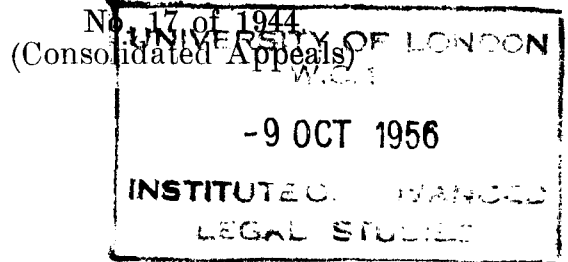


40, 1948

No. 16 of 1944.



In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF PALESTINE.

44452

BETWEEN—

FATIMA AHMAD AL'AFIFI and 24 others

Appellants

10

— AND —

THE GOVERNMENT OF PALESTINE and

106 others

Respondents

— AND —

BETWEEN—

THE VILLAGE SETTLEMENT COMMITTEE
OF ARAB EN NUFEL'AT

Appellants

— AND —

AHARON SAMSONOV and 208 others

Respondents

20

CASE FOR THE APPELLANTS.

1. These are appeals against five judgments of the Supreme Court of Palestine sitting as Court of Civil Appeal all dated the 22nd of April 1941 in which the Court (The Chief Justice, Mr. Justice Copland and Mr. Justice Khayat) dismissed the Appeals of the Appellants against five separate judgments of the Settlement Officer (Mr. Kenyon) one dated the 21st of March 1940 and the remainder dated the 4th April 1940.

RECORD.

No. 16, pp. 92,
95 and 101
No. 17, pp. 93
and 99
No. 16, pp. 79,
83 and 88
No. 17, pp. 82
and 86

APPELLANTS' CASE.

No. 16, p. 182

2. These appeals all relate to claims by the Appellants (in the cases consolidated to form the subject of Appeal No. 16) as individuals and (in the cases consolidated to form the subject of Appeal No. 17) as the collective members of the tribe of Arab en Nufei'at to be registered in the Schedule of Rights as the owners of or as entitled to rights or interests over parts of a tract of land lying between the Jewish Colony of Hedera and the sea. The tract of land in question is described in the judgment of the Land Court set out on page 182 of the Record to Appeal No. 16 as being of such a size that it would take a man the better part of a day to ride round its boundaries without leaving him much time to examine the land itself and as being not all of one category but containing woods and orange orchards, land which has obviously been cultivated and other land which never has been, in all probability. 10

No. 16, p. 179

No. 16, p. 186

No. 16, p. 185

No. 17, pp. 84,
85

3. It has been formally admitted by the Respondents that the Arabs Infiat have exercised possession of part of these lands and used them for grazing and other purposes, and it was recognised by the Courts which have dealt with this dispute that the Appellants have had material possession of land in the Area, have remained on the land cultivating some parts and grazing other parts, have cut wood from and grazed their cattle on the land and have lived on the land without interruption for many years, and it appears that the material questions at issue are (a) whether the admitted possession was or was wholly under certain leases alleged to have been granted by the Respondents to certain persons as representative of the Arabs Infiat and (b) whether the acts of possession admitted are such as to entitle the Appellants to registration in the Schedule of Rights. 20

4. The following provisions of the Palestine Land Settlement Ordinance No. 9 of 1928 (as amended) are relevant and material to the matters in question in this Appeal:— 30

“(2) In this Ordinance, unless the context otherwise requires—‘claimant’ includes any tribe or group of persons; ‘disposition’ means any transaction of whatever nature by which the rights of persons in or over land are affected or a charge is created or affected, but does not include an agreement to transfer or charge land; ‘land’ includes any rights arising out of land, buildings and things permanently fixed to land an undivided share in land and any interest which requires, or is capable of, registration under this Ordinance. 40

“3. (1) Whenever it appears expedient to the High Commissioner that a settlement of the rights in land in any area and registration thereof shall be affected, the High Commissioner shall publish in the Gazette an order in this Ordinance called a settlement order.

“(2) The order shall state the situation and limits of
“the area, in this Ordinance called the settlement area, within
“which the settlement of rights to land and registration thereof
“shall be effected and shall declare that, after a period to be
“defined in the order, the demarcation of parcels and presenta-
“tion of claims may begin within the settlement area.

10 “10. (1) The Settlement Officer shall have power to hear
“and decide any dispute with regard to the ownership or
“possession of land in a settlement area and may make such
“order as to costs in any such matter as he thinks fit.

“(3) A settlement officer shall apply the land law in
“force at the date of the hearing of the action: Provided that
“he shall have regard to equitable as well as legal rights to land
“and shall not be bound by any rule of the Ottoman law or by
“any enactment issued by the British Military Administration
“prohibiting the courts from hearing action based on unregis-
“tered documents or by the rules of evidence contained in the
“Ottoman Code or Civil Procedure or the Ottoman Civil Code.

20 “14. (1) A village settlement committee shall represent
“the village for which it is constituted in all matters of common
“interest and shall, for the purposes of the settlement, be
“entitled to bring and defend actions in its own name, and do
“any legal action in connection with the settlement: the settle-
“ment officer may award costs to or against the committee in
“any action so instituted before him and shall state by whom
“such costs shall be paid.

30 “31. (1) After the investigation of such claims to rights
“in a block as are undisputed, the settlement officer shall draw
“up a schedule of rights in such form and containing such parti-
“culars as may be prescribed and, after dealing with such
“schedule as hereinafter provided, shall transmit a signed copy
“thereof to the Registrar together with a signed plan of the
“parcels comprised in the schedule.

“43. Save as provided in this Ordinance, the registration
“of land in the new register shall invalidate any right conflict-
“ing with such registration.

40 “51. Where a settlement officer is satisfied that land is
“registered in the name of any person and that another person
“has been in possession thereof for such period and under such
“conditions as will prevent any action for recovery of the land
“being heard, he shall enter the name of the person in posses-
“sion in the Schedule of Rights as owner of the land in respect
“of the interest therein, which was held by the person registered

“as owner. Provided that, where the person in whose name the
“land is registered opposes the application and the settlement
“officer is satisfied that the person making the application
“originally obtained possession from the registered owner as
“tenant or mortgagee, or otherwise than owner, he shall not be
“bound to enter the name of the applicant in the Schedule of
“Rights as owner of the land, or he may enter it subject to such
“conditions as he thinks fit.”

5. The following are English translations of what appear to be
the most relevant provisions of Ottoman Land Code and the Mejelle 10
or Ottoman Civil Code both of which are in force in Palestine:—

OTTOMAN LAND CODE.

(Translation from S. Fisher “Ottoman Land Laws”).

“Article 20.

“In the absence of a valid excuse according to the Sacred
“Law duly proved, such as minority, unsoundness of mind,
“duress, or absence on a journey (muddet-i-sefer) actions con-
“cerning land of the kind that is possessed by title-deed the
“occupation of which has continued without dispute for a
“period of ten years shall not be maintainable. The period of 20
“ten years begins to run from the time when the excuses above-
“mentioned have ceased to exist. Provided that if the
“defendant admits and confesses that he has arbitrarily
“(fouzouli) taken possession of and cultivated the land no
“account is taken of the lapse of time and possession and the
“land is given back to its proper possessor.

“Article 97.

“In a pasturing ground (mera) assigned *ab antiquo* to a
“village, the inhabitants of such village only can pasture their
“animals. Inhabitants of another village cannot bring their 30
“animals there. A pasturing ground assigned *ab antiquo* to a
“group of two, three or more villages in common shall be the
“common pasture of the animals of such villages no matter
“within the boundaries of which of the villages the pasturing
“ground is situated, and the inhabitants of one of the villages
“cannot stop the inhabitants of another of the villages from
“using it. Such pasturing grounds assigned *ab antiquo* for the
“use of the inhabitants of one village exclusively, or of several
“villages collectively, can neither be bought nor sold, nor can
“sheepfolds, enclosures, nor any other buildings be erected 40
“upon them; nor can they be turned into vineyards or orchards
“by planting vines or trees on them. If anyone erects buildings
“or plants trees thereon the inhabitants may at any time have

“them pulled down or uprooted. No one shall be allowed to plough up and cultivate such land like other cultivated land. If anyone cultivates it he shall be ejected, and the land shall be kept as a pasturing ground for all time.

“Article 104.

10 “Anyone can cut wood for fuel and for building on mountains which are ‘moubah’ which are not woods or forests assigned *ab antiquo* to the public, without anyone being able to prevent him. Trees cut there and herbage collected there are not titheable. No portion of such ‘moubah’ mountains can be detached and given possession of by title-deed to anyone, either individually or jointly, by the Official in order that it may be made (private) woodland.”

6. The matters in dispute first came before the Settlement Officer in Case No. 11/29/Nufiat Part II.

No. 16, p. 104

20 In these proceedings the Government of Palestine were plaintiffs, the Village Settlement Committee of the Arabs Infiat (representing also individual Arab claimants) were defendants and the Village Settlement Committee of Hudeira (representing the Jewish Colonists of Hudeira) and other persons not parties to the present appeals were made third parties. The issue in these proceedings was to determine the boundaries of certain lands vested in the Hudeira Colonists and the Palestine Jewish Colonization Association by Kushans (title deeds issued by the Ottoman Administration) and in particular the western boundary of these lands. The Government claimed as Mewat State lands all land between the sea and whatever should be determined by the Settlement Officer to be the western boundary of these Kushans. The Arabs Infiat claimed all lands west of the eucalyptus trees of Breiktas (a line substantially to the east of the western boundary as claimed by the Hudeira Colonists) on the ground of undisputed possession over a period of years but the Settlement Officer stated (by Interim Order dated the 21st May 1930) that the fixing of the boundaries was without prejudice to any right that the Defendants might claim within the boundaries and gave this as one reason for his refusal to grant to the Defendants the right of cross-examining witnesses on the ground.

No. 16, p. 106
No. 16, p. 106
No. 16, p. 106
No. 16, p. 107

No. 16, p. 164

No. 16, p. 116
No. 16, p. 137

7. The Settlement Officer gave a final judgment on these proceedings on the 31st July 1930. He said that:—

40 “2. Although it is a matter for regret that the Arabs ‘Infe’at should have become dispossessed of lands which prior to 1296 (1880 A.D.) were presumably in their hands, and although the nature of the methods presumably employed to

No. 16, p. 161

“secure their dispossession may be deprecated, the Settlement Officer cannot be influenced by sentimental considerations but it is required to decide the issues between the parties in the cold light of facts and law.

“3. These facts are that the Arab Infe’at in 1925-6 (presumably an error for 1295-6 i.e. 1877-8) obtained registration by payment of Bedl Misl cultivated and cultivable lands in the area occupied by them; they shortly afterwards disposed of these lands by sale to Shaker Pasha, a man of great influence at that time, who subsequently sold to Salim el Khouri and the latter in turn sold the lands to the representatives of the Jewish Colonists of Hudeira. The last-named purchased in good faith, and have no concern with the original purchase by Shaker Pasha.” 10

He then decided the boundaries of the Kushans in question by indicating them by a red line and as to one portion by a blue line on the map attached to his judgment and as to the boundary between these areas and the Government land lying between them and the sea—by a green line. The Settlement Officer further stated:— 20

“7. In giving this decision the Settlement Officer wishes to record that the Arabs Infe’at whose presence and continued subsistence in this locality was clearly recognised by the Turkish Government as is shown in the observations to the registrations of the Birket Atta and Birket Breikhtas localities have at least a moral claim to continued occupancy of this Mewat area, to exercise grazing and watering facilities to the extent enjoyed by them in the past, and to cut firewood subject to the provisions of the law relating to the cutting of trees and brushwood. 30

“8. This judgment is without prejudice to claims if any to land within the area of the Kushan held by the Colonists of Hudeira Messrs. Berman and Slutzkin and the Palestine Jewish Colonization Association based on adverse possession during the period prescribed by law, to claim for the revival of Mewat lands found in this judgment to be the property of the Government, and to claims to Moslem burial grounds.”

The Arab Infe’at appealed against this judgment on grounds which are not material for the purposes of the present proceedings and such appeal was dismissed. 40

8. Further proceedings were commenced before the Settlement Officer on the 6th of July 1932 to determine the title of the Arab Infe’at, or the individual Arabs whom they represented, to be registered in the Schedule of Rights by virtue of their prescriptive claims

within the area in question, the previous proceedings having been without prejudice to such claims. In these proceedings the Settlement Officer ordered as follows:—

10 “As there exists doubt as to whether the possession of the
 “Arab Infiat is by way of tenancy or is adverse to the Kushans
 “held by the people of Hudeira, and as the Village Settlement
 “Committee of Hudeira, produced in Case 111/29 evidence that
 “the Arabs Infiat were their tenants, the Settlement Officer
 “decides, in accordance with Settlement Procedure Rule 5 as
 “amended, that the parties be entered as follows:—

“Plaintiffs: The Village Settlement Committee of Arabs
 “Infiat.

“Defendants: The Village Settlement Committee of
 “Hudeira.”

Rule 5 is as follows:—

20 “5. Where a claim to land is contested, the person who is
 “not in possession shall be the Plaintiff, and the person who is
 “in possession shall be the Defendant; if no person is in posses-
 “sion or if there is a doubt as to who is in possession, the settle-
 “ment officer shall decide which of the claimants shall be
 “plaintiff and defendant respectively.”

It is submitted that the decision of the Settlement Officer on this point was erroneous. He also ordered:—

No. 16, p. 167

“In view of the admissions of the Attorneys for the Arabs
 “Infi'at in Case 111/29 and the fact that the Arab Infiat sub-
 “mitted through their Village Settlement Committee joint
 “claims for their common rights in this land, the Settlement
 “Officer decides that this tribe shall be represented by the Village
 “Settlement Committee for the purpose of this action.”

30 Evidence was given on behalf of the Arabs Infi'at to the effect
 that the Arabs had cultivated, camped and grazed upon, obtained
 firewood from and watered their animals in the area in question,
 being the area between the eucalyptus trees and the sea, and of the
 payment of tithes by certain of their members in respect of the area
 in question the years 1920-1927.

No. 16, p. 169

No. 16, Pt. III

40 On behalf of the Hudeira Colonists possession by the Arabs was
 admitted but it was claimed that they were in possession as tenants
 and evidence was given of 14 contracts of lease between the Jewish
 Settlement Committee and certain individuals covering a period
 from 1902 to 1929 and purporting to grant rights over the area in
 question between the Eucalyptus plantation and the sea. They
 also produced their books containing entries of payment of rent and

No. 16, p. 178

gave evidence of use or occupation of parts of the area by the Colonists during the period in question.

No. 16, p. 179

9. The Settlement Officer gave judgment on the 15th July, 1932. He stated that the Village Settlement Committee of Hudeira admitted the possession of the Arabs Infi'at of land situated in the area but maintained that their possession was not adverse but as tenants and that one ground for his refusing to hear a large number of witnesses on behalf of the Arabs was that material possession was not in dispute. He continued:—

“Mr. Zwi Botkovsky, a leading member of the Colony of Hudeira produced 14 contracts which purported to refer to a number of years between 1902 and 1929 and to the complete period from 1920 to 1929. These contracts purport to lease the lands of ‘Arabs Infi’at to a number of persons, among whom were Hasan es Sayid Sheikh of the Infiat for a number of years prior to his death in 1927, and to Ali Abdalla another Sheikh of the Infiat, for the years 1927, 1928 and 1929. The witnesses produced the account books of the Hudeira Vaad showing that the amounts due under the contracts had been collected and brought to account. He also produced a number of Werko receipts and a register shewing that werko had been paid on the Infiat lands by the Colonists of Hadera. It is a common practice that, where lands belonging to a person are cultivated by a number of other persons, the owner leases or sells the Khoms payable by the cultivators to an intermediary for a lump sum, the intermediary collecting the ‘Khoms’ in kind. The Settlement Officer has no doubt that this was in fact the practice in respect of the whole of the Infi’at lands and this is confirmed by the evidence of witnesses Ahmad Bek Kathudar and Mustafa Bushnak in the original action.”

“The Jewish Colonists of Hudeira have done everything to secure their ownership that the law provides.

“They are registered owners of Miri land in the Land Registry and have paid the Werko on these lands.

“The Arabs Infi’at have not complied with the law in any respect. They are not registered owners nor have they produced any evidence that they have ever paid Werko. They have produced no documentary evidence in support of their claims and the fact that they have paid tithe and animal tax does not support their claim as tithe is usually paid by the actual cultivator whether he is the owner of the land or a tenant and animal tax is paid by owners of animals who do not necessarily own any land.”

The Settlement Officer also relied upon a decision of the Supreme Court in Land Appeal No. 137/23 dealing with the effect of the absence of written evidence. He concluded:—

10 “the Settlement Officer therefore rejects the claim of the Plaintiffs to ownership of the land in dispute. As regards their claim to be registered as enjoying certain servitudes over the land, there is no provision in the Land Code whereby such registered rights can be granted over Miri Land registered as
 10 “in the ownership of other persons. Whatever rights the Plaintiffs may have become entitled to as tenants of the lands in dispute or by continued usage, the Settlement Officer finds that he has no authority to register the rights as claimed by
 “the Arabs Inf’at, in the Schedule of Rights.”

10. The Arab Village Settlement Committee appealed to the Land Court of Haifa which gave judgment on the 20th April, 1933. The material part of the judgment is as follows:—

20 “Following the inspection of the land in dispute which we made, we have come to the conclusion that the trial in the Court below was unsatisfactory because the Settlement Officer attempted to decide in one fell swoop a case the nature of which
 “was such as to preclude it from being dealt with in so summary a fashion. The land in question is not all of one category—
 “it contains woods and orange orchards, land which has obviously been cultivated and other land which never has
 “been, in all probability; in such circumstances, the history of the various parts of the land cannot be the same, and consequently wherever there are differences, the question of owner-
 “ship should form the subject of a separate enquiry and each case should be tried on its merits. The Settlement Officer
 30 “would appear to have placed too much reliance on the contracts of lease produced by the Respondents, on the entries in their books as to the payment of rent and on the judgment of the Court of Appeal which he quotes in his judgment. In the
 “first place, the authenticity of the contracts of lease requires to be strictly proved and even when that has been done, they are only evidence against the persons who were parties to them.
 “Secondly, the entries in the colony books of the payment of rent are entries made by the party relying upon them and, so
 “far as this case is concerned, are entries in their favour and as
 40 “such have very little evidential value. Finally, principles enunciated in judgments in Land Courts and judgments of the Court of Appeal in Land Actions are not necessarily applicable to Land Settlement procedure and, as it happens, the particular judgment on which the Settlement Officer has relied
 “in this case, actually, has no application here. The attention

No. 16, p. 182

“of the Settlement Officer is directed to Section 2 of the Registration of Land Ordinance 1929. The Judgment of the Settlement Officer is set aside and the case will go back to him for re-trial. In this connection we may add that it is very desirable in our view that the new trial should take place on the land itself.”

11. The Hudeira Village Settlement Committee appealed to the Supreme Court of Palestine which affirmed the decision of the Land Court (Mr. Justice Frumkin dissenting) subject to a qualification upon the effect of the leases, if proved, expressed as follows:—

No. 16, pp. 182-185

“In my view the said contracts cannot be taken in evidence against each individual person unless it is shown in the circumstances of each case, from the nature of the cultivation or possession in the case of each separate plot, that the particular tenant was in a position to obtain an equivalent rent from the proceeds of the land, had, for example, cereals been grown thereon and that this would not have been so had the lands been planted with trees.”

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No. 16, pp. 1-33

12. In these circumstances a number of fresh claims to registration on the ground of inheritance and long possession were presented those in Appeal No. 16 being claims by individuals and those in Appeal No. 17 being claims by the Village Settlement Committee Arab en Nufei'at on their own behalf and on behalf of all members of the Arab en Nufei'at.

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No. 17, pp. 1-25

No. 16, pp. 40, 43, 44, 51, 60, 72-77
No. 17, pp. 49, 50, 58-69, 71, 72, 80-82

13. Consolidation Orders were made by the Settlement Officer whereby the individual claims were grouped into three groups and the Village Settlement Committee claims into two groups. The Settlement Officer again required the Arabs to appear as Plaintiffs.

No. 16, p. 31

14. The Settlement Officer gave judgment against the Appellants in all cases and these judgments were upheld by the Supreme Court of Palestine.

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No. 16, p. 92

15. With regard to the first set of cases (Nos. 1, 2, 7, 16, 93 and 95) the Appeal to the Supreme Court was dismissed quite shortly on the basis of a statement by the Settlement Officer in his judgment that he came to the conclusion that no reliance would be placed on the Plaintiffs (Appellants) evidence and the long uninterrupted possession and cultivation was not proved. The Settlement Officer however had also found that the Plaintiffs (Appellants) were in possession as tenants and not as owners and that the established payments of tithe by them were not evidence of ownership but might indicate possession.

40

It is submitted that these latter findings are only consistent with the former, if the former finding meant that the Appellants evidence could not be accepted only in so far as it sought to prove

possession other than such possession as might be attributable to the leases of which evidence was given. It is submitted therefore that the Supreme Court failed to take account of the arguments put forward on the Appeal based upon the Respondents admission of possession in the former proceedings, and their failure to prove that the existence of the leases affected the individual Appellants.

16. In the second set of cases (Nos. 6, 18, 38, 62, 63, 97 and 98 Nufei'at) the Supreme Court also appears to have founded its judgment principally upon a finding of the Settlement Officer that the Appellants witnesses were not to be believed. But again the Settlement Officer had found from evidence of payment of tithe that the Appellants were in possession of part at least of the land in question. He also stated that there is no justification for believing their evidence concerning non-payment of rent, an observation which is only intelligible on the footing that he found the Appellants were in actual possession.

No. 16, p. 95

17. A submission on similar grounds is made with regard to the judgment of the Supreme Courts in the third set of cases (Nos. 3, 4, 5, 15, 19, 33, 35, 43, 45 and 54 Nufei'at).

No. 16, p. 100

18. In all these cases it is submitted that having regard first to the admissions made by the Respondents representatives in the first proceedings and secondly to the actual finding of the Land Settlement Officer the Appellants actual possession of the whole or some at least of the lands claimed by them respectively in these cases for a long period of years is established and that the mere existence of the leases to persons alleged to be heads of the tribe from time to time is not sufficient to prevent title being acquired against the Respondents by such possession.

19. In the first set of claims in the second group (claims on behalf of all members of the tribe) it was admitted that the Appellants have for many years used the land as common grazing lands and for woodcutting and camping sites and the question at issue was whether these facts entitled the Appellants to any and what registration in the Schedule of Rights. The Settlement Officer decided in favour of the Respondents on the ground that, where land is once cultivated and is capable of cultivation, title by adverse possession can only be acquired by acts of cultivation. He and the Supreme Court also relied upon the following finding:—"It is admitted that the Arab en Nufei'at have lived on the lands without interruption for many years, but that their existence there was permitted as relations between all parties were cordial until this litigation arose. The Arab en Nufei'at moved freely about the lands, were engaged in various occupations in Hadera and lived on the very best possible terms with the colonists. The Defendants

No. 17, p. 82

No. 17, p. 92

“have paid the werko as registered owners, have drained the swamps
“planted eucalyptus and exploited the lumber. Because their
“possession did not expel the Arab en Nufei’at from the land, it does
“not follow that possession was abandoned.”

No. 17, p. 46
No. 17, p. 97
20. In the second class of cases of the second Group (in which there was also a claim based upon the cultivation of cultivated parts of the land) the Settlement Officer found that there was no evidence of continuous cultivation and the Supreme Court dismissed the appeal on the basis of this finding of fact. It was not alleged or proved that anyone but the Appellants had cultivated the areas in question and it is submitted that, in these circumstances, continuous cultivation need not be proved. 10

No. 16, p. 103
No. 17, p. 100
21. In both appeals the Supreme Court of Palestine granted the Appellants leave to appeal to His Majesty in Council.

22. By Order dated the 29th April, 1947, the Right Honourable the Lords of the Judicial Committee of the Privy Council ordered and directed that Appeals Numbers 16 and 17 be consolidated and heard together as one case on each side.

23. The Appellants submit that these Appeals should be allowed and that the judgments of the Settlement Officer should be reversed and that the proceedings may be remitted to the Settlement Officer for the purposes of having the several Appellants entered in the Schedule of Rights in respect of the lands in question as owners thereof or alternatively (in the case of the Appellants in Appeal No. 17) as persons entitled to a perpetual easement of right of using the land as common grazing lands and for purposes of woodcutting areas and camping sites or alternatively that the proceedings be remitted to the Settlement Officer for further hearing and that (in any event) an order may be made for payment by the Respondents to the Appellants of their costs here and in all courts below and for repayment by the Respondents of their costs in any Court below paid by the Appellants for the following among other 20 30

REASONS.

1. BECAUSE the Respondents having admitted that the Appellants were in possession, the Settlement Officer was wrong in directing that the Appellants should appear as Plaintiffs and should have placed upon the Respondents the onus of establishing that they would have been entitled to succeed in an action for recovery of the land and of proving that the Appellants possession was not such as entitled them to registration as owners. 40

2. BECAUSE the Respondents failed to establish that the possession of the Appellants was as tenants or sub-tenants under the leases of which evidence was given or otherwise to be ascribed to the said leases.
3. BECAUSE the Respondents failed to establish that the leases of which evidence was given applied to the particular plots the subject of Appeal No. 16.
- 10 4. BECAUSE in the absence of proof that the possession of the Appellants was under or ascribable to the said leases such possession entitled them to registration as owners.
- 20 5. BECAUSE the Settlement Officer ought not to have refused to register the Appellants in the Schedule of Rights merely because he may have been satisfied that the Respondents had cultivated some parts of the areas in question. In such circumstances he ought to have gone on to determine in respect of which parts of any particular areas the Appellants should have been registered as owners and in respect of which parts the Respondents should have been so registered.
6. BECAUSE the evidence of payment of tithe, and in some cases, the undisputed evidence of the Appellants established their possession to some at least of the areas in question.
7. BECAUSE so far as concerns Appeal No. 17, in the absence of evidence of continuous cultivation of the areas in question by anyone, the acts of user by the Appellants, admitted or established, were sufficient to create a title by adverse possession.
- 40 8. BECAUSE so far as concerns Appeal No. 17, the admitted acts of user constitute evidence of the existence of rights or interests in land capable of being registered under the Palestine Settlement Ordinance and such rights and interests should therefore have been registered.
9. BECAUSE the findings of fact by the Settlement Officer in all the Appeals are inconsistent and against the weight of the evidence.
- 40 10. BECAUSE the Judgments of the Settlement Officer and of the Supreme Court were wrong and ought to be reversed.

F. E. SKONE JAMES.

No. 16 of 1944.

No. 17 of 1944.
(Consolidated appeals.)

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF PALESTINE.

BETWEEN—

FATIMA AHMAD AL'AFIFI and 24 others
Appellants

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106 others** - - - *Respondents*

— AND —

BETWEEN—

**THE VILLAGE SETTLEMENT COMMIT-
TEE OF ARAB EN NUFE'AT**
Appellants

— AND —

AHARON SAMSONOV and 208 others
Respondents

CASE

FOR THE APPELLANTS.

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London, E.C.4.