

ON APPEAL
FROM THE SUPREME COURT OF PALESTINE.

UNIVERSITY OF LONDON
W.C.1.

-9 OCT 1956

INSTITUTE OF ADVANCED
LEGAL STUDIES

44157

BETWEEN

1. KHALIL RAJIH KHALIL and 239 others as stated in the Schedule attached to the Memorandum of Claim
2. FARID SALEH KHADR and 38 others as stated in the Schedule attached to the Memorandum of Claim
3. TAHER 'AWAD MANNA and 52 others heads of families representing 226 persons
4. MUSTAFA MUHAMMAD GHUDIYA and 182 others
5. HUSNI ABDALLAH HASSAN NA'AMAN and 48 others heads of families representing 289 persons
6. NEJIB EL HAJ MOHAMMAD KHALIL UMAR HAMMAD and 10 others
7. YASIN YUSUF ZETAWI and 11 others
8. MUHAMMAD AHMAD MUHAMMAD, ABD EL GHANI NI'MAN and 7 others (Plaintiffs)

Appellants

AND

1. TOVA RUTMAN of Hudera
2. RIFKA ARONSON of Zichron Yacob
3. EPHRAIM LTD. private company
4. YA'AQOV RUTMAN of Kfar Brandes
5. RAHEL RUTMAN of Kfar Brandes, and 87 others whose names are set out in the original application for leave to appeal (Defendants)

Respondents.

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In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF PALESTINE.

BETWEEN

1. KHALIL RAJIB KHALIL and 239 others as stated in the Schedule attached to the Memorandum of Claim
- 10 2. FARID SALEH KHADR and 38 others as stated in the Schedule attached to the Memorandum of Claim
3. TAHER AWAD MANNA and 52 others heads of families representing 226 persons
4. MUSTAFA MUHAMMAD GHUDIYA and 182 others
5. HUSNI ABDALLAH HASSAN NA'AMAN and 48 others heads of families representing 289 persons
6. NEJIB EL HAJ MOHAMMAD KHALIL UMAR HAMMAD and 10 others
7. YASIN YUSUF ZETAWI and 11 others
- 20 8. MUHAMMAD AHMAD MUHAMMAD, ABD EL GHANI N'AMAN and 7 others (Plaintiffs) *Appellants*

AND

1. TOVA RUTMAN of Hudera
2. RIFKA ARONSON of Zichron Yacob
3. EPHRAIM LTD. private company
4. YA'AQOV RUTMAN of Kfar Brandes
5. RAHEL RUTMAN of Kfar Brandes, and 87 others whose names are set out in the original application for leave to appeal (Defendants) - *Respondents.*

30 RECORD OF PROCEEDINGS.

No. 1.

MEMORANDUM OF CLAIM.

PART A Land (Settlement of Title) Ordinance.
 Sub-District : Haifa. No. of claim : 65.
 Village : Kfar Brandeis. Reg. block : Name . . . No. 10402-10410 (inclusive).

PART B

40	1. Name of person in whose favour right to registration is claimed : Khalil Rajeh and 239 others as shown in attached list, all	Full address of same : Zeita.	Interest of share claimed : Khor El Wassa' of El Raml
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Before the Settlement Officer, Haifa.

No. 1.
 Memorandum of Claim,
 5th December 1941.

Before the
Settlement
Officer,
Haifa.

No. 1.
Memoran-
dum of
Claim,
5th
December
1941,
continued.

- | | |
|---|---|
| <p>representing their families and Fared Saleh Khader & 38 others all representing their families represented by Abed El Latif Bey Salah, Advocate by virtue of Power of Attorney dated 18-18-41.</p> | <p>Masha' lands
as part of
village Masha'.</p> |
| <p>2. Category of Land :</p> | <p>Miri.</p> |
| <p>3. Nature of right claimed :</p> | <p>Ownership as village Masha' (Zeita). 10</p> |
| <p>4. How acquired :</p> | <p>By way of village Masha'.</p> |
| <p>5. Registration in land registry :</p> | <p>Registered in Tabou in the name of 20 persons in trust for the village.</p> |
| <p>6. By whom is Rural Property Tax paid :—(State annual amount)</p> | <p>Rural Property Tax paid by villagers until 1935 when separated from Tulkarem Sub-district.</p> |
| <p>7. Description of Parcel :</p> | <p><i>Present Boundaries :</i></p> |
| <p>(a) Land : Arable.</p> | <p>North : Ard El Khuderah.</p> |
| <p>(b) Building :—</p> | <p>East : Zeita (Qizazeh & Birkit 20 El Turieh)</p> |
| <p>8. Area claimed :</p> | <p>South : Previously by road & Attil lands.</p> |
| <p>9. Other rights affecting parcel (or share) :</p> | <p>West : Previously Infiat lands presently Khuderah forest.</p> |
| <p>(a) Servitudes to which the parcel is subject :</p> | <p>Between 5000-6000 dunums in accordance with the Survey Maps.</p> |
| <p>(b) Servitude over other land enjoyed by the parcel :</p> | <p>30</p> |
| <p>10. Is partition desired (in case of a claim to undivided parcel or village Musha') :</p> | <p>Nil.</p> |
| <p>(a) By Government :</p> | <p>Nil.</p> |
| <p>(b) By Agreement :</p> | <p>Nil.</p> |
| <p>11. Charges on parcel or share :</p> | <p>No.</p> |
| <p>12. Supporting documents :</p> | <p>No.</p> |
| <p></p> | <p>Nil. 40</p> |
| <p></p> | <p>Judgment of Land Court Nablus No. 18/22 dated 14-4-24 confirmed by the Supreme Court sitting as a Court of Appeal in Case No. 70/24 dated 20-1-25 reference is also made to the decision of the Settlement Officer (Mr. Lowick) dated 26-6-31 in file No. 92/30 and to the judgment of the Land Court and the 50 Court of Appeal in this connection.</p> |

13. Additional Statement or details (if any) : Nil. We agree to the Registration of roads falling within these parcels and shown in survey maps in the name of the High Commissioner in trust for the Government of Palestine.
14. I Abed El Latif Salah, Advocate, Attorney of claimants hereby solemnly affirm or declare that the particulars stated by me in the memorandum of claim are true and correct and that all information affecting the validity of my claim is truly set forth therein.
- 10 (Sgd.) ABED EL LATIF BEY SALAH.
- Before the Settlement Officer, Haifa.*
—
No. 1.
Memorandum of Claim, 5th December 1941, continued.

Read over to signatory and sworn to and signed by him in my presence.

(Sgd.) ITSHAKI,

for Settlement Officer.

Date : 5-12-41,
Haifa.

15. We the undersigned hereby declare that to the best of our knowledge and belief the above statement is true & correct.
- Name : 1) Mukhtar Zeita Residence : —
- 20 2) Member of the Settlement Committee Zeita.
- 3) Member of Settlement Committee Zeita.

Date : 5-12-41

Place : —

PART C

PRELIMINARY INVESTIGATION

1. Observations regarding claim as submitted : —
2. Valuation : —
3. Recommendation : Disputed.
- 30 At Haifa 15th December, 1941.

(Signed) ITSHAKI,

for Assistant Settlement Officer.

NAMES OF CLIENTS IN ZEITA VILLAGE.

[Not printed.]

Before the
Settlement
Officer,
Haifa.

No. 2.

MEMORANDUM OF CLAIM.
(Translation from Arabic.)

No. 2.
Memoran-
dum of
Claim.
5th
December
1941.

PART A. Land (Settlement of Title) Ordinance.

Sub-District : Haifa.

No. of claim : 66.

Village : Kefar Brandeis. Reg. block : Name.....No. 10402-10410
inclusive.

PART B.

- | | | | |
|---|--|---|----|
| 1. Name of person in whose favour right to registration is claimed :
Taher Awad Mana' & 52 others as shown in attached list representing their families consisting of 227 persons. | Full address of same :
Zeita. | Interest of share claimed : 10
Khor El Wassa' of Ard El Raml Masha' as part of village Masha'. | |
| 2. Category of Land : | Miri. | | |
| 3. Nature of right claimed : | Ownership as village Masha' (Zeita). | | |
| 4. How acquired : | By way of village Masha'. | | |
| 5. Registration in land registry : | Registered in Tabou in the name of 20 persons in trust for the village. | 20 | |
| 6. By whom is Rural Property Tax paid :—(State annual amount) | Rural Property Tax paid by villagers until 1935 when separated from Tulkarem Sub-District. | | |
| 7. Description of Parcel : | <i>Present Boundaries :</i> | | |
| (A) Land : Arable. | North : Ard el Khuderah. | | |
| (B) Building :— | East : Zeita (Qizazeh & Birket Nuriyah). | 30 | |
| | South : Previously road & lands of Attil. | | |
| | West : Previously Infiat lands presently Khuderah forest. | | |
| 8. Area claimed : | Between 5000-6000 dunums in accordance with Survey Maps. | | |
| 9. Other rights affecting parcel (or share) : | | | |
| (a) Servitudes to which the parcel is subject : | Nil. | | 40 |
| (b) Servitudes over other land enjoyed by the parcel : | Nil. | | |
| 10. Is partition desired (in case of a claim to undivided parcel or village Musha') : | | | |
| (a) By Government : | No. | | |
| (b) By Agreement : | No. | | |
| 11. Charges on parcel or share : | Nil. | | |

12. Supporting documents :

Nablas Land Court Judgment No. 18/22 dated 14.4.24 confirmed by the Supreme Court sitting as a Court of Appeal in Case No. 70/24 dated 20.1.25. I also refer to the judgment of the Settlement Officer (Mr. Lowick) dated 26.6.31 in file No. 92/30 and also to the Judgment of the Land Court and the Court of Appeal produced with the Memorandum of Claim of Abdul Latif Bey Salah.

Before the Settlement Officer, Haifa.
No. 2.
Memorandum of Claim, 5th December 1941,
continued.

10

13. Additional Statement or details (if any) :

We agree to the Registration of roads falling within these parcels and shown in Survey Maps in the name of the High Commissioner in trust for the Government of Palestine.

20 14. I Othman El Bushnak of Tulkarem Attorney of the claimants hereby solemnly affirm or declare that the particulars stated by me in the memorandum of claim are true and correct and that all information affecting the validity of my claim is truly set forth therein.

(Sgd.) OTHMAN EL BUSHNAK.

Read over to signatory and sworn to and signed by him in my presence.

Date 5.12.41,
Haifa.

(Sgd.) ITSHAKI
for Settlement Officer.

30 15. We the undersigned hereby declare that to the best of our knowledge and belief the above statement is true and correct.

Name :

Residence : —

Date : 5.12.41.

Place : —

(Sgd.)

(1) Mukhtar Zeita.

(2) Member Settlement Committee Zeita.

PART C.

PRELIMINARY INVESTIGATION

1. Observations regarding claim as submitted : Nil.
2. Valuation : Nil.
40 3. Recommendation : Disputed.
At Haifa 15th December, 1941.

(Sgd.) ITSHAKI

for Assistant Settlement Officer.

ATTACHED LIST

- (1) Taher Awad Muna (the Head of the Family and 225 others)
[not printed].

Before the
Settlement
Officer,
Haifa.

No. 3.

MEMORANDUM OF CLAIM.

(Translation from Arabic)

No. 3.
Memoran-
dum of
Claim,
8th
December
1941.

PART A Land (Settlement of Title) Ordinance.

Sub-District : Haifa. No. of claim : 67.

Village : Kefar Brandeis. Reg. Block : Name No. 10402-10410
(inclusive)

PART B

- | | | | |
|---|--|---|----|
| 1. Name of person in whose favour right to registration is claimed :
Names as per attached list. | Full address of same :
Zeita. | Interest of share claimed :
Khor El Wassa' of Ard El Raml Masha as part of village Masha'. | 10 |
| 2. Category of Land : | Miri. | | |
| 3. Nature of right claimed : | Ownership as village Masha' (Zeita). | | |
| 4. How acquired : | By way of village Masha'. | | |
| 5. Registration in land registry : | Registered in the Tabou in the name of 20 persons in trust for the village. | | 20 |
| 6. By whom is Rural Property Tax paid :—(State annual amount) | Rural Property Tax paid by the villagers until 1935 when separated from Tulkarem Sub-District. | | |
| 7. Description of Parcel : | <i>Present Boundaries :—</i> | | |
| (A) Land : Arable. | North : Ard El Khuderah. | | |
| (B) Building :— | East : Zeita (Qizazeh & Birket Nuriah). | | 30 |
| | South : Previously road & lands of Attil. | | |
| | West : Previously Infiat lands presently Khuderah forest. | | |
| 8. Area claimed : | Between 5000-6000 dunums in accordance with Survey Maps. | | |
| 9. Other rights affecting parcel (or share) : | | | |
| (a) Servitudes to which the parcel is subject : | Nil. | | 40 |
| (b) Servitudes over other land enjoyed by the parcel : | Nil. | | |
| 10. Is partition desired (in case of a claim to undivided parcel or village Musha') : | | | |
| (a) By Government : | No. | | |
| (b) By Agreement : | No. | | |
| 11. Charges on parcel or share : | Nil. | | |

12. Supporting documents : Judgment of Land Court Nablus *Before the Settlement Officer, Haifa.*
 No. 18/22 dated 14-4-24 confirmed by the Supreme Court sitting as a Court of Appeal in Case No. 70/24 dated 20-1-25. No. 3.
 I also refer to the judgment of the Settlement Officer (Mr. Lowick) dated 26-6-31 in file Memorandum of Claim, 8th December 1941, *continued.*
 10 Judgment of the Land Court and the Court of Appeal produced with the Memorandum of Claim of Abdul Latif Bey Salah.
13. Additional Statement or details (if any) : Nil. We agree to the Registration of roads falling within these parcels and shown in Survey maps in the name of the High Commissioner in trust for the Government of Palestine.
- 20 14. I Anas el Khamrah of Haifa solemnly affirm or declare that the particulars stated by me in the memorandum of claim are true and correct and that all information affecting the validity of my claim is truly set forth therein.

(Sgd.) AMAS EL KHAMRAH. Claimant :

Read over to signatory and sworn to and signed by him in my presence.

Date : 9-12-41,
 Haifa.

(Sgd.) ITSHAKI
 for Settlement Officer.

- 30 15. We the undersigned hereby declare that to the best of our knowledge and belief the above statement is true and correct
 Name : — Residence : —
 Date : — Place : —

PART C

PRELIMINARY INVESTIGATION.

1. Observations regarding claim as submitted : Nil.
2. Valuation : Nil.
3. Recommendation : Disputed.
 At Haifa 15th December, 1941.

(Sgd.) ITSHAKI

40 for Assistant Settlement Officer.

ATTACHED LIST

NAMES OF PERSONS APPOINTED IN ZEITA VILLAGE.

- (1) Mustafa Muhammad Ghudayyah and 181 others [*not printed*].
-

Before the
Settlement
Officer,
Haifa.

No. 4.

MEMORANDUM OF CLAIM.

(Translation from Arabic.)

No. 4.
Memoran-
dum of
Claim,
5th
December
1941.

- PART A** Land (Settlement of Title) Ordinance.
- Sub-District : Haifa. No. of claim : 68.
- Village : Kefar Brandeis. Reg. block : Name..No. 10402
10410 (inclusive)
- PART B**
1. Name of person in whose favour right to registration is claimed : Full address Interest of
Name of claimants shown on attached list 49 heads of families representing 289 persons. of same. share claimed : 10
Zeita. Khor al Wasa' of
Ard El Raml
Musha' as part of
Village Masha'.
 2. Category of Land : Miri.
 3. Nature of right claimed : Ownership as Village Masha' (Zeita).
 4. How acquired : By way of Village Masha'.
 5. Registration in land registry : Registered in Tabou in the name of 20 persons in trust for the 20 village.
 6. By whom is Rural Property Tax paid :—(State annual amount) Rural Property Tax paid by villagers until 1935 when separated from Tulkarem Sub-District.
 7. Description of Parcel :
(a) Land : Arable. *Present Boundaries :*
North : Ard El Khuderah.
East : Zeita (Qizazeh & Birket Nuriyah).
South : Previously road & lands 30 of Attil.
West : Previously Infiat lands presently Khuderah forest.
 8. Area claimed : Between 5000–6000 dunums in accordance with Survey Maps.
 9. Other rights affecting parcel (or share) :
(a) Servitudes to which the parcel is subject : Nil. 40
(b) Servitudes over other land enjoyed by the parcel : Nil.
 10. Is partition desired (in case of a claim to undivided parcel or village Musha') :
(a) By Government : No.
(b) By Agreement : No.
 11. Charges on parcel or share : Nil.

12. Supporting documents : Nablus Land Court Judgment No. 18/22 dated 14.4.24 confirmed by the Supreme Court sitting as a Court of Appeal in file No. 70/24 dated 20.1.25. I also refer to the judgment of the Settlement Officer (Mr. Lowick) dated 26.6.31 in file No. 92/30 and also to the Judgment of the Land Court and the Court of Appeal produced with the Memorandum of Claim of Abdul Latif Bey Salah. *Before the Settlement Officer, Haifa.*
No. 4. Memorandum of Claim, 5th December 1941, *continued.*
- 10 13. Additional Statement or details (if any) : Nil. We agree to the registration of the roads falling within these parcels and found in the Survey Maps in the name of the High Commissioner in trust for the Government of Palestine.
- 20 14. See attached list.
Read over to signatory and sworn to and signed by him in my presence.
Date : 5.12.41. Haifa. (Sgd.) ITSHAKI,
for Settlement Officer.
15. See list.
Name : — Residence : —
Date : 5.12.41. Place : Kefar Brandeis.

PART C

PRELIMINARY INVESTIGATION

- 30 1. Observations regarding claim as submitted : —
2. Valuation : —
3. Recommendation : Disputed.
(Sgd.) ITSHAKI,
At Haifa, 15-12-41. for Assistant Settlement Officer.

ATTACHED LIST.

We the undersigned declare that the particulars mentioned in the memorandum of claim are true and correct and that all information proving the validity of our claim was so included in the memorandum of claim correctly.

- 40 (1) Husni Abdallah Hassan Na'aman and 288 others [*not printed*].

Before the
Settlement
Officer,
Haifa.

No. 5.

MEMORANDUM OF CLAIM.
(Translation from Arabic)

No. 5.
Memoran-
dum of
Claim,
5th
December
1941.

Part A. Land (Settlement of Title) Ordinance.

Sub-District : Haifa. No. of claim : 69.

Village : Kefar Brandeis. Reg. block : Name No. 10402-10410
(inclusive)

PART B.

- | 1. Name of person in whose favour right to registration is claimed : | Full address of same : | Interest of share claimed : | |
|---|--|--|----|
| Najeeb El Haj Mohamed Khalil Omar Hammad. | Nazlet Essa Tul Karem District. | 11 shares out of our shares in Masha'. | 10 |
| Said Najeeb El Haj Mohamed Khalil Omar Hammad. | | | |
| Yousef Najeeb El Haj Mohamed Khalil Omar Hammad. | | | |
| Bader Najeeb El Haj Mohamed Khalil Omar Hammad. | | | |
| Mohamed Najeeb El Haj Mohamed Khalil Omar Hammad. | | | |
| Hanifeh Najeeb El Haj Mohamed Khalil Omar Hammad. | | | |
| Rabeha Sleman Al Sheikh Yahya Jamileh El Haj Mohammed Khalil Omar Hammad. | | | |
| Ghazaleh El Haj Mohammed Khalil Omar Hammad. | | | |
| Sharefeh El Haj Mohammed Khalil Omar Hammad. | | | |
| Hafizeh El Hassan Yousef. | | | 30 |
| 2. Category of Land : | Miri. | | |
| 3. Nature of right claimed : | Ownership as village Masha' (Zeita). | | |
| 4. How acquired : | By way of village Masha'. | | |
| 5. Registration in land registry: | Registered in Tabou in the name of 20 persons as trust for the village. | | |
| 6. By whom is Rural Property Tax paid :—(State annual amount) | Tax paid by villagers until time when separated from Tulkarem Sub-District (1935). | | 40 |
| 7. Description of Parcel : | <i>Present Boundaries :</i> | | |
| (A) Land : Arable. | North : Ard el Khuderah. | | |
| (b) Buildings : — | East : Zeita (Qizazeh and Birket at Turieh). | | |
| | South : Previously road and lands of Attil. | | |
| | West : Previously land of Infiat, Presently Khuderah forest. | | |
| 8. Area claimed : | According to survey plans between 5000-6000 dunums. | | 50 |

My signature on this memorandum of claim binds me & binds me personally only. 20

(Sgd.) NAJEEB EL HAJ
MOHAMMED.

*Before the
Settlement
Officer,
Haifa.*

No. 5.
Memorandum of
Claim,
5th
December
1941,
continued.

- 9. Other rights affecting parcel (or share) :
 - (a) Servitudes to which the parcel is subject : Nil.
 - (b) Servitudes over other land enjoyed by the parcel : Nil.
- 10. Is partition desired (in case of a claim to undivided parcel or village Musha') :
 - (a) By Government : No.
 - (b) By Agreement : No.
- 11. Charges on parcel or share : Nil.
- 12. Supporting documents :

Nablus Land Court Judgment No. 18/22 dated 14.4.24 confirmed by the Supreme Court sitting as a Court of Appeal in file No. 70/24 dated 20.1.25. I also refer to the judgment of the Settlement Officer (Mr. Lowick) datd 26.6.31 in file No. 92/30 and also to the Judgment of the Land Court and the Court of Appeal produced with the Memorandum of Claim of Abdul Latif Bey Salah.
- 13. Additional Statement or details (if any) :

We agree to the registration of the roads falling within these parcels and found in the Survey Maps in the name of the High Commissioner in trust for the Government of Palestine.
- 14. I Najeeb El Haj Mohammed Khalil Omar Hammad of Nazlet Essa Tulkarem hereby solemnly affirm or declare that the particulars stated by me in the memorandum of claim are true and correct and that all information affecting the validity of my claim is truly set forth therein.

(Sgd.) NAJEEB EL HAJ MOHAMMED.

Claimant.

40 Read over to signatory and sworn to and signed by him in my presence.

Date : 5.12.41.

(Sgd.) ITSHAKI

Haifa Area.

for Settlement Officer.

15. We the undersigned hereby declare that to the best of our knowledge and belief the above statement is true & correct.

Name : Identified.

Residence : —

Date : —

Place : —

Before the
Settlement
Officer,
Haifa.
No. 5.
Memoran-
dum of
Claim,
5th
December
1941,
continued.

Part C

PRELIMINARY INVESTIGATION

1. Observations regarding claim as submitted : —
2. Valuation : —
3. Recommendation : Disputed.

At Haifa 15th December, 1941.

(Sgd.) ITSHAKI

for Assistant Settlement Officer.

No. 6.
Memoran-
dum of
Claim,
8th
December
1941.

No. 6.

MEMORANDUM OF CLAIM.

10

(Translation from Arabic.)

PART A Land (Settlement of Title) Ordinance.

Sub-District : Haifa.

No. of claim : 70

Village : Kefar Brandeis.

Reg. block : Name..No. 10402-
10410 (inclusive).

PART B.

- | | | |
|---|---|--|
| 1. Name of person in whose favour right to registration is claimed :
As per attached list. | Full address of same :
As per attached list. | Interest of share claimed :
12 shares out of the whole village 20 Masha'. |
|---|---|--|

I Yasseen Yousef Zeitawi hereby declare that my signature on this memorandum of claim binds me personally.

(Sgd.) YASSIN YOUSEF ZEITAWI.

- | | | |
|---|--|----|
| 2. Category of Land : | Miri. | |
| 3. Nature of right claimed : | Possession. | |
| 4. How acquired : | By way of village Masha'. | |
| 5. Registration in land registry : | Registered in Tabou in the name of 20 persons as trustees for the 30 interests of the village & on behalf of it. | |
| 6. By whom is Rural Property Tax paid :—(State annual amount) | We do not pay Tax. | |
| 7. Description of Parcel : | <i>Present Boundaries :</i> | |
| (a) Land : Arable. | North : El Khuderah. | |
| | East : Zeita. | |
| (b) Building : — | South : Attil. | |
| | West : El Khuderah. | |
| 8. Area claimed : | Between 5000-6000 dunums. | 40 |
| 9. Other rights affecting parcel (or share) : | | |
| (a) Servitudes to which the parcel is subject : | Nil. | |

- (b) Servitudes over other land enjoyed by the parcel : Nil.
10. Is partition desired (in case of a claim to undivided parcel or village Musha') :
 (a) By Government : No.
 (b) By Agreement : No.
11. Charges on parcel or share : Nil.
- 10 12. Supporting documents : I rely upon the proofs produced by Abed El Latif Bey Salah in his memorandum of claim.
13. Additional Statement or details (if any) : I agree to the registration of roads in these blocks in the name of the High Commissioner in trust for the Government of Palestine.
- 20 14. I, Yasseen Yousef Zeitawy of Haifa hereby solemnly affirm or declare that the particulars stated by me in the memorandum of claim are true and correct and that all information affecting the validity of my claim is truly set forth therein.

*Before the
Settlement
Officer,
Haifa.*

No. 6.
Memoran-
dum of
Claim.
8th
December
1941,
continued.

(Sgd.) YASSEEN YOUSEF ZEITAWY,

Claimant.

Read over to signatory and sworn to and signed by him in my presence.

Date : 8-12-41.

(Sgd.) ITSHAKI,

Haifa.

for Settlement Officer.

15. We the undersigned hereby declare that to the best of our knowledge and belief the above statement is true & correct.

30 Name : Identified by Identity Card No. 58219 issued by A.D.C. Haifa and Samaria. Residence : — Place : —

Date : 22.6.40.

PART C.

PRELIMINARY INVESTIGATION

1. Observations regarding claim as submitted : Nil.
 2. Valuation : Nil.
 3. Recommendation : Disputed.

At Haifa 15th December, 1941.

40

(Sgd.) ITSHAKI,

for Assistant Settlement Officer.

ATTACHED LIST.

(1) Yasseen Yousef Zeitawy and 11 others [*not printed*].

Before the
Settlement
Officer,
Haifa.

No. 7.

Memorandum of Claim.

(Translation from Arabic.)

No. 7.
Memoran-
dum of
Claim,
6th
January
1942.

PART A Land (Settlement of Title) Ordinance.

Sub-District : Haifa.

No. of claim : 73.

Village : Kefar Brandeis.

Reg. block : Name..No. 10402-
10410 (inclusive).

PART B.

1. Name of person in whose favour
right to registration is claimed :
Mohammed Ahmed Mohammed
Abdel Ghani Naaman.
Ahmad Mohammed Ahmed
Mohammed Abdel Ghani Naaman.
Mahmud Mohammad Ahmed
Mohammed Abdel Ghani Naaman.
Abed Ellah Mohammed Ahmed
Mohammed Abdel Ghani Naaman.
Sayyed Mohammed Ahmed
Mohammed Abdel Ghani Naaman.
Abed el Razek Mohammed Ahmed
Mohammed Abdel Ghani Naaman.
Hanyfah Mohammed Ahmed
Mohammed Abdel Ghani Naaman.
Fatmeh Mohd. Ahmed Mohd. Abdel
Ghani Naaman.

Full address Interest of
of same : share claimed : 10
Bafet El 8 shares out
Garbiah of Khor El
Tulkarem. Wasa' Masha'

My signature on this memo-
randum of Claim binds me and
binds me personally only.

20

2. Category of Land :

Miri.

3. Nature of right claimed :

Ownership as village Masha'
(Zeita).

4. How acquired :

By way of village Masha'. 30

5. Registration in land registry :

Registered in Tabou in the name
of 20 persons as trust for the
village.6. By whom is Rural Property Tax
paid :—(State annual amount)Tax paid by villagers until time
when separated from Tulkarem
sub-district (1935).

7. Description of Parcel :

(a) Land : Arable

Present Boundaries :

North : Ard el Khuderah.

East : Zeita (Qizazeh & Birket
at Turieh). 40

(b) Building : —

South : Previously road & lands
of Attil.West : Previously land of Infiat.
Presently Khuderah
forest.

8. Area claimed :

According to survey plans
between 5000-6000 dunums.9. Other rights affecting parcel (or
share) :

Before the
Settlement
Officer,
Haifa.

PART C.

PRELIMINARY INVESTIGATION

No. 7.
Memorandum of
Claim,
6th
January
1942,
continued.

1. Observations regarding claim as submitted : —
2. Valuation : —
3. Recommendation : Disputed.
At Haifa 6-1-42.

(Sgd.) ITSHAKI,
for Assistant Settlement Officer.

No. 8.
Proceedings
4th May
1942.

No. 8.
PROCEEDINGS.

10

Case No. 1/Kefar Brandeis.

BEFORE THE SETTLEMENT OFFICER,
HAIFA SETTLEMENT AREA.

<i>Cl. No.</i>	<i>P.P. No.</i>	<i>Plaintiffs</i>	<i>Shares</i>
65	10402/1-5. 10403/1 10404/1. 10405/1-3 & 5 10406/1-3. 10407/1-7 and 12-14. 10408/1-51. 10409/1. 10410/1.	(1) Khalil Rajih Khalil and 239 others. (2) Farid Salih Khadra and 38 others.	20
66	do.	(3) Tahir 'Awad Manna' and 52 others Heads of Families representing 226 persons.	
67	do.	(4) Mustafa Muhammad Ghadiya and 182 others.	
68	do.	(5) Husni 'Abdallah Hassan Na'aman and 48 others Heads of Families representing 289 persons.	30
69	do.	(6) Najib el Haj Muhammad Khalil 'Umar Hammad and 10 others.	11
70	do.	(7) Yasin Yusuf Zetawi and 11 others.	12
73	do.	(8) Muhammad Ahmad Muhammad 'Abd el Ghani Ni'man and 7 others.	8
71	10405/2, 3 & 5. 10406/2 & 3.	(9) The Mukhtars and the Members of the Village Settlement Committee of 'Attil on behalf of the village of 'Attil.	In whole
1	10402/1-3	(1) Tova Rutman	In whole
4	10403/1		
2	10402/4	(2) Haiyim Rutman	40
3	10402/5	(3) Baruch Holbetz	,,
5	10404/1	(4) Rivqa Aharonson	,,
6	10405/1-3, 5		
7	10406/1-3		
8	10407/1, 3, 4, 12, 13		
58	10409/1		
59	10410/1		
9	10407/2	(5) Yosef Danieli (6) Esther Danieli	1 1 <hr/> 2
			50

<i>Cl. No.</i>	<i>PPN</i>	<i>Cl. No.</i>	<i>PPN</i>	<i>Share</i>	<i>Defendant</i>	<i>Share</i>	<i>Before the Settlement Officer, Haifa.</i>
10	10407/5	13	10407/14	4	(7) Ya'aqov Rutman	78	No. 8. Proceedings 4th May 1942, continued.
				1	(8) Rahel Rutman	20	
				<u>5</u>		98	
	11	10407/6			(9) Mordekhai Rodin	In whole	
	12	10407/7			(10) Wilhelm (Zeen) Bruenn	"	
	14	10408/1			(11) Meir Zon	1	
					(12) Hanna Zon	1	
						<u>2</u>	
10	15	10408/2			(13) Yisrael Balfour	1	
					(14) Penina Balfour	1	
						<u>2</u>	
	16	10408/3			(15) Arie Mikulizki	1	
					(16) Hinda Mikulizki	1	
						<u>2</u>	
	17	10408/4			(17) Shemuel Deresh	1	
					(18) Rivqa Deresh	1	
						<u>2</u>	
20	18	10408/5			(19) Hanna Kaufmann	In whole	
	19	10408/6			(20) Shemuel Salomon	1	
					(21) Tsila Salomon	1	
						<u>2</u>	
	20	10408/7			(22) Haiyim Wassermann	In whole	
	21	10408/8			(23) Yisrael Talit	1	
					(24) Sara Talit	1	
						<u>2</u>	
	22	10408/9			(25) Ya'aqov Matossov	1	
					(26) Sara Matossov	1	
						<u>2</u>	
30	23	10408/10			(27) Mordekhai Hirsh	1	
					(28) Tsippora Hirsh	1	
						<u>2</u>	
	24	10408/11			(29) Menahem Mutilsky	1	
					(30) Miryam Mutilsky	1	
						<u>2</u>	
	25	10408/12			(31) Avraham Abramovitz	1	
					(32) Gronia Abramovitz	1	
						<u>2</u>	
40	26	10408/13	57	10408/51	In wh. (33) Zeev Hochberg	1	
					(34) Riva Hochberg	1	
						<u>2</u>	
	27	10408/14			(35) Ya'aqov Hershkovitz	1	
					(36) Sara Hershkovitz	1	
						<u>2</u>	

<i>Cl. No.</i>	<i>PPN</i>	<i>Cl. No.</i>	<i>PPN</i>	<i>Share</i>	<i>Defendant</i>	<i>Share</i>	<i>Before the Settlement Officer, Haifa.</i>
	41		10408/28		(65) Shelomo Meimes	In whole	
	42		10408/29		(66) Shemuel Marder	"	
	43		10408/30		(67) Yehoshu'a Tyren	1	
					(68) Devora Tyren	1	
						—	
						2	No. 8.
	44		10408/31		(69) Shim'on Tikuzki	1	Proceedings
					(70) Tsippora Tikuzki	1	4th May
						—	1942,
						2	<i>continued.</i>
						2	
10	45		10408/32		(71) Ya'aqov Fuchs	In whole	
	46		10408/33		(72) Sholomo Reuven Pishko	1	
					(73) Rivqa Pishko	1	
						—	
						2	
	47		10408/35		(74) Nissan Heissiner	In whole	
	48		10408/36		(75) The Sharon Water Co. Ltd.	"	
	56		10408/44				
	49		10408/37		(76) Reuven Feller	"	
20	50		10408/38		(77) Arieh Rohrman	1	
					(78) Hadassa Rohrman	1	
						—	
						2	
	51		10408/39		(79) Shimson Katzap	In whole	
	52		10408/40		(80) Mordekhai Gutstadt	"	
	53		10408/41		(81) Yosef Ziga	1	
					(82) Hadassa Ziga	1	
						—	
						2	
	54		10408/42		(83) Yosef Silberstein	1	
					(84) Batia "	1	
						—	
						2	
30	55		10408/43		(85) Yosef Shim'oni	1	
					(86) Miryam "	1	
						—	
						2	
					<i>Third Party</i>		
	72		10407/3, 13		(1) Yosef Berman	In whole	
			10408/1-22,		(2) The Palestine Mort- gage and Credit Bank, Ltd.	"	
			24-33, 35,				
			37-43		(3) Loan Bank, Ltd.	"	
			10408/1-18,				
40			20-22, 24-33,				
			35, 37-43				
			10408/1, 2, 3,		(4) The Central Bank of Co-operative Institu- tions in Palestine, Ltd.	"	
			5, 8, 10, 11,				
			14, 15, 17,				
			20, 22, 25-29,				
			33, 35, 38,				
			39, 42, 43				
			10404/1		(5) Efrain Ltd.		
			10405/1-3 & 5				
50			10406/1-3				
			10407/1, 3, 4,				
			12, 13				
			10409/1				
			10410/1				

Before the
Settlement
Officer,
Haifa.

No. 8.
Proceedings
4th May
1942,
continued

Hadera May 4th 1942.

(R. No. 696693 of 6.5.42)	Abd el Latif Salah,	representing group 1 & 2.	
(R. No. 696696 of 6.5.42)	Uthman Bushnaq,	representing group 3.	
(R. No. 696694 of 6.5.42)	Anas. Eff. Khamra,	representing group 4.	
	Husni Abdallah Hassan Na'aman.	representing group 5.	
	Najib el Haj Mohammed Khalil,	representing group 6.	
	Yasin Yusef Zetawi,	representing group 7.	
	Mukhtar of 'Attil,	representing group 9.	10
	Moh. Ahm. Mohd.,	representing group 8.	
(R. No. 696692 of 6.5.42)	Abcarius Bey,	representing defendants 1 & 4.	
(R. No. 696691 of 6.5.42)	Mr. J. Kaiserman,	representing defendants 2, 3, 8, 9, 10, 33 & 37.	
(R. No. 696695 of 6.5.42)	Mr. Schwatz,	representing defendant No. 73 & third party No. 2, 3.	
	Wife of 1st Third Party Sonie Benna. Third Party in the Army.		

Abd el Latif Bey as Salah. Our claim of Khor Wasa' in general. The land is part of the masha' of Zeita known as Raml Zeita, registered 20 in the Land Registry 1288 Daimi, a short time of the promulgation of the Land Code. The land was registered in 20 shares in the names of 23 persons. These 23 persons are nominees. The usage in Zeita was that each one who had a feddan used to plough. This usage was both before and after the registration. This state of affairs continued until the occupation. Certain heirs of the registered persons then attempted to sell the land. An action was brought by certain cultivators in the Land Court of Nablus. In their claim they displayed the true facts concerning the nominees. Judgment L.C. 18/23, dated 13.3.23. The land was considered as masha' for all the inhabitants of the village. On 30 appeal 1/27/23, 1st October, 1923 Court of Appeal, upheld the finding that the land was masha' for the village and cultivated by the Zeita villagers in Masha' form. The Court found that registration could not be made until each claimant proved his claim to the land. Art. 8 of the Land Code. The Land Court gave a judgment on rehearing on 14.4.24. The Court gave judgment for 1 out of 906 to each plaintiff and directed the correction of the title deeds. The boundaries of the land were stated. On appeal 70/24 Judgment confirmed. A certain part of the heirs of the registered owners grouped themselves as plaintiffs and defendants and brought an action in the Land Court of Nablus, 11/24, before the 40 Judgment of the Court of Appeal in 70/24. The attorneys for the plaintiffs were Faragy and Sh. Kurab of Nablus. Nagib Hakim authenticated the Power of Attorney in Haifa. A mazbata was given by the Mukhtar of Zeita and the Imam assessing the value of the Land @ 4150. First hearing 27.1.35. On the same day certain people of Zeita heard of this and submitted applications to the Court. Application for adjournment on behalf of plaintiffs and defendants 7.3.25, Sh. Kurab. On the 19th of March, 1925, Abd el Fattah brought an action before the Haifa Land Court. This Abd el Fattah was one of the first plaintiffs in the Land Court Nablus. Considering the land as masha'. He withdrew his claim 50 on the 16th December, 1923, from the Nablus Land Court Case. In the Land Court of Haifa Abd el Fattah claimed on his own behalf and 3 sons

v. 3 Jews. Samsonov and others. This case was in respect of Khor al Wasa' 10/25 and judgment was found in favour of the plaintiff. On the strength of this judgment the land was registered in the land registry of Haifa in name of Plaintiffs and immediately after 5.6. the land was transferred to Rutman and Aaronson. Saleh el Khatib and others appealed the judgment. As some of the parties were not parties to the original action their objections were overruled. The Court held that objections could not be split into parts and overruled other objections. Judgment is clear that each person has a right to bring a separate action

10 against the judgment. Judgment 39/25 dated 2.1.1926. Judgment confirmed 35/26. Notice of Settlement 2nd May 1929, O.G.235. Thereupon the people of Zeita objected saying the land was not within the lands of Hadera. Settlement Officer gave his decision in Case 92/30 26th June 1931 Land found to be in Zeita or Attil. Decision upheld on appeal, but on different grounds. If the Land Court held that the rights of any persons were affected the Court of Appeal found no rights were affected, and dismissed the appeal. Privy Council appeal. Judgment 19/35. The inhabitants of Zeita were not represented before the Privy Council. The masha' land of Zeita (Raml Zeita) was declared under

20 settlement and the Settlement Officer in Case 41/Zeita found that Khor al Wasa' and Masha' Zeita lies on the eastern and south boundaries of Hadera. I produce a certified copy of the decision. The essential point before us is whether the land is part of Raml Zeita, masha' of Zeita, as adjudged on appeal. If we can satisfy the Court that Khor el Wasa' is part of Raml Zeita we shall succeed in this action. There are the decisions from two Settlement Officers that Khor al Wasa is in Raml Zeita. The facts prove this finding. The late Mr. Lowick dealt at great length with this point. Raml Zeita in the registers: are road, road, Kharab, Infiat S.E.N.W. customary order of directions. There is a plan attached to

30 the files (Wilbushevitz plan). The boundaries that interest us are the western and the northern. On both these boundaries we find Hadera. The eastern part of Hadera was Arab en Nufu'at. Mr. Hankin who bought the Arab en Nufe'at lands in 1893. After the purchase, and with the agreement of the inhabitants of Zeita. Wilbuschewitz made a plan and eucalyptus trees were planted on the boundaries. These trees still exist. The plan was, until the agreement between Abd el Fattah and Samsonov, considered to show the agreed boundary of Hadera. The part lying east of Hadera was not encroached upon and was in the possession of Zeita until 1925 when Abd el Fattah brought his action. The tithes

40 and taxes were paid by Zeita people to the collectors of taxes in Tulkarem until 1925. Two important points in regard to boundaries shown to Mr. Lowick. The south boundary of Hadera Khor el Yacub and Tin es Suweriya is Dabbat Qasa and the road which extends to Qazaza. This Qasa road separates Hadera land from Khor el Wasa', on the north. The land sold by Rutman to Risotto shows the southern boundary as the Qasis road. (This land lies north of Khor el Wasa.) There is a Land Court Judgment, confirmed on appeal in our favour. As to the judgment of the Haifa Court there is a general principle from which we cannot deviate. A decision that acquires finality cannot be

50 objected. Any other decision or judgment cannot stand against it. Civil Procedure in force at the time. Principle not affected by repeal 2 (3). The other party may contend they have a final judgment. The first

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judgment having been delivered, it could have been altered or revoked according to the rules in force at the time. The 2nd judgment was given on the basis of a claim made by a plaintiff in the original action who withdrew his claim and whereas resort to legal procedure was not made the first judgment stands.

The Ottoman Code of Civil Procedure contained rules concerning conflicting decisions. This rule applies only to judgments of the same Court and same parties. Let us assume that both judgments stand. Rule 215 of the Ottoman Civil Procedure Rules. The first judgment remains in force and should be applied. These legal provisions support my view that the first judgment must stand. If we prove the second judgment was obtained by collusion or fraud it can have no force. In addition to the facts set out in the decision of Mr. Lowick, I refer to the action 11/24 in the Land Court of Nablus. After submission of complaints by the inhabitants of Zeita the Case was withdrawn on the 7th of March. Haifa Land Court on the 10th of March. I refer to Halsbury, Vol. 13, page 436 on the question of fraud or misrepresentation paragraph 491. We have evidence to prove this point concerning the Land Court Haifa Action, although I hold we do not need to call this evidence. Collusion. No possession since 1925 by my clients because possession was beyond their control, the police prevented the Arabs from taking possession. Prescription 1666, Majalla. No lapse of rights of actions pursued.

Mr. Uthman Bushnaq. My position is the same as that of Abd el Latif Bey. I support his statement, and add that Ard Raml Zeita was registered under Nos. 28/31 inclusive 2-4 Moharrem 1288 with the western boundary as Arab on Nufu'at. Mr. Nissan Rutman, who held a Power of Attorney from Toba Rutman knew the land was in Khor al Wasa' for in 1922 he made an agreement with Mabarak Assad and others (registered owners) to buy the land of Raml Zeita. The contract between him and the then registered owners was clear that Khor al Wasa' was in Raml Zeita. He paid some money to the then registered owners and endeavoured to transfer some of the land to others. This contract was the cause of bringing the action 18/22. Cultivators in possession v. registered owners who made the contract. The attorneys for the registered owners was Nagib Hakim and Mr. Kaisermann. Nissan Rutman was the man who paid the money. In the proceedings the western boundary of Raml Zeita was mentioned and those boundaries included Khor el Wasa'. First judgment appealed. Rutman financed the appeal and gave the bond for the appellants. I produce a copy of the bond "B". When the case was remitted for rehearing another bond was given. Exh. "C". When the second judgment was given on appeal, a difficulty arose between Rutman and the registered owners. The registered owners claim they were threatened with criminal proceedings. There was a difference between the registered owners, and this was the reason for the Land Court Action. Some persons in possession approached me and I applied to be joined as a third party.

Anas Eff. I support my friends as to the facts. As to the Haifa Land Court judgment all the parties should have been cited. The judgment does not bind anyone not a party. The Privy Court only set aside the finding of Mr. Lowick concerning his jurisdiction. I submit that there is no need to prove fraud. Such a finding has been made and has become

final. Knowledge of agent is knowledge of the principal. I do not think there is any further necessity to call evidence. This case, is in fact a continuation of 90/30. Land Settlement Officer can make a finding on the evidence of Mr. Lowick. There was ample evidence in 90/30 to prove this and I see no reason to recall it. Ruling as to points on which to proceed.

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Husni Abdallah. I hold a title deed from my father there are 20 such deeds. The land is possessed and cultivated by all the village of Zeita. I was one of the persons who contracted with Nissan Rutman in 1923,
10 1924, or perhaps 1922—

Najib el Haj. I associate myself with the statements of the advocates Abd el Latif Bey and others.

Yasin Yusef. I also associate myself with the statements of the advocates Abd el Latif and others.

Mahmud Hassan en Naddaf. I agree with the statements of the advocates Abd el Latif Bey and others.

Nimr Said el Fares Mukhtar of Attil. There is a boundary dispute between us.

Mohammad Ahmad. Group 8. I associate myself with the advocates
20 Abd el Latif Bey and others.

Case adjourned until afternoon 3 p.m.

Parties present as at morning session.

Abcarius Bey absent.

Abd el Latif Bey. We have some of our witnesses. There has been much evidence given before Mr. Lowick. This can be taken into account. Rule 9 L. (S. of T.) Ordinance.

Mr. J. Kaisermann. I draw attention to Rules 6 & 7 and plaintiffs ought to proceed with their case. If Abd el Latif Bey relies upon any evidence given before Mr. Lowick he should say so. Address by Abd
30 el Latif Bey, stating that he has large numbers of witnesses and wishes to refer to evidence given before Mr. Lowick and to know defendants' claim amplified by defendants' advocates.

Settlement Officer. The procedure must follow the Settlement procedure rules, especially Rules 6 and 7. Drayton 1804.

4.5.42.

CECIL KENYON.

Abd el Latif Bey : There is much evidence.

Uthman Bushnaq. Statement in similar terms to Abd el Latif Bey.

Settlement Officer's Ruling. This case must proceed by plaintiffs'
40 witnesses being produced and heard.

Before the
Settlement
Officer,
Haifa.

No. 9.

PLAINTIFFS' EVIDENCE.

Husni Abdala Hassan.

Plaintiffs'
Evidence.

1st Witness for plaintiffs on oath.—HUSNI ABDALLA HASSAN, aged 40, Zeita. Teacher of the D. of Education.

No. 9.
Husni
Abdalla
Hassan
4th May
1942.

I am from Zeita and live in Zeita, and know the lands of Zeita, and I know Khor Wasa'. The land is near Hadera. S. Tariq Attil. N. El Qasa' & Eucalyptus. E. Zeita. W. Arab en Nufu'at, today Hadera. Khor al Wasa' is part of Zeita, masha'. It is registered land in the Tabu. 23 persons in 20 title deeds. I am a registered owner. The land is for all the inhabitants of the village of Zeita. From what I heard people used to register the land in the name of the two heads of the families in order to avoid payment of taxes. I never interfered with the inhabitants of the village. The custom is to divide the land between the cultivators, of Zeita. Cultivators undertake to pay one fifth of the yield to non cultivators. I was approached to sell my registered land by Nissam Rutman through Haj Ahmad Abu Jazzar, now dead. We negotiated to sell about 3,000 to 4,000 dunums in Khor Wasa'. We explained we did not own all the land. Rutman said he knew that all the land belonged to the village, but if we were successful he would take the land and if we failed in our case he would pay expenses, etc. Several documents were drawn up in the conditions outlined by me.

Mr. Kaisermann : I object to oral evidence.

S.O. : Witness to continue giving his evidence.

Witness : I signed the documents in company with others, and received some money in advance. Document signed before Notary Public. I do not know how many persons signed such documents. As far as I know more than one agreement was signed. There was no copy of the document I signed. Nissan Rutman was not satisfied with the document. Others were drawn up before Notary Public in Tulkarem and Haifa. Rutman wanted to recover his money from us in case he lost his action. Trouble in the village following these agreements. Actions commenced in Nablus Land Court. Plaintiffs not registered owners. Defendants registered owners. I did not know Nagib Hakim, Advocate, not Mr. J. Kaisermann. Nissan Rutman paid the expenses of the registered owners. We only signed the Power of Attorney. Nablus Land Court sitting in Tulkarem. N. Rutman was present in Court. N. Rutman and Ja'acov Samsonov, now dead, came to my house. We discussed the action. We arranged a meeting with the registered owners. Met Rutman at Mukhtar's house. Mukhtar can read. Asked me to call contractors who had agreed to sell. In the result of the actions plaintiffs succeeded. After that we were not consulted. Only heard that Abd el Fattah brought an action against Hadera colonists and asked not to oppose the claim. I remember before the institution of the Haifa case, another case was lodged in the Nablus Land Court then withdrawn. Zeita was in possession of the land before the last registration before the Haifa Case. No one of Hadera possessed the land before registration. The document drawn up before the Notary Public—No action. After the Nablus Case was lost, Rutman did not ask for return of money from me, the notary public was

in Zeita drawing documents. Rutman claimed in Court against Tawfiq el Zubeid and obtained judgment. After the new registration the people of Zeita did not possess the land. The police of Hadera prevented them. Hilmi eff. sent a letter to Zeita asking them not to interfere. I know Abd el Fattah. One of the cultivators of Zeita. He has a house in Khor el Wasa'. Others of Zeita Taufiq el Zubeida, Haj Mohd. Khalil, Haj Mohd. Dekrallah, Fared Ibrahim Yusef. The police prevented Taufiq from cultivating after the Haifa Land Court Case. Haj Mohammad el Haj Sa'ad, cautioning him not to do anything in the lands of Khor el Wasa'.

10 We were not in the position to take possession because of the Police and the Government Taxes paid to Tulkarem before 1925, collected from Zeita. Tithes assessed by Tulkarm assessors. No opposition or dispute before 1925.

Before the Settlement Officer, Haifa.

Plaintiffs' Evidence.

No. 9.

Husni
Abdalla
Hassan
4th May
1942,
continued.

Yd. Mr. J. Kaisermann: I signed a contract with Rutman with several others, not a separate contract. I have not got the contract and have not seen it since 1922. I do not remember seeing any other contract. I sold jointly with others 3-4000 dunums in Masha' Zeita. Do not remember price. I had as an advance £E.15 document drawn up before notary public. Some others had £E.15, some had more, cannot remember

20 exactly what boundaries were mentioned in the contract. Khor el Wasa' was mentioned. This happened before the Nablus Court Case which was caused by this event. Khor el Wasa' was mentioned in the Nablus Land Court Case. The action was brought against the registered share owners. I was a defendant. When I say Raml Zeita I include Khor el Wasa'. There are many Khor's in Masha' Zeita. Documents before notary public were security for the sums received as advance. I knew Rushdi ibn Ibrahim now dead. Do not know if Rutman gave Rushdi money, and do not know of any other business between Rushdi and Rutman. Do not know if Rushdi sold to Rutman. Husein Abd el Razzaq sold. Naif

30 Mustafa sold, both had Kushans. My share was 11 shares. I sold 4 to the S.M.C. In Khor el Wasa' I have 11 shares. Never cultivated myself in Khor el Wasa' I never went to the Police myself in connection with the possession of the Jews, and never took any steps. Such case necessitated large sums of money. Abd el Fattah built the houses some 40 years ago. I first heard of Abd el Fatta's selling land to Rutman in 1925, from inhabitants of Zeita. I took no action. I did not go to the land when I heard of the matter, nor did I speak to Abd el Fattah. Do not know of anyone who did do so. I know that Abd el Fattah withdrew his case

40 Mr. Lowick. It is untrue that Rutman does not know me. I approached him personally and he came to my house. I am a notable of Zeita. Do not know how much was given by Rutman in the village. In 1922 I was in Satt. Tulkarem S/D. from 1920-24 5 years, then went to Saffa, 3 years, and then I returned to Satt. Abd el Fattah was cultivating part of the lands. Taxes may have been collected in Haifa after 1925.

S.O.: My father died in 1916 or so. My property in Zeita is administered by my cousins. My father is registered as owner. I have a mother, brother and sisters alive. My brother received £E.25 as well as my £E.15. Only Khor al Wasa' was sold. I knew that our kushan

50 was for land that was the common property of the village. Do not know if Abd el Fattah was a registered owner.

Before the
Settlement
Officer,
Haifa.

Plaintiffs'
Evidence.

No. 9.

Husni
Abdalla
Hassan,
4th May
1942,
continued.

Re Xd. by Abd el Latif: And el Fattah is the owner of a house in Khor el Wasa'. The £E.25 was paid to my brother for his share in the land, in Haifa. I used to visit my village of Zeita once or twice a year from Saffa. From Satt I visited it more frequently, and spent my summer vacation in the village. Satt is about 20 minutes from Zeita. I did not cultivate in Zeita as I am an official.

S. O. Ruling: Defendants' witness to be produced after plaintiffs.
4.5.42.

CECIL KENYON.

No. 10.
Mohammad
Mahmud
Hamdan,
4th May
1942.

No. 10.

PLAINTIFFS' EVIDENCE.

Mohammad Mahmud Hamdan.

10

2nd Witness for Plaintiffs, on oath—MOHAMMAD MAHMUD HAMDAN,
aged 56-57, Zeita, cultivator.

I know the lands of Khor al Wasa'. It is part of Raml Zeita, and is registered. 23 persons. 20 kushans registered boundaries S.E.N. Road W. Infiat. N. Qasa road boundary of eucalyptus between Infiat and Khor al Wasa'. Land belongs to all the villagers. Registered owners not in possession, as owners. All the inhabitants of the village were owners. Persons not registered possessed the lands as owners. Those who were not registered paid no share to those who were. Never any difficulties. Witness names owners who were not registered. Abd el Fattah Haj Ahmad Zekrallah. Sh. Salih Khatib, Musa Said Ahmad, Said en Natur, Moh. Abu Masard, and myself. There were disputes in 1922 Nissam Rutman entered into contracts with registered owners. Others took action against him in 1923 and obtained judgment. Five persons obtained judgment that the land was masha' for the inhabitants. 10 to 13 persons of the registered owners brought an action against others and obtained judgment, then withdrew it. This was done to obtain registration in the name of Rutman when the inhabitants became aware of it they opposed it by application to the Courts. All the expenses were incurred by Nissam Rutman. After the objections by the inhabitants of Zeita, Rutman arranged a case in Haifa and obtained judgment. Abd el Fattah was a party. Abd el Fattah was one of the masha' claimants 1/906. He is the same person who claimed Khor al Wasa' in whole. The second case in Haifa was not known to anyone in Zeita. Judgment was given in favour of Abd el Fattah. I did discuss the case with Abd el Fattah. Abd el Fattah told me that he did not know what the Haifa Case was about. Until the Haifa Case the Zeita people were in possession. No one of the Jews of Hadera was in possession of the lands. Abd el Fattah was not in possession alone, he has 3 sons. Salim, Mousa, Mohammad and a nephew Abd el Latif. They were in possession together. They were not in possession of all Khor al Wasa'. Abdul Fattah built a house of stone and bricks, it is customary for the Arabs to do so. House near the boundary of Hadera he was nearest to the Jews, and he and his sons used to work for Jews. The police prevented

us from taking possession of the land after 1925. The Mukhtars and Taufiq el Zubeide endeavoured to plough and was prevented from doing so. When Taufiq came back from ploughing he said he was prevented, for what reason I am not certain. He was in prison a few days. The inhabitants of Zeita feared the police.

XX Anas Eff: We grew sumsum, barley, water melons. Cultivators harvested the crop paid nothing as lessees. I may build on the masha' lands as an inhabitant of the village. As far as I remember Khor al Wasa' was agricultural land. Assessors from Tulkarem assessed the crops and
10 taxes were paid there.

Xd. Abd el Latif Bey. I know a place called Qasa' situated near the house of Abdul Fattah, in the wood. 5m. from boundary, there is a hillock there. There is a road from Hadera going to the east called Tariq el Qasa', goes from east to west. It is the boundary between Raml Zeita and Hadera. There is a swamp bass el Qazaza east of the Dabba'. The road leads to the bassa and proceeds east. Directions west to east. The land north of the Qasa road is Hadera, Khor el Yacub locality is north of the Barka and Qasa', Hadera land, Road is northern boundary. I know Ein el Hajar on boundary, on east of Khor al Wasa'.

20 *Xd. by Mr. J. Kaisermann*: The Ein is a spring of an old stone. There is both stones and a little water. It is far from the house, at the edge of the Qazaza swamp. I gave evidence twice. I may not have mentioned Ein Hajar before as I may not have been asked any question. I have one share in Zeita. I know Khalil Raja Khalil. He is the first of Abd el Latif bey's clients. Never grew durra on the land, it is not fit for it. Since 1926 I did not cultivate. I was not one of 1906. Last cultivated in 1925. Cultivated in 1922, 1923 and 1924. Ali Abdul Qader, Taufiq Zebeide, Farid Ibrahim and Zikrallah cultivated in 1925. All the village cultivated. About 30-40 persons cultivated. Cannot say how many persons cultivated
30 in 1925. Perhaps 50-60 in Khor al Wasa'. If I said 20-25 in 1930, I cannot remember the exact number now. Melons finished at end of August in 1925. No one interfered with our possession or cultivation in 1925. Did not see any Jews on the land, marking it, or walking around. I returned in October or November and found Rutman had sown it with barley. Cannot remember with whom I visited the land. Same people as I have mentioned. They may have been with me. I enquired of Abd el Fattah who was cultivating, as he was a neighbour. Did not go to the Police or to the District Officer or to anyone. Abdul Fattah cultivated as cultivator of Zeita and has rights in Zeita. I know Khor Yacub in Hadera. I know of the Nablus
40 Court Case. Nissam Rutman. The plaintiffs were not registered owners.

Re Xd. by Anas Eff: Abdalla-Ahmad Hassouni. Hassan Haj Said and Yusef Bey built houses. The house that is alleged to belong to Abdul Fattah belongs to others.

Case adjourned until May 5, 1942.

May 4th, 1942.

CECIL KENYON.

*Before the
Settlement
Officer,
Haifa.*

*Plaintiffs'
Evidence.*

No. 10.
Mohammad
Mahmud
Hamdan,
4th May
1942,
continued.

Before the
Settlement
Officer,
Haifa.

No. 11.

PLAINTIFFS' EVIDENCE.

Mahmud en Nadaf.

Plaintiffs'
Evidence.

Hadera May 5th, 1942.

Present, Abd el Latif Bey as Salah.

'Uthman Bushnaq.

Anas Khamra.

—
Mr. J. Kaisermann.

—
Yasen Yusef Zeitawi claimant in C/70.

3rd Witness for Plaintiffs.—MAHMUD EN NADAF, aged 67, cultivator, 10
'Attil.

'Attil lands adjacent to Zeita lands. I know the lands of Khor el Wasa'. Boundaries: W. Arab en Nufu'at, to-day the Jews of Hadera Boundary is lines of eucalyptus trees 5-10 lines. Southern boundary, Lands of 'Attil from Hadera to Zeita. E. Road between mulk of Zeita and masha' of Zieta. N. Road between mulk of Zeita and masha' of Zeita, leading to Qazaza thence to Ein el Qasa' thence to Infiat. Ein el Qasa is a small spring for watering cattle. There is stone masonry around. It is a natural feature. All the land within these boundaries are Zeita lands. There is no dividing boundary between Khor el Wasa' and Raml 20 Zeita. Boundary between Khor el Wasa' and Hadera, on the west eucalyptus trees, on the east eucalyptus trees. I know this land many years from the time Hankin and Selim el Khoury purchased Infiat. My knowledge extends back before this time. Khor el Wasa' was in possession of Zeita people, cultivators. No separate persons held Khor el Wasa' for themselves. I am a cultivator, have some cattle, no other business. Graze my cattle in Zeita. I was very often in Khor el Wasa' and also Khor el Halimi. I know Abdel Fattah Samara and his sons and nephew. When a person has sons, so long as he lives, his sons have no interest. 30 Abdel Fattah was as any other cultivator. Cultivating and keeping cattles, 1925. Disputes. Nissam Rutman and Baruch Rutman and others attempted to drive in angle irons. The police were brought from Hadera but we escaped. The next day we received notice to report to the police in Tulkarem. I said the Court should decide this matter and refused to go to Zichron. Ya'acov Wadie Masa'ad was involved in this. Four persons were summoned with me. We are all of 'Attil, when we were encroached upon we opposed. The police officer wanted to send us to Zichron but we submitted a bond, and went to Zichron where the police made us stand five days in the sun. Until that day Zeita people were in possession. We gave undertakings not to interfere. The prevention applied to Zeita 40 people as well. Zeita people were also taken by the police in connection with the land. Qasa' is a stone in the rocks. It is within the orange grove north of Fowerriya on the north of Khor el Wasa'. There is a road called Tarik Ein el Hassa'. A public road between Hadera and Zeita. This road runs along the Qasa, which is in the orange grove. The road leads to the sea. I know the Qazaza north boundary. This road runs north of Qazaza to Zieta. The Ein el Hassa is in the swamp. I know Birkat Nuriya, a small pond to the east of Khor al Wasa'. The possession

No. 11.
Mahmud
en Nadaf,
5th May
1942.

of Zeita was by cultivation of water melons, wheat, sesame. I saw the crops. Mahmud Hamdan Mohd. Khadr, Musa Sedair and many others including Abdel Fattah Samara.

*Before the
Settlement
Officer,
Haifa.*

*Plaintiffs'
Evidence.*

No. 11.

Mahmud
en Nadaf,
5th May
1942,
continued.

Xd. by Mr. Kaisermann. We had our incident with the Jews in June 1925. Never saw the Jews on the land before that putting in iron marks or people. 4 or 5 persons. 2 Jews and others. I was cultivating lupines and water melons. The plains were full of Zeita cultivators. The Jews encroached upon our lands and we objected. The Jews went to the police at Hadera. We did not call for the help of the Zeita people. We left
10 when we saw the police coming. My village is 'Attil, and we hid on our lands. I live in Salama khirbe of 'Attil. I slept in Salama. Some of the others went to Zalafa and others to the village. I reported the incident to the Mukhtar, the next day I told the story to my workmen. I attempted to regain possession, but were told by the D.O. through the Mukhtar not to go out (a year or two or three later a document was taken from me by Rutman)? We signed a document and gave it to the police saying we should not encroach. We did not take up any angle irons. I may have told the five days in the sun story before. Do not know the Shiff, the police officer concerned, is dead. I do not remember if I said,
20 before Mr. Lowick, that angle irons were pulled up. Went to Zichron a few days after the incident. We gave the document in Zichron and were released. I do not remember if I complained to Hilmi Bey. I did not complain to any lawyer, or to any Qadi. 360 dunums were taken from us. I did nothing about it until land settlement came along. Many persons were cultivating the Zeita lands perhaps 15-20. No case about this land before Mr. O'Connor. I had a case before Mr. O'Connor.

I was not angry with Rutman. I was in Zichron. I did lease 80 dunums in Khor el Wasa' from Rutman in November 1925 (Exhibit "D") one year. I have a seal. My seal is on Exh. "E". I have always my
30 seal. Once lost my seal 7-8 years ago. Do not remember ever lending my seal to—Rutman. My seal is on the lease. I did lease the land. Musa Hassan Naddaf is dead. Do not know if he leased land. I know of no 'Attil people who leased land from Rutman. Do not know if Zalafe people leased land. Do not remember if I ever leased any other land except the 80 dunums and 40 dunums. Do not remember ever saying I took 200 dunums on lease. Mohd. Aradi was Mukhtar of 'Attil at the time. Selim el 'Amous was Mukhtar 4-5 years before. I complained to Hamdan ez Zakar. Selim Ammous and Hamdan were joint Mukhtars. Haj Hamdan was Mukhtar in 1925. I heard that the Mukhtar of 'Attil signed
40 the plan. He was discharged for that reason. The D. O. discharged him. Abdel Fattah cultivated, first he had a tent, now he has a house. He had a house before he sold the land. Many persons built houses. 10 or 12, by Arabs of Zeita. I know Mohd. Mohd. Hamdan.

Xd. by S.O. : My dispute was over land that was in dispute between Zeita and 'Attil as far back as I remember. I grazed my cattle in Khor Wasa' lands as well as our own. I live about half an hour's riding, 30-40 minutes. Had about 200 sheep and a shepherd. My sheep were driven home every day.

Re Xd. by Mr. Bushmaq : I do not read or write. I leased the lands
50 from Rutman for one year, but do not remember which year and gave

Before the
Settlement
Officer,
Haifa.

No. 11.
Mahmud
en Nadaf,
5th May
1942,
continued.

a document (lease)? that year. Did not give another document for another year. The land I took from Rutman belonged beforehand to Khadr Abu Nassar el Eid and then Rutman's agent threatened me with legal proceedings and so I entered into an agreement. Lease "E." As to lease "D" I did not sign or seal it. I deny I put my thumb print on lease "D."

Abd el Latif Bey leaves the Court by permission.

No. 12.
Mustafa
Mohd. Abu
Ghudaya,
5th May
1942.

No. 12.

PLAINTIFFS' EVIDENCE.

Mustafa Mohd. Abu Ghudaya.

10

4th Witness for Plaintiff, on oath—MUSTAFA MOHD. ABU GHUDAYA, aged 41, Cultivator, Zeita.

I know Khor Wasa'. It is part of the sandy lands of Zeita. Raml Zeita is registered in the Land Registry in the names of 23 persons in 20 title deeds. The owners are all the inhabitants of Zeita, not only the registered owners. I can give the boundaries. South, road. W. Infiat. E. Road, N. Tariq el Qasa and Ein el Hajar. Khor Wasa' is within the boundaries. To-day the Infiat lands are Hadera. There is natural boundary between Khor Wasa' and Hadera, a hillock, to-day eucalyptus planted after purchase of Nufu'at lands. The road on the north goes east to west. Zeita used the land from of old. I am not a registered owner. I used to cultivate in Khor al Wasa'. In 1922 some of the registered owners entered into an agreement with Rutman to sell him 3-4000 dunums. Some of the non-registered owners brought an action against him. I became aware of the agreement from the registered owners, we were told we could do whatever we wanted. I was not present when the agreement was made, the story was related to us. For this reason non-registered owners brought the action. The action brought by Zikrallah and others was on our behalf, financed by us. We obtained judgment in favour of 906 persons. I remained in possession until 1925. In that year when I came to plough the police (?) came from Hadera and told me that the land belonged to Hadera and was Rutmans'. I was obstinate. So I was beaten and taken to the Police Station. Apart from me others came to cultivate, but went away when they saw how the police treated me. I was taken to the police, with Masoud en Nufah and Hassan es Said Labidi. I was warned by the police not to go on to the land. I accepted the warning and went away. The police intervened on other occasions, so I heard. I heard the D.O. sent a notice to the elders cautioning them not to use the land. We were claimants when settlement came to the district. I know Abdul Fattah well and his sons Musa, Selim, Mohd. and his nephews Abd el Latif. Their relation to Khor Wasa' was like any other villagers of Zeita. They were not owners of the land independently. The Jews did not come to the land before 1925. I never heard the Jews disputed the land.

Xd. Mr. Kaisermann : I cultivated in Khor Wasa'. Many persons cultivated in the land 15-20-30 at times. My cultivation was 30 dunums

approx. I know Sh. Mahmud Naddaf of 'Attil. I did not see him cultivate in Khor Wasa'. I did not meet Nissan Rutman in connection with the contract. I heard about the contract from the registered owners. I was harnessing my animals when the police came. Many people were there though they had not started work. Did not distinguish between Jews and Arabs or English police. About 10-20 persons were present. Three of us were taken by the police to the Station at Hadera, not to Zichron. Do not know who the police were. Kept there 2-3 hours. Took no undertaking from us, did not ask us our names. We went back to the village that night. I related the story in the village but did not report the matter officially to the D.O. Brought no action before the police or the Magistrate. That was the first time I heard N. Rutman had taken possession of the land. It may be that the D.O. warned us after 1931, when the S.O. gave his decision. Have never returned to the land since 1925.

*Before the
Settlement
Officer,
Haifa.*

*Plaintiffs'
Evidence.*

No. 12.
Mustafa
Mohd. Abu
Ghudaya,
5th May
1942,
continued.

Xd. by S.O. : I cultivate other land in Zeita as an unregistered owner. Abdul Fattah cultivated other land in masha', in many places, he had many animals for ploughing. I live in Zeita village, Abdul Fattah lives on the lands of Khor Wasa'. He first of all lived in a tent so I heard. Since I remember he had a house. Abdel Fattah had many cows for milk, and produced dairy products.

Case adjourned until 15th June, 1942, at 10 a.m. at Hadera.

No. 13.

PROCEEDINGS—continued.

June 15th, 1942 Haifa.

Present : Abd el Latif Bey as Salah
'Uthman Eff. Bushnaq,
Anas Eff. Khamra.

(R. No. 851005 of
15.6.42).

Walid Eff. Salah, representing

Abcarius Bey.
Mr. J. Kaisermann.

Husni Abdallah, representing group 5.
Yasin Yusef Zetawi, representing group 7.
Muhammad Ahmad Muhammad group 8.
Group 6 not represented.

Mr. Schwatz.

No. 13.
Proceedings
continued,
15th June
1942.

Abd el Latif Bey as Salah. Addressed the Court on the question of hearing the defence before calling the witnesses of the plaintiffs. I ask for a correction of the record. At the end of the statement of the plaintiff Abcarius Bey stood up to address the Court. The Settlement Officer then said he would hear the defence of the defendants after the luncheon

Before the
Settlement
Officer,
Haifa.

No. 13.

Proceedings
continued,
15th June
1942,
continued.

recess. In the afternoon session Abcarius Bey was absent and I was called upon to submit evidence. Thereupon I asked the Court to hear the reply of the defendants. Then Mr. Kaisermann asked for the application of Rule 6-7 of the Land Settlement Procedure Rules. I objected to the application of Rule 6 as being irrelevant.

Abcarius Bey: The memory of my friend fails him. I said no single word at the Hadera session. In the afternoon I was not present. A ruling was given by the S.O. Witnesses were heard and it is too late to object now. I submit the case should continue.

Abd el Latif Bey as Salah, continuing: After the last hearing the 10
advocates of the plaintiffs found that according to Mr. Lowick's judgment,
P.C.A. 19/35, the land should fall in the village of 'Attil or Zeita. In
view of this passage in the Privy Council Appeal I maintain the land
should be declared a settlement area in Tulkarem Sub-District and to
carry out the settlement in accordance with Mr. Lowick's judgment as
upheld by the Privy Council. The High Commissioner has declared the
land to be a settlement area in the Sub-District of Haifa. It cannot
be imagined that the H.C. contravened the express decision of the Privy
Council, especially as this point was the subject of protracted proceedings
before Mr. Lowick. We therefore applied to the High Commissioner 20
drawing attention to this fact. I received a reply acknowledging receipt
of the application. I produce the reply. We are pursuing the matter.
Uthman Bushnaq and Anas Eff. went to Jerusalem, to enquire the result.
In fact, before the Settlement Officer this is a settlement notice in the
Haifa Sub-District, and a decision of the Privy Council. The Court
should have regard to all the laws. The Settlement Officer should await
the instructions of the H.C. Firstly, whether in view of the decision of the
Privy Council the S.O. can continue. This was the same state of affairs
as before the late Mr. Lowick whose decision was upheld by the Privy
Council. This point goes to the root of the hearings. The question of 30
jurisdiction is important and can be raised at any time. The Settlement
Officer has no jurisdiction in spite of the Order of H.C. which I maintain
was issued by an oversight. The H.C. can change the land from 'Attil
to Zeita where there is no final judgment. In this case the matter has
been referred to the High Commissioner. In this point the H.C. cannot
alter the final decision of the Court. This point was before the late
Mr. Lowick and was his decision, upheld by the Privy Council. No other
authority can re-open the matter. Our proper decision was to refer the
matter to the High Commissioner, after we receive his decision we may
refer the matter to the proper judicial authority. The Settlement Notice 40
of Raml Zeita excluding Kefar Brandeis (Khor el Wasa), was published in
1934. Suppl. 2 435. The reason for this exclusion was the action pending
before the Privy Council. If the Privy Council decision had at that
time been issued Khor Wasa would not have been excluded. The decision
of the P.C. was later. It can only be imagined that by inadvertence the
Administration issued the notice in this form. Our application is for a
stay of proceedings until we receive the reply of the High Commissioner
or in the event of our application being rejected for time in which to submit
an application to the High Court, or for the Settlement Officer to give a
decision that the action is not within his jurisdiction. 50

'Uthman Eff. : I agree to the Statement of my colleague.

Anas Eff. : I agree.

Walid Eff. : I agree.

Husni Eff. : I agree.

Other plaintiffs present in reply to general question of the Settlement Officer. Agree with Abd El Latif Bey contentions.

Before the
Settlement
Officer,
Haifa.

No. 13.
Proceedings
continued,
15th June
1942,
continued.

10 *Abcarius Bey* : My first submission is that the application is too late. The Settlement of Zeita and Attil were recently held and the plaintiffs, if they have any grievance, should have applied then. The judgment of the Privy Council is not well understood. It is expressly that part of the Settlement Officer's finding, and altering the registration from Haifa to Tulkarem that has been set aside by the Privy Council. As we stand to-day, Kefar Brandeis which we know as Khor el Wasa', stands registered in Haifa. A notice of commencement of settlement 18.11.41 and 30.12.41 notifies of this settlement. The village is called Kefar Brandeis in the Sub-District of Haifa Settlement Area of Haifa Settlement Officer of the Area at the office of Haifa. No objection has been made to that, and it is now too late. Further in the P.C.A. judgment page 4. The Settlement of Zeita was completed and no objection was made.

20 The 'Attil people claimed their land was in Khor el Wasa' and their claim was rejected. The Haifa S. Officer is the only officer competent to deal with this land. The policy of the Govt. was to make a detached area of the land and not to put it anywhere until the Settlement Officer has decided the dispute. The land is a detached area of the land known as Khor el Wasa'. Once the ownership is known it is for the administration to decide in which administrative area the land should fall. It is submitted that there is no substance in the objection.

30 *Mr. J. Kaisermann* : Abd el Latif Bey application is misconceived. Sect. 3 & 4 of the L. (S. of T.) Ordinance. The Order (Sect. 3) was made. Sect. 4. S.O. appointed. High Court proceedings should have been instituted. Laches. The notice published in 1934. P.G. 435 is not as Abd el Latif Bey has stated. The settlement notice was for specific blocks. Vol. III Drayton page 1809, June 1928. May 1929. There is no direction in the Privy Council Judgment.

Mr. Schwatz : I concur with *Abcarius Bey* and *Mr. J. Kaisermann*.

40 *Abd el Latif Bey as Salah* : The gist of the defendants' claim is that the land is within the Haifa Sub-District and jurisdiction of the Settlement Officer. These are the facts objected to by us. At the time the case was heard by Mr. Lowick the land was registered in Haifa but this did not prevent the Settlement Officer from going into the matter at great length and deciding the land was in Zeita or 'Attil. To-day's proceedings are a second party of the first proceedings. Objection not too late, two types of objections. Personal and fundamental. Where there is a final decision of the Court the H.C. should abide by it. We have written to the H.C. and await his answer. Question whether the land is detached or not is immaterial P.C. judgment is the judgment we must consider.

'Uthman bey *Bushnaq* : Sects. 3 & 4 of the L. (S. of T.) Ordinance. We have never said that the H.C. has no authority to issue the notice.

Before the
Settlement
Officer,
Haifa.

No. 13.
Proceedings
continued,
15th June
1942,
continued.

The H.C. cannot issue an order repugnant to a final decision of a Court. I refer to Article 7 of the Interpretation Ordinance and to Article 8. The H.C. has power to issue orders under 3 & 4 of the L. (S. of T.) Ordinance. The H.C. has no power to issue an order repugnant to an order of the Court. We have applied to the H.C. to amend his Order. In the Settlement Notice of 1934 the lands of Khor el Wasa' were excluded. Settlement operations are not finished in either Zeita or 'Attil, only the lands declared in the settlement notice. We are not too late.

Anas Eff: I support the statements of my colleagues. Section 16 of the L. (S. of T.) Ordinance. This question is of considerable importance and once the land has been declared part of Zeita the plaintiffs' case is considerably strengthened. 10

Walid Eff: I submit that two points before the P.C. Boundaries and musha', the Privy Council upheld the first point, not the second. I agree with the arguments of my colleagues.

12 noon.

Case adjourned until 1 o'clock for decision.

No. 14.
Inter-
locutory
Decision of
Settlement
Officer,
15th June
1942.

No. 14.

Case No. 1/Kefar Brandeis.

INTERLOCUTORY DECISION of the Settlement Officer, Haifa Settlement Area.

20

Plaintiffs.

KHALIL RAJIH KHALIL and others.

Defendants.

TOVA RUTMAN and others.

Third Party.

YOSEF BERMAN and others.

The plaintiffs object to the hearings being continued in this case on the grounds that the Order of the High Commissioner declaring the land under settlement in the sub-district of Haifa is repugnant to a decision of the Privy Council given in PCA 19/35. The relevant part of the judgment of the Privy Council reads:— 30

“ In defining the boundaries of the village of Hadera the Settlement Officer was entitled to find that the area of Khor al Wasa' was not in Hadera, but within the boundaries of Zeita and/or 'Attil; that was a purely administrative finding.”

“ Counsel for the appellants asked that the case should be sent back to the Land Court in order that the Land Court should proceed to hear the appeal to them on the question of the boundaries of Hadera, but the judgment of the Land Court makes clear that they were not prepared to interfere with the decision of the Settlement Officer on this point, and their Lordships are of opinion that the case should not be sent back.” 40

From this judgment the fact emerges that the lands of Khor al Wasa' which are to-day known as Kefar Brandeis were found by the Settlement Officer to be out-with the settlement area of Hadera with which he was concerned at the time, and Settlement of Title (Settlement Areas) Order dated the 14th of May 1929 as published in Palestine Gazette No. 235 did not apply to the land.

*Before the
Settlement
Officer,
Haifa.*

No. 14.
Inter-
locutory
Decision of
Settlement
Officer,
15th June
1942,
continued.

On the 16th of March 1933 Orders under Section 3 of the Land (Settlement of Title) Ordinance were published in Palestine Gazette No. 350 declaring the sub-districts of Tulkarm and Haifa to be settlement areas, and thus Khor al Wasa' was brought within a settlement area, since the land was in one or other of these two sub-districts.

On the 22nd of December 1933 the lands of Raml Zeita were declared to be a village under settlement by a notice caused to be published by the Settlement Officer under Section 5 (1) of the Land (Settlement of Title) Ordinance, and on the 2nd of March 1934 the final notice of settlement was published under Section 7 of the Ordinance. By these notices the lands of Khor al Wasa' were excluded from the land to be settled.

On the 20th of December 1939 there was published in Palestine Gazette No. 974 the Administrative Divisions Proclamation 1939 whereby the High Commissioner, in virtue of the powers vested in him by Article 11 of the Palestine Order in Council 1922, proclaimed Kefar Brandeis to be a village unit of the administrative division of the Haifa sub-district of Haifa District, and on the 18th of December 1940 the Administrative Divisions (Amendment) (No. 2) Proclamation 1940 was published in Palestine Gazette No. 1064 whereby the High Commissioner again proclaimed Kefar Brandeis to be a village unit within the sub-district of Haifa.

On the 15th of January 1942 a further proclamation was published in Palestine Gazette No. 1163 whereby the High Commissioner again proclaimed Kefar Brandeis to be a village unit within the sub-district of Haifa.

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 of 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 possession 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 that he has jurisdiction to hear the disputes and decides to proceed with the hearing.

Before the
Settlement
Officer,
Haifa.

Interlocutory decision delivered in the presence of the parties present at the first hearing on June 15th 1942, at Haifa.

(Sgd.) CECIL KENYON,
Settlement Officer,
Haifa Settlement Area.

No. 14.
Inter-
locutory
Decision of
Settlement
Officer,
15th June
1942,
continued.

Haifa—June 15th, 1942. 3 p.m.

Walid Eff. Salah : We have a decision now that you are bound to proceed the case, and we ask for time to proceed to a higher Court to question the ruling. We are making an application for leave to appeal from the interlocutory decision, and ask for an adjournment. 10

Abd el Latif Bey } We associate ourselves with this application.
Anas Eff. }

Abcarius Bey : Being a question of law, we have nothing to say, except we oppose the application.

Mr. J. Kaisermann : I have nothing to add.

Mr. Schwatz : I oppose the application.

Abd el Latif Bey : I am aware that an interlocutory decision cannot be appealed. Our case is not connected with the decision. The same procedure is applied in this instance as in a final order. A question of jurisdiction is involved. 20

S.O. Ruling : There is no provision in the Land (Settlement of Title) Ordinance for leave to appeal from an interlocutory decision. Such decisions are appealable with the final decision. No appeal shall lie from a decision of a Settlement Officer save with the leave of such officer. Furthermore, the application, if in order, shall be made in writing. In this instance no such application has been made but the Settlement Officer refuses leave to appeal from the interlocutory decision delivered this morning on the grounds that no provision exists for such grant.

Haifa 3rd June, 1942.

CECIL KENYON.

Plaintiffs'
Evidence.

No. 15.

PLAINTIFFS' EVIDENCE.

Benjamin Fishmann.

5th Witness for plaintiff, on oath—BENJAMIN FISHMANN, 45 years, Jerusalem, Land Officer.

I gave evidence in respect of Khor el Wasa' before the late Mr. Lowick. I have re-read the evidence in the record of the proceedings. During my term of office I examined the unofficial land books of Hadera. I do not remember according to the unofficial land books there are certain entries bounded by Zeita on the East. According to the entries, there is no mention of Khor el Wasa'. I was not on the ground. A plot of land was shown to me as Khor el Wasa' on a plan as being outside Hadera. I do not remember the plan. I did see a plan, but I do not think Exh. S.1 of 92/30. I cannot remember the number of folios but I gave particulars of some entries. I came to the conclusion that the land shown on the plan was outside the plan of the registration made by the first settlers. Having examined S.1 I do not think it was the plan. 40

Abcarius Bey : I do not accept to have the evidence of the witness.

S.O. Ruling : Mr. Fishman to be recalled.

(Sgd.) CECIL KENYON.

No. 15.
Benjamin
Fishmann,
15th June
1942.

No. 16.

PLAINTIFFS' EVIDENCE.**Fahmi Abdul Hadi.***Before the
Settlement
Officer,
Haifa.*

6th Witness for the Plaintiff, on oath—FAHMI ABDUL HADI, Asst. Land Registrar, Tulkarm.

*Plaintiffs'
Evidence.*

The extract filed with claim 65 is an official one. It is for land of Raml ez Zeita boundaries. Road, Road, Kharab, and Arab en Nufu'at, no directions are given. Do not know why. There are remarks. The lands of Khor Wasa have been held by the S.O. Jaffa to be within Zeita
10 Masha, Ramel localities. The lands of Khor el Wasa' are also recorded in Haifa, 4.11.31. There is a warning remark in Arabic. The order has not been cancelled.

No. 16.
Fahmi
Abdul Hadi
15th June
1942.

Abcarius Bey: I am instructed that the order has been removed by order of the Director of Lands.

Witness continuing: The entry has not been cancelled.

Abcarius Bey: I submit a letter ordering the cancellation. Ex. "F".

Re Xd. Abd el Latif Bey: I have never seen a letter in those terms. We cannot issue an extract without the remarks. Had we received the letter the remark would have been cancelled.

20

No. 17.

PLAINTIFFS' EVIDENCE.**Adib Saqf il Heit.**

No. 17.
Adib Saqf
il Heit,
15th June
1942.

7th Witness for Plaintiff, on oath—ADIB SAQF IL HEIT, aged 30, Clerk District Court Nablus.

I am responsible for the custody of the civil and land files in the Nablus Court. I have Land Case 18/22. A case between some of the inhabitants of Zeita *v.* others of Zeita. The land in dispute was masha' Zeita, called Ard el Ramle. Boundaries: S.E.N. Road, W. Ard on Nufu'at in possession of the Jews. Abd el Fattah Samara was one of the
30 plaintiffs. He gave a power of attorney to Husni Eff. Anabtawy, an Advocate. There is a delegation to Mr. Mockler by Mr. Kaisermann to represent defendants in the case file, and Mr. Mockler appeared on the 14th February 1923. The case was decided on the 13th March 1923 that the land was the masha' land of the villagers of Zeita. The judgment was appealed to the Supreme Court by the defendants, the clients of Mr. Kaisermann. The defendants were guaranteed in the Court of Appeal by Mr. Nissam Rutman. 2nd May 1924. Guarantee certified by the Notary Public. Abd el Fattah sent a notice to the Land Court that he
40 withdrew his claim on the 26th of December 1923. Withdrawal made before the Notary Public of Haifa. There is a list of the distribution of taxes, and Abd el Fattah al Mar'i is one of the taxpayers. The list is submitted by Mukhtars and notables and is dated 14th January 1923, and for 1922. One of the agreements for the distribution of the masha' is signed by Abd el Fattah. It is for the distribution of 1919. There was filed a further distribution of the masha' for the year 1919. Abd el Fattah had

Before the
Settlement
Officer,
Haifa.

Plaintiffs'
Evidence.

No. 17.
Adib Saqf
il Heit,
15th June
1942,
continued.

a share, 4 feddans. Boundaries of the Masha'. W. Eucalyptus of the Jews. The distribution lists were signed by the notables and Mukhtars of Zeita.

I have another Land Case 11/24, Nablus,

Mas'ud Musa Nasr
Ahmad Hamdan
'Abdallah Musa Samara
Rushdi Ibrahim abu Khadr
Raghib at Tayih
Abd el Hadi al Muhd.

} Plaintiffs.

v.

10

'Ali as Sa'd.
Rajih Khalil al Yusuf
Abdallah al 'Antar
Hussein Abd el Fattah
Muqbil As'ad al Muhd.
Sa'id Mustafa Hassune
Nayif al Mustafa

} Defendants.

6.10.24. The case was in respect of the land Khor al Wasa'. Boundaries, E. Qazaza and Birket Nuriya, S. Road, W. Ard el Yahud, N. Forest of the Jews and their land. On 27th January, 1925 an applica-
tion by Saleh Ismail el Khatib for dismissal of the claim as the matter had
been decided, or for joinder as a third party. There is another application
for joinder by a second group of persons. 26th January 1925. There is a
joint application for adjournment for two months submitted by plaintiffs
and defendants. 20

7th March 1925 : The case was struck out after 6 months for want of prosecution. The plaintiffs appointed Faragy of Jerusalem and Shukri Kuri of Nablus as Advocates.

Ad. by 'Uthman Bushnaq : Before the adjournment the case was fixed for hearing on the 27th of January 1925. On the 26th of January 30 an application was submitted for the joinder of 3rd parties. Case was adjourned until 11th March 1925.

Ad. by Walid Eff : The result of the appeal in Case 18/22 was that it was dismissed.

Anas Eff : No examination.

Abcarius Bey : Case 18/22. The claim was originally Sharif and others of Zeita are endeavouring to transfer the land to the P.I.C.A. though the land is masha' for the villagers for hundreds of years. The boundaries are not said to be in dispute in the statement of claim. There is no mention of Khor al Wasa'. The heading of the list of taxes is headed. 40 —“distribution of taxes of the masha' of Zeita.” No mention of Khor al Wasa'. The list contains 49 names.

The record of the distribution of the masha' land is headed : “Statement of number of feddans.” Masha Ramle. No mention of Khor al Wasa'. The application for withdrawal by Abd el Fattah was made before the last judgment was delivered 24.4.24.

Case 11/24. Abd el Fattah as Samara is not mentioned as a party. Case was struck out for non-prosecution.

*Before the
Settlement
Officer,
Haifa.*

Xd. by Mr. J. Kaisermann : The masha' distribution list in Case 18/22 contains 23 names. Case 11/24. The fees paid to the Court was LE.3 being 2 per cent. There is a certificate by Mukhtar Imam and others that the land was valued at LE.150.

*Plaintiffs'
Evidence.*

Re Xd. by Abd el Latif Bey : File 18/22.

No. 17.
Adib Saqf
il Heit,
15th June
1942,
continued.

There are four masha' distribution lists.

The boundary on the masha' distribution list is W. Eucalyptus of the
10 Jews.

There were 44 feddans in the masha' distribution list.

Re. Xd. by 'Uthman Bushnaq : I did not examine every document when I answered Abcarius Bey that Khor al Wasa' was not mentioned. No documents are referred to in the statement of claim in Case 18/22.

Re Xd. by Walid Eff : Q. Is there any mention of Khor al Wasa' in any document in file 18/22.

S. O. : This question does not arise out of the X examination and is disallowed.

June 15th, 1942.
20

CECIL KENYON.

Walid Eff : We wish to produce the file and have a record of the contents of certain documents.

S. O. Ruling. Certified true copies should be produced of documents in official and public records.

June 15th, 1942.

CECIL KENYON.

Case adjourned until June 16th, 1942, at Haifa.

June 15th, 1942.

CECIL KENYON.

No. 18.

PLAINTIFFS' EVIDENCE.

Nahum Epstein.

30

Haifa, June 16th, 1942.

Present	Abdul Latif Bey as Salah	group 1 & 2.
	'Uthman Bushnaq	group 3.
	Walid Eff. as Salah	group 5.
	Husni Abdallah Hassan	group 5.
	Yasen Yusef Zetawi	group 7.
	Muhammad Ahmad Muhammad	group 8.
	Anas Eff. Khamra	group 4.

No. 18.
Nahum
Epstein,
16th June
1942.

40

Abcarius Bey.
Mr. J. Kaisermann.
Mr. N. Rutman.

Before the
Settlement
Officer,
Haifa.

8th Witness for Plaintiffs, on oath.—NAHUM EPSTEIN, 50. Licensed,
Surveyor, Haifa.

Plaintiffs'
Evidence.

No. 18.
Nahum
Epstein,
16th June
1942,
continued.

I know Joseph Musallam, and also Nissam Rutman of Hadera. Joseph Musallam is a surveyor and used to work as such. I, together with Mr. Musallam, prepared a plan for Mr. Rutman of Hadera land. Exhibit W of 1930 was made by me. The plan is headed Khor el Wasa'—Hadera. At the first instance something else was written on the plan, so I remember, but I do not remember what was written there before. In place of Hadera "Tulkarm" was written. "Tulkarm" was erased and Hadera substituted. Mr. Rutman asked Musallam to make the alteration. There are 10 traces of the erasure. When we handed over the plan to Rutman it did not bear the signatures at the foot of it. The plan was signed by me 29th October, 1924.

Xd. by Anas Eff. : I remember Tulkarem was there, nothing more.

Xd. by Abcarius Bey : I was not present when Mr. Rutman asked for the plan to be altered. Someone told me.

Xd. by Mr. Kaisermann : I had many surveys for Rutman.

Xd. by S.O. : Mr. Musallam was a partner. I do not remember if I signed the plan after the alterations were made. I do not know if the signatures at the foot of the plan were added after the alterations or not. 20

Re Xd. by Abdul Latif Bey : I do not remember having seen the plan after it was altered. Do not remember if the alteration took place before or after Musallam told me. Cannot remember the exact words of Musallam only that he told me so.

Joseph
Musallam

9th Witness for Plaintiffs, on oath.—JOSEPH MUSALLAM, 48. Surveyor,
Contractor, Haifa.

I know I appeared before Mr. Lowick and gave evidence regarding a plan. The plan was prepared for Nissam Rutman. Ex. "W" is the plan. The plan is headed "Khor el Wasa'" "Hadera". There was a former heading "Zeita" "Tulkarm". Mr. Rutman questioned the heading 30 and asked for a new plan. As this entailed much work I erased the old name and inserted the new one. I made the alteration. Ex. W is the plan. The plan was not signed by Epstein at the time. Mr. Epstein delivered the plan after signature by him. Do not remember if I was present. Do not remember if before delivery the plan bore the signatures of the neighbours.

Xd. by 'Uthman Bushnaq : The first heading was added by my mistake.

Xd. by Anas Eff. : I prepared the plan.

Not. X by Walid Eff.

Xd. by Husni Eff. : The eastern boundary is not described as Zeita 40 Tulkarm. Tulkarm does not appear.

Abcarius Bey : I have made many plans for persons. We visit the land, put in marks, measure the land, and draw the plan in the office, and then we hand the plan to our clients. After that the signature of neighbours are affixed. The general rule is that when the plan leaves our

office it is blank. I was on the land of Khor al Wasa'. As far as I remember there were 12-15 persons on horseback who came from the eucalyptus trees and went to the eastern boundary and to 'Attil boundary. Mukhtars of Zeita and 'Attil present, many persons, including the man from the house shown in the plan. Do not know if it was Abd el Fattah Samara, perhaps it was. People from Zeita were with us, so I believe, they showed a boundary in the middle of the marsh. I put wooden pegs around the boundary in the presence of the persons with us. Then I measured the land and then I made the plan in the office. I did not put iron marks.

10 No rules that iron marks should be used. Mr. Rutman wanted a new plan when he saw the heading "Zeita" "Tulkarm". I insisted in altering the plan and in not making a new one. After the alteration I gave the plan to Epstein. I read Arabic. On the eastern boundary there is a certificate confirming the genuineness of the eastern boundary. May 22, 1925.

Walid Eff. : I object to the questions.

S.O. Questions allowed.

Witness continuing : There is another certificate stating that the boundaries are correct. The certificates are signed and sealed. In Hebrew there is a statement signed by the Hadera people. 17th May 1925. There were Jews of Hadera present as well as Zeita people.

20

Ad. by S.O. : I cannot say if any of the persons who signed the plan were present with me on the land. The Mukhtar was present. 10-12 others, but I do not know the names of them.

Re Ad. by Abd el Latif Bey : I did not notify the people to be present. I did not notify them nor is it possible for me to do so. The applicant makes these arrangements. Mr. Rutman was with us some short time. He saw the people present. The Mukhtars of Zeita certified the correction of the boundaries, no mention of Zeita or Hadera. There is no mention

30 of Hadera in the statements. The northern boundary is Hadera. So is the western boundary. I was not present when the endorsements were made.

Witness for Plaintiff, E. Wilbushewitz, called and absent.

Case adjourned for 15 minutes.

No. 19.

PLAINTIFFS' EVIDENCE.

Yusef el Ghusein.

Resumed.

10th Witness for Plaintiffs, on oath—YUSEF EL GHUSEIN, aged 49,
 40 Turkish clerk, Land Registry, Haifa.

I am a land registry clerk—Haifa and am responsible for the Turkish registers. I have not brought the Daftar Shamsiya of Hadera lands as it is forbidden to do so. Exhibit (j) is a certified extract of the Daftar Shamsiya Haifa Land Registry. Hadera, locality Raml. Ard Khor Yacub and Tin Suwana. Boundaries S. Dabbat el Qasa and the road running in a straight line to Berkat Qazzaze. We cannot bring the Daftar Shamsiya from the Registry without authority.

Before the Settlement Officer, Haifa.

Plaintiffs' Evidence.

No. 18.
 Joseph Musallam
 16th June 1942,
continued.

No. 19.
 Yusef el Ghusein,
 16th June 1942.

Before the
Settlement
Officer,
Haifa.

Plaintiffs'
Evidence.

No. 19.
Yusef el
Ghusein,
16th June
1942,
continued.

Abd el Latif Bey : I reserve my right to call for the Daftar Shamsiya, if necessary.

Witness continuing : The Daftar Shamsiya bears no date, at the end of all the entries there is the date 1292. The old Turkish registers give no directions, but in practice the order was S.E.N.W. Some hold this view, starting from the south as being the sacred direction.

Xd. Abcarius Bey : The Shamsiya registers date back as early as 1292 but there is no date for the Hadera entries. The Shamsiya was before the Yoglama. The Shamsiya was registration in the form of investigation that later on went to Yoglama or to payment of bedl. misl. As far as I know a commission set aside certain lands as Shamsiya, others for the village and that any person could obtain part of the Shamsiya. The Shamsiya lands bore remarks as to shares held by certain people and later on these were transferred to the Yoglama or on payment of bedl. misl. Ex. () is an old entry. Directions are mentioned for the boundaries. The directions are given in the Shamsiya. If the directions of the boundaries are given in the Shamsiya, the directions are given in subsequent entries. Ex. () bears no name of owners, but at the end of the list there is a record of the owners, without stating the property each person owns. 10 20

Xd. by S.O. : I do not know if other plots in Hadera bear the name of Zeita or 'Attil as a boundary.

Re Xd. by Abd el Latif Bey : I only know the purpose of the Daftar Shamsiya by hearsay. The Daftar Shamsiya is the basis of the registration. I was not alive at the time of the Shamsiya and only know what I have heard. The appointment of the commission and investigation is my knowledge of the proceedings. The Daftar Shamsiya is the basis and are acted upon for registration. The Daftar Shamsiya are in respect of areas and boundaries, and secondarily in respect of names.

Re Xd. by 'Uthman Bushnaq : I work in the Turkish registry. Yoglama, 30 daimi, and shamsi, are the names of 3 registers. Shamsi is the first used, transfers from Shamsi to Yoglama or Daimi. If a person purchased a piece of land recorded in the Shamsiya register it would be transferred to the Yoglama or Daimi registers without alteration of the boundaries unless an application was made. This locality of Khor Yacub constitutes a part of Hadera. There are registers in respect of other villages dated 1285 etc. prior to 1292. There are many Yoglama entries without directions.

No. 20.
Mohammad
Hour, 16th June
1942.

No. 20.
PLAINTIFFS' EVIDENCE.
Mohammad Hour.

40

11th Witness for Plaintiffs, on oath—MOHAMMAD HOURI, aged 30, clerk District Court, Haifa.

I have file Land Case 10/25. The statement of claim is submitted by Adv. Kaisermann on behalf of Abd el Fattah es Samara and his sons plaintiffs *v.* Yacub Samsonov, Yefet ben Yacub Yamini and Aharon Madrovsky, all of Hadera. Nagib Haken was attorney for defendants.

I have file 143/29 Criminal Case. A.G. v. Nissam Rutman. Charged under Section Second Addendum to Article 155 of the Penal Code, submitting a false document. The plan of *Khor el Wasa'*. Alteration of heading. The information was filed on 3rd July 1929. About November 1924 false plan prepared; about May 5th, 1925 presented plan to Tabu; land transferred under 695 Vol. II folio 7, Hadera. Rutman knowing the land was in Zeita. I cannot say if the plan endorsed 143/29 is the plan—

Before the
Settlement
Officer,
Haifa.

Plaintiffs'
Evidence.

No. 20.

10 *Abcarius Bey*: I have the record of the examining magistrate. Moh. Eff. Baradey. There was a refusal to commit the accused for trial. I have a copy of the application in High Court 6/27 and certified copy of the proceedings and there is an Order adjourning the case for 14 days so that the A.G. may decide to reopen the Haifa Case and what steps.

Mohammad
Hour, 16th June,
1942,
continued.

I think the file is incomplete. There is a refusal to commit and also a complaint. I do not know that Mr. Rutman was acquitted.

143/29.

Abd el Latif Bey: I ask for permission to have the witness recalled with all the file.

S.O.: Granted.

Abd el Latif as Salah: I ask Mr. Kaisermann as a witness.

20 *Mr. Kaisermann*: I would appreciate if I was to be given notice of what I am to testify.

Case adjourned until 30th of July, 1942, and following days.

CECIL KENYON.

No. 21.

PROCEEDINGS—continued.

Haifa, November 2nd, 1942.

Present: Abd el Latif Bey as Salah, group 1, 2 & 3.
Anas Eff. Khamra, group 4.
Walid Eff. Salah
Mohd. Ahmed Mohd, group 8.
Husni Abdallah Hassan group 5.
Yasen Yusuf Zeitawi, group 7.
Group No. 9 not represented.

30

Abcarius Bey.
Mr. Kaisermann.
Mr. Rutman.
Capt. Alex. Aharonson.

S.O.: Mr. Hankin has sent a telegram to say he is unable to attend the Court owing to illness.

40 *Abd el Latif Bey*: I ask if the evidence of Mr. Hankin can be heard in his house in Tel-Aviv.

S.O.: Yes, if he is fit to give evidence.

Abd el Latif Bey: I ask for the plans and exhibits in the case before Mr. Lowick to be considered as part of this case.

No. 21.
Proceedings
continued,
2nd
November
1942.

Before the
Settlement
Officer,
Haifa.

Plaintiffs'
Evidence.

No. 21.
Proceedings
continued,
2nd
November
1942,
continued.

Abcarius Bey : This point was raised and it has already been decided. If the application is confined to maps and plans and judgments, it is inconvenient. See pages 11 and 12. In the Supreme Court judgment 76/42 reference is made to the delay in this case. Certified true copies should be submitted.

S.O. : Case 1/Kefar Brandeis is not a continuation of the proceedings before Mr. Lowick. It is a case commenced before the Settlement Officer on the 4th of May, 1942, concerning claims to ownership of the land in dispute. In order to make it quite clear the Settlement Officer rules that the plaintiffs must continue to lead their evidence, proving such facts as they wish by witnesses and the production of plans by these witnesses if they so wish. These plans may be available in land settlement file for production and may be brought into evidence from those files. 10

Haifa 2.11.42.

CECIL KENYON.

Abd el Latif Bey : I apply for the Daftar Shamsiya for Hadera lands to be produced by a land registry clerk. I also ask for Mr. Fishman to be recalled ; he is ready now to be called as a witness.

Abcarius Bey : The plaintiffs have had ample time to produce the evidence. On page 47.

No. 22.
Elias
Hanna
Khattar,
2nd
November
1942.

No. 22.

PLAINTIFFS' EVIDENCE.

Elias Hanna Khattar.

20

12th Witness on oath—ELIAS HANNA KHATTAR, 54 years, Haifa, Clerk at the District Court.

I was a notary public from 1919 until 1938. I remember issuing a notarial notice from Abd el Fattah to Nagib Hakim Advocate. The document is Ex. " I. " Ex. " J " was a second notarial notice. Ex. " K " is a third notice. The persons who signed the notices were the persons who called me to the hotel. Abd el Fattah, Nissam Rutman and Ya'acov Samsonov were present. Do not remember who paid the fees. Sometimes Mr. Rutman paid. I remember Mr. Rutman asked me to authenticate certain undertakings in Hadera. I remember the contents of the documents were admissions in respect of the lands of Khor al Wasa'. At that date I went to Hadera from Haifa at the request of Abd el Fattah or Nagib Hakim. Do not remember who paid the fees for transport. Nagib Eff. was present, Ex. " L ". 30

Xd. by Anas Eff. : Mr. Rutman and Mr. Samsonov entered into a room and paid money. I did not see money actually paid by them to the persons signing the documents.

Walid Eff. : I think I went with the witnesses of Hakim to Hadera in the same car. We went to the house of Rutman. My evidence agrees with the evidence given by me in the District Court. 40

Husni Eff. : Several times I visited Hadera and Zeita, people were present. I cannot say if Rutman paid everybody.

Xd. by Abcarius : " L " 1567 of 9.12.25. Witness reads the contents. Abd el Fattah and others, in possession (L.C. judgment) transfer to defendants 1 and 4. Nissam Rutman Attorney. Made in the house of Nissam Rutman of Hadera. " K. " A declaration Ali Sa'ad al Mana'a that he, received LE.60. 26.12.1923. A loan. Written at Halperin Hotel. " J " a similar declaration, a loan, Mohd. Ali Taufiq Shaker. 26.12.23. Halperin Hotel Haifa. I do not remember making any other similar notices. I may have done so. I remember some of the loans were recovered. " I " is 28.12.23. Signed by Abd el Fattah. Addressed to the Court, withdrawing from the L.C. Nablus Action. Two years before " L ". No mention of land in the document of loans.

Before the
Settlement
Officer,
Haifa.

Plaintiffs'
Evidence.

No. 22.
Elias
Hanna
Khattar,
2nd
November
1942,
continued.

Xd. by Mr. Kaisermann : Ex. " M " is certified by me. An application to the L.C. Haifa 27.9.25 signed by Musa Nasser Said Ahmad stating he wishes to withdraw his action against Abd el Fattah. I remember there was a criminal action against Mr. Rutman. I gave evidence only once.

Walid Eff. : We agree there was only a preliminary enquiry. No criminal action.

Mr. Kaisermann : The procedure to enforce a notarial notice is to send one through a notary public. " N " is such a notice, and concern LE.100. 12.8.22, recovery notice 9.9.25.

Re Xd. by Abd el Latif Bey : I think I issued other notices similar to " N ". Do not know if " N " has any relation to the Halperin Hotel loans.

No. 23.

PLAINTIFFS' EVIDENCE.

'Omar el Quwess.

13th Witness for plaintiff, on oath—'OMAR EL QUWESS, aged 40-45, Khirbat esh Sharkass, cultivator.

No. 23.
'Omar el
Quwess,
2nd
November
1942.

I know Mr. Nissam Rutman I was his carriage driver and his servant. I know Khor al Wasa'. I worked for Rutman 12-15 years. Khor al Wasa' boundaries. W. Eucalyptus. E. Ein el Hajar and Road. E. El Qazaze this is masha, the western part of which was bought by Rutman. The inhabitants of Zeita ploughed the land before Rutman bought it. We took irons and put them around the land. We went to plough the land and the Zeita people drove us away. We reported the matter to the police, and the police drove the Zeita people away. I was sent by Rutman to plough. The police took some of the Zeita people into custody. People of Zeita used to plough but went away when the police came. Crops, barley, melons. Saw the police drive the Zeita people many times. Hassan el Faris was a watchman of Rutman and informed Rutman of the ploughing by the Zeita people. Do not remember if anything happened after Rutman bought the land. The villagers used to return to the land after Rutman bought it. 5-6 years. There was a judgment in their favour. The people of Zeita sowed barley and melons and the police (Baruch) drove the men away. The sale took place about 16-17 years ago.

Abd el Latif Bey : It is said that a judgment was given in favour of the people of Zeita. Know nothing about the case.

Before the
Settlement
Officer,
Haifa.

Plaintiffs'
Evidence.

No. 23.
'Omar el
Quwess,
2nd
November
1942,
continued.

Walid Eff. & Husni Eff. : No examination.

Xd. by Abcarius Bey : I was a cart driver, not a carriage driver. This was after the occupation. I worked for Rutman both before and after the occupation. Cannot say when I left his service. I am from Khirbat Sharkass, now, originally from Sabbarin. Was always with Rutman. Before Rutman was married I was working with him. Cannot say how long Rutman has been married. The time before Rutman was married was 4-5-10 years, before the war. I am not certain about years.

Other than Baruch I know no policeman. Baruch was a corporal. He was a blonde tall fellow, do not remember the year. I was a ploughman of Rutman and worked on the land. Rutman ordered me to go to the lands. Where there is land for Rutman I ploughed it. I know Rutman has other lands and the orange grove and know the boundaries. Do not know the year of the survey and when we put irons in. I remember the Mukhtars of Zeita and 'Attil were present. Only Hassan Faris was present. The Mukhtars of Zeita and 'Attil were not present. Do not know a man named Samara. Do know Abd el Fattah and his children. They ploughed and cultivated the land. They are from Zeita Village. The lands were ploughed by him as other people of Zeita. Only 'Abd el Fattah has a house on the land. They are ploughing the land.

Xd. by Mr. Kaisermann : Do not know how many people in Zeita, do not know names of people. Do not visit the village often. Do not know who drove us away. Did not speak to anyone about my evidence. Yesterday the Mukhtar told me to give evidence to-day. He told me to say what I knew. I remember when Rutman was imprisoned by the Turks. He was single. Do not know how long he was away, he was released by the British. Do not know when the British came. Rutman's father paid me. I worked for Nissam Rutman. I attended his wedding. I left the father of Rutman and work for 'Ali bey after the British occupation. This I did before Rutman returned from prison (Damascus). I returned to Nissam Rutman employ when he came back. I did not leave Rutman's employ before he bought Khor el Wasa'.

Xd. by S.O. : I have lived in Khirbat as Sharkass for a time I cannot. I lived in the Khirbat before Hassan es Saiyid died. I left Rutman before Ali Abdullah was murdered. Cannot remember it. I left before Hassan es Saiyid died. I cannot remember if I left before the water channel was made in Sharkass.

Re Xd. by Anas Eff : Hassan el Faris is from 'Arabs el Fugara. Khor al wasa belonged to the people of Zeita.

No. 24.
Ahmad
Hassan al
Abdallah,
2nd
November
1942.

No. 24.

PLAINTIFFS' EVIDENCE.

Ahmad Hassan al Abdallah.

14th Witness for Plaintiffs, on oath—AHMAD HASSAN AL ABDALLAH,
50 years. Khirbat esh Sharkass, Cultivator.

I know Khor al Wasa', it is in the masha' of Zeita, and belongs to all the people of Zeita. W. Eucalyptus. I was a watchman on the trees for 3 years. There was a dispute between Rutman and Zeita. At the time I was a watchman on the eucalyptus trees. My salary was paid by Aby

40

Samsonov on behalf of the Baron. E. Qasar and Ein el Hajar, and road leading to Zeita and other villages. S. 'Attil. I lived in the Khor al Wasa', lived in a tent. The dispute between the people was that the people came to plough and were driven away by the police of Hadera, who took some of them into custody. Taufiq Zubaid was one, he asked me to go to the police station. I did so and took from him a message that he was arrested. He was placed under the cold shower. I know Taufiq. Before the dispute the people of Zeita cultivated the land. The Khor extends into Zeita lands. Have lived in the neighbourhood 20 years. Zeita people used to plough, the police used to drive them away. Each cultivated his own share, from the Birket. South and east. The police drove them away from Khor al Wasa'.

*Before the
Settlement
Officer,
Haifa.*

*Plaintiffs'
Evidence.*

No. 24.
Ahmad
Hassan al
Abdallah
2nd
November
1942,
continued

Xd. by Abd el Latif Bey : There is Khor Sidr, and many others in Zeita, all of them are masha'. Khor al Wasa' is west of the masha'. Ein Hajjar is in Qezaze, a swamp, the Ein is in the middle. There is a road near the Ein el Hajjar, leading to Hadera and Arab en Nufu'at in the west. The road is to the border of the Birket to the north. There was eucalyptus in the land. The land the other side was called Khor Ya'cub, it is north of the road. I know the 'Infu'at lands, they belonged to Selim al Khoury and then to the Jews. The road goes from the Ein westwards to the sea. There is the Sidr and the house of Rutman that was the original boundary of Khor al Wasa'. The Sidr and Rutman's house is in Hadera. There is a road west of the Sidr that leads to Birkat 'Atta. The old boundary between Khor al Wasa' was the Sidr and Road that leads to 'Atta. The east boundary of Khor al Wasa' was Birkat En-Nuriya. Qazaza is near the birkat and all of it is in Khor al Wasa'. Ein el Hajjar is in the north and northern boundary of Qizaze. There is a spring below some stones. The spring has medicinal qualities. To the east of Birkat en Nuriya is the Masha'. I have lived in Khor esh Sharkas since the disturbances, before that in Qazaza. Aly Samson cultivated the eucalyptus. I was a watchman before 1936. There is a beika belonging to Abd el Fattah. Yusef el Bakawiya also built a store (beika). I know all the Zeita masha'. There was also beika near Tel el Majdal. I know Abu Massarein. He has a house in Qeisume in the masha' land of Zeita. The beika was the masha' of the villages. My brother is Mustafa al Hassan. I know Yusef abou Tayis has a wooden hut in Qazaza. I know Ahmad Rahman, he has a wooden hut at the head of Qazaza. The land is masha'.

Xd. by Abcarius Bey : I am 50 years of age. I heard that Khoury was the owner, when the German King passed through I was a boy of 12. Maybe I am older. The eastern boundary of Khor al Wasa' is Qazaza and Birket Ein Nuriya. The Khor belongs to Zeita. Do not know how many people there are in Zeita who are owners. Hamdan Haj Ahmad from Baqa', Mohd. Abd el Halim of Tulkarem has land in Zeita. Do not know if Mohd. has sold his land. Mohd. has an orange grove in Zeita lands. Do not know that the 'Attil people have a claim in the masha'. Do not know how the masha' land is divided among the inhabitants. Do not know 'Attil people sold their lands. The houses of Abd el Fattah and Yusef who are relatives, are masha'. The houses of Abd el Fattah and Yusef, and now Abd el Latif has a house. My 3 years' service cannot say when I started. I left the work 3 years before the disturbances of 1936. I lived in Qazaza from a long time ago. The trouble with Rutman occurred many years before I left Qazaza. They took Radwan. To my knowledge the Zeita people did not complain

Before the
Settlement
Officer,
Haifa.

Plaintiffs'
Evidence.

No. 24.
Ahmad
Hassan al
Abdallah,
2nd
November
1942,
continued.

to the police. I saw only one incident when Taufiq and Radwan were taken. For three days people of Zeita came. I did not see them any other time. Cannot say what year this happened. Do not know if the Zeita people lodged any complaint. I saw iron pegs near the eucalyptus. I crossed the land from time to time on my way to my house and to the village. There is an angle iron north of Tall Mas'ud. The iron pegs were taken by me to be the western boundary of Khor al Wasa'. I do not remember when the 3 days trouble occurred. I know only Taufiq and Radwan, not other people. Do not know if the police took any written statements or made any entries. Took no further interest in those proceed- 10
ings. Saw people coming to the land afterwards but not ploughing. Do not know who paid the taxes. Khor al Wasa' was not in Hadera. N. Rutman bought the land from Abd el Fattah by way of theft. This I heard. Do not know why Taufiq and Radwan were taken to the Hadera Station. I was asked to give evidence on the incident. The people of Zeita said I was cited as a witness.

Xd. by Mr. Kaisermann : I saw Abd el Fattah. I left Aly Samson in 1933. Worked in the eucalyptus 3 years. I worked as a coachman before I was a watchman. I worked 13 years for Aly Samson. I first worked as a watchman. The incident occurred during my service as a watchman. 20
Do not remember which year of the three. When I came to Hadera the houses of Abd el Fattah were constructed. My brother and other houses were built recently. Baruch was the policeman, he was a lance-corporal, a Hadera man. He has now left. He was blonde, thin and tall. No other police present. Do not know when he left. I visit Hadera sometimes. I know Mittelman, the present police officer. At the time of the incident the police were in the Khan. No Inspector at the time. Do not know who came before Mittelman. No officer before him.

Xd. by S.O. : Before I lived in Khirbat Sharkass, I lived in Qazaza in a zinc house, certainly more than one year, and before that I lived in a 30
hair tent. My hut and tent were my personal property. The Zeita people never interfered with me in any way. My father lived in Khirbat ash Sharkass and I was born there.

Re Xd. by Anas Eff. : The orange grove of Abd el Halim was not in the masha' land. The houses on the masha' land belonged to the owners not masha'. Do not know when the incident occurred during my work as watchman.

Re Xd. Abd el Latif Bey : The Mukhtar of Zeita allowed me to put my hut on the land. I may have had a zinc hut 3-4 years. I know well that I was a watchman first for 3 years, and that in all I worked 10 years as a 40
coachman. I was a watchman during the incident. I do not remember if there was any incident whilst I was a carter.

S.O. Ruling : On the question of witnesses.

Application in writing have been made by the parties for witnesses to be summoned. During the course of the present sitting the plaintiffs

have brought witnesses not previously named by them. Abd el Latif asks for from 3 to 4 to be heard. The plaintiffs are permitted to bring 3 more witnesses not named in their application, and no more will be allowed.

*Before the
Settlement
Officer,
Haifa.*

2.11.42.

CECIL KENYON.

*Plaintiffs'
Evidence.*

Abd el Latif Bey : I ask for Selim Mari Samara to be summoned.

*No. 24.
Ahmad
Hassan al
Abdallah,
2nd
November
1942,
continued.*

Case adjourned until November 3rd, 1942, 3 p.m.

2.11.42.

CECIL KENYON.

10

No. 25.

PLAINTIFFS' EVIDENCE.

Selim Hanna.

*No. 25.
Selim
Hanna,
3rd
November
1942.*

Haifa, November 3rd, 1942.

Present : Abd el Latif Bey Salah.

Anas Eff.

Walid Eff. Salah.

Husni Eff.

Yasin Yusef Zetawi.

Mr. Abcarius Bey.

20

Mr. J. Kaisermann.

Moh. Ahmad Mohd. Abd el Ghani.

15th Witness for Plaintiffs, on oath—SELIM HANNA, aged 49, Jerusalem, Police Officer.

I was a Police Officer in 1931. I know Nissam Rutman. There were legal proceedings against him before 1931, sometime in 1927-1928-1929. We received instructions from the A.G. The accusations were *the* submission of false declarations before the L. Registry or the Court in a land dispute. The land was claimed by Zeita people and Rutman said the land was in Hadera. The land was known as Khor al Wasa'. The
30 dispute was in connection with a title deed and a plan. The case went before the examining magistrate and was dismissed because of prescription. I visited the land with other persons but cannot say who. I visited the land a second time with Mr. Drayton. The reason Mr. Drayton visited the land because the proceedings were sent to the A.G. and the A.G. wanted to see the land before committing. Mr. Bentwich was the A.G. The A.G. committed Rutman to stand his trial on the charge preferred. The case came before the District Court, but being a witness I was outside. I know the case was refused for a reason I do not know, but it may have been a point of prescription.

Before the
Settlement
Officer,
Haifa.

Plaintiff's
Evidence.

No. 25.
Selim
Hanna,
3rd
November
1942,
continued.

A second case was heard by the Land Settlement, before Mr. Lowick. I took part as a friend of a person I do not know by order of the A.G. in order to acquaint the Court with the circumstances of the case. I do not know of any correspondence between the Legal Dept. and the Settlement Officer, nor of any correspondence between the Police and the L.S.O. regarding the result of the case.

Anas Eff. : I made an inspection of the land and took up witnesses to examine the boundaries. My conclusions were that there was a good case that was according to the title deed and the map.

Walid Eff. : I received no complaint from any civilian, my instructions 10 from the A.G. I interrogated people from Zeita, 'Attil and neighbouring villages and Government Officers. The map and not the title deed mentioned Khor al Wasa'. As to the accusations they were false declarations, but I do not remember the exact particular.

By Husni Eff. : I visited the land several time. I was not dealing with land, only with the accusation of making a false declaration. I remember who were the persons I interrogated.

Xd. by Abcarious Bey : I went to the land to verify the plan produced. The map was signed by the Mukhtars of Zeita and 'Attil. I cannot remember if Ex. " W " is the plan, it may be. The plan appears to be 20 the one. The plan I had bore signatures, as Ex. " W " does. I do not see a seal of the Mukhtars of 'Attil. There are signatures of Jews of Hadera. I now see the seal of the Mukhtar of 'Attil. I think the persons who signed the map must have confirmed their signatures. As far as I remember there were iron pegs on the ground on the boundaries. I am not a surveyor but I think the land was covered by the plan. I remember Koussa was J.G.A. Mr. Koussa represented my friend. I know there was a H.C. action, about the matter—do not know the judgment, but Koussa did not appear. 58/30 " O " I received instructions to appear 30 after this order. I was told Mr. Kantrovitch would appear and help me in the matter. I received my instructions from my superiors. I remember Mr. Kantrovitch was ordered to sit amongst the public. Objection was also taken to my presence. I only know that I received instructions to appear. I never before in all my long service ever received similar instructions, and I have never heard of a similar instance. I received a notice that my services were no longer required. Ex. " P " is the notice. I considered the whole matter strange.

Abd el Latif Bey : The Ex. " P " was handed to witness by Mr. Kaisermann.

Xd. by Mr. Kaisermann : I was a senior police officer in 1929. I am 40 not certain if J.J. Webb and Plunkett constituted the Court, but I believe so. I cannot say on what grounds the District Court dismissed the action. I have had much to do with land disputed, small and big. Big land disputes often have tragic results, fatal ones. I have never had a case where 5000–6000 dunums were taken from one village to another and no dispute for 5 years. In 1925 I was in Nazareth. As far as I remember this was the only case I had with Rutman.

Re Xd. by Abd el Latif Bey : There is a note stating that the Mukhtar of Zeita village certifies the correctness of the boundaries. There is a

second note. We the undersigned etc. etc. S. 'Attil, in accordance with plan. E. Birkat en Nuriya, Qazaza, Ard Zeita in accordance with the plan " N " & " W ". The forest of Hadera. There is no reference to say that the lands falls within Hadera or Zeita. My appointment in the case shows that Govt. considered it to be a serious case. Ex. " P ". Notarial Notice, Haifa. The witnesses are named, Krassner of Haifa and Shaker 'Awad. I do not know the procedure concerning copies of such notices. The person applying for service Hassan Haj Said Mohd. Khalil Labidi of Zeita.

Before the
Settlement
Officer,
Haifa.

Plaintiffs'
Evidence.

No. 25.
Selim
Hanna,
3rd
November
1942,
continued.

10 *Re Xd. by Abas Eff.* : I have never heard that a large part of one village went to another, such as Zeita to Hadera.

Re Xd. by Walid Eff. : The Land Settlement Officer accepted my presence in spite of the objection.

16th Witness for Plaintiffs, on oath—JOSEPH KAISERMANN, aged 46, Haifa, Lawyer.

Joseph
Kaisermann

Abd el Latif Bey : I dispense of the witness,

Abcarius Bey : I consider I have the right to cross-examine but leave the matter to the S.O.

S.O. : I think we should dispense with the witness.

20 *Walid Eff.* : We have Wilbuschewitz, Helmi Bey, L. R. Yusef Bey with the Daftar Shamsiya, Fishmein, Hankin and 3 other witnesses. Selim Samara and clerk of Land Settlement to produce documents. This is the total number of witnesses we have.

3.11.42.

CECIL KENYON.

No. 26.

PLAINTIFFS' EVIDENCE.

Hilmi Hussein.

Haifa, November 4th, 1942.

Present : Abd el Latif Bey as Salah

Walid Eff. Saleh

Anas Eff. Khamra

Abcarius Bey

Mr. J. Kaisermann

Husni Eff.

Yasen Yusef Zetawi

Mohammad Ahmad Moh. Abd el Ghani.

S.O. : I have received this morning a withdrawal of their claims " R ".

Anas Eff. : I ask leave to withdraw at 12 noon.

Walid Eff. : I ask leave to withdraw at 12 noon to attend a funeral.

40 *S.O.* : Granted.

17th Witness for Plaintiffs, on oath—HILMI HUSSEINI, aged 52, Haifa District Officer.

I am a District Officer and was so in Tulkarm during the years, August 1926–August 1927, and from April 1931–1937. I know a place called Khor al Wasa'. I remember there was no settlement in the Khor. There

No. 26.
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Hussein,
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*Before the
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No. 26.
Hilmi
Husseini,
4th
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1942,
continued.

was land settlement in Hadera and Khor al Wasa' was connected with this. I knew what Mr. Lowick decided in this matter. His decision was that the land was not in the lands of Hadera. My attention was drawn that the people of Zeita wanted to plough as a result of this decision, and this would result in a dispute between the kushan holders and the people of Zeita—a breach of peace. I called the Mukhtar and elders of Zeita and warned them not to cultivate but to leave the matter to be decided by the Courts. This order was an official one made in my capacity as District Officer. After consultation with the A.D.C. I do not remember if we received orders from higher authority. I do not remember if correspondence took place between Mr. Lowick and the Administration in this matter, it is now a long time ago. I do not know if the A.D.C. had any orders. I talked to the A.D.C. about the matter. I believe Mr. Badcock was the A.D.C. or perhaps Mr. Sulman, or Mr. Perowne. Ex. "S" is a letter from the S.O. to the D.C. Northern District, and Tulkarm was within the Haifa District. 10

Xd. by Anas Eff. : The letter bears no signature, only a rubber stamp.

Xd. by Abcarius Bey : I cannot remember ever seeing the original of "S". The document appears to be a letter from Mr. Lowick about the possibility of damage being done to plantations, etc. Litigation might extend over a few years. Status quo to be maintained. Maybe my actions were founded on this letter. Tulkarm was at one time attached to Jaffa then to Nablus and then to Haifa. As far as I know these partitions are made administratively. Tulkarm belonged to Haifa in 1927 and in 1931. To-day it is in Nablus. I know Abd-el Fattah Samara living on Khor al Wasa'. I know Kefar Bandeis, the Jewish Settlement in Khor al Wasa'. I have often visited the Khor. Abd el Fattah was cultivating the land. I heard that Adv. Eliash had bought land there. I know Nissam Rutman as a reputable man. 20 30

Xd. by Mr. Kaisermann : In 1926 I heard nothing about any trouble in Khor al Wasa'. There was no breach of the peace during my term of office. I cannot remember if there was any complaint. In 1940 there was a dispute between Abd el Fattah and Rutman.

Re Xd. by Abd el Latif Bey : I remember there was a case in connection with Khor al Wasa' but I cannot say if Rutman was a party, or if it was a criminal case. In places where I am a stranger my connection with people are in my official capacity. In my land registry days Mr. Rutman often referred to me, in recent days he referred to me about his rent question with Abd el Fattah. We once called Rutman to inspect land on the edge of Khor al Wasa' to see land in masha called Qazaza. When I saw Abd el Fattah and brothers cultivating it was after I became D.O. in Tulkarm. Cannot remember if before or after I gave the instructions. It was, however, after the end of 1926. 40

Re Xd. by Anas Eff. :

No. 27.

PLAINTIFFS' EVIDENCE.

Husni Jarrah.

Before the
Settlement
Officer,
Haifa.

18th Witness for Plaintiff—HUSNI JARRAH, aged 39, Asst. Reg. of Lands, Haifa.

Plaintiffs'
Evidence.

Abd el Latif Bey : The witness has appeared without the file.

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Husni
Jarrah,
4th
November
1942.

Xd. by Mr. Kaisermann : I submit a certified true copy of the deed book " T " with regard to the registration of land in the names of Abd el Fattah, Selim, Musa and Abd el Latif Meri Samara. 5358 old duns. 10 4.6.1925. Deed No. 695/25. Petition 467/25. Consideration LE.5358. Fees paid, new registration 5% receipt No. 71783. Article 8 of the Regulation as to Tapu Sanads.

No. 28.

PLAINTIFFS' EVIDENCE.

Yusef Ghusein.

No. 28.
Yusef
Ghusein
(re-called),
4th
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1942.

10th witness for Plaintiff, on oath, recalled—YUSEF GHUSEIN, aged 49, clerk in Land Registry of Haifa.

See p. 42 of record.

20 Khor Yacub is recorded in the Daftar Shamaiya as part of the Mazra'at Hadera. Boundary S. Dabbat al Qasa and road going straight to Birkat Qazaza or Fazaza. E. Masil el Ma' Shattawi, until Birkat Qazaza, Urm el 'Aqareb and Dahr Tell Masoud. This is a locality in Arab en Mufu'at.

E. boundary. Dhahrat el Aqareb until Tall Masoud in the east and the Dharat en Naqareb and Nazaza which is on the north of Tall Masoud and goes to the (turf) northwards until Rub'el Qfta.

N. boundary. Tariq el Qasa' and it goes on the Dhahrat el Qurar going downward to the Maloul tree.

_____? and from thence direct to the Birkat.

30 *W. boundary.* Birkat 'Atta and the cultivable land of (Bir Seir or Bir Saba) Qasherma and Birkat Tas.

Xd. by Mr. Kaisermann : Nazaza is a place which oozes water. There is no mention of Khor al Wasa'.

Before the
Settlement
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No. 29.

PLAINTIFFS' EVIDENCE.

Musa Abd el Fattah Mari As Samara.

Plaintiffs'
Evidence.

19th Witness for Plaintiff, on oath—MUSA ABD EL FATTAH MARI AS SAMARA, aged 36-37, Zeita.

My father is Abd el Fattah.

S.O. note. Record page 59 Musa appears in place of Selim Samara. Abd el Latif Bey consents.

CECIL KENYON.

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Musa Abd
el Fattah
Mari As
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1942.

Witness continuing : I know Khor al Wasa'. I was born in the land 10
The land is in the possession of Nissan Rutman. Before Rutman possessed
the land it belonged to Zeita. Masha, to us and to the people of Zeita.
I know the name of Raml Zeita it contains several Khors, and is masha'.
Raml Zeita is all one land until it reaches the boundary of the Jews.
E. Railway. W. Eucalyptus of Hadera, originally of Infiat, Raml Zeita
is the general name. Khor al Wasa' is part of it, within it and not outside.
Boundaries of Khor al Wasa' fixed by Rutman, with marks. Before
Rutman came on the land we used to cultivate it. Everyone who had
horses to plough used to plough in the land. Before Rutman bought
the land the people from Tulkarm collected the taxes. Before Rutman 20
came on the land it belonged to Tulkarm. Before Rutman came we
never paid any taxes or tithes in Hadera. Cases were raised by villagers
of Zeita against Rutman in respect of Khor al Wasa'. My father raised
a case before the Nablus Court, together with others from Zeita. The
question was that the Raml was registered in the names of families, every
50-60 persons were one family. My father was included in one of these
families, this family is registered but I do not know in whose name the
family is registered. Cannot say if my father was registered. The case
in the Nablus Court was in respect of Khor al Wasa' alone. I remember 30
well. The intention of my father before that Court was to establish the
Khor as his, but he failed and the village got it. This took place about
18 years ago. My father did not raise another case. He later raised
another case against 3 persons in a Haifa Court. Three Jews. Ali Huda,
Yafet el Yamimi, Yacub Samsonov. Mr. Rutman raised the case on our
behalf by agreement. We won the case. We gave Rutman a power of
attorney. Mr. Kaisermann acted for us, he is the advocate. The three
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. Mr. Rutman obtained the
power of attorney from us and raised the case. After that Rutman and 40
Yacub Samsonov brought us before the Land Registrar of Haifa to transfer
the land to Refka Tova. We transferred the land directly ourselves before
the notary public. We admitted we received the money. I personally
received LP.1½, and the rest was paid to my father in amounts of LP.10
to LP.20 until he had received full payment. I do not remember if the
Jews appealed. They did not appeal. I paid no expenses to Mr. Kaiserunam,
Rutman paid. When we brought the action Khor Wasa' belonged to Zeita,
there was no dividing boundary. Zeita belonged to Tulkarm. Rutman
wanted the case in Haifa. I believe if we had raised the case in Tulkarm

- it would not have had the same result. At that time the people refrained from giving any share in Khor al Wasa' and so he raised a case to that effect before the Nablus Court. A settlement was reached by 5 or 6 persons of Zeita and carried on the transaction with Mr. Rutman. My father abandoned the case when the agreement was reached. I know the people who came and induced my father to agree. Mohd. Khalil Shaker Awad Mana'a. Ahmad abu Jazar, Ali Sa'ad. This happened 17 years ago. We have some structures, stores, in the land. The buildings belong to my father, cousins and brothers. They are erected in the Qasa' locality.
- 10 The land is masha'. Qasa' is the north of Khor al Wasa'. North of the Qasa' there are orange groves of the Jews and a road, the road is between us and the orange groves. This road leads from Zeita to Hadera. The road is known as Hadera Road or Zeita Road. This road goes through the lands of Zeita eastwards until the railway line. Mr. Rutman took many documents signed by us. These documents were obtained from us in respect of money. After Rutman took the land he started to lease us part of the land and we gave bills. When we repaid he would not give us receipts or return the bills. Before we made these bills we went several times to Rutman. I do not remember he obtained documents for money
- 20 for land in Hadera. He took bills from us for rent for places we lived in. I have heard the name of Negib Hakim. I do not know the Notary Public of Hadera. Rutman took us to the N.P. to sign before him and once again in Hadera. He asked us to sign without knowing what we signed. I do not remember for what purpose he obtained the signatures from us in Hadera. Cases started between Rutman and Zeita villagers after the transfer and delivery. In 1926 the people attempted to cultivate but the Police stopped them. I know Ahmad Hassan Abdulla, he used to live on the lands of Zeita. He was a cartman for Haj Mohd. Zikrallah he drove the harvesting machine. I know 'Umar el Quweis. He was a
- 30 cartman for N. Rutman a long time ago. I think he left Rutman 6-7 years ago. He was always employed by Rutman since he was a man.

Xd. by Anas Eff. : Before my father built the stone house we lived in hair tents. I do not remember when the building was erected, it was so ever since I can remember. I believe Selim is at home. Haim Rutman came to our house two days ago, two hours after sunset, and said we should not come. I was told not to come to the hearing by Rutman, that is, the last hearings. We are indebted to Rutman for money for rent and the purchase price. He threatens to make us poor if we do anything against us. He made sanads. If these sanads and judgment did not exist

40 against us we would come immediately to the Court. I gave Mr. Kaisermann no instructions. Every expense was paid by Rutman. We did not meet Mr. Kaisermann at all. Rutman did everything.

My father paid the expenses for the Nablus Case. That case was because the village refused to give him anything in the land. At that time my father was not strong financially. Khor Wasa boundaries bought by Rutman, E. Bass el Qazaza and Birkat en Nuriya, S. Attil, W. Ard el Nufu'at to-day eucalyptus of the Jews. When the sale was made of Khor al Wasa' we were told by Rutman that if we mentioned the matter we should be imprisoned.

*Before the
Settlement
Officer,
Haifa.*

*Plaintiffs'
Evidence.*

No. 29.
Musa Abd
el Fattah
Mari As
Samara,
4th
November
1942,
continued.

Before the
Settlement
Officer,
Haifa.

Plaintiffs'
Evidence.

No. 29.
Musa Abd
el Fattah
Mari As
Samara,
4th
November
1942,
continued.

Xd. by Husni Eff.: When my father brought the case in Nablus it was in company with Zeita people. Zeita people would not give us a share in the land. The Zeita people wanted to sell Khor al Wasa' to the land brokers, Hankin and Rutman. I remember 5 or 6 people of Zeita agreed with Rutman to sell him Khor al Wasa'. My father did not pursue the case because there was intervention by 5-6 persons and Rutman paid my father LE.200 expenses. At the time of the case in Haifa we made no written agreements with Rutman. When we agreed to sell to Rutman we calculated 4,058 dunums for LP.9000. I took nothing in advance, if my father did I cannot say. I knew the 3 persons against whom we raised the case, before the case. We have not been in independent possession of the Khor Wasa'. Each person cultivated in rotation. After the Haifa case the people of Zeita used to meet Rutman in Hadera. The people of Zeita received sums of money from Rutman to state that the land belonged to Abd el Fattah. Subsequent to this judgment of Mr. Lowick the people of Zeita tried to cultivate. 10

Xd. by Abcarius Bey: I am 36-37 years of age, do not know my exact age, I am a bedawi. 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 his wishes. 20

Whatever Rutman told us, we did. We did not know if it was fraudulent or not. I know what I am doing. I know Umar el Queis. He entered the service of Rutman before I came to understanding and he remained until 6-7 years ago. I may have been 10-12 years of age when I came to understanding. I did not keep a record of the years of service that Queis had with Rutman. I do not know how many years he worked for Rutman. I cannot say what Umar said. I only know he left Rutman 6-7 years ago. If Umar left Rutman before that time I do not know, but I do know that he was able to buy sheep that time ago, and that he left him for good. 'Umar joined the Cherkass only 6-7 years ago. Anything to the contrary is untrue. In 1926 persons attempted to cultivate. 'Ali Abdul Qader and Mahmud es Sadawi were two of them, they were 8-10 persons. When the police drove the people away these two persons came to our house. In the Nablus case we were plaintiffs and Haj Mohd. Zikrallah, against the villagers, in whole. The subject was Khor al Wasa'. The name Khor al Wasa' was mentioned in the Nablus proceedings. I did not raise the case, my father did and he told us that the case was in respect of Khor al Wasa'. My father is not untruthful. I do not know the result of the Nablus case. I am from Zeita and so is my father. I have a share in the masha' of Zeita. I made no claim to a share in the masha' land of Zeita in the land settlement for myself because I had sold my share to the S.M.C. 30
First I sold to Mohd. Abd el Halim. I sold all my shares in the masha' which is to the east of Birkat Nuriya and Bass el Qazaza. In my contract these places are named as the western boundary of Raml Zeita. Do not know how many persons have sold, they are many. I do not know how many shares have been sold, if it is 727 or not to the S.M.C. or 242 to Smiliansky. Do not know if the total is 2,039 shares and that 969 have been sold. They may have been sold. All the sales gave Bass el Qazaza and Birkat en Nuriya as boundaries. My sons still have shares in Raml Zeita and their shares have been confirmed in the settlement. Do not know if the Schedules of Rights were published. I was not present when the schedules were 50

published. I do not know if anyone made a claim to Khor al Wasa' in the Settlement of Zeita. I did not do so, nor did my children. My father paid the werko before Rutman took possession. I say that until now my father cultivates, we are one family. My father is the first of the most truthful man in the locality.

Walid Eff. : There is no evidence given by the father of witness before the Court and no question can be put on evidence that exists.

Abcarius Bey : All the witness has testified is his father's actions.

Settlement Officer : The question whether or not the witness agrees
10 that his father had stated on oath in the Courts that he cultivated alone in the Khor al Wasa' is allowed.

4.11.42.

CECIL KENYON.

*Before the
Settlement
Officer,
Haifa.*

*Plaintiffs'
Evidence.*

No. 29.
Musa Abd
el Fattah
Mari As
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continued.

Witness cont. : I agree with the statement that my father said this, but he said it out of fear he is indebted for over LP.1,500 and my father's properties are attached by Rutman and he threatens him if he tries to do anything against him. My father made the statement with 5 or 6 persons of Zeita for the money they were given by Rutman. Rutman bound us with sanads for money which he keeps. They were made before the sale.
20 I do not know if the sanads are before the Notary Public or not. My father made these sanads in Haifa. I have never seen them and do not know their contents.

Abcarius Bey : I ask leave to withdraw.

Xd. by Mr. Kaisermann : I have 8 children, the eldest of which is about 11 years. I remember well signing documents before the Notary Public. Ex. " U ". I know Yusef Bakawiya, he is of my family, my uncle. He has a share in the houses. One house to Yusef Bakawiya, and to his children. Another to 'Abdulla Samara, Eld Abed el 'Umbar. One or two Abd el Latif al Mari a half brother and cousin. All the rest to Abd el Fattah
30 and to us. There is another house belonging to my Uncle 'Abdulla. Only one person has a house in Khor al Wasa' who does not belong to our family, Abed al 'Umbar. Everybody sold their houses to Rutman, do not know if Abdulla sold direct.

Ex. " U ". I remember thumbprinting the document dated 6th October 1926. I do not remember if any one else came with us to the Notary Public. Ex. " V " bears my thumbprint but I do not know the contents. I do not know to what I have put my thumbprint. The document was not read to me. I cannot remember if the Notary Public read over the Hadera documents, Ex. " V ". The Notary Public is probably correct,
40 I do not remember. My father has a share in masha' Zeita. Some of my brothers sold, some did not. I sold to Mohd. Abd el Halim for cash, about LP.20 and then another LP.16 from the Majlis. I never signed a power of attorney to Mr. Kaisermann. My father did all the business. Rutman obtained several signatures from me. I did not attend the Haifa Land Court. My father did. I do not know who was on the land before my father. My father told me that he moved to Khor al Wasa' when he was a boy. He said he had over 100 head of cattle. When I knew things he had 70-80 head. Now we cannot own many head as we

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Officer,
Haifa.*

*Plaintiffs'
Evidence.*

No. 29.
Musta Abd
el Fattah
Mari As
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4th
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continued.

have no grazing land. We have now about 50 head. We probably cultivate to-day over 500-600 dunums, winter and summer crops. Since I came to understand, he always cultivated a large area, partly in Khor al Wasa' and adjacent land and in his private property. The greatest area was in Khor al Wasa' as it is near our house. We leased large areas. Rutman never objected if we took more than we leased. We probably leased not more than 700-800 dunums. Each year we had these contracts. I do not know the exact area, we took from him localities, not a measured area. We calculated the area from the number of horses. Other lessees were Mohd. Mah. Ghazzawi of 'Attil, and Hassan al Faris of Arab el Fugara, 10 no one of Zeita, all this after the sale. Before the sale the Zeita people cultivated. The better part of Khor al Wasa' is the middle and northern parts. For the past 10 years some of the land was cultivated and some uncultivated. I do not agree that a half of the Khor was always left uncultivated. It may have been a third or so. There were not enough people to cultivate the Khor. Each did as much as he could. Before the sale parts were left uncultivated. The southern part is no good for cultivation. Do not know the area. My father told me all about his affairs in Haifa. I was present for my signatures. My father used to travel alone. I heard about the sum of LP.9000 from the villagers and 20 from my father. I do not remember all the 5 persons in the Nablus case, Hassan Zikrallah was one. Rutman paid my father LP.200. I was not present at the time. My father would not sign the sale until he received the LP.200. My father, and others from Zeita, were made to sign contracts for LP.400 each before the sale. Ahmad al Hasan worked as a driver on the thresher for Zikrallah in the summer. He lived in a tin hut east of Qazaza and left when I cannot say, 4-5 years ago. He was a guard for the Jews in other times for their cultivation.

'Umar el Quweis left Rutman and after him his cartmen were two brothers Salah and Salih, and 'Umar was also there. All the same family. 30 Rutman always had two pairs of horses needing two drivers.

Do not know how Rutman took delivery of the land. Since we sold the land and Rutman took delivery the people of Zeita did not cultivate. I was present when Rutman took delivery, he took the land automatically. After we signed the first and second time the people of Zeita came to know about the sale. We talked about the sale to our women and so the tale was spread. I often go to Zeita, it is my village. I have never been assaulted by Zeita people, they were angry with us, but half of the people of Zeita are relatives of ours.

Cannot say how long after the sale the Zeita people visited the land 40 to plough. This was after they knew of the sale. I think there were 8-10 persons, that is all I saw. It was in the morning. The police came before the ploughing started. I do not know who the police officer is, I do not know Baruch, cannot say how many police came. The two who came to my house did not cry out against us. The incident lasted only a short time, did not see them return the same day or any other day. The two who had come to the house are not relatives of ours. Cannot remember if the incident happened before or after the iron marks were fixed. Rutman put in the marks with Arab labour. The marks are there to this day. The villagers who came to the land to plough were more 50

than 300 m. away and I could not recognise them. My father and we 3 brothers received summons to attend these proceedings. We feared that my father's properties would be sold. I am not afraid because I have no property. There is a judgment against us for LP.70 for rent for houses, which has been increased. There is one judgment. It is against me and the amounts have to be paid by instalments in the execution office. Rutman gave up the judgment against us, but threatens to execute it if we ever do anything against us. Rutman possesses several papers by which we are bound to him for large sums. He has the means to ruin my father and myself. I am penniless and have nothing. My brothers have no property, but have houses and cultivations. My father drove me out of his house, that is why I am so poor. I left my father for family reasons 14-15 years ago, I live in the same group of houses. Saw my father the day before yesterday. I came alone in the bus, yesterday, 4.30 p.m. I paid the fare myself. Did not speak to anyone about the case, except my father and brothers. My father is between 85-90 years.

Before the
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Musa Abd
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Mari As
Samara,
4th
November
1942,
continued.

Re Xd. by Abd el Latif Bey: I think the Khor al Wasa' was the subject of the Nablus case. I was no party, my father was. I was not present at the Nablus case. So I do not know all the subject matter.

20 My share in Masha' sharqi to Abd el Halim was sold after the sale to Rutman of Khor Wasa'. The masha' gharbi is Khor Wasa'. Land Settlement in masha' sharqi is before O'Connor. Originally Khor al Wasa' and the sharqi masha' were one entity. Divided after sale. I do not know the limits of the masha' settled by O'Connor, the Mukhtar dealt with the claims. A stranger of Zeita was not allowed to build in Khor al Wasa'. Before the sale to Rutman anyone from Zeita could build a house. 'Umber did so before the sale. I did not sell my house, my father sold the houses. I sold only the land. In Ex. "U" I meant land, not buildings. I received only LP.1½ out of the price of the land and the

30 buildings. When we signed the lease Rutman read them to us. Even if it was in Arabic we could not read it. The first sale was for 4058 dunums, this was sold for LP.9000. So my father said. I received only LP.1½. My father received only sums of 10 & 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 al Wasa' belonged to Abd el Fattah received LP.3. I cannot say that LP.9000 was paid in toto to the village. These LP.9000 were paid in instalments. I remember when the 8-10 persons came it was subsequent to the sale. The judgment was for LP.70, plus LP.100 costs and interest. Rutman

40 is in the position to recover from us LP.2000 by documents in his possession. These are not real documents. We are not indebted to him for anything. He kept our sanads with which to threaten us, we always paid him the rent.

4.11.42.

CECIL KENYON.

S.O.: Before closing these proceedings this day the S.O. orders the plaintiffs to arrange for the evidence of Mr. Hankin to be taken before the 14th of December, 1942, unless any good reason is shown in the contrary.

4.11.42.

CECIL KENYON.

Before the
Settlement
Officer,
Haifa.

No. 30.

PLAINTIFFS' EVIDENCE.

Joshua Hankin.

Plaintiffs'
Evidence.

Tel-Aviv, December 14th, 1942.

Present : Abdul Latif Bey as Salah
'Uthman Bushnaq
Anas Khamra
Mr. Kaisermann, and
by delegation for Abcarius Bey.

No. 30.
Joshua
Hankin,
14th
December
1942.

20th Witness for Plaintiffs, on oath—JOSHUA HANKIN, 77 years, retired, 10
formerly land purchaser and agent.

I purchased Hadera, Dardara and Infiat, about 50 years ago. I must have known Wilbushevitz, the Surveyor. I gave evidence about 10-12 years ago, when I remembered well. My memory was strong at the time but to-day I do not remember so well. The evidence I gave then was the truth.

I do not remember well, my evidence was given before. I remember having agreed to certain boundaries at the time of a Commission of the Mamur Tabu of Tulkarem and of Haifa and the surveyor and others. The title deeds contained different boundaries. I was a young man, had just started to engage in that kind of work (land purchase), a compromise was proposed, I accepted the compromise. The title deeds contained much more land. Eucalyptus trees were planted along the agreed boundary. I do not know if the trees are still there. Wilbushevitz made a plan. We purchased the land by boundaries in the title deeds and sold the land by dunums. I do not know if I sold the land according to the boundaries. I sold by dunums and the title deeds remained unchanged. The title deeds covered much more land. The land east of the eucalyptus was part of my kushan. The eucalyptus were planted before me. The eucalyptus trees represented the compromise, not the true boundary. The plan was drawn up before the compromise, in order to know how much land we had. I do not remember having produced the Wilbushevitz map. The official boundary of Hadera and Zeita is in the kushans, the compromise boundary is somewhere else. I was a young man and understood something about land matters. I safeguarded the original boundaries lest they raised the point later on. I do not remember Ex. " S/1 " of file 92/30. I remember such a name as Bass Qazaza. All the Bass was originally in Hadera. After the compromise part went to Hadera, part to Zeita, I do not remember this well. Cannot remember if it was the south part. I remember Ein el Hajar, I think it contained mineral waters. The Ein el Hajar is a Hadera boundary, it belongs to Hadera. I do not remember if the Ein was given to Zeita or not as the result of the compromise. I did not put in any marks on the boundaries. I safeguarded the original boundaries in order that the fellahin should not raise any question. I did not measure the land, but I gave an area to the Zeita people. When I gave the land I thought they would have had no intention to bring an action. Though the land was within my kushan I gave the land away. If I had known there was 5000 dunums I should not have given the land away.

Xd. by Anas Eff. : I sold to the Jews of Hadera by the dunums, and according to the boundaries I fixed myself in order to avoid trouble. The trees were planted afterwards.

Before the Settlement Officer, Haifa.

No Xd. by 'Uthman Eff.

Plaintiffs' Evidence.

Xd. by Mr. Kaisermann : The land in dispute was never measured. I did not know the extent of the land in dispute it was told to me to be so and so. I was told it was about 2000 dunums. The kushans remained unchanged. I was in Palestine about 8 years when the transaction took place. I have more experience to-day. I know Abd el Fattah was a thief. He was more famous than I was. He had a house in my land.

No. 30.
Joshua Hankin,
14th December 1942,
continued.

Xd. by S.O. : All the land of Hadera, Infiat and Dardara was in Haifa District, and I obtained a kushan from the Haifa Tabu.

Re Xd. by Abd el Latif Bey : Abd el Fattah had his house in my land before the compromise. I do not know to whom the land went after the compromise. The land which I ceded was within my registered boundaries, and in Haifa. I do not know what happened to the land I ceded. The land I renounced did not belong to Zeita. Sure the kushans remained unchanged.

14.12.42.

CECIL KENYON.

20

No. 31.

PLAINTIFFS' EVIDENCE.

Benjamin Fishmann, re-called.

Haifa 15th December 1942.

No. 31.
Benjamin Fishmann (re-called),
15th December 1942.

Present : Abdul Latif Bey.
'Anas Eff. Khamra.
'Uthman Eff. Bushnaq.
Walid Eff. Salah.
Mr. Kaisermann.
Yassen el Zetawi.
Mohammad Ahmad Mohd.
Abd el Ghani.

Group S.

30

5th Witness for plaintiffs on oath : re-called by plaintiffs, BENJAMIN FISHMANN.

See p. record.

During my term of office I saw the list of the original settlers of Hadera. I had an unofficial list of the Colony and the records therein. I did not check the official registrations. I know Ex. "g" of Case 92/30 I checked the list as far as Zeita is concerned. The plan does not bear the word Khor Wasa, but the land of Khor Wasa lies to the south-east of certain plots and is referred to as the lands of Zeita. I saw the marks on the plan 15.16.17. In accordance with this plan the area of land marked 15.16.17 is outside Hadera. The map bears no date. The exhibit is the map of Hadera. I checked the plots numbered 711, 715, 864, 865 and

40

Before the
Settlement
Officer,
Haifa.

others and found the eastern or southern boundaries as Zeita. The general area allotted to the settlers of Hadera is approximately the same as Ex. S/1 of 92/30. I think S/1 is the plan of Wilbushewitz, 1893.

Plaintiffs'
Evidence.

No Xd. by 'Uthman Eff.

No Xd. by Anas Eff.

No. 31.
Benjamin
Fishmann
(re-called),
15th
December
1942,
continued.

No. Xd. by Walid Eff.

No Xd. by Yassen Zetawi.

No Xd. by Mohd. Ahmad.

Xd. by Mr. Kaisermann : The list I referred to is not with me. It was given me by the Committee of Hadera. The list is the unofficial list of the Settlement of Hadera. I cannot say when the village plan (g) was made. I know the 'Infiat lands, they are on the sea shore. There was a dispute between Govt. and the Colonists and Arabs. Government obtained part of the land by judgment. The land is included in the map, and seems to have been partitioned. I know of no case between Govt. and someone concerning Khor al Wasa'. There was an entry in the Turkish registers. I know of an agreement between Govt. and Rutman representing the registered owners concerning the payment of LE.1000 for badl misl. I believe Ex. " X " is the agreement. I heard that Khor al Wasa' was registered by Haq el Qarar. I did not deal with the transaction in the Lands Dept. Ex. " T." If the amount of fees represents 5 per cent. of the value of the land it represents the fee payable on new registration on Haq el Qarar. It was the fee then payable. Ex. " F " bears my signature, and instructions were given by me to the Registrars to cancel a certain entry in the land registers. This was done in conformity with a Privy Council judgment, and was made on the request of Mr. Kaisermann. 10 20

Re Xd. by Abdul Latif Bey : There was a remark in the Turkish registers about Khor al Wasa'. I do not remember any other remarks emanatory from the Civil Courts of Turkish days cancelling the remark. I cannot say that Ex. " M " of 92/30 is an extract I have seen, but it reminds me of an extract I have seen. The exhibit appears official. I do not read Turkish well. I do not remember the wording of the remarks that were to be cancelled by Ex. " F." I think they were remarks made by the Department and by Order of the L.S.O. Mr. Lowick. I think the remarks in the register dated 4.11.31 are those cancelled by me. Extract filed with claim 65. Both remarks were ordered to be cancelled by me. Between the recording of the remark and the date of cancellation the remark seems to have been on the register. 30

Re Xd. by 'Anas eff. : I cannot say what the line along the sea-shore represents. 40

No. 32.

PLAINTIFFS' EVIDENCE.

Hasan Said Mohd. Khalil.

*Before the
Settlement
Officer,
Haifa.*

21st Witness for Plaintiff, on oath—HASAN SAID MOHD. KHALIL,
aged 50, Zeita, Cultivator.

*Plaintiffs'
Evidence.*

No. 32.
Hasan Said
Mohd.
Khalil,
15th
December
1942.

I know Messrs. Kaisermann and Rutman I remember the case before Mr. Lowick. Zeita has masha' land. The name of the masha' is Raml. Mr. Lowick settled the lands of Khor al Wasa'. Khor Wasa' is part of the masha'. I am a registered owner. I contended before Mr. Lowick
10 that this land was stolen. I was claiming in my capacity as registered owner and shareholder in the masha'. Although we hold title deeds the land is common to all the villagers. I appointed the prosecutor of Govt. to appear before Mr. Lowick. Mr. Koussa was the prosecutor. He was my advocate, and then Selim Hanna appeared as a friend, the latter had no right to appear as an advocate. Selim Eff. appeared because I complained to the D. Commissioner of the north. I paid no money. He remained until the end of the proceedings. He obtained judgment in my favour. Selim Hanna did this for me. I sent certain documents to Selim Hanna. In 1925 I received LP.50 from Rutman and Kaisermann
20 and spent the money on the proceedings. I do not remember the exact circumstances. I disregarded my interest in the action after appointing Selim Hanna. After having obtained 50 from Kaisermann they drew up certain documents which I was made to sign, four or five copies. I do not know what was in the documents. I signed the documents before the Notary Public in Haifa. I do not know to whom these documents were to be sent. I was given a document, but I lost it. It was a copy, unsigned. All I took was an unsigned copy from Shaker, which was given me with the money. I did not see Selim Hanna after having signed the documents before the Notary Public. Shaker Awad told me to receive
30 LP.50 and to withdraw from the action. Mr. Kaisermann gave me LP.50. I went to Rutman in Hadera who gave me a letter to Mr. Kaisermann. I know Khor al Wasa' well. The village cultivated the land. Each person who had animals to plough used to cultivate the land. The east part is still cultivated, the other lands are prohibited, that is Khor al Wasa'. This prohibition was since 1925 when Rutman took the land. In that year 1925, we were all cultivating, all the fellahin. We were prevented from cultivating the land by the theft of it. I know Abd el Fattah and his sons and nephews. They cultivated in the same manner as any other villager. There are relations between Rutman and Abd el Fattah. I know
40 of the actions of Abd el Fattah and Rutman. Certain of the Hadera Colonists claimed that Abd el Fattah had encroached upon the lands. Nissan Rutman got the land for Abd el Fattah, the latter was not the owner of the land. Abd el Fattah built a house for his cattle on the lands of Qasa', which is the masha' lands of Zeita, in Khor al Wasa'. The Qasa' falls on the boundary separating us from Hadera on the north. Zeita lands falls south of Qasa', there is a road between the two. The road goes from Ein el Hajar to the forest of the Jews in the west. Ein el Hajar is in Qazaza which is in the masha' of Zeita. The road is to the north, to-day it is divided due to the swamp. Qazaza is partly in the Zeita and
50 part in Khor al Wasa', which is in Zeita. Ein al Hajar is in the middle

Before the
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of the north-east of Qazaza. It is in the north of masha' Zeita Hadera land is to the north of the 'Ein.

No further examination.

Plaintiffs'
Evidence.

No. 32.
Hasan Said
Mohd.
Khalil,
15th
December
1942,
continued.

Xd. by Mr. Kaisermann: My correct name is Hassan Said Mohd. Khalil. My name is Hasan Said Labadi. I know Hasan Mustafa abu Jibara Ex. "P" is the document I referred to. I sent papers to Selim Hanna through the Notary Public. I thought the documents were for the land settlement. I went to the Notary Public with Shaker Mana'a, he is a friend, a broker, from Zeita, if he had the chance he would sell me. I have known him always as a man who would sell men and land. I sold 10 for LP.50. The brokers' functions are to deceive men. I myself received the money from Mr. Kaisermann. Shaker was present. It was in the evening, I slept in Haifa and saw Kaisermann the next day. I stayed in the hotel, Salahi Hotel. The next day I went to Mr. Rutman by train to Hadera. We went when the work was finished in the Execution Office, that is, Shaker and myself, no one else. Rutman had promised me one pound, so I went and got it. Shaker went to swallow a big share. I took the money and went away. I went from the hotel with Shaker to the Execution Office, did not go to Kaisermann's office. Mr. Kaisermann was waiting for us. Shaker went to bring Mr. Kaisermann, he was alone. 20 Shaker drafted the document and signed it in the presence of Mr. Kaisermann and I was present the whole time. Mr. Kaisermann gave me the money near the door of the Execution Office. I put it in my pocket and lost my land. I was glad to receive the money. Never saw any other money. Money in one pound notes, not counted by me, as I had confidence. Counted them afterwards and found them correct. I am a plaintiff and have been present in Court at time. Did not hear the evidence. I have no other land but the masha'. I did not cultivate in Khor al Wasa'. Never. Zeita have horse, oxen, etc. People with ability to cultivate did so. I had no ability and did not do so. The number of cattle is from 30 20 to 50. I have 4 oxen. There is no one with 40-50 cattle, each has one or two. Abd el Fattah has horse, four, sometimes two, sometimes five. Abd el Fattah and his sons and nephews 5-6 horses. I am sure. He may have 100-150 oxen and cows. Musa is still worse than Shaker, I know him. It is correct to say that Abd el Fattah has over 100 head of cattle. I know Abd el Fattah and his sons cultivated Khor al Wasa' and that the houses are his. There is some 'utol in Khor al Wasa' on the south near 'Attil. I first heard of the land being stolen when the registration was made in Haifa. I complained to the District Commissioner in Haifa. I submitted a complaint to the District Court of Nablus and 40 another to Jerusalem. Fuad Attalah has copies of these complaints. The replies are with Fuad. This happened in 1925. As soon as I learnt about the transfer of the land. The Court of Nablus asked me to specify the name of the defendant. Rutman, etc. I was unable to cite the opponent. My advocate was F. Attalah who took from me a document for LP.300. Attalah played, received money from Rutman, and gave me back the undertaking. I never paid Attalah any cash, gave him a paper for 350 pounds. Rutman became aware of it and paid Attalah money, and Attalah asked him to destroy the document in my presence. The paper was for 300 pounds. Before the story of the execution office, Attalah 50

went with me to Rutman's Office in Haifa, near the road near the sea. He advised me to accept LP.25. I refused. I was alone. This happened after the land had been stolen. I signed the complaint alone, many other people made complaints.

*Before the
Settlement
Officer,
Haifa.*

Witness calls examining advocate the thief of the land.

*Plaintiffs'
Evidence.*

Witness continuing : I came to Haifa on my own account by train.

No. 32.
Hasan Said
Mohd.
Khalil,
15th
December
1912,

Xd. by Settlement Officer : The 50 pounds was paid for the withdrawal from the land, my rights are not lost. After taking me money I brought an action the following day as attorney for my aunt.

10 *Re Xd. by Abdul Latif Bey* : I did come to-day, but I was not asked to come. I came with the witnesses waiting outside and did not come into Court.

continued.

Re Xd. by Walid Eff. : Villagers, other than Abd el Fattah have oxen. About 10-14 feddans have 4 oxen.

No. 33.

PLAINTIFFS' EVIDENCE.

Husni eff Jarrah, re-called.

No. 33.
Husni
Jarrah
(re-called),
15th
December
1912.

18th Witness for Plaintiff re-called on oath : HUFNI EFF. JARRAH.
Ex. (1) of file 92/30, 1st Jacket.

20 Appears to be a copy of a kushan for land known as Hajar or Ramel in the village of Khedera. I have compared it with entries in my register and found it correct. The south boundary of the land is registered as Road of El Qasa'a. The west as swamp. The area 307 dunums and 800 pies. Owner was Said Nasser and Ahmad abu Jazzar. Said Nasser died and his share passed to his heirs. To-day the property is registered in the name of Shabatay (Simon) ben Shraga Kasseti, the previous owner was Nissam Rutman. The sale from the latter was made 3rd July 1925.

No. 34.

PLAINTIFFS' EVIDENCE.

Solomon Goral.

No. 34.
Solomon
Goral,
15th
December
1912.

30 22nd Witness for Plaintiff on oath : SOLOMON GORAL, aged 33, Court Clerk Land Settlement, Haifa.

I have the custody of the Court files of Land Settlement Haifa. I have the files of the Khor Wasa' Case No. 92/30 of the Land Settlement Hadera. I have jackets Nos. 1 to 7, and 9 and 10. I have the following Exhibits. Jacket L Exhibit "c" Ex. "a" is the decision L.C.10-25. Ex. "W" judgment dismissing opposition 39/25. Ex "Q" statement signed by Attorney-General to Land Court Haifa 10/25. Ex. "P" statement of claim address to L.C. Haifa 5.2.1927. Ex. "M" Order under trial
40 upon Information Ordinance 143/29. Ex. Jacket 1 (91) is a letter dated 26.6.1931 from the L.S.O. to Attorney-General. Ex. (p.2) letter addressed

Before the
Settlement
Officer,
Haifa.

Plaintiffs'
Evidence.

No. 34.
Solomon
Goral,
15th
December
1942,
continued.

by L.S.O. to Dist. Com. N.D. dated 29th June 1931 with copy to Com. of Lands. Letter in connection with possession of land. Ex. "o" Letter of L.S.O. to D. of Lands Jerusalem 29.6.1931, final paragraph. Ex. Jacket 1 (j). Extract of Daftar Shamsiya of Hadera lands. Ex. "f" Revenue record extract, Tulkarem Office. (Ex. "R" Judgment of L.C. Nablus 18/22 not found.) Ex. "X" Letter addressed by C.S. to L.S.O. 17.2.31. Jacket No. 6 contains the record of the proceedings before the Land Settlement Officer, the proceedings contain 144 folios, and a copy of the decision is attached, 92/30, and the Judgment of the Privy Council 19/35. Attached to the decision of the Settlement Officer is a plan attached to the decision. The plan contains notes of the L.S.O. 10

Xd. by Mr. Kaisermann : I cannot testify more than to say that these Exhibits are in land settlement files in my custody. I am not prepared to swear to the genuineness of any uncertified documents. I was Court Clerk for some of the proceedings in Khor al Wasa'. The proceedings are in the handwriting of the late Mr. Lowick.

Re Xd. by Walid Eff. : I know the signature and handwriting of Mr. Lowick and that the files were in the office of the L.S. Officer.

Case adjourned until December 16th 1942 at 9 a.m.
15.12.42.

20

CECIL KENYON.

No. 35.
Guedaliahu
Wilbus-
chevitz,
17th
December
1942.

No. 35.

PLAINTIFFS' EVIDENCE.

Guedaliahu Wilbuschevitz.

Haifa 17th December 1942.

Present : Abdul Latif Bey in person and representing 'Uthman Eff. Bushnaq and Walid Eff. Salah and Anas Eff. Khamra. Mr. Kaisermann in person and representing Abcarius Bey and Mr. Schwartz by delegation.

23rd Witness for plaintiff, on oath : GUEDALIAHU WILBUSCHEVITZ, 30
aged 77. Surveyor and engineer, Haifa.

Exhibit S/1 is a copy of my plan. My plan was made on cloth. I think S/1 is a copy of my map. I see on the print a new line F.G.H. that was not on my plan. I also see letters A.B.C.D. made in pencil by someone else, not by me. I made the survey in 1893. The Colony of Hadera ordered the plan, Joshua Hankin also asked me to prepare the plan. The settlers of Hadera asked me. The settlers walked along all the boundaries. The plan took half a year to prepare, perhaps 5 months, in the summer. The assistants were people of Hadera. Everything is written on the plan and shown accurately on the plan. All around the boundaries is a description. 40
The letters A.B.C.D.E. have been added later. The boundary is Hadera, Zeita, Attil. On the south of the boundary C.D. is Zeita.

Xd. by Mr. Kaisermann : I made a map because of a dispute between Hankin and the settlers of Hadera. The dispute was in regard to the

area of the land, big dispute and many cases. The north is usually the top, but on this map there is no north point. It is correct that the sea is west of Hadera and so the north would be at the top. South of the line is A.B.C. is Hadera.

*Before the
Settlement
Officer,
Haifa.*

*Plaintiffs'
Evidence.*

No. 35.
Guedaliahu
Wilbus-
chevitz,
17th
December
1942,
continued.

- Xd. by S.O.:* I do not remember the details of the map, they are so many. This plan was traced by the land surveyor in Jerusalem. This endorsement was not on my plan. It must have been added afterwards. The endorsement was on the original of the sunprint. The word "Copie" was also on the original of the sunprint. My signature has been copied.
- 10 This copy bears the name of my brother who was not present when the plan was made. He came to Palestine 10 years after me. There is a statement that the print is a copy of the original. I had been in Palestine 6 months when I made the plan. I do not recollect the details of the plan, and never compared this copy.

Re Xd. by Abdul Latif Bey: The inscription on the print is not in my handwriting, the signature is. The inscription says, "In conformity with the original drawing, correct." My signature appears, and I signed the inscription. The plan contains many details not in my original plan.

No. 36.

No. 36.
Proceedings
continued,
17th
December
1942.

20

PROCEEDINGS—continued.

Anas Eff. Khamra appears.

Abdul Latif Bey: I ask for Mr. Hankin and Mr. Nasr to be called to give evidence on the plan.

Settlement Officer's Ruling: The plan S/1 has been filed in the Land Settlement Office for more than 12 years. Ample time has been given to the parties to bring any evidence they desired to prove the plan. The application for fresh witnesses is refused.

16.12.42.

CECIL KENYON.

- Abdul Latif Bey:* My last two witnesses are Abdul Rahman Haj Ibrahim ex Land Registrar and Mayor of Tulkarm, and Taufiq Tamimi, ex Mudir Mal of Tulkarm. They were expected to be here this morning, at 7.30 this morning I received a telephone call that Abdul Rahman had an attack and is unable to appear. Taufiq Tamimi has not appeared.
- 30

S.O. Ruling: This present hearing was set for the 14, 15, and 16 of December. The witnesses should have been present. Plaintiffs undertook to produce witnesses. They failed to do so yesterday when the Settlement Officer was ready to proceed with the hearing. By their delay the witnesses are not present to be heard. No adjournment can be granted.

40 16.12.42.

CECIL KENYON.

Abdul Latif Bey: I produce a copy of the distribution of the masha' in L.C. 18/22 Nablus Ex. "AA." I also produce a copy of the masha' of Zeita middle part with Khor al Wasa'. I also produce a copy of the

Before the
Settlement
Officer,
Haifa.

distribution of the feddans relating to the lands described in "BB"
Ex. "CC." I also produce a statement of claim in L.C. 18/22 Ex. "DD."
I also produce a copy of a P/A by Kaisermann to Mochler in L.C. 18/22
Ex. "EE."

No. 36.
Proceedings
continued,
17th
December
1942,
continued.

Evidence for plaintiffs closes.

Mr. Kaisermann : I should like to submit certified copies of documents
for filing in this case, through a witness.

S.O. : Documents truly certified may be put in by counsel for
defendants.

Mr. Kaisermann : I produce :

- Ex. 1. P/A. Signed by plaintiffs in L.C. 10/25 Haifa to myself. Musa
Abd el Fattah thumb printed the power. 10
- Ex. 2. Extract of Registers of Dt. Ct. Haifa relating to Land Action
39/25. Salih Ismail Khatib and another. The date is given
19.9.25. The fees were paid 19.8.25. I believe the date was
August.
- Ex. 3. P/A. given to Kaisermann in L.A. 39/25, by Abdul Fattah and
others and Musa Samara.
- Ex. 4. Judgment of L.C. is in Ex. 2. The appellate judgment is in 4.
- Ex. 5. Notarial declaration 27.9.25 signed by 11 persons 1158/25. 20
- Ex. 6. Notarial deed, dated 27.9.25, 1160/25.
- Ex. 7. Notarial deed, dated 26.10.25, 1318/25 signed by 3 persons.
- Ex. 8. Certified copy of notarial declaration, 6.10.26, 1163/26 signed
by Abd el Fattah Samara and Selim and Abdul Latif.
- Ex. 9. Certified copy of notarial declaration, 6.10.26, 1173/26 signed
by Musa Abd el Fattah. Certification made on the 7th of
October, 1926.
- Ex. 10. High Court proceedings and Order 6/27, taken from Criminal
file 143/29.
- Ex. 11. Copy of decision of Examining Magistrate in Case 13/29, and 30
Dt. Ct. 143/29 dismissing the charge, 29th Jan. 1929.
- Ex. 12. Extract of Dt. Ct. registers relating to Criminal Case 143/29.
A.G. v. Rutman. Record taken by Government advocate. File
remitted 18.10.31. File returned 21.10.30.
- Ex. 13. Crown Counsel, letter saying Criminal File cannot be traced.
- Ex. 14. Judgment by Magistrate Haifa C.C. 5728/30 Defts. Abdul Fattah
and his sons amt. £50.
- Ex. 15. Judgment by Magistrate Haifa 5729/30 same parties LP.28.
- Ex. 16. Judgment by Magistrate Haifa 5731/30 deft. Abdul el Fattah
LP.10. 40
- Ex. 17. Order of H.C. 58/30.

Case adjourned until the 11 to 14th of January, 1943 for defendants'
witnesses to be heard.

16.12.42.

CECIL KENYON.

Abdul Latif Bey : I produce two telegrams concerning my witnesses—
Nos. 26 and 27. I ask for the exercise of the discretion of the S.O. to call
these witnesses.

16.12.42.

CECIL KENYON.

No. 37.

DEFENDANTS' EVIDENCE.

Nissan Rutman.

*Before the
Settlement
Officer,
Haifa.*

Haifa, 11th January, 1943.

Present : Abdul Latif Bey as Salah.

'Uthman Eff. Bushnaq.

Anas Eff. Khamra.

Mr. J. Kaisermann and for Abcarius Bey and Mr. Schwartz.

Amin Abd el Qador Nassor, m. of V.S.C. Zeita.

10 Ali Abdul Qader Mahmud of Zeita.

*Defendants'
Evidence.*

No. 37.

Nissan
Rutman,
11th
January
1943.

1st Witness for Defendant.—NISSAN RUTMAN, 50 years, Hadera landowner-merchant.

My orange grove is in Fuqara near Hadera, and I have other property in Hadera and in Jerusalem, Pardess Hanna and Haifa. I buy lands for myself and as an agent for others. In 1922 I negotiated some purchase in Zeita. I wanted to buy land in the masha' Zeita. I negotiated with Abd el Jazzar, and with the Mukhtar Mohammad Nimr, and Ali Saad Mana'a. They were the three persons with whom I negotiated. I agreed with them on the shares. I do not make written agreements. I paid some money

20 in connection with these negotiations. I paid to certain persons through these three persons. These three persons gave me the names of persons to whom I should pay. I paid from 2500 to 3000 pounds. I did not get shares in Zeita as a result of these payments. A part of the money was refunded, the major part. I sent warnings through the notary public in order to recover the money. The security I received for the money I paid was notarial deeds. Such deeds, that can be presented for collection without process in the Courts. The major part I collected was about 2000-2300 pounds. I do not read Arabic. Ex. N. is one of the notarial notices. The amount was LE.100. I did not give Masoud Nasser and Abdallah

30 Yusef Hamdan LE.100. I gave them some money. I submit Ex. 18, a notarial notice to Ali Saad Mana'a and Mohammad Khalil Yusef for LE200 8th May, 1924. I paid one fourth of the stated amount. It was agreed between the parties that had the land been given the actual amount paid would have been taken into account, if the land was not given the money would be damages. I did not send notices to all the debtors. Some sums were paid through the notarial warnings, others were paid without warnings. All these negotiations were concerned with the masha' Zeita. At a later time I was concerned with the masha' Zeita, in the year 1933. I then negotiated with Mohammad Abd el Halim of Tulkarm. The object

40 of these negotiations was the purchase of Masha' Zeita. I negotiated with Mohammad Abd el Halim because he had purchased shares by contract. He handed over the contracts to me, and I took photographic copies of the contracts. Ex. 19 are seven photographs of the contracts and I handed the photographs to Mr. Kaisermann. My 1933 negotiations were on my behalf and Mr. Suprasky of Hamankhil, the Geula Company, and Dr. Bruner. I did not buy the shares in Raml Zeita. The masha' Zeita negotiations of 1922 had no connection with Khor al Wasa'. I think I was present in Hadera during the afternoon session on the 4th of May. I may have been in Nathanya as Abcarius Bey was sick. I have seen

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Husni Abdalla Hassan, the first witness for plaintiff in Court since then. His evidence was read to me. I have not been in the house of Husni Abdalla Hassan in Zeita, and did not know him before. I do not think I was ever in Zeita Village. I did not know Shuqri Qirri, and advocate. Had no dealings with him in connection with masha' Zeita or Khor Wasa'. As to Muhammad Mahmud Hamdan, I had no dealings with him, but I may have seen him at Hadera. I did know in 1922 that there were cases in Tulkarm, between the villagers. I did not take any particular interest in the cases, and never attended any of the hearings. In regard to Exs. C. and D. I did Abu Jazzar a favour and gave him the two bonds. 10
The amount as small LP 15-20 for appeal expenses.

I purchased Khor al Wasa' in 1925. I first considered the purchase in 1924. Abd el Fattah came to me and asked me to buy the land. I think the Mukhtar of Zeita was with him. I have known Abd el Fattah ever since I came to Hadera. He lived near Hadera in his house in Hadera in Khor al Wasa'. He lived there ever since I came to Hadera. I did not know exactly the area of Khor al Wasa' but I knew it was a large area. He told me he had no kushan. He said he would obtain new registration. When I started negotiations I drew up a plan, a surveyor Epstein made the plan. I bought in accordance with boundaries. 20
We agreed on a fixed price, 8000-9000 pounds. The buildings were not included. I paid all the money to Abd el Fattah, not in one sum. Abd el Fattah did not make the new registration. He told me that the Mukhtar Samsonov, the Mukhtar of Hadera, refused to sign. Abd el Fattah brought an action. I personally took no interest in the action. I knew about the case. He told me he had obtained judgment. The land was registered in his name. A fee was paid on the registration 5% Haq el Karar, paid by Abdul Fattah. I may have made the actual payment on account of Abdul Fattah. I transferred part of the land into the name of Tova Rutman and the other to Rivka Aaronson. Having paid the money 30
I held a power of attorney. I did not transfer all the land. About 1300 dunums remained without transfer for one year, in the names of Abdul Fattah and his sons. After making the transfer I received the land. We came to the ground, put in angle irons, and took over the land. I went. Abdul Fattah went, and my labourers. This happened after the transfer. The marks were iron pipes with concrete about one metre deep. The marking took about 5 to 6 days. I went myself to the land and saw the work. I was not present the whole time. Work was done during the day. There was no disturbance. I did not apply to the police either before or after the work. Baruch Helvitz was my 40
foreman workman. I took over the land in June after the transfer. The land was ploughed for me at the end of October or early November the same year. I cultivated, Abd el Fattah cultivated, and people of 'Attil and Jews also cultivated. I leased the land to them on the basis of contracts. There was no disturbance at that time. I did not call for the police either before or after this visit to the land. There was never any disturbance at any time in Khor al Wasa'. I know 'Omar Quweis, he worked for me, until the middle of the first world war, until 1917. I was in Damascus at the time. I was taken by the Turkish authorities and deported to Damascus. Until that time, 'Omar Quweis worked 50
for me. I returned from Damascus after the Occupation. I fled from Damascus in 1918 and returned to Hadera. I did not find 'Omar Quweis

working for me, and I did not re-engage him. He did not work for me in 1925, June or October. I married in 1919. I knew Hassan es Saiyid, a good friend of mine. He was Sheikh of the Arab en Nufu'at, and died about 1927. He was a well-known man and his death was a well-known event. I knew 'Ali Abdulla, he was killed in 1938. My house in Hadera is on the corner of Herbert Samuel and Herzl Streets. It is on the western side of the village and very far from Khor al Wasa', a few kilometres away. I heard the evidence of Musa Samara. He is a big liar. Since I purchased Khor al Wasa' I leased the land to Abd el Fattah and his sons. They took different areas 900-700-200 dunums and paid me rent for the land. I let the buildings to them. They paid rent for the buildings. Ex. 14, 15, 16 are judgments against Abd el Fattah. The debts were rent, altogether LP.88 plus costs. I have no other judgments against Abd el Fattah or his sons. Besides these actions I filed no others against Abd el Fattah or his sons at any time. To-day Abd el Fattah and his sons owe me one year's rent. I produce a contract of lease. I have the lessor, the lessee is Abd el Fattah and sons, 620 dunums Dec. 1928-September, 1928. Rent 60 pounds. The thumbprints are those of the lessees. Ex. "20" is in my handwriting. Ex. "21" is also in my handwriting, a contract of lease to Nimr el Hassan, son of Hassan es Saiyid, land is Khor al Wasa' on the north Kefar Brandeis. 1st November, 1930, Sept. 1931. Rent 18 pounds. Signed by Nimer Hassan. The rent for Abdul el Fattah and sons was different, to them I made allowances. Ex. "22" is also a contract made in my handwriting with Mohammad Abdul Razzaq of Jatt Village Khor Wasa' land, 50 dunums, 17th October 1932 to 1st September 1933. Lease is signed by lessee. Rent is L.P.8. Ex. "23" is a lease in my handwriting with Mahmud el Musa of Baqr from 5th September 1933 to 1st June 1934. Area 80 dunums. Rent 40 pounds. I knew Musa Hassan Nadaf of 'Attil or Zalafa. Ex. "24" is a contract of lease with him November 1931 to September 1932. 55 dunums, rent LP.600. Ex. "25" is a lease with Mohammad Mahmud Saleh, dated 15th November 1925 for one year. Area 30 dunums 300 Egyptian piastres. Ex. "D" is a lease with the Witness Nadar. I know him personally, and remember making the lease with him. Ex. "E" is with the same person. A feddan is a number of oxen, 3 or 4 which plough during the season. Ex. "L". I know of this document. Ex. "5" is dated 27th September 1925 signed by 11 persons of Zeita. Given on request by Abdul el Fattah and declaring that Khor al Wasa' was not part of Zeita land. There are other documents like these. Ex. "5" is, I believe, the first one of them. I did not pay any money in connection with these declarations. I heard the evidence of Hassan Labadi. His evidence about the 50 pounds is untrue. I know Mr. Bentwich, he was the Attorney-General of the Government of Palestine. I had trouble with the land, when land settlement came. I had dealings with Mr. Bentwich, he caused us a lot of trouble. One year after the purchase we desired to transfer part of the area to Dr. Eliash and Mr. Bentwich stopped the transaction. We brought a High Court action and the Court gave him 14 days to bring the action or allow the transaction. I gave evidence in connection with the action, Ex. "10". Abcarius Bey appeared for me, Dr. Doukhan appeared for the Government. Government brought an action in the Court of Haifa. Government contended the land was mahlul. The action was not heard, because Dr. Doukhan invited me to Jerusalem and we compromised. Ex. "X" is the document

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between me and H.E. The witnesses were Abcarius Bey and Mr. Bentwich and I paid the LP.1000. We transferred the land to Dr. Eliash. That was not the end of my relations with Mr. Bentwich. After some time criminal proceedings were brought against me. I was charged with a false plan. I was brought before an examining Magistrate. Adv. Koussa appeared for the A.G. The examining Magistrate heard many witnesses. He decided to dismiss the charge, saying there was no offence. Ex. 11 is a certified copy of the judgment. I heard Selim Hanna giving evidence. Selim Hanna was in error. The Exhibit 11 is the judgment. Mr. Bentwich was not satisfied with this judgment. He remitted the documents to the District Court for trial. The case was heard before a special tribunal. Ex. "M" refers. The District Court was specially constituted. JJ. Webb and Plunkett. They did not hear the evidence. The charge was dismissed and I was acquitted, on the ground that there was no offence, no guilt as claimed. I have not a copy of the record or the judgment in this case. Ex. "12" is a copy of the registers of the District Court. I instructed Mr. Kaisermann to write to the Registrar of the Courts and Ex. "13" is the letter and reply. That was in 1929. This was not the end of Mr. Bentwich. He again, in 1930-31 re-opened the matter at land settlement. He started to intrigue in the area. He sent Mr. Koussa to land settlement. He was Junior Government Advocate. Abcarius Bey objected to his presence. The L.S.O. allowed Mr. Koussa to appear. Abcarius then petitioned the High Court and an Order nisi. Ex. "O" and "17" was given, and the High Court ruled that the A.G. could not delegate the matter to Mr. Koussa. Mr. Koussa did not appear in L.S. proceedings after that. Mr. Bentwich did not stop there, he sent Selim Hanna, a Police Officer. Mr. Bentwich took all this interest because he asked Mrs. Fels to give the land for the purposes of Jewish Settlement. Selim Hanna appeared with Mr. Kantrovitch, of the Legal Department. There is a Baruch Rutman, he is a young man, about 19 or 20 years' old to-day, he is a student. In 1925 he was 2 or 3 years of age. I have a brother, Hayim Rutman, a farmer in Hadera. He is not a partner of mine, he works independently and lives in another house. The evidence of Musa Samara that I sent Hayim Rutman to him and told him not to appear is untrue. I did not discuss the giving of evidence with Musa Samara. I did discuss the giving of evidence with Abd el Fattah and I think his son Selim was present. This happened in my house in Hadera. Abd el Fattah came to me and told me he was being pressed to give false evidence and was being threatened. I did not call Abd el Fattah to me. A month or so after the transfer in 1925 a certain Sheikh Salih el Khatib and Musa Nasser brought an action against Abd el Fattah and us in the Court of Haifa, and that is why I obtained the declarations. Ex. "2" is an extract from the District Court Haifa registers obtained on my instructions. Land Case 39/25. The fee was paid on the 19th of August 1925. Salih el Khatib claimed that the registration of Abd el Fattah should be cancelled, he wanted to oppose the judgment. He stated that Khor al Wasa' was within the lands of Zeita. When he filed the action, and as Abd el Fattah had money with me, I asked Abd el Fattah to bring villagers of Zeita to make the declarations. The action of Salih el Khatib was dismissed in the Land Court. He appealed and the appeal was dismissed. From the date of the action in 1925 until land settlement in 1930-31 no one of Zeita brought any action against me in respect of this land. In May 1940 I appeared before Mr. O'Connor, the Land Settlement Officer of

Tulkarm in a case with the villagers of 'Attil. The defendant was Miss Rifka Aaronson and I appeared on her behalf with Mr. Kaisermann. I produce a certified true copy of the decision. The case concerned Khor al Wasa'. Ex. "26". I produced the leases mentioned in the decision, they were different leases to those produced in this case. I have many more contracts of lease. I obtained Ex. "27" from the Revenue Officer of Haifa, it states that land taxes were paid by me. Ex. "W" is a lease from me to Abd el Fattah and sons for an area of 900 dunums in Khor al Wasa, in 1927. Ex. "8" is a document obtained by me in regard to the value of the buildings, of Abd el Fattah.

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Xd. by Abdul Latif Bey: I had trouble with Mr. Bentwich. The land belongs to Mrs. Mary Fels. At the first the land was registered in the name of Abd el Fattah. Then it was transferred to Mrs. Tova Rutman in her own right and the balance that belongs to Mrs. Mary Fels was registered in the name of Miss Aaronson. I received these instructions. Do not mean to say that Miss Aaronson is not the owner. I merely carried out the instructions of Mrs. Fels. The purchase was by Mrs. Fels from Abd el Fattah. I was the agent. I bought about 5300 old dunums for 8000-9000 pounds. The actual cost was finally over LP.10000 since we had to pay badl misl. There is no contract of purchase between me and Abd el Fattah. The agreement was made between us. We agreed on the price. I gave him some money, he gave me an irrevocable Power of Attorney. The sum paid was not a large sum, a few hundred pounds at that time. I do not remember if the Power of Attorney was given on the same day or a few days earlier or later. I think this took place in 1925, not at the beginning of 1925. I think it was in the middle of the year. The Power of Attorney was made before the Notary Public in Haifa. I think Abd el Fattah and his sons gave me one Power of Attorney. It was most certainly before the registration, as otherwise how could I have effected the transfer. Cannot remember if it was before or after the Land Court Judgment (Haifa). The sons were Selim, Musa and Abd el Latif. Apart from this Power of Attorney I do not think there are others. I made the transfer on the authority of this Power of Attorney. The P/A could not have been dated the 9th of December 1935. I do not remember the contents of the power, but I do not think the sum I paid was mentioned, nor do I think the price is mentioned therein. There was an oral agreement to sell, and we signed a Power of Attorney. They, Abd el Fattah and sons, received the money and gave the declaration Ex. "L". Abd el Fattah and his sons received the money. The father was the principal, but his sons also received the money. All received money, final accounts were settled with the old man. I do not know who received one fourth or one fifth, the father was the principal man. They received all the money. I think the land registry has also a reference to the money paid. I paid between 8-9000 pounds, excepting the buildings. The buildings were about 7-800 pounds. The agreement for the buildings was made at the same time, so far as I remember. The buildings were part of the land. I paid the money by instalments, do not remember the number. The payments were made in a short time, cannot say how long the payments took to make. Musa, Selim and Abd el Latif received this money together. Do not remember how much they received. I cannot say if all were present at the payment of each instalment, but they were all present at

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the final settlement. Do not remember whether I received receipts on each payment. I do not remember if I took receipts at times or not, there is a final receipt. There is a declaration that they received all the money. Do not remember if I received separate receipts for each payment.

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Case adjourned until 9.30 a.m. January 12th, 1943, at Haifa.

CECIL KENYON.

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Haifa 12th January, 1943.

Present : Abdul Latif Bey.
'Uthman Eff. Bushnaq.
Mr. Kaisermann.

Taufiq Zubeidi ; Mustafa Mohd. Ghadayi ; Mohd. Ahmad 10
Abd el Ghani Ammaui ; Amin Abdul Khalil Nassar ; Ali
Abdul Qader ; Izzat Mustafa Abed ; Abdalla Sayid Salih,
all of Zeita.

Xn. Examination of witness continued.

Witness reminded he is still on oath :

I said yesterday that about 1300 dunums remained with Abdul Fattah. This land remained with him 10 months to 1 year. Then I effected a transaction and the land was transferred to Miss Aaronson. To Mrs. Rutman something more than 1300 dunums was transferred. 20
Mrs. Rutman is my wife. Mrs. Rutman paid for the land from her estate, from her own monies. I received instructions to transfer the land to Miss Aaronson. The number of Transfers to Miss Aaronson is recorded in the Tabu. I may have transferred on two occasions. A period of one year between these two transactions may have elapsed. On the first occasion and on the second occasion I received instructions. I do not remember the actual date on which I paid for the 1300 dunums but I did pay all the money. I paid the money in instalments I do not remember the dates. I only know I paid all the money. I do not remember a thing which happened 18 years ago. I had a Power of Attorney. I may have 30
paid money on the first transfer. I did not say I paid all the money at the first transfer and left him 1300 dunums. I cannot remember what happened then. I cannot remember if I paid at the time of the second transfer, the accounts were complicated by the purchase of the houses, etc. I have no account books, my private accounts were kept by me, but kept no systemised accounts. I am not sure if I have my private accounts. Though Mrs. Fels may have paid. I received the money from Miss Aaronson. Cannot say in how many instalments the money was paid. Do not know if I received the money before the first or second transaction. There were bank transactions and cheques. Barclays Bank. Do not 40
remember if there were cheques or bank transactions. Cannot remember if I received anything in cash. I kept a record of the cheques and transfers. I have not the account books. Only keep books since the advent of the income tax. I did have simple accounts. The same procedure was adopted in Pardess Hanna. Ex. 18 and N. LE.200 and 100. Actual.

Yasin Zeitawi appears.

Money paid was on quarter of the sum. I also received from them one fourth of the amount named. I had no written agreement that only

one fourth should be received or returned. They had confidence in me. The agreement was oral and between three persons. They were warned for the whole amount, and I had the right to warn them for those amounts. Before buying Khor al Wasa' I knew the lands and knew the land from the time I went to Hadera 37 years ago. I used to pass along that place, and knew the place because Abd el Fattah lived there and was our neighbour. I have lands in Hadera and Khor al Wasa' abuts on Hadera. Any person who lives in Hadera knows Khor al Wasa' and knows Abd el Fattah. I sometimes passed along the boundary, though had no particular interest. I used to go to Abd el Fattah and bought manure from him for my orange grove. Never made an inspection of the land but saw Abd el Fattah and his sons cultivating. Do not know how much he cultivated but he had the ability to cultivate many thousands of dunums. Do not know how much he cultivated but for me he cultivated over 1000 dunums. I did not pass the land after but when doing so I knew Abd el Fattah was cultivating. I think Abd el Fattah and his sons were the owners of the land. Do not know the partnership between father and sons, what shares or proportion. When I came to Hadera Selim Abd el Fattah must have been born, but not Musa. Do not know how Selim and Musa obtained the land, but their father said it was owned by them all. Do not know the Abd el Fattah family arrangements. Know they have been on the land over 40 years. There is eucalyptus on the boundary between Khor al Wasa' and Hadera. These trees do not say that the boundary of Hadera is the eucalyptus trees. As far as I know, and as I heard from my grandfather, the land once belonged to original settlers of Hadera who held kushans for the land. My grandfather was an original settlor. I said there was a boundary, but it does not mean anything. Before the purchase Abd el Fattah lived in Khor al Wasa' along the boundaries of Hadera. Knew that the Zeita people had masha' land, but not that Khor al Wasa' was part of it. I know Raml Zeita and went there but do not know of the localities of Raml Zeita. Since 1925 I have paid the taxes on Khor al Wasa' in Haifa, but before 1925 I do not know where the taxes were paid. Before the purchase I do not know if any taxes were paid. I am not a tax collector. I think the taxes on Raml Zeita may have been paid in Tulkarm, since it belongs to Tulkarm District. There is no hard or fast rule where people are to put their crops when they are living on the border. I say crops may be put sometimes in one place and sometimes another. I know there was a case in the Nablus Court concerning Raml Zeita, perhaps in 1923, or may be 1922. Do not know the parties to the action, cannot recollect the names of any of the plaintiffs or the defendants. I do not know by name Sharif Yusef or Muqbel As'ad Mohammad, but may be able to recognise them by sight. Only know three persons with whom I had negotiations. Did not brief counsel for Sharif and Mugbel or other defendants. I did not appoint Mr. Kaisermann and Negib Hakim as counsel for them. Do not know that Mr. Kaisermann and Negib Hakim acted for these persons until land settlement commenced in 1930 when the facts were revealed. Do not know Mr. Mockler, the Advocate. Since settlement started I knew Abd el Fattah was a party in the Nablus Action. I may have known before. I did not know that Abd el Fattah sent a notarial notice to the Court asking to withdraw from the case. I know Shakir 'Awad and Taufiq Zubeidi, but not Ali Husein el 'Isa. Do not know

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Mohammad Nimr Abu Mana'a, do not know Abd el Qader Salah Zubeidi. Know Elias Khattas the notary public. There were many transactions between us, also with people whom I did not know. There may have been happenings in the Halperin Hotel at Haifa. If there were it would be recorded in the documents. All the transactions were in the form of loans. Ex. J. contains the particulars. I cannot remember what happened at the time, if anything is mentioned in the document it must be correct. Cannot remember if I invited Elias Khattas to the hotel. Do not remember the details of the transaction. I had many transactions in Hotel Halperin. Do not remember if one was with Zeita people. It may have been that 10
Abd el Fattah was at the same place on the same day. I do not know that Abd el Fattah on the same day before the same notary public sent a notarial notice to the Nablus Land Court. I gave a bond to Abu Jazzar, who asked for it. Ex. B. There is no mention to Abu Jazzar but I gave the bond at his request. The bond was given in 1923. I heard about a case between the villagers before land settlement. I have said so. I gave the bond to Abu Jazzar, and have given similar bonds as a favour. Ex. C. 2nd May, 1924, also given to Abu Jazzar, he is the man I knew, had transactions with him. Do not know the persons mentioned in the bond. I knew the subject matter of the case, in a general manner, that it 20
was a question of partition. Did not know the substance of the case, did Abu Jazzar a favour, gave him 20-30 pounds, as I did favours for other persons. When I gave the second bond I had the same knowledge as when the first bond was given. Abu Jazzar was my friend. I did not know at the time if there was a second action in the Nablus Court about the masha' land. I knew at the time when the Haifa action between Abd el Fattah and Samsonov was brought, not the exact dates. I think the action was in 1925. The transfer from Abd el Fattah to Mrs. Rutman followed closely upon the judgment. It is possible that the transfer to 30
Mrs. Rutman took place one day after registration in the land registry in favour of Abd el Fattah. Messrs. Kaisermann and Negib Hakim were the advocates of Abd el Fattah. The attorney for Samsonov was Negib Hakim. I did not appoint the advocates for both sides. Ex. 14, 15, 16. Judgments against Abd el Fattah for amounts under £100. Received part of the money, cannot say how much. There is nothing owing to me but this year's rent. The judgments do not include this year's rent, which is between £35-40. From the judgment debts certain sums have been paid, and there remains only this year's rent. I know Hassan Labadi, he was present in the first settlement case and that he appointed Salim Eff. Hanna, and that later on he sent a warning dismissing him. Do not know 40
who prepared the notice. I have heard his evidence. I had many documents with me. Shakir was here, they prepared the notice. I may have paid 2 or 3 pounds in Hadera, when they came to see me. Do not know if the fee for the warning was included, did not ask them. When they come to Hadera they receive 2 or 3 pounds. After paying Hassan Labadi did not see him. Cannot remember if I received documents from him, many persons were involved. Do not remember if he gave me any documents in connection with the warning. I may have seen him later on, in the settlement office. I cannot say if he did not sign on a document. Ex. P. Do not know its contents. I do not think the notice was kept 50
by me. I do not know it was produced by Mr. Kaisermann. I may know Husen Abd er Razzaq by sight, and also Naim Mustafa. I do not know

Sheikh Husni, but if he is mentioned in a document he may have received money, I did not visit Sheikh Husni's house, nor do I think I have ever been in Zeita. I knew Ali Saad Mana'a. I believe he is dead, do not remember ever having gone to him in Zeita, or ever having stayed over night in the village. Do not know Zeita village. We are not far from Ramel Zeita, but Zeita is far away. There was also eucalyptus on the north of Khor al Wasa' and there was also a road, north of the houses of Abd el Fattah. The road or footpath stops at Qazzaza, as there is a swamp there. There is a passage running to the south leading to Qaqun. I
 10 remember the parcel I sold to Risotta, the one I received from Abou Jazzar. This road or path north of the houses of Abd el Fattah does not, so far as I know, run south of Risotta's parcel. The swamp stops the road, which turns to the south east. Do not know if there is a road south of Risotta's land, as I had the parcel only two weeks and do not know the boundaries. When there is rain I am certain the swamp is impassable, in dry weather it is possible to pass anywhere. It may be that there is a road south of Risotta's land, I do not know. I knew Epstein the surveyor who made the plan of Khor al Wasa'. Epstein and Musallam prepared the plan. The plan first had the inscription Zeita Tulkarm,
 20 and I did not want to receive the plan. I said the name was incorrect and asked for Khor Wasa' Hadera, to be put in place of Ramel Zeita—Tulkarm. It was the plan upon which the criminal action was instituted. Ex. (W) in Case 92/30. Exhibit Jackets II. I can read Latin characters. The western boundary is described as Hadera, I received the plan from Epstein. Before preparing the plan, the elders and Mukhtars of Zeita, Attil, and Hadera went out on the ground and pointed out the boundaries. In my view and in the view of Attil and Zeita the boundary is correct. I did not know where Qazzaza was but the Zeita people did and pointed out the boundary. I was not
 30 certain of the eastern boundary. The plan was prepared in order that I might know the correct boundary of the land and the area that I was buying. Plan dated 29.X.24. The plan was made before the Haifa Land Case (Abd el Fattah *v.* Samsonoff). Do not know if the plan was produced in the case. I cannot remember to whom I gave the plan after it was prepared. Do not know if there was an inspection on the ground. Do not know if the Land Registrar made an inspection of the ground. I only started to deal with the plan after Abd el Fattah told he he had obtained judgment. The plan was prepared before the action was instituted. Subhi Aweida was the Land Registrar. I know Judge
 40 Strumza. They are not to-day land registry and judge respectively. I heard that the case of Abd el Fattah had something to do with their not being in office to-day. I do not know whether I or Abd el Fattah produced the plan to the Tabu, to effect the registration in the name of Abd el Fattah. I was acting as agent for Abd el Fattah. This plan is not the basis of the actions of Mr. Bentwich. Mr. Bentwich first asked Mrs. Fels for the land, then the mahlul question, then the plan, and then the L.S. wanted Mrs. Fels to make a gift of the land for a Jewish Settlement. Mr. Bentwich at the time was the Attorney-General. The office of Attorney-General is a high post. The actions of the A.G. were
 50 unjustified. I did not refuse, only Mrs. Fels refused. Mr. Bentwich's actions against me were absolutely unjustified. Mrs. Fels told me that Mr. Bentwich had asked for the land. The A.G. made the charge against

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 Evidence.*

No. 37.
 Nissan
 Rutman,
 11th
 January
 1943,
continued.

Before the Settlement Officer, Haifa.
 me when the examining Magistrate discharged me. I was present when Selim Hanna gave evidence. I heard him say that Mr. Drayton made the *investigation*. (S.O. note, no such evidence, see pages 51, 57 of record.) I think the action in the District Court must have been dismissed as there was no offence.

Defendants' Evidence.

Cross-examination of witness by Abd el Latif Bey completed.

No. 37.

Case adjourned until 3.15 p.m.

Nissan
 Rutman,
 11th
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 1943,
continued.

CECIL KENYON.

Hearing resumed, 3.15 p.m.

Present : 'Uthman Eff. Bushnaq.
 Anas Eff. Khamra.
 Mr. J. Kaisermann.

10

Absent : Abdel Latif Bey.

X. examination of witness by Uthman Eff. Bushnaq : It is true that I knew Abd el Fattah about 40 years and used to visit him for the purpose of buying manure, and that he was a villager of Zeita. I cannot say that he was the first person I knew him though I have known him a long time. I think I knew Abd el Fattah before I knew any others. It is true that I negotiated in 1922 for the purchase of part of the masha' of Zeita. Do not remember if it was the early or late part of the year. I negotiated with Ali Saad, and others. I started negotiations with the three persons they indicated who were the persons and I drew up the documents. Ex. "N" contains a reference to the 12th August, 1922, then the negotiations must have started before that date. I did not know that Ramel Zeita belonged to all the inhabitants. I was told that they had title deeds. I did not make attempts to examine the registration, I saw a few kushans and relied upon the three persons. I wanted to buy only part of Ramel Zeita. Not all of it. The part I desired to buy was a masha' share, not a specific parcel. Did not know there were disputes, thought the owners of title deeds or their heirs were the owners. I used to give money in the form of a loan. I could not verify that each person who was brought to me was a kushan holder, but the three negotiators said they had rights in the land. The transaction with Abdul Fattah involved a big area of land and at that time I had business in Pardess Hanna, Arab el Fugara, and Abd el Fattah did not approach me. I did not know all the persons, the three negotiators were responsible to me and that is why I did not approach Abd el Fattah to purchase his share in Ramel Zeita. I did not know in 1922 who were the registered owners of the masha' of Zeita. As far as I know, there was a mess in the Ramel Zeita registrations. Some persons were registered, there were many heirs of registered owners and many unregistered persons, and the position was confused. I would have preferred if the owners of the kushans had had them confirmed. The documents of the loans are the agreements, there were no agreements before them. Do not remember Sharif Yusef el Askar nor Muqbel Asa'd Hamad, known as Abu Hammad. Ahmad Abd er Rahim Abu Hammad is also unknown to me. Haj Said abu Razzaq, son of Ahmad Abu Hammad is also unknown to me, so is Shafiqa bint Saleh Abd el Ghani nor Suwad Abd el Fattah Ibrahim. The bond was given to Abu Jazzar at his request. I knew Abu Jazzar, bought land from him, and he was one of the three

persons who gave money for me. I did not know Negib Hakim before the Nablus Land Action, not certain. He never had a general power of attorney from me. It is not possible that I gave money to the villagers in order that they might get Negib Hakim to prosecute the claims in the Nablus Land Court. Khor Wasa' had never been a part of Ramel Zieta. I knew it was nearer to Hadera than was Ramel Zeita.

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N. examined by Anas Eff. : I was acting as agent for Mrs. Rutman and Miss Aaronson at the time of the transfer from Abd el Fattah. Ex. "26" refers to land that I bought, part of it. I do not agree that Settlement Officer, Tulkarm, found my land was in Zeita. I do not remember inviting the Notary Public in Tulkarm to Zeita to make certain documents. I might know the house of Elias Khattar in Haifa and I may have visited him. Do not remember going to Elias Khattar's house with people of Zeita to draft an agreement concerning the purchase of the masha' of Zeita. No agreement of sale was made, money was given as loans, Abd el Fattah said his father had the land before him. I knew the land belonged to Abd el Fattah and his sons. Land that belongs to Abd el Fattah belongs to his sons. He himself told me that the land belonged to them in this manner. I knew the land belonged to his family. Do not know if his wife had any share in the land. By family I mean the sons of Abd el Fattah. Do not know if the daughters had any share, if they have, they must get it from their father. I knew Abd el Fattah had no kushan, he told me so. I did not enquire who paid the taxes, the man who cultivates does so. I did not make enquiries about the paying. Abd el Fattah said that the land was unregistered, I made no enquiries. I did not act solely upon his statement. I knew he had land. Such a thing needed no evidence, everybody knew he had the land, was living there, and had cattle. I do not know that there were any negotiations by Abd el Fattah to sell the land before I approached him. I saw no one but Abd el Fattah and his brother living on the land, his brother's name was Abdulla. As far as I know he lived with him. I do know Abdulla has sons. Cannot say if they were young men at the time of the negotiations in 1925. He may have had cousins living on the land. Abdulla was a half brother. I do not know that some Jews leased part of Khor al Wasa' from Zeita people. To lease the land from Abd el Fattah was possible but not from Zeita people. I know Zvi Botkovsky. I personally know that Botkovsky told me that Samara took the land from Hadera. I do not know about the statement of Botkovsky concerning lease of Khor al Wasa' by Abd el Fattah and people of Zeita. Abd el Fattah told me that he came to an agreement with Samsonoff by giving them 500-600 pounds. They came to an amicable agreement, they used to cultivate together. I do not know the terms of the settlement between Abd el Fattah and Samsonoff. As far as I know Abd el Fattah and Samsonoff, and others used to cultivate jointly in Khor al Wasa' and Hadera. Do not know the relationship, I think they were partners. They used to cultivate in Hadera and Kefar Brandeis (Khor al Wasa') as partners. Do not know if they were co-owners. It was common knowledge that they ploughed as partners. I think they were intimate friends. Do not know the arrangements between them. Samsonoff's land in Hadera was cultivated by Abd el Fattah. It may have been a partner in the produce. I do not know the extent or number of dunums cultivated by Samsonoff in Khor al Wasa'. The majority of Khor al Wasa' is sandy, some of it is good land.

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No. 37.
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I should think that one third is good, one third medium, one third bad. Some parts must be rested. I do not know if Samsonoff and Abd el Fattah ever quarrelled. As far as I know, Abd el Fattah went to Samsonoff, who was Mukhtar at the time, for a certificate, and he refused to give it. So an action was brought. I think it would have been a true statement if Samsonoff had signed the certificate because Abd el Fattah had always been on the land. It is likely that Abd el Fattah became angry, he told me Samsonoff refused to sign so he wanted to bring an action against Samsonoff. An action in respect of this land, to prove that the ownership was his. I was not present when they disagreed or quarrelled, I was told by Abd el Fattah that they quarrelled. Samsonoff never erected any buildings in the land, not so far as I know. I repeat that Samsonoff and Abd el Fattah had quarrelled. The real owner was Abd el Fattah who was on the land. Samsonoff was claiming as a registered owner. 10

Case adjourned until 9 a.m. 13th January 1943 at Haifa.

12th December, 1943.

CECIL KENYON.

Haifa 13th January 1943.

Present : Abd el Latif Bey as Salah.

'Uthman Eff. Bushnaq.

Anas Eff. Khamra.

Mr. J. Kaisermann.

Yasin Zeitawi ; Taufiq Zubeidi, Ali Abdul Qader, Amin

Abd el Khalid ; Mustafa Abu Daiya, all of Zeita.

20

Witness continuing.

Anas Eff. called and absent.

Re. Xd. by Mr. Kaisermann : Mrs. Fels had no connection with the attempted purchase in 1924, she had no connection with the attempted purchase in 1933, masha' Zeita. On many occasions I had similar powers of attorney to that given me by Abd el Fattah to purchase land. On many other occasions I made notarial deeds. Other persons bought manure from Abd el Fattah. Abd el Fattah sold to me and others hundreds of cart loads. The map Ex. " W " was held by me to be correct. I went out with them, the notables, and the boundaries were shown to me. The notables of Zeita and Attil, my agent in Hadera, and Abd el Fattah. The mukhtar was Mohammad an Nuris who signed the plan. The same person is still Mukhtar. I never paid either Mr. Kaisermann or Mr. Mockler any money for the Zeita case. I do not know Mr. Mockler. Mr. Kaisermann was not my general legal adviser, General Attorney in 1922. I commenced briefing and working with Mr. Kaisermann in 1929, when Abcarius Bey introduced him to me, in the criminal case (143/29). I first heard about a second Nablus case when the Court Clerk was called to give evidence in these present proceedings. Adib Eff. witness. Case No. 11/24. See page 37 Record. On map Ex. " g " Jacket 4, Case 92/30. 30

Abd el Latif Bey : I object to this map being shown to witness at this stage of his evidence.

S.O. : Objection allowed.

CECIL KENYON.

Witness continuing: Risotta's land is east of Qazaza. It is north of Ramel Zeita. It is in the settled area of Hadera. Do not know the block and parcel number. Mr. Bentwich asked for the land without paying for it, and he also asked Mrs. Fels to give him money for compensation. (I did not take notarial declarations from the 'Attil people.)

Abd el Latif Bey: No Xd. by me on the 'Attil question.

S.O.: Last question disallowed. •

Witness continuing: Jacub Samsonoff took over my property in the Turkish days. I was not on good terms with him over this.

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No. 37.
Nissan
Rutman,
11th
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No. 38.
Pinhas
Mittelman,
13th
January
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10

No. 38.

DEFENDANTS' EVIDENCE.

Pinhas Mittelman.

2nd Witness for Defendants, on oath—Inspector PINHAS MITTELMAN, 43 years of age, Inspector in charge at Hadera.

I am police inspector at Hadera and have been in the service 23 years. In Hadera since 1st September, 1932. I know the lands of Khor al Wasa' (Kefar Brandeis). I know Abd el Fattah Mari. He lives in houses near Hadera, on the Kefar Brandeis land. I know the family of Abd el Fattah. On the 8th of October, 1942, at 12 midnight it was reported by Selim Abd el Fattah that unknown persons fired at the yard of his father, killed his horse, and a cow belonging to his father. I went out in the morning with a tracker to the place, we found two tracks and followed them. We searched the scene. Eleven empty cartridges fired from an English rifle. Went in an eastern direction to Kh. Salama, on the cross roads to Zeita-Tulkarem-Attil and there the tracks were lost, owing to swamp that has been used by cattle. We asked for police dogs, they were not available. The dead horse was outside the house tied to a tree. We came to the conclusion that there was no attempt at theft, the incident was either a threat or retaliation. On the 31st of December, 1942, at 10 p.m. before midnight, Abd el Latif, one of Abd el Fattah's family, reported that two shots were fired from outside into his house, in the Kefar Brandeis. We went next morning and found two empty cartridges from an English rifle, and in the house the bullets embedded in the wall of one of the rooms. I came to the conclusion that the incident was either a threat or retaliation. We found tracks of a man running away, tracks going in an eastern direction. From 1932 until to-day we never had any land disputes on the Khor Wasa' lands. There were cattle trespass cases. I know Musa Abd el Fattah. He was absent some times during the 1936-39 disturbances. He joined the guns (terrorists). He was arrested by the military and police of 'Attil. I know Ahmad Hassan Abdulla from Kh. Sharkass. I know nothing about him in connection with the disturbances.

Xd. by Abd el Latif Bey: Musa Abd el Fattah was found in 'Attil and sentenced to six months imprisonment, either by the Military or D.C. I was not present at his trial, nor did I represent the Crown nor have I seen the judgment against, nor have I been served with the judgment. He was among suspected persons, we used to make searches and inspections,

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Settlement
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No. 38.
Pinhas
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continued.

and found he was one of the persons. I know Selim Abd el Fattah, he was not suspected. Did not see Musa in prison. My knowledge is hearsay. I was not in Hadera before 1932, nor do I know what happened in Hadera before 1933. Investigations were carried out in the second case, and we arrested Ahmad Hassan Qaid, of Zeita village. Abd el Latif and his wife said they recognised his voice. We carried out voice investigation, and as the voice was not identified the man was released. Ahmad Hassan Qaid married the daughter of the wife of Abd el Fattah. I know the Abd el Fattah family, but not the details of their blood relationships. Abd el Latif said there was something between them.

10

Xd. Abas Eff. : There is a shop of Abu Suwan near the houses. The shop was burglaried on the 8th of October, 1942. A clear case of theft. The shop is in the grove of Frank.

No. 39.
Baruch
Moscovitch,
13th
January
1943.

No. 39.

DEFENDANTS' EVIDENCE.

Baruch Moscovitch.

3rd Witness for Defendants, on oath—BARUCH MOSCOVITCH, aged 39, employed in the Municipality of Tel-Aviv, 11, Moliver Street, Tel-Aviv.

I was once a member of the Palestine Police Force, and left the force in 1933. Most of the time I was in Hadera, from the years 1925 until September, October 1930. I know Nissan Rutman and also Abd el Fattah. The latter lived in houses near Hadera. I was corporal in charge of the police station at Hadera. Before I went to Hadera there was no police station. The station was closed in 1923 and in 1924 only one constable. We opened the police station in 1925. During my time in Hadera there were land disputes. Arab en Nufu'at *v.* Jews. I reported the land disputes to my superiors, Kramer, Abbud, Barker. They spent weeks in Hadera. No dispute in Khor al Wasa' land. There was no shower in the police station, later on we had a shower, the year before I left. During my time there was no person other than myself called Baruch and in charge of the police station. I do not know Taufiq Labidi. Never took any person under a cold shower as punishment. Never saw anyone in the station do so. I know a person called Omar Quweis worked in Hadera. Do not remember him or know him. I do not know Mahmud Mohd. Nadaf of 'Attil. Took no one into custody in connection with the Khor al Wasa' case.

Xd. by Abd el Latif Bey : When I went to Hadera in 1925 Khor al Wasa' was vacant land, the houses were Abd el Fattah's and he cultivated. The crops belonged to Abd el Fattah, the most, and some to Jews. I think the cultivation was for Nissam Rutman. Do not know if the land was registered in the name of Nissam Rutman, but the land was cultivated on his behalf. I do not know to whom the land belonged before I went to Hadera. No one of Zeita, the Jews of Hadera, or Rutman ever referred the case of Khor al Wasa' to me. In land matters there were no incidents, but sometimes there were complaints that cattle strayed into the crops. Abd el Fattah and his family, Hayim Rutman and Mr. Helbetz, the agent

of Nissan Rutman, used to make complaints. Hayim Rutman complained as a cultivator, he cultivated in Khor al Wasa' south of Hadera, south-east of Hadera. On many occasions I went to Khor al Wasa'. There were no encroachments by the Zeita people on Nissam Rutman. I had one constable from Zeita, and people from Zeita used to visit him. I do not know of any Zeita or 'Attil people cultivating on the land. I do not know the plaintiff standing. I may have known him in the past, but do not recollect him. (*S.O. note*: Plaintiff standing is Taufiq Zubeidi.) I did not put that man under a cold shower on a rainy day. Until 1924 there

10 was one constable named Brill who was killed when the Courts at Haifa were being built. The Hadera police post belonged to Zichron Ya'acov police station. When I left Hadera in September, October 1930, Mr. Kramer was at Zichron Ya'acov. The late Mr. Shiff was at Zichron in 1925. There were other persons, but principally Mr. Kramer. Settlement started in Hadera in my time in Hadera. I think the decision of Mr. Lowick in Khor al Wasa' was delivered after I left Hadera.

*Before the
Settlement
Officer,
Haifa.*

*Defendants'
Evidence.*

—
No. 39.
Baruch
Moscovitch,
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1943,
continued.

Xd. by 'Uthman Eff: I had 3 constables at the beginning, and ended with 10 constables.

Do not remember the names of the first three, they were Arabs,

20 then we had more Arabs, only one Jewish constable and myself. I remember the name of one Iskander Ibrahim of Zeita, he was about in 1928-29. There were many incidents in Hadera during my term of office. I cannot remember minor incidents, only those that left an impression on me or required a lot of work. Do not remember a telephone call from Zichron asking for the stopping of cultivation in Khor al Wasa'. Received a summons to attend as a witness in this case about two weeks ago, 25th December, 1942. Summons refers to Mr. Kaisermann, Kefar Brandeis Case. So I addressed myself to him. Mr. Kaisermann asked me about my knowledge. I did not go to Hadera to look up the incidents

30 book, if there is one. I resigned from the Police Force on my own.

Xd. by Anas Eff.: I had no recollection of taking Taufiq Zubeidi before Mr. Harakaby for resisting the police in Khor Wasa'. I remember now that Taufiq Zubeidi was a water melon seller and the railways forbade the selling of melons in the station. Samsonoff was his friend and asked me to release him. I do not know if the plaintiff is the man, I remember the incident. It is not true that I took Taufiq Zubeidi for ploughing in Khor al Wasa' or that he cursed me or quarrelled with me. I do not remember any incidents concerning Khor al Wasa' recorded in the Hadera police book.

40 *Re-Xd. by Mr. Kaisermann*: Mr. Shiff was murdered last year, he was a major at the time of his death. I was a sergeant when I left the police.

Before the
Settlement
Officer,
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No. 40.

DEFENDANTS' EVIDENCE.

Khalil Fakhoury.

Defendants'
Evidence.

4th Witness for Defendants, on oath.—KHALIL FAKHOURY, aged 48,
Revenue Clerk, Haifa.

No. 40.
Khalil
Fakhoury,
13th
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Ex. 27 was signed by me, its contents are correct. No X-examination
by plaintiff counsel. Abd el Latif Bey and Uthman Eff.

Xd. by Anas Eff. : Prior to 1925, there was an entry in 1341, which is
1925. The entry is in the names of Abd el Fattah, Musa, Selim, and Abd
el Latif. Before that date there was no werk entry in my department. 10

No. 41.

Baruch
Helbitz,
13th
January
1943.

No. 41.

DEFENDANTS' EVIDENCE.

Baruch Helbitz.

5th Witness for Defendants, on oath.—BARUCH HELBITZ, 42 years,
Merchant, Hadera.

I know Nissan Rutman since 1920. In 1922 to 1933 I was his foreman
in Hadera. I know the land of Khor Wasa', it is called so to-day. There
is a settlement there, called Kefar Brandeis, there are also orange groves,
I have an orange grove there, 10 dunums, bought from Nissan Rutman
15 years ago. Bought land and planted the grove. No one disturbed 20
me. Nissan Rutman belongs to Nissan Rutman who bought it from
Abd el Fattah in 1925. I was working for Rutman at the time. I know
the surveyor Musallam and remember seeing him in 1925. I measured
and marked the Khor al Wasa' with him. I went with him, also the
neighbours of 'Attil, Zeita, Hadera, the Sheikhs, elders, and notables were
with us. Abd el Fattah and his sons were with us. We went first with the
labourers and Musallam and marked the boundaries with wooden pegs.
7-10 days' work, and after that a few months later, we dug holes one metre
deep at each peg, and put in concrete and iron marks. The second work
took us from 6-7 days. The marks are still on the land. I saw Mr. Rutman 30
during this work, he used to come and go. Mr. Rutman used to give the land
on lease to certain persons for cultivation. He used to give the lease
on land to Jews of Hadera and villagers of 'Attil, Baqa, and Zalafa. After
Abd el Fattah sold, he with his sons used to cultivate land they leased
from Rutman. Zeita people did not cultivate. I used to collect the
rent from the tenants in cash or in kind. No one of Zeita ever came and
asked for land to lease. Zeita people had their own land abutting on
Nissan Rutman's land. The land was leased immediately after the
purchase by Rutman. I used to go out and fix the areas leased. There
were no incidents concerning cultivation of the land. I know 'Omar 40
Quweis in Hadera, I knew all the workmen of N. Rutman in Hadera.
I do not know the workman of Rutman before I joined his service. I came
to Hadera from Russia in 1920. I know Hassan es Saiyid, the Sheikh of
'Arab en Nufu'at. He died in 1927. He was a respected man, and at
his funeral many Hadera people were present I was present.

Xd. by Abd el Latif Bey : I have been to other funerals besides that
of Hassan es Saiyid. I was at the burial of Nimer his son, and also the

Fuqara people. Can remember only the funerals of important people. The Sheikh of Fuqara is still alive. Do not remember the date of every funeral. Do not remember the date of another important funeral. Have known Khor al Wasa' since 1920, and know who cultivated. Abdul Fattah and his sons cultivated the land, as far as I know they were alone. I know Khor al Wasa' is a vast area. Jews were cultivating there. This evidence is for the period 1920-1925. Do not remember the names of the Jews. I was a newcomer. I remember Abd el Fattah because he lived there in his houses and everyone knows he is there. I actually
 10 saw him cultivating and also saw Jews cultivating. I knew the Jews, but not their names. When I worked for Rutman I knew the names, before that I did not. Do not know names of persons who cultivated before Rutman's purchase. Rutman's cultivation started in 1925. I know that well. Do not know to which town or village Abd el Fattah paid taxes before Rutman's purchase. I know only the Ramel Zeita that abuts Khor al Wasa', not all the Ramel. See Arabs cultivating. I know and recognise Taufiq Zubeidi. Got to know him during my long residence in Hadera. There is no incident by which I know him. Do not know if he is good or bad. He did not encroach upon Rutman's land. The
 20 people of Zeita did not ask me to visit them, there was no incident with them. Never any incidents of encroachment by people of Zeita. I remember the Settlement of Hadera and recollect Mr. Lowick, but not the date of his decision in Khor al Wasa'. Did not enter into the details of the matter, it had nothing to do with my work. The Zeita people have never attempted to cultivate the land. There were no incidents from 1920 except an occasional case of cattle straying in the crops. The cattle belonged to Arabs. Do not know the date when the plan was prepared. Boundaries marked in 1925, that is my opinion, it was not in 1924. After the purchase by Rutman, not long afterwards, immediately afterwards
 30 do not remember if winter or summer. The boundaries were first marked with iron and then Abd el Fattah took the land on lease, not long after the marking. I know that the land belonged to Abd el Fattah and his sons and that they cultivated it before 1925. After 1933 I do not know anything about the land.

No Ad. by 'Uthman Eff.

Ad. by Anas Eff.: I did not see anyone of Zeita ploughing the land. I saw Jews, Samsonoff may have been one of the Jews. I do not know of internal matters, only things that relate to my work. The boundary between Hadera and Khor al Wasa' is eucalyptus, and was so in 1920.
 40 Do not know who planted them. Do not know Samsonoff is a friend of Abd el Fattah. Abd el Fattah used horses and oxen to plough, he used from 8-10 horses. I know that negotiations were conducted by Rutman with Abd el Fattah to buy the land of 1924. Know of no earlier negotiations. Do not know if there was a kushan. The northern boundary of Khor al Wasa' is Hadera, boundary is partly orange groves and eucalyptus. There is a road leading as far as a Jewish cemetery. Abd el Fattah's cultivation was large, that is before 1925. Cannot say what was the proportion. I do not know for whom Rutman bought. I know he bought. The road on the north can lead to Qazaza. Mr. Rutman paid
 50 my wages. No one else paid me.

*Before the
Settlement
Officer,
Haifa.*

*Defendants'
Evidence.*

—
No. 41.
Baruch
Helbitz,
13th
January
1943,
continued.

Before the
Settlement
Officer,
Haifa.

Defendants'
Evidence.

No. 41.
Baruch
Helbitz,
13th
January
1943,
continued.

Xd. by S.O.: After he sold, Abd el Fattah used to take on lease large areas 700 dunums or so. I do not know the reason for Abd el Fattah taking on lease only 700 dunums or so. Have never heard that Abd el Fattah ever cultivated land in Hadera, never saw him doing so. Do not know if he ever worked as a ploughman. I should be surprised if he did. He and his family were owners and cultivators.

Re Xd. by Mr. Kaisermann: I know Nissan Rutman is an agent of the Aaronson family. I know which properties are managed by Rutman as agent and his own properties. I worked for Rutman on his instructions. I worked in Aaronson properties in Hadera but Rutman paid me.

10

No. 42.
Zeev
Hochberg,
13th
January
1943.

No. 42.

Zeev Hochberg.

6th Witness for Defendants, on oath—ZEEV HOCHBERG, 37, Farmer, Kefar Brandeis.

I am one of the first settlers of Kefar Brandeis. The land was bought from Nissan Rutman. We erected buildings and planted trees. 41 buildings. All are occupied. The land was handed over to us in 1928. Commenced building a year before that, in 1927. I first went to Kefar Brandeis in 1926. I went alone to the land to see it as I purchased land near Khor al Wasa'. In 1926 I lived in Hadera. I have land in Khor al Wasa', a building site and house. I cultivate land in Khor al Wasa' as a tenant of Rutman. Lease about 200 dunums, the area leased varied from time to time. I change the place sometimes. Knew of a dispute about 3 years ago when I was asked to call upon the land settlement clerk in Kefar Brandeis.

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Xd. by Abd el Latif Bey: Was called by the settlement clerk to submit any particulars concerning my land. When I produced my kushan I was told there were other claimants to the land. The land was bought by Immanuel Mohl, and I bought from him. The registration in the land registry was in 1937-1938. We bought by agreement, and I had authority to erect buildings, and plant trees. I did not know about the proceedings in 1931. I knew of land settlement in Hadera in 1930-31. Do not know if Khor al Wasa' was included in the settlement of Hadera. I knew that Hadera was a settlement area in 1930-31, because I have land in Hadera. I read the notices. I did not take interest because I had no registration in my name in Kefar Brandeis, even though I had built a house and planted trees. I took interest in Hadera in the part in which I had land. I cannot say that I did not know that Khor al Wasa' was under settlement in Hadera. When I purchased in 1929-30 I did not examine the registration of Mohl, I considered him the registered owner. I did not hear there was a very big case. I do not know the accurate boundaries of Khor al Wasa', only the general area. All the buildings of Kefar Brandeis are located in the heart of Khor al Wasa' on the west. The gardens we planted are near the houses. The total area may cover about 2/3 of the general area of Kefar Brandeis, over 60 dunums. I estimate the total area of Kefar Brandeis at about 120 dunums. There are other groves outside

40

Kefar Brandeis. I do see who works the land. I may know of an incident if one ever occurred. No incident ever occurred to me during the past 13 years. My cultivation is in all directions in Khor al Wasa'. I can confirm that I did not see any Zeita people come in 1930 and attempt to cultivate. I came to Hadera about 19 years ago. My first opportunity to visit Khor al Wasa' was in 1926 when I decided to buy a piece of land there. I was not interested in Khor al Wasa' before that time. I only knew at land settlement that the Zeita people claim the land. The settlement clerk told me that my kushan was disputed. It is quite possible that the result may affect me, as I have a kushan. I think I have a good claim. I am prepared to answer any questions.

*Before the
Settlement
Officer,
Haifa.*

*Defendants'
Evidence.*

—
No. 42.
Zeev
Hochberg,
13th
January
1943,
continued.

Xd. by 'Uthman Eff. : I do not remember seeing the Settlement Officer on inspection in 1930. I remember Mr. Alhassid making an exchange of areas between me and Mr. Rutman. He was a Settlement Officer at that time, this happened in 1931-32. At that time I had built part of my house. Mr. Alhassid was in my house. I did not ask for my house to be shown on the plan. He came to me in connection with my other land. I could not submit a claim for my land and building as I was not a registered owner, at that time. I know some of the cultivators of the remaining lands of Khor al Wasa'. I cannot say how much they cultivate.

No Xd. by Anas Eff.

Re Xd. by Mr. Kaisermann : I made an agreement with Mr. Mohl, who I believe is an agent of a certain institution.

No. 43.

Shmuel Yosef Choina.

7th Witness for defendant, on oath—SHMUEL YOSEF CHOINA, aged 44 years, farmer, Kefar Brandeis.

No. 43.
Shmuel
Yosef
Choina,
13th
January
1943.

I am the Mukhtar of Kefar Brandeis since 1930. I live in Kefar Brandeis. I was there before I lived there, first saw the land in 1928. Know of no incident between Jews or Arabs since I have been there. I have been Mukhtar since 1934. I am the owner of a house and building site, acquired it from Mohl, through the Mortgage Bank.

Xd. by Abd el Latif Bey : I know of every incident since 1930. Since the time I was in Kefar Brandeis. Khor Wasa' is large, over 5,000 dunums, I do not know which side of Khor al Wasa' the Zeita people encroached. I do not know there was land settlement in Khor al Wasa' in 1929-30. Do not know of the decision of Mr. Lowick that Khor al Wasa' belongs to Tulkarm and not to Haifa. I saw Surveyors in Kefar Brandeis in recent years perhaps 1938. I did not see surveyors in 1928-1929, because I was

Before the
Settlement
Officer,
Haifa.

not there. Did not see Settlement Officers in Khor al Wasa' making enquiries. I do not know Mr. Lowick. I do not know of a settlement officer who came in 1930-31 and heard a case about Khor al Wasa'.

Defendants'
Evidence.

No Xd. by 'Uthman Eff.

No Xd. by Anas Eff.

No. 43.
Shmuel
Yosef
Choina,
13th
January
1943,
continued.

Re.-Xd. by Mr. Kaisermann: I do not know of, or ever saw, any encroachment by the people of Zeita.

Case adjourned until 9.30 a.m. the 14th of January 1943, at Haifa.

13.1.43.

CECIL KENYON. 10

No. 44.
Asaad
Hissin,
14th
January
1943.

No. 44.

Asaad Hissin.

Haifa, 14th January 1943.

Present: Abd el Latif Bey.
Anas Eff. Khamra.
'Uthman Bushnaq represented by Abd el Latif Bey.
Verbal delegation.

Mr. J. Kaisermann.

'Ali Abd el Qader Zubeidi
Hakim Husni
Mustafa abu Ghudaiye
Amin Abd el Qader
Jamil Mustafa 'Omar Agha
Said Mohammad Asaad

} all of Zeita village.

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8th Witness for Defendants, on oath—ASAAD HISSIN, aged 45, Land Registrar, Haifa.

Ex. "T" is an extract from the deeds book, certified true copy, it refers to Petition No. H/467/25. I have been asked recently to produce the file by the S. Officer. I could not trace the file in the land registry at Haifa. I asked the D. of L.R. for the file, and from a letter No. LD/38/3, dated 10.12.42 addressed to the A.G. by the Director, I can say the file can not be traced in the Director's Office. Ex. "28" is a copy. Since that day I heard nothing more from the Director or the Attorney-General. I was in Haifa Land Registry in 1925 as Asst. Land Registrar. The fee paid on the consideration value of LE.5358 was LE.267.900 milliemes equal to 5% of the consideration. Head 12 of the schedule of Fees, which reads 5% of the market value of the property etc. etc. Ex. "29" is a copy of the wording of the Order. There was an order to collect this fee, by the Director of Lands. I remember the file.

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Xd. by Abdul Latif Bey : I do not remember the grounds upon which the registration was effected, but I think it was by order of the Land Court at Haifa, as I have recently looked at the Privy Council judgment. Usually an order of Court is executed through the Execution Office. I cannot remember the events of 17 years ago. The consideration is the assessed value of the land. If the assessed value is more than the consideration, the fact is described. I do not know who assessed the value, it is LE1 a dunum. Do not know if it was the value of the land in 1925. The land abuts on Hadera. Do not know if the value was 10 pounds a
 10 dunum. Subhi Aweida may have been the Registrar at the time. I left Haifa in 1928. Subhi eff. is no longer a land registrar. Do not know why he left his post, he was transferred to Haifa. The assessors of value were the land registrar and the mudir mal. I cannot say if the entry was a new registration. The term registration would apply to Haq el Karar, or to the registration if a man obtained his title by prescription. I do not have the file before me, but the Ex. " T " refers to grantors and so I am unable to answer the question whether or not there was previous registration. I do not know if this land was previously registered. When
 20 property is transferred we make a cross reference. Ex. " T " is an extract from the Deeds book. Ex. " 30 " is an extract of the Register of Deeds.

Xd. by Anas Eff. : Ex. " 28 ", " 29 " were signed by me in Court, I have the original of Ex. " 28 ". The authority of the Court shows that the grantee was not previously registered. I cannot say I had any part in the completion of the file. Have never been in Khor al Wasa'. I remember when I was in Tulkarm that there was a caution ordered to be placed in the register. This has been brought to my notice by a reminder received 6 months ago. Do not know the limits of Haifa in Hadera vicinity.

Xd. by S.O. : The number 10/25 is the Court number not the land registry decd. I cannot say that because grantors are named that there
 30 was a previous registration. Because there is no cross reference it appears there has been no cross reference.

S.O. Note : The fact has been established by enquiry that there is a cross reference to entries Nos. 11 and 12 of Huzeiran 1307.

No. 45.

Abraham Elensky.

9th Witness for Defendants, on oath—ABRAHIM ELENSKY, 40, Licensed Surveyor and Engineer, Haifa.

I have seen the plan in front of me before to-day. It is an index map of the registration blocks of Zeita. I was asked to calculate the area
 40 of the plan. I did so, and the approximate area is 14841 duns. From the plan the boundaries are N. Hadera, Pardess Hanna, Baqa Gharbiya. W. Kefar Brandeis. S. 'Attil. E. Satt. The area is approximate. Ex. " 31 ".

Xd. by Abd el Latif Bey : The plan is dated Survey of Palestine 1935, printed 1942. I do not know if the plan was made after Khor al Wasa' was called Kefar Brandeis.

Before the
Settlement
Officer,
Haifa.

Defendants'
Evidence.

No. 44.

Asaad

Hissin,

14th

January

1943,

continued.

No. 45.

Abraham

Elensky,

14th

January

1943.

Before the
Settlement
Officer,
Haifa.

Defendants'
Evidence.

No. 46.
Josef
Zamali,
14th
January
1943.

No. 46.

Josef Zamali.

10th Witness for Defendants, on oath—JOSEF ZAMALI, aged 28, book-keeper P.I.C.A. Haifa.

The chief accountant of the P.I.C.A. is Mr. Tannenbaum. I was instructed by him to look up the archives and extract all the payments made by Ahmad Hassan el Abdulla in 1924, 1925 and 26 in connection with the work and watching in Hadera. I did not find the name Ahmad Hassan Abdulla. I know exhibit "32", and obtained it from the archives of the P.I.C.A. It is a list of payments made in the month of July 1925 in connection with the eucalyptus in Hadera. The payments were made by A. Sansonoff. The extract is in French. There is an entry, payment in connection with watching. Payments to Mihsen, watchman 250 piastres no other watchmen. On annexure A there is a reference to the payment of the wages of the watchman. The total amount is LP.48.525. Annexure B is an order of payment to the bookkeeping section of P.I.C.A. in the same amount. Item Labourers and Supplies Hadera. Such lists are prepared monthly and I examined the records for several years. Ex. "33" is a similar document for the month of October 1925. The same Mihsen is the watchmen. Ex. "34" is similar for November 1925. Ex. "35" is similar for October 1926. Mihsen is the watchman, and Ex. "36" is similar for November, 1926. Mihsen is the watchman. I searched similar records for several years and found no mention of Ahmad Hassan Abdulla. So far as I know, Samsonoff was the manager of the forests. 10

Xd. by Abd el Latif Bey : In respect of all the months in 1924, 1925 and 1926 Mihsen was the watchman, and only his name appears. Only Mihsen appears, and the full name. I did not examine the records for the years 1927, 1928, 1929. Cannot say when the name of Mihsen disappeared from the records of the P.I.C.A. I did not look for the name Ahmad Hassan Abdulla in any other years. 30

Xd. by Anas Eff. : I do not know if there are large tracts of land in Hadera planted with eucalyptus. Samsonoff was looking after the forests in Hadera. In these documents only Mihsen appears as watchman of the forests. He seems to have been the watchman of forests in Hadera. I do not know if he was watchman in Arab en Nufuat. Not present when the documents were signed.

No. 47.

PROCEEDINGS—continued.

No. 47.
Proceedings
continued,
14th
January
1943.

Mr. J. Kaisermann : I ask for an adjournment to produce Mr. Samsonoff who is sick, but who can give evidence on the question of Ahmad Hassan Abdallah. 40

S.O. : No adjournment at this stage.

Mr. Kaisermann : I produce Notarial Deed No. 1325/Notarial Deed 1566. Notarial Deed 1606, all of the year 1925. Declarations signed by

Zeita people and signatures certified. Notarial declaration 143, and 366 and 367 of the year 1926. Exs. 37 and 42 inclusive. This closes the case for defendants. I have no instructions to produce any witnesses for the third parties.

*Before the
Settlement
Officer,
Haifa.*

Abd el Latif Bey : Rule 11 L. (S. of T.) Procedure Rules. Exercise of S.O. discretion. I ask for witnesses.

No. 47.
Proceedings
continued,
14th
January
1943,
continued.

(A) Iskander Ahmad Ibrahim, the policeman in Zichron, referred to by ex-Sgt. Baruch.

(B) Abd el Fattah Samara.

10 (C) Selim Abd el Fattah Samara.

(D) Abd el Latif, Abd el Fattah Samara.

(E) Extract of registration. Entries No. 1, 11, 12 and 19 Huzeiran 1307 L.R. Haifa.—Ex. "43".

(F) Enquiry into Subhi Aweida's conduct.

(G) Abd er Rahman Haj Ibrahim.

Mr. Kaisermann : I do not think this is a proper application. Rule 11 can only be used in the discretion of the Settlement Officer.

S.O. : Written pleadings to be submitted by agreement of parties. Settlement Officer's Ruling.

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(Intd.) C. K.

The plaintiffs have made an application that certain persons named by them should be called as witnesses and ask the Settlement Officer to issue summonses to these persons as though the witnesses were called on the motion of the Settlement Officer himself. The Settlement Officer has heard 23 witnesses for the plaintiffs and 10 witnesses for the defendants and he knows of no person not heard by him whose evidence is material to the settlement of the schedule of rights. Consequently no summons will be issued on his own motion, and the Settlement Officer declines to summon the persons named by the plaintiffs as though they were summoned on his own motion.

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As to the production of a certified extract of the entries Nos. 1, 11, 12 and 19 of Huzeiran 1307, the Settlement Officer considers this extract may be material and orders the Registrar of Lands to file a certified extract.

14.1.43.

CECIL KENYON.

Case adjourned for submission of final pleadings on behalf of the plaintiffs on or before the 14th day of February, 1943, copies to be served on counsel for defendants and third parties. Final pleadings and reply of defendants and third parties to be submitted on or before the 28th day of February, 1943. Copies to be served on counsel for plaintiffs. Reply of plaintiffs to final pleadings and reply of defendants and third parties to be submitted on or before the 15th day of March, 1943, and decision to be delivered on the 30th day of March, 1943.

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14.1.43.

CECIL KENYON.

Before the
Settlement
Officer,
Haifa.

No. 48.

FINAL PLEADINGS of Plaintiffs.
(Translation from Arabic.)

Case 1/Kefar Brandeis.

No. 48.
Final
Pleadings
of
Plaintiffs,
12th
February
1943.

(1) The land of Khor il Wasa' is a part of Ard Raml Zeita bounded from the west by Ard an Nufei'at which was transferred to Jews and from the north by road as per Tabou Records.

(2) The land of Raml Zeita is masha for the whole village. The villagers are possessing the land by way of Masha' 'Urfi (common usage) and is being ploughed by anyone who has a feddan (oxen for ploughing) and is not owned by individuals and is not subject to transfer by Succession or Sale. 10

(3) The two judgments passed by Land Court Nablus in Case No. 18/23 dated 13/3/23 and 14/4/24 together with the judgment of the Supreme Court sitting as a High Court of Appeal dated 20/1/25 in case No. C.A. 70/24 upholding the latter judgment of the Land Court Nablus, are verdicts conveying that all the land of Raml Zeita bounded from the west by Ard an Nufei'at which is now in possession of the Jews is Masha. This boundary includes Khor il Wasa'.

(4) The judgment issued by Land Court Haifa in Case No. 10/25 on 6.5.25 describes the western boundary of Khor il Wasa' as the Forest of the Jews. This proves that Khor il Wasa' subject matter of this judgment is within the boundaries mentioned in the judgment of the Land Court, Nablus and so the judgment of the Land Court, Haifa, is contradicting the judgment of the Land Court, Nablus. 20

(5) The judgment issued in Case No. 39/25 on 4.1.26 which involves the dismissal of the objection raised by Salih Ismail Khatib against the said judgment gives the said objector the right to raise a separate case against anyone he chooses regarding the ownership of the lands subject matter of the judgment against which the objection has been raised.

(6) When the settlement operations in Khudira including Khor il Wasa' were proclaimed as per Settlement Notice dated 2.5.29, the said objector together with others on behalf of Zeita villagers claimed that Khor el Wasa is a part of the Masha which has been adjudicated on and that it is outside the boundaries of Khudeira. These issues were dealt with before the then Settlement Officer Mr. Lowick who delivered his decision on 26.6.31 which contains inter alia :—

“The Settlement Officer therefore concludes that the whole area of Khor il Wasa lies outside the boundaries of Hudeira-Infiat Kushans and it is thus included within the Kushans boundaries of Raml-Zeita.” 40

(7) This decision had been appealed by the other party to the Land Court, Haifa, and thence to High Court of Appeal and thence to Privy Council by special leave. The Judicial Committee of the Privy Council issued a Judgment under No. 191/35 dated 1937 which includes inter alia that :

“The Settlement Officer was entitled to find that the area of Khor al Wasa' was not Hudeira, but within the boundaries of Zeita or Attil.”

(8) When this judgment was issued the Lands of Zeita were already since 1934 declared under settlement under Palestine Gazettes Nos. 412 and 432 and simultaneous to the issue of the judgment of the Privy Council, 50

the lands of Zeita including Khor il Wasa were still under Settlement. The Government did not declare Khor il Wasa under Settlement as directed in the judgment of the Privy Council which quotes inter alia that

“The matter will be entirely open to the Settlement Officer, when the villages of Zeita and Attil are under Settlement.”

This state of affairs which has been adopted by the Government made the Settlement Officer, Tulkarm, adjudicate on the disputes in the lands of Raml Zeita with the exception of that part known as Khor il Wasa'. He delivered his decision dated 30/10/40 in which he commented on the question of the boundaries of Raml Zeita and he found that they include Khor il Wasa' (41/Zeita). Vide Exhibit “A”.

(9) Khor el Wasa' was declared under Settlement on 14.11.41 under a new nomination: Kefar Brandeis—Haifa Settlement Area. Then the People of Zeita submitted their claim attached to this case which states that Khor il Wasa' is a part of Masha Zeita owned by all the people of Zeita and has been finally adjudicated (Res judicata).

(10) The Settlement Officer, Haifa Settlement Area, decided that he has jurisdiction to hear this case notwithstanding our objection supported by the judgment of the Privy Council. Confronting these facts we had to prove the following points:—

First:—Raml Zeita is a masha and decided on, Khor el Wasa is a part of it and is not a part of Khudeira as contended by Defendants.

Second:—The judgment given by Land Court Haifa cannot override the judgment of Land Court Nablus.

Third:—The non-possession of Zeita people since 1925–1926 do not create prescription.

We have proved all the said points sufficiently:—

First: (1) The lands of Raml Zeita are bounded as per kushans, from the West by Ard an Nufei'at and from North by Road and this boundary includes Khor il Wasa. The judgment issued on 14.4.24 by Land Court, Nablus declares that the land adjudged as Masha is the land of Raml Zeita which is bounded from the west by Ard an Nufei'at which is possessed by Jews and from the North by Road and so that land adjudged as Masha' includes Khor el Wasa'; for the Western boundary of Khor il Wasa' was described by the judgment issued by Haifa Court dated 6.5.25 as Forest of the Jews. This Forest is that in Khudeira which was Nufei'at. It is therefore evident that the judgment of Haifa Court includes a part of the land subject matter of judgment issued by Nablus Land Court dated 13.3.23 and 14.4.24.

(2) The decision delivered by the Settlement Officer, the late Mr. Lowick on 26.6.31. may be arbitrated in this respect.

(3) The decision delivered by the Settlement Officer, Tulkarm, Mr. O'Connor in Case No. 41/Zeita on 30/10/40 (Exhibit “A”) confirms that Khor il Wasa' is a part of Raml Zeita which is limited from the west by Ard an Nufei'at (now Khudeira) and from the North by the Road (Road of el Qas'a) and this includes Khor il Wasa' within the limits of Masha Zeita already adjudged (Ex. 1).

(4) The plan prepared during 1893 by Mr. Wilbushewitz for Khudeira by request from Mr. Khankin and the people of Khudeira (Exhibit S/1)

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Final
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continued.

excludes Khor el Wasa. Mr. Wilbushewitz gave the following evidence :
fol. 84

“ I made the survey in 1893. Jehushua Hankin also asked me to prepare the plan. The settlers of Hedeira asked me. The settlers walked along all the boundaries.”

Mr. Hankin gave evidence before Mr. Lowick as follows (fol. 14) :

“ The eastern boundary is as noted in German (Exhibit S/1) A, B, C, D, E, in red pencil.”

Mr. Hankin gave his last evidence in this case at Tel-Aviv as follows :

“ I gave evidence some 10–12 years ago, when I remembered 10
well, my memory was strong at that time, the evidence I gave
then was the truth, but to-day I do not remember well.”

(5) The plan (Exhibit “ G ”) coincides with the plan of Khudeira (Wilbushewitz S/1).

The witness Mr. Fishman, Inspector of Lands, stated in his second evidence (fol. 75) that

“ But the land of Khor el Wasa lies to the South East of certain plots and referred to as the lands of Zeita.”

(6) The plan prepared by Epstein and Yusef Musallam on the request of Mr. Rutman (Exhibit “ W ”) who requested to rub out the expression 20
(Zeita-Tulkarm) and to substitute therefor (Khor il Wasa-Khudeira) describes the western boundary of Khor il Wasa as Khudeira which fact proves by itself that Khor il Wasa is entirely outside Khudeira and within Zeita lands (notwithstanding the obliteration of Zeita and the substitution of Khudeira therefor).

(7) The old records of Khudeira clearly mention that Khor il Wasa is also outside Khudeira lands from the southern side. The registration relating to Ard Khor Ya'acob and Teen as Suwariya shows that the southern boundary is Dabbet el Qas'a and the Road running straight to Birket Qazaza and the eastern boundary Masil il Ma' (Winter water course) 30
up to Birket Qazaza (vide plan of Mr. Lowick in Case No. 92/30 and the evidence of Yusef Ghusein on fol. 62). The road shown as the southern boundary of the said Khor is the road which forms the Northern boundary of Khor il Wasa and separates it from Khudeira and it runs from Dabbet el Qas'a to Birket Qazaza. West of the Khor is the Winter Water course reaching Birket Qazaza.

(8) The agreement of Distributing the masha between the people of Zeita Village (Exhibit “ AA ”) (Vide the evidence given by Adib Saqfel Heit No. 37 fol. 36) are the general agreement for the way of distributing 40
Ard el Masha on the grounds of the Number of Feddans and the way of distributing the produce. These agreements were executed in the presence of competent officials at that time and are bearing the signature of Abdul Fattah el Mar'i. Furthermore (Exhibit “ CC ”) contains numeration of Feddans which are to plough during year 1919 in the Mawqi Wastani which is bounded from the West by Eucalyptus of the Jews and from the North by Road. This is signed by Abdul Fattah el Mari and dated 25/12/1919. The agreement executed on 26/12/1919 (Ex. “ BB ”) gives the persons who were to use the lands with their feddans in Khor il Wasa. Among these persons are Abdul Fattah il Mari and Abdel Fattah il Mari and others of Zeita. 50

(9) Witnesses Nos. 1, 2, 3, 4, 13, 14, 19 gave important evidence regarding the use of Khor il Wasa as Masha and as part of Zeita Lands

and that Abdul Fattah el Mari and sons did not possess it except with others as Masha'.

There is a fact that corroborates this. It is that Abdul Fattah is ploughing this land 40 years ago before he begot his two sons Musa and Salim who also became in possession of the land. Had not this land been a Masha, Musa and Salim would not have right to use this land. The possession of part of this land by these two sons is a proof that the land is Masha. In a clear expression, we cannot explain the possession of each of the two sons of Abdul Fattah with him (with Abdul Fattah) with the exclusion of the females except with the mere idea that the land is Masha to all the villagers (vide Evidence of Musa Mari No. 19 folios 63-74).

Secondly : What is the weight of the judgment of Land Court, Haifa (Case No. 10/25) as against that of the Land Court of Nablus (Case No. 18/23) ? I will subdivide this subject into two parts :—

1st Part : is that the judgment of Land Court, Nablus, in Case No. 18/23 became Res judicata and no other judgment will override it whether the latter deals with this subject wholly or partially unless it is legally set aside.

2nd Part : is when there is a fraud.

1st Part : Whereas the judgment of the Land Court, Nablus, became Res judicata and whereas this judgment involves a land bounded from the West by Ard an Nufei'at which is now possessed by Jews and whereas this includes the subject matter of the judgment of the Land Court, Haifa (Khor il Wasa'), which is a land bounded from the west by the same boundary, the judgment of the Haifa Land Court will have no legal effect and so all the transactions executed thereunder should be considered as legally null and void. This is the underlying principle in law which does not need any other proof as to prove that the judgment was obtained by fraud.

(1) The legal principles are clear. There is an underlying principle that a case, once it is heard and finally decided, this decision remains withstanding unless it is set aside by that Court or by a higher Court. Vide Mejelle Article 1837 which rules that once a case is properly and legally decided shall not be heard again and if in the latter Court a judgment is issued, that latter judgment will be void.

The judgment of the Land Court was issued after taking into consideration the Ottoman Code of Civil Procedure. The Preliminary Articles contain certain legal maxims, the last paragraph of which rules that a judgment issued by a Court remains valid and in force unless it is set aside by the said Court or by a higher Court.

Article 215 rules that if the application for re-hearing is for finding the contents of one of the Ilams (judgment) repugnant to the other, the Ilam prior in date of issue will be forced in full.

Article 239 rules that in case two judgments are issued by two Courts including the same issues and contradicting each other while the Plaintiff, Defendant and the form of the case did not change, the judgment later in date will be void.

(2) A final judgment as that of the Land Court Nablus is Res judicata. Any further proceedings on the same subject should be suspended. The judgment of the District Court Haifa is therefore of no legal effect.

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2nd Part : The case of Abdul Fattah el Mari at Land Court Haifa is Fraudulent Misrepresentation, for the then evidence proves this fact :—

(A) During 1919, Abdul Fattah el Mari participated in the distribution of the Masha between the people of Zeita. That Masha included Khor el Wasa. He signed the documents that distribute the use of Khor il Wasa between him and others of Zeita Village and among these was Abdul Latif Mari Samara (Documents Nos. "AA," "BB," "CC").

(B) He together with others submitted to the Land Court, Nablus (in Case No. 18/23) that Raml Zeita is a Masha to all the villagers of Zeita and that Raml Zeita is bounded from the West by Ard an Nufei'at which was transferred to Jews and is bounded from the North by Road. These limits includes Khor il Wasa. 10

After the issue of the former judgment of Land Court, Nablus, dated 13.3.23 which adjudicated that the said Raml Zeita is Masha to all the people of the Village he (probably Abdel Fattah) submitted his known notice (Exhibit 1) to the President, Land Court and the attorney of the defendants announcing his withdrawal from that case and waiving all his rights.

(c) After all that he claimed in the Land Court Haifa, in Case No. 10/25 that Khor il Wasa is his own and his children's private property and that it is a part of Khudeira Lands of Haifa District. This is misrepresentation. He raised this case against three Jews. 20

This is sufficient to render the judgment a nullity whether Mr. Rutman participated in this or not :—

"A judgment obtained by fraud or collusion, even, it seems, a judgment of the House of Lords, may be treated as a nullity. Halsbury—v. 13, page (536)."

(3) *Connection of Rutman* : Though the connection of Mr. Rutman is evident yet we use the same expression used by the late Mr. Lowick :— 30

"The methods adopted by Mr. Nissan Rutman in conjunction with Abdul Fattah Mari' Samara to obtain possession of the land appear to indicate action of a corrupt, deliberately misleading and improper nature."

The late Mr. Lowick enumerated the following events as follows :—

"This is indicated by the sequence of the following events relating to the transaction."

(A) : Abdul Fattah il Mari was one of the Plaintiffs in Case No. 18/23 of the Land Court Haifa and he signed the statement of claim in which he sought for a judgment to be given to the effect that Raml Zeita bounded from the west by Ard Nufei'at which is now possessed by Jews and from the North by Road is Masha to all the people of the Village. After the issue of the judgment by the Land Court, Haifa regarding the Masha'ship of Raml Zeita on 23.3.23, Defendants lodged an appeal and Mr. Nissan Rutman submitted twice his surety for Defendants (Exhibits "B" and "C"). 40

(B) Abdul Fattah el Mari sent a notice to the president of the Land Court, Nablus, and to the attorney for Defendants, Najib Eff. Hakim, announcing his withdrawal from that case and that he waives all his rights in that case. This notice was drawn at Halperin Hotel, Haifa, on 50

the same day where other documents were signed by people of Zeita in favour of Mr. Nissan Rutman before Elias Khattar, the ex-Notary Public and in the presence of Nissan Rutman and Samsonov on 26.12.23.

(C) Nissan Rutman requested Epstein and Yusuf Musallam the two Jewish Engineers to prepare a plan for Khor il Wasa and ordered them to strike out the expression (Zeita—Tulkarem) and to substitute the expression (Khor il Wasa—Khudeira) therefor—October 1924.

(D) A case was instituted in the Land Court, Nablus, by collusion in between the registered owners of Raml Zeita (Case No. 11/24) subsequent to the issue of the second judgment of the Land Court, Nablus regarding the Masha'ship i.e. subsequent to 14.4.24. The registered owners grouped themselves into Plaintiffs and Defendants. The people of Zeita took cognizance of this and submitted their petitions. When this case was discovered, the plaintiffs and defendants applied on 7.3.25 for adjournment. (Vide evidence of 7th Witness, fol. 37.) Three days later (i.e. on 10.3.25), a case was lodged in the Land Court, Haifa, dealing with the ownership of Khor il Wasa by Abdul Fattah Mari and sons who were represented by Advocate Mr. Kaisermann against three Jews of Khudeira who were represented by Advocate Najib Eff. Hakim (Witness 11 fol. 45).

(6) We add the following to the events mentioned by late Mr. Lowick :

“Mr. Rutman's desire to own Masha of Zeita may be dated from 1922. He himself stated that to us. He added that he used to pay a sum of money and to receive against it documents four times as much and that the people of Zeita used to sign for him these documents without receiving from him in return documents to safeguard their rights.”

Witness No. 1—Sheikh Najib El Haj stated to us that Mr. Rutman of Khudeira Village used to attend the Land Court Nablus sitting at Tulkarm in case of Masha Raml Zeita (Mr. Rutman denied this when he gave his evidence). This discloses the connection of Mr. Rutman in this case. His connection was of course with those persons who desire from time to time to disprove the Mashaship and to prove the ownership of some persons such as Ahmad Abu Jazar and partners.

The evidence of Elias Eff. Khattar, the Notary Public of Haifa at that time, given before the Magistrate Court in the Criminal Case raised against Nissan Rutman throws light on this point. It quotes as follows :—

“On 26.12.1923 there was produced to me, in my capacity as Notary Public, a notice from Abdul Fattah bin Mari el Samara dated 26.12.23. It is, I think, written by the handwriting of Yacob Eff., Bahhus, who is working as a clerk with Advocate, Najib Eff. Hakim. The notice is addressed to President, Land Court, Samaria. He announces in this notice his waiver in the case he lodged against Miqbel bin Asad Mohamed and partners of Zeita as regards the lands known as the lands of Ar Raml of Zeita. The notice was produced to me at Helpern Hotel at Haifa in the presence of Abdul Fattah bin Mari as Samara, Rutman and other persons of Zeita whose names are mentioned at the foot of the notice number 875/4582 and documents No. 876/5496 both dated 26.12.23. I remember that Rutman paid money to some of Zeita villagers in my presence in the square (yard) of Helpern Hotel ; but I cannot say whether this payment was in connection with document No. 876/5496 or some other document executed between Rutman

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and the people of Zeita. I have also recorded and drew up a promissory note at the same time and in the same Hotel in which Ali Bin Sa'ad Abu Mana' declared and admitted that he had borrowed from Nissan Rutman fifty Egyptian Pounds. This document is dated 879/5497.

" On 9.12.1925 I proceeded to Khudeira Village accompanied by Mr. Nissan Rutman who produced to me the declaration recorded under No. 566/250 written by the handwriting of Advocate Najib Eff. Hakim, and in the house of Mr. Nissan Rutman there appeared before me 33 persons of Zeita Village and declared before me that the land known as Khor il Wasa is within the boundaries of Khudeira and this declaration was recorded under the aforementioned serial number. After the signatures and thumbprints were obtained on this declaration, Mr. Rutman and Mr. Samsonof entered a room followed by some of the persons mentioned above of Zeita Village while some others remained outside the house. I, then, left the house to have a look in the Village. I returned to the house of Mr. Rutman where we took our breakfast. I did not ask the villagers for their declaration, nor did I ask Mr. Rutman about that but I have recited the declaration to them word by word and I have made them understand its contents. Neither the fellahin nor Rutman did inform me about the reason for this declaration.

" On the same date and in the same place I have recorded under No. 1567/8392 a declaration from Abdul Fattah Mari as Samara and his two sons Salim and Musa and his nephew Abdul Latif Samara in which they declare that the land known as Khor il Wasa situated within the boundaries of Khudeira Village and declare that the said land was sold to each of Toba Rutman and Rifqa Aaronson. This was made in the presence of Mr. Rutman, Najib Eff. Hakim, Michel Khuri and Mr. Samsonov, I say now that each of Mr. Michel, Advocate Najib Eff. Hakim were present when recording and signing the declaration. I have read to them the declaration registered under No. 1566/25. I am sure that these are the two declarations produced to me by Advocate Najib Eff. Hakim at the house of Mr. Rutman at Khudeira.

" On 16.12.25 I went with Mr. Rutman to Khudeira Village and there in the house of Mr. Rutman I have recorded and drawn a declaration identical with Declaration No. 1566/25 referred to under the previous para. It was signed by 46 persons of Zeita Village some other 56 persons thumbprinted it.

" So also on 31.10.1926 I proceeded with Mr. Rutman to his house at Khudeira and there I have drawn a declaration identical with that numbered 1566/25. It was signed by 12 persons and thumbprinted by 15 persons. All of them are of Zeita Village.

" I remember now the notification numbered 875/5482 and dated 26.12.23 which is written by the handwriting of the petition writer Sheikh Muhammad Nabahani Najib Eff. Hakim dictated it to him in my presence."

This evidence was given by Elias Eff. Khattar before the Magistrate on the investigation. Elias Eff. was asked to give evidence in this case (he was witness No. 12). The elapse of about 20 years did not state everything but he added that his evidence in the criminal case is valid.

It is therefore evident that there is connection between Mr. Rutman and the withdrawal of Abdul Fattah il Mari and his waiver to his rights in the case he instituted to prove the Mashaship in the Land Court Nablus on 26.12.23.

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The connection of Mr. Rutman in this plottery or simply in this case is proved also by the contribution of Mr. Rutman to produce his surety for defendants, who lost twice their case, before the Land Court, on appeal. Mr. Rutman stated that he signed these two sureties on the request of Ahmad Abu Jazar. This supports the question of his old connection to disprove the claim of plaintiffs who are to prove the status of Masha for he stated that he agreed with Ahmad Abu Jazar to purchase that Masha but could not succeed.

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(E) Nissan Rutman obtained the plan (W) and requested to rub out the two words (Zeita-Tulkarm) and to substitute the expression (Khor il Wasa'-Khudeira) therefor although it was not a part of Khudeira on October 1924. But he forgot to request him to rub out the word Khudeira from the western boundary. The plan became after this obliteration contradicting itself.

(F) A short time after Abdul Fattah Samara obtained this forged plan from Rutman he raised a case in the Land Court Haifa alleging that Khor il Wasa' is of Khudeira Lands (Land Case 10/25). The defendants being three Jews of Khudeira. Yacob Samsonov, who accompanied Mr. Rutman in Halperin Hotel when drawing the notification consigned by Abdul Fattah Mari Samara to the President of the Land Court, is one of the defendants.

(G) In this case, the Plaintiffs Abdul Fattah Samara and sons who are Arabs were represented by Mr. Kaiserman (he was the attorney in Nablus Case No. 18/23, for the Plaintiffs who were registered owners and who claimed the ownership). The defendants who were Jews were represented by the Arab Advocate Najib el Hakim. Their contract with Mr. Rutman can be easily adduced. Mr. Rutman stated in his second evidence that Mr. Kaiserman was not his general attorney during 1922 and that his dealings with him commenced since 1929. This does not prevent that dealings were performed with Miqbel il Asad and partners in the Nablus Case and with Abdel Fattah il Mari in the Haifa Case against payments made by Mr. Rutman with the existence of a general power of attorney. Mr. Kaiserman cannot say that he knows his said clients nor that he accepted this agency at the request of the said clients and that he received his fees from them.

Musa Samara stated in this respect that :—

“ Mr. Rutman raised the case on our behalf by agreement, we gave Rutman a power of attorney. Mr. Kaiserman acted for us . . . Rutman obtained the power of attorney from us and raised the case . . . I paid no expenses to Mr. Kaiserman, Mr. Rutman paid.”

Musa Samara stated in his evidence :—

“ He (my father) raised another case against three persons in Haifa Court, three Jews. The three Jews did not in fact dispute our possession. So we brought fictitious case against three Jews to obtain.”

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(H) After the judgment of the Land Court Haifa was issued, Khor il Wasa was registered in the name of Abdel Fattah and sons on 4.6.25. On the next day (5.6.25) it was transferred from Abdul Fattah to the wife of Nissan Rutman and to his principal Rifqa Aaronson.

(K) Salih il Khatib and Musa Nasser raised a case objecting against the judgment of Land Court, Haifa, but after some time Musa Nasir withdrew from the case after he appeared in the office of Najib Eff. Hakim and signed a declaration in favour of Mr. Rutman and his wife that his case was misconceived.

(L) Some of the documents obtained by Nissan Rutman bearing the 10 signatures of Zeita villagers and certified by the Notary Public, were drawn at Helpern Hotel, Haifa and some at his house at Khudeira and some at the office of Advocate Najib Eff. Hakim. These documents were produced by Mr. Kaiserman, a fact that should be added to the events mentioned by the late Mr. Lowick.

The documents obtained at Helpern Hotel on 26.12.1923 such as the loan for LP.125 numbered 876/5496 and signed by Sakir Awad Tawfiq Zubeidi, Ali bin Husin il Isa, Muhammad Nimr Abu Manna', Abdel Kadir Zubeidi, with Yaacob Samsonov as witness and

Loan No. 879/5479 signed by Ali Said Abu Manna' for LP.50 and all 20 the documents drawn and against which money were paid by Mr. Nissan Rutman to Zeita villagers on the same day when Abdel Fattah il Mari signed his notification No. 875/42 and which conveyed the withdrawal of his case in Masha Raml Zeita.

From all these documents, there may be adduced that there is connection between the payment of these sums of money and between the withdrawal by Abdul Fattah il Mari of his case in the masha.' If this may be adduced, a part of the activities performed by Mr. Rutman to have a part of Masha Zeita by illegal means is adduced.

(M) The documents drawn on 9.12.1925 in Khudeira at the house 30 of Mr. Nissan Rutman and in the presence of Najib il Hakim and Yacob Samsonov by the handwriting of Najib il Hakim and the declaration given by Abdul Fattah il Mari and sons that Khor il Wasa is situated within the lands of Khudeira and that it has been disposed of to Tuba Rutman and Rifqa Aaronson (No. 1567) and document No. 1566/25 given by Shakir Awad Manna' and 32 other persons in the same sense and

The documents drawn in Khudeira on 16.12.25 at the house of Nissan Rutman in the same sense and signed by 46 persons and the documents drawn in Khudeira on 31.10.26 at the house of Nissan Rutman in the same sense and signed by 15 persons, all of these documents proves 40 the direct connection of Mr. Rutman to defile those persons so as to give declarations contrary to facts.

(N) Mr. Nissan Rutman stated in his evidence that the declarations and documents were obtained when Salih Khatib appeared and submitted his objection against the judgment of the Land Court, Haifa. This shows that he was cognisant of the fact that the judgment obtained from the Land Court Haifa is wanting to disprove of the objections by paying for these weak declarations.

Rutman himself said to us that the people of Zeita used to sign and deliver to him documents embodying debts which they did not receive 50 in whole and against which they did not sign any documents. This explains to us how the people of Zeita used to sign for him any documents he asks.

Among the facts that draw the attention is the declaration of Musa Nasir who submitted his objection to the Court stating the real facts and soon after he hands over to Rutman or to Abdul Fattah a declaration adverse to the previous one withdrawing his objection.

(o) The abusive acts committed by Mr. Rutman extended over settlement operations before the late Mr. Lowick who did not mention everything when he said :—

10 “That the same kind of tactics continued until recently is apparently indicated by the action of Sharif Abd el Kadir in renouncing his principals rights to which reference has been made in his judgment. The reasons for this action have not been disclosed.”

(p) If the reason for this action was not disclosed, a more serious action took place and had effect. This was in defiling Hasan Labadi, who, after his many complaints to Government was represented by Salim Eff. Hanna, the A.S.P. Jerusalem by order of Attorney-General, before the Settlement Officer. While this representative was defending him he received a notification revoking his power of attorney through the Notary Public, Haifa (Exhibit “ P ”).

20 This Exhibit “ P ” was produced by Advocate Mr. Kaiserman during cross-examining Salim Eff. Hanna. I have requested the Settlement Officer to record in the proceedings that it has been produced by Advocate Mr. Kaiserman.

(q) Hasan Said Muhamad Khalil Labadi explained to us in his evidence (fol. . . .) this question in a detailed form. He said inter alia :—

“Shakir Awad told me to receive LP.50. I went to Rutman in Hudeira who gave me a letter to Mr. Kaiserman.”

In his evidence, Mr. Rutman denied, of course, this together with all the events but Hasan Labadi was ? and sincere in his evidence and no doubt it is truthful.

30 Naturally, it is not reasonable that this man dismisses his agent Salim Eff. Hanna who was defending him by order of Government except when there is a strong reason and attractive cause that attracted him in the same manner as it has attracted Abdul Fattah il Mari when he despatched his notification announcing the withdrawal of his case and waiving his rights in the Land Case of Nablus No. 18/23. The same cause that attracted Musa Nasir who was a co-objector with Salih el Khatib against the judgment of the Land Court Haifa and made him withdraw his objection after he signed the undertaking (No. 5) which conveys that his case was conceived. These actions are similar to each other and it is evident that it is the make
40 of one person.

The credibility of the witness Hasan Labadi and the discredibility of the evidence of Mr. Rutman is that the receipt of serving the notification of Labadi to Salim Eff. Hanna which is signed by Salim Eff. Hanna is in possession of Mr. Kaiserman. (The General Attorney of Mr. Rutman in this case.) This receipt should formally be with the consignor of the notification Al Labadi—Either Mr. Kaiserman has obtained the notification from the Notary Public directly in his capacity as it was he who introduced Hasan Labadi to the Notary Public or from Hasan Labadi himself—and this proves the relation mentioned by Hasan el Labadi.

50 I was told that Mr. Kaiserman was not the attorney for Mr. Rutman in this case but Mr. Kaiserman is the attorney for Mr. Rutman as per General Power of Attorney and is being delegated through the agent of

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Mr. Rutman. Mr. Kaiserman did produce all the documents upon which Mr. Rutman relies and it was he who received written instructions from Mr. Rutman to the Registrar of the District Court (vide fol. 94).

This is in addition to the other proofs which prove the abusive connection of Mr. Rutman with everything relating to Raml Zeita and Khor il Wasa Case.

(R) It is here beneficial to have a glance at the evidence of Mr. Rutman when we see that it is so arranged and fabricated so as to nullify all what was stated by the Plaintiffs' witnesses but its fabrication is evident.

We believe, and we have the cause to believe, that the Settlement Officer disbelieves the story mentioned by Mr. Rutman regarding his relation to Khor il Wasa and that this was by way of purchase and payment of purchase-price in full which is eight or nine or ten thousand pounds. Such a great sum as this is not sharply known whether it is LP. 8,000, or 9,000 or LP.10,000, as if the LP.1,000 are merely some Mils. Mr. Rutman further stated that he did not open an account book and does not know how he spent it exactly. He does not know whether he paid the purchase-price of 1,300 Dunums at the time of the transfer or one year prior to that date when he made his primary agreement. This is funny when we consider a man such as Mr. Rutman who adopted the purchase and sale of lands as a profession and trade.

Mr. Rutman who lived for a long time with full cognisance of Raml Zeita and Khor il Wasa alleges that he does not know that Khor il Wasa is of Zeita or that it is a Masha for all the people of Zeita notwithstanding all his mentioned activities.

It is expected from a person such as Mr. Rutman that he should give an evidence that may destroy his protracted efforts to own this "Khor" and disclose the means which we found so as to lose that treasure.

THIRD POINT.

Does the possession made by Abdul Fattah il Mari, the principals of Rutman and others since 5.6.25, form a prescription that prevents the plaintiffs from submitting their claim?

We have already stated a résumé of this point of issue when the case was first heard:—

1. (A) So long as this possession was supported by the judgment of Land Court Haifa (No. 10/25) which judgment was found to be contradicting a previous final judgment and to be not legal, any action performed on the basis of this judgment will be illegal and void.

(B) If it is proved that the said judgment was obtained by fraud it will be considered as null and any action performed on its basis will be considered a nullity.

2. There is no plea of prescription for the judgment of the Supreme Court of Appeal upholding the judgment of the Land Court Haifa in Case No. 35/26 was issued on 26.5.26. On 2.5.29 Settlement operations were declared at Khudeira including Khor il Wasa' when the people of Zeita submitted their known pleas before the late Mr. Lewick. Since then till the issue of the judgment of the Privy Council on / / 37, the case was pending in the courts.

The case was renewed when Kefar Brandeis was declared under settlement on 14.11.1941. And so this case was pending before the courts which means there is no plea of prescription as per Mejelle Article 1666.

3. As a result of registration in the name of Tuba Rutman and Rifqa Aaronson on the basis of the judgment of Land Court, Haifa, the people of Zeita were prevented from taking possession of Khor il Wasa. Owing to the existence of the said judgment, it was incumbent on the local authorities to prevent the people from taking possession until a judgment is issued by the court putting an end to this dispute. The case was before the Settlement for the whole period with the exception of (24 days short of) three years.

4. During 1925 after registering the Khor in the name of Rutman and when the decision of Mr. Lowick was issued during 1931 some people of Zeita tried to plough the land but they were prevented by the Police and by order issued by Tulkarem District Officer (vide evidence of witnesses Nos. 1, 2, 3, 4, 13, 14 and 17).

It is strange to say that Defendant attempted to deny this event and in particular the statement of Rutman on fol. 92. "There was never any disturbance at any time in Khor il Wasa". I did not apply to the Police either before or after the work."

Is it not astounding to see that Rutman obtains Khor il Wasa by his poor activities without any interruption by any one or by the interested owners who may attempt to plant the land? And that the money be spent subsequent to that date as per the documents, a good lot of which he produced, was only to defile those persons who opposed him by different sorts of means. And we see thenceforth the payment of money to scores of persons of Zeita Village against the documents he produced true copies thereof. Were these documents obtained without paying money, whether that money was paid by him or out of the account of Abd-el Fattah as Rutman says himself.

If these were obtained against payment of money they were merely to stop their objection. Is it reasonable that those scores of persons who were blackmailed by receiving the money were silent and did not show any move to plough their lands. If any one persisted on his motion did Rutman keep his silence . . . The sense, conditions and facts all support the credibility of the plaintiffs' witnesses regarding the interfering of Police . . .

The courage of Mr. Rutman to lie is shown by his statement on oath that Mr. Bentwich, the Attorney-General, pursued him and raised a case against him for producing a forged plan subsequent to his not being in good terms with Mrs. Fels who refused his request to grant her land to a Jewish Settlement. Moreover this man dared to state lies on oath to the effect that the abdication of Mr. Bentwich was due to his pursuit of this case while the resignation of Mr. Bentwich from his office was merely for political causes. The evidence of Mr. Rutman in this respect could not be traced in the proceedings. It seems that the Settlement Officer disliked to record such a lie. Mr. Rutman denied the fact that he returned Umar il Kuwayis after he was back from exile at Damascus. He denied everything.

The Defendants are trying to show that Ahmad Hasan Abdallah is not truthful in his evidence. To do that they introduced their Witness No. 10 Yusuf Zamati to say that in the account books of P.I.C.A. he never traced the name Ahmad Hasan Abdallah as a Natur (Watchman) during 1924, 1925 and 1926, and that the Natur to P.I.C.A. was Mihsen. This is most misleading for Ahmad Hasan Abdallah never said that during 1924, 1925 and 1926 he was a watchman. For what he said see fol. 52.

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In reply to a question put by Abcarius Bey (fol. 54) :

“ I was watchman in the hills for three years, my three years, service . . . I left the work, three years before disturbances of 1936.”

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In reply to Mr. Kaiserman (fol. 54) he said :

“ I left Ali Samson in 1933. Worked in the eucalyptus 3 years. The incident occurred during my service as a watchman.”

At the end of the sitting the attorney for Defendants stated that Mr. Samsonov is sick and he asked to adjourn the case to bring him for evidence. We the attorneys for Plaintiffs did not object notwithstanding the non-production of a medical report that proves the sickness and we desired the attendance of Mr. Samsonov to give his evidence for he cannot deny the truth of the evidence of Ahmad Hasan Abdalla as regards his service and period of service. Would the Defendants have desired to disclose the real facts and not to mislead they would have produced the records of the P.I.C.A. during 1930–1933. The attempts made in this form by the Defendants shows that witnesses for the Plaintiffs are true in reporting the events and facts and that the Defendants tried to overshadow these facts. 10

Then came Witness No. 5, Baruch Helpens, the timekeeper of Mr. Rutman's labourers. He introduced this witness to corroborate his evidence. He stated that when the plan was being prepared by Yusef Musallam for 6 or 7 days or more no incident occurred but when he was asked about the time he said : “ I do not remember if winter or summer.” The season has great importance for the villagers of Zeita do not visit Khor il Wasa except when it is time to plough the land and work on it. It is possible that they may not have come there for weeks or months. 20

He introduced the former corporal Mr. Baruch for giving evidence who is said to have come to Khor il Wasa and suspended many of the villagers on different occasions. He denied everything. Is it possible that he should state what may incriminate him ? 30

The witness Mr. Hochberg who is a proprietor declares that he took possession of a land in Khor il Wasa since 1928 and he commenced in constructing a building prior to that date and yet he alleges that he was unaware of the disputes during 1930 and 1931 when there was settlement nor was he aware of the settlement at Khudeira when Khor il Wasa' was the subject matter of the dispute. The proceedings were going on and it is not reasonable that he was unaware of the dispute and that he knew of it merely during this settlement. They have also introduced Shmuel Hayim (Witness No. 7) who is the Mukhtar since 1934. He says that he is there since 1930. He says that no incident took place between Arabs and Jews. He does not know that there was a survey or Settlement during 1929 and 1930. And so if he was not cognizant of the settlement operations which lasted for one year and did not see the Settlement Officer performing his investigation in Khor il Wasa, it would not be astounding if he was unaware of Police incidents in the Arable land ! 40

To sum up our claim : Khor il Wasa is a part Raml Zeita which is Masha' and that Raml Zeita was adjudged as Masha by a final judgment (*Res judicata*) and that the judgment of Haifa Land Court which conveys

that Khor il Wasa is owned by Abdul Fattah and sons includes a part of the subject matter of the judgment of Nablus Land Court and that its repugnancy to the former judgment makes it illegal and legally void. It may be added that the judgment of the Land Court, Haifa, was obtained by misrepresentation committed by Abdul Fattah whether the interference of Rutman was proved or otherwise while his relation to this case is clear; and that the period elapsed between the issue of the judgment of Court of Appeal as regards the judgment of the Land Court Haifa and between the effect of registration in the name of Rutman and Aaronson do not form a period of prescription, for this period elapsed whilst the case was pending before the courts, whether it was proved that the people of Zeita were prevented from having possession or not.

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We request that registration be made to Khor il 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.

We beg to be most respectfully

Yours. 12/2/43.

ABDUL LATIF SALAH, OSMAN BUSHNAQ,
ANAS KHAMRA, WALID SALAH.

Enclosures : Three copies to each of :

- (1) Nasib Bey Abcarius, Adv.
- (2) Mr. Kaiserman, Adv.
- (3) Mr. Shwatz, Adv.

Addendum.

And lastly I have inspected two extracts of Tabu Registration produced by the Registrar of Lands, Haifa, in compliance with an order issued by the Settlement Officer in this case. They are the Turkish Registrations No. 11 and 19 and the English Registration fol. 2, Vol. 7.

To scrutinise shortly these two registrations and in the application for the Case No. 10/25 of Haifa Land Court, will lead to the existence of misrepresentation to which we have referred in the second point of issue of our statement.

The land registered under Registration Nos. 11 and 19 of Haifa Land Registry is bounded from the North by Wadi Khudeira, from the South by Road of el Qas'a, from the West by Dabbet ash Sheikh, Hilu, and Dabet Bir el Jumeiza and Makabb el Ma'a and from the East by Basset Qazaza.

Sufficient evidence has been produced to prove that Road of el Qas'a is the Road that crosses along the North of Dabet el Qas'a which is to the of Khor il Wasa and which separates Khudeira to the North and Khor il Wasa to the South. It is not possible that that would lead to Attil from the South and what supports that is the other boundaries. From the North Wadi Khudeira, East Basset Qazaza, West Dabbet ash Sheikh Hilu and Dabet Bir il Jumeiza. This confines the location of this land to the North of Khor il Wasa as exhibited on the plan of Khudeira

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Pleadings
of
Plaintiffs,
12th
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continued.

upon which the late Mr. Lowick has delineated the location and boundary of Khor il Wasa (Jacket 6 of the Case).

When this registration was recorded under fol. 7 Vol. 2 on 4.6.25 the boundary undertook a change that made the registration entirely different : The Northern boundary was shown to be the lands of Khudeira instead of Wadi Khudeira ; there being a serious difference. The Southern boundary was shown to be Attil in substitution for Road of il Qas'a. The difference is great and evident on simply scrutinizing the plan of Khudeira and on ground. This is due to the Report of Inspection produced by the then Registrar of Lands, Subhi Aweida. I am at a loss to understand how the following evident contradiction was overlooked by those who managed this misrepresentation. This was by stating that Khor il Wasa was of Khudeira and by leaving the northern boundary as Khudeira (which excludes it from the lands of Khudeira). 10

The misrepresentation is evident also when we consider lodging Case No. 10/25 for ascertaining the boundaries of Khor il Wasa and in producing in this case Kushans Nos. 11 and 19 as a document to prove in a deceptive manner that these records are for Khor il Wasa which is of Khudeira lands. This deception and misguidance was so evident and clear as already mentioned. The conspiracy plotted by the plaintiffs and defendants in this Case No. 10/25 and their keeping the silence and not disclosing what contradictions it contains made this misrepresentation be overlooked by the Court which issued the order obtained by misrepresentation. 20

We beg that this addendum be considered as part of second point dealt with on folios 4-10 of our statement.

13.2.43.

ABDUL LATIF SALAH.

UTHMAN BUSHNAQ.

ANAS KHAMRA.

WALID SALAH.

30

Three copies are attached to be served on each of :—

Nasib Bey Abcarius.

Mr. Kaiserman.

Mr. Schwatz.

No. 49.

REPLY by Defendants to Final Pleadings of Plaintiffs.

IN THE LAND SETTLEMENT COURT,
Haifa Settlement Area,
Haifa.

Kefar Brandeis No. 1.
Defendants' Case.

*Before the
Settlement
Officer,
Haifa.*

No. 49.
Reply by
Defendants,
27th
February
1943.

At the outset of these pleadings, it is submitted that the Plaintiffs have laboured at a great length under a misconception and misapprehension
10 of their own case.

The true facts of this case may be briefly summed up as follows :—

One Abdel Fattah Samara and others brought an action in the Haifa Land Court against one Samsonoff and others, claiming by possession a plot of land known as Khor al Wasa. The Court sent out an Inspection Commission, who, after inspecting the land and boundaries reported that the land in dispute as claimed was within the land of Hudeira. The Court gave judgment in favour of Plaintiffs and ordered the land claimed to be registered in their names.

The judgment became final. Execution was applied for and an
20 order was issued to the Land Registrar to have this land registered in the name of Plaintiffs in accordance with the judgment, giving the boundaries and localities.

When registration is applied for in such cases, it is necessary that the applicant should produce a map of the land. The map must be inspected by the Land Registry Surveyor, and if found correct, then approve it. If Applicant does not produce a map, then the Land Registry sends out their Surveyor to survey the land, the registration of which is applied for, and make a map thereof, and registration is effected in accordance therewith. Such a map, when supplied by Applicant or made by the Land
30 Registry Surveyor, must be signed by the adjoining neighbours

In this case a map of the land was submitted to the Land Registry. The map was checked by the Land Registry and found to be correct and in accordance with the judgment of the Court. The map was signed by adjoining neighbours.

The Plaintiffs tried during the proceedings to show that this plan was a forged plan, that it was made by a man called Joseph Musallam, a Surveyor, and by Nahum Epstein, a licensed Surveyor, the 8th and 9th witnesses in the proceedings before the Land Settlement Officer. Mr. Joseph Musallam stated on examination by Advocate Osman Bushnak that the
40 first heading was added by his own mistake.

From the evidence of the 8th and 9th witnesses, pages 41 and 42 of the Record, it shows clearly that the practice followed is for the Surveyor to visit the land, put in marks, measure the land and draw the plan in their own office and then hand over the plan to the client. After that, the signatures of neighbours are affixed.

Mr. Musallam stated on page 42, on being cross-examined by Abcarius Bey, that the general rule is that when the plan leaves their office it is

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blank. Mr. Musallam, in his cross-examination by Abcarius Bey, on page 42, 6th line :—

“ I was on the land of Khor el Wasa. As far as I remember there were 12 to 15 persons on horseback who came from the Eucalyptus trees, and went to the Eastern boundaries and Attil. The Mukhtars of Zeita and Attil were present. Many persons, including the man from the house shown in the plan. I do not know if it was Abdel Fattah Samara. Perhaps it was. People from Zeita were with us, so I believe. They showed the boundaries in the middle of the barge. I put wooden pegs around the boundaries in the presence of the persons with us. Then I measured the land. Then I made the plan in the office. Mr. Rutman wanted a new plan when he saw the heading Zeita-Tulkarem. I insisted on altering the plan and not making a new plan. After the alteration I gave the plan to Epstein. I read Arabic. On the Eastern boundary there is a certificate confirming the genuineness of the Eastern Boundary dated 22nd May, 1925. There is another certificate stating that the boundaries are correct. The certificates are signed and sealed in Hebrew signed by the Hadera people dated 17th May, 1925. There were Jews of Hadera present as well as Zeita people. The Mukhtar was present, 10–12 others, but I do not know their names.”

On page 43 this witness, on re-examination by Mr. Abdel Latif Salah, stated :—

“ The Mukhtar of Zeita certified the correctness of the boundaries.”

It appears that the plan on which registration was made bore the name of Zeita-Tulkarem by mistake. That Mr. Rutman as soon as he saw that in the office of the Surveyor, he refused to accept it and insisted on a new plan being made for Khor el Wasa. The surveyors refused to make a new plan, but altered the heading from Zeita-Tulkarem to Khor el Wasa.

This plan, as may appear later, was challenged to have been forged before the Land Court at Haifa, and before the High Court of Jerusalem, and both these Courts dismissed this allegation.

Mr. Bentwich then had criminal proceedings instituted against Mr. Rutman for forging this plan, but the charge was dismissed as it did not disclose any offence.

The truth of the matter is that, with all due respect, Mr. Bentwich wrote a letter to Mrs. Fells, asking her to give this land of Khor el Wasa to a Jewish Organisation to settle down immigrants, and further asked her to finance this scheme with her own money, she being a very wealthy American lady. Mrs. Fells wrote back to Mr. Bentwich and told him that she did not believe in his scheme, nor in his policy, and refused to acquiesce to his proposal. Hence this persecution against Mr. Rutman and the cause of all this unnecessary litigation.

When the papers in the District Court were submitted to the Director of the Land Department, an order was made by him for the registration of this land in the names of the Plaintiffs, on payment of 5% Hak el Karar. These 5% of Hak el Karar are paid when the land belongs to the State and the person cultivates it without buying it for a period of over 10 years.

In other words the 5% represents the price of the land paid to the Government. After obtaining registration in their names, Abdel Fattah and his sons sold the land to Mr. Rutman and Miss Aaronson. The registration was carried out by the Land Registry at Haifa, and the plan in question was acted upon.

Mr. Rutman has given long detailed evidence before the Land Settlement at Haifa on pages 89 *et seq.* His examination-in-chief and re-examination lasted 3 days, and it will be a sheer waste of time to deal at this stage with the evidence of each witness. I will have to leave that
 10 to the Settlement Officer himself who has heard at great length this case and all the witnesses. Mr. Rutman deals in his evidence in detail regarding the case brought by Mr. Bentwich against him in the different Courts and the obstruction he received from the Land Registry office.

It is to be remembered that Lord Plumer made an agreement on the 29th April, 1927, between himself and Mr. Rutman on behalf of Mrs. Rutman and Miss Rivka Aaronson, whereby the Government received from Mr. Rutman the sum of LP.1000.—in consideration of the Government renouncing their claim to treat this land as Mahloul and to apply to the
 20 Land Court of Haifa to have the action which they had brought for the cancellation of the entries in the Land Registry withdrawn and to leave the lands of Khor el Wasa registered in the Land Registry at Haifa. This agreement was signed by Mr. Bentwich, the Attorney-General.

It is most extraordinary to understand the attitude of the then Attorney-General, who some years after that delegated one of his subordinate officials, Mr. Koussa, Junior Government Advocate, to go and stir up a Zeita man to bring an action claiming this same land before the Land Settlement Officer at Hadeira. When a High Court action was brought against the Attorney-General for abusing his office by delegating
 30 one of his subordinate Government officials to represent a private individual, and the High Court made absolute the Order Nisi, the Attorney-General, Mr. Bentwich, had recourse to the Commandant of Police who instructed one of his officers, Mr. Selim Hana to represent this private individual, and in order to assist Mr. Selim Hana he delegated another clerk of his office, Mr. Kantrowitch.

Mr. Selim Hana, the 15th witness for Plaintiffs on page 56 of the Record, distinctly stated that he received instructions from the Attorney-General. Mr. Selim Hana distinctly stated at the end of page 57 of the
 40 Record that the plan was signed by the Mukhtar of Zeita and Attil, and he further stated that he was told that Mr. Kantrowitch would appear and help him in the matter. This attitude of the then Attorney-General shows clearly the prejudice Mr. Bentwich had personally against Mr. Rutman.

It is not my intention to dwell at great length on the history of this case. I attach herewith a memorandum which I have made and which I adopt as part of my pleadings.

The judgment of the Land Settlement Officer Mr. Lowick which I submit, with great respect, was prejudiced and wrong on the evidence before him, was against us, and the Land Court at Haifa distinctly stated
 50 in their judgment that they would not themselves have given the same decision. Before the Land Court at Haifa we were never given a fair trial. We were never heard on the merits of the case. The question

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was whether this case was appealable or not. It was adjourned by the Land Court of Haifa to consider this point, and then judgment was given on the merits of the case, which, in our submission, is a real denial of justice and is against natural justice.

Be that as it may, we appealed to the Supreme Court, and the Supreme Court took a point as to whether this case is appealable or not, of its own motion, without a cross appeal being lodged and without the point being raised by Respondents.

The Supreme Court held that this was not appealable, that there was a clear distinction between a decision affecting the rights in land and a decision as to any right in land. The Supreme Court decided that while the decision of the Settlement Officer may affect rights in land by forming the basis of his decision as to such right is not in itself a decision as to such rights. 10

After waiting for nearly a whole year, we had this decision. We applied for leave to appeal to the Privy Council, which also after 7 or 8 months was refused from here, on the ground above mentioned and on the ground that the boundaries when fixed by a Settlement Officer are fixed in his administrative capacity and not judicial capacity. We applied for leave to appeal to the Judicial Committee direct, when we were represented by Sir Wilfrid Greene, now Master of Rolls. He undertook not to raise the question of administrative boundaries. He was granted leave to appeal and their Lordships of the Judicial Committee, after very careful examination of the case, failed to appreciate or to understand the fine distinction made by the Supreme Court of Palestine between a decision which affects rights in land and to any rights in land. 20

Their Lordships in the detailed judgment stated that special leave was granted by them on the undertaking that the Settlement Officer's decision as to the boundaries should not be questioned in the appeal, as it was an administrative question, and that the appeal should be confined to a challenge of his decision, in so far as it affected the title of the Appellants. Their Lordships further added that they are clearly of opinion that the Land Settlement Officer's decision was a decision as to right to land in so far as it held that the land of Khor el Wasa are Mushaa land, a finding that necessarily excluded the title relied on by the Appellants. Their Lordships had difficulty in appreciating the fine distinction drawn by the Supreme Court in holding the appeal incompetent. In the next place :— 30

“ Their Lordships are clearly of opinion that the judgment
“ of the Settlement Officer was outside his jurisdiction and ultra vires
“ in so far as it dealt with questions of rights to land outside the
“ village of Hadeira, which was under settlement, and that accord- 40
“ ingly, the finding that the area of Khor el Wasa which he held to
“ be outside the boundaries of Hadeira was Mushaa land, along with
“ the consequential directions as to entries in the Land Registries
“ of Haifa and Tulkarem was ultra vires of the Settlement Officer.
“ It is remarkable that the Settlement Officer made these findings
“ in spite of the correct view expressed by him as to the extent
“ of his jurisdiction. The Land Court would appear to have
“ accepted this view also, but they equally failed to give effect to 50
“ it. The Supreme Court only considered the competency of the
“ appeal.

“ In defining the boundaries of the village of Hadeira, the Settlement Officer was entitled to find that the area of Khor el Wasa was not in Hadeira, but within the boundaries of Zeita and/or Attil; that was a purely administrative finding. But in the opinion of their Lordships, the judgment of the Settlement Officer of the 26th June, 1931, ought to be varied by excluding from the findings any findings that the area of Khor el Wasa is musha land, and also the orders as to entries in the Land Registries of Haifa and Tulkarem.”

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10 From the foregoing it would appear that the ownership of Khor el Wasa has still to be decided. When the Attil settlement took place the Attil people renewed their claim to part of Khor el Wasa, but their claim was dismissed and the judgment of the Land Settlement Officer was confirmed by the Supreme Court. That finishes us from the Attil people.

The land at Zeita was brought under settlement. No claim was made that Khor el Wasa was a part of the Mushaa land of Zeita. The claimants of the Zeita lands were not those referred to in the Nablus judgment. Their number reached some 15,000 shares, all of which or most of which have been sold to the Supreme Moslem Council and to
20 Smilansky.

Any reference made by the Settlement Officer, Zeita, Mr. O'Conner, to Khor el Wasa in his judgment is equally ultra vires for the said reasons given in the Privy Council judgment No. 19/35. The Zeita Land Settlement Officer had no jurisdiction over Khor el Wasa or Kefar Brandeis. The Zeita settlement has been finished and settled. Now we come to a separate unit called Khor el Wasa, or rather Kefar Brandeis, which administratively has been made a separate unit belonging to Haifa District.

The parties now before the Land Settlement Officer must prove what rights of ownership and/or possession have they exercised over this land.
30 In our submission, the Plaintiffs have proved nothing of the kind, as may be seen from the analysis ably made by Mr. Kaisermann, and which is equally attached hereto. As a small example to show the collusive action of Mr. Bentwich and his representative before Mr. Lowick. Hassan Said Labadi of Zeita, who was in fact stirred up to make this claim, stated before you, on page 81 of the Record, that he had never himself cultivated any land in Khor el Wasa, nor did any of Plaintiffs' witnesses, as may appear from Mr. Kaisermann's analysis, come forward and stated that he had had cultivated a fixed area within fixed boundaries, and paid any taxes thereon.

As Mr. Kaisermann has dealt extensively with these facts, I shall
40 refrain from repetition. I have read very carefully all the Record before you, and I can confidently say that neither you nor any other Court could seriously take the evidence of Plaintiffs' witnesses as having exercised rights of ownership and/or effective possession for the necessary period to entitle them to acquisitive possession. While Mr. Rutman and his predecessor in title have clearly proved that they exercised rights of ownership and actual possession and payment of taxes. Mr. Rutman sold several plots of Khor el Wasa, which from the nucleus of Kefar Brandeis and none of the plaintiffs has ever protested or made a claim. Abdel Fattah Samara and his sons, the predecessors in title to Mr. Rutman, cultivated Khor el Wasa
50 for over 10 years before they sold it.

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Even if we got to the Nablus judgment we find that judgment was entered in favour of the Plaintiffs who were six in number, and directed that if the alleged 906 persons had any claim they should go to Court and prove their claim and the extent of their shares. They have done nothing of the kind. The 906 persons have multiplied themselves so that there are to-day about 1,500 to 2,000 claimants, and none of these people has made a claim to Khor el Wasa before the Zeita Land Settlement Officer, or before any other Court. The claimants to-day are not the same Plaintiffs who claimed before.

It is well to be remembered that in the Nablus action, 18/22, the name of Khor el Wasa was never mentioned. The boundaries were never at issue and they were never argued. In our submission the Nablus case is dead and buried, and cannot in any way be binding on us. That the Attil case is finished and the claim made by the Attil people to Zeita was dismissed and confirmed on appeal, and no claim having been made before Mr. O'Connor in the Zeita case to Khor el Wasa before him. He decided the Musha'a land of Zeita as forming part of the Zeita case, independent and irrespective of Khor el Wasa. 10

Even assuming that he had mixed up himself with Khor el Wasa, such a decision will certainly be ultra vires as previously stated, in accordance with the judgment of the Judicial Board, he having no jurisdiction. To my mind, there is only one point. Have the Plaintiffs satisfied Your Worship that they owned or exercised acts of ownership over Khor el Wasa, or have they possessed this land for the necessary period to enable them to a declaration of ownership? In my frank submission they did nothing of the kind. Their witnesses were liars. The attitude of the Plaintiffs was fraught with collusion, with surreptitious dealings, lies and fabrications. It cannot possibly be said that they are coming to seek justice before you with clean hands. 20

This case which has been going on for the last 17 or 18 years has reached a stage where it should be definitely disposed of, and it is not my intention to overtax your patience with unnecessary pleadings. 30

If you add to these pleadings my memorandum regarding the facts of the case and the able memorandum made by my friend Mr. Kaisermann, on the evidence and the detailed facts, that will give you all the material necessary that could be required for the final determination of the case.

We have read very carefully the Plaintiffs' pleadings, but I do not find anything substantial or true in these which would deserve any special comment. These pleadings confirm the conviction that 70 per cent. of Plaintiffs have misconceived their case and position, and 30 per cent. are making false and inaccurate statements, as they have done in H.C. cases Nos. 76 and 77 of 1942, not to speak of the means they have adopted by their petitions to the Authorities while this case was going on. 40

As an illustration of Plaintiffs' misconception, I submit as follows :—

1. Plaintiffs take it as granted that Khor el Wasa is a part of the Musha'a of Raml Zeita. This is definitely not true. Their Lordships of the Judicial Committee positively laid it down that Mr. Lowick was wrong in so holding. Therefore there can be no assumption that Khor el Wasa is a part of Musha'a Raml Zeita. In their judgment in P.C. 19/35, in the last paragraph but one, their Lordships laid down that they express no opinion on the merits of Defendants' claim to Khor el Wasa. The matter will be entirely open to the Settlement Officer when the villages 50

of Zeita and Attil are under settlement. In the last paragraph their Lordships state that the judgment of the Settlement Officer should be varied by excluding from the findings any finding that the area of Khor el Wasa is musha' land.

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Officer,
Haifa.*

As stated before, as far as Attil is concerned, the whole matter is finished. In the Zeita settlement, no claim was lodged to any right in Khor el Wasa by the Zeita people. By an administrative order, Khor el Wasa, "Kefar Brandeis" was made an administrative unit under Haifa, and therefore excluded from the boundaries of Zeita, if ever it were within
10 such boundaries. The Plaintiffs therefore had to prove their rights of ownership in Kefar Brandeis, which they have failed to do.

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The Land Settlement Officer of Zeita could not touch Kefar Brandeis, as he had no jurisdiction over it, and now, with all due respect, the Settlement Officer of Haifa cannot touch Musha'a Raml Zeita as it is not within his jurisdiction. In a nutshell, the Plaintiffs have failed to prove ownership in or over Kefar Brandeis, and the Defendants have amply proved that they belong to them.

The Nablus judgments and all other judgments were before the Judicial Board and were disregarded. It is therefore of no avail for
20 Abdel Latif Bey Salah to take it for granted that Khor el Wasa is a part of the Musha'a Raml Zeita. This is a further attempt of Plaintiffs to mislead the Court.

2. Abdel Latif Bey Salah contends that there can be no prescription since 1925, but he wishes to forget and to mislead the Court regarding this point. There is ample evidence that Abdel Fattah Samarah and his family were in possession for over 40 years previous to the sale to Defendants. Further, the High Commissioner made a grant to us and we paid LP.1,000.- and our predecessors paid Hak el Karar before us.

In my last words I would like to draw your attention once more to
30 what His Lordship the Chief Justice stated and what His Lordship Mr. Justice Copland stated regarding the conduct of the Plaintiffs, and to emphasize the point that what was stated in High Court case No. 76/42, substantially applies to the case before you. On page 3 of the High Court judgment, His Lordship the Chief Justice says :

"The whole matter is one of baseless insinuations made against responsible persons with a view of postponing and delaying the settlement case, and should never have been made, nor is there any substance in them. The less stated about the conduct of the Petitioners and their advocates the better. To mark our disapproval,
40 the rule will be discharged with costs to be paid personally by the Advocates who signed the petition."

His Lordship Mr. Justice Copland stated :

"These proceedings should never have been brought by any responsible advocate who had any regard for his own reputation. They were conceived in a lie and born in dishonesty."

In our humble submission the proceedings before you were instituted with the same object, and are of the same nature. They were conceived in dishonesty and born in a lie for the purpose of extracting money from Mr. Rutman and Miss Aaronsohn.

50 My prayer to you is to have Plaintiffs' case dismissed with costs and exemplary advocate fees, owing to the way the Plaintiffs have dragged their case and the surreptitious means they have employed.

Dated : 27.2.43.

(Sgd.) N. ABCARIUS.

No. 50.

Before the
Settlement
Officer,
Haifa.

MEMORANDUM attached to Reply by Defendants to Final Pleadings by Plaintiffs.

On Khor el Wassa. (Kefar Brandeis).

IN THE LAND SETTLEMENT COURTS

No. 50.
Memoran-
dum
attached to
Reply by
Defendants,
27th
February
1943.

The facts of this case may be briefly summed up as follows :—

One Abdel Fattah and others brought an action in the Haifa Land Court against one Samsonoff and others claiming a plot of land known as "Khor el Wassa".

The Court sent out an Inspection Commission who after inspecting the land and boundaries reported that the land in dispute as claimed was within the lands of Khudeira. 10

The Court gave judgment in favour of Plaintiffs and ordered that the land claimed be registered in their names.

The Judgment became final.

Execution was applied for and an order was issued to the Land Registrar to have this land registered in the name of Plaintiffs in accordance with the Judgment giving the boundaries and locality.

When registration is applied for in such cases it is necessary that the applicant should produce a map of the land, and if he does, the map is checked by the Land Registry Surveyor and if he finds it correct it is passed, or if applicant does not produce a map then the Land Registry sends out their Surveyor to survey the land, the registration of which is applied for, and make a map thereof and registration is effected in accordance therewith. 20

Such a map whether supplied by applicant or made by the Land Registry Surveyors must be signed by the adjoining neighbours.

In this case a map of the land was submitted to the Land Registry.

The map was checked by the Land Registry and found to be correct and in accordance with the Judgment of the Court. It was also signed by the adjoining neighbours. 30

An order by the Director of the Land Department was made for the registration thereof and it was registered in accordance therewith in the names of the Plaintiffs Abdel Fattah and his sons.

It was alleged that the map produced to the Land Registry was tampered with, that the words "Zeita Tulkarem" were written on the map and they were removed and replaced by the words "Khor el Wassa" Khuderia.

On this plan a case against Mr. Nissan Rutman was brought for having used this map knowing it to be forged.

Mr. Rutman was tried and discharged. 40

It is to be remarked that before this land was registered in the name of Abdel Fattah and his sons, *the Director of Lands received 5% of the market value.*

This procedure is adopted when the land belongs to the State and a person cultivates it without buying it for a period over ten years.

In other words the 5% represents the price of the land paid to the Government.

After obtaining registration in their names, Abdel Fattah and his sons sold this land to Mrs. Rutman and Miss Aaronson.

The registration was carried out by the Land Registry at Haifa and the map in question was acted upon. 50

In 1926, one Saleh Ismail El Khatib and one Moussa Naser, prompted by a desire of extracting money from Mrs. Rutman and Miss Aaronson, made an opposition to the Judgment given in favour of Abdel Fattah and his sons on the 6th May, 1925.

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In their grounds of opposition, the opposers alleged that the Judgment of the 6th May, 1925 was obtained by collusion, that the land was within the boundaries of Tulkarem and not Khuderia, that the previous Judgment of the Nablus Land Court had been given regarding this same land, that the land did not belong to Abdel Fattah and his sons but it belonged to
10 all the inhabitants of Zeita of whom they were members, and therefore they had a share in it.

Before the opposition came on for hearing, Moussa Naser withdrew his application and Saleh El Khatib remained alone.

The Land Court at Haifa heard the opposition and dismissed the case.

Saleh El Khatib appealed this Judgment to the Supreme Court and advanced the same grounds as those put forward in the Lower Court.

The Supreme Court heard the appeal and dismissed it with costs on the 6th day of May 1926. The Court was presided over by the Chief Justice himself.

20 Mr. Rutman as agent of the registered owners sold some hundred and ten dunums to Mr. Mohl on behalf of Kefar Brandeis and 40 houses were built thereon. This was registered at the Tabu, Mr. Rutman also sold 100 dunums to one Mr. Eliash, advocate, Jerusalem.

The Director of Lands for no reason, without justification or authority, stopped the registration of the plot of land sold to the purchaser.

Mr. Rutman served on the Director of Lands a Notarial Notice calling on him to pass the transaction, holding him liable in damages if he did not do so.

This notice was duly served on the Director of Lands.

30 As the Director of Lands refused to carry out the transaction, Mr. Rutman brought an action against the Director of Lands in the High Court of Justice.

An order nisi was obtained against the Director of Lands on the 14th January 1927, the Chief Justice himself presiding.

On the 22nd of January 1927, Mr. Doukhan appeared on behalf of the Attorney-General and the case was heard at great length.

The Attorney-General advanced as reasons of the refusal of the Director of Lands to allow registration, the same grounds as those put forward by Saleh El Khatib in his opposition to the Judgment of the Haifa
40 Land Court of the 6th May 1925 namely :—

That the land is Zeita land in Tulkaram District registered in the names of 22 persons and not in Khudeira,

That the land although it was registered in the names of 22 persons it in fact belonged to 906 persons,

That the Land Court Nablus had given a Judgment affecting this land on 4.10.1924,

That the Judgment given by the Haifa Land Court, treating this land as part of the Khudeira land, was obtained by collusion,

That the boundaries of the land were different,

50 *That the map submitted in support of Abdel Fattah's application for registration was tampered with,*

The word Zeita was scratched out and another word was written on it.

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That Khudeira was written over something that had been scratched out—probably Tulkarem.

That this land was in the year 1316 (financial year) declared "Mahlul" for want of cultivation, that is to say that the ownership of this land reverted to the Government as it was not cultivated.

That the whole area was surveyed and entered in the Finance Registers as "Mahlul" (belonging to the State).

Mrs. Rutman submitted to the Court that she was not a party to the action alleged to be collusive by the Attorney-General, and that the land was within the boundaries of Khudeira, that the land was totally different from the Zeita lands, and that the Director of Lands had no right to withhold registration. 10

The Court adjourned the case for 14 days to enable the Attorney-General to declare whether he purported to take steps to re-open the Haifa case.

Acting upon the decision of the High Court, Mr. Bentwich, the Attorney-General, lodged in the Haifa Land Court, an opposition of third party against the first Judgment of the Haifa Land Court of 6.5.1925.

In this application of opposition, Mr. Bentwich, the Attorney-General submitted :—

That the Government claimed that the land belonged to it and that the action of the Director of Land was regular in stopping the transaction of sale. 20

The grounds advanced for opposition by the Attorney-General are briefly as follows :—

1. That the boundaries are totally different from those of the kushan and that no proper application of the kushan on the ground was made.

2. That the Defendants to the opposed Judgment owned only 5 shares out of 286 and not the whole land. 30

3. That the map produced in the case was tampered with, the words Zeita of Tulkarem were rubbed out and "Khor el Wassa," Hedera, printed on it.

4. That the area of the kushan produced by the Defendants is 3,224 dunums and that the area shown on the map is 5,358 dunums.

5. That this land was by Judgment of the Land Court Samaria on the 14th of April 1923 declared to be Musha land of Zeita village.

6. That the same land being of Zeita village is recorded in the Land Registry Books of Tulkarem District and *that it was declared "Mahlul,"* and 40

7. That the Land Court Haifa had no jurisdiction to hear the original action and that it was only on account of the spurious map which deceived the Court that jurisdiction was assumed by the Haifa Court.

On this application being presented an order was made by the Court staying any transaction in this land pending the hearing of the opposition.

On the 5th of February 1927 a statement of claim was made out by the Attorney-General whereby he applied :—

1. That the Judgment given in favour of Abdel Fattah and his sons be cancelled and that the Registry in the Haifa Land Registry be also cancelled. 50

2. That also the registration made in the names of Toba Rutman and Rifka Aaronson be also cancelled.

On the 22nd of February 1927, Mr. Bentwich, the Attorney-General, addressed an application to the President, the Land Court, Haifa, in which he informed the Court that a Criminal Investigation was instituted against Abdel Fattah and he requested the adjournment of the case pending the Criminal action.

10 On the 29th day of April 1927, Mr. Bentwich, the Attorney-General, made an Agreement between Mr. Nissan Rutman on behalf of Mrs. Rutman and Miss Rifka Aaronson and the High Commissioner for Palestine whereby the Government in consideration of the sum of £1,000 (One Thousand Pounds Egyptian) renounced its claim to treat as "Mahlul" the 5,358 dunums of land described in the entries of the Land Registry Haifa, and Mr. Rutman renounced all claims for damages and costs in connection with the attachment of the land.

It was further agreed that the Government should apply to the Land Court of Haifa to have the action for the cancellation of the entries in the Land Registry withdrawn and the attachment released.

20 This agreement is witnessed by Mr. Bentwich, the Attorney General. The Government thus for the second time sold this land once to the predecessor in title to Mrs. Rutman and Miss Aaronson and once to Mr. Rutman in his aforesaid capacity and agreed to have the present registration maintained.

On the 29th of April 1927, the Director of Lands addressed a petition to the Land Court Haifa withdrawing the action.

A letter was sent to the Registrar of Lands to have the attachment released.

On the 8th of July 1927, the High Court case brought by Miss Aaronson was withdrawn.

30 From the foregoing it appears that the Government agreed to leave everything as it was and it thus recognised the correctness of the registration and the map.

Since then several transactions of sale were allowed and approved by the Land Registry and the kushans and map were acted upon.

40 A Criminal Inquiry was directed against Mr. Nissan Rutman for having prepared a map regarding this land and falsely showed that it is within the Khudeira Village, knowing the same to be false, and that the said Nissan Rutman did present the said false map to the Land Registry Office at Haifa, for the purpose of having the said land registered in the name of Abdel Fattah and his sons, falsely pretending that the land shown in the said map is the same land covered by the Judgment given by the Land Court, Haifa.

After a long investigation, the Examining Magistrate, by a long reasoned Judgment given on the 29th of January 1929, refused to commit Mr. Rutman on the ground that no offence was disclosed.

50 On the 4th day of April 1929, Mr. Bentwich, the Attorney-General, in the exercise of the power in him vested by the Trial Upon Information Ordinance committed the said Nissan Rutman for trial before the District Court, Haifa, on a charge of having submitted a false document contrary to the second addendum to Article 155 of the Penal Code.

Mr. Rutman was put on his trial before a specially constituted Court composed of Judge Webb and Judge Plunkett was on the 4th of February 1930 discharged.

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The Director of Land again put a note on the Registers of the Land Registry at Haifa in the nature of a caveat.

Miss Aaronson brought a High Court case against the Director of Lands. Judgment was entered in favour of Miss Aaronson.

Subsequently the Attorney-General directed the Junior Government Advocate to represent one Hassan El Haj Said and lodge a claim before the Court of the Land Settlement Officer.

As a matter of fact, the Junior Government Advocate lodged a claim in accordance with the Attorney-General's instructions and the matter was dealt with by the Land Settlement Officer under Case No. 57 of 1930 at Hadeira. 10

A High Court action was brought against the Attorney-General that he had exceeded his powers and had no right to delegate an official of his Department to represent a private individual. The High Court upheld this view and ordered the Attorney-General to abstain.

The Land Settlement Officer, the late Mr. Lowick, investigated the case. In the beginning everything was going on all right in favour of Rifka Aaronson and Toba Rutman. All of a sudden under some outside interference, the Settlement Officer changed his attitude and finished by deciding that "Khor El Wassa" was outside the Kushans of Khudeira and therefore not within the area under Settlement. He went on to decide that "Khor El Wassa" formed part of the Zeita Mesha land and ordered that the registration at Haifa be cancelled and that "Khor El Wassa" should be registered in Tulkarem. 20

We appealed to the Haifa Land Court, which delivered its Judgment on the 18th July 1932. The Court in its Judgment says "To-day 'Khor el Wassa' is to all intents and purposes a part of Khudeira and is likely to remain so whatever may be the outcome of the dispute as to title, further, since the year 1925, it has been treated by the Government as being part of Khudeira and consequently within the Haifa Sub District and not within the Sub District of Tulkarem." 30

"The Appellants (that is we), on the question of title have still another string to their bow because they have acquired the rights of the Government in 'Khor El Wassa' which the Government claims, was declared Mahlul during the Turkish Regime. This question has still to be determined."

The Court however dismissed our appeal. See pages 135 and 136 of the Privy Council printed Record.

We appealed this Judgment to the Supreme Court, Jerusalem, on the 8th August, 1931. On the 12th January, 1932, appeal was heard and Judgment reserved. 40

On the 12th of January 1933 (a year after the pleadings were closed) the Supreme Court delivered its Judgment saying that there was no appeal. Pages 146-149 of the Record.

An application for leave to appeal to the Privy Council was made on the 24th January, 1933.

The Supreme Court refused to grant leave to appeal to the Privy Council on 6th July, 1933.

Application for leave to appeal to the Privy Council was made in London against the order refusing leave to appeal by the Supreme Court, Jerusalem, and was granted, pages 154-156. 50

The Privy Council, in their Appeal, No. 19 of 1935, allowed the appeal, attached herewith a copy of their Judgment. In brief, their Lordships held that the Land Settlement Officer had no right to decide that "Khor El Wassa" formed a part of the Mesha of Zeita or Attil and had no right to cancel the Haifa Registration.

Now the Attil lands were under Settlement and the Settlement Officer dismissed the claim of the Attil people to any portion of "Khor El Wassa." There was an appeal to the Supreme Court and the decision of the Settlement Officer was upheld.

10 Again the Zeita lands were brought under settlement, and the Settlement Officer heard the case and gave his Judgment which was upheld by the Supreme Court. The Settlement Officer disregarded the old Nablus Judgment, he altered the persons entitled to shares in the Zeita lands. The Settlement Officer's Judgment overrides the old Nablus Judgment which thus becomes ineffective.

The Attil lands and Zeita lands have been settled and finished. Copies of the Attil and Zeita decisions are in the Record before you.

Now "Khor el Wassa" or Kfar Brandeis has been brought under Settlement.

20 Every Claimant has now to prove his ownership. The villagers cannot any more rely on Judgments of other Courts. The Attil people are definitely ousted. The Zeita villagers cannot be heard now saying that as we had shares in Zeita we must have shares in "Khor el Wassa". A great part of the claimants to-day were not accepted as parties in Settlement case of Zeita as they have sold their shares in the land they once had to others. Which is two-thirds of the land.

On what do our adverse claimants now rely ?

They have had no possession of these lands.

They have paid no werko.

30 They simply rely on a Judgment of the Nablus Land Court to which we were no parties at all and therefore such a Judgment which never dealt with the subject matter now in dispute cannot in any way be binding on us and besides it does not exist any longer, since the judgment of the Land Settlement hereabove referred to.

We rely :—

1. On the Judgment of the Haifa Land Court which is still subsisting and final. That part of the Judgment of Mr. Lowick which dealt with this matter has been set aside by the Privy Council. Therefore, the Judgment in favour of our predecessor in title still holds good.

40 2. On the fact that our predecessors in title have paid the Hak El Karar fee amounting to 5% of the value of the land to the Government.

3. On our possession of this land since 1925.

4. On our disposing by sale of parts of this land to others with the approval of the Land Department and the Government.

5. On our payment of werko and the Rural property tax since we purchased this land.

6. On the admissions made by the greater part of the claimants before the Notary Public that they have no rights whatsoever in or over these lands but that they are our own property.

50 7. On the fact that these lands were Mahlul and the Government gave them to us on our payment of Bedl El Misl vide the written agreement signed by Lord Plumer on behalf of the Government of Palestine and by

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Nissan Rutman on behalf of Rifka Aaronson and Toba Rutman. As to Bedl El Misl, it is the price of the land, see Chiha pp. 137, 444, 446 et seq., 456 et seq.

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It is respectfully submitted that any argument advanced by the other side, and it is the only one they are advancing, that these lands belonged to the lands of Zeita and that they as once upon a time were owners of certain shares in Zeita lands become ipso facto owners of shares in "Khor El Wassa," such argument is fallacious and in violation of the Judgment of the Privy Council.

If Your Worship, for the sake of argument, were to make such a finding, it means that you are making a finding outside your jurisdiction the same as the late Mr. Lowick has made, and which the Privy Council said he was not justified in making. 10

We have paid Hak El Karar fees, we have paid Bedl El Misl to the Government. The High Commissioner on behalf of the Palestine Government has sold these lands to us as they were Mahlul lands. An agreement between Lord Plumer and ourselves was made to that effect.

We have the written admissions of most of the claimants that these lands are ours.

We have possessed these lands since 1925, we have paid werko and 20 taxes.

The Central Government has since the registration of these lands in our names in 1925, considered and treated these lands as forecoming part of the Khudeira lands.

We therefore humbly pray that Judgment be entered in our favour, that the adverse claimants be ordered not to interfere with our proprietary rights, with costs and Advocate fees.

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ANALYSIS OF EVIDENCE in Case No. 1/Kfar Brandeis attached to Reply by Defendants to Final Pleadings by Plaintiffs.

Plaintiffs' case is based upon certain allegations of fact which were all denied by the Defendants and it is the purpose of the undersigned in the following pages to analyse the evidence led by both parties before His Worship the Settlement Officer : 30

(1) Plaintiffs' story is that the land in dispute was their property as being part of the Raml Zeita Masha lands, which by a decision of the Settlement Officer of Zeita was found to belong to them, or some of them.

Exh. "A" produced by Plaintiffs is in our submission absolutely irrelevant for reasons clearly stated in the main pleadings and on the same grounds on which late Mr. Lowick's decision was reversed. Still assuming for a moment that his finding that Khor Wassa was ever part of the Raml lands of Zeita were true, still it has, in our submission, very little bearing on the case before Your Worship ; what is relevant and in issue is the question as to whether any of the Plaintiffs—and if so, who, ever was in actual possession as owner of any part of the land in dispute, or whether the land was the sole property of the original vendors, Abdel Fattah Samara and sons ? 40

(2) As to the judgment of the Nablus Court, Ex. "Z" which forms one of the pillars of Plaintiffs' case it does not mention the land in

dispute neither by name or otherwise ; it has been given to a limited number of persons, *none of whom is a plaintiff in our case*. It refers to a number of 906 residents with no list attached and no such list was produced to Your Worship. It has not been acted upon since it has been given by any one of the 906 or any other person.

All that judgment (Exh. " Z ") says is that any person claiming to have a share in the Raml lands may file an action and prove his share (vide also Exh. " Y ", judgment of Supreme Court of 1.10.1923 and also statement by advocate for Plaintiffs on p. 5 of Record).

10 Now, no one of the Plaintiffs ever acted on this judgment and it was only long after the land of Khor-el-Wassa was transferred by Abdel Fattah to Miss Rifka Aaronson and Mrs. Toba Rutman that one Ismail Hattib came forward with a claim that he was entitled to a share in this land ; his action was dismissed (Exh. 2 and 4) and he is not a Plaintiff in this action.

It is clear from the reading of the so-called Nablus judgment (Ex. " Z ") and from all other facts of the case that the said Nablus action had nothing to do with the land in dispute in this case and covered only the Raml Zeita. Plaintiffs lay much stress upon the fact that Abdel Fattah was 20 originally one of the Plaintiffs and later withdrew from the case. There is nothing in either fact as Abdel Fattah is, according to the Plaintiffs' case (see Moussa Samara's evidence, pages 63 and 67), one of the shareholders of the Raml Zeita according to Mr. O'Connor's judgment.

(3) As to the certified true copies Ex. " AA ", " BB " and " CC " it is submitted that although the Plaintiffs have filed them as certified copies they were not properly proved and not being official documents such as a judgment, notarial deeds or declarations or the like, it is not sufficient in order to prove same to produce certified copies, but it is imperative that such documents be proved by a witness who can properly testify 30 as to their proper existence and their contents and truthfulness. No such witness appeared before Your Worship and that for the simple cause that no one could testify that what these documents contain is true.

(4) It is alleged by Plaintiffs' witnesses that the Nablus case 18/22 was a result of the alleged attempt by Mr. Rutman to buy the land of Khor el Wassa (see evidence of W.1 p. 13 first two lines) : " We negotiated to sell about 3000-4000 dunums in Khor Wassa " p. 13—further :

" Trouble in the village following these agreements . . ." p. 15 . . .

" This happened before Nablus case which was caused by this event . . . Khor el Wassa was mentioned in the Nablus land case . . ." and 40 is it not most extraordinary that Khor Wassa is *not* mentioned in the said action either in the statement of claim (Ex. " DD ") or in the judgment (Exh. " Z " and " Y ").

It is the submission of the Defendants that the above fact fits much more and better with Mr. Rutman's evidence that he in 1922 did not intend nor consider the purchase of Khor el Wassa but simply negotiated the purchase of shares in the Raml Zeita, and he and others attempted the same on several occasions at a later date (Smilansky, Supreme Moslem Council and others—vide p.).

(5) Another ground of Plaintiffs' case is the allegation that this so-called 50 Nablus case was financed by Mr. Rutman and conducted by him : if Your Worship would kindly examine the evidence on this point it will be clear

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that it is nothing but an allegation and insinuation of the kind in which Plaintiffs excel with no true foundation at all: Witness 1: on page 13:—

“ . . . Rutman paid the expenses of the registered owners.
“ We only signed the powers of attorney . . . Rutman was present
“ in (Nablus) Court . . . Rutman and Jacob Samsonoff, now
“ dead, came to my house, we discussed the action . . .”

on page 14:—

“ . . . The Notary Public was in Zeita drawing up documents
“ . . . I sold jointly with others 3-4000 dunums in Masha Zeita
“ . . . Khor el Wassa was mentioned (in contract) . . .” 10

Stress is laid on the fact that the undersigned happened to act for one of the parties and gave a delegation to Mr. Mockler, a lawyer then practising in Jerusalem; see W.7, p. 36:—

“ . . . There is a delegation to Mr. Mockler by Mr. Kaisermann
“ (In file 18/22) ”.

Further, same witness, p. 57:—

“ The Defendants were guaranteed in the Court of Appeal
“ by Mr. N. Rutman . . . ” (vide Exh. “ B ” and “ C ”.)

W. 21 Hassan Said Mohamad Khalil (Labadi) p. 81:—

“ . . . calls examining advocate (J. Kaisermann) ‘the thief
“ of land ’ ” (a statement which was the subject of an apology by
advocates for Plaintiffs). 20

All this first class evidence went to support the contention that Mr. Rutman paid all expenses of the Nablus case having in view the purchase of . . . Khor Wassa.

The above evidence is not only insufficient to support such a contention but is categorically denied by the evidence of Mr. Rutman himself and by circumstantial evidence. But I shall deal with Mr. Rutman's evidence later in this analysis.

(6) Plaintiffs' other “ strong point ” is the allegation of fraud and collusion on the part of Mr. Rutman in the so called Haifa case (Land Case 10/25 Exh. “ a ” in jacket 2 of file 92/30); their evidence in support of this most serious charge is as follows:— 30

Exh. “ B ” and “ C,” the guarantees for the two appeals re the Nablus case given by M. Rutman; the reply to this is very simple and is given by Mr. Rutman in his evidence (pp. 90 & 100).

Exh. “ Y,” the Notice sent by Abdel Fattah to the President of the Land Court Nablus and advocate Najib Hakim—on 26th December 1923 announcing his withdrawal as Plaintiff from the Nablus case; how this can be evidence of collusion is not clear; Mr. Rutman is not mentioned in the document in any way whatsoever; the document is dated exactly one and a half years before the Haifa case 10/25 started. Mr. Rutman stated in his evidence on page 99:— 40

“ . . . I know there was a case in Nablus Court concerning
“ Ramel Zeita . . . Do not know parties to the action . . .
“ Did not brief counsel for . . . defendants. I did not appoint
“ Mr. Kaisermann and Najib Hakim . . . do not know Mr. Mockler,
“ the advocate . . . ”

page 100:—

“ . . . I did not know Abd el Fattah sent a notarial notice
“ to the Court asking leave to withdraw from the case . . . Exh. “ B ” 50

“ . . . I gave the bond to Abu Jazzar and have given similar bonds
 “ as a favour. Ex. “C”. 2.5.24 also given to Abu Jazzar . . .
 “ I knew the subject matter of the case, in a general manner, that
 “ it was a question of partition . . . did Abu Jazzar a favour . . . ”

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No witness appeared to testify as to why and how the notice Ex. Y was sent and Mr. Rutman has denied on oath that he knew anything about it at the time.

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10 No witness testified as to how and why the two bonds B and C were given by Mr. Rutman and he himself gave on oath a plan and simple explanation to it.

Mr. Rutman further also stated on p. 90 that he did not attend the Court proceedings in the Nablus Case ; as to the fact that the undersigned was acting apparently for the Defendants and now happens to be Mr. Rutman's lawyer, Mr. Rutman replied on p. 108 that :—

“ I never paid either Mr. Kaisermann or Mr. Mockler any
 “ money for the Zeita case . . . Mr. Kaisermann was not my
 “ general legal adviser . . . in 1922. I commenced briefing and
 “ working with Mr. Kaisermann in 1929 when he acted with
 “ Abearius Bey in the criminal case.”

20 (7) In his opening address and in his pleadings advocate for Plaintiffs laid much stress on the evidence of Mr. Hankin and on the so-called Wilbushevitz plan. If Mr. Hankin's evidence goes to prove anything it can only be in favour of Defendants as can be clearly seen from his evidence. Mr. Hankin says on p. 74 :—

“ . . . the title deeds contained much more land . . . the
 “ title deeds remained unchanged . . . I safeguarded the original
 “ boundaries . . . all the Bass was originally in Hadera . . . ”

on page 75 :—

30 “ . . . I did not measure the land . . . the land in dispute
 “ was never measured . . . I was told it was about 2,000 Dunums.
 “ The Kushan remained unchanged . . . ”

on page 76 :—

“ . . . The land I renounced did not belong to Zeita since
 “ the Kushan remained unchanged.”

40 And it should be borne in mind that this witness is not a witness for Defendants but was called as witness for the Plaintiffs and that rules of evidence make it clear that Plaintiffs are bound by their own witnesses. As to the so-called Wilbushevitz plan it has been clearly established in cross-examination by Your Worship that the document shown to the said witness (No. 23) is not his plan nor a correct copy of his plan and it has therefore of course not been proved, and therefore proves nothing.

50 (8) The most important question is obviously that of actual possession, or, it would be more correct to say, of actual cultivation. This is not a dispute as to whose title is better. Same as Plaintiffs say that not having been parties to action 10/25 they are not bound by it, same can Defendants say about the judgment Ex. “Z”. The whole question is whether truly Plaintiffs or any of them ever were in possession and cultivated the land in dispute. What is the evidence as to this? About 2,000 claimants claim that they are entitled to shares in this land by virtue of a registration and a judgment. Neither the registration nor the judgment establish sufficiently or at all that Khor el Wassa is covered by the said registration and/or judgment. The only means at Plaintiffs' disposal was of course oral evidence.

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That evidence they had full opportunity to lead and they have called a great number of witnesses.

(9) Out of about 2,000 claimants only four witnesses came to testify that they ever cultivated land in Khor el Wassa ; I shall deal with each of them by the order they were called.

Mohamad Mahmud Hamdan, W.2 is the first cultivator of Zeita called ; I should point out here that first witness for Plaintiffs Hussni Abdallah Hassan is a teacher and stated on p. 15 :—

“ . . . Never cultivated myself in Khor el Wassa.”

The second witness Mahmud describes himself as a cultivator and says on page 18 :—

“ . . . Last cultivated in 1925, cultivate in 1922, 1923, 1924.”

Now this witness seems to say that he cultivated for four years from 1922 to 1925 inclusive. No mention in his evidence of long cultivation for many years although he is aged 56–57. But the most remarkable statement of this witness is to be found on the same p. 18 :—

“ I was not one of the 906.”

If that is to be given any meaning at all, we may assume that he does not benefit by either the registration or the judgment Exh. “ Z ”.

The next witness who alleges to have cultivated is W.3 Mahmud Naddaf of . . . Attil. I think in so far as the Zeita side of the story goes this by itself is enough and I dare submit his evidence is not to be counted among the “ cultivating ” witnesses.

I shall have to deal with his evidence when I come to the question of the weight of evidence in general and with the evidence as to the alleged prevention by Government and Police of the Plaintiffs, cultivation.

Next comes Mustafa Mohamad Gdiyo, W. No. 4, who also describes himself as cultivator of Zeita ; he says on p. 24 :—

“ I used to cultivate in Khor el Wassa . . . In that year (1925) when I came to plough, the police came from Hadera and told me that the land belonged to Hadera . . . I was obstinate, so I was beaten and taken to the police station. Apart from me others came to cultivate . . . I was taken to the police with Massud el Mofal and Hassan Said Labadi.”

This statement of this witness is most remarkable bearing in mind—

(A) that Hassan Said Labadi admitted he had never cultivated in Khor el Wassa (page 81) and

(B) that Hassan Said Labadi was also called as witness and never said a word about having been out on the land and having been taken by the police to Hadera.

This same witness (No. 4) on p. 25 :—

“ . . . many persons cultivated . . . 15–20–30 at times. My cultivation was 30 D. approximately ; that would make it at a maximum calculation of 30 persons by 30 dunums 900 dunums cultivated in all.”

He further makes another remarkable statement on the same page :—

“ I know Sh. Mahmud Madaf. I did not see him cultivate in Khor Wassa.”

The person named is witness No. 3 for Plaintiffs and one who alleges he cultivated and one who named the persons who cultivated.

The next witness as to cultivation is . . . Musa Samara and his evidence will be the subject of a separate paragraph devoted to him only.

Thus the whole of the evidence of the Plaintiffs as to actual cultivation by them is made up of the four witnesses Nos. 2, 3, 4 and 19.

(10) We shall now see how far these four, of whom one is of Attil and the other is one of the original vendors, fit their respective story with that of the others. While none of the witnesses agree on the number and names of the people who cultivated in Khor el Wassa, there is one outstanding fact on which they all agree and that is that Abdel Fattah and his sons did cultivate Khor el Wassa and lived there in their own houses and that they had the ability and capability to cultivate large and wide areas of land.

W.1 on p. 15 :—

“ Abdel Fattah built the houses some 40 years ago . . .

“ Abdel Fattah was cultivating part of the lands.”

W.2 on p. 17 naming owners who were not registered, names first Abdel Fattah, and six more including himself.

Further on the same page the same witness states :—

“ . . . Abdel Fattah was not in possession *alone*, he has

“ 3 sons . . . and a nephew. They were in possession *together*.” (Underlined by the undersigned.) Later witness qualifies this clear

statement by saying :—

“ They were not in possession of *all* Khor el Wassa.” and immediately after that he adds :—

“ Abdel Fattah built a house of stone and bricks.”

In order to judge the reliability of this witness I beg to draw Your Worship's attention to the reply given by the witness to Anas eff. Khamra in re-examination :—

“ The house that is alleged to belong to Abdel Fattah belongs

“ to others—”; the house that on the previous page was “ built

“ by Abdel Fattah ” is now “ alleged to belong to him.”

W.3 when giving the names of the people who cultivated in Khor el Wassa on p. 20 gives two names and then says—

“ and many others including Abdel Fattah Samara ” ;

on page 23 this witness says :—

“ Abdel Fattah cultivated, first he had a tent, now he has a “ house.”

W.4 confirms on p. 25 that Abdel Fattah

“ had many animals for ploughing ”

and that he

“ lives on the lands of Khor el Wassa . . . since I remember he

“ had a house.”

11. Allow me now, Sir, to compare the different statements made by those four witnesses as to the actual cultivators :

The first witness, the teacher and admitting not to have cultivated himself, can give us no information as to how many and who cultivated.

W.2 mentions Tewfic Zebde, the Mukhtar, Aly Abdel Kader, Farid Ibrahim Zikrallah and himself, in all six names : but he said before Your Worship that in all “ about 30-40 persons cultivated ” (p. 19) and cannot deny having said in 1930 before Mr. Lowick that 20-25 persons only cultivated. Neither this person nor any other witness mentions any locality or area with the exception of witness No. 4.

W.3 mentions the following names (p. 20) “ Mahmud Hamdan Mohd. Khader, Mussa Sidar and many others including Abdel Fattah ” which

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including himself and Abdel Fattah will make it four names in all ; as to the number of persons who cultivated this witness says on p. 22

“ many persons were cultivating . . . perhaps 15-20 ” ;

having given names of Atil and Zeita people this would mean that in all from both villages 15 to 20 persons were cultivating.

When we turn to W.4 the number increases but not very much ; on p. 25 he says :

“ Many persons cultivated in the land, 15-20-30 at times.”

As to the names of the people who cultivated, this witness names Hassud Nufal and Hassan Said Labadi (p. 24) and of course himself three 10 in all ; now the interesting fact about this witness is that one of the three persons named by him i.e. Hassan Said Labadi has never cultivated on his own admission (p. 81) ; on the other hand he had not seen Mahmud Maddaf (W.3) cultivate in Khor el Wassa although he knew him (p. 25).

In all, and excluding Abdel Fattah, eleven names were given

- (1) W.2 not mentioned by any of the other two, himself not a plaintiff
- (2) W.3 who was not seen by witness 4
- (3) W.4 not mentioned by any of the other two
- (4) The Mukhtar— not a witness nor plaintiff
- (5) Aly Abdel Kader—not a plaintiff 20
- (6) Farid Ibrahim—not a plaintiff
- (7) Zikralla—impossible to identify
- (8) Mahmud Hamdan Mohd Khader—not a plaintiff
- (9) Mussa Sidah—not a plaintiff

(10) Massud Nufal

(11) Hassan Said Labadi—admitted never cultivated.

(12) I wish now to examine how far these allegations of cultivation by the above or any of them can be accepted as true in view of other facts which transpired during the proceedings.

It is alleged by the plaintiffs—that the sale of Khor el Wassa was 30 not known to them and that when they came to cultivate the land after the sale—it will be in October or November 1925—they were prevented by the Police of Hadera.

This evidence was obviously led with the purpose of showing that the plaintiffs did cultivate the land in dispute before the sale by Abdel Fattah and that if it were not for the unlawful intervention by the Hadera Police they would have continued so notwithstanding the sale.

It is well known and really need not be proved by proper evidence that land disputes in Palestine are numerous and that they often have fatal consequences—but even this has been proved before Your Worship 40 by the evidence of a witness for the plaintiffs ; Mr. Selim Hanna on p. 58 says :

“ I have had much to do with land disputes : small and big. Big
“ land disputes often have tragic result, fatal ones. I have never
“ had a case where 5000-6000 Dunums were taken from one village
“ to another and no dispute for 5 years.”

Bearing this improbability in mind the plaintiffs attempted to prove that there was a dispute and that the police prevented them from cultivating.

(13) The evidence to this effect is supplied by the same set of witnesses with the addition of two new ones each with his own story. 50

W.1 who never cultivated only says on p. 14 that

“ the police of Hadera prevented them ”

(the people of Zeita) and that

“ Hilmi eff. (the District Officer) sent a letter to Zeita asking them
“ not to interfere.”

10 Although this is obviously only hearsay evidence it is still of importance for the reason that it emanates from, seemingly, the most educated man of Zeita and it clearly fixes these two events i.e. prevention by Police and letter by D.O. at the same time ; on the other hand some of the witnesses clearly state that these disputes with the Police took place in 1925— and from the evidence of Hilmi eff. the D.O., we learn that he was not in Tulkarem District before August 1926 (p. 60) and that the part he played in this affair i.e. warning

“ the Mukhtar and elders of Zeita . . . not to cultivate but to
“ leave the matter to be decided by the Courts ” (p. 60),

was only as a result of Mr. Lowick’s judgment i.e. after 1931 and when witness was on duty in Tulkarem on the second occasion from April 1931 to 1937 as stated by him before Your Worship.

Other witnesses are also not quite clear about when this alleged clash with the Police took place, whether in 1925 or in 1931.

20 W.2 seems not to have been an eye-witness to any such clash ; his evidence on the subject is to be found at the bottom of p. 17 and top of p. 18 :

“ the Police prevented *us* from taking possession . . . after 1925.

“ The Mukhtar and Taufik Zbede endeavoured to plough and

“ *were* prevented from doing so. When Taufik came back from

“ ploughing *he said* he was prevented.”

30 (the underlining by the undersigned). I submit that the above citation from the Record is sufficient to prove that this witness was not personally present to any such clash and his story is purely hearsay. In addition it can be said that this would mean that witness did not go out to cultivate at all.

As to W.3 the man of Attil and the main witness as to the “ atrocities ” of the Hadera Police I dare move Your Worship to find that this witness is a liar : this is clear from his demeanour and the many contradictions in his evidence. But let me draw Your Worship’s attention to what this witness says about the clash with the Police. His story is different from that of the others in that he describes a clash with the police in connection with an attempt by Mr. Rutman to drive angle irons in the land ; on p. 19 he states :—

40 “ 1925 disputes, Nissan Rutman and Baruch Rutman and others
“ attempted to drive in angle irons. The Police were brought
“ from Hadera but we escaped. The next day we received notice
“ to report to the police in Tulkarem. Wadi Massad was involved
“ in this. Four persons were summoned with me. We are all of
“ Attil.”

50 From this evidence it seems that the incident did not take place in connection with cultivation at all but as a result of opposing Mr. Rutman to put in angle irons. It is to be noted that not one other witness mentions a word about this alleged incident, that the four persons are all of Attil and not of Zeita and that Wadi Massad who seems to have been involved in this incident has not been mentioned as a cultivator by any witness even not by this witness No. 3 (see p. 20 bottom).

This witness goes on to tell a most fantastic story about how these four persons were made to stand in the sun in Zichron Yacob for five days

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(p. 20) ; turning to page 21 the picture seems to appear as follows : witness together with other Attil people were cultivating when they saw Jews, 4 or 5 persons, driving in angle irons :

“ the plains were full of Zeita cultivators . . . we did not call for the help of Zeita people ” :

now witness says this incident occurred in June 1925—what were they cultivating in June ? Is it to be believed that they would not call the Zeita people for help if the whole story were true ?

The best to be said about this witness' evidence is that he himself had reluctantly to admit that he took Khor el Wassa lands on lease from Mr. Rutman in November 1925 and later too (p. 22 and Exh. “ D ” and “ E ”).

Next is W.4 of Zieta, who says he was in company with Hassan Said Labadi (21st W.) and that they were taken together to the Police : Witness 21 admitted (p. 81) that he never cultivated, did not say a word about all this incident, never mentioned having been taken to the Police. But it seems that this witness 4 refers to a much later period, namely that after Mr. Lowick's judgment, because on p. 24 he says that D.O. sent a notice to the elders cautioning them not to use the land ; from the evidence of Hilmi Effendi we see that this must have happened—if at all—in 1931.

(14) The plaintiffs seem not to have been satisfied with the story told by their witnesses so far, as to the interference by the Police and they have after some time and after having produced witnesses of a different line, called more witnesses in support of this story ; they are witnesses No. 13 Omar Qwaieys and W. 14 Ahmad Hassan Abdalla.

W. 13 worked, he says for Mr. Rutman, 12-15 years (p. 49) ; he was present at Mr. Rutman's wedding which was 4-5-10 years before the war (p. 50) ; he is called as an independent witness, so to say, to prove beyond any doubt the story about the clash between Zeita people and the Police : he went out on behalf of Mr. Rutman to plough the land and the Zeita people have driven them away ; they reported the matter to Hadera Police which drove Zieta people away (p. 49) ; this, he says, happened

“ many times . . . the villagers used to return to the land after

“ Rutman bought it 5-6 years ” (p. 50) ;

this witness also names the Policeman who committed all these atrocities the man then in charge of the Hadera Police :

“ Baruch was a corporal.”

We were lucky to find this man Baruch who appeared as 3rd witness for defendants and when dealing with the weight of the evidence I shall deal with his evidence more particularly.

It is respectfully submitted that this evidence of Omar Qwaieys is not true and should not be believed at all: he is most indefinite as to when he worked for Mr. Rutman and when all these incidents occurred ; there is an excellent test as to the truthfulness of stories told by people of his standard and that is the one found on p. 51 of Your Worship's record in reply to questions put to the witness by Your Worship.

One more witness the Plaintiffs had in store and that is witness 14 who could not fix the year of the alleged clash with the Police and from whose evidence it may have occurred either in 1925 or in 1931 ; he says he was watchman of the Baron's forests in Hadera for 3 years and it was

during these three years that this incident took place and that Tewfic Zbede was taken by the Police into custody and

“ placed under the cold shower ” : (p. 52)

the Police Officer he says was Baruch (p. 55) and other police were present.

His evidence in our submission proves nothing but I think I can say that it has been established beyond any doubt that his story is a pure invention ; he never was a watchman of the Baron's forests (W.10 for defence and Exh. 32 to 36, p. 120), Baruch Moskovitz (W.3 for Defence) denied on oath all these accusations as well as any stories about incidents in
10 Khor el Wassa and denied in the face of Tewfic Zbede having ever placed him under a cold shower (p. 110) ; as to the role played by Tewfic Zbede I shall deal with that in a separate chapter.

(15) As a counterpart to all these contradictions and falsities there is one thing on which all witnesses agree and that is that Abdel Fattah and his son cultivated in Khor el Wassa ; this point being important I propose to point out to Your Worship the evidence on this subject and more particularly that of plaintiffs themselves :

W.1 on p. 14 :—

20 “ I know Abd el Fattah, one of the cultivators of Zeita. He
“ has a house in Khor el Wassa.”
p. 15 :—

“ *Abdel Fattah built the houses some 40 years ago . . . Abdel Fattah was cultivating part of the lands ;* ”

p. 16 :—

“ Abdel Fattah is the owner of a house in Khor el Wassa.”

W.2 on p. 17 naming the owners mentions Abdel Fattah first ; further on the same page he says : “ Abdel Fattah was not in possession alone,
“ he has 3 sons . . . they were in possession together. They were not in
“ possession of all Khor el Wassa. Abdel Fattah built a house of stone,
30 “ and bricks.”

W.3 the witness of Attil says on p. 19 that Abdel Fattah was in possession as any other cultivator, cultivating and keeping cattle, but he too has to admit that Abdel Fattah actually cultivated ; again on p. 20, bottom, when he gives the names of some of the cultivators he adds—

“ including Abdel Fattah Samara.”

This is the more characteristic as it is a statement made by the witness in reply to a question put to him in examination-in-chief, further in cross-examination, on p. 23, he says again :—

40 “ Abdel Fattah cultivated, first he had a tent, now he has a
“ house. He had a house before he sold the land.”

W.4, although in examination-in-chief he starts by saying that the relation of Abdel Fattah and his sons and nephew to Khor Wassa was like any other villager of Zeita (p. 24), in cross-examination witness has to admit on pp. 25 and 26 :—

“ I live in Zeita village, Abdel Fattah lives on the lands of
“ Khor Wassa . . . since I remember he had a house ; (he) had
“ many cows for milk and produced dairy products.”

W.13 on p. 51 :—

50 “ Do know Abdel Fattah and his children. They ploughed and
“ cultivated the land. They are from Zeita village. The lands
“ were ploughed by him as other people of Zeita. Only Abdel
“ Fattah has a house in the land.”

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This is a reply given in his examination-in-chief ; from his cross-examination it appears at once, that he does

“ not know names of people (of Zeita).”

W.14 who tells us on p. 53 that in addition to Abdel Fattah's house there is also a house belonging to one Yosef Bakawya there but he admits that the two are relatives.

There is another witness for plaintiffs on this subject. It is Mussa Samara, but as I said before I will have to devote to him a special chapter.

Even Mr. Hankin W.20 on p. 75 says that Abdel Fattah had a house since 50 years ago in Khor-el-Wassa. 10

(16) Now having dealt with the alleged cultivation by the plaintiffs, with their being prevented by the Police from continuing in cultivation and with their own evidence as to cultivation by Abdel Fattah, I think it is right to consider what is the evidence as to the action taken, if any, by plaintiffs to recover their lost possession ; and it will soon be seen that on their own admission none of them took any action whatsoever until 1930 when Settlement proceedings started in the western part of Hadera.

W.1 on p. 15 :—

“ I never went to the Police myself in connection with the

“ possession of the Jews and never took any steps . . . I did not 20

“ go to the land when I heard of the matter, nor did I speak to Abdel

“ Fattah. Do not know of anyone who did so,”

and it is important to remember that this witness is of an educated type being himself since 1920 a teacher in Government Schools.

W.2 on p. 19 says :—

“ Did not go to the Police or to the District Officer or to

“ anyone.”

W.3 on page 21 :—

“ We did not call for the help of the Zeita people. We left when

“ we saw the police coming.” 30

on p. 22 :—

“ I do not remember if I complained to Hilmi Bey ; I did

“ not complain to any lawyer nor to any Kadi . . . I did nothing

“ about it until land Settlement came along.”

W.4 on p. 25 :—

“ I related the story in the village but did not report the

“ matter officially to the D.O. ; brought no action before the

“ police or the Magistrate.”

It is respectfully submitted that from this evidence it is clear that the witnesses themselves admit not to have taken any action whatsoever 40 and it is also obvious that if their story were true one would expect them to take some kind of action.

In this respect it is necessary to remember that the only evidence as to any action at all is that of witness 21 Hassan Said Labady who on p. 18 states that—

“ this happened after the land had been stolen. I signed the

“ complaint, many other people made complaints.”

He refers, it is clear, to the complaints allegedly made by him to the District Commissioner. Though no copy of such complaint was produced let us assume that witness made a complaint, but from his own evidence 50 on p. 78 it appears clearly that he made this complaint, if at all, some time in 1930, as on the said page he says :

" Mr. Kussa . . . was my advocate and then Selim Hanna appeared . . . because I complained to the District Commissioner . . . "

From the evidence as a whole including that of the witnesses for plaintiff Selim Hanna and Hilmi Husseni it appears clearly established that from the year 1925 and until 1930 at the earliest no one took any action whatsoever.

10 (17) In connection with the weight of evidence it is most important to consider the question of Tewfic Zbede ; this person is being referred to by nearly all witnesses for plaintiffs and is supposed to have been the ringleader of the opposition to the alleged theft of the land and the one who suffered most.

The first witness Hussni Abdalla Naaman, the teacher, whose evidence is obviously hearsay, also refers to Tewfic Zbede and on p. 14 he states :

" . . . cultivators of Zeita . . . others of Zeita, Tewfic Zbede . . . the police prevented Tewfic from cultivating . . . "

W.2 on p. 17-18 states :

20 " The Mukhtar and Tewfic ez Zebede endeavoured to plough and was prevented from doing so. When Tewfic came back from ploughing he said he was prevented for what reason I am not certain. He was in prison a few days."

W.14 on p. 51 :

" . . . The Police of Hadera . . . took some of them into custody. Tewfic Zbede was one, he asked me to go to the police station. I did so and took from him a message that he was arrested. He was placed under the cold shower."

The same witness on p. 54 :

" I saw only one incident when Tewfic and Radwan were taken . . . "

W.5 for Defendants Baruch Helbetz in cross-examination on p. 114 answered in reply to question by Abdel Latif Salah :

30 " I know and recognise Tewfic Zubeidi . . . he did not encroach upon Rutman land."

Obviously Tewfic Zbede was then in Court.

Tewfic Zbede was also present during previous hearings as well on at the day before the last hearing, on the 13th of January 1943 in the morning when W.3 for Defendants Baruch Moskovitz gave evidence and in cross-examination he replied to question by Abdel Latif Salah on p. 111 :

40 " I did not put that man under a cold shower on a rainy day " ; from the note by Your Worship preceding this statement it is to be seen that witness was referring to Tewfic Zbede which means that Tewfic was in Court that day too.

Still advocate for plaintiffs never thought of calling him as a witness or even applying for leave to call him at the end of the evidence for Defendants as he did on 14th January (pp. 121, 122) when he asked for leave to call five fresh witnesses.

(18) It is now very material to consider whether it is possible and whether it can be believed that such a thing as the story told by the plaintiffs happened at all, namely : the sale by non-owners of an area of over 5000 Dunums and the owners not objecting at all.

50 With reference to this question, which is in my submission of primary importance in so far as the question of reliability of witnesses goes, I wish to draw Your Worship's attention more particularly to the following facts :

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Plaintiff's story is that the whole transaction was a collusive and a fraudulent one and that it was kept as a secret (p. 66) which ought not to be known to the people of Zeita and which finally became known only as a result of the vendors talking

"about the sale to their (our) women and so the tale was spread." (p. 71—evidence of W.19 Mussa Samara). On the other hand it has been established by evidence that the land was measured sometimes before October, 1924, that it was again measured and marked with angle irons sometimes after June 1925, that the Mukhtars of Zeita and Attil were present at the survey and have signed the plan and that very many people, 10 admittedly, signed declarations in 1925 and 1926 to the effect that the land was the property of Abdel Fattah Samara.

(19) It is now interesting to examine the evidence of two absolutely independent witnesses to examine on this question of the alleged cultivation by plaintiffs or some of them as well as on the alleged interference by the Police against the Zeita people and in the light of that evidence it will be obvious to Your Worship that all the stories told by the witnesses for plaintiffs are not true and most improbable. I am referring to the evidence of W.15 Selim Hanna and W.17 Hilmi Hussein.

On p. 57 W.15 says :

"I received no complaint from any civilian . . . interrogated
" people from Zeita Attil and neighbouring villages . . . I went to
" the land to verify the plan produced ; the map was signed by
" the Mukhtars of Zeita and Attil . . . I think the persons who
" signed the map must have confirmed their signatures." 20

On p. 58 :

"I have had much to do with land disputes : small and big. Big
" land disputes often have tragic results, fatal ones. I have never
" had a case where 5000-6000 Dunums were taken from one village
" to another and no dispute for 5 years." 30

From other statements by the same witness we know that he had a " long service " as a Police Officer.

W. 17 starts his evidence on p. 60 by saying that he came to Tul Karem as District Officer in August 1926, and remained till August 1927 ; he then returned in April 1931 and remained till 1937. From his evidence it is clear that except for his warning the villagers after Mr. Lowick's judgment, i.e. after 1931, nothing else came to his knowledge concerning this land. In 1931, witness learned " that the people of Zeita wanted to plough (the land) a result of this (Mr. Lowick's) decision "—witness then

" called the Mukhtar and elders of Zeita and warned them not to
" cultivate." 40

Any reference by other witnesses to warnings by the D.O. in 1925 after the sale are pure invention ; in connection with the above quoted statement of this witness it is interesting to emphasize that only Zeita elders are being mentioned while Attil is not even mentioned by him.

There is a further important statement by this witness on p. 61 where he definitely states that

" in 1926 I heard nothing about any trouble in Khor el Wassa.
" There was no breach of the peace during my term of office." 50

No better evidence can be produced to establish the fact that no " trouble " 50 and no " breach of the peace " occurred in connection with this land at any time during 1925 or at any later time.

(20) One important " personality " appears in the evidence of plaintiffs and something should be said about him, that is Mussa Samara, one of the original owners and vendors.

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10 It is our submission that Mussa made a most pitiable and disgraceful appearance and perjured himself all through his evidence. He was born on the land in Khor el Wassa and not in Zeita, to his father, who drove him out of his house (p. 72) and who is, nevertheless, " not untruthful " (p. 67) nay, he is " the first of the most truthful men in the locality " (p. 68). Why did his father make him and his other brothers partners in the land is a matter for pure speculation, as no evidence either way was led on this point. Abdul Fattah may have been moved by the old custom prevailing among Badawi people or by any other reason. Mussa unquestionably agreed with his father's actions and instructions. He himself admits that, but he denies having shared the profit, the purchase price, with him or his brothers. All he got was LP.1.500 (pp. 64 and 72) while simple villagers of Zeita who admitted that Khor el Wassa belonged to Abdel Fattah received LP.3.

20 Mussa wants to appear as somebody who did a wrong and now wants to repent and make a clean breast of it. It is my respectful submission that the only construction to be put on Mussa's evidence is that he perjured himself either for consideration or as a result of fear and threats.

The following passages from his own evidence will go to support my submission that he is not speaking the truth :

His story on p. 67 about the attempt by some 8 or 10 people who having attempted to cultivate were driven off by the Police, and two of them came to witness' house in the Khor and none of them cried out against Abdel Fattah or his sons, although they, the two, were not relatives of Abdel Fattah (p. 71). The villagers who came to plough were 600 metres away and witness could not recognise them.

30 Haim Rutman, Mr. N. Rutman's brother, and Mr. N. Rutman himself, says Mussa on p. 65, told him not to come ; this was denied on oath by Mr. Rutman (p. 94).

" When the sale was made . . . we were told by Rutman " that if we mentioned the matter we should be imprisoned," (p. 66) is a most fantastic and ridiculous statement in view of the evidence that the action took place obviously in open Court, that inspections and surveys were carried out before and immediately after the sale and that nothing of the kind can be a subject of secrecy.

40 On his own admission this man sold his share in the Musha of Zeita first to Abdel Halim and then to the Supreme Moslem Council (p. 67).

" My father (Abdel Fattah Samara) is indebted (to Mr. Rutman) " for over LP.1500 and (his) properties are attached by Rutman." (Statement by Mussa on p. 68.)

the truth is to be found on p. 92 of Mr. Rutman's evidence and in the Exhibits 14, 15 and 16, judgments to the grand total of LP.100 approx.

On p. 68 Mussa further makes the following admission :--

" Rutman bound us with bonds for money which he keeps.

" They were made before the sale . . . My father made these

" senads. I have never seen them and do not know their contents."

50 Witness himself admits in the last part of this statement that what he said at the beginning of the same phrase was either hearsay or pure imagination.

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We have it in evidence that no such sanads were taken except for the sale itself and the discharge for the purchase price.

Further, witness says that he "never signed a power of attorney to Mr. Kaisermann" (p. 69), exhibits 1 and 3 plainly contradict and destroy this statement, not only once did witness sign a power of attorney to the undersigned advocate, but twice, in two different cases.

The most striking statement of this witness from this point of view is to be found on p. 72 :

"I came out in the bus, yesterday 4.30 p.m., I paid the fare myself."

This needs no comment.

It is our submission that in view of the evidence I will analyse in the following chapter, Mussa's evidence has been obtained by most improper means and should therefore be completely disregarded.

(21) The defendants have led evidence to show that pressure and threats had been exercised on Abdel Fattah and his family for a considerable time. This is a short résumé of the evidence.

W.1 for Defendants on p. 94 :

"I did discuss the giving of the evidence with Abdel Fattah and

"I think his son Selim was present. This happened in my house

"in Hadera. Abdel Fattah came to me and told me he was being

"pressed to give false evidence and was being threatened. I did

"not call Abdel Fattah to me."

Although Mr. Rutman was cross-examined at a very great length not one question in cross-examination had been put to him by plaintiffs' advocate on this subject which would in our submission amount to acquiescence on their part to this statement.

But this is not the only evidence, and there is better evidence in the form of circumstantial evidence contained in the information given to the Court by W.2 for defendants, Police Inspector Mittelman of Hadera; the two incidents reported by him both show that Abdel Fattah and his family were subjected to threats and actual acts of violence. One incident occurred on the 8th of October, 1942, when a horse which was tied outside the yard was not stolen, but shot and killed. The second incident occurred on the 31.12.42 when two shots were fired into the house. The witness who is an experienced Police Officer and has been in this District since 1932 states without hesitation that the two incidents were "either a threat or retaliation" (twice on p. 109) and in the two cases the tracks led in the eastern direction (twice on the same page).

(22) In the circumstances and in view of Abdel Fattah's age it was not within defendants' power or right to bring this man as a witness and they were advised not to call him, but there is in the file voluminous evidence by others as to Abdel Fattah's rights of ownership, his cultivation, his actions including the sale which is sufficient for defendants' case. Also his possession and cultivation for some forty years prior to the sale to Mr. Rutman.

(23) Before concluding the analysis of the evidence of plaintiffs and before I proceed with the evidence of the defendants I wish to deal with two more chapters namely (a) the evidence of Mr. Hankin and (b) the part played in this case by Mr. N. Bentwich, once Attorney-General of the Government of Palestine.

(24) Mr. Hankin gave evidence before Your Worship in Tel-Aviv on the 14th of December 1942 and the following most important and material

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points were made out by him: the eucalyptus trees on the outskirts of Hadera did not mean that any land beyond such trees were not Hadera land, that the Kushan of Hadera contained much more land and that excess Mr. Hankin was told 40 years ago, was about 2000 Dunums, that the title deeds were never changed, amended or corrected, that the area in excess—or in dispute—was not measured and that he safeguarded the original boundaries (pp. 74 and 75).

(25) As to Mr. Bentwich's part in this case this is a special chapter.

10 That the then Attorney-General took exceptional interest in the case is quite clear from the following:

He instructed Mr. Kussa, then a Junior Government Advocate, to act as attorney for a then plaintiff (Ex. O.H.C. 58/30 and Exh. 17); notwithstanding the rebuff by the High Court, he ordered a Senior Police Officer, Mr. Selim Hanna, to act for another plaintiff in a capacity of a "friend" (pp. 56-57); the then Attorney-General obviously himself offended against the law by instructing a non-lawyer to act in legal proceedings as a friend of a person whom this non-lawyer never met; he instructed the then Solicitor-General Mr. Drayton himself to visit the land with Mr. Selim Hanna; he instituted criminal proceedings against 20 Mr. Rutman and, when the Examining Magistrate refused to commit, he gave himself an order of committal (p. 56 and Exh. 11 and "M"); he also ordered another officer of his department, Mr. Kantrovitch, to act as assistant to Mr. Selim Hanna (p. 58).

Is that usual?—to this question Mr. Selim Hanna, witness for plaintiffs, gives the reply himself: on page 58 he states:

"I never before in all my long service ever received similar instructions and I never heard of a similar instance . . . I considered the whole matter strange."

30 Now there is other evidence as to the role played by Mr. Bentwich but I think it is sufficient to refer to Mr. Selim Hanna's evidence, he being a witness for the plaintiffs.

No explanation is tendered by anyone as to why the Attorney-General of the Government should himself take such a lively interest in a dispute between individuals; the only explanation is that given by Mr. Rutman on pp. 93, 94 and 103.

Page 93:

40 ". . . I know Mr. Bentwich, he was the Attorney-General . . .
"I had dealings with Mr. Bentwich, he caused us a lot of trouble
". . . we desired to transfer part of the area . . . and Mr. Bentwich
"stopped the transaction . . . we brought a High Court action
". . . Government brought an action in the Court of Haifa. The
"Government contended the land was Mahlul . . . that was not
"the end of my relations with Mr. Bentwich. After some time
"criminal proceedings were brought against me";

the Examining Magistrate having dismissed the charge, Mr. Bentwich "was not satisfied with this judgment. He remitted the documents to "the District Court for trial . . . (p. 94) I was acquitted . . ."

p. 94:—

50 ". . . this was not the end of Mr. Bentwich. He again in
"1930-31 re-opened the matter . . . started to intrigue in the
"area. He sent Mr. Koussa to Land Settlement . . . the High
"Court ruled that the A.G. could not delegate . . . Mr. Koussa . . .

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“ Mr. Bentwich did not stop there, he sent Selim Hanna a police officer . . . Selim Hanna appeared with Mr. Kantrovitch of the legal Department.”

Also on p. 94, Mr. Rutman explains :—

“ Mr. Bentwich took all this interest because he asked Mrs. Fels to give the land for the purposes of Jewish Settlement.”

On p. 103 :—

“ Mr. Bentwich asked first Mrs. Fels for the land . . .

“ Mr. Bentwich wanted Mrs. Fels to make a gift of the land for a Jewish Settlement . . . I did not refuse, only Mrs. Fels refused, 10

“ Mr. Bentwich’s actions against me were absolutely unjustified.

“ Mrs. Fels told me that Mr. Bentwich had asked for the land.”

(26) The above evidence together with all the documents—official documents—produced in support are sufficient proof that the then Attorney-General acted in this matter in a way not to be expected from an Attorney-General and was himself the cause and reason for dishonest and baseless claims being brought by the Zeita and later also by Attil people (vide. Exh. “ Q ”—“ P ”—“ M ”—10—11—12—13—17).

In this country where false claims to land are a very usual incident, it is easy to imagine how the special interest and help of a man of the position then held by Mr. Bentwich could intensify the appetite of the usual land-mongers and push them to develop it into the magnitude this case took. 20

(27) What is the defendants’ case—is the subject I propose to deal with now. The defendants were at the opening of the case for plaintiffs charged with fraud and collusion but in their final pleadings plaintiffs now allege fraud and collusion by Abdel Fattah and in their summing-up they now say : “ I would add that the judgment of the Land Court Haifa was obtained by misrepresentation by Abdel Fattah whether the interference of Rutman is proved or not . . . ” 30

It is the submission of the defendants that matters such as fraud or collusion must be clearly pleaded and definitely proved, and they further submit that there was no clear allegation as to what was the fraud and by whom it was done, nor was there evidence for such a finding. Your Worship is hereby respectfully moved to find as a fact on carefully weighing the evidence of the parties that plaintiffs failed to prove fraud and/or collusion and having made this finding Your Worship will, it is respectfully submitted, find that defendants are the bona fide registered owners of the property in dispute by virtue of title-deeds, possession, cultivation and payment of taxes, Bedl el Misl. 40

(28) Mr. Rutman’s evidence being the most important evidence for defendants deserves particular analysis and the undersigned shall now endeavour to draw Your Worship’s attention to some of the most material parts of his evidence in so far as they were not dealt with in other chapters of the submission.

Mr. Rutman’s story is, concisely, as follows :

He is a landowner and dealer in land ; has property in very many places in Palestine ; some of it for himself, some for speculation. As far back as 1922 he negotiated the purchase of shares in Musha Zeita through Abu Jazzar, and others of Zeita ; paid some 2,500–3,000 Pounds and 50 obtained from the prospective vendors notarial deeds for amounts exceeding the amounts actually paid ; this seems to have been a way of securing

purchaser's rights in certain area, also in Beisan (p.); part of this money was repaid by vendors, some repaid after warnings have been issued to them by the Notary Public, some without such warnings (p. 89); in all about 2,000-2,300 pounds were repaid (p. 89); a similar endeavour was made by Mr. Rutman to buy shares in Musha Zeita in 1933 through Abdel Halim of Tul Kareem, and photographs of contracts which Abdel Halim had with Arabs were produced by him (Ex. 19); Mr. Rutman stated on oath that the Musha Zeita negotiations of 1922 had no connection with Khor el Wassa (p. 90); he denied any particular interest in the cases going on between the Zeita people as to the Musha lands and explained that he gave the two bonds (Exh. "C" and "D") to Abu Jazzar as a favour.

He further states that in 1924 Abdel Fattah who was with the Mukhtar of Zeita asked him to buy Khor al Wassa; witness knew Abdel Fattah for the last 40 years or so; Abdel Fattah had no kushan and wanted to obtain new registration; witness did not know the exact area or boundaries and instructed surveyor Mr. Epstein to draw a plan; parties agreed on a lump price of 8,000-9,000 Pounds and as the then Mukhtar of Hadera refused to sign the plan and certificates (p. 90) he had to bring an action (L.C. 10/25); after judgment had been given, Mr. Rutman had the land registered and paid on Abdel Fattah's account 5 per cent. Haq el Karar as ordered by the Director of Lands (see evidence of Mr. Assad Nissen on p. 119); he settled his accounts with Abdel Fattah and had part of the land transferred to the name of defendants Mrs. Tova Rutman and Miss Rivka Aaronson; the remaining part was transferred only after about one year as witness was to obtain special instructions on this subject from Mrs. Fels; on the completion of the purchase witness had the land properly handed over to him and iron-angles were put in on all boundaries, a work which took 5 to 6 days and which was carried out without any disturbance (p. 91); in October or November 1925 the land was first ploughed by Rutman or on his behalf, there never was any disturbance and witness did not call for the Police; among the main lessees of the land was Abdel Fattah and his sons who paid reduced rent as compared with other lessees and who also paid rent for the houses they were dwelling in (p. 92); Jews and Arabs of different villages—Attil, Nafiath, Salt, Baka and others—were the lessees.

Some time in August 1925 one Saleh Ismail Khatib filed an action in the Land Court of Haifa (L.C. 39/25) claiming that Khor el Wassa was part of the Musha lands of Zeita (p. 94 and Ex. 2-4); this prompted Mr. Rutman to ask Abdel Fattah to obtain declarations from people of Zeita confirming his, Abdel Fattah's, rights to the land and the first of such declarations was obtained on the 29.9.25 (Exh. 6).

After the action of Ismail Khatib was dismissed, both in the Land Court and in the Court of Appeal, everything was in order in connection with this land and nothing disturbed the defendants' ownership and possession, but after some time, namely in 1927, Mr. Bentwich started his actions against Mr. Rutman (Exh. 10).

It was not until Hadera was declared Land Settlement Area that any claimant appeared at all; first it was on a small scale and then slowly the number increased, first some people of Zeita, then Attil joined in too.

Since the purchase and until this day defendants are in undisturbed possession of the whole land in dispute, they sold part of it, they lease it, they pay the taxes on it and they are the actual owners of same.

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(29) It is submitted that the evidence for the defendants destroyed completely the story of the plaintiffs and all the circumstantial evidence goes in our submission to support our evidence as against that of the plaintiffs.

We wish only to draw Your Worship's attention to an instance which is just an illustration of the misleading way in which plaintiffs conducted their case.

On p. 101 in cross-examination Mr. Rutman was asked to look at map W in case 92/30 jacket 2 and having answered that he could read Latin characters, was asked whether Hadera was stated to be the western boundary and to this he replied in the affirmative. The question as put was, however, deliberately misleading, as the western boundary is described on that map as "forest of Hadera" and not just "Hadera".

This is just one small, but characteristic, instance which illustrates a lot.

(30) I have now to devote a few paragraphs to the so-called final pleadings of the plaintiffs and to draw Your Worship's attention to some irregularities therein contained:

(A) As to their "First point," para. (4) (page 2 in our English translation) of the said pleadings, it is respectfully submitted that no exhibit S/1 has been produced and that the so-called Wilbushevitz plan has not been proved.

(B) In the same para. reference is being made to a statement allegedly made by Mr. Hankin to Mr. Lowick; it is respectfully submitted that although Mr. Lowick's record and other papers had been put in through the medium of Mr. Goral being called as a witness, but Mr. Lowick's record was not proved and the statement alleged to have been made by Mr. Hankin was not put to him, and he did not confirm it.

(C) It is Defendants' submission that Mr. Hankin's statement to Your Worship that "the evidence I gave then is true" does not cover the point in issue and it is not sufficient according to the law of evidence to prove an alleged previous statement by the same witness.

(D) It is further submitted, with reference to the "First Point," para. (7) that any references to findings by Mr. Lowick are irregular particularly as they were not proved; in addition it may be said that Mr. Lowick's findings as to boundaries were held by the Privy Council to be a mere administrative act.

(E) As to para. (8) this is denied and it has never been proved, nor attempted to prove, that any of the Exhibits "AA-BB-CC" bears the signature of Abdel Fattah and here I would repeat what I said at the beginning of this analysis that none of these three exhibits was properly proved.

In this connection it should be remembered that there is overwhelming evidence in the file and exhibits that Abdel Fattah could not sign his name and always used his finger-thumb instead (Exh. "L," "W," 1, 3 and 8).

Further it must be said that it is most surprising, curious and suspicious that the above three exhibits all relate to the same year of 1919 and that no similar agreements were produced or even alleged to have existed at any other time, either before or after 1919.

(F) As to the "Second Point," para. (3), Your Worship's attention is again drawn to the words "whether Mr. Rutman participated in that fraud or not" at the end of the first sentence of para. (3) above.

As to the second clause in the same para. (3), regarding Mr. Rutman, exception is strongly taken to the reference to Mr. Lowick's findings on this subject; fraud is a matter which cannot be inferred and must be definitely established and proved beyond any doubt.

(G) As to para. (4) of the "Second Point" (page 5) it is respectfully submitted that nothing of the allegations contained therein has been proved and not one witness was called to state that this action LC 11/24 was a fictitious one, or that it was a collusion in which Abdel Fattah took part and that Mr. Rutman had anything to do with it; short of such evidence any other allegations are entirely irrelevant to the question in issue in this Kefar Brandeis case.

(H) In this para. (4) of their "Second Point" reference is again being made to a finding by Mr. Lowick; our objection in para. (F) of this chapter (30) applies to this reference as well as to any other references to similar findings.

(I) Mr. Rutman has specifically and solemnly denied having ever attended the Nablus or Tul Karem Land Court and this disposed of the reference to the evidence on this subject of W. No. 1 for plaintiffs mentioned in plaintiffs' pleadings in the third sentence of para. (4) of their Second Point.

(J) Neither the extract from the statement of Elias Khattar in the fourth sentence of the said para. has been proved nor has this alleged statement as a whole been proved and it was not put to the witness when in the box before Your Worship; it may be added that there is nothing in this extract of the alleged statement which is in any way relevant to the questions in issue before Your Worship.

(K) Mr. Rutman denied on oath to have known anything at that time about the withdrawal of Abdel Fattah from the Nablus Case, he has explained the giving of the two bonds ("C" and "D"); this disposes of the two items to be found in sentences 12 and 13 of para. (4) of the Second Point (page 6).

(L) As to the next sentence it has already been stated by the undersigned that it is incorrect and misleading to say that the western boundary on plan ("W") is described as "Khadera" and that in fact it is described as "Forest of Khadera."

(M) The statement concerning the undersigned contained in the last four lines of the second clause of page 7, beginning with the words: "and it is not possible for Mr. Kaisermann to tell," is unintelligible and it is proper here to draw Your Worship's attention to the following two facts:—

40 That Mr. Kaisermann was summoned as a witness and had actually gone into the witness box and taken the oath, and then plaintiffs dispensed with his evidence without asking him one single question:

That Mr. Najib Hakim was also summoned to appear and had actually appeared but was dispensed with.

(N) Reference in the pleadings to one Mussa Nasser having withdrawn his action against the Haifa judgment after having visited the office of Mr. Najib Hakim is a pure invention, and there is nothing in the record to allow such a statement in the plaintiffs' pleadings.

50 (O) It is to be noted that plaintiffs in their pleadings lay particular stress on a notarial deed signed by Tewfic Zbede with others, and this they do notwithstanding the fact that they did not call him as a witness although

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he was present during the major part of the proceedings, and nothing was tendered in evidence or said to show that there was any reason why plaintiffs could not call him as a witness.

(P) There is no evidence whatsoever that any of the documents produced were written by Mr. Najib Hakim as alleged by plaintiffs in their pleadings.

(Q) Not one of the persons who signed the Notarial Declarations came forward to give evidence as to how and why these were given and obtained and the only evidence on this subject is that of Mr. Rutman which thus being uncontradicted, ought, in our humble submission, to be fully accepted. 10

(R) A few words must be devoted to the evidence of Hassan Said Labadi on whom plaintiffs lay so much stress in their pleadings and urge that his evidence be accepted as true: It is obvious that his story is a lie from the beginning to the end: his story (p. 79) that he brought a letter from Mr. Rutman to the undersigned with instructions to pay him LP.50.— and that after having received the LP.50.— he returned to Hadera to see Mr. Rutman in order to get from him one additional pound (p. 80) is so ridiculous and incredible that this by itself should be sufficient to discredit this witness; a further point is that he himself says that he received the 50.— pounds and next day he brought a claim on behalf of his aunt (p. 82) 20 but the most important evidence as to the veracity of this man's story is his own admission on p. 81 that he never cultivated the land, and it is most unbelievable that Mr. Rutman would pay a person who was not a real cultivator at all such a large sum of money.

(S) Plaintiffs' comments on Mr. Rutman's evidence are misleading and entirely false and all we have to do is to refer Your Worship to the official record and to move respectfully Your Worship to accept his evidence as true and sound.

(T) Defendants' entirely agree with Plaintiffs' statement in the second part of para. (4) of Point Three: "Would it not be astonishing for 30 Mr. Rutman to reach Khor el Wassa without opposition by any one?" And the false and ambiguous evidence on the alleged opposition and clashes with the police not being even certain as to whether it happened in 1925 or 1931, when compared with the evidence of witnesses for defendants and with that of Mr. Hilmi Hussein, is sufficient to make it clear that there was no opposition, as there could be none, the whole story of the plaintiffs being false.

(U) Most curious is the argument of plaintiffs that all people who opposed or wanted to oppose were paid; if that is true, it would mean they all renounced their claims, if any, for consideration, unless of course 40 plaintiffs think that Hassan Said Labadi's conduct is proper and honest.

(V) Pica registers (Ex. 32-36) were brought only in order to destroy the evidence of Ahmad Hassan Abdalla (W. 14) and plaintiffs seem to have forgotten that this witness clearly stated on p. 55 that:

"I left Aly Samson in 1933, worked in the eucalyptus 3 years.

"I worked as a coachman before I was a watchman, I worked

"13 years for Aly Samson. I first worked as a watchman. The

"incident occurred during my service as a watchman."

If witness left A. Samsonoff in 1933 and worked for him 13 years he must have started about 1920, he says himself he first worked as a 50 watchman and says he did so for three years; allowing for a mistake on his part, he may have been a watchman until 1925, but certainly not

until 1931, if the alleged incident would have occurred in 1931 all witness would have had to say would be that the incident occurred three years or about three years before he left Samsonoff.

It is clear in our submission that Ahmad Hassan's evidence related to 1925 or 1926 and could not have related to 1931 and we therefore produced the said Ex. 32-36.

(w) The last part of the Plaintiffs' pleadings and just before their so-called summing-up is entirely unintelligible.

In conclusion we beg to apologise for submitting such a lengthy analysis which we respectfully pray Your Worship to read as part of the main pleadings and memorandum of Abcarius Bey.

27.2.43.

(Sgd.) J. KAISERMANN.

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REPLY by Plaintiffs to Defendants' Final Pleadings.

(Translation from Arabic.)

Khor el Wasa'.

Kfar Brandeis (1)

Before : THE SETTLEMENT OFFICER, HAIFA.

Defendants' pleadings together with what they call "Memorandum" and "Analysis" were received by me on 11.3.43. Mr. Abcarius, who began his pleading with a greeting addressed to us that we do not understand our case, gave a long and confused story from the time that Abdul Fattah Hiri' Samara instituted a case in the Land Court Haifa as if the said Abdul Fattah Hiri' Samara had no connection with the Nablus Land Case. Abcarius Bey explained how a map is prepared, then referred to Mr. Bentwich and criticised the Land Court Haifa and the Supreme Court, for both Courts have dismissed his appeals from the decision of the late Mr. Lowick against whom Abcarius Bey had also something to say in a special part of his memorandum. Abcarius Bey then attempted to win the case by referring you more than once to some paragraphs which pleased him most of the judgment in High Court application No. 76/42 which was an application for change of venue, intending thereby to arouse your feelings against us ; but High Court Case No. 76/42 is not part of this case and no evidence was heard therein. At any rate, I shall answer his pleadings in the order which he chose though the said order is confused.

(1) In part 1 of his pleadings he attempted to deny the erased plan produced by Rutman and drawn up by Epstein and Yousef Musallam relying on two passages in the evidence of the latter, the first, in reply to a question put to him by Othman Eff. Bushnaq, Advocate "that the first heading inserted by him namely (Zeita-Tulkarem) was due to a mistake on his part." Yousef Musallam put it clearly that he inserted the heading (Zeita-Tulkarem) and that he rubbed same later at the request of Rutman. Why did he insert the heading (Zeita-Tulkarem) and what was the purpose ? He must have inserted that name because he must have known that to be certain. In fact, the witness in reply to the question of Othman Eff. said that it was a mistake. What was the cause of the mistake ? It may be explained that he did not follow the instructions

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of Rutman, the person who asked for the plan. The same witness had previously said before Mr. Lowick that he inserted the first name because he saw eucalyptus trees on the western boundary. The following quotation is from his evidence: "I thought the land belongs to Zeita, because I saw the eucalyptus trees." There is ample evidence that the eucalyptus trees were planted on the boundaries of the Nufeat lands, now Khudeira. Raml Zeita is bounded from the west by the Nufeat. See the Tabu Extract and the evidence of witness No. 6, the Assistant Registrar Tulkarem, on the question of boundaries, at page 36.

Again, Yousef Musallam was asked finally by the Attorney of the 10
Plaintiffs "what did the Mukhtar of Zeita attest?" and the reply was:
"The Mukhtar of Zeita attested the correctness of the boundaries shown
on the map." This is natural for this is not an attestation to the effect
that the land is from Khudeira.

The western boundary of Khor el Wasa' as shown on the map is
Khudeira Forest. The forest lies on the eastern boundary of Khudeira
(Nufeat). The presence of that boundary on the map is sufficient by
itself to render the erasure and the insertion of the word (Khudeira) a
clear contradiction. I shall deal with this aspect of the matter in my
reply to the pleadings of Mr. Kaisermann. Mr. Abcarius alleged in his 20
pleadings that the Land Court Haifa and the Supreme Court Jerusalem
dismissed our contention that the map was forged. There is not the
slightest evidence to support this allegation and we therefore treat it as
imaginary.

(2) Here Abcarius Bey attributed to Mr. Bentwich the then Attorney-
General scandalous accusations, accusations mentioned by Mr. Rutman
in his bare evidence: "Mr. Bentwich wrote a letter to Mrs. Fells asking
her to give this land of Khor el Wasa' etc.," This is a strange daring on
honesty, honour and truth for nothing better can belie these disgraceful 30
accusations than the silence of Defendants during the long period preceding
Mr. Bentwich's retirement from the service or even after when it would
have been possible for him to prosecute criminally the above named.
In the many and long sittings before the Settlement Officer, the late
Mr. Lowick, neither Abcarius Bey nor Kaizermann nor Rutman dared to
speak anything of that sort. They have, however, on more than one
occasion complained to the High Court of Justice against Mr. Bentwich,
but on none of those occasions did they dare to invent such a story.
Abcarius Bey alleged that Mr. Bentwich sent a letter to Mrs. Fells but he
did not produce that letter to support his allegation or adduce any oral
evidence. It is to be remembered that Defendants' Attorneys strongly 40
objected to a question put by Plaintiffs as to the connection between
the dismissal of the two officers (namely, the Judge of the District Court,
Haifa, and the Land Registrar, Haifa) and these fraudulent acts on the
ground that there is no proof. Defendants' Attorneys, as one observes,
now attribute to Mr. Bentwich matters which if true would constitute
a crime but they adduce no proof. It is known that Mr. Bentwich in the
course of his duty condemned the usurpation by Rutman by means of
fraudulent acts, of part of the Masha' lands which Zeita villagers had
obtained by virtue of a judgment confirmed by the highest Court in the
country. The prosecution of Rutman and his partners by Mr. Bentwich 50
is a virtue but this virtue in the eyes of Plaintiffs had become a vice
because it did not suit their wishes.

(3) Both Abcarius Bey and Mr. Kaisermann discussed in their pleadings and analysis that Rutman or Abdul Fattah paid 5% Bedl el Misl as the price of the land and that they further paid LP.1000 to Government on the agreement. If Mr. Bentwich or any other person on behalf of Government had compromised with defendants as to Government's claim to treat the land as Nahlul this does not affect the established rights of the villagers whose rights have been registered as a result of the judgment of the Land Court Nablus (Case No. 19/22), confirmed on appeal by the Supreme Court. The acts of employees do not annul judgments.

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10 (4) From the diversities and oddity of Mr. Abcarius I quote the following :—

“ The land of Zeita was brought under settlement. No claim
“ was made that Khor el Wasa' was a part of the Masha' land of
“ Zeita.”

Mr. Abcarius did not mention how it was possible for Plaintiffs to submit a claim at the time when the case of Khor el Wasa' was in the Privy Council and the notice of settlement did not include Khor el Wasa'.

20 (5) Mr. Abcarius further stated that the claimants of the Zeita lands were not those referred to in the Nablus judgment. The judgment of the Land Court Nablus dealt with the Masha' nature of the land and was not confined to those in whose favour judgment was given before, but the judgment was one to the benefit of all villagers of Zeita big or small and undoubtedly the number of the villagers and their names are apt to change. In this connection, the Supreme Court when dealing with the Masha' lands of Beit Lid (C.A. 121/26 P.L.R. Vol. I p. 239) said :

“ It is no doubt proper that in an action of this nature the
Plaintiff should state & prove the exact share in the common lands
to which he was entitled at the date of action and this Court required
this to be done in the above quoted case of Zeita Village lands.

30 It does not follow, however, that under the custom of the village, a villager will always be entitled to the same share and the entry in the books of the Land Registry should not be in a form which would give the plaintiff a fixed share in the common lands in perpetuity.”

40 (6) The judgment of Mr. Lowick that Khor el Wasa' falls outside Khudeira and is within Zeita or Attil is *res judicata*. The judgment of Mr. O'Connor confirms this fact. When the land (Raml Zeita-Masha' Zeita) was under discussion before the Settlement Officer, Tulkarem, the latter was bound to fix the boundaries of the land and he found that it includes Khor el Wasa'.

(7) If we proved that Khor el Wasa' is covered by the judgment of the Land Court Nablus then the judgment of the Land Court Haifa fails and with it fail all transactions of sale etc. based thereon. Mr. Abcarius alleged that the judgment of the Land Court Nablus is dead and buried but he does not qualify this submission. The submission therefore is not based on legal grounds and there can be no answer to it.

50 (8) At the end of his pleadings, Abcarius Bey says : “ As an illustration of plaintiffs' misconception, I submit that the allegation that Khor el Wasa' is part of Raml Zeita is untrue.” He relies on the judgment of the Privy Council but that judgment did not deal with the merits. He further leaves the matter open to the Settlement Officer when the villagers of Zeita and Attil will be declared to be under settlement (as admitted by

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him previously.) In accordance with the judgment of the Privy Council we have addressed sufficient evidence to prove that Khor el Wasa' is part of Raml Zeita as clarified in my previous detailed pleading and there is no need to reiterate the facts here.

(9) Abcarius Bey alleged that we misled the Court on the question of prescription. As to this, we say that prescription did not run when the case was pending in Court according to Art. 1666 of the Mejelle. Abcarius Bey also alleged that our submission that Khor el Wasa' is part of Raml Zeita is misleading. He stated that sufficient evidence proved that Abdul Fattah was in possession of this land for a period of 40 years. This statement is untrue and of no value for it does not agree with the final judgment of the Land Court Nablus. The evidence adduced proved in fact that Abdul Fattah Samara was in possession, by way of loan from Zeita villagers in the Masha' and that Abdul Fattah was one of those who in the year 1919 had agreed to exhibits "AA," "BB" and "CC." In the pleadings of Mr. Kaisermann it was alleged that Abdul Fattah Miri' Samara did not sign his name. The said exhibit is signed by Abdul Fattah Miri' and others, and below the signatures the signature of Mohamed Zikrallah appears followed by the words "authorised to sign." The agreement is attested by the Department of Agriculture Tulkarem and sealed.

(10) "*The clean hands.*"

Mr. Abcarius in his pleadings said that Plaintiffs did not appear before you with clean hands and also alleged that 70% of them have misconceived their claim and 30% gave false and inaccurate statements as they have done in High Court Case Nos. 76 and 77/42. At the end of his pleadings he quoted some passages of the High Court judgment No. 76/42 which is not part of this case. He did not even exhibit a copy of the said judgment to form part of this record. The reference thereto however was nothing but to arouse the feelings of the Settlement Officer—a matter which an Advocate should not do when seeking justice. Inasmuch as Mr. Abcarius thought fit to deal with this case, it is only right that we should give our opinion in this respect lest this case should go to a higher Tribunal. Our application in High Court Case No. 76/42 included with full frankness without any accusation whatsoever two incidents:—

(1) The meeting of the Settlement Officer with the Advocates of our opponents at one hotel where they all slept; the payment by one of the opponents' advocates of the hotel bill. These facts were based on a letter from the Manager of the Hotel. The reply was that the meeting was by coincidence and that what Mr. Kaisermann paid on behalf of the Settlement Officer was returned to him. Inasmuch as the reply was on affidavit filed by the Settlement Officer in person, we accepted it in full. Is there anything in this which would wash out our statement?

(2) The departure of the Settlement Officer to Hotel Eppingert wherefrom he together with Mr. Abcarius went to an unknown place . . . The object of the application was clear, namely, to show that between the Settlement Officer and our opponents there was acquaintance and friendship which necessitated two meetings during the course of the trial of the case. This certainly affected the aspects of justice particularly in the eyes of our clients. As I said, though that was done clearly and frankly without any attribution or accusation, Mr. Abcarius however explained that to be attribution and accusation in his affidavit in reply.

Whatever the Judges may have said this does not bring the matter to an end and the legal course is still open to us. We propose to follow it at the conclusion of this fundamental case. The Judges who composed the Court did not pay attention to the repeated statement made by the Attorney of the Plaintiffs that there was no insinuation and no suspicion in the person of the Settlement Officer but that what had happened was contrary to the manifestations of justice. The High Court did not permit us to exercise our rights to cross-examine the deponents or to read further affidavits thereby contravening the High Court Rules 1937. The High Court further followed a new procedure by ordering the expenses to be borne by the Advocate who signed the application—a procedure unknown to the law of Palestine. Abcarius Bey who succeeded in his case on these lines should have avoided the discussion. Whatever Mr. Justice Copland may have said, the relation of Judges with individuals does not extend outside the Court and differs from the opinion of the public who are aware of the secrets of all persons. Mr. Abcarius swore that Mr. Kenyon did not go to him to the Hotel Eppinger, whilst in fact Mr. Kenyon did go to him that evening and both went down from the hotel and took a taxi out. You will thus know the value of Mr. Abcarius' oath and statements.

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Our case is based on law, legal proofs and credible evidence. The Defendants were unable to rebut any point. Their evidence was based on misrepresentation, falsehood and above all fraud coupled with a desire to conceal that fraud. Let us examine now the points upon which Mr. Abcarius relies. He says that—

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- (1) the judgment of the Land Court Haifa is material because the decision of Mr. Lowick was thereby dismissed ;
- (2) the Defendants have paid 5% Bedl el Misl (Haq el Qarar) ;
- (3) the Defendants were in possession since 1925 ;
- (4) the Defendants have transferred a part of the land to others in the Land Registry ;
- (5) the Defendants have paid the Werko and Rural Tax since 1925, namely the date of purchase ;
- (6) a good number of the Plaintiffs have so admitted before the Notary Public ;
- (7) the land was mahlul and that Government sold it to them in consideration of Bedl el Misl in accordance with an agreement made with Lord Plumer.

Our answer to the above has been covered on most of the points but we say that :—

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(1) The judgment of the Land Court Haifa cannot stand, it includes part of the land already covered by the judgment of the Land Court Nablus and it was obtained through misrepresentation (3, 4 & 5). So all matters and transactions whether possession, transfer, payment of werko, etc. based on that void judgment are also void and of no legal effect (5 & 6). Inasmuch as the Masha' belongs to all the inhabitants of Zeita Village, the admission made by some or most of the inhabitants does not affect the nature of the Masha' nor the rights of the others amongst whom there are minors (2 & 7). It is not true to say that the land was Mahlul. Government had claimed that it was Mahlul but its claim was dismissed

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by the competent Court vide exhibit "O." The judgment of the Land Court Nablus in Land Case No. 18/22 also rejects the allegation that the land is Mahlul. Inasmuch as the land is not Mahlul but was declared

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as Masha' for the whole villagers of Zeita, Government has no right to transfer it to others and that being the case, the agreement made between Government and Rutman does not affect the inhabitants of Zeita.

The learned Advocate Mr. Abcarius in the last lines of his memorandum says that the basis of our claim being that Khor el Wasa' is part of the Masha' lands of Zeita, under our possession and finally decided in our favour is fallacious and in violation of the judgment of the Privy Council. Mr. Abcarius did not, however, clarify this conclusion. The Privy Council did not go into the merits of the case nor have they said anything about it. The Privy Council as well as any other Court in the world will not go beyond the general principle that the first judgment which had become absolute will remain valid and that any judgment contradicting it will not be enforced unless the first is cancelled by a separate judgment. On this principle, the second judgment given by the Land Court Haifa is null and void and so are all transactions carried thereunder. Before the Settlement Officer we stated clearly that we are owners by way of Masha' in accordance with a final judgment and that if we ceased to be in possession by virtue of a judgment obtained by illegal means this will not affect our rights in the action. 10

Mr. Abcarius has mentioned several times in his pleadings that the rights in the lands of Zeita were determined by the Settlement Officer, when the lands were under settlement; that the Settlement Officer ignored the judgment of the Land Court Nablus, substituted the claimants and that his judgment superseded the old judgment of the Land Court Nablus which had therefore become of no effect. The allegation that the Settlement Officer ignored the judgment of the Land Court Nablus or that he did not consider it is another lie. The Settlement Officer took in view the number of the present claimants who have changed and increased in compliance with the judgment of the Supreme Court in the case of Masha' Beit Lid. The Settlement Officer acted in accordance with the judgment of the Land Court Nablus and in fact had applied same. 30

Reply to the pleadings of Mr. Kaisermann.

Our reply to these pleadings will follow the same numbering, i.e. item 1 of this part of our pleading is in reply to item 1 of Defendants' pleadings.

(1) Mr. Kaisermann says that we rely on the judgment of the Settlement Officer. This is wrong. We rely on the ownership of all the inhabitants of Zeita to the lands in dispute by operation of the judgment that the said lands are Masha', by possession thereof as Masha'—possession which had been interrupted on account of the judgment of the Land Court Haifa obtained by fraud which judgment is contradictory to that of the Land Court Nablus. Mr. Kaisermann denies our claim and says that the issue is whether any of the Plaintiffs and if so, who, ever was in actual possession or whether the land was the property of Abdul Fattah Samara. If we agree with this supposition then obviously the result is in favour of the Plaintiffs because their possession of the land as Masha' is established by an absolute and final judgment. Possession was not interrupted except after that the judgment of the Land Court Haifa had been obtained by misrepresentation. 40

(2) The judgment of the Land Court Nablus does not mention the name Khor el Wasa' nor the name of any of the other Khors (bights) 50

which constitute the Masha' lands of Raml Zeita but it does mention the name " Raml Zeita " with its boundaries including Khor el Wasa' and the other Khors (bights). The issue therefore, as I have previously pointed out at the beginning of the trial, is : Do the boundaries mentioned in the judgment of the Land Court Nablus include Khor el Wasa' or not ? We have proved this issue in the affirmative by oral and written evidence. Defendants say that the judgment of the Land Court Nablus is in favour of some persons, none of whom is of the present Plaintiffs and that the judgment was not executed. Why should the Defendants ignore the fact

10 that the said judgment declared the land in dispute as Masha' to the inhabitants of Zeita Village.

Plaintiffs have claimed that the land is Masha'. They proved their claim and since that time the land was held as Masha' for the whole inhabitants of Zeita. They continued to use the land as such in accordance with old custom. This alone constitutes " execution " for the land was not held by strangers to necessitate their dispossession. The land was held by the inhabitants of Zeita.

The judgment of the Supreme Court Exhibit (Y) confirms that the land is Masha', but it required to render the claim valid that each Plaintiff

20 should prove his share in the Masha', his interest in the land claimed, even if it were to amount to one share each. This had been done and proved and a final judgment declaring the land Masha' had been given. The judgment does not however include, as the Attorney of the Defendants wish to explain, that none of the Plaintiffs or of the inhabitants of Zeita will benefit unless he proves his share. If this were at all necessary, it is a matter between the beneficiaries themselves and not between one of the beneficiaries and a stranger. Every stranger to the inhabitants of Zeita had lost all connection from the time of the issue of the judgment declaring the land as Masha'.

30 The dismissal of the opposition filed by Ismail el Khatib to the judgment of the Land Court Haifa was ordered on formal grounds only and not on the merits. Ismail el Khatib as well as others were given the right to institute an independent action but at the issue of the settlement notice to Khudeira (including Khor el Wasa') the inhabitants of Zeita had filed their action which dragged for a long period for it had to come before Mr. Lowick, the Land Court, the Supreme Court, the Privy Council and now again before the Settlement Officer.

(3) Exhibits (AA, BB and CC) are exhibits produced by order of the Settlement Officer in exercise of his jurisdiction. There is nothing

40 in the Settlement Procedure Rules to prevent the production of same. Our complete reply to this, however, will be given together with our reply to clause (3).

(4) It is not important if one of the witnesses in his evidence erroneously stated that the name Khor el Wasa' is mentioned in case No. 18/22 because Khor el Wasa' is included in the boundaries. It may be that this fact known to the witness had caused him to commit the mistake. The mistake, however, does not affect the substance of his evidence, especially as the Defendants admit that Mr. Rutman attempted to buy part of the lands of Raml Zeita. When the attempt failed owing to the issue of the judgment

50 declaring the land Masha', Mr. Rutman tried again to extract a part of the Masha' (Khor el Wasa') and obtain same.

(5) Mr. Kaisermann denies that the costs in the Nablus Land Case were paid out by Mr. Rutman and he relies in this respect on his evidence.

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The payment of the said expenses by Mr. Rutman is certain in the light of the evidence to which we referred in our first pleadings. Had it not been for the many written and other circumstantial evidence which we adduced to the effect that Mr. Rutman filed guarantees, etc., which go to prove Mr. Rutman's connection with that case, the Defendants might have attempted to say that our allegations on this point are untrue and that the evidence of Mr. Rutman is correct. We referred to the aforesaid evidence before and we need not reiterate it here.

(6) Mr. Kaisermann attacks the allegation that the judgment of the Land Court Haifa was obtained through misrepresentation by Rutman. 10 We have fully dealt with this point in our previous pleadings in a way that does not call for comment. It is not necessary to repeat it here but it is important to point out that the late Mr. Lowick determined this issue on which he relied that Khor el Wassa' is not part of Khudeira but part of Tulkarem Zeita. This matter has therefore become *res judicata* and Defendants are estopped from raising it in this connection. All the proofs we have referred to are interlinked. The only basis of Mr. Kaisermann's plea to refute the series of fraudulent acts committed by Mr. Rutman is the evidence of Mr. Rutman. In the opinion of Messrs. Kaisermann and Abcarius, the Judges ought to believe Mr. Rutman and 20 disbelieve the others.

(7) Mr. Khankin, who is known in the Jewish World to be busy in dispossessing the Arabs from their lands and passing them to the Jews had excused himself this time from not attending before the Settlement Officer on many occasions. It must be remembered that before the last hearing, by two days, Mr. Hankin was pleading in person before the Magistrate Tulkarem in a case between himself and the heirs of Rashid es Shanti, opposing the delivery of an orchard to the said heirs. Before you, Mr. Hankin said that at the time he gave evidence before the late 30 Mr. Lowick he remembered everything and that now he does not remember well. That may be so generally. His evidence here if read with that given by him formerly will confirm that the part decided by the Commission (but according to his statement was the subject of compromise) was included from that date within Zeita. With regard to Mr. Wilbushevitz who prepared the plan I have no doubt that he is a truthful and honourable witness. He gave the same evidence as that before Mr. Lowick and said that the plan is one certified by him to be a true copy of the original, negating by this the allegation of Mr. Kaisermann.

(8) Mr. Kaisermann here discussed actual possession or actual cultivation. How often did we reply on this point. 40

(9-11) Mr. Kaisermann then entered into a lengthy discussion in the hope of finding contradiction in the evidence of four witnesses namely 1, 2, 3 and 4 with regard to the cultivation of Khor el Wasa' before and in the year 1925. This matter was dealt with in the judgment of the Land Court Nablus which declared the land to be Masha' cultivable by the inhabitants of Zeita according to custom. Nevertheless, the evidence of witnesses confirmed that the inhabitants of Zeita were in possession of the land as Masha' and it is immaterial if a witness mentions a name or thing not mentioned by another or remembers something not remembered by another. Mr. Kaisermann was anxious to prove that Abdul Fattah 50 and his sons were the only persons in possession. There was ample evidence amongst which is the evidence of Mousa (one of the sons) that

that was not so but that " El Khor " was part of the Masha' and that he (Mousa), his father and brothers were from the many persons only in possession. Furthermore Exhibits (AA, BB & CC) confirmed that by the signature of Abdul Fattah Samara thereon. We tried several times to summon Abdul Fattah Samara privately and on two or three occasions we summoned him through the Court but he did not attend for the reason mentioned by Musa Samara in his evidence namely that he was influenced by Mr. Rutman who held two documents against him. Mr. Kaisermann produced a part of these documents . . . but did not call as witness

10 Abdul Fattah Samara from whom Defendants took the land the ownership of which they now try to prove lest he should say the truth and confirm Plaintiffs' claim. What is then the value of Defendants' reply to Plaintiffs' claim if they have refrained from calling Abdul Fattah Samara to give evidence as to how he was the owner of the whole land or at least Defendants should not have prevented him to give evidence at the request of Plaintiffs.

(10) In clause 10, Mr. Kaisermann clearly tries to mislead the Court by saying that the four witnesses who did not agree on the number and names of the cultivators at Khor el Wasa' have however agreed that Abdul Fattah and his sons did cultivate Khor el Wasa. The said four

20 witnesses did not say anything of that sort. Abdul Fattah and his sons cultivated by way of Masha' in Khor el Wasa' together with others.

(12) Does the fact that Zeita inhabitants did not commit crimes show that they were not prevented from being in possession by the Police whose duty is to prevent crimes without inquiring into the legality or otherwise of the judgment of the Land Court Haifa.

(13) To this clause, there is nothing worth answering. The intervention of the Police was in the year 1925 and the warning by Hilmi el Hussein, District Officer, was at the date of the issue of the decision by Mr. Lowick, namely in the year 1931. Therefore we do not understand what weight

30 this lengthy discussion carries. It was evident from the evidence of witnesses that the first incident occurred between the inhabitants of Zeita and Mr. Rutman in the year 1925 when the latter attempted to cultivate the land. After the issue of the judgment by Mr. Lowick the inhabitants of Zeita tried again to cultivate their lands and they were warned by the District Officer of the District. Can the occurrence of two incidents, the first between the inhabitants of Zeita who tried to cultivate the land and the Police who forbade them, and the second between the inhabitants of Attil who attempted to pull out the boundary marks and the Police be said to be a contradiction? If Husni Said el Labdi was not asked about

40 the quarrel that took place and he himself has not mentioned anything about it, does that mean that he was not taken to the Police? What could have prevented the Defendants from cross-examining the witness on this point if they so wished?

(14) Our full reply to this clause is found in our original pleadings.

(15) The cultivation by Abdul Fattah and his sons together with others of the inhabitants of Zeita in Khor el Wasa' by way of Masha' is not denied by Plaintiffs.

(16) Our reply to this clause is found in our original pleadings.

(17) In reality we have not been expecting from the Attorney of

50 Defendants to produce as witness a usurper. Had this witness admitted what he had done, he would have been put in prison. Defendants may have thought that a piece of evidence of this sort would refute several

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others. When this witness denied the incident as also the presence of water at that time at the Police Station but mentioned the name of a member of the Police who was employed with him, we desired the Settlement Officer to hear the latter's evidence so that the story of this witness may be belied.

These were Defendants' witnesses—Witnesses accused of criminal offences. Had they uttered the truth they would have been driven to prison and would have been cleared from the land which they had acquired by reason of their fraudulent acts.

We believe that the evidence of Defendants' witnesses will not carry 10 weight with Your Worship and that such evidence will be disregarded.

(18) In clause 8 of their pleadings Defendants said that one cannot believe that the sale could have taken place without Plaintiffs' knowledge. This statement is nonsensical. In ordinary transactions when the contracting parties do not act in secrecy such an event would not happen. But, it is to be remembered that those intending to usurp this land fraudulently have twice unsuccessfully attempted to carry out their intentions by filing two actions. By the first action it was desired to prove that the land was mulk and not Masha' so that they can acquire it through Rutman. The second action was based on conspiracy. The usurpers divided them- 20 selves into two groups as Plaintiffs and Defendants and as such filed an action in the Land Court Nablus. Their conspiracy was soon discovered. Now the very same persons whose attempts proved futile on two occasions, have decided to bring an action in another Court in a different town away from the reach of Zeita Villagers. They required something by which they could misrepresent that the land belongs to Haifa. They therefore based their attempt on a forged map . . . In such a case, it is natural that those concerned should have been discreet so that they could conclude everything without the knowledge of the owners of the land. It is not strange to find the Mukhtar of Zeita Mohammed el Nimer and others 30 amongst Rutman's partners for these persons have pictured in the transactions for some known purposes. This Mukhtar, Mohamed el Nimer, had given false evidence before the late Mr. Lowick in favour of Rutman, and the Settlement Officer had asked that he be prosecuted.

(19) Here I find a repetition of some of the previous clauses. Mr. Selim Hanna did not receive any complaint with regard to Khor el Wasa' for the simple reason that he was not an employee either at Tulkarem or Khudeira to which Khor el Wasa' pertains. Selim Hanna was employed at Nazareth in the year 1925 (see p. 58 of the Record). His evidence showed that the receipt of the Notice sent to him by Hassan Said el Labdi dismissing him as 40 Attorney is in possession of Mr. Kaisermann while it should have been in possession of Hassan el Labdi, the person served. This shows the connection of Mr. Kaisermann with the dismissal. As to the evidence of Hilmi Bey el Husseini, it is clear therefrom that in his capacity of District Officer in the year 1931 he stopped the Plaintiffs from cultivating the land.

(20) In clause 20 Defendants refer to the witness Moussa el Samara, whose appearance they did not expect. Despite their numerous attempts to prevent him from appearing, he appeared and revealed all their acts. This witness, who annoyed them very much, deserves their dispraise, for he did not show himself grateful to Mr. Rutman, who ensured for him 50 and his father the ownership of Khor el Wassa, although this ownership lasted only one day or even less, and especially because he disclosed how

Mr. Rutman sent his brother Haim Rutman to Selim Samara (his brother) in order to prevent him from obeying the order of the Settlement Officer to appear before him. Defendants are expected to say a lot of things against Moussa; so also Mr. Rutman is expected to deny, but Moussa's statement was natural, simple, true and sufficiently illustrative of the facts. Moussa has frankly spoken of the authority of Mr. Rutman over his father and brothers, of their obedience to him, and of their disobedience to the order of the Court. He clearly said that all this is due to the fact that Mr. Rutman holds several contracts of lease, the value of which was
10 paid out, and which belong no more to them, and that he threatens them therewith. Finally Mr. Rutman admitted in his statement that nothing remained due to him from Abdul Fattah, except the rent of this year. But afterwards, on cross-examination, he said that "there remained to him also a part of the documents in respect of which a judgment was given," but he did not fix the amount. This was explained in detail in our first statement. Rutman's admission frees Abdul Fattah Samara and his sons from his threat and domination. That is why we made another application to you to exercise your power and summon Abdul Fattah and his sons as witnesses, so that you may know the truth from them, and
20 satisfy yourself that the story stands exactly as narrated by Moussa Samara. The time to do this did not yet pass, and Defendants should not object thereto, if they wish the truth to be discovered.

It is noteworthy that among the arguments raised by Mr. Kaisermann is the one that Mousa's statement relating to Mr. Rutman's warning to Abdul Fattah and his sons not to make the sale known is a strange warning, as the trial was public and the land inspected, and that these are public proceedings! We replied to this argument in clause 18 of our present statement.

Moussa has plainly explained that the LP.1500 are for documents paid
30 to Rutman who holds them.

He also said that he used to sign whatever his father ordered him. It is not strange that he should not know whether among the documents signed by him there was a power of attorney in favour of Kaisermann or another . . . To rely on such forgetfulness on the part of this simple man, forgetfulness which may occur to everybody, denotes only the weakness of proof.

(21) We come now to the eloquent arguments he makes to establish that Moussa's statement was obtained (*sic*) by pressure and threat. These arguments are set out by them in the following order:

(1) Rutman's statement that Abdul Fattah came to him and informed
40 him that he was asked to give a false statement and that he was threatened. Why then they called neither him nor his son to give evidence in order to establish this? And why they prevented him from coming to the Court whilst he was twice or thrice summoned by it? It would be a good occasion for them if Abdul Fattah comes as a witness and discloses to the Court what Mr. Rutman said? They only have to join themselves with us in applying to His Worship the Settlement Officer for summoning Abdul Fattah Marii Samara and his sons to give their evidence.

They rely in the second place on the evidence of the Police Officer
50 Mr. Littleman. A horse was killed outside the house on 8th October, 1942, and two bullets were shot at the house on 21.12.1942.

This is misleading. As regards the first incident, it has a connection with the theft of Abou Souan's house situated near the house

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which theft took place on the same date of 8th October, 1942. The witness in cross-examination by Anis Eff. El Hamza said :

“ There is a shop Abou Souan near the houses, the shop was burgled on the 8th of October, 1942,” a clear case of theft.

As regards the second incident he said, in reply to the cross-examination by Abdul Latif Bey Salah as follows :—

“ Investigations were carried out in the second case, we arrested Ahmed Hassan Aaid . . . Ahmed Hassan Aaid married the daughter of the wife of Abdel Fattah. I know Abdel Fattah, but not the details of their blood relationship. Abdul Latif said there was something between them.” 10

From this it is clear that the two incidents have nothing to do with Zeita's inhabitants or with the case of the Musha, contrary to the misrepresentation of Defendants.

(22) Defendants realised that if they don't bring Abdul Fattah Mari Samara many points raised by them will appear to be mere lie and invention. Therefore they tried in this clause to justify their failure to summon him by alleging that this was due to his age and to circumstances. This excuse is not strange if we take into account the attempts of the Defendants in all matters relating to this weak and unreasonable case. 20

The age of Abdul Fattah was not an impediment for his appearance. What would they say about the calling of Selim, and Abdullatif ? And what are these preventing circumstances ?

They are the misrepresentations which he mentioned in clauses 21 (23 & 24). In this clause Mr. Kaisermann believes that the important point in the evidence of Mr. Khankin is where he says that the “ Kina ” trees planted on the boundaries of Khudeira do not mean that what lies behind them is not Khudeira, and that the Kushan of Khudeira has not changed. This is a repetition of what has already been said. In addition to what we previously said, we submit that this allegation does not affect that which took place after the decision of the enquiry commission, called by Mr. Khankin the settlement commission, for if the registration of the Kushan has not changed, yet the area lying east of the “ Kina ” trees has in fact been detached from Khudeira and included in Zeita-Tulkarem subsequent to the settlement in question. This fact is beyond any discussion. In view of Mr. Khankin's statement that he can no more remember anything, and that his evidence given before the late Mr. Lowick is the true one, these two statements should be read together. 30

(25 & 26) The fictitious story of Mr. Kaisermann occupies also a place in these two clauses that Mr. Bentwich was against Rutman because Fellner refused to give him the land for Jewish colonisation and that he did irregular acts. If Nessib Bey Abcarius who entered Palestine thanks to Mr. Bentwich and was in the public service together with him, and who is deemed to know that the manners of this man make him hate the crime and the open intrigues against the judgments of the Courts, did not restrain himself from attributing to him matters which, if they were true, would have destroyed his reputation as well as his honour, it would not be therefore strange that Mr. Kaisermann should follow his example, although they belong to the same race. No other reply is needed. 40

(27 & 28) Rutman's evidence—We dealt with it sufficiently in our original statement. 50

(29) In this section Mr. Kaisermann makes much noise in alleging that he got proof of misleading on the part of Plaintiffs. This proof according to him, is that "when Mr. Rutman was asked about the western boundary as shown on Epstein's plan and whether it was Khudeira, he replied, Yes." If his allegation were true, where was he? And why did he not correct it? Rutman has two eyes and can see what is written on the plan; he is not a simple man.

(30) Mr. Kaisermann alleges that there are some irregularities of procedure in our proceedings.

10 (A) S/I was neither produced nor proved.

In reply we quote the following passages from Mr. Filippshewitch's evidence :—

"Exhibit S/I is a copy of my plan (Page 94) and the inscription says: in conformity with original drawing, correct, my signature appears and I signed the inscription."

(B) He raises here the objection that the records by Mr. Lowick were not proved, and that Mr. Khankin's evidence was neither read to nor confirmed by him.

20 The allegation that the records by Mr. Luke were not proved is refuted, because the records in question are those written in his own handwriting and signed by him, and are kept in the Land Settlement Office.

The clerk of the Land Settlement, witness No. 22, in reply to a question by the Attorney of Plaintiffs said as follows :—

"I have the custody of the Files of the Khor Wasa Case."

He also said in cross-examination by Kaisermann, Attorney of Defendants :—

"I was court clerk for some of the proceedings, the proceedings are in the handwriting of the late Mr. Lowick."

30 In reply to the re-examination by Walid Salah he said :—

"I know the signature and handwriting of Mr. Lowick and the files were in the office of the Land Settlement Office (Records p. 83)."

At the beginning of his evidence Mr. Khankin said :—

"I gave evidence some 10-12 years ago, when I remember well, my memory was strong at the time, but to-day I do not remember well. The evidence I gave then was the truth." (Record p. 23.)

40 (c) The evidence of Mr. Khankin was recorded by the Settlement Officer, the late Mr. Lowick, in his capacity as judge. This suffices to establish the validity of this evidence. Furthermore, the reference made by Mr. Khankin to this evidence and his affirmation that it is true are enough to take it into account.

(D) The decision of Mr. Lowick as regards the boundaries and the inferences which led him to this decision are res judicata and binding. The fact that Mr. Lowick's decision is an administrative one does not preclude it from being binding and having the same effect as a judgment. This decision is the one which was appealed to the Privy Council.

(E) He alleges, that Exhibits "AA," "BB," "C," were not proved.

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In reply, we reproduce the following extract from the evidence of the Record Clerk of the District Court, Nablus, Adib Eff. Sakfel Heit (No. 7), page 37, line 7 :—

“ There is a list of the distribution of (taxes) and Abdel Fattah

“ el Marii is one of the taxpayers. This list is submitted by Mukhtars

“ and Notables and is dated 14th January, 1923, for 1922.

“ One of the agreements for the distribution of the masha is
“ signed by Abdul Fattah, it is for the distribution for 1919.

“ There was filed a further distribution of the masha for the
“ year 1919. 10

“ Abdel Fattah had a share 4 feddans.

“ Boundaries. West : Eucalyptus of the Jews.”

In reply to the examination by Abdul Latif Salah he said in page 39 :—

“ File 18/22. There are four masha distribution lists.”

And in reply to the re-examination by Osman Eff. el Bushnak, he said :—

“ I did not examine every document when I answered Abcarius

“ Bey that Khor el Wasa was not mentioned.”

Afterwards, at the request of one of the Attorneys of Plaintiffs that the file of that case should be produced, the Settlement Officer gave the following decision :— 20

“ Certified true copies should be produced of documents in official and public records.”

At the closure of that hearing, Abdul Latif Bey Salah, one of the Plaintiffs' Attorneys, went to the room of the Clerk of the Land Settlement Mr. Goral and met the Settlement Officer who informed him that certified true copies of the Exhibits orally mentioned should be produced. He added that he saw no need for his being served in writing. According to this order these documents, “ AA,” “ BB,” “ CC,” were produced.

The Settlement Officer has the power to require the production by any person of any document under Article 9 (c) of the Land Settlement Ordinance and Rule 11 of the Settlement Procedure Rules. This is what was required by the Settlement Officer and was produced by us. Thus, these documents are legal evidence. 30

As to Abdul Fattah Marii's inability to sign his name, the reply has been already given.

At the end of this clause Mr. Kaisermann expresses his astonishment at the existence of an agreement for the year 1919 and the absence of other agreements for other years.

If Mr. Kaisermann will thoroughly examine Exh. “ AA,” he will find that it is a general agreement not being confined to a specific year. It has the force of law and confirms the practice followed by the inhabitants. The custom is that the distribution does not change every year but lasts several years. This is customary. In the year in which the confirmation of the agreement was decided, there were prepared distribution lists, and there is no need for their repetition. 40

(F) Late Mr. Lowick discussed the reasons which made him decide that Khor el Wasa is outside Khudeira and included in Zeita and Attil. He had therefore two judgments before him. A first one declaring that Ramel Zeita with boundaries including Khor el Wasa belong to Zeita, and a second one declaring that Khor el Wasa is within Khudeira. It was therefore necessary for him to enquire into the reasons which made him 50

give his judgment. He found that the cause for arriving at the second judgment was fraud and misrepresentation; and he enumerated these causes. Fraud is like any other acts which make contracts void. The way of proving any act is governed by the general law of evidence. On the strength of the opinion of some jurists, I submit that deductive evidence in certain cases is better than personal evidence which might be true or untrue. There is however sufficient evidence to prove the fraud as found by late Mr. Lowick.

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10 (G) We disclosed the facts which prove that the case No. 11/24 was collusive. There is no need to mention them again.

(H) We have already replied.

(I) Rutman was a liar. He naturally appeared to give evidence only to deny his fraudulent dealings for obtaining the land.

(J) Elias Khattar gave his evidence before a judge, and he signed it. The evidence is in the file of the case; it was asked that it should be considered as a part of the records. This witness said in his evidence as follows :—

“ My evidence agrees with the evidence given by me in the District Court.”

20 (K) We repeat what we have already said as regards Rutman. Its denial is of no value.

(L) This is a repetition of section (29). We replied thereto in Section () of our reply to Mr. Abcarius' pleadings.

(M) It is true that Nejib Eff. el Hakim was called to give evidence. But, as advocate, he expressed to the Attorney of Plaintiffs the desire not to give any evidence relating to what was done by him in his capacity as Attorney. His request was granted.

At the hearing of 16.1.42, Mr. Kaisermann was called to give evidence. The following is an extract from the records in this respect :—

30 “ *Abdel Latif Salah* : I ask Mr. Kaisermann as a witness.

“ *Mr. Kaisermann* : I would appreciate it if I was to be given “ notice of what I am to testify.”

Thereupon you ordered that an application to this effect should be made. The application was made, and at the hearing of 3.11.42, when he was called for evidence, the Attorneys of Plaintiffs, Anis Eff. el Hamzeh and Walid Salah, insisted that his evidence should be dispensed with, in view of his being a colleague and an advocate. They now realise with regret that they were wrong in this.

(N) (O) (P) See Elias Khattar's evidence.

40 (Q) See evidence of witness No. 19.

(R) Hassan Said el Labdi. This evidence, which was given by this simple man and disclosed a part of the scandalous actions of Rutman and partners is, according to them, inadmissible. They found nothing to say against this witness, and they therefore made analogies which are not unnatural. Mr. Kaisermann finds that it is unbelievable that Mr. Rutman should pay money to such a person who admitted not having ploughed the land. Does Mr. Kaisermann not believe that the fifty pounds were paid on Mr. Rutman's account in order to eliminate from the case this witness together with his Attorney Selim Hanna, and thus frustrate the arrangements of Mr. Bentwich, the Attorney-General, against whom they have so often expressed their anger. Is Hassan el Labdi not a registered owner? and is he not in possession of his musha share? Why

50

*Before the
Settlement
Officer,
Haifa.*

No. 52.
Reply by
Plaintiffs to
Defendants'
Final
Pleadings,
26th March
1943,
continued.

did not Mr. Kaisermann give us any explanation as to the existence of Ex. (P) in his possession, while it belongs to Hassan el Labdi, if he has no connection with Mr. Rutman? Is this not a sufficient proof that Hassan Said el Labdi's statement is true? That is what we believe, and we pray the Settlement Officer to share our belief. All other statements do not deserve a reply. Is it strange that he should take the fifty pounds and another pound for his travel?

(S) (T) As regards Mr. Rutman. What we mentioned in our original statement is a sufficient reply in this respect.

(U) When and where have we said that all plaintiffs received money 10 from Rutman? Once again we draw your attention to the fact that the waiver by any of the present persons does not affect the nature of the Musha, since it is a musha belonging to the village by virtue of a judgment.

This is a further continuation of misrepresentation. In our original pleadings we quoted the clear statement of the witness Hassan Abdallah that he left the services of Samsonoff in 1933, and that before that date he was a watchman for 3 years. Thus he was a watchman from 1930 to 1933.

From the passages of his evidence referred to by Kaisermann it is clear that Hassan Abdallah was at first a coachman and then a watchman, 20 that the period of his service was 13 years, that his last services as watchman lasted 3 years, and that he left the service in 1933. These are clear expressions.

It was the duty of Mr. Kaisermann, who wants to conceal the truth by false and contradictory explanations, to bring all the . . . to the Association, but he intentionally failed to do so.

(v & w) Of what part does he speak? It seems that he speaks of the subsequent one. If this is so, he is excused in not understanding it, for it is another proof of the fraudulent actions intended to mislead the Court of Haifa by showing Khor el Wasa as being within Khudeira, whilst it is 30 outside it. We pray the Settlement Officer to take this proof into consideration.

We finally draw your attention to our original pleadings and repeat our demands.

26.3.43.

(Sgd.) ABDUL LATIF SALAH.

No. 53.

DECISION of the Settlement Officer, Haifa Settlement Area.

Case No. 1/Kefar Brandeis.

Before the
Settlement
Officer,
Haifa.

<i>Provisional Parcel No.</i>		<i>Plaintiffs</i>	<i>Share</i>				
10	10402/1-5 10403/1 10404/1 10405/1-3 & 5 10406/1-3 10407/1-7 & 12-14 10408/1-51 10409/1 10410/1	1. Khalil Rajih Khalil and 239 others. 2. Farid Salih Khadr and 38 others.		No. 53. Decision of the Settlement Officer, Haifa, 30th March 1943.			
	do	3. Tahir "Awad Manna" and 52 others Heads of Families representing 226 persons.					
	do.	4. Mustafa Muhammad Ghadiya and 182 others.					
	do.	5. Husni Abdallah Hasan Na'man and 48 others Heads of Families representing 289 persons.					
20	do.	6. Nejib el-Haj Muhammad Khalil 'Umar Hammad and 10 others.					
	do.	7. Yasin Yusuf Zetawi and 11 others.					
	do.	8. Muhammad Ahmad Muhammad 'Abd el Ghani Ni'man and 7 others.					
	10405/2, 3 & 5 10406/2 & 3	9. Mukhtars and the Members of the Village Settlement Committee of 'Attil on behalf of the village of 'Attil.					
<i>P. Parcel No.</i>		<i>P. Parcel No.</i>	<i>Share</i>			<i>Defendants</i>	<i>Shares</i>
30	10402/1-3 10403/1 10402/4 10402/5 10404/1 10405/1-3, 5 10406/1-3 10407/1, 3, 4, 12, 13 10409/1 10410/1					1. Tova Rutman 2. Haiyim Rutman 3. Baruch Helbetz	in whole do. do.
40	10407/2 10407/2			4. Rivqa Aaronson 5. Yosef Danieli 6. Esher Danieli	do. 1 1		
	10407/5	10407/14	4 1 <hr/> 5	7. Ya'akov Rutman 8. Rahel Rutman	2 78 20 <hr/> 98		
	10407/6 10407/7			9. Mordekhai Rodin 10. Wilhelm (Zeev) Bruenn	in whole in whole		
50	10408/1			11. Meir Zon 12. Hanna Zon	1 1		
	10408/2			13. Yisrael Balfour 14. Penina Balfour	<hr/> 2 1 1 <hr/> 2		

<i>Before the Settlement Officer, Haifa.</i>	<i>P. Parcel No.</i>	<i>Parcel No.</i>	<i>Share</i>	<i>Defendants</i>	<i>Shares</i>	
No. 53. Decision of the Settlement Officer, Haifa, 30th March 1943, <i>continued.</i>	10408/3			{ 15. Arie Mikulizki 16. Hinda Mikulizki	1 1	
					—	2
	10408/4			{ 17. Shemuel Deresh 18. Rivqa Deresh	1 1	
					—	2
	10408/5			19. Hanna Kaufmann	In whole	
	10408/6			{ 20. Shemuel Salomon 21. Tsila Salomon	1 1	10
					—	2
	10408/7			22. Haiyim Wassermann	In whole	
	10408/8			{ 23. Yisrael Talit 24. Sara Talit	1 1	
					—	2
	10408/9			{ 25. Ya'aqov Matossov 26. Sara Matossov	1 1	
					—	2
	10408/10			{ 27. Mordekhai Hirsh 28. Tsippora Hirsh	1 1	20
					—	2
	10408/11			{ 29. Menahem Mutilsky 30. Miryam Mutilsky	1 1	
					—	2
	10408/12			{ 31. Avraham Abramovitz 32. Gronia Abramovitz	1 1	
					—	2
	10408/13	10408/51	In whole	{ 33. Zeev Hochberg 34. Riva Hochberg	1 1	
					—	2
	10408/14			{ 35. Ya'aqov Hershkovitz 36. Sara Hershkovitz	1 1	30
					—	2
	10408/15			{ 37. Shemuel Yosef Ghoina 38. Hinda Ghoina	1 1	
					—	2
	10408/16			{ 39 Yisrael Yehieli 40. Sara Yehieli	1 1	
					—	2
	10408/17			{ 41. Barakha Rosenzweig 42. Shifra Rosenzweig 43. Tsippora Rosenzweig 44. Ya'aqov Rosenzweig 45. Esther Rosenzweig	20 3 3 3 3	40
					—	32
	10408/18			{ 46. Shemuel Fenski 47. Rahel Fenski	1 1	
					—	2

<i>P. Parcel No.</i>	<i>Defendants</i>	<i>Shares</i>	<i>Before the Settlement Officer, Haifa.</i>
10408/19	{48. Menahem Mendel Segalovitz	1	No. 53. Decision of the Settlement Officer, Haifa, 30th March 1943, <i>continued.</i>
	{49. Batia Segalovitz	1	
10408/20	{50. Tsevi Yosef Piekarsh	1	
	{51. Rivqa Piekarsh	1	
10 10408/21	{52. Heiyim Barukh Lubinsky	1	
	{53. Shoshanna Lubinsky	1	
10408/22	{54. Nahum Tepper	1	
	{55. Haiya Tepper	1	
10408/23, 34, 45-50	56. Aguda Shitufit Le- Kipur Ule Haklout Kefar Brandeis Ltd. (in liquidation)	In whole	
	{57. Yosef Hodorovnik	1	
20 10408/24	{58. Nehama Hodorovnik	1	
10408/25	{59. Mordekhai Efrati	1	
	{60. Bat-Sheva' Efrati	1	
10408/26	{61. Hanokh Hochberg	1	
	{62. Nehama Hochberg	1	
30 10408/27	{63. Eliyahu Avtalion	1	
	{64. Simha Avtalion	1	
10408/28	65. Shelomo Meimes	In whole	
10408/29	66. Shemuel Marder	In whole	
10408/30	{67. Yehoshu'a Tyren	1	
	{68. Devora Tyren	1	
10408/31	{69. Shim'on Tikuzki	1	
	{70. Tsippora Tikuzki	1	
40 10408/32	71. Ya'aqov Fuchs	In whole	
	{72. Shelomo Reuven Pishko	1	
10408/33	{73. Rivqa Pishko	1	
10408/35	74. Nissan Heissiner	In whole	
10408/36	{75. The Sharon Water Company Ltd.	In whole	
10408/44	76. Reuven Feller	In whole	
10408/37	{77. ArieH Rohrman	1	
50 10408/38	{78. Hadassa Rohrman	1	
		2	

<i>Before the Settlement Officer, Haifa, No. 53. Decision of the Settlement Officer, Haifa, 30th March 1943, continued.</i>	<i>P. Parcel No.</i>	<i>Defendants</i>	<i>Shares</i>	
	10408/39	79. Shimson Katzap	In whole	
	10408/40	80. Mordekhai Gutstadt	In whole	
	10408/41	{ 81. Yosef Ziga	1	
		{ 82. Hadassa Ziga	1	
			—	
			2	
	10408/42	{ 83. Yosef Silberstein	1	
		{ 84. Batia Silberstein	1	
			—	
			2	
	10408/43	{ 85. Yosef Shim'oni	1	10
		{ 86. Miryam Shim'oni	1	
			—	
			2	
		<i>Third Party</i>		
	10407/3, 13	1. Yosef Berman	In whole	
	10408/1-22, 24-33, 35, 37-43	2. The Palestine Mortgage and Credit Bank Ltd.	In whole	
	10408/1-18, 20-22, 24-33, 35, 37-43	3. Loan Bank Ltd.	In whole	
	10408/1, 2, 3, 5, 8, 10, 11, 14, 15, 17, 20, 22, 25-29, 33, 35, 38, 39, 42, 43	4. The Central Bank of Co-operative Institutions in Palestine Ltd.	In whole	20
	10404/1			
	10405/1-3 & 5			
	10406/1-3			
	10407/1, 3, 4, 12, 13	5. Efraim Ltd.		
	10409/1			
	10410/1			

The claims of the Plaintiffs and Defendants have been heard in order to decide the ownership of the village of Kefar Brandeis that was formerly known as Khor al-Wasa'. The trial of claims commenced at Hadera on the 4th of May 1942 and adjourned until the 15th of June 1942 for further hearings. On the 15th June the Plaintiffs objected to the hearings being continued on the grounds that the judgment of the Privy Council in PCA 19/35 contained a passage deciding the land was in Tulkarm Sub-District and in consequence the Settlement Officer had no jurisdiction to try the claims in the Haifa Settlement Area. In an interlocutory decision delivered on the 15th of June the Settlement Officer decided he had jurisdiction and confirms this finding in this final decision.

2. The claim of the Plaintiffs is that the land in suit is part of the Masha' land of Ramel Zeita registered in the Land Registry in 1288 (1872) in 20 shares in the names of 23 persons representing the villagers of Zeita. The boundaries of the land were road and road and Kharab and Infi'at and it is agreed that the Kharab is Hadera and that with Infi'at they form the western and part of the northern boundary of Ramel Zeita. From 1872 onwards until the settlement of title in 1940 of Zeita the boundaries of Ramel Zeita remained unchanged and the first issue to be decided is whether or not Khor-el-Wasa' was ever part of Ramel Zeita. The land was bounded by Hadera and Infi'at and the registrations of these villages throw considerable light upon the point at issue. The Plaintiffs refer to the registration of Khor Ya'cub in Hadera bounded by 'Dabbat Qas's' and the road that extends to Qazaza' that is claimed as the northern boundary of Khor-el-Wasa'. Other registrations are entries Nos. 11 and 19

of June 1307 (1890) that give the east boundary of the Hadera locality of " within the village " as " swamp of Qazaza and hamra land that was bought by Zeita inhabitants." The Infi'at registration of importance is that of the locality of Umm el-'Aqareb and Dhahret Tel Mas'ud of which the northern boundary was the Qas'a road and goes on to the malul tree and from thence direct to the Birket.

*Before the
Settlement
Officer,
Haifa.*

No. 53.
Decision
of the
Settlement
Officer,
Haifa,
30th March
1943,
continued.

Other evidence that Khor el-Wasa' was in Ramel Zeita is the distribution of the Masha' land made in 1919, Exhibits " BB " and " CC ".

10 There is also oral evidence for the Plaintiffs and the undisputed fact that 'Abd el-Fattah es-Samara of Zeita had a house and outbuildings on the land for over 50 years. 'Abd el-Fattah es-Samara was one of the persons to whom a share was allotted in the distribution of the Masha' by " BB ". There is also the evidence of Mr. Hankin who bought the lands of Hadera and Infi'at about 50 years ago. He stated that to settle a dispute he surrendered about 2,000 dunums to Zeita, and accepted the boundary claimed by the Plaintiffs.

20 The estimate of 2,000 dunums is Mr. Hankin's own, being his opinion of the area within his kushan that he gave to Zeita. From all this evidence the Settlement Officer comes to the conclusion that Khor el-Wasa' was part of Ramel Zeita.

3. In 1922 an action was filed in the Samara Land Court by the villagers of Zeita opposing the contemplated sale of the Mash'a land by some of the heirs of the 23 registered persons. The Court found that Ramel Zeita was Masha' for all the inhabitants of Zeita in accordance with the custom in force in the village from time immemorial and that the kushan holders or their heirs had no right to dispose of the land, LC Nablus 18/22. On appeal the case was remitted for delivery of a fresh judgment LA 59/23.

30 The Nablus Land Court decided that the Masha' of Ramel Zeita should be divided into 906 shares, and to quote from the judgment:—

" At the result of the re-trial it appeared that the Plaintiffs
" Muhammad Hasan and 'Abd el-Fattah did not appear at the trial
" and that they have provisionally dropped their case but all the
" other Plaintiffs . . . proved their claim by oral evidence that
" each of them enjoyed one share out of 906 shares in the common
" Sand land of Zeita.

" The said land is bounded south, east, and north by a road
" and west by the Infi'at land which is in the hand of the Jews."
Land Case 18/24.

40 On appeal from the judgment " delivered in presence by the Nablus Land Court adjudging each Plaintiff one share out of 906 shares in the Sand lands of Zeita the boundaries of which are described in the minutes of the action the judgment was confirmed." LA 70/24.

50 4. 'Abd el-Fattah es-Samara withdrew his claim as Plaintiff in Land Case 18/24 by a petition dated 26.12.23 to the President of the Land Court Ex. lettered " I " and declared he abandoned all his rights that might accrue to him by virtue of the judgment in the case and released the Defendants from all obligations towards him then and in the future. He did not oppose the judgment of the Land Court 18/24, which stated the boundaries of the land in dispute in that case.

On the 10th of March 1925 he, with his two sons and nephew, instituted an action in the Land Court of Haifa claiming the registration of Khor-el-

*Before the
Settlement
Officer,
Haifa.*

No. 53.
Decision
of the
Settlement
Officer,
Haifa,
30th March
1943,
continued.

Wasa' in their names LC 10/25. The Defendant Settlers of Hadera produced a kushan for land in the Hadera locality of " within the village " being Nos. 11 and 19 of 1307 referred to in paragraph 2 of this decision. Judgment was given for the Plaintiffs on the 6th of May 1925, registration was ordered by the Execution Officer on the 14th, an inspection was made by the Registrar of Lands and member of the Court on the 29th of May and on the 4th of June 1925 the Plaintiffs were registered as owners of 5,358 dunums in accordance with the judgment and a plan. The fee of 5% of the market value was paid to the Land Registry by Nissan Rutman. On the following day 2,708 dunums were transferred by Nissan Rutman as agent for Plaintiffs to Mrs. Rutman and Miss Aaronson. A few days later a further 1,350 dunums were transferred by Rutman to Miss Aaronson and on the 2nd of June 1926 the balance of the Plaintiffs' land was transferred. Thereafter the Plaintiffs are alleged to have been tenants of Rutman's principals. 10

An opposition to the judgment was filed by certain villagers of Zeita and on the 4th of January 1926 the Land Court of Haifa dismissed the claim against Mrs. Rutman and Miss Aaronson with leave to institute a separate action against any person in order to prove the ownership of the land in question. On the 6th of May 1926 this judgment was confirmed on appeal LA 35/26. 20

5. The Settlement Officer is thus confronted with two conflicting judgments. The Plaintiffs' contentions are that judgment in LC 10/25 was obtained by fraud and in consequence the judgment should not stand and the registration should be set aside.

It is quite certain that 'Abd el-Fattah es Samara knew at all times that Khor el-Wasa' was within the masha' land of Ramel Zeita and that Ramel Zeita was in Tulkarm 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 Hadera. He suffered himself to be registered as an owner in 5,358 dunums as shown in a plan made for Nissan Rutman in 1924. Nissan Rutman stated in evidence that he personally took no interest in the Land Court action, 10/25. 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 Mukhtar of Hadera one Samsonoff refused to sign the necessary certificates. He had a plan made of the land with the inscription Zeita-Tulkarm, and at his request this was altered to Khor el-Wasa'-Hadera some time in 1924. He paid the fee of 5% 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. 30 40

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.

6. The Plaintiffs do not rely entirely upon the circumstances of case 10/25 to prove the relationship between Nissan Rutman and the villagers of Zeita and his endeavours to purchase land in Ramel Zeita. In 1922 Nissan Rutman attempted to purchase shares from the registered owners of Ramel Zeita, and LC 18/22 was instituted by the villagers against the 50

heirs of the registered owners. Judgment was for the villagers, and the costs and expenses of appeal was guaranteed by Rutman Ex. "B." At the re-trial judgment was for the villagers, Nablus Land Court 18/24, and again Rutman gave a bond for the costs and expenses of appeal, Ex. "C". Rutman in re-examination in the present case stated he only heard of the second Nablus Land Court Case in the present proceedings, but he appeared before the Notary Public of Haifa on the 14th of April 1924 and gave a bond for the costs of appeal in this second Nablus case. He claims that whatever he did was a favour to one Abu Jazzar with whom he had transactions, but he admits that from 1922 onwards he was endeavouring to buy shares in Ramel Zeita and gave considerable sums of money to the villagers. He safeguarded himself by notarial documents in which this money was declared to be a loan and he recovered the money when the transaction of purchase failed.

*Before the
Settlement
Officer,
Haifa.*

No. 53.
Decision
of the
Settlement
Officer,
Haifa,
30th March
1943,
continued.

7. The Settlement Officer comes 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.

The claims of the other Defendants are not the same. The second, third, fifth, sixth, seventh, eighth, ninth and tenth Defendants claim by unregistered purchase from the fourth. They have been in possession since 1928, have built houses and established orange groves. This possession is clearly adverse to the Masha' owners of Zeita for more than the prescriptive period and they should succeed in their claims to ownership. As to the claim of the 7th and 8th Defendants to parcel 10407/14, their purchase from the 4th Defendant was made in 1937. Their possession does not exceed the prescriptive period and their claim to this parcel fails. As to Defendants Nos. 11 to 86, they are registered owners by purchase from registered owners who purchased from the fourth Defendant. They had no notice of any defect in the title, they purchased in good faith and they and their vendors enjoyed possession since 1927. As they are registered owners by purchase in good faith and in possession their claims succeed.

The claim of the first of the Third Parties is that he purchased the land from the 4th Defendant in 1928. The land was planted with orange trees in 1928 and it is clear he has had possession adverse to the Masha' owners of Zeita for more than the prescriptive period, and his claim succeeds. The claims of the second, third and fourth of the Third Parties are to mortgages on the properties of the 11th to 86th Defendants. As these Defendants succeed in their claims and admit those of the Third Parties, the latter also succeed. The claim of the fifth of the Third Parties is to a lease registered on the 26th of March 1940 of all the property of the fourth Defendant. As the claim of the fourth Defendant fails, this claim also fails.

Finally there is the claim of the ninth group of Plaintiffs who alleged that part of the land was the property of the village of 'Attil. These Plaintiffs withdrew their claim on the 31st of October 1942 and from thence onwards ceased to prosecute their claim, which is hereby dismissed.

*Before the
Settlement
Officer,
Haifa.*

No order as to costs, hearing fees of LP.10.— each to be paid by Defendants Nos. 1 and 4.

Decision delivered on the 30th of March 1943 at Haifa, in the presence of Mr. J. Kaisermann, Mr. Nissan Rutman, Yasin Yusuf Zeitawi, representing group 7, with usual notification re appeal.

No. 53.
Decision of
the
Settlement
Officer,
Haifa,
30th March
1943,
continued.

(Sgd.) CECIL KENYON,

Settlement Officer,
Haifa Settlement Area.

Haifa,

30.3.1943.

10

*In the
Supreme
Court of
Palestine.*

No. 54.

NOTICE AND GROUNDS OF APPEAL of Tova Rutman.

Civil Appeal No. 143/1943.

No. 54.

Notice and
Grounds of
Appeal of
Tova
Rutman,
27th April
1943.

IN THE SUPREME COURT,

Sitting as a Court of Appeal, Jerusalem.

TOVA RUTMAN, Property Owner, Hadera, represented by N. Abcarius Bey, Advocate, Jerusalem, by whom service will be accepted

Appellant

V.

- | | | | | | | | |
|--|---|----|-----------------------------------|----|---|-------------------------------|--|
| <ol style="list-style-type: none"> 1. KHALIL RAJIH KHALIL and
239 others 2. FARID SALIH KHADR and
38 others 3. TAHIR 'AWAD MANNA' and 52 other Heads of
Families representing 226 persons, represented
by Othman Eff. Bushnaq, Advocate, of Tulkarem 4. MUSTAFA MUHAMMAD GHADIYA and 182 others,
represented by Anas Khamra, Advocate, of Haifa 5. HUSEIN 'ABDALLAH HASAN NA'MAN and 48
other Heads of Families of whom two heads of
families are represented by Walid Eff. Salah,
Advocate, of Haifa 6. NAJIB EL-HAJ MUHAMMAD KHALIL 'UMAR
HAMMAD and 10 others, of Zeita 7. YASIN YUSUF ZETAWI and 11 others, of Haifa 8. MUHAMMAD AHMAD MUHAMMAD 'ABD EL
GHANI NI'MAN and 7 others, of Zeita 9. MUKHTARS AND THE MEMBERS OF THE
VILLAGE SETTLEMENT COMMITTEE OF
'ATTIL on behalf of the village of 'Attil 10. HAIYIM RUTMAN, of Kfar Brandeis | <table border="0"> <tr> <td style="font-size: 2em; vertical-align: middle;">}</td> <td style="vertical-align: middle;">represented by
Abdul Latif Bey</td> <td style="vertical-align: middle;">20</td> </tr> <tr> <td style="font-size: 2em; vertical-align: middle;">}</td> <td style="vertical-align: middle;">Salah, Advocate,
of Nablus</td> <td></td> </tr> </table> | } | represented by
Abdul Latif Bey | 20 | } | Salah, Advocate,
of Nablus | |
| } | represented by
Abdul Latif Bey | 20 | | | | | |
| } | Salah, Advocate,
of Nablus | | | | | | |
| | 30 | 40 | | | | | |

*In the
Supreme
Court of
Palestine.*

No. 54.
Notice and
Grounds of
Appeal of
Tova
Rutman,
27th April
1943,
continued.

11. BARUCH HELBETZ, of Kfar Brandeis
12. YOSEF DANIELI, of Kfar Brandeis
13. ESTHER DANIELI, of Kfar Brandeis
14. MORDEKHAI RODIN, of Kfar Brandeis
15. WILHELM (ZEEV) BRUENN, of Kfar Brandeis
16. MEIR ZON, of Kfar Brandeis
17. HANNA ZON, of Kfar Brandeis
18. YISRAEL BALFOUR, of Kfar Brandeis
19. PENINA BALFOUR, of Kfar Brandeis
- 10 20. ARIEH MIKULIZKI, of Kfar Brandeis
21. HINDA MIKULIZKI, of Kfar Brandeis
22. SHEMUEL DERESH, of Kfar Brandeis
23. RIVQA DERESH, of Kfar Brandeis
24. HANNA KAUFMANN, of Kfar Brandeis
25. SHEMUEL SALOMON, of Kfar Brandeis
26. TSILA SALOMON, of Kfar Brandeis
27. HAIYIM WASSERMANN, of Kfar Brandeis
28. YISRAEL TALIT, of Kfar Brandeis
29. SARA TALIT, of Kfar Brandeis
- 20 30. YA'AQOV MATOSSOV, of Kfar Brandeis
31. SARA MATOSSOV, of Kfar Brandeis
32. MORDEKHAI HIRSH, of Kfar Brandeis
33. TSIPPORA HIRSH, of Kfar Brandeis
34. MENAHEM MUTILSKY, of Kfar Brandeis
35. MIRYAM MUTILSKY, of Kfar Brandeis
36. AVRAHAM ABRAMOVITZ, of Kfar Brandeis
37. GRONIA ABRAMOVITZ, of Kfar Brandeis
38. ZEEV HOCHBERG, of Kfar Brandeis
39. RIVA HOCHBERG, of Kfar Brandeis
- 30 40. YA'AQOV HERSHKOVITZ, of Kfar Brandeis
41. SARA HERSHKOVITZ, of Kfar Brandeis
42. SHEMUEL YOSEF CHOINA, of Kfar Brandeis
43. HINDA CHOINA, of Kfar Brandeis
44. YISRAEL YEHIELI, of Kfar Brandeis
45. SARA YEHIELI, of Kfar Brandeis
46. BERAKHA ROSENZWEIG, of Kfar Brandeis
47. SHIFRA ROSENZWEIG, of Kfar Brandeis
48. TSIPPORA ROSENZWEIG, of Kfar Brandeis
49. YA'AQOV ROSENZWEIG, of Kfar Brandeis
- 40 50. ESTHER ROSENZWEIG, of Kfar Brandeis
51. SHEMUEL FENSKI, of Kfar Brandeis
52. RAHEL FENSKI, of Kfar Brandeis
53. MENAHEM MENDEL SEGALOVITZ, of Kfar
Brandeis
54. BATIA SEGALOVITZ, of Kfar Brandeis
55. TSEVI YOSEF PIEKARASH, of Kfar Brandeis
56. RIVQA PIEKARASH, of Kfar Brandeis
57. HAIYM BARUKH LUBINSKY, of Kfar Brandeis
58. SHOSHANNA LUBINSKY, of Kfar Brandeis
- 50 59. NAUM TEPPER, of Kfar Brandeis
60. HAIYA TEPPER, of Kfar Brandeis

<i>In the Supreme Court of Palestine.</i>	61. AGUDA SHITUFIT LE KISPUT ULE-HAKLAUT, KFAR BRANDEIS LTD. (In Liquidation), of Kfar Brandeis	
No. 54. Notice and Grounds of Appeal of Tova Rutman, 27th April 1943, <i>continued.</i>	62. YOSEF HODOROVNIK, of Kfar Brandeis	
	63. NEHAMA HODOROVNIK, of Kfar Brandeis	
	64. MORDEKHAI EFRATI, of Kfar Brandeis	
	65. BAT-SHEVA EFRATI, of Kfar Brandeis	
	66. HANOKH HOCHBERG, of Kfar Brandeis	
	67. NEHAMA HOCHBERG, of Kfar Brandeis	
	68. ELIYAHU AVTALION, of Kfar Brandeis	10
	69. SIMHA AVTALION, of Kfar Brandeis	
	70. SHELOMO MEIMES, of Kfar Brandeis	
	71. SHEMUEL MAEDER, of Kfar Brandeis	
	72. YOHOSUA TYREN, of Kfar Brandeis	
	73. DEVORA TYREN, of Kfar Brandeis	
	74. SHIM'ON TIKUZKI, of Kfar Brandeis	
	75. TSIPPORA TIKUZKI, of Kfar Brandeis	
	76. YAAQOV FUCHA, of Kfar Brandeis	
	77. SHELOMO REUVEN PISHKO, of Kfar Brandeis	
	78. RIVQA PISHKO, of Kfar Brandeis	20
	79. NISSAN HEISSINER, of Kfar Brandeis	
	80. THE SHARON WATER CO. LTD. of Kfar Brandeis	
	81. REUVEN FELLER, of Kfar Brandeis	
	82. ARIEH ROHEMAN, of Kfar Brandeis	
	83. HADASSA ROHEMAN, of Kfar Brandeis	
	84. SHIMON KATZAP, of Kfar Brandeis	
	85. MORDEKHAI GUTSTAD, of Kfar Brandeis	
	86. YOSEF ZIGA, of Kfar Brandeis	
	87. HADASSA ZIGA, of Kfar Brandeis	
	88. YOSEF SILBERSTEIN, of Kfar Brandeis	30
	89. BATIA SILBERSTEIN, of Kfar Brandeis	
	90. YOSEF SHIM'ONI, of Kfar Brandeis	
	91. MIRYAM SHIM'ONI, of Kfar Brandeis	
	92. YOSEF BERMAN, of Kfar Brandeis	
	93. THE PALESTINE MORTGAGE AND CREDIT BANK LTD., of Jerusalem	
	94. LOAN BANK LTD., of Jerusalem	
	95. THE CENTRAL BANK OF CO-OPERATIVE INSTITUTIONS IN PALESTINE LTD., of Jerusalem	<i>Respondents.</i> 40

NOTICE AND GROUNDS OF APPEAL.

Appeal is entered hereby from the decision of the Settlement Officer, Haifa Settlement Area, given in Case No. 1/Kfar Brandeis, delivered on 30th of March, 1943, leave to appeal having been granted by the Settlement Officer on the 14th of April, 1943, as evidenced by his letter addressed to Attorney for Appellants and bearing the said date.

A certified copy of the said decision is attached hereto, as well as sufficient copies for service on the Respondents together with copies of the Appeal.

An application for fixing a deposit in lieu of a guarantee is also 50 attached, as well as the necessary declaration under the Defence Regulations.

The following grounds of appeal are respectfully urged :—

1. That the learned Settlement Officer has erred entirely in disregarding the judgments of the Supreme Court as to the proper procedure for setting aside a judgment of a Land Court on the ground of a plea of fraud.

2. That the Land Settlement Officer erred in not taking fully into account the judgment of the Judicial Committee of the Privy Council No. 19/1935.

10 3. That the learned Settlement Officer has misconceived his jurisdiction ; since Khor el Wassa was declared by an Administrative act as a unit in the sub-district of Haifa under the name of Kfar Brandeis, and the Land Settlement Officer was appointed to settle disputes as to ownership of Kfar Brandeis, he had no jurisdiction over Raml Zeita or Musha Raml Zeita.

4. That the decision of the Land Settlement Officer is directly and completely against the weight of evidence laid before him.

5. That the Land Settlement Officer has not given any decision or consideration or attached any weight as to the fact of payment of Haq-el-Qarar, and the effect of such payment.

20 6. That the Land Settlement Officer has completely disregarded and omitted to deal with and consider the agreement entered into between the Appellants and Lord Plumer, the then High Commissioner for Palestine.

7. The judgment of the Land Settlement Officer is vague and ambiguous and incapable of execution.

8. The learned Settlement Officer further erred in purporting to confirm, for the purposes of the settlement proceedings, a judgment to which none of the parties to the present proceedings were either parties or privies.

30 Wherefore it is prayed that this Honourable Court may allow this appeal and set aside the decision of the learned Settlement Officer, and grant such other or consequential relief as this Honourable Court may seem fit in the circumstances, with costs and advocate's fees in this appeal and below.

(Sgd.) N. ABCARIUS,

Advocate for Appellants.

27.4.43.

*In the
Supreme
Court of
Palestine.*

—
No. 54.
Notice and
Grounds of
Appeal of
Tova
Rutman,
27th April
1943,
continued.

NOTICE and GROUNDS OF APPEAL of Rivka Aaronson and Another.

Civil Appeal No. 144/1943.

*In the
Supreme
Court of
Palestine.*

No. 55.
Notice of
Grounds
of Appeal
of Rivka
Aaronson
and
Another,
— April
1943.

IN THE SUPREME COURT,
Sitting as a Court of Appeal, Jerusalem.

1. RIVKA AARONSON, Property Owner, Zichron Jacob
 2. EPHRAIM LTD., a private Company, registered in Palestine
- Both represented by N. Abcarius Bey, by whom service will be accepted

Appellants 10

VS.

1. KHALIL RAJIH KHALIL and 239 others
2. FARID SALIH KHADR and 38 others
3. TAHIR 'AWAD MANNA' and 52 other Heads of Families representing 226 persons, represented by Othman Eff. Bushnaq, Advocate, of Tulkarm
4. MUSTAFA MUHAMMAD GHADIYA and 182 others,
5. HUSEIN 'ABDALLAH HASAN NA'MAN and 48 other Heads of Families of whom two Heads of Families are represented by Walid Eff. Salah, Advocate, of Haifa
6. NAJIB EL-HAJ MUHAMMAD KHALIL 'UMAR HAMMAD and 10 others, of Zeita
7. YASIN YUSUF ZETAWI and 11 others, of Haifa
8. MUHAMMAD AHMAD MUHAMMAD 'ABD EL GHANI NI'MAN and 7 others, of Zeita
9. MUKHTARS AND THE MEMBERS OF THE VILLAGE SETTLEMENT COMMITTEE OF 'ATTIL on behalf of the village of 'Attil
10. HAIYIM RUTMAN, of Kfar Brandeis
11. BARUCH HELBETZ, of Kfar Brandeis
12. YOSEF DANIELI, of Kfar Brandeis
13. ESTHER DANIELI, of Kfar Brandeis.
14. MORDEKHAI RODIN, of Kfar Brandeis
15. WILHELM (ZEEV) BRUENN, of Kfar Brandeis
16. MEIR ZON, of Kfar Brandeis
17. HANNA ZON, of Kfar Brandeis
18. YISRAEL BALFOUR, of Kfar Brandeis
19. PENINA BALFOUR, of Kfar Brandeis
20. ARIEH MIKULIZKI, of Kfar Brandeis
21. HINDA MIKULIZKI, of Kfar Brandeis
22. SHEMUEL DERESH, of Kfar Brandeis
23. RIVQA DERESH, of Kfar Brandeis
24. HANNA KAUFMANN, of Kfar Brandeis
25. SHEMUEL SALOMON, of Kfar Brandeis

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| | 26. TSILA SALOMON, of Kfar Brandeis | <i>In the
Supreme
Court of
Palestine.</i> |
| | 27. HAIYIM WASSERMANN, of Kfar Brandeis | |
| | 28. YISRAEL TALIT, of Kfar Brandeis | |
| | 29. SARA TALIT, of Kfar Brandeis | |
| | 30. YA'AQOV MATOSSOV, of Kfar Brandeis | |
| | 31. SARA MATOSSOV, of Kfar Brandeis | |
| | 32. MORDEKHAI HIRSH, of Kfar Brandeis | |
| | 33. TSIPPORA HIRSH, of Kfar Brandeis | |
| | 34. MENAHEM MUTILSKY, of Kfar Brandeis | |
| 10 | 35. MIRYAM MUTILSKY, of Kfar Brandeis | |
| | 36. AVRAHAM ABRAMOVITZ, of Kfar Brandeis | |
| | 37. GRONIA ABRAMOVITZ, of Kfar Brandeis | |
| | 38. ZEEV HOCHBERG, of Kfar Brandeis | |
| | 39. RIVA HOCHBERG, of Kfar Brandeis | |
| | 40. YA'AQOV HERSHKOVITZ, of Kfar Brandeis | |
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| | 50. ESTHER ROSENZWEIG, of Kfar Brandeis | |
| | 51. SHEMUEL FENSKI, of Kfar Brandeis | |
| | 52. RAHEL FENSKI, of Kfar Brandeis | |
| | 53. MENAHEM MENDEL SEGALOVITZ, of Kfar
Brandeis | |
| 30 | 54. BATIA SEGALOVITZ, of Kfar Brandeis | |
| | 55. TSEVI YOSEF PIEKARASH, of Kfar Brandeis | |
| | 56. RIVQA PIEKARASH, of Kfar Brandeis | |
| | 57. HAIYM BARUKH LUBINSKY, of Kfar Brandeis | |
| | 58. SHOSHANNA LUBINSKY, of Kfar Brandeis | |
| | 59. NAUM TEPPER, of Kfar Brandeis | |
| | 60. HAIYA TEPPER, of Kfar Brandeis | |
| | 61. AGUDA SHITUFIT LE KISPUR ULE-HAKLAUT,
Kfar Brandeis LTD. (In Liquidation), of
Kfar Brandeis | |
| 40 | 62. YOSEF HODOROVNIK, of Kfar Brandeis | |
| | 63. NEHAMA HODOROVNIK, of Kfar Brandeis | |
| | 64. MORDEKHAI EFRATI, of Kfar Brandeis | |
| | 65. BAT-SHEVA EFRATI, of Kfar Brandeis | |
| | 66. HANOKH HOCHBERG, of Kfar Brandeis | |
| | 67. NEHAMA HOCHBERG, of Kfar Brandeis | |
| | 68. ELIYAHU AVTALION, of Kfar Brandeis | |
| | 69. SIMHA AVTALION, of Kfar Brandeis | |
| | 70. SHELOMO MEIMES, of Kfar Brandeis | |
| | 71. SHEMUEL MAEDER, of Kfar Brandeis | |
| 50 | 72. YOHOSUA TYREN, of Kfar Brandeis | |
| | 73. DEVORA TYREN, of Kfar Brandeis | |
| | 74. SHIM'ON TIKUZKI, of Kfar Brandeis | |

<i>In the Supreme Court of Palestine.</i>	75. TSIPPORA TIKUZKI, of Kfar Brandeis	
	76. YAAQOV FUCHA, of Kfar Brandeis	
	77. SHELOMO REUVEN PISHKO, of Kfar Brandeis	
	78. RIVQA PISHKO, of Kfar Brandeis	
No. 55. Notice and Grounds of Appeal of Rivka Aaronson and Another, — April 1943, <i>continued.</i>	79. NISSAN HEISSINER, of Kfar Brandeis	
	80. THE SHARON WATER CO. LTD., of Kfar Brandeis	
	81. REUVEN FELLER, of Kfar Brandeis	
	82. ARIEH ROHEMAN, of Kfar Brandeis	
	83. HADASSA ROHEMAN, of Kfar Brandeis	
	84. SHIMON KATZAP, of Kfar Brandeis	10
	85. MORDEKHAI GUTSTAD, of Kfar Brandeis	
	86. YOSEF ZIGA, of Kfar Brandeis	
	87. HADASSA ZIGA, of Kfar Brandeis	
	88. YOSEF SILBERSTEIN, of Kfar Brandeis	
	89. BATIA SILBERSTEIN, of Kfar Brandeis	
	90. YOSEF SHIM'ONI, of Kfar Brandeis	
	91. MIRYAN SHIM'ONI, of Kfar Brandeis	
	92. YOSEF BERMAN, of Kfar Brandeis	
	93. THE PALESTINE MORTGAGE AND CREDIT BANK LTD., of Jerusalem	20
	94. LOAN BANK LTD., of Jerusalem	
	95. THE CENTRAL BANK OF CO-OPERATIVE INSTITUTIONS IN PALESTINE LTD., of Jerusalem	
	-	<i>Respondents.</i>

NOTICE AND GROUNDS OF APPEAL.

Appeal is entered hereby from the decision of the Settlement Officer, Haifa Settlement Area, given in Case No. 1/Kfar Brandeis, delivered on 30th of March, 1943, leave to appeal having been granted by the Settlement Officer on the 14th of April, 1943, as evidenced by his letter addressed to Attorney for Appellants and bearing the said date. 30

A certified copy of the said decision is attached hereto, as well as sufficient copies for service on the Respondents together with copies of the Appeal.

An application for fixing a deposit in lieu of a guarantee is also attached, as well as the necessary declaration under the Defence Regulations.

The following grounds of appeal are respectfully urged :—

1. That the learned Settlement Officer has erred entirely in disregarding the judgments of the Supreme Court as to the proper procedure for setting aside a judgment of a Land Court on the ground of a plea of fraud. 40

2. That the Land Settlement Officer erred in not taking fully into account the judgment of the Judicial Committee of the Privy Council No. 19/1935.

3. That the learned Settlement Officer has misconceived his jurisdiction ; since Khor el Wassa was declared by an Administrative act as a unit in the sub-district of Haifa under the name of Kfar Brandeis,

and the Land Settlement Officer was appointed to settle disputes as to ownership of Kfar Brandeis, he had no jurisdiction over Raml Zeita or Musha Raml Zeita.

*In the
Supreme
Court of
Palestine.*

4. That the decision of the Land Settlement Officer is directly and completely against the weight of evidence laid before him.

5. That the Land Settlement Officer has not given any decision or consideration or attached any weight as to the fact of payment of Haq-el-Qarar, and the effect of such payment.

10 6. That the Land Settlement Officer has completely disregarded and omitted to deal with and consider the agreement entered into between the Appellants and Lord Plumer, the then High Commissioner for Palestine.

7. The judgment of the Land Settlement Officer is vague and ambiguous and incapable of execution.

8. The learned Settlement Officer further erred in purporting to confirm, for the purposes of the settlement proceedings, a judgment to which none of the parties to the present proceedings were either parties or privies.

20 Wherefore it is prayed that this Honourable Court may allow this appeal and set aside the decision of the learned Settlement Officer, and grant such other or consequential relief as this Honourable Court may seem fit in the circumstances, with costs and advocate's fees in this appeal and below.

(Sgd.) N. ABCARIUS,

April, 1943.

Advocate for Appellants.

—
No. 55.
Notice and
Grounds
of Appeal
of Rivka
Aaronson
and
Another,
— April
1943,
continued.

No. 56.

NOTICE and GROUNDS OF APPEAL of Ya'aqov Rutman and Another .

Civil Appeal No. 145/1943.

IN THE SUPREME COURT,
Sitting as a Court of Appeal, Jerusalem.

- 30 1. YA'AQOV RUTMAN, landowner, of Kfar Brandeis,
near Hadera
2. RAHEL RUTMAN, landowner, of Kfar Brandeis,
near Hadera.
Both represented by J. Kaisermann, Advocate,
Haifa, whose address for service will be c/o
N. Abcarius Bey, Advocate of Jerusalem -

Appellants

V.

- 40 1. KHALIL RAJIH KHALIL and } represented by
239 others } Abdul Latif Bey
2. FARID SALIH KHADR and } Salah, Advocate,
38 others } of Nablus
3. TAHIR 'AWAD MANNA' and 52 other Heads of
Families representing 226 persons, represented
by Othman Eff. Bushnaq, Advocate, of Tulkarm

No. 56.
Notice and
Grounds
of Appeal
of
Ya'aqov
Rutman
and
Another,
— April
1943.

*In the
Supreme
Court of
Palestine.*

No. 56.
Notice and
Grounds of
Appeal of
Ya'aqov
Rutman
and
Another,
— April
1943,
continued.

4. MUSTAFA MUHAMMAD GHADIYA and 182 others represented by Anas Khamra, Advocate, of Haifa
5. HUSEIN 'ABDALLAH HASAN NA'MAN and 48 other Heads of Families of whom two Heads of Families are represented by Walid Eff. Salah, Advocate, of Haifa
6. NAJIB EL-HAJ MUHAMMAD KHALIL 'UMAR HAMMAD and 10 others, of Zeita
7. YASIN YUSUF ZETAWI and 11 others, of Haifa 10
8. MUHAMMAD AHMAD MUHAMMAD 'ABD EL GHANI NI'MAN and 7 others, of Zeita
9. MUKHTARS AND THE MEMBERS OF THE VILLAGE SETTLEMENT COMMITTEE OF 'ATTIL on behalf of the village of 'Attil
10. HAIYIM RUTMAN, of Kfar Brandeis
11. BARUCH HELBETZ, of Kfar Brandeis
12. YOSEF DANIELI, of Kfar Brandeis
13. ESTHER DANIELI, of Kfar Brandeis
14. MORDEKHAI RODIN, of Kfar Brandeis 20
15. WILHELM (ZEEV) BRUENN, of Kfar Brandeis
16. MEIN ZON, of Kfar Brandeis
17. HANNA ZON, of Kfar Brandeis
18. YISRAEL BALFOUR, of Kfar Brandeis
19. PENINA BALFOUR, of Kfar Brandeis
20. ARIEH MIKULIZKI, of Kfar Brandeis
21. HINDA MIKULIZKI, of Kfar Brandeis
22. SHEMUEL DERESH, of Kfar Brandeis
23. RIVQA DERESH, of Kfar Brandeis
24. HANNA KAUFMANN, of Kfar Brandeis 30
25. SHEMUEL SALOMON, of Kfar Brandeis
26. TSILA SALOMON, of Kfar Brandeis
27. HAIYIM WASSERMANN, of Kfar Brandeis
28. YISRAEL TALIT, of Kfar Brandeis
29. SARA TALIT, of Kfar Brandeis
30. YA'AQOV MATOSSOV, of Kfar Brandeis
31. SARA MATOSSOV, of Kfar Brandeis
32. MORDEKHAI HIRSH, of Kfar Brandeis
33. TSIPPORA HIRSH, of Kfar Brandeis
34. MENAHEM MUTILSKY, of Kfar Brandeis 40
35. MIRYAM MUTILSKY, of Kfar Brandeis
36. AVRAHAM ABRAMOVITZ, of Kfar Brandeis
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42. SHEMUEL YOSEF CHOINA, of Kfar Brandeis
43. HINDA CHOINA, of Kfar Brandeis
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45. SARA YEHIELI, of Kfar Brandeis
46. BERAKHA ROSENZWEIG, of Kfar Brandeis

47. SHIFRA ROSENZWEIG, of Kfar Brandeis
 48. TSIPPORA ROSENZWEIG, of Kfar Brandeis
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 59. NAUM TEPPER, of Kfar Brandeis
 60. HAIYA TEPPER, of Kfar Brandeis
 61. AGUDA SHITUFIT LE KISPUR ULE-HAKLAUT,
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 69. SIMHA AVTALION, of Kfar Brandeis
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 30 74. SHIM'ON TIKUZKI, of Kfar Brandeis
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 77. SHELOMO REUVEN PISHKO, of Kfar Brandeis
 78. RIVQA PISHKO, of Kfar Brandeis
 79. NISSAN HEISSINER, of Kfar Brandeis
 80. THE SHARON WATER CO. LTD., of Kfar Brandeis
 81. REUVEN FELLER, of Kfar Brandeis
 82. ARIEH ROHEMAN, of Kfar Brandeis
 83. HADASSA ROHEMAN, of Kfar Brandeis
 40 84. SHIMON KATZAP, of Kfar Brandeis
 85. MORDEKHAI GUTSTAD, of Kfar Brandeis
 86. YOSEF ZIGA, of Kfar Brandeis
 87. HADASSA ZIGA, of Kfar Brandeis
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 89. BATIA SILBERSTEIN, of Kfar Brandeis
 90. YOSEF SHIM'ONI, of Kfar Brandeis
 91. MIRYAM SHIM'ONI, of Kfar Brandeis
 92. YOSEF BERMAN, of Kfar Brandeis
 93. THE PALESTINE MORTGAGE AND CREDIT
 50 BANK LTD., of Jerusalem
 94. LOAN BANK LTD., of Jerusalem

*In the
 Supreme
 Court of
 Palestine.*

No. 56.
 Notice and
 Grounds
 of Appeal
 of
 Ya'aqov
 Rutman
 and
 Another,
 — April
 1943.

*In the
Supreme
Court of
Palestine.*

95. THE CENTRAL BANK OF CO-OPERATIVE
INSTITUTIONS IN PALESTINE LTD., of
Jerusalem

Respondents.

NOTICE AND GROUNDS OF APPEAL.

No. 56.
Notice and
Grounds of
Appeal of
Ya'aqov
Rutman
and
Another,
— April
1943,
continued.

Appeal is entered hereby from the decision of the Settlement Officer, Haifa Settlement Area, given in Case No. 1/Kfar Brandeis, delivered on 30th of March, 1943, leave to appeal having been granted by the Settlement Officer on the 14th of April, 1943, as evidenced by his letter addressed to Attorney for Appellants and bearing the said date.

A certified copy of the said decision is attached hereto, as well as 10 sufficient copies for service on the Respondents together with copies of the Appeal.

An application for fixing a deposit in lieu of a guarantee is also attached, as well as the necessary declaration under the Defence Regulations.

The following grounds of appeal are respectfully urged :—

1. That the learned Settlement Officer erred entirely in disregarding the judgments of the Supreme Court as to the proper procedure for setting aside a judgment of a Land Court on the ground of a plea of fraud.

2. That the Land Settlement Officer erred in not taking fully into account the judgment of the Judicial Committee of the Privy Council 20 No. 19/1935.

3. That the learned Settlement Officer has misconceived his jurisdiction ; since Khor el Wassa was declared by an Administrative act as a unit in the sub-district of Haifa under the name of Kfar Brandeis, and the Land Settlement Officer was appointed to settle disputes as to ownership of Kfar Brandeis, he had no jurisdiction over Raml Zeita or Musha Raml Zeita.

4. That the decision of the Land Settlement Officer is directly and completely against the weight of evidence led before him.

5. That the Land Settlement Officer has not given any decision or 30 consideration or attached any weight as to the fact of payment of Haq-el-Qarer, and the effect of such payment.

6. That the Land Settlement Officer has completely disregarded and omitted to deal with and consider the agreement entered into between the Appellants and Lord Plumer, the then High Commissioner for Palestine.

7. The judgment of the Land Settlement Officer is vague and ambiguous and incapable of execution.

8. The learned Settlement Officer further erred in purporting to confirm, for the purpose of the settlement proceedings, a judgment to 40 which none of the parties to the present proceedings were either parties or privies.

Wherefore it is prayed that this Honourable Court may allow this appeal and set aside the decision of the learned Settlement Officer, and grant such other or consequential relief as this Honourable Court may seem fit in the circumstances, with costs and advocate's fees in this appeal and below.

(Sgd.) J. KAISERMANN,

April, 1943.

Advocate for Appellants.

No. 57.

JUDGMENT of the Supreme Court.

Civil Appeal No. 143/43.

Civil Appeal No. 144/43.

Civil Appeal No. 145/43.

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

Before : THE CHIEF JUSTICE and Mr. JUSTICE COPLAND.

In the Appeal of :
10 Civil Appeal No. 143/43.

TOVA RUTMAN

Appellant

*In the
Supreme
Court of
Palestine.*

No. 57.
Judgment
of the
Supreme
Court in
C.A. Nos.
143/43,
144/43,
and
145/43,
21st July
1943.

V.

- | | | |
|--------|---|--|
| 1. | KHALIL RAJIB KHALIL and
239 others | } represented by
Abdul Latif Bey
Salah, Advocate,
of Nablus |
| 2. | FARID SALIH KHADR and
38 others | |
| 3. | TAHIR 'AWAD MANNA' and
52 other Heads
of Families representing 226 persons, represented
by Othman Eff. Bushnaq, Advocate, of Tulkarm | |
| 20 4. | MUSTAFA MUHAMMAD GHADIYA and 182 others,
represented by Anas Khamra, Advocate, of Haifa | |
| 5. | HUSEIN 'ABDALLAH HASAN NA'MAN and 48
other Heads of Families of whom two heads
of families are represented by Walid Eff. Salah,
Advocate, of Haifa | |
| 6. | NAJIB EL HAJ MUHAMMAD KHALIL 'UMAR
HAMMAD and 10 others, of Zeita | |
| 7. | YASIN YUSUF ZETAWI and 11 others, of Haifa | |
| 30 8. | MUHAMMAD AHMAD MUHAMMAD 'ABD EL
GHANI N'MAN and 7 others, of Zeita | |
| 9. | MUKHTARS AND THE MEMBERS OF THE
VILLAGE SETTLEMENT COMMITTEE OF
'ATTIL on behalf of the Village of 'Attil | |
| 10. | HAIYIM RUTMAN, of Kfar Brandeis | |
| 11. | BARUCH HELBETZ, of Kfar Brandeis | |
| 12. | YOSEF DANIELI, of Kfar Brandeis | |
| 13. | ESTHER DANIELI, of Kfar Brandeis | |
| 14. | MORDEKHAI RODIN, of Kfar Brandeis | |
| 15. | WILHELM (ZEEV) BRUENN, of Kfar Brandeis | |
| 40 16. | MEIR ZON, of Kfar Brandeis | |
| 17. | HANNA ZON, of Kfar Brandeis | |
| 18. | YISRAEL BALFOUR, of Kfar Brandeis | |
| 19. | PENINA BALFOUR, of Kfar Brandeis | |
| 20. | ARIEH MIKULIZKI, of Kfar Brandeis | |
| 21. | HINDA MIKULIZKI, of Kfar Brandeis | |
| 22. | SHEMUEL DERESH, of Kfar Brandeis | |
| 23. | RIVQA DERESH, of Kfar Brandeis | |

<i>In the Supreme Court of Palestine.</i>	24. HANNA KAUFMANN, of Kfar Brandeis	
	25. SHEMUEL SALOMON, of Kfar Brandeis	
	26. TSILA SALOMON, of Kfar Brandeis	
	27. HAIYIM WASSERMANN, of Kfar Brandeis	
No. 57. Judgment of the Supreme Court in C.A. Nos. 143/43, 144/43, and 145/43, 21st July 1943, <i>continued.</i>	28. YISRAEL TALIT, of Kfar Brandeis	
	29. SARA TALIT, of Kfar Brandeis	
	30. YA'AQOV MATOSSOV, of Kfar Brandeis	
	31. SARA MATOSSOV, of Kfar Brandeis	
	32. MORDEKHAI HIRSH, of Kfar Brandeis	
	33. TSIPPORA HIRSH, of Kfar Brandeis	10
	34. MENHAHEM MUTILSKY, of Kfar Brandeis	
	35. MIRYAM MUTILSKY, of Kfar Brandeis	
	36. AVRAHAM ABRAMOVITZ, of Kfar Brandeis	
	37. GRONIA ABRAMOVITZ, of Kfar Brandeis	
	38. ZEEV HOCHBERG, of Kfar Brandeis	
	39. RIVA HOCHBERG, of Kfar Brandeis	
	40. YA'AQOV HERSHKOVITZ, of Kfar Brandeis	
	41. SARA HERSHKOVITZ, of Kfar Brandeis	
	42. SHEMUEL YOSEF CHOINA, of Kfar Brandeis	
	43. HINDA CHOINA, of Kfar Brandeis	20
	44. YISRAEL YEHIELI, of Kfar Brandeis	
	45. SARA YEHIELI, of Kfar Brandeis	
	46. BERAKHA ROSENZWEIG, of Kfar Brandeis	
	47. SHIFRA ROSENZWEIG, of Kfar Brandeis	
	48. TSIPPORA ROSENZWEIG, of Kfar Brandeis	
	49. YA'AQOV ROSENZWEIG, of Kfar Brandeis	
	50. ESTHER ROSENZWEIG, of Kfar Brandeis	
	51. SHEMUEL FENSKI, of Kfar Brandeis	
	52. RAHEL FENSKI, of Kfar Brandeis	
	53. MENAHEM MENDEL SEGALOVITZ, of Kfar Brandeis	30
	54. BATIA SEGALOVITZ, of Kfar Brandeis	
	55. TSEVI YOSEF PIEKARASH, of Kfar Brandeis	
	56. RIVQA PIEKARASH, of Kfar Brandeis	
	57. HAIYIM BARUKH LUBINSKY, of Kfar Brandeis	
	58. SHOSHANNA LUBINSKY, of Kfar Brandeis	
	59. NAUM TEPPER, of Kfar Brandeis	
	60. HAIYA TEPPER, of Kfar Brandeis	
	61. AGUDA SHITUFIT LE KISPUR ULE-HALAUT, KFAR BRANDEIS LTD. (In Liquidation), of Kfar Brandeis	40
	62. YOSEF HODOROVNIK, of Kfar Brandeis	
	63. NEHAMA HODOROVNIK, of Kfar Brandeis	
	64. MORDEKHAI EFRATI, of Kfar Brandeis	
	65. BAT-SHEVA EFRATI, of Kfar Brandeis	
	66. HANOKH HOCHBERG, of Kfar Brandeis	
	67. NEHAMA HOCHBERG, of Kfar Brandeis	
	68. ELIYAHU AVTALION, of Kfar Brandeis	
	69. SIMHA AVTALION, of Kfar Brandeis	
	70. SHELOMO MEIMES, of Kfar Brandeis	50
	71. SHEMUEL MAEDER, of Kfar Brandeis	
	72. YOHOSUA TYREN, of Kfar Brandeis	

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| 73. | DEVORA TYREN, of Kfar Brandeis | <i>In the
Supreme
Court of
Palestine.</i> |
| 74. | SHIM'ON TIKUZKI, of Kfar Brandeis | |
| 75. | TAIPPORA TIKUZKI, of Kfar Brandeis | |
| 76. | YAAQOV FUCHA, of Kfar Brandeis | |
| 77. | SHELOMO REUVEN PISHKO, of Kfar Brandeis | |
| 78. | RIVQA PISHKO, of Kfar Brandeis | |
| 79. | NISSAN HEISSINER, of Kfar Brandeis | |
| 80. | THE SHARON WATER CO. LTD., of Kfar Brandeis | |
| 81. | REUVEN FELLER, of Kfar Brandeis | |
| 10 82. | ARIEH ROHEMAN, of Kfar Brandeis | |
| 83. | HADASSA ROHEMAN, of Kfar Brandeis | |
| 84. | SHIMON KATZAP, of Kfar Brandeis | |
| 85. | MORDEKHAI GUTSTAD, of Kfar Brandeis | |
| 86. | YOUSEF ZIGA, of Kfar Brandeis | |
| 87. | HADASSA ZIGA, of Kfar Brandeis | |
| 88. | YOSEF SILBERSTEIN, of Kfar Brandeis | |
| 89. | BATIA SILBERSTEIN, of Kfar Brandeis | |
| 90. | YOSEF SHIM'ONI, of Kfar Brandeis | |
| 91. | MIRIAM SHIM'ONI, of Kfar Brandeis | |
| 20 92. | YOSEF BERMAN, of Kfar Brandeis | <i>Respondents.</i> |
| 93. | THE PALESTINE MORTGAGE AND CREDIT
BANK LTD., of Jerusalem | |
| 94. | LOAN BANK LTD., of Jerusalem | |
| 95. | THE CENTRAL BANK OF CO-OPERATIVE
INSTITUTIONS IN PALESTINE LTD., of
Jerusalem | |

Civil Appeal No. 144/43.

- | | | |
|----|----------------|-------------------|
| 1. | RIVKA AARONSON | <i>Appellants</i> |
| 2. | EPHRAIM LTD. | |

30

V.

- | | | |
|----|--|-----------------------|
| 1. | KHALIL RAJIH KHALIL and 239 others and
94 others whose names are shown above as
respondents in Civil Appeal 143/43 | - <i>Respondents.</i> |
|----|--|-----------------------|

Civil Appeal No. 145/43.

- | | | |
|----|----------------|-------------------|
| 1. | YA'AQOV RUTMAN | <i>Appellants</i> |
| 2. | RAHEL RUTMAN | |

V.

- | | | |
|----|--|---------------------|
| 40 | KHALIL RAJIH KHALIL and 239 others and 94 others
whose names are shown above as respondents in Civil
Appeal 143/43 | <i>Respondents.</i> |
|----|--|---------------------|

Appeal from the decision of the Settlement Officer, Haifa Settlement Area, dated the 30th of March, 1943, in case No. 1/Kefar Brandeis.

For Appellants :	In Case No. 143/43—Nesib Abcarius Bey. In Case No. 144/43—Dr. Mordekhai Eliash. In Case No. 145/43—Messrs. Kaiserman and E. D. Goitein.
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*In the
Supreme
Court of
Palestine.*

No. 57.
Judgment
of the
Supreme
Court in
C.A. Nos.
143/43,
144/43,
and
145/43,
21st July
1943,
continued.

For Respondents : 1 & 2—Abdel Latif Bey Salah.
3—Othman Eff. Bushnaq.
4 & 6—Anas Eff. Khamra.
5—Issa Eff. Nakhleh and Walid Eff. Salah.
7, 8, 9—In person.

JUDGMENT.

This is an appeal against a decision of the Settlement Officer, Haifa Settlement Area, dated the 30th March, 1943, in Case No. 1 Kefar Brandeis. In that case the plaintiffs consisted of 595 persons representing themselves and an additional 525 persons and also a Village Settlement Committee of 10 Attil Village. The defendants numbered 86 persons and there were in addition 5 third parties including four limited companies.

At the outset of the hearing before us, Abdul Latif Bey Salah for the respondents raised a preliminary objection arising out of Civil Procedure Rules 316 and 326 and asked that the appeal be dismissed. A strict compliance with these Rules would have involved inordinate delay and a waste of something like ten thousand sheets of paper, and an order dispensing with such strict compliance had already been obtained from a Judge in chambers. We ordered consolidation of the three cases before us and were satisfied that all parties were before the Court and were represented or 20 present and that the one decision would cover all three appeals, as all facts and points at issue were identical.

There is somewhat of a similarity between this appeal and that of Civil Appeal 236/42 in which I delivered the judgment of this Court last week and in which I remarked that that case had been occupying the Courts of this Territory for a period of nearly fifteen years without finality. In this case, however, the period is even longer and it has already once been before the Privy Council. In that other case, as probably in this case, it would be optimistic to expect that finality has even now been 30 reached by this appeal.

In paragraph 1 of his decision the Settlement Officer in referring to the Privy Council judgment confirms an interlocutory decision that he gave to the effect that he had jurisdiction in the matter. In paragraphs 2, 3 and 4 he recites earlier facts and judgments of various Courts.

In paragraph 5 he states that he is confronted with two conflicting Court judgments, i.e., of the Nablus Land Court, being Land Appeal No. 70/24 and of the Haifa Land Court being Land Case 10/25. He then recites that the plaintiffs', i.e., the respondents', contentions are that the Haifa judgment was obtained by fraud and in consequence could not stand, and that the registration should be set aside. 40

In paragraphs 5 and 6 he considers this question of fraud and in paragraph 7 comes to the following decision :—

“The Settlement Officer comes 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.”

On this basis he then deals with the interests of other claimants, some 50 of whom he held had purchased from defendants 1 and 4 in good faith.

It is therefore quite plain and apparent that this decision of the Settlement Officer given in 1943 sets aside and avoids a judgment of a Court of Record given in 1925 in favour of the plaintiffs in that action on the grounds that that judgment was obtained by the fraud of such plaintiffs ; and this in spite of the fact that the opposition to that judgment went on appeal to the Court of Appeal and the decision confirmed.

It is unnecessary to set out in detail the grounds of appeal, the main point submitted being that in coming to his decision the Settlement Officer acted entirely without jurisdiction in the matter and that he was not
 10 the competent authority to come to such a decision. The point as to there being no evidence before him on which he could have based such a decision, that there had been no specific allegations of fraud in the claims put forward before him, and laches on the part of the plaintiffs before him or "sleeping on rights" are merely subsidiary points.

On this main point C.A. 94/39, P.L.R. 1939 p. 493, is directly in point and the facts are similar. The second head-note reads in that case :—

“ 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 declared to be in a settlement area, was an application in
 20 an action in which the Land Court had jurisdiction, and therefore should have been made to that Court and not to the Land Settlement Officer.”

The judgment reads :—

“ The appeal raises one simple and interesting point—and that is—can the Land Settlement Officer declare that a judgment of the Land Court, which it is alleged was obtained by fraud, is a nullity, on the fraud being proved before him, or is such a question within
 30 only the jurisdiction of the Land Court which gave that judgment ? The Land Court held that the Settlement Officer had no such power and that the proper procedure was to bring an action in the original Court to have the judgment set aside.”

The judgment then goes on to hold that the provisions as to the review of judgments contained in the Ottoman Civil Procedure Code had been repealed, and as there was nothing in the Palestine Law or in the Civil Procedure Rules, the English law and procedure was applicable in accordance with article 46 of the Order-in-Council. The judgment then deals with the English law on the matter and it goes on to say :—

“ We think that an application to set aside a judgment of
 40 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 application in an action in which the Land Court has jurisdiction—it is, in reality, a 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.”

A further and even stronger authority is that contained in the judgment in High Court 108/42, and some of the remarks made in that judgment are equally applicable to the Settlement Officer’s decision in this case.
 50 But a further and even still stronger authority, in that it is a statutory

*In the
 Supreme
 Court of
 Palestine.*

— — —
 No. 57.
 Judgment
 of the
 Supreme
 Court in
 C.A. Nos.
 143/43,
 144/43,
 and
 145/43,
 21st July
 1943,
continued.

*In the
Supreme
Court of
Palestine.*

No. 57.
Judgment
of the
Supreme
Court in
C.A. Nos.
143/43,
144/43,
and
144/43,
21st July
1943,
continued.

authority, is that contained in Section 66 of the Land (Settlement of Title) Ordinance, Cap. 80, and which reads as follows :—

“ After the 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 of any person in respect of any right to land has been obtained by fraud or that a right recorded in the existing registers has been committed or incorrectly set out in the register.”

10

And then follows a proviso.

Nowhere in this Ordinance nor in the Rules prescribed thereunder have I been able to find any reference to or even suggestion that the proceedings before the Settlement Officer are proceedings of a Court nor is a Court thereby constituted.

I do not wish to prolong this judgment by going into the facts leading up to the judgment of the Privy Council, No. 19/1935 in connection with these same matters as the Order of the Privy Council granting special leave to appeal gives a very lucid resume of these facts, but I would observe that that decision of the Privy Council held that the decision of the previous Settlement Officer, Mr. Lowick, as to the boundaries of the village of Hudeira and that the area of Khor el Wasa was not within Hudeira but within Zeita was a purely administrative finding, and that his decision that the lands of Khor el Wasa were mush'a lands necessarily excluded the title relied on by the appellants and was outside his jurisdiction and ultra vires, in so far as it dealt with questions of rights to land outside Hudeira, which was then under Settlement.

20

On this main ground alone, therefore, I am of the opinion that the appeal should succeed and the decision of the Settlement Officer must be set aside and that consequently the registrations of the title of the appellants ordered by the Haifa judgment remain and subsist, as effected thereunder, unless and until it and they are set aside by a competent Court.

30

As regards the subsidiary points put forward in argument by the respective advocates for the appellants against the decision of the Settlement Officer, even assuming he had jurisdiction, the practice, procedure and principles on which a previous and subsisting judgment of a Court can be set aside on the grounds of fraud are well established and a Court requires a strong case to be established by specific pleadings and evidence in support thereof, before it will allow such previous judgment to be set aside on such grounds. It is not for this Court to anticipate such a possible decision by another Court on facts that might be put before that Court, and I would merely observe that on what appear to be the facts put before the Settlement Officer in this case, there was no evidence of any fraud, and in view of the decision objected to having been delivered nearly 18 years ago, it will probably be a matter of some difficulty for the respondents to this appeal to establish such a case and obtain a judgment in their favour.

40

This appeal is therefore allowed with costs on the higher scale, and we certify appellants' advocates' fees for attendance at £P.20 each. The

Settlement Officer's order as to no costs for either side is confirmed, but the hearing fees of £P.20 are to be paid by the respondents.

Delivered this 21st day of July, 1943.

(Sgd.) F. GORDON-SMITH,

Chief Justice.

*In the
Supreme
Court of
Palestine.*

No. 57.
Judgment
of the
Supreme
Court in
C.A. Nos.
143/43,
144/43,
and
145/43,
21st July
1943,
continued.

COPLAND J. : I have had the advantage of reading the judgment which has just been delivered by my Lord, and I agree entirely both with the reasoning and with the conclusions arrived at by him. There is only one point on which I desire to add a few words, that is, the question as to whether there was any evidence of fraud adduced before the Settlement Officer. The Settlement Officer based his decision that the judgment of the Haifa Land Court had been obtained by fraud on the ground that Abd el Fattah es-Samara and partners, and Nissan Rutman must have been aware that this land was not in Hudeira but in Zeita, and that they wilfully deceived the Court by stating that it was in Hudeira. I find, with all respect, considerable difficulty in appreciating the reasons which prompted the Settlement Officer to say that these persons must have been aware that the land was in Hudeira. The whole gist of the case was a dispute as to whether the land was in Hudeira or in Zeita. Why the Settlement Officer said that they must have been aware that it was in Hudeira is a matter on which I can find no evidence whatever. It seems to be based not upon fact but upon a mere guess. Even supposing that the Settlement Officer had power to declare a judgment of a Land Court to be a nullity, which we have held not to be the case, there must be the very strongest evidence of fraud going to the root of the judgment, and there is to my mind not a scrap of evidence before the Settlement Officer to this effect. I would quote the remarks of James L.J. in *Flower v. Lloyd* (1878-9) 10 Chancery Division, p. 327, at p. 333. These remarks were concurred in by Baggallay L.J. The learned Lord Justice said:—

“ Where is litigation to end if a judgment obtained in an action fought out adversely between two litigants sui juris and at arm's length could be set aside by a fresh action on the ground that perjury had been committed in the first action, or that false answers had been given to interrogatories or a misleading production of documents, or of a machine, or of a process had been given? There are hundreds of actions tried every year in which the evidence is irreconcilably conflicting, and must be on one side or other wilfully and corruptly perjured. In this case, if the plaintiffs had sustained on this appeal the judgment in their favour, the present defendants, in their turn, might bring a fresh action to set that judgment aside on the ground of perjury of the principal witness and subornation of perjury; and so the parties might go on alternatively *ad infinitum*.”

Further on the learned Lord Justice says:—

“ Perjuries, falsehoods, frauds, when detected, must be punished and punished severely; but, in their desire to prevent parties litigant from obtaining any benefit from such foul means, the Court must not forget the evils which may arise from opening such new sources of litigation, amongst such evils not the least being that it would be certain to multiply indefinitely the mass of those very perjuries, falsehoods and frauds.”

*In the
Supreme
Court of
Palestine.*

No. 57.
Judgment
of the
Supreme
Court in
C.A. Nos.
143/43,
144/43,
and
145/43,
21st July
1943.
continued.

Those pertinent remarks apply not only to litigation in England but even more so to litigation in Palestine. In this country the mass of litigation in the higher Courts is something like twenty times the proportion which it has assumed in England. To allow motions to set aside actions, to set aside judgments on the ground of fraud—judgments which have been up to the Court of Appeal where fraud was never specifically alleged on appeal—would be to multiply indefinitely the already excessive number of actions which these Courts—the higher Courts at any rate—unfortunately have to try.

For these reasons which I have just given, in addition to those given 10 by my Lord, I agree that these appeals must be allowed with the consequences indicated by my Lord.

(Sgd.) R. COPLAND,
British Puisne Judge.

No. 58.
Application
and Order
granting
Conditional
Leave to
Appeal
(*not
printed*),
23rd
September
1943.

No. 58.
APPLICATION FOR AND ORDER granting conditional leave to Appeal to His Majesty
in Council.

(Not printed).

No. 59.

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

Privy Council Leave Application No. 19/43.

IN THE SUPREME COURT.

Sitting as a Court of Civil Appeal.

Before : Mr. JUSTICE ROSE and Mr. JUSTICE EDWARDS.

In the Application of :—

1. KHALIL RAJIH KHALIL and 239 others as stated in the schedule attached to the memorandum of claim
- 10 2. FARID SALEH KHADR and 38 others as stated in the schedule attached to the memorandum of claim
3. TAHER 'AWAD MANNA and 52 others heads of families representing 226 persons
4. MUSTAFA MUHAMMAD GHUDIYA and 182 others
5. HUSNI ABDALLAH HASSAN NA'MAN and 48 others heads of families representing 289 persons
- 20 6. NEJIB EL HAJ MUHAMMAD KHALIL UMAR HAMMAD and 10 others
7. YASIN YUSUF ZETAWI and 11 others
8. MUHAMMAD AHMAD MUHAMMAD, ABD EL GHANI NI'MAN and 7 others

Applicants

V.

1. TOVA RUTMAN, of Hudera
2. RIFKA AARONSON, of Zichron Yacob
3. EPHRAIM LTD., private company
4. YA'AQOV RUTMAN, of Kfar Brandes
- 30 5. RAHEL RUTMAN, of Kfar Brandeis, and 87 others whose names are set out in the original application for leave to appeal

Respondents.

Application for final leave to appeal to His Majesty in Council from the judgment of the Supreme Court sitting as a Court of Civil Appeal, dated the 21st July, 1943, in the consolidated Civil Appeals Nos. 143/43, 144/43 and 145/43.

For Applicants : Isa Eff. Nakhleh.

For Respondents : Abcarius Bey.

ORDER.

40 WHEREAS by order of this Court dated the 23rd day of September, 1943, the applicants were granted conditional leave to appeal to His Majesty in Council, subject to the following conditions :—

(1) That the appellants do enter within two months of the date of this order into a bank guarantee from one of the three banks,

*In the
Supreme
Court of
Palestine.*

No. 59.
Order
granting
Final Leave
to Appeal
to His
Majesty
in Council,
15th
December
1943.

*In the
Supreme
Court of
Palestine.*

No. 59.
Order
granting
Final Leave
to Appeal
to His
Majesty
in Council,
15th
December
1943,
continued.

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 respondents in the event of the appellants not obtaining an order granting them final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the appellants to pay the respondents' costs of the appeal (as the case may be) ;

(II) That the appellants do take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England within two months of the date of this order. 10

WHEREAS the applicants have fulfilled the said conditions in that they have paid as a deposit the sum of LP.300 as per receipt No. 451721 dated 8th November, 1943, as prescribed and have filed a list of documents to be included in the record of the appeal, which has to be settled by the Chief Registrar for despatch to His Majesty in Council ;

THE COURT therefore 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. 20

Given this 15th day of December, 1943.

(Sgd.) D. EDWARDS,
British Puisne Judge.

(Sgd.) ALAN ROSE,
British Puisne Judge.

EXHIBITS AND DOCUMENTS.

No. 1.

Exhibit " A A ".

AGREEMENT for Division of Masha Lands.

(Translation from Arabic.)

On the date below, Monday, it has been agreed between all the inhabitants of Zeita Village in the presence of the Agriculture Officer of the District, Mohammed Habib Eff. el Jarrah, of the inhabitants of Acre and residing in Tulkarem Sub-District, and the Werko Officer, Mutih Eff. 10 About Zahra, of the noblesse of Nablus, residing in Tulkarem, and the Officer in charge of the Police Station in our village, namely, Murad Eff. of the inhabitants of Damascus and temporarily residing in Tulkarem, on the following conditions :—

1. The Musha lands shall be equally divided according to the number of the feddans ; there shall be taken from the products of their cultivation the eighth after deducting the Tithe ; the " Kirab " land shall not be taken from its owner, but that which is not " Kirab " shall be equally divided between all the inhabitants according to the number of the feddans ; all the expenses, such as camels, the fourth of the ploughing and other 20 things, shall be borne by the cultivator, with the exception of the Tithe which shall be deducted from the total of the products.

2. There shall be no objection to the lands exceeding the needs of the cultivators of the village being given to cultivators stranger to the village, provided that the quantity which must be taken from the products cultivated by the foreign cultivator shall, according to the existing custom, be taken from the fifth, apart from the Tithe ; all other expenses shall be sustained by the cultivator.

3. None of the inhabitants of Zeita Village shall have the right to claim his ownership in the lands in his possession, whereas these are 30 " Musha " between the whole village.

4. The products, that is to say the price which will be taken from the cultivators of Zeita Village, and the fifth which will be taken from foreign cultivators, shall be divided among all the inhabitants of Zeita Village, male and female, whether small, ill or healthy, even idiot, according to the register bearing our seals and approved by the Agriculture Department, of which there are five copies, one copy with each head of the Quarter, a copy kept with the Agricultural Committee of the Village, and the last copy to be kept in the Agricultural Department of the District for emergency.

40 5. Any person, whose name is entered in the schedule of the inhabitants and who afterwards quits the village with his own family, shall have his share abolished and added to the total ; such share shall be equally divided among all. So also if an absent person, who was a former inhabitant of the Village, comes back to the Village and wishes to live therein, he will be entitled to his share like the others. In the like manner, the absent persons whose absence is due to Military Service, shall be entitled to their shares on their return. But the name of a person who is publicly known to be dead shall not be entered ; however, the name of his descendant, even if a small child, shall be entered.

Exhibits.

No. 1.
Exhibit
" AA ".
Plaintiffs'
Documents.
Agreement
of division
of Masha
Lands by
Zeita
population,
25th
November
1919.

Exhibits.
 —
 No. 1.
 Exhibit
 "AA".
 Plaintiffs'
 Documents.
 Agreement
 of division
 of Masha
 Lands by
 Zeita
 population,
 25th
 November
 1919,
continued.

6. The products of the "Musha" lands, that is to say, the eighth from the inhabitants of the Village and the fifth from foreign cultivators shall be collected and deposited with the president of the Agricultural Committee of the Village, and shall only be distributed in the presence of the Agriculture Officer of the District.

7. The Werko payable on the aforementioned "Musha" lands shall be paid from the general products. But the taxes and the extraordinary expenses shall be collected from all the inhabitants of the Village, every person according to his capability, under the supervision of the agricultural committee of the village, the musha being excluded. This partition shall not be abolished but shall always be valid, provided that the summer "Kirab" lands shall not be partitioned, but the waste and "shalaf" lands shall be equally partitioned each year at the fall of the season according to the feddans existing at the time. Made by consent of all the inhabitants, whilst they are in full health and full mental capacity.
 24.11.19.

Mukhtar and president of the Chamber of Agriculture—Notable and cultivator : Seal—Notable and cultivator : Seal—Notable and Cultivator : Seal—Notable and cultivator : Seal—Notable and cultivator : (Sgd.) Ali el Hussein—Notable and cultivator—Notable and cultivator—Notable and cultivator : (Sgd.) Abdul Pattah el Mari—Notable and cultivator : Abdul Sheikh Hassan—Notable and cultivator—Notable and cultivator—Notable and cultivator : Seal—Notable and cultivator : Seal—Notable and cultivator : Mohammed Mahmoud Hamdan—Notable and cultivator : Hassan el Natour—Notable and cultivator : Mohamed Abou Massadeh—Notable and cultivator : Salman Abou Suleiman—Notable and cultivator : Assaad Ali el Nassar—Notable and cultivator : Mohammed el Noussi—Notable and cultivator : Mohamed el Sayed Ahmed—Notable and cultivator : Ridwan el Sayed Ahmed—Notable and cultivator : Moussa Nasser el Sayed Ahmed—Notable and cultivator : Hamad Zikralla—Cultivator : Youssef Ibrahim—Cultivator : Nimer el Akkad—Cultivator : Said Hassouneh—Cultivator : Abdul Kader el Mahmoud—Cultivator : Saed el Din el Akkad—Cultivator : Zikralla Mohammed—Cultivator : Seal—Cultivator : Mohammed Salah—Cultivator : Heidar el Akkad—Cultivator : el Abed el Moustafa—Cultivator : Mohammed Taher el Akkad—Cultivator : Abdul Kader—Cultivator : Hassan Gussein—Abdul Kader el Nofal : authorise to put the signature of Mohammed Zikralla—Ahmed Abdul Hadi Abou Hamdeh : authorised to put the signature of Mohammed Zikralla.

He who has the "Kirab" is obliged to plant it in winter, and assuming he plants it in winter, it will be liable to partition among all according to the feddans, and thereupon it has been approved by the Agriculture Department.
 25.11.19.

Seal of the Agriculture Department

(Sgd.) MOHAMMED JARRAH.

Certified true copy of the original agreement produced in Land Case No. 18/22.

Signature :

Registrar of the District Court, 50
 Nablus.

Seal of the District Court, Nablus.

No. 2.

Exhibit "BB".

AGREEMENT for Division of Masha Lands.

(Translation from Arabic.)

Exhibits.

No. 2.

Exhibit
"BB".Plaintiffs'
Documents.Agreement
of division
of Masha
Lands by
Zeita
population,
26th
December
1919.

According to the partition made among all the inhabitants of our village in the "musha" land we, the undersigned, were allotted thirty-five feddans of the land of "el Ramel el Wousta" with "Khor el Wassa." We went to partition "Khor el Wassa" among us. It has been divided into two plots, Eastern and Western, according to the lot of the Prophet of God. The Western part of the said locality includes nineteen and a half feddans and was allotted to : Abdalla el Zikralla, Ahmed Abou Jazar, Nassan el Natour, Moussa el Sayed Ahmed, Mohammed Abou Massada, Farid Ibrahim, Abdul Latif el Mari, Selim Abdul Fattah, Ahmed Imkattaf, Abdul Kader Abou Nasser, Abou el Taher, Saed el Din, Heidar and Nimer sons of El Akkad, Mohammed el Abed el Mihsen, Ahmed Abdul Hadi and Awad el Manna'a ; the Eastern part includes fifteen and a half feddans according to the lot of the Prophet of God, and was allotted to : Abdul Fattah el Mari, Abdul Kader el Mahmoud, Mohammed el Mahmoud, Abdul Kader el Massoud, Ali el Saed, Mahmoud Zikralla, Mohammed el Younes, Sheikh Ali, Nasser Idriss, Bint Ihsein, Mohammed el Salah, Awad Abdul A'al, Hassan Ibrahim, and Sadek Abdul Latif. The boundaries between the two plots are : the waterfalls and water course. On this an agreement has been reached among us. 26th December, 1919.

(Sgd.) Abdul Kader el Mahmoud, Mohammed Taher el Akkad, Ahmed Abdul Hadi, Zikralla, Mohammed Mahmoud, Hassan el Akkad, Ahmed Abou Jazar—the agreement between them was made in my presence : Seal of the Mukhtar of Zeita, (Sgd.) Sadek Abdul Latif, Abdallah Zikralla, Mohammed el Younes, Nimer el Akkad, Hassan Natour, Abdul Kader Abou Nasser, Abdul Kader el Saoud, Awad Abdul A'al, Mohamed Abou Massoud, Moussa el Sayed Ahmed, Mahmoud Zikralla, Fahed Ibrahim, Hassan Ibrahim, plougher of Bint Hussein Ahmed Abou Saber.

Checked :

Certified true copy of the agreement produced in Land Case No. 18/22.

(Sgd.)

Registrar of the District Court, Nablus.
Seal of the District Court, Nablus.

No. 3.

Exhibit "CC".

AGREEMENT for Division of Masha Lands.

(Translation from Arabic.)

LIST OF THE QUANTITY OF FEDDANS.

Exhibits.
 No. 3.
 Exhibit
 "CC".
 Plaintiffs'
 Documents.
 Agreement
 of division
 of Masha
 Lands by
 Zeita
 population,
 25th
 December
 1919.

Feddans.		Feddans.	
1½	Farid Ibrahim	1	El Sheikh Saleh & Mohammed
1	Abdul Kader el Massoud		Abou Massadeh
1½	Abdul Kader Abou Nasser	1	Mohammed Abdul Mihsen
1	Mahmoud el Zikralla	1	Mohammed el Yunis
4½	Dar el Akkad	1	Mohammed el Salah
3½	Abdul Kader el Mahmoud	1	El Sheikh Ali and Nasser
	and Brothers		Idriss
1	Hassan el Natour	1	Ahmed Abou Jazar
2	Mohammed Zikralla	1	Bint Hussein
1½	Moussa el Sayed Ahmed	4	Abdul Fattah el Mari
1	Ahmed el Katek	1	Hassan Ibrahim
<hr/>		<hr/>	
18½		13	
Feddans.			
1½	Ali el Saed		20
-½	Sadek Abdul Latif		
-½	Awad el Manna'a		
1	Awad Abdul A'al		
<hr/>			
3½			
13	reported		
18½	reported		
<hr/>			
35			

THIRTY-FIVE FEDDANS ONLY.

On the date below an agreement has been reached among us, all the 30 inhabitants of Zeita Village, in respect of the partition of the "Musha" sand lands of our village according to the feddans existing in the village. The persons whose names appear above were allotted thirty-five feddans in the said land on the basis of the quantity of the feddans. Of the plots partitioned among all, they were also allotted the "middle plot" bounded: South: road—North: road—West: Quinine trees of the Jews—East: Public Road. This partition is for one year, 1919, and they are entitled to dispose of this land as they like; it will be divided among them according to the feddans, whether waste or shalaf, provided they will not bring a stranger while the village is in need of cultivation; if what exceeds their 40 need and the need of the village is given to a person of another village, the fifth of the products shall be taken from him and given to the whole village. No other name shall be added to their names unless something remains after them. This document has been therefore written and kept with them.

25.12.19.

Notable : ? —Notable : (Sgd.) Ahmed Iwess—Notable : Seal—Notable : Seal—Notable : Seal—Notable : Seal—Notable : Seal—(Sgd.) Assad el Rabba'a—(Sgd.) : Said Hassounch.

Certified copy of the agreement produced in Land Case No. 18/22.

Signature :

Registrar of the District Court, Nablus.
Seal of the District Court, Nablus.

No. 4.

Exhibit " DD ".

10

APPLICATION to President of Land Court, Samaria.

(Translation from Arabic.)

To the Land Court of Samaria District.

Mohammed Ahmed Zikralla, Moussa Ben Nasser el Sayed Ahmed, Saleh Ben Ismail el Khatib, Mohammed Ben Hassan Ali Saada, Zikralla Ben Mohammed Zikralla, Abdul Fattah Ben Mari el Samara and Said Ben Hassan el Natour, peasants of the inhabitants of Zeita Village, Tulkarem.

The Demand : Sharif Ben Youssef el Ashkar, Mukbel Ben Assaad el Mohammed el Mukbel Ali Hamdeh, Ahmed Ben Abdul Salim Ben Ahmed Ali Hamdeh, el Haj Said Ben Abdul Razek Ben Ahmed Abou Hamdeh, Shafika Bint Saleh Ben Abdulhadi el (?), Suad Bin Hassan Ben Abdul Fattah, Ibrahim and Mohammed Said, Abdulgani and Rajeh sons of Khalil el Youssef, Mahmoud Ben Assaad Ben Khalil el Youssef, Hassan Ben Moussa Khalil el Youssef, Ali Ben Assaad Abi Manna'a, Abdul Kader Ben Saleh el Zabidi, Ishtewi Ben Abdulrahman Ben Mohammed Kassem Siksik, Suad Bint Suleiman Ben Mohammed el Kassem Siksek, Amneh Bint Abdulhadi el Mohammed el Kassem Siksik, Mahmoud Ben Salah Hussein Salwan, Abdulrahim Ben Hussein Sahman, Kamleh Bint el Abed Hassan, Kadra Bint Said Ben Assaad el Nasser Abbas, Amneh Bint Ahmed Mahmoud Nasser Abbas, (?) Ben Abdulrahman Hassan el Nasser Abbas, Hussein Ben Abdulrahman Hussein el Nasser, Sharifeh Bint Youssef Igfieh, Zeinab Bint Saleh Igfieh, Abdullah Ben Salah el Moustafa, Naif Ben Moustafa Ben Hassan Naaman, Abduljabbar Ben Abdalla Hassan Naaman, Said Ben Yassin Ibrahim el Yassin, Abdul Kader Ben Mahmoud Saleh Hassounch, Abdulhafez Ben Mohammed Saleh Hassounch, Suad Bint Youssef Saleh Hassounch, Belkiss Bint el Abed Ibrahim, Said Ben Moustafa Hassounch, Jamileh Bint Saleh Ben Moustafa Hassounch, Hassan Ben Said el Khalil, Hafza Bint Nasser Abou Ahmed, Mohammed Said Ben Hamdan Ben Anhar Hamdan el Abed, Kadra Abdul Kader, Suleiman Ben Saleh Suleiman el Ahmed and Youssef Ben Mahmoud Moustafa Suleiman of Zeita, and Aminah Bint Mohammed el Hamdan el Amer of Balaa, residing in Ishwekeh Village, and Mohammed Ben Saleh Incim of Zeita, residing in Haifa, are trying to transfer the whole land of Ramleh to a person of the Zionist " Pica " Association in Haifa, whereas it is since hundreds of years common

Exhibits.

—
No. 3.
Exhibit
" CC ".

Plaintiffs'
Documents.
Agreement
of division
of Masha
Lands by
Zeita
population,
25th
December
1919,
continued.

No. 4.
Exhibit
" DD ".

Defendants'
Documents.
Application
to
President
of Land
Court in
Samaria
District,
2nd
September
1922.

Exhibits.
 No. 4.
 Exhibit
 "DD".
 Defendants'
 Documents.
 Application
 to
 President
 of Land
 Court in
 Samaria
 District,
 2nd
 September
 1922,
continued.

property of all the inhabitants of that village who count nine hundred and six persons. No one of the inhabitants of the village has ever possessed this land independently. We ask therefore in the first place that an order be issued to the Land Registry of Tulkarem stopping the transfer until the result of the trial, and secondly that these persons be summoned before Your Honourable Court, and, after our trial with them, a judgment be given declaring this land to be the common property of all the inhabitants of Zeita, forbidding them to interfere with our shares totalling seven out of 906 shares and adjudging them to pay the costs of the action and the fees of the advocate who will represent us before the Court. 10

Situation of the land in dispute: in Zeita lands. Boundaries: South, East and North: the way—West Nafiat land which is in the hand of the Jews.

The name of the registered person and how registered: the registered persons are the de cujus of Defendants.

We shall explain at the trial how the registration took place. The reasons for claiming the said property: the attempt of Defendants to transfer it to the Jews for their own profit and to deprive us as well as all the inhabitants thereof.

Nature of documents supporting the demand: We have no documents. 20
 We all shall prove by evidence and proofs during the trial that we, together with all the inhabitants of the village, possessed it by way of "Musha" from time immemorial to our ancestors. If there is another demand relating to the property, mention the name of applicant and the nature of his application: None.

Remarks: the value of this land in the werko is 675,791 Turkish Piastres. Therefore the value of our shares in proportion of the number of the inhabitants of the village is 6117 Egyptian Piastres.

We admit and recognise that what is written above is true and is our right in the said property. Therefore we make an application to the Court 30 asking for a judgment confirming it.

2nd September, 1922.

Zikralla Ben Mohammad Zikralla, Mohammed Ben Hassan Abi Massadeh, Saleh Ben Ismail El Khatib, Moussa Ben Nasser el Sayed Ahmad, Mohammed Ben Ahmed Zikralla, Said Hassan el Natour, Abdul Fattah Ben Mari El Samara.

Checked:

True copy of the original application in Land Case No. 18/22.

(Sgd.) J. MASAAD,

Registrar,
 District Court, Nablus.

40

Seal of the District Court,
 Nablus.

No. 5.

Exhibit "EE."

POWER OF ATTORNEY.

(Translation from Arabic.)

By virtue of my Power of Attorney from Zeita inhabitants (the defendants in the Land Case of Raml Zeita) a case between the inhabitants of Zeita and Mohamed Zikrallah and partners (Plaintiffs) and Sharif and partners (Defendants) I have appointed Mr. Mockler Advocate to defend the said case. A special Power of Attorney made this 13th day of
10 February, 1923.

(Sgd.) J. KAISERMAN,

Advocate.

Certified true copy of the Power of Attorney produced in Land Case No. 18/22.

(Sgd.) J. MASSAD,

Registrar District Court,
Nablus.

Seal of District Court, Nablus.

*Exhibits.*No. 5.
Exhibit
"EE".Defendants'
Documents.
Power of
Attorney
from Mr.
Kaisermann
to Mr.
Mokler,
13th
February
1923.

No. 6.

Exhibit "Z".

JUDGMENT of Land Court, Nablus, in Land Case No. 18/22.

IN THE LAND COURT NABLUS,

Before : HIS HONOUR THE PRESIDENT (Judge Webb).
HIS HONOUR JUDGE IZZAT NAMMAR.

In the Case of :

MOHAMED AHMED ZIKRALLAH and others *Plaintiffs*

V.

SHARIF EL YOUSEF and others *Defendants*No. 6.
Exhibit
"Z".Plaintiffs'
Documents.
Judgment
of Land
Court,
Nablus,
in Land
Case 18/22,
13th
March
1923.**JUDGMENT.**

30 After scrutiny it appeared that Plaintiff Mohamed Ahmed Zikrallah and others of Zeita Village alleged that Defendant Mohamed el Yousef and others attempted to transfer the whole land of Raml to one of the inspectors of the Jewish PICA Association in Haifa in spite of the fact that the said land is Masha' for the whole villagers of Zeita from hundreds of years and it never occurred that anyone of the villagers concerned held the land independently of the others. Plaintiffs therefore asked that the land be declared Masha' for the whole village of Zeita and that an order be made restraining the Defendants from interfering with it. Defendants replied that the land is not Masha', that Plaintiffs are not
40 cultivators or fellahins and that the land belongs to them by virtue of title deeds. At the trial it came to light that the land in dispute is not

Exhibits. to the benefit of the Village which would have necessitated the inclusion of all villagers as Plaintiffs. The Court therefore decided that the action be limited in the name of one of the Plaintiffs. At their request the action was limited in the name of Plaintiff Mohamed Ahmad Zikrallah.

No. 6.
Exhibit
"Z".
Plaintiffs'
Documents.
Judgment
of Land
Court,
Nablus,
in Land
Case 18/22,
13th
March
1923,
continued.

Having heard the evidence adduced by both parties it was proved that the land in claim is Masha' to all Zeita villagers and that each villager is entitled to cultivate in the land from time immemorial, that the land was not allotted or assigned to a section of the village, that Plaintiff Mohamed Zikrallah is one of the cultivators of the said land from time immemorial and that Defendants did not possess the land independently. 10
Though under Article 8 of the Land Law it is not possible to assign the land to all the inhabitants of the village or to one or two or three persons from amongst them but it is necessary to grant each inhabitant a separate piece and though this land does not fall to the benefit of the village such as grazing land or woodland, or public way or threshing floor in which cases its grant to the whole village is prohibited yet in view of the fact that it was proved that the land was left Masha' between all the inhabitants of the village by cultivation without differentiation from time immemorial and on established custom and in view of the principle that "things which have been in existence from time immemorial shall be left as they were" 20
and cannot be altered at all before settlement by Government now in accordance with articles 66, 36 and 1818 of the Mejelle we order as follows :—

We declare that the land in dispute is Masha' to all the inhabitants of the village and we order that it should be left as it stood from time immemorial without it being assigned to anybody. We consider that Plaintiff Mohamed Ahmad Zikrallah is a cultivator in the said land according to the existing custom and we therefore order that Defendants should not interfere with his cultivation rights.

We also order the cancellation of the Tabu Sanads in the name of 30
the Defendants (by inheritance from their ancestors) and the registration of the land in dispute in the Tabu as general Masha' to every cultivator of the Village pending settlement by Government. We also dismiss the action of the Third Party namely Sheikh Rifat Eff. Tuffaha as he failed to prove that he is one of the cultivators of the Village and also failed to recognise the Masha' land in question and we cancel the Tabu registration in his possession.

We order Defendants to pay the costs of Plaintiff Mohamed Ahmad and LP.10.— Advocate's fees.

Judgment given in presence on 13.3.23 subject to appeal.

40

(Sgd.) WEBB.

(Sgd.) J. NAMMAR.

No. 7.

Exhibit " B ".

GUARANTEE by N. Rutman.
(Translation from Arabic.)

Exhibits.

No. 7.
Exhibit
" B ".

Plaintiffs'
Documents.
Guarantee
by Rutman,
18th
March
1923.

GUARANTEE.

WHEREAS Muqbel ibn Assad Mohamed el Muqbel Abi Hamdeh and Ahmed ibn Abd el Rahim ibn Ahmad Abi Hamdeh and el Haj Said ibn Abd el Razzak ibn Ahmad Abi Hamdeh and Suad bint Hassan ibn Abdul Fattah Ibrahim and Ishteiwi ibn Abdul Rahman ibn Mohamed el
10 Kasem Safaq and Amneh bint Abdul Hadi Mohamed el Kasem Safaq and Mahmoud ibn Saleh Hussein Suleiman and Abdul Rahim ibn Hussein Suleiman and Kameleh bint el Abed Hussein and Khadrah bint Said ibn Assad el Nasr Abbas and Amnah bint Ahmed Mahmoud Nasser Abbas and Hussein ibn Abdul Rahman Hassan el Nasr Abbas and Abdalla ibn Salah el Mustapha and Nayef ibn Mustapha Hassan Ne'man and Abdul Jaber ibn Abdallah Hassan Ne'man and Said ibn Yassin Ibrahim el Yassin and Abdul Kader ibn Mahmoud Saleh Hassouneh and Abdul Hafez ibn Mohamed Saleh Hassouneh and Suad bint Yousef Saleh Hassouneh and
20 Said ibn Mustapha Hassouneh and Jamileh bint Saleh ibn Mustapha Hassouneh and Mohamed Said ibn Hamdan el Abed and Amneh bint Mohamed el Hamdan el Amer of Balka residing at Shweiteh Village and Mohamed ibn Saleh el Naim of Zeita residing at Haifa and

WHEREAS all the above from Zeita are desirous of appealing the judgment of the Land Court Samaria in respect of Zeita lands el Ramlich given in favour of Mohamed Zikrallah,

THEREFORE I hereby guarantee the appellants for the payment by them of all costs and expenses on appeal and damages that may result from the appeal in the event it fails.

Made this 18th day of March, 1923.

30 (Sgd.) Witnesses

(Sgd.) N. RUTMAN.

18.3.23.

No. 272 Special.

No. 1085 General.

The signature affixed at the foot of this guarantee made and attested on Sunday the 18th March, 1923, is the signature of Mr. Nissan Rutman of Khudeirah Village who signed the document after it was read over to him and accepted its contents in full in presence of the two witnesses namely Mr. Yousef Kaizerman, Advocate, Haifa and Shawki Eff. El Khoury Pharmacist of Haifa.

40 Wherefore upon demand and acceptance I make this confirmatory endorsement.

(Sgd.) FUAD

for Notary Public, Haifa.

Registered on 18.3.23 under Serial No. 1085.

Stamps.

18.3.23.

Exhibits.

No. 8.
Exhibit
" Y ".
Defendants'
Documents.
Judgment
of the
Court of
Appeal,
L.A. 59/23,
1st
October
1923.

No. 8.

Exhibit " Y ".

JUDGMENT OF THE COURT OF APPEAL in Land Appeal 59/23.

(Translation from Arabic.)

Land Appeal 59/23.

Before : THE A/PRESIDENT HIS HONOUR JUDGE CORRIE.

HIS HONOUR MUSTAPHA BEY

HIS HONOUR MAJED BEY.

In the Appeal of :—

MUQBEL ASSAD EL MAHMOUD and 23 others
from Zeita represented by Najib Eff. el Hakim

Appellants

10

V.

MOHAMED ZIKRALLAH of Zeita, represented by
Husni Eff. Anabtawl - - - -

Respondent.

This is an appeal from the judgment of the Land Court Samaria dated 13.3.23 whereby the land in dispute known as Er. Raml was declared Masha' to the whole inhabitants of the village and ordered to be left as it stood from time immemorial without being assigned to anyone. The judgment further considered the Plaintiff Mohamed Ahmad Zikrallah, as cultivator in the said land, according to existing custom and it refrained the defendants (appellants) from interfering with plaintiff's cultivation. It also ordered the cancellation of the Tabu Sanads in the name of Defendants devolved upon them by inheritance from their ancestors and the registration of the land at the Land Registry as General Masha' to every cultivator of the inhabitants of the village pending settlement by Government. The judgment further dismissed the claim of the Third Party, Sheikh Rif'at Tuffaha, as he failed to prove that he is a cultivator in the village and that he was in possession of the Masha', cancelling at the same time the tabu registration in his name. Judgment given in presence ordering the Defendants to pay Plaintiff costs and LP.10.— Advocate's fees.

JUDGMENT.

Having scrutinised the documents and heard the addresses of both parties, the Court, after consideration finds, as follows :—

1. Though the Land Court was entitled at the determination of the dispute between the parties to consider whether the lands were or were not Masha' to the village yet under article 1829 of the Mejelle it could not order as such in favour of persons other than the parties to the action.

2. Irrespective of the fact that the lands in dispute are registered in the names of appellants' ancestors, the lands however were cultivated by the inhabitants of Zeita Village by way of Masha' who did not pay rent to the kushan holders. The Respondent is one of those persons who cultivated it and he is bound by the evidence adduced which the Court is entitled to accept under Section 7 of the Land Courts Ordinance.

3. The order for the registration of the lands in dispute as Masha' to the whole inhabitants of the village is contrary to article 8 of the Land Law.

4. The order of the Court whereby the action was confined to one of the Plaintiffs which action was heard and judgment given therein in the absence of the other Plaintiffs is contrary to law.

5. The failure to call upon Plaintiffs to prove legally the number of shares they claim is contrary to article 1817 of the Mejelle.

Therefore the Court unanimously decides to set aside the judgment of the Land Court and to remit the case in order that Plaintiffs may be called upon to prove legally the shares they claim in the land in dispute. Costs to abide the result.

Given in presence this 1st day of October, 1923.

Certified true copy (Sgd.) I. MASAD. (Sgd.) CORRIE.
Registrar District Court, Nablus.

Exhibits.
—
No. 8.
Exhibit
" Y ".
Defendants' Documents.
Judgment of the Court of Appeal, L.A. 59/23, 1st October 1923,
continued.

No. 9.

NOTICE OF WITHDRAWAL.
(Translation from Arabic.)

Through the Notary Public of Haifa.

20 To : His Honour the President of the Land Court of Samaria, and Negib Eff. El Hakim, Advocate, legal Attorney of Mukbel Ben Assaad el Mohammad and partners of Zeita.

With regard to the case raised by me against Mukbel Ben Assaad el Mohammed and partners of the inhabitants of Zeita in respect of the lands known as " Ard el Ramel " belonging to Zeita, in which a judgment was given in first instance by the Land Court of Samaria on 23rd March, 1923, and quashed by the decision of the Court of Appeal of Jerusalem on 1st October, 1923, File No. 59/23, I declare to you that I have absolutely waived my right of action in that case, relinquished any interest I have
30 therein, and that I have generally released the Defendants from any liability. I pray you to have this declaration recorded in your Honourable Court and to notify the Land Registry and the Execution Officer for the removal of the attachment laid on these lands. Accept my respects.
26th December 1923.

Signature : ABDEL FATTAH BEN MARI' EL SAMARA.

Thumbprint : BEN HUSSEIN ISSA authorised to sign.

Witness & Identifier :

40 MOHAMMED BEN NIMER ABOU MANA'.

Witness & Identifier :
ALI BEN HUSSEIN ISSA.

No. 9.
Exhibit
—
Plaintiffs' Documents.
Notice by Abdul Fattah Samara, with-drawing from Land Case 18/22, Land Court, Nablus, 26th December 1923.

Exhibits. *Number*
 ———
 No. 9. 875 General
 Exhibit 5482 Special.

Plaintiffs' Documents.
 Notice by Abdul Fattah Samara, with-drawing from Land Case 18/22, Land Court, Nablus, 26th December 1923, *continued.*

To : His Honour the President of the Land Court of Samaria and to Mr. Nejib el Hakim, Advocate, legal attorney of Mukbel Ben Assad el Mohammed and partners of Zeita.

At the request of Abdul Fattah Ben Mari el Samara of Zeita who has affixed his right thumbprint above and authorised Ali Ben Hassan el Issa of Zeita to put his signature I only serve upon you a copy of this attested Notice.

10

Wednesday the sixth day of December, 1923.

Notary Public of Haifa.

(Sgd.) ELIAS KHATTAR.

N.P.1416/42.

At the request of Walid Eff. Salah this copy has been extracted from the register and issued to applicant after being duly checked and the prescribed fee paid in accordance. Articles 51 & 81 of the Notary Public Law.

In witness whereof I have hereunto set my hand this 27th day of October, 1942.

20

(Sgd.) E. KHATTAR,

Notary Public,

Revenue Stamp (50 Mils).

Haifa.

No. 10.
 Exhibit
 "K".

Defendants' Documents.

No. 10.

Exhibit "K".

NOTARIAL DOCUMENT No. 879.

(Translation from Arabic.)

Notarial Document No. 879, 26th December 1923. *Number*
 879 Special
 5497 General.

On Wednesday the 26th day of December, 1923, I, Elias Ben Hanna Khattar, Notary Public of the District Court of the Northern Area, went at request to Halperin Hotel situated in the Eastern Quarter of Haifa, and when I arrived there, there appeared before me Mr. Ali Ben Said Abou Manna'a of the inhabitants of Zeita Village, Tulkarem, and after he became fully known to me through Mohammed Bey Saleh Abbas, Advocate residing at Haifa, and through Mr. Yacoub Leeb Samsonoff, cultivator residing at the Kudeira Village. he declared to me by his own will and consent and whilst possessing all the qualities required by law, that he borrowed from Mr. Nissan Ben Mordechai Rutman, cultivator residing at Kudeira, the sum of fifty Egyptian Pounds, which he fully received in

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cash from the above creditor, and he undertook before me to pay the said amount to the order of the above creditor at the expiration of six months from this date, and asked me to write a deed in respect of his present admission and to give a certified copy thereof to the creditor so that he may act upon it in case of necessity. Whereas the said declarant, Mr. Ali aforementioned, is aware of the results deriving from his admission, and whereas his demand is in conformity with the law, I have myself directly written this document, and after it has been read to him, and he was made clearly understand its contents and has fully agreed to its provisions in the presence of the aforementioned identifiers, it has been signed by all the aforementioned persons and attested by me, and recorded in its respective register.

Exhibits.
No. 10.
Exhibit
" K ".
Defendants'
Documents.
Notarial
Document
No. 879,
26th
December
1923,
continued.

26th December, 1923.

Declarant

ALI BEN EL SAYED ABOU MANNA'A.

Witness and Identifier :

MOHAMMED SALEH ABBAS.

Witness and Identifier :

YACOUB LEEB SAMSONOFF.

Notary Public,
Haifa,

(Sgd.) ELIAS KHATTAR.

20 N.P.1415/42

At the request of Walid Eff. Salah this copy has been extracted from the register and issued to applicant after being duly checked and the prescribed fee paid in accordance. Arts. 51 & 81 of the Notary Public Law.

In witness whereof I have hereunto set my hand this 27th day of October, 1942.

Notary Public,
Haifa,

(Sgd.) ELIAS KHATTAR.

30 Revenue Stamps 50 Mils.

Seal of the District Court, Haifa.

No. 10a.

Exhibit " J ".

NOTARIAL DOCUMENT No. 876.

(Translation from Arabic.)

Number

876 Special

5496 General.

No. 10a.
Exhibit
" J ".
Defendants'
Documents.
Notarial
Document
No. 876,
26th
December
1923.

At the meeting held by me, Elias Ben Hanna Khattar, Notary Public of the District Court of the Northern Area, at Halperin Hotel situate in the Eastern Quarter of Haifa, on Wednesday the 26th of December 1923, there appeared before me Messrs. Mohammed Ben Nimer Abou Manna'a, El Sheikh Ali Ben Hussein el Issa, Shaker Ben Awad Abou

Exhibits. Manna'a, Tewfik Ben Mohammad Zabidi and Abdul Kader Ben Saleh
 No. 10A. Zabidi, all of them cultivators of the inhabitants of the Zeita Village,
 Exhibit being fully identified by Messrs. Yacoub Ben Leeb Samsonoff of the
 "J". inhabitants of Hudeira Village, Haifa, and Hassan Ben Fares el Hassan
 Defendants' of the said Zeita Village, and declared to me by their own will and consent
 Documents. and whilst possessing all the qualities required by law, that they borrowed
 Notarial from Mr. Nissam Ben Mordechai Rutman, cultivator residing at Hudeira
 Document Village, the sum of one hundred and twenty five Egyptian pounds, which
 No. 876, they fully received in cash from the creditor, and undertook before me to
 26th pay the said sum jointly and severally to the order of the aforementioned 10
 December creditor in Haifa at the expiration of six months from this date, and
 1923, asked me to prepare a deed in respect of their admission and to give a
continued. certified copy thereof to the said creditor so that he should act upon it in
 case of necessity. Whereas the declarants are aware of the results deriving
 from their admission and whereas their demand is in conformity with
 the law, I have myself directly prepared this deed; and after it has been
 read to them, and they were made clearly to understand its provisions,
 and they fully have agreed to its contents in the presence of the identifiers
 Messrs. Yacoub and Hussein aforementioned, it has been signed by each of
 them and by me, has been attested by me, and recorded in its respective 20
 register.

26th December 1923.

(Sgd.) SHAKER AWAD ABOU (Sgd.) TEWFIK MOHAMMED
 MANNA'A. ZABIDI.

(Sgd.) ALI BEN HASSAN EL (Sgd.) MOHAMMED BEN
 ISSA. NIMER ABOU
 MANA'A.

(Sgd.) ABDUL KADER BEN SALEH EL ZABIDI.

Witness and Identifier: (Sgd.) HUSSEIN BEN FARES HASSAN.

Witness & Identifier: (Sgd.) YACOUB LEEB SAMSONOFF. 30

Notary Public,
 Haifa,

(Sgd.) ELIAS KHATTAR.

At the request of Walid Eff. Salah this copy has been extracted from
 the register and issued to applicant after being duly checked and the
 prescribed fee paid in accordance with Arts. 51 & 81 of the Notary Public
 Law.

In witness whereof I have hereunto set my hand this 27th day of
 October, 1942.

Notary Public,
 Haifa,

40

(Sgd.) ELIAS KHATTAR.

Revenue Stamps 50 Mils.

JUDGMENT OF THE LAND COURT, Nablus.

No. 11.
Plaintiffs'
Documents.
Judgment
of Land
Court,
Nablus,
4th April
1924.

IN THE LAND COURT OF NABLUS.

MOKBEL BEN ASSAD EL MOHAMMAD EL
MOKBEL
AHMAD ABED EL RAHIM AHMAD ABOU
HAMDEH
HAJ SAID BEN ABDUL RAZIK
SUADBINT HASSAN ABDUL FATTAH
10 SHTEWI BEN ABED EL RAHMAN BEN
MOHAMED KASIM
AMNEH BINT ABED EL HADI MOHAMED
KASEM
MAHMOUD SALIH HASSAN SLEIMAN
and partners of Zeita

v.

OSMAN EFF. EL BUSHNAQ attorney for
Mohamed Zikrallah & partners of Zeita

JUDGMENT.

20 On 13.3.25, this Court decided that the land in dispute is masha' between the whole inhabitants of the village as it had been so since long without being specialised to any one ; that the Plaintiff Mohammed Ahmad Zikrallah is a cultivator in the said land according to custom and that the Defendants should not interfere with the said Plaintiffs. It further decided the cancellation of the Tabou Deeds in the name of the Defendants devolved upon them from their ancestors and the registration of same in the Land Registry as a masha' between every cultivator in the said village until it will be demarcated by Government.

30 The Court has also decided to restore the claim against one of the Plaintiffs, namely Muhammad Ahmad Zikrallah because the land is not subject to the village in order that all the inhabitants should be considered opponents as stated in the preliminary judgment. On appeal from the said judgment by some of the Defendants the case was remitted by the appellate Court and the judgment set aside ; the Defendants were requested to prove their alleged shares in the land in dispute by legal evidence because the lands registered being Masha' contrary to Article 8 and because the failure to request the Defendants to prove their legal shares as alleged by them is contrary to Article 1817 of the Mejelle.

40 Therefore a fresh hearing was allowed and at the hearing the Plaintiffs Mohammed Hassan and Abed El Fattah did not appear. Their rights were dropped. With regard to the remaining Plaintiffs Mohammed Zikrallah, Salih El Khatib, Mousa Nasir, Zikrallah Mohammad Zikrallah, and Suad Hassan Nazoub they proved their claim by evidence of witnesses to the effect that each did possess one share out of 906 shares in the masha' land of Ramel Zeita which was proved to be Masha' at the previous hearing

Exhibits.
 —
 No. 11.
 Exhibit
 —
 Plaintiffs'
 Documents.
 Judgment
 of Land
 Court,
 Nablus,
 14th April
 1924,
continued.

and that all the inhabitants had right therein and that it did not only belong to the Defendants. According to the partition deed made between the inhabitants and to which the Court of Appeal did not object, the land is bounded South, East, North, Road—West : Ard Enufiat possessed by the Jews.

Therefore it is unanimously decided, subject to article 1818 of the Mejelle, to order the non-interference in the one share of each out of 906 shares in the land in dispute and that these shares should be registered in the names of the Plaintiffs in the Tabou and to amend the sanads of the Tabou in the name of Defendants under Nos. 28, 29, 30 and 31, dated 10 4 Muharram 1288, 2nd Muharram 1288 and 4th Muharram 1288 respectively. Defendants ordered to pay all costs and LP.5 Advocate's fees.

Judgment in presence and subject to appeal.

Signed : IZZAT, Member.

Signed : WEBB, President.

14.4.24.

No. 12.
 Exhibit
 " C ".
 Plaintiffs'
 Documents.
 Guarantee
 by Rutman,
 2nd May
 1923.

No. 12.
Exhibit " C ".

GUARANTEE by N. Rutnam.
 (Translation from Arabic.)

GUARANTEE.

20

WHEREAS Muqbel ibn Ahmad el Mohamed el Muqbel Abi Hamdeh and partners of Zeita Village are desirous of appealing the judgment given against them by the Land Court Samaria on 14.4.24 in favour of Saleh Mohamed Zikrallah and partners of Zeita with regard to Ard el Raml of Zeita lands, I the undersigned guarantee the payment to respondents, namely, Mohamed Ahmed Zikrallah and others all damages & travelling expenses which may result out of this appeal in the event the appellants (Muqbel ibn Assad el Mohamed el Muqbel Abi Hamdeh and others) fails.

2/5/24

Sgd. NISSAN RUTMAN.

Sgd. YACOUB BAHUT }
 „ NAEF ZAKA } Witnesses.

30

To the Jewish Chamber of Commerce.

Kindly notify the Notary Public N.D. whether the guarantee of Mr. Nissan Rutman is acceptable.

(Sgd.) E. KHATTAR,
 Notary Public.

Here follows the observations of the Jewish Chamber of Commerce in Hebrew.

No. 292 Special.
 No. 2307 General.

40

The signature appearing at the foot of this guarantee made on Friday the 2nd of May, 1924 and attested on Tuesday the 6th of May 1924 is the signature of Mr. Nissan Rutman ben Mordechai Rutman of Khuderah,

who signed it before me at my office after it was read over to him and who confirmed its contents in full in presence of two witnesses namely Messrs. Nayef Zaka and Yacoub Yousef Bahut of Haifa.

Therefore upon demand & acceptance I confirm this guarantee, and register it in the special register.

6.5.24
Seal and stamp of 5 mils

(Sgd.) E. KHATTAR,
Notary Public,
Northern District,
Haifa.

Exhibits.
—
No. 12.
Exhibit
"C".
Plaintiffs'
Documents.
—
Guarantee
by Rutman,
2nd May
1923,
continued.

10

No. 13.

JUDGMENT OF THE SUPREME COURT in C.A. 70/24.

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

In the Appeal of :

MUKBEL ASSAD MOHAMMED MUKBEL and
others - *Appellants*

v.

ZIKRALLAH MOHAMMED ZIKRALLAH and
others *Respondents.*

20

Appeal from the Judgment of Land Court Nablus dated 14-4-24.

No. 13.
Plaintiffs'
Documents.
—
Judgment
of
Supreme
Court.
Jerusalem,
in
C.A. 70/24,
20th
January
1925.

JUDGMENT.

There appears to be no reason to set aside or amend the Judgment appealed from. We therefore dismiss the appeal and confirm the Judgment and order appellants to pay costs.

Given in presence 20-1-25.

(Sgd.) FRANCIS KHAYAT, (Sgd.) MUSTAFA KHALDI, (Sgd.) CORRIE,
Member. Member. President.

Exhibits.

 No. 14.
 Exhibit
 "i".
 Defendants'
 Documents.

No. 14.
Exhibit "i".

POWER OF ATTORNEY.

(Translation from Arabic.)

Land 10/25.

P/A
 signed by
 Plaintiff in
 L.A. 10/25,
 7th March
 1925.

On this date we have appointed Mr. J. Kaiserman and Abcarius Bey Advocates in the action between us and Yacob Samsonoff and partners and have authorised them to plead and defend the said case and exercise all such powers as may be assigned to them by law, to serve and accept service, admit, compromise, waive, receive monies, execute, attach 10 provisionally and subsequent to judgment, to request the oath or otherwise and to appoint any substitute as attorneys in respect of all or any of the matters aforesaid.

Special Power of Attorney made this 7th day of March 1925.

Thumbprints of ABDUL FATTAH MIRI' SAMARA,
 ABDUL LATIF IBN ABDUL MIRI',
 SELIM ABDUL FATTAH EL MIRI',
 MOUSA ABDUL FATTAH EL MIRI'.

I do certify the above-mentioned signatures.

(Sgd.) J. KAISERMANN. 20
 (Sgd.) J. SAMSONOFF.
 (Sgd.) B. GONOT.

Exhibit "2"
EXTRACT FROM REGISTERS of Land Court, Haifa, re L.A. No. 39/25.
 (Translation.)

SERIAL	DATE OF FILING ACTION	PLAINTIFF	DEFENDANT	SUBJECT MATTER OF CASE AND VALUE
39	19.9.25	Saleh Ismail Al Khateeb Moussa Nasser el Haj Ahmad	Abd el Fattah Mir'i Al Samara and his sons Salim and Moussa and Abd El Latif Bin El Abd Mir'i of Zeita Village Tul Karem Sub-District Yacoub Samsonoff Yatet Yamma Haroun Madoursky Touba Rutman of Khadera and Rifka Aaronson of Zamarin.	Application for Judgment cancelling or annulling the Judgment given by this Court on 6.5.25 in Possessory Action No. 10/24 and the dismissal of the case of Plaintiffs and the cancellation of Tabou Registration which was made on the basis of the said Judgment with costs, expenses, and Advocate's fees.
<p>Remarks.</p> <p>As Saleh El Khatib appealed the case was sent to the Supreme Court on 9.3.26 under No. 570 attached to Case 10/25 (Possessory) owing to its relation thereto. Delivered to A.G. 14.5.28. Returned and put under its Serial No. on 9.6.28.</p> <p style="text-align: center;"><i>Judgment</i></p> <p>Opposition dismissed granting Opposer Saleh El Khateeb the right to file a separate action against whomsoever he deems fit as regards his ownership of the land included in the Judgment opposed against now.</p>				
<p>Remarks.</p> <p>Opposition dismissed granting Opposer Saleh El Khateeb the right to file a separate action against whomsoever he deems fit as regards his ownership of the land included in the Judgment opposed against now.</p>				
<p><i>Judgment</i></p> <p>In presence, dated 4.1.26 No. 2.</p> <p style="text-align: center;">Judgment</p> <p>1. APPEAL. Filed on 20.1.26</p> <p style="text-align: right;">Fees 800 25 450 110</p> <p style="text-align: right;">1.385 Date 19.8.25</p>				

Exhibits.
 Exhibit "2".
 Defendants' Documents. Extract from Registers of Land Court, Haifa, re L.A. No. 39/25, 19th September 1925.

Exhibits.

No. 15.

STATEMENT OF CLAIM in Land Case No. 10/25.

(Translation from Arabic.)

Land Case No. 10/25.

No. 15.
Exhibit
Plaintiffs'
Documents.
Statement
of Claim
submitted
by Abdul
Fattah
Samara
and others
in Land
Case
No. 10/25,
19th March
1925.

IN THE LAND COURT HAIFA.

ABDUL FATTAH MIRI' SAMARA and sons ABDUL
LATIF, SALIM and MOUSA represented by
Mr. Joseph Kaisermann -

Plaintiffs

V.

YACOB SAMSONOF, JAPHET BIN YACOUB
YAMIMI, AHARON MADURSKY all of
Khuderia - -

10

*Defendants.**Nature of Claim and locality of land in dispute :*

Trespass by Defendants on Khor el Wasa'—Khudeira Village.

Boundaries :

East : Kazazeh & Birket Nourieh ; North : the forest of the Jews ;
West : the forest of the Jews ; South : lands of Attil.

*Name of registered owner (i.e.) real owner : —**Nature of registration (if any) : —**Grounds of Claim to the Land :*

20

My clients have cultivated and revived the land which had been
Mewat. They have built houses thereon to facilitate the working on
and cultivation of the land since more than 30 years.

Documents in support of claim :

Oral evidence and inspection.

In case of any other claim attaching to the land, state name of claimant and nature of his claim :

Other than my claim for ownership, I ask that Defendants be
dispossessed and ordered to pay costs and advocate's fees.

Remarks : —

30

Date : 19-3-25.

Sgd. J. KAISERMANN.

Checked and found correct.

Intld. E.L.

Certified true copy.

Sgd. G. AGHAJANIAN

Δ/Chief Clerk.

22.12.44.

No. 16.

Exhibit " D ".

JUDGMENT OF LAND COURT in Case No. 10/25.

(Translation from Arabic.)

Land Case 10/25.

In the Case of :

- 10 (1) ABED EL FATTAH MIRI' SAMARA
 (2) ABED EL LATIF MIRI' SAMARA
 (3) SALIM MIRI' SAMARA
 (4) MOUSA MIRI' SAMARA
 represented by Mr. Joseph Kaiserman.

v.

- (1) YACOUB SAMSONOFF
 (2) YAFITH YACOUB YAMANI
 (3) AARON MADURSKY
 represented by Najib Eff. el Hakim.

The Plaintiffs in this case are in possession of the lands known as Khor el Wassa' bounded as follows : East : Qazazeh, Birket Nurieh and Zeita lands, West : The Jews forest, North : The Jews forest, South :
 20 Attil lands. The Plaintiffs have cultivated the said lands and built thereon houses without any opposition. The Defendants admit this fact but have produced a Tabou Kushan and alleged that the lands in question are included within the Tabou Kushans registered in their names. Even if it was proved that the lands in dispute are included within the boundaries shown in the Tabou Kushan produced by the defendants this does not however, without actual possession, give right to defendants to nullify the acquired rights by Plaintiffs. We therefore order the dispossession of defendants from the lands in dispute and the delivery of same to Plaintiffs. We also order that these lands be registered in the land registry
 30 records in the name of the Plaintiffs with costs and LP.5 advocate's fees.

Judgment given by default as if in presence and subject to appeal.

Delivered in presence on 6-5-25.

(Signed) President (COPLAND).

Member (J. STRUMZA).

Certified true copy of the Judgment in Haifa Land Case No. 10/25.

(Signed) H. ATALLAH

Chief Clerk Supreme Court,
 Jerusalem.

23-10-30.

Exhibits.

—
 No. 16.
 Exhibit
 " D ".

—
 Plaintiffs'
 Documents.
 Judgment
 of Land
 Court,
 Haifa, in
 Land Case
 No. 10/25,
 6th April
 1925.

Exhibits.

No. 17.
Exhibit
43.
Plaintiffs'
Documents.
Extracts
from
Register
of Deeds,
4th June
1925.

No.
Exhibit

EXTRACTS FROM

(Translation from:

No. 6666	Date	Yoklama or Daimi	Village or city	Location	Kind	Nature	Dunum	Size bik	AMOUNT of share	
									SHARE	of share
11	June 307	Daimi	Khedeira	inside village	land	Miri	3224	2	2½	286
19	do.	do.	do.	do.	do.	do.	3224	2	2½	

43.

REGISTER OF DEEDS.

(Arabic and Turkish.)

Boundaries	Nature of transaction	Present owner or possessor	No. of deed in werko	Value in werko	Price of sale	Remarks.
East : Kazazeh & the red land which was bought by Zeita villagers ; West : Dabet Sheikh Helou & Dabbet Bir El-Jamidi & water estuary ; North : Wadi el Khedeira and Nufeiati land from the western direction ; South : the well-known road of El-Kassa'a.	By transfer by Selim Effendi Nasrallah Khouri to sons Yousef, Kaiser and Nasrallah	Being 286 shares 2½ shares Samsonof	3100, 3101, 3102, 3103, 3104.	1900	1925	carried to vol. 2 page 7.
	do.	2½ shares Madorsky	do.	1900	1925	carried to vol. 2 page 7.
	do.					

Exhibits.
 —
 No. 17.
 Exhibit
 43.
 Plaintiffs'
 Documents.
 Extracts from
 Register
 of Deeds,
 4th June
 1925

Transferred 11 & 19 of Huzairan 1307.

GOVERNMENT OF PALESTINE

Folio No. 7. EXTRACT FROM THE REGISTER OF DEEDS, LAND REGISTRY OFFICE OF HAIFA.
 VOLUME No. 2.

Town or Village : Khudeireh. Situation or Quarter : Khudeira Lands Khor al Wassa. Petition No. 467/25.

No. of Deed	Date of Registration	Class of Land	Description of Property	Boundaries	Area	Nature of Transaction	Name of Grantor	Name of Grantee	Shares	Remark
695	4/6/25	Miri		N. Khudeira Lands. S. Attil E. Gazazeh & Birket Nourieh & Zeifa Land W. Khudeira Lands.	5358 ds.	Registration vide auth. of the Court 10/25 of 6/5/25.	Samsanof & Madrosky & Partners	Abdul Fattah Miry Samara Selim & Mousa & Abdul Lateef Miry Samara.	1/4 1/4 1/4 1/4	See Deed 701

For official use.

I Certify that the above is a true extract from the Register of Deeds given against payment of L.P. Mills as per Receipt of Date

Land Registry of Haifa.

If the column of the Register is completely blank, the corresponding column in this extract is cancelled by a diagonal stroke.

(Sgd.)

f/Registrar of Lands.

No. 18.

Exhibit 32.

ACCOUNTS OF WAGES.

(Translation from French.)

AGRONOMIC SERVICES

ZICHRON JACOB & DEPENDENCIES

Labourers—Hadera as per paysheet.

Eucalyptus Hedera

10 Preparing wood for sale

Salary—Watchman

Material etc. and transport

Concessions—Kabbara

Maintaining machines

Transport expenses of eucalyptus

wood for placing it

under the machines

LE.m/m

41.900

2.500

2.350

No. 502

LE.m/m

46.750

1.775

48.525

(Sgd.) R. KOHN.

20

28.7.25.

(Translation from French.)

‘ B ’

No. 177

Good for LE.48.525.

Received from the Palestine Jewish Colonization Association, Haifa, the sum of LE.48.525 m/m for labourers' pay and suppliers July 1925 as per attached paysheet signed by the recipients and bill of Mr. Kohn.

Haifa 30.7.25.

(Sgd.) S. SEGAL.

*Exhibits.*No. 18.
Exhibit
32/AB.Defendants'
Documents.
Account of
Wages of
workers
of PICA
for the
month of
July 1925,
28th July
1925.

Exhibits.
 No. 18.
 Exhibit
 32/AB.
 Defendants'
 Documents.
 Account of
 Wages of
 workers of
 PICA
 for the
 month of
 July, 1925,
 28th July
 1925,
continued.

(Translation from French.)
 AGRONOMIC SERVICES
 ZICHRON YACOB & DEPENDENCIES

Paysheet—July 1925.

Eucalyptus Hedera.

SERIAL NO.	NAME OF LABOURERS	WORKING DAYS	SALARY	AMOUNT PAYABLE	ALLCE. HIGH COST OF LIVING	TOTAL	ADVANCES	BALANCE
1	Abramoff	14½	20	290	44	334	—	334
2	Weinberg for collecting and getting ready wood for sale 120 tons @ 32½ Pt.			3900	—	3900	1535	2365
3	Mihlsen—Watchman Salary, July			250	—	250	200	50
				4440	44	4484	1735	2749
4	<i>Suppliers</i> Klotzman for repairing 4 hatchets					12		12
5	Sehtermine for transport of machine to colony					100		100
6	Samsonoff—lading machine Railway Purchase of oil and paraffin Purchase of nails Transport & despatch of 50 eucalyptus poles to Kabbara	50 27 37.50 8.50 133.50				256.50	—	256.50
TOTALS						4852.50	1735	3117.50

No. 19.

Exhibit "M".

APPLICATION to President of Land Court, Haifa.

(Translation from Arabic.)

TO THE HONOURABLE LAND COURT OF THE NORTHERN DISTRICT.

APPLICANT : I Moussa Ben Nasser el Sayed Ahmad of
Zeita Village, Tulkarem.

10 DEMAND : I had instituted an action in the Land Court of Haifa against Ali Abdel Fattah el Mari' el Samara, his two sons Selim and Moussa and his nephew Abdul Latif and against Yacoub Samsonof, Yafet Yamini, Haron Madrosky, Toba Rutman and Rivka Aaronson in respect of the land called "Khor el Wassa'" bounded : East : Kazaza, Birket Nurieh and the lands of Ramel Zeita—West : the Forest of the Jews—South : Attil lands in respect of which a judgment was obtained on 6.5.25 by Abdul Fattah, his sons and his nephew Abdul Latif. I now ask in this application your Honourable Court to abate my action because I am not entitled thereto and have raised it by error. The lands are part of the lands of Hudeira. Accept my respects.

27th September, 1925.

20 (Sgd.) MOUSSA NASSER EL SAYED AHMED.

We the undersigned agree to the contents of this application and admit and recognise that the lands in respect of which a judgment was given by the Land Court of Haifa on 6.5.25 in favour of Abdul Fattah el Mari' and partners are from the lands of Khudeira and have nothing to do with Zeita lands. In witness whereof we made this declaration.

Signature :

Signature :

AHMED EL NIMER MANA'. AHMED EL HAMDAN ABOU JAZAR
of Zeita.

Witness and identifier :

Witness and identifier :

30 (Sgd.) SALEH AMBOUSI.

(Sgd.) AHMED EL HAJ AHMAD.

Number

1159 Special

6366 General.

40 The signatures affixed at the bottom of this declaration which is written and attested on Sunday the seventh day of September 1925 are the signatures of Moussa Nasser el Sayed Ahmed and Mohammed Ben Nimer Mana', and Ahmed el Hamdan Abou Jazar of Zeita Village, Tulkarem, and now staying at Haifa. They put their signatures before me in the office of the Advocate Nejib Eff. el Hakim situate near the Haifa Police Station, to which office I went at request and owing to necessity in the presence of the identifiers and witnesses Hamdan el Haj

*Exhibits.*No. 19.
Exhibit
"M".Defendants'
Documents.
Application
to the
President
Land
Court of
Haifa,
27th Sep-
tember
1925.

Exhibits. Ahmed of Baka'a el Garbieh, and Mr. Saleh Anbousi of Haifa after the
 ——— said admission was openly read to them, and after they clearly understood
 No. 19. its contents and fully agreed to the correctness of its provisions. At
 Exhibit request this admission has been attested and registered in its respective
 "M". Register.

Defendants'
 Documents.
 Application
 to the
 President
 Land
 Court of
 Haifa,
 27th
 September
 1925,
continued.

27th September, 1925.

Notary Public of Haifa,

(Sgd.) ELIAS KHATTAR.

At the request of the advocate Abcarius Bey this copy has been extracted from the register, kept in this office, and issued to him after 10
 being duly checked and the prescribed fee paid in accordance with
 Articles 51 and 89 of the Notary Public Law.

This 20th day of October, 1925.

Notary Public,
 Haifa,

(Sgd.)

Seal of the District Court, Haifa.

No. 20.
 Exhibit 5.
 Defendants'
 Documents.
 Notarial
 Declara-
 tion,
 27th
 September
 1925.

No. 20.

Exhibit 5.

NOTARIAL DECLARATION.

20

(Translation from Arabic.)

We, whose signatures and prints are affixed below admit and recognise, whilst we are in full health and mental capacity, that the land registered in the name of Toba Rutman of the inhabitants of Kudeira and Rivka Aaronson of the inhabitants of Zammarin, in the registry of the Haifa Land Registry under No. 2, page 9 and 10, No. of application 550/24 according to Deed No. 701 and 702/25, and Number 2, page No. 10, number of application 602/25, according to Deed No. 771/925, and Number 2, page 8, Number of application 550/25, bounded : East : Kazaza, Birket el Nurieh and Zeita lands—South : Attil lands, formerly a way—North : 30
 the Forest of Kudeira—West : the Forest of Kudeira, which land the two ladies bought from Mr. Abdul Fattah el Mari' Samara, his two sons Selim and Moussa and his nephew Abdul Latif Ben el Abed Samara, known as "Khor el Wassa'" and in respect of which the said vendors obtained a judgment from the Haifa Land Court, is independent and separate, and belongs to Kudeira lands, is situate within the boundaries of these lands, and is adjacent to the Musha lands of Zeita from the West, that is to say the lands of Ramel Zeita is situate East of the said lands, that we have no right or claim or interest whatever therein, that the aforementioned judgment issued by the Haifa Land Court is valid and conform to law and 40
 that we have no objection whatever to this judgment. Should there appear a claimant among us to this land, his claim will be void, should anyone

of us obtain a judgment in respect of his part in the lands of Ramel Zeita, this judgment will not apply to the said land registered in the names of the aforementioned Toba Rutman and Rivka Aaronson. At the request of the said Abdel Fattah we made this declaration by which we waive any right or claim in the said land.

Thumbprints of : Abdul Kader El Abed Abou Nasser, Abdul Kader Ben Massoud el Nasralla, Hassan Ben Mohammad el Nubeh and Khader Ben el Abed Abou Nasser.

10 Signatures of : Ahmad Abdul Hadi, Farid Ibrahim el Youssef, Yehia el Sheikh Saleh Gadba, Mahmoud Ben Hassan Abou Massada, Ali Abdul Kader Mahmoud, Sharif Saleh el Youssef and Mohammed Ben Abdul Mihsen Omar.

Identifier and witness : Ahmed el Hamdan Abou Jazar of Zeita.

Identifier and witness : Mohammed el Nimer.

Authorised to sign for Kader Abou Nasser, Hassan el Nubeh, Abdul Kader Abdallah and Abdul Kader Abou Nasser,

Signed :

HAMDAN EL HAJ AHMED.

20 Number
1158 Special
6365 General.

30 The signatures and prints affixed at the bottom of this admission written and attested on Sunday the 27th day of September, 1925 are the signatures of Mohammed Ben Hassan Abou Massada, Yehia el Sheikh Saleh Gadba, Farid Ibrahim el Youssef, Ahmed Abdul Hadi, Mohammed Ben Abdul Mihsen Omar, Sharif Saleh el Youssef and Ali Abdul Kader Mahmoud; and the prints of the right hand thumbs of Hassan Ben Mohammed Nubeh, Kader Ben el Abed Abou Nasser, Abdul Kader Ben Massoud el Abdalla and Abdul Kader Ben el Abed Abou Nasser, all of them
40 of Zeita Village, Tulkarem and at present staying at Haifa. They affixed their signatures and prints before me in the office of the advocate Nejib Eff. el Hakim, situate near the Haifa Police Station, to which office I went at request and owing to necessity in the presence of the two identifiers and witnesses Mohammed Ben Nimer Manna of Zeita and Ahmed el Hamdan Abou Jazar of Zeita, after this admission was openly read to them and they clearly understood its contents and fully agreed to its provisions—Owing to the fact that the last four, who affixed the prints of their right hand thumbs on this document are illiterate, they authorised Mr. Hamdan el Haj Ahmad of Baka el Gharbieh to put their signatures, and he put same
40 before me. At request this admission has been attested and recorded in its respective register.

27th September, 1925.

Signature : ELIAS KHATTAR.

Checked :

Signature.

Exhibits.
—
No. 20.
Exhibit 5.
Defendants'
Documents.
Notarial
Declara-
tion
27th
September
1925
continued.

Exhibits.
No. 20.
Exhibit 5.
Defendants'
Documents.
Notarial
Declara-
tion,
27th
September
1925,
continued.

At the request of the advocate Abcarius Bey this copy has been extracted from the register, kept in this office, and issued to him after being duly checked and the prescribed fee paid in accordance with Articles 51 and 89 of the Notary Public Law.

Tuesday this 20th day of October, 1925.

NOTARY PUBLIC, HAIFA.

Signature :

Seal of the District Court,
Haifa.

No. 21.
Exhibit 7.
Defendants'
Documents.
Notarial
Declara-
tion.
26th
October
1925.

No. 21.
Exhibit 7.

10

NOTARIAL DECLARATION.

(Translation from Arabic.)

We, the undersigned Haj Mohammad Abu Zikrallah, Said Hassan el Natour, Zikrallah ibn Mohammad Zikrallah all of Zeita, Tulkarem Sub-District, with full legal and mental capacity, hereby declare and admit that the land registered in the names of Toba Rutman of Khudeirah and Rifka Aaronson of Zammarin at the Land Registry Haifa under No. 2, folios 9-10, No. of application 550/25 and Nos. 701, 702/25 and No. 2, folio 10, application No. 602/25, Deed No. 771/25 and No. 2, folio 8, application No. 550/25, bounded East—Kazazeh and Birket Nourieh and Zeita lands; South—Attil lands, previously road; North and West—Khudeirah Forest which we purchased from Abdul Fattah Miri' Samarah and his two sons Salim and Mousa and his nephew Abdul Latif ibn el Abed Samarah and which is known as Khor el Wasa' and in respect of which the said vendors obtained a judgment from the Land Court Haifa is separate and independent, pertaining to Khudeira lands and included within its boundaries. The said land does not form part of Raml Zeita lands in respect of which we obtained judgment from the Land Court Samaria on 14.4.24 (No. 8) declaring our ownership in 1 share out of 906 shares therein to each of us.

In view of the fact that the Raml Zeita lands fall to the east of the lands in question and that we have no rights over the lands of the above named and no interest therein whatsoever and that the judgment issued by the Land Court Haifa in favour of Saleh Abdul Fattah Miri and partners is correct and in conformity with law and justice and against which we have not the least opposition therefore we make this Deed whereby we renounce every right and action in or over the said land and in case any claim is made by any of us to the said land his claim would be of no effect.

Sgd. MOHAMMED ABU ZIKRALLAH.
Sgd. SAID IBN HUSSEIN EL NATOUR.
Sgd. ZIKRALLAH IBN MOHAMMAD ZIKRALLAH.

40

(Sgd.) TOUMA ELIAS.
Y. SAMSONOF.

Stamps.
26.10.25.

Witnesses.

No. 1318 Special
No. 7122 General.

Exhibits.

The signatures and marks appearing at the foot of this admission made and signed on Monday the 26th of October, 1925 are the signatures of el Haj Mohamed Abu Zikrallah and Said ibn Hassan el Natour and Zikrallah Mohammed Zikrallah, signed before me at my office, in the presence of two identifiers and witnesses, Messrs. Touma Elias el Haj of Haifa and Yacoub Samsonoff of Khudeira, after the admission had been read over and explained to them clearly its contents confirmed.

No. 21.
Exhibit 7.
Defendants'
Documents.
Notarial
Declara-
tion,
26th
October
1925,
continued.

10 In view of the inability of Said and Zikrallah ibn Mohammad Zikrallah to write, the latter have authorised Mohammed Abdul Halim to put their signatures and he did so in my presence.

At request, this admission was attested, confirmed and registered in the special register kept for this purpose.

Sgd.

26.10.25.

NOTARY PUBLIC,
Haifa.

No. 22.

Exhibit 37.

NOTARIAL DECLARATION.

(Translation from Arabic.)

We the undersigned Husni el Haj Mohamed el Khader and Mohamed el Haj Said Samara of Zeita Village, Tulkarem Sub-District with full legal and mental capacity hereby declare and admit that the land registered in the name of Toba Rutman of Khudeirah and in the name of Rifka Aaronson of Zammarin at the Land Registry Haifa under No. 2, folio 9 and 10, application No. 550/25 and Deed No. 701/702 of 1925 and No. 2, folio 10, application No. 602/25, Deed No. 771/25 and No. 2, folio 8, application No. 550/25 and bounded East: Qizazeh and Birket Nourieh and Zeita lands; South: Attil lands—formerly road; North: Khudeirah Forest; West: Khudeirah Forest, which we purchased from Abdul Fattah el Mir'i Samara and his sons Salim and Mousa and his nephew Abdul Latif Samara and known as Khor el Wasa' and in respect of which the said vendors have obtained judgment from the Land Court Haifa, stands separate and pertains to Khudeirah Lands and is included within its boundaries and adjacent to Raml Zeita Masha' Lands from the western side, i.e., the lands of Raml Zeita fall to the east of the said lands. We do not have any rights therein or any cause of action at all. Further we do not have any interest therein and the judgment given by the Land Court Haifa is correct and in conformity with law and justice. We do not oppose the said judgment and in the event any of us claiming it, his claim would be null and void. Furthermore if any of us would obtain judgment in respect of his share in Raml Zeita lands, that judgment would not apply to the said land registered in the names of the above-named Toba and Rifka. By this deed we waive all our rights in the said land.

20

30

40

No. 22.
Exhibit 37.
Defendants'
Documents.
Notarial
Declara-
tion
No. 1325,
28th
October
1925.

Made this day the 28th October, 1925.

Sgd. Witnesses.

Stamp 42 PT.

Sgd. HUSNI EL HAJ MOHD. KHADER.

Sgd. MOHAMED HAJ SAID SAMARA.

Exhibits.

No. 23.
 Exhibit 6.
 Defendants'
 Documents.
 Notarial
 Declara-
 tion,
 27th
 September
 1925.

No. 23.

Exhibit 6.

NOTARIAL DECLARATION.

(Translation from Arabic.)

I, the undersigned, Moussa Ben Nasser El Sayed Ahmed of the inhabitants of Zeita Village, Tulkarem, admit and recognise whilst I am in full mental capacity that the land registered in the name of Toba Rutman of the inhabitants of Kudeira and Rivka Aaronson of the inhabitants of Zammarin, in the registry of the Haifa Land Registry under No. 2 page 9 and 10, No. of application 550/24 according to Deed No. 701 and 702/25, 10
 and Number 2, page No. 10, number of application 602/25, according to Deed No. 771/925, and Number 2, page 8, Number of application 550/25, bounded: East: Kazaza, Birket el Nurieh and Zeita lands—South: Attil lands, formerly a way—North; the Forest of Kudeira—West: the Forest of Kudeira, which land the two ladies bought from Mr. Abdul Fattah el Mari Samara, his two sons Selim and Moussa and his nephew Abdul Latif Ben el Abed Samara, known as "Khor el Wassa" and in respect of which the said vendors obtained a judgment from the Haifa Land Court, is independent and separate, and belongs to Kudeira lands, 20
 is situate within the boundaries of these lands, and that it is not part of the lands of Ramel Zeita in respect of which I obtained from the Samaria Land Court a judgment confirming my ownership in one share out of nine hundred and six shares therein. Therefore the action which I raised in the Land Court of the Northern District in association with Saleh Ben Ismail el Khatib of Zeita Village against the two aforementioned ladies and Yacoub Samsonoff and partners is not correct and is erroneous because the land of Khor el Wassah has nothing to do with Zeita lands, and I have no right or interest whatever therein. For this reason I waive any right I have in this land and abate any action and undertake to make to the Haifa Land Court an application asking for the abatement of my said 30
 action.

(Sgd.) MOUSSA NASSER EL SAYED AHMED.

27th September 1925.

Identifier and witness: (Sgd.) AHMED EL HAMDAN ABOU JAZAR of Zeita.
 Identifier and witness: Signature of MOHAMMED EL NIMER MANA'A.

Number

1160 Special.
 6367 General.

The signature affixed at the bottom of this admission which is written and attested on Sunday the 27th of September, 1925, is that of Mr. Moussa 40
 Nasser el Sayed Ahmed of the inhabitants of Zeita Village and at present staying at Haifa. He affixed with his own handwriting before me in the office of the advocate Nejib Eff. el Hakim situate near the Haifa Police Station, to which office I went at request and owing to necessity, in the presence of the two identifiers and witnesses Messrs. Mohammed Ben Nimer Mana'a and Ahmed el Hamdan Abou Jazar of the said village, after the said admission was openly read to them and he clearly understood

its contents and fully agreed to its provisions. At request this admission has been attested and recorded in its respective register.

Notary Public, Haifa.

27th September, 1925.

(Sgd.) ELLAS KHATTAR.

Checked :

At the request of the advocate Abcarius Bey this copy has been extracted from the register, kept in this office, and issued to him after being duly checked and the prescribed fee paid in accordance with 10 Articles 31 and 89 of the Notary Public Law.

This 20th Tuesday, day of October, 1925.

Notary Public, Haifa.

(Sgd.)

Seal of the District Court, Haifa.

Exhibits.

No. 23.
Exhibit 6.
Defendants'
Documents.
Notarial
Declaration,
27th
September
1925,
continued.

No. 24.

Exhibit 33.

ACCOUNT OF WAGES.

(Translation from French.)

AGRONOMIC SERVICES

ZICHRON JACOB & DEPENDENCIES

Labourers Hedera (as per paysheet).

No. 15 " A "

No. 24.
Exhibit 33.
Defendants'
Documents.
Account
of Wages
of Workers
of PICA
for the
month of
October
1925.

20

LE.m/m LE.m/m

Eucalyptus Hedera

For labourers to prepare wood for sale and cutting
of trees

19.450

Allee. high cost of living

0.330

Watchman

2.500

Material and others

0.420

30

22.700

29.10.25. Sgd. R. KOHN.

(Translation from French.)

No. 208.

" B "

Good for LE.22.700

Received from the Palestine Jewish Colonization Association, Haifa, the sum of LE.22.700 m/m for labourers' pay October, as per attached paysheet signed by the recipients and bill of Mr. Kohn.

Haifa 30.10.25.

Sgd. S. SÉGAL.

Exhibits.
 No. 24.
 Exhibit 33.
 Defendants'
 Documents,
 Account
 of Wages
 of Workers
 of PICA
 for the
 month of
 October
 1925.
continued.

(Translation from French.)
 AGRONOMIC SERVICES
 ZICHRON YACOB & DEPENDENCIES

Paysheet—October 1925.

Eucalyptus—Hedera.

Serial No.	Name of labourers	No. of working days	Salary	Amount payable	Allee. high cost of living	Total	Advances	Balance.	
1	Abramoff	5½	20	110	11	121	35	86	
2	Weinberg	11	20	220	22	242	-	242	
3	Saleh Azam	12	10	120	-	120	-	120	
4	Weinberg—preparing wood for sale 16 tons		32.50	1495	-	1495	400	1095	
5	Mihsen Sal. Oct.			250	-	250	65	185	
6	Klotzman repairing tools			23	-	23	-	23	
7	Samsonoff A. Lime Telephone		10 9	19	-	19	-	19	
Total							2237	500	1770

No. 25.

Exhibit " D ".

CONTRACT OF LEASE

(Translation from Hebrew.)

between the undersigned on one part and Mr. Mahmoud Nadaf of Attil Village on the second part, agreed as follows :—

*Exhibits.*No. 25.
Exhibit
" D ".Defendants'
Documents.Contract
of Leasewith
MahmudNadaf of
AttilVillage,
15thNovember
1925.

- 10 (A) Mr. lets to Mr. Mahmoud Nadaf a plot of land at Khor el Wassa' of eighty dunums (80 d.) for one year from Heshwan 5685 till Elul 5686 for the purpose of ploughing and sowing for the sum of 800 Egyptian piastres (PT.800) which Messrs. undertake to pay the sum of 800 P.T. on 1st Tamouz 5685.
- (B) Messrs. undertake to use the land for ploughing and cultivation but they cannot sub let it to another person without my consent.
- 20 (C) Upon the expiry of the period of lease of the aforementioned parcel the lessee undertakes to vacate it without any excuse or claim whatsoever. Not for the Karab that he has already done nor for any other purpose.
- (D) The Lessee undertakes to return the said plot of land in the same position as it was received by him and if there be delay one quarter Pound shall be paid every day.

Made and signed at Haifa.

15.11.1925.

Sgd. MAHMOUD ETC.

Witness (—).

CONTRACT OF LEASE

(Translation from Hebrew.)

Exhibits.

 No. 26.
 Exhibit 25.
 Defendants'
 Documents.
 Contract of
 Lease,
 15th
 November
 1925.

between the undersigned Mr. _____ on one part
 and Mr. Mohammad el Mahmoud Saleh of Attil Village on the second
 part, agreed as follows :

- (A) Messrs.
 let to Mr. — a plot of land of 30 dunums at Khor el Wasa' for
 one year from Heshwan 5685 till Elul 5686 for the purpose 10
 of ploughing and sowing for the sum of 300 Egyptian Piastres
 which Messrs.
 undertake to pay, 100 P.T. at the signing the contract and
 P.T.200 on Tamouz 5686.
- (B) Messrs.
 undertake to use the land for ploughing and cultivation but
 they cannot sub let it to another person without my consent.
- (C) Upon the expiry of the period of lease of the aforementioned
 parcel the lessee undertakes to vacate it without any excuse
 or claim whatsoever. Not for the Karab that he has already 20
 done nor for any other purpose.
- (D) The lessee undertakes to return the said plot of land in the
 same position as it was received by him and if there be delay
 one Quarter Pound shall be paid every day.

Made and signed at Haifa.

15.11.1925.

Sgd. MOHAMED MAHMOUD EL SALEH.

Witness : MOHAMMED HILOU.

No. 27.

Exhibit 34.

ACCOUNT OF WAGES.

(Translation from French.)

' A '

AGRONOMIC SERVICES

ZICHRON JACOB & DEPENDENCIES

No. 43

Labourers—Hédéra (as per paysheet).

LE.m/m LE.m/m

*Exhibits.*No. 27.
Exhibit
34Defendants'
Documents.
Account of
Wages of
Workers
of PICA
for month
of
November
1925.*Eucalyptus Hedera*

10	Various labourers to prepare wood for selling and cutting of trees.	25.740
	Allee—high cost of living	0.400
	Watchman	2.500
	Railway fare for despatch of 2 waggons of wood to Haifa	11.410
	Material, etc.—	1.750
		<u>41.800</u>

(Sgd.) R. KOHN.

20

30.11.25.

(Translation from French.)

' B '

No. 278.

Good for LE.41.800

Received from the Palestine Jewish Colonization Association, Haifa, the sum of LE.41.800 m/m for labourers' pay—November, as per attached paysheet signed by the recipients and bill of Mr. Kohn.

Haifa 30.11.25.

(Sgd.) S. SÉGAL.

Exhibits.
 No. 27.
 Exhibit
 34.
 Defendants'
 Documents.
 Account of
 Wages of
 Workers
 of PICA
 for month
 of
 November
 1925,
continued.

(Translation from French.)
 AGRONOMIC SERVICES
 ZICHRON YACOB & DEPENDENCIES

Paysheet—November, 1925.

Eucalyptus Hedera.

Serial No.	Name of Labourers	Working days	Salary	Amount payable	Allec. 4% Kupat Holim	Allec. cost of living	Total	Advances	Balance
1	Weinberg	10	20	200	-	20	220	-	220
2	Lisgarten	10	20	200	-	20	220	-	220
3	Weinberg for collecting & preparing wood for sale (14 tons—fuel wood 46½"—poles etc.)								
	60½ tons		32.50	1958			1958	600	1358
4	Mihsen Sal. Nov.,			250			250	200	50
5	Mohamed el Assad	12	10	120			120	100	20
6	Ahmed Kalkile	12	8	96			96	80	16
7	Fovel 1 tin of benzine 57 lime								
				72			72	-	72
8	Rosov. work on the machine			50			50	-	50
9	Pasternack—transport of weighing scale			30			30	-	30
10	Klotzman—repairing tools			9			9	-	9
	Samsonoff A.								
	Telephone		14						
	Despatch of 2 waggons of wood to Haifa								
	Transport of wood to Station	550							
	Hire of waggons Haifa	591	1141	1155			1155		1155
				4140	-	40	4180	980	3200

No. 28.

Exhibit " L ".

ADMISSION of Abdul Fattah and Others.

(Translation from Arabic.)

*Exhibits.*No. 28.
Exhibit
" L ".Defendants'
Documents.
Admission
of Abdul
Fattah and
his sons
Selim and
Mussa and
his nephew,
Abdul
Latif,
9th
December
1925.

On this date, we the undersigned, Abdul Fattah Miri' Samara and his sons Salim and Mousa and his nephew Abdul Latif ibn el Abed Samara, with full legal and mental capacity hereby admit and declare that we have received in full the price of the land known as Khor el Wasa' which falls within the boundaries of Khudeirah and which is bounded as follows :

10 East—Qisazeh and Birket Nourieh and Zeita lands ; South—Attil lands, previously road ; North—Khudeirah Forest ; West—Khudeirah Forest and which has been in our possession from time immemorial as proved and established by the judgment of the Land Court Haifa dated 6.5.25 (No. 10/17). The said land was transferred to Toba Rutman of Khudeirah Village and Rifka Aaronson of Zammarin Village by virtue of a power of attorney signed by us in favour of Nissan Rutman of Khudeirah from whom we received the price in full. We have nothing to claim from Mr. Nissan Rutman or from the purchasers and we have waived all rights and actions ; we have also waived our right to call for their oath.

20 Wherefore this Deed was made on 9.12.25.

Thumbprints of : ABDUL LATIF IBN EL ABED SAMARA
MOUSSA ABDUL FATTAH SAMARA
SALIM ABDUL FATTAH SAMARA
ABDUL FATTAH MIRI' SAMARA.

(Sgd.) MICHEL KHOURY (witness)
" NAJIB HAKIM
(authorised to sign on behalf
of the above named)

Stamps.

No. 1567 Special
30 No. 8392 General.

The thumbprints affixed at the foot of this admission made on the 9th of December 1925 and attested on Thursday the 10th of December 1925 are the right thumbprints of Abdul Fattah Miri' Samara and his sons Salim and Mousa and Abdul Latif ibn Abed Samara all of Zeita in my presence at the house of Nissan Rutman at Khudeirah and in the presence of two identifiers and witnesses Messrs. Najib el Hakim Advocate and Michel Khoury of Haifa, after the admission had been read over and explained to them clearly and confirmed by them as correct.

In view of their inability to write, they have authorised Najib el Hakim to affix their signatures which he did before me. At their request, this admission was attested and confirmed and registered in the special register kept for this purpose.

(Sgd.) E. KHATTAR,
Notary Public,
Haifa.
Seal of District Court Haifa.

10.12.25.

Exhibits.

No. 29.
Exhibit 38.
Defendants'
Documents.
Notarial
Declara-
tion
No. 1566,
10th
December
1925.

No. 29.**Exhibit 38.****NOTARIAL DECLARATION.**

(Translation from Arabic.)

We, whose signatures and prints are affixed below, cultivators and inhabitants of Zeita Village, Tulkarem, admit and recognise, whilst we are in full health and mental capacity, that the land registered in the name of Toba Rutman of the inhabitants of Kudeira and Rivka Aaronson of the inhabitants of Zammarin, in the registry of the Haifa Land Registry under No. 2 page 9 and 10, No. of application 550/24 according to Deed No. 701 and 702/25, and Number 2, page No. 10, number of application 602/25, according to Deed No. 771/925, and Number 2 page 8, Number of application 550/25, bounded : East : Kazaza, Birket el Nurieh and Zeita lands—South : Attil lands, formerly a way—North : the Forest of Kudeira—West : the Forest of Kudeira, which land the two ladies bought from Mr. Abdul Fattah el Mari' Samara, his two sons Selim and Moussa and his nephew Abdul Latif Ben el Abed Samara, known as " Khor el Wassa' " and in respect of which the said vendors obtained a judgment from the Haifa Land Court, is independent and separate, and belongs to Kudeira lands, is situate within the boundaries of these lands, and is adjacent to the Musha lands of Zeita from the West, that is to say the lands of Ramel Zeita is situate East of the said lands, that we have no right or claim or interest whatever therein, that the aforementioned judgment issued by the Haifa Land Court is valid and in conformity with the law and that we have no objection whatever to this judgment. Should there appear a claimant among us to this land, his claim will be void, should anyone of us obtain a judgment in respect of his part in the lands of Ramel Zeita, this judgment will not apply to the said land registered in the names of the aforementioned Toba Rutman and Rivka Aaronson. At the request of the said Abdel Fattah we made this declaration by which we waive any right or claim in the said land.

9th December, 1925.

Stamps for P.T.12.

Signatures of : Tewfik Mohammed Zabidi, Shaker, Kamel, Naif and Abduljabbar sons of Awad Abou Manna'a, Rajeh Awad Abou Manna'a, Ahmed Ben Idriss el Yassin, Jamil Ahmed Essaid, Kamel Ben Samara Eshalabi, Moustafa Mohammad Gadba, Jibrin Amer Gadba, Mohammed Taher Ben Mohammed Gadba, Mohammed Abdul Khalek Abou Saber and Said Ben Mustafa Hassuneh.

Thumbprints of : Ahmed Said Hasauneh, Mahmoud Ben Mohammad El Ahmad (nicknamed Abou Safieh), Ahmed Ben Abdulhadi Abou Saber, Youssef Ben Mohammed Abdul Rahman Daklalla, Moussa Ben Ahmed el Zundeh, Deeb Ben Kader Abou Sarhan, Abdul Razzak Mohammed Antar, Ali Ben Kader Antar, Ahmed Ben Said Suleiman, El Abed Ben Saleh Idriss, Abdallah Ben Salah Antar, Mohammed Ben Abdallah Salah Antar, Ahmed Ben Moustafa Hourani, Mohammed Ben Moussa Abdalla, Marzouk Ben el Abed Abou Tayeh, Ibrahim Asmar Samara, Abdul Fattah Ben el Abed Samara, Assad Ben Youssef el Bekawiyeh, Abdallah Ben El Abed Samara, Youssef Ben Mahmoud Moustafa, Ishtewi Ben Abdul Rahman Siksek.

Identifier and witness : Ahmed Hamdan Abou Jazar.

Exhibits.

Identifier and witness : Mohammed el Nimer.

Authorised to sign for 15 persons starting from Ahmed Said Hassuneh to Marzuk Ben el Abed Abou Tayeh according to the remarks : Hamdan el Haj Ahmed—authorised to sign for Youssef Mahmoud el Moustafa : Salman Daoud.

Number

1566 Special.

8391 General.

No. 29.
Exhibit 38.
Defendants'
Documents.
Notarial
Declara-
tion
No. 1566,
10th
December
1925,
continued.

- 10 The fifteen signatures and the twenty-one prints affixed at the bottom of this declaration which is written on Wednesday the 9th of December, 1925 and attested on Thursday the 10th of the same month and year are the signatures of Tewfik Mohammed Zabidi, Shaker, Kamel, Naif and Abduljabbar sons of Awad Abou Manna'a, Rajeh Awad Abou Manna'a, Ahmed Ben Idriss el Yassin, Jamil Ahmed Essaid, Kamel Ben Samara Eshalabi, Moustafa Mohammed Gadba, Jibrin Amer Gadba, Mohammed Taher Ben Mohammad Gadba and Mohammed Abdul Khalek Abou Saber and Said Ben Mustafa Hassuneh, and the prints of the right hand thumbs of Ahmed Said Hassuneh, Mahmoud Ben Mohammed el Ahmed
- 20 nicknamed Abou Safieh, Ahmed Ben Abdul Hadi Abou Saber, Youssef Ben Mohammed Abdul Rahman Daklalla, Moussa Ben Ahmed el Zundoh, Deeb Ben Kader Abou Sarhan, Abdul Razzak Mohammed Antar, Ali Ben Kader Antar, Ahmed Ben Said Suleiman nicknamed Tabboushi, El Abed Ben Saleh Idris, Abdalla Ben Salah Antar, Mohammed Ben Abdallah Salah Antar, Ahmed Ben Moustafa Hourani, Mohammed Ben Moussa Abdalla and Marzouk Ben el Abed Abou Tayeh who authorised Hamdan el Haj Ahmed to put their signatures, and the prints of the right-hand thumbs of Ibrahim Asmar Samara, Abdul Fattah Ben el Abed Samara, Assad Ben Youssef el Bekawiyeh, and Abdallah Ben el Abed Samara who
- 30 authorised Mohammed el Nimer to put their signatures, and the print of the right-hand thumb of Youssef Ben Mahmoud Moustafa nicknamed Tabboushi who authorised Salman Daoud to put his signature, and the print of the right-hand thumb of Ishtewi Ben Abdul Rahman Siksek who authorised one of the declarants, Moustafa Mohammad Gadba, to put his signature, and this owing to the fact that those who affixed their thumbprints are illiterate, all of them of Zeita Village. They affixed their signatures and prints before me in the house of Nissan Rutman, in his property situate in Kudeira in the presence of the two identifiers and witnesses Messrs. Ahmed Hamdan Abou Jazar and Mohammed el Nimer,
- 40 of the said village, to which place I went at request and owing to necessity, after this admission was openly read to them and they clearly understood its contents and fully agreed to its provisions. At request this admission has been attested and recorded in its respective register.

10th December, 1925.

Notary Public, Haifa.

(Sgd.) ELIAS KHATTAR.

Seal of the District Court, Haifa.

Exhibits.

No. 30.
 Exhibit 39.
 Defendants'
 Documents.
 Notarial
 Declara-
 tion
 No. 1606,
 17th
 December
 1925.

No. 30.

Exhibit 39.

NOTARIAL DECLARATION.

(Translation from Arabic.)

We, whose signatures and thumbprints are here below affixed, cultivators and inhabitants of Zeita Village, Tulkarem, admit and recognise whilst we are in full mental capacity, that the land registered in the name of Toba Rutman of the inhabitants of Kudeira and Rivka Aaronson of the inhabitants of Zammarin, in the registry of the Haifa Land Registry under No. 2, page 9 and 10, No. of application 550/24 according to Deed No. 701 and 10 702/25, and Number 2, page No. 10, number of application 602/25, according to Deed No. 771/925, and Number 2, page 8, number of application 550/25, bounded—East : Kazaza, Birket el Nurieh and Zeita lands ; South : Attil lands, formerly a way ; North : the Forest of Kudeira ; West : the Forest of Kudeira, which land the two ladies bought from Mr. Abdul Fattah el Mari Samara, his two sons Selim and Moussa and his nephew Abdul Latif Ben el Abed Samara, known as "Khor el Wassa'" and in respect of which the said vendors obtained a judgment from the Haifa Land Court, is independent and separate, and belongs to Kudeira lands, is situate within the boundaries of these lands, and is adjacent to the Musha lands of Zeita 20 from the West, that is to say the lands of Ramel Zeita is situate East of the said lands, that we have no right or claim or interest whatever therein, that the aforementioned judgment issued by the Haifa Land Court is valid and conforms to law and that we have no objection whatever to this judgment. Should there appear a claimant among us to this land, his claim will be void, should anyone of us obtain a judgment in respect of his part in the lands of Ramel Zeita, this judgment will not apply to the said land registered in the names of the aforementioned Toba Rutman and Rivka Aaronson. At the request of the said Abdel Fattah we made this declaration by which we waive any right or claim in the said land. 30

6th January 1925.

Stamps for P.T. 11 and 10 Nil.

Signatures of : Saleh Massoud el Yassin, Ahmad Mohammad Samara, Murshid al Badawy Ghadbeh, Ahmad Ben Ali Abu Jad'a, Mahmoud Ben Salah el Sadkah, Naif Ben Mustafa el Hussein, Salah Ben Mohammad al Salah, Saleh el Haj Mohammad Hassan, Mahmoud Ben Abdel Razzak Abou Mohammad, Ali Abd el Fattah Abou Mohammad, Saleh Abd el Hadi Abou Mohammad, Saleh Abd el Razzaq Ni'man, Youssef Ben Mahmoud Ni'man, Ibrahim el Haj Youssef Mahmoud Ni'man, Abed Ben Awad Rabah, Abdel Kador Ben Nasser el Qassem, Saleem Ben Said Mustafa Hassouny, Ahmad Ben Mustafa Anbar, Mohammad el Sheikh Ali Hussein, Ibrahim 40 el Sheikh Abed Abou Uthman, Darwish Ahmad al Haleeq, Mustafa Khalil Barakat, Murad Massoud al Mous, Mahmoud el Haj Abdel Kader Fayez, Haj Mohammad Ahmad Zeitoun, Mohammad Ahmad Zeitoun, Kamel Ibrahim Moussa, Mohammad Hussein Kashou', Ahmad Ben Ali Mustafa, Ahmad Mahmoud al Mas'ad, Hussein Abd el Fattah Ibrahim, Ameen Abd el Khaleq Nasr, Mohammad Ben I'weiss Kashou', Mohammad Abd el Khaleq Youssef, Shehadeh Ben Daoud al 'Ali, Hassan Mohammad Khalil, Said Khalil Youssef, Hassan Mousa Khalil, Rajeh ben Khalil Youssef, Issa Ahmad Shanbour, Mohammad Ibrahim Abd el Hafeez, Sadek Ben Anbar Mohammad,

Exhibits.

No. 30.
Exhibit 39.
Defendants'
Documents.
Notarial
Declara-
tion
No. 1606,
17th
December
1925,
continued.

- Ahmad Ben Hassan Abd el Hadi, Youssef el Haj Ahmad I'weiss, Fauzi Taufik el Zubeidy ; prints of the right-hand thumbs of : Mohammad Abd al Khaleq el Salem, Saleh Ahmad el Shareef, Naji Ahmad al Kasseem, Mohammad Ben Mahmoud al Mukbily, Abdul Razeq Mohammad Ibrahim, Mahmoud Ben Mohammad Ibrahim, Hassan Ben Hassan al Abed, Abdul Raheem Ben Hussein el Ali, Kamel Ben Mohammad el Younes, Mohammad Ben el Haj Rabah Ni'man, Mohammad Ben Massoud al Mahmoud, Ibrahim ben el Abed Ibrahim, Abdel Kader Ben Mohammad al Kureishy, Abdul Rahman Ben Mohammad al Kureishy, Mahmoud ben Yassin el Kureishy,
- 10 Ahmad Ben Hamdan Abou Sleih, Abdul Rahman Ben Massoud Abou Hadbeh, Zoukam Ben Abdel Hadi Abou Hadbeh, Said Ben Abdel Hadi Abou Hadbeh, Mustafa Abdel Hadi Mansour, Youssef Ben Mustafa Abou Jabarah, Abdel Kader Ben Hassan Abou Szabaleh, Mohammed Ben Ali el Saleh Abou Hamdeh, Mohammad el Haj Abdul Rahim Abou Hamdeh, Mohammad Ben Mausour al Shehadeh, Ahmad Deeb es Sarkass, 'Ata Ben Salah Abou Seidawiyyeh, Ahmad Ben Hassan Abou Hussein, Abdel Razeq Ben Ali al Nasser, Abdul Rahman Abd el Hadi al Issa, Ibrahim Abd el Kader al Issa al Nasser, Mahmoud Ben Mohammad Mousa Nasser, Najeeb Ibrahim Youssef el 'Ali, Mustafa Ben Abdallah el Antar, Ahmad
- 20 Ben Mahmoud Saleh Daoud, Abdul Ghani Khalil Youssef el 'Ali, Mahmoud Ben Hassan Ibrahim el Ahmad, Abdallah Ben Said el Saleh, Shareefeh bint el Sheikh Youssef Ghadbeh, Khadijeh Imran Ghadbeh, Azizeh Bint Mohammed Al Khadr Dakkah, Amneh bint Khalil al Mustafa, Azizeh bint Ali al Jada'a, Amneh bint el Sheikh Youssef Ghadbeh, Rashid bin Saleh el Zubeidy, Shaker Ben Ahmad el Zubeidy, Balqees bint Yehya Ghadbeh, Seifiyyeh bint Massoud el Yassin, Ayisbeh bint Mustafa el Bahbouh, Mohammed ben Youssef Makwiyyeh, Mahmoud Ben Mohammad al Hamad, Nimr Mohammad el Jada'a, Radwan Ben Nasser Sayyed Ahmad, Mohammad Ben Nasser Sayyed Ahmad, Daeb Ben Ahmad Abou
- 30 esh Shaban,

Identifier and witness :

Ahmad Ben Hamdan Abou Jazar.

Identifier and witness of all the above-mentioned persons and authorised to sign for those who affixed the prints of their right-hand thumbs :

Mohammad el Nimer Mana'.

No. 1606 Special.

8591 General.

- The forty-six signatures and fifty-six prints affixed at the bottom of this admission which is written on the 16th day of December 1925 and which
- 40 is attested on Thursday the 17th day of the said month and the year are the signatures of : Saleh Massoud el Yassin, Ahmad Mohammad Samara, Murshid al Badawy Ghadbeh, Ahmad Ben Ali Abu Jad'a, Mahmoud Ben Salah al Sadkah, Naif Ben Mustafa el Hussein, Salah Ben Mohammad al Salah, Saleh el Haj Mohammad Hassan, Mahmoud Ben Abd el Razzak Abou Mohammad, Ali Abd el Fattah Abou Mohammad, Saleh Abd el Hadi Abou Mohammad, Saleh Abd el Razzaq Ni'man, Youssef Ben Mahmoud Ni'man, Ibrahim el Haj Youssef Mahmoud Ni'man, Abed Ben Awad Rabah, Abdel Kader Ben Nasser el Qassam, Saleem Ben Said Mustafa Hassouny, Ahmad Ben Mustafa Anbar, Mohammad el Sheikh
- 50 Ali Hussein, Ibrahim el Sheikh Abed Abou Uthman, Darwish Ahmad al Haleeq, Mustafa Khalil Barakat, Murad Massoud al Mous, Mahmoud el Haj Abdel Kader Fayez, Haj Mohammad Ahmad Zeitoun, Mohammad Ahmad Zeitoun, Kamel Ibrahim Moussa, Mohammad Hussein Kashou',

Exhibits.
 No. 30.
 Exhibit 39.
 Defendants'
 Documents.
 Notarial
 Declara-
 tion
 No. 1606,
 17th
 December
 1925,
continued.

Ahmad Ben Ali Mustafa, Ahmad Mahmoud al Mas'ad, Hussein Abd el Fattah Ibrahim, Ameen Abd el Khaleq Nasr, Mohammad Ben I'weiss Kashou', Mohammad Abd el Khaleq Youssef, Shehadeh Ben Daoud al 'Ali, Hassan Mohammad Khalil, Said Khalil Youssef, Hassan Moussa Khalil, Rajeh ben Khalil Youssef Issa Ahmad Shanbour, Mohammed Ibrahim Abd el Hafeez, Sadek Ben Anbar Mohammad, Ahmad Ben Hassan Abd el Hadi, Youssef el Haj Ahmad I'weiss, Fauzy Taufik el Zubeidy which they all affixed with their handwriting before me, and the prints of their right-hand thumbs of: Mohammad Abd al Khaleq al Salem, Saleh Ahmad el Shareef, Maji Ahmad al Kansem, Mohammad Ben 10
 Mahmoud Al Mukbily, Abdul Razek Mohammad Ibrahim, Mahmoud Ben Mohammad Ibrahim, Hassan Ben Hassan al Abed, Abdul Raheem Ben Hussein el Ali, Kamel Ben Mohammad el Younas, Mohammad Ben el Haj Rabah Ni'man, Mohammad Ben Massoud al Mahmoud, Ibrahim ben el Abed Ibrahim, Abdel Kader Ben Mohammad al Kureishy, Abdul Rahman Ben Mohammad al Kureishy, Mahmoud ben Yassin el Kureishy, Ahmad Ben Hamdan Abou Sleih, Abdul Rahman Ben Massoud Abou Hadbeh, Zoukam Ben Abdel Hadi Abou Hadbeh, Said Ben Abdel Hadi Abou Hadbeh, Mustafa Abdel Hadi Mansour, Youssef Ben Mustafa Abou Jabarah, Abdel Kader Ben Massan Abou Sabaleh, Mohammad Ben Ali 20
 el Saleh Abou Hamdeh, Mohammad el Haj Abdul Rahim abou Hadeh, Mohammad Ben Mansour al Shehadeh, Ahmad Deeb es Sarkass, 'Ata Ben Salah Abou Seidawiyyeh, Ahmad Ben Hassan Abou Hussein, Abdel Razeq Ben Ali al Nasser, Abdul Rahman Abd el Hadi al Issa, Ibrahim Abd el Kader al Issa al Nasser, Mahmoud Ben Mohammad Mousa Nasser, Najeeb Ibrahim Yossef el 'Ali, Mustafa Ben Abdallah el Antar, Ahmad Ben Mahmoud Saleh Daoud, Abdul Ghani Khalil Youssef el 'Ali, Mahmoud Ben Hassan Ibrahim el Ahmad, Abdallah Ben Said el Saleh, Shareefeh bint el Sheikh Youssef Ghadbeh, Khadijeh Imran Ghadbeh, Azizeh Bint 30
 Mohammad Al Khadr Bakkah, Amneh bint Khalil al Mustafa, Azizeh bint Ali al Gada'a, Amneh bint el Sheikh Youssef Ghadbeh, Rashid bin Saleh el Zubeidy, Shaker Ben Ahmad al Zubeidy, Balqees bint Yehya Ghadbeh, Shifiyyeh bint Massoud el Yassin, Ayisheh bint Mustafa al Bahbouh, Mohammad ben Youssef Makwiyyeh, Mahmoud Ben Mohammad al Hamad, Nimr Mohammad el Jada'a, Radwan Ben Nasser Sayyed Ahmad, Mohammad Ben Nasser Sayyed Ahmad, Deeb Ben Ahmad Abou esh Shaban, all of them of the inhabitants of Zieta Village; they affixed their signatures and prints before me in the residence of Mr. Nissan Rutman in Kudeira, to which residence I went at request and owing to necessity, in the presence of the two identifiers and witnesses Messrs. Mohammed Nimer 40
 Manna and Ahmed Ben Hamdan Abou Jazar of the said village after the said admission was openly read to them and they have clearly understood its contents and fully agreed to its provisions; owing to the fact that the fifty-six persons, who affixed the prints of their right-hand thumbs on this document, are illiterate, they authorised one of the identifiers, namely Mr. Mohammad el Nimer Manna', to put their signatures, and he put same for them before me. At request this admission has been attested and recorded in its respective register.

17th day of December, 1925.

NOTARY PUBLIC,
 Haifa.

(Sgd.) ELIAS KHATTAR.

Seal of the Haifa District Court.

No. 31.

Exhibit 40.

NOTARIAL DECLARATION.

(Translation from Arabic.)

Exhibits.

No. 31.
Exhibit 40.
Defendants'
Documents.
Notarial
Declara-
tion
No. 143,
1st
February
1926.

We, whose signatures and thumbprints are herebelow affixed, cultivators and inhabitants of Zeita Village, Tulkarem, admit and recognise whilst we are in full mental capacity, that the land registered in the name of Toba Rutman of the inhabitants of Kudeira and Rivka Aaronson of the inhabitants of Zammarin, in the registry of the Haifa Land Registry
 10 under No. 2 page 9 and 10, No. of application 550/24 according to Deed No. 701 and 702/25, and Number 2, page No. 10, number of application 602/25, according to Deed No. 771/925, and Number 2 page 8, Number of application 550/25, bounded : East : Kazaza, Birket el Nurieh and Zeita lands—South : Attil lands, formerly a way—North : the Forest of Kudeira
 —West : the Forest of Kudeira, which land the two ladies bought from Mr. Abdul Fattah el Mari Samara, his two sons Selim and Moussa and his nephew Abdul Latif Ben el Abed Samara, known as " Khor el Wassa' " and in respect of which the said vendors obtained a judgment from the Haifa Land Court, is independent and separate, and belongs to Kudeira
 20 lands, is situate within the boundaries of these lands, and is adjacent to the Musha lands of Zeita from the West, that is to say the lands of Ramel Zeita is situate East of the said lands, that we have no right or claim or interest whatever therein, that the aforementioned judgment issued by the Haifa Land Court is valid and conform to law and that we have no objection whatever to this judgment. Should there appear a claimant among us to this land, his claim will be void, should anyone of us obtain a judgment in respect of his part in the lands of Ramel Zeita, this judgment will not apply to the said land registered in the names of the aforementioned Toba Rutman and Rivka Aaronson. At the request of the said Abdel Fattah
 30 we made this declaration by which we waive any right or claim in the said land.

21st January, 1926.

Stamps for P.T.12.

Thumbprints of : Hussein Ben Ahmed Abou Jazar, Saleh Faiz Abou Hamdeh, Mahmoud and Ahmed sons of El Haj Abdul Rahim Abou Hamdeh, el Abed Ben Salah Abou Hedawiyeh, Shafik Ben Assad el Khalil, Youssef and el Abed Ben Saleh Abdul Mihsen, Mahmoud Mohammad Zikralla, Ahmad Mohammed el Hussein, Mohammed el Abed Ibrahim, Abdul Fattah Massoud Abou Souba, Ahmed Abdul Khalek Nasser Kassem, Youssef Ali Abou Jada'a and Munile Abdul Khalek Nasser Kassem—seal
 40 and thumbprint of Abdalla Ben Ahmed Zikralla—Signatures of : Mohammed Hamdan Nubar, Mahmoud Ahmed Abou Jazar, Mohammed Hassan el Natour, Youssef Hassan el Natour, Ahmed Saleh Abdul Mihsen, Abdul Razek Mohammad Zikrallah, Abdul Kader Saed el Mustafa, ORasha Mohammed Hassan, Hassan Massoud Mahmoud, Mohammed Khalil el Youssef, Abdul Kader Sabbag Zabidi—signature and thumbprint of Mahmoud Abdul Rahman Dakhlallah.

Identifier and witness :

Identifier and witness :

Mohammed el Nimer Abou Manna'a.

Ahmed el Hamdan Abou Jazar.

Exhibits. Number

No. 31.
Exhibit 40.
Defendants'
Documents.
Notarial
Declara-
tion
No. 143,
1st
February
1926,
continued

143 Special.
812 General.

At the meeting held at the residence of Mr. Nissan Ben Mordechai Rutman in Kudeira, to which residence I went at request and owing to necessity, there appeared before me, I Elias Ben Hanna Khattar, Notary Public of the Haifa District Court, Messrs. Hussein Ben Ahmed Abou Jazar, Saleh Faiz Abou Hamdeh, Mahmoud and Ahmed sons of el Haj Abdul Rahim Abou Hamleh, el Abed Ben Salah Abou Hedawiyeh, Shafik Ben Assad el Khalil, Youssef and el Abed Ben Saleh Abdul Mihsen, 10
Mahmoud Mohammed Zikralla, Ahmed Mohammed El Hussein, Mohammad el Abed Ibrahim, Abdul Fattah Massoud Abou Souba, Ahmed Abdul Khalek Nasser Kassem who affixed the print of his left-hand thumb, Abdallah Ben Ahmed Zikralla, who affixed his own seal and the print of his right-hand thumb, and the signatures of Mohammed Hamdan Anbar Mahmoud Ahmed Abou Jazar, Mohammed Hassan el Natour, Youssef Hassan el Natour, Ahmed Saleh Abdul-Mihsen, Abdul Razek Mohammed Zikralla, Abdul Kader Said el Mustafa, ORasha Mohammed Hassan, Hassan Massoud Mahmoud, Mohammad Khalil el Youssef Abdul Kader Sabbag Zabidi, the signature and the print of the right-hand thumb 20
of Mahmoud Abdul Rahim, all of them of the inhabitants of Zeita Village. They affixed their signatures and prints before me and produced this admission. At their request and after this admission has been openly read to them and they have clearly understood its contents and fully agreed to its provisions in the presence of the two identifiers and witnesses Ahmed el Hamdan Abou Jazar and Mohammed el Nimer Abou Manna'a of the said village, it was attested by me and recorded in its respective register.

Notary Public, Haifa.

1st February, 1926. 30

(Sgd.) ELIAS KHATTAR.

Seal of the Haifa District Court.

No. 32.
Exhibit 41.
Defendants'
Documents.
Notarial
Declara-
tion
No. 366,
22nd March
1926.

No. 32.
Exhibit 41.
NOTARIAL DECLARATION.

(Translation from Arabic.)

We, whose signatures and thumbprints are herebelow affixed, cultivators and inhabitants of Zeita Village, Tulkarem, admit and recognise whilst we are in full mental capacity, that the land registered in the name of Toba Rutman of the inhabitants of Kudeira and Rivka 40
Aaronson of the inhabitants of Zammarin, in the registry of the Haifa Land Registry under No. 2 page 9 and 10, No. of application 550/25 according to Deed No. 701 and 702/25, and Number 2, page No. 10, number of application 602/25, according to Deed No. 771/925, and Number 2 page 8, Number of application 550/25, bounded : East : Kazaza, Birket el Nurieh and Zeita lands—South : Attil lands, formerly a way—North : the Forest of Kudeira—West : the Forest of Kudeira, which land the two ladies bought from Mr. Abdul Fattah el Mari Samara, his two sons Selim and Moussa and his nephew Abdul Latif Ben el Abed Samara,

Exhibits.

No. 32.
Exhibit 41.
Defendants'
Documents.
Notarial
Declara-
tion
No. 366,
22nd March
1926,
continued.

known as "Khor el Wassa'" and in respect of which the said vendors obtained a judgment from the Haifa Land Court, is independent and separate, and belongs to Kudeira lands, is situate within the boundaries of these lands and is adjacent to the Musha lands of Zeita from the West, that is to say the lands of Ramel Zeita is situate East of the said lands, that we have no right or claim or interest whatever therein, that the aforementioned judgment issued by the Haifa Land Court is valid and conforms to law and that we have no objection whatever to this judgment. Should there appear a claimant among us to this land, his claim will be
10 void, should anyone of us obtain a judgment in respect of his part in the lands of Ramel Zeita, this judgment will not apply to the said land registered in the names of the aforementioned Toba Rutman and Rivka Aaronson. At the request of the said Abdel Fattah we made this declaration by which we waive any right or claim in the said land.

22nd March, 1926.

Stamps for P.T.7.

(Sgd.) Abdul Malek Ahmed-Abdul Hadi, Hussein Abdul Razek el Hassan, Suleiman Ben Saleh Suleiman, Abdul Jabbar es Samara, Massoud Ben Moussa Nasser, Ragheb Tayeh el Youssef, Abdul Razek Ben Ali Abou Mohammed.

20 Thumbprints : Awad Ben Hassan Abdul Ghani el Naaman, el Abed Ben Nasser Addriss, Mukbel Assaad Mohammed el Mukbel, Mahmoud Assad el Mukbel and Abdallah Youssef Hamdan.

Witness and identifier of the twelve declarants and authorised to sign for the five affixing their right thumbprints, Mohammed Ben Nimer Abou Mana'.

Witness and identifier : Yacoub Samsonoff.

Number : 366 Special
22557 General.

The signatures and prints affixed at the bottom of this admission
30 which is written and attested on Monday the 22nd day of March, 1926 are the signatures of El Haj Massoud Ben Moussa Nasr, Hussein Abdul Razek el Hassan, Abdul Malek Ben Ahmed Abdul Hadi, Ragheb Ben Tayeh el Youssef el Alami, Suleiman Ben Saleh Suleiman, Abdul Jabbar Ben Abdallah Samara and Abdul Razek Ben Ali Abou Mohammad, and the thumb prints of the right hands of Awad Ben Hassan Abdul Ghani el Naaman, el Abed Ben Naser el Driss, Mukbel Ben Assad el Mohammed el Mukbel and Mahmoud Assad el Mohammed el Mukbel and Abdallah Youssef Hamdan, all of the inhabitants of Zeita Village, Tulkarem. They affixed their signatures and prints before me in the office of the advocate
40 Nejjib Eff. el Hakim, situate in the Eastern Quarter of Haifa near the Haifa Police Station, to which office I went at request and owing to necessity, in the presence of the identifiers and witnesses Mr. Yacoub Samsonoff of Kudeira and Mr. Mohammed Ben Nimer Abou Mannah of Zeita Village after the said admission was openly read to them and they understood its contents and fully agreed to its provisions. At request this admission has been attested and recorded in its respective register.

22nd March, 1926.

Notary Public,
Haifa.

(Sgd.)

Seal of the Haifa District Court.

Exhibits.

No. 33.
 Exhibit 42.
 Defendants'
 Documents.
 Notarial
 Declara-
 tion
 No. 367,
 23rd March
 1926.

No. 33.**Exhibit 42.****NOTARIAL DECLARATION.**

(Translation from Arabic.)

We, whose signatures and thumbprints are herebelow affixed, cultivators and inhabitants of Zeita Village, Tulkarem, admit and recognise whilst we are in full mental capacity, that the land registered in the name of Toba Rutman of the inhabitants of Kudeira and Rivka Aaronson of the inhabitants of Zammarin, in the registry of the Haifa Land Registry under No. 2, page 9 and 10, No. of application 550/25 according to Deed No. 701 and 702/25, and Number 2, page No. 10, number of application 602/25, according to Deed No. 771/925, and Number 2 page 8, Number of application 550/25, bounded: East: Kazaza, Birket el Nurieh and Zeita lands—South: Attil Lands, formerly a way—North: the Forest of Kudeira—West: The Forest of Kudeira, which land the two ladies bought from Mr. Abdul Fattah el Mari Samara, his two sons Selim and Moussa and his nephew Abdul Latif Ben el Abed Samara, known as "Khor el Wassa'" and in respect of which the said vendors obtained a judgment from the Haifa Land Court, is independent and separate, and belongs to Kudeira lands, is situate within the boundaries of these lands and is adjacent to the Musha lands of Zeita from the West, that is to say the lands of Ramel Zeita is situate East of the said lands, that we have no right or claim or interest whatever therein, that the aforementioned judgment issued by the Haifa Land Court is valid and conforms to law and that we have no objection whatever to this judgment. Should there appear a claimant among us to this land, his claim will be void, should anyone of us obtain a judgment in respect of his part in the lands of Ramel Zeita, this judgment will not apply to the said land registered in the names of the aforementioned Toba Rutman and Rivka Aaronson. At the request of the said Abdel Fattah we made this declaration by which we waive any right or claim in the said land.

23 March, 1926.

Stamps for P.T.12.

MOHAMMAD HASSAN AHMED IBRAHIM
 Thumbprint.

Signature of MAHOUD
 EL HASSAN ALI.

Signature of ABDUL KADER HASSOUNEH.

Witness and identifier of three declarants and authorised to sign for the said Mohammad Hassan

MOHAMMAD BEN NIMER ABOU MANA'.

Witness and identifier: YACOB SAMSONOFF.

Number 367 Special
 2261 General.

40

The signatures and prints affixed at the bottom of this declaration which is written and attested on Thursday the Twenty-third day of March, 1926 are the signatures of Hassan Ali Abbas and Abdul Kader Mohammed Hassan and the right thumbprint of Mohammad Hassan Ahmed Ibrahim all of them of Zeita Village, Tulkarem. They put their signatures before

me in my office in the presence of the identifiers and witnesses, Mr. Yacoub Samsonoff of Kudeira & Mohammad Ben Nimer Abou Mana' of Zeita Village, after the said admission was openly read to them and they clearly understood its contents and fully agreed to the correctness of its provisions. At request this admission has been attested and registered in its respective Register.

23rd March, 1926.

Notary Public
Haifa.

(Sgd.) ELIAS KHATTAR.

Seal of the District Court,

Haifa.

Exhibits.
—
No. 33.
Exhibit 42.
Defendants'
Documents.
Notarial
Declara-
tion
No. 367,
23rd March
1926,
continued.

10

No. 34.

JUDGMENT OF SUPREME COURT in Case L. A. No. 35/26.

(Translation from Arabic.)

Land Appeal No. 35/26.

SALEH BEN ISMAIL EL KHATIB, of Zeita Village,
Tulkarem

Appellant

V.

20

ABDUL LATIF BEN MIRI EL SAMARA and his
sons SELIM, MOUSA and ABDUL LATIF of
Zeita Village, Tulkarem

Respondents.

No. 34.
Plaintiffs'
Documents.
Judgment
of Supreme
Court,
Jerusalem,
in Land
Appeal
35/26,
6th May
1926.

THE JUDGMENT APPEALED.

Given in presence by the Land Court of Haifa on 4.1.26, dismissing the opposition of appellant on the ground that as the two defendants Rutman and Aaronson were not parties to the first action, in which action the judgment given was opposed by the present opposer, they cannot be considered as parties to the existing action raised by way of a Third Party Opposition, adjudging him to pay the costs and expenses and 30 five pounds as advocate's fees and granting him the right to raise a separate action against whomever he wishes in respect of his ownership in the lands affected by the judgment which is being now opposed.

JUDGMENT.

On deliberation it was found that the judgment of the Court of First Instance conforms to law and procedure. The Court decided therefore to confirm it and to dismiss the appeal and orders the appellant to pay the legal expenses.

Given in presence in open Court.

6th May, 1926.

40

Certified true copy.

Signed : ELIAS KHOURY,
Chief Clerk.

Seal of the Supreme Court.

*Exhibits.*No. 35.
Exhibit
"U".Defendants'
Documents.
Admission
by Mussa
Samara,
7th October
1926.

No. 35.

Exhibit "U".

ADMISSION by Mousa Samara.

(Translation from Arabic.)

I, the undersigned, Mousa ibn Abdul Fattah ibn Miri' Samara of Zeita Tulkarem with full legal and mental capacity hereby declare and admit that all the buildings, existing on the land of Khor el Wasa' of Khudeirah lands, in respect of which a judgment was obtained in my favour and in favour of my partners Abdul Fattah ibn Miri' Samara and Salim ibn Abdul Fattah Samara and Abdul Latif ibn el Abed Miri' Samara from the Land Court Haifa on 6.5.25 (No. 17), are included within the sale to Rifka Aaronson and Toba Rutman. We have received in full the value of the buildings together with the value of the land from Nissan Rutman. We have nothing to claim from him and we have no interest whatsoever in the said land or buildings or their value. Wherefore this Deed was made and signed on 6.10.26. 10

Thumbprint of MOUSA IBN ABDUL FATTAH MIRI' SAMARA.

(Sgd.) YOUSEF EL HAMID

(Sgd.) MOHAMMED HILOU

Identifiers and witnesses. 20

No. 1173 Special.

The thumbprint at the foot of this admission made on the 6th of October 1926 and attested on Thursday the 7th of October 1926 is the right thumbprint of Mousa Abdul Fattah ibn Miri' Samara of Zeita Village, put before me in the house of Nissan Rutman at Khudeirah in the presence of two identifiers and witnesses, namely, Sheikh Mohamed ibn Abdul Rahman el Hilou and Yousef el Hamid, after that the admission was read over and explained to him clearly and its contents confirmed. At request, this admission was attested and registered in the special register kept for this purpose. 30

7.10.26.

(Sgd.) E. KHATTAR,

Notary Public, Haifa.

At the request of Mr. N. Rutman a copy of this admission was extracted from the special register kept in this office and given to him after comparison and payment of the necessary fee in accordance with articles 51 and 89 of the Notary Public Law. This copy was certified by me on Thursday the 18th of September, 1930.

(Sgd.) E. KHATTAR,

Notary Public.

Seal of District Court, Haifa. 40

No. 36.

Exhibit 8.

NOTARIAL DECLARATION.

(Translation from Arabic.)

Exhibits.

No. 36.
Exhibit 8.
Defendants'
Documents.
Certified
Copy
Notarial
Declara-
tion,
6th October
1926.

10 On this date, we the undersigned, with full legal and mental capacity, declare and admit that all the buildings at Khor el Wasa' of Khudeira lands in respect of which judgment was given in our favour by the Land Court Haifa on 6.5.25 (No. 17), are included in the sale made to Rifka Aaronson and Toba Rutman. We have received their full value together with the value of the land from Mr. N. Rutman. We have no rights whatsoever in the said land, buildings or value thereof.

Wherefore this Deed was made on 6.10.26.

Thumbprint of ABDUL LATIF SAMARA

SALIM SAMARA.

ABDUL FATTAH SAMARA.

Witnesses :

(Sgd.) N. HAKIM.

„ K. BAHUT.

No. 1163.

20 The three thumbprints at the foot of this admission made and attested on Wednesday the 6th of October 1926 are the right thumbprints of each of Abdul Fattah ibn Miri' Samara, Salim ibn Abdul Fattah Samara and Abdul Lattif ibn Abd el Miri Samara all residing at Khor el Wasa', Khudeira. These thumbprints were affixed before me at my office in the presence of the witnesses and identifiers Najib el Hakim, Advocate, and Yacoub Bahut, both residents of Haifa, after that the admission was duly read and explained to them clearly and accepted by them as correct. At their request, the said admission was confirmed and registered in the special register.

30 Date : 6.10.26

(Sgd.) E. KHATTAR,

Notary Public, Haifa.

N.P.612/41.

At the request of Mr. Kaiserman, Advocate, Haifa, this copy has been extracted from the register and issued to applicant after being duly checked and the prescribed fee paid in accordance with Articles 5 and 81 of the Notary Public Law.

In witness whereof I have hereunto set my hand this 7th day of May, 1941.

(Sgd.)

40

Notary Public,
Haifa.

Revenue Stamps 50 Mils.

Exhibits.

No. 37.
 Exhibit 9.
 Defendants'
 Documents.
 Certified
 Copy of
 Notarial
 Deed,
 6th October
 1926.

No. 37.

Exhibit 9.

NOTARIAL DEED.

(Translation from Arabic.)

I, the undersigned, Mousa ibn Abdul Fattah ibn Miri Samara of Zeita Tulkarem Sub-District, hereby declare and admit, whilst being in full legal and mental capacity, that all buildings on the land known as Khor el Wasa' of Khudeira lands in respect of which a judgment was given in my favour and in favour of my partners (Abdul Fattah ibn Miri Samara, Salim ibn Abdul Fattah Samara and Abdul Lattif ibn Abed Miri' Samara) by the Land Court Haifa on 6.5.25 (No. 17) are included in the sale made to Rifka Aaronson and Toba Rutman. We have received their value in full together with the value of the land from Mr. N. Rutman. We have no right left whatsoever in the said land or buildings or their value. 10

Wherefore this Deed was made this 6th day of October, 1926.

Thumbprint of MOUSA ABDUL FATTAH BEN MIRI' SAMARA.

(Sgd.) Witnesses.

No. 1173.

The thumbprint at the foot of this admission made on the 6th day 20 of October 1926 and attested on Thursday the 7th of October 1926 is the right thumbprint of Mousa ibn Abdul Fattah ibn Miri Samara of Zeita Village. It was affixed before me in the house of N. Rutman at Khudeirah in the presence of the two witnesses Sheikh Mohamed ibn Abdul Rahman Hilou and Yousef el Hamid after it was read over and explained to him clearly. The said Mousa ibn Abdul Fattah ibn Miri' Samara agreed to its contents and at his request this admission was confirmed and registered in the special register.

7.10.26.

(Sgd.) E. KHATTAR,

Notary Public,
 Haifa.

30

No. 39.

Exhibit 36.

ACCOUNT OF WAGES.

(Translation from French.)

*Exhibits.*No. 39.
Exhibit
36" A " Defendants'
Documents.
Account of
Wages of
Workers of
PICA for
the month
of
November
1926.

AGRONOMIC SERVICES.

ZICHRON YACOB AND DEPENDENCIES.

Labourers Hedera (according to paysheet).

	LE m/m	LE m/m
Eucalyptus Hedera		
10 For labourers to prune trees and prepare wood for selling	34.890	
Allowance Kupat Holim	0.330	
High Cost of living allowance	0.790	
Salary Arab Watchman	2.500	
Transport of wood to store	10.675	
Purchase of material and travelling allowance etc.	3.890	
	Total	53.075
30.11.26.		

(Sgd.) R. KOHN.

20

(Translation from French.)

" B "

No. 199.

Good for LE.53.075.

Received from the Palestine Jewish Colonization Association at Haifa the sum of I.E.53.075 Mils for labourers' pay November as per paysheet signed by recipients and bill of Mr. Kohn attached hereto.

Haifa, 30th November, 1926.

(Sgd.) S. SEGAL.

Exhibits.
 No. 39.
 Exhibit
 36
 Defendants'
 Documents.
 Account of
 Wages of
 Workers
 of PICA
 for the
 month of
 November
 1926,
continued.

(Translation from French.)
 AGRONOMIC SERVICES
 ZICHRON YACOB & DEPENDENCIES.

Paysheet—November 1926.

Eucalyptus Hedera.

Serial No.	Name of workers	No. of working days	Salary	Amount payable	Allee. 4% Kupat Holim	Allee. high cost of living	Total Pt.
1	Weinberg	26	21.-	546.-	22	52	620
2	Catz	13½	20.-	270.-	11	27	308
3	Mihsen, Watchman, Salary Nov.,			250.-			250
4	Abramoff for pruning trees & prepare wood for sale 89.100 tons including allee. for Kupat Holim						
5	Zilberstein—transport of wood to stock 61 tons		30.-	2,673.-			2,673
6	Eph. Stermine—hiring of carriages		17.50	1,067.50			1,067.50
7	Sansonoff A.—hiring of animals		21	120.-			120.-
	Purchase of lime			80.-			
	Purchase of 4 axes		44	91.-			
	Furniture—office		26				
	Travelling to Zichron with Weinberg			80.-			
	Telephone			18.-			
	Totals			5,195.50	33.-	79.-	5,307.50

No. 38.

Exhibit 35.

ACCOUNT OF WAGES.

(Translation from French.)

AGRONOMIC SERVICES

ZICHRON YACOB AND DEPENDENCIES.

Labourers Hedera (according to paysheet attached)

*Exhibits.*No. 38.
Exhibit
35" A " Defendants'
Documents.
Account of
Wages of
Workers of
PICA for
the month
of October
1926.

	LE. m/m	LE. m/m
<i>Eucalyptus Hedera.</i>		
10 Labourers' pay to prepare wood for selling	38.700	
Allee.—Kupat Halim	0.230	
Allee.—high cost of living	0.570	
Salary—Arab Watchman	2.500	
Transport of wood to store	7.000	
Transport of wood to station and loading on wagons destined to PICA Jaffa	9.625	
Purchase of Material etc.	2.445	
		61.070
<i>Concessions—Kabbara Digging and Clearing</i>		
20 Transport to station and despatch to Kabbara of eucalyptus poles to be used for bridges over canals at Zerka		12.950
	Total	74.020

31.10.26.

(Sgd.) R. KOHN.

(Translation from French.)

" B "

No. 219.

Good for LE.74.020

Received from the Palestine Jewish Colonization Association, Haifa,
the sum of LE.74.020 m/m for labourers' pay and other expenses for
October as per attached paysheet signed by the recipients and bill of
30 Mr. Kohn.

Haifa 21.10.1926.

Exhibits.
 No. 38.
 Exhibit
 35
 Defendants'
 Documents,
 Account of
 Wages of
 Workers of
 PICA for
 the month
 of October
 1926,
continued.

(Translation from French.)

AGRONOMIC SERVICES
 ZICHRON YACOB & DEPENDENCIES

Paysheet for October 1926.

Eucalyptus Hedera.

Serial No.	Name of Labourers	Working days	Salary	Amount payable	Allee. 4% Kupat Holim	Allee. high cost of living	Total	Advances	Balance
1	Weinberg	24	20	480	19	48	547.-	-	547.-
2	Catz	4½	20	90	4	9	103.-	-	103.-
3	Mihsen Sal. Oct.			250	-	-	250.-	-	250.-
4	Abramoff for cutting trees & preparing wood for sale (including Kupat Holim Allee.)	110	30	3300			3300	1250	2050.-
5	Abramoff for collecting wood & loading of 2 wagons—Kabbara & further 2 wagons—Brantzky	160		260			260	-	260.-
6	Zilberstein—transport of wood to stock 40 tons	100		700			700	-	700.-
7	Klotzman for repairing tools			22.50			22.50	-	22.50
8	Samsonoff A. Purchase of saws & lime Telephone Travelling expenses to Zichron with Weinberg Transport of 19 tons of wood from the forest to the station for dispatch to Kabbara Railway fare—2 wagons to Kabbara Transport of 1725 poles from forest to station for despatch to Brantzky		17.50 124.- 18.- 80.- 715.- 420.-						
			862.50	2219.50			2219.50	-	2219.50
				7322.-	23	57	7402.-	1250	6152.-

No. 40.

Exhibit " e ".

RECORD of Land Case No. 10/25.

(Translation from Arabic.)

Land Case No. 10/25.

Before : HIS HONOUR THE PRESIDENT JUDGE LITT AND
HIS HONOUR JUDGE STRUMZA.

Plaintiffs : 1. ABD. EL FATTAH MIR'I SAMARA
2. ABD. EL LAFIF MIR'I SAMARA
10 3. SALIM MIR'I SAMARA
4. MOUSA MIR'I SAMARA,
all represented by Mr. Joseph Kaisermann.

Defendants : 1. YACOUB SAMSONOV
2. YAFET BEN YACOUB YAMINI
3. AHARON MARODISKY,
represented by Najib Eff. Hakim.

*Exhibits.*No. 40.
Exhibit
" e ".Defendants'
Documents.
Record of
Land Case
No. 10/25,
6th May
1925,
26th
January
1927,
4th
February
1927,
5th April
1929.

Attorney of Plaintiffs : My clients have been cultivating and working on the land known as Khor el Wasa' bounded as follows : East : Kazaze, Birket Nourieh and Zeita lands ; West : The Forest of the Jews ; North :
20 The Forest of the Jews ; South : Attil Lands. They had been working on the land without any interruption for a period exceeding 30 years. Before them the land was cultivated by their ancestors and they also built houses thereon and other erections for their animals. The said buildings have been in existence from a long period. There was no opposition from neighbours or any other person at any time. Last year in winter Defendants encroached upon the said land and cultivated it. I filed this action claiming registration of this land in the name of my clients. In the reply served upon me by my colleague Najib Eff. el Hakim, the
30 Attorney of Defendants, a Tabu extract was attached thereto in the name of two of the Defendants. I reject the said Kushan and say that though my clients do not possess a Kushan still I think that the Kushan by itself without possession does not entitle Defendant to ownership. My clients however have been in possession for a period exceeding 30 years and moreover I do not think that the Tabu extracts produced tally with the land in dispute. I draw the attention of this Honourable Court that the boundaries mentioned in the Tabu extracts do not correspond with the boundaries shown in my statement of claim. My claim is based upon Article 78 of the Land Code. I am prepared to prove this point by evidence of witnesses present in this Court. I ask that they may be heard. Accord-
40 ing to the said Article it is necessary that I should prove : first, that my clients have been cultivating and in possession of the land in dispute without any interruption or opposition ; secondly, that possession is for a period exceeding 10 years as required by law. I draw the attention of this Court to another point, namely, that Defendants in person did not allege that the land in dispute was in their possession at all. For these reasons I ask for judgment in favour of my clients to the effect that the said land be registered in their names and that Defendants be ordered to pay Plaintiffs' cost. My clients did not pay originally rent to the Defendants.

Exhibits.
 ———
 No. 40.
 Exhibit
 " e".
 Defendants'
 Documents.
 Record of
 Land Case
 No. 10/25,
 6th May
 1925,
 26th
 January
 1927,
 5th
 February
 1927,
 4th April
 1929,
continued.

Attorney of Defendants : My clients own the land in dispute by virtue of Kushans as shown in my defence. Defendants were cultivating it with the permission of my clients. Recently however they filed an action and altered the boundaries found in the Sanad. The South in the Sanad is shown as road. Plaintiffs cut the road to change the boundaries. The north in our Sanad shows a Wadi (valley). Plaintiffs ignored the Wadi and (sic.) and showed another line, i.e., Khudeira Forest. Again, the western boundary is Dabbet el Sheikh Hilou. Plaintiffs left the Dabbeh behind and drew for themselves a line, i.e., Khudeira Forest. Now as to the east the boundaries alleged are in agreement. They have thus altered the northern, western and southern boundary, but this alteration is not material because the plot they claim is part of our plot. Plaintiffs have further built houses but these houses do not entitle them to ownership because they had built them on others property and you well know that dealings in others property is void. Therefore, in view of the fact that my defence is based upon a document of title produced to this Court and whereas all what my colleague said does not invalidate the said document I ask that his action be dismissed with costs and advocate's fees. 10

Order : The Court finds it necessary in the first instance to send the Land Registrar to the land in dispute so that the boundaries in the Kushan relating to the land in dispute be compared and applied by him and to make a report of the result of the inspection, namely whether the land in dispute is registered or not. We fix an allowance of LP.5—to the Registrar and we adjourn the action to Thursday the 16th April, 1925. 20

Order made in presence and delivered on 1.4.25.

(Sgd.) W. G. LITT,
 P.D.C.

(Sgd.) J. STRUMZA,
 Member.

On the day fixed, advocates of both parties appeared. Due to the absence of the President this case cannot be heard. Adjourned to Friday 24.4.25. Both parties informed. 30

16.4.25

(Sgd.) J. STRUMZA.

„ N. HAKIM, Att. of Defendants.

„ J. KAISERMAN, Attorney of
 Plaintiffs.

On the day fixed, both parties appeared. Due to the sickness of His Honour the President the case cannot be heard. Adjourned to Wednesday 6.5.25. Parties informed.

24.4.25

(Sgd.) J. STRUMZA.

(Sgd.) N. HAKIM, Att. of Defendants.

(Sgd.) J. KAISERMAN, Attorney of
 Plaintiffs. 40

On the day fixed, the Court was composed of the President H.H. Judge Copland and H.H. Judge Strumza.

Attorney of Plaintiffs : Mr. Kaiserman.

Attorney of Defendants : Najib el Hakim—absent.

Certified to be a true copy of the proceedings in Haifa Land Case No. 10/25.

23.10.30

(Sgd.) H. ATALLA, Chief Clerk, Supreme
 Court, Jerusalem.

Revenue Stamps : LP.2.100 Mils.
 Reg. No. 109 of 24.10.30.

50

IN THE LAND COURT, HAIFA.

ATTORNEY-GENERAL v. ABDEL FATTAH MIRI SAMARA

ABDEL LATIF SAMARA

SALIM SAMARA

MOUSSA SAMARA

JACOB SAMSONOFF

YAFITH YAMANI

AARON MADURSKY

TOBA RUTMAN

RIVKA AARONSON

} of Zeita
Village

} of Hedera
Village

Opposition
of Third
Party
signed by
Attorney-
General in
Case
No. 10/25
in File
2/92/30.

10

In re Land Case No. 10/25.

Opposition of Third Party.

1. In this case judgment was given in favour of Abdel Fattah Samara and others on 6.5.25. The judgment is prejudicial to the interest of the Government which was not present and was not a party to the suit.

2. Opposition against the judgment is therefore made in accordance with Articles 161 and 166 of the Code of Civil Procedure, and application is made for an order to stay the action in the land included on the plan alleged to have been produced in the above case, copy of which is enclosed
20 and particularly the transaction submitted to Haifa Land Registry regarding a sale of a part of this land by one Rivka Aaronson to Mr. Eliash (1080/26).

3. Opposition is made on the following grounds :—

(A) The boundaries in the kushan referred to in the opposed judgment are totally different from those in the judgment, and it seems that no proper application of the kushan on the grounds has been made.

(B) The Defendants to the opposed judgment owned only five shares out of 286, and therefore only those shares could have
30 been given by the judgment to the Plaintiff on the strength of the admission of the Defendants as the Plaintiffs occupancy.

(C) The plan alleged to have been produced in the case opposed is tampered with. The words "Zeita of Tulkarem" have been rubbed out and "Khor El Wassa Khedera" printed on it.

(D) The area of the kushan produced by the Defendants is 3224 dunums. The area shown on the map is 5358 dunums.

4. With regards to this land a judgment has been given by the Land Court of Samaria on the 14th April, 1924, that it is Mushaa land of Zeita village, and it has been declared Mushaa for all the inhabitants of the
40 village each of them having been awarded one share out of 906 shares.

5. The same land being of Zeita village of Tulkarem District is recorded in the tabo books of Tulkarem List, and has been declared by the Majlis Idara in the year 1316 to be Mahlul land. An action is still pending before the Nablus Court to which the Turkish Government and the villagers of Zeita were parties, with regard to the claim of Government that the land is Mahlul.

Opposition
of Third
Party
signed by
Attorney-
General in
Case
No. 10/25
in File
2/92/30,
continued.

As the land is included in the Land Registers of the Tulkarem Sub-District, and as the Samaria Land Court had 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 Hedera and which thereby deceived the Court, that jurisdiction was assumed by the Haifa Court.

26.1.27.

(Sgd.) N. BENTWICH,
Attorney-General.

Claim
signed by
M. Dukhan,
Attorney
for the
Govern-
ment dated
5.2.27
v. Samara
Samsonov
and others.
In File
2/92/30.

Lands Department,
Haifa.

10

5th February, 1927.

IN THE LAND COURT,
Haifa.

ATTORNEY-GENERAL <i>v.</i>	ABDUL FATTAH MIRY SAMARA, ABDULATIF SAMARA, SELIM, MUSA SAMARA. JACOB SAMSONOF, YAFIT YAMINI, AARON MADORSKI, TOBA RUTMAN and RIVKA AARONSON.	}	of Zeita Village.	}	Of Hedera Village.	20
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STATEMENT OF CLAIM.

1. This action is for cancellation of a judgment given in favour of Abdul Fattah Samara and others on 6.5.1925, and for an order to cancel the registration in the Haifa Land Registry Office :—

(a) Vol. 2, Fol. 8, of Khudeireh Village, Deed No. 690 of 2.6.1926, regarding an area of 1300 dunums which stands registered in the name of Rifka Aaronson. 30

(b) Vol. 2, Fol. 9, Deed 701 of 5.6.1925 in respect of 1358 dunums registered in the name of Toba Rutman.

(c) Vol. 2, Fol. 10, Deeds 702 of 5.6.1925 and 771 of 17.6.1925 in respect of 2700 dunums registered in the name of Miss Rifka Aaronson.

2. The grounds of the action are as follows :—

(a) The defendants to the opposed judgment owned only 5 shares out of 286, and therefore only those shares should have been given by the judgment to the plaintiff on the strength of the admission of the defendants as to the plaintiff's occupancy. 40

(b) The boundaries in the Kushan referred to in the opposed judgment are totally different from those in the judgment, and it seems that no proper application of the Kushan on the ground has been made.

(c) the plan alleged to have been produced in the case opposed is tampered with. The words "Zeita of Tulkarem" have been rubbed out and "Khor El Wassa Hedera" printed on it.

(d) the area of the Kushan produced by the defendants is 3224 dunums. The area shown on the map is 5358 dun.

(e) With regard to this land a judgment has been given by the Land Court of Samaria on the 14th April, 1924, that it is Masha Land of Zeita Village, and it has been declared Mashaa for all the inhabitants of the village, each of them having been awarded one share out of 906 shares.

Claim signed by M. Dukhan, Attorney for the Government dated 5.2.27 v. Samara Samsonov and others. In File 2/92/30, continued.

10

(f) The same land being of Zeita Village of Tulkarem District is recorded in the Tabu Books of Tulkarem District, and it has been declared by the Majlis Idara in the year 1316 to be Mahloul Land. An action is still pending before the Nablus Court to which the Turkish Government and the villagers of Zeita were parties, with regard to the claim of the Government that the land is Mahloul.

(g) As the land is included in the Land Registers of 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 of Hedera and which thereby deceived the Court, that jurisdiction was assumed by the Haifa Court.

20

3. I respectfully beg to request :—

(1) That the attachment ordered by the Honourable President of the Court on 28.1.1927 be confirmed.

(2) That the judgment of the Haifa Court of 6.5.1925 be cancelled.

(3) That judgment be given for cancellation of the entries in the Haifa Land Registry Books, above mentioned, and the Kushans issued on the strength of the entries also be cancelled.

30

(4) Costs.

(Sgd,) M. DOUKHAN,

Attorney of the Government.

Schedule of Documents

Ex. 1. Copy of plan of Hedera village of the year 1893.

TRIAL UPON INFORMATION ORDINANCE, 1924.

Charge
Sheet
signed by
the
Attorney-
General
against
Mr.
Rutman,
dated
4.4.29—
In File
2/92/30.

ORDER.

WHEREAS a charge of having caused to be prepared and having submitted a false document contrary to the 2nd addendum to Article 155 of the Penal Code was preferred on the 17th of January, 1929, against Nissan Rutman of Khudeira, in that in or about the month of November, 1924, he caused to be prepared a false plan of the land known as Khor El Wasa, representing that it was a plan of part of the land of the village of Khudeira in the Sub-District of Haifa, whereas he knew that it was part of the land of the village of Zeita in the Sub-District of Tulkarem; and on or about the 5th of May, 1925, he presented the said false plan to the Land Registry office at Haifa with a view to the area represented in the plan being registered in the land registers at Haifa; and the Committing Magistrate of Haifa on the 29th of January, 1929, refused to commit him for trial. 10

Now, in exercise of the power vested in me by Section 26 (ii) (a) of the Trial Upon Information Ordinance, 1924, I hereby commit the said Nissan Rutman for trial before the District Court of Haifa on a charge of having submitted a false document contrary to the 2nd addendum to Article 155 of the Penal Code. 20

Dated this 4th day of April, 1929.

(Sgd.) N. BENTWICH,
Attorney-General.

*Exhibits.***No. 41.****Exhibit "X".****AGREEMENT between H.E. Lord Plumer and Mrs. Rutman and Miss Aaronsohn.**

Defendants'
Documents.
Agreement
Rivka
Aaronsohn
and Tova
Rutman
with
H.E. Lord
Plumer,
28th April
1927,

AN AGREEMENT made this twenty-ninth day of April One Thousand Nine Hundred and Twenty-seven between His Excellency Field Marshal, HERBERT CHARLES ONSLOW, BARON PLUMER, High Commissioner for Palestine on behalf of the Government of Palestine (hereinafter called the Government) of the one part, and Mrs. TOBA RUTMAN of Khedera and Miss RIFKA AARONSON of Zichron Jacob (hereinafter called the Defendants) of the other part, 30

Whereas the Defendants stand registered in the Land Registry Books of Haifa as owners of a plot of land of an area 5,358 dunums in virtue of a judgment of Haifa Land Court of 6.5.25 given in favour of Abdul Fattah, Salim, Mousa and Abdel Latif Samara, and sale by the above-named persons to the Defendants,

And whereas in an action instituted in the Land Court of Haifa entitled Attorney-General *v.* Abdul Fattah, Selim, Musa and Abdul Latif Samara of Zeita Village, Jacob Samsonof, Yafit Yamini, Aaron Madorsky, Toba Rutman and Rifka Aaronson of Khedera Village (Land 2/27), the Government opposed the above judgment of 6.5.25 and asked for the cancellation of the entries in the Haifa Land Registers consequent on the above-mentioned judgment and of the Kushans issued to the Defendants 40

from the Haifa Land Registry (Vol. 2, Fol. 8, Deed No. 690; Vol. 2, Fol. 9 Deed No. 701; Vol. 2, Fol. 10 Deeds Nos. 702 & 771) on the ground, among others, that the land being a part of a plot of land known as the Zeita lands of Tulkarem District was by a decision of the Mejlis Idara of the year 1316 declared Mahlul, and that an action is pending before the Land Court of Nablus to which the Ottoman Government and the villagers of Zeita were parties with regard to the claim of the said Ottoman Government that the land is Mahlul;

Exhibits.
 —
 No. 41.
 Exhibit
 "X".
 Defendants'
 Documents.
 Agreement
 Rivka
 Aaronsohn
 and Tova
 Rutman
 with
 H.E. Lord
 Plumer,
 28th April
 1927,
continued.

10 And whereas it has been agreed that the Government shall renounce its claim to the 5,358 dunums of land as Mahlul in consideration of the Defendants paying to the Government the sum hereinafter mentioned :

Now this Agreement witnesses as follows :—

1. In consideration of the sum of LE.1,000 (One Thousand Pounds Egyptian) paid by the Defendants to the Government (the receipt of which is hereby acknowledged) the Government renounces its claim to treat as Mahlul the 5,358 dunums of land more particularly described in the entries in the Haifa Land Registry and in the Kushans above referred to.

20 2. The Defendants renounce all claims for damages and costs in connection with the attachment on the above land ordered by the Haifa Land Court on 28.1.27 and confirmed by the President of the same Court on 5.2.27.

3. The Government shall apply to the Land Court of Haifa to have the above-mentioned action for the cancellation of the entries withdrawn and the attachment released.

In witness whereof the said parties have hereunto set their hands the day and year first before written.

30 Signed by His Excellency The High Commissioner for and on behalf of the Government of Palestine. } (Sgd.) PLUMER.

In the presence of (Sgd.) BENTWICH Attorney-General }

Signed by Mrs. Toba Rutman and Miss Rifka Aaronson } For Miss Rifka Aaronson in virtue of a general power of attorney No. 552 special and No. 3457 General dated 4th June 1925 and for Mrs. Toba Rutman in virtue of a general power of attorney No. 142 special dated 1st February 1926.

40 In the presence of N. ABCARIUS. Counsel of Defendants.

(Sgd.) N. RUTMAN.



Exhibits.

No. 42.

No. 42.
Exhibit 20
Defendants'
Documents.
Contract
of Lease,
24th
November
1927.

Exhibit 20.

CONTRACT OF LEASE

(Translation from Hebrew.)

between the undersigned Mr. N. RUTMAN on one part and Mr. ABDUL FATTAH MIR'I SAMARA, ABDULLAH MOUSA SAMARA, ABDUL LATIF SALIM and MOUSA SAMARA on the second part, agreed as follows :—

(A) Mr. lets to Messrs. Abdul Fattah Mar'i Samara, Abdullah el Mousa Samara, Abdul Latif Salim and Moussa Samara, 15 plots of land whose area amounts to 900 dunums at Khor el Wassa' for one year from Heshwan 5688 till Ab 5688 for the purpose of ploughing and sowing for the sum of LP.28.— (twenty-eight Palestine Pounds) which Messrs. undertake to pay the said sum of LP.28 on 1st Tamouz 5688. 10

(B) Messrs. undertake to use the land for ploughing and cultivation but they cannot sublet it to another person without my consent.

(C) Upon the expiry of the period of lease of the afore-mentioned parcel the lessee undertakes to vacate it without any excuse or claim whatsoever. Not for the Karab that he was already done nor for any other purpose. 20

(D) The lessee undertakes to return the said plot of land in the same position as it was received by him and if there be delay one-quarter Pound shall be paid every day for each plot.

Made and signed at Haifa.

24.11.27.

Thumbprints of :—

Abdul Latif Samara, Abdul Fattah Samara, Abdallah el Mousa Samara, Mousa Samara, Salim Samara. 30

Witness :

(Sgd.) Hassan el Paras.

No. 43.

Exhibit " W ".

CONTRACT OF LEASE.

(Translation from Hebrew.)

between the undersigned Mr. N. RUTMAN on one part and Messrs. ABDULLAH EL MOUSA, ABDUL LATIF EL ABED, MOUSA, ABDUL FATTAH SALIM ABDUL FATTAH and ABDUL FATTAH MIR'I SAMARA, residents of Hadera, on the second part, agreed as follows :—

*Exhibits.*No. 43.
Exhibit
" W ".Defendants'
Documents.Contract
of Lease
between
Rutman
and Abdul
Fattah
Abdallah,
Abdul-
Latif
Selim and
Mussa
Samara,
1st
December
1928.

10 (a) Mr. N. Rutman lets to Abdullah el Mousa, Abdul Latif el Abed, Mousa Abdul Fattah Salim Abdul Fattah, and Abdul Fattah Mir'i Samara 620 dunums (six hundred twenty ds.) at Khor el Wassa, Hadera, in different shares, for a period of one year as from 1st December, 1928 till 1st September, 1929, for the purpose of ploughing and sowing for the sum of LP.60.200 (sixty Palestine Pounds and 200 Mils) which Messrs. Abdallah el Mousa, Abdul Latif el Abed, Mousa Abdul Fattah, Salim Abdul Fattah and their Father Abdul Fattah Mir'i Samara undertake to pay the sum of LP.60.200 on 1st July 1929.

20 (b) The said gentlemen undertake to use the land for ploughing and cultivating, but they cannot sublet it without my consent.

(c) The above-named undertake to pay the tithes for the said plot according to the form adopted by the Government in accordance with the Order of the Official Gazette No. 107 of 16th October, 1927.

(d) At the expiry of the period of lease the lessees undertake to vacate the said land without any delay, without any claims or demands, for karab, work or any right of tenancy as per the Public Notice of 1921.

30 (e) The lessees undertake to return the said land in the same state as they received it, and for any day of delay shall pay LP.0.250.

Signed and made at Hadera, 1.12.1928.

five thumbprints.

Signatures of two witnesses.

*Exhibits.*No. 44.
Exhibit
11.Defendants'
Documents.
Decision
of
Examining
Magistrate
in Case
13/29 and
District
Court
143/29
dismissing
the Charge,
29th
January
1929.

No. 44.

Exhibit 11.

DECISION OF MAGISTRATE in Case No. 13/29 and 143/29, District Court.

Criminal 143/29 D.C.

,, 13/29 Magistrate.

MAGISTRATE'S COURT HAIFA.

Before : The Examining Magistrate MUHAMMAD BEY BARADEY
Senior Magistrate.

SENIOR MAGISTRATE.

ATTORNEY-GENERAL

10

v.

NISSAN RUTMAN OF HADERA.

DECISION.

The Charge against accused Nissan Rutman as described by the Prosecution (The Junior Government Advocate) is that the said accused on or about the month of May, 1925, at Haifa, prepared a map of the land known as Khor Al Wassa' of the lands of the Village of Zeita, which map is false in that the land in question was to the knowledge of accused in the Village of Khadera, Haifa District—and that the accused produced this false plan to the Land Registry Haifa for the purpose of registering this land in the Land Registers of Haifa in the name of Abdul Fattah Mir'i Al Samara and his partners, falsely stating that the land shown on the plan is the land in respect of which a Judgment has been given by the Land Court Haifa in the case brought by the said Abdul Fattah Samara against Samsonoff and his partners of Hadera. The Junior Government Advocate applied for the Committal of accused to be tried on this charge in accordance with the second addendum of Article 155 of the Ottoman Penal Code. 20

I am of opinion that in order to commit the above accused it is necessary that the following conditions shall be fulfilled : **FIRST**, That this map is false showing a land other than the land in respect of which the Land Court Haifa gave Judgment in favour of Abd el Fattah Samara against Samsonoff. **SECOND**, That this plan is the basis for official transactions required to be made for the purposes of registering the land adjudged in the name of Abdul Fattah Samara and his partners. **THIRD**, That the accused did prepare and submit same knowing same to be false. 30

FOURTH, That accused prepared and submitted the same for the benefit of himself or the benefit or detriment of another.

I have carefully considered the evidence of the witnesses for the Prosecution and those for the Defence, and made careful perusal of the documents and maps. But before considering the main offence and the circumstances that lead thereto, I have to express my opinion in regard to the question of Prescription which was mentioned by the Defence, and which the Prosecution denied. 40

In my opinion there is no Prescription within the meaning of Article 482 of the Ottoman Criminal Procedure Code.

Exhibits.

No. 44.
Exhibit
11.

Defendants' Documents.
Decision of Examining Magistrate in Case 13/29 and District Court 142/29, dismissing the Charge, 29th January 1929,
continued.

Therefore, and in order to decide as to whether the offence in question was committed contrary to the Second Addendum to Article 155 of the Criminal Code, and whether there were sufficient grounds to commit the accused for trial for such an offence, and under the conditions above mentioned, we have to approach and examine the official stages in dispute and the legal proceedings seriatim—whether these stages and these proceedings occurred before submitting Plan B in question to the Land Registry by the Accused, or after the presentation of the said plan. On perusal we find the following :—

1. That Abdul Fattah Samara and his partners in the case brought by them against Samsonoff and others—before the Land Court of Haifa (No. 10/25)—alleged that the land of Khor el Wassa' is of the lands of Khadera Village (See File AF).

2. The Defendants Samsonoff and others, in the said case, produced a Tabou Deed covering land at Hadera (See File AF).

3. The Land Registrar, Haifa, basing himself on the order of the Court, inspected the land in question in the above case, and found that it falls within the boundaries shown in the Land Registry Deed produced by the Defendant to the effect that it belongs to the lands of Hadera. The Land Registrar produced a Report to this effect to the Court (See File AF).

4. The Land Court Haifa gave a Judgment in the said case on 6.5.25 that the land, the subject-matter of the case, is within the boundaries of the Tabou Deed produced by the Defendants and also gave Judgment to register same in the name of the Plaintiffs (File AF).

5. The Execution Office Haifa sent to the Tabou Haifa an Order, dated 14.5.25 No. 723, to register the land in the Registers of Haifa Registry considering the same to be of the lands of Hadera (File M).

6. The Plan B alleged to be false was produced to the Tabou Haifa after all the above-mentioned proceedings.

7. Plan B was passed to the Official Land Registry Surveyor, the latter went to the land and examined same with the map and returned same to the Land Registrar.

8. His Excellency the High Commissioner on behalf of the Government of Palestine, and accused acting for Mrs. Toba Rutman and Miss Rivka Aaronson, signed on 29.4.27 a Compromise (D) whereby the Government dropped their claim of Mahlul as to this land, and admitted in para. 3 of the contract the registration made in virtue of Plan B in the names of Mrs. Tova and Miss Rivka above mentioned from Abd el Fattah Samara and his partners in regard to the land the subject-matter in question.

9. The Land Registry Haifa made more than one sale transaction of some parts of this land after its registration in the names of the purchasers above mentioned to the name of new purchasers and relied in regard to all these transactions on Plan B in question. After all that and

Exhibits.
 No. 44.
 Exhibit 11.
 Defendants'
 Documents.
 Decision of
 Examining
 Magistrate
 in Case
 13/29 and
 District
 Court
 142/29
 dismissing
 the Charge,
 29th
 January
 1929,
continued.

after some of the witnesses for the Prosecution testified that the land Khor al Wassa was and still in fact belongs to the lands of the Village of Khadera and is not of the Musha' lands of Zeita (See evidence of Butkovsky pages 29-32 and Mayerson pages 33-34 and Moussa Nasser 24-25) and after the witnesses for the Prosecution also testified (the clerks of the various Tabou Offices) that the plan in question corresponds as regards boundaries and area to the Judgment given by the Land Court Haifa on 6.5.25 (File AF) and the land referred to in the land adjudged, itself,

And after the officials of the Tabou have also testified that the plan 10 is not always the basis for the official registration—similar to the transaction with which we are dealing—but that the basis in such a transaction is the Judgment of the Court, **IN THE RESULT**, Therefore, and for the reasons and considerations as stated above, I find that the fundamental elements required to constitute the offence in the case are not present, and so are the conditions required for the committal of accused for trial under the charge ascribed to him,

And in virtue of Section 16 of the Trial Upon Information Ordinance, I dismiss the charge against accused.

As regards the application of the Junior Government Advocate for 20 the committal of the witnesses Nahum Epstein and Moussa Nassar Al Sayed for trial for the reason of their giving evidence contradictory to the evidence which they gave before the Officer of the Police, I am of opinion that this his application does not come within the provisions of the Law because the Statement made by these witnesses before the Officer of Police was so made on 21.3.27, and this before the enactment of The Criminal Procedure (Evidence) Ordinance and I therefore refuse this application.

Given this 29th January, 1929, and made Public.

(Sgd.) MUHAMMAD BARADY AL ABBAS, 30
 Examining Magistrate,
 Haifa.

No. 45.
 Exhibit 19.
 Defendants'
 Documents.
 Photo-
 graphs of
 Contracts
 dated
 respectively
 15th
 October,
 16th, 9th,
 11th and
 13th May
 1929.

No. 45.
Exhibit 19.
CONTRACTS.

(Translation from Arabic.)

On the date below it has been agreed between us Mohammed eff. Abdul Halim, merchant of Tulkarem, and between Ahmed Ali Ijhin, his wife Hafsa Bint Abdel Razek Saktu, Ahmed El Haj Abdel Rahim Abu Hamed, Mahmud Zikralla, Jamileh Bint Kasem Tuhul, Safieh Bint El 40 Bint el Abed El Yussef, Tamimeh Bint Mahmoud Zikralla, Mohammad Hamdan El Anbar, his mother Shamseh bint Saleh Mustafa Abou Hamdeh, and Amneh bint Hamdan El Anbar of Zeita Village, jointly and severally, hereinafter called Second Party, on the following conditions:—

(1) The Second Party undertakes jointly and severally to sell and transfer an out and out sale to the purchaser, the First Party, or to whom

Exhibits.

—
 No. 45.
 Exhibit 19.
 Defendants'
 Documents.
 Photo-
 graphs of
 Contracts
 dated
 respectively
 15th
 October,
 16th, 9th,
 11th and
 13th May
 1929.
continued.

the First Party may select, seven shares out of nine hundred and six shares in an agricultural plot of land comprised in the land known as " Raml Zeita " the boundaries of which are : North : The way separating the Mushaa' from the Mulk land and the land of the Jews of Khudeira— East : The way separating the Mulk from the Mashaa—South : The way separating it from Attil Lands—West : Kazaza land and Birket Nurieh situate in Zeita lands at a price of four Palestine Pounds for each share. The Second Party received from the First Party the sum of one hundred and forty Pounds on account of the price on signing this agreement, the
 10 balance of the price amounting to LP. One hundred and forty will be paid at the transfer in the Land Registry. The Second Party undertakes too that the one share should not be less than thirteen dunums.

(2) The Second Party admits his true ownership to the said shares, and acknowledges also the receipt by him in cash of the sum of LP. One hundred and forty from the First Party as an advance, and admits too the correctness of the conditions of this agreement.

(3) The Second Party undertakes to effect the transfer of the said shares in the name of the First Party or in the name of any person selected by the First Party in the Land Registry within eleven months as from
 20 the date of this agreement, on condition that the said shares should be free from all legal hinderances, Government taxes, agricultural loans, cultivation rights attached on these shares, if any—

(4) All fees and expenses necessary for this transaction are to be borne by the First Party, with the exception of "bedl el misl" and cultivation rights which are to be borne by the Second Party.

(5) The Second Party undertakes to eliminate every legal hindrance which may prevent the transfer of these shares in the name of First Party or in the name of any person chosen by First Party, and to pay all Government Taxes and agricultural loans, if any. He is also bound to
 30 remove any attachment or mortgage, if any, and to prepare and make all the proceedings necessary for the transfer.

(6) The Second Party undertakes to give a Power of Attorney to any person chosen by the First Party for the purpose of executing the transfer in the Land Registry in the name of First Party or in the name of the person chosen by the First Party, or for the purpose of instituting an action, or applying to the competent authorities in that respect, or doing everything necessary for the registration of these shares in the name of First Party or in the name of the person chosen by First Party.

(7) The First Party has the right to transfer this agreement to any
 40 person he wishes without the consent of Second Party.

(8) If the Second Party renounces the sale, or breaks any of the conditions above stated, or if the fixed period expires without the Second Party having executed the transfer, or if any person appears to be entitled to these shares without the Second Party having removed his objection either after or before the transfer, he undertakes to refund to the First Party what he has received as an advance, and undertakes also to pay to the First Party the sum of LP. Three hundred as damages agreed upon in anticipation by his consent without compulsion or duress and without need for serving him with a Notarial Notice, since this condition
 50 will be deemed to be in lieu of the warning. Likewise, if the First Party

Exhibits. renounces to buy or breaks any of the conditions of this agreement, he undertakes to pay to the Second Party the amount of the damages. Each Party releases the other from the option of voidable sale, deceit and misrepresentation as well as from ignorance.

No. 45. On this an agreement was reached between us. This agreement was drawn in one copy to be kept with the First Party so that it will be acted upon when necessary.

Exhibit 19. Defendants' Documents. Photo-graphs of Contracts dated respectively 15th October, 16th, 9th, 11th and 13th May 1929, *continued.*

12.10.1929. Stamps of Fifty Mils. Second Party.

Signature of Ahmad Ali Ijhin, thumbprints of Jamileh Bint Kassem el Tuhul, Tamimeh Bint Mahmoud Zikrallah, Amneh bint Hamdan El Anbar, Shamseh bint Saleh Abou Hamdeh, Hafsa bint Abdul Razek Saktu, signature of Mohammad El Hamdan Anbar, thumbprints of Mahmud Zikralla and Ahmed El Haj Abdel Rahim. 10

Receipt of the amount of the advance.

Stamps for 7 mils.

13.10.1929.

Signature of Ahmad Ali Ijhin, thumbprints of Jamileh bint Kassam el Tuhul, Tamimeh Bint Mahmoud Zikrallah, Amneh bint Hamdan El Anbar, Shamseh bint Saleh Abou Hamdeh, Hafsa bint Abdul Razek Saktu, signature of Mohammad El Hamdan Anbar, thumbprints of Mahmud Zikralla and Ahmed El Haj Abdel Rahim. 20

Salha bint Mohammad II Masri } wives of Mohammad Saleh
Halimeh bint Idris II Yassin } Zakdah.
Saleh Mas'oud II Yassin.
Amneh Mas'oud II Yassin.
Safiyeh Mas'oud II Yassin.
Murshid Bedawi Ghadiya.
Souad bint Abdallah, wife of Abdel.
Kader Hassouneh. 30
Souad bint Mas'oud II Shanyour.
Ahmad Ibn Yussef II Bakawiye.
Abd El Fattah El Haj Abed.
Hamdan Ahmad Abu Jazar.
Shafiq Ahmad Abu Jazar.
Fatmeh bint Said Dakhlallah.
Heirs of Awad Abu Mauna namely :
Shaker Awad Abu Mauna.
Taher Awad Abu Mauna.
Naif Awad Abu Mauna. 40
Rajeh Awad Abu Mauna.
Kamel Awad Abu Mauna.
Abd El Jabar Awad Abu Mauna.
Ahmad Rid'a Awad Abu Mauna.
Adeeb Awad Abu Mauna.
Ayshe bint Haj Mahmud Dakhlallah.
Rajeh Ibn Awad Abu Mauna in his own right.
Mahmud Ibn Ahmad Abu Jazar.

Safiyeh bint Il Abd Il Khadriye (?).
 Yusef Ibn Mohammad Dakhlallah.
 Abdel Rahman Ibn Mohammad Dakhlallah.
 Hassan Ibn Mohammad Dakhlallah.
 Hassan Ibn Mohammad Dakhlallah.
 Haj Mahmud Il Dakhlallah.

Exhibits.

—
 No. 45.
 Exhibit 19.
 Defendants'
 Documents.
 Photo-
 graphs of
 Contracts
 dated
 respectively
 15th
 October,
 16th, 9th,
 11th and
 13th May
 1929,
continued.

On the date below an agreement has been reached between Hamdan Haj Ahmad of Bakaa Gharbieh, landlord and therein residing, as First Party, and between Second Party, Iskander El Ibrahim, Faride Bint Said El Mustafa, Ali Abdel Fattah Abu Mohammad, Souad bint Said El Mustafa, Mas'ad Ibn Assi El Naaman, Mariam bint Samar wife of Mas'ad El Assi, Mohammad Ibn Saleh El Naim, Mahmud Ibn Abdel Razak Abu Mohammad, Mohammad Ibn Abdel Razak Abu Mohammad, Hassouneh Abu Ali Naim, Khadra bint Deeb Abu Sarhan, Hanifeh bint Mustafa El Hassan, Ayesha bint Abdel Hadi Abu Mohammad, Mohammad Said El Mustafa, Fatmeh bint Said El Mustafa, Yusra bint Sheikh Abdalla El Hassan, Husein Abdel Razak El Hassan, Salha bint Saleh Abu Hamda, Ayesha bint Idris El Yasin, Amini bint Sa'ad, Souad bint Saleh El Abdallah, Abdalla Ibn Yusef Hamdan, Abdel Kader Said El Mustafa, Mahmud El Abed El Nimr, Sheikha bint Saleh El Zagda, Amini bint Idrin El Yasin, Ahmad Ibn Mohammad Samara, Hamed Ibn Sheikh Ahmad Samara, Amneh bint Abdel Khaleq El Yusef, Zeinab bint Abdel Rahman Barakat, Mohammad Abdel Khaleq El Yusef and Sharife bint Sheikh Yusef Ghadieh, all of them of Zeita village, Tulkarem Sub-District, for the sale and purchase of thirty-three shares out of nine hundred and six shares in Ramel Zeita land, the boundaries of which are given below. The Second Party have agreed to be jointly and severally responsible for the execution of the terms of this agreement.

Each one of the Second Party has sold to the First Party by way of an absolute and out and out sale one share out of nine hundred and six shares constituting the whole piece of land known as Ramel Zeita and situate in its lands, the boundaries of which are : North : way separating the Musha from the mulk land and the land of the Jews of Khudeira—East : way separating the mulk from the Musha—South : way separating it from Attil Land—West : Kazaza and Birket El Nurieh ; the area of this piece of land being between twelve thousand to thirteen thousand new dunums, each dunum one thousand square metres, at the price of thirty Palestine Pounds for each share. The First Party has purchased the said thirty-three dunums, whatever their area.

(2) The Second Party undertake to execute the transfer into the name of the First Party or into the name of the person chosen by the First Party within a period not exceeding one year from the date of this agreement ; and this after making the correction of the area and the boundaries, so that the kushans of these shares which will be transferred into the name of the First Party or into the name of the person chosen by him, should correspond to the true area and boundaries according to the plan to be prepared as below.

(3) The First Party should arrange for an architect for surveying the whole land and preparing a plan thereof ; the Second Party should make the correction of the area and the boundaries in the kushans according to the said plan, and should also have it approved by the neighbours and the mukhtars and notables of the village.

Exhibits.
 —
 No. 45.
 Exhibit 19.
 Defendants'
 Documents.
 Photo-
 graphs of
 Contracts
 dated
 respectively
 15th
 October,
 16th, 9th,
 11th and
 13th May
 1929,
continued.

(4) The Second Party undertake to deliver the said shares in that land to the First Party so that he may cultivate it and benefit of its products at the expiration of six months from the date of this contract.

(5) The transfer of the said shares by the Second Party to the First Party or to whom the First Party may choose will be by way of musha, and the Second Party will by no means be asked to make the partition.

(6) The First Party has to pay fifteen Palestine Pounds for each share at the signature of this contract ; the balance will be paid at the final transfer into the name of First Party or into the name of the person chosen by the First Party ; the First Party shall pay too the transfer fees, as well 10 as the Court's and Advocate's fees.

(7) The Second Party undertake to deliver to the First Party thirteen dunums by way of musha for each share ; every increase or decrease in the area of the one share will be on account.

(8) The First Party has the right to transfer this agreement to whomever he wishes without the consent of the Second Party.

(9) Should the Second Party renounce this out and out sale, or fail to execute any of the conditions of this contract, they will pay to the First Party the whole amount they received from the First Party in advance, and will also pay the sum of one thousand Palestine Pounds as 20 liquidated damages agreed upon between both Parties together with its legal interests as from the date of the receipt of the amount up to the full payment, and this without need for a warning, since the failure and the renunciation will take the place of the Notice, on this it was agreed written in two copies, only one copy for each Party.

Stamps for 50 Mils.

9.5.29.

Signatures and thumbprints :

Iskander El Ibrahim.

Faride Bint Said El Mustafa.

Ali Abdel Fattah Abu Mohammad.

Souad bint Said El Mustafa.

Mas'ad Ibn Assi El Naaman.

Mariam bint Samar wife of Mas'ad El Assi.

Mohammad Ibn Saleh El Naim.

Mahmud Ibn Abdel Razak Abu Mohammad.

Mohammad Ibn Abdel Razak Abu Mohammad.

Hassouneh Abu Ali Naim.

Khadra bint Deeb Abu Sarhan.

Hanifeh bint Mustafa El Hassan.

Ayesha bint Abdel Hadi Abu Mohammad.

Mohammad Said El Mustafa.

Fatmeh bint Said El Mustafa.

Yusra bint Sheikh Abdalla El Hassan.

Husein Abdel Razak El Hassan.

Salha bint Saleh Abu Hamda.

Ayesha bint Idris El Yasin.

Amini bint Sa'ad.

Souad bint Saleh El Abdallah.

Abdallah Ibn Yusef Hamdan.

Abdel Kader Said El Mustafa.

30

40

50

Mahmud El Abed el Nimr.
 Sheikha bint Saleh El Zagda.
 Amini bint Idrin El Yasin.
 Ahmad Ibn Mohammad Samara.
 Hamed Ibn Sheikh Ahmad Samara..
 Amneh bint Abdel Khaleq El Yusef.
 Zeinab bint Abdel Rahman Barakat.
 Mohammad Abdel Khaleq El Yusef.
 Sharife bint Sheikh Yusef Ghadieh.

Exhibits.

No. 45.
 Exhibit 19.
 Defendants'
 Documents.
 Photo-
 graphs of
 Contracts
 dated
 respectively
 15th
 October,
 16th, 9th,
 11th and
 31st May
 1929,
continued.

10 I received on the account of this contract sixteen Pounds for each share.

Stamps for 7 mils.

Signatures and thumbprints :

Iskander El Ibrahim.
 Faride Bint Said El Mustafa.
 Ali Abdel Fattah Abu Mohammad.
 Souad bint Said El Mustafa.
 Mas'ad Ibn Assi El Naaman.

(Translation from Arabic.)

20 On the date below an agreement has been reached between Hamdan Eff. el Haj Ahmad of Bakaa el Garbieh, landlord and therein residing, as First Party, and between Second Party, Abd el Rahman Ibn Mohammad Dakhalla, Adla bint Ahmad El Sharif, Saada bint Ahmad Abu Hamda, Amneh es Sheikh Yusef, Zeinab Sheikh Yusef, Sharifeh Sheikh Yusef as guardian of daughter Zahieh bint Musa Ibrahim, Yusra bint Haj Masoud El Mussa, Haj Masoud Ibn Musa Nasr, Hadijeh bint Hamdan Abu Ijheim, Mahmud Ibn Mohamad El Mussa, Zeinab bint Yusef El Awad wife of Mahmud el Mas'ad, Mohammad Mahmud El Mas'ad Khadra bint Mahmud El Mas'ad, Saleh Ibn Mohammad Saleh Zakdah, Sharifeh bint Mohammad
 30 Saleh Zakdah, Watka bint Mohammad Saleh Zakdah, Salha bint Mohammad Il Masri wife of Mohammad Saleh Zakdah, Halimeh bint Idris Il Yassin wife of Mohammad Saleh Zakdah, Saleh Mas'oud Il Yassin, Amneh Mas'oud Il Yassin, Safiyeh Mas'oud Il Yassin, Murshid Bedawi Ghadiye, Souad bint Abdallah, wife of Abdel Kader Hassounne, Souad bint Mas'oud Il Shanyour, Ahmad Ibn Yussef Il Bakawiye, Abd El Fattah El Haj Abed, Hamdan Ahmad Abu Jazar, Shafiq Ahmad Abu Jazar, Fatmeh bint Said Dakhlallah, Heirs of Awad Abu Mauna namely : Shaker Awad Abu Mauna, Taher Awad Abu Mauna, Naif Awad Abu Mauna, Rajeh Awad Abu Mauna, Kamel Awad Abu Mauna, Abd El Jabar Awad Abu Mauna, Ahmad Rid'a
 40 Awad Abu Mauna, Adeeb Awad Abu Mauna, Ayshe bint Haj Mahmud Dakhlallah, Rajeh Ibn Awad Abu Mauna in his own right, Mahmud Ibn Ahmad Abu Jazar, Safiyeh bint Il Abd il Khadriye (?), Yusef Ibn Mohammad Dakhlallah, Abdel Rahman Ibn Mohammad Dakhlallah, Hassan Ibn Mohammad Dakhlallah and Haj Mahmud Il Dakhlallah, all of them of Zeita Village, Tulkarem Sub-District, for the sale and purchase of thirty one shares out of nine hundred and six shares in Ramel Zeita lands, the boundaries of which are hereinafter shown in detail. Second Party have accepted to be jointly and severally responsible for all the provisions of this agreement, its execution, the refund of what they will
 50 receive on account of the price, the payment of damages assigned to First Party, if they break any of the conditions of this agreement.

Exhibits.

No. 45.
Exhibit 19.
Defendants' Documents.
Photographs of Contracts dated respectively 15th October, 16th, 9th, 11th and 13th May 1929,
continued.

(1) Each one of the Second Party has sold to the First Party by an absolute and out and out sale one share out of nine hundred and six shares forming the whole of a piece of land known as Ramel Zeita and situate in its lands, the boundaries of which are: North: way separating the "Musha'" from the Mulk land and the land of the Jews of Khudeira—East: way separating the mulk from the Musha—South: way separating it from Attil lands—West: Kazaza and Birket el Nurieh; the area of this piece of land being between twelve and thirteen thousand new dunums, each dunum making one thousand square metres, at a price of thirty pounds per each share; the First Party has bought the said thirty one shares, 10 whatever their area.

(2) The Second Party undertake to execute the transfer into the name of the First Party or into the name of the person indicated by the First Party within a period not exceeding one year from the date of this agreement; and this after making the correction of the area and the boundaries, so that the Kushans to be issued in respect of the shares which will be transferred into the name of the First Party or into the name of the person indicated by him should correspond to the true area and boundaries according to the plan which must be prepared as below—

(3) The First Party has to arrange for an engineer for surveying the whole land and preparing a plan thereof; The Second Party should correct the area and the boundaries in the Kushans according to the said plan, and he should also obtain the approval of the neighbours and of the mukhtars and notables of the village thereon. 20

(4) The Second Party undertake to deliver to the First Party the said shares in the land so that he may cultivate it and profit of its products at the expiration of six months from the date of this agreement.

(5) The transfer of the said shares by the Second Party to the First Party or to the person indicated by the First Party will be by way of "musha," and the Second Party will not be asked to make the partition. 30

(6) The First Party should pay fifteen pounds for each share at the signature of this contract, the balance will be paid at the legal transfer into the name of the First Party or into the name of the person chosen by the First Party. The First Party should also pay the fees of the transfer, as well as the Court's and advocate's fees.

(7) The Second Party undertake to deliver to the First Party thirteen "musha" dunums of land for each share. Should the area of each share be less than thirteen dunums, the difference will be deducted from the price; should it be more, the difference will be on account.

(8) The First Party has the right to transfer this agreement to whom- ever he wishes without the consent of the Second Party. 40

(9) Should the Second Party renounce this out and out sale, or break any of the conditions of this agreement, they will pay all the amount they received from the First Party in advance, and will also pay one thousand Palestine Pounds as agreed damages between both parties, together with its legal interest as from the date of its receipt until full payment, without need for any warning, as the failure or the renunciation will take place of the Notice. Thereupon an agreement has been reached and made in two copies, one copy for each Party.

Stamps for 50 Mils. 50

16.5.29.

Signatures and Thumbprints :

Exhibits.

	Abd El Rahman Ibn Mohammad Dakhalla.	
	Adla bint Ahmad El Sharif.	No. 45.
	Saada bint Ahmad Abu Hamda.	Exhibit 19.
	Amneh es Sheikh Yusef.	Defendants'
	Zeinab Sheikh Yusef.	Documents.
	Sharifeh Sheikh Yusef as guardian of daughter.	Photo-
	Zahieh bint Musa Ibrahim.	graphs of
	Yusra bint Haj Masoud El Mussa.	Contracts
10	Haj Masoud Ibn Musa Nasr.	dated
	Hadijeh bint Hamdan Abu Ijheim.	respectively
	Mahmud Ibn Mohammad El Mussa.	15th
	Zeinab bint Yusef El Awad.	October,
	Wife of Mahmud el Mas'ad.	16th, 9th,
	Mohammad Mahmud el Mas'ad.	11th and
	Khadra bint Mahmud El Mas'ad.	13th May
	Saleh Ibn Mohammad Saleh Zakdah.	1929,
	Sharifeh bint Mohammad Saleh Zakdah.	<i>continued.</i>
	Watka bint Mohammad Saleh Zakdah.	
20	Salha bint Mohammad Il Masri {wives of Mohammad	
	Halimeh bint Idris Il Yassin {Saleh Zakdah.	
	Saleh Mes'oud Il Yassin.	
	Anneh Mas'oud Il Yassin.	
	Safiyeh Mas'oud Il Yassin.	
	Murshid Bedawi Ghadiya.	
	Souad bint Abdallah, wife of Abdel Kader Hassounne.	
	Ahmad Ibn Yussef Il Bakawiye.	
	Abd. El Fattah El Haj Abed.	Hamdan Ahmad Abu Jazar.
	Shafiq Ahmad Abu Jazar.	Fatmeh bint Said Dakhlallah.
30	Heirs of Awad Abu Mauna namely :—	
	Shaker Awad Abu Mauna.	Taher Awad Abu Mauna.
	Naif Awad Abu Mauna.	Rajeh Awad Abu Mauna.
	Kamel Awad Abu Mauna.	Abd el Jabar Awad Abu Mauna.
	Ahmad Rid'a Awad Abu	Adeeb Awad Abu Mauna.
	Mauna.	
	Ayshe bint Haj Mahmud Dakhlallah.	
	Rajeh Ibn Awad Abu Mauna in his own right.	
	Mahmud Ibn Ahmad Abu Jazar.	Safiyeh bint Il Abd Il Khadriye (?)
	Yusef Ibn Mohammad Dakhlallah.	
40	Abdel Rahman Ibn Mohammad Dakhlallah.	
	Hassan Ibn Mohammad Dakhlallah.	Haj Mahmud Il Dakhlallah.

We received on account of the written contract eighteen Palestine Pounds for each shares. Stamps.

Signatures and thumbprints :

	Abd El Rahman Ibn Mohammad Dakhlalla.	
	Adla bint Ahmad El Sharif.	Saada bint Ahmad Abu Hamda.
	Amneh es Sheikh Yusef.	Zeinab Sheikh Yusef.
	Sharifeh Sheikh Yusef as guardian of daughter.	
	Zahieh bint Musa Ibrahim.	Yusra bint Haj Masoud El Mussa.
50	Haj Masoud Ibn Musa Nasr.	Hadijeh bint Hamdan Abu Ijheim.

<i>Exhibits.</i>	Mahmud Ibn Mohammad El Mussa. Zeinab bint Yusef El Awad wife of Mohd. Mahmud El Mas'ad. Mahmud el Mas'ad.	
No. 45.	Khadra bint Mahmud El Mas'ad. Saleh Ibn Mohammad Saleh Zakdah.	
Exhibit 19.	Sharifeh bint Mohammad Saleh Zakdah.	
Defendants'	Watka bint Mohammad Saleh Zakdah.	
Documents.	Mariam bint Semar wife of Mas'ad El Assi.	
Photo-	Mohammad Ibn Saleh El Maim.	
graphs of	Mahmud Ibn Abdel Razak Abu Mohammad.	
Contracts	Mohammad Ibn Abdel Razak Abu Mohammad.	10
dated	Hassouneh Abu Ali Naim.	
respectively	Khadra bint Deeb Abu Sarhan.	
15th	Hanifeh bint Mustafa El Hassan.	
October,	Ayesha bint Abdel Hadi Abu Mohammad.	
16th, 9th,	Mohammad Said El Mustafa.	
11th and	Fatmeh bint Said El Mustafa.	
13th May	Yusra bint Sheikh Abdalla El Hassan.	
1929,	Husein Abdel Razak El Hassan.	
<i>continued.</i>	Salha bint Saleh Abu Hamda.	
	Ayesha bint Idris El Yasin.	20
	Amini bint Sa'ad.	
	Souad bint Saleh El Abdallah.	
	Abdallah Ibn Yusef Hamdan.	
	Abdel Kader Said El Mustafa.	
	Mahmud El Abed El Nimr.	
	Sheikha bint Saleh El Zagda.	
	Amini bint Idrin El Yasin.	
	Ahmad Ibn Mohammad Samara.	
	Hamed Ibn Sheikh Ahmad Samara.	
	Amneh bint Adbel Khaleq El Yusef.	30
	Zeinab bint Abdel Rahman Barakat.	
	Mohammad Abdel Khaleq El Yusef.	
	Sharife bint Sheikh Yusef Ghadieh.	

On the date below it has been agreed between us Mohammad eff. Abd. el Halim, merchant of Tulkarem, called First Party, and Abd el Khaleq El Taha, Yusra bint Abdel Rahim el Hassan, Hamdi bint Mussa. El Ali, Kamel Ibrahim el Musa, Mariam bint Ahmad Zagdah (mother of Kamel Ibrahim el Musa), Latifeh bint Ahmad El Yunis, Hadijeh bint Masud El Yasin, Said Abdul Hadi abu Hawayeh, Kamli bint El Abed Jidri wife of Said Abdul Hadi abu Hawayeh, Ibrahim Ibn Abdel Qader Issa El Masser, Jamileh bint ibn Abdel Qader Issa El Nasser, Rafika bint Saleh Osman Kheir, Atiyeh El Natur, Salha bint Mohammad Abu Jehash wife of Atiyeh El Natur, Abdel Kader Kanadi (?), Sabha wife of Abdel Kader Kanadi, Mohammad Mahmud El Muqbil, and Fares Mahmud El Muqbil, all of them of Zeita Village, called Second Party, jointly and severally, on the following conditions :

(1) The Second Party undertake to sell and transfer by an absolute sale and transfer their whole part in the land known as Ramel Zeita and situate in its lands, the boundaries of which are: North : the way separating the Musha from the mulk land and the land of the Jews of Khudeira— East : the way separating the mulk from the Musha—South : the way

separating it from Atfil lands—West : Kazaza land and Birket el Nurieh ; the part of the Second Part in the whole piece being twenty-two shares out of nine hundred and six shares devolved on them under the judgment of the Land Court of Nazareth District, dated 13th May, 1923 ; the area of each share is thirteen dunums, at the price of thirty-two and half pounds for each share, if at surveying the land the area of each share appears to be less than thirteen dunums, there will be deducted from the price two and a half pounds for each dunum in minus ; for each dunum in plus of the thirteen dunums the First Party will pay two and a half Pounds Palestinian ; the Second Party received in cash from the First Party the sum of three hundred and thirty Palestine Pounds as an advance, the balance of the price will be paid at the transfer in the Land Registry.

Exhibits.
 No. 45.
 Exhibit 19.
 Defendants' Documents.
 Photographs of Contracts dated respectively 15th October, 16th, 9th, 11th and 13th May 1929,
continued.

(2) Both Parties admit the validity of these conditions, the Second Party admit and recognise their legal ownership to the said shares, as well as the receipt of the advance money, as stated above, totalling to three hundred and thirty Palestine Pounds.

(3) All the fees and expenses for raising an action in case it becomes necessary, as well as the transfer expenses and the bedl el misl for these shares, if any, and the expenses for preparing the plan will be borne by First Party with the exception of the approval of the neighbours on the plan, which must be obtained by the Second Party, while the First Party will bear the expenses thereof.

(4) The Second Party undertake to execute the transfer of the said shares in the Land Registry into the name of the First Party or into the name of the person chosen by the First Party within one and a half years from the date of this contract.

(5) The Second Party undertake to eliminate every legal hindrance which may prevent the transfer of these shares in the name of First Party or his nominee, and he has to take the administrative and legal steps for the immediate elimination of the hindrance.

(6) If an action is raised in the competent Court for the partition of these shares from the whole piece of land or for any other purpose, the Second Party undertake to give a power of attorney or a delegation to the First Party or his nominee for the purpose of appointing an advocate or applying to the competent authorities for obtaining a judgment in respect of the said shares ; when this is done and the judgment becomes final, they also undertake to give a power of attorney to whomever the First Party may indicate for the transfer of the said shares into his name or to whomever he wishes at the Land Registry and for the payment of the balance of the price.

(7) The Second Party undertake to obtain an order of guardianship from the Sharia Court and a permission from the Supreme Moslem Council for the sale of the shares of the minors, as well as to obtain a certificate of succession, if necessary, and in case they fail to do so, they will be considered as committing a breach of the conditions of this contract ; all the fees and expenses shall be borne by the First Party.

(8) The Second Party undertake to waive their rights of cultivation in respect of the said shares and they have no right to make such claim.

(9) If the Second Party break any of the conditions of this agreement they will be under the obligation to refund to First Party what they have

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 Exhibit 19.
 Defendants'
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 October,
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 1929,
continued.

received on account of the price, and to pay also to First Party the sum of LP. Eight hundred and eighty as liquidated damages agreed upon from now by their own will without compulsion or duress.

(10) If the First Party breaks any of the conditions of this agreement he will be liable to pay the sum of LP Eight hundred and eighty to the Second Party as damages.

(11) Both Parties waive their right as to the claim of voidable sale, deceit, misrepresentation and ignorance.

(12) If the Second Party break any of the conditions of this agreement, the First Party is entitled to take the legal steps without it being necessary 10 to send a Notarial Notice to Second Party.

On this an agreement was reached : written in two copies, one copy for each Party, to be acted upon when necessary.

Stamps for 57 Mils.

9.5.29.

Signatures and Thumbprints :

Abd el Khaleq El Taha.

Yusra bint Abdel Rahim el Hassan.

Hamdi bint Mussa El Ali.

Kamel Ibrahim el Musa.

Mariam bint Ahmad Zagdah mother of Kamel Ibrahim el Musa. 20

Latifeh bint Ahmad el Yunis.

Hadijeh bint Masud El Yasin.

Said Abdul Hadi abu Hawayeh.

Kamli bint El Abed Jidri wife of Said Abdul Hadi abu Jawayeh.

Ibrahim ibn Abdel Qader Issa El Nasser.

Jamileh bint ibn Abdel Qader Issa El Nasser.

Rafika bint Saleh Osman Kheir.

Atiyeh El Natur.

Salha bint Mohammad Abu Jehash wife of Atiyeh El Natur.

Abdel Kader Kanadi (?).

30

Sabha wife of Abdel Kader Kanadi.

Mohammad Mahmud el Muqbil.

Fares Mahmud El Muqbil.

On the date below it has been agreed between us Abdul Rahim Eff. Hassan and partners, hereinafter called First Party, and Salim El Sheikh Mohammad El Haj Yusef, Sa'ad El Sheikh Mohammad El Haj Yusef, Jamil El Sheikh Mohammad El Haj Yusef, Amneh As'ad El Rabah, Ziham Abu Hawaye, Mohammad El Haj Rabah, Aysheh As'ad El Rabah, Afifi Ahmad El Sharif, Jaleh Ahmad El Sharif, Ayeshe El Abed el Muhsin, Sabba Abdel Hadi Abu Saber, Hajeli Said Abu Hawaye, Ayeshe Hasan 40 El Aburi, Saleh Ahmad El Saleh, Hafizi Kheir Abu Ahmad, Abdel Rahman Chaqua Abu Hawaya, Abdallah Chaqua Abu Hawaya, Abdel Fattah Chaqua Abu Hawaya, Abdel Qader Nasr, Afife bint Abdel Qader Nasr, Mima wife of Abdel Qader Nasr, Gaada Zitam Hawaya, Mas'ud Qasem El Mansur, Hind Assad El Rabah, Qasem Masoud El Qasem, Mansur Masoud El Qasem, Abdel Qader Hsein Shikli, Amneh Khalil Abu Shehab, Khadiji Saleh El Shibli, Saada Khader El Ashqar, Yusra Musa El Mansur, Souad Mohammad Abu Saber, Ahmad Abu Saber, Khadiji Mohammad Abu Shenab, Souad Ahmad El Mansur, Ayesha Mussa El Mansur, Fatmeh Said El Labady, Amneh Abdel Khaleq Abu Saber, Ahmad Saleh El Mansur 50

and Yusra daughter of Ahmad Saleh El Mansur, all of them of Zeita Village, hereinafter called Second Party, jointly and severally, each one either in his personal capacity, or as a guardian or attorney, on the following conditions :—

Exhibits.

—
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Exhibit 19.
Defendants'
Documents.
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graphs of
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dated
respectively
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October,
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13th May
1929,
continued.

(1) The Second Party undertake to sell and transfer by an absolute and out and out sale and transfer to the purchaser, the First Party or his nominee, their full part in the whole piece of land known as Ramel Zeita and situated in its lands, the boundaries of which are : North : the way separating the Musha from the Mulk land and the land of the
10 Jews of Khudeira—East : the way separating the Mulk from the Musha—
South : the way separating it from Attil land—West : Kazaza land and Birket Nurieh, their part in the said piece of land being fifty six shares out of nine hundred and six shares devolved on them according to the judgment of the Land Court of Samaria District dated _____, at the price of thirty Palestine Pounds for each share, whatever the area of the share. The Second Party received in cash from the First Party the sum of LP. Eight hundred and forty as an advance, and the balance will be paid at the transfer in the Land Registry, provided that the shares of each one of the Second Party should not be less than twelve dunums ;
20 if there is a decrease in the quantity of dunums, the difference will be deducted from the price ; if the share is more than twelve dunums, the First Party will pay the price of the surplus ; the First Party shall accept from the Second Party the transfer into his name by way of Musha.

(2) Both parties admit the validity of the conditions of this agreement, the Second Party recognises his true ownership to the said shares amounting to fifty six out of nine hundred and six shares.

(3) All the fees and expenses of the action which might be necessary to raise, as well as the transfer expenses, and the bedl el misl, if any, in respect of the sold shares, and the expenses for preparing the plan,
30 will be sustained by the First Party, with the exception of the approval of the plan by the neighbours, for which the Second Party is responsible, while the First Party will pay the expenses.

(4) The Second Party undertake to execute the transfer of the said shares in the Land Registry in the name of the First Party or his nominee within one and a half years from the date of this agreement.

(5) The Second Party undertake to eliminate every legal hindrance which might prevent the registration of these shares into the name of First Party or his nominee within one and a half years from the date of this agreement, provided that all the expenses shall be borne by First
40 Party.

(6) If a case is raised in the competent Court for the partition of these shares from the whole piece or for any other purpose, then the Second Party undertake to give a power of attorney or a delegation to the First Party or to whomever the First Party wishes for appointing an advocate or for applying to all the Competent Authorities with a view to obtaining a judgment in respect of the said shares ; when this is done and the judgment becomes final, they undertake too to give a power of attorney to the person chosen by the First Party for the transfer of the said shares into his name or into the name of the person chosen by the
50 First Party in the Land Registry and for the payment of the remaining price.

Exhibits.
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 Exhibit 19.
 Defendants'
 Documents.
 Photo-
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 dated
 respectively
 15th
 October,
 16th, 9th,
 11th and
 13th May
 1929,
continued.

(7) The Second Party undertake to obtain from the Sharia Court an order of guardianship and an authorisation from the Supreme Moslem Council for the sale of the part of the minor mentioned in clause 1 of this agreement if there are shares belonging to minors among the sold shares ; they also undertake to obtain a certificate of succession if necessary ; if they fail to comply with these provisions they will be considered as contravening the conditions of this agreement; all the costs and expenses will be borne by the First Party.

(8) The First Party undertake to waive their rights of cultivation in the said shares. 10

(9) If the Second Party break any of the conditions of this agreement they will be under the obligation to refund to the First Party what they received on account of the price and to pay to the First Party the sum of L.P. One thousand six hundred and eighty as liquidated damages by their own will without compulsion or duress.

(10) Should the First Party break any of the conditions of this agreement, he will not be entitled to claim back from the Second Party what he paid to them on account of the price, and will be obliged to pay to the Second Party the sum of L.P. One thousand six hundred and eighty as damages. 20

(11) Both Parties waive their rights as to the claim of voidable sale, deceit and misrepresentation.

(12) Should the Second Party contravene any of the conditions of this agreement, then the First Party will be entitled to take the Legal steps directly without any need for him to send to the Second Party a Notarial Notice.

On this it has been agreed, written in two copies, one copy for each party to be acted upon when necessary.

9.5.1929. Stamps for 50 mils.

Signatures & Thumbprints :

Salim El Sheikh Mohammad El Haj Yusef.
 Sa'ad El Sheikh Mohammad El Haj Yusef.
 Jamil El Sheikh Mohammad El Haj Yusef.
 Amneh As'ad El Rabah.
 Ziham Abu Hawaye.
 Mohammad El Haj Rabah.
 Aysheh As'ad El Rabah.
 Afifi Ahmad El Sharif.
 Jaleh Ahmad El Sharif.
 Ayeshe El Abed el Muhsin.
 Sabha Abdel Hadi Abu Saber.
 Hajeli Said Abu Hawaye.
 Ayeshe Hasan El Aburi.
 Saleh Ahmad El Saleh.
 Hafizi Kheir Abu Ahmad.
 Abdel Rahman Chaqua Abu Hawaya.
 Abdallah Chaqua Abu Hawaya.
 Abdel Fattah Chaqua Abu Hawaya.
 Abdel Qader Nasr.
 Afife bint Abdel Qader Nasr.
 Mima wife of Abdel Qader Nasr.

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 15th
 October,
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 13th May
 1929
continued.

- 10 Gaada Zitam Hawaya.
 Mas'ud Qasem El Mansur.
 Hind Assad El Rabah.
 Qasem Masoud El Qasem.
 Mansur Masoud El Qasem.
 Abdel Qader Hsein Shikli.
 Amneh Khalil Abu Shehab.
 Khadiji Saleh El Shibli.
 Saada Khader El Ashqar.
 Yusra Musa El Mansur.
 Souad Mohammad Abu Saber.
 Ahmad Abu Saber.
 Khadiji Mohammad Abu Shenab.
 Souad Ahmad El Mansur.
 Ayesha Mussa El Mansur.
 Fatmeh Said El Labady.
 Amneh Abdel Khaleq Abu Saber.
 Ahmad Saleh El Mansur.
 Yusra daughter of Ahmad Saleh El Mansur.
- 20 On the date below it has been agreed between us Mohammad Abdul Halim, merchant of Tulkarem, called First Party and Selim Sa'id Hassoune, Yusef 'Ali Abu-Jad'a, Mohammad Mansour El-Shehadi, Amne Mohammad 'Abdul-'Al, Hassan 'Ali Nasser 'Ali El-Sayed Ahmad, Mariam Nasser 'Ali El-Sayed Ahmad, Tewfic Kassem El-Tuhl, Su'ad 'Abdul-Rahman El-Youssef, Yussra Mahmoud Zikrallah, Amne bint Kassem El-Tuhul, Khamisse Suleiman El-Saksak, Izzat Ibn Mustafa El-'Abed, Ahmad ibn Mustafa El-'Abed, Amne bint Mustafa El-'Abed, Rabha bint Mustafa El-'Abed, Youssef Mahmoud El-Saleh, Amne Mohammad El-Hassan daughter of Youssef Mahmoud El-Saleh, Fatme Mohammad El-Hassan daughter of Youssef Mahmoud El-Saleh, Ahmad Suleiman Abu Samaha, Fatme Suleiman El-Miri, Saleh Youssef El-Miri, Jamil Ahmad Abu-Samaha, Mahmoud Hassan El-Ibrahim, Amne Khalil El-Mustafa, Bahie Ibrahim El-Youssef, Bahja Ibrahim El-Khader, Nijmi Abdul-Kader el Mahmoud, Khadiji Mohammad El-'Alayan, Hind 'Ali El-Sayed Ahmad, Ahmad Abu Jad'a, Jamili Sa'id Taboubash, Amne Abdul-Khalek Abu-Saber, Ahmad Said Taboubash, Ghanem Suleiman Abu Samaha, Rabiha Ibrahim El Youssef, Ragheb Ibn Saleh El Youssef, Sharif Ibn Saleh El Youssef, all of them of Zeita Village, jointly and severally, each of them either in his personal capacity, or as guardian or attorney, on the following
- 30 conditions :—
- 40 (1) The Second Party has sold to the First Party by an absolute and out and out sale forty shares out of nine hundred and six shares in an agricultural land forming part of the whole piece of land known as Ramel Zeita and situated in its lands, bounded—North : the way separating the Musha from the Mulk land and the land of the Jews of Kudeira—East : the way separating the Mulk from the Musha—South : the way separating it from Attil Lands—West : Kazaza Land and Birket el Nurieh—at the price of Forty Palestine Pounds for each share. The Second Party received from the First Party as an advance the sum of LP. Six hundred and the
- 50 balance of the price will be paid at the time of the transfer, and they undertake to transfer these shares in the said land, i.e., their part therein,

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 ———
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 Exhibit 19.
 Defendants'
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 15th
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 13th May
 1929,
continued.

into the name of the First Party or his nominee in the Land Registry, and these shares will be registered in the name of the First Party or his nominee, within one and a half years from the date of this agreement, provided that the one share should not be less than twelve dunums; should the quantity be less than above stated the decrease will be deducted from the price of the share; if the share will be more than twelve dunums, the surplus price will be paid on the base of the price of each share; everyone of the Second Party has received LP. Fifteen out of the amount of the advance paid by the First Party.

(2) The First Party has accepted this sale for himself at the mentioned price, has paid the sum of LP. Six hundred as an advance to the Second Party, and has undertaken to pay the balance of the price after the transfer. 10

(3) The Second Party admit his true ownership to this land, there is no claim on it on the part of any person whatever, and that there is no obstacle to its transfer; should anything of the kind happen before the transfer the Second Party undertake to eliminate it at once in order to be able to execute the transfer within the period fixed in this agreement; if there appears a beneficiary to this land or to the said shares or to a part thereof after or before the transfer, the Second Party undertake to pay to the First Party the damages mentioned in this contract and to refund to him the amount of the advance which they received. 20

(4) If there are agricultural loans, or a mortgage or a sale or an attachment on this land, the Second Party are obliged to discharge the mortgage and pay the agricultural loans in order to be able to complete the proceedings and deliver the sold shares in the land free from all hindrances.

(5) It is the duty of the Second Party to obtain from the Sharia Court certificates of succession, and, if there is a minor, to appoint a guardian on the minor and obtain an authorisation for the sale of his part, as well as to obtain the approval of the neighbours and beneficiaries on the plan, provided that all the expenses and costs necessary for this purpose shall be borne by First Party, should it be necessary to raise a case for the partition of the said shares or for any other purpose, all the expenses and costs thereof shall be sustained by the First Party. 30

(6) It is the duty of Second Party to have the Mazbatas and the petitions signed.

(7) The Second Party undertake to waive their rights of cultivation in respect of the said shares and are not entitled to claim such rights.

(8) If an action is raised in the competent Court for the partition of the said shares from the whole piece of land or for any other purpose, then the Second Party undertake to give to the First Party or to his nominee a power of attorney or a delegation for appointing an advocate or applying to the Competent Authorities with a view to obtaining a judgment in respect of the said shares; when this is done and the judgment becomes final, they undertake also to give to the person chosen by the First Party a Power of Attorney for the transfer in the Land Registry of the said shares into the name of the First Party or his nominee. 40

(9) The First Party is entitled to transfer this agreement to whomever he wishes without the consent of the Second Party. 50

(10) If the Second Party renounce the sale or fail to register the land into the name of the First Party within the period fixed in this agree-

ment, or contravenes any of the conditions of this agreement, or if there appears a beneficiary to these shares or to a part thereof before or after the transfer, they shall pay jointly and severally to the First Party the sum of two thousand and five hundred Palestine Pounds as liquidated damages by the consent and will of the Second Party, and will further pay back to him the advance which they received from him amounting to LP. Six hundred without any need to serve him with a Notice, for this condition will be deemed as taking the place of the Notarial Notice; if the First Party renounces the purchase or breaks any of the conditions of this agreement, he will be under the obligation to pay to the Second Party the sum of two thousand five hundred Palestine Pounds as liquidated damages by his own will and consent; by the consent of both parties the bedl el misl in respect of the said shares, if any, is to be paid by the First Party.

On this it has been agreed; written in two copies, one copy for each Party to be acted upon when necessary.

11.5.1929.

Stamps for 50 Mils.

Second Party: Signatures and Thumbprints.

Selim Sa'id Hassoune.

Yusef 'Ali Abu-Jad'a.

20 Mohammad Mansour El-Shehadi.

Amne Mohammad 'Abdul-'Al.

Hassan 'Ali Nasser El-Sayed Ahmad.

Mariam Nasser 'Ali El-Sayed Ahmad.

Tewfic Kassem El-Tuhl.

Su'ad 'Abdul-Rahman El-Youssef.

Yussra Mahmoud Zikrallah.

Amne bint Kassem El-Tuhul.

Khamisse Suleiman El-Saksak.

Izzat ibn Mustafa El-'Abed.

30 Ahmad ibn Mustafa El-'Abed.

Amne bint Mustafa El-'Abed.

Rabha bint Mustafa El-'Abed.

Youssef Mahmoud El-Saleh.

Amne Mohammad El-Hassan daughter of Youssef Mahmoud El-Saleh.

Fatme Mohammad El-Hassan daughter of Youssef Mahmoud El-Saleh.

Ahmad Suleiman Abu Samaha.

Fatme Suleiman El-Miri.

Saleh Youssef El-Miri.

40 Jamil Ahmad Abu-Samaha.

Mahmoud Hassan El-Ibrahim.

Amne Khalil El-Mustafa.

Bahie Ibrahim El-Youssef.

Bahja Ibrahim El-Khader.

Nijmi Abdul-Kader el Mahmoud.

Khadiji Mohammad El-'Alayan.

Hind 'Ali El-Sayed Ahmad.

Ahmad Abu Jad'a.

Jamili Sa'id Taboubash.

50 Amne Abdul-Khalek Abu-Saber.

Ahmad Said Taboubash.

Exhibits.

—
No. 45.
Exhibit 19.
Defendants'
Documents.
Photo-
graphs of
Contracts
dated
respectively
15th
October,
16th, 9th,
11th and
13th May
1929,
continued.

Exhibits.
 No. 45.
 Exhibit 19.
 Defendants'
 Documents.
 Photo-
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 Contracts
 dated
 respectively
 15th
 October,
 16th, 9th,
 11th and
 13th May
 1929,
continued.

Ghanem Suleiman Abu Samaha.
 Rabiha Ibrahim El Youssef.
 Ragheb Ibn Saleh El Youssef.
 Sharif Ibn Saleh El Youssef.

11.5.1929.

Stamps for 7 mils.

First Party
 Mohammad Abdul Halim.

Witness :

Hassan El Haj Mohammad.

Witness :

Mohammed Zikralla.

Witness :

Mohammed Abdul
 Muhsen. 10

On the date below it has been agreed between us Mohammed eff. Abd el Halim, merchant of Tulkarem, called First Party and Mohammad Abdel Rahman Abu Osman, Amneh bint el Abed el Hassan, Hadije bint Saleh El Abdalla Abu Osman, Fatmeh bint El Abed El Hassan, Amneh bint Naser El Muqbil, Mariam El Khaliq, Abdel Razeq Mas'oud El Shambur, Haj Mohammad Mustafa Zeitun, Abdel Latif Amin El Yusef, Latifeh Mohammad Zikrallah, Mohammad Hasan El Qaid, Jamil Mustafa Abd Omar, Shafiqa Haj Ahmad El Aqqad, Hamdeh Abdel Razaq El Jabali, Hadija bint El Abd El Jarab, Mariam bint Muzleh el Saleh, Ibrahim Mahmoud Kirnish and Mohammad Mahmoud Kirnish, all of them of Zeita village, called the Second Party, jointly and severally, either personally or as guardian or attorney, on the following conditions :—

(1) The Second Party sold to the First Party by an absolute and out and out sale twenty one shares out of nine hundred and six shares in a piece of an agricultural land forming part of the land known a Ramel Zeita, and situate in its lands, bounded: North: the way separating the "musha" from the "Mulk" land and the land of the Jews of Kudeira—East: the way separating the mulk from the Musha—South: the way separating it from Attil lands—West: Kazaza land and Birket el Nurieh, at the price of forty Palestine Pounds for each share; the Second Party received in advance from the First Party the sum of three hundred and fifteen Palestine Pounds, and the balance of the price will be paid on the transfer; they undertake to transfer these shares in the land, i.e., their part therein, to the First Party or his nominee in the Land Registry; these shares will be registered in the Land Registry into the name of the First Party or his nominee within one and a half year from the date of this agreement, provided that the one share should not be less than twelve dunums; should there be any decrease the Second Party will be responsible therefore, and the decrease will be deducted from the price of the share; if the share will be more than twelve dunums the price of the difference will be paid on the base of the price of the share; everyone of the Second Party received fifteen pounds out of the money paid in advance by the First Party. 30 40

(2) The First Party accepted this sale for himself at the mentioned price and paid in advance the sum of three hundred and fifteen Palestine Pounds to the Second Party and undertook to pay the balance of the price at the transfer.

(3) The Second Party admit that they are the true owners of the land, that there is no claim whatever thereon on the part of any person,

and there is no impediment which might prevent its transfer, should anything of the kind happen before the transfer the Second Party undertake to eliminate it at once in order to be able to execute the transfer within the period fixed in this agreement, should there appear any beneficiary in the said land or shares or in a part thereof after or before the transfer, the Second Party undertake to pay to the First Party the damages mentioned in this agreement, and to pay him back the amount of the advance which they received.

10 (4) If there are on the land agricultural loans, or a mortgage or sale or attachment, the Second Party will be under the obligation to discharge the mortgage, pay the agricultural loans and remove the attachment in order to be able to complete the proceedings and to deliver the sold shares in the land free from all hindrances.

(5) It is the duty of the Second Party to obtain from the Sharia Court certificates of succession, and if there is a minor, to appoint a guardian on him and obtain an authorisation for the sale of his part; they shall also obtain the approval of the neighbours and beneficiaries on the plan, provided that all the costs and expenses necessary for this purpose shall be borne by the First Party; should it be necessary to raise a case 20 for the partition of the said shares or for any other purpose, all the expenses and costs thereof shall be borne by the First Party.

(6) It is the duty of the Second Party to have all the Mazbatas and applications duly signed.

(7) The Second Party undertake to waive their rights of cultivation in the said shares and they are not entitled to claim same.

30 (8) If a case is raised in the competent Court for the partition of these shares from the whole land or for any other purpose, the Second Party undertake to give to the First Party or his nominee a power of attorney or a delegation for appointing an advocate or for applying to the competent authorities with a view to obtaining a judgment in respect of the said shares; when this is done and the judgment becomes final, they undertake also to give a power of attorney to the person chosen by the First Party for the transfer of the said shares in the Land Registry into his name or in the name of the person chosen by him.

(9) The First Party has the right to transfer this agreement to whomever he wishes without the consent of the Second Party.

40 (10) If the Second Party renounce this sale, or fail to complete the proceedings and register the land into the name of the First Party within the period fixed in this agreement, or break any of the conditions of this agreement by whatever means, or if there appear a beneficiary in these shares or in a part thereof after or before the transfer, they will pay jointly and severally to the First Party the sum of eight hundred and forty Palestine Pounds as damages estimated in advance by the consent and will of the Second Party, and they will also pay him back the amount of the advance which they received amounting to three hundred and fifteen Palestine Pounds without any need to warning them, as this condition will be deemed as taking the place of the Official Notice; should the First Party renounce this purchase or break any of the conditions of this agreement, he will be obliged to pay to the Second Party the sum of eight 50 hundred and forty Palestine Pounds as damages estimated in advance by his will and consent and with the approval of both Parties; if there is any *bedl el misl* in respect of these shares, it will be paid by the First Party.

Exhibits.

—
No. 45.
Exhibit 19.
Defendants' Documents.
Photographs of Contracts dated respectively 15th October, 16th, 9th, 11th and 13th May 1929,
continued.

Exhibits. On this it has been agreed ; written in two copies, one copy for each party to be acted upon when necessary.

No. 45.
Exhibit 19.
Defendants' Documents. Photographs of Contracts dated respectively 15th October, 16th, 9th, 11th and 13th May 1929, *continued.*

Stamps for 50 Mils. 13.5.29.

Second Party : Signatures and thumbprints.

Mohammad Abdal Rahman Abu Osman.
Ameh bint el Abed el Hassan.
Hadije bint Saleh El Abdalla Abu Osman.
Fatmeh bint El Abed El Hassan.
Amneh bint Naser El Muqbil. 10
Mariam El Khaliq.
Abdel Razeq Mas'oud El Shambur.
Haj Mohammad Mustafa Zeitun.
Abdel Latif Amin El Yusif.
Latifeh Mohammad Zikrallah.
Mohammad Nasan El Qaid.
Jamil Mustafa Abd Omar.
Shafiqa Haj Ahmad El Aqqad.
Hamdeh Abdel Razaq El Jabali.
Hadija bint El Abd El Jarab. 20
Nariam bint Musleh el Saleh.
Ibrahim Mahmoud Kirnish.
Mohammad Mahmoud Kirnish.

Witness :
Hassan Kader.

Witness :
Mohammad Zikralla.

Witness :
Mohammed Abdul
Muhsen.

No. 46.
Exhibit
" E ".
Defendants' Documents. Contract of Lease with Mahmud Nadaf of Attil Village, 5th December 1929.

No. 46.
Exhibit " E ".

CONTRACT OF LEASE.

(Translation from Hebrew.)

between the undersigned Mr. N Rutman on one part and Mr. Mahmoud el Nadaf of Attil Village residing at Jerusalem on the second part, agreed as follows :— 30

(a) Mr. N. Rutman lets to Mr. Mahmoud el Nadaf two plots of lands, of 40 dunums each, near Birket Nourieh, 1st 40 dunums being bounded on all sides with our land, and the second plot also of 40 dunums bounded West : Eucalyptus, North our land near Brandeis Quarter, South and East : our land, for a period of one year as from 5th December, 1929 till 1st August, 1930, for the purpose of ploughing and sowing for the sum of LP.8.— which 40 Mr. Mahmoud el Nadaf undertakes to pay LP.2 at the signature of contract and the balance of LP.6.— on 1st July, 1930.

(b) Mr. Mahmoud el Nadaf hereby declares that the said plots of an area of 80 dunums were delivered to him by the first party and that he has taken possession thereof in accordance with boundaries known to him and undertakes to take care of it from encroachments by strangers, against it being damaged and spoilt,

that he is liable for all the survey marks placed by the Government Surveys Department on the said land and that he is forbidden to sublet the said land to another without the permission of the first party.

Exhibits.
—
No. 46.
Exhibit
" E ".

10 (c) Mr. Mahmoud el Nadaf undertakes to cultivate the land in accordance with the object specified in clause 1, and should he fail to comply with the said condition he shall have to pay damages on every dunum at LP. Mr. Mahmoud el Nadaf undertakes to pay the rent in full even if he does not exploit the land or part thereof.

Defendants' Documents.
Contract of Lease with Mahmud Nadaf of Attil Village, 5th December 1929, continued.

(d) At the expiry of the period of lease the lessee undertakes to return the land without any delay and without any claim of demand, either for Karab or other purpose.

(e) The Lessee undertakes to return the said plots in the same state as he has received and for any day of delay he shall pay LP.0.250.

Made and signed at Hadera.

5.12.29.

thumbprint & seal—Stamp.

20

witness : HASSAN EL FARES.
JOSEPH KASTEL.

No. 47.

Exhibit " N ".

NOTARIAL NOTICE No. 1067.

(Translation from Arabic.)

No. 1067 Special
No. 5975 General.

No. 47.
Exhibit
" N "
Defendants' Documents.
Notice No. 1067, 24th January 1930.

To : Massoud ibn Mousa Nasser and Abdalla ibn Yousef Hamdan of Zeita Village, Tulkarem Sub-District.

30 On 12.8.22 you came to Haifa and admitted before the Notary Public of this Court that you together with two of your companions have obtained a loan from Mr. N. Rutman, cultivator residing at Khudeirah, amounting to LE.100 in cash and you undertook to repay the said amount to the said creditor at the expiration of 12 months from that date. At your request your admission was put into writing by the Notary Public in a deed drawn by him, signed by you and registered under No. 684/2521. Whereas the creditor is now claiming the said amount from you which already fell due, it was found necessary to notify you that you should
40 arrange to pay it within 8 days from the day of service together with legal interest and the expenses incurred on this notice failing which legal steps will be taken against you.

(Sgd.) ELIAS KHATTAR,
Notary Public,
Haifa.

Exhibits.
 —
 No. 47.
 Exhibit
 "N".
 Defendants'
 Documents.
 Notice
 No. 1067,
 24th
 January
 1930,
continued.

At the request of N. Rutman this copy was extracted from the special register kept in this office and given to him after comparison and payment of the necessary fee in accordance with articles 51 and 89 of the Notary Public Law. This copy has been certified by me this day Friday the 24th of January, 1930.

Revenue Stamp.

Seal of District Court (Sgd.) E. KHATTAR.
 Haifa.

No. 48.
 Exhibit 18.
 Defendants'
 Documents.
 Notarial
 Notice,
 8th May
 1924.

No. 48.
Exhibit 18.
NOTARIAL NOTICE.

10

(Translation from Arabic.)

No. 304 Special
 No. 2377 General.

To : Ali Es Saad Abu Manna' and Mohamed ibn Khalil Yousef, cultivator s
 residing at Zeita Village, Tulkarem Sub-District.

On the 13th of August, 1922, you came to this town and admitted before the Notary Public of this Court, in conjunction with four other persons of your village, a loan of LE.200 from Nissan Rutman of Khudeirah village, Haifa Sub-District. You admitted receipt of the said sum in cash and undertook before me the payment of the said sum to the order of the said creditor at the expiration of one year from that date. At your request all your admission was put into writing by the Notary Public on the same date and the deed drawn up was signed by you and registered by me under No. 686/2523. Whereas the debt fell due and the creditor is claiming payment thereof you are hereby notified to pay the amount in claim within 10 days from the date of service in accordance with article 69 of the Notary Public Law as otherwise legal steps will be taken against you.

(Sgd.) ELIAS KHATTAR,

8.5.24.

Notary Public, Haifa. 30

At the request of Mr. Nissan Rutman, a copy of this notice was extracted from the special register kept in this office and given to him after comparison and payment of the exigible fee under articles 51/89 of the Notary Public Law. The said copy was certified by me as correct on Friday the 24th of January, 1930.

(Sgd.) E. KHATTAR.

Revenue Stamp 50 Mils.

Seal District Court, Haifa.

No. 49.

Exhibit 17.

ORDER OF THE HIGH COURT 58/30.

High Court 58/30.

IN THE SUPREME COURT.

Sitting as a High Court of Justice.

Before : THE CHIEF JUSTICE, KHALDI, J., and KHAYAT, J.

Exhibits.

No. 49.
Exhibit 17.
Defendants'
Documents.
Order of
High Court
58/30,
17th July
1930.

In the Application of :—

Ex-parte RIFQA AARONSON and TOBA RUTMAN *Petitioners*

10

vs.

1. THE ATTORNEY-GENERAL

2. THE JUNIOR GOVERNMENT ADVOCATE,

Haifa

Respondents.

Application for an Order to issue to the 1st Respondent to show cause why an order should not issue directing him to rescind his order calling upon the 2nd respondent to procure a power of attorney from Hassan El Haj Said of Zeita, and to raise an action in connection with land thereunder :—

ORDER.

20 The Court upon hearing Abcarius Bey for the Petitioners orders and it is hereby ordered as follows :—

That the Attorney-General do appear before this court, if he so wishes to show cause why his order directing the 2nd respondent to procure a power of attorney from one Hassan El Haj Said of Zeita Village and to raise an action thereunder, should not be set aside ; and that the Junior Government Advocate, Haifa, do appear before this Court to show cause why he should not be directed to refrain from taking an action in virtue of the power of attorney he obtained from the said Hassan El Haj Said.

30

That the return day for the further hearing and final determination of this application be Monday the 21st July, 1930.

Delivered this Seventeenth day of July, 1930.

(Sgd.) MICHAEL F. J. McDONNELL,
Chief Justice.

*Exhibits.*No. 50.
Exhibit
" O ".Defendants'
Documents.
Copy of
Judgment
in High
Court Case
No. 58/30.
24th July
1930.

No. 50.

Exhibit " O ".

JUDGMENT OF SUPREME COURT in Case No. 58/30.**IN THE SUPREME COURT.**

Sitting as a High Court of Justice.

Before : **THE CHIEF JUSTICE, Mr. JUSTICE KHALDI and Mr. JUSTICE KHAYAT.**

In the Application of :—

1. RIFKA AARONSON
2. TOBA RUTMAN

Petitioners 10*v.*

1. THE ATTORNEY-GENERAL
2. JUNIOR GOVERNMENT ADVOCATE, Haifa *Respondents.*

Application for an Order to issue to the Attorney-General to show cause why his instruction to the 2nd Respondent should not be cancelled and abstained from giving such instructions, and for an Order to issue to the 2nd Respondent to show cause why an order should not issue directing him to abstain from acting under the power of attorney dated 7th June, 1930.

JUDGMENT.

20

In this case we are asked to issue a mandamus to the Attorney-General ordering him to cancel, and abstain from giving to the Junior Government Advocate, Haifa, instructions which are referred to in letter marked " B " paras. 1 and 5 addressed on 5th July, 1930, to the Settlement Officer, Khudera by the Junior Government Advocate, Haifa, as follows :—

" I have the honour to state that I have been instructed by the Attorney-General to institute in the Land Court, Nablus an action concerning Khor-el-Wassa' land on behalf of some of the villagers of Zeita."

" I am instructed by the Attorney-General to apply for the exclusion of Khor-el Wassa' from the settlement area to enable me to proceed with the action before the Land Court of Nablus."

Also we are asked to issue a mandamus to the Junior Government Advocate, Haifa, to abstain from acting under the power of attorney dated 7th June, 1930, which he holds from Hassan el Haj Said which empowers him to appear on the latter's behalf in all suits in respect of his rights in Khor-el-Wassa' lands.

The application is based on the fact that Mr. Kousa, the Government Advocate, cannot practice as an Advocate under Section 2 of the Advocates Ordinance No. 13 of 1922 inasmuch as he does not hold a licence from the Chief Justice, and that as the Attorney-General's representative he has the right to be heard under the first proviso to Section 3 only when acting

Sec. 4 in B
Vol. I
p. 307.
Sec. 5 in B
Vol. I
p. 308.

on behalf of the Government. In my opinion the question of the right of the Junior Government Advocate to audience in any particular Court is one, in the first instance, within the jurisdiction of that Court, and consequently not at this stage rightly within jurisdiction of the High Court, so that so far as this part of the application is concerned the rule nisi should be discharged.

Exhibits.
 No. 50.
 Exhibit
 "O".
 Defendants'
 Documents.
 Copy of
 Judgment
 in High
 Court Case
 No. 58/30,
 24th July
 1930,
continued.

As to the instructions given by the Attorney-General to the Junior Government Advocate: the question whether he can be compelled by mandamus to cancel and abstain from giving such instructions must depend
 10 on whether in giving such instructions he was performing a duty which he owed to the High Commissioner alone or whether he was performing a duty of a public nature in which the applicant is interested. (*Regina v. Secretary of State for War*) 1891 (2 Q.B.D.) p. 334 per Charles, J.

In this case it appears to me that the executive duty which the Attorney-General performed in issuing such an instruction affected the rights of private persons namely the petitioners and that, in consequence, so far as this part of the application is concerned, the rule nisi must be made absolute.

Given this 24th day of July, 1930.

20

(Sgd.) M. McDONNELL,
 Chief Justice.

**No. 51.
 Exhibit 14.**

JUDGMENT BY MAGISTRATE, Haifa, 5728/30.

No. 51.
 Exhibit 14.
 Defendants'
 Documents.
 Judgment
 by
 Magistrate,
 Haifa,
 5728/30,
 21st
 September
 1930.

NISSAN RUTMAN of Khadera represented by Advocates
 Kaiserman and Kitay of Haifa

5728/30.

Plaintiff

V.

SALIM BIN ABD EL FATTAH MIR'I SAMARA
 30 and ABD EL LATIF BIN ABD SAMARA
 and ABDALLAH AL MOUSSA SAMARA
 and ABD EL FATTAH MIR'I SAMARA
 all of Khor Al Wassa' near Khadera

Defendants.

In accordance with Articles 1709/1817 of the Mejele I order defendants
 Salim Bin Abd El Fattah Mir'i Samara and Abd El Latif Abd Samara,
 and Abdallah Al Moussa Samara and Abd El Fattah Mir'i Samara
 jointly and severally, to pay the sum of LP.50 (Fifty Palestine Pounds)
 with costs and expenses and Legal interest from the date of the filing
 of the action which is 18.9.30 and until final payment to the Plaintiff
 40 Nissan Rutman represented by Mr. Kitay, and half a Pound Advocate's
 fees.

Judgment in default against Abd El Fattah Mir'i Samara, and in
 presence as regards the other defendants.
 Dated this 21.9.30.

Sgd.

Magistrate.

True Copy Clerk.
 Fee 110 Mils.

Exhibits.

No. 52.
Exhibit 15.
Defendants'
Documents.
Judgment
by
Magistrate,
Haifa,
5729/30,
21st
September
1930.

No. 52.**Exhibit 15.****JUDGMENT BY MAGISTRATE, Haifa, 5729/30.**

5729/30.

NISSAN RUTMAN of Khadera represented by Advocates
Kaiserman and Kitay of Haifa

- *Plaintiff*

V.

ABD EL FATTAH MIR'I SAMARA
and ABDALLAH AL MOUSSA SAMARA
and ABD EL LATIF SAMARA
and SALIM SAMARA
and MOUSSA SAMARA
all of Khor Al Wassa' near Khadera

10

- *Defendants.*

In accordance with Article 1820 of the Mejelle I order Defendants Abd El Fattah Mir'i Samara and Abdallah Moussa Samara and Abd El Latif Al Sammara and Salim Samara and Moussa Samara jointly and severally to pay the sum of Twenty Eight Pounds Palestinian with costs and expenses and legal interest from the date of the filing of the action which is 18.9.30 until final payment to Plaintiff Nissan Rutman who is represented by Advocate Mr. Kitay and this the consideration of the Promissory Note dated 24.11.27, due 1.7.28, and half Pound Advocate's fees. 20

Judgment delivered in default this 21.9.30.

Sgd. Magistrate.

True Copy. Clerk.

Fees 110 Mils.

Receipt No. 131020 dated 11.12.42.

No. 53.
Exhibit 16.
Defendants'
Documents.
Judgment
by
Magistrate,
Haifa,
5731/30,
21st
September
1930.

No. 53.**Exhibit 16.****JUDGMENT BY MAGISTRATE, Haifa, 5731/30.**

30

NISSAN RUTMAN Plaintiff of Khadera represented by Advocate
Kaiserman and Kitay of Haifa.

Defendant ABD EL FATTAH MIR'I SAMARA of Khor al Wassa,
near Khadera.

In accordance with article 1820 of the Mejelle judgment is hereby given ordering the defendant Abd El Fattah Mir'i Samara to pay Ten Pounds to the Plaintiff Nissan Rutman and this the consideration of a Promissory Note dated 10.3.30 due on 1.7.30 with costs, expenses and legal interest from the date of the bringing of this action 18.9.30 until final payment, and three hundred mils advocate's fees. 40

Judgment in default made public on 21.9.30.

Sgd. Magistrate.

Certified true copy.

Sgd. Clerk.

Fees 110 Mils.

No. 54.

Exhibit 12.

COPY OF REGISTRATION IN CRIMINAL CASE No. 143/29.

Exhibits.

No. 54.
Exhibit 12.
Defendants'
Documents.
Extract of
District
Court
Register
relating to
Criminal
Case
143/29,
21st
October
1931.

	Serial Number	143.
	Date of filing action	4.7.29.
	Case brought by	Attorney General.
	Name of accused	Nissan Rutman of Khadera.
	Age	39.
10	Charge	In that in the month of November 1924 accused prepared a plan forged in the land known as Khour Al Wassa', alleging that this plan contains (includes) part of the land of Hadera, knowing that it is part of the Village of Zeita, Tul-Karem Sub-District ; and that on or about the 5th May, 1925, he presented the forged plan mentioned, to the Tabou Department Haifa, for the making of the transaction of the sale of the land mentioned, and which is registered in the Haifa Registers on 4.6.25 No. 695 Volume 2, page 7 in the Official Tabou Register for the Village of Hadera.
20	Article	para. 2 of Article 155.
	Date of arrest	On bail.
	Judgment	Case Dismissed, accused acquitted.
	Judgment	In presence.
	Date	4.2.30.
	Number of hearings	2.
30	Remarks	The Record of this case was taken by the Government Advocate on the same date from the Court, direct. As per request, and by order of the President this file remitted to the Government Advocate at Haifa. 18.10.31. File Returned and placed in its place. 21.10.31.

PROCEEDINGS IN HIGH COURT and Order, Case No. 6/27.

High Court 6/27.

Exhibits.
 No. 55.
 Exhibit 10.
 Defendants'
 Documents.
 High
 Court
 Proceedings
 and Order
 6/27,
 22nd
 October,
 1930.

IN THE SUPREME COURT.

Sitting as a High Court of Justice.

Before : THE CHIEF JUSTICE and the SENIOR BRITISH
 JUDGE.

In the Application of :—
 (Ex Part)

RIVKA AARONSON

Petitioner

10

v.

DIRECTOR OF LANDS

Respondent.

For Petitioner :—Mr. Abcarius.

Petitioner bought land at Khedera and obtained a title. She obtained three titles which all form one plot of 500 dunums.

On 10.12.26 she submitted a petition to L.R.O. Haifa (A) to sell 100 dunums to Dr. Eliash. There is a penalty of L.E.1,000 against petitioner if she does not complete sale before 15th January, 1927.

Papers referred to L.R.O. Jerusalem. The Director refused to register. 20
 On 21 December we sent him a Notary Public notice calling on him to register. Afterwards petitioner called on Director and was informed that one Saad El Din claimed a share in these lands, for which he had no kushan. Petitioner asked Director to direct the claimant to the Court to prove his title but submitted that he, the Director, had no right to refuse to transfer.

The Director promised to consider it, but we have not been able to register up to date. On Monday, 10th January, Petitioner again went with Dr. Eliash and myself and he told us that he refused to transfer unless he had an order from the High Court. He promised us to put it in writing 30
 but has not done so up to now.

Put in N.P. notice and certificate of service B.

Nissan Rutman. Sworn.

I am general agent of Miss Aaronson, and have acted for her in the matter of the sale of land. I obtained the N.P. notice B and the certificate of service relating to the same document.

I called on the Director of Lands on Monday at his offices about the registration of the land to Dr. Eliash. He said he refused to register the land on the ground that one Saad-el-Din claimed therein.

Abcarius Bey asked that the Director should register in order to 40
 save us from paying the agreed penalty. He refused. We told him that he was not a Court and Saad el Din should go to the Court. He did not agree.

Usual order to the Director of Lands to show cause why he should not be directed to register of transfer of the lands in question to Dr. Eliash on receipt of the necessary papers and payment of fees.

Day to be fixed.

(Sgd.) THOS. W. HAYCRAFT, C.J.

22.1.27 In Application of A.G.

Case adjourned to Tuesday 25th January, 1927.

(Sgd.) THOS. W. HAYCRAFT, C.J.

25.1.27. *Mr. Doukhan* for the Attorney General.

10 This land is part of the Zeita lands of Tulkarem District. It is recorded in the names of 22 persons. Webb, P.D.C.—Judgment 14th April 1924, 18/22, ruled that the 22 registered names should be replaced by 906 persons of the village of Zeita each having one share out of 906, 1/906.

By an action in the Haifa Court a judgment has been obtained treating this land as being part of a Jewish Colony Khedera. This was a collusive action as reported.

20 Mr. Litt, P.D.C., judgment 6 May 1925, that a part of this land of Zeita being the subject matter of an action between Abdel Fattah Samara of Zeita v. Samsonov & Madorsky & Yamani, it was represented that the land was within the boundaries of Khudera and Defendant admitted that the land was within a coshan held by them which Plaintiff admitted but he obtained a judgment in his favour on the ground of occupation.

That judgment was brought to the L.R.O. of Haifa to be registered in Haifa District and entered in the books. It was entered in that office and a few days later transferred to the Petitioner in this application to the H.C.

The boundaries of the coshan produced by Samsonoff etc. are different from the boundaries in the Haifa Court.

30 The three defendants cited in the Haifa Court had only 5 out of 286 shares of some land in Khudera village. Nevertheless Abdul Fattah got registered for the whole—over 5358 dunums.

The coshan produced by Samsonov and Coy. shows 5 out of 286 shares of a property of an area of 3224 dunums within the boundaries of Kudera (inside the village).

40 The map used in the application to the Haifa L.R.O. bears no mark of the Court. Moreover, the original title of the map "Zeita District Tulkarem" has been obliterated and "Hadera" printed in. We find a copy map of an old map dated 1893 made when Hadera was bought and which shows the plot of 5358 is shown outside the Hadera lands. This copy was obtained from one of the owners of Hadera. The legend shows that the map is a copy of an old map showing the boundaries of Hadera in 1893.

A few months before the action was brought in Haifa a map was made by the village council of Hadera for the purpose of defining its own

Exhibits.
—
No. 55.
Exhibit 10.
Defendants'
Documents.
High
Court
Proceedings
and Order
6/27,
22nd
October
1930.
continued.

Maps
marked
"A and
B"

Exhibits. boundaries. A printed copy was sent to me and I produce it " C ". It shows the land now in question outside the boundary.

No. 55.

Exhibit 10.
Defendants'
Documents.
High
Court
Proceedings
and Order,
6/27,
25th
January
1927,
continued.

I produce another old map made by the Turkish Government. In 1316 this land was declared Mahlul for want of cultivation and the area surveyed by the Commission who reported to the Magless Idara and it was entered in the Mahloul book of Tulkarem District as Government property. At the same time in the tapou books of the Tulkarem District, this land was recorded in the names of 22 persons nominally described as village land of Zeita declared as Mahloul. In 1316 and after the land was out into blocks and put up to auction. I put in a plan made for that purpose " E ".

Before the auction was closed an action was brought by the villagers of Zeita against the Government for an order that the declaration of Mahlul was wrong. The Court of First Instance of Tulkarem entered judgment for the village and set aside the find of the Meglis Idara. The Government appealed to Nablus which Court set aside the Judgment of Tulkarem, began to re-try the case when the war broke out.

The inspection of E. is this that it shows natural boundaries between Khedera and Zeita and E. of Kedera and the N. of Zeita land and S. of Khedera a khan within the Hadera boundary. These boundaries remain the same and appear on " B " and " C ". In " C " the red mark shown the khan. I say this because on inspection I found trees along the boundary shown in " B " & " C ".

Abdul Fattah was a Plaintiff in Mr. Webb's Court but did not attend throughout and his name was struck out.

Mr. Abcarius.

Petitioner was no party to the action in the Haifa Court. The Haifa Registrar was one of the inspectors in the case. The two plots were absolutely different. The plot we bought is not part of the Zeita land to which Mr. Webb's judgment refers.

30

ORDER.

Case adjourned for 14 days to enable the Attorney-General to decide whether he proposed to take steps to reopen the Haifa case and what steps—as for judgment.

(Sgd.) THOS. W. HAYCRAFT, C.J.

22.10.30.

Certified to be a true copy of the notes and proceedings in H. Ct. Case No. 6/27.

Seal of the P.

C

A. Attallah (Sgd.)

JUDGMENT OF LAND COURT, Haifa, in L.C. No. 39/25.

(Translation from Arabic.)

SALEH ISMAIL EL KHATIB and MOUSSA NASSER
EL SAYED AHMED of Zeita

Plaintiffs

ABDUL FATTAH MAR'I SAMARA and his sons SELIM,
MOUSSA and ABDUL LATIF BIN EL ABED MAR'I
of Zeita.10 YACOB SAMSONOFF, PAVEV YAMIM, HARON
MADROSKY and TOBA RUTMAN of Khudeira
and RIVKA AARONSON of Zammarin

Defendants.

*Exhibits.*No. 56.
Plaintiffs'
Documents.
Judgment
of Land
Court,
Haifa,
in L.C.
No. 39/25.
23rd
October
1930.

JUDGMENT.

After hearing the preliminary objections of the attorney of the two Defendants Rutman and Aaronson and the reply of the attorney of the opposer, the Court finds that, whereas the said two Defendants were not parties to the first action, in which action the judgment given is being now opposed by the present opposer, they cannot be considered as parties to the present action raised by way of a Third Party Opposition. It orders therefore the dismissal of the claim of the opposer against the said

20 defendants and adjudges him to pay the costs and expenses and five pounds as fees of the defendants' attorney. As regards the remaining Defendants, the Court finds that it is impossible to divide the judgment given in this action, and sequel to the fact that the purchasers were not considered as parties to this opposition, it is impossible to execute the judgment which the Court might issue if the opposer succeeds in his action. It is therefore decided to dismiss the opposition and to give the opposer the right to raise an action separately against whomever he wishes in respect of his ownership in the lands affected by the judgment which

30 open Court.

Seal of the Court.

Certified true copy of the judgment of the Haifa Land Court in Haifa Land Case No. 39/25.

Seal of the Supreme Court.

Signed : Chief Clerk (?)

23/10/30.

Supreme Court,
Jerusalem.

No. 58.

Exhibit " P ".

EVIDENCE OF SERVICE OF NOTARIAL NOTICE.

(Translation from Arabic.)

EVIDENCE OF SERVICE OF NOTARIAL NOTICE.

Haifa—Notary 20/1931.

District Court Haifa—Office of the Notary Public.

Applicant for service : Hassan ibn el Haj Said ibn Mohd. Khalil el Labdi of Zeita.

10 Party to be served : Salim Eff. Hanna, of Police Jaffa, Assistant Superintendent.

Documents to be served : Copy of Notice dated 9.1.31 No. 20/188.

(Sgd.) S. HANNA,

Recipient.

Served on 12.1.31.

(Sgd.) AHMAD JAMAL,
Process Server.

12.1.31.

*Exhibits.*No. 58.
Exhibit
" P "Defendants'
Documents.
Evidence of
service of
Notarial
Notice to
Selim
Hana,
12th
January
1931.

No. 59.

Exhibit " x ".

LETTER, Chief Secretary to Settlement Officer, Jaffa.Secretariat,
Government Offices,
Jerusalem.

17th February, 1931.

L/88/31.

Settlement Officer,
Jaffa Settlement Area,
P.O.B.2, Jaffa.No. 59.
Exhibit
" x "Defendants'
Documents.
Letter from
Chief
Secretary
to
Settlement
Officer,
17th
February
1923.

I am directed to refer to your letter of the 31st January addressed to an Assistant Secretary with regard to the hearing of evidence by an officer of the Secretariat in the Ghor El Wasa case in which Mr. Strumza and Mr. Aweida were involved.

2. The clerk in charge of personnel records in the Secretariat will be furnished with a verbatim copy of the charges against Mr. Strumza and Mr. Aweida and will receive instructions, when he gives his evidence, to hand you a copy of these charges and to state in evidence that as a result of the inquiry into these charges Mr. Strumza and Mr. Aweida were dismissed from Government service.

3. He will also be instructed to plead that the despatches and other documents relating to these officers are regarded by the Government as privileged and therefore cannot be produced.

40 4. I am to ask that you will inform me without delay whether you wish the clerk in question to attend your Court on the 20th inst., and at what hour, or if not then, on what day and hour.

(Sgd.)

?

for Chief Secretary.

Exhibits.

No. 60.
Exhibit
"f"

Defendants'
Documents.
Authenti-
cated
Extract
from
Werko of
Tulkarm,
12th
May
1931.

No. 60.**Exhibit "f".****EXTRACT from Werko of Tulkarm.**

(Translation.)

Amount of Werko in Turkish currency :	3,500 1,960	56% addition	
Valuation in Turkish Currency :	5,460—or LP.49.140 Mils		
Whole :	875,000		
Category of Property :	1,750		
Number of Chapter :	Terlo		10
Area in Dunums :	438		
Locality :	4,375		
Boundaries :	Ard er Ramel.		
	Road, Khirbet Qazaza, Zeita, Qasa'.		
Name :	All inhabitants of village.		

In accordance with the application of the Settlement Officer of Hudeira, this is an extract of Ard er Raml registered according to werko records in the name of all the inhabitants of Zeita as shown above.

Certified true copy.

20

12.5.31.

Seal of Revenue Department.

No. 61.
Exhibit
"j-j1".

Plaintiffs'
Documents.
Old Tabu
entries to
Khudeira,
8th
May
1931.

No. 61.**Exhibits "j-j1".****OLD TABU ENTRIES.**

(Translation from Turkish.)

MAZRA'AT EL KHUDEIRA.

<i>Red Soil</i> Khirbet Abunol—Land South : Road ; East : Wadi el Khedeira ; North : Road ; West : Winterstream. Dunums : 74½	<i>Red Soil</i> Land South of Road, North : Road ; South : canal & ploughed land ; East : Marsh & 30 road ; West : Winter-stream. Dunums : 803.
<i>Red Soil</i> Land North of the Road, South : Khedeira Road ; East : ploughed land ; North : Wadi ; West : Wadi ; Dunums : 138	<i>Sand</i> Land of Khor Yacoub & Tin Souariyeh (Black soil) South : Dabet El Kass'a & road leading direct to Birket Kazazeh ; North : Waste and Dabet Sheikh Helu & road ; East : Winter- stream extending to Birket 40 Kazazeh ; West Dabet : El- Taweel & Dahret el-Ber Jamidi
<i>Red Soil :</i> Kazazeh Land (?), South : Marsh ; East : Marsh ;	

North : Ploughed land ; West :
Winterstream.

Dunums : 260

Sand

Sand land of Abunol,
South : road ; East : Winterstream ;
North : road ; West : Waste of
Sheikh Helou

10 Dunums : 28½

El-Kassa' Marsh land

South : Sandland and Birket El-
Kassa' ; East : road ; North : Red
land belonging to El-Khirbeh ;
West : Kazazeh Marsh and Birket
El-Kassa'.

Dunums : 455
minus waste 120

20 335

copy copied from the Land Register
on 8/6/31.

Land of Khor El-Jamidi.

South : Stone separating el-Hamidi to the West ending at the North
of El-Sidra and Birket El-Akile ; West : Hot-Land and Sheikh Helu
Land ; North : road ; East : Khudeira land and Tombs Dahrat
(elevation) Sheikh Helu.

Dunums : 1,005
Difference 100

30 1,105

True copy of the original on 8/6/31.

Sand

Land of Dahrat Um El-Akareb and Dahrat Tel Masoud.

South : Dahrat El-Khudoor and Land of Wadi El-Hawares and Dahrat
Um-El-Akareb ; East : Dahrat El-Akareb till boundary of Tel Masoud and
Sharafeh and Daher El-Akarib El-Nazazeh north of which Tel Masoud is
situated extending northwards to El-Taf, till Rab Plot ; North : El-Kas'a
Road extending over Dahrat El-Kar'a down to Shajarat El-Malloul
separated till El-Birket and Birket Tash.

40 West : Birket Ata and ploughed land

Dunums 3,314
Minus Waste 582

2,732

The above has been copied from the Land register & is a true copy
of the original. On 8/6/31.

& Tin Souarieh & Waste land of
Sheikh Khadir.

Dunums 1,500
Minus waste 45

1,455

Sand

El-Kazazeh Marsh land,
South : El-Kasa'a Marsh ; East :
ploughed land ; North : ploughed
land ; West : waterstream.

Dunums : 130

All under disposition (?).

This plot is of Nufayatland.

Exhibits.

No. 61.
Exhibit
"j-1".
Plaintiffs'
Documents.
Old Tabu
entries to
Khudeira,
8th
May
1931.
continued.

*Exhibits.***No. 62.****RECORD OF PROCEEDINGS before Land Settlement Officer, Jaffa, in Case No. 92/30.**

No. 62.
Plaintiffs'
Documents.
Record of
Proceedings
before
L.S.O.
Jaffa,
Mr. Lowick,
in Case
No. 92/30,
6th
November
1930 to
16th June
1931.

Claims Nos. 635, 637, 645-647.
Blocks Nos. 23-28 & 44.
Parcels Nos. Complete
(Khor al Wasa' Hudeira Area).

COURT OF THE SETTLEMENT OFFICER—Jaffa & Hudeira Areas.
Sitting at Hudeira.

- Plaintiffs* :— HASAN MUSTAFA ABU JABARA of Zeita and eighty six partners of Zeita. 10
- Defendants* :— I (1) RIFKA AARONSON, represented by Nissan Rutman of Hudeira (for parcels Nos. 26/1, 2, 3 & 4 ; 27/1, 2 & 3 ; 25/1 ; 28/1 ; 24/2 & 23/1 & 3).
(2) TOBA RUTMAN (for parcels Nos. 23/5 & 24/1).
II (1) THE BAYSIDE LAND CORPORATION LTD., represented by Advocate Dr. Bernard Joseph (for Block 44).
(2) SH. MEIRSON, V'ad Chairman, on behalf of Hudeira Colony (for parcels Nos. 23/2 & 4 ; 28/3, 6 & 9 & 25/2). 20
(3) MORDECAI RUTMAN (23/6).
(4) BARUKH HILBETZ (23/7).
(5) DR. WILHELM BRIN (28/2).
(6) JOSEPH BERMAN (28/4).
(7) JOSEPH DANIELI (28/5).
(8) JACOB RUTMAN (28/7) rep. by Zalman Rutman.
(9) RACHEL RUTMAN (28/7).
(10) MORDECAI ROUDIN (28/8).
- Third Parties* :— I (1) 'ABD EL FATTAH MAR'I ES-SAMARA } of Zeita
(2) SELIM 'ABD EL FATTAH MAR'I } claim 30
SAMARA } Musha'
(3) MUSA 'ABD EL FATTAH MAR'I } part
SAMARA } in all
(4) 'ABD EL LATIF EL 'ABD EL MAR'I } above
books.
II VILLAGE SETTLEMENT COMMITTEE, 'Attil (26/3 & 4 and 27/4).
III (1) HUSNI 'ABD EL QADIR 'ALI EL MUSA
(2) RASHID SA'ID EL 'AM'AS
(3) SALIH MUHAMMAD EL KAFRI } all of 40
(4) HUSSEIN MUHAMMAD EL MAS'UD } Attil
(5) SA'ID EL SHEIKH NAJIB 'ATTILI }
(6) 'ABD ER RAHMAN SHEIKH AHMAD EL ATTIL
(7) AHMED IBRAHIM SHEIKH AHMAD EL ATTIL
(8) MAHMUD HASSAN EN NADDAF.

Adv. Hanna Asfur : I hold Powers of Attorney with my colleague, Mahmud al Madi, from Amna bint Daud Anabusi, Jamil Ibrahim al Yusuf,

'Abd er Rahman al Hassan al Mas'adi, and I submit that under the provisions of the Mejelle, these persons are sufficient to represent the whole of the inhabitants of the village, as these exceed 100 persons. I claim that we are thus entitled to represent the whole of the inhabitants of the village. As our claim is that the property is held in partnership by the inhabitants, one or more of the co-owners may represent the whole of the partners under Section 16 (4) of the Land Settlement Ordinance 1928-30.

Exhibits.
 —
 No. 62.
 Plaintiffs'
 Documents.
 Record of
 Proceedings
 before
 L.S.O.
 Jaffa,
 Mr. Lowick,
 in Case
 No. 92/30,
 6th
 November
 1930 to
 16th June
 1931,
continued.

10 *Adv. Abcarius Bey*: A judgment was sent back to the Land Court, Samaria, by the Court of Appeal saying to cancel the old registration and that the Musha' of Zeita belonging to all be set aside. It was wrong for one person to represent all the village, judgment of Land Court Samaria, of 14th April, 1924. It will be entirely misleading to treat the Musha' of Zeita as belonging to all under Article 8 of the Land Code. Every one has to prove his ownership. The other party has not yet proved any. If all be represented by the Village Settlement Committee, I do not mind. I should like, at first, to be on the right basis.

The following were present :

20 *Plaintiffs* :—(vide List A) present in person : 1, 2, 7, 9, 10, 12, 13, 15, 16, 18, 26, 27, 29, 31, 33, 37, 39, 41, 42, 47, 49, 50, 51, 52 (represented by Power of Attorney by Mahmud al Madi and Hanna Asfur) 55, 56, 58, 60, 63, 67, 68, 70, 78, 85, 86 (all were summoned).

Adv. Asfur : I and Mahmud al Madi represent in addition, 'Abd er Rahman al Hassan al Mas'adi and Amna bint Anabusi.

A. D. S. P. Selim Hanna : I appear in my private capacity as agent on behalf of Plaintiff 86 in virtue of Section 16 (2) of the Land Settlement Ordinance 1928-30.

Plaintiff 86 : I have appointed Salim Eff. Hanna as my agent.

30 *Adv. Abcarius* : I formally object to a Government Official leaving his official duties to act in a private capacity, to represent a litigant in this Court. I submit that it is incompatible with his office and duties to appear in this capacity. He cannot be an agent for a litigant within the meaning of the Land Settlement Ordinance. This Ordinance is not meant to modify the Advocates Ordinance and is not meant to extend to a Government Official. I reserve to myself the right to challenge this attitude of a police officer. Personally, I do not mind his appearing.

ORDER :

I order that A. D. S. P. Selim Hanna be entered as representing Plaintiff 86.

40 Hudeira 5.11.30.

Settlement Officer.

Defendants :—

- I (1) & (2) represented by Adv. Abcarius by P/A.
- II (1) represented by Adv. Bernard Joseph by P/A.
- (2), (3), (4), (6), (7) & (9) absent, though summoned.
- (5) Present in person.
- (8) do.
- (10) do.

Exhibits. Third Parties :—

No. 62.	I (1) Present in person.
Plaintiffs'	(2) do.
Documents.	(3) do.
Record of	(4) do.
Proceedings	II Represented by Mahmud en Naddaf, Muhammad al ' Askar,
before	Muhammad al Rabi', Sharif al 'Ammus and 'Abd el Qadir Abu
L.S.O.	Hasan in person.
Jaffa,	III Present in person (1), (2), (3), (4), (5).
Mr. Lowick,	Absent (6), (7) & (9).
in Case	
No. 92/30,	
6th	
November	
1930 to	
16th June	
1931,	
<i>continued.</i>	

10

Adv. Asfur (representing certain Plaintiffs) : The land in dispute is called Khor al Wasa'. Khor al Wasa' is a piece of land in the Tulkarem Sub-District, and not in Hudeira. As Your Honour was appointed Settlement Officer for the Settlement of Hudeira, the land in dispute is not within the jurisdiction of this Court. Khor al Wasa' is itself a part of the lands of Zeita and Zeita is attached to the Tulkarem Sub-District. It is necessary to dispose of and produce evidence, Kushans and also the old maps of Hudeira, proving that this land is not within the jurisdiction of Hudeira. As it will be found as such, Your Honour has no power to try this case. The forged map which was recently used will be produced to the Court and also an old map from a most reliable source. Mr. Hankin. As documentary evidence, there are the judgment of the Land Court, Nablus; the judgment of the Court of Appeal; extracts from the Land Registry and Revenue Books of Tulkarem; an old Turkish map (Exhibit " B/2 "); the Hebrew map of Hudeira dated 1933; a copy of the map of the Colony of Hudeira dated 1893; the unofficial Colony Land Books of Hudeira Colony and, of course, other oral evidence which we are prepared to submit. 20

Adv. Abcarius : I have never had during my judicial career to say to a Court you have no authority and jurisdiction. If the Court has no jurisdiction, let the other party take the petition and clear out. This Court is competent by a publication made by the High Commissioner in the Official Gazette declaring Hudeira as a Land Settlement Area within those boundaries given in the Official Gazette. This having been entered in the Hudeira Land Settlement Area, it necessarily follows that it is within the jurisdiction of the Land Settlement Court. If I read clearly the petition put by the other party, I think they are simply asking this Court to tell that this plot of land does not fall within the Settlement and to remove it to some other District, and put a claim in some other Court. This is what their application comes to. My application is that their submission should be dismissed, under the Land Settlement Ordinance, Sec. 10, if it does not come under Section 12 regarding boundaries. 40

Claim of Plaintiffs : My principal, Hanna Saiyid Muhammad Khalil claims that Khor al Wasa' lands form part of the Musha' lands of Zeita, and of which he owns one share out of 906, and asks for registration accordingly in the Tulkarem Register, and that these lands be not recorded in the Schedule of Rights for Hudeira and that no permission be granted for disposition in these lands during Settlement.

(Sgd.) S. HANNA.

I agree to the above in respect of each one of my three clients who each claims one share out of 906 shares.

(Sgd.) H. ASFUR.

Sharif' Abd el Qadir of 'Ara Village : I present a P/A in my favour signed by all inhabitants of Zeita claiming rights in this land (Exhibit (h) in Case File No. 92/30 B). I agree to the claim as put forward by Selim Eff. Hanna. I will submit extract of the shares by each one of my principals, Hasr Irth, and testimony of the Mukhtars showing the shares of each.

10

(Sgd.) SHARIF 'ABD EL QADIR.

Claims of Third Parties : I. We withdraw our claim.

ORDER :

That third party No. I be struck out from the action.

Hudeira 5.11.30.

(Sgd.) LOWICK S.O.

II. *Village Settlement Committee of 'Attil* : We claim that a part of the lands of our village was included wrongfully within the boundaries of Khor al Wasa' when the latter land was acquired by Nissan Rutman from persons of Zeita. We ask that the Settlement Officer should fix the correct and true boundary between us and Zeita in the Khor al Wasa' Locality.

20

(Sgd.) Member of V.S.C. 'Attil.

III. *Husni Abd el Qadir 'Ali al Musa & Partners* of 'Attil : We concur in the claim of Third Party II.

(Sgd.) HUSNI 'ABD EL QADIR
& PARTNERS.

III (3) *Rashid Sa'id al 'Ammus* : I withdraw my claim. I am not a claimant in this action.

(Sgd.) RASHID SA'ID AL AMMUS.

Adv. Bernard Joseph : My principal the Bayside Land Corporation are registered owners and purchased from Miss Aaronson the registered owner. We have constructed buildings and as purchasers in good faith are entitled to be recorded in the Schedule of Rights as owners of our parcels. There are a number of judgments of the Court of Appeal protecting the title of a purchaser in good faith. Apart from our land there is ample land in Khor al Wasa' to satisfy any claims. The actual sale was by Miss Aaronson to Emmanuel N. Mohl who has made a renunciation before the Land Settlement Officer in our favour. The area we claim is 110 dunums. We ask that our rights be recognised irrespective of the dispute between the parties.

30

Adv. Asfur : My clients and their partners claim to be registered owners whose title was confirmed by the Nablus Land Court. I submit that this is a subsidiary action to be heard after the main issue is decided. After which claim of the 3rd Party should be heard. The Bayside Corporation cannot claim any better title than their predecessors had. I suggest that we should now develop the case of Plaintiffs.

Exhibits.

—
No. 62.
Plaintiffs'
Documents.
Record of
Proceedings
before
L.S.O.
Jaffa,
Mr. Lowick,
in Case
No. 92/30,
6th
November,
1930 to
16th June
1931,
continued.

Exhibits.
 ———
 No. 62.
 Plaintiffs'
 Documents.
 Record of
 Proceedings
 before
 L.S.O.
 Jaffa,
 Mr. Lowick,
 in Case
 No. 92/30,
 6th
 November
 1930 to
 16th June
 1931,
continued.

Adv. Bernard Joseph : I have no objection to my claim being treated as a subsidiary action if you consider it convenient provided that no decision affecting my rights is given without my being heard.

Defendants II : We concur with the observations of Dr. Joseph.

ORDER :

That the claims of Defendants II be entered as subsidiary actions, the date fixed for the hearing of which will be duly notified to them, if necessary.

Hudeira 5.11.30.

Settlement Officer.

(Sgd.) LOWICK S.O. 10

Order.

Hearing adjourned to 1.30 p.m.

5.11.30.

Settlement Officer.

Resumed at 1.30 p.m.

Adv. Asfur (on behalf of certain Plaintiffs)—

I claim all Khor al Wasa'. I claim that this parcel is bounded by three roads and on the West by the Infi'at lands. In the year 1288 A.H. it was registered in the Tabu in the names of four persons under Nos. 28, 29, 30 & 31. During the year 1923 those owners attempted to make sole use of this property and transferred their rights to one or more of the villagers of Zeita. It must be remembered that the land of Khor al Wasa' forms part of the Musha' of the land of Zeita village. A certain Ahmed Zikrallah entered a claim before the Land Court, Nablus, which was the only Court having jurisdiction at those days. Although the land was registered in the names of four individuals, it was held as Musha' in common for all the villagers of Zeita. I find by my friend Mr. Abcarius that instructions were given by the Court of Appeal to the Land Court, Nablus, that each one had to prove his title. During the year 1923, while this action was in progress before the Land Court and the Court of Appeal, a collusive action was agreed between the colonists of Hudeira and the villagers of Zeita, the Samaras. The Samaras claimed in the Land Court, Haifa, that that was a part of their lands. They brought dummy defendants, so called, and the Court found that the Samaras were the owners of the land. In order to have the judgment effected, a map was prepared by a surveyor at the instructions of Mr. Nissan Rutman, husband of Toba Rutman. On that map there was inscribed Zeita Tulkarem Land. The same Mr. Rutman instructed the surveyor to alter the inscription Zeita Tulkarem and put Khor al Wasa' Hudeira instead. The Samaras having obtained a judgment, as previously submitted, had this property registered in their names in the Land Registry, Haifa, Kushans were issued and finally sold to Mrs. Toba Rutman of Hudeira and Rifka Aaronson of Zikron Jacob. A criminal case was lodged against Mr. Nissan Rutman but it failed. The charge was about forged map which I referred to. The grounds of my claim depend primarily on the old registration which was interpreted as registration in common to all the Zeita villagers. That this land is a part of Zeita village and registered in the Tabu of Tulkarem will also be proved to Your Honour by extracts of Land Registry of Tulkarem. Your Honour will remember from the Infi'at Case that the

most instrumental man in buying the lands of Hudeira was Mr. Hankin. A map was usually prepared while buying lands. Mr. Hankin prepared a map in 1893, on which map this locality is not within the Hudeira lands. Another Turkish map (Exhibit S/2) will prove the same point; also a Hebrew map (Exhibit "v") which was prepared in 1923. Also the Unofficial Books or Registers of Hudeira Colony as compared with the Government Registers. And further it will be proved by the Revenue Officer, Haifa, that for this land prior to 1926 no registration whatever appeared and that no revenue was paid in Haifa. Evidence of the

10 Revenue Officer, Tulkarem, that this part paid its taxes by the owners to the Tulkarem Revenue Officer. There is of course another oral evidence which furthers this point. It is on these points that my clients wish to submit their claims. The witnesses :—

Mr. Hankin

Mr. Fishmann

Land Registrar, Haifa

Yusef Eff. Musallam

ex Land Registrar, Haifa

Nahum Epstein

20 Land Registrar, Tulkarem

Revenue Officer, Haifa

Revenue Officer, Tulkarem

Clerk of District Court, Haifa

Clerk of Supreme Court, Jerusalem,

are to produce documents. Very shortly I will be able to produce evidence of civilians, notables, Mukhtars and other tribesmen. One of the most striking things about the boundary are the natural features, which will appear upon inspection, that the land planted with eucalyptus trees forms a natural boundary of Hudeira lands and entirely separates any other

30 land, leaving Khor al Wasa' alone. All the supporting vouchers have been handed by the Government to its different departments and will be produced in support of our claim. The official witnesses are all here.

Adv. Abcarius had nothing to reply to *Adv. Asfur*.

Witnesses for Plaintiffs :

Mr. BENJAMIN FISHMANN—Sworn—aged 32—Land Officer.

It is within my duties to inspect registers. I have inspected the Unofficial Land Books of Hudeira in accordance with the property which was indicated to me as Khor al Wasa'. From this investigation it appeared to me that this area was outside the boundary of the land recorded in the

40 Unofficial Land Books of Hudeira. I do not know exactly what this case is about. What are the main points? What I can tell about the Unofficial Land Books of Hudeira is that Kushans have been issued in the year 1307. The land was sold to the Jews. I have examined an old list of settlers according to which it happens that the area distributed among the settlers was 28994/2 dunums. Against the name of each owner there is the amount of dunums allotted to him. On another column there is the number of the Kushan. The total area in accordance with the list corresponds fairly closely to the map of Hudeira lands made in the year 1893. The locality pointed out to me on the map as Khor al Wasa' was

50 never inspected by me on the ground. In accordance with the Unofficial Land Books of Hudeira, it is asserted to me that it is not included in the

Exhibits.

—
No. 62.
Plaintiffs'
Documents.
Record of
Proceedings
before
L.S.O.
Jaffa,
Mr. Lowick,
in Case
No. 92/30,
6th
November
1930 to
16th June
1931,
continued.

Exhibits.
 —
 No. 62.
 Plaintiffs'
 Documents.
 Record of
 Proceedings
 before
 L.S.O.
 Jaffa,
 Mr. Lowick
 in Case
 No. 92/30,
 6th
 November
 1930 to
 16th June
 1931,
continued.

map. In the following plots I have seen that the boundary described in the Unofficial Land Books as Zeita lands or Zeita boundary. The plots I have examined in the Register were:—plot No. 711 folio 260, No. 713 folio 472, No. 715a, b & c folios 366, 289 & 254, No. 864 folio 149, No. 865 folio 75 and other parcels. Since the Unofficial Registers are connected with Official Registers, I came to the conclusion that the plot on the map as Khor al Wasa' was outside, as recorded in 1307 and this land was considered by the colony people as in Zeita lands.

Cross-examination by Attorney for Defendants:—

Q. Have you heard that the land in dispute is registered in the name of Toba Rutman? 10

A. In regard to this land, I do not know. I have not got personal knowledge of this land. I was to look up these things for Mr. Drayton in connection with the previous case. I looked up in the Registers of Haifa of 1307 and the Registers of Hudeira, there was no name of Toba Rutman.

Mr. JOSEPH BERNBLUM—sworn—aged 34—Actually Land Registrar, Haifa.

I had to provide the Registers of Hudeira Colony. I dispose of a map. I did not study this map very carefully. It is a private plan. I do not see any date on it. This is a copy and enlargement of the plan, probably made for the Land Registry. There is Khor al Wasa' in this map. As far as I see there is no partition in the Khor al Wasa' lands. I believe this map was deposited before I came to the Land Registry, April 1928. I had no access to the original map of Hudeira. I have seen a copy of another plan with Mr. Salim Hanna. That map is not in my custody. The registration is of individuals and the blocks owned by them. Plot No. 711 folio 260, according to the plan, the Southern boundary is Khor al Wasa'; according to the Books it is Zeita. Folio 472 No. 713, Southern boundary according to the Register is Zeita; according to the map it is Khor al Wasa'. Folio 366 No. 715a, on the Book it is Zeita, as in the map it is Khor al Wasa'. Folio 52 No. 874, Eastern boundary, according to the Register, is Zeita, on the map it is Khor al Wasa'. Folio 188 No. 873. I have no 873. I am sorry, the Eastern boundary of 873 is Zeita on the Book, on the map the Eastern boundary is Khor al Wasa'. Folio 89 No. 859a & 859b, Eastern boundary, according to the Book is Zeita, according to the map it is Khor al Wasa'. 20 30

Cross Examination by Attorney for Defendants:—

Q. Have you got the file of Khor al Wasa'?

A. The original file was given to the Chief Secretary. We have got subsequent maps.

Q. Have you got a certified copy of the map?

A. It is a sun print of a plan of the Land Registry Office. 40

Q. Have you another one?

A. Yes.

Q. Will you put this to the Court? (Map submitted.)

Q. Is it signed?

A. I can hardly read it. It is apparently certifying the boundaries.

Q. When was this land first registered in the name of Samara and Sons?

A. It was first registered on the 4th of June, 1925, in the names of 'Abd el Fattah Mar'i es-Samara and partners.

Q. Have you a letter from the Execution Officer, Haifa, dated 14.9.25 ?

A. This is in the original file of registration. Since that registration the land was subsequently transferred to Rifka Aaronson and Toba Rutman.

Q. Subsequent to that record, have you any record that some parts were sold to Mr. Eliash of Jerusalem and that the application was stopped by the Director of Lands ?

A. Subsequently, the land was registered in the name of Mr. Eliash and a Kushan was issued, acting on the same map Mr. Emmanueal Mohl bought also 110 dunums and Kushan was issued. Always acting on the same map.

Q. Do you remember of an order to make a note on the Register to protect any sale of Zeita lands ?

A. I know that subsequently there was an order to cancel it.

Q. Are these maps and registers official ?

A. They are unofficial.

Mr. Asfur addressing the witness :—

You are talking about the original file.

Q. Do you know why it was sent to the Chief Secretary ?

A. The former Land Registrar was dismissed from his office.

Q. Was he dismissed about this map of Khor al Wasa' ?

A. I do not know about this case neither officially nor unofficially.

Q. What is this shade under Khor al Wasa' (indication on map).

A. The colour is a little bit darker. You will better ask a specialist.

Settlement Officer—Note.

The remaining Plaintiffs not represented by Adv. Asfur and Adv. Nadi and Third Parties II and III agreed that as long as Adv. Asfur is endeavouring to prove that Khor al Wasa' lands do not belong to Hudeira Village but are part of the lands of Tulkarem District, they confide their interests to Adv. Asfur and will not exercise their rights of cross-examining with them witnesses.

SALIH HAKIM—sworn—aged 21—Clerk of the Supreme Court.

Muhammad Zikrallah is registered under No. 59 of 23 Land Appeal (Exh. K). This is Land Case, Nablus (Exh. "j") No. 18 of 22. It was not among the files of the Supreme Court. It was in the office of the Chief Justice. The Chief Clerk of the Supreme Court handed the file to me in my official capacity.

Cross Examination by Attorney for Defendants :—

Q. Have you got Land Case No. 10 of 25 ?

A. This is with Clerk of District Court, Haifa.

Q. Have you any other files ?

A. I have High Court Case No. 6 of 1927 (Exh. "n")—the Director of Lands *vs.* Rifka Aaronson. Land Appeal Case No. 35 of 26 (Exh. m) Salih Ismail al Khatib *vs.* 'Abd el Fattah Samara and others. High Court No. 40 of 30 (Exh. "o") Rifka Aaronson *vs.* Director of Lands. The other files are with clerk of District Court, Haifa.

RASHID EFF. BARHUM—sworn—aged 34—Clerk of the District Court, Haifa.

I have Criminal Case No. 143 of 29 (Exh. "s"). There are maps also. A Turkish map (Exh. S/2) and a German map (Exh. S'1).

Exhibits.

No. 62.
Plaintiffs'
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Record of
Proceedings
before
L.S.O.
Jaffa,
Mr. Lowick,
in case
No. 92/30,
6th
November,
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continued.

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continued.

Cross Examination by Attorney for Defendants :—

Q. Do you have case No. 10 of '25 ? (Exh. " p ".)

A. Yes, also No. 2 of 27 (Exh. " r ")—'Abd el Fattah Samara and others
vs. The Government of Palestine and No. 39 of '25 (Exh. " q ").

'UMAR RUSAS—sworn—aged 33—At present in charge of Land Registry,
 Tulkarem.

The village of Zeita belongs to Tulkarem as it is registered in the
 Tulkarem Land Registry. Zeita lands are known as Raml Zeita. The
 boundaries, as in the old Register, are :—Road, ditto, Kharab (waste) and
 Infi'at. I did not visit the place personally. The first entries or registra- 10
 tion of Zeita goes back to 1288 A.H. as Daimi. I do not have a book
 stating the localities. That is what I know.

TAUFIC TAMIMI—sworn—aged 50—Revenue Officer, Tulkarem.

I know Zeita village. It belongs to Tulkarem Sub-District. All
 Zeita lands are in our Registers. This book is the original book, Daftar
 Asasi. The boundaries in the book are distinct : Road, Khirbat Kazaza,
 Zeita and Qas'a. The collectors of Tulkarem have been levying the taxes
 of Zeita up to the present time. I do not know as regards 'Attil. There
 is only one Ard or Raml in this locality. This region is about 4,375 dunums.
 Everything in these books, in these two books, is written in Turkish. 20
 There appears no date in both books. This book is the book of amounts,
 being the summary of the other book. Zeita people pay Werko to Tulkarem
 up to the present date.

NAHUM EPSTEIN—sworn—age not stated—Engineer and licensed
 Surveyor.

I know Yusu Musallam. He worked under me as a surveyor. I know
 Mr. Rutman. I worked with him. I surveyed in Haifa and in Hudeira.
 The locality I surveyed, according to the instructions was about
 5,000 dunums. It was near Hudeira. I remember both this map and
 the tracing. There was a change of names. The first name was Zeita 30
 Tulkarem. On the tracing the first name is apparent. This map is a copy
 of the tracing. The tracing that is in the Tabu may show that the name
 has been erased and altered. Mr. Rutman gave instructions to make the
 alteration. He did not say it to me. Mr. Musallam told it to me. I am
 saying what I heard from Mr. Musallam.

Note.—Selim Eff. Hanna will try to have Mr. Musallam in Court
 to-morrow. Mr. Hankin will give evidence to-morrow.

Hearing adjourned to the 6th November, 1930, at 8.30 a.m.

The hearing was continued at Hudeira on the 6th November, 1930,
 in the presence of the parties as in the previous hearing. 40

Mr. HANKIN—sworn—aged 64 years and eleven months.

I know Hudeira lands. I bought the land. I know the boundaries
 according to the plan. I know this map (German map Exh. S/1). At the
 time of purchase, this was the land of Hudeira (indicating on map). I
 know the lands of Zeita. The boundaries of Hudeira at the time of
 purchase were as indicated on this map. I know nothing else. I never
 looked at the map of the unofficial Land Books of Hudeira. The Southern
 boundary is written on the map as Hudeira.

Attorney for Defendants : He cannot treat his witness as an hostile witness. He is not entitled by law to cross-examine the witness in this way.

Settlement Officer : The Eastern boundary is as noted on the German map (Exh. S/1) A B C D E in red pencil.

Mr. Hankin's evidence continued : This map was made about 40 years ago. I have never seen the Turkish map (Exh. S/2). I could point out the boundaries on the ground.

10 *Attorney for Defendants* : I must insist on some regularity adopted in this Court. When the Plaintiffs finish, I will give my defence. The other party has to give the names of the witnesses and not add a witness every now and then. Article 83 of the Code of Civil Procedure. They should state the nature of evidence they are going to give, then I will be ready to give my reply. In this way we will not come to any practical result. I want to see what he is driving at. If it is necessary to inspect the boundaries, we will reserve that point. Then I will proceed with the defence.

20 *Attorney for Plaintiffs* : This section of the law does not make it imperative to mention all the witnesses. That section of Civil Procedure is largely modified by the law of Evidence Amendment Ordinance. Art. 83 is therefore not applicable. A person is entitled to call as many witnesses as he likes. This is a Court to investigate the truth and give to all equitable justice. I should reserve the right to call another witness, if the first witnesses will fail. I bring my witnesses at my own risk. Section 6 of the Evidence Amendment Ordinance, Bentwich, Vol. I, page 385.

30 *Attorney for Defendants* : I have never heard all sorts of this argument. Let him produce 200 witnesses. Let him produce all Zeita and all Palestine. I do not mind. What are the witnesses for? For the boundaries, all right. I do not see whether the practice of the Court is well known. We are not asking the credibility of the witnesses. Has he any other witnesses? He called the Land Registrar, Haifa. He should ascertain whether he is useful or not. All my object is to expedite my case. I should like to hear the statement of claim exactly and then I will be able to reply. Are they claiming that the land is not within the Hudeiri Area? Let him go and prove his case. (The statement of claim was read out by the Settlement Officer.) My submission is that the Court has to treat it as within the Hudeira lands.

40 *Settlement Officer* : In the procedure of Settlement, first of all, an order is made by the High Commissioner. A village is not under Settlement unless Preliminary and Final Notices are issued by the Settlement Officer. There is no intention, at the present time, to carry out the Settlement of Zeita. The point to be established is whether Khor al Wasa does form a part of Hudeira, which is in course of Settlement, or does not. I made it clear that Zeita is not a village under Settlement. The High Commissioner has ordered that Settlement *may* commence in that area. We should come to a decision about the witnesses of Mr. Asfur.

50 *Attorney for Plaintiffs* : I have an objection. I do not want to confine my witnesses to some persons. We have documentary evidence of people that have made declarations that this land belongs to somebody else. You have a wide experience about these Fallahin witnesses. The Code

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continued.

of Civil Procedure says that the Plaintiffs have to open the case and the Defendants reply and then go to the merits of the case. The other side has not produced any evidence. He has got none. He has to make the concluding speech and this ends the case.

Order : The Plaintiffs must name their witnesses to give evidence on the boundaries, in accordance with the provisions of Article 83 of the Code of Civil Procedure. In view of the suggestion that influence may be brought to bear on Plaintiffs' witnesses, if their names are disclosed at this juncture, the Settlement Officer will, if he thinks fit, at the proper time, himself, call additional evidence on the boundaries, in view of the obligation imposed upon him under Section 27 (1) of the Land Settlement Ordinance 1928-30 to investigate all claims. 10

Attorney for Plaintiffs : Any evidence as to boundaries or possession is termed in the Mejelle Bayinat at Tawatur. This means any number of witnesses may be called not less than 25 according to the decision of the Mashyakha Islamiya. I am appearing on behalf of all the village.

Attorney for Defendants : Bayinat at Tawatur means a fact of common knowledge. This does not dispense him of naming the witnesses he intends to produce. He has to name a list of witnesses and put them to the Court. He should state how many witnesses four or five and submit to your order. 20

Attorney for Plaintiffs : I know my case very well and I know my people. It is no fear to mention any number of witnesses.

Hearing adjourned for 15 minutes.

Hearing resumed.

Attorney for Plaintiffs : I put in the list of Fellahin witnesses to prove the boundaries of the area in dispute. The names marked with a cross should be summoned by the Court and we will produce the remainder.

SADR ED DIN 'ASHUR (Witness for Plaintiffs)—sworn—aged 35—
 Revenue Officer, Haifa. 30

I made extracts of my Registers relating to the lands of Khor al Wasa'. The first registration in my books of Khor al Wasa' is in the year 1925. There is no record before that date. This information was taken from the Revenue Books of Haifa.

Cross-examination by Attorney for Defendants : Q. Are the records of Revenue taken from the Land Registry ?

A. Not everything is found in the Tabu. Some are in the Tabu, some are not. There are more records in the Revenue Books. I know of a case that happened recently that it was registered in the Tabu and not recorded in our Books. I do not know if a Commission of Assessment was appointed. 40

Attorney for Plaintiffs : I think the case as it is should be adjourned for inspection ; unless the Court orders inspection, I have to apply for adjournment.

Attorney for Defendants : I apply that we should sit in Chambers in order to fix the issues of the case. I have no objection to adjournment.

Hearing adjourned to 24th and 25th November, 1930.

The issues were defined in Chambers and the hearing adjourned to 24th and 25th November, 1930, Note of issues attached.
Hudeira 6.11.30.

Settlement Officer
Jaffa Area.

Exhibits.
—
No. 62.
Plaintiffs' Documents.
Record of Proceedings before L.S.O. Jaffa, Mr. Lowick, in Case No. 92/30, 6th November 1930 to 16th June 1931.
continued.

Meeting held in Chambers by the Settlement Officer Jaffa Area, to define the Issues in Case No. 92/30, at *Hudeira the 6th day of November, 1930.*

Issues (1).

10 That the Settlement Officer shall decide whether the area in dispute known as the lands of Kbor al Wasa' and/or Raml Zeita are included within the boundaries of Hudeira or included within the boundaries of Zeita and/or 'Attil Villages, and for this purpose the Settlement Officer shall define the Eastern and Southern boundaries of Hudeira Villages lands. Such decision to be without prejudice to the rights of any claimant to bring an action in the competent Court to establish his ownership or to pursue an action before the Settlement Officer if the area is found to be within his jurisdiction.

2. That the further issues shall, if necessary, be defined subsequent to a decision being given on the first issues.

20

(Sgd.) Adv. Abcarius.
,, Adv. Asfur.
,, Selim Hanna.
,, Adv. Mahmud Al Madi.
,, Sharif 'Abdel Qadir.
,, Muhammed Radi (Mukhtar of Attil).
,, 'Abd er Rahman 'Abd el Karim Ghazi—Member of V.S.C. 'Attil.
30 ,, 'Abd el Qadir of Zeita.
,, Muhammad Mahmud of Zeita.

(seal) of Mahmud Hassan en Naddaf.

The hearing was continued at Hudeira on the 24th of November, 1930, at 9.30 a.m. in the presence of the following parties :—

Plaintiff I (principal Plaintiff) present and other partners.

Defendant I (1 & 2) represented by Adv. Abcarius.

Defendant II (1) represented by Adv. Joseph
(2) absent
(3) absent
40 (4) absent
(5) absent
(6) absent
(7) absent
(8) represented by Adv. Horowitz
(9) absent
(10) represented by Adv. Kaiserman

<i>Exhibits.</i>	<i>Third Parties</i>	II	present
		III	(1) present
No. 62.	Plaintiffs'		(2) absent
Documents.			(3) absent
Record of			(4) absent
Proceedings			(5) present
before			(6) absent
L.S.O.			(7) absent
Jaffa,			

Mr. Lowick, in Case No. 92/30, 6th November, 1930 to 16th June 1931, *continued.*

Adv. Kaiserman : I make a formal objection as to the appearance of Mr. Kantrovitch. He is the Secretary of the Legal School. He has no right to appear here. 10

Adv. Horowitz : There are special tables for the public.

Mr. Kantrovitch : I am clerk to Selim Eff. Hanna.

Adv. Abcarius : Selim Eff. Hanna is not entitled to appear. Law has to be observed. Reference was made to Art. 16 (2) of the Land Settlement Ordinance. It is distinctly stated that he must be a member of the family. It is Art. 16 (2) which Selim Eff. Hanna applied to be admitted. The interpretation of the law is not to appoint every body. Art. 43 of the Code of Civil Procedure limits the appearing of Officers of the Court on behalf of private persons. This restriction extends to all officers. The President the members, the clerks, the public prosecutors, their substitutes, their assistants and extends to all Courts. As a matter of fact, Salim Eff. Hanna is neither of the family of that man nor is he within the meaning of the law appearing in his official functions as an Assistant to the Public Prosecutor. In this case he cannot have a clerk within him. All these surreptitious means should be put an end to. As there are many advocates let it be a fair play. 20

Selim Eff. Hanna : All these points were discussed during the last hearing. It was decided that I could represent the Plaintiff 86 in this case. As regards clerks, I am entitled to have anybody to come here and assist me. 30

Adv. Kaisermann : We would not object if he states that he has not come here by order of the Attorney-General or a higher Government Official.

Selim Eff. : It was decided in the last hearing that I can appear in my private capacity.

INTERIM ORDER.

I have already given an Interim Order that Selim Eff. Hanna be entered as representing Plaintiff 86. Objections should have been made at the time: this matter was discussed in Court and the order cannot now be amended. As regards the position of Mr. Kantrovitch, it is ruled that he should sit in the body of the Court among the general public. 40

Settlement Officer,

Hudeira 24.11.1930.

Jaffa & Hudeira Settlement Area.

Witness for Plaintiffs—YUSUF MUSALLAM—sworn—aged 36.

I worked with Mr. Epstein in the year 1924, I know this map (Exh. " u ") of File No. 92/30 B). I drew it. This is a copy of the tracing. This map is called Khor al Wasa' Hudeira. There was something written before that on the map. Zeita Tulkarem was written on it at first. Then

Mr. Nissan Rutman came to take the map and asked why I had put Zeita Tulkarem. The land belongs to Hudeira. He told me to change the map. I rubbed Zeita Tulkarem and wrote Khor al Wasa' Hudeira. I have never visited the land before drawing the map. I thought the land belonged to Zeita because I saw the eucalyptus trees. Nobody told me that it belonged to Zeita or Hudeira. I myself thought so. I do not know either Zeita Village or its boundaries. I do not know if 'Attil is bounded by Hudeira. It came to my mind and I did so.

10 *Adv. Kaiserman* : The other party cannot cross-examine their witness or treat him as an hostile witness.

Evidence of Yusuf Musallam continued—

Mr. Rutman asked Mr. Epstein to make the map ; and as I worked with Mr. Epstein I prepared the map.

Cross-examination by Adv. Kaiserman :

Q. In whose presence did you prepare this map ?

A. When I prepared the map Arabs from Zeita and workers from Hudeira were present.

Q. Was the map signed when Mr. Rutman came to take it ?

A. When Mr. Rutman took the map nothing was signed on it.

20 Q. What is the date of the map ?

A. The map is dated 29.10.24.

Adv. Kaiserman : Mr. Kantrovitch is still communicating with Selim Eff. Hanna. This is Contempt of Court. Original map (Exh. " w " of file No. 92/30) was submitted to the Court.

Witness of plaintiffs Mr. Wilbushevitch was called, but failed to appear. He was to prove the German map (Exh. S/1) of File No. 92B). He lives in Hadar Hacarmel, Haifa.

Adv. Abcarius : We do not deny the genuineness of the German map (Exh. S/1 of File No. 92/30B).

30 *Adv. Asfur* : There are many persons called Wilbushevitch in Haifa. On this map (Exh. S/1 of File No. 92/30B) N. Wilbushevitch and C. Wilbushevitch are signed. I have no more witnesses. There remains only the inspection of the boundaries. The witnesses to give evidence on the ground are not technical witnesses. My case, with the exception of identification of boundaries and evidence identifying the German map (Exh. S/1 of File No. 92/30B), is complete.

INTERIM ORDER.

40 That the case of Defendants and Third Parties shall now be heard and the inspection of the boundaries and the hearing of evidence regarding these boundaries shall, if found necessary, be left to a later stage.

Settlement Officer,

Hudeira 24.11.30.

Jaffa & Hudeira Settlement Area.

Adv. Abcarius : The dispute is regarding a plot of land called Khor al Wassa'. A map has been produced this morning by the other side regarding the same plot. It is a plot measuring 5,358 dunums, with certain boundaries shown on that map. The Western boundary of Khor al Wasa' is not disputed ; the Northern boundary is not disputed. It is the boundary

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of the South which is disputed. I think for the sake of convenience, we let the 'Attil people alone. One of two things may happen, either this Court will say that Khor al Wasa' is within Hudeira or it is without Hudeira. Should the Court find that Khor al Wasa' is within the boundaries of Hudeira, then there will be no dispute as to it. We cannot litigate about a plot of land unless we are sure that it is the plot. Art. 1623 of the Mejelle was cited. The object of the law is very clear, that we should know what the dispute is about. Let the other side produce the map that they claim as Khor al Wasa'.

Adv. Asfur : The land which we claim as Khor al Wasa' is a part of 10
 Raml Zeita. The land that is shown on both maps (Exh. " w " of File No. 92/30B) and the copy of the map (Exh. " n " of File No. 92/30B) is a part of Ard Raml Zeita Al Musha' ; in which the Plaintiffs of this case each hold one share out of 906 ; according to the Nablus Land Court. Our claim is that the land in this map is ours. The maps represent the part erroneously included in Hudeira. We do not admit that it is Khor al Wasa'. We say it is Ard Raml Zeita Al Musha'. Our claim in this action is that the land indicated in the map produced to-day (Exh. " w " of File No. 92/30B) has been wrongly or erroneously included within the boundaries of Hudeira ; and it is a part of the land of Raml Zeita. 20

Adv. Abcarius : I suppose now I will have to make my pleadings in such a way as to meet the point that Your Honour is anxious to decide at this stage. I must revise certain points with which I shall deal later as to the inaccuracies and misleading statements made by the other side during the last hearing. Insinuation was made regarding a forged map, and insinuation was made that one party has withdrawn his case in Court that morning. While reserving all rights of action and professional duty, I cannot but say a word regarding the party who came and withdrew its claim. This was the vendor of the judgment holder. As to the criminal 30
 proceedings, Your Honour will find in the statement of Abd el Fattah Mar'i es Samara, before the Examining Magistrate Haifa, in the early part of 1929, that he sold his land at Khor al Wasa' and received LP.8,000 from Mr. Rutman, and that he had sold according to boundaries and not according to dunums. Having made that statement, Your Honour, he subsequently, for reasons known to everybody, was prompted to come and say that he sold an area of some 5,000 dunums, whereas, in fact, there are some 10,000 dunums, and therefore wanted the surplus area. The ultimate result will be that he will find himself in trouble, and so he had the commonsense to come and withdraw his claim. The point with which 40
 we are now concerned is not the question of ownership. In order to determine whether the claimants have a locus standi, the primary object is to see if the plot falls within the boundaries of the Settlement Area. Now, what have the claimants produced in support of their contention and of what legal value is it ? They have relied on a Judgment of the Land Court of Nablus dated 13.3.1923 and which was set aside by the Court of Appeal, and another Judgment of Land Court of Nablus of 14.4.1924 and which was confirmed by the Court of Appeal on 20.1.1925. They rely upon—

- (1) these judgments
- (2) certain maps
- (3) certain evidence regarding payment of Taxes, etc. 50

It is necessary for me to say that in the first place none of the present claimants was a party to these judgments. It is an elementary principle

of law that judgment is only binding on the parties thereto, and can only benefit any party thereunder and an outsider cannot come and benefit from it. The other side stated in the last proceedings :—

p. 6 *beginning with Adv. Asfur*

“ My clients and their partners claim to be registered owners whose title was confirmed by the Nablus Land Court.”

p. 7 *beginning with Adv. Asfur*

“ I claim all Khor al Wasa’.”

p. 7 *Twelfth line*

10 “ Although the land was registered in the name of four individuals, it was held as Musha’ in common for all the villagers of Zeita.”

p. 7 *Sixteenth line*

“ During the year 1923, while this action was in progress before the Land Court and the Court of Appeal, a collusive action was agreed between the colonists of Hudeira and the villagers of Zeita, the Samaras.”

p. 8 *Third line*

“ The charge was about a forged map which I referred to.”

20 These are the principal passages of the pleading of claimants at the last hearing.

I do not believe that the principal or friend of Selim Eff. Hanna, namely, Hassan Sa’id Mahmud, could now come to Court after the abortive attempt of Mr. Kussa, his representative. Your Honour will remember his first application to the Land Settlement Court, Case No. 57/30 and the discourteous manner in which the application was put, saying directly to the Court: “ I wish that this Khor al Wasa’ be excluded from the Settlement Area, in order to enable me to go to another Court, as it involves great points of law which will better be dealt with in another Court.”

30 In withdrawing the action he said: “ I withdraw my application not because I am not entitled to appear before you, but because I am so advised by the Attorney General.” In the present claim of Hassan Sa’id Muhamad, on page 5 second line of the proceedings of Selim Hanna, states “ My principal, Hassan Sa’id Muhamad Khalil claims that Khor al Wasa’ lands form part of the Musha’ lands of Zeita, and of which he owns one share out of 906, and asks for registration accordingly in the Tulkarem Register, and that these lands be not recorded in the Schedule of Rights for Hudeira, and that no permission be granted for disposition in these lands during Settlement.” This in substance means that he is

40 applying for exclusion of these lands from Hudeira. A claim which was admitted by him and withdrawn. A claim to which the superior officer had doubted as to the legality of such application. This Court heard that there exist a judgment of the Nablus Land Court and confirmed by the Court of Appeal.

No one told us or explained to us what these judgments were about. It seems to me to be of primary importance for the Court to take cognisance of the terms of this judgment. The first judgment of Nablus Court dated 13.3.23, was that the land in the dispute was Musha’ to all the inhabitants of the village and that Mohamed Ahmad Zikralla is a share

50 owner in accordance with the prevailing old custom among the inhabitants

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Exhibits. of the village. The Kushans in the names of Defendants from their
 ——— ancestors should be cancelled and the land registered in the Tabu as
 No. 62. Plaintiffs' Musha'. This judgment was appealed and it was on appeal set aside
 Documents. to the Nablus Land Court of First Instance. The judgment of the
 Record of Nablus Land Court of First Instance, dated 14.4.24 embodies the
 Proceedings terms of the judgment of the Court of Appeal. This judgment was con-
 before firmed by the Court of Appeal on 20.1.1925. Your Honour will realise
 L.S.O. one thing that the judgment means, this. These lands, according to the
 Jaffa, story, were registered in the names of 22 persons divided into 20 shares,
 Mr. Lowick, 18 persons having one share and four persons having half shares each. 10
 in Case It makes 20 shares. When the Court of Appeal said that this land belongs
 No. 92/30, to all the inhabitants of Zeita, each one had to come to prove his claim
 6th individually. The Court gave judgment in the names of five persons
 November, who proved that they have possessed the land and cultivated it and
 1930 to they were entitled each one share out of 906. It is therefore misleading
 16th June to say that our title was confirmed by the Court of Appeal. The other
 1931, side relied on maps. My submission is, as far as their claims are concerned,
continued. the maps are void of any legal value whatsoever. They have produced
 the map of the Colony of Hudeira. Of what value is that to them? 20
 There is nothing signed on the map but the Colonists of Hudeira, and if
 they did sign, it has no value. Their maps were to govern Hudeira lands.
 Thus, whatever lands they proposed to buy, they made maps showing the
 respecting shares they have added to themselves. Your Honour is very
 familiar with the vicinity of these places. Did this Court attach any
 value to the Colony maps in the Infi'at Case? and is this Court not bound
 by its previous decision? In the Infi'at Case we could use the Colony
 map and have the land extended to the sea shore. To cut a long argument
 very short, we cannot rely in the Colony map of Hudeira. Besides, legally
 and technically, how can it bind others who were not party to it? Therefore
 all those maps, which have been produced with great zeal and vigour are 30
 of no value. There is no such thing in law which prevents taking land
 from one village and adding to another. It is an administrative act.
 Other than these Hudeira maps, it was alleged that the map was made
 during the Turkish time (exh. S/2 of File No. 92/30 B) and which was
 produced in the High Court Case No. 6/27 by Dr. Dukhan. A map which
 was not signed and does not show East, West, North and South. A map
 which conveyed nothing. The Chief Justice asked him to take it back.
 With regard to revenue we have never disputed about Raml Zeita. It
 goes without saying that Zeita belongs to Tulkarem. The villagers of
 Zeita should pay their taxes to Tulkarem, but all this does not prove in 40
 any way that they have paid any revenue or taxes in respect of Khor
 al Wasa'. They also produced a gentleman from Haifa who also said
 what he could. It was absolutely in our favour. He said that the
 land was not registered before. In the year 1925 they started paying
 taxes in Haifa. He simply came and said that there is such a thing as
 Khor al Wasa' officially recognised to be in Haifa. These, Your Honour,
 are the documents and evidence produced by the other side. They have
 produced nothing more. The whole thing is a failure. They did not prove
 anything about Khor al Wasa'. Have they produced anything to show
 that this particular plot belonged formerly to Zeita? They did not. They 50
 referred to a forged map. Your Honour is aware of the criminal proceedings
 in connection with this map. This morning in the cross-examination
 Your Honour found how this map was alleged to have been forged. The

map has been prepared in the presence of the villagers of Zeita. At the time Mr. Rutman took the map it was not signed by anybody. In any case whether it would be a forged map, we are not concerned with criminal proceedings. The other side has tried enough, let him try again.

Hearing adjourned 10 minutes.

Adv. Abcarius : I shall now proceed to deal with what and on what we rely that Khor al Wasa' is within and a part of the village of Hudeira. The origin of the case starts as far as 1925. The judgment was obtained in Haifa Land Court on 6.5.25. I cannot let it pass without simply referring, en passant, to the statement made by the other party that while the proceedings were going on in the Nablus Land Court, a collusive action was agreed. Now, Your Honour, a man called Abdel Fattah Mar'i es-Samara and sons introduced an action No. 10/25 before the Haifa Land Court. The claim was about a plot of land known as Khor al Wasa' bounded on the East—Kazaza, Birket Muria and lands of Zeita, on the West—Forest of the Jews, and on the North—Forest of the Jews, and on the South—land of Attil. The Defendants in that case were Yacob Samsonoff, Yafit Yamani and Aharon Madursky. On the 16.4.25 judgment was given that the Registrar of Lands submit a report about the land in dispute. (Judgment read out in full by Adv. Abcarius, Exh. " v," page 11,) (Inspection report read out in full by Adv. Abcarius Exh. " v " page 12.) On the 6.5.25 judgment was given that the land be registered in the name of Plaintiffs (Judgment read in full by Adv. Abcarius, Exh. " v " page 13). On the 14.5.25 a letter was sent from the Execution Office to the Registrar of Lands, Haifa, to register the land in the name of Abdel Fattah Mar'i es-Samara and Sons. (Letter read out in full by Adv. Abcarius Exh. " v " page 15.) On 29.5.25 an inspection was carried out on the ground (inspection report read out in full by Adv. Abcarius, Exh. " v " page 16). From this judgment we find clearly that the plot called Khor al Wasa' was held judicially to be within the boundaries of Hudeira and forming part of Hudeira. Judgment was given; Haq el Qaarar was paid; the land was registered in the names of the judgment holders; and Kushans were issued. Now this judgment has become final. Attempts were made to have it set aside, but they were fruitless. This judgment stands and holds good up to the present time. Allegation was made last time regarding Mr. Strumza and Mr. Uweida. I may, Your Honour, use an example. Assuming that " A " bribes a judge and obtains judgment against " B ". The judge is subsequently tried, put in jail, dismissed, hung, shot or anything you like. The judgment is there and holds good. The law is clear about this point. Art. 3 of the Code of Civil Procedure refers—

" A decree issued by a Court shall be valid and executory until it is legally cancelled or invalidated by the same Court, or by some other Court to which such Court is subordinate."

Therefore we have an express provision of the law. Whether the judges misconducted themselves, this does not affect the judgment. Anybody who likes to upset the judgment may do so. This is a land registered according to a final judgment; Kushans issued, and Land Registry Records made. Here we have a specific name of a specific area. The judgment should be valid. This is not only the law of Palestine, it is

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also the law of England and the law of all countries. This is enough to dismiss the pretended contention.

As regards Saleh Ismail al Khatib, a judgment holder of the Nablus Land Court, obtained a Kushan for one share out of 906 shares and came to Haifa Land Court to oppose the judgment of 6.5.25, the first judgment I have alluded to in favour of Abdel Fattah. He came and said, I am a judgment holder of a share in that land and, this is all collusive action and fraudulent transactions going on between Mr. Rutman and Abdel Fattah and I am going to oppose this judgment. Judgment of opposition in the Land Court, Haifa, No. 39/25 was that the claims of opposer was dismissed. (Judgment read out in full by Adv. Abcarius, Exh. "v" page 22.) This judgment was appealed, Land Appeal No. 35/26 and judgment of the Haifa Land Court was confirmed (Exh. "v" page 29). Before we proceed any further there is legal deduction and a legal principle laid down from which nobody can deviate. When a man benefited from the Court of Nablus one share out of 906 shares and came to oppose the judgment of the Haifa Land Court, it laid down the procedure to be followed by any claimant. It is an elementary principle of law that judgments of higher Courts must be observed. In the laws of England, if a judgment of a lower Court after having for some time been acted upon, the judgment of the lower Court will be generally respected by the High Courts. This is particularly true as regards property. How much more must a judgment of a higher Court be an authority on a lower Court. Vide Halsbury Vol. III p. 210 and 211 paras. 535 & 536. My submission that the judgment of 6.5.25 is binding and nobody can exclude this Khor al Wasa', except new legislation. This land is registered for the first time as Khor al Wasa'. There is no other Khor al Wasa'. In virtue of the judgment it belongs to Hudeira. I put, entre parenthèse, for the sake of argument, if Khor al Wasa' did ever belong to Zeita or China or anywhere else, it was in virtue of a judgment confirmed to be in Hudeira, and will continue to be as such until the judgment is invalidated. In my submission that is enough for any Court, but to be more explicit; Mr. Rutman as agent of the registered owners wanted to sell about 100 dunums to Mr. Eliash of Jerusalem. The Director of Land refused to carry out this transaction. We served a notarial notice. He refused and the result was that he went to the High Court and brought an action. In the High Court Mr. Dukhan produced the Turkish map (Exh. S/2 of File No. 92/30 B) without signature and boundaries, and the Court rejected it. He went on repeating what Salih Ismail had done. That Land Court Nablus has given a judgment on 14.4.24 that the action brought before the Haifa Land Court was collusive action; that the map was tampered with and that the land belonged to Zeita. The Chief Justice after having heard the case at great length, ordered that the final judgment must stand and gave 14 days' time for the Attorney-General to re-open the Haifa Case. Mr. Bentwich went again to Haifa Court, in re Land Case No. 10/25 (Opposition of Third Party read out by Adv. Abcarius, Exh. "v" page 37). Then the statement of claim was put on to 5.2.27 (read out by Adv. Abcarius, Exh. "v," page 40). Then the Government made a compromise with Mr. Rutman, agent of his wife and Miss Rifka Aaronson, and an agreement was entered into between the Government of the one part and Mrs. Toba Rutman and Miss Aaronson on the other part. This agreement was made on the

29.4.27 (Agreement read out by Adv. Abcarius, Exh. " v " page 46). Now in virtue of this agreement they have written to withdraw the action and to release the attachment. Since then the operation between Miss Aronson and Mr. Eliash was carried out and other transactions were made. What is the interpretation of all this ? They have renounced their claim to Mahlul of this land. Where such a claim is advanced by the Government it must be a genuine claim of a certain plot to a certain person. Besides the final judgment, this administrative act held that registration of Khor al Wasa' shall be in Haifa. The Administration is 10 omnipotent and has authority to take Khor al Wasa' and transport it to Jaffa or somewhere else. If the Government knew that this land belonged to the village of Zeita, it would be a sheer swindle on the part of the Government to come to me and take LP.1,000. The Government knew that this land was not registered anywhere as Khor al Wasa'. A ruling which is final and binding was given in the higher Courts that this Khor al Wasa' is part of Hudeira and by an Administrative Act of the Government. After all this the Settlement Officer has no jurisdiction to determine if this land belongs to Hudeira or not. It belonged to Hudeira since the year 1925 and must continue to belong to Hudeira until these judgments 20 are changed. What will the consequence be, for the sake of argument, if the Settlement Court decides that the land does not belong to Hudeira and Haifa, but belongs to Tulkarem ? Assuming the client of Mr. Horowitz wants to sell his land, and as the land does not belong to Haifa he will go to Tulkarem. Tulkarem will say, that is Khor al Wasa' and we do not have an entry of Khor al Wasa' in our Registers. Whereas the finding is this, it therefore belongs to Hudeira and Haifa. The other side cannot come and apply for exclusion of Khor al Wasa' from the Settlement Area. They tried criminal proceedings against Abdel Fattah and Mr. Rutman and have disgracefully failed. The Director of Lands entered a form 30 of caveat in the Haifa Registers and we had to go to Court. Judgment was given by the High Court No. 40/30 (read out by Adv. Abcarius Exh. " v," p. 65). My submission is that in virtue of final judgment since 1925, which is still in force, Khor al Wasa' is a part of Hudeira, whether it appears on those maps or not.

Before going any further, I most earnestly urge this learned Court to consider at this stage the proceedings of all cases and give an interlocutory judgment.

Case adjourned to the 25th November, 1930, at 8.30 a.m.

40 The hearing was continued at Hudeira on the 25th November, 1930, at 8.45 in the presence of the following :—

Plaintiff I (principal plaintiff) present and other partners.

Defendants I (1) & (2) represented by Adv. Abcarius.

Defendants II (1) represented by Adv. Joseph.

(2) absent.

(3) absent.

(4) absent.

(5) absent.

(6) absent.

(7) absent.

50 (8) represented by Adv. Horowitz.

(9) absent.

(10) represented by Adv. Kaiserman.

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		III	(1) absent.
No. 62.			(2) present.
Plaintiffs'			(3) absent.
Documents.			(4) absent.
Record of			(5) absent.
Proceedings			(6) absent.
before			(7) absent.
L.S.O.			(8) present.
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Adv. Abcarious : I feel confident that the point of Law I raised yesterday is enough in itself to dismiss claimant's application for exclusion. I have a list of witnesses which I am prepared to submit, which will substantiate and support that Khor al Wasa' is a part of Hudeira. 10

Adv. Joseph : My first point is that the circumstances under which my clients purchased the part of Khor al Wasa' land belonging to them are such as to entitle us to a judgment to the effect that Khor al Wasa' is a part of Hudeira before the purchase of this land was effected. I proceeded to Haifa to verify the title they take ; that precaution in all cases. That is the practice followed in Palestine, particularly in this case, I was anxious to search the title properly because I have heard a good deal about it and it intended to create an atmosphere of doubt as to the validity of the title. I assured my clients that there could not be a better title for two reasons : I had the legal decision of the Haifa Land Court recognising the title of the vendors, I also had before me an agreement signed by His Excellency the High Commissioner. I advised my clients that there could not be a better title to the land. I submit that a person purchasing land is entitled to the protection of the Court. The question then arises as to what difference it really makes to us. My clients having particular interests in establishing a working settlement, they desire to foster the movement of agricultural establishments forming a part of the Colony, so that they could be satisfied. It is a big social experiment which is succeeding in Palestine. After a lot of considerations, they have selected the Colony Hudeira. It was satisfied that Hudeira was a better place than Petah Tikvah or Rehovoth, therefore the land was bought in Khudeira in which they invested thousands of pounds. They selected forty families who were brought from different parts of the country assuring them to be in the colony of Hudeira. We agreed to settle them in Hudeira otherwise we fail to fulfil the contract. Now it is being suggested, as I said, in my letter addressed to the Chief Secretary (the letter was read out), that the Government is against us. I submit that this is not the case. It might be the failing of some officer, for example Mr. Dukhan, I do not believe that the Government of Palestine will now turn round in spite of the fact that money was received, and change the sub-districts. I am entitled to rely on the conduct of the Government in asking this Court that Khor al Wasa' is actually Hudeira and not in Tulkarem. From the point of practical expediency and natural justice, Your Honour will be able to form a very good idea of the case. We have 85 persons out of 906 claiming a share in 5,000 dunums. The maximum of this claim is about 10 per cent. of the land, and on the other hand you have a situation where 90 per cent. of the land involved is declared as Tulkarem. The inconvenience alone is sufficient. The very fact that these people will be obliged to go for every 30 40 50

small thing to Tulkarem and have to appear before officers who do not know their languages, the very fact that they will not have the benefit of Hudeira for example, the supply of electricity, all sorts of difficulties and hardships will arise. These people will have been misled by the Registers of the Government. The circumstances require, Your Honour, to decide the land within the confines of Hudeira and not Tulkarem. Another point which was referred to by my friend Abcarius and which was not sufficiently stressed is that it is the first time that lands were taken from one village and added to another. The Land Settlement Ordinance gives powers to

10 attach pieces of land to another piece. When the Government entered into the agreement, they agreed that this part should fall within Hudeira. This was an Administrative act. The Government has powers and declared Khor al Wasa' to be in Hudeira. The Settlement Officer is bound to observe this decision. A great deal was made by the other side about Khor al Wasa' being of Zeita lands. They referred to the Nablus Court and various documents. Nablus Court does not mention Khor al Wasa' even once. They have not established an iota of evidence before Your Honour on which you should be entitled to decide that it belongs to Zeita.

20 All this argument of the other side is to throw sand in the eyes of Your Honour. As they are entitled to Raml Zeita they are not entitled to Khor al Wasa'. My final point is with regard to the legal position in which this Court finds itself. If I were conducting this case before the Land Court I would have made the preliminary objection. This case is a chose jugé : This issue is decided by a competent Court of Justice. There is the judgment of the Land Court Haifa and registration of this land was ordered in the name of the vendor as being in the district of Hudeira. It is a judgment given in which there was an inspection. The judgment of the Haifa Land Court was open to them to try and upset it. No attempt was made to upset it. It is my contention that it is a chose jugée. The

30 judgment of the Haifa Land Court is binding. My clients are still spending money and developing their settlement. I ask the Court that Khor al Wasa' is within the confines of Hudeira and not of Tulkarem.

Adv. Kaiserman : I would like to draw your attention to a few points. If we now go to the Land Court, it will be bound by its decisions. Salih Ismail and his friends have failed in all Courts. Now they are trying to get from this Court what they could not get elsewhere. It is really wasting money and time to discuss this once more here. A case which could not succeed in any court cannot succeed here. The first application of Mr. Kussa was to exclude Khor al Wasa' from Hudeira. Now the applica-

40 tion is, we admit that it is included and fraudulently included. I submit that Khor al Wasa' is included. If they think that it is fraudulently included they can bring an action before a criminal Court, and so long as they admit that it is included but wrongfully or fraudulently included, Your Honour cannot deal with the question whether it is properly or improperly included. The fact that the Kushans are Kushans of Hudeira ; the judgment of the 6th of May, 1925, deals with it as in Hudeira and the agreement of the High Commissioner referring to the Haifa Land Registry, this registration stands good and it is based on a judgment. The case of the other side should therefore be set aside. Judgment of Haifa was

50 given on payment of Haq al Qarar. Art. 70 of the Land Code was cited. Haq el Qarar is a purchase from the Government. The land was cultivated peacefully and they got the land against payment of Haq el Qarar. The

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Government got LP.1,000 for the alleged Mahlul rights. The Government sold it as Khor al Wasa' in Hudeira and Haifa District. The Government sold this land twice and twice were fees collected and receipts delivered through Officers in Haifa. There are sufficient grounds to dismiss the claim of the other side.

Adv. Horowitz :

I will just try to stress my principal points. Your Honour, my clients' position is like that of the clients of Dr. Joseph. Twice has the land been transferred. First to Mr. Eliash and his brother who planted it and erected on it, and subsequently the brother of Mr. Eliash fell ill and it was sold to my client. Both transfers were bona fide. He bought according to the final judgment of the highest tribunal. He bought after the agreement of the Government, when the land was declared to be in Hudeira, within the registers of Haifa. The root of title I bought was under apprehension of the Government whereby the predecessor, Abdul Fattah, paid Haq el Qarar. The title of Abdul Fattah was the best title in regard to Miri land. Twice had the Government received money and all transactions were carried out in the Haifa Land Registry. The great technicality is whether this land should be brought in Hudeira or in Zeita. As a matter of experience the Government has laid down the division between district and district, between sub-district and sub-district and between village and village. There is no law that we have to follow in any particular way. If they had done it openly, this is an effective declaration that such and such a land belongs to such and such a village. In that case, we have decisions from the highest Courts. You have the Land Department and particular competent authorities taking taxes and making compromises that this land is in Haifa district and nowhere else. It is a part of the village of Hudeira. The claimants themselves, when they came to this tribunal, they did not deny it. From the year 1925 by competent decisions and the *de facto* methods adopted by the Government this land has been included in Hudeira. They admit that since 1925 it has been included in Hudeira. In fact, my clients have paid the local rates and taxes to Hudeira and not to Zeita. We wanted the protection of Hudeira and we have done that. I submit that your function, at present, is to determine whether within what village this land falls and not to whom it belonged 50 years ago. If for the last five years it has been in Hudeira, how can they say that 50 years ago it belonged to some other village. They have not given prima facie proof. Remember, Sir, this case depends on collusion and fraud. That is really a necessary part of their case. Supposing they have no subject of collusion and fraud and supposing they merely had the Nablus judgment; the boundaries were never discussed there. In subsequent judgments the same things were discussed and in which judgments were given against them. They clearly could not have hoped to succeed. As regards collusion and fraud, they have not submitted a scintilla of evidence. As to the map without names, this was ruled by a Court. They brought an old map of Hudeira. This is not an official map, but it should be treated as a private document by the people who prepared it. If it were an official map, it would have been accepted in the Infiat Case in favour of Hudeira; it is entirely an unofficial map and cannot bind people who were not parties to it. This does not prove that Khor al Wasa' is not a part of Hudeira. This Court

cannot sit in judgment on a court of appeal. The proper step is that they must go to the competent tribunal. Now, Sir, what they are really trying to do is to get something from the Settlement Officer that they could not get elsewhere. They say that they have certain claims of ownership in certain parts of this land. Very well, we are not objecting to their trying those claims and the expeditious and effective methods would be to try them now, while Land Settlement of Hudeira is getting on. This land is to be immobilised for an indefinite period, as there is a claim of title against us. If Your Honour decide that this land belongs to Zeita, we cannot deal with our land, because we do not know what the decisions will be. When the Court gave the other side the opportunity they were slack. Their tactics are to get another opportunity to sleep on their rights. My submission is whether Your Honour looks at it from a point of law or general equity, there is no proof that it belongs to Zeita. I would like to point out that the case of my client is not subsidiary. We are the more interested than Mr. Abcarius. We have bought the land in a particular district with a view to be in a certain jurisdiction. We thought it best to be represented separately.

Adv Asfur: Your Honour, great stress has been laid upon a point of law which really should have been taken at the initial steps before Your Honour in the previous hearing. It is a preliminary point which should have been taken at the beginning of the proceedings and whereas it was not taken, it should be disregarded. The case has been heard on the claimant's side, from the point of documentary evidence. The counsel for Defendants has deliberately refused to put an objection after I had made my opening speech. This is recorded. After the case is being heard such preliminary objection cannot be entertained. Your Honour, it has been said and said too much about the judgments of the Haifa Court and the decisions taken by the Government. In both cases we are not concerned. Whatever the Government might have thought or done is not binding upon the claimants who appeared before you. We claim a title in this land which has been ours and which we have enjoyed from our grand grandfathers. There seems to be an intention of avoiding you to understand the article in the Land Settlement Ordinance; where there is Settlement, no claim can be entered into in any other Court, except in the Land Settlement Court. That Ordinance has extracted from the jurisdiction of the Land Court of Haifa all powers to deal with any property within the Settlement Area of which you are a Settlement Officer. To analyse the evidence submitted by the claimants in this case, Your Honour will presently see that Messrs. Fishmann and Bernblum have given us evidence of such value and importance, to say nothing of their posts in the Government. Their evidence alone is of unique importance in this case to show to Your Honour where is the original boundary of Hudeira lands. The map which was produced from the Hudeira Colony is not as unimportant as suggested by the other side. It is an old map which was made and registered and particulars of registration were very carefully made in the Colony Registers. These Registers show according to the evidence of Messrs. Fishmann and Bernblum that the Southern and Eastern boundaries of the land of Hudeira and Zeita lands and it is within that area of Khor al Wasa', which is a khor of several khors of Zeita. The lack of importance that Your Honour has attached to the map in the Infi'at Case does not in any way affect this case at all. In that case

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Exhibits. the map produced by one party as evidence for himself and in this case it was produced from a neutral part of this action. A map which was properly made to define the boundaries and limits of the Hudeira lands. Your Honour, in going on to the evidence of the Revenue Officer of Tulkarem, he tells you very plainly that Ard Raml Zeita with its Northern boundary Al Qaza, has been and did form a part of Zeita lands until the year 1926. Taxes have been paid on that land and they are up to now paid in Tulkarem. He has given us boundaries and a statement of the old registration. As opposed to that, we have the Revenue Officer of Haifa who also stated that this land Khor al Wasa' was an innovation 10
 in his Registers. It was only registered in 1926. There was no previous registration in it at all. Your Honour, another very important and most valuable witness was heard in this case, Mr. Hankin. He has recognised the map produced by us, and stated before Your Honour on what he was asked. I submit that this gentleman speaks nothing else but the truth. He indicated to Your Honour from the boundary A B C D . . . on the German map Exh. S/1 of (File No. 92/30 B) as being the boundaries of Hudeira. The other side has admitted the validity of this map. Therefore, nothing remains in this case. In fact the other side has entirely given in, in making such an admission. The question of these maps has 20
 been further carried to the Registers of the Hudeira Colony. In these Registers which are more efficient than any Land Registers one comes across in this country, there are also sketches of the land and diagrams showing the boundary of each number. When these numbers were applied to a map, they indicated boundaries on the map, as indicated by Mr. Bernblum. As opposed to these most valuable maps, the other party produced a map which was altered. Your Honour, if the Haifa Court had before it the map with Zeita written on it, it could not have assumed jurisdiction. It is that alteration which has, at any rate, given prima facie power to the Haifa Land Court to deal with that case as in Haifa. 30
 This map is nothing else but a scrap of paper after hearing the evidence of Mr. Epstein and Mr. Musallam, who prepared the map. As regards the judgment of the Haifa Land Court, I confine myself to an argument to challenge him. Your Honour will remember that Mr. Abcarius is dealing with the Nablus judgment, he said and laid great stress that the judgment was only operative on the parties that were in the action. He has very ably put the argument forward. I am not prepared at this stage to challenge him to argument. It is not a part of my duty to argue before Your Honour what was the result of the criminal case. I have never mentioned it in my opening speech, except for terms of giving the story 40
 of the case, but having great stress laid on that judgment, I feel I am obliged to reply as to what that judgment contained. It is wrong to state that the Court held that the alteration is not forgery. That judgment was, first of all, given on preliminary arguments before the case was opened. Several points were raised by the accused in that case, two of which were prescription and defect in information. Turning to the judgment of Nablus, it was one in which title was established to a person of Zeita, not because he had the name of Salih Ismail, but because he was a villager of Zeita. The Supreme Court held that the land belonged to all the inhabitants of Zeita. As regards the difference in boundaries, this 50
 was not a matter which could be raised. The parties did not have any doubt as to the jurisdiction of that Court. It was argued between the

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- parties in that case that the Court which assumed jurisdiction was the only Court of jurisdiction and no objection was raised. As regards the Haifa judgment, it is claimed and still claimed to be an entirely collusive action. As a proof of that we have, first of all, the fact that one of the Plaintiffs of the Haifa case was a Plaintiff in the Nablus case; and after having made apparently certain stipulations with other parties, he withdrew from the Nablus case and informed the Nablus Court by a notarial notice that he has no claim in that land. He goes on then to the Haifa Court and gets the valuable judgment. As I said, the Land
- 10 Settlement Ordinance has fortunately closed every Court for the litigants claiming rights in immovable property within the Settlement Area. It is with this law, Your Honour, may I say, this fortune we have come here to attack every action that has been done by a Court of law or Government to prove the invalidity of those acts and pray to give us our rights which have been devoured for some time. In dealing with land matters under Settlement Your Honour holds the same powers as a Land Court of First Instance before Settlement. Prescription does not confirm a title. It acts only as an estoppel. This judgment was given by the Court of Appeal on the able argument of Mr. Abcarius himself.
- 20 If you leave all the evidence submitted and take the Haifa judgment as it stands, it is in favour of the Plaintiffs who got a prescriptive title; Your Honour, it is ridiculous to put one side of this judgment and try to fight a case of this sort. Much stress has been laid on the judgment of the Haifa Court. I submit, Your Honour, to be fair if a quotation or reference is made of a document, the document should be fairly represented. In reading that judgment, nothing appears as to the merits of the claim. It is simply a point of procedure which was confirmed by the Court of Appeal. I am sure that Your Honour is not going to believe that that judgment had any bearing on the case
- 30 of Salih Ismail. The Haifa Court simply said that this man not being a party at all, his case is dismissed, and the others may continue whatever they like. This deals with the arguments put forward as against evidence that has been tendered before Your Honour. I refer you to the agreement made between the High Commissioner and Miss Aaronson. In that agreement, Your Honour, nothing is binding on us, but with which the Defendants are bound. It might not be strictly my duty to defend the reputation of the Government which was very badly attacked. I submit that under the circumstances no such statements could be made. Your Honour, the registration of the Defendants in the Haifa case says that the
- 40 Southern boundary of their land is the well known ard of Qaza. Another point which will interest you on the question of boundaries, is the Eastern boundary of this land, called Kazza, and of the Western boundary Infi'at. If the contention of the other side were correct and that the land was in fact a part of the Hudeira lands, we should find in the old registration of Hudeira something in addition to the word of Kazza on the Eastern boundary and Infi'at on the West. In this case, Your Honour, it will be seen this Kazza which is a swamp and runs from the North-Eastern angle of that land to the Eastern boundary and only to middle of it and does not reach the middle of the Northwards. The same point also will
- 50 represent itself as regards the Western boundary, where Infi'at lands run approximately on the West to the same point to which Kazaza ends. The whole point in this case, I submit, is to determine the Southern

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boundary of Hudeira on the land and give the name of the boundary, which we submit to have the name of the well known road of Qaza. And to amend the Northern boundary of Ramel Zeita which is the Qaza'. On verifying those two registers which have been produced in evidence, Your Honour will see that the Southern boundary of Hudeira is Qaza and the Northern boundary of Zeita is Qaza. Therefore the matter becomes very simple after Your Honour has heard the evidence to determine what is and where is the well known road of Qaza. This, of course, to say nothing of the natural boundary that will appear to you on the spot and the line of eucalyptus trees which coincide exactly with the maps that have been produced, namely, the big map of Hudeira (Exh. " v " of File No. 92/30 B) and the German map (Exh. " S/1 " of File No. 92/30 B). They coincide angle by angle and metre by metre. To determine these points would be to dispose of this case. A great deal of argument has been put forward which is really irrelevant to the facts, about the reasons why we claim that this land is of Zeita and that we went to sleep over our rights. This is a wrong contention. Our only view is to dispose of this matter as quickly as possible and besides, Your Honour can declare to-morrow morning this land of Zeita under settlement. We come to Your Honour and ask that justice be done in this case, not only on question of equity, because this is the only defence the other side can put forward under the circumstances, but on the grounds of documentary evidence. On the grounds of evidence that cannot be rebutted in any way : the officer of the Land Registry, its map, the actual well known road which still exists, and the Qaza itself and the eucalyptus trees which coincide with those maps very strictly. The claimants are the owners of the land and were deprived of it in improper manners. Dr. Joseph stated this morning that he heard rumours which gave rise to doubt of the title and he took the trouble to investigate the title. Whether it was a good title or not, it was not a full title. This purchase was more or less a speculation. If the vendors fall, they fall also. To say nothing of the old and long established principle of law, that you cannot sell what you do not have and a person holding a title in any property does not enjoy more rights to that title than what his predecessors entitled him. I submit, Your Honour, that this is not the place for it to be discussed. This deals with all the arguments put forward. Your Honour will be much more impressed with the actualities of this case, in addition to the voluminous evidence that is now before you and naturally you will have your surveyors to read the maps for you and to fix the boundary on the spot.

Hearing adjourned for 30 minutes.

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ORDER :

The preliminary issue now before the Settlement Officer is to decide whether the area in dispute is situate within the boundaries of the village of Hudeira for the purpose of settlement and thus comes within his jurisdiction in virtue of the Notice issued in May, 1929, under Section 5 (1) of the Land Settlement Ordinance, 1928-30, declaring Hudeira to be a village under Settlement.

The Plaintiffs to the action have submitted that the area in dispute is part of a tract of land which formed the subject matter of an action in which the Land Court Nablus gave judgment on 14.4.24 that that land

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was Musha' land of Zeita Village, and each of the Plaintiffs in the action should be registered in the Land Registry as being the owners of one share out of 906 in this Land. This judgment was confirmed by the Court of Appeal on 20.1.25. The Defendants, however, have shown that the land in dispute was registered in the Haifa Land Registry in the name of Abdul Fattah Mar'i es Samara and partners, the predecessors in title of the Defendants, by order of the Execution Officer, Haifa, dated 14.5.25. The registration was effected in accordance with a map by virtue of a judgment of the Land Court Haifa dated 6.5.25 (Exh. "w" of File No. 92/30 B) which was presented by the Defendants, and which Adv. Asfur representing certain of the Plaintiffs to the present action, admits covers the area in dispute.

The latter judgment was not appealed but a certain Selim Samara al Khatib and another subsequently entered an opposition in the Land Court, Haifa, against the judgment of 6.5.1925, and included among the Respondents certain persons who were not parties to the original action, and on these grounds the claim of the opposer was dismissed, and this judgment was confirmed by the Court of Appeal on 6.5.1926.

The Settlement Officer is informed that at the time judgment was delivered, the opposer was notified that his remedy was to bring a new action in the competent Court. In spite of this, no new action was brought by the opposer or other persons claiming similar rights until Settlement was commenced in Hudeira in May, 1929.

Subsequently to the judgment of the Haifa Land Court of 6.5.25 Abdul Fattah Mar'i es Samara and partners transferred the area in dispute to Mrs. Toba Rutman and Miss Rifka Aaronson who have in turn sold considerable portions to the other Defendants in this action, many of whom erected buildings and made plantations. These transactions were effected in the Land Registry of Haifa.

It is claimed that the original registration in favour of Abdul Fattah Mar'i es Samara and partners was obtained by fraud and by a collusive action before the Courts, but the charges of fraud were not substantiated both in the case of Samara and of Nissan Rutman before the competent Court.

The Settlement Officer is thus confronted with the position of a tract 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.

Hudeira 25.11.1930.

Settlement Officer,
Jaffa & Hudeira Settlement Area.

Note by the Settlement Officer read out in Court.

It is desirable now to hear arguments as to whether the Settlement Officer's Court is the competent Court to hear actions the object of which

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is to render nugatory a judgment of a higher Court, namely, that of the Haifa Land Court, dated 6.5.1925. On the other hand Section 27 (2) of the Land Settlement Ordinance 1928-30, provides that if there are conflicting claims between two or more claimants, the dispute shall be heard and determined by the Settlement Officer, but there is some doubt whether this power extends to hearing actions which have the object of quashing a judgment of a superior Court.

There appears to be the following alternatives :—

(A) That the Settlement Officer should now hear the claims of the Plaintiffs and the Third Parties as prescribed in Section 27 (2) 10 of the Land Settlement Ordinance, 1928-30.

(B) That the Settlement Officer should record in the Schedule of Rights the persons whose claims to ownership are supported by registration in the Haifa Land Registry, originating in the judgment of the Haifa Land Court, dated 6.5.1925 and at the same time granting leave to any persons to enter an opposition to that judgment or to bring a new action in the Haifa Land Court after publication of the Schedule of Rights.

(c) That the Settlement Officer should refer to the Land Court of Haifa the question of the effect on his jurisdiction of the 20 judgment of 6.5.1925. Is such a judgment an "Instrument" within the meaning of Section 29 (1) (a) of the Land Settlement Ordinance, 1928-30.

Adv. Asfur : I made the submission that Your Honour had jurisdiction in accepting attacks on the judgment of the Land Court. Since promulgation of the Land Settlement Ordinance, the Settlement Officer appointed under the Ordinance have taken, in certain respects, the power and directions given to Land Courts as a Court of First Instance. The Land Court, Your Honour, before the Land Settlement Ordinance, was the Court of First Instance in all disputes arising out from immovable property, 30 rights in and on immovable property. Such powers Land Courts have ceased to possess in all immovable property falling within an area under Settlement. Your Honour is the best expert in this Land Settlement Ordinance and the jurisdiction in it, where the powers that are conferred upon you in that Ordinance are, inter alia, the powers of the Land Court. I submit that the Land Court is not a higher Court than Your Honour's Court. The Land Court has been given higher powers after the promulgation of the Land Settlement Ordinance and particularly after the publication of the Notice of Settlement in the area of Hudeira, Your Honour's Court has been the substitution for it. Your Honour, had it not been for 40 the strict provisions of the Land Settlement Ordinance, Section 6 as amended, no claim whatsoever concerning immovable property should be entered in any Court if the property falls within a village under Settlement ; we should have gone to the Haifa Court as directed by Your Honour's order. We are deprived from going anywhere else to put our claim, except before Your Honour's Court. Your Court is the only Court competent to deal with that judgment. It is matter which is entirely supported by express law.

Adv. Abcarius : In Section 27 (2) of the Land Settlement Ordinance, the Settlement Officer has power to determine conflicting claims. As 50

regards Section 29 (a) the word "Instrument" includes judgment. The definition is given in the beginning of the Ordinance. The validity of a judgment is only the face of it. It does not mean that the Settlement Officer can go into the merits of the judgment of higher Courts and say whether they are right or wrong. It will be violating the principles of law. That is the only interpretation I can give with little preparation I made.

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Adv. Joseph : Once there is a judgment of another Court the Settlement Officer is bound by it. The Settlement Officer should see whether the judgment is genuine or authentic or not. My submission is that the Settlement Officer cannot sit in review of judgment of another Court.

Adv. Kaiserman : It is correct that no fresh cases be made in the Land Settlement Area. This being an old case it should go to the very same Court. It is specially laid down by the Code of Civil Procedure, Art. 164 (read out).

Adv. Horowitz : I would like to put my view. As I understand, an opposition was brought in Haifa Court and was dismissed and the Court of Appeal said that it will let the other party bring a new action. If they want to attack the judgment, they can do so before the Haifa Court. The other side state that they have owners rights, you have to decide that. If you find great difficulties of law, I think you have the right to refer. The other side should open the case and state the grounds of ownership.

Order as to payment of Witness Fees.

I order that the Plaintiffs : Amna Daoud Anabusi, Jamil Ibrahim al Yusuf and Abdel Rahman al Hassan el Massadi shall pay the following indemnities to the witnesses named, who were summoned at their request. Plus cost of execution of this order if necessary and fee of Court.

	Yusuf Musulman of Haifa	LP.1.500 mils
	Arif Massif of Tulkarem	-.700 mils
	Abdel Rahim Haj Samara of Tulkarem	-.700 mils
30	Saleh Saada Jallad of Tulkarem	-.700 mils

Hudeira 25.11.30.

Settlement Officer,

Jaffa & Hudeira Settlement Area.

The case was adjourned to the 16th and 17th of December, 1930.

The hearing was resumed at Hudeira on the 16th December, 1930, at 8.45 a.m. in the presence of the following parties :—

Plaintiff I (principal Plaintiff) present and other partners.

Defendants 1 (1 & 2) represented by Adv. Abcarius.

40 *Defendants* II (1) represented by Adv. Joseph.
 (2) absent.
 (3) absent.
 (4) absent.
 (5) absent.
 (6) absent.
 (7) absent.
 (8) represented by Adv. Horowitz.
 (9) absent.
 (10) represented by Adv. Kaiserman.

<i>Exhibits.</i>	<i>Third Parties</i>	II	present.
		III	(1) absent.
No. 62.			(2) present.
Plaintiffs'			(3) absent.
Documents.			(4) present.
Record of			(5) absent.
Proceedings			(6) present.
before			(7) present.
L.S.O.			(8) present.
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Adv. Asfur : On the point of inspection I submit to Your Honour's 10
order a list of the witnesses to be summoned which was prepared. In
the last proceedings, the representatives of the Defendants put forward
that Your Honour is not entitled to go back to a judgment of a higher
Court. I said that the Land Court of Haifa at the time of giving the
judgment was a Court of First Instance. Now, after the Settlement,
the Land Court was given higher authorities. This is an intricate point
and unless this point is decided, I submit that there is no need for inspection
at this stage of the proceedings. If Your Honour is going to hold, as we
hope you will not hold, that you are not entitled to deal with the Haifa
judgment, the case rests there. If, on the other hand, you decide that you 20
can deal with this case, the case can go on. In Section 29 (a) of the Land
Settlement Ordinance, a judgment is nothing but an instrument. In
making this law the legislature had in view such documents. In the
definition the word "Instrument" includes any deed, judgment, order
or other document requiring or capable of registration under the Ordinance.
Your Honour, under the Code of Civil Procedure, it follows in this Court,
as in any other Court, that where a judgment is given by a Court of Law,
and there is a party interested in that judgment, it has the right to bring
a new action (I'tirad al Gheir) and set aside the former action. In this
case such an opposition should have lied to the Haifa Land Court, but as 30
the Land Settlement Ordinance has stopped the Haifa Land Court from
dealing in all matters of immovable property, such powers were conferred
to Your Honour, according to Section 6 of the Land Settlement Ordinance
as amended. An action of a Third Party attacking a judgment is made by
entering a claim before a Land Court. The Section of Law of Civil
Procedure referred to is 161 :—

" If in any suit a judgment be given which is prejudicial to the
interests of a third party who was not present and was not one of the
parties to the suit, that is to say, a party who was not summoned
to attend the Court either in person or by attorney and who made no 40
application to be joined in the suit, such third party shall have a
right of opposition against such judgment."

and Section 164 :—

" Principal opposition shall be made by presenting an applica-
tion according to the ordinary procedure. Such application shall
be transferred to the Court which gave the judgment or order against
which opposition is made, and that parties shall be summoned
to appear under the ordinary rules."

This case should be began as an ordinary action ; it is nothing else
but a new action. Our case is further strengthened by the Settlement 50

Ordinance itself where it says that any person claiming any right should put a claim before the Settlement Officer. We are persons claiming rights in a Land Settlement Area. The previous case does not concern us at all. The claim as filed is entirely independent.

10 *Adv. Abcarious* : I think that the matter is very simple indeed. There is no doubt that an opposition is not and cannot be treated a separate action. The meaning of opposition is to oppose a judgment by some party who claims to be interested in that case. It is nothing but reopening the same case. It is imperative that the opposition should be made in
 10 the same Court. It is not a question of Settlement. The opposition by a Third Party as in Art. 161 of the Code of Civil Procedure, is reopening the case. You will find that in Art. 164 of the Code, it is clearly stated that an opposition cannot be heard except by the Court which gave the judgment. You cannot oppose in another Court. You cannot go to the Jaffa Land Court and oppose a judgment given by the Haifa Land Court. All that is meant by this opposition is reopening the case. The fresh action cannot annul the judgment already given. It must reopen the case and give a judgment, either confirming the previous judgment or giving another judgment. In the Haifa Court it was stated that no
 20 opposition could lie against Aaronson and Rutman and this was confirmed by the Court of Appeal (Exh. "v" page 22 of File No. 92/30). If an opposition should be made, it must be made to the same Court which gave the judgment, and there were two fruitless attempts of Sheikh Saleh el Khatib and the Attorney General. After Your Honour has decided that the area in dispute is within the Hudeira Settlement Area according to the last paragraph of your order in the last proceedings, nobody can prevent any person from coming and claiming any part of this land as his own.

30 As regards Art. 29 (A) of the Land Settlement Ordinance, no difficulty should arise therefrom. If a question arises as to the construction of a document, Your Honour may ask the Land Court what is its true construction. There is no ambiguity about our judgment because they have been executed. The question of validity has not arisen. All these judgments were confirmed by the Court of Appeal and were given effect to. Anybody can come and claim whatever he owns. Judgments cannot be upset or attacked in this Court. Your Honour having declared this land to be within the Hudeira Settlement Area, anybody can come and claim his right of ownership. There is no question of inspection of boundaries.

40 *Adv. Kousa* : I wish to remove any misunderstanding that we are pursuing our claim as a third party. Our claim is entered before Your Honour as a separate action which has no connection with the action which was brought before the Haifa Land Court. This is an entirely foreign action so far as the rights of our clients are concerned. Hence, under the Land Settlement Ordinance, no action can be taken except before Your Honour. That is clear from Section 6 of the Ordinance. It is not our intention to be a third party. The judgment of the Land Court of Haifa in the opposition case dictates clearly that any person having any claim should bring a new action. If it is a separate action,
 50 it can only be brought before Your Honour.

Hearing adjourned for 20 minutes.

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 No. 62.
 Plaintiffs' Documents.
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Exhibits.

INTERIM ORDER.

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Although a judgment was given by the Land Court, Haifa, and confirmed by the Court of Appeal regarding the subject matter of the present claims, 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 this 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. 10

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 to 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 the publication of such Notice is that the only Court now possessing jurisdiction is that of the Settlement Officer.

Hudeira 16.12.30.

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Settlement Officer,
Jaffa & Hudeira Settlement Area.

Adv. Asfur : Your Honour, the first step as regards our claim seems to be this ; on our file there was produced a judgment of the Nablus Land Court which was confirmed by the Court of Appeal, in which it was found as a fact established by law that the land we claim forms a part of Raml Zeita and has been held in common or Musha' among the Zeita Villagers, as many as are in the list produced before the Court. As against this legal and effective instrument, the principal Defendants in this case, who are Mrs. Toba Rutman and Miss Rifka Aaronson, have obtained registration. 30 We produced evidence of title against this, there is a judgment of the Haifa Land Court. The first step of Your Honour is to see whether the judgment of the Haifa Land Court should stand or be quashed. If you say it is defective, there is no case for the Defendants.

Settlement Officer : You have to bring positive evidence. Your first step is to show that the plot of Khor al Wasa' is claimed by you.

Adv. Asfur : Your Honour will appreciate that the Haifa judgment itself was built and based on the evidence that this land was a part of Hudeira. Your Honour has observed the concrete, written evidence that this land is not within the Hudeira lands. If the Haifa judgment falls, 40 the only claim which remains is that of Zeita, and that is ours. I have observed in the room of the Committee of Hudeira a map of the Colony and I pray that the map be produced before you and hear evidence on it. Your Honour, if the case of the Defendants falls, the question of Settlement of this land as among the Zeita villagers themselves will be a very easy and feasible process, as there is no dispute among them. If Your Honour will see it fit to divide the land into plots, this will be done. If Your Honour holds that the Haifa judgment is a good judgment in substance and that the evidence you have heard is not sufficient to reserve it, I might say that Zeita has no leg to stand on. This is all the point of the case. I submit, 50

before going any further, that Your Honour decide this point. If this judgment falls, the case is finished. Your Honour will see that the Nablus judgment was never contested. In order to elucidate the issues of the case, the only position rests on the Haifa judgment.

Settlement Officer : The first point is to prove that the Nablus judgment applies to the land.

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Adv. Abcarius : One of my points was that we are confronted with 87, so to speak, claimants who come here and who were no parties to the action. The Court of Appeal stated that anybody who owned land had to prove his title before the Nablus Court, not collectively, but each one should claim individually. At present, all the claimants must be dismissed under Art. 68 of the Code of Civil Procedure. Only four or five among the 87 have got Kushans in their names. Therefore, it seems to me that the only logical or legal way is to produce Kushans in their names and then prove that they cultivated and possessed the land. The legal standing of these people is nought. They cannot rely on somebody else's title. The judgment states distinctly and expressly that each individual should prove his title. My submission that the 87 claimants should go to the Nablus Court, obtain Kushans in their names for their respective shares and then come here and claim their rights in Khor al Wasa'. Last time, I analysed the first judgment which was set aside by the Court of Appeal on this point.

Adv. Horowitz : There is no evidence that all these claimants are villagers of Zeita.

Adv. Joseph : Because of the fact that a judgment was given can a man of the street come and say that he challenges our title ?

Adv. Kusa : We will let the people come and swear that they are the villagers of Zeita.

Adv. Abcarius : Who are the three or four registered claimants ?
 30 The names of these three are not in the body of the judgment ; they are on the list.

Adv. Horowitz : May I apply to have the names of the 84 and 3.

Adv. Asfur : There is an established fact recognised by a Court of Law that Raml Zeita is held in common. If it is desired, we will bring all the villagers of Zeita. (Citations were made from the Nablus judgment.) The list of distribution is an essential part of the judgment.

Adv. Abcarius : The Nablus judgment did not say that the land be registered in the names of the 906. It expressly stated that each one had to prove his title separately. The logical part of the judgment is
 40 this : Some might have died without issues ; others might have left the country ; and others might not have cultivated or possessed the land at all. These people have to go to the Nablus Court, get their kushans and then come here.

Adv. Asfur : The Nablus judgment said that Raml Zeita was registered in the names of certain inhabitants and was the property of Zeita as Musha'. The judgment did not say : to prove the title, but the shares. The title is an established fact.

The Nablus judgment was read out in Arabic by the Court Clerk.

Adv. Horowitz : May I draw your attention, Sir, to one point which
 50 seems to be overlooked by the other side. We are holders of Kushans

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of the land in dispute. We are the ostensible owners with registered title at the present time. The other side must prove superior title to ours.

They must prove—

1. that they are villagers of Zeita.
2. that they have rights of possession or cultivation,
3. that the land referred to in the Nablus judgment is the land which is the subject matter of their application, as Zeita and Khor la Wasa' are two different names.

The Settlement Officer read out the judgment of the Court of Appeal which was remitted to the Nablus Court. 10

Adv. Asfur : The only direction which was set to the lower Court by the Court of Appeal was to prove the extent of the share.

Adv. Abcarius : Whatever direction was given, one thing is certain, that this judgment was set aside and sent back to prove whatever was the extent or quantity. The present claimants did not comply with the terms of the judgment, therefore they cannot derive benefit from it. I can assure the Court that there are some persons claiming land whose names are not in the list of the 906.

Adv. Kusa : We are coming to prove the extent of the share.

Adv. Abcarius : Can he come to prove the extent of the share in this Court? It is absurd. 20

INTERIM ORDER.

The Settlement Officer disagrees with the contention of Mr. Asfur that if it be established as a fact that the land in dispute is not or was not at some time in the past included within the boundaries of Hudeira, the judgment of the Haifa Land Court of 6.5.25 can be ipso facto ignored by him. It is necessary that the Plaintiffs produce positive proof that the land in dispute is a part of the Musha' lands of Zeita.

As regards the contention of the Defendants that it is necessary that each of the Plaintiffs should as a preliminary prove his title, the Settlement Officer draws attention to the following provisions of the Land Settlement Ordinance 1928-30 :— 30

Section 16 (4) providing that the appearance of one or more of the co-owners of a parcel shall be deemed to be the appearance of all the co-owners, unless the Settlement Officer otherwise directs. Section 27 (1) providing that the Settlement Officer shall investigate *publicly all* claims.

Section 27 (4) providing that if the Settlement Officer is satisfied that any person who has not presented a claim is entitled to any right to land, he may proceed as if such person had made a claim within the time prescribed. 40

It seems clear from the foregoing to the Settlement Officer that the position with regard to the investigation of claims under Settlement differs fundamentally from the procedure in an ordinary Court of Law. He must investigate the rights of all persons. It is not sufficient that the mere fact that a group of claimants bring an action before him against another group of claimants justifies him in recording in the Schedule of Rights the successful parties in the action as owners of the land in dispute. He must decide if the successful parties are themselves entitled

to be recorded as owners. In the present action the Settlement Officer has been made cognisant of disputes regarding the ownership of the land known as Khor al Wasa' and he must investigate fully the rights to the land.

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continued.

The Settlement Officer is of opinion that the effect of the judgment of the Court of Appeal in Land Appeal No. 59/23, Nablus, dated 1.10.1923, is that although the judgment of the Nablus Land Court was set aside, the view of the latter Court that the land is Musha' of the village of Zeita was upheld and the case was remitted for the Plaintiffs to prove the extent
 10 of the share they claim in the lands in suit. That judgment and the subsequent judgment of the Land Court, Nablus, dated 14.4.1924, do not in the opinion of the Settlement Officer bear any claimants other than those who were parties to the cases referred to from bringing an action to prove their rights in the Musha' lands in question, and as result of the Interim Order of the Settlement Officer that the land in dispute is included for the purpose of Settlement within the boundaries of Hudeira, such other claimants are now barred from bringing an action in any Court other than that of the Settlement Officer.

The Settlement Officer decides that the issue of whether the lands
 20 in dispute in the present action form part of the Musha' of Zeita referred to in the judgment of the Nablus Land Court and the Court of Appeal shall be first dealt with and for this purpose he will proceed to inspect the land and hear the witnesses which are available to give evidence on the boundaries.

Hudeira 16.12.30.

Settlement Officer,
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Adv. Joseph : I apply for the list of witnesses to give evidence on the boundaries.

30 *Adv. Asfur* : It has been submitted already to the Court.

Hearing adjourned to 2.30 p.m. for inspection of the land and hearing of evidence on the boundaries.

Hearing resumed at 2.30 p.m. on the ground of Khor el Wasa'.

Witness for Plaintiffs : GUEDALIAHOU WILBUSHEVITCH—sworn—
 aged 66.

I cannot identify this map (Exh. "v" of File No. 92/30 B). I made a smaller one (Exh. "S/1" of File No. 92/30), which is a copy of the original. I made the original map. It bears my signature. It was prepared in about 1893; about 38 years ago. I can read only what is
 40 written on it. I made the map for the Colony of Hudeira. The area shown on the map is not the correct area. I see the line marked A B C D E. According to the map which I prepared, this line is a boundary between two sets of land. The map does not indicate the North. The North should be at the top of the map. According to the map, the line marked D E is the Eastern boundary of Hudeira and the line marked C D is its Southern Boundary. The line E D on the Colony map (Exh. "v" of File No. 92/30 B) is approximately the same line shown on the German map (Exh. "S/1" of File No. 92/30 B) as E D. The line C D on the Colony map (Exh. "v" of File No. 92/30 B) is approximately the same line C D on the German map

Exhibits. (Exh. "S/1" of File No. 92/30 B). According to the German map (Exh. "S/1" of File No. 92/30 B) the line E D on its southern part 'Attil and on its Northern part Zeita; while on the Colony map (Exh. "v" of File No. 92/30B) it is shown as Khor al Wasa'. The area shown on the Colony map (Exh. "v" of File No. 92/30 B) as Khor al Wasa' is indicated by me roughly on the German map (Exh. "S/1" of File No. 92/30 B) as the line of F G H.

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Cross-examination by Adv. Abcarius : There was a dispute between Mr. Hankin and the Colonists of Hudeira, and I made the map to reconcile between them. I made the map in accordance with the instructions of Mr. Hankin and the Colonists of Hudeira. The Colonists went along the boundaries and pointed them out to me. I am not from the people of Hudeira. I have no knowledge either of the boundaries of Zeita or Hudeira. The Western boundary is shown on my map as the Sea and the Southern boundary as Wad el Hawareth. The Western and Southern boundaries of Hudeira were marked on the German map (Exh. "S/1" of File No. 92/30 B) as Z Y X; and the Northern boundary was marked as Z W. The lands of Hudeira are approximately between the letters Z Y X W. As regards the area marked C B A, I do not know if it is excluded from Hudiera, because the word "Hudeira" appears on that spot on the map. The points C B A on the German map (Exh. "S/1" of File No. 92/30 B) are approximately the same as C B A on the Colony map (Exh. "v" of File No. 92/30 B). The area between the letters C B A is written as Hudeira on the German map (Exh. "S/1" of File No. 92/30 B) while it is shown as Zeita on the Colony map (Exh. "v" of File No. 92/30 B). This map was prepared for the Colony; I do not know if the Government ever used it.

Cross-examined by Adv. Horowitz : At the time I prepared the map, there were certain persons, namely, Ram, Nahamovsky and Yankel Samsonoff, who accompanied me in showing me the boundaries. Samsonoff was a boy of about 15 or 16. He was my assistant who accompanied me and carried my instruments. He was a developed boy. I heard of his death recently. It might be that ages in Russia are inaccurate. Mr. Hankin did not go around the boundaries. He used to live in Jaffa. During all the time, people of Hudeira accompanied me, showed me the boundaries, and I prepared the map accordingly. The dispute was between the residents of Hudeira and Mr. Hankin.

Cross-examined by Adv. Joseph : I made what I was told. The map is not correct and so cannot be used. It does not represent the land at present. I do not know what happened in Hudeira after the preparation of the map. I was an architect and made this map casually. The computations and calculations were made by Mr. Lubman. The reasons of preparing the map was to make peace between conflicting parties, and that is why an incorrect area was inserted. The scale and calculations were made by Mr. Lubman.

Mr. Wilbushevitch's evidence will be continued to-morrow.

Witness for Plaintiffs YUSUF : MUSALLAM—sworn—aged 36.

Mr. Epstein sent me and Mr. Vilensky to make this map (Exh. "w" of File No. 92/30 B). The road on which we are now standing stretches from the point D on the map Eastwards. The line of eucalyptus trees we

see on the West, is shown as D F approximately on the German map (Exh. "S/1" of File No. 92/30 B) which I think corresponds roughly with the Western side of Khor al Wasa' map (Exh. "w" of File No. 92/30 B). The house shown on this map (Exh. "w" of File No. 92/30 B) is the house 200 metres East, approximately.

Cross-examined by Adv. Abcarius : The Eastern boundary is shown on the map (Exh. "w" of File No. 92/30 B) is a marsh called Kazaza and further South is Birkat Nuriya.

Cross-examined by Adv. Kaiserman : On the Southern part of the Eastern boundary of the map (Exh. "w" of File No. 92/30 B) is written sand dunes of Zeita. I have been on the boundary and actually saw sand dunes. When I came to this land, it was already cultivated. The map was signed by Mohamed al Nimer and by the Mukhtar of Infi'at and other notables. When I prepared the map, there was the Mukhtar and many people of Zeita. I do not know Abdel Fattah.

Witness for the Plaintiffs : AREF EN NASHIF—sworn—aged 53.

I am from Teiba village of Tulkarem sub-district. I was employed by the Government as estimator and inspector. I was appointed in about 1921. I know the land of Khor al Wasa'. I used to come for the estimation of the crops. This locality is called Khor al Wasa'. I do not know if it has another name in the Government. The crops belonged to Abdel Fattah and other people of Zeita. The crops that were cultivated here were : barley, wheat, subeila (oats) and battikh (water melons). I do not remember the last time I came here. I used to send my returns and reports to the Kaim Makam of Tulkarem. The land was assessed as belonging to Zeita.

Cross-examined by Adv. Abcarius : I worked as estimator for one year and an Inspector for four years or five years ; then somebody else was appointed. The last time I came here was about three years ago, on inspection. Zeita people cultivated the land and Abdel Fattah was among them. I did not see any Jewish people here. At that time the house of Abdel Fattah was existing, but I do not know when it was built. When I first came, it was there. Three years ago I did not see either Jewish Settlement or any orange groves. We used to go to the threshing floors and assess the crops, and not on the land.

Cross-examined by Adv. Kaiserman : In 1921, I saw Abdel Fattah and other people of Zeita. I do not know how many people of Zeita were cultivating the land in 1921. The threshing floor for this land is close to the house of Abdel Fattah. This was Khor al Wasa' threshing floor. There is another threshing floor in Zeita village. The threshing floor of Zeita was much bigger than this one. I cannot say whether the threshing floor of Khor al Wasa was used by some people of Zeita or by all of them. I do not know the divisions among the inhabitants. At the present time I am an Inspector of commuted tithe in Tulkarem. For two years I have been an Inspector of commuted tithe schedules. I do not know if Khor al Wasa' belongs now to us. The last time I came here, Abdel Fattah was in the house. I do not remember how much tithe we used to take : it is recorded in the registers. I do not know if Abdel Fattah used to lease land. I used to estimate all the lands of Zeita. I do not remember the names of all the localities. We used to assess the crops from the eucalyptus trees on the West up to the land of Zeita.

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Re-examined by Adv. Asfur : I said that this land used to produce battikh. The crops were estimated on the land and recorded in the books of Zeita.

Witness for Plaintiffs : ABD ER RAHIN ES SAMARA—sworn—aged 50.

I am originally from Suffarin, living at present in Tulkarem. I was employed as estimator from the year 1923–1924 and onwards. I was an estimator and Inspector. I know the land in front of us ; it belongs to Zeita. Its name is Khor al Wasa'. Zeita land is divided into Hamra land and Raml land. This is a part of Raml Zeita land. I assessed winter and summer crops. On the South where the Jewish Settlement is situated, I assessed standing turmus. I was appointed by the Government of Tulkarem. I used to make my records in the Zeita Register and submit it to the Government of Tulkarem. Water melons were assessed on the ground. The winter and summer crops belonged to the people of Zeita. I do not know the boundaries of Khor al Wasa'. I do not know the name of the road on which we are standing. I have never estimated to the North of the land of Khor al Wasa'. The land to the West of the eucalyptus trees and to the North of the road belongs to Hudeira. The boundaries of Khor al Wasa' on the West and on the North are visible, but on the South there are no natural boundaries. 10 20

Hearing adjourned to the 17th December, 1930, at 8.00 a.m. on the ground of Khor al Wasa'.

Hearing resumed on the 17th December, 1930, at 8.00 a.m. on the ground of Khor al Wasa'.

Cross-examination of Abdel Rahim es Samara by Adv. Abcarius : I am now engaged in commuted tithe. I inspected in about the years of 1923–1924–1925. I do not remember if I came here in 1928. The last time I came was in about 1926–1928, when I estimated dura on the threshing floor. I have not seen the land planted with dura. The threshing floor was near the house of Abdel Fattah. We used to estimate there all the cereals with the exception of turmus, which was estimated while standing on the ground. I estimated standing turmus where the Jewish Settlement now stands. I came here in about 1923–1924, accompanied by a clerk and by the Mukhtar. I used to have a different clerk in summer and in winter. I have estimated crops East of Sharkas. The Mukhtar and the villagers used to show me to whom the crops on the threshing floor belonged. I do not know if Sharkas belongs to Haifa. 30

Cross-examination by Adv. Kaiserman : I have assessed a threshing floor of barley and oats to Hassan el Faris. I might have entered the whole crop as barley as there was no heading for oats. I have never assessed any other oats except for the Jews. I know Abdel Fattah. I used to sleep on his threshing floor. He used to supply me with food and bed. There was a number of people who cultivated this land. I did not know how many. I did not see people of other villages. I remember that the Government instructed us to write the names of the localities ; I am not sure if we always did so. I used to assess different localities each season. I know Raml Zeita. It stretches from the eucalyptus trees on the West running Eastwards. At the time of the estimation, the elders used to point out the boundaries of the land, and they pointed out this land as being Khor al Wasa'. I do not remember if I recorded the name. 40 50

Zeita also has a threshing floor, which is bigger than that of Khor al Wasa'. I came here in about 1926-1927, and estimated a threshing floor of dura which belonged to Abdel Fattah and his son. The share of the crops of the villagers was larger than that of Abdel Fattah.

Cross-examination by Adv. Joseph : At the beginning of the assessment in about 1923-1924 I was told by the elder of the village that this land is Khor al Wasa'. I never discussed about this land with anybody. I received a witness summons and I am appearing here for the third time.

Re-examination by Adv. Asfur : The dura I estimated in the year of 10 1926-1927 was grown on the land East of the road. I could mention forty-one villages in which there are separate threshing floors.

Question by Settlement Officer : I used to go from locality to locality in respect of standing crops and thus was familiar with the names of the localities in my area. The crops of Khor al Wasa', during my service, were recorded as belonging to the Tulkarem Sub-District.

Cross-examination of Guedalyahou Wilbushevitch by Adv. Joseph, continued : Samsonoff was a very big family. The boy Samsonoff did not own any land in Hudeira. The people of Hudeira pointed out the boundaries for me. I do not know the present boundaries of Hudeira. 20 I cannot state now what happened 38 years ago. I worked for half a year in preparing the map (Exh. "S/1" of File No. 92/30 B).

Re-examination by Adv. Asfur : The inaccuracy was as regards the scale and the area. The people of Hudeira accompanied me while measuring the boundaries. The preparation of the map took me about half a year.

Question by Settlement Officer : When I made the map, I went all the way round the boundaries. I am not a specialist at survey. I made my plan to a certain scale, but I cannot remember what the scale was. There was a conflict between the people of Hudeira and Mr. Hankin. One party 30 said that there was more area than that figured by Mr. Lubman and the other party said that it was less. When I made the map I found that the area was larger than that of Mr. Lubman. The area I found will remain a secret until the day of my death. I adjusted the scale to comply with the area of Mr. Lubman. I cannot point out the place we are now standing. I do not know of any natural boundaries at the time I prepared the map. The trees were planted afterwards. I could now walk around the boundaries with the assistance of tools.

Witness for Plaintiffs : SALIH SADA—sworn—aged 45.

I am from Tulkarem. I was employed as an Assessor of tithe, I was 40 appointed by the Tulkarem Government, from 1923 up to the end of estimation in 1928. Zeita belongs to Tulkarem. The lands of Zeita are of two kinds : Hamra and Raml. I have never assessed the crops of the land we are on at present, and I do not know this land.

Witness for Plaintiffs : MUHAMAD AL MAHMUD—sworn—aged 44-45.

I am from Zeita village. My profession is cultivator. I know the land on which we are standing. I know all the lands of Zeita. This land belonged to Zeita. I can point out the boundaries of this land, as it belonged to our villagers, who cultivated it. I have cultivated this

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land many times. I used to pay my tithe to Tulkarem, as our village belongs to the Tulkarem sub-district. The road on which we are now standing has no name. The locality around the house is called the Qaz'a. Qas'a means a round stone with a hole in it. This land has been held as Musha' by our forefathers. Raml Zeita is divided into a number of localities or Khors. These are vague localities without fixed boundaries. The boundaries of Raml Zeita are West—the eucalyptus trees which now belong to Hudeira and originally were Infi'at lands. East—Ard al Mulk, Ard el Hamma and road. South—road and Attil lands. North—road and eucalyptus plantation of the Jews. The boundaries of Khor al Wasa' 10
 are : North—road and eucalyptus plantations of the Jews. South—Attil. East—Kazaza and Birket Huriya. West—Infi'at Lands, and which are now the eucalyptus plantations of the Jews. Since about 1926, we ceased to cultivate this land.

The claimants of Attil appointed the Mukhtar, Mohamed Radi esh Shihada, to appear on their behalf.

Cross-examination of Mohamed al Mahmud by the Mukhtar of Attil : I can point out the boundary between Attil and Khor al Wasa'.

Cross-examination by Adv. Abcarius : I am not a claimant to this land, but some of my relatives are claimants. Though I am not one of the 906, 20
 I cultivated in the Musha' land of Raml Zeita. I hold a Kushan for one share out of 20 shares in Raml Zeita, registered in the name of my uncle. The number of plots I cultivated varied from five to eight. I cultivated in Khor al Wasa' from the time I reached the age of 20 until the year 1925. In Raml Zeita there was a certain partition for the winter crops, but as regards the summer crops, anybody cultivated wherever he wished. I myself cultivated in Khor al Wasa' in the year 1925, when I planted battikh. I cultivated an area of about 30 to 40 dunums. My neighbours were : Husni al Haj Muhammad, Mas'ud Abd en Naufal, Ali Abd el Kader and others. I used to pay tithe for this land. The name of the locality 30
 used not to be mentioned. I do not know the name of the Estimator who came here in 1925. The Estimator used to come with the Mukhtar and the village representatives. I do not remember who the representatives were. In 1925, 20 or 25 persons cultivated battikh in Khor al Wasa'. Abdel Fattah, his sons and Abdel Latif cultivated barley, wheat and battikh. In 1924 I cultivated summer and winter crops. I do not remember the area cultivated. I cannot remember who were my neighbours in 1924. In 1924 I cultivated barley, battikh and turmus.

Question by Settlement Officer : We stopped the cultivation of this land in 1925. There was a quarrel between Nissan Rutman and the 40
 villagers of Zeita. He was stronger and we stopped the cultivation of the land. Mr. Nissan took possession of all Khor al Wasa' in 1925. I do not know if he took possession of Attil lands, or any other lands. I know the boundaries of the land before 1925. I could say on going around the boundaries, if Mr. Nissan took possession of any land of Attil. There was no dispute between Attil and Zeita as to the boundary of Khor al Wasa' previous to 1925.

Witness for Plaintiffs : MOHAMED RADI ESH SHIHADA—sworn—
 aged 50.

I am the Mukhtar of Attil for the last two years. The boundary 50
 between Attil and Khor al Wasa' was a road running from East to West.

This road has disappeared but I can point out its location on the ground. I know the land we are standing on. Its name is Khor al Wasa'. It used to belong to Zeita. On the West and on the North it is bounded by eucalyptus trees of the Jews.

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Cross-examination by Adv. Abcarius : I have never cultivated in Khor al Wasa'. I know the boundaries of Khor al Wasa', as I am a neighbour. The boundaries of Zeita are : West—eucalyptus trees. North—eucalyptus trees and cemetery. East—Ard al Mulk. South—Attil. We are nearer to Khor al Wasa' than to Wad el Nawareth. Abdel Fattah
10 used to cultivate this land as a member of Zeita. I do not know if his sons cultivated the land. I know that all the inhabitants of Zeita used to cultivate the land. I do not know if Abdel Latif cultivated the land. There are some people of Attil who cultivated a part of this land on the Northern boundary of Attil. One of them is Hassan Abdel Hadi, I have a Kushan for my Musha' share in Attil lands. I am not one of the people who sold their land in Attil. I know that some people of Zeita have sold to Abdel Rahman el Taji. I do not know how many shares they have sold. I know Muhammad en Nimer. He is the Mukhtar of Zeita. I have heard reports of sale, but I have no personal knowledge. I cannot state the
20 names of the persons who used to cultivate Khor al Wasa'.

Cross-examination by Adv. Joseph : I do not know of any person of Zeita who cultivated this land by lease.

Re-examination by Adv. Asfur : Abdel Fattah being a resident here, cultivated a large portion of the land ; but I know that the land is Ard Raml Musha' Zeita.

Witness for Plaintiffs : SULEIMAN YUSUF AL ATTIL—sworn—aged 75.

I was born in Attil and have been a cultivator in it. The boundary of Attil on the North is Zeita. The land on which we are now standing belongs to Zeita. I know this because we are neighbours. The Northern
30 boundary of Zeita is the road of Qasa. Our boundaries were encroached upon by Mr. Nissan Rutman at the time he took possession of the land. Before Mr. Nissan took possession of the land, the inhabitants of Zeita used to cultivate the land, and there was no cultivation by the Jews. I can show the boundaries of the land by walking along them.

Cross-examination by Adv. Abcarius : I have never cultivated land either in Khor al Wasa' or in Raml Zeita. I used to pay visits to Raml Zeita and used to go to Hudeira Colony through Khor al Wasa'. I do not know the names of the cultivators of Zeita. I know Abdel Fattah ; he is one of the people of Zeita. I visited him once or twice. He and
40 others used to cultivate Khor al Wasa'. I do not know his sons. I am a member of the Village Settlement Committee of Attil. If we get any land from Mr. Nissan, we all derive benefit from it. I do not know if anybody of Attil cultivated land in Khor al Wasa' in the previous years.

Witness for Plaintiffs, SHEIKH MAHMUD EN NADDAF—sworn—aged 56.

The Mukhtar of Attil had no question to ask this witness.
Hearing adjourned for 10 minutes.

Evidence of Sheikh Mahmud en Naddaf : I was born in Attil and have been a cultivator in it. The Northern boundary of Attil is a road and Zeita.

Exhibits. There are many Khors. This one is called Khor al Wasa'. I know Khor al Wasa' well, as it neighbours our lands. From old it belongs to Zeita, but about five years ago Mr. Nissan took possession of it. The Western boundary of Khor al Wasa' was originally Infi'at, but now it is the eucalyptus line owned by the Jews. The boundary of the North is the eucalyptus trees and the road known as Tariq Ain Al Hajar and Tariq al Qasa. There was no dispute between us and the people of Zeita regarding our common boundary, but in about 1927, Mr. Nissan made a map and encroached upon our land. He put marks upon our land, but we stopped him. There has never been a dispute between us and the people of Zeita before that. Both Attil and Zeita belong to Tulkarem. People of Zeita used to cultivate this land before Mr. Nissan took possession of it. Abdel Fattah was one of the cultivators. I personally have seen Zeita people cultivate this land.

No. 62. Plaintiffs' Documents. Record of Proceedings before L.S.O. Jaffa, Mr. Lowick, in Case No. 92/30, 6th November 1930 to 16th June 1931, continued.

Cross-examination by Adv. Abcarius : The old irons were pulled up, but there are irons newly placed on the Western side entering our lands. I have not inspected the old irons and I do not know if they exist or not. I know the boundary of Wad el Hawarith on our side. I know all the boundaries of Raml Zeita. All the people of Zeita used to cultivate Khor al Wasa'. The following cultivated the land in 1924 :—

Abu Zikralla.
 Abu Jazzar.
 Muhammad Mahmud al Hamdan.
 Ali Abdel Qader.
 Ahmed Abdel Hadi.
 Mohamed el Khadr.
 Muhammad Abdel Muhsin.
 Masuf Abdel Naufal.
 Farid Ibrahim el Yusuf.
 Abu Makatif—and others.

Every year they used to divide the land among them. They used to plant summer and winter crops. Abdel Fattah, his sons and Abdel Latif his nephew, used also to cultivate summer and winter crops. I cultivated land near to Zeita and have been always mixing with its people. I cultivated about 200 dunums by lease from Mr. Nissan Rutman in 1926–27. I was in the habit of taking that land from Zeita. This land was in the middle of Khor al Wasa', in Babat an Neim. I did not take land from Mr. Nissan before 1926, but I had taken it from Zeita, on the payment of Khums. I cultivated in Raml Zeita by lease. The lease was signed by the Iman and by other persons of the village. Khor al Hamam, Khor al Huriya and other Khors are only names of the Zeita Musha'.

Cross-examination by Adv. Joseph : All the Khors are parts of Raml Zeita, and they do not have separate boundaries.

Question by Settlement Officer : I know the boundaries of Khor al Wasa'. Khor al Wasa' belongs to Zeita. Khor al Wasa' is the end of Raml Zeita on the Western side. The boundaries of Khor al Wasa' are :—

West—Woods of the Jews, formerly Infi'at.
 North—Eucalyptus trees and Road.
 East—Khor al Huriya and other localities named by the ploughman.
 South—Attil.

Cross-examination by Mukhtar of Attil : I cultivated the land in dispute by Attil to the account of Attil, in the year 1927–1928.

Witness for Plaintiffs : ABDEL FATTAH MAR'I ES SAMARA—sworn—
aged 62.

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I know Salih el Khatib and Mohammed Zikrallah. I had a case with them in the Nablus Court about the Musha'. I claimed that that land was Musha' for the inhabitants of the village. Some had Kushans, but we did not have. Some of the Jews came and ploughed my land, and so I had to bring an action against them. I had no power to proceed with two actions in two separate Courts. I and my partners paid all the fees in the Nablus Court. I do not remember if I had to pay any other fees. The
10 boundaries of Musha' Raml Zeita claimed by me in the Nablus Court were :—

West—Kazaza and Birkat Nuriya.
North—Road and the land of the Jews.
South—Attil.
East—Road and the Railway line.

Adv. Asfur : I apply that this witness be treated as an hostile witness, because in his statement of claim in the Nablus Court he stated that the Western boundary was Infi'at, and in his present reply he wants to suppress the truth.

20 *Adv. Horowitz* : My objection is, firstly, that the statement of claim has not been produced. Secondly, it has not been produced to the witness and he has been asked to speak from memory on a statement alleged to be in the File. Thirdly, he has answered all questions put to him in the ordinary straight-forward manner, and therefore there is nothing to show hostility on his part.

INTERIM ORDER.

Application refused.

At Hudeira 17.12.30.

Settlement Officer,

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Jaffa & Hudeira Settlement Area.

Evidence of Abdel Fattah continued : The reason I dropped the action from the Nablus Court was that I had no sufficient money to carry on the two cases. The Jews were cultivating this land and they refused to give me a share in it. I am from Zeita, but I have been living on this land. I originally lived in tents, but later I built a house. I went to the Haifa Court with regard to my land. I appointed a lawyer in my case. The house does not belong to me now, it belongs to Mr. Rutman. The deed of sale was executed before the Notary Public of Haifa. The boundaries of the house at the time of the sale were as in Khor al Wasa' ; Zeita was
40 not mentioned in it. Khor al Wasa' is my land. The Musha' of Zeita is to the East of it. Previously this land was held by my father and grandfather. Prior to 1925, the Jews used to cultivate the land on lease. The people who leased the land from me were : Yacob Samsonoff, Yafet Yamani and Ali Madursky. I do not remember if there was any registration in my name prior to the judgment of the Haifa Court. Madursky and Samsonoff had other lands in Hudeira Colony, but I do not know if Yamani has. He is a new comer. These people used to plant : oats, barley and water melons. They planted chiefly oats and melons. The Jewish cultivators used to take their produce to Hudeira. I know Arf en

Exhibits. Nashif and Abd er Rahim es Sahamara. They were Estimators. They did not come as Estimators when the Jews cultivated the land. The Estimators used to assess the crops standing, including the oats crops. The crops of the Jews were estimated by Messrs. David Frank and Nahum Samsonoff of Hudeira. I do not know if the Government Estimators used to come and assess water melons before 1925. The Assessors of Tulkarem used to assess my land other than that of Khor al Wasa'. One of the Estimators was Abd er Rahim es Samara. I know Arf en Nashif. He has come only once. He came as an Inspector. Before I had sold the land to Mr. Rutman I used to pay tithe and Werko to the President of the Vaad of Hudeira. I am not a member of the Hudeira Committee. All the Jews pay their taxes to the Vaad and the Vaad pays them to the Government. I belonged to Haifa and so I paid the tithe to the Vaad of Hudeira. I cannot read and write. I used to pay the taxes to Mr. Ram. I do not have any receipts. I paid the taxes for the Musha' land and my Mulk property to Tulkarem. The taxes I paid to the Vaad of Hudeira was only for Khor al Wasa'.

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10

Adv. Horowitz : I ask that my objection be applied to most of the questions asked in the examination-in-chief on the grounds that they were cross-examination without the advocate having leave of the Court to treating the witness as hostile witness.

20

Advocate Abcarius put in a statement confirmed before the Notary Public, Haifa, dated 6.10.1926 (Exh. " p " of File No. 92/30 B).

Cross-examination by Adv. Abcarius : Khor al Wasa' came to me from my father. I built this house about 28-30 years ago. This building is not included in the Musha' of Zeita. I got this land on payment of Haq el Qara, after the Haifa judgment. Nobody of the Zeita people cultivated this land. I have lands in Zeita. I paid the tithe for my land in Zeita to Tulkarem, and for Khor al Wasa' to Hudeira. From the time of my birth I am on this land. My sons and my brother Abdallah cultivated this land with me. I am not aware that anybody estimated the crops of the Hudeira people here. The Jews used to pay me a fifth for cultivating my land. As our lands are extensive, many people have cultivated our land. After the judgment of the Haifa Court, I obtained a Kushan, and subsequently sold it to Miss Rifka Aaronson and Mrs. Toba Rutman, according to boundaries. Up to the present time I pay the taxes for my Zeita lands to Tulkarem.

30

Question by Settlement Officer : I am certain that I stated before the Nablus Court that the Western boundary of Raml Ze ta was Kazaza and Birkat Nuriya. My brother Abdallah is a half-brother from my mother's side, and therefore is not entitled to a share of his father. I do not know what the heirs of my father are entitled to. I received the land from my father.

40

Witness for Plaintiff : HAJ SAID IBRAHIM—sworn—aged 50.

I am a cultivator Jat. Zeita lands neighbour us. The land on which we are standing belongs to Zeita. As I am a neighbour I heard that this land was cultivated by Zeita people.

Cross-examination by Adv. Abcarius : I am from Jat. The boundaries of Jat are :—

South—Zeita.

50

North—Baqa.
West—Zeita.
East—Illar.

Exhibits.

Re-examination by Adv. Asfur : The land on the South and West is Hamra land.

Witness for Plaintiffs : MUSTAFA AHMED ABU BAKER—sworn—aged 63.

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I am a cultivator of Jat. I know Zeita lands and its localities. The locality we are on is called Khor al Wasa'. It belongs to Zeita. I know this land because I used to pass here frequently and buy water melons. On many occasions I used to keep my flocks on this land. I have cultivated water melons for one year in Khor al Wasa', together with a certain Mohamed of Zubeidi. I planted this land about 36 years ago. The people of Zeita used to cultivate this land. The eucalyptus trees on the West are the boundary between Raml Zeita and Infi'at.

Cross-examination by Adv. Abcarius : I know the boundaries of Khor al Wasa', but I do not know the boundaries of Khor al Nuriya. The boundaries of Khor Al Wasa' are :—

South—Attil.
East—Kazaza.
West—Eucalyptus.
North—Road.

I have not planted in this land since 36 years. I know Abdel Fattah. I saw him planting in different places of Khor al Wasa'. The house was built by Abdel Fattha and his cousin about 28 years ago.

Cross-examination by Mukhtar of Attil : I know the boundary between Khor al Wasa' and Attil. I can describe it on the spot.

Witness for Plaintiffs : AHMAD, MUHAMMAD HAMMAD—sworn—aged 40.

I am a cultivator of Jat, I know Zeita lands. I know both the Hamra lands and the Raml lands. The lands we are on now is of the Raml category and belongs to Zeita. I know this because I am a neighbour and used to pass in this land a lot. I used to buy water melons in this vicinity. Before Mr. Nissan bought the land, the Jews did not cultivate this land.

Cross-examination by Adv. Joseph : Jat is far from this land about 1½ hours on horseback. I can see this land from Jat, but cannot distinguish the people working on it. I engage ploughmen to cultivate my land. I used to come from two to four times every year in the season of water melons. I used to come to Hudeira to consult the doctor and for other things. The road we are on directs to our village. I used to go to Minat Abu Zabura by means of this road. I did not come here on inspection. I do not know the names of the people who cultivated this land. The people cultivated the land as their property. Hudeira itself belonged to our forefathers. Jat is ten minutes distant from Zeita and I am aware of the rights of land of Zeita. I do not know to whom each plot belongs. There are no sandy lands in Jat. My only occupation is owner of land. The distance between Jat and this land is equivalent to the distance from Jat to Tulkarem. I do not belong to the Infi'at tribe; I am from Jat.

Exhibits. I was not alive when the lands were sold to Hudeira. I am coming here to speak according to my faith and conscience. I know what I speak; nobody instructed me how to speak.

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Witness for Plaintiffs : YOUSEF ABDUL RAZZIK—sworn—aged 57.

I am a cultivator from Jat. I know this land, it belongs to Zeita. I know this land because I am a neighbour. I planted a part of it with water melons in 1920. Zeita is partly sand and partly Hamra. This land is Raml land. Khor al Wasa' is part of Raml Zeita. The boundaries of Raml Zeita are :—

West—Eucalyptus. 10
North—Road called the Qasa and Ain Hajar.
East—Road.
South—Attil and path.

I was a camel driver and used to transport water melons.

Cross-examination by Adv. Joseph : I personally ploughed a plot of land, partly in Khor al Wasa' and partly in Khor al Nuriya. The population of Jat is about 400 persons. They do not have land suitable for the cultivation of battikh. It takes two hours on camel-back to come here. I used to sleep near by. There are various Khors in Raml Zeita. If we proceed to the place I can point out all the Khors. In connection with 20 this case the boundaries were demarcated. I was not summoned by a Witness Summons. Last night somebody told my brother that my evidence was required regarding the case of Khor al Wasa'. I have never discussed the matter of Khor al Wasa'. I did not receive or pay any money; I was to give evidence according to my knowledge.

Cross-examination by Adv. Kaiserman : All the people of Zeita used to cultivate this land. Some had their plot here, others had it somewhere else in Raml Zeita. I know Abdel Fattah from old. He used to plant in Khor al Nariya and in Raml Sharqi. I know him before he had built this house. Originally he used to live in tents. He used to plant water 30 melons to the North-Western part of Khor al Muriya.

Hearing adjourned to the 20th, 21st, 22nd and 23rd January, 1931.

The payment of witness fees will be settled in the hall of the Vaad in Hudeira.

ORDER as to the payment of witness fees :—

I order that the Plaintiffs : Amna Daud Anabusi, Jamil Ibrahim al Yusuf and Abdel Rahman al Hassan al Masadi, shall pay the following indemnities to the witnesses named who were summoned at their own request, plus costs of execution of this order, if any, and fees of Court :—

Abdel Rahim al Haj Samara of Tulkarem	LP.0.700 Mils.	40
Arif en Nashif of Tulkarem	LP.0.350 Mils.	
Salih Saada Jallad of Tulkarem	LP.0.700 Mils.	
Yusuf Musallam of Haifa	LP.1.500 Mils.	
Guedalياهو Wilbushevitch of Haifa	LP.1.500 Mils.	

At Hudeira 17.12.1930.

Settlement Officer,
Jaffa & Hudeira Settlement Area.

The hearing was resumed at Hudeira on 19.5.31 in presence of :—

Exhibits.

<i>Plaintiffs</i>	Hassan Mustafa Abu Jabara with certain partners.	No. 62.
<i>Defendants</i>	I (1)–(2) represented by Adv. Abcarius.	Plaintiffs' Documents.
	II (1) represented by Dr. Bernard Joseph.	Record of Proceedings before L.S.O.
	(2) not present—summoned.	Jaffa,
	(3)–(7) not present—summoned.	Mr. Lowick, in Case No. 92/30, 6th November 1930 to 16th June 1931, continued.
	(8) represented by Adv. Horowitz.	
	(9) not present—summoned.	
	(10) represented by Adv. Kaiserman.	
10 <i>Third Parties</i>	I (1)–(4) withdrawn.	
	II represented by Mohamed Ragheb, Member.	
	III (1) absent.	
	(2) present.	
	(3) withdrawn.	
	(4) present.	
	(5) absent.	
	(6)–(8) absent.	

Adv. Moghannam : I asked that my clients set forth on attached list N.1 should be admitted as third parties. I have already filed my application and it has been served on the other parties.

Adv. Horowitz : I object and desire to press my objection against this application. The application is being now considered and I have every right to object. The application is being made under Section 26 (1) of the Land Settlement Ordinance. Under that Section two conditions are requisite for the entry of the claim. First : that there were reasonable grounds for failure to present the claim in due time. He is not proposing to call new evidence. He agrees to adopt the evidence and proceedings up to the present in this action. Second : that you are satisfied that there were sufficient grounds for the failure to present their claim in due time. There are no grounds for such failure. There must be legal grounds.

Adv. Joseph : In view of your remarks that the application is premature Section 27 (4) apparently does not apply. The whole application is unnecessary. To admit about a 100 new parties at this stage would be a travesty of justice and cause delay. The rights of the villagers of Zeita are sufficiently protected.

Adv. Moghannam, representing certain third parties : I am greatly surprised that the other side objects my entering this case. I notice a contradiction of Mr. Horowitz. He said that the action is on behalf of all the people of Zeita. My clients are people of Zeita and they are entitled to instruct counsel to appear on their behalf. In addition to this my application is not based on Section 26 (1) and Section 27 (4) of the Land Settlement Ordinance as regards third parties, but I do base myself on Section 117 of the Civil Procedure Code which is the general section as regards third parties. It is the judgment regarding the boundaries that the people of Zeita are interested in. My submission is that there is no power of law in the world that prevents the people of Zeita and my clients from being third parties.

Adv. Horowitz, representing certain Defendants II (8) : Section 117 of the Civil Procedure Code does not bind this Court according to Section 10 (3) of the Land Settlement Ordinance. When it is a question of third parties

Exhibits. Section 26 (1) of the Land Settlement Ordinance applies and not the Code of Civil Procedure.

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ORDER.

The Settlement Officer decides to admit as additional third parties the persons set forth in the list, Exh. " M ".

(Sgd.) S.O.

19.5.1931.

Plaintiffs and third parties : We consent to the proceedings being continued in English as purchase is being conducted by lawyers understanding English. 10

Attorneys for certain Plaintiffs and third parties : We do not wish to call any further witnesses other than the following experts :—

1. Mohamed Rageb Bey Osman.
2. Hilmi Bey Hussein.
3. Land Registrar of Tulkarem, or either No. 1 or 2,

as the Settlement Officer may decide to give evidence on the boundaries, otherwise our case is completed.

Plaintiffs and third parties in Court : We agree to the foregoing.

Attorneys for Defendants : We nominate the following experts :—

1. Mr. Mason, Inspector of Agriculture. 20
2. Mr. Bernblum, Registrar of Lands.
3. Mr. Butkovsky of Hudeira, or any two of these persons.

Adv. Abcarius, representing certain Defendants I (1) & (2) : I think it would be convenient that if those who are not represented by a lawyer, be represented by somebody. This will expedite the cross-examination of witnesses.

INTERIM ORDER.

That the following experts should inspect the land in dispute and endeavour to apply to the ground the boundaries shown in the Kushans of Hudeira and the Kushans of Zeita and Attil, and give a report regarding 30 the location of these boundaries, and for this purpose all maps shall be placed at their disposal.

Appointed by Plaintiffs and Third Parties :—

1. Mohammed Rageb Eff. Osman or Hilmi Bey Hussein.
2. The Registrar of Lands, Tulkarem.

Appointed by Defendants :—

Any two of the following :

3. Mr. Mason.
Mr. Bernblum.
4. Mr. Butkovsky. 40

Appointed by Settlement Officer :—

Mr. Elhasid, Asst. Settlement Officer at Hudeira.

(Sgd.)

Settlement Officer

19.5.1931.

Jaffa & Hudeira Settlement Area.

DEFENDANTS' DEFENCE.

Exhibits.

Defendants' Witnesses: MOUSTAFA MOHAMED ZEITUN—sworn—18 years old.

My father's name is Haj Muhammad Zeitun. My age is 18.

My father's name appears on the list of the 906. My name also appears there. My father is alive. The list says: "Haj Mohamed Zeitun—5 shares"—meaning my father and his children. I can sign my name. I sold to Mohamed Abd el Halim one share.

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10 The photographic copy (Co. 5) of the contract produced bears my signature (No. 70).

Note—Advocate Abcarius produced this photo. Copy No. 5 and 12 contracts, Exh. "1".

My father did not claim in this case. He is not in Court.

Cross-examination by Adv. Moghannam: All this land was ever since to Zeita and not to Hudeira. These shares which my father has are in his name. In the contract I undertook to sell my sister's shares and sign on her behalf. I had no power of attorney to represent my sister. My mother and sister authorised me to sign on their behalf. The land we sold to Mohammed Abd el Halim did not include Khor al Wasa'.

20 No re-examination.

YOUSEF MOHAMMED ABD EL MUHSEL—sworn—20 years' old.

My name does not appear on the list of the 906. My father's name appears there. I sold to Abd el Halim. I can write.

Note: (Adv. Abcarius produced photographic copy No. 1 indicating signature "78".)

This is my signature. My father is still living. He is not a party in this case.

Cross-examination by Adv. Asfur: The land sold to Abd el Halim include Khor al Wasa'.

30 The witness then states the opposite by saying it does not include Khor al Wasa'.

Note: (Adv. Dr. Joseph points out that apparently a sign has been made to the witness to change his evidence).

I sold one share out of 906 in the land of Raml Zeita. Khor al Wasa' is not included in the lands I sold. My father had four shares. I sold one of them.

SHEIKH MOHAMMED KHALIL—sworn—77 years' old.

40 I am the Mukhtar of Nazla, originally from Zeita. My name is not on the list of the 906, but I have rights in this action. I was born in Zeita. I have been a Mukhtar since the Occupation.

No re-examination.

MOHAMED ABD EL NIMR—sworn—25 years' old.

My name is mentioned in the list of 906.

Note: (His name was not found in the list.)

My father's name is Abd el Nimr. He has no name on the list. I am not from Sidon. I am from Zeita. I sold land to Hamdan.

Exhibits. *Note* : (Adv. Abcarius produced photographic copy No. 11 Witness' finger print is No. 62.)

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Cross-examination by Adv. Moghannam : Saed Elasi is my maternal uncle. His name appears on the list. He had three shares on the list. I live with him. I was included as sharing the three shares of my uncle. My rights were included in those of my uncle. If these were five shares shown opposite the name of the father, this would mean that there were five persons. The shares are counted according to the number of persons in the house.

Note : List shows the number of persons entitled to rights and not the number of shares. 10

HASSAN EL FARES—absent.

NIMR DIB KAD'AN—sworn—45 years' old.

I am from Gat, living in Tulkarem. I know Khor al Wasa' and its boundaries. The eastern boundary is Kazaza, and the southern is Attil lands. I was a cultivator and now am a petition-writer. I cultivated Khor al Wasa' lands. I know the boundaries because I was a cultivator in Khor al Wasa'. I know the boundaries of Raml Zeita. The western boundary is the land of the Jews.

Cross-examination by Adv. Asfur : Khor al Wasa' is separate and Raml Zeita is separate. I do not know whether Khor al Wasa' is included. I hired land from Abdel Fattah Miri Samara, when I used to cultivate. 20

Cross-examination by Adv. Moghannam : I was not a petition-writer in 1920, but since the year 1924. I obtained a licence in February 1924. I do not remember what I did in January 1924. I do not know why I remember the date on which I received my licence as petition-writer. I have no reason to remember this. I do not know what I was doing at the end of 1923 or at the beginning of that year. Neither do I remember what I was doing in 1922 or in 1921 or in 1920. In 1919 I was a cultivator. I was in the Gat at that time. I am certain that I was in Gat and not in Tulkarem. In 1918 I was in Gat. At that time I was not a petition-writer. I do not remember what I was doing in 1918. In May 1919 I cultivated wheat, barley and water melons. 30

I have worked as a clerk to an advocate for about three or four years. The advocate was Osman Eff. Bushnaq. I used to copy statements and petitions. I remember when Bushnaq Eff. was attorney for certain persons in a case in the Nablus Land Court. He was attorney for Saleh. I was not a clerk when the people of Zeita appointed Bushnaq Eff. in the case before the Nablus Land Court. I remember when the Nablus Land Court gave judgment in favour of 906. I do not remember the year, I may have given evidence in that case. If there is a statement that I gave evidence in the dossier, I cannot deny it. I remember having given evidence in that case. I gave evidence in favour of the persons in the list of the whole of Raml Zeita. I do not know whether Khor al Wasa' is included in the whole of Raml Zeita. I was neither a clerk to the Advocate when I gave this evidence nor a petition-writer. I remember neither the date of the case nor the date of the judgment. Judgment was given before I took the licence for a petition-writer. 40

I was not judged under the Prevention of Crime Ordinance. They took a warrant on me for a quarrel between families.

Hearing adjourned to 20.5.31 at 8.30 a.m.

The hearing was resumed on 20.5.31 at Hudeira in presence of parties.

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Adv. Abcarius: I filed in this Court certain declarations duly authenticated by the Notary Public and are admissible in evidence. Such declarations were made by parties to this action. Yesterday I produced certain contracts made between some parties to this action and certain Hamdan and Abdel Halim of Tulkarem which later have in turn sold their
10 lands to Abd el Rahman and Shukri Eff. Taji; for this purpose I called four claimants who are parties to the present proceedings and who admitted their signatures. I have filed the original agreements and as these are required particularly for the time being by Hamdan and Abdel Halim, I produce photo copies of these contracts so that they may be verified with the originals. Your Honour has powers under the Land Settlement Ordinance to keep these copies instead of the originals. I do not desire to call all these people simply for the sake of admitting their signatures. These copies will be available for their inspection; they may deny their signatures if they wish to do so. These contracts are private documents
20 and are not attested by the Notary Public. I have put a list long ago showing the claimants who made an admission or sold any plot of land. I submit these photo copies in order to withdraw the originals when they are verified. I should like to have a ruling whether the Court would call all these claimants to come separately to admit their signatures, or make it open to all who would like to deny their signatures. I gave a specimen of these agreements and the signatures therein. It is time to file all our documents as they reflect on the question of boundaries. In these agreements it is stated distinctly that so many shares are of 906 of the notorious land known as Raml Zeita of certain boundaries were sold.
30 I am under the impression that we are under litigation as regards boundaries and that is why I submit these documents which I consider to be the point of issue.

Adv. Moghannam: I do not think it is necessary to translate Mr. Abcarius' remark or that it is necessary to prove the signature on the documents. Certain signatures were proved yesterday. The documents are all in the same form. It is not necessary to waste the time of the Court proving the signatures of each document separately.

INTERLOCUTORY ORDER.

The Settlement Officer decides that it is not necessary at the present
40 stage of the proceedings to prove the signature on all these documents. These documents may be inspected by any interested party who is at liberty to inform the Settlement Officer if he denies his signature.

At Hudeira 20.5.31.

(Sgd.) —

Settlement Officer

Jaffa & Hudeira Settlement Areas.

Adv. Abcarius: I produced a certified copy of the original revenue Werko book of Tulkarem by the order of the Settlement Officer (Exh. "f").

Exhibits. The object is to show the boundaries regarding Raml Zeita. If Your Honour wishes the original book, it suits us also.

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Adv. Moghannam : This extract refers to Ard er Raml and not to Raml Zeita.

Witness called by Settlement Officer : THEODOR ZOLOTKOFF—sworn—
32 years old.

Adv. Abcarius : My objection is that this witness should not be heard because no matter what evidence he could give can affect the issue of the boundary in which we are concerned. My submission is that nothing of the Secretariat could be produced in this Court in as much as it is not a judgment of any Court or proceedings but a finding from a Court of Discipline which cannot affect the present proceedings. Section 9 (c) of the Land Settlement Ordinance does not apply in this case. Section 11 of the Rules of Court was cited. The document must be material and relevant to the Schedule of Rights. We must certainly put on the records the humble submission that this is not a document in which the Settlement Officer has authority to have it produced nor is the Government justified in sending one of its officials to produce such documents. This witness should not be heard at all.

Adv. Horowitz : This is a very important question of principle. The general power conferred to the Settlement Officer must be confined to witnesses and documents which are admirable. In the present case there has been an allegation of fraud made by the claimant. It is for the person alleging fraud to prove it and not for the Court to do so. They have not proved it because they know perfectly well that the so-called judgment was that of a disciplinary tribunal and an administrative decision has no force of judgment of a competent Court of Law. It has the force of a decision of eminent gentlemen of a committee or a club sitting as a disciplinary Court of the Club. Our side was not a party to the departmental enquiry. If that judgment states in expressed terms that Mr. Rutman bribed this man or that, this judgment will not be worth a farthing, we had no chance to be heard. If the judgment of the Departmental Enquiry Tribunal had any validity the other parties should have caused to be changed the judgment of the Court of Appeal. That judgment stands to overrule it. It is quite possible that certain judges may have acted improperly, but this cannot affect a judgment of the Court of Appeal. Until the judgment of the Court of Appeal is set aside, the results of the Enquiry Commission cannot be effective or useful for any purpose in this present action.

Adv. Joseph, representing certain Defendant (II) (1) : I have to place on record that my clients, the third parties, enquired about the validity of the title and the Government permitted me to put my good money in this land. I do state that our rights against the Government are reserved.

Adv. Moghannam : It is not my business to defend the Government. I think the Settlement Officer may call every and any witness he wishes. Section 9 (3) gives the Settlement Officer big powers, much bigger than any other Court. At this stage the Settlement Officer is entitled to hear any evidence.

Settlement Officer : Objection of Defendants is upheld.

Adv. Moghannam : I object that the witnesses of Mr. Abcarius be called in the order he wants. I should like that Your Honour would give a ruling on this. Yesterday there was an application for appointment of expert-witnesses to carry out the inspection. I am now instructed by my clients and on behalf of Mr. Asfuur and Muhammad Effendi that this inspection would be of no use in law. It would cause delay and waste of money. My clients and those of Mr. Asfur and Mahmoud Effendi withdraw their application and cancel it. Every one of the 87 claimants support my application.

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10 *Adv. Abcarius* : This was the proposition made by the other party after due and deliberate consideration. This application was not recommended by the Bench—Technically the point was the application of the Kushan on the land. We agreed to it. The other party nominated their own experts; we nominated ours and the Court nominated one expert. Then the Court made a ruling that this should be done. This order is final as it was agreed between the two parties and was read out in Arabic. The sole object of the Court is to find the correct boundaries. The order should stand. It is binding and cannot be withdrawn.

20 *Adv. Horowitz* : As this was a consent between the two parties the Order cannot be cancelled.

Hearing adjourned to 20.5.31 at 3 p.m. Hearing resumed on 20.5.31 at 2 p.m.

INTERLOCUTORY ORDER.

Although the Settlement Officer considers that he is entitled to cancel or amend an Interlocutory Order previously given, he is reluctant on general grounds to take such action.

30 He was however of opinion at the time that the original application was made that in the circumstances no useful purpose might be served by calling expert witnesses who do not know the locality to fix the situation of boundaries, such as a road which may not now exist and a locality name such as Elkaser. It is obvious that such boundaries can only be fixed after the hearing of evidence and the Settlement Officer considers it preferable that he himself and not the experts should hear such evidence and that the parties be given an opportunity of cross-examining witnesses.

If after the hearing of the witnesses on the ground it is found that expert witnesses are required to identify certain physical features described in the Kushan with the physical features on the ground, the question of calling such experts will be reconsidered.

40 In the meantime the Settlement Officer will hear the remaining witnesses for the defence and will proceed to the ground to-morrow morning to hear any witnesses that the parties may desire to produce as regards the identification of the boundaries with the description shown in the Kushans.

Hudeira 20.5.1931.

Settlement Officer,
Jaffa & Hudeira Settlement Areas.

Exhibits. The hearing was resumed on 20.5.31 at 2 p.m.

No. 62. *Defendants' witness*: MOHAMMED EL NIMR—Mukhtar of Zeita.

Plaintiffs' Documents, Record of Proceedings before L.S.O. Jaffa, Mr. Lowick, in Case No. 92/30, 6th November 1930 to 16th June 1931, *continued.*

I came late this morning as I knew that the hearing was fixed for three days. I left my house at about 6.30 a.m. and I arrived Hudeira at about 12.30 p.m. I was delayed on my water melon plantation.

ORDER.

I fine this witness to LP.2 for failure to attend when summoned.
2 p.m.

(Sgd.) S.O.

Defendants' witness: MOHAMED NIMR MANAA—sworn—40 years—
Mukhtar of Zeita. 10

My signature is on the map (Exh. "w" of Case No. 92/30 B). The Eastern boundary of Khor al Wasa' is Kazaza and Birket Nuriya Kazaza is a marsh which can be distinguished on the ground. Birket Nuriya is an old marshy hollow which dries up in the summer. On the East of this boundary is the Musha' land of Zeita.

Cross-examination by Adv. Madi: On the map produced I cannot indicate the East or the West side, I am not a surveyor. Abdel Fattah Miri Samara asked me at Haifa to sign the map. He did not pay me anything. Khor al Wasa' is not part of the Musha' of Zeita. I do not know how the crop of this land was estimated for Zeita or Hudeira. I receive allowances for tithes. Collection from the Government. The tithe on Khor al Wasa' crops do not concern me. I do not remember having signed another map in Khor al Wasa'. I signed the map in the Land Registry Office at Haifa in the presence of the Registrar. 20

To Adv. Moghannam: Abdel Fattah Miri Samara asked me to sign the map. The map was not with him at the time, but at the Land Registry. He asked me to sign as I was a neighbour. He met me accidentally in Haifa. I signed the map after nearly everyone else. The signature of the Mukhtar of Attil was not then at the map. They told me that it was a map of Khor al Wasa' and mentioned the boundaries and asked if they were correct. I said—Yes. I could not read the map. I was Mukhtar at the time. I do not know that certain persons of Zeita entered into contracts to sell land of Khor al Wasa'. I have never witnessed signature to such contracts or I do not remember if I have done. I know Mohamed Abdel Halim and Hamdan el Haj Ahmed. They purchased land by contract from Zeita people. I have knowledge of such contracts. I have witnessed such contracts. I did not sell my shares. I have witnessed perhaps four or five such contracts. They did not purchase Khor al Wasa' land. The contracts show the boundary as that between Raml Zeita and Khor al Wasa'. I think I signed the map in 1925. I remember the action regarding Raml Zeita brought by certain persons of Zeita in Nablus Land Court. I was neither a party nor a witness in this case. I was not Mukhtar at the time. I do not know that these persons claimed rights in the Raml Zeita including Khor al Wasa'. I only know of their claim to Raml Zeita. I know that they claimed that the land was Musha' to all the villagers. If they won I would have received a share. I did not know the boundaries of the land they claimed and never asked. 30 40

Five or four persons only brought the action I was never afraid of these persons because they were newcomers and did not form part of the Hamayel, in the names of the leaders of which the lands were registered in the Tabu.

I do not know if Abdel Fattah El Miri was party to the action. Abdel Fattah lived here and I lived two and a half hours distance in Zeita and I do not remember if he was a party.

I did not see the Daftar Hatib (906) share until after it was drawn up. I with all other people examined the Daftar after it was drawn up. I do not remember the date when this took place. I do not know how many shares were recorded in the Daftar in the name of Abdel Fattah Miri: possibly 14. Certainly I have since looked at the Daftar on a number of occasions since and before I signed the map and before I was Mukhtar. I do not remember the date it was drawn up. Perhaps it was in 1919 or thereabouts. I was appointed Mukhtar in 1924. On the occasion I examined the book. I ascertained that Abdel Fattah Miri was a party to the Nablus action. I do not know that Abdel Fattah ever brought an action at the Nablus Court. I know that the people who brought the action won the action and that this was confirmed by the Court of Appeal. I knew at the time that they had won the action in the Land Court. I knew that Osman Bushnaq and Anabtawi were their advocates. I did not know the number of the plaintiffs. The plaintiffs were Haj Mohammed Zikrallah, Saleh el Khatib, Sayed Natur, Mousa Ahmed, Zikrallah Mohamed Zikrallah. I do not know of any others. I only knew of these persons after they had won the action. Rumour filled the village. I do not remember if Abdel Fattah dropped his case and if so when. I do not know if he brought an action. The subject of the action was the Musha' of Zeita. Abdel Fattah is not one of the strangers. Nobody in the village owns 7,000 dunums. I do not remember anyone in Zeita having owned 7,000 dunums or 5,000. I do not know any persons in Zeita who may have 1,000 dunums. Khor al Wasa' perhaps consists of 4,000 dunums or more. I know this from the map. Abdel Fattah is originally from Zeita. He was and is a simple man. I was not surprised when I heard he owned 4,000 dunums or more. He also has 14 shares in the land of the village which he now cultivates. When I signed the map, Abdel Fattah had won the action in Haifa. I do not remember when he brought the action. I did not give evidence in his favour nor was I present at the hearing, nor did I know about it. I built the last house that I own in 1924, the year I was appointed Mukhtar. I know Tewfik Zubeidi. I do not remember if I was in partnership with him. I never was in partnership with him in a piece of land in Khor al Wasa'.

Last year I was imprisoned at Tulkaram for 30 days for a contradictory mazbata. I do not remember under which law it was judged. It was regarding a bankruptcy. The Court found that the statement above my signature was untrue. I do not remember if I owe money to Mr. Rutman by virtue of a document executed before the Notary Public in Haifa. I do not even remember having signed bills, contracts or documents by which I admitted owing to Mr. Rutman. It is possible that I witnessed many documents (Notarial Deeds) as between inhabitants of Zeita and Mr. Rutman. I do not remember the names of the persons who executed such documents. I do not remember if such deeds contained references to Khor al Wasa'. They wished to sell land to Mr. Rutman but they

Exhibits.

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No. 62.
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6th
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continued.

Exhibits. did not come to an agreement. This was before they agreed with Mohammed el Halim and Hamdan. I do not remember having witnessed deeds before the Notary Public of Haifa in Mr. Rutman's house. I witnessed the documents I signed in Haifa.

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No. 62.
Plaintiffs'
Documents.
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Proceedings
before
L.S.O.
Jaffa,
Mr. Lowick,
in Case
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continued.

Re-examination by Adv. Abcarius: The lists contain 906 shares *not persons*. There are 906 persons. One had 10 men in his family and obtained ten shares. If a man was recorded as five shares, he would have five members in his family. Abdel Fattah had 14 shares, which is in respect of 14 persons. I gave a certificate regarding the property of a man and I was condemned in respect of this certificate. 10

To Settlement Officer: The lands of Khor al Wasa' belong to Abdel Fattah Samara and his father before him. I do not know how the lands reached him. The land is within the boundaries of Hudeira. It should be of the land that used to belong to the Infi'at who sold to Hudeira. I do not know how it reached Abdel Fattah from the Infi'at Arabs. I know that the land belonged to Hudeira for about 18 years. I knew nothing before the war of these lands. Nobody has intimidated me regarding my evidence.

Defendants' Witness: HASSAN FARES EL HASSAN—of Arabs Sheikh Helou—about 48 years—Cultivator. 20

I cultivated in Khor al Wasa' for 20 years. I used to take land from Abdel Fattah. I now take it from Nissan Rutman. I know the boundaries of this land. The boundaries of the land are:—

East—Kazaza and Nuriya.
North—Eucalyptus and Road.
South—Attil.

The boundary on the South was a road which does not exist now. There are marks on the land put in about 1924/35. They can be seen now. From the time the marks were put in they remained in the same place.

To Adv. Kaiserman: To the East of Kazaza is the Raml Zeita. 30

To Adv. Moghannam: The marks are still in the same place. It is enough that I should see them once a year. It is not necessary that I should see them every day. I am the watchman. My pay is LP.2.500. Mr. Rutman pays me. I am his servant. I have been so for a long time. I have been a servant for two or three years. I am a watchman at the Ard Elpica now for him. I never was the servant of anyone else. I also am a cultivator. I am illiterate. I perhaps can sign my signature. I have not signed a contract of lease in the past two or three years. I have leased the land of Khor al Wasa' from him. He gives me pay to look after the land. I work on a part as cultivator. I do not know the people of Zeita nor the Musha' of Zeita. The Musha' of Zeita is bounded by a road between South Attil and Zeita; East Railway line; West: Birket Nuriya and Kazaza; North: Road and Hudeira land. 40

I have not walked along the boundaries of Zeita but I hear that these are boundaries. I had cultivated Zeita land from Mohamed Khalil during and after the war—or after the war. I used to plant 20–30 dunums and bring them to the threshing floor and pay the taxes. I was not a soldier. Sometimes I planted wheat and sometimes barley. I leased for two such lands.

I have never given evidence before regarding these lands. I do not know the name of the locality in Zeita in which I cultivated.

No re-examination.

Mr. Abcarius : We proposed to call not more than three witnesses as suggested to give evidence on the boundaries and if we call as witnesses some of the experts previously mentioned by us we reserve our rights to nominate other experts should the interim order of 19.5.31 be rendered operative with this exception we do not wish to call any other witnesses.

10 *Mr. Horowitz, Mr. Kaiserman, and Dr. Joseph* : We assent to this proposal.

Mr. Moghannam : I will hand in a list of three witnesses later regarding the boundaries.

Mohamed Rali, Member of the Village Settlement Committee of Attil and Mukhtar : I will produce three witnesses to give evidence on the Attil Khor al Wasa' boundary to-morrow.

Hudeira 20-5.31.

Adjourned to 8 a.m.

(Sgd.)

Settlement Officer

Jaffa Settlement Area.

20

The hearing was resumed on the land in the presence of the parties, their attorneys as at previous sitting.

30 *Adv. Abcarius, for Defendant I (1) & (2)* : My preliminary objection is that plaintiffs should not produce any witnesses at this stage as *Adv. Asfuur* has informed the Court that this case is closed except for the "Expertise" and that he has no more witnesses to call and that at a previous sitting an order was made for an "expertise" and experts were appointed by the parties and the Court. That Order has not been cancelled and it therefore follows that it is for the defence only to produce their witnesses which may be heard in Court or on the land, at the discretion of the Court. If this be meant as an "expertise" the order should be cancelled, and if it is not an "expertise" the plaintiffs and their parties should not be allowed to produce their witnesses as their case has been closed.

In Chambers : It was decided to limit the number of the witnesses and this constitutes an "expertise."

Adv. Joseph for Defendants II (1) also addressed the Court in the same sense.

40 *Adv. Moghannam for certain third parties* : I cannot understand these tactics. This procedure was agreed to yesterday and in addition to this the principle that the cases for plaintiffs or defendants is definitely closed at any stage does not apply to civil or land (Settlement) Cases. It was stated by you yesterday that the case of plaintiffs was closed for the question of boundaries. Further the case of third parties was never closed for the question of general evidence or boundaries. The other side admits that we can call evidence before the experts, but they are not a competent body to hear evidence. My witnesses are ready to be heard.

Exhibits.

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Adv. Joseph : We did not agree to this proposal. We merely stated we intended to confine ourselves to these witnesses and the other side stated that they would call three witnesses only.

ORDER INTERLOCUTORY.

The original application of Adv. Asfur was that an "expertise" should be arranged to report on the boundaries and that subject to this application being given effect to, he proposed to call no further witnesses to be heard before the Settlement Officer.

The Settlement Officer has decided that the matter of an "expertise" will be held in abeyance and will only be given effect to if it is found during the course of the hearing that certain questions of interpretation of boundaries regarding which expert evidence is necessary or advisable. 10

It is clearly necessary at the present stage that both parties should have the opportunity of having their witnesses heard as regards the boundaries and the Settlement Officer decides to hear the witnesses of the plaintiffs and third parties as well as those of the defendants on the boundaries.

Hudeira 21.5.1931.

(Sgd.) LOWICK,
 Settlement Officer. 20

Witnesses on Boundaries—(see map Ex. "G").

Witness of Plaintiffs and Third Parties I: SALEH ISMAIL KHATIB, of Zeita—50 years—sworn.

To Adv. Moghannam : The Boundaries of Zeita :—

West—(of old) Infi'at, at present the Forest of the Jews.

North—Forest and Road.

That is the road (map 1-2,-) dividing the Mulk of the Jews and Eastwards of Zeita from the Musha' going Eastwards with no special name. The place known as Khor al Wasa' is the place where the house is situated of Abdel Fattah Samara and partners. The Kasr (Map 3) was a round stone which was broken up and used in the building. It had a hole in it. The eastern boundary is a road between the Mulk and Musha' of Zeita. The road 1-2 connects with the village to the East. On the South—Road and Attil lands. I and my grandfather planted in the Khor al Wasa'. Khor al Wasa' is within the Musha' of Zeita. The Musha' of Zeita is Wakf Zirrie to all the inhabitants of Zeita. The whole of the living have shares but the dead have none. I have cultivated on the Khor al Wasa' many times. I can go round the boundaries. I brought an action in the Court of Tulkarem. 30

To Adv. Abcarious—for Defendants I : My age is 60. It is possible that Abdel Fattah Samara built this house about 20 years' ago. I said in the Land Court that the Western boundary was the land of the Infi'at of old, now planted with trees by the Jews. I do not know the present condition of the Attil road on the South. The stone Kasr was part of an old ruin which was found on the ground. I was not present when the stone was broken and incorporated in the building. 40

To Adv. Moghannam : I did not say "land of Infiat which is in the hands of the Jews" but "forest of the Jews" in Court. If my lawyer described the boundary as Ard Infiat which is in the hands of the Jews, it was meant that the Ard Infiat West of the Forest which was bought by the Jews. This is the boundary as I described now.

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To Settlement Officer : I do not know that there is any difference between two descriptions in the Registered boundaries of Ard Raml Zeita. The two roads mentioned in the Kushan are the roads I have mentioned in the North, East and South of the land. The description Kharab refers to the land now divided on the Eastern side of the Musha' of Zeita. I was about 18–20 years' old when the Jews bought the land of the Infi'at. The old boundary between us and the Infiat is at present shown as the line of eucalyptus trees. That line was the old boundary between them.

As regards the boundary mentioned in the Werko Registers of Tulkarem, regarding Ard Raml Zeita. I do not know of Khirbet Kazaza—the green land East of where we are sitting is the marsh (Bass) of Kazaza (Map 4). There is a ruin near the Bass on the South-Eastern side known as Khirbet el Akkad. On the North and East side of Raml Zeita exists a road and other lands of Zeita. The Kasr is the place I have indicated. I cannot understand to what these boundaries refer. It is possible that the road is that on the East side.

As regards the Kushan (old) of Hudeira, the Eastern boundary shown in the present boundary of Hudeira which is the Marsh of Kazaza and Ard el Hamra. The Southern boundary is the road of Kasr which is the road on which we at present (2 on the map) to the eucalyptus trees. This Tariq el Kasr is not a public road. The land south of the road and west of the eucalyptus did not originally belong to Selim Khouri who sold it to the Jews. It belonged to Infiat and now to the Jews. The boundary was altered and pushed in and out as is the custom among villagers.

30 *Plaintiffs and Third Parties witness II* : MOHAMED EL MAHMOUD HAMDAN—sworn—44 years—of Zeita.

I know the land Khor el Wasa'. I know the boundaries. They are from here North—the road and the forest of the Jews; West—the Ard of Infiat, previously and now the forest of the Jews. South—Road and Attil, and East—Kazaza and Birket Nuriya (Birket Nurieh) is beyond the ridge of the South-East.

The boundaries of the Musha' of Zeita are :

40 North—Road (1–2 map).
 South—Tariq and land of Zeita.
 East—Road and Mafruz lands of Zeita.
 West—Ard Infiat and Forest of the Jews.

I am not aware of any boundary which can be described as "Kharab" (waste) like the Bass of the Kazaza and North.

As regards the Werko record, I know the road "El Kasr" (1–2). I do not know the Kazaza. There is a Khirbet el Akkad, a short distance South-East of the marsh of Kazaza or last of the South and of the Marsh. As regards the southern boundary of Hudeira shown in the old Kushan, the description Tariq el Kasr applies to the road we are on (1–2). This road is an old road which led to the sea and the camps of the Infiat. It was the

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old road from Zeita in this direction. The land south of the road and west of the eucalyptus belonged to the Infiat. I do not know the boundaries of that locality which belonged to the Infiat.

To Adv. Joseph : I know by hearing that the land belonged to Selim Khoury, but my knowledge does not go back to the time of the purchase by the Jews. I heard from the elders that the road reached to the sea and Infiat. The road is known as Tariq el Kasr. I remember giving evidence before the Settlement Officer. I said that this road had no name but the locality around the house is known as "Mowka el Kasr." The road has no name but the locality is el Kasr. The locality is named 10 after a stone with a hole in it called a Qassar and perhaps that is the origin of the name. I noticed that after the building of the house (Samara) it had disappeared. Nobody has told me to say that it is the Kasr road.

Re-examination by Adv. Moghannam for Third Parties : The road to Tulkarem of Jerusalem are "roads." The roads are known by the localities on which they pass.

To Settlement Officer : The roads are usually described by the localities to which they pass.

Plaintiffs' and Third Parties' Witness III : MOHAMED HASSAN ABU MASSADI—sworn—50 years—from Zeita. 20

The boundaries of the Musha' Zeita are as follows :

East—Road.

North—Road and Kasr.

South—Road and Attil.

West—The land of Infiat, now in the hands of the Jews.

Kasr is a locality. The boundary shown as Kharab is really Mafru land bearing the name of the "Khurab." Perhaps at the time of the Tapu the land was *waste*. Waste land round the swamp would be described as "Kharab." The land west of the eucalyptus trees belongs to the Infiat. I never saw the "Kasr" stone during my lifetime (but I have 30 heard it existed and was broken up and used for building). I have never seen the stone but I know al Kasr is the name of the locality.

As regards the boundaries shown on the Werko register, I do not know Khirbet Kazaza. There is a Khirbet Akkad which is East of the Kazaza. The road mentioned in the Werko may be the road leading to Attil. The boundary Zeita may mean other land of Zeita.

The southern boundary of Hudeira is the road (map 1-2) on which we are, by which we used to transport the melons to the sea. The road used to wind about according to customs. The land West of the eucalyptus belonged to the Infiat, and now to the Jews. I do not know 40 the boundaries of this locality. The land south of this boundary is joined to Hudeira by the moving about of the road.

Adv. Joseph : I never saw the stone of el Kasr in my lifetime. I heard that a stone had existed and was broken up and used for building. I know the Kasr locality. I have passed through many times. I cultivated in it many times. In 1920 I had a water melon plantation with Sheikh Saleh Khatib in that place. It is probable that I first came to it when I was 15 years of age. I did not see the stone.

To Adv. Kaiserman : Khirbet Akkad is within the land of Zeita. It is not on the boundary. 50

To Adv. Moghannam : The land in front of us is known as Khor al Wasa' and near is locality " al Kasr."

To Settlement Officer : Now Khirbet el Kasr is part of Khor al Wasa'.

Adv. Moghannam : This concludes our witnesses but I am told that there is a man here who broke up the Kasr stone with his own hands. If the Settlement Officer wishes to call him.

Defendants' Witness II : ZVI BOTKOVSKY—45 years—sworn.

I know the Kushan of Hudeira. I know the boundaries of Hudeira as shown in the Kushan. On East—Marsh Kazaza. South—road. I do not know a word called Tariq al Kasr. I know the boundary of Khor al Wasa'. East—Marsh of Kazaza, Birket Nurieh ; South—road and boundary of Attil. West—the land of Hudeira part in the Kushan of Um el Akareb and part of the Kushan of Hudeira. North—the land of Hudeira and part of Marsh of Kazaza. Those are physical boundaries.

As regards the Raml Zeita boundaries in the Tabu : (Tariq Kharab and Ard Infiat). These fit on with the boundaries I have already given. As regards the Werko boundaries of Ard Raml Zeita Tulkarem (Tariq Khirbet Kazaza, Zeita and Kasr) I do not know the description " Kasr " " Infiat " lands referred to in the Kushan of Zeita are the lands included in our Kushan of Um el Akareb which is a part of the Infiat. The road mentioned in the Kushan of Raml Zeita runs from East to West. It begins on the East between the lands of Zeita and Attil and continues westward between Khor al Wasa' and Attil. Kharab is the marshy land of Kazaza. The road is between the lands of Hudeira and Hudeir Zeita. The Kharab is I think on the West. As regards the Werko registration of Ard Raml Zeita, the first road on the South to which I referred. The Khirbet Kazaza refers to the same marsh which forms the Western boundary of Raml Zeita. The boundary shown as Zeita is the lands of Hudeira Zeita. I do not know al Kasr. I would be prepared to point out all these boundaries on the ground.

To Adv. Moghannam : I have lived in Hudeira 37 years and my age is 45. I saw the Kushan and I gave the boundaries accordingly. I never heard of the word Kasr or Tariq el Kasr. I am familiar with the Kushan of Hudeira. According to the translations I have there is no mention of Kasr. In my translation there is no mention. I do not read Turkish and Arabic. The name of Kasr is not mentioned. I do not agree with you. My evidence is based on the Hebrew translation to which I refer. My evidence is correct ; it is based on the Kushan and my knowledge of the ground. I gave as one of the boundaries of Hudeira as Kazaza and this is Khor al Wasa'. The land up to Kazaza is Hudeira and included in the lands and Kushan of Hudeira. I know that Mr. Rutman as attorney for others produced a Kushan for Khor al Wasa' in 1925 that they were registered as owners and recorded in the books and maps of the colony. I did not do this record. We were very glad that Mr. Rutman brought us an official document and this land came back to us. There were no actions between us and the people of Zeita. The land was taken away from us in 1894 when we came to an agreement with the Zeita people over this boundary (West and North boundary of Khor al Wasa'). We then planted eucalyptus trees and this was the boundary. I know that Abdel Fattah es Samara and some people of Zeita used to lease some of the

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land to the Jews of Hudeira and others. I was 8 years' old when I came to Hudeira. The agreement was made when I happened to be in Hudeira. My memory is based on facts of 10–12 years ago. I am not sure whether the road here has existed since I came to Hudeira. It is not a new road. I never leased land from Abdel Fattah and others.

Re-examination by Adv. Kaiserman : I produce the translation of the Kushan of Hudeira made by Solomon Levin, a Turkish lawyer, in 1891–2. It shows the boundary on South as the well-known road of Hifiya.

To Settlement Officer : The boundaries of Um el Akareb and Tel Massud locality :—

South—Dahr Hayma and Arabs Wadi Hawarith and Dahret Um el Akareb. 10

East—Um el Akareb until Tel Massud and Dahr Siyub al Wadi which are north to Tel Massud and runs to the Taff from the North and Dabbat al Nafiya.

North—The road of Nifiya which runs to Dahret el Karum and which goes down to the Mallul tree which is separated from us on the right side to the Birkeh.

West—Moyat Atta, Beer al Birkat, etc., etc.

The Eastern boundary of Um al Akareb is most complicated. It is very difficult to trace the marks. Tel el Massud is indicated on the map (Exh. "g") by No. 5. The road of Nifiya should be somewhere where I have indicated (at point 9 on the map). I guess that the road is at this point. 20

Witness for Defendants II : JOSEPH BERNBLUM—sworn—35 years—Government Official—Land Registry, Haifa.

I know a locality called Khor al Wasa'. I have been there about one year ago with the Police Official Selim Hanna. I was invited to go with one of my surveyors.

I remember the particulars of boundaries of Hudeira on the East and on the West. We compared the boundaries stated in the Hudeira Kushans with the land. The Eastern boundary of the Hudeira Kushan being Kazaza, is quite a natural and fixed boundary. Kazaza is a swamp. The witness pointed out the swamp. With regard to the Southern boundary, I could find only one road said to be existing since the old registration. This road is actually called Attil road running from East to West. The Kazaza mentioned in the Werko registration of Zeita is obviously a boundary separating two properties. Kharab means uncultivated land. I interpreted the description Zeita as land belonging to Zeita village. I do not know where the Zeita Mafruz is located. I was not able to understand the meaning of Qas'a or find where it was. 30 40

Cross-examination by Adv. Moghannam : I do not know if any of the plaintiffs or third parties were with me when I made the inspection. Bass means a swampy land. The old boundary does not state only "bass" but there is also Ard el Hamra. I have never come to this land except with Selim Eff. Hanna. I do not know about the land before. I gave evidence once before this Court. I do not believe I said that Khor el Wasa' is the Zeita lands. Khor al Wasa' was not found in the Haifa Registers before 1925 as a particular plot. I saw no other road but the

Attil road in addition to this road (road in front of the meeting place of the Court). Khor al Wasa' had been registered before I came to Haifa. It was registered by order of the Court and old registration which existed prior to that. The man who executed the Order of Court cancelled the old Kushan. The kushan which was cancelled was perhaps No. 11 of 307.

Re-examination by Adv. Kaiserman (representing certain Defendants

II (10-): I was in the swamp in winter. As far as I remember I can show the swamp.

To Settlement Officer: The land between the Northern part of the present swamp and the Hudera land planted with eucalyptus in my opinion was not a swamp but may have been swampy in some place.

Adv. Abcarius: We are not calling our third witness.

To Settlement Officer: All the plaintiffs and third parties agreed that the lawyers appearing on behalf of some of them should put in pleadings in the names of all of them.

At Hudeira.

Adjourned to 8.6.1931.

The hearing was resumed at Hudeira on 8.6.1931.

Witness called by Settlement Officer: MOHAMAD IDDILBI—sworn—68 years of age—Tabu Clerk.

I am producing the Daftar Shamsieh in regard to the Infiat lands and Hadera and Dardara. It is dated May 1292. The boundaries of the localities in this Youklama in respect of Hudeira lands are the following:

Ard Jasiereth Abu Ful (hamra or samra?)

South—Road.

East—Wadi Hudeira.

North—Road.

West—Musil Elmaa Shitawi

74½ dunums.

Ard Shemal Eltarik (hamra or samra?)

South—Tarik el Hudeira.

East—Ard Muftalah.

North—Wadi.

West—Wadi.

148 dunums.

Ard Qibliet el Tariq (hamra or samra?)

North—Road.

South—Masrub and Ard Muftalah called Kaddadi.

East—Bass and Tariq.

West—Musil Elma'.

803 dunums.

Ard Kazazi (hamra or samra?)

South—Bass.

East—Bass.

North—Cultivated land.

West—Musil Elma' Elshitawi.

260 dunums.

Ard Khor Jakub wa Tin Sawalieh (raml)

South—Debeth Kassa and Tariq in straight line to Birket Kazazi.

North—Ottul and Debth Sheikh Halu and Road.

East—Musil Elma' Elshitawi up to Birket Kazazi.

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West—	Debth Tawil and Dahret Elbir and Jimmeidi and Tin Sawlieh and Ottul and Ottul Debth El Sheikh Khader.	1445½ dunums.	
<i>Ard Raml Abou Ful (raml)</i>			
	South—Road. East—Musil Elma' Elshitawi. North—Tarik. West—Uttul Sheikh Helu.	28½ dunums.	
<i>Ard Bass Elkazazi</i>			
	South—Bass Elqassa. East—Ard Muftalah. North—Ard Muftalah. West—Musil Alma'.	130 dunums.	10
<i>Ard Bass Elqassa</i>			
	East—Tarik. South—Ard Raml and Birket Qassa. North—Ard Hamra (or samra) tabea Elherbit. West—Bass Kazazi and Birket Elqassi.	335 dunums.	20
<i>Ard Elkhor Jumsisse</i>			

(Note) This land is within the Infiat land.

Boundaries.

South—	Elhajmi Ellati bildahret Bir El Humedi.		
West—	Up to the North of the Sidri and Birket Ukeibi (or Attili) and		
West—	or to the west Ard Elkhor and Elsheikh Helu.		
North—	Road.		30
East—	Ard Elhadum and the Tomb and Dahret Elsheikh Helu.	1105 dunums after deduction of Uttul land.	

There are no general boundaries for the Hudeira, locality. There is another locality mentioned in the Daftar named Ard Dareth Um Elaqaieb was Dareth Tel Massud described as Raml (sand). The boundaries are :—

South—	Dareth Elhazzur and Ard Wadi Hawareth and Dahreit Um Elaqaieb.		40
East—	Dahret Elaqaieb up to Tel Massud on the East and “ Dahret Elaqaieb Elnazai, allati min Shamel Tel Massud ” and runs to the Taf in the northern direction to Rub el Katta.		

North—Tariq Elkassa and runs on the Dahret Elkassa negil ala Sagmaret Elmalub Elmafruz (or Mukassam) waminha Sahiya ila Biru.

West—Birket Atta and Ard Muftalah wibir Elbir wibirket Tash.

2732 dunums after deduction of Uttul.

No query by parties.

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10 *Defendants' Witness : ZVI BOTKOVSKY*—recalled by Settlement Officer—
sworn—45 years.

With regard to the description in the Hudeira old Kushan "Ard al Hamra ali eshtarua Ahali Elseita" (red land that was bought by Ahali Zeita). This refers to land described as Hudeira-Zeita and there are special Kushans for this. Most of it was acquired by settlers of Hudeira from inhabitants of Zeita and a small part remains in the hands of the people of Zeita.

The Southern boundary of the land Hudeira-Zeita divides the land of Haifa sub-District from that of Tulkarem.

20 The Kushans of the lands of Hudeira-Zeita are in the hands of the proprietors of such lands. This land was bought subsequently to that of Hudeira. It was recorded in the Books of the Colony according to the map.

The Western boundary of Hudeira-Zeita is about the Kazaza. A portion of the Kazazi swamp is included in the boundaries of Hudeira (exclusive of Khor al Wasa').

It is difficult to say now the northern boundary of swamp. It is about where I have placed a X (10) on map Exhibit "G".

30 As regards description "Ard el Hamara ali ashtarua Ahali El Zeita" this description was made prior to the purchase of the land by the Jews of Zeita. The Hudeira Kushan is dated Huseiran 1307 and Hudeira-Zeita lands were purchased about 1913-4.

40 There is a locality known as "Netiot Cvul Zeita" which means "plantation boundary Zeita." I have shown it by a red circle on map Exh. "g," 11, 12, 13. Khor el Wassa is included in the boundaries of Hudeira. The fact that part of the plantations called "Netiot Cvul Zeita" is for the same reason that a line of eucalyptus trees are planted in this locality. For a certain time until the land of Khor al Wassa' was taken back, this was considered as the boundary of Hudeira. I have already described the reason why this boundary was so fixed in my previous statement.

The northern boundary of Hudeira-Zeita is Wadi Hudeira. The Western boundary is the old Hudeira locality. Bass Kazazi is on the south-western corner of Hudeira Zeita. The eastern boundary of Hudeira (excluding Khor el Wasa') is Hudeira-Zeita and Bass Kazazi. I have shown on the map the actual boundary of Hudeira Kushan (Exh. "g") 1-14 red line.

The Kazi swamp begins at south-western corner of Hudeira-Zeita and runs southwards to B (?) approximately to Birket Niriye.

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At the present a small part of the marsh may be seen, as drainage operations have been carried out. I base my statement that Khor al Wasa' is included within the boundary of Hudeira as the land west of Kazazi is included in the Kushan of Hudeira.

The second point on which I base myself is that this land was included in the area delivered to the early settlers of Hudeira. It is known that there were disputes on this boundary in the early years. In the year 1894 we came to an agreement to fix the boundary by eucalyptus trees. Later there were actions regarding parts of this land between settlers of Hudeira such as Samsonoff and others and Abdel Fattah es Samara 10 who lived on the land. This land was acquired again by certain settlers of Hudeira. In the early years of the colony there were disputes between the settlers of Hudeira and Abdel Fattah and others who lived on the spot say between 1891-4. I was too young to remember such details but remember the facts. We fixed a temporary boundary which excluded the Khor al Wasa'. The fixing of this boundary was not done on a legal basis but by compromise at a peace making. I cannot say whether there was a meeting of neighbouring villagers to fix the boundary.

The Eastern boundary of Hudeira (excluding Khor al Wasa) can be described as Ard al Hamra-Zeita and a part of Kazazi. I understand the 20 description Kazazi as including the whole of Kazazi swamp.

The southern boundary of Birket Atta and Ard Raml Kushan is shown in the Land Registry as Wadi Hawareth lands; this however, does not mean that *all* lands north of Wadi Hawareth lands are included in Birket Atta and Ard Raml Kushan. All the lands west of the whole of Kazazi swamp are in my opinion included in the Hudeira Kushan. The point shown by me at the last hearing on the map Exh. "g" as the northern point of the eastern boundary of the El Akareb, was only fixed very approximately. The Kazazi swamp extended southwards to Birket 30 Nuriyeh.

Witness called by the Settlement Officer, MOHAMED IDDILLA, recalled.

I produce a copy of an entry in the Haifa Land Registry consolidating the 9 localities of Hudeira Kushan into one locality. The boundaries of the latter are:—

East—Bass Kazazi and Ard el Hamra illati shtarna Ahali Zeita.

West—Dabbet esh Sheikh Helu and Dabbet Bir el Jummeizi was Macab il Ma'.

North—Wadi Hudeira and Ard Infiat from the West.

South—Tariq Kassa el Mashura. Area—3,224½ dunums.

I produce a certified extract of the entries in the Shamsieh book 40 relating to the localities described previously Exh. "j."

FINAL PLEADINGS of Plaintiffs in the matter of *Raml Zeita (boundaries)*.

1. The maps and Kushans produced pertaining to Khudeira Colony prove that the western boundary of Khor il Wasa is the eastern boundary of Khudeira, as indicated on the maps and the eucalyptus tree now now appearing on the scene.

2. The evidence of the witnesses, particularly that of the Land Registrar, Haifa, and the Land Inspector, Mr. Fishmann, prove that Khor

al Wasa is a part of Zeita lands, and confirm the boundary lines indicated on the maps and registers of the lands of Khudeira, which have been produced.

3. The inspection which has been conducted and the physical features of the land, particularly the line of trees forming the boundary of the lands of Khudeira, also prove the authenticity of the maps and registers of the Khudeira Colony, and corroborates the claim of our client, in that the land known as Khor al Wasa is a part of Zeita lands, and not a part of Khudeira.

10 Wherefore application is humbly made for judgment to issue confirming the claim of our client, namely that the land of Khor al Wasa is a part of Zeita, in which each of our clients owns one share out of 906 shares, together with costs and advocates fees.

(Sgd.) J. ASFUR.

Adv. Moghannam on behalf of certain Third Parties: I support the pleadings put in by Mr. Asfur and Mahmoud Eff. el Madi. I simply wish to add that the evidence in this case is before Your Honour. We are sure, Your Honour has appreciated the evidence. I wish to say only this:

20 Taking the proceedings from start to finish, we see that the only evidence given in this case is for this side and not for the other. Our evidence was not challenged or rebutted. The only evidence of the other side is that of Mr. Botkovsky. The two or three Arab witnesses called by the other side were not telling the truth. It is a question of direction and credibility to Your Honour to judge the evidence. Even Mr. Botkovsky did not mention the word Qasa. He admitted that his evidence was based on a mistaken or false translation. Take the word Qasa' (Qaf, sin, 'en, ha) by changing the dots of these letters, the word may read Nafia. Your Honour has heard the word of Al Qasa al Mash-hura in the Shamsieh Register. In addition to this may I mention the way this was extracted from Mr. Botkovsky. He said that in 1913-1914 line of eucalyptus trees was planted as a result of the claim of the people of Zeita that the land was theirs from that day and that the other side took it back later. He did not say that they bought it but acquired it, in a round about way. Mr. Botkovsky said that there were disputes in 1891-94. The only evidence of the other side has become evidence for our side. We have proved our case by documents, maps and witnesses and ask that judgment be given that the land in dispute was outside and is outside Hudeira.

40 The Settlement Officer stated that the witness Yehoshua Hankin had been recalled in order that the Settlement Officer may put additional questions to him. Mr. Hankin was ill and it might be necessary for the Settlement Officer to take his additional statement at his house and the parties and their attorneys would be given an opportunity of attending and submitting if they desire any supplementary pleadings arising out of any new points that might be disclosed from his evidence.

Adv. Asfur and Madi, representing certain Plaintiffs: We have nothing to add to our written pleadings.

Adv. Abcarius Bey's pleadings: The facts of this case are too well known to the Court it is therefore unnecessary to recapitulate them.

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For the sake of convenience I will divide my pleadings according to the different phases this case has developed into.

1. The Plaintiffs claimed Khor al Wasa' as a piece of land in the Tulkarem Sub-District and not Hudeira. They contested the jurisdiction of the Land Settlement Court Hudeira on the ground that Khor al Wasa' formed a part of the lands of Zeita and that the latter was not actually under settlement. The Plaintiffs disputed your power to try this case. Mr. Asfur's pleadings, end of page 3 of the proceedings before this Court.

Files were produced, maps were produced and after hearing nine of Plaintiffs' witnesses the issue in this case was, by consent of all the parties, 10 fixed as follows :—

“ That the Settlement Officer shall decide whether *the area in dispute known as the lands of Khor al Wasa' and/or Raml Zeita are included within the boundaries of Hudeira or included within the boundaries of Zeita and/or Attil villages*, AND FOR this PURPOSE the Settlement Officer shall define the Eastern and Southern boundaries of Hudeira village lands. Such decision to be without prejudice to the rights of any claimant to bring an action in the competent Court to establish his ownership or to pursue an action before the Settlement Officer if the area is found to be within his jurisdiction.”—See page 19 of the proceedings. 20

This took place on the 6th of November, 1930. On the 24th of November, 1930, the hearing was continued, one more of Plaintiff's witnesses was heard, and Mr. Asfur stated in open Court as follows :—

“ I have no more witnesses. There remains only the inspection of the boundaries. The witnesses to give evidence on the ground are not technical witnesses. My case, with the exception of identification of boundaries and evidence of identifying the German map, is complete.”—See page 23 of the proceedings.

Thereupon the following interim order was made :— 30

“ That the case of Defendants and Third Parties shall now be heard and the inspection of the *boundaries* and the hearing of evidence regarding these boundaries shall, if found necessary, be left to a later stage.”—See page 23 of the proceedings.

After very long pleadings by me and my friends on this side and the reply of my friends on the other side, the following order was made :—

“ The preliminary issue before the Settlement Officer is to decide whether the area in dispute is situate within the boundaries of the village of Hudeira for the purpose of settlement and thus comes within his jurisdiction in virtue of the Notice issued in May, 1929, under Section 5 (1) of the Land Settlement Ordinance, 1929–30, 40 declaring Hudeira to be a village under Settlement.

The Plaintiffs to the action have submitted that the area in dispute is part of a tract of land which formed the subject matter of an action in which the land Court Nablus gave judgment on 14.4.24 that the land was Musha' land of Zeita Village, and each of the Plaintiffs in the action should be registered in the Land Registry as being the owner of one share out of 906 in this land. This judgment was confirmed by the Court of Appeal on 20.1.25.

The Defendants, however, have shown that the land in dispute was registered in the Haifa Land Registry in the name of Abdul Fattah Mar'i es Samara and partners, the predecessors in title of the Defendants, by order of the Execution Officer, Haifa, dated 14.4.25. The registration was effected in accordance with maps (Exh. " w " of File No. 92/30 B) which was presented by the Defendants, and which Adv. Asfur representing certain of the Plaintiffs to the present action, admits covers the area in dispute. The latter judgment was not appealed but a certain Selim Samara al Khatib and another subsequently entered an opposition in the Land Court, Haifa, against the judgment of 6.5.1925, and included among the Respondents certain persons who were not parties to the original action, and on these grounds the claim of the opposer was dismissed, and this judgment was confirmed by the Court of Appeal on 6.5.1925.

The Settlement Officer is informed that at the time judgment was delivered, the opposer was notified that his remedy was to bring a new action in the competent Court. In spite of this, no new action was brought by the opposer or other person claiming similar rights until Settlement was commenced in Hudeira in May, 1929.

Subsequently to the judgment of the Haifa Land Court of 6.5.1925 Abdul Fattah Mar'i es Samara and partners transferred the area in dispute to Mrs. Toba Rutman and Miss Rifka Aaronson who have in turn sold considerable portions to the other Defendants in this action, many of whom erected buildings and made plantations. These transactions were effected in the Land Registry of Haifa.

It is claimed that the original registration in favour of Abdul Fattah Mar'i es Samara and partners was obtained by fraud and by a collusive action before the Courts, but the charges of fraud were not substantiated both in the case of Samara and of Nissan Rutman before the competent Court.

The Settlement Officer is thus confronted with a position of a tract 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 so 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."

On the 16th December, 1930, the further hearing of this case was resumed. My friend on the other side submitted that there was no need for an inspection—see page 52 of the proceedings, fourth line from the bottom of the page—and I submitted that Your Honour having declared this land of Khor al Wasa' to be within the Hudeira Settlement Area, anybody could come and claim his right of ownership—see page 55 of the proceedings seventh line.

Your Honour made an interim order as follows :—

" Although a judgment was given by the Land Court, Haifa, and confirmed by the Court of Appeal regarding the subject matter

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of the present claims 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 claims to this 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 1920-30.

The judgment of the Haifa Land Court moreover contained 10 a statement that—

‘ the opposer is at liberty to institute 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 the publication of such notice is that the only Court now possessing jurisdiction is that of the Settlement Officer.”

Again after certain pleadings Your Honour made the following interim order :—

“ The Settlement Officer disagrees with the contention of 20 Mr. Asfur that if it be established as a fact that the land in dispute is not or was not at some time in the past included within the boundaries of Hudeira, the judgment of the Haifa Land Court of 6.5.1925, can be ipso facto ignored by him. It is necessary that the Plaintiffs produce positive proof that the land in dispute is a part of the Musha’ land of Zeita.

* * * * *

In the present action the Settlement Officer has been made cognisant of disputes regarding the ownership of the land known as Khor al Wasa’ and he must investigate fully the rights to the land. 30

* * * * *

The Settlement Officer decides that the issue of whether the lands in dispute in the present action form part of the Musha’ of Zieta referred to in the judgment of the Nablus Land Court and the Court of Appeal shall be first dealt with and for this purpose he will proceed to inspect the land and hear the witnesses which are available to give evidence on the boundaries.”

The hearing was then adjourned for inspection of the land and hearing of evidence on the boundaries.

We went to the land and the following witnesses of Plaintiffs were heard. Let us see what did they establish ? 40

Mr. Wilbushevitch identified map Exhibit “ v ” File No. 92/30 B. He said he had no knowledge either of the boundaries of Hudeira or Zeita.—See page 63, line 16 of the proceedings.

This witness proves nothing. He made a map. The boundaries were shown to him by the people who are no parties to this action. The map was made to show the lands sold by Hankin to the then colonists. On this map the western boundary is shown as the sea. Hankin sold and received money for the land extending to the sea and yet, Your Honour

refused in the Infiat case to accept the boundary shown in that map. Much less can this Court accept any private map to which Mrs. Toba Rutman, Miss Rifka Aaronson, their predecessor in title Abdel Fattah Samara or the people of Zeita were no parties.

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10 *Witness Yusef Musallam* said that the eastern boundary on the map is a marsh called Kazaza and further south is Birket Nuriya ; that the map was signed by the Mukhtar of Zeita and other notables ; that when the map was signed there were many people of Zeita—page 64 of the proceedings. This map is our map and this witness has given evidence for us and not against us.

Witness for Plaintiffs, Aref Nashif gave no evidence whatsoever as to boundaries—see 65 of the proceedings. Abder Rahim Es Samara states : “ that he did not know the boundaries of Knor al Wasa’ and he did not know the name of the road on which we were standing—see line 6 on page 67 of the proceedings. On page 68, line 10, this witness said “ at the time of the estimation, the elders used to point out this land as being Khor al Wasa’ ”. On page 69 he said “ I do not know the present boundaries of Hudeira ”.

20 *Saleh Sada*, an assessor of tithe from 1923 till 1928, stated : “ I have never assessed the crops of the land we are on at present, and I do not know this land ”—see line 1 on page 70.

This witness is Plaintiffs’ they have called him and he knows nothing about boundaries.

30 *Mohammed el Mahmoud*—a cultivator, stated : “ This land belonged to Zeita. I can point out the boundaries of this land . . . The road on which we are standing has no name . . . Raml Zeita is divided into a number of localities of Khors. These are vague localities without fixed boundaries.” Witness gives boundaries of Raml Zeita and then he gives the boundaries of Khor al Wassa : “ North—road and eucalyptus plantations of the Jews : South—Attil ; East—Kazaza and Birket Nuriyeh ; West—Infiat lands.”—See 70 of the proceedings.

As it may be remarked, this witness is an interested party having one share out of 20 in the Musha’ land although he said he was not one of 906. It is claimed by the other side that Raml Zeita belongs exclusively to the 906 in virtue of the Nablus judgment.—See page 71 of the proceedings.

40 This witness distinctly stated that Raml Zeita is divided into a number of localities or Khor which have no fixed boundaries and then he gave very clearly the boundaries of Khor al Wasa’ which consists of well fixed and defined boundaries such as Kazaza, Birket Nuriyeh, Road and Attil. If Khor al Wasa’ was a part of Raml Zeita, it would, according to this witness, have been a vague locality without fixed boundaries. The fact that it has fixed boundaries shows that it never formed a part of Raml Zeita.

Mohamed Radi Shihadeh stated that the boundary between Attil and Khor al Wasa’ was a road running from East to West which has disappeared.

50 This witness, who is supposed to be a witness on the Southern boundary, gave in evidence the boundaries of Zeita as West—Eucalyptus trees and cemetery ; North—Eucalyptus Trees ; East—Ard el Mulk ; South—Attil.

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These boundaries are in contradiction with the boundaries shown in the Kushan, namely : Road, Road, Road, Kharab (waste land) and Infiat land, and the Werko Kushan which are Zeita, Road, Kazaza and Kassa. This witness helps the defence inasmuch as he does not know the boundaries of Zeita and he establishes that Khor al Wasa' is a distinct locality having fixed boundaries and that its southern boundary is a road which was running from East to West and which exists no longer. This coincides exactly with the Hudeira Kushan which gives the southern boundary as a Road and this Road must be either the Infiat Road according to the Book of Mr. Butkovsky, or Kassa Road or Attil Road.—See page 72 of 10 the proceedings.

Suleiman Yusef el Attil : This is another witness on the boundaries (southern). He told us that the northern boundary of Attil is Zeita when in fact it is a Road and he told us that the northern boundary of Zeita is the road of "Qasa". The northern boundary is not at issue and this gentleman told us nothing, absolutely nothing about the eastern boundary with which we are now most principally concerned.—See page 73 of the proceedings.

Sheikh Mahmoud en Naddaf : This witness of Attil gave us the northern boundary of Attil as a road and Zeita. He gave us the boundaries of Khor 20 al Wasa'.—See pages 73, 74 and 75 of the proceedings.

This witness has told us nothing about the western boundary of Raml Zeita. He has, on the contrary, affirmed that the eastern boundary of Khor al Wasa' is Birket Nurieh, and that Khor al Wasa' is a distinct locality having its own boundaries, which on the other hand he emphatically stated that all the Khors are parts of Raml Zeita and they do not have separate boundaries ; it necessarily follows that Khor al Wasa' has nothing to do with Raml Zeita.

Abdel Fattah Miri Samara : This witness produced by Plaintiffs 30 told us distinctly that the eastern boundary of Khor al Wasa' was Kazaza and Birket Nuriyeh, and that the southern boundary was Attil. He told us further that Khor al Wasa' was entirely distinct from Raml Zeita which was to the East.

Haj Said Ibrahim from Gat told us "the land on which we were standing belongs to Zeita." As he was a neighbour *he heard* that this land was cultivated by Zeita people.—See pages 78 and 79 of the proceedings.

Mustafa Ahmed Abu Bakr from Gat : This witness told us that the locality was Khor al Wasa'. He knew it because he passed from there and bought water melons. Some 36 years ago he planted water melons. 40 This witness knew the boundaries of Khor al Wasa', but he did not know the boundaries of Khor Nuriyeh. He knew the southern boundary but did not describe it. He knew that the eucalyptus trees are the boundary between Raml Zeita.—See page 79 of the proceedings.

Ahmed Mohammed Hammad from Gat told us that the land on which we were is of the Raml category and belongs to Zeita. He knew that because he was a neighbour.—See page 80.

Yusef Abdel Razik from Gat told us that he knew this land belonged to Zeita because he was a neighbour. He gave us the boundaries of Zeita as Road, Road, Attil and path and eucalyptus. 50

What is the value of all this evidence? Has it established the Eastern and Southern boundaries? No.

Exhibits.

No. 62.
Plaintiffs'
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I shall deal later more fully with this point. The case was then adjourned till the 19th, 20th and 21st of May, 1931. On the 19th of May, 1931, after certain people were admitted as third parties, notwithstanding our objections, Mr. Asfur, with whom all advocates for Plaintiffs and all third parties agreed closed their case and after making an application for an inspection and nominating their experts, stated most definitely and expressly that subject to the inspection their case was
10 closed.

Before agreeing to the inspection, I particularly inquired if the object of it was to apply the Kushan to the ground. My friends on the other side said it was and thereupon Your Honour made a consent order ordering the inspection as follows:—

“ That the following experts should inspect the land in dispute and endeavour to apply to the ground the boundaries shown in the kushans of Hudeira and the kushans of Zeita and Attil, and give a report regarding the location of these boundaries, and for this purpose all maps shall be placed at their disposal.

20 *Appointed* by Plaintiffs and Third Parties:—

1. Mohamed Rageb Eff. Osman or Hilmi Bey Hussein.
2. The Registrar of Lands, Tulkarem.

Appointed by Defendants. Any of the two of the following:—

3. Mr. Masson.
Mr. Bernblum.
4. Mr. Butkovsky.

Appointed by Settlement Officer:—

Mr. Elhasid, Asst. Settlement Officer at Hudeira.

(Sgd.) —

30

19.5.1931.

Settlement Officer
Jaffa & Hudeira Settlement Area.”

We then, relying that there was going to be an inspection called some of our witnesses, as to our mind the inspection and the application of the kushans to the land was absolutely essential and would have disposed of the point at issue.

Mustafa Mohamed Zeitun was our first witness. He is one of the claimants. This witness told us that he was 18 years old, his name did not appear on the 906 list, that his father had 5 shares, and that he, although not having shares in his name, he had sold his share to one Abdel Halim.
40 I produced to him a copy of his agreement of sale and he admitted his signature.

On being cross-examined, he stated that he had signed the agreement of sale on behalf of his sister and that he was authorised to do so by her and his mother. This is a deliberate lie because in copy 5 Exhibit No. 1 it is clear that he signed for himself and not on behalf of his sister. He also stated that the land he sold did not include Khor al Wasa'. That is one of the claimants. Let us see what did he actually sell. He and many others mentioned in the agreement of sale 48 shares out of 906 shares

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of the whole plot of land famous by the name of Raml Zeita and bounded on the North by the Road separating the Musha' from the mulk and the land of the Jews of Hudeira, on the East by the road separating the mulk from the musha', on the South by the road separating between it and the lands of Attil and on the West by the land of Kazaza and Birket Nuriyeh. I have submitted a list of the claimants and I have produced the agreements of sale. Your Honour will see that about all the claimants have sold their shares in Raml Zeita and they all give its Western boundary—which is our Eastern boundary—as Kazaza and Birket Nuriyeh—how can they go behind their own admission? In all the agreements of sale the same phrase is used namely the whole plot of land famous by the name of Raml Zeita and bounded on the North and South by Roads and on the East by Kazaza and Birket Nurieh. 10

Yousef Mohamed Abdel Mihsen our second witness. He is one of the claimants, a boy 20 years old, stated that his name did not appear on the list of 906. That he had sold his share to Abdel Halim. He admitted his signature on the agreement of sale. He said that the land he sold included Khor al Wasa', and then he said it did not include it when my friend Dr. Joseph pointed out to the Court that a sign was made to the witness to change his evidence. See page 87. 20

Sheikh Mohamed Khalil: This witness is also one of the claimants. He is the Mukhtar of Nazleh. He is not of Zeita. His name is not on the 906 list.

Mohamed Abdel Nimr: This witness is also one of the claimants. He stated that his name is mentioned in the list of 906 when in fact his name was not. His father has no name on the list and yet he sold shares in Raml Zeita to Hamdan, and stated in his agreement of sale that the Western boundary of the whole of Raml Zeita is Kazaza and Birket Nuriyeh. (See pages 87 and 88.) Are these witnesses, who are Plaintiffs themselves, not proving our Eastern boundary to be Kazaza and Birket 30 Nuriyeh?

Nimr Deeb Kadan from Jat, gave us the Eastern boundary as Kazaza and the Southern as Attil.

I then submitted all the agreements of sale to Abdel Halim and Hamdan and asked for a ruling as to whether the Court would like to have each claimant called to prove his signature. (See pages 90 and 91.) The Court made the following interlocutory order:—

“The Settlement Officer decides that it is not necessary at the present stage of the proceedings to prove the signature of all these documents. These documents may be inspected by any 40 interested party who is at liberty to inform the Settlement Officer if he denies his signature.

At Hudeira,
 20.5.31.

(Sgd.) Settlement Officer
 Jaffa & Hudeira Settlement Area.”

I then produced a certified copy of the original Revenue Book of the year 1310, that is some forty years ago, which shows that the Western boundary of Raml Zeita is Kazaza. Exhibit “f” (see page 91).

Mr. Moghannam at that stage of the proceedings got up and withdrew his application for the inspection and applied that the consent order be cancelled. I and my friends on this side were greatly amazed at this 50

attitude. It seemed to us most strange and extraordinary to apply one day for an expertise which the Court accepted and made a consent-order and to come the following day and apply for its cancellation on the ground that it was not useful in law and would cause delay and waste of money.

We strongly objected to this attitude and submitted that the application of the Kushans was absolutely essential and once a consent order was made it should be maintained. Notwithstanding my objections, another interlocutory order was made whereunder the consent order was left in suspense. It ran as follows :—

10 “ Although the Settlement Officer considers that he is entitled to cancel or amend an Interlocutory Order previously given he is reluctant on general grounds to take such action.

He was however of opinion at the time that the original application was made that in the circumstances no useful purpose might be served by calling expert witnesses who do not know the locality to fix the situation of boundaries, such as a road which may not exist and a locality name as Elkaser. It is obvious that such boundaries can only be fixed after the hearing of evidence and the Settlement Officer considers it preferable that he himself and not the experts should hear such evidence and that the parties be given

20

If after hearing the witnesses on the ground it is found that expert witnesses are required to identify certain physical features on the ground, the question of calling such experts will be reconsidered.

In the meantime the Settlement Officer will hear the remaining witnesses for the defence and will proceed to the ground to-morrow morning to hear any witnesses that the parties may desire to produce as regards the identification of the boundaries with the descriptions shown in the kushans.

30

Hudeira,

20.5.1931.

Settlement Officer,

Jaffa & Hudeira Settlement Areas.”

40 *Mohamed El Nimr* : Mukhtar of Zeita. This witness, besides his being the Mukhtar of Zeita, is on the Village Settlement Committee. He gave very positive evidence that Khor al Wasa' is distinct from Raml Zeita and that the Eastern boundary of the former is Kazaza and Birket Nuriyeh and that on the East of that boundary is the musha' of Raml Zeita. See page 96. He said that Khor al Wasa' used to belong to the Infiat who sold it to Hudeira. See pages 98 and 99 on being examined by the Court.

Hassan El Fares : This witness cultivated Khor al Wasa' for 20 years and he gave us the Eastern and Southern boundaries as Kazaza, Nurieh and Attil. He said that the southern boundary was a road which does not exist. See page 99. He also gave us the boundaries of Raml Zeita as road between South Attil and Zeita. East Railway line, West, Birket Nurieh and Kazaza, North Road and Hudeira land.

On the 21st of May, 1931, I made the following objection when the Court wanted to hear other witnesses of plaintiffs :—

50 “ My preliminary objection is that Plaintiffs should not produce any witnesses at this stage as Adv. Asfur has informed the Court

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that this case is closed except for the 'expertise' and that he has no more witnesses to call and that at a previous sitting an order was made for an 'expertise' and experts were appointed by the parties and the Court. That order has not been cancelled and it therefore follows that it is for the defence only to produce their witnesses which may be heard in Court or on the land, at the discretion of the Court. If this be meant as an 'expertise' the order should be cancelled, and if it is not an 'expertise' the Plaintiffs and third parties should not be allowed to produce their witnesses as their case has been closed."

10

My objection was overruled and the following interlocutory order was made :—

"The original application of Adv. Asfur was that an 'expertise' should be arranged to report on the boundaries and that subject to this application being given effect to, he proposed to call no further witnesses to be heard before the Settlement Officer.

The Settlement Officer has decided that the matter of an 'expertise' will be held in abeyance and will only be given effect to if it is found during the course of the hearing that certain questions of interpretation of boundaries regarding which expert evidence is necessary or advisable.

20

It is clearly necessary at the present stage that both parties should have the opportunity of having their witnesses heard as regards the boundaries and the Settlement Officer decides to hear the witnesses of the Plaintiffs and third parties as well as those of the Defendants on the boundaries.

Hudeira,
21.5.1931.

(Sgd.) LOWICK,
Settlement Officer."

At this stage the Plaintiffs called their witnesses.

Saleh Ismail Khatib : This witness is the same person who had made the opposition to the Haifa judgment and his opposition was dismissed. He appealed and his appeal was dismissed. He is not a claimant now. He gave the boundaries of Zeita as West of old Infiat at present, forest of the Jews, North Forest and Road. He said that Khor al Wasa' was within musha' of Zeita. He said the musha' Zeita was Wakf Zuri, which is a deliberate lie.

30

On cross-examination, he said that in the Land Court he had given the Western boundary of Zeita as Infiat of old and now planted with trees by the Jews. This again is a deliberate lie because he said Infiat land in the hands of the Jews. See pages 102 and 103.

40

He also stated that he was not present when the stone Kassa was broken and incorporated in the building.

Your Honour then read out to this witness the Werko Register. He pointed out where Kazaza was and Khirbet el Akkad. As regards the old Hudeira Kushan, he said the Eastern boundary is marsh of Kazaza and Ard el Hamra, the Southern boundary is the Road of Kaza which is the road on which we were, but that it was not a public road. He said that the road of El Kassa ran straight to the sea and when Your Honour pointed out to him if this were the case a great part of Hudeira lands will be excluded from Hudeira, he said that the boundaries get mixed up together

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as is the custom among villagers. This I found in my notes but I did not find it in the copy of the proceedings I have before me. I should like to be put right on this point. See page 104.

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Mohamed el Mahmud Hamden, Plaintiffs' witness stated that he knew Khor al Wasa' and gave us the boundaries as we claim them to be, and he gave us the boundaries of the Ard Raml as now claimed by Plaintiffs. He said he was not aware of any boundary which can be described as Kharab waste like the Bass of the Kasasa North. As regards the Werko records, he knew el Kaza, but did not know Kazaza. He knew Khirbet el Akkad a short distance from Kazaza. As regards the Hudeira Kushan, the southern boundary Tariq El Kassa, he said that applied to the Road we were on. He said that the road was an old road which led to the sea. He said he did not know the boundaries of that locality which belonged to the Infiat. This witness had previously given evidence (see page 5 here) before Your Honour when he said that the Road on which we were standing had no name. Now he emphatically says it is called Road of El Kassa. It is enough to point out, as was pointed out by Your Honour, but I do not find any record of it in the proceedings, that if that road on which we were standing extended to the Sea one-third of Hudeira lands will be excluded of the Hudeira area Kushan. See pages 105 and 106.

Mohammed Hassan Massadi: The third witness for Plaintiffs stated that the boundary shown as "Kharab" in the Raml Zeita Kushan is really land bearing the name of "Khurab." Then he said perhaps at the time of the Tapu the land was waste. He never saw Kassaa stone. What can anyone think of this man's evidence and of what value is it?

He then added that he did not know Khirbet Kazaza. That there was a Khirbet Akkad East of Kazaza, that the Southern boundary of Hudeira was the road on which we were, and by which he said he used to transport the melons to the Sea. Again it was pointed out by Your Honour that if it were so great part of Hudeira would be excluded from Hudeira to which he could not reply, and if I am right, may I ask Your Honour to have this inserted in the proceedings. See pages 106 and 107. For the third time the Plaintiffs closed their case and we then called two witnesses namely:—

Zvi Botkovsky.—This witness knew perfectly well the Hudeira boundaries. He gave us the boundaries of Khor al Wasa' and showed us the physical boundaries. He distinctly showed us that the Eastern boundary according to the Hudeira Kushan is Marsh Kazaza and the Southern boundary as Road. He gave us the Raml Zeita boundaries as in the Tabu and he showed us how well they fit on with the boundaries of Hudeira, and thus bring in Khor al Wasa' within the Hudeira kushan. As regards the Werko boundaries of Ard Raml Zeita, he also showed us how well they apply to the land which can leave no doubt that Khor al Wasa' is within the Hudeira Kushan and never formed part of the Raml Zeita. Witness explained to us that Kharab was the marshy land of Kazaza, that Khirbet Kazaza refers to the same marsh and that he was prepared to point out the boundaries on the ground.

Joseph Bernblum.—The second witness for the defence. He is the Land Registrar at Haifa. He told us that he was invited by Police Officer Salim Hanna to go to Khor al Wasa' with his surveyor. That he knew the particular boundaries of Hudeira on the East and West. That he

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compared the boundaries in the Hudeira Kushans with the land. That the Eastern boundary of the Hudeira kushan is Kazaza which is quite natural and fixed boundary. He pointed out the marsh of Kazaza. That the Southern boundary was the Attil road running from East to West. That the Kazaza mentioned in the Werko Registration of Zeita is obviously a boundary separating two properties and that he was unable to find where Kasa was. On being cross-examined he stated that Khor al Wasa' was registered as a separate plot by order of the Court at Haifa and that the old Kushan relating thereto was cancelled. See pages 110 and 111.

The Court rose and all Plaintiffs and Third Parties agreed that the 10
 lawyers appearing on behalf of some of them should put in pleadings in the names of all of them.

I have gone through the evidence of witnesses and analysed it briefly. I do not think there is a Court in the world or a fair minded person who, on carefully considering each evidence and weighing it, will not find that the scale weighs very much on our side. In addition to the positive fact that the evidence of the witnesses is on our side, we have declarations made by the claimants before the Notary Public, which have been filed in the Court in the early stages of the proceedings, declarations in which these Plaintiffs and Third Parties have officially declared that the land 20
 registered in the names of Rifka Aaronson and Toba Rutman at the Land Registry Haifa, bounded on the East Kazaza and Birket Nuriyeh, on the South Road of old and new Attil, on the North Hudeira Forest and on the West Hudeira Forest, which plot of land known by the name of Khor al Wasa' was bought by them from Abdel Fattah Samara, is a distinct and a separate land adjoining Raml Zeita and that they (Plaintiffs and Third Parties) have no claim or interest whatsoever in Khor al Wasa'. These declarations were read over to them by the Notary Public and the contents thereof have been explained to them as evidenced by the Notary Public 30
 himself. Under what law and in what country can a man making an official declaration under his signature and before a Notary Public, that this plot of land (Khor al Wasa') is separate and distinct from Raml Zeita, and that he has no claim or interest therein, come and have the effrontery to claim it. Are they not estopped and barred by their own admissions ?

These declarations were made in 1925. Towards the end of 1929, that is some five years later, these same Plaintiffs and Third Parties sold their shares in Raml Zeita to one Mohamed Abdel Halim and one Hamdan who in their turn sold those shares to Abdel Rahman Bey el Tagi and Shukri Eff. el Taji.

In the agreements of sale these same Plaintiffs and Third Parties 40
 have sold all their shares in the whole plot of land famous by the name of Raml Zeita, bounded on the West by Kazaza and Birket Nuriyeh, on the North by a Road separating the musha' from the mulk and Ard of the Jews in the Hudeira, on the East road separating the musha' from the mulk, and on the South by a road separating it from Attil.

How can these vendors come before Your Honour now and say that although in 1925 we declared before the Notary Public that Khor al Wasa' belonged to Defendants and its Eastern boundary is Kazaza and Nourieh and the Southern boundary Attil, and although we declared that it was distinct and never formed part of Raml Zeita 50
 and that we had no interest whatsoever therein, and although five years

later in different transactions of sales to which the Defendants were no party declared that the boundary of the whole of Raml Zeita on the West was Kazaza and Nurieh, yet it suits our interest to say that Khor al Wasa' belongs to Zeita. In any other country these Plaintiffs and Third Parties would have been prosecuted.

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I should like now to deal with the different Kushans produced by us from which it will most clearly appear and it will be distinctly proved that the Southern boundary of Hudeira was a Road running from East to West, which probably was called Road of Kazaza or Attil or Infiat which now does not exist, that the Eastern boundary of Hudeira was 10 Kazaza and Nourieh, that the Western boundary of Raml Zeita was Kazaza and Nourieh, that the Northern and Southern boundaries were Roads, that there was not and never existed a Road passing Abdel Fattah Samara' house called El Kassa, is so obvious and clear because if there were any one third of the lands of Hudeira would have been excluded. I shall now examine the kushans more minutely in order to convince Your Honour that my submission is correct and admits of no other alternative.

The boundaries given in the Kushan of Hudeira are as follows :—

20 West—Dabet El Sheikh Helou, Dir El Hemeida and Maka El Mai.

East—Bass Kazaza and the Ard el Hamra which is bought by Zeita people.

North—Wadi el Khedeira and Ard el Nafeiat to the West.

South—Tarik el Kessa el Mash-hour.

2. When applying these boundaries to the land, it is found that it includes " Khor al Wasa " which forms part of the Eastern portion of the Colony's land which is bounded from the East by Bass Kizaza and Ard el Hamrah. In fact the Eastern boundary of " Khor al Wasa " is Bass 30 Kissaza and therefore it forms a part of the Colony's lands and is within the boundaries mentioned in the Kushan of Hudeira.

3. The kushan of the " musha " Raml Zeita gives as boundaries the following :—

Road.

Road.

Kharab.

Infiat.

4. When applying these boundaries on Musha' Raml Zeita we find that this piece of land is bounded by the four natural boundaries, three 40 of which are Roads and the fourth which is the Western " Otul ". This Western boundary which is limited by the two roads which form the Northern and Southern boundaries and which run East and West, meets the Eastern boundary of Hudeira which is the Bass Kizaza and therefore the two boundaries of Hudeira and Zeita meet at Bassat Kizaza, Khor al Wasa' is to the West of this Bassat Kizaza and is thus an apparent part of Hudeira land.

5. The boundaries given of Musha' Raml Zeita as mentioned in the Werko Government are as follows : Road, Kassa, Zeita and Kizaza.

6. The boundaries conform with those of the Kushan of Musha' 50 Raml Zeita. The Western boundary given as Kizaza, clears and interprets

Exhibits. the word "Otul" given in the Kushan of Zieta as western boundary. This western boundary of the Musha' Raml Zeita given as Kizaza meets the same Kizaza given in the Eastern boundary of Hudeira.

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7. The statement made about the Tarik al Kassa al Mash-hur "Road", which is mentioned in the kushan of Hudeira as Southern boundary, and which touches Bassat Kizaza from the North and stated to pass through Hudeira Colony to the Sea, is a fallacy, for the following reasons :—

A. This road must then cut the Hudeira property into two portions, one would be to the North of this road and one would be to the South of the road, and as this boundary (road) is given as the Southern boundary of the Hudeira Kushan the location of this road as stated is wrong and cannot be the road passing through the Colony's property and must be therefore a road bounding the Khuderia property from the South, and should be a good few miles from that suggested road. 10

B. The boundaries given in the Hudeira Kushan for the Eastern boundaries in Bass Kizaza and Ard Hamtah and for the South Tarik el Kassa el Mash-hur, thus this Tarik should and must be to the South of the Southern end of Basset Kizaza. If we have to follow the previous statement made about the Tarik mentioned in para. 7 we have to move and shift the whole of Basset Kizaza which is about two kilometres in length from its place where it is now, to a place somewhere North of this supposed to be the Tarik el Kassa, and as this is impossible and impracticable, therefore the suggestion that road is the one that passed through the Hudeira Colony is also wrong and the only location of this road, in accordance with the terms of the kushan, would and must be to the South of Basset Kizaza and forms a Southern boundary of the Colony's property. 20 30

8. The suggestion that a negligible part of Bassat Kizaza "some few metres" forms the Eastern boundary, is not only absurd but ridiculous, as boundaries of villages and Colonies are not known yet to be few metres, besides the Western boundary of the Musha' Raml Zeita as mentioned in the Kushan Otul, and as mentioned and interpreted in the Werko Government Books as Kizaza and that the two boundaries as mentioned in these two documents for North and South are roads. Thus the Western boundary of this property is *limited between the two roads*, and as it stands now, the Bass Kizaza is stretching between these two roads. The suggestion that the few metres of the Bass which are situated to the North of the Northern road, is contradicted by the said boundaries. If such is the case it would leave the Musha' Raml Zeita without a Western boundary or that Northern Road will have to be shifted from its present locality to somewhere in the property of Hudeira in order to form the Western boundary of the Raml Zeita as mentioned in the Kushan. 40

9. It is therefore obvious that Bass Kizaza is that stretching now between the two roads which form the Northern and Southern boundaries of the Musha' Raml Zeita. The road el Kassa al Mash-hur cannot be but the road that forms the Southern boundary of Hudeira Colony and must be to the Southern of the Bass Kizaza as it stands now. 50

10. Khor al Wasa being to the West of Bass Kizaza which forms the Eastern boundary of Hudeira and the Western boundary of Musha' Raml Zeita, is obviously a part of Hudeira Colony property and is outside Musha' Raml Zeita.

If we go as far back as the year 1878, we find in the War Office reprints of 1917 of the Palestine Exploration Fund maps surveyed by Kitchner, that there never existed a Road famous by the name El Kassa or otherwise which cut through the Northern boundary of Zeita from East to West.

We find a small track which stops at Kizaza and we find a famous road which must be the Attil road, or that called El Kassa or Infiat.

The only Otul between Raml Zeita and Khor al Wasa' is Kazaza and Birket Nurieh, Kazaza stretches out some two kilometres. Kazaza is a natural fixed boundary between two fixed boundaries of Raml Zeita, the Northern and Southern of which are Roads. The Western boundary of Raml Zeita is and must be Kazaza. The eastern boundary of Hudeira is and must be Kazaza, therefore Khor al Wasa' is distinct from Raml Zeita and Khor al Wasa' within the Hudeira Kushans and outside Raml Zeita, Kushan.

What have the Plaintiffs and Third Parties proved? Nothing. On what did they rely on their claim? They relied on:—

- (1) The Nablus judgment.
- (2) On the private maps of the Colony.
- (3) On the witnesses.

As regards the Nablus judgment, it cannot, I submit, be taken seriously to help the Plaintiffs. It is what I call a bluff.

In the first place we were not parties to it and therefore it cannot affect us; and secondly the question of boundaries was not at all at issue in those proceedings and the Nablus Court gave no judgment thereon. The Nablus Court simply decided a plot of land called Musha' Raml Zeita was divided into 906 shares and that each claimant should go and prove his shares. The boundaries incidentally mentioned in the Nablus judgment were North, East and South Road, West Ard el Infiat which is in the hands of the Jews. Does this prove that Khor al Wasa' is included in Raml Zeita? That is really very naive.

The kushan of Raml Zeita gives Otul as the Western boundary. In the judgment Otul is not mentioned, and secondly if the Western boundary of Raml Zeita is Infiat lands in the hands of the Jews, this means that Khor al Wasa' was of the Infiat lands and is now in the hands of the Jews.

The Nablus Judgment says that Raml Zeita is to be divided into 906 shares. We are not objecting to that. The Nablus judgment does not say that Khor al Wasa' is within Raml Zeita, nor was this a point at issue, and therefore it is absolutely ridiculous to contend that the Plaintiffs can derive any benefit from the Nablus judgment.

As regards the maps of the Colony: also those, I submit are of no legal value whatsoever. In the first neither Miss Rifka Aaronson nor Mrs. Toba Rutman were parties or in any way contributed or participated in the making of these maps.

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Exhibits. Secondly, these maps are private maps of the Colonists and not official maps.

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Thirdly, these maps were made with the sole object of showing the land of Hudeira as owned by them, at the time they were made.

Your Honour held this view impliedly in the Infiat case inasmuch as these maps the self same maps showed that the Western boundary was the sea-shore. Mr. Joshua Hankin had sold to the Colonists Hudeira till the seashore and notwithstanding Hankin's evidence, notwithstanding possession and contracts of lease and contracts of lease of the land to the sea shore and notwithstanding these maps, yet it was held by this Court 10 and upheld on appeal that the Kushan gave as Western boundary Raml Uutl and the maps and Hankin's evidence were disregarded.

This case is identical, the Hudeira kushan shows that the Eastern boundary is Kazaza and Ard el Hamra—it is therefore immaterial what the maps show and they cannot possibly override a Kushan.

As regards the evidence of witnesses : I have already dealt with that.

I submit that the Plaintiffs' case rests on no leg and had it not unfortunately been to the interference of the Government and the assistance given to the claimants, no such case would have ever been instituted. 20

Let us now see on what does our case rest and on what do we rely. We rely :—

1. On the Haifa judgment.
2. On the opposition judgment.
3. On the opposition proceedings in the Government case and on the withdrawal from such proceedings.
4. On the agreement of compromise made by the High Commissioner.
5. On the declaration made by the Plaintiffs before the Notary Public which are admissions in our favour. 30
6. On the agreement of sale by the Plaintiffs to Abdel el Halim and Hamdan.
7. On the evidence of our witnesses.
8. On the kushans and their application.
9. On the official map of 1878.
10. On the evidence of some of Plaintiffs' witnesses and plaintiffs themselves.
11. On the decision of the Land Settlement Court that Khor al Wasa' is within the Hudeira Land Settlement Area.

As regards the Haifa judgment, Your Honour will remember that 40 the main issue in that case was the locality and boundaries of Khor al Wasa'. Abdel Fattah and others were Plaintiffs in that case, Samsonoff and others were Defendants. Plaintiffs had no kushan for Khor al Wasa, Defendants had one. Plaintiffs disputed that the Kushan applied to the land in dispute. The Land Court at Haifa in Case No. 10 of 1923 (see my memorandum page 10 et seq.) gave the following judgment :—

“ The Court is of opinion that the Registrar of Lands should proceed to the Land in dispute and submit a report about the record of the land Registry copy of which was produced to the Court by the Defendants, and further report whether the land in 50 dispute is registered or not.”

Whereupon the Land Registrar inspected the land and made the following report :

“ Inspection Report :—

In accordance with the order given to me by the District Court, Haifa, No. 483 of 2.4.1925 I proceeded to Khudeira Village on the 10th instant. On the identification of the record of the Land Registry, copy of which was produced to the Court by the Attorney General of the Defendants Mr. Nagib Hakim.

Exhibits.
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No. 62.
Plaintiffs’
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10 The land in question is registered under Nos. 1 and 19 of Huseiran 1307, the boundaries as described by the notables of Khudeira Village, namely Hassan El Sayed and Mr. Zvi Botkovsky, in the presence of the attorney of both parties Mr. Kaiserman and Mr. Hakim and one of the Defendants, Mr. Samsonoff, correspond with the records of the Land Registry and is bounded :—

East—Kizaza, the lands of Zeita and Birket Nurieh.
West—The eucalyptus trees of Khuderia Forest.
South—Road, nor lands of Attil.
North—The forest of Khudeira.

20 The land in dispute is situate within the boundaries of the above mentioned record and planted with barley.

About ten buildings are erected thereon and inhabited by peasants.

(Sgd.) Registrar of Lands Haifa
Subhi Oweida.
Nejib Hakim

J. Kaiserman
Hassan El Sayed.”

30 Judgment was entered on 6th of May, 1925, in favour of Plaintiffs on the ground that they possessed this land for over ten years and that registration alone without actual possession does not affect the acquired rights of the possessor.

This judgment became final and up to date it stands as it was.

Now, which of the two judgments has a bearing on Khor al Wassa ? Is it the Nablus Judgment in which no mention of Khor al Wassa is made and in which the question of locality and boundaries never arose, or is it the final judgment of Haifa which decided that Khor al Wasa’, within certain boundaries, belonged to Abdel Fattah Samara and others and was within the boundaries of Khudeira ?

40 Surely it is the Haifa judgment alone that can be taken into consideration and it was held to be so when Your Honour decided that Khor al Wasa’ was within the Khudeira Settlement Area.

A mischievous reference was made to Strumza and Oweida, but that is simply throwing dust into people’s eyes because the enquiry made regarding these two officials was with regard to a report alleged to have been made by them at the Land Registry, after judgment was given, and the conduct of both these officials was never questioned regarding the case itself.

Abdel Fattah Samara obtained Khor al Wasa’ by Haq el Qarar and paid the market value.

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As regards the Opposition judgment, I refer Your Honour to page 17 of my memorandum. Sheikh Saleh el Khatib, the same person who gave evidence before this Court—see pages 102 and 103 of the proceedings—opposed the Haifa judgment on the same grounds and on the same basis as Plaintiffs and Third Parties are doing now in this case. The Land Court at Haifa, which is the Appellate Court of the Land Settlement Court, dismissed the opposition and in its judgment held that any claimant was at liberty to institute a separate action against any person in order to prove his ownership to this land (Khor al Wasa'). See pages 21 and 22 of my memorandum.

10

On appeal, the Supreme Court of Palestine dismissed the appeal and confirmed the Judgment of the Court below—see page 29 of my memorandum.

What are the present plaintiffs and Third Parties doing now in this Court which is a lower Court than the Haifa Land Court and the Supreme Court : Are they not doing the same thing as Sheikh Saleh El Khatib ? Did he not fail ?

The present claimants should, in accordance with the Judgment, have proved their ownership before the Land Settlement Court. They did nothing of the kind. They produced one or two private maps showing the lands held by the Hudeira Colonists at the time the maps were made. They referred to a Nablus judgment which makes no mention of Khor al Wasa'. They produced a few witnesses who helped them not.

20

As regards the opposition made by the Government. Again the Government tried to do the same thing as Sheikh Saleh el Khatib, and the Supreme Court sitting as a High Court of Justice held that the Attorney-General had only one way before him and that was to take steps to reopen the Haifa Case (see p. 36 of the memorandum). The Attorney-General tried, but having been convinced that the Haifa judgment was right he withdrew his opposition, and on his considered opinion, the High Commissioner for Palestine Field Marshal Lord Plumer, entered into a compromise with Miss Rifka Aaronson and Mrs. Toba Rutman, the two bona fide purchasers, whereby the Government of Palestine received from us LE.1,000 renounced to their claim of Mahlul and gave its full consent and authority that Khor el Wasa' bounded as claimed by us, was within the Hudeira boundaries, and that the registration thereof at the Land Registry, Haifa, should be maintained as it was.

30

I should like to point out that it is entirely misleading to say that there are two registrations of Khor al Wasa', one at Tulkarem and the other at Haifa. At Tulkarem there is no registration or mention of Khor al Wasa'. Raml Zeita is registered with Kazaza as its Western boundary. Khor al Wasa' was registered as such for the first time in Palestine in the Haifa Land Registry with the Eastern boundary as Kazaza and Birket Nurieh. Two different localities with different boundaries.

40

As regards the admissions of all the Plaintiffs and Third Parties that Khor al Wasa' is separate and distinct from Raml Zeita, that is within the boundaries of Khudeira and that they have no claim or interest whatsoever in it. How can they now come and claim ? They are bound by their own admissions made before the Notary Public, and they should, in my submission, be all prosecuted for their manœuvres. It is a very simple and elementary principle of law that a man is bound by his own admission.

50

And what can the Plaintiffs and Third Parties say when some five years after these admissions were made, they sold their shares in Raml Zeita and in the contracts of sale they distinctly stated that they sold their shares in the whole plot of land, famous by the name of Raml Zeita, bounded on the West by Kazaza and Birket Nurieh. Is this not a further admission that Raml Zeita on the West extends to Kazaza and Birket Nurieh and thus it is separate and distinct from Khor al Wasa? What better proof do we require?

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10 As regards the evidence of witnesses: I have already dealt with it, and I have also dealt with the question of the application of the kushans: and I should like to draw Your Honour's attention that the Plaintiffs and Third Parties have never even produced the Raml Zeita Kushan; it was we who produced all the Kushans.

I have already referred to the old map of 1878 reprinted by the War Office in 1917 and to Plaintiffs' witnesses and to the evidence of some Plaintiffs themselves, who had no names whatsoever in the 906 List—the very basis and only basis on which the original claim is made. My clients are bona fide purchasers for value. Mr. Rutman was not their agent when they bought.

20 From the foregoing it can leave no shadow of doubt that the Plaintiffs and Third Parties have no *Locus Standi* whatsoever and no Court in the world can but dismiss their claim with costs.

Before I sit down, I should like to once more point out to Your Honour the illegal attitude of the Government in this case. The Government sold us this land on the basis that it was Mahlul land and received from us LE.1,000 and now they are assisting the Plaintiffs and Third Parties on the basis that the land belongs to them—an attitude which is to be deprecated.

30 When Mr. Bentwich instructed the Haifa Junior Government Advocate to appear on behalf of the then Plaintiff, the High Court held, on our application, that the Attorney-General had no authority to issue such instructions to his subordinates; yet at the second and subsequent hearings the Attorney-General instructed a Police Officer to appear on behalf of the same Plaintiff and sent his Chief Clerk to help and assist the present claimants. Is not the Government by such conduct trying to impeach the very document (compromise) to which they were a party? Such an attitude is ridiculous and absurd, and I can assure Your Honour, and all Palestine knows it, that had it not been for this sad attitude of the Government, no villagers would ever have thought or dared to institute
40 such a frivolous and vexatious action. When Notices of Settlement were published no one of Zeita presented a claim. It was not till about June or July last year, when the Junior Government Advocate, acting under instructions, had succeeded in convincing El Haj Hassan to appoint him as his advocate, that the first claim was made.

No matter what the attitude of the Government may be, our Courts will see that Justice be done and that Justice be well administered.

Adv. Kaiserman: There seems to be a misunderstanding in connection with the Kushans of Hudeira and Infiat. It is important to have this clear. Hudeira lands were in 9 Kushans. Muhammad Eff. stated the
50 combined boundary of these 9 kushans. There is only one Hudeira

Exhibits.

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continued.

Kushan. Um el Akarib is a part of the Infiat land. Khirbet Kazaza which is unknown to all witnesses is marked on the Palestine Exploration Fund of 1878. The Qas'a which is known to the witnesses is not marked on the map while caves and tombs were described on it. My client is a purchaser in good faith and he could not have a better title than by a judgment and compromise. Moreover, the property of my client is already planted.

Adv. Joseph : The Wilbushevitch map was prepared for special purposes and it certainly cannot be used in any way against us. With regard to the evidence, my submission is that the evidence of plaintiffs' 10 witnesses, who were interested witnesses, did go further and said that Zeita people cultivated Khor al Wasa'. The predecessors in title of my clients' land were also Zeita people. Assuming that there is before Your Honour evidence that Khor al Wasa' is part of Raml Zeita, it does not mean that it is within the mush'a of Zeita. Abdel Fattah Mari es Samara has given evidence that he built a house on Khor al Wasa' land. Is it likely that Abdel Fattah was permitted by the villagers of Zeita to build that house on Musha' land? The fact that he built the house shows that the land was not musha'. Most of the claimants to these proceedings are estopped to claim in this Court after their admission before the Notary 20 Public. It will be a travesty of justice that claimants obtained back after they had entered into contracts and received the consideration. Abdel Rahman et Taji did not come to this Court claiming that Khor al Wasa' was part of his land. In connection with the three Plaintiffs' witnesses, Sheikh Salim Ismail said that all the boundaries mentioned in the Werko extract were in the Northern boundary. The third witness Muhammad Abu Masud said that the road led to the sea. Why was the road not called the road of the sea but called after a stone? I think that the evidence given by the Land Registry Clerk of Haifa to-day is very important. The Yuklama Register proves that Kazaza was a Bass, 30 as it refers to Bass Kazaza. The Yuklama Registers clearly indicate that Kazaza is near Hudeira as the boundaries given in the Hudeira Kushan. Another interesting point is that the famous Qas'a was a Bass as there is a reference in the Register as Bass Al Qas'a. It is quite clear that any Qas'a was elsewhere. In one case the Qas'a is mentioned together with Kazaza.

The Land Settlement Ordinance was promulgated with a view to make justice. My clients will have to establish their title by litigation. I submit that it is impossible in law to render a decision which would make such an illogical interpretation of the Land Settlement Ordinance. 40 My clients purchased in good faith and believed that their title was a good one. They spent thousands and thousands of pounds in laying foundations and in plantations and now they are put in a position to institute proceedings.

I submit that the plaintiffs have failed to establish their case. The only interpretation of the kushan is this submitted by Abcarius Bey.

If the decision in this case should be an adverse decision, my clients reserve their right of claiming damages from the Government.

Adv. Mr. Levin : Khor al Wassa is within the boundaries of Hudeira. My client is a bona fide purchaser and has been residing in Australia 50 for 18 years.

He was offered the land by Mr. Eliash and he bought it. There was nothing on the Register in the form of caveat or otherwise that would prevent him from buying the land. Had he made a stronger inquiry, he would have found that the predecessor in title was a bona fide purchaser. I therefore submit that whatever the issue will be, my client is entitled to his land. Had it not been for the fact that the land was within the boundaries of Hudeira, my client would have not bought it.

I should like to endorse the arguments of my friend Abcarius Bey, and ask that the rights of my clients be put on the Schedule of Rights.

- 10 Hearing adjourned to 16.6.31 at the house of Mr. Y. Hankin Tel-Aviv. The hearing was resumed on 16.6.31 at the house of Mr. Y. Hankin in the presence of Adv. Josef & Horiwotz.

Supplementary note submitted to the Land Settlement Court by *Abcarius Bey* on the 9th June, 1931.

Under the provisions of articles 67 of the Civil Procedure Code the following note is submitted :

There is, I am afraid, an important point which was not made very clear to the Court yesterday, and which seems to me to be very simple and should, in my opinion, dispose of the whole case.

- 20 The Zeita people claim that Khor al Wasa' forms a part of Raml Zeita and it is for them to prove their claim, see article 68 of the Civil Procedure Code, where it is distinctly stated that every Plaintiff must prove his claim.

In the Nablus judgment it is distinctly stated that the boundaries are road, road, road, lands of Infiat now in the hands of the Jews, in the Kushan of Zeita the boundaries are shown as road, road, Kharab Infiat.

- 30 All the witnesses that were produced by the Plaintiffs themselves, who are supposed to be their witnesses as to boundaries, have all stated and affirmed that the Northern boundary of Raml Zeita was a road and that the Southern boundary was a road, and that the Western boundary was the eucalyptus trees. If this be so on plaintiffs' own showing it necessarily follows that there should be a road running from Zeita to the eucalyptus trees from East to West on the North, and another road to the South, and unless plaintiffs can establish this fact, they must, and are bound to fail in their claim.

- 40 Plaintiffs have established that there is a road on the North running from the East to West and stopping at Kazaza, and that there is another road on the South. It has been very clearly proved that no road has ever existed running from East to West on the Northern boundary from Kazaza to the eucalyptus trees and therefore the plaintiffs must fail on their own evidence.

Under your interim order of the 16th December, 1930, it was distinctly laid down as follows :—

It is necessary that the plaintiffs produce positive proof that the land in dispute is a part of the Musha' lands of Zeita. It is submitted that the plaintiffs have produced no positive proof of any kind whatsoever that the land in dispute is a part of the Musha' lands of Zeita.

There is one point which is irrefutable and un rebuttable and that is : that the Eastern boundary of Hudeira is Kazaza.

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No. 62.
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 No. 62.
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Kazaza is a fixed boundary which can be seen up to this present minute. The Southern boundary must begin from the Southern point of the Eastern boundary and run from East to West which latter boundary is described in the Hudeira Kushan as the Kaza road the famous road, and there is and there was no such famous road or any road whatsoever to the South of Hudeira except the Attil road which is partly visible now and which is admitted by all parties to have existed.

I refer you to the statement of claim as presented by the plaintiffs themselves and in which they very expressly stated that the lands of Raml Zeita are bounded on the North East and South by a road and on 10 the West by the land of Infiat and now the forest of the Jews. The Western boundary must therefore be a line between the two roads on the North and South. No road on the North from Kazaza to the forest on the West have ever existed and therefore this shows clearly the fallacy of plaintiffs' contention, while on the other hand it affirms the defendants' contention that the road in the Hudeira Kushan on the South is as claimed by them to be Attil road.

Plaintiffs themselves claimed that there was a Kaza road on the North of Zeita going from East to West to the sea and that the Hudeira boundary on the South was that road, and it thus excluded Khor al Wasa'. 20 When it was found out that no such road ever existed and that if it did it went as far West as the sea, one-third of Hudeira would have been excluded so that the Kaza road and this contention at the eleventh hour and at the last hearing was dropped and it was not till after the case on both sides was closed and adjourned for the final pleadings, that the question of the Eastern boundary was again taken up, and it is submitted that neither justly nor equitably can the Northern part of Kazaza be taken with the Hamra lands as Eastern boundary disregarding Khor al Wasa' which is very misleading and which I submit was not properly understood 30 by Mr. Botkovsky.

The only point at issue was and still is the Eastern and Western boundaries of the village of Hudeira and its Kushan and I fail entirely to see how after the close of the case on both sides, an enquiry was made regarding Infiat lands and Um el Akareb which is a part thereof particularly that Mr. Botkovsky stated that the Eastern boundary is very complicated and he did not understand it. It is submitted that this should be entirely disregarded as it is illegal and contrary to all the laws of Procedure and Justice.

It is again submitted that the plaintiffs have not made out their claim and they have not produced positive proof or any proof establishing their 40 claim which should be dismissed with costs.

Plaintiffs' witness, JOSHUA HANKIN—recalled by Settlement Officer (already sworn).

Attorneys Joseph and Horowitz : We wish to record our objection to the hearing of this witness after the final pleadings have been submitted.

ORDER.

That this witness be heard. The Settlement Officer informed the parties prior to the submission of final pleadings that he wished to recall this witness and they could if they had desired have submitted their pleadings after the re-hearing of this witness. 50

Tel-Aviv 15.6.1931.

(Sgd.) Settlement Officer.

Mr. Joshua Hankin: I bought from Selim el Koury the lands of Hudeira, Dardara and Infiyat over 40 years ago.

Before the transfer took place at the Tabou a commission went out on the land consisting of the Mamur Tabu Haifa, Mamur Tabu Tulkarem (who is now the Mayor of Tulkarem) Mukhtars, Elders and inhabitants of Zeita and Attil and they fixed the boundaries of Hudeira. I was present and the representative of the vendors. The boundaries of Hudeira at that time were bigger than at the present time on the side of the boundary of Zeita, but we, myself, the vendors and the inhabitants of the villages and the commission that the boundary should be as shown on the Wilbushevitch map (Exhibit "S").

The Mamur Tabu of Tulkarem advised me not to quarrel with the neighbours of Zeita and to accept the boundary as shown in the Wilbushevitch map (Exhibit "S/1"). From that date we were friends. I bought from Selim El Koury according to the boundaries of Hudeira not by area.

The commission went out because there was a dispute between me and the people of Zeita. I wanted the original boundaries as based on the Kushan. The people of Zeita disputed the boundary and did not accept the Kushan boundary. The object of the commission was to fix the boundaries as shown in the Kushan.

The Mamur Tabu Tulkarem advised me to settle the boundary amicably and to accept the boundary as shown in the Wilbushevitch map. I accepted this arrangement as a final settlement of the boundary.

The difference against us was approximately 2,000 dunums. The dispute was as regards the boundary and concerned the area indicated on map (Exhibit "g") by me (15.16.17). The views of the Zeita people differed as regards the interpretation of the boundary and I thought that the area indicated by me should be included.

There was one kushan for Hudeira one for Dardara and thirteen for Infiyat. On map (Exhibit "g") the point marked "5" is "Tel Elmassud." "Dahereth Um el Akareb" is approximately where point "18" is marked on the map.

I do not remember the description N. of Dahereth Um el Akareb. I do not remember the Southern boundary of Hudeira and the Northern boundary of Um el Akareb Kushan described as a road. I cannot remember the boundary between the old Hudeira Kushan and the Infiyat (Um el Akareb Kushan).

At this time Hudeira (accepting the kushan of the Hura land which was purchased later) was contained in one kushan.

I sold the land I had bought about six or eight months later to the new settlers of Hudeira. I sold according to the Wilbushevitch map and according to the boundaries in that map.

I sold by dunums and not according to boundaries. The area sold did not include the area of 2,000 dunums (about) which had been in dispute between me and the Zeita people.

I do not remember the description of the boundary which was in dispute when I bought. The boundary I claimed is as shown approximately on map "g" by the line 16-17. The Zeita people claimed the boundary

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as shown in the Wilbushevitch map. As far as I remember about half of the Bass Kazaza belonged to us and half to Zeita ; that was what was agreed.

In the Wilbushevitch map (Exhibit "S") the portion of the Bass Kazaza which was agreed to belong to Hudeira is shown as within the boundaries of Hudeira.

I mentioned the Ein El Hagar shown on the Wilbushevitch map, the water was said to be good as a remedy for certain diseases. It was well known among the Arabs. I saw the Ein El Hagar at that time. The water bubbled up from the land. I cannot say why it was called Ein El Hagar. I do not remember having seen a stone there. If the name was Ein El Hagar there should have been some stones there. 10

Adv. Abcarius : I ask for leave to cross-examine this witness, new points have been raised in the re-examination of this witness.

ORDER.

Although Mr. Abcarius had concluded his cross-examination of this witness, the Settlement Officer has no objection the latitude granted to him under the Land Settlement Ordinance to Mr. Abcarius putting further questions to this witness.

16.6.1931.

(Sgd.) Settlement Officer. 20

To Adv. Abcarius : I do not remember the Lord Kitchener's survey of Palestine. The present kushan of Hudeira is the same kushan that has ever existed. The Eastern boundary is Bass Kazaza and Ard el Hamra ili ishtaruha ahali Zeita. I said formerly that not all Bass Kazaza was ours. I have already replied I do not remember the road of Hudeira in this locality. The agreement was that I should take half the Kazaza and the Zeita people to take the southern portion.

Q. When it says the boundary was El Kazaza it meant the whole Kazaza ?

A. It depends. If Hamra comes after Kazaza it means that all Kazaza was within the boundaries. The kushans, however, entitled me to the area I have shown approximately on map (Exhibit "g") 15-16-17. I have already stated that Mamur Tabu of Tulkarem advised me to accept the boundary. I did so for the sake of peace. 30

The kushans remained unchanged, but we fixed the boundary by agreement. I do not remember any road to the South of Hudeira.

When we planted the eucalyptus there was no road. I remember Tel-el-Massud, but I do not remember Um el Akareb. The area was approximately 2,000 more or less in dispute between me and Zeita.

Sometimes a kushan represented less land than shown and sometimes more land. There are many lands which are much greater than the registered area. 40

To Settlement Officer : If the area claimed (as Khor al Wasa') is 5,382 dunums, this does not belong to Hudeira. I mean the excess of the approximate area of 2,000 dunums did not belong to Hudeira.

To Dr. Joseph : I sold the Infiat lands as extending to the sea. This boundary was not accepted afterwards by the authorities.

To Adv. Horowitz : I can remember after 40 years that it (the area in dispute) was only 2,000 dunums. I bought the land for myself and then sold it to other people. I knew of the dispute as to the approximately 2,000 dunums when I applied for the commission to go out. At that time I was not rich and now I am not rich.

If I had known of a difference of 5,000 dunums I would not have given in. I thought about this difference. I did what was best to obviate disputes. The area I gave up was all that the people of Zeita asked for.

I gave up my claim for the friendship of the people of Zeita. You may think the area in dispute was 5,000 dunums of which you gave up 2,000, but I know what took place. I still do similar things for the sake of peace.

The hearing was adjourned until 26.6.1931 for judgment.

16.6.1931.

(Sgd.) Settlement Officer.

No. 63.

JUDGMENT of Land Settlement Officer in Case No. 92/30.

No. 63.
Plaintiffs'
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Judgment
Land
Settlement
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In case No. 92/30.

JUDGMENT.

This action has been brought to decide whether an area of land known as the Khor al Wasa' stated to consist of between 5,000 and 6,000 dunums lies within the boundaries of Hudeira and is thus within the jurisdiction of the Settlement Officer, Jaffa Settlement Area, in virtue of a Settlement Notice published by him on 2.5.29 (vide Official Gazette No. 235 of 16.5.29 p. 537) under Section 5 of the Land Settlement Ordinance 1928 in respect of Hudeira village, the effect of which being that jurisdiction in actions concerning rights to land within the boundaries of the said village of Hudeira is conferred on the Settlement Officer according to the provisions of Sec. 6 of the said Ordinance.

The plaintiffs are persons who claim that the area in question lies within the boundaries of the village of Zeita (Tulkarem Sub-Dist.) and forms part of the Mesha' lands of Raml Zeita. At a later stage namely on 19.5.31, 73 additional claimants who made a similar claim were entered as third parties. The third parties are Abdel Fattah es Samara and partners who subsequently withdrew their claim and representatives of Attil Village (Tulkarem Sub-District) who claimed that a part of the area is included within the boundaries of their village.

The defendants claim that the land in question is within the boundaries of Hudeira and is their property in virtue of registration in the Land Registry, of Haifa.

In the course of the hearing Advocate Asfur representing certain of the plaintiffs contended that on the prima facie evidence submitted by

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him the land in question was not within the jurisdiction of the Settlement Officer but was subject to a judgment of the Nablus Land Court which had been confirmed by the Court of Appeal declaring the land to be mesha' to the villagers of Zeita.

On 6th November, 1930, the Settlement Officer defined the first issue to be decided in this action was whether the area in dispute is included within the boundaries of Hudeira or within those of Zeita and/or Attil and for this purpose he will establish the Eastern and Southern boundaries of Hudeira village lands. On the 25th November, 1930, the Settlement Officer confirmed by order that the foregoing was the preliminary issue 10 to be decided. In the penultimate paragraph of this order he states that he has no powers to exclude land so registered (in the Haifa Land Registry) from the village Settlement area of Hudeira. This statement should have been qualified by the addition of the words "on prima facie evidence without going fully into all evidence available" and this, it is submitted, is clear from the first paragraph of the order.

The plaintiffs rely on a number of judgments of the Nablus Land Court and of the Court of Appeal regarding an area of masha' lands of Zeita defined in the petition of claim as bounded on the South, East and North by roads and on the West which is the boundary material to this 20 dispute by the *lands of the Infiat which is in the hands of the Jews*. The entry in the Tulkarem Land Registry relating to the said land show the boundaries as Road, Road, Kharab, Ard el Infiat. It should be noted that the lands of the Arabs Infiat were purchased about 41 years ago by Jewish interests and are included within the village boundaries of Hudeira.

The first judgment dated 13.3.23 was in action (Land Court Nablus 59/23) brought by seven villagers of Zeita which included Abdel Fattah Mari Samara against the registered owners of the mesha' lands Raml Zeita. They claimed that although the lands were registered in the names of certain persons, these persons were nominees of the villagers of Zeita, 30 and that the lands were in possession of and were cultivated by all the villagers of Zeita as owners. The Court found that the land should be registered as public mesha' between all the cultivators of the village.

This judgment was appealed to the Court of Appeal who found on 1.10.23 that although the Land Court is entitled to find that the land is mesha' of the village, yet in accordance, with Art. 1829 of the Mejelle it cannot give judgment in favour of any person except a party to the action. The Court of Appeal ruled that the Land Court was justified in finding that the land was cultivated by the inhabitants of Zeita without paying rent to the registered owners but set aside the judgment as regards 40 the registration of the land as mesha' and remitted the case for plaintiffs to prove the extent of the share they claim in the lands in suit by legal evidence.

At the re-hearing the Land Court Nablus found on 14.4.1924 that five of the original plaintiffs were each entitled to one share out of 906 in a mesha land in Raml Zeita. The afore-mentioned Abdel Fattah Mari Samara, one of the seven original plaintiffs withdrew from the action on 26.12.23 and another of the original plaintiffs had also withdrawn. This judgment was confirmed by the Court of Appeal on 20.1.25.

On 10.3.25 the aforesaid Abdel Fattah Mari Samara and his sons 50 brought an action in the Haifa Land Court claiming that they had been in possession of the land known as Khor al Wasa' for over thirty years

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without opposition and that last year the defendants Jacob Samsonoff, Yafit Yamani and Aaron Madursky had during the previous winter trespassed on the land and cultivated it. The defendants produced a kushan in the names of two of them which they claimed related to the land in dispute. The Land Court Haifa on 6.5.25 found in favour of the plaintiffs and decided that the defendants should be dispossessed and the land should be registered in the name of the plaintiffs. The land was accordingly registered in the Haifa Land Registry in the name of Plaintiffs who paid 5% of the market value as Bedl Misl, and after obtaining registration in their names they sold the greater part of this land to Mrs. Toba Rutman and Miss Aaronson.

In 1926 a certain Salih Ismail el Khatib and Musa Nasr (the latter subsequently withdrew) made an opposition to the judgment of 6.5.25 on the grounds that this judgment was obtained by collusion, that the land was within the boundaries of Tulkarem Sub-District and not Haifa Sub-District, that a previous judgment of the Nablus Land Court had been given regarding this same land, that the land did not belong to Abdel Fattah Mari Samara and sons but to all the inhabitants of Zeita of whom they were members and owned a share in it. The Land Court dismissed the action on the ground that Mrs. Toba Rutman and Miss Rifka Aaronson who were cited as defendants were not parties to the original action, stating that the opposer is at liberty to institute a separate action against any person to prove the ownership to the land in question. The opposers appealed and their appeal was dismissed by the Court of Appeal on 6.5.1926.

On 26.1.1927 the Attorney General entered an opposition in the Land Court Haifa to the judgment of that Court dated 6.5.25 on the grounds that the judgment was prejudicial to the interests of the Government, which was not a party to the dispute; that the boundaries in the Kushan are totally different to those in the judgment; that the defendants to the opposed judgment only owned 5 shares out of 288 and that only these shares could have been given to the Plaintiff on the strength of the admission by the defendants of the Plaintiffs' occupancy; that the plan alleged to have been produced in the case opposed is tampered with and the words "Zeita of Tulkarem" have been rubbed out and Khor al Wasa' Hudeira printed above it; that the area of the Kushan produced by the defendants is 3,224 dunums whereas the area shown on the map is 5,358 dunums. The Attorney General claimed that the land was Mahlul and an order was asked for to stay transactions in the land. On 29.4.1927 the Government withdrew its claim to treat as Mahlul the 5,358 dunums in consideration of a payment of LP.1,000 by the defendants Rifka Aaronson and Toba Rutman.

A criminal action was brought against Nissan Rutman, husband of Toba Rutman, on a charge of having prepared a map of the lands of Khor al Wasa, showing the land is within the boundaries of Hudeira, knowing the same to be false and presenting the said false map to the Land Registry Haifa, etc., etc. The Court found that the information laid by the Attorney General was not adequate, that the right of prosecution was barred by the passage of time and dismissed the charge. Other proceedings before the High Court dealt with a refusal of the Director of Lands to allow a transaction in the lands of Khor al Wasa, the insertion in the Land Registry of a caution regarding possible claims to the land, and the right of the Attorney General to instruct the Junior Government

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Advocate of Haifa to appear on behalf of certain inhabitants of Zeita before the Settlement Officer. These proceedings resulted in judgments in favour of Toba Rutman and Rifka Aaronson.

It has now to be considered whether the two sets of judgments namely that of the Nablus Land Court and that of the Haifa Land Court include the same area of land namely that described as the Khor al Wasa which is in dispute in this action. The Settlement Officer has had great difficulty in arriving at the facts of the case. The plaintiffs and third parties number over one hundred and sixty persons a few of whom were represented by two counsel and latterly others by a third. The Village Settlement Committee of Zeita who under the provisions of Sec. 14 (1) of the Land Settlement Ordinance 1928 should represent the common interest of the village are not a party to the action. The result was that plaintiffs formed an unwieldy and disorganised mass which added greatly to the difficulties of the hearing of the action. The case of the plaintiffs was not put forward in such a manner as to reveal the facts affecting the dispute. The principal defendants largely contented themselves with establishing their plea that they were in the position of registered owners in virtue of a judgment confirmed by the Supreme Court and did not assist the Court in revealing the basic facts affecting the action. Indeed the same defendants attempted to prevent the Settlement Officer in arriving at the facts by pleading that the Settlement Officer had no power of his own initiative to call witnesses or ever to recall the witnesses of the parties. 10

The Settlement Officer holds that this view is entirely erroneous. He is given very full powers under the Land Settlement Ordinance to carry out a complete investigation into any claims submitted at Settlement. Under Section 10 (5) of the Land Settlement Ordinance 1928 he is not bound by the rules of evidence contained in the Code of Civil Procedure or the Civil Code. Under Section 12 he shall settle any doubt or dispute as to the boundaries of a village or block within the settlement area ; 30 under Section 25 the Settlement Officer shall investigate and settle claims ; Section 27 lays down that he shall publicly investigate claims ; and under Sec. 27 (4) if he is satisfied that any person who has not presented a claim is entitled to any right to land, he may proceed as if such person had made a claim within the time prescribed. The Settlement Officer is of opinion that these provisions of law grant him the fullest powers to carry out investigations into any claim, including calling any witnesses he required to establish the facts, and to rely on his general knowledge of the lands obtained by him during the course of settlement.

In the course of the hearing an application was made by two of the 40 counsel for plaintiffs and supported by the remaining plaintiffs and third parties that a commission of experts should be appointed to fix the boundaries in dispute and this proposal was acceded to with alacrity by the counsel for defendants. The Settlement Officer looked upon this proposal with misgiving but being faced with a consent application he issued on 19.5.31 an order that the following experts should inspect the land in dispute and endeavour to apply to the ground the boundaries shown in the kushan of Hudeira and the kushans of Zeita and Attil :—

Appointed by plaintiffs and third parties :—

Muhammad Ragheb Eff. (Agricultural Inspector), or
 Helmi Bey Hussein (District Officer of Tulkarem),
 Registrar of Lands Tulkarem.

Appointed by defendants—any of the following :—

Mr. Masson (Agricultural Officer).

Mr. Bernblum (Registrar of Lands Haifa),

Mr. Botkovsky (a leading notable of Hudeira).

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On the following day Advocate Mughannam representing certain plaintiffs asked for the cancellation of the order and his application was supported by a large number of the plaintiffs in Court. Although the application was of a most unusual nature the Settlement Officer decided to consider it. The defendants strongly opposed any interference with the
10 order. It was however clear to the Settlement Officer that the experts, only one of whom, Mr. Botkovsky, had any personal knowledge of the land, would require to hear evidence to establish on the ground the points described in the kushans, and the Settlement Officer considered that if evidence was to be heard, it was essential that it should be heard by him and not by experts. Moreover the effect of the appointment of experts would be largely to remove the establishment of the facts affecting the dispute from the Settlement Officer who had already heard a considerable body of evidence to a commission of experts possessing little or no knowledge of the locality. He was also influenced by the general
20 tone which had manifested itself during the proceedings. Counsel for plaintiffs had openly alleged in Court that witnesses were being bribed and Counsel for defence alleged that their witnesses were being intimidated. An incident which throws light on the influence which had been brought to bear during the course of the proceedings was the appointment on 12.11.30 by a considerable number of the plaintiffs of a certain Sheriff Abdel Qadir of Zeita as their attorney ; on 21.2.31 the said Sherif notified the Settlement Officer that his principals had no claim to the land which was not situated within the boundaries of Zeita, and asked that their claim should be struck out ; shortly prior to the same date his principals
30 notified the Settlement Officer that they had withdrawn the Power of Attorney granted to the said Sherif.

In view of the foregoing the Settlement Officer decided to hold in abeyance the order appointing the experts and this order was subsequently cancelled. It should be noted however that the Settlement Officer subsequently heard the evidence of two of the three defendants experts, Messrs. Bernblum and Botkovsky who were called as witnesses for the defendants. The cancellation of the order was moreover not opposed by any of the plaintiffs.

Prior to the submission of the final pleadings by the parties the
40 Settlement Officer notified them that he desired to recall the plaintiff's witness Mr. Yehoshua Hankin and the defendants' witness Mr. Zvi Botkovsky. The latter was re-examined but the former did not attend on account of ill health, and it was decided to take his evidence at his residence at Tel-Aviv. The parties then proceeded to submit their pleadings ; Mr. Hankin was re-examined subsequently and additional pleadings were submitted by counsel for defendants, who alone attended the re-examination. Although the said counsel at the previous hearing had been notified of the re-examination of Mr. Hankin before the submission of their pleadings, they now objected to his being re-examined.

50 Mr. Hankin was a most valuable witness. He had purchased the lands of Hudeira (old) Infiat and Dardara about 41 years ago and a few months afterwards he disposed of these lands to the new settlers who

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fermed the present colony of Hudeira. He stated that there was a dispute as to the boundaries between Hudeira (old) and Zeita; that a commission consisting of himself, representatives of the vendors, the Mamurs of the Tabu at Haifa and Tulkarem, together with representatives of the villagers attended on the ground to establish the boundaries. He claimed then that he should have received about 2,000 dunums in the area under dispute. This claim was opposed by the notables of Zeita and on the advice of the Mamur Tabu of Tulkarem and in the interests of peace he withdrew his claim and the boundary was fixed in accordance with a plan made by Engineer Wilbushevitch (Exh. 1). The Settlement Officer is of opinion 10 that this Commission thus established the boundaries by agreement between the lands of Zeita and those of Hudeira Colony (Hudeira, Dardara and Infiat kushans). Mr. Hankin further stated that he sold the lands a few months later according to the said map of Wilbushevitch, and stating their area, to the original settlers of Hudeira. The boundaries as shown in the Hudeira and Ard el Infiat kushans however remained unchanged. He stated however that the additional area he had claimed was about 2,000 dunums and not between 5,000 and 6,000 dunums for which the defendants as result of the action brought in the Haifa Land Court obtained registration on the grounds that the latter area was included in the 20 boundaries of Hudeira. Mr. Hankin roughly indicated on the map (printed Exh. "G") of the Colony of Hudeira the approximate location of the area in dispute at the time of his purchase. (Page 135 of record.)

As regards the witness for the plaintiffs Mr. Fishmann a Land Department Officer stated that the lands recorded in the Colony Land Book of Hudeira correspond fairly closely to the map of Hudeira lands made in 1893 (Wilbushevitch map Exh. "S/1"). He had in the course of his duties come to the conclusion that the plot on the map (shown) as Khor al Wasa was outside (the boundaries of Hudeira) as recorded in 1307 and this land was considered by the colony people as in Zeita lands. (Page 9 of 30 the Record.)

Mr. Joseph Bernblum, Land Registrar, Haifa, produced a copy of the map (exh. "u" file 92/30B) in accordance with which the land known as Khor al Wasa was first registered in the Haifa Land Registry on 4.6.1925 in the names of Abdel Fattah Mar'i Samara and sons and subsequently transferred to Toba Rutman and Rifka Aaronson. The plan was a sun-print and he confirmed that there was a shaded portion under the heading of the map "Khor al Wasa" (Record pp. 10-12).

'Umar Rusas the Land Registrar of Tulkarem, stated that the boundaries of Raml Zeita as shown in the old Register of Tulkarem are: 40 road, road, Kharab (waste) and Infi'at (Record p. 12).

Tawfik Tamini, Revenue Officer of Tulkarem, stated that the boundaries of Zeita as shown in the Werko Daftar Assasi are: Road, Khirbet Kazaza, Zeita, and Qas'a (Record p. 13).

Mr. Yehoshua Hankin in the first examination stated that the boundaries of Hudeira at the time of his purchase were as indicated in map (Exh. "S/1" Wilbushevitch) (Record p. 14). (In case No. 143 of 1929 "Penal.")

Yusuf Musallam a licenced Surveyor, stated he drew at request of Nissan Rutman, husband of Mrs. Toba Rutman, the map (exh. "u" of 50

file 92/30B) that he had headed the map "Zeita-Tulkarem": that Nissan Rutman asked him why he had headed the map thus and that land belonged to Hudeira. He told him to change the map. The witness rubbed out "Zeita-Tulkarem" and wrote "Khor al Wasa" "Khudeira." He stated that he saw the line of eucalyptus trees which he thought marked the boundary of Hudeira and therefore of his own initiative described the area as "Zeita-Tulkarem." The map is dated 29.10.24, an important date in view of the fact that the application by Abdel Fattah Mar'i Samara and sons (Land Case Haifa No. 10 of 1925) was dated 10.3.25.

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- 10 *Gedalyahu Wilbusheritch* identified map (Exh. "S/1" of file in Case No. 143 of 1929 "Penal"—92/30B) as having been made by him for the Colony of Hudeira. He stated that the line marked "D E" is the Eastern boundary of Hudeira Colony and the line marked "C D" is the Southern boundary. He, however, stated that the area shown 29,380 dunums is not the correct area. The map was made in accordance with the instructions of Mr. Hankin and the Colonists of Hudeira. The latter went along the boundary and pointed it out to him. The reason for making the map was to make peace with the conflicting parties (Hankin and the Colonists and that was why an incorrect area was inserted). The map is not correct and so, cannot be used (Record pp. 61-63 & 67-68). (See under.)

Arif en Nashif an ex-tithe estimator confirmed that the crops on the land of Khor al Wasa were assessed on behalf of the authorities of Tulkarem as being in Zeita lands. He worked as tithes estimator subsequent to 1921 for one year and as inspector of assessment for four or five years. The last time he came to the land on inspection was about three years ago. Zeita people cultivated the land and Abdel Fattah among them (Record 63-65).

- 30 *Abd er Rahim es Samara* was an estimator and inspector of tithes assessments from the year 1923-24 onwards, assessed the crops of Khor al Wasa lands and recorded them in the Zeita Register. The winter and summer crops belonged to the people of Zeita. The crops not estimated standing were assessed on the threshing floor near the house of Abd el Fattah (on the Northern side of Khor al Wasa). He remembers assessing barley and oats in the names of Hassan al Faris (Record pp. 65-67).

Godalya Whuilibusheritch—recalled—explained that after he had made the map he had manipulated the scale so as to obtain an area to effect a reconciliation between Mr. Hankin and the colonists. He stated he could now walk round the boundaries (as shown in his map) with the assistance of tools (instruments). (Record pp. 67-68.)

- 40 *Muhammad al Mahmud*, a villager of Zeita, stated that he had cultivated land in the Khor al Wasa many times. He states that the land round the house is called "Qas'a" means a stone with a hole in it. He also stated that we (the people of Zeita) stopped the cultivation of this land in 1925. There was a quarrel between Nissan Rutman and the villagers of Zeita. He was stronger and we stopped the cultivation of the land. He took possession of all Khor al Wasa in 1925 (Record pp. 68-70).

Muhammad Radi esh Shihada, Mukhtar of Attil testified regarding the boundary between Attil and Khor al Wasa and stated that Khor al Wasa

Exhibits. used to belong to Zeita. Certain persons of Attil cultivated part of the land in dispute on the Northern boundary of Attil (Record p. 70).

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Suleiman Yusuf el Attili testified that the land "on which we are standing" belongs to Zeita. The Northern boundary of Zeita is the road of Qa'a. Before Mr. Rutman took possession the inhabitants of Zeita used to cultivate the land. Mr. Rutman encroached on our (Attil) boundaries when he took possession of the land. He (witness) had never cultivated in the Khor al Wasa (Record pp. 70-71).

Mahmud en Naddaf stated that the Western boundary of Khor al Wasa' was originally Infi'at and now it is the eucalyptus line owned by the Jews; on the north it is the eucalyptus trees and the roads known as Tariq "Ain al Hagar" and Tariq al Quas'a. The people of Zeita used to cultivate this land and Abdel Fattah was one of them. All the people of Zeita used to cultivate (witness mentioned the names of ten persons who cultivated there in 1924) (Record pp. 71-73). 10

Abd. el Fattah Mar'i Samara gave particulars about the case in the Nablus Land Court and his action in the Haifa Land Court and subsequent sale by him to Defendants I (i) & (2). He claimed that the whole land of Khor al Wasa was held by him, and his father and grandfather before him. He stated he had leased the land of Khor al Wasa to certain colonists of Hudeira before 1925, and he used to pay tithes and Werko to the President of the Va'ad of Hudeira, in respect of Khor al Wasa'. He was certain he had stated before the Nablus Land Court that the Western boundary of Raml Zeita was Kazaza and Birket Nuriya (Record pp. 73-76). 20

(A perjured witness. If he had leased the land to colonists of Hudeira prior to 1925, he would have pleaded this in his action before the Haifa Land Court. The Settlement Officer does not believe his statement that he used to pay tithes on the crops of Khor al Wasa' to the President of the Va'ad of Hudeira. There is no record in the proceedings of the action before the Nablus Land Court that he claimed the Western boundary of Raml Zeita to be Kazaza and Birket Nuriya. On the contrary, the boundary in the petition of claim signed by Abd el Fattah Mar'i Samara and his co-plaintiffs gave the Western boundary as: Ard el Infiat which is in the hands of the Jews. The Attorney General is being asked to institute proceedings for perjury against this witness.) 30

Mustafa Ahmed Abu Bakr, a cultivator of Jat village, knew that Khor al Wasa belonged to Zeita. He used to buy melons from the land and on one occasion about 36 years ago he planted melons in partnership with a certain Muhammad al Zubaidi. The people of Zeita used to cultivate this land. The Western boundary is the line of eucalyptus trees. Abdel Fattah used to cultivate in different places in the Khor al Wasa and the house was built by him and his cousin about 38 years ago. (Record p. 76). 40

Ahmed Muhammad Hammad, of Jat, stated that the land belongs to Zeita, and he knew this as he was a neighbour and used often to pass in this land. The Jews did not cultivate before Mr. Nissan (Rutman) bought the land (Record, p. 77).

Yusuf Abd er Razic, of Jat, gave similar evidence and in addition states that he personally ploughed a piece of land partly in Khor al Wasa and partly in Khor Nuriya (Record pp. 77-78). 50

This closed the case for the Plaintiffs (except as regards boundaries).
The following witnesses were heard for the Defence :—

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Mustafa Muhammad Zeitun, Yusuf Muhammad abd el Mihsin, Mahmud Abd en Nimr gave evidence regarding their signatures on contracts of sale signed by them in respect of their shares in Raml Zeita. (The Defendants produced photographic copies of 32 contracts of sale (Exh. " e ") on which they stated appeared the signatures and seals of most of the Plaintiffs. These contracts describe the Western boundary of Raml Zeita as Ard Kazaza and Birket Nuriya. These contracts were
10 executed in 1929. The Plaintiffs agreed that it was unnecessary to prove all the signatures to the deeds) (See Record, pp. 85-87 & 90-91.)

Nimr Deeb Ka'dan, originally of Jat and now a petition writer of Tulkarem stated that the Eastern boundary of Khor al Wasa is Kazaza and that Khor al Wasa is separate from Raml Zieta ; he hired land from Abd el Fattah Mar'i Samara which he used to cultivate (Record, pp. 88-89).

Muhammad el Nimr, Mukhtar of Zeita. He signed the map (Exh. " w " of Case No. 92/30 B) (Rutman map) ; he stated that the Eastern boundary of Khor al Wasa is Kazaza and Birket Nuriya ; he maintained that he did not receive payment for signing the map. He also gave evidence
20 regarding the action before the Nablus Land Court and the preparation of the " Daftar Habib " showing the names of the 906 persons of Zeita alleged to be entitled to shares in the Musha lands of Zeita. He did not know of anyone in Zeita who owned 7,000, 5,000 or 1,000 dunums of land. Khor al Wasa consist of 4,000 dunums or more. He admitted having been imprisoned at Tulkarem for signing a " contradictory mazbata " (Record, pp. 96-102).

Hasan Faris el Hasan, of Arabs Sheikh Hilu testified that he had cultivated in Khor al Wasa for 20 years first by arrangement with Abd el Fattah and latterly from Nissam Rutman. The boundary on the East
30 is Kazaza and Birket Nuriya. He is the watchman of Nissam Rutman who pays him LE.2½ per month (Record pp. 102-104).

The witnesses called to give evidence on the boundaries were then heard.

Plaintiffs' and Third Parties' Witness Salih Ismail Khatib testified that the boundaries of Zeita are West : Infiat, at present forest of the Jews. North : forest and wad. He stated that the place known as al Qas'a is where the house of Abd el Fattah Mar'i Samara now stands. The Qas'a was a round stone with a hole in it. He and his grandfather cultivated in the Khor al Wasa. The land of Zeita is Waqf Zirri to all the inhabitants
40 of Zeita. The whole of the living have shares and the dead have none (Record, pp. 107-110).

Plaintiffs' and Third Parties' witness Muhammad el Mahmud Hamdan described the boundaries of Khor al Wasa as North the road and forest of the Jews and West the land of the Infiat previously and now the forest of the Jews. The locality (north of Khor al Wasa) is known as al Qas'a named after a big stone with a hole in it. I noticed after the building of the house (Samara's) it had disappeared (Record, pp. 110-112).

Plaintiffs' and Third Parties' witness Muhammad Hassan abu Mas'adi described the boundaries of the Musha of Zeita as North : Road and Qas'a

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and West : the land of Infiat now in the hands of the Jews. Does not know Khirbet Kazaza shown in the Werko record. He cultivated a melon patch with Salih el Khatib in 1920 in the Qas'a locality (Khor al Wasa) (Record, pp. 112-113).

The defendants' witnesses on the boundaries were then heard.

Zsevi Botkovsky (a leading notable of Hudeira 45 years of age). The boundaries of Hudeira are on the East : the marsh Kazaza and on the South : Road. The Eastern boundary of Khor al Wasa is marsh of Kazaza and Birket Nuriya. He stated that the boundaries of the Raml Zeita Kushan (Tariq, Tariq, Kharab and Ard el Infiat) fit in with these 10 boundaries. He does not know the description "Al Qas'a" mentioned in the Werko entry relating to Raml Zeita. Infiat lands referred to in the kushan of Zeita are those included in our kushan of Um al Akareb. He explained the boundaries described in the kushan of Raml Zeita in relation to the ground. He does not know the Road al Qas'a (described in the relative Kushan of Hudeira—old—) and Ard Dahret Um al Akareb was Dahret Tel Mass'ud being the Southern boundary of Hudeira (old locality) described as Tariq al Qas'a al Mash-hura and the Northern boundary of the latter locality (Tariq al Qas'a etc.). "We were very glad that his land came back to us" when Mr. Rutman as attorney for others 20 obtained a Kushan for Khor al Wasa in 1925. No actions took place in the past between us (colonists of Hudeira) and the people of Zeita but there were continual disputes. The land was taken away from us in 1894 when we came to an agreement with the Zeita people. We then planted eucalyptus trees and this was the boundary. He knows that Abdel Fattah Mar'i Samara and some people of Zeita used to lease some of the land to Jews of Hudeira and others. He produced a Hebrew translation of the kushan of Hudeira which shows the boundary on the South of Hudeira (old locality) as the well known road of Nafiya. He stated that the Eastern boundary of Um al Aqareb (Infiat) locality as described in the kushan is 30 most complicated and difficult to trace. He indicated the situation of Tel Mas'ud on map (Exh. "g" by No. 5 point). The road of Nafiya should be somewhere where I have indicated (at point 9 on the same map) "I guess that the road is at this point" (Record p. 114-117).

The witness was subsequently recalled by the Settlement Officer and explained that the boundary of Hudeira (old locality) Kushan on the East : "Ard el Hamra Illati ishtaruha Ahali Zeita" referred to land described (in the colony map) as Hudeira—Zeita which was purchased by the Settlers of Hudeira (subsequently) from inhabitants of Zeita. The Southern boundary of Hudeira-Zeita divides Haifa Sub-District from 40 Tulkarem Sub-District. The Western boundary of Hudeira-Zeita is about the Kazaza. A portion of the Kazaza swamp is included in the boundaries of Hudeira (exclusive of Khor al Wasa'). There is a locality known as "Neti'ot Cvul Zeita" which means "plantations-boundary-Zeita." I have shown it by a red circle on map Exh. "g" 11, 12, 13. The area was so called until the land of Khor al Wasa was taken back, this was considered as the boundary of Hudeira. I base my statement that Khor al Wasa is included within the boundaries of Hudeira as the land West of Kazaza is included in the Kushan of Hudeira. I understand the description Kazaza as including the whole of Kazaza swamps. The Kazaza 50 swamp begins at the South-West corner of Hudeira-Zeita and runs south-

wards to approximately Birket Nuriya. At present a small part of the marsh may be seen as drainage operations have been carried out. Also the lands West of Kazaza swamp are included in the Hudeira Kushan. I was young to remember the details of the agreement with the inhabitants of Zeita but we fixed a temporary boundary which excluded Khor al Wasa (from Hudeira) (Record pp. 123-126).

Defendants' witness on boundaries.

10 *Jacoub Bernblum* (Land Registrar Haifa) came to the land about one year ago with the Police Officer Selim Hanna. Compared the boundaries in the Hudeira Kushan (old locality). The eastern boundary is a quite natural and fixed boundary. Kazaza is a swamp. He could only find one road existing since the old registration called "Attil Road" running from East to West. The Kazaza mentioned in the Werko registration of Zeita is obviously a boundary separating two properties. I was not able to understand the meaning of "Qas'a" or find where it was. I did not know the land before. Khor al Wasa was registered in Haifa before I came there. I can show the swamp (Record pp. 118-120).

20 In view of the divergence of opinion of the name of the road shown as the Southern boundary of Hudeira (old locality) and the Northern boundary of Um al Akareb (Infiat land) the Settlement Officer called the following witness.

Muhammad Iddilbi, Land Registry Clerk of Haifa who produced the Daftar Shamsieh regarding the Infiat lands and Hudeira lands dated May 1292 Hejira (Record pp. 121-123).

The evidence of Mr. Yehoshua Hankin, witness for Plaintiffs and Third Parties which has been referred to above is recorded on pp. 14 and 133-140.

30 The Settlement Officer is of opinion that the evidence which for the convenience of future reference has been briefly summarised in the foregoing pages, proves that until the year 1925 the lands of Khor al Wasa were considered as forming a part of Zeita and/or Attil lands and did in fact fall within the boundaries of this village or villages, situated in the Tulkarem Sub-District. Tithes were assessed by and paid to the revenue authorities at Tulkarem. The lands of Khor al Wasa were cultivated prior to 1925 by the inhabitants of Zeita and/or Attil. Abdel Fattah Mar'i Samara and his sons probably cultivated a considerable area of the land of Khor al Wasa, as he lived there, but other persons of Zeita also cultivated there, and the Settlement Officer is of opinion that all persons so cultivating did so as right holders in the musha land of Zeita
40 of which the Khor al Wasa was a part. It is possible that many years ago the lands of Khor al Wasa were Mahlul and this is the explanation of the Werko registration of Tulkarem showing the Eastern boundary of Raml Zeita as Kazaza thus excluding Khor al Wasa. The witness for Plaintiffs Mr. Yehoshua Hankin of whose credibility the Settlement Officer has no doubt has explained the circumstances under which he purchased the land in about 1893. There was a dispute at the time of the purchase between himself, the vendors and the people of Zeita as regards the Eastern boundary of Hudeira-Infiat. A commission was appointed consisting of the persons interested in the boundary and the Mamurs of Tabu
50 of Haifa and Tulkarem. Mr. Hankin has explained that he thought

Exhibits.
No. 63.
Plaintiffs'
Documents.
Judgment
Land
Settlement
Officer,
Jaffa,
in Case
No. 92/30,
26th June
1931,
continued.

Exhibits.
 ———
 No. 63.
 Plaintiffs'
 Documents.
 Judgment
 Land
 Settlement
 Officer,
 Jaffa,
 in Case
 No. 92/30,
 26th June
 1931,
continued.

that in accordance with the Kushans, he should receive an additional area of about 2,000 dunums. However, on the advice of the Mamur of Tabu of Tulkarem and in the interest of peace he accepted the boundary as excluding this area and the boundaries as then agreed upon were surveyed by the Engineer Wilbushevitch and planted with eucalyptus trees. About eight months afterwards he sold the lands he had purchased to the first settlers of Hudeira according to the boundaries shown in the Wilbushevitch map and the sale was for a definite area of dunums. No change, however, was made in the description of the boundaries shown in the Land Registry. The Wilbushevitch map was adopted and repro- 10
 duced by the colonists of Hudeira as the map of their colony. The boundaries thus fixed were not the subject of litigation, until the action brought by Abdel Fattah Mar'i Samara and sons in 1925 in the Haifa Land Court. The Settlement Officer is of opinion that the boundaries so fixed by agreement and strengthened by the passage of about thirty years became the boundary as set forth in the Kushans of Hudeira-Infiat and Zeita. The commission did in fact fix the said kushan boundaries. Neither Mr. Hankin nor the colonists of Hudeira received possession or enjoyed possession of the lands to the East of the Hudeira boundary as shown in the Wilbushevitch map. The land remained in the hands of the villagers 20
 of Zeita until 1925.

However, on the other hand, if the persons of Hudeira who appeared as Defendants in the action brought by Abdel Fattah Mar'i Samara and sons were entitled to plead that the Khor al Wasa was included in the Hudeira-Infiat kushans and to ignore the original settlement of the boundary by agreement and passage of about 30 years, the Settlement Officer is of opinion that their interpretation of the boundaries cannot be maintained. Mr. Hankin's claim at the time of his purchase was for an additional area of 2,000 dunums whereas the Khor al Wasa as claimed at Settlement measures between 5,000 and 6,000 dunums. The boundary 30
 on the West side of Raml Zeita is described in the kushan as Ard el Infiat. The locality of Ard el Infiat situated on the Eastern side of the Hudeira colony is Um el Akareb and Dahret Tel Mas'ud locality and is recorded in the Land Registry of Haifa as bounded on the Eastern side (Record pp. 122-123) by Dahret el Aqarib (a point identified by the Defendants' witness Botkovsky) up to Tel-Mas'ud on the East (also identified by the witness Mr. Hankin—see map accompanying this judgment) and Dahret el Aqarib el Nazazi allati min Shimal Tel Mas'ud and runs to the Taf in the Northern direction to Rub el Qatta (the latter descriptions have not been identified on the ground and the witness Botkovsky has stated 40
 that they are difficult to follow). The Northern boundary of the locality is shown in the Kushan as Tariq el Qas'a. It is clear therefore that the Eastern boundary ran for some distance North of the identified point Tel Mas'ud until it reached the road Tariq el Qas'a.

The Hudeira (old locality) Kushan (Record pp. 127-128) shows the southern boundary as Tariq el Qas'a al Mash-hura, so it appears to be clear that this locality lay to the North of Um al Aqarib and Dahret Tel-Mas'ud locality. The Eastern boundary shown in this Kushan is al Kazaza (swamp). If the line of division between these two localities can be definitely fixed, the solution of the dispute would be simple. But the whole 50
 nature of the land has been changed; desolate sandhills have been converted into plantations; new roads have been made; old roads have disappeared and the locality names have been forgotten.

The Hudeira (old locality) was, however, made up of a number of smaller localities, each of which was recorded separately in the Daftar Shamsieh of 1292 (Hejira). The description of the locality Khor Ya'qub wa Tin Sawaliya area 1,455½ dunums described as Raml would appear to assist in arriving at a solution of the question. The southern boundary is described as Dabbet el Qas'a and road in a straight line to Birket Kazaza and the Eastern boundary as Nazil el Ma Shatawi (winter water channel) up to Birket Kazaza. This description would appear to apply to the area so shown by the Settlement Officer on the map illustrating this judgment.

- 10 It may be assumed that the road mentioned on the South side in conjunction with the Dabbet el Qas'a is the Tariq el Qas'a al Mash-hura. The boundary as seen in the map is in a straight line to Kazaza. The Eastern boundary Nazil el Ma esh Shatawi is a natural but deepened channel in a North Westerly direction from the Birket Kazaza which still exists and is indicated on the map.

- Further important information on the location of Tariq el Qas'a was obtained after the hearing, from examination of the kushans for land situated East of Kazaza in the Hudeira-Zeita locality. A parcel shown on the map illustrating this judgment was sold by Nissan Rutman, the husband of Defendant I (2) and the attorney of Defendants I (1) & (2) to a certain Rissots. The Southern boundary of this parcel is described in the Kushan Exh. (1) as Al Qas'a road. This fixes the location of the Road al Qas'a East of Kazaza. Mr. Hankin also identified a spring called "Ain al Hajar" which lies due West of the portion of the road "Al Qas'a" thus identified and on the East side of Kazaza (see Exh. "S/1"). He stated that his spring was renowned (Mash-hura) all over the neighbourhood for its medicinal properties and much frequented. The association of the description "al Hajar" (the stone) and the explanation of the Plaintiffs that al Qas'a (al Mash-hura) was a hollowed out stone supports the view that "Ain al Hajar" was the well known spring close to the well known stone al Qas'a. This would bring the road al Qas'a as far West as the Kazaza. Although Mr. Hankin states that there was no road in existence going Westwards from Kazaza, it is clear from the Um al Aqareb Kushan and the entry in the Daftar Shamsieh regarding Khor Ya'qub and Tin Sawaliya that there was such a road running in a westerly direction. As the population to the West of the renowned Ain al Hajar was very sparse the road from the West to this frequented spring would probably have been less well marked than that from the East, and as the land is of a very sandy nature, the road was probably not well defined and may have disappeared. Following the general direction of the road al Qas'a from the East of the swamp and it is clear that road continued in a westerly direction, the Settlement Officer comes to the conclusion that this road follows approximately the boundary shown on the map illustrating this judgment by a blue line from Kazaza westwards to the corner where the eastern boundary of Hudeira turns at a right angle southwards, and continued thence in a generally westwardly direction. It follows from this that the Infiat lands Tel-Mas'ud and Dahret Um al Akarib reached as far North as this corner and that the Eastern boundary of the locality is as shown in map Exh. "g" as the boundary of Hudeira Colony (by the blue line in the map illustrating this judgment).

The Settlement Officer attaches little importance to the admissions of certain of the Plaintiffs and Third Parties contained in contracts of sales,

Exhibits.
 No. 63.
 Plaintiffs'
 Documents.
 Judgment
 Land
 Settlement
 Officer,
 Jaffa,
 in Case
 No. 92/30,
 26th June
 1931,
continued.

Case 143
 of 1929
 Penal.

Exhibits.
 No. 63.
 Plaintiffs'
 Documents.
 Judgment
 Land
 Settlement
 Officer,
 Jaffa,
 in Case
 No. 92/30,
 26th June
 1931,
continued.

produced in this action (Exh. "c") 1-32 to the effect that the Western boundary of Raml Zeita was Kazaza and Birket Nuriya. These contracts were signed in 1929, whereas Khor al Wasa had been registered in the Haifa Land Registry as part of Hudeira in 1925.

The Settlement Officer therefore concludes that the whole area of Khor al Wasa lies outside the boundaries of the Hudeira-Infiat Kushans and is thus included within the kushan boundaries of Raml Zeita. It is clear that the judgments of the Nablus Land Court in 1923-1924 which applied to the Raml Zeita as registered in the kushan included the same land as was the subject of the judgment of the Haifa Land Court in favour of Abd el Fattah Mar'i Samara in 1925. Although the question of the correct boundaries of Raml Zeita was not an issue before the Nablus Land Court, it is clear from the petition of claim that the judgment related to the lands included in the Kushan of Raml Zeita. 10

The Settlement Officer is thus faced with the task of deciding which of these two conflicting judgments is the better judgment. The Settlement Officer finds that the land in dispute was situated 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 Abd el Fattah Mar'i Samara to obtain possession of the land appear to indicate actions of a corrupt, deliberately misleading, and improper nature. This is indicated by the sequence of the following events relating to the transactions:— 20

26.12.23	Abdel Fattah Mar'i Samara withdrew from the action at the Land Court of Nablus.	
October, 1924	Mr. Nissan Rutman obtained a map of Khor al Wasa and ordered the correction of the description on the map from "Zeita Tulkarem" to "Khor al Wasa Hudeira".	30
March, 1925	Abd el Fattah Mar'i Samara brought an action in the Haifa Land Court for registration of Khor al Wasa in his name on the grounds of possession citing certain Defendants from Hudeira.	
May, 1925	Abd el Fattah Mar'i Samara obtained registration and shortly afterwards sold to Mrs. Toba Rutman and Miss Rifka Aaronson whose attorney Nissan Rutman was at the time and still is. Mrs. Toba Rutman is the wife of the said Nissan Rutman.	40

That the same kind of tactics have been continued until recently is apparently indicated by the action of Sharif 'Abd al Qadir in renouncing his principals' rights to which reference has been made in this judgment. The reasons of this action have not been disclosed.

The Settlement Officer finds that the boundaries of Hudeira on the East and South are as shown in the Wilbushevitch map and as indicated by a blue line in the map illustrating this judgment and that accordingly the whole area of Khor al Wasa in dispute in this action is included within the boundaries of Zeita and/or Attil Musha' lands.

He has thus no jurisdiction to consider the claims of the Defendants who have purchased parcels of land in Khor al Wasa' from Toba Rutman and Rifka Aaronson. But as the lands of Khor al Wasa' are included in the Land Registry of Haifa as being a portion of Hudeira and as the registers of Hudeira are superseded as result of the issue of a Settlement Notice regarding Hudeira on 2.5.29 he orders that the entries in respect of Khor al 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 al Wasa' and 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 Musha' 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 this land known as Khor al Wasa is also registered in the Haifa Land Registry.

Exhibits.
—
No. 63.
Plaintiffs'
Documents.
Judgment
Land
Settlement
Officer,
Jaffa,
in Case
No. 92/30,
26th June
1931,
continued.

Exempted from the payment of Court fees.

(Sgd.) F. G. LOWICK

Settlement Officer

Jaffa & Hudeira Settlement Areas.

20 At Hudeira.
26.6.1931.

No. 64.

Exhibit "g1".

LETTER, F. G. Lowick to Attorney-General.

Jaffa

P.O. Box 595, Jaffa

26th June, 1

The Attorney-General,
Government Offices,
Jerusalem.

No. 64.
Exhibit g1.
Defendants
Documents.
Letter from
Lowick
to the
Attorney-
General,
26th June
1931.

30

Subject : Khor al Wasa' land dispute
Hasan Mustafa Abu Jbara and others of Zeita
and Attil versus Toba Rutman & others
(Settlement Officer, Jaffa Area Case 92/30).

I shall be obliged if you will institute proceedings for perjury against Abdel Fattah Meri Samara resident at Khor al Wasa, near Hudera.

(2) This person in his evidence given before me on 17.12.30 stated inter alia :—"The boundaries of Musha Raml Zeita claimed by me in the Nablus Court were : West : Kazaza and Birket Nuriya ; North : road and the lands of the Jews ; South : 'Attil ; East : Road and the Railway line."

(3) I have examined the file of Land Action Nablus No. 18 of 1922 between Abdel Fattah Meri Samara & others and Sherif Yusuf al Ashqar and others of Zeita and found that the boundaries now described by him differ materially from those stated in their petition of claim. I enclose

40

Exhibits.
 No. 64.
 Exhibit g1.
 Defendants'
 Documents.
 Letter from
 Lowick
 to the
 Attorney-
 General,
 26th June
 1931,
continued.

certified true copy of that petition. The material boundary is the Western boundary of Zeita, and by describing the boundaries as Kazaza & Birket Nuriya instead of land of the Infiat an area of between 5000 and 6000 dunums is excluded from Zeita and added to Hudera.

(4) The said Abdel Fattah also testified before me as follows :—“ Prior to 1925 the Jews used to cultivate the land on lease. The people who leased land from me were : Ya'cov Samsonov, Yafet Yamani and Ali Madursky.” Whereas in Land Action No. 10 of 1925 Haifa between Abdel Fattah and sons and Samsonov, Yemani & Madursky heard in 1925, it was pleaded on behalf of Abdel Fattah that the latter three persons had trespassed on the land. I attach certified true copy of the petition of claim in that action. 10

(5) Moreover the same person testified that before he sold the land to Mr. Rutman he used to pay tithe and werko to the President of the Va'ad of Hudera. He added that he paid taxes for the musha land to Mulk of Zeita to Tulkarem. The taxes he paid to the Va'ad were only for Khor el Wasa. No foundation was given for this statement and the witnesses Abdel Rahim Samarra, originally of Suffarin village living at Tulkarem and Arif en Nashif of Teiba of Tulkarem Sub-District, who acted as assessors or inspectors of tithe estimation prior to 1925 stated that the tithes of Khor al Wasa' were assessed as being part of Zeita lands of Tulkarem Sub-District. I believe that the statements regarding the payment of taxes to the Va'ad of Hudera prior to 1925 to be absolutely devoid of truth. 20

I enclose certified true extracts from the record of the action before me containing the evidence of Abdel Fattah Meri Samarra, Abdel Rahim Samara and Arif en Nashif.

(Sgd.) F. G. LOWICK,
 Settlement Officer,
 Jaffa Settlement Area. 30

No. 65.
 Exhibit p2.
 Defendants
 Documents.
 Letter from
 Lowick
 to the
 District
 Commis-
 sioner,
 Haifa,
 29th June
 1931.

No. 65.
 Exhibit “ p 2 ”.

LETTER, F. G. Lowick to District Commissioner, Haifa.

464

Jaffa

P.O. Box 595, Jaffa.

29th June, 1

Case No. 92 /30
 District Commissioner,
 Northern District,
 Haifa.

Subject :—Khor el Wasa' Land Dispute.
 Action Settlement Officer,
 Jaffa Settlement Area
 No. 92/30.

40

Judgment in this action was given on 26.6.31.

2. The effect of the judgment is that Khor el Wasa' is not within the boundaries of Hadera but within the Meshah' lands of Raml Zeita (and Raml 'Attil) and is thus not within the Settlement Area of Hadera, and not within the jurisdiction of the Settlement Officer.

3. The Settlement Officer thus did not deal with the claims of persons who alleged they had purchased lands in Khor el Wasa' from 'Abd el Fattah Mer'i Samara and sons. But as the Settlement Notice issued by him in respect of Hadera on 2.5.29 has the effect of superseding the existing Registers of Hadera in which the aforesaid persons are included in respect of lands situated in Khor el Wasa', the Settlement Officer ordered as follows :—

Exhibits.
—
No. 65.
Exhibit p2.
Defendants'
Documents.
Letter from
Lowick
to the
District
Commis-
sioner,
Haifa,
29th June
1931,
continued.

10 He has thus no jurisdiction to consider the claims of the Defendants who have purchased parcels of land in Khor el Wasa' from Toba Rutman and Rivqa Aaronson. But as the lands of Khor el Wasa' are included in the Land Registry of Haifa as being a portion of Hadera and as the registers of Hadera are superseded as result of the issue of a Settlement Notice regarding Hadera on 2.5.29, he orders 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 Hadera and be described as Khor el Wasa' and that an observation be made in respect of such entries that in accordance with the judgment of the Settlement Officer, Jaffa Settlement Area, in Case No. 92/30, these lands are held to be

20 situated within the Mesha' 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 this land known as Khor el Wasa' is also registered in the Haifa Land Registry.

4. Toba Rutman, Rivqa Aaronson and others who are registered owners according to the Haifa Land Registry are in possession as registered owners and cannot be dispossessed except by a judgment of a competent court.

30 5. I have been asked by the notables of Hadera to bring to your notice the possibility of evil-intentioned persons of Zeita and 'Attil attempting to interfere with the lands of Khor el Wasa' and damaging the plantations that exist within these lands. The situation calls for the closest co-operation between the police of Tulkarem and Zichron Ya'qub and if I may offer a suggestion, it would appear advisable that until the litigation is completed—this will probably last for some years—the land of Khor el Wasa' should be considered for administrative and police services as in the possession of persons living in Hadera, and as part of Hadera.

40 6. I have personally explained the legal position to representatives of Zeita and 'Attil and they have assured me that they will make no attempt to recover possession, or to interfere with the land except in accordance with an order from the competent Court.

(Sgd.) F. G. LOWICK,
Settlement Officer,
Jaffa & Hadera Settlement Areas.

Copy to :
Commissioner of Lands,
Jerusalem.

Exhibits.

No. 66.

Exhibit "o".

No. 66.
Exhibit o.
Defendants'
Documents.
Letter from
Lowick to
Director
of Land,
Jerusalem,
29th June
1931.

LETTER, F. G. Lowick to Director of Lands, Jerusalem.

464

Jaffa,

Case No. 92/30

P.O. Box 595, Jaffa.

29th June, 1

Director of Lands,
Jerusalem.

Subject: Khor el Wasa' land action.

(Settlement Officer, Jaffa Settlement Area
No. 92/30).

10

The following are the concluding paragraphs of my judgment in the action referred to above:—

The Settlement Officer finds that the boundaries of Hadera on the East and South are as shown in the Vilbushevitch map and as indicated by a blue line in the map illustrating this judgment and that accordingly the whole area of Khor el Wasa' in dispute in this action is included within the boundaries of Zeita and/or 'Attil Mesha' lands.

He has thus no jurisdiction to consider the claims of the 20 Defendants who have purchased parcels of land in Khor el Wasa' from Toba Rutman and Rivqa Aaronson. But as the lands of Khor el Wasa' are included in the Land Registry of Haifa as being a portion of Hadera & as the registers of Hadera are superseded as result of the issue of a Settlement Notice regarding Hadera on 2.5.29, he orders 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 Hadera and be described as Khor el Wasa' and that an observation be made in respect of such entries that in accordance with the judgment of the Settlement Officer, Jaffa 30 Settlement Area, in Case 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 this land known as Khor el Wasa' is also registered in the Haifa Land Registry.

2. I shall be glad if you will issue the necessary orders to put into effect these provisions of the judgment in the Land Registries of Haifa and Tulkarem.

40

3. The southern portion of Khor el Wasa' is claimed to be within the boundaries of 'Attil Raml Mesha' Kushan. The exact area involved was not an issue which was within the jurisdiction of the Settlement Officer. The following note should be placed on the Register as regards 'Attil Raml Mesha' locality:—

“ The lands of Khor el Wasa' have been held by the Settlement Officer, Jaffa Settlement Area to be within the boundaries of Zeita

(and/or 'Attil) Mesha'—Raml localities. The lands of Khor el Wasa' are also recorded in the Land Registry of Haifa."

4. Khor el Wasa' should be treated in the Haifa Land Registry as forming a locality separate and independent of the village lands of Hadera, and the notice issued by the Settlement Officer on 2.5.29 (Official Gazette No. 235 of 16.5.29) in respect of Hadera village will be considered as having no effect as regards the lands of Khor el Wasa'.

(Sgd.) F. G. LOWICK,
Settlement Officer,
Jaffa & Hadera Settlement Area.

Exhibits.

No. 66.

Exhibit o.
Defendants'
Documents.
Letter from
Lowick to
Director
of Land,
Jerusalem,
29th June
1931,
continued.

10

No. 67.

Exhibit 24.

CONTRACT OF LEASE

(Translation from Hebrew.)

between the undersigned Mr. N. RUTMAN on one part and Mr. MOUSA BIN HASSAN NADAF of Djelmi (Kafr Attil) on the second part, agreed as follows :—

No. 67.
Exhibit 24.
Defendants'
Documents.
Contract
of Lease,
14th
November
1931.

(A) Mr. N. Rutman lets to Mr. Mousa bin Hassan Nadaf a plot of land of 55 ds. of the plot which Mohamad el Mahmoud Salah & Faleh Mahmoud Saleh took on lease last year at Khor el Wassa', Hedera, bounded on all sides with our land which is generally bounded: West—Eucalyptus; East—Qazazi Birket Nouria & Zeita lands; North—Eucalyptus and South—boundary marks and Attil for one year as from 14th November, 1931, till 1st September, 1932, for the purpose of ploughing and sowing for the sum of LP.6.600 which Mr. Hassan bin Mousa Nadaf undertakes to pay LP.3.300 at the signature of contract and the balance of LP.3.300 on first June, 1932.

(B) The above-named declares hereby that the above plot of an area of 55 dunums was delivered unto him by the first party and that he has taken possession thereof, the boundaries being known to him, and that he undertakes to take care of it so as it would not be encroached upon by strangers, spoilt and damaged, that he is responsible for all the survey marks put by the Surveys Department of the Government on the land, and that he is forbidden to sublet the said land to another without the consent of the first party.

(c) Mousa bin Hassan Nadaf undertakes to cultivate the land in accordance with the object specified in clause (A). Should he fail to fulfil the said condition he shall have to pay to the lessor damages per dunum of LP.0.500.

Mousa Bin Hassan Nadaf undertakes to pay the rent in full even if he does not exploit the land or part thereof.

40

Exhibits. (D) Upon the expiry of the period of lease the lessee undertakes to vacate the land without delay and shall raise no claims and arguments, either for Karab or for other purposes.

No. 67.
Exhibit 24.
Defendants' Documents.
Contract of Lease,
14th
November
1931,
continued.

(E) The lessee undertakes to return the said plot in the state as he received it, and for any day of delay he shall pay the sum of LP0.250.

Signed and made at Hadera.

Signatures (thumbprint) MOUSA BIN HASSAN NADAF.

14.11.31.

stamps, revenue, 10 Mils.

Witness (Sgd.) HASSAN EL FARES.
ABDUL FATTAH MIR'I SAMARA.

10

No. 68.
Plaintiffs' Documents.
Judgment of Land Court,
Haifa,
in L.S.A.,
No. 1/31,
18th July
1932.

No. 68.

JUDGMENT of Land Court, Haifa, in L.S.A. No. 1/31.

Land Settlement Appeal No. 1/31.

IN THE LAND COURT OF HAIFA.

Before : The President and Aziz J.

In the case between :

RIFKA AARONSON AND OTHERS

Appellants

V.

HASSAN MUSTAFA ABU JBARA AND OTHERS

Respondents 20

ABDEL FATTAH MAR'I EL SAMARA AND
OTHERS - -

Third Parties.

Appeal from the judgment of the Land Settlement Officer dated the 26th of June, 1931, in Case No. 92/30.

On the 14th of May, 1929, the High Commissioner made an order under Section 3 of the Land Settlement Ordinance 1928 (which took the place of an earlier Order of the same nature dated the 26th April 1929) ordering that a settlement of the rights in land and registration thereof should be effected in the area included within the boundaries of the village of Hudeira and the area, if any, between that village and the sea in the Haifa Sub-District and of the lands of Wadi Hawareth, Attil and Zeita in the Tulkarem Sub-District and various other places therein specified. 30

Village Settlement Committees were appointed for Hudeira, Zeita and Attil under Section 13 of the Ordinance and on the 9th of November, 1929, the Settlement Officer gave notice to these committees that it was his intention to come on a certain day and inspect the boundaries between Hudeira and the neighbouring villages and warning anybody who had any interest in the boundaries to attend since no change would be made after they had once been settled.

It has been stated by the Appellants that on the day appointed for the inspection of the boundaries the village Settlement Committee 40

of Attil attended and objected to a certain boundary and that this objection has not been settled yet but that the Village Settlement Committee of Zeita did not attend although they informed the Settlement Officer (whether prior or subsequent to the inspection does not appear) that they had no objection to the boundaries. However this may be, it appears that the Settlement Officer did fix the boundaries and that when he did so, Khor al Wasa', the land in dispute, was within those boundaries for on the 2nd of December, 1929, he gave notice under section 8 of the Ordinance that three blocks in Khor al Wasa' were about to be settled and on the 8th September, 10 1930, he gave a similar notice in respect of blocks 23-28 and 44, all of which form part of Khor al Wasa'.

When these notices were issued more than 80 persons of the village of Zeita came forward and claimed that Khor al Wasa' was part of the Musha' of their village and belong to them.

We think that at this stage the best course to have taken would have been to have selected one of these claims as representative of all the others and settled it in the manner provided by section 27 of the Ordinance obtaining undertakings from the remaining claimants to abide by the result.

20 However, this course was not adopted. The fellaheen of Zeita were assigned the role of plaintiffs, the colonists of Hudeira became defendants, other fellaheen, some of Zeita and some of Attil, were added as third parties and an investigation was begun by the Settlement Officer with the object as is stated in the final decision of the 26th of June, 1931, of deciding whether Khor al Wasa' lay within the boundaries of Hudeira and in consequence was within the jurisdiction of the Settlement Officer.

30 With all due respect to the Settlement Officer we do not think that the trial was began with that object at all. The boundaries had already been settled and what all the parties were seeking was an opportunity to prove their title to the land. In any case it is clear from the record of the proceedings that there was a good deal of uncertainty in the mind of the Settlement Officer as to what he was going to do, so much so that in his Interim Order made on the 25th of November, 1930 (page 47 of the Record) we find him recording that he "is of opinion and decides that he has no powers to exclude land so registered (i.e. the land in dispute) from the Village Settlement Area of Hudeira"; he qualifies this finding in his final judgment but the qualification appears to have been an afterthought, since in his Interim Order of the 16th December, 1930 he quotes the previous Interim Order without any such qualification (page 60 of Record).

40 In the end, the Settlement Officer found that the land in dispute was not within the boundaries of Hudeira and that he had no power to deal with claims in respect of the same, since his jurisdiction was limited to Hudeira.

On the face of it, this seemed to be a decision which prejudiced nobody and we had considerable difficulty at first in convincing ourselves that any appeal lay from it. No indication is given in the Land Settlement Ordinance as to what are to be considered the boundaries of a village and so long as the rights of individuals are not affected it does not seem to us to matter very much how the Settlement Officer decides the question. 50 If his decision is inconvenient, machinery exists by means of which it

Exhibits.
 No. 68.
 Plaintiffs'
 Documents.
 Judgment
 of Land
 Court,
 Haifa,
 in L.S.A.,
 No. 1/31,
 18th July
 1932,
continued.

Exhibits. can be amended, administratively, after Land Settlement has been completed.

No. 68.
Plaintiffs'
Documents.
Judgment
of Land
Court,
Haifa,
in L.S.A.,
No. 1/31.
18th July
1932,
continued.

However, upon closer examination, it will be observed that the judgment of the Settlement Officer consists of two parts, firstly, a finding as to the boundaries of Hudeira made under section 12 of the Land Settlement Ordinance 1928 and, secondly, a decision that Khor al Wasa' does not lie within the boundaries of Hudeira as recorded in the original Kushans of Hudeira.

The latter decision seriously affects the rights of the Appellants, the more so since the Settlement Officer has ordered that the entries in respect of Khor al Wasa' in the Haifa Land Registry shall be separated from the Hudeira entries and an observation made in respect of the former that in accordance with the judgment of the Settlement Officer, Jaffa Area, in Case No. 92/30, these lands were held to be situated within the musha' lands Zeita and/or Attil. 10

With regard to the first decision, as has been mentioned before, the Land Settlement Ordinance nowhere lays down what the boundaries of a village are to be deemed to be nor does it say what factors should be taken into consideration in coming to a decision on the subject. In this case, the Settlement Officer has excluded Khor al Wasa' from Hudeira because, as he found it, it was not included in the original Kushans of Hudeira. We do not propose to overrule him on this point because his decision does not affect the right or title of any individual who is a party to this action; on the other hand, if we had had to make the decision ourselves, we think that we should have paid regard more to the present state of affairs rather than to that of many years ago. To-day Khor al Wasa' is to all intents and purposes a part of Hudeira and is likely to remain so whatever may be the outcome of the dispute as to title; further since the year 1925, it has been treated by the Government as being part of Hudeira and consequently within the Haifa Sub-District and not within the Sub-District of Tulkarem. For these reasons it seems to us that it would have been more convenient to have kept it within Hudeira for the purposes of Land Settlement, and so we should have decided, had the question any practical value for the parties to this action. 20 30

With regard to the second decision, namely that Khor al Wasa' does not lie within the boundaries recorded in the original Kushans of Hudeira, there is ample evidence in the careful and competent investigation made by the Settlement Officer to confirm this finding and we uphold the same accordingly.

The Appellants, on the question of title, have still another string to their bow because they have acquired the rights of the Government in Khor al Wasa' which the Government claims, was declared Mahlul during the Turkish régime. This question has still to be determined. 40

In the result, the appeal fails and is dismissed: no order is made as to costs.

Judgment delivered in the presence of the parties and subject to a right of appeal upon a point of law.

Dated the 18th day of July, 1932.

(Sgd.) AZIZ DAOUDI,
Judge.

(Sgd.) C. R. W. SETON,
President. 50

No. 69.

Exhibit 22.

CONTRACT OF LEASE

(Translation from Hebrew.)

between the undersigned Mr. N. Rutman on one part and Mr. Mohamed Abdul Razek el Husein of Zeita village, residing to-day at Hedera, on the second part, agreed as follows :—

Exhibits.

No. 69.
Exhibit 22.
Defendants'
Documents.
Contract
of Lease,
17th
October
1932.

10 (a) Mr. N. Rutman lets to Mr. Mohamed Abdul Razek el Husein a plot of land of fifty dunums at Khor el Wassa', Hedera, (qazazi), bounded, East—Qazazi Marsh, North South and West—our land, for one year as from 17th October, 1932, till 1st September, 1933, for the purpose of ploughing and sowing for the sum of LP.8.— which Mr. Mohamed Abdul Qader el Hasan (sic) undertakes to pay at the signature of Contract LP.4.— and the balance of LP.4.— on 1st March, 1933.

20 (b) The above named declares hereby that the above plot of an area of 50 dunums was delivered unto him by the first party and that he has taken possession thereof, the boundaries being known to him, and that he undertakes to take care of it so as it would not be encroached upon by strangers, spoilt and damaged, that he is responsible for all the survey marks put by the Surveys Department of the Government on the land, and that he is forbidden to sublet the said land to another without the consent of the first party.

(c) The above named undertakes to cultivate the land in accordance with the object specified in clause (a). Should he fail to fulfil the said condition he shall have to pay to the lessor damages per dunum of LP.

30 The above named undertakes to pay the rent in full even if he does not exploit the land or part thereof.

(d) Upon the expiry of the period of lease the lessee undertakes to vacate the land without delay and shall raise no claims and arguments.

(e) The lessee undertakes to return the said plot in the state as he received it, and for any day of delay he shall pay the sum of LP.0.250.

Signed and made at Hadera.

Signature : MOHAMMAD ABDUL RAZEK EL HUSSEIN.

stamp, revenue, 10 Mils. 17.10.32.

40

Witness sgd. : IBRAHIM EL HAJ SAID ZEI
HASSAN EL FARES.

Exhibits.

No. 70.

JUDGMENT OF THE SUPREME COURT in L.A. No. 66/32.

Land Appeal No. 66/32.

No. 70.
Plaintiffs'
Documents.
Judgment
of
Supreme
Court,
Jerusalem,
in
L.A. 66/32,
12th
January
1933.

IN THE SUPREME COURT.

Sitting as a Court of Appeal.

Before : THE ACTING CHIEF JUSTICE, Mr. JUSTICE KHALDI and
Mr. JUSTICE KHAYAT.

In the case of :

Appellants : RIFKA AARONSON and 8 others.*Respondents* : FARID NAJIB GHADIEH and 158 others. 10*Third Party* : AYSHAH AS'AD RABAH and 29 others.

Appeal from the judgment of the Land Court of Haifa, dated the
18th July, 1932.

Defendants : MOHAMED RADI SHEHADEH—Mukhtar of Attil repre-
senting Village Settlement Committee.

MAHMUD HASSAN NADDAF—Notable.

For Appellants :—

1 and 2 Abcarius Bey

3 Dr. Joseph

4 Mr. Horowitz 20

5, 6, 7, 8, 9 Mr. Kaisermann.

For Respondents :—

1 Mr. Moghannam—representing Mahmud Madi

2-23 Mr. Moghannam

24-159 Auni Bey.

Abcarius Bey—in reply to Court : The judgments affect my rights to
land because of the direction that the entries in the Haifa Land Registry
shall be separated from lands for Hudeira and his finding that Khor al
Wasa' is included within the Kushan boundaries of Raml Zeita.

Joseph : This affects the right to land : the decision as to ownership 30
must follow inevitably.

Horowitz : The entries ordered to be made in the Land Registers
affect my power to transfer the land. We had applied to be entered in
the Hudeira Schedule ; and this has been refused. We have to start
all over again in Zeita.

Moghannam—for Respondents : The appealable decisions are those
entered in the Schedule of Rights.

Auni Bey : The Appellants have not lost the right to be entered on
the Schedule of Rights.

Abcarius Bey in reply : High Court No. 6/27. By refusing to follow 40
the judgments of the District Court, the Settlement Officer has affected
my proprietary rights.

Every decision of Settlement Officer is subject to appeal without leave except in the single case in which the Ordinance requires that leave should be obtained.

Civil Appeal No. 105/32 Arbitration proceedings. Land Settlement Ordinance, section 10.

JUDGMENT.

This is an appeal from a judgment of the Land Court of Haifa given in an appeal from a decision of a Settlement Officer.

10 The nature of the proceedings before the Settlement Officer is stated at the beginning of his Decision to be as follows :—

“ This action has been brought to decide whether an area of land known as the Khor al Wasa stated to consist of between 5,000 and 6,000 dunums lies within the boundaries of Hudeira and is thus within the jurisdiction of the Settlement Officer, Jaffa Settlement Area, in virtue of a Settlement Notice published by him on 2.5.29 under Section 5 of the Land Settlement Ordinance 1928, in respect of Hudeira Village, the effect of which being that jurisdiction in actions concerning rights to land within the boundaries of the said village of Hudeira is conferred on the Settlement Officer according to the provisions of Sect. 6 of the said Ordinance.”

20

Early in the course of the proceedings the Issues to be decided were settled as follows :—

“ *Issue 1.*

That the Settlement Officer shall decide whether the area in dispute known as the lands of Khor al Wasa' and/or Raml Zeita are included within the boundaries of Hudeira or included within the boundaries of Zeita and/or 'Attil Villages, and for this purpose the Settlement Officer shall define the Eastern and Southern boundaries of Hudeira Village lands. Such decision to be without prejudice to the rights of any claimant to bring an action in the competent Court to establish his ownership or to pursue an action before the Settlement Officer if the area is found to be within his jurisdiction.

30

2. That the further issues shall if necessary be defined subsequent to a decision being given on the first issue.”

After an exhaustive inquiry the Settlement Officer made the following finding :—

“ The Settlement Officer finds that the boundaries of Hudeira on the East and South are as shown in the Wilbushevitch map and as indicated by a blue line in the map illustrating this judgment and that accordingly the whole area of Khor el Wasa in dispute in this action is included in the boundaries of Zeita and/or Attilmusha' lands.

40

He has thus no jurisdiction to consider the claims of the Defendants who have purchased parcels of land in Khor al Wasa from Toba Rutman and Rifka Aaronson.”

Exhibits.
—
No. 70.
Plaintiffs' Documents.
Judgment of Supreme Court, Jerusalem, in L.A. 66/32, 12th January 1933,
continued.

O.G.
No. 235 of 16.5.29
P.537.

Exhibits.

No. 70.
Plaintiffs'
Documents.
Judgment
of
Supreme
Court,
Jerusalem,
in
L.A. 66/32,
12th
January
1933,
continued.

Having thus determined the question of jurisdiction which was the subject of his inquiry, the Settlement Officer proceeded to give certain directions as to entries in the old registers in the following terms :—

“ But as the lands of Khor al Wasa' are included in the land Registry of Haifa as being a portion of Hudeira and as the registers of Hudeira are superseded as result of the issue of a Settlement Notice regarding Hudeira on 2.5.29, he orders that the entries in respect of Khor al 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 al Wasa' and that an observation be made in respect of such entries that in accordance with the judgment of the Settlement Officer Jaffa Area, in Case 92/30, these lands are held to be situated within the Musha' 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 this land known as Khor al Wasa' is also registered in the Haifa Land Registry.” 10

From what source the Settlement Officer derived authority to give such directions does not appear ; but that is not a matter with which we have at present to deal. 20

The question that first presents itself is whether the Settlement Officer's decision is appealable or not. The only provisions as to appeal contained in the Land Settlement Ordinances are those of sections 56, 57 and 58 of the Land Settlement Ordinance 1928, as amended by section 16 of the Land Settlement Ordinance 1930 : the first paragraph of section 56 (1) as amended is as follows :—

“ No appeal shall lie from the decision of a Settlement Officer as to any right to land save with the leave of such officer or of the President of a Land Court.” 30

Section 57 defines the powers of the Land Court with regard to an appeal. Section 58 contains provisions with regard to an appeal from a “ decision recorded ” in the Schedule of Rights or the Partition Schedule.

Unless therefore the decision of the Settlement Officer now in question is “ the decision of a Settlement Officer as to any right in land,” or is a decision recorded in the Schedule of Rights or the Partition Schedule, there is no provision for any appeal to be made from it. Clearly this is not a decision entered in a Schedule of Rights or Partition Schedule : the question that remains is, is it a decision *as to any right in land*.

This question was argued before the Land Court which held that the decision was subject to appeal on the ground that the decision that Khor al Wasa does not lie within the boundaries of Hudeira as recorded in the original Kushan of Hudeira “ seriously affects the rights of the Appellants, the more so since the Settlement Officer has ordered that the entries in respect of Khor al Wasa' in the Haifa Land Registry shall be separated from the Hudeira entries and an observation made in respect of the former that in accordance with the judgment of the Settlement Officer, Jaffa Area, in Case No. 92/30, these lands were held “ to be situated within the mesha' lands of Zeita and/or Attil.” 40

This view is supported by the Appellants who allege that their case depends upon a finding that the land in question forms part of the lands of Hudeira.

But even if such be the case : there is a clear distinction between a decision which affects rights in land and a decision as to any right in land.

Every relevant finding of fact made by a Settlement Officer is a decision affecting rights in land, in that it may be the basis of a decision as to those rights. It does not follow that any such decision can be the subject of an appeal apart from the decision as to rights in land based
10 thereon.

The decision that the lands of Khor al Wasa are within the mesha' lands of Zeita or of Attil, while it may affect rights in land by forming the basis of a decision as to such rights, is not in itself a decision as to such rights.

Again, the directions given by the Settlement Officer as to the entries to be made in the old register, are not decisions as to rights in land.

The same persons as before remain registered as owners of the same rights in the same plots of land after such entries are made.

There is thus, at present, no decision before the Court against which
20 an appeal can lie, and the Appellants' application must be dismissed with costs including LP.2 to each advocate appearing (Mr. Moghannam and Auni Bey) and LP.1 each expenses to each of the two members of the Attil Village Settlement Committee, and to each of the unrepresented villagers of Zieta present in person.

Delivered this 12th day of January, 1933.

(Sgd.) C. C. K. CORRIE

Acting Chief Justice.

Exhibits.

—
No. 70.
Plaintiffs'
Documents.
Judgment
of
Supreme
Court,
Jerusalem,
in
L.A. 66/32,
12th
January
1933,
continued.

No. 71.

Exhibit 23.

CONTRACT OF LEASE

(Translation from Hebrew.)

30

between the undersigned Mr. N. Rutman on one part and Mahmoud El Mousa Zaatariyeh of Baka Village, at present residing at Hedera on the second part, agreed as follows :

(a) Mr. N. Rutman lets to Mahmoud el Mousa Za'atariyeh a plot of land at Khor el Wassa of an area of eighty (80) dunums for one year as from fifth December 1933 till 1st June, 1934 (*sic*) for

No. 71.
Exhibit 23.
Defendants'
Documents.
Contract
fo Lease,
5th
December
1933.

Exhibits.
 —
 No. 71.
 Exhibit 23.
 Defendants'
 Documents.
 Contract
 of Lease,
 5th
 December
 1933,
continued.

ploughing and sowing for the sum of LP.40 which Mr. Mahmoud Zaatariyeh undertakes to pay in the manner following: by a promissory note of LP.40 which shall be payable on 1st June, 1934.

(b) The above named hereby declares that the said plot of 80 dunums has been delivered to him by the first party and that he has taken possession thereof as per boundaries known to him, and he undertakes to take care of it against encroachment by strangers, against damage and spoiling, and he is responsible for all the survey marks placed on the said land by the Survey Department, and that he is forbidden to sub-let the said land to 10 another without the permission of the first party.

(c) Should the lessee sublet the land or part thereof to another or other persons with the permission of the lessor—he shall remain liable as against the lessor or the subtenants taking the lease from him for any claims and demands which the subtenants taking the lease from him shall have, and he covenants towards the lessor to satisfy any tenancy claims out of his property and by himself if such claim there be.

(d) The above named undertakes to cultivate the land in accordance with the object specified in clause (a), and should he 20 fail to carry out the said condition I shall have to pay to the lessor damages of one Palestine Pound on each dunum.

(e) The above named undertakes to pay the rent in full even in the event he does not exploit the land or part of it.

(f) The lessee undertakes to return the said plot in the same position as was delivered to him and for every day of delay he shall pay the sum of a quarter of Palestine Pound.

In witness whereof I have affixed my signature after having it translated to me correctly.

Made and signed at Hedera, on 5.12.33.

30

Thumbprint of MAHMOUD MOUSA EL ZAATARIYEH
 BAKA EL GHARBIYEH.

I hereby guarantee to the lessor the fulfilment and carrying out of this contract by the lessee.

(Sgd.) ABDUL HALIM MOHAMMAD ABDUL HALIM
 of Tulkarem, 5.12.33.

Witness : ISSA . . .

JUDGMENT OF THE PRIVY COUNCIL in P.C.A. 19/35.

Privy Council Appeal No. 19 of 1935.

RIFKA AARONSON and others - Appellants
 V.
 FARID NAJIB GHADIEH and others Respondents
 from
 THE SUPREME COURT OF PALESTINE.

No. 72.
 Plaintiffs'
 Documents.
 Judgment
 of Privy
 Council in
 P.C.A.
 19/35,
 27th July
 1936.

10 JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY
 COUNCIL, DELIVERED THE 27TH JULY, 1936.

Present at the Hearing :
 LORD THANKERTON.
 SIR JOHN WALLIS.
 SIR GEORGE RANKIN.

(Delivered by LORD THANKERTON.)

This is an appeal by special leave from a judgment of the Supreme Court of Palestine in its appellate jurisdiction, dated the 12th January, 1933, dismissing an appeal from a judgment of the Land Court of Haifa dated the 18th July, 1932, under which an appeal by the present appellants from an order of the Settlement Officer, dated the 26th June, 1931, was dismissed.

Under section 3 of the Palestine Land Settlement Ordinance, as amended, the High Commissioner for Palestine, on the 26th April, 1929, issued a settlement order, by which it was ordered that a settlement of the rights in land and registration thereof should be effected in the area included within the boundaries of inter alia the village of Hudeira in the Haifa Sub-District and of the lands of Attil and Zeita in the Tulkarem Sub-District. By another order of the same date Mr. Francis Goldworth Lowick was appointed Settlement Officer for the purposes of the above order. On the 14th May, 1929, the High Commissioner issued another order, which cancelled the first order and reissued it in an amended form. The amendments are not material to the present question.

On the 2nd May, 1929, a preliminary notice, in terms of section 5 of the Ordinance, was issued of the intended settlement and registration of rights in the village of Hudeira. The village of Hudeira thus became a village under settlement, and the lands comprised within its boundaries became subject to the jurisdiction of the Settlement Officer.

The present dispute relates to a large area of land, said to extend to between 5,000 and 6,000 dunums, and known as Khor al Wasa'. At this time the appellants were registered in the Land Registry of Haifa as absolute owners of an area extending to between 5,000 and 6,000 dunums, and forming part of Khor al Wasa', and were the holders of

Exhibits.
 ———
 No. 72.
 Plaintiffs'
 Documents.
 Judgment
 of Privy
 Council in
 P.C.A.
 19/35,
 27th July
 1936,
continued.

Kushans or title deeds issued to them by that Land Registry, which certified their registration as such. The entry in the register describes the area as being within the village of Hudeira.

On the 2nd December, 1929, and the 9th September, 1930, statutory notice was given that settlement and registration of rights was about to commence as to certain blocks of land in the village of Hudeira, including the blocks of which the appellants were the registered owners. The appellants then duly submitted memoranda of their claims to these blocks to the Settlement Officer.

Thereafter the Settlement Officer held a prolonged public enquiry, 10 generally at Hudeira, on various dates from the 5th November, 1930, to the 16th June, 1931, and he delivered a considered judgment on the 26th June, 1931, from which it is convenient to take his description of the parties before him and their claims:—

“ This action has been brought to decide whether an area of land known as the Khor al Wasa' stated to consist of between 5,000 and 6,000 dunums lies within the boundaries of Hudeira and is thus within the jurisdiction of the Settlement Officer, Jaffa Settlement Area, in virtue of a Settlement Notice published by him on 2nd May, 1929 (vide Official Gazette No. 235 of 16th May, 20 1929, p. 537), under Section 5 of the Land Settlement Ordinance, 1928, in respect of Hudeira village, the effect of which being that jurisdiction in actions concerning rights to land within the boundaries of the said village of Hudeira is conferred on the Settlement Officer according to the provisions of Section 6 of the said Ordinance.

“ The plaintiffs are persons who claim that the area in question lies within the boundaries of the village of Zeita (Tulkarem Sub-Dist.) and forms part of the Musha' lands of Raml Zeita. At a later stage, namely, on 19th May, 1931, 73 additional claimants who made a similar claim were entered as third parties. The 30 third parties are Abdel Fattah es Samara and partners who subsequently withdrew their claim and representatives of Attil Village (Tulkarem Sub-District) who claimed that a part of the area is included within the boundaries of their village.

“ The defendants claim that the land in question is within the boundaries of Hudeira and is their property in virtue of registration in the Land Registry of Haifa.”

In the view that their Lordships take, it is unnecessary to consider either the question of the boundaries of Hudeira or the question of title to the area in dispute on its merits, but it may be explained that the present 40 appellants obtained a judgment of the Haifa Land Court in their favour in 1925, under which the entry in their favour in the Haifa Land Registry was directed to be made, while the respondents hold a judgment of the Nablus Land Court in their favour, which they claim applies to the area in dispute. Further the questions of village boundaries and of title are inter-related to some extent for, if the area in dispute is village musha' of the village of Zeita or the village of Attil, it seems clear that it cannot be within the boundaries of the village of Hudeira.

After dealing with the evidence and arguments in detail, the Settlement Officer stated his conclusions as follows:—

“ The Settlement Officer therefore concludes that the whole area of Khor al Wasa' lies outside the boundaries of the Hudeira- 50

Infiat Kushans and is thus included within the kushan boundaries of Raml Zeita. It is clear that the judgments of the Nablus Land Court in 1923-1924 which applied to the Raml Zeita as registered in the kushan included the same land as was the subject of the judgment of the Haifa Land Court in favour of Abd el Fattah Mar'i Samara in 1925. Although the question of the correct boundaries of Raml Zeita was not an issue before the Nablus Land Court, it is clear from the petition of claim that the judgment related to the lands included in the Kushan of Raml Zeita.

Exhibits.
—
No. 72.
Plaintiffs'
Documents.
Judgment
of Privy
Council in
P.C.A.
19/35,
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1936,
continued.

10 “ The Settlement Officer is thus faced with the task of deciding which of these two conflicting judgments is the better judgment. The Settlement Officer finds that the land in dispute was situated 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.”

20 “ The Settlement Officer finds that the boundaries of Hudeira on the East and South are as shown in the Wilbushevitch map and as indicated by a blue line in the map illustrating this judgment and that accordingly the whole area of Khor al Wasa' in dispute in this action is included within the boundaries of Zeita and/or Attil Musha' lands.

30 “ He has thus no jurisdiction to consider the claims of the Defendants who have purchased parcels of land in Khor al Wasa' from Toba Rutman and Rifka Aaronson. But as the lands of Khor al Wasa' are included in the Land Registry of Haifa as being a portion of Hudeira and as the registers of Hudeira are superseded as result of the issue of a Settlement Notice regarding Hudeira on 2nd May, 1929, he orders that the entries in respect of Khor al 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 al Wasa' and 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 Musha' 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 this land known as Khor al Wasa' is also registered in the Haifa Land Registry.”

40 The present appellants appealed from that judgment, with the leave of the Settlement Officer, to the Land Court, Haifa. The competency of the appeal was challenged, but it was upheld by the Land Court on the 26th November, 1931, by a judgment as follows :—

50 “ The judgment of the Settlement Officer appears at first sight merely to decide the boundaries of Hudeira on the South and East in arriving at this decision the Settlement Officer states that he has come to the conclusion that Khor al Wasa' is within the Kushan boundaries of Raml Zeita and that the judgment in the Haifa Land Court was obtained by corrupt, deliberately misleading and improper methods. The appellants right to the land in dispute is affected undoubtedly by the two latter decisions and the Settlement Officer having given leave to appeal, we hold that an appeal lies under

Exhibits.

No. 72.
Plaintiffs'
Documents.
Judgment
of Privy
Council in
P.C.A.
19/35,
27th July
1936,
continued.

section 56 (1) of the Land Settlement Ordinance 1928, and we overrule the respondents' preliminary objection to the contrary." Thereafter, the Land Court delivered judgment on the 18th July, 1932, dismissing the appeal. After some comment on the proceedings before the Settlement Officer, the judgment proceeds as follows :—

"In the end, the Settlement Officer found that the land in dispute was not within the boundaries of Hudeira and that he had no power to deal with claims in respect of the same, since his jurisdiction was limited to Hudeira.

"On the face of it, this seemed to be a decision which 10 prejudiced nobody and we had considerable difficulty at first in convincing ourselves that any appeal lay from it. No indication is given in the Land Settlement Ordinance as to what are to be considered the boundaries of a village and so long as the rights of individuals are not affected it does not seem to us to matter very much how the Settlement Officer decides the question. If his decision is inconvenient, machinery exists by means of which it can be amended, administratively, after Land Settlement has been completed.

"However, upon closer examination, it will be observed that 20 the judgment of the Settlement Officer consists of two parts, firstly, a finding as to the boundaries of Hudeira made under section 12 of the Land Settlement Ordinance, 1928, and, secondly, a decision that Khor al Wasa' does not lie within the boundaries of Hudeira as recorded in the original Kushans of Hudeira.

"The latter decision seriously affects the rights of the Appellants, the more so since the Settlement Officer has ordered that the entries in respect of Khor al Wasa' in the Haifa Land Registry shall be separated from the Hudeira entries and an observation made in respect of the former that in accordance with 30 the judgment of the Settlement Officer, Jaffa Area, in Case No. 92/30, these lands were held to be situated within the Musha' lands Zeita and/or Attil.

"With regard to the first decision, as has been mentioned before, the Land Settlement Ordinance nowhere lays down what the boundaries of a village are to be deemed to be nor does it say what factors should be taken into consideration in coming to a decision on the subject. In this case, the Settlement Officer has excluded Khor al Wasa' from Hudeira because, as he found it, it was not included in the Original Kushans of Hudeira. We do not 40 propose to overrule him on this point because his decision does not affect the right or title of any individual who is a party to this action; on the other hand, if we had to make the decision ourselves, we think that we should have paid regard more to the present state of affairs rather than to that of many years ago. To-day Khor al Wasa' is to all intents and purposes a part of Hudeira and is likely to remain so whatever may be the outcome of the dispute as to title; further since the year 1925, it has been treated by the Government as being part of Hudeira and consequently within the Haifa Sub-District and not within the Sub- 50 District of Tulkarem. For these reasons it seems to us that it would have been more convenient to have kept it within Hudeira

for the purposes of Land Settlement, and so we should have decided, had the question any practical value for the parties to this action.

“ With regard to the second decision, namely, that Khor al Wasa’ does not lie within the boundaries recorded in the original Kushans of Hudeira, there is ample evidence in the careful and competent investigation made by the Settlement Officer to confirm this finding and we uphold the same accordingly.

10 “ The Appellants, on the question of title, have still another string to their bow because they have acquired the rights of the Government in Khor al Wasa’ which the Government claims, was declared Mahlul during the Turkish régime. This question has still to be determined.

“ In the result, the appeal fails and is dismissed : no order is made as to costs.

“ Judgment delivered in the presence of the parties and subject to a right of appeal upon a point of law.”

An appeal by the present appellants to the Supreme Court of Palestine was dismissed by a judgment of that Court on the 12th January, 1933. After referring to the decision of the Settlement Officer, the judgment
20 proceeds as follows :—

“ From what source the Settlement Officer derived authority to give such directions, does not appear : but that is not a matter with which we have at present to deal.

30 “ The question that first presents itself is whether the Settlement Officer’s Decision is appealable or not. The only provisions as to appeal contained in the Land Settlement Ordinances are those of sections 56, 57 and 58 of the Land Settlement Ordinance 1928, as amended by section 16 of the Land Settlement Ordinance 1930 : the first paragraph of section 56 (1) as amended is as follows :—

“ ‘ No appeal shall lie from the decision of a Settlement Officer as to any right to land save with the leave of such officer or of the President of a Land Court.’

“ Section 57 defines the powers of the Land Court with regard to an appeal. Section 58 contains provisions with regard to an appeal from a ‘ decision recorded ’ in the Schedule of Rights or the Partition Schedule.

40 “ Unless therefore the decision of the Settlement Officer now in question is ‘ the decision of a Settlement Officer as to any rights in land,’ or is a decision recorded in the Schedule of Rights or the Partition Schedule, there is no provision for any appeal to be made from it. Clearly this is not a decision entered in a Schedule of Rights or Partition Schedule ; the question that remains is, is it a decision as to any right in land.

50 “ This question was argued before the Land Court which held that the decision was subject to appeal on the ground that the decision that Khor al Wasa’ does not lie within the boundaries of Hudeira as recorded in the original Kushan of Hudeira ‘ seriously affects the rights of the Appellants, the more so since the Settlement Officer has ordered that the entries in respect of Khor al Wasa’ in the Haifa Land Registry shall be separated from the Hudeira entries and an observation made in respect of the former that in

Exhibits.

—
No. 72.
Plaintiffs’
Documents.
Judgment
of Privy
Council in
P.C.A.
19/35,
27th July
1936,
continued.

Exhibits.

No. 72.
Plaintiffs'
Documents.
Judgment
of Privy
Council in
P.C.A.
19/35,
27th July
1936,
continued.

accordance with the judgment of the Settlement Officer, Jaffa Area, in Case No. 92/30, these lands were held to be situated with the Musha' lands of Zeita and/or Attil.'

" This view is supported by the Appellants who allege that their case depends upon a finding that the land in question forms part of the lands of Hudeira.

" But even if such be the case there is a clear distinction between a decision which affects rights in land and a decision as to any right in land.

" Every relevant finding of fact made by a Settlement Officer 10 is a decision affecting rights in land, in that it may be the basis of a decision as to those rights. It does not follow that any such decision can be the subject of an appeal apart from the decision as to rights in land based thereon.

" The decision that the lands of Khor al Wasa' are within the Musha' lands of Zeita or of Attil, while it may affect rights in land by forming the basis of a decision as to such rights, is not in itself a decision as to such rights.

" Again, the directions given by the Settlement Officer as to the entries to be made in the old registers, are not decisions as to 20 rights in land.

" The same persons as before remain registered as owners of the same rights in the same plots of land after such entries are made.

" There is thus, at present, no decision before the Court against which an Appeal can lie, and the Appellants' application must be dismissed."

The present appeal is by special leave ; the respondents have not appeared and the appeal was heard *ex parte* by their Lordships. Special leave was granted on the undertaking that the Settlement Officer's decision as to the 30 boundaries should not be questioned in the appeal, as it was an administrative question, and that the appeal should be confined to a challenge of his decision in so far as it affected the title of the appellants.

Their Lordships are clearly of opinion that the Settlement Officer's decision was a decision as to rights to land in so far as it held that the lands of Khor al Wasa' are musha' lands, a finding that necessarily excluded the title relied on by the appellants. This appears to be the ground on which the Land Court upheld the competency of the appeal to their Court. Their Lordships have difficulty in appreciating the fine distinction drawn by the Supreme Court in holding the appeal incompetent. 40

In the next place, their Lordships are clearly of opinion that the judgment of the Settlement Officer was outside his jurisdiction, 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 al Wasa,' which he held to be outwith the boundaries of Hudeira, was musha' land, along with the consequential directions as to entries in the Land Registries of Haifa and Tulkarem, was *ultra vires* of the Settlement Officer. It is remarkable that the Settlement Officer made these findings in spite of the correct view expressed by him as to the extent of his jurisdiction. The Land Court will appear to have 50 accepted this view also, but they equally failed to give effect to it. The Supreme Court only considered the competency of the appeal.

In defining the boundaries of the village of Hudeira, the Settlement Officer was entitled to find that the area of Khor al Wasa' was not in Hudeira, but within the boundaries of Zeita and/or Attil; that was a purely administrative finding. But, in the opinion of their Lordships, the judgment of the Settlement Officer of the 26th June 1931, ought to be varied by excluding from the findings any finding that the area of Khor al Wasa' is musha' land, and also the orders as to entries in the Land Registries of Haifa and Tulkarem.

10 Counsel for the appellants asked that the case should be sent back to the Land Court in order that the Land Court should proceed to hear the appeal to them on the question of the boundaries of Hudeira, but the judgment of the Land Court makes clear that they were not prepared to interfere with the decision of the Settlement Officer on this point, and their Lordships are of opinion that the case should not be sent back.

It is right that their Lordships should make clear that their decision is confined to the 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 al Wasa'. The matter will be entirely open to the Settlement Officer, when the 20 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 al Wasa' is musha' land, and also the orders 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 30 Court from the respondents.

No. 73.

Exhibit "F".

LETTER, Assistant Director of Land Registration to Joseph Kaisermann.

GOVERNMENT OF PALESTINE.

No. LD.38/3-5762.

Director of Land Registration,
Jerusalem.

Sir,

3rd August, 1938.

40 In reply to your letter dated the 31st of July, 1938 on the subject of a judgment given by the Privy Council in the Khor El Wassa case, I have to inform you that the necessary instructions were issued on the 20th of July, 1938 to the Registrar of Lands Haifa and Tulkarem to delete and cancel the notes inserted on the respective entries by virtue of an order made by the Settlement Officer in case No. 92/30.

I have the honour to be,

Sir,

Your obedient servant,

(Sgd.) ?

for A/Director of Land Registration.

Mr. Joseph Kaiserman,
Advocate,
P.O.B. 299,
Haifa.

Exhibits.

No. 72.
Plaintiffs'
Documents.
Judgment
of Privy
Council in
P.C.A.
19/35,
27th July
1936,
continued.

No. 73.
Exhibit F.
Defendants'
Documents.
Letter of
A/Director
of Land
Registra-
tion at
Jerusalem
to Mr.
Kaisermann
3rd
August
1938.

Exhibits.

No. 74.
Exhibit 24.
Defendants'
Documents.
Decision of
Settlement
Officer,
17th May
1940.

No. 74.

Exhibit 26.

DECISION of Settlement Officer, Case 96/'Attil.

2nd Copy
Provisional Parcels
7920/1, 2, 3.
7921/1, 2. 7922/1.

*Case 96/'Attil.**Plaintiffs :—*

1. SALIH 'ISA 'AZZAM.
2. NAJIB MUSTAFA AR RAZIYA.
3. SADIQ NAJIB 'ATTILI.
4. MOHAMMAD RABI' MAKHUL.
5. MOHAMMAD HASAN SHALABI.
6. 'ABDALLAH MUHAMMAD AL LAMYUN.
7. AHMAD 'ABD ER RAZIQ 'ABURA.
8. 'ABD ER RAHMAN ZUREIQ.
9. HUMAIDI SA'ID AL HUMAIDI.
10. IBRAHIM 'ABDALLAH MUSTAFA.
11. 'ABD EL JABBAR SA'ID AL 'AMMUS.

10

Defendant :— RIFKA AARONSON.*3rd Parties :—*

1. MUSTAFA YAHYA MOHAMMAD ASH SHUNNAR 20
2. ASMA YAHYA MOHAMMAD ASH SHUNNAR.
3. 'ABD EL 'AZIZ ISMA'IL ASH SHAKHSHIR.
4. 'ABD EL KARIM ISMA'IL ASH SHAKHSHIR.
5. MOHAMMAD SA'ID ISMA'IL ASH SHAKHSHIR.
6. BAHIYA ISMA'IL ASH SHAKHSHIR.
7. FATMA ISMA'IL ASH SHAKHSHIR.
8. SHARIFA ISMA'IL ASH SHAKHSHIR.
9. MOHAMMAD SABIR MOHAMMAD IBRAHIM ASH SHUNNAR.
10. SA'DIYA SABIR MOHAMMAD IBRAHIM ASH 30 SHUNNAR.
11. MOHAMMAD MAHMUD FALIH.
12. FADL MAHMUD FALIH.
13. FATMA MAHMUD FALIH.
14. 'ABD EL LATIF MAHMUD HASAN AN NADDAF.
15. 'ABD ER RAHMAN MAHMUD HASAN AN NADDAF.
16. AS'AD AS SA'DI.
17. HEIRS OF 'ABD EL QADIR 'ALI MUSA.
18. MOHAMMAD AMIN MUSLIH SALAH.

DECISION OF SETTLEMENT OFFICER,
TULKAREM SETTLEMENT AREA.

40

The Village Settlement Committee of 'Attil and the claimants to "nufus" shares in case 70/'Attil claim these parcels as part of the Masha' al Gharbi of that village. 3rd parties in the case were defendants in case 70/'Attil, who claimed shares in the masha' as Kushan holders. Their claims were dismissed and they, therefore, have no claim here.

The land was registered in 1925 in the name of defendants' vendor. The plan upon which registration was based (Exhibit "W") includes this and two other areas shown in separate Kushans, the total area registered

corresponding to the area of the plan, namely, 5,358 dunums. The southern boundary of Exhibit "W" agrees with the boundary as claimed by defendant. Sale to defendant was carried out in the Land Registry in 1926, and there is no objection on record by plaintiffs or by any member of 'Attil Village. On the contrary, leases are produced (Exhibit "A") which show that the land in dispute, or some of it, was rented over a period from 1926 onwards by defendant to certain villagers of 'Attil and others.

Exhibits.
—
No. 74.
Exhibit 26.
Defendants'
Documents.
Decision of
Settlement
Officer,
17th May
1940,
continued.

10 Plaintiffs object that these leases refer to land not in dispute in Zeita village. This objection is groundless, because (a) the leases describe the land with reference to the registration, which is in accordance with defendant's claim and the southern boundary of which is 'Attil, and (b) some of the leases describe the iron pipes with which defendant had demarcated the southern boundary of the registered area. A further objection by plaintiffs that the Mukhtar who signed Exhibit "W" did so unknown to the village and for personal gain is also disallowed because plaintiffs should, in that case, have taken steps between 1925 and 1935 to put matters right. That they were aware of the registration and possession of defendant is obvious from the lease Exhibits.

20 Plaintiffs' case is dismissed. The parcels in dispute shall become part of defendant's land in Zeita (Kefar Brandeis), and the village boundary of 'Attil shall be taken as running along the southern boundary of the disputed parcels.

The Village Settlement Committee of 'Attil shall pay LP.2.000 hearing fees and LP.3.000 advocate's fees.

Read to parties this 17th day of May, 1940.

(Sgd.) ?

Settlement Officer, Tulkarem Settlement Area.

No. 75.

Exhibit "A".

JUDGMENT of Settlement Officer in Case No. 41/Zeita.

Case No. 41/Zeita.

Blocks Nos.

7722, 7723, 7724, 7725, 7726,
7727, 7728, 7729, 7730, 7731.

**DECISION OF THE SETTLEMENT OFFICER,
TULKAREM SETTLEMENT AREA.**

Plaintiffs : MEMBERS OF THE VILLAGE SETTLEMENT
COMMITTEE OF ZEITA.

Defendants : MEMBERS OF THE VILLAGE SETTLEMENT
COMMITTEE OF ZEITA.

40

Third Parties : 1. THE GOVERNMENT OF PALESTINE.
2. AHMAD SALAMA KHALIL SALAMA.
3. BALQIS SALAMA KHALIL SALAMA.
4. JAMILA SALAMA KHALIL SALAMA.
5. HEIRS OF MUHAMMAD SALAMA KHALIL
SALAMA.

No. 75.
Exhibit A.
Defendants'
Documents.
Judgment
of
Settlement
Officer
in Case
No. 41/
Zeita,
30th
October
1940.

Exhibits.
 No. 75.
 Exhibit A.
 Defendants'
 Documents.
 Judgment
 of
 Settlement
 Officer
 in Case No.
 41/Zeita,
 30th
 October,
 1940,
continued.

6. YASIN YUSUF EZ ZEITAWI.
7. ZAHRA MAHMUD MUHAMMAD QASIM ES SIKSIK.
8. SA'DA MAHMUD MUHAMMAD QASIM ES SIKSIK.
9. MUSTAFA 'ABD EL FATTAH GHANNAM.
10. AMIN 'ABD EL KHALIQ NASR EL LABADI.
11. SHAFIQ 'ASAL.
12. 'ABD EL FATTAH MIR'I SAMARA.
13. SALIH ISMA'IL SULEIMAN AL KHATIB. 10
14. ZIKRALLAH MUHAMMUD ZIKRALLAH.
15. MUHAMMAD AHMAD ZIKRALLAH.
16. SA'D AD DIN MUHAMMAD AL QASIM.
17. MUDIR AL AWQAF AL ISLAMIYA AL'AM.
18. MOSHE SMILANSKY.
19. MUSTAFA AHMAD MUSTAFA HURANI.
20. SHARIFA 'ABD ER RAHMAN YUSUF AL KHATIB.
21. SALIH ISMA'IL SULEIMAN AL KHATIB.
22. 'ABD EL LATIF AMIN YUSUF 'ID. 20

Mr. A. ALHASSID for Government.

The Land in dispute comprises Settlement blocks 7722-7731 inclusive and is good, plain light soil except for the "Basset" near the northern boundary. A short history of the case and a description of the claims is necessary.

Registration of the land was made in 1288 A.H. in the Daimi record, giving as boundaries road, road, kharab and 'Arab Infi'at. The area given was 120 dunums and the land described as "tarla" (cultivable). The manner of acquisition was by "Haq el Qarar" and registration was in the names of 23 persons for 20 shares. In 1316, an inspection was made 30 by the Tabu department, which found that the land was "raml" (light and sandy soil) mafruz and waste owing to lack of water, within the same boundaries as in the registration but of an area of 19,075 dunums. They found that of this area, 14,700 dunums appeared to be mahlul, and a mahlul record of that area, but retaining the original boundaries, was made (Exhibit "D"). The mahlul record includes a statement that the villagers appealed from this decision and the entry as mahlul, and gained their case in the Land Court against the mahlul registration. There was apparently a further appeal by the Tabu Department to a higher court, but there is no record of its fate. 40

In 1922, a case was raised by certain villagers of Zeita against some descendants of the registered owners who wished to sell the land in accordance with their Kushans. The Land Court found that Raml Zeita (the land in dispute) was mash'a for all the inhabitants of Zeita in accordance with the custom in force in the village from time immemorial; that Kushan holders as such had no right and that their Kushans should be cancelled; that registration should be carried out as customary masha' in accordance with Articles 6, 36 and 68 of the Mejelle in spite of the terms of Article 8 of the Land Code; and that the plaintiffs should enjoy their right as members of the village. Upon appeal to the Supreme Court, the case was 50 remitted to the Land Court for re-trial because, inter alia, such registration

is contrary to Article 8 of the Land Code, and plaintiffs should be called upon to prove the share to which they were entitled. Upon re-trial, the Land Court ordered registration in the Tabu of 1/906 share for each of 5 plaintiffs and that the defendants' title deeds should be amended accordingly. In a final appeal from this decision, the Supreme Court confirmed the second Land Court judgment. The judgments are Exhibits "K", "L", "M" and "N."

The following claims or groups of claims have now to be decided :—

10 (A) By Government for ownership of 14,000 dunums odd and for the area of the "basset."

(B) By the Village Settlement Committee on behalf of Government for roads.

(C) By Kushan-holders for ownership of their registered shares.

(D) By parties to whom shares were renounced by villagers at Settlement.

(E) By claimants on the 906 basis against claimants who contend that final registration should be on the basis of the number of people in the village to-day or at Settlement.

20 (F) By claimants in favour of the retention of the customary tenure.

(G) By a few individuals who claim mafruz parcels in their proper ownership within the masha' through having built houses or planted trees.

30 (A) The Government representative suggests that nothing more than the land to the East of the railway (or some of it) is registered and that the mahlul record consequently covers all the land to the west, including the present dispute and the colony of Kefar Brandeis formerly known as Khor el Wasa'. That the 120 dunums' registered area is not nominal, as are so many old registrations, but that that definite area was meant to represent the cultivable and the cultivated land lying, perhaps in patches, within the boundaries mentioned in the deed of registration. That the land must be considered as waste and uncultivable at the time of the majlis Idara decision, because it was not within the power of the villagers to irrigate it and thus to produce any crops. That the mahlul entry debars the original claim and grant by Haq el Qarar. That "Haq el Qarar" does not mean prescription as translated by Tute, but only a confirmation by the State of a title previously held. That Article 78 of the Land Code was enacted only to give the opportunity to claimants to get a new deed, and not a title, free of charge, so that a squatter without assignment is not entitled to hold land under Article 78, and the plea of 40 "Haq el Qarar" under that article can only arise when the claimant entered into possession by one of the three legal ways of acquiring land, according to Tabu Sanad Regulation 8. He denies that the land was ever masha' and states that the court judgments in Aslin and Beit Lid masha' cases relied on the first judgment in the Zeita masha' case cited above, which was cancelled by the second judgment. With particular reference to the "basset," he states that this has always been considered as unassigned State land and that there is no prescription there against the State, and that it was not until a few years ago that the land was 50 drained, the villagers thereafter encroaching on it and planting crops in summer.

Exhibits.
—
No. 75.
Exhibit A.
Defendants' Documents.
Judgment of Settlement Officer in Case No. 41/Zeita, 30th October 1940,
continued.

Exhibits.
 ———
 No. 75.
 Exhibit A.
 Defendants'
 Documents.
 Judgment
 of
 Settlement
 Officer in
 Case No.
 41/Zeita,
 30th
 October
 1940,
continued.

I shall not in this judgment discuss the incidents of "Haq el Qarar" or the application of Article 78 of the Land Code. There is an easier way out. It is agreed by all parties that the 'Arab Infi'at is situated to the west of the disputed lands and of Khor al Wasa', and that the "Kharab" is what is now known as the lands of Hadera. In my opinion, the mention of these two boundaries in the Kushan proves that the area registered extended from a line in the East situated somewhere east of the railway track to the western boundary of Khor el Wasa' and that, therefore, the whole of the lands in dispute and Khor al Wasa' as well are registered lands. In the absence of any statement or hint in the Daimi record that parts only of the area included within the boundaries given are to be considered as granted, I must conclude that the specific area registered is bounded as stated, in spite of the area of 120 dunums allotted to it. I cannot agree with the Government representative that any of the land could at any time be described as "Kharab" in the sense that it was uncultivable. The quality of the land is a constant, and does not vary with the methods and implements of cultivation available to the peasantry. It can be stated with reasonable exactness that there is and was a definite dividing line between the raml of Zeita and the "Kharab" mentioned as its boundary. This gives the western limit of the registration as extending to the western boundary of Khor el Wasa' and therefore including the westernmost parts of the disputed area. It is known that Ard el Infi'at extends from the western boundary of the disputed area and of Khor el Wasa'. That decides that the whole of Khor el Wasa' and the whole of the raml of Zeita except as modified below are registered in Tabu. The mahlul record itself shows that the declaration and recording of part of the land as mahlul was upset by a civil court. I hesitate to pronounce the fact of registration as *res judicata*, because I am not in possession of the judgment; but it can be said, at least, that the mahlul record is its own negation. Nor was the fact of registration called into question in the later Land Court cases: the registered owners were withheld from possession of their registered share, but the registration itself was accepted. I do not think it necessary to go into the various points raised about taxation records and payment; the land is registered and the people have been in possession.

I make one modification of the generality of the above finding. That is the "basset." It is a marshy region covering provisional parcels 1 and 4 of block 7731, some parcels of Khor el Wasa' adjoining them on the west, and land in the north falling without the area. There is a gentle slope northwards towards the stream mifjir. I wish to make clear that a definition of boundaries registered within a large area such as this would not necessarily include such a feature as the "basset," which is, after all, merely a narrow valley athwart one of the boundaries. On the scale of 1/10,000, which would show the area registered as lying within the compass of an ordinary field-sheet, this feature would be represented by a long thin strip not much wider than that necessary to show by conventional sign the existence of the swamp. Such a feature crossing the registered boundary might not be included in the registration any more than would a road or a river crossing the boundary. It is in evidence that the "basset" used to be used as a watering place and pasture for cattle, and that the people used to cut reeds there before the drainage reached an advanced stage; and it was only within the past few years that the land could be

cultivated even in summer. The villagers themselves admit that. The greater part is now cultivable in summer, as I have seen on inspection of the land. In winter, however, this is still a lot of marsh. I consider the "Basset" accordingly as falling within the class of land described in Article 105 of the Land Code, in which I hold there is no prescription against the State. The Government claim succeeds for these "basset" parcels and fails for the remainder of the land. Khor el Wasa' is outside the land covered by this decision, but my findings about its registration and my reference to the basset, part of which lies there, may be of interest to the

Exhibits.
 —
 No. 75.
 Exhibit A.
 Defendants'
 Documents.
 Judgment
 of
 Settlement
 Officer in
 Case No.
 41/Zeita,
 30th
 October
 1940,
continued.

10 Settlement Officer deciding that dispute.

(B) All roads surveyed and shown on the block plan shall be registered as matruka in the name of the High Commissioner for the time being in trust for the Government of Palestine.

(C) Although several claims were entered at Settlement by owners of shares in Kushans for registration of such shares in their names at Settlement, almost all withdrew their claims before me, and admitted possession by the villagers in masha'. The judgments, Exhibits "K" to "N," whatever their ambiguity on other points, are clear in deciding that Kushan-holders as such have no right in the masha', and so I take that

20 point as *res judicata*. All such claims not pleaded are now dismissed.

(D), (E) and (F) can be taken together, as they include a discussion of the general tenure in customary masha'. It is admitted by all parties that the particular custom of cultivation by "power" has been in force in Zeita for a very long time, and that the court judgments referred to did in no wise change the tenure. By "power" is meant the existence of a little plutocratic state wherein, although every man, woman and child in the village was entitled to a share in theory, those only could enjoy the fruits of the land who had sufficient animals and labourers to cultivate. Frequent re-distribution was obviously necessary through the workings

30 of natural increase and good luck or good management of the different families. It was recognised and admitted by all but a very few that the prevalence of this custom is unfair and unsettling; the very few who still wished its continuance stated before me that they would agree to a definite allotment of shares in perpetuity under certain conditions, as they did not wish any longer to stand in the way of the will of the great majority.

The Land Court, having heard evidence about customary masha', was faced with the problem of how to register an unregistrable right. The judgments in these two Land Court cases seem to have created a precedent which has been followed in Aslin and Beit Lid. Article 8 of

40 the Land Code prohibits registration of village masha' held in common. That article was followed in the judgment on appeal from the first Land Court cases. The Land Court, in its second judgment, got over the difficulty by finding that each of 5 plaintiffs had proved his right to a share of 1/906 in the lands of Raml Zeita masha' and that the defendants (Kushan holders) should not oppose the registration or possession of the new shareholders. Article 1818 of the Mejele was invoked. The Court did not give any order for the registration of the remaining 901/906 shares, but implied that they were masha' for all the inhabitants of the village. Now, the

50 only explanation of the number 906 is that it represented the number of the inhabitants of Zeita at or about the time of the first Land Court case, and it was used as a denominator merely to fulfil the letter of the law. I think it would have been a good thing if registration of the whole 906

Exhibits.
 No. 75.
 Exhibit A.
 Defendants'
 Documents.
 Judgment
 of
 Settlement
 Officer in
 Case No.
 41/Zeita,
 30th
 October
 1940,
continued.

shares had then been made in accordance with the list provided. That might have been done if the Court had seen its way to overcoming the difficulty of customary tenure. I have shown, to my own satisfaction at any rate, in case 65/Taiyiba, that no permanent injustice is done to anybody by an agreed partition of customary masha'. On the contrary, I consider that a Settlement Officer is not carrying out his duty if he places on record as a permanent settlement of title something which is quite clearly the reverse of permanent. The guiding principle of settlement of title is that every person who, has a right in land shall have that right defined in a register of titles in such a manner that it is capable of reference to a parcel or a given share in a parcel the exact shape and size of which are permanently recorded on an accurate plan. Other criteria of Land Settlement I quote from my decision in case 5/Ghabat Miska: "No registration in miri is permissible that does not assign shares to persons in such a manner that the law of miri inheritance can be applied, that all the fees consequent on acts of transfer by succession or otherwise can be imposed, and that reference to the register would disclose the share and interest and encumbrance of and upon any person about whom inquiry might be necessary." Registration by a Settlement Officer of land as masha' for a village in accordance with customary tenure obtaining in that village, or as masha' for the village as a whole without allotment of shares, is not settlement of title. 10

That the villagers themselves are of the same opinion is suggested by their actions. Since the court judgments were delivered, a good deal of the land has been sold by them to 3rd parties 17 and 18 in this case. The 906 shares were ignored as, of course, they represented an entity which was true only in a certain year. The Court finding that the lands were masha' held on customary tenure was also ignored, in spite of the fact that possession remained strictly in accordance with custom. The villagers did not want the custom to prevail. I do not blame them. There is scarcely a voice raised to-day for its continuance. 30

I decide, therefore, to settle this case on the lines of the masha' cases in 'Attil and Miska (cases 70/'Attil and 5/Ghabat Miska), after remarking that claimants under (G) have no right to mafruz parcels either by registration or possession. They are considered as villagers, and as such they cannot obtain a prescriptive title in the masha'. In the distribution which will follow, their convenience will be consulted and they will probably be given their mafruz parcels when parcellation takes place.

Between the ending of the proceedings and the writing of this judgment, an agreement was submitted to me in written form—Exhibit "F.1"—between 3rd Party 17, 3rd party 18 and the mukhtars and Village Settlement Committee of Zeita. It was that, out of the 8,200 dunums approximately of the masha', 3rd party 17 should take shares equivalent to 4,600 dunums, 3rd party 18 should take shares equivalent to 1,400 dunums, and the villagers the remainder. Two lists accompanied the agreement: one showing the total number of persons at present considered as villagers, and one showing the remainder when those who had sold to one or other of the 3rd parties had been subtracted. The lists contain 1,899 and 1,118 names respectively, to which 2 more names would be added by the Village Settlement Committee as having been left out by an oversight. Closely following this event, I received some hundreds of petitions from villagers protesting against the large allotment to the 3rd parties and pointing out 40 50

that there remained for each of the 1,118 villagers only about 2 dunums. A meeting of parties and petitions was called by me, wherein I satisfied myself that the lists themselves are based on a fair definition of who is and who is not a villager, specimens of the petitions were examined in the presence of their authors, and it was found that there were two main complaints: certain persons excluded from membership of the village, and persons who object to the agreement. The first class I dismiss at once; the second requires an analysis of the agreement.

Exhibits.
—
No. 75.
Exhibit A.
Defendants'
Documents.
Judgment
of
Settlement
Officer in
Case No.
41/Zeita,
30th
October
1940,
continued.

10 557 Shares were renounced to 3rd party 17 at settlement in 1934, and 185 to 3rd party 18. From perusal of names of those renouncing to 3rd party 17, I find that the number of persons renouncing more than 1 share each is not less than the number renouncing less than one share each, or that the 557 shares is roughly the value of the renunciation of 557 persons. So also the 185 shares is the value of the renunciation of 185 persons. 3rd party 17 has laid stress on the point that they bought on the basis of 906 shares; but I have already decided that that cannot form a permanent basis. It represented the number of persons in the village in 1918 or 1919. The masha' was obviously for the village as a whole, and it is therefore a necessary preliminary to any decision that

20 the number of persons at the time of such division be known estimated. The present agreement is an anachronism. The equivalent value of a share given by it to 3rd party 17 is about 8.2 dunums; that of a share given to 3rd party 18 is about 7.5 dunums; that given to each of the remaining villagers who did not sell is just under 2 dunums. This is not fair. Consider the population of Zeita in 1934. There is no reliable official record of it, but a near approximation can be made. In 1918 it was 906; in 1940 it is 1,899. Statistically, the interval is small, and there is no evidence of any violent disturbing factor during that time which would greatly affect the rate of natural increase. Even if such rate were in process of

30 change in the years studied, the rate itself between its upper and lower limits would be very nearly constant. No appreciable error, that is to say, would be introduced by assuming a linear variation between 1918 and 1940. I adopt, accordingly, as a working basis, the figures 1,600 as representing the population of Zeita in 1934. That is the figure which must form the basis of an equitable settlement between the parties to the agreement. They bought in 1934. In 1934, those villagers who did not sell, but who were *a priori* entitled each to a share out of 1,600, could each have evaluated his share to this amount. Consequently, the 3rd parties who bought in

40 1934 must obey the same rule. There is no fish and flesh. It is with regret that I cannot approve the agreement, because an agreement is always better than a judicial settlement. There was apparent full agreement on the part of the mukhtar and the Village Settlement Committee, although one or two of the Committee at the meeting became critical. The large number of protests against the agreement would show by itself that something was wrong. I do not say that the Committee have deliberately wished to give the villagers less than they are entitled to, but rather that the matter was complicated originally, and became still more so as time went on.

50 In giving the decision which follows, I wish it to be borne in mind that I accept the list, Exhibit "G.1," with the two added names already referred to, as being a true record of those people now in Zeita who are entitled to shares; that, however, the population in 1934 is taken as the

Exhibits.
 ———
 No. 75.
 Exhibit A.
 Defendants'
 Documents.
 Judgment
 of
 Settlement
 Officer in
 Case No.
 41/Zeita,
 30th
 October
 1940,
continued.

denominator of the shares to be divided, and not the present population ; and that I am not imposing a basis of the present population in computing the value of a share. Thus I divide the masha' lands as defined earlier in this judgment into 1,600 shares. To 3rd party 17 shall be given 557, to 3rd party 18, 185 and to the 1,120 villagers remaining 858 shares. The anomaly thus disappears and each of the parties is given that which he bought in 1934 or that which he did not sell in 1934 on the valid assumption that all shares bought or retained in that year are of equal value. The registration shall be carried out in "nufus" according to the Village Settlement Committee list, Exhibit "G.1," showing a proportion of 1 share 10 of each villager. The shares of the 3rd parties 17 and 18 shall, therefore, each be multiplied by 1,120/858, i.e., 3rd party 17 get 727 shares, 3rd party 18 get 242. The two extra names, 'Abd el Hadi Mustafa Mahmud Ni'man and Muhammad 'Abdallah 'Antar, are included in this distribution.

Judgment delivered this day in open court according to notification to parties.

There is no order for costs or hearing fees.

(Sgd.) J. A. O'CONNOR,

Settlement Officer,
 Tulkarm Settlement Area. 20

30.10.1940.

No. 76.
Exhibit 30.
EXTRACT FROM REGISTER OF DEEDS, Haifa.

No. 11-12 Huzeeran 1307.
Folio No. 7.

Ex. 30.
Extract No. 240-3/4240/41.

GOVERNMENT OF PALESTINE.
EXTRACT FROM THE REGISTER OF DEEDS
LAND REGISTRY OFFICE OF HAIFA

VOLUME No. 2. 467/25.
Town or Village - Khudeireh. Petition No. 550/25.
Situation or Quarter: Khudeira Lands, Khor El Was'a.

No. of Deed	Date of Registration	Class of Land	Description of Property	Boundaries	Area ds. Diras	Nature of Transaction	Name of Grantor	Name of Grantee	Shares	Consideration or Value LP. Mils.	Remarks
695	4/6/25	Miri	N. Kudeira Lands S. Attil E. Gazazeh & Birket Nurieh-Zeita Lands W. Khudeira Lands		5358	Registration vide Auth. of the Court No. 10/25 of 6/5/25	Samsanoff & Madrosky & Partners	Abdul Fattah Miry Samara Selim & Mousa & Abdul Latif Miry Samara	1/4 1/4 1/4 1/4	5358	See deed 701 below. do. do. do.
701	5/6/25	Miri	N. Khudeira Lands S. Rifka Aaronson E. Gazazeh-Birket Nourieh Zeita Lands W. Khudeira Lands		1358	Sale	Abdul Fattah Miry Samara Selim & Mousa & Abdul Lateef Miry Samara	Toba Rutman	in whole	2716	

I Certify that the above is a true extract from the Register of Deeds given against payment of LP.0.600 Mils as per Receipt
No. 603819 of 21.11.41. (Sgd.)

If the column of the Register is completely blank, the corresponding column in this extract
is cancelled by a diagonal stroke.

24.11.41. (Sgd.)

Registrar of Lands.

Exhibits.
No. 76.
Exhibit 30.
Defendants' Documents.
Extract from Register of Deeds, Haifa, 24th November 1941.

Exhibits.

No. 76.
Exhibit 30.
Defendants' Documents.
Extract from Register of Deeds, Haifa, 24th November 1941, continued.

No. of Deed	Date of Registration	Class of Land	Description of Property	Boundaries	Area	Nature of Transaction	Name of Grantor	Name of Grantee	Shares	Consideration or Value LP. Mils	REMARKS
702	5/6/25	Miri	--	N. Toba Rutman S. Abdul Fattah & Salim & Moussa & Abdul Lateef Samara E. Gazazeh & Birket Nourieh & Zeita Lands W. Khudeira Lands	2700 ds.	Sale	Abdul Lateef & Abdul Fattah & Selim & Mousa Miry Samara	Rifka Aaronson	1/2	2700 -	Transferred to N 2 f 10 as a partition plot.

do.	do.	do.	do.	do.	2700 ds.	Exchange of Certificate after Sale by Deed 702/25	Abdul Fattah & Selim & Moussa & Abdul Lateef Samara	1/8 1/8 1/8 1/8	do.
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I Certify that the above is a true extract from the Register of Deeds given against payment of LP. Mils as per Receipt

(Sgd.)

If the column of the Register is completely blank, the corresponding column in this extract is cancelled by a diagonal stroke.

Registrar of Lands.

GOVERNMENT OF PALESTINE.

EXTRACT FROM THE REGISTER OF DEEDS
LAND REGISTRY OFFICE OF HAIFA

VOLUME No. 2.

Petition No. of year.

Folio No. 8.

Town or Village: Khudeirah.

Situation or Quarter: Khudeirah Lands Khor el Wassa'.

No. of Deed	Date of Registration	Class of Land	Description of Property	Boundaries	Area	Nature of Transaction	Name of Grantor	Name of Grantee	Shares	Consideration or Value LP. Mills	REMARKS	
5/6/25	Miri	—		N. Rifka Aaronson S. Attil E. Zeita Lands W. Khudeira Lands	1300 ds.	Exchange of Certificate for remaining after sale by Deed 701 & 702/25	Abdul Fattah Miry Samara Salim & Moussa & Abdul Lateef Miry Samara	1/4 1/4 1/4 1/4	1300	—	See Deed 690 below. do. do. do.	
690	2/6/26	do.		do.	1300 ds.	Sale	Abdul Latif Miry Samara & Salim & Moussa Abdul Lateef Miry Samara	Miss Rifka Aaronson	in whole	2600	—	See Deed 659/40 below.
659	26/3/40	do.		do.	1195 ds. & 090 ms. m ²	Lease	Rivka Aaronson	Efraim " Ltd "	do.	Coll with No. 83/58 Haifa		

I Certify that the above is a true extract from the Register of Deeds given against payment of LP. (See folio I) Mills as per receipt No. of Date (Sgd.)

If the column of the Register is completely blank, the corresponding column in this extract is cancelled by a diagonal stroke.

(Sgd.) — 24.11.41.

Registrar of Lands.

Exhibits.
No. 76.
Exhibit 30.
Defendants' Documents.
Extract from Register of Deeds, Haifa, 24th November 1941, continued.

Exhibits.
 No. 76.
 Exhibit 30.
 Defendants' Documents.
 Extract from Register of Deeds, Haifa, 24th November 1941,
continued.

Vol. 2 f 10 Khor El Wassa'

No. of Deed	Date of Registration	Class of Land	Description of Property	Boundaries	Area	Nature of Transaction	Name of Grantor	Name of Grantee	Shares	Consideration or Value LP. Mils	REMARKS
702	5/6/25	Miri	—	N. Toba Rutman S. Abdul Fattah & Selim & Moussa & Abdul Lateef Miry Samara E. Gazaze Birket Nurieh & Zeita lands W. Khudeira Lands	2700 ds.	Sale	Abdul Fattah Miry Samara & Selim & Moussa & Abdul Lateef Miry Samara	Rifka Aaronson	1/2	2700	See 493 below.
	5/6/25	do.		do.	2700 ds.	Exchange of Certificate for examining after sale by deed 702/24		Abdul Fattah Miry Samara Selim & Moussa & Abdul Lateef Miry Samara	1/8 1/8 1/8 1/8	2700	See Deed 731/25 below.
771	11/6/25	do.	do.	do.	2700 ds.	Sale	Abdul Fattah Miry Samara & Selim & Moussa & Abdul Lateef Miry Samara	Rifka Aaronson	1/2	2700	See Deed 493 below.

I Certify that the above is a true extract from the Register of Deeds given against payment of LP. Mils as per receipt
 No. of Date (Sgd.)

If the column of the Register is completely blank the corresponding column in this extract is cancelled by a diagonal stroke. Registrar of Lands.

Folio No. 10.

GOVERNMENT OF PALESTINE.
EXTRACT FROM THE REGISTER OF DEEDS
LAND REGISTRY OFFICE OF HAIFA
VOLUME No. 2.

Town or village Situation or Quarter Petition No.

Continuation

No. of Deed	Date of Registration	Class of Land	Description of Property	Boundaries	Area	Nature of Transaction	Name of Grantor	Name of Grantee	Shares	Consideration or Value LP. Mils	REMARKS
493	10.5.27	Miri	—	N. Land of Rifka Aaronson as shown in the map attached to file No. 1080/26 S. do. E. do. W. do.	98 ds.	Sale	Rifka bint Fishel Aaronson thro' her auth. Agent N. Rutman Vide P/A No. 532/3457 of 23.4.26	Mordekhey Eliash Alexander Eliash	80/98 18/98	1078 —	{ Transferred to N 2 f 16.

I Certify that the above is a true extract from the Register of Deeds given against payment of LP. (See folio I) Mils as per Receipt No. _____ of _____ Date _____

(Sgd.)

If the column of the Register is completely blank, the corresponding column in this extract is cancelled by a diagonal stroke.

(Sgd.)

24.11.41.

Registrar of Lands.

Exhibits.
No. 76.
Exhibit 30.
Defendants' Documents.
Extract from Register of Deeds, Haifa, 24th November 1941, continued.

Exhibits.
 No. 76.
 Exhibit 30.
 Defendants' Documents.
 Extract from Register of Deeds, Haifa, 24th November 1941,
continued.

Khor El Wassa'

N 2 f 15

No. of Deed	Date of Registration	Class of Land	Description of Property	Boundaries	Area	Nature of Transaction	Name of Grantor	Name of Grantee	Shares	Consideration or Value LP. Mils	REMARKS
1004	10.5.27	Miri	N. Toba Rutman S. Abdul Fattah Salim, Mousa, Abdul Lateef Miry Samara E. Gazazeh, Birket Nurieh & Zeita Lands W. Khudeira Lands	2602 ds.	Exchange of Certificate remaining after sale Deed 493'27	Rifka bint Fishel Aaronson	In whole				A plot of land measuring 98 Don. included within the boundaries of property is registered in V 2 f. 16. See Deed 1004.
1004	17.8.27	do.	N.S.E. Land of Rifka Aaronson W. Khudeira Lands	110 ds.	Sale	Rifka Aaronson	Emanuel N. Mohl	do.	1260		Transferred to V 2 f. 17.
659	17.8.27	do.	N. Toba Rutman & Part sold to Emanuel Mohl S. Abdul Fattah, Salim & Mousa & Abdul Lateef Miry Samara & Part sold to Emanuel Mohl W. Khudeira Lands & Part sold to Emanuel Mohl & Khudeirah Lands	2492	Exchange of Certificate for remaining after sale by Deed 1004/27	Rifka bint Fishel Aaronson	In whole				See Deed 659/40 below.
659	26.3.40	do.	do.	2492	Lease	Rifka Aaronson	Ephraim Ltd.	do.			Coll with No. 83/58 Haifa.

I Certify that the above is a true extract from the Register of Deeds given against payment of LP. _____
 No. _____ of _____ Date _____
 Mils as per Receipt

If the column of the Register is completely blank, the corresponding column in this extract is cancelled by a diagonal stroke. _____
 (Sgd.) _____ Registrar of Lands.

GOVERNMENT OF PALESTINE.
EXTRACT FROM THE REGISTER OF DEEDS
LAND REGISTRY OFFICE OF
VOLUME No. 2.

Folio No. 16.

Town or Village : Khudeirah. Situation or Quarter : Khudeirah Lands Petition No. 138/28
Khor El Wassa'. 1080/26

No. of Deed	Date of Registration	Class of Land	Description of Property	Boundaries	Area	Nature of Transaction	Name of Grantor	Name of Grantee	Shares	Consideration or Value LP. Mils	REMARKS
493	10.5.27	Miri	N. Lands of Rifka Aaronson as shown in the map attached to file 1080/26 S. E. W.		98 ds.	Sale	Rifka bint Fishel Aaronson thro' her auth. Agent Rutman vide No. 552/3457	Mordekhai Eliash Alexander Eliash Nissan P/A of 23.6.26	80/98 18/98	1078 -	See Deed 228 below.
228	20.2.28	do.	do.		98 ds.	Sale	Mordekhai & Alexander Eliash thro' their auth. agent Nissan Rutman as per P/A No. 29/3951 made before Notary Public of Jerusalem.	Yacob Rutman Miss Rachel Rutman	38/98 20/98	1126.154	

I Certify that the above is a true extract from the Register of Deeds given against payment of LP. (See folio I) Mils as per Receipt of _____ (Sgd.)

If the column of the Register is completely blank, the corresponding column in this extract is cancelled by a diagonal stroke.

(Sgd.)

Registrar of Lands.

(Sgd.) 24.11.41.

Exhibits.
No. 76.
Exhibit 30.
Defendants' Documents.
Extract from Register of Deeds, Haifa, 24th November 1941, continued.

Exhibits.

No. 77.
Plaintiffs'
Documents.
Memoran-
dum of
Claim
submitted
by Zeita
villagers on
Declaration
of
Settlement
in
Khudeira,
15th
December
1941.

No. 77.

MEMORANDUM OF CLAIM by Zeita villagers.
(Translation from Arabic.)

MEMORANDUM OF CLAIM.

LAND (SETTLEMENT OF TITLE) ORDINANCE.

PART A.

Sub-District : Haifa.
Village : Kefar Brandeis.

No. of claim : 71.

Reg. block : Name—

No. 10405/2, 3, 5

10406/2, 3. 10

PART B.

1. Name of person in whose favour
right to registration is claimed :

Full address
of same :

Interest of
share claimed :

Mukhtars and members of Attil
Settlement Committee on behalf
of the villagers of Attil.

Attil.

Whole.

2. Category of Land :

Miri.

3. Nature of right claimed :

4. How acquired :

Ownership as village masha' part 20
of masha' of Attil Village.

5. Registration in land registry :

Registration as shown in file No. 70
Attil in Land Settlement Office
Tul-Karem Sub-District.

6. By whom is Rural Property Tax
paid :—(State annual amount)

By us.

7. Description of Parcel :

(A) Land : Arable

(B) Building : —

Present Boundaries.

North : Khor el Wassa.

East : Attil.

South : Attil.

West : Khuderah.

350 dunums approximately.

30

8. Area claimed :

9. Other rights affecting parcel (or
share) :

(A) Servitudes to which the
parcel is subject :

Nil.

(B) Servitudes over other land
enjoyed by the parcel :

Nil.

10. Is partition desired (in case of a
claim to undivided parcel or
village Musha') :

We do not wish partition.

40

(A) By Government :

(B) By Agreement :

—

—

11. Charges on parcel or share :

No charges.

12. Supporting documents :

Attached to file No. 70 Attil in
respect of Masha' lands of Attil
Village known as plots 7917-7923
and 7925 in the land settlement
office Tul-Karem Sub-District.

13. Additional Statement or details
(if any) :

Nil.

50

14. We Mukhtars and Members of Attil Settlement solemnly affirm or declare that the particulars stated by us in the memorandum of claim are true and correct and that all information affecting the validity of our claim is truly set forth therein.

Seal of Mahmud Hassan
Nadaf a member.

Seal of Radi Mohammed
Radi Mukhtar.

Seal of Nimr Said
El Fares
Mukhtar and
member.

Exhibits.

No. 77.
Plaintiffs'
Documents.
Memoran-
dum of
Claim
submitted
by Zeita
villagers on
Declaration
of
Settlement
in
Kuideira,
15th
December
1941,
continued.

10 Read over to signatory and sworn to and signed by them in my presence.

11-12-41,
Haifa.

(Sgd.) ITSHAKI for Settlement Officer.

15. We the undersigned hereby declare that to the best of our knowledge and belief the above statement is true & correct.

Name : _____ Residence : _____
Date : _____ Place : _____

PART C.

- 1. Observations regarding claim as submitted : _____
- 20 2. Valuation : _____
- 3. Recommendation : Disputed.

(Sgd.) ITSHAKI,

Haifa 15-12-41.

for A/Settlement Officer.

No. 78.

Exhibit 27.

CERTIFICATE of Werko Office.

PRELIMINARY INVESTIGATION.

CERTIFICATE.

30 After having examined the relevant books I hereby certify that the lands known as Khor-El-Wassa have been registered since 1925 in the names of Miss Rivka Aaronson and Mrs. Toba Rutman.

The Werko Taxes until 1933 were regularly paid by Mr. Nissan Rutman on behalf of the aforesaid registered owners.

As from 1935 Rural Property Tax became payable in respect of the said lands instead of Werko-Tax. Since that date and until 1940/41 the Rural Property Tax in respect thereof was paid by Mr. N. Rutman as aforesaid.

17.4.1942.

(Revenue stamp 50 Mils).

40

(Sgd.)

?

f/Mudir Mal

No. 78.
Exhibit 27.
Defendants'
Documents.
Certificate
of Werko
Office,
17th April
1942.

Exhibits.

No. 79.
Exhibit T.
Defendants'
Documents.
Authenti-
cated
Extract
from the
Tabu at
Haifa,
21st April
1942.

No. 79.

Exhibit " T ".

EXTRACT FROM LAND REGISTER, Haifa.

LAND REGISTERS OFFICE OF HAIFA
DEEDS BOOK.

Extract No. 179/526/42.

No. of Petition :	467/25.	
No. of Deed :	695.	
Date of Registration :	4.6.1925.	
No. of Property :	Vol. 2, Fol. 7.	10
Nature of Property :	Miri.	
Area :	Dun. 5,358—Zir :—	
Town or Village :	Khudeira.	
Grantor :	Samsanoff and Madrosky & part- ners.	
Grantee :	Abdul Fattah Miry Samara Selim and Mussa and Abdul Latif Miry Samara.	
Nature of Transaction :	Registration.	
Consideration :	L.E. : 5,358 m/m :—	20
Fees paid :	L.E. : 267 m/m : 900.	
No. of Receipt :	71783.	
Share :	Abdul Fattah Miry Samara 1/4 & Selim and 1/4 Musa and 1/4 Abdul Latif Miry Samara 1/4	

The above is a true copy of the entry in the Deeds Book and is given against payment of LP.-.150 Mils as per Receipt No. 640071.

Date : 21.4.1942.

(Sgd.) ? 30

f/Registrar of Lands Haifa.

No. 80.
Exhibit G.
Defendants'
Documents.
Medical
Certificate
of
Incapacity
to appear
(Hankin)
(not
printed),
14th June
1942.

No. 80.

Exhibit " G ".

MEDICAL CERTIFICATE of incapacity to appear.

(not printed.)

No. 81.

Exhibit "H."

EXTRACT FROM SHAMSI REGISTER.

(Translation from Arabic.)

Mazraat el Khudeira.

Ramel :

Land of Khor Yacoub and el Tin Suariyeh.

- 10 South : Dabbat el Kasah and the way running straight to Birket Kazaza.
 North : Utol Dabbet Sheikh Hilou and road—
 East : Winter watercourse to Birket Kazaza—
 West : Dabbet el Tawil, Dahret el Beir Jamidi, el Tin Souariyeh and
 Utol Dabbet el Sheikh Khader.

Dunums

1,500

less

utol

45½

1,454½

20 This record was extracted from Shamsi Register N.54, kept in the Land
 Registry, Haifa, and is a certified true copy.

15.6.42.

Seal of Land Registry, Haifa.
 Stamps for 50 Mils.

Exhibits.

No. 81.
 Exhibit H.
 Defendants'
 Documents.
 Authenti-
 cated
 Extract
 from
 Shamsi
 Register of
 the Tabu
 in Haifa in
 connection
 with
 Ard-Khor
 Ya'akov
 and Eltin
 Suwaryah,
 15th
 June 1942.

No. 83.

Exhibit "R".

LETTER, Fares and Mohammed to Settlement Officer, Haifa.

(Translation from Arabic.)

Settlement Officer,
 Haifa.

Sir,

- 30 We were served with a notice issued from your office in connection
 with the hearing of the case No. 1 relating to the lands of Kefar Brandeis
 which we claimed in the past on behalf of the inhabitants of our village
 as shown in our memorandum of claim.

We wish to inform you now with full frankness and confidence that we
 go back on our claim against the defendants in the above case—Block
 10402 and other, Parcels 5 & 1 and others.

We request you to consider this letter as a verbal admission made
 before your Worship that we claim no rights from the said defendants.

Greetings

40 Attil

31.10.42.

(Sgd.) NIMER SAID EL FARES,
 1st Mukhtar Attil Village.

(Sgd.) ZAKI MOHAMED,
 2nd Mukhtar Attil Village.

No. 83.
 Exhibit R.
 Defendants'
 Documents.
 Letter
 signed by
 the
 Mukhtars
 of Attil, i.e.,
 Nimer Said
 El-Phares
 and Radi
 Mohamad
 El-Radi,
 31st
 October
 1942.

Exhibits.

No. 84.
Exhibit Q.
Defendants'
Documents.
Medical
Certificate
of
incapacity
appear
(Hankin)
(*not
printed*),
2nd
November
1942.

No. 84.

Exhibit " Q ".

MEDICAL CERTIFICATE of incapacity to appear in Court on account of sickness.

(*Not printed.*)

No. 85.

Exhibit 3.

POWER OF ATTORNEY.

L.A. 39/25.

POWER OF ATTORNEY.

10

No. 85.
Exhibit 3.
Defendants'
Documents.
P/A given
to
Kaisermann
in
L/A 39/25
by Abdul
Fattah
and others,
10th
November
1942.

I/We the undersigned Abdel Fattah Meri Samara, Selim bin Abdel Fattah Samara, Moussa Samara, Abdel-Latif Meri do hereby give power to Mr. I. KAISERMAN, Advocate at Haifa, to represent me/us before all the Courts of Law or Government's Offices in the case brought against us by Saleh bin Ismail Katib and Moussa Nasr Elsaid Ahmad—from Zeita authorising him to plead before the Courts, to sign any petition, notice, statement or paper for me/us or on my/our behalf or submit same, obtain necessary judgment and have them executed, receive payments and give effectual receipts, make opposition to judgments rendered in default, appeal to higher Courts, make application for seizure, withdraw or confirm same, demand withdrawal of judges, refer claims to oath or to arbitration, nominate and revoke arbitrators, compromise, prosecute as Civil Party, demand bankruptcy and perform all formalities thereof and in general take any action whatsoever he thinks necessary for the safeguard of my/our interests with power to substitute others in his place and revoke at pleasure such substitutes.

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Abd el Latif Meri	Mousa Ibn Abd El-Fattah Samara	Selim Ibn Abd el-Fattah	Abd el Fattah Miri Samara.
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I certify the above signs

30

(Sgd.) J. KAISERMANN.

Fees paid receipt No. 80547.

(Sgd.)

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10.11.42.

No. 86.

Exhibit 13.

LETTER, Registrar to J. Kaiserman.

Gn 53/2340.

District Court Haifa.
5th December, 1942.Mr. J. Kaiserman,
Advocate—Haifa.*Subject*: Criminal Case file No. 143/29.

10 With reference to your application dated 19.11.42, the Crown Counsel now informs me that he was unable to trace the Criminal Case file in question.

(Sgd.) K. SHEHADEH,
Registrar.*Exhibits.*

No. 86.
Exhibit 13.
Defendants'
Documents.
Registrar's
Letter to J.
Kaiserman,
5th
December
1942.

No. 87.

Exhibit 28.

LETTER, A/Director of Land Registration to Attorney-General.Director of Land Registration,
P.O.B. 190
Jerusalem.

LD.38/3-

20 Attorney-General.

10 December, 1942.

Subject :—Zeita Land Case—Khor el Wassa.

Reference :—My letter G.467 of 30.10.30.

I enclose a copy of my above-quoted letter for easy reference. I cannot trace any record of the return of the Haifa Land Registry file No. 467/25, and I should be grateful if it might now be returned to me.

Acting Director of Land Registration.

30 Copy to :—Registrar of Lands, Haifa,
ref. HLE/467/25-3386 of 20.11.42.

No. 87.
Exhibit 28.
Defendants'
Documents.
Copy of
Letter
from
A/Director
of Land
Registra-
tion to the
Attorney-
General,
10th
December
1942.

Exhibits.

 No. 88.
 Exhibit 29.
 Defendants'
 Documents.
 E tract
 from Tax
 Ordinance,
 undated.

No. 88.**Exhibit 29.****EXTRACT FROM TAX ORDINANCE.****PALESTINE LAND REGISTRIES.**

SCHEDULE OF FEES.

(12) **ISSUE OF CERTIFICATES OF REGISTRATION WHEN PROPERTY DOES NOT APPEAR ON THE REGISTER.**

5%

On the market value of the property in respect of which a certificate is applied for, provided that the applicant shall have proved his title to the property before a competent Court or Government Department and that the Director of Land Registries, to whom each case should be referred, approves of the issue of the certificate. This provision includes registration of land to which a title by prescription is established. 10

(Sgd.)

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(Stamped) Land Registry of Haifa.
