officer had no jurisdiction to do this, and reversed his decision. The Appellants respectfully submit that the decision of the Settlement Officer was *intra vires* and was right, and that the judgment of the Supreme Court reversing the decision was wrong.

Record. p. 175.

4. It is necessary to the proper understanding of the dispute that its history since 1922 should be briefly summarised. This can best be done by dividing that history into four stages and dealing with each in turn.

Stage I.

Exhibit "D.D." 5. The first stage begins on 2nd September 1922, when seven villagers of Raml Zeita instituted an action (Land Case 18/22) in the Land Court of Nablus, Samaria District, against 44 other inhabitants of the same village. The plaintiffs claimed that the defendants were attempting to transfer to the Palestine Jewish Colonisation Association the whole of the Raml Zeita lands. They said that their lands were "Masha'" from time immemorial. They asked for a declaratory judgment to that effect and for an injunction restraining defendants from dealing with the plaintiffs' shares in the land. There being at that date 906 inhabitants of the village, the plaintiffs' shares numbered seven.

Record. p. 189.

Exhibit "Z." p. 191 6. The Nablus Land Court gave judgment on the 13th March 1923 (Land Case 18/22). Inter alia the Court declared that "the land in dispute is Masha' to all the inhabitants and we order that it should be left as it stood from time immemorial, without it being assigned to anybody."

Exhibit "Y." 7. This judgment was set aside on 1st October 1923, on appeal by the defendants (Land Appeal 59/23). The Court held that, while the Land Court was entitled to consider whether the lands in question were Masha' or not, it could not register this as Masha' to the whole inhabitants of the village. The Court therefore ordered the case to be remitted to the Nablus Land Court so that the plaintiffs might prove legally the shares in the land to which they were entitled.

Record. p. 195.

p. 199. 8. The action was accordingly re-heard by the Nablus Land Court, and judgment was delivered on the 14th April 1924. Two plaintiffs of the original seven dropped their claim and did not appear. The remaining five proved their claim to one share each out of 906 shares in the Masha' land of Raml Zeita, and the Court ordered these five shares to be registered in the Tabou in the respective names of the plaintiffs. Defendants were ordered to pay costs. This judgment was affirmed on appeal to the Supreme Court on 20th January 1925. A Mr. Nissan Rutman guaranteed the costs of the appeal. Mr. Rutman is a person of importance in this history. He was an agent of Keren Kayemith Leisrael Ltd. (the Jewish National Fund).

Exhibit No. 11.

p. 201.

Exhibit No. 13.

Exhibits "B" and "C." Record. pp. 193, 200.

9. It should be mentioned that one of the plaintiffs who withdrew his claim in this action was Abdul Fattah Mari el Samara (variously spelt). His notice of withdrawal dated 26th December 1923 (Exhibit No. 9) was after the decision of the Court of Appeal and before the re-hearing. Abdul Fattah is also a person of importance in the subsequent history of the case. He was in 1922 in possession of part of the lands Khor el Wasa'. It is to be noted that he signed the application to the President of the Land Court, and that this document stated the boundaries of Zeita village as South, East and North of " the way " (road); West, Nafiat land in the hands of the Jews. Khor el Wasa' lay within these boundaries. In view of the suggestion in the course of the present case that Khor el Wasa' was not mentioned in the Nablus action, it must be observed that these lands lay within the boundaries of the village of Zeita as noted in the application to the Court. This is confirmed by an agreement to partition Khor el Wasa' dated 26th December 1919, under which the eastern part was allotted to the aforesaid Abdul Fattah el Mari, and others.

Exhibit " D.D." p. 189.

Record. p. 112, l. 10.

Exhibit " B.B." p. 187.

10. This ends the first stage of the case history.

To sum up: the Nablus Land Court had found that the lands of Raml Zeita village had been Masha' from time immemorial; had registered five shares of these lands in the names of the five remaining plaintiffs; the boundaries of Zeita village were accepted by the Court as stated in the plaintiffs' pleading; and these boundaries included Khor el Wasa'.

Stage II.

11. The second stage begins with an action in the Land Court, Haifa District (Land Case 10/25 (Copland J. and Strumza J.) instituted by the aforesaid Abdul Fattah Mari el Samara and his 3 sons on the 29th March 1925, against three Jewish settlers of Khudeira village, Haifa sub-district. Here " Khor el Wasa " again comes into the story. Abdul Fattah claimed ownership of Khor el Wasa', and the eviction of the defendants, whom he alleged were trespassing thereon. It is important to note that the plaintiffs gave the locality of the land as " Khor el Wasa—*Khudera* (or Hudera) village."

Record. p. 204. Exhibit No. 15.

12. It is desirable at this stage to make good the submission of the Appellants (A) that this action of Abdul Fattah was collusive, and (B) that jurisdiction was assumed by the Haifa Land Court owing to fraud.

13. (A) *Collusion:* One of the plaintiffs in this action (Case 10/25) gave evidence for the plaintiffs in the action the subject of this appeal (i.e. Case No. 1, Kefar Brandeis). This was Massa Abdul Fattah, a son of Abdul Fattah Miri el Samara. He said:—

Record. p. 54.

> " I know Khor el Wasa. I was born in the land . . . Before Rutman possessed the land it belonged to Zeita. Masha' to us and the people of Zeita . . . He (Abdul Fattah) later raised another case against 3 persons in a Haifa Court. Three Jews . . . Mr. Rutman raised the case on our behalf by agreement. We won the case. We gave Rutman a purse of Money . . . The 3 Jews did not in fact dispute our possession. My father intended to sell

the Khor. We did not know how to do so. So we brought a fictitious case against three Jews to obtain this end . . . I paid no expenses to Mr. Kaisermann (advocate), Rutman paid."

Record. p. 56.

On cross-examination he said :—

"When we agreed to sell to Rutman we contributed 4,058 dunams for L.P. 9,000 . . . We have not been in independent possession of the Khor Wasa. Each person cultivated in rotation . . . The people of Zeita received sums of money from Rutman to state that the land belonged to Abdul Fattah . . . I agree that the transaction was a fraudulent one. I was a young man ; my father made this with Rutman, and a father always compels his son to do as he wishes . . ."

On re-examination :—

p. 59.

"When we signed the lease Rutman read this to us. Even if it was in Arabic we could not read it. The first sale was for 4,058 dunams ; this was for L.P.9,000, so my father said. I received only L.P.1½. My father received only sums of 10 and 20 pounds until the amount was paid. My father did not take the money alone ; everyone from the village received money ; each person who admitted that Khor el Wasa belonged to Abdul Fattah received L.P.3. I cannot say that L.P.9,000 was paid to the village . . . Rutman is in the position to recover from us L.P.2,000 by documents in his possession. These are not case documents. We are not indebted to him for anything. He kept our sanans (deeds) with which to threaten us . . ."

It is clear from this evidence in the Appellants' submission that this action (Case 10/25) was collusive. Rutman had agreed with Abdul Fattah to buy his land (Khor el Wasa) outright . . . not subject to Masha. It was necessary, therefore, to have the land registered in the plaintiffs' names as proprietors, with nobody to raise inconvenient questions about Masha. These Jewish alleged trespassers were accordingly named as defendants, and judgment was given against them in their absence.

(B) *Fraud* :—

Abdul Fattah, the principal plaintiff in the action, was well aware that Khor el Wasa, a part of which he occupied, was Masha' land of the village of Raml Zeita. In the first place he was a party to two agreements dated respectively 24th November 1919 and 26th December 1919, by which the Masha' lands of Zeita village were divided among the inhabitants of the village. Clause 3 of Exhibit "A.A." stated : "None of the inhabitants of Zeita village shall have the right to claim his ownership in the lands in his possession, whereas these are 'Masha' between the whole village." In other words, the persons to whom the shares were allotted were occupiers only ; the land occupied was in common ownership of the village. Under Exhibit "B.B." the Eastern part of Khor el Wasa was declared to include "fifteen and a half feddans according to the lot of the Prophet of God" and was allotted to Abdul Fattah and others. By an agreement dated 25th December 1919, Abdul Fattah had 4 feddans.

Exhibit No. 1 "A.A." Record. p. 185 and No. 2 "B.B." p. 187. Exhibit No. 3 "C.C." p. 188.

Further, Abdul Fattah as plaintiff in the Nablus case 18/22, agreed the boundaries of Zeita village as including Khor el Wasa, and claimed that the land was Masha'.

Khor el Wasa' being, then, to the knowledge of Abdul Fattah in Zeita village and Masha' land, and being therefore situated in Tulkarem district, it was under the jurisdiction of the Nablus Land Court. And the Nablus Court had already held that these lands were Masha'. It was therefore necessary to bring the action (which sought to establish the absolute ownership of Abdul Fattah and his sons) in another court.

Exhibit No. 11. Record. p. 199.

" Zeita belonged to Tulkarem. Rutman wanted the case in Haifa," said Abdul Fattah's son in his evidence in Case No. 1, Kefar Brandeis. " I believe if we had raised the case in Tulkarm it would not have had the same result." Accordingly in October 1924 Rutman requested two surveyors Epstein and Musaltan, to prepare a plan of Khor el Wasa. The plan was prepared and headed " Zeita-Tulkarem." Rutman asked Musaltan to erase the words " Zeita-Tulkarem " and substitute the words " Khor el Wasa-Hudera." This evidence was given by these surveyors in the Kefar Brandeis case. This was done. Rutman now had a plan headed " Khor el Wasa', Hudera," and Hudera was within the jurisdiction of the Haifa Land Court. Abdul Fattah could therefore bring his action in the Haifa Court with the knowledge that the only map before the Court would show Khor el Wasa' as part of Hudera, and so within their jurisdiction.

p. 54.

Separate document " No. 72 of 1945." Record. pp. 39–40.

14. The view that this action (Case 10/25) was fraudulent and collusive was accepted subsequently by two Settlement Officers. The first was Mr. Lowick, L.S.O. of Jaffa and Huderin areas, in Case No. 92/30 (Stage III, see below, p. 10). The following is an extract from his judgment :—

Exhibit No. 13. Record. p. 390.

" The Settlement Officer finds that the land in dispute (Khor el Wasa) was situate within the jurisdiction of the Nablus Land Court, while the Haifa Land Court was induced to assume jurisdiction by deliberate misrepresentation by the parties before it. The methods adopted by Mr. Nissan Rutman in conjunction with Abdul Fattah Mari Samara to obtain possession of the land appear to indicate a chain of a corrupt, deliberately misleading and improper nature. This is indicated by the sequence of events relating to the transaction :—

" 26.12.23. Abdul Fattah Mari Samara withdrew from the action at the Land Court at Nablus.

" October 1924. Mr. Nissan Rutman obtained a map of Khor el Wasa and ordered the correction of the description on the map from 'Zeita Tulkarem' to ' Khor el Wasa Hudeira.'

" March 1925. Abd el Fattah Mari Samara brought an action in the Haifa Land Court for registration of Khor el Wasa in his name on the grounds of possession, citing certain defendants from Hudeira.

" May 1925. Abd el Fattah Mari Samara obtained registration and shortly afterwards sold to Mrs. Tova Rutman and Miss Rifka Aaronson whose attorney Nissan Rutman was at the time and still is. Mrs. Tova Rutman is the wife of the said Nissan Rutman."

Document 53. Record. p. 162.

The other Settlement Officer was Mr. Cecil Kenyon, who in his judgment in the present case (No. 1 Kefar Brandeis) said :—

" It is quite certain that Abd el Fattah es Samara knew at all " times that Khor el Wasa was within the Masha' land of Raml " Zeita and that Raml Zeita was in Tulkam sub-district by concealing " this fact from the Haifa Land Court he induced the Court to " proceed with the action and to deliver judgment in the belief " that the land was part of Hudeira. He suffered himself to be " registered as an owner in 5,358 dunams as shown in a plan made " for Nissan Rutman in 1924. Nissan Rutman stated in his evidence " that he personally took no interest in the Land Court action. " He did, however, negotiate with Abd el Fattah for the purchase " of the land in 1924 ; he paid him sums of money ; he knew that " Abd el Fattah had no registration ; he also knew that Abd el " Fattah failed to obtain registration because the Muktar, one " Samsonoff, refused to sign the necessary certificates. He had a " plan made of the land with the inscription Zeita—Tulkarem, and " at his request this was altered to Khor el Wasa—Hudera some time " in 1924. He paid the fee of 5 per cent. of the market value of " the land to the Land Registry for Abd el Fattah, and he held an " irrevocable power of attorney that enabled him to effect immediate " transfer to his principals.

" In the opinion of the Settlement Officer he was both interested " in the action and a party to inducing the Land Court of Haifa " to assume jurisdiction by the deliberate misrepresentation that " the land was in Haifa sub-district . . .

" The Settlement Officer comes to the conclusion that the " registration of Abd el Samara and partners was obtained by " fraud, that Nissan Rutman was aware of the matter and a party " to the fraud . . ."

Exhibit No. 16 " O." Record. p. 203.

15. In the circumstances it is not surprising that the Haifa Land Court, on 6th April, 1925, wholly unaware of the background of the case and of the fact that they had no jurisdiction to try the action, gave judgment " by default " for the plaintiffs, and ordered that the lands be registered in the names of the plaintiffs.

16. The subsequent history is briefly summarised in the two following paragraphs.

Record. p. 162.

17. Abdul Fattah and his sons were, on 4th June, 1925, registered as owners of Khor el Wasa, an area of 5,358 dunams. On 5th June, 1925, they transferred 1,358 dunams to Mrs. Tova Rutman and 2,700 dunams to Miss Rifta Aaronson ; and on 26th June, 1926, the balance of 1,300

dunams were also transferred to Miss Rikfa Aaronson. Thereafter Abdul Fattah and his sons are alleged to have become the tenants of " Rutman's principals " (Judgment in Case No. 1, Kefa Brandeis).

18. Two oppositions to this Judgment were made. The first was by the Attorney-General of Palestine (Sir Norman Bentwich) and is dated 26th January, 1927. It is stated (inter alia) as Record. p. 243.

> " The judgment is prejudicial to the interests of the Government which was not present and was not a party to the suit . . .
>
> " The plan alleged to have been produced in the case is tampered with. The words ' Zeita of Tulkarem ' have been rubbed out and ' Khor el Wassa ' printed on it.
>
> " As the land is included in the Land Registers of the Tulkarem sub-district, and as the Samaria Land Court has already given a judgment as to the title of the land, the Land Court of Haifa had no jurisdiction in the matter, and it was only on account of the spurious map which purported to indicate that the land was included within the village Hudera and which thereby deceived the Court, that jurisdiction was assumed by the Haifa Court."

It also referred to the judgment of the Nablus Land Court (in Case 10/25) " with regard to this land " that it was Masha' land of Zeita village ; and to the fact that the defendants in the action owned only five shares out of 286, and therefore only these shares could have been given by the judgment to the plaintiffs on the strength of the admission of the defendants to the plaintiffs' occupancy.

The Attorney-General also filed a separate action dated 5th February, 1927, claiming a cancellation of the said judgment and the land registrations based thereon. The Government claimed the lands as " Mahlul " i.e., vacant. The Government, however, for reasons unknown to the appellants, abandoned this last-mentioned claim on payment by Rutman of £1,000 sterling, as recorded in an agreement between The High Commissioner for Palestine H. E. Lord Plumer and Mrs. Rutman and Miss Aaronson. The Appellants submit that this action by the Palestine Government in renouncing its claim to treat the land as " Mahlul " in no way affects the present case. p. 244. Exhibit No 41 " X." Record. p. 246.

19. The other opposition to the judgment was made by persons named Saleh Ismail e Khitib and Mansa Rassa el Maj Ahmed of Zeita. The file in this action could not be traced. The opposition (in the Haifa Land Court) was, however, dismissed on what was apparently a procedural point and Saleh Ismail appealed. The judgment of the Appeal Court (Land Appeal No. 35/26 is Exhibit No. 34, Record p. 233. It confirms the judgment of the Court below, which was given on the ground that " the two defendants Rutman and Aaronson were not parties to the first action " (Case 10/25) " and could not therefore be considered as parties to the existing action. Saleh Ismail was, however, given the right to raise a separate action against whomsoever he wishes in respect of his ownership in the lands affected by the judgment which is now being opposed." p. 233.

20. It should be added that the Attorney-General for Palestine on the 17th January, 1929, signed a charge against Nissan Rutman of having prepared a false document (the map above referred to) and of having presented it to the Land Registry Office at Haifa with a view to the area shown in the plan being registered in Haifa. The Senior Magistrate at Haifa refused on 29th January 1929 to commit Rutman for trial, on the ground that the conditions necessary to constitute the offence were not present. Whereupon the Attorney-General made an Order on the 4th April 1929, committing Rutman for trial on a charge of having submitted a false document contrary to the 2nd addendum to Article 155 of the Penal Code. This case also was dismissed, according to the copy of Registration (Exhibit No. 54 ; Record p. 277). The reasons for the judgment are not stated.

Exhibit No. 41. Record. p. 250.

p. 246.

21. This ends Stage II of the history of the case, which leaves Mrs. Rutman and Miss Aaronson in possession, but not undisputed possession, of the lands of Khor el Wasa.

Stage III.

22. Stage III of the history is a little involved, but as at its conclusion the case is left very much as it was at the end of Stage II, it can be taken quite shortly.

23. Stage III relates to proceedings before the Land Settlement Officer, Jaffa Settlement Area. By virtue of a Settlement Notice made under Section 5 of the Palestine Land (Settlement of Title) Ordinance, 1928, and published in the Palestine Gazette on 2nd May 1929, the lands of Khudeira (or Hudera) village and other localities were declared under settlement. The effect of this Notice was that jurisdiction in actions concerning rights to land within the boundaries of the village of Khudeira was conferred upon the Settlement Officer in accordance with section 6 of the Ordinance.

Drayton V. 2 c. 80 p. 853.

24. On the 6th November 1930, one Hasan Mustafa Abn Jubara of Zeita and eighty-six partners of Zeita instituted proceedings in the Court of the Settlement Officer, Jaffa and Hudeira areas, against Rifka Aaronson (represented by Nissan Rutman of Hudeira), Tova Rutman and other persons. The claim was brought to decide whether Khor el Wasa lay within the boundaries of Hudeira and was thus within the jurisdiction of the Settlement Officer, Jaffa Settlement Area. The plaintiffs claimed that the area in question lay within the boundaries of the village of Zeita, Tulkarem sub-district, and formed part of the Masha' Lands of Raml Zeita.

Case No. 92/30. Ex. No. 62. Record. p. 286.

25. It is to be noted that Abd el Fattah Mar'l es Samara and his three sons were joined as third parties in the action, claiming that the lands in question were Masha' lands of Zeita. This was the same family that appeared as plaintiffs in the collusive action referred to in Stage II above. It is further to be noted that they withdrew their claim on the first day of the hearing, and were dismissed from the action.

p. 288. p. 204. p. 289.

26. On the 25th November 1930, the Settlement Officer made an interim Order in the action which, after referring to the conflicting judgments of the Nablus and Haifa Land Courts on the Khor el Wasa lands, concluded as follows :— Record. p. 312.

" The Settlement Officer is thus confronted with the position of a unit of land registered at the Land Registry of Haifa, registration originating in a judgment of a competent Court which has become final. This was the situation at the date of the issue of the Notice of Settlement, and the Settlement Officer is of opinion and decides that he has no power to exclude land to be registered from the Village Settlement of Hudeira.* It should, however, be realised that should the plaintiffs or Third Parties succeed at any time in obtaining judgment that the land in dispute or portion thereof is in their ownership, the question of adjusting the boundaries of Hudeira may be referred to the competent administrative authority after settlement." p. 313.

In his judgment in the action, the Settlement Officer said :— p. 378, l. 13.

" This statement* should have been qualified by the addition of the words, ' on prima facie evidence without going fully into all evidence available.' "

27. On the question of jurisdiction to hear the claim, the Settlement Officer made the following interim Order on the 12th December 1930 :— p. 318.

" Although a judgment was given by the Land Court, Haifa, and confirmed by the Court of Appeal regarding the subject matter of the present claim, and although the present claims are now obviously brought with the object of obtaining a revision of that judgment, the Settlement Officer is of opinion that he is bound under Section 27 (2) of the Land Settlement Ordinance, 1928–30, to hear any claim to the land that may be brought by any persons, who were not parties to the action heard by the Haifa Land Court. Such actions are new actions the hearing of which is barred by any court other than that of the Settlement Officer by Section 6 of the Land Settlement Ordinance, 1928–30."

The judgment of the Haifa Land Court moreover contained a statement that :—

" The opposer is at liberty to institute a separate action against any person in order to prove the ownership of the land in question."

" That right of recourse is not barred by the publication of a notice under Section 5 of the Land Settlement Ordinance 1928–30 ; the consequence of such notice is that the only Court now possessing jurisdiction is that of the Settlement Officer."

28. After a prolonged investigation the Settlement Officer delivered judgment on the 26th June 1931. His conclusions may be summarised as follows :— p. 377.

(1) That the whole area of Khor el Wasa lay outside the boundaries of the Hudeira Infiat Kushans and was thus included within the Kushan boundaries of Raml Zeita.

(2) That the Haifa Land Court was induced to assume jurisdiction by deliberate misrepresentations by the parties before it (see paragraph 14 *supra*).

(3) That the boundaries of Hudeira east and south were shown in the Wilbushevitch map and as indicated by a blue line on the map illustrating the judgment; and that accordingly the whole area of Khor el Wasa in dispute in the action was included within the boundaries of Zeita and/or Attil Masha' land.

Record. p. 391.

29. Accordingly the Settlement Officer made the following Order :—

(A) That the entries in respect of Khor el Wasa' in the said Land Registry of Haifa be separated from the entries in respect of the lands of Hudeira and be described as Khor el Wasa'; and

(B) That an observation be made in respect of such entries that in accordance with the judgment of the Settlement Officer, Jaffa Area, in Case No. 92/30, these lands are held to be situated within the Masha' lands of Zeita and/or Attil, and are recorded as such in the Land Registry of Tulkarem, and that a corresponding entry be recorded in the Land Registry of Tulkarem in respect of all entries relating to Raml Zeita and/or Attil, to the effect that a portion of the land known as Khor el Wasa' is also registered in the Haifa Land Registry.

L.S. Appeal No. 1/31. Record. p. 396. L.A. Appeal 66/32. Record. p. 400.

30. The defendants appealed from this judgment to the Haifa Land Court. The appeal was dismissed on the 18th July 1932. A further appeal made to the Supreme Court was also dismissed on 12th January 1933, on the ground that the appeal did not lie. The defendants then appealed to the Privy Council.

P.C. Appeal No. 19/35. p. 405.

31. The judgment of the Judicial Committee was delivered (by Lord Thankerton) on 27th July 1936. Their Lordships held (1) that the Settlement Officer was entitled to find that the area of Khor el Wasa' was not in Hudeira, but within the boundaries of Zeita and/or Attil; but (2) that it was outside the jurisdiction of the Settlement Officer and ultra vires, in so far as it dealt with questions of rights to land outside the village of Hudeira, which was under settlement; and that accordingly the finding that the area of Khor el Wasa' which he held to be outwith the boundaries of Hudeira, was Masha' land, along with the consequential direction as to entries in the land Registries of Haifa and Tulkarem, was ultra vires of the Settlement Officer.

The judgment concluded as follows :—

" It is right that their Lordships should make clear that their decision is confined to this question of the jurisdiction of the Settlement Officer in settling the village of Hudeira; it does not involve any expression of opinion on the merits of the Appellants' claim to part of Khor el Wasa'. The matter will be entirely open to the Settlement Officer, when the villages of Zeita and Attil are under settlement.

" Their Lordships will accordingly humbly advise His Majesty that the appeal should be allowed, that the judgment of the Land

Court of Haifa, dated the 18th July 1932, and the judgment of the Supreme Court of Palestine dated the 12th January 1933, should be set aside, and that the judgment of the Settlement Officer dated the 26th June 1931, should be varied by excluding from the findings any finding that the area of Khor el Wasa' is Masha' land, and also the Order as to entries in the Land Registries of Haifa and Tulkarem. The Appellants will have the costs of this appeal and their costs in the Land Court and the Supreme Court from the Respondents."

32. This concluded Stage III of the history of the case, which was thus left in very much the same position as at the end of Stage II, viz., with a judgment of the Nablus Land Court holding that Khor el Wasa' was Masha' land of Raml Zeita, and a judgment of the Haifa Land Court given on the footing that Khor el Wasa' was within the boundaries of the village of Hudeira; while Mrs. Tova Rutman and Miss Rifka Aaronson and others deriving title from Abdul el Samara remained in possession, but a still disputed possession, of the lands of Khor el Wasa'. The only difference was that it had now been decided by the competent Settlement Officer that Khor el Wasa' was *not* within the boundaries of Hudeira, which decision was upheld by the Judicial Committee of the Privy Council. (The village of Attil disappeared from the case by a judgment of the Settlement Officer confirmed by the Supreme Court.)

STAGE IV.

33. The matter then remained in abeyance till 1941. On the 18th December 1940 the High Commissioner had proclaimed Kefar Brandeis (Khor el Wasa') to be a village unit within the sub-district of Haifa. On the 28th October 1941 a notice of intended settlement of these lands was published in Palestine Gazette No. 1137, and on the 18th November of the same year a notice of Commencement of Settlement was published in Palestine Gazette No. 1142. On the 5th December 1941 the Appellants instituted proceedings before the Haifa Settlement Officer (Mr. Cecil Kenyon) claiming ownership of the lands of Khor el Wasa' as Masha' lands of Zeita village. The seven memoranda of claims are set out in the Record pp. 1–16.

Record. p. 35, l. 24. p. 35, l. 37. pp. 1–16.

34. By an interim Order made by the Settlement Officer on 15th June 1942, the Settlement Officer held that he had jurisdiction to try the action. After quoting the relevant orders and proclamations, he concluded as follows :—

Document No. 14. Record. p. 34. p. 35.

"A village within the meaning of the Land (Settlement of "Title) Ordinance Cap. 80 is an area described by the Settlement "Officer in a notice published under section 5 of the Ordinance "and the Settlement Officer therefore finds by virtue of these "proclamations that Kefar Brandeis is a village unit within the "sub-district of Haifa and that the notice of intended settlement "dated the 28th October, 1941, published in Palestine Gazette "No. 1137 and the notice of Commencement of Settlement dated "18th November, 1941, published in Palestine Gazette No. 1142 "are valid and effective. Any disputes as to ownership or posses-"sion of lands in a settlement area shall be decided in accordance

" with Section 10 of the Ordinance, and the Settlement Officer " finds that as Settlement Officer of the sub-district of Haifa he has " jurisdiction to hear the disputes and decides to proceed with the " hearing."

Record. pp. 24-92. p. 92. p. 107. p. 141.

35. After a large body of evidence had been called by both parties, final pleadings in the case were delivered by the plaintiffs on 12th February 1943, and by the defendants on 27th February 1943 ; and there was a Reply by the plaintiffs on 26th March 1943. All are voluminous. The plaintiffs' grounds of claim may be summarised as follows :—

(1) Khor el Wasa' is a part of Raml Zeita which is Masha', as adjudged by the Nablus Land Court in a final judgment (*res judicata*) ;

(2) The judgment of the Haifa Land Court which held that Khor el Wasa' was owned by Abdul Fattah and his sons included a part of the subject matter of the judgment of the Nablus Land Court, and its repugnancy to the Nablus judgment makes it wholly illegal and void (Articles 215, 239 of the Ottoman Code of Civil Procedure and Article 1837 of the Majelle quoted) ;

(3) Further, the judgment of the Haifa Land Court was obtained by fraud ;

(4) No question of prescription arises, since the period of prescription elapsed while the case was pending before the Courts.

p. 105. The plaintiffs accordingly claimed that " registration be made to Khor el Wasa' as defined and bounded in our claim in the name of the villagers of Zeita as Masha' and to annul and cancel what is contrary to that in the registers of Haifa Land Registry."

36. The defendants' grounds of defence may be summarised as follows :—

p. 119. (1) The judgment of the Haifa Land Court is subsisting and final ;

(2) Their predecessors in title had paid the Haq el Quirar fee to the Government.

(3) Possession of the land since 1925 ;

(4) Part of the land was disposed of by the defendants to other persons with the consent of the Government ;

(5) Payment of werko and Rural Property Tax since purchase ;

(6) Admission by claimants that they had no rights in the land ;

(7) The lands were Mahlul (vacant) and the Government gave them to defendants on payment of Bedl el Mise (vide Lord Plumer's agreement) ;

(8) Want of jurisdiction on the part of the Settlement Officer.

Doc. 53. p. 160. p. 161, l. 18.

37. The Settlement Officer gave his decision on 30th March 1943. He reviewed the evidence, both oral and documentary, that had been given before him, and came to the conclusion that Khor el Wasa was a part of Raml Zeita.

He then referred to the proceedings in the Nablus Land Court in 1922, 1923 and 1924 which resulted in the decision that Raml Zeita was Masha' for all the inhabitants of Zeita, and that the five Plaintiffs had proved their title to one share each out of 906 shares in the Common Sand land of Zeita. He further referred to the subsequent history, particularly as to the collusive action in the Haifa Land Court in 1925. On the whole of the evidence he came to the conclusion that "the registration of Abd-el Fattah es Samara and partners was obtained by fraud, that Nissan Rutman was aware of the matter and a party to the fraud, and in consequence the registration ordered by the Land Court of Haifa should be set aside and the judgment of the Land Court of Nablus confirmed in the Settlement. This is the decision in respect of Defendants Nos. 1 and 4," i.e. Mrs. Tova Rutman and Rivka Aaronson. The defendants numbered 2, 3, 5, 6, 7, 8, 9 and 10, purchasers from Rivka Aaronson, were held to have required rights by prescription against the Masha' owners of Zeita. The claim of defendants 7 and 8 failed in respect of one parcel (10407/14). The claims of defendants 11 to 86 succeeded as they purchased in good faith from Rivka Aaronson and had been in possession of the land since 1927. The claims of certain Third Parties were similarly disposed of, all but one succeeding. In effect, the plaintiffs established ownership in the lands of Khor el Wasa' (as part of the Masha' lands of Zeita) so far as the parcels in respect of which the defendants failed were concerned.

Record. p. 163, l. 15.

38. It is to be noted that the questions as to whether the action in the Haifa Land Court in 1925 was collusive and that Court induced to assume jurisdiction by fraud of the parties, were questions only incidental to and not essential to the jurisdiction of the Settlement Officer. His powers were derived from Sections 10 and 27 of the Land (Settlement of Title) Ordinance 1928, and came to be exercisable consequent upon (A) the Notification of Settlement Order made by the High Commissioner in October 1941, and (B) the claims duly made by the Appellants under Section 16 of that Ordinance. The Settlement Officer found himself faced with the decision of the Nablus Land Court in 1924 that the lands in question were Masha' and the consequent entries in the Tabou, on the one hand; and with the decision of the Haifa Land Court of 1925, and the consequent entries in the Register, on the other hand. These two decisions were obviously not reconcilable. There appear to be no provisions in the Land (Settlement of Title) Ordinance 1928 which make either of these decisions binding upon the Settlement Officer. It is therefore submitted that he was entitled, and indeed bound, to treat them merely as items of evidence in the dispute, and consequently that it was proper for him to test their weight by other evidence and then to come to his own conclusion on the matter of title. This is the course that he adopted. It is unfortunate that in his judgment he used the words "the registration ordered by the Land Court should be set aside and the Judgment of the Court of Nablus confirmed." This phrase was fastened upon by the Supreme Court as showing, it was said, that he had exceeded his jurisdiction. It may well be that he had no power formally to do what he said; but if the effect of his decision was that in compiling the new register he followed the Order of the Nablus Court and disregarded the Order of the Haifa Court, and therefore the registration made pursuant

to the order of the Haifa Land Court no longer had any effective force, it seems hardly necessary to correct the language he used by appealing from the decision.

Record. p. 178.

39. The defendants appealed to the Supreme Court of Palestine, which delivered its judgment on the 21st July, 1943, allowing the appeal. The judgment was delivered by Gordon-Smith C.J. The main ground of his decision was that the Settlement Officer acted without jurisdiction in the matter, and that he was not a competent authority to come to such a decision. Assuming fraud had been proved to have induced the decision of the Haifa Land Court in Case No. 39/25, the proper and only procedure, in the learned Chief Justice's opinion, was by way of an action in the Haifa Court. The provisions in the Ottoman Civil Procedure Code had been repealed; and as there was nothing in Palestine Law or in the Civil Procedure Rules, English law and procedure prevailed in accordance with Article 46 of the Order in Council. After reference to a previous case in the Palestine Court of Appeal he went on to state that there was further and even stronger statutory authority contained in Section 66 of the Land (Settlement of Title) Ordnance which provided that after completion of the settlement rectification of the register may be ordered by the Land Court, subject to the law as to limitation of actions either by annulling the registration or in such other manner as the Court thinks fit, where the Court is satisfied that the registration has been obtained by fraud. His lordship also held that the proceedings before the Settlement Officer were not proceedings in a Court. On the main ground his lordship was of opinion that the appeal should succeed. As to subsidiary points, he held that fraud should be established by specific pleadings, and in his opinion there was no evidence of fraud. Copland J. concurred.

As to Section 66, this hardly seems to be in point, as it only applies to the Register after the completion of the Settlement.

p. 180, l. 12.

40. On the question of the status of the Settlement Officer, the Appellants respectfully submit that the learned Chief Justice was wrong in stating that "proceedings before the Settlement Officer are not proceedings of a Court nor is a Court thereby constituted." By Section 10 of the Palestine Land (Settlement of Title) Ordinances, 1928, the Settlement Officer has power "to hear and decide any dispute with regard to the ownership or possession of land in a settlement area and may make any order as to costs in any such matter as he thinks fit." He is to "apply the land law in force at the date of the hearing of the action," and is to have regard to equitable as well as legal rights to land. Under Section 27 he is given power to examine publicly all claims and to hear and determine disputes arising out of conflicting claims. In Appellants' submission, it is clear from the whole tenor of the Ordinance, and in particular from the above-quoted section, that the Settlement Officer exercises judicial as well as administrative functions in deciding claims to land. Further, by Section 6 (1) of the same Ordinance as amended in 1939, on the notification of settlement in any village, no action concerning rights to land in that village shall be entered in any Land Court or Civil Court; in other words, after notification of settlement the only tribunal with jurisdiction to try actions concerning rights to land in the settled area is that of the

Settlement Officer. Again, by Article 38 of the Palestine Order in Council as amended in 1935, the Courts having jurisdiction in Palestine are not only those Courts named in the Palestine Order in Council, but " any other courts or tribunals constituted by or under any of the provisions of any ordinance " (see L.A. 5/33 in Vol. II Judgments 1918–33 p. 517).

41. As regards the right of the Settlement Officer to try the action, the Appellants refer to the Interim Order made by the Settlement Officer on the 15th June 1942, and respectfully submit that that Order was right. By virtue of the relevant Proclamations of the High Commissioner, Kefar Brandeis (Khor el Wasa') became a village unit within the sub-district of Haifa : i.e., whatever the administrative status of these lands was at the times of the Nablus and Haifa actions, they had now become part of the sub-district of Haifa, and therefore under the jurisdiction of the Settlement Officer for that area ; since by virtue of Section 10 of the Settlement of Title Ordinance he had jurisdiction to hear and decide any dispute with regard to the ownership or possession of land in that area. Record. p. 35.

42. The main ground, however, upon which the learned judges of the Supreme Court based their decision was that, assuming that the judgment of the Haifa Land Court (Case No. 39/25) had been procured by fraud, the Settlement Officer had no jurisdiction to set it aside or indeed to do anything else but accept that judgment as binding and conclusive. Any application to set aside a judgment on the ground of fraud should, they said, be made to the Court in which the action was tried and the judgment entered, and not to the Land Settlement Officer. p. 281.

43. On this point the Appellants respectfully make the submissions contained in the following paragraphs 44–52.

44. If the judgment of the Haifa Court was binding and conclusive, so also was the previous judgment of the Nablus Court. But both could not be binding and conclusive because they were mutually contradictory. Treating such decisions with proper respect as matters of evidence, it is submitted that it was quite open to the Settlement Officer to make up his own mind as to which, if either, was correct.

45. The Appellants respectfully agree that here the English law and procedure obtain in accordance with Article 46 of the Palestine Order in Council. It is necessary, therefore, to consider briefly what the English law and procedure is on this matter.

46. In a case referred to in the judgment of the Supreme Court, viz., C.A. Case No. 94/39, Palestine Law Reports, 1939, p. 493, Copland J. (acting Chief-Justice) stated the English law and procedure as follows : " The English law on the subject is quite clear. According to it, a judgment obtained by fraud is a nullity and theoretically can be set aside by any Court, but the established practice is to bring an action in the original Court to have the judgment set aside." Since Mr. Justice Copland delivered the judgment in C.A. Case No. 94/39, and since he was also a member of the Court in the present case, where the judgment in the former case was quoted with approval, it is safe to assume, in Appellants' submission, that

this was the view upon which the learned judges acted in the present case. Copland J.'s statement, however, is in the Appellants' respectful submission, not accurate. The true view is stated in the judgment of de Grey C.J. in R. *v.* Duchess of Kingston (2 Sm. L.C. 657), which may perhaps be regarded as the *locus classicus* of the law on this subject. " A judgment or decree obtained by fraud upon a Court," said the Chief Justice, " binds no such Court nor any other, and its nullity upon this ground, though it has not been set aside or reversed, may be allowed in a collateral proceeding." (See also " Kerr on Fraud and Mistake," p. 445). In other words, it is not that such a judgment can be " theoretically set aside by any Court," but that any Court can regard it as a nullity. In Patch *v.* Ward, 3 Ch., p. 206, Lord Cairns (then L.J.) quotes from the same case the answer of the judges to one of the questions: " Fraud is an extrinsic collateral act which vitiates the most solemn proceedings of Courts of Justice. Lord Coke says it avoids all judicial acts, ecclesiastical or temporal: " and adds, " The fraud there spoken of must clearly, as it seems to me, be actual fraud, such that there is on the part of the person chargeable with it the *malus animus*, the *mala mens* putting itself in motion and acting in order to take an undue advantage of some other person for the purpose of actually and knowingly defrauding him."

47. In the Haifa case it is submitted that the fraud was actual fraud. It was a fraud upon the villagers of Khor el Wasa' other than the el Samara family, by which they were defrauded of their Masha' rights in the lands of Khor el Wasa'. The point that a judgment proved to have been obtained by fraud could be treated as a nullity in any Court was again considered in the House of Lords in the leading case of Sheddon *v.* Patrick *et al* (1 MacQueen, House of Lords Cases, p. 535). There a judgment had been obtained in 1803 adjudging that the Appellant was illegitimate. This was confirmed by the House of Lords in 1808. Forty years afterwards (in 1848) this judgment was impeached in the Court of Session on the ground that it had been obtained by fraud, but the action was dismissed. On appeal to the House of Lords the Lord Chancellor took the point of jurisdiction and asked whether a decision of the House of Lords could be impeached in an inferior Court on the ground of fraud. Sir Fitzroy Kelly in an exhaustive argument for the appellant laid down the principle that, while an action to set aside the judgment should be brought in the Court in which the judgment was delivered, it could nevertheless be treated in any Court as a nullity on proof of fraud. This principle was accepted by their Lordships. The relevant portion of the Head Note to the case reads :—

> " Where a judgment has been obtained by fraud, and more especially by the collusion of both parties, such judgment, though confirmed by the House of Lords may, even in an inferior tribunal, be treated as a nullity. But the obligations of fraud must be specific, pointed and relevant, otherwise they cannot be admitted to proof."

Lord Bingham said in his speech: " The question is whether or not the course of proceeding having for its object to impeach this judgment before an inferior Court in order to obtain there a decree that it was collusively procured and that it must therefore be disregarded was a competent proceeding for dealing with such a judgment, and I, for one, my lords,

can see no reason to doubt it." He instanced the case of the Duchess of Kingston, where the House of Lords sitting as a High Stewards' Court, disregarded the decree of nullity of marriage made by the Consistorial Court: "This House had no right to interfere with the sentence of that Court any more than that Court had to interfere with any sentence pronounced in this House. But it had a right to disregard it on proof that it was a nullity."

It is submitted, therefore, that whether or not the usual English procedure is that an action to set aside a judgment on the ground of fraud is to bring the action in the original Court, it was competent to the Settlement Officer to regard the Haifa judgment as a nullity on proof of fraud or at all events to reject it as evidence of any true value.

48. But the argument on this point can be put upon a different ground. It is submitted that the Court of the Settlement Officer was the only Court in which the present action could have been brought. In other words, the Settlement Officer had taken the place of the Land Court in this area in respect of actions to determine rights to land. The effect of the Palestine Land (Settlement of Title) Ordinance, 1928, is that, on notification of settlement in any village, the only Court to determine rights to land in that area is that of the Settlement Officer, the jurisdiction of the Land Court thenceforth being excluded in respect of such actions. This is clear from Sections 6 and 10. Section 6 provides that on notification of settlement in any village, no action concerning rights to lands shall be entered in any Land Court or Civil Court, and if any action entered before the notification is published cannot be decided before the settlement is begun, the Court may order that it shall be determined before the Settlement Officer. Section 10 (1) provides that the Settlement Officer shall have power to hear and decide any dispute with regard to the ownership or possession of land in a settlement area. Section 27 gives the Settlement Officer power to examine publicly all claims and to hear and determine disputes arising out of conflicting claims, to refer disputes to arbitration, and to authenticate the awards of the arbitration. Section 43 enacts that, save as provided by the Ordinance, the registration of land in the new register shall invalidate any rights conflicting with such registration. The Appellants therefore followed the correct procedure in bringing their action in the Settlement Officer's Court. There was no other court in which they could bring their action.

49. The learned judges of the Supreme Court seem to have sought to escape from this difficulty by praying in aid sub-section (1) of Section 6 of the Settlement of Title Ordinance which provides that the Land Court shall retain jurisdiction over cases entered before it prior to the notification of the district as a settlement area. They were here following a decision of the Supreme Court of Palestine which is referred to in the judgment under appeal. The Head Note of that case reads :— C.A. No. 94/39.

> "(1) There is nothing in the Palestine Law regarding the procedure to be adopted in order to have a judgment set aside on the ground that it was obtained by fraud, and therefore the English law and procedure had to be applied in view of the provisions of

Article 46 of the Palestine Order in Council, and according thereto an action had to be brought in the original Court to have the judgment set aside;

"(2) an application to set aside on the ground of fraud the said judgment of the Land Court which had been given before the land was notified to be a settlement area is an application in an action in which the Land Court had jurisdiction and therefore should have been made to that Court and not to the Settlement Officer."

In his judgment in this case Copland J. said: "Appellants admit this (the English procedure) but say that in a settlement area a Settlement Officer has all the powers of a Land Court under Sections 6 (1) and 10 (1) of the Land (Settlement of Title) Ordinance: in other words, that the jurisdiction of the Land Court is now transferred to the Settlement Officer, who exercises all the jurisdiction of the Land Court and therefore as successor to the Land Court has full power to deal with judgments of the latter Court. The Appellants argue that the jurisdiction of the Land Court has now gone. This, however, is not so. By Section 6 (1) of the Ordinance the Land Court retains jurisdiction over cases entered before it prior to the notification of the district as a settlement area. We think that an application to set aside a judgment of a Land Court on the ground of fraud where that judgment was given, as is the case here, before the land was declared to be in a settlement area, is an action in which the Land Court has jurisdiction. It is in reality continuation of an action properly entered originally and within the Land Court's jurisdiction, and that under the established procedure in England, an action to set aside must be brought before the original Court, in this case the Land Court."

50. It is respectfully submitted that this decision was wrong in law. Point (1) has already been dealt with in paragraphs 46 and 48 above. As regards point (2) it is submitted that an action to set aside a judgment obtained by fraud is in no sense a continuation of the original action. There is a new writ and a new cause of action, and possibly different parties. But in fact the present action was not an action to set aside a judgment obtained by fraud. It was an action to establish title to lands. The question of the validity of the Haifa judgment came into question only incidentally. It is submitted, therefore, that the provision in Section 6 (1) of the Ordinance did not give the Land Court jurisdiction in this case, since the action instituted by the Appellants was in no sense an action entered in the Land Court before the notification of the area as a settlement area, or the continuation of that action. It should be added that Copland J. has since reviewed the opinion above expressed. See his judgment in C.A. 229/40 and 270/40 8 P.L.R. p. 48. See also judgment of Copland J. in C.A. 229/40 and 270/40 p. 52.

51. It must also be observed that the fraud perpetrated on the Haifa Land Court was one which purported to give the Court jurisdiction when in fact it had no jurisdiction to try the action. It was represented to the Court that Khor el Wasa' was part of Hudeira village, and therefore under the jurisdiction of the Court. In fact, as found by the Nablus Court, the land was part of the village of Raml Zeita and therefore outside the jurisdiction. The rules of procedure regulating the jurisdiction of the

Record. p. 293.

Courts of Palestine at the relevant date (1923) are contained in the Ottoman Code of Civil Procedure, which remained in force till 1938. This procedure was made applicable to the Land Courts of Palestine by Section 9 (2) of the Land Courts Ordinance, 1921. Shortly, the effect of the Code Rules (which are to be found in Articles 1 and 48) was that suits regarding the ownership of immoveable property might be brought in the place where the property is situate, and that if a claim was made in respect of property outside the jurisdiction of the Court, the Court should refuse to hear the claim. Khor el Wasa', as part of the village of Raml Zeita, was in Tulkarem area, and therefore outside the jurisdiction of the Haifa Land Court. It is also worthy of note that the Ottoman Code laid down a procedure for the review of judgments, and if the ground of review was a contradiction between two judgments, the earlier judgment prevailed (Art. 215).

52. Judgments pronounced in actions where the Court has no jurisdiction to try the action are, according to English law, void *ab initio*. This principle is so well known as hardly to require authority ; but the Land Courts of Palestine, like English County Courts, are creatures of statute ; and judgments of the County Courts have been set aside for want of jurisdiction (*cf.* De Vries *v.* Smallridge (1928) 1 K.B. 82 ; R. *v.* Cheshire County Council Judge (1921) 2 K.B. 694).

53. With regard to the subsidiary point made by the Supreme Court that " a Court requires a strong case (of fraud) to be established by specific pleadings and evidence in support thereof," it must be observed that there are no pleadings in land settlement procedure in Palestine, nor are the Civil Procedure Rules which apply to trial of actions in District Courts and Land Courts applicable to trials before a Settlement Officer. The case of fraud, however, is set out in what are called the " final pleadings " of the Plaintiffs and evidence in support thereof was given.

Record. p. 180, l. 37.

p. 96.

54. The Appellants respectfully submit that the judgment of the Supreme Court was wrong and should be reversed, and that the decision of the Settlement Officer should be restored, for the following amongst other

REASONS

(1) BECAUSE the decision of the Settlement Officer was in accordance with the facts and the law :

(2) BECAUSE it was within the jurisdiction of the Settlement Officer to decide the dispute in the action and to make the order made by him in the action ; and there was no other Court which had jurisdiction to try the action :

(3) BECAUSE the Settlement Officer was confronted with two conflicting judgments in respect of the lands in question in the action, and he was entitled to disregard the latter judgment and prefer to follow the prior judgment :

(4) BECAUSE the Settlement Officer found as a fact that the judgment of the Haifa Court in Case No. 19/25 had been procured by fraud :

(5) BECAUSE the Haifa Land Court had no jurisdiction to try the said Case No. 19/25 :

(6) BECAUSE there was ample evidence before the Settlement Officer upon which he could find that a fraud had been perpetrated upon the Haifa Land Court :

(7) BECAUSE the judgment of the Haifa Land Court in Case No. 19/25 having been procured by fraud and the action having been tried without jurisdiction, it was within the competence of the Settlement Officer to disregard or treat as a nullity that judgment : 10

(8) BECAUSE apart from the question whether the judgment of the Haifa Land Court in Case No. 19/25 and the consequent entries in the Register were obtained by fraud, the whole question of the title to the land at Khor el Wasa' was open to the Settlement Officer and he was entitled, if he thought fit, to disregard that judgment, which was in no way binding upon him.

F. W. BENEY.

S. PARNELL KERR.

No. 72 of 1945.

In the Privy Council.

ON APPEAL

From the Supreme Court of Palestine, sitting as a Court of Appeal, Jerusalem.

BETWEEN

KHALIL RAJAH KHALIL and Others (Plaintiffs) - *Appellants*

AND

TOVA RUTMAN OF HUDERA and Others (Defendants) - *Respondents.*

Case for the Appellants.

PIPER, SMITH & PIPER,
31 Warwick Square,
Westminster, S.W.1.

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