

40. 1948

Nos. 16 and 17 UNIVERSITY OF LONDON

# In the Privy Council.

-9 OCT 1956

## ON APPEAL

FROM THE SUPREME COURT OF PALESTINE

INSTITUTION OF PALESTINE  
LEGAL STUDIES

44453

BETWEEN

No. 16 of 1944.

- |    |                             |                            |
|----|-----------------------------|----------------------------|
| 10 | 1. FATIMA AHMAD AL'AFIFI    | 16. ALYA ALI ABDALLAH      |
|    | 2. AMNA HASSAN AL 'ATTAR    | 17. ABDALLAH MUSTAFA       |
|    | 3. AISHA HUSSEIN EL 'ALI    | ABDALLAH                   |
|    | 4. MUHAMMAD ALI ABDALLAH    | 18. FAHIM IBRAHIM ISA AL   |
|    | 5. AMDUL LATIF ALI ABDALLAH | HAJIBI                     |
|    | 6. MUHMUD ALI ABDALLAH      | 19. SALEH IBRAHIM ISA AL   |
|    | 7. JAMIL ALI ABDAALAH       | HAJIBI                     |
|    | 8. ABDALLAH ALI ABDALLAH    | 20. ABD AR-RAHMAN ISA AL   |
|    | 9. AHMAD ALI ABDALLAH       | HAJIBI                     |
|    | 10. SA'AD ALI ABDALLAH      | 21. AYISH MUHAMAD HUMAIDAN |
|    | 11. MUHAMMAD SHAFIQ ALI     | 22. MUBARAK SULAIMAN       |
|    | ABDALLAH                    | MUBARAK                    |
| 20 | 12. HUSEIN ALI ABDALLAH     | 23. AWAD SAQR SULEIMAN     |
|    | 13. SHEIKHA ALI ABDALLAH    | 24. ALI HASSAN AL-SAYID    |
|    | 14. JAMILA ALI ABDALLAH     | 25. SA'AD SAQR SULAIMAN    |
|    | 15. AMINA ALI ABDALLAH      |                            |

*Appellants*

AND

- |    |                             |                              |
|----|-----------------------------|------------------------------|
| 30 | 1. THE GOVERNMENT OF        | 20. MORDEKHAI HADJAINOFF     |
|    | PALESTINE                   | 21. AVRAHAM HAYIM YADGAROFF  |
|    | 2. YOSEF YA'AQOV BERVITZ    | 22. OHELIYAV HAYIM SHAULOFF  |
|    | 3. MOSHE BEN TZIYON SUSSMAN | 23. ELIYAHU KIMGAROFF        |
|    | 4. RIFQA BAT MORDKHAI       | 24. SHELOMO BAHN             |
|    | HURVITZ                     | 25. RAHEL GOLDBERG           |
|    | 5. MOSHE TURETZ             | 26. SHEMUEL GOLDBERG         |
|    | 6. ZVI BEN MORDEKHAI        | 27. HANNA TOGKOVSKY          |
|    | SOLONOVITCH                 | 28. YEHIDITH KLEBANOFF       |
|    | 7. MENASE SCHWARTZSTEIN     | 29. SHULAMITH HOCHFILD       |
|    | 8. BEN-ZION BEN YEHUDA      | 30. LEIB SCHAAFF             |
|    | RITOV                       | 31. YITS-HAQ LAMBURG         |
|    | 9. KALMAN HIRSCHHORN        | 32. FANIA (FEIGO) SPIRO      |
|    | 10. ELIMELECH HERSHKOVITZ   | 33. TANIA RAZEMOVESKA        |
|    | 11. HADERA FOUNDERS         | 34. RACHEL (RU) SEIKANEN     |
|    | ASSOCIATION LIMITED         | 35. AHARON KONGRETSKI        |
| 40 | 12. ROBERT BARACH           | 36. MATEL KONGRETSKI         |
|    | 13. GERTRUD RIESE           | 37. BENYAHIM SACHENHAUS      |
|    | 14. EDITH MENASSA           | 38. SHAUL DAVID SACHSE       |
|    | 15. BENYAHU VA'ADYA         | 39. SHIM'ON GORDON           |
|    | 16. HILLEL VA'ADYA          | 40. CENTRAL BANK OF COOPERA- |
|    | 17. NISSIM VA'ADYA          | TIVE INSTITUTIONS IN         |
|    | 18. BEN-ZION HADJAINOFF     | PALESTINE LIMITED            |
|    | 19. AVRAHAM HAYIM           | 41. SHELOMO BAHN             |
|    | HADJAINOFF                  | 42. YONA HURVITZ             |

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| 43. ARIEL HURVITZ   | 78. THE VILLAGE SETTLEMENT<br>COMMITTEE OF ARAB<br>EN-NUFEI'AT |    |
| 44. ROMAMTI-EZER HURVITZ  |  |    |
| 45. YITZHAQ HURVITZ   | 79. THE GOVERNMENT OF<br>PALESTINE                             |    |
| 46. AVRAHAM SMALLNIK  | 80. RIVKA BAT MORDEKHAI<br>HORVITZ                             |    |
| 47. BEN-TZIYON SMALLNIK   |  |    |
| 48. SHULAMIT SMALLNIK   | 81. MOSHE TURETZ   |    |
| 49. YOSEF TARTAKOVISKI  | 82. ZVI BEN MORDEKHAI<br>SOLONOVITCH                           | 10 |
| 50. YOSEF ELIASH  |  |    |
| 51. AHARON MEIRSON  | 83. HADERA FOUNDERS<br>ASSOCIATION LIMITED                     |    |
| 52. DAVID ZOLTEROV  |  |    |
| 53. HADERA FOUNDERS<br>ASSOCIATION LIMITED                      | 84. YOSEF YA'AQOV BERVITZ                                      |    |
| 54. NATAN NATA LERMAN   | 85. BENYAMIN SHULAMI   |    |
| 55. NATA' MOSHE LERMAN  | 86. MOSHE BEN TZIYON SUSSMAN                                   |    |
| 56. TANHUM FRANK  | 87. YOSEF ELIASH   |    |
| 57. THE GOVERNMENT OF<br>PALESTINE                              | 88. AHARON MEERSON   |    |
| 58. HAIYIM BEN-SHAUL RUTMAN                                     | 89. DAVID ZELTEROV   |    |
| 59. AHARON TZEVI AHARONSON                                      | 90. TANHUM FRANK   |    |
| 60. RAHEL SAMSONOV  | 91. LEIB SCHAF   | 20 |
| 61. PENINA SAMSONOV   | 92. BEN-ZION BEN YEHUDA<br>RITOV                               |    |
| 62. OFIRA SAMSONOV  |  |    |
| 63. ARYE SAMSONOV   | 93. KALMAN HIRSHHORN   |    |
| 64. MATITYAHU NAHUMI  | 94. KEREN KAYEMETH LEISRAEL<br>LIMITED                         |    |
| 65. AHARON SAMSONOV   | 95. ELIMALECH HERSHKOVITZ                                      |    |
| 66. YEHUDA SLUTZKIN   | 96. ALEXANDER AHARONSON  |    |
| 67. YITSHAQ YA'AKOV SLUZKIN                                     | 97. PENINA (SCHMIDT)<br>BLUMERSON                              |    |
| 68. HAYIM FRACKIN   |  |    |
| 69. MEKHAEL TUTELMAN  | 98. ZEEV DARJAVITS   | 30 |
| 70. AHARON KONGROTISKI  | 99. YEFET MILNER   |    |
| 71. MATEL KONGROTISKI   | 100. MOSHE MILNER  |    |
| 72. BENYAMIN SACHENHAUS   | 101. MATITYAHU NAHUMI  |    |
| 73. THE PALESTINE JEWISH<br>COLONISATION ASSOCIATION<br>LIMITED | 102. YEKHEVED HAR-ZAHAV  |    |
| 74. SHAUL DAVID SACHE   | 103. EFRAHIM SHTERDIN  |    |
| 75. BELLA GUTOVITZ  | 104. YITSHAQ LAMBURG   |    |
| 76. AHARON ALFRED TICHIO  | 105. FANIA (FEIGO) SPERO                                       |    |
| 77. YITSHAQ MAIDENICK   | 106. TANIA RAZEMOVISKA   |    |
|   | 107. RACHEL (RU) SOIKANON                                      |    |

*Respondents.* 40

AND BETWEEN

No. 17 of 1944.

THE VILLAGE SETTLEMENT COMMITTEE OF ARAB EN NUFEI'AT

*(Plaintiffs) Appellants*

AND

- |                                |                                    |    |
|--------------------------------|------------------------------------|----|
| 1. AHARON SAMSONOV             | 7. YEHEZKEL GOLDENBERG             |    |
| 2. RAHEL SAMSONOV              | 8. NOAH MILNER                     |    |
| 3. PENINA SAMSONOV             | 9. MORDEKHAI BEN BINYAMIN<br>RODIN |    |
| 4. OFIRA SAMSONOV<br>NEIDERMAN | 10. THE GOVERNMENT OF<br>PALESTINE | 50 |
| 5. ARYE SAMSONOV               | 11. EFRAYIM PINHAS MARGOLIN        |    |
| 6. MOSHE GOLDENBERG            |                                    |    |

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|----|-----------------------------|-----------------------------|
|    | 12. WILLIAM ZEEV BRUENN     | 57. ELIEZER BELOCH          |
|    | 13. KEREN KAYEMETH          | 58. GITTA HASMAN            |
|    | LEISRAEL LTD.               | 59. HANNA HASMAN            |
|    | 14. TANHUM HANKIN           | 60. BATYA YOVAL (HASMAN)    |
|    | 15. MANDEL HANKIN           | 61. LEIB (LUBA) HASMAN      |
|    | 16. HADERA FOUNDERS         | 62. YA'AQUV HASMAN          |
|    | ASSOCIATION, LTD.           | 63. AHARON TSEVI AHARONSON  |
|    | 17. ALEXANDER AHORONSON     | 64. NAHMAN RUTMAN           |
|    | 18. RAHEL GOLDENBERG        | 65. DAVID KASTEL            |
| 10 | 19. SAMUEL GOLDENBERG       | 66. MASHE KASTEL            |
|    | 20. HANNA TELKOVISKI        | 67. SHABETAI KASTEL         |
|    | 21. YEHUDIT KLEBANOFF       | 68. AVRAHAM KASTEL          |
|    | 22. SHULAMITH HOCHFELD      | 69. SIMHA (BEKHORA) MISRAHI |
|    | 23. LEVY YITSHAQ MADOURSKY  | 70. MAZZAL BEKHORE          |
|    | 24. YITSHAQ HUCK            | 71. MALKA SHEIMAN           |
|    | 25. SHEM'ON GORDON          | 72. THE PALESTINE JEWISH    |
|    | 26. MATITYAHU SHEMUELSON    | COLONIZATION ASSOCIATION,   |
|    | 27. MIKHAEL SHEMUELSON      | LTD.                        |
|    | 28. SHEMUEL SHTERNIN        | 73. SHALOM RABINOVITCH      |
| 20 | 29. ZEEV GURVITZ            | 74. THE GOVERNMENT OF       |
|    | 30. EFRAYEM SHTERNIN        | PALESTINE                   |
|    | 31. ESTER SHNEERSON         | 75. NAHUM MUNIZ             |
|    | 32. YAIYIM BEN SHAUL RUTMAN | 76. MORRITZ SHAPIRA         |
|    | 33. SHELOMO SHARGARODISKY   | 77. HASYA SHALOPSKY         |
|    | 34. PENINA (SCHMIDT)        | 78. ROBERT BARAACH          |
|    | BLOMERSON                   | 79. GERTRUD RIESE           |
|    | 35. AVRAHAM LABSOVSKY       | 80. EDITH MANASSE           |
|    | 36. BENAYHU VA'ADYA         | 81. SHELOMO BAHN            |
|    | 37. HILLEL VA'ADYA          | 82. YONA HURVITZ            |
| 30 | 38. NISSIM VA'ADYA          | 83. ARIEL HURVITZ           |
|    | 39. BEN TZIYON HADJAINOFF   | 84. ROMANTI-EZER HURVITZ    |
|    | 40. AVRAHAM HAIYIM          | 85. YETZHAQ HURVITZ         |
|    | HADJAINOFF                  | 86. YOSEF TARTAKOVSKY       |
|    | 41. MORDEKHAI HADJAINOFF    | 87. YOSEF ELIASH            |
|    | 42. AVRAHAM HAIYIM          | 88. AHARON MEIRSON          |
|    | YADGAROFF                   | 89. DAVID ZOLTEROV          |
|    | 43. OHELIAV HAIYIM SHOLOFF  | 90. BINYAMIN SHULAMI        |
|    | 44. ELIYAHU KIMYAGAROFF     | 91. YOSEF YA'AQOV. BERVITZ  |
|    | 45. AHARON MEIRSON          | 92. MOSHE BEN TZIYON        |
| 40 | 46. THE ANGLO PALESTINE     | SUSSMAN                     |
|    | BANK, LTD.                  | 93. MENASHE SCHWARTSTEIN    |
|    | 47. HAIYIM PERETZ           | 94. LEVY YITWHAQ MADORSKY   |
|    | RABINOVITCH                 | 95. YOSEF AHARON HALEVI     |
|    | 48. MEIR RABINOVITCH        | 96. RAHEL SAMSONOV          |
|    | 49. TSEEV YOVAL             | 97. PENINA SAMSONOV         |
|    | 50. ZEEV YOVAL              | 98. OFIRA SAMSONOV          |
|    | 51. YERAHMIAL YOVAL         | 99. ARYE SAMSONOV           |
|    | 52. LEA LUBIN               | 100. YITZHAQ HACK           |
|    | 53. PESIA BERVITSKI         | 101. SHELOMO MERSON         |
| 50 | 54. HENIA SEGAL             | 102. BARUKH RUM             |
|    | 55. YONA SALTMAN            | 103. YISSAKHAR RAM          |
|    | 56. HAIYIM LAVOUCHKIN       | 104. TZEVI BOTKOSKY         |

105.	TZEVI CANTARJI	152.	TANHUM BRANSBURG
106.	DOV. CANTARJI	153.	DOV KLEIN
107.	GENESIA HALEVI	154.	HADERA FOUNDERS ASSOCIATION, LTD.
108.	YOKHEVET HAR ZAHAY	155.	AVRAHAM SMALNIK
109.	SHOSHANA MADOURSKY	156.	BEN TZIYON SMALNIK
110.	TSEVI MADOURSKY	157.	SHULAMIT SMALNIK
111.	WIFE OF ZALMAN MADOURSKY	158.	HAIYIM BEN SHAUL RUTMAN
112.	DAUGHTER OF ZALMAN MADOURSKY	159.	FEIGA COHEN STOCK
113.	LEVY YITZHAQ SHNEERSON	160.	SIMA HUT-ORI 10
114.	MANDEL SHNEERSON	161.	EFRAYIM SHTERNIN
115.	DOV BER ABRAHAM LEVITAS	162.	HAIYIM WEINSTEIN
116.	SHEMUEL KLASS	163.	HARRY TSEVI SHARGARODSKY
117.	MOSHE YITZHAQ KLASS	164.	SAMUEL SHAR YEHUSHAA SHARGARODSKY
118.	NATAN YITZHAQ KLASS	165.	WOLF SHERRY ZEEV SHARGARODSKY
119.	EDLA ABRAMSON	166.	SHELOMO SHARGARODSKY
120.	YEHUDA SLUTZKIN	167.	NATAN NATA' LERMAN 20
121.	YITZHAQ YA'AQOV SLUTZKIN	168.	NATA MOSHE LERMAN
122.	HAIYIM FRADKIN	169.	ZEHAVA SHAPIRA
123.	MIKHAIL TUTELMAN	170.	SHOSHANA FRIED
124.	AHARON KONGRETEZKY	171.	HAVIVA BLUMBERG
125.	MATEL KONGRETEZKY	172.	YEHUDIT SHAPIRA
126.	BINYAMIN SACHENHAUS	173.	SHULAMIT (SHAPIRA) BEN YEHUDA
127.	PESAH GUTMAN DRIBEN	174.	NOAH MILNER
128.	YESHA 'YAHU BEN SHEMUEL SLIK	175.	YEFET MILNER
129.	BEN TZIYON BEN YEHUDA RITOV	176.	YA'AQOV. PILOSOFF 30
130.	BEILA GUTOVITCH	177.	MATITYAHU NAHUMI
131.	SHAUL DAVID SACHS	178.	MOSHE LUBIN
132.	LEIB SCHAFF	179.	NAHMAN LUBIN
133.	DAVID GOTTLIEB	180.	YA'AQOV BEN SHAUL RUTMAN
134.	KALMAN HIRSHHORN	181.	YOSEF RUTMAN
135.	AHARON ALFRED TICH0	182.	ZALMAN RUTMAN
136.	YITZHAQ MAIDANIK	183.	IMMANUEL SHAHAR
137.	YEHOSHA BITAN	184.	SHERYA SHAHAR
138.	HAIYIM SCHER	185.	MIRYAM SHAHAR 40
139.	BENYAIM VA'ADIA	186.	AVIGDOR FISHER
140.	HILLEL VA'ADIA	187.	SHELOMO FISHER
141.	NISSIM VA'ADIA	188.	HELENA FISHER
142.	YA'AQOV ELIASHER ZALSTER	189.	DAVID SCHLOSINGER
143.	YOSUF GLUSGAL	190.	DAVID LEVUTCHKIN
144.	SHEMUEL FIGUR	191.	ZEEV DARJAVITCH
145.	TZEVI FEIN	192.	PENINA (SCHMIDT) BLUMERSON
146.	HAIYIM PINHAS COHEN	193.	HAYA (ZIVIK) ARIEL
147.	MOSHE HARAP	194.	URIYA ZIVIK 50
148.	YITZHAQ IZIK GOLDMAN	195.	YONA GUREVITCH
149.	MOSHE ZEEV BEN DAVID MITZKON	196.	ZEEV GUREVITCH
150.	TANHUM GRANK		
151.	AVRAHAM METZ		

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|------------------------------|---|
| 197. SHEMUEL SHTERNIN        | 204. TANIA RAZEMOVSKA                                 |
| 198. YITZHAQ OKRAINETZ       | 205. RAHEL (RU) SOIKANEN                              |
| 199. DOVE YEMINI             | 206. YITZHAQ LAMBURG                                  |
| 200. ZEEV LIPKES             | 207. SHIMON ZIHAVI                                    |
| 201. DOV BEN AVRAHAM LEVITAS | 208. THE PALESTINE AGUDAT<br>NATA'IM, LTD.            |
| 202. TSEVI ELHANAN GUTERMAN  | 209. KEREN HAYESOD, LTD.<br>(Defendants) Respondents. |
| 203. FANIA (FEIGE) SPIRO     |   |

(Consolidated Appeals.)

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## CASE FOR RESPONDENTS.

Nos. 2, 3, 5-11, 13-17, 21, 24, 30, 33-39, 41, 51, 53-56, 58-61, 63-68, 70-72, 74, 75, 77, 81-86, 88, 90, 92, 93, 95, 96, 98-101, 103, 106 and 107 in Appeal No. 16 of 1944 and Nos. 1-3, 5-8, 12, 14, 16, 17, 23, 25, 26, 28-30, 32, 33, 35-38, 42, 45, 47-51, 54, 56, 58-71, 75-78, 81, 88, 90-98, 101-107, 109-112, 113-115, 119, 120, 124, 128-134, 136-139, 142-156, 158-163, 166-170, 172-179, 181, 182, 184, 188, 190-192, 194, 197-199, 202, 203, 205 and 206 in Appeal No. 17 of 1944.

RECORD.

1. Appeal No. 16 is an appeal from three judgments of the Supreme Court, all delivered on the 22nd April 1941, in Civil Appeals Nos. 121/40, 123/40, and 124/40, dismissing appeals from decisions of the Land Settlement Officer Haifa Settlement Area, all given on the 4th April 1940, dismissing three groups of consolidated individual claims to various parcels by prescription based upon alleged possession and cultivation as of right for a period in excess of the statutory period of ten years.

No. 16, pp. 92, 95  
and 100.  
pp. 77, 82 and 86.

2. Appeal No. 17 is an appeal from two judgments of the Supreme Court both also delivered on the 22nd April 1941, in Civil Appeals Nos. 125/40 and 126/40, dismissing appeals from decisions of the Land Settlement Officer, Haifa Settlement Area, given on the 21st March 1940 and the 4th April 1940 respectively, dismissing two groups of consolidated claims by the Appellants, the Village Settlement Committee of Arab en Nufei'at (on behalf of the tribe) to certain other parcels as common lands by prescription—the acts alleged in support of the former claim being grazing, woodcutting, and camping on the land, and in support of the latter cultivation of parts of the land also.

No. 17, pp. 92 and  
97.  
pp. 82 and 86.

3. These Consolidated Appeals are concerned with claims made by the Appellants who are Arabs of the tribe en Nufei'at or Infiat to title by prescription to certain parcels of land within an area owned by the Respondents, members of the Jewish Colony and landowners at Hadera. The Respondents are Kushan holders. The Appeals involve, and in the Respondents' submission turn on, questions of fact on which there are concurrent findings in the Respondents' favour.

4. In the year 1880 the Turkish Government made a grant of lands in the area in question to the Appellant tribe. Very soon after the grant the tribe sold the land to one Shaker Pasha who resold it to one Selim Khoury, and he in his turn sold it in the year 1890 to a group of Jewish settlers. The latter founded a colony at Hadera (also spelt "Hudeira" or "Hedera").

5. The lands of Hadera comprise several localities. The principal localities are Hadera (proper), Dardara and Nufei'at (proper). Hadera and Dardara are good agricultural land; Nufei'at adjoins the seashore, is sandy, and is bordered by waste land ("Raml Utl"). The first two 10 localities were fully cultivated by the settlers; the third was, from its nature, more neglected, though as time went on settlements were built and orange groves planted.

6. After the settlers became the Kushan holders the Appellant tribe continued to camp and to lease land in Nufei'at, the agreements of lease being usually in the name of the Sheikh and the headman of the colony.

7. The history of the proceedings leading up to these various claims is briefly set out in this and the next five paragraphs.

In 1929 disputes arose between the Village Settlement Committee of Arab en Nufei'at, the Village Settlement Committee of the Jewish 20 Colony at Hudeira and the Government of Palestine concerning land in the vicinity of Hudeira, and in particular the locality of Nufei'at, in consequence of which proceedings known as Case No. 111/29/Nufei'at were begun before the Settlement Officer, Jaffa and Hudeira Settlement Areas, an account of which will be found in Part II of the Record of Appeal No. 16. The action was heard in two parts: Part I as an Application by the Attorney-General's representative for the fixing by the Settlement Officer of the boundaries of three Kushans held by the Jewish Colony at Hudeira for certain localities; and Part II as a similar application by the Village Settlement Committee of the Arabs en Nufei'at in 30 respect of two other localities.

No. 16, p. 104,  
et seq.

No. 16, p. 161.

No. 16, p. 163, l. 17.

8. In his Final Judgment delivered on 31st July 1930 the Settlement Officer fixed the boundaries and found that all the land not covered by the Respondents' Kushans was State Domain. The judgment was without prejudice (inter alia) to prescriptive claims, if any, to land within the area of the Kushan held by the Respondents based on adverse possession during the statutory period.

No. 16, p. 163.  
p. 165.

9. This judgment was on the 3rd January 1931 affirmed on Appeal by the Land Court of Haifa; and an Appeal from the Land Court to the Supreme Court was on the 7th January 1932 dismissed on technical 40 grounds. The judgment accordingly became final.

No. 16, p. 166.

10. In 1932 the hearing was begun before the Settlement Officer of an Action (Case No. 153/32) by the Village Settlement Committee of Arab Infiat against the Village Settlement Committee of Hudeira in which the Plaintiffs advanced a collective claim to certain parcels of land by

prescription, based in some cases merely on the uninterrupted exercise of grazing, woodcutting and camping rights, and in others on cultivation of the land. The defence was that if the Plaintiffs had ever cultivated the land they had done so as tenants of the Defendants and that the Plaintiffs' other activities on or in connection with the land did not affect the registered title or afford the Plaintiffs any registrable right. After hearing evidence at length the Settlement Officer on the 15th July 1932 delivered judgment dismissing all the claims. No. 16, p. 179.

11. On appeal to the Land Court of Haifa the Land Court delivered a judgment remitting the case to the Settlement Officer for retrial of each claim separately on the grounds (inter alia) that the land was not all of one category, and, further, that the leases produced had not been strictly proved and were in any case evidence only against the persons who were parties to them. No. 16, p. 182.

12. On appeal to the Supreme Court judgment was given on the 9th May 1935 upholding (with a slight modification) the decision of the Land Court and remitting the case to the Settlement Officer. On remission each Plaintiff would have an opportunity to prove possession or cultivation in his own right irrespective of what agreement his chief had made with the Defendants. No. 16, p. 183.

13. The various claimants then submitted to the Settlement Officer fresh individual claims to separate parcels and in addition the Village Settlement Committee submitted certain claims to other parcels as common land of the tribe. These claims were considered individually by the Settlement Officer, Haifa, and consolidated or combined for hearing into various groups; and after much investigation and taking of oral evidence on the land and considerable argument the Settlement Officer gave the five decisions referred to in paragraphs 1 and 2 above—the first in Cases Nos. 1, 2, 7, 16, 93 and 95 combined; the second in Cases Nos. 6, 18, 38, 62, 63, 97 and 98 combined; the third in Cases Nos. 3, 4, 5, 15, 19, 33, 35, 43, 45 and 54 combined (all of which cases are the subject of Appeal No. 16); the fourth and fifth in Case No. 12, Parts II and III, on the claims to common land (the subject of Appeal No. 17). In each case he dismissed the claim. No. 16, pp. 77, 82 and 86.

14. The chief ground for the Settlement Officer's decision in the first three cases (now the subject of Appeal No. 16) was that there was no satisfactory evidence of uninterrupted possession and cultivation by the Plaintiffs (the present Appellants) or their predecessors. In each of the three decisions he refers to the fact that the Plaintiffs relied on oral evidence, to the conflict of evidence, and to the unreliability of the Plaintiffs' witnesses. No. 17, pp. 82 and 86.

Thus, in the first of the three judgments :

“ After considering the oral evidence of the Plaintiffs and their witnesses, the manner in which the evidence was given, their demeanour and evasiveness under cross-examination, and the obvious falsehoods disclosed in their oral evidence, I have no No. 16, p. 80, l. 15.

“ hesitation in coming to the conclusion that they were well aware  
 “ that neither they nor their father before them ever had any  
 “ property in the land.”

In the second :

p. 85, l. 17.

“ After considering the oral evidence of the Plaintiffs and their  
 “ witnesses, the manner in which it was given, their replies under  
 “ cross-examination and the inconsistencies disclosed in the oral  
 “ evidence, and then that of the Defendants and their witnesses, I  
 “ come to the conclusion that the Plaintiffs’ statements are not to  
 “ be believed.”

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In the third :

p. 89, l. 26.

“ After considering the oral evidence of the Plaintiffs, the  
 “ manner in which it was presented, the demeanour of the witnesses,  
 “ and the evasiveness of their replies, I come to the conclusion that  
 “ no reliance can be placed on their statements and their evidence is  
 “ unreliable.”

In each case he found the Plaintiffs’ claim based on adverse possession not proved.

15. With regard to the defence that if the claimants cultivated at all it was as tenants, the Settlement Officer referred briefly to the leases 20 produced by the Defendants (the present Respondents), found them to be genuine, and disbelieved the Plaintiffs’ statements that they had not paid rent. His references to the leases are to be found at page 80 l. 34, page 85 l. 41 and page 89 l. 41 of No. 16. At page 85 l. 41 he says :—

“ As the foundation of the Plaintiffs’ claim is false and their  
 “ evidence unreliable, no reliance can be placed on any of their  
 “ statements or claims, and there is no justification for believing  
 “ their evidence concerning non-payment of rent or consideration  
 “ to Hassan es Saiyid or Ali Abdulla Suleiman the tenants of the  
 “ Colonists.”

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No. 16, pp. 92, 95  
and 100.

16. On appeal (Civil Appeals 121/40, 123/40 and 124/40) the Supreme Court on the 22nd April 1940 delivered short judgments referring to the Settlement Officer’s findings of fact (“ in these circumstances we see no reason to interfere with his decision ”) and dismissing the Appeals.

17. The remaining claims (now the subject of Appeal No. 17) were claims by the Village Settlement Committee of Arab en Nufei’at to lands as common land of the tribe. These claims were all consolidated for purposes of hearing into Case No. 12/Nufei’at; but for purposes of judgment were split into two groups—those in which the claim was based merely on long and uninterrupted exercise of grazing, woodcutting and 40 camping rights (referred to as Case No. 12/Nufei’at Part II) and those also based on cultivation (Case No. 12/Nufei’at Part III).

No. 17, p. 82.

18. After hearing considerable evidence on the land the Settlement Officer gave his decision on Part II on the 21st March 1940, dismissing the claims.



He found as facts that it was the custom of the Arabs to pitch tents in the most convenient and accessible places according to the seasons and the occupations followed at the time, but that there had been no permanent settlement on any one parcel and that they had moved around within the general boundaries of the whole of the land ; that they took from time to time wild bushes and trees or the new growth round the stools of eucalyptus trees felled by the Respondents—using such wood for domestic and not for commercial purposes ; and that the Arabs' herds and flocks grazed over the disputed lands and cultivated lands adjoining after harvest.

p. 83, l. 43.

p. 84, l. 1.

p. 84, l. 8.

10 Having thus found the facts he considered how far such uses constituted possession adverse to the registered owners within the meaning of Article 20 of the Land Code (conferring prescriptive rights) ; and continued :—

20 “ In view of Article 5 of the Law regulating the right to dispose  
 “ of immoveable property 30th March 1329, that extended the  
 “ lawful uses of miri land, I would not go so far as to say that  
 “ cultivation is essential to-day to support a prescriptive claim as  
 “ the nature of the land may preclude cultivation, but where, as  
 “ here, the land is capable of cultivation and was once cultivated  
 “ by the Plaintiffs who acquired possession on payment of badl misl,  
 “ I do not consider the pitching of tents constitutes adverse  
 “ possession to upset the title of the registered owner. As to  
 “ woodcutting and grazing, these rights are recognised by the Land  
 “ Code. They may be enjoyed, acquired and maintained in  
 “ accordance with articles to be found in Book II of the Land Code  
 “ and are no rights that accrue to the public by prescription under  
 “ Article 20 of the Code.”

No. 17, p. 84, l. 41.

30 The Settlement Officer indicated (and clearly accepted) the case for the Defendants that the Arabs camped on the land by permission of the Defendants, that the Defendants paid the property tax, drained the swamps, planted the eucalyptus and exploited the lumber. He held that there was no abandonment of the land by the Defendants and concluded :—

“ The onus of proving possession is on the Plaintiffs and on the  
 “ facts and my conclusion as to facts set out in this decision I find  
 “ they have failed to do so. Consequently their claim must be  
 “ dismissed and is hereby dismissed and judgment entered in favour  
 “ of the Defendants.”

No. 17, p. 85, l. 24.

19. The Appellants' appeal to the Supreme Court (No. 125/40) was on the 22nd April 1941 dismissed for reasons given in the judgment as follows :—

No. 17, p. 92.

40 “ It is clear that grazing and woodcutting are rights which are  
 “ recognised by the law but I do not think that their exercise gives  
 “ any right to the land itself.

p. 93, l. 28.

“ As to camping, whether or not the pitching of tents on the  
 “ same spot for many years would give rise to prescriptive rights it  
 “ is not necessary to determine, as in this case the Settlement Officer  
 “ found that the tents were pitched in the most convenient and  
 “ accessible places according to the seasons and occupations followed

“ at the time. I do not think that by moving tents hither and thither over a tract of land the owners of the tents can establish prescriptive title to the land.”

The Supreme Court also quoted the passage of the Settlement Officer's decision already referred to in which he held that the presence of the Arabs was by permission, and that there had been no abandonment by the Respondents.

No. 17 p. 86. 20. The Settlement Officer gave his decision on Case No. 12/Nufei'at, Part III, dismissing the Appellants' claim to common land by cultivation, on the 5th April 1940. 10

After examining the evidence of alleged cultivation by the Appellants under a system of common ownership the Settlement Officer observed :—

No. 17, p. 88, l. 17. “ I come to the conclusion there never was any recognised system of ownership in masha' and that if the land was cultivated it was the work of individuals cultivating as and when they pleased without reference to any system of customary tenure . . . ”

l. 25. “ On the evidence of the Plaintiffs I also find no continuous cultivation of the hollows as they claim. The evidence-in-chief of Plaintiffs' witnesses was always the same but in examination 20 discrepancies and serious contradictions appeared. The evidence is not sound and unshaken and cannot be accepted as reliable, and since adverse possession must be strictly proved I find the Plaintiffs' claim is not proved . . . ”

l. 42. “ In Part II of this decision reasons were given for rejecting as unreliable the evidence of the Plaintiffs and in this claim I reject their evidence also.

“ I do not find it necessary to enquire into the authenticity of the leases relied upon by the Defendants as I am satisfied that the lands have never been cultivated by the Plaintiffs . . . ” 30

p. 89, l. 3. “ Having found the Plaintiffs' claim to ownership by prescriptive right not proved, their claim is hereby dismissed and judgment entered in favour of the Defendants.”

No. 17, p. 97. 21. The Appellants' (Plaintiffs) Appeal to the Supreme Court (No. 126/40) was on the 22nd April 1941 dismissed, on the ground that the Settlement Officer, having gone fully into the facts, had found that the Appellants had not cultivated the land.

p. 99, l. 20. The judgment of the Supreme Court referred also to the claim based on grazing, woodcutting and camping but stated that the position as to that was the same as in Civil Appeal No. 125/40 (above referred to). 40

22. The Respondents to the present Appeals hereby submit :—

(1) That the Appellants, in order to be successful, must upset concurrent findings of fact by the Settlement Officer and the Supreme Court.

(2) That those findings of fact, made first by the Settlement Officer upon the evidence adduced and on inspection of the land and afterwards upheld by the Supreme Court, should not now be set aside.

(3) That there can be no reason for interfering with the conclusions of the Settlement Officer, who had ample opportunity for observing the witnesses, that the evidence adduced on behalf of the Appellants' claims was untrustworthy or false ; and that there is no ground for admitting any further evidence in the matter.

10 (4) That with regard to the claims based on grazing, wood-cutting and camping the Settlement Officer's statement of the law upheld by the Supreme Court, is correct.

(5) That these appeals are frivolous and without substance.

23. The Respondents submit that the Appellants' Appeals should be dismissed for the following among other

### REASONS.

(1) Because the decision of the Settlement Officer and the judgment of the Supreme Court were, upon fact and law, right and should be upheld.

20 (2) Because there was ample evidence upon which the Settlement Officer and the Supreme Court could find the facts as they did and there are no grounds for calling such findings in question.

(3) Because, with regard to Appeal No. 16 of 1944, if the Appellants or their predecessors at any material time occupied or cultivated any land the subject of this appeal they did so as tenants and had no possession adverse to the Respondents.

30 (4) Because neither the Appellants nor their predecessors nor the members of the Appellants' tribe at any material time cultivated any land the subject of this Appeal under any system of customary tenure or in any way save by the permission or as tenants of the Respondents ; and because grazing over, woodcutting on, or from time to time pitching tents on land cannot in law give any prescriptive or other right to possession or ownership of such land.

(5) Because it was for the Appellants to prove their prescriptive claims and this they failed to do.

40 (6) Because there are concurrent findings of fact against the Appellants on all points material to these Appeals.

PHINEAS QUASS.

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**In the Privy Council.**

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

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BETWEEN

No. 16 of 1944.

FATIMA AHMAD AL'AFIFI and

Others

*Appellants*

v.

THE GOVERNMENT OF  
PALESTINE, YOSEF YA'AQOV

BERVITZ and Others

*Respondents.*

AND BETWEEN

No. 17 of 1944.

THE VILLAGE SETTLEMENT  
COMMITTEE OF ARAB EN  
NUFEI'AT

*Appellants*

v.

AHARON SAMSONOV and Others - *Respondents.*

(Consolidated.)

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CASE FOR THE RESPONDENTS AS  
MENTIONED WITHIN.

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