

40. 1946

No. 16 of 1944.

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF PALESTINE

UNIVERSITY OF LONDON
W.C. 1
OCT 1956
INSTITUTE OF
LEGAL STUDIES

44451

BETWEEN

FATIMA AHMAD AL'AFIFI and Others (Plaintiffs) - - Appellants

AND

**THE GOVERNMENT OF PALESTINE YOSEF YA'AQOV
BERVITZ and Others (Defendants) - - - Respondents.**

RECORD OF PROCEEDINGS.

STONEHAM & SONS,
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LONDON, E.C.4,
Solicitors for the Appellants.

T. L. WILSON & CO.,
6 WESTMINSTER PALACE GARDENS,
LONDON, S.W.1,
Solicitors for the Respondents.

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF PALESTINE.

BETWEEN

1. FATIMA AHMAD AL'AFIFI
2. AMNA HASSAN AL 'ATTAR
3. AISHA HUSSEIN EL 'ALI
4. MUHAMMAD ALI ABDALLAH
5. AMDUL LATIF ALI ABDALLAH
6. MUHMUD ALI ABDALLAH
7. JAMIL ALI ABDAALAH
8. ABDALLAH ALI ABDALLAH
9. AHMAD ALI ABDALLAH
10. SA'AD ALI ABDALLAH
11. MUHAMMAD SHAFIQ ALI ABDALLAH
12. HUSEIN ALI ABDALLAH
13. SHEIKHA ALI ABDALLAH
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16. ALYA ALI ABDALLAH
17. ABDALLAH MUSTAFA ABDALLAH
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21. AYISH MUHAMAD HUMAIDAN
22. MUBARAK SULAIMAN MUBARAK
23. AWAD SAQR SULEIMAN
24. ALI HASSAN AL-SAYID
25. SA'AD SAQR SULAIMAN - - - *Appellants*

AND

1. THE GOVERNMENT OF PALESTINE
2. YOSEF YA'AQOV BERVITZ
3. MOSHE BEN TZIYON SUSSMAN
4. RIFQA BAT MORDKHAI HURVITZ
5. MOSHE TURETZ
6. ZVI BEN MORDEKHAI SOLONOVITCH
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104. YITSHAQ LAMBURG
105. FANIA (FEIGO) SPERO
106. TANIA RAZEMOVISKA
107. RACHEL (RU) SOIKANON

Respondents.

(Consolidated Appeals.)

RECORD OF PROCEEDINGS.

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In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF PALESTINE.

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Respondents

(Consolidated Appeals.)

50 **RECORD OF PROCEEDINGS.**

*Before the
Settlement
Officer.*

PART I.

No. 1.

MEMORANDUM OF CLAIM No. 364.

No. 1.

Case No. 2/
Nufei'at.
Memo-
randum of
Claim
No. 364.
25th
November
1936.

Before the Settlement Officer, Haifa Settlement Area.

Sub-District : Haifa

Village :—Hadera-Nufei'at.

Reg. Block : Name———No. 10572.

Prov. Parcel No. 8-9a-10a-11e-16b-17a.

1. Ali Abdallah el Suleiman : Arab en Nufei'at : In whole.

2. Miri.

3. Proprietorship.

10

4. By inheritance and possession for a period exceeding the legal period.

5. Not registered.

6. —————

7. Arable land. North :—Block 10580, Parcels 1 and 3 : Barreh El Hawakir el Sharkeih.

East :—Parcels 3, 4 : Awad Saqr Suleiman and Ali Hassan Es Sayyid.

South :—Road.

West :—Block 10572 : Ali Abdallah Suleiman and Awad Saqr Suleiman and the Waqf.

20

8. 160 dunums approximately.

9. —————

10. —————

11. —————

12. Tithes receipts and evidence of witnesses.

13. —————

14. I, Ali Abdallah El Suleiman, of Arab En-Nufei'at, hereby take oath and swear (or solemnly affirm) 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.

30

(Sgd.) ALI EL ABDALLAH EL SULEIMAN

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

(Sgd.) M. ALHASSID

Assistant Settlement Officer.

Date—25.11.1936.

Area—Haifa.

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

Members of Village Settlement

Committee of Arab en Nufei'at

40

(Sgd.) FAHIM IBRAHIM EL HAJIBI

,, ALI HASSAN ES-SAYYED.

Date—25.11.1936.

Place : Arab en Nufei'at.

Claim No. 364

*Before the
Settlement
Officer.*

	Block No.	P.P. No.	F.P. No.	Govt. Claim.	Jewish Claim.	Case 2/Nuf.	No. 1. Case No. 2/ Nufei'at. Memo- randum of Claim No. 364. 25th November 1936, <i>continued.</i>
10	10572	8			91		
	10572	9a			92		
	10572	10a			93		
	10572	11e			88		
	10572	16b			98		
	10572	17a			99		
	10571	1a			56		
	10571	1c			56		
	10571	22a			76		
	10571	23a			77		
	10571	24a			78		
	10571	25a			79		
	10571	26a			80		

No. 2.**CASE No. 7/Nufei'at.****MEMORANDUM OF CLAIM No. 369.****No. 2.**
Case No. 7/
Nufei'at,
Memo-
randum
of Claim
No. 369,
25th
November
1936.

20 Sub-District : Haifa. Reg. Block : Name———No. 10571.

Village : Hadera-Nufei'at. Prov. Parcel No. 5b-7-8-11-12-13-28a.

1. Ali Abdallah el Suleiman Arab en- 1 Share
Abdullah Mustafa Abdullah. Nufei'at. 1 Share

2. Miri.

3. Ownership.

4. By inheritance and old possession for a period exceeding the prescriptive period.

5. Not registered.

6. _____

- 30 7. Arable land. Boundaries : North : Hefzi Bah and Road.
East : Parcels 8, 9 ; Abd el Rahman
El Mahlab and Abd el Fattah
abu Tamam.
South : Road.
West : Block 10580 ; Barret el Hawakir
esh Sharkieh.

8. 55 dunums approximately.

9. _____

10. _____

40 11. _____

12. Tithe receipts and evidence of witnesses.

13. _____

*Before the
Settlement
Officer.*

No. 2.
Case No. 7/
Nufei'at,
Memo-
randum
of Claim
No. 369,
25th
November
1936,
continued.

14. We, Ali Abdullah Sleiman and Abdullah Mustafa Abdullah, hereby take oath and swear (or solemnly affirm) 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.

(Sgd.) ABDALLAH EL MUSTAFA EL ABDALLA
ALI ABDALLA SULEIMAN ABDALLA.

Read over to signatories and sworn to and signed by them in my presence.

(Sgd.) M. ALHASSID

Assistant Settlement Officer. 10

Date—25.11.1936

Area—Haifa.

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

Members of Village Settlement
Committee of Arab en-Nufei'at.

(Sgd.) FAHIM IBRAHIM EL HAJIBI
" ALI HASSAN ES SAYYED.

Date—25.11.1936

Place—Arab en-Nufei'at.

20

Claim No. 369.

Block No.	P.P. No.	F.P. No.	Govt. Claim.	Jewish Claim.	Case 7/Nuf.
10571	5b		—	60	
10571	7		—	62	
10571	8		—	63	
10571	11		—	66	
10571	12		—	67	
10571	13		—	68	
10571	28a		—	56	30

No. 2a.
Parcel
identifica-
tion sheet.

No. 2a.

**LAND SETTLEMENT OF PALESTINE.
PARCEL IDENTIFICATION SHEET**

(only for Villages with unofficial Land Books).

Village—Hudeira. Reg. Block— Provisional Parcel No.—

Final parcel No.— Area—

PART I. DESCRIPTION OF PARCEL AS RECORDED IN COLONY LAND BOOK.

1. Page : 444. Parcel No. 1003. Area—23,597/900 Dunums.

2. Parcel Boundaries : North : Lachman.

East : 770—Vaadya & Partners.

South : Road and Hurvitz.

West : Bahn.

40

PART II. INTERESTS AND NAMES OF PERSONS IN COLONY LAND BOOK.

*Before the
Settlement
Officer.*

1. Interest : Miri proprietorship.

2. Name(s) Share(s)
V'daya Yesha'ayahu 4Address(es)
J'lem, Zichron
Moshe B'Itshak Moshe 3
Tchujhanov Benziyon 5
Shaulov Ahliav Hayim 2
Kimyagarov Eliyahu 2,, , Bukharian
Qrtr.No. 2a.
Parcel
identifica-
tion sheet,
continued.

10

16

3. Date of Record—25 Iyar 5684 (1924).

4. How acquired and when : By combination of their separate properties
purchased from A. Lonson, 25 Iyar 5684
(1924).

5. Observations :

6. Date Form Cl. 46 sent : 4.6.29, 18.6.29 : or Notice published in
Official Gazette :—

7. Serial No. of Memorandum of Claim— Date—

8. Observations.

20

No. 3.

CASE No. 16/Nufei'at.

MEMORANDUM OF CLAIM No. 378.

Sub-District—Haifa.

Village—Hadera-Nufei'at. Reg. Block. Name— No. 10572
Prov. Parcel No. 3d-4p-5a-6a-9.

1. Ali Abdullah Suleiman, Arab en Nufei'at. In whole.

2. Miri.

3. Ownership.

30 4. By inheritance and old possession for a period exceeding the prescriptive
period.

5. Not registered.

6. ————

7. Arable land. Boundaries : North : Parcel 2-Masha' Mauqa' el 'Urf.
East : Block 10571, Ali Abdullah
Suleiman
South : Parcel 5- 'Awad Saqr Suleiman.
West : Parcels 12, 13- Muhammad
Abdullah Marzouq and Ayesha
Hussin Ali.No. 3.
Case No.
16/Nufei'at
Memo-
randum
of Claim
No. 378,
25th
November
1936.

40 8. 60 dunums approximately.

9. ————

10. ————

11. ————

*Before the
Settlement
Officer.*

No. 3.
Case No.
16/Nufei'at,
Memo-
randum
of Claim
No. 378,
25th
November
1936.

12. Tithe certificates and evidence of witnesses.

13. _____

14. I, Ali Abdalla Suleiman, hereby take oath and swear (or solemnly affirm) 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.) ALI EL ABDALLA SULEIMAN.

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

(Sgd.) M. ALHASSID

Assistant Settlement Officer. 10

Area—Haifa.

Date—25.11.1936.

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

Members of Village Settlement
Committee of Arab en-Nufei'at.

(Sgd.) FAHIM IBRAHIM EL HAJIBI

„ ALI HASSAN ES SAYYED.

Date—25.11.1936.

Place—Arab-en-Nufei'at.

20

Claim No. 378.

Block No.	PP. No.	F.P. No.	Govt. Claim.	Jewish Claim.	Case 16/Nuf.
10572	3d		—	83	
10572	4p		—	87	
10572	5a		—	88	
10572	6a		—	89	
10572	9		—	92	

No. 4.
Case No.
49/Nufei'at,
Memo-
randum
of Claim
No. 411,
25th
November
1936.

No. 4.

CASE No. 49/Nufei'at.

MEMORANDUM OF CLAIM No. 411.

30

Sub-District—Haifa.

Village : Hadera-Nufei'at. Reg. Block : Name—No. 10574
Prov. Parcel No. 22d–24d.

1. Ali Abdullah El Suleiman. Arab en Nufei'at. In whole.
2. Miri.
3. Ownership.
4. By inheritance and old possession for a period exceeding the prescriptive period.
5. Not registered.

40

6. _____

7. Store (Cave) and threshing-floor.

North : Parcel 20 : Hasan Abdallah Johar.

East. Road.

South. Parcel 18 : Awad Ibrahim Abu Hatsa.

West. Parcel 11 : Ali Abdallah Marzouq.

8. 7 dunums approximately.

9. _____

10. _____

10 11. _____

12. _____

13. _____

14. I, Ali Abdallah Suleiman, hereby take oath and swear (or solemnly affirm) 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.) ALI EL ABDALLA SULEIMAN.

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

(Sgd.) M. ALHASSID

20

Assistant Settlement Officer.

Date—25.11.1936

Area—Haifa.

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

Village Settlement Committee, Arab en-Nufei'at.

(Sgd.) FAHIM IBRAHIM EL HAJIBI

„ ALI HASSAN ES SAYYED.

Date—25.11.1936

Place—Arab en Nufei'at.

30 Claim No. 411.

Block No.	P.P. No.	F.P. No.	Govt. Claim.	Jewish Claim.	Case No./Nuf.
10574	22d		—	148	
10574	24d		—	150	

*Before the
Settlement
Officer.*

No. 4.
Case No.
49/Nufei'at,
Memo-
randum
of Claim
No. 411,
25th
November
1936,
continued.

*Before the
Settlement
Officer.*

No. 5.

CASE No. 66/Nufei'at.

MEMORANDUM OF CLAIM No. 428.

No. 5.
Case No.
66/Nufei'at,
Memo-
randum
of Claim
No. 428,
20th
December
1936.

Sub-District : Haifa.

Village : Hadera Nufei'at. Reg. Block : Name _____ No. 10575.

Prov. Parcel No. 5b-7a-13a.

1. Ali Abdallah Suleiman. Arab en Nufei'at. In whole.
2. Miri.
3. Ownership.
4. By inheritance and old possession for a period exceeding the prescriptive 10 period.
5. Not registered.
6. _____
7. Cultivable land. North : Parcel 3 : Fahim el Hajibi
East : Parcel 8 : Masha' Mauqa' 'ata.
South : Parcel 9 : " "
West : Parcel 6 : Isa Abdallah 'atta
8. 100 dunums approiximately.
9. _____
10. _____
11. _____
12. Tithe records and evidence of witnesses.
13. _____
14. I, Ali Abdallah Suleiman, hereby take oath and swear (or solemnly affirm) 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.) ALI EL ABDALLAH.

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

(Sgd.) M. ALHASSID,

20

30

Date—20.12.1936.

Assistant Settlement Officer.

Area—Haifa.

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

Village Settlement Committee of Arab en Nufei'at.

(Sgd.) FAHIM IBRAHIM EL HAJIBL

Date—20.12.1936.

„ ALI HASSAN ES SAYYED.

Place—Arab en Nufei'at.

Claim No. 428.

Block No.	P.P. No.	F.P. No.	Govt. Claim.	Jewish Claim.
10575	5b		—	157
10575	7a		—	159
10575	13a		—	165

40

No. 6.

CASE No. 95/Nufei'at.

MEMORANDUM OF CLAIM No. 457.

Withdrawn (*not printed*).

No. 7.

CASE No. 6/Nufei'at.

MEMORANDUM OF CLAIM No. 368.

Sub-District—Haifa.

Village—Hadera Nufei'at.

Reg. Block : Name—No. 10571.

Prov. Parcel No. 13c-14-15-16a-17c-
18b-19b-27a.

1. Fahim Ibrahim Isa al Hajibi. Arab en Nufei'at. In whole.
2. Miri.
3. Ownership.
4. By inheritance and long possession for a period exceeding the prescriptive period.
5. Not registered.

6. —————

7. Arable land. Boundaries : North : Road.

East : Road.

South : Parcel 5, Ali Hussein es Sayyed.

West : Block 10580.

Barret el Hawakir esh Sharkieh.

8. 40 dunums approximately.

9. —————

10. —————

11. —————

12. Tithes receipts and evidence of witnesses.

13. —————

- 30 14. I, Fahim Ibrahim Isa el Hajibi, hereby take oath and swear (or solemnly affirm) 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.) FAHIM IBRAHIM EL ISA EL HAJIBI.

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

(Sgd.) M. ALHASSID,

Assistant Settlement Officer

Date—15.11.1936.

Area—Haifa.

*Before the
Settlement
Officer.*No. 6.
Case No.
95/Nufei'at,
Memo-
randum
of Claim
No. 457,
27th
December
1936.No. 7.
Case No.
6/Nufei'at,
Memo-
randum
of Claim
No. 368,
25th
November
1936.

Before the
Settlement
Officer.

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

Members of Village Settlement Committee, Arab en
Nufei'at.

(Sgd.) FAHIM IBRAHIM EL HAJIBI.
ALI HASSAN ES SAYYED.

No. 7.
Case No.
6/Nufei'at,
Memo-
randum
of Claim
No. 368,
25th
November
1936,
continued.

Date—25.11.1936.

Place—Arab en-Nufei'at.

Claim No. 368.

Block No.	P.P. No.	F.P. No.	Govt. Claim.	Jewish Claim.	Case 6/Nuf.
10571	13c		—	68	10
10571	14		—	69	
10571	15		—	70	
10571	16a		—	71	
10571	17c		—	72	
10571	18b		—	73	
10571	19b		—	74	
10571	27a		—	81	

No. 8.
Case No.
18/Nufei'at,
Memo-
randum
of Claim
No. 380,
25th
November
1936.

No. 8.

CASE No. 18/Nufei'at.

MEMORANDUM OF CLAIM No. 380.

20

Sub-District—Haifa.

Village—Hadera-Nufei'at.

Reg. Block : Name—No. 10572.

Prov. Parcel. No. 4a-4d-4g-11c.

1. Fahim Ibrahim Isa al Hajibi. Arab en Nufei'at. In whole.

2. Miri.

3. Ownership.

4. By inheritance and possession for a period exceeding the period of prescription.

5. Not registered.

6. _____

7. Arable land. Boundaries : North : Parcel 7, Mohd. Mihsen el 'Ukkasheh.

East : Parcel 13, Mohd. Abdallah Marzuq.

South : Parcels 5 & 9, Awad Saqr Suleiman and Sa'ad Saqr Suleiman.

West : Block 10581, Barrat el 'Urf.

8. 35 dunums approximately.

9. _____

30

40

10. _____
 11. _____
 12. Tithe records and evidence of witnesses.
 13. _____
 25th November 1936.

*Before the
Settlement
Officer.*

Claim No. 380.

	Block No.	PP. No.	Govt. Claim.	Arab Claim.	Case 17/Nuf.
	10572	4a	—	84	
10	10572	4d	—	85	
	10572	4g	—	86	
	10572	11c	—	88	

No. 8.
18/Nufei'at,
Memo-
randum
of Claim
No. 380,
25th
November
1936,
continued.

No. 9.

CASE No. 38/Nufei'at.

MEMORANDUM OF CLAIM No. 400.

Sub-District—Haifa.

Village—Hadera-Nufei'at.

Reg. Block : Name—No. 10574.

Prov. Parcel No. 7a-8-9-10-11a-12a.

No. 9.
Case No.
38/Nufei'at,
Memo-
randum
of Claim
No. 400,
25th
November
1936.

- 20 1. Fahim Ibrahim Issa El Hajibi, Saleh Ibrahim Isa el Hajibi. Arab
 en Nufei'at. 1 share each.
 2. Miri.
 3. Ownership.
 4. By inheritance and old possession for a period exceeding the prescriptive
 period.
 5. Not registered.
 6. _____
 7. Arable land. North : Parcels 5, 6—Muhammad Abdallah el Abed
 and Ali es Sayyad.
 East : Parcels 5, 9—Ali es Sayyed and Abdel Qader
 ed Dalileh.
 South : Block 10583, Groves of Malissa.
 West : Parcel 7, Salem Ibrahim el Hamd and his
 partner.
 8. 50 dunums approximately.
 9. _____
 10. _____
 11. _____
 12. Tithe records and evidence of witnesses.
 13. _____
 40 14. We, Fahim Ibrahim Isa el Hajibi and his brother Saleh, of Arab en
 Nufei'at, hereby take oath and swear (or solemnly affirm) 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.

(Sgd.) FAHIM IBRAHIM EL ISA EL HAJIBI.
 Thumbprint of SALEH IBRAHIM ISA EL HAJIBI.

Before the
Settlement
Officer.

Read over to signatories and sworn to and signed by them in my presence.

(Sgd.) M. ALHASSID,

Assistant Settlement Officer.

No. 9.
Case No.
38/Nufei'at,
Memo-
randum
of Claim
No. 400,
25th
November
1936,
continued.

Date—25.11.1936.

Area—Haifa.

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

Members of Village Settlement Committee
of Arab en Nufei'at.

10

(Sgd.) FAHIM IBRAHIM EL HAJIBI.

„ ALI HASSAN ES SAYYED.

Date—25.11.1936.

Place—Arab en Nufei'at.

Claim No. 400.

Block No.	P.P. No.	F.P. No.	Govt. Claim.	Jewish Claim.	Case 38/Nuf.
10574	7a		—	132	
10574	8		—	134	
10574	9		—	135	
10574	10a		—	136	
10574	11a		—	137	
10574	12a		—	138	

20

No. 10.
Case No.
62/Nufei'at,
Memo-
randum
of Claim
No. 424,
20th
December
1936.

No. 10.

CASE No. 62/Nufei'at.

MEMORANDUM OF CLAIM No. 424.

Sub-District—Haifa.

Village—Hadera-Nufei'at.

Reg. Block : Name— No. 10575.

Prov. Parcel, No. 3a-4-5-13.

1. Fahim Ibrahim Isa el Hajibi } Arab en Nufei'at. 1 Share. 30
Saleh Ibrahim Isa el Hajibi }
Abder Rahman Isa Ahmad el Hajibi } „

2. Miri.

3. Ownership.

4. By inheritance and old possession for a period exceeding the prescribed period.

5. Not registered.

6. _____

7. Cultivable. North : Road.

East : Parcel 4, eucalyptus.

South : Parcels 6, 7—Ali Abdalla Suleiman and Isa Abdalla 'atta.

West : Salem Ibrahim Hamd—Parcel 2.

40

8. 80 dunums approximately.
 9. _____
 10. _____
 11. _____
 12. Tithe records and evidence of witnesses.
 13. _____

*Before the
Settlement
Officer.*

No. 10.
Case No.
62/Nufei'at,
Memo-
randum
of Claim
No. 424,
20th
December
1936,
continued.

- 10 14. I, Fahim Ibrahim Isa el Hajibi, of Arab en Nufei'at, hereby take oath and swear (or solemnly affirm) 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 out therein.

(Sgd.) FAHIM IBRAHIM ISA EL HAJIBI.

Thumbprint of ABDEL RAHMAN ISA AHMAD EL HAJIBI.

Thumbprint of SALEH IBRAHIM ISA EL HAJIBI.

Read over to signatories and sworn to and signed by them in my presence.

(Sgd.) M. ALHASSID,

Assistant Settlement Officer.

Date—20.12.1936.

Area—Haifa.

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

Village Settlement Committee Arab Nufei'at.

(Sgd.) ALI EL ABDALLAH.

„ FAHIM IBRAHIM EL HAJIBI.

Date—20.12.1936.

Place—Arab en Nufei'at.

Claim No. 424.

	Block No.	P.P. No.	F.P. No.	Govt. Claim.	Jewish Claim.	Case 62/Nuf.
30	10575	3a		—	155	
	10575	4		—	156	
	10575	5		—	157	
	10575	13		—	165	

No. 11.

CASE No. 63/Nufei'at.

MEMORANDUM OF CLAIM No. 425a.

Withdrawn (*not printed*).

No. 11.
Case No.
63/Nufei'at,
Memo-
randum
of Claim
No. 425a,
16th
January
1938.

Before the
Settlement
Officer.

No. 12.

CASE No. 97/Nufei'at.

MEMORANDUM OF CLAIM No. 459.

No. 12.
Case No.
97/Nufei'at,
Memo-
randum
of Claim
No. 459,
20th
December
1936.

Sub-District—Haifa.

Village—Hadera-Nufei'at.

Reg. Block : Name— No. 10583.
Prov. Parcel No. : 11d.

- | | | | |
|--|------------------|----------|----|
| 1. Fahim Ibrahim Issa el Hajibi. | Arab en Nufei'at | 1 share | |
| 'Ayesb Muhammad Humeidan. | | 1 share. | |
| Saleh Ibrahim Isa el Hajibi | | 1 share. | |
| Mubarak Suleiman Mubarak. | | 1 share. | 10 |
| 2. Miri. | | | |
| 3. Ownership. | | | |
| 4. By inheritance and old possession for a period exceeding the prescriptive period. | | | |
| 5. Not registered. | | | |
| 6. _____ | | | |
| 7. Hakura and threshing floor. | | | |
| 8. 6 dunums approximately. | | | |
| 9. _____ | | | |
| 10. _____ | | | 20 |
| 11. _____ | | | |
| 12. _____ | | | |
| 13. _____ | | | |
| 14. We, Fahim Ibrahim Isa el Hajibi and partners, hereby make oath and swear (or solemnly affirm) 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. | | | |

(Sgd.) FAHIM IBRAHIM EL HAJIBI.

Thumbprint of MUBARAK SULEIMAN MUBARAK.

Thumbprint of SALEH IBRAHIM ISA EL HAJIBI. 30

Read over to signatories and sworn to and signed by them in my presence.

(Sgd.) M. ALHASSID,
Assistant Settlement Officer.

Date—20.12.1936.

Area—Haifa.

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

Village Settlement Committee of Arab en
Nufei'at.

(Sgd.) FAHIM IBRAHIM EL HAJIBI.

„ ALI HASSAN ES-SAYYED.

Date—20.12.1936.

Place—Arab en Nufei'at.

Claim No. 459.

Block No.	P.P. No.	F.P. No.	Govt. Claim.	Jewish Claim.	Case 97/Nuf.
10583	11d		—	327	

No. 13.

CASE No. 98/Nufei'at.

MEMORANDUM OF CLAIM No. 460.

*Before the
Settlement
Officer.*No. 13.
Case No.
98/Nufei'at,
Memo-
randum
of Claim
No. 460,
20th
December
1936.

Sub-District—Haifa.

Village—Hadera-Nufei'at.

Reg. Block. Name— No. 10583.

Prov. Parcel No. : 9c-11.

- 10 1. Fahim Ibrahim Isa el Hajibi. Arab en Nufei'at 1 Share.
 'Ayish Muhammad Humeidan. 1 Share.
 Salih Ibrahim Isa el Hajibi 1 Share.
 Mubarak Suleiman Mubarak. 1 Share.
2. Miri.
3. Ownership.
4. By inheritance and old possession for a period exceeding the prescriptive period.
5. Not registered.
6. _____
7. Hakura, stores, threshing-floors and caves.
 North : Road.
 East : Road.
20 South : Parcel 7—Suleiman Abu Tamin.
 West : Parcel 1 and Road ; grove and road.
8. 10 dunums, approximately.
9. _____
10. _____
11. _____
12. _____
13. _____
- 30 14. We, Fahim Ibrahim Issa El-Hajibi and partners of Arab en Nufei'at, hereby take oath and swear (or solemnly affirm) 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.

(Sgd.) FAHIM IBRAHIM ISA EL-HAJIBI.

Thumbprint of MUBARAK SULEIMAN MUBARAK.

Thumbprint of SALIH IBR. ISA EL HAJIBI.

(Sgd.) 'AYISH.

Read over to signatories and sworn to and signed by them in my presence.

(Sgd.) M. ALHASSID,

Asistant Settlement Officer.

40

Date—20.12.1936.

Area—Haifa.

Before the
Settlement
Officer.

No. 13.
Case No.
98/Nufei'at,
Memo-
randum
of Claim
No. 460,
20th
December
1936,
continued.

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

Village Settlement Committee of Arab en Nufei'at.

(Sgd.) FAHIM IBRAHIM EL HAJIBI

,, ALI HASSAN ES-SAYYED.

Date. 20.12.1936.

Place—Arab en Nufei'at.

Claim No. 460.

Block No.	P.P. No.	F.P. No.	Govt. Claim.	Jewish Claim.	10
10583	9c		—	325	
10583	11		—	327	

No. 14.
Case No.
3/Nufei'at,
Memo-
randum
of Claim
No. 365,
25th
November
1936.

No. 14.

CASE No. 3/Nufei'at.

MEMORANDUM OF CLAIM No. 365.

Sub-District—Haifa.

Village—Hadera-Nufei'at. Reg. Block : Name— No. 10571

Prov. Parcel No. : 1b-24b-25-26-27d.

- | | | | |
|--------------------------|----------|---------|----|
| 1. Ali Hassan Es Saiyid. | Arab en | 1 Share | 20 |
| Sa'ad Saqr es-Suleman | Nufei'at | 1 Share | |
| 'Awad Saqr Suleiman | | 1 Share | |

2. Miri.

3. Ownership.

4. By inheritance and possession for a period exceeding the legal period.

5. Not registered.

6. _____

7. Arable land. North : Parcels 2, 4 : Awad Saqr Suleiman and Ali Abdallah Suleiman.

East : Parcel 4 and road.

South : Road.

West : Parcel 2.

30

8. 45 dunums approximately.

9. _____

10. _____

11. _____

12. Tithes records and evidence of witnesses.

13. _____

14. We, the undersigned, hereby take oath and swear (or solemnly affirm) that the particulars stated by us in Memorandum of Claim are true and correct and that all information affecting the validity of our claim is truly set forth therein.

(Sgd.) ALI EL HASSAN ES SAYYAD.
Thumbprint of AWWAD SAQR SULEIMAN
Thumbprint of SA'D SAQR SULEIMAN

Date—25.11.1936.

Area—Haifa

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

Members of Village Settlement Committee of Arab en Nufei'at.

(Sgd.) FAHIM IBRAHIM EL HAJIBI

„ ALI HASSAN ES SAYYED.

Date—25.11.1936.

Place—En Nufei'at.

Claim No. 365.

20	Block No.	P.P. No.	F.P. No.	Govt. Claim.	Jewish Claim.
	10571	1b		—	56
	10571	24b		—	78
	10571	25		—	79
	10571	26		—	80
	10571	27d		—	81

No. 15.

CASE No. 4/Nufei'at.

MEMORANDUM OF CLAIM No. 366.

Sub-District—Haifa.

- 30 Village—Hadera Nufei'at. Reg. Block : Name———No. 10571.

Prov. Parcel No. : 20a-21a-22-23-24-25b-27c.

1. Awwad Saqr Suleiman, of Arab en Nufei'at. In whole.
2. Miri.
3. Ownership.
4. By inheritance and possession for a period exceeding the legal prescriptive period.
5. Not registered.
6. _____

Before the Settlement Officer.

No. 14.
Case No.
3/Nufei'at,
Memo-
randum
of Claim
No. 365,
25th
November
1936,
continued.

No. 15.
Case No.
4/Nufei'at,
Memo-
randum
of Claim
No. 366,
25th
November
1936.

*Before the
Settlement
Officer.*

No. 15.
Case No.
4/Nufei'at,
Memo-
randum
of Claim
No. 366,
25th
November
1936,
continued.

7. Arable land. North : Block 10580 and Parcel 5. Ali Hassan Es Saiyid.
East : Road.
South : Parcel 3 ; Ali Hassan es Saiyid.
West : Parcel 2 and 3 : Ali Abdallah Suleiman and Ali Hassan Es Sayyed.

8. 60 dunums approximately.

9. _____

10. _____

11. _____

12. Tithes records and evidence of witnesses.

13. _____

14. I, Awwad Saqr es Suleiman of Arab en Nufei'at, hereby take oath and swear (or solemnly affirm) 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.

Thumbprint of AWWAD SAQR SULEIMAN.

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

(Sgd.) M. ALHASSID,

Assistant Settlement Officer. 20

Date—25.11.1936.

Area—Haifa.

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

Members of Village Settlement Committee of Arab en Nufei'at.

(Sgd.) FAHIM IBRAHIM EL HAJIBI.

„ ALI HASSAN ES-SAYYED.

Date—25.11.1936.

Place—Arab en Nufei'at.

30

Claim No. 366.

Block No.	P.P. No.	F.P. No.	Govt. Claim.	Jewish Claim.	Case 4/Nuf.
10571	20a			75	
10571	21a			56	
10571	22			76	
10571	23			77	
10571	24			78	
10571	25b			79	
10571	27c			81	

40

No. 16.

CASE No. 5/Nufei'at.

MEMORANDUM OF CLAIM No. 367.

*Before the
Settlement
Officer.*

No. 16.
Case No.
5/Nufei'at,
Memo-
randum
of Claim
No. 367,
25th
November
1936.

Sub-District—Haifa.

Village—Hadera-Nufei'at. Reg. Block : Name—————No. 10571
Prov. Parcel No. 17a-18a-19a-20b-21b-22c-
27-27b.

1. Ali Hassan es Sayyad. Arab en Nufei'at. 1 Share
Sa'd Saqr Suleiman 1 Share
- 10 Awwad Saqr Suleiman. 1 Share
2. Miri.
3. Ownership.
4. By inheritance and long possession for a period exceeding the legal prescriptive period.
5. Not registered.
6. _____
7. Arable land. North : Block 10580 & Parcel 6 : Fahim Ibrahim Isa el Hajibi.
East : Road.
South : Parcel 4 ; Awad Saqr Suleiman.
20 West : Block 10580. Barret El Hawaqir esh-Sharqieh.
8. 70 dunums approximately.
9. _____
10. _____
11. _____
12. Tithe records and evidence of witnesses.
13. _____
- 30 14. We, Ali Hassan es Sayyed, Awwad Saqr Suleiman and Sa'd Saqr Suleiman of Arab en Nufei'at, hereby take oath and swear (or solemnly affirm) that the particulars stated in the Memorandum of Claim are true and correct and that all information affecting the validity of our claim is truly set forth therein.

(Sgd.) ALI EL HASSAN SAYYED.

Thumbprint of AWWAD SAQR SULEIMAN.

Thumbprint of SA'D SAQR SULEIMAN.

Read over to signatories and sworn to and signed by them in my presence.

(Sgd.) M. ALHASSID,

Assistant Settlement Officer.

Dated—15.11.1936.

Area—Haifa.

*Before the
Settlement
Officer.*

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

Members of Village Settlement Committee
of Arab en-Nufei'at.

(Sgd.) FAHIM IBRAHIM EL HAJIBI.

„ ALI HASSAN ES SAYYED.

Date—25.11.1936.

Place—Arab en Nufei'at.

Claim No. 367.

No. 16.
Case No.
5/Nufei'at,
Memo-
randum
of Claim
No. 367,
25th
November
1936,
continued.

Block No.	P.P. No.	F.P. No.	Govt. Claim.	Jewish Claim.	Case 5/Nuf.	10
10571	17a		—	72		
10571	18a		—	73		
10571	19a		—	74		
10571	20b		—	75		
10571	21b		—	56		
10571	22c		—	76		
10571	27		—	81		
10571	27b		—	81		

No. 17.
Case No.
15/Nufei'at,
Memo-
randum
of Claim
No. 377,
25th
November
1936.

No. 17.

20

CASE No. 15/Nufei'at.

MEMORANDUM OF CLAIM No. 377.

Sub-District—Haifa.

Village—Hadera Nufei'at.

Reg. Block. Name— No. 10572.

Prov. Parcel. No. : 4k-4n-5b-5c-9b-10
-11d-12a-14-16.

1. Awwad Saqr Suleiman. Arab en Nufei'at. In whole.
2. Miri.
3. Ownership.
4. By inheritance and old possession for a period exceeding the legal 30 prescriptive period.
5. Not registered.
6. _____
7. Cultivable. North : Parcels 8, 13, 6 : Ali Abdallah Suleiman, Muhammad Abdallah Marzuq and Fahim Ibrahim el Hajibi.
East : Block 10571 : Ali Abdullah Suleiman.
South : Parcels 4 & 14 : The Waqf and Zeib Shteiwi El-Akkashe.
West : Parcels 9, 13 : Sa'd Saqr Suleiman & Muhammad 40 Abdullah el Marzouq.

8. 60 dunums approximately.
 9. _____
 10. _____
 11. _____
 12. Tithes receipts and evidence of witnesses.
 13. _____

*Before the
Settlement
Officer.*

No. 17.
Case No.
15/Nufei'at,
Memo-
randum
of Claim
No. 377,
25th
November
1936,
continued.

- 10 14. I, Awwad Saqr Suleiman, of Arab en Nufei'at hereby take oath and swear (or solemnly affirm) 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.

Thumbprint of AWWAD SAQR SULEIMAN.

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

(Sgd.) M. ALHASSID,

Assistant Settlement Officer.

Date—25.11.1936.

Area—Haifa.

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

20

Village Settlement Committee of Arab en Nufei'at.

(Sgd.) FAHIM IBRAHIM EL HAJIBI.

„ ALI HASSAN ES SAYYED.

Date—25.11.1936.

Place—Arab en Nufei'at.

Claim No. 377.

	Block No.	P.P. No.	F.P. No.	Govt. Claim.	Jewish Claim.	Case 15/Nuf.
30	10572	4k		—	86	
	10572	4n		—	87	
	10572	5b		—	88	
	10572	5c		—	88	
	10572	9b		—	92	
	10572	10		—	93	
	10572	11d		—	88	
	10572	12a		—	94	
	10572	14		—	96	
	10572	16		—	98	

Before the
Settlement
Officer.

No. 18.

CASE No. 19/Nufei'at.

MEMORANDUM OF CLAIM No. 381.

No. 18.
Case No.
19/Nufei'at,
Memo-
randum
of Claim
No. 381,
25th
November
1936.

Sub-District—Haifa.

Village—Hadera Nufei'at.

Reg. Block : Name— No. 10572.

Prov. Parcel No. 11a-12-13a.

1. Sa'ad Saqr es Suleiman. Arab en Nufei'at. In whole.
2. Miri.
3. Ownership.
4. By inheritance and possession for a period exceeding the legal 10 prescriptive period.
5. Not registered.
6. _____
7. Arable Land. Boundaries :
 North : Block 10581 and Parcel 8. Fahim Ibrahim
 Isa el Hajibi.
 East : Parcels 5, 14—Muhammad Abdalla Marzouq.
 South : Parcel 10 : Awad Saqr Suleiman and Sa'ad
 Saqr Suleiman.
 West : Block 10581—Barra el 'Arf. 20
8. 80 dunums approximately.
9. _____
10. _____
11. _____
12. Tithes receipts and evidence of witnesses.
13. _____
14. I, Sa'd Saqr Suleiman, hereby take oath and swear (or solemnly affirm)
 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. 30

Thumbprint of SA'D SAQR SULEIMAN.

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

(Sgd.) M. ALHASSID,

Assistant Settlement Officer.

Date—25.11.1936.

Area—Haifa.

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

Members of Village Settlement Committee
 of Arab en Nufei'at. 40

(Sgd.) FAHIM IBRAHIM EL HAJIBI.

„ ALI HASSAN ES SAYYED.

Date—25.11.1936.

Place—Arab en Nufei'at.

Claim No. 381.

Block No.	P.P. No.	F.P. No.	Govt. Claim.	Jewish Claim.	Case 19/Nuf.
10572	11a		—	88	
10572	12		—	94	
10572	13a		—	95	

No. 19.

CASE No. 33/Nufei'at.

MEMORANDUM OF CLAIM No. 395.

*Before the
Settlement
Officer.*No. 19.
Case No.
33/Nufei'at,
Memo-
randum
of Claim
No. 395,
25th
November
1936.

Sub-District—Haifa.

Village—Hadera Nufei'at.

Reg. Block : Name—— No. 10574.

Prov. Parcel No. : 1-2a-3a.

1. Ali Hassan es Sayyad
Awwad Saqr Suleiman
Sa'd Saqr Suleiman

Arab en Nufei'at

1 Share

1 „

1 „

—

3

10

2. Miri.

3. Ownership.

4. By inheritance and old possession for a period exceeding the legal prescriptive period.

5. Not registered.

6. _____

7. Arable land : Boundaries :

North : Road.

East : Parcel 2 : The Waqf.

South : Parcels 5, 6 : Ali es Sayyed and partners
& Muhd. Abdalla El-Abid.

West : Road.

20

8. 80 dunums approximately.

9. _____

10. _____

11. _____

12. Tithes receipts and evidence of witnesses.

13. _____

- 30 14. We, Ali Hassan Sayyad, Awwad Saqr Suleiman and Sa'd Saqr Suleiman of Arab Nufei'at, hereby make oath and swear (or solemnly affirm) 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.

(Sgd.) AL HASSAN SAYYAD.

Thumbprint of AWWAD SAQR SULEIMAN

„ „ SA'D SAQR SULEIMAN.

Date—25.11.1936.

Area—Haifa. ,

Before the
Settlement
Officer.

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

Members of Village Settlement Committee of Arab
en Nufei'at.

(Sgd.) FAHIM IBRAHIM EL-HAJIBI.

„ ALI HASSAN ES-SAYYED.

Date 25.11.1936.

Place—Arab en Nufei'at.

Claim No. 395.

No. 19.
Case No.
33/Nufei'at,
Memo-
randum
of Claim
No. 395,
25th
November
1936,
continued.

Block No.	P.P. No.	F.P. No.	Govt. Claim.	Jewish Claim.	Case 33/Nuf.
10574	1		—	125	
10574	2a		—	126	
10574	3a		—	127	

10

No. 20.
Case No.
33/Nufei'at,
Memo-
randum
of Claim
No. 397,
25th
November
1936.

No. 20.

CASE No. 33/Nufei'at.

MEMORANDUM OF CLAIM No. 397.

Sub-District—Haifa

Village—Hadera Nufei'at.

Reg. Block : Name——— No. 10574.

Prov. Parcel No. 1e-3b-4-5-10-13a-20b.

20

- | | |
|--------------------------|-------------------|
| 1. Ali Hassan es Sayyad. | 1 Share |
| Sa'ad Saqr Suleiman. | Arab en 1 Share |
| Awwad Saqr Suleiman. | Nufei'at. 1 Share |

2. Miri.

3. Ownership.

4. By inheritance and old possession for a period exceeding the legal prescriptive period.

5. Not registered.

6. _____

7. Arable land. North : Parcels 3 and 2 : Ali Hassan es Sayyad and 30 his partners and Waqf.

East : Parcel 4 and Road : Ali Abdullah Marzouq el Abid and road.

South : Parcels 6, 8, 9 : Abd el Qader Ed-Dalileh.

West : Parcel 6 : Fahim El Hajibi and his brother Saleh and Muhammad Abdullah El-Abid.

8. 60 dunums approximately.

9. _____

10. _____

11. _____

12. Tithe records and evidence of witnesses.

13. _____

40

14. We, the undersigned, Ali Hassan and Sayyad and partners, of Arab en Nufei'at, hereby take oath and swear (or solemnly affirm) 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.

(Sgd.) ALI EL HASSAN ES SAYYED.

Thumbprint of AWWAD SAQR SULEIMAN.

Thumbprint of SA'D SAQR SULEIMAN.

Date—25.11.1936.

- 10 Area—Haifa.

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

Members of Village Settlement Committee of Arab en Nufei'at.

(Sgd.) FAHIM IBRAHIM EL HAJIBI.

„ ALI HASSAN ES-SAYYED.

Date—25.11.1936.

Place—Arab en Nufei'at.

Claim No. 397.

20	Block No.	P.P. No.	F.P. No.	Govt. Claim.	Jewish Claim.	Case 33/Nuf.
	10574	1e		—	125	
	10574	3b		—	127	
	10574	4		—	128	
	10574	5		—	129	
	10574	10		—	136	
	10574	13a		—	138	
	10574	20b		—	145	

No. 21.

CASE No. 43/Nufei'at.

MEMORANDUM OF CLAIM No. 405.

30

Sub-District—Haifa.

Village—Hadera Nufei'at. Reg. Block : Name— No. 10574.

Prov. Parcel No. : 22l-22g.

1. Ali Hassan es-Saiyid. Arab en Nufei'at. In whole.
2. Miri.
3. Ownership.

Before the
Settlement
Officer.

No. 20.
Case No.
33/Nufei'at,
Memo-
randum
of Claim
No. 397,
25th
November
1936,
continued.

No. 21.
Case No.
43/Nufei'at,
Memo-
randum
of Claim
No. 405,
25th
November
1936.

*Before the
Settlement
Officer.*

No. 21.
Case No.
43/Nufei'at,
Memo-
randum
of Claim
No. 405,
25th
November
1936,
continued.

4. By inheritance and old possession for a period exceeding the legal prescriptive period.
5. Not registered.

6. _____

7. Store (Cave) and threshing floor.

North : Parcel 14 ; Ali Abdullah Marzuq.

East : Road.

South : Parcel 11. Salem Ibrahim el Hamd.

West : Parcel 12. Ayesh Hassan Ali.

8. 5 dunums approximately.

10

9. _____

10. _____

11. _____

12. _____

13. _____

14. I, Ali Hassan es-Sayyid, hereby take oath and swear (or solemnly 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.) ALI EL HASSAN ES SAYYID. 20

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

(Sgd.) M. ALHASSID,

Assistant Settlement Officer.

Date—25.11.1936.

Area—Haifa.

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

Members of Village Settlement Committee of
Arab en Nufei'at.

(Sgd.) FAHIM IBRAHIM EL HAJIBI. 30

„ ALI HASSAN ES SAYYED.

Date—25.11.1936.

Place—Arab en Nufei'at.

Case No. 405.

Blook No.	P.P. No.	F.P. No.	Govt. Claim.	Jewish Claim.	Case 43/Nuf.
10574	221		—	148	
10574	25g		—	151	

No. 22.
CASE No. 45/Nufei'at.
MEMORANDUM OF CLAIM No. 407.

*Before the
Settlement
Officer.*

Sub-District—Haifa.

Village—Hadera Nufei'at. Reg. Block : Name _____ No. 10574.
 Prov. Parcel No. : 22h-25e.

No. 22.
 Case No.
 45/Nufei'at,
 Memo-
 randum
 of Claim
 No. 407,
 25th
 November
 1936.

1. 'Awwad Saqr Suleiman. Arab en Nufei'at. In whole.
2. Miri.
3. Ownership.
- 10 4. By inheritance and old possession for a period exceeding the legal prescriptive period.
5. Not registered.
6. _____
7. Store (Cave) and threshing floor.
 North : Parcel 16. Abdallah Hasan Mubarak.
 East : Road.
 South : Parcel 14, Ali Abdallah Marzuq.
 West : Parcels 12, 21 : Ayesh Hussein Ali.
8. 5 dunums.
- 20 9. _____
10. _____
11. _____
12. _____
13. _____
14. I, Awwad Saqr Suleiman, hereby take oath and swear (or solemnly affirm) 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.

Thumbprint of AWWAD SAQR SULEIMAN.

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

(Sgd.) M. ALHASSID,
 Assistant Settlement Officer.

Date—25.11.1936.

Area—Haifa.

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

Village Settlement Committee of Arab en
 Nufei'at.

- 40 (Sgd.) FAHIM IBRAHIM EL-HAJIBI.
 „ ALI HASSAN ES-SAYYED.

Date—25.11.1936.

Place—Arab en Nufei'at.

Claim No. 407.

Block No.	P.P. No.	F.P. No.	Govt. Claim.	Jewish Claim.	Case 45/Nuf.
10574	22h		—	148	
10574	25e		—	151	

*Before the
Settlement
Officer.*

No. 23.

CASE No. 54/Nufei'at.

MEMORANDUM OF CLAIM No. 416.

No. 23.
Case No.
54/Nufei'at,
Memo-
randum
of Claim
No. 416,
25th
November
1936.

Sub-District—Haifa.

Village—Hadera Nufei'at.

Reg. Block : Name—No. 10574.

Prov. Parcel No. : 23d-24a-24-26a-26b.

1. 'Awwad Saqr Suleiman. Arab en Nufei'at. In whole.
2. Miri.
3. Ownership.
4. By inheritance and old possession for a period exceeding the legal 10 prescriptive period.
5. Not registered.
6. _____
7. Cultivable land : North : Parcel 23 : The Waqf.
East : Road.
South : Parcel 25 : Suliman Abu Tamam and his brothers.
West : Road.
8. 50 dunums approximately.
9. _____
10. _____
11. _____
12. _____
13. _____

20

25th November 1936.

Claim No. 416.

Block No.	P.P. No.	F.P. No.	Govt. Claim.	Jewish Claim.	Case No.	
10574	23d			149	52/Nuf	
10574	24					
10574	24a			150	48/Nuf	30
10574	26a					
10574	26b			152	53/Nuf	

No. 24.
CASE No. 2—Nufei'at—PROCEEDINGS.

Before the Settlement Officer, Haifa Settlement Area.

*Before the
Settlement
Officer.*

Before the Settlement Officer, Hana Settlement Area.					No. 24.	
Cl. No.	P.P. No.	Plaintiff :—	Share.	Case No.		
364	10571/ 1a	'Ali Abdallah Suleiman	In whole	2/Nufei'at,		
	" / 1c			Proceed-		
	" / 22a			ings, 10th		
	" / 23a			January		
	" / 24a			1940.		
10	" / 25a					
	" / 26a					
	10572/ 8					
	" / 9a					
	" / 10a					
	" / 11e					
	" / 16b					
	" / 17a					
Defendants :—						
56	10571/ 1a)	1. The Government of Palestine.	In whole.			
20	" / 1c)					
88	10572/ 11e)					
76	10571/ 22a	2. Yosef Ya'aqov Bervitz.	do.			
77	10571/ 23a	3. Moshe Ben-Zion Sussman.	do.			
78	10571/ 24a	4. Rivqa Bat Mordekhai Hurvitz.	do.			
79	10571/ 25a	5. Moshe Turetz.	do.			
80	10571/ 26a	6. Zvi Ben Mordekhai Solonovitch.	do.			
91	10572/ 8)	7. Menashe Schwartzstein.	do.			
99	" / 17a)					
92	10572/ 9a	8. Ben Zion Ben Yehuda Ritov.	do.			
30	93	9. Kalman Hirschhorn.	do.			
98	10572/ 16b	10. Elimelech Hershkovitz.	do.			
Plaintiff died and his heirs are the following :—				Shares.		
	1. Fatima Ahmad Al-'Affi	.. .. .	13		
	2. Amna Hassan Al-'attar	.. .. .	13		
	3. 'Aisha Husein Al-'Ali	.. .. .	13		
	4. Muhammad 'Ali Abdallah	.. .. .	9		
	5. 'Abdul Latif 'Ali 'Abdullah	.. .. .	9		
	6. Mahmud 'Ali Abdallah	.. .. .	9		
40	7. Jamil 'Ali Abdallah	.. .. .	9		
	8. 'Abdallah 'Ali Abdallah	.. .. .	9		
	9. Ahmad 'Ali Abdallah	.. .. .	9		
	10. Sa'd 'Ali 'Abdallah	.. .. .	9		
	11. Muhammad Shafiq 'Ali 'Abdallah	.. .. .	9		
	12. Husein 'Ali 'Abdallah	.. .. .	9		
	13. Sheikha 'Ali 'Abdallah	.. .. .	9		
	14. Jamila 'Ali 'Abdallah	.. .. .	9		
	15. Amina 'Ali 'Abdallah	.. .. .	9		
50	16. 'Alya 'Ali Abdallah	.. .. .	9		
				156		

Before the Settlement Officer. Hadera, 10th January 1940.

Present :— Anas Eff. Khamra, representing the Plaintiff by P/A.

Mr. J. Kaisermann, representing the Defendants.

No. 24.
Case No.
2/Nufei'at,
Proceed-
ings, 10th
January
1940
continued.

ANNAS EFF. :—My objection as to citation of parties in Case 1-Nufei'at applies in this case.

INTERIM ORDER :—

This case has been sent back for re-hearing, and I see no reason to vary the order of the Settlement Officer in case 153/32 Infiat page 2 of the English record. Parties to remain as cited.

10.1.40.

(Sgd.) CECIL KENYON. 10

PLAINTIFF'S EVIDENCE.

Plaintiff's
Evidence—
Muhammad
El Haj Ali
Abdalla,
10th
January
1940.

1st Witness for Plaintiff: MUHAMMAD EL HAJ ALI ABDALLA, aged 29, living at Arab en Nufei'at, Cultivator :—

I know the Safra locality in the Arab en Nufei'at and have some property there, it belongs to us and Abdalla Mustafa. My father and Abdulla were brothers and we are the heirs. We cultivated the land, my father did so. My father cultivated the land from the age of 15 years onwards as an owner. No one of Hadera ever cultivated the land, and my father never made any payments on account of the land. He never made any payments to Hassan es-Saiyid on account of the land and only paid 20 tithes to the Government. Our possession extends over more than forty to fifty years. We gathered the produce of the land. Boundaries : E. Abd. el Fattah and Hamad El Nusa and partners : W. Masha' of the Arab en Nufei'at ; N. Aradi el Fuqara ; S. Tariq between us and Fahim Ibrahim. The second parcel lies in Safra wa ez Zif locality, about 200 dunums. Boundaries : E.—Ali Hassan and Awad es Sakkar ; W.—Our land and Awad es Sakkar ; N.—Masha' ; S.—Tariq and Waqf. We cultivate this 2nd plot and there is an Interim Order in our favour. The third parcel is in the Urf locality. W.—Aish el Hassan ; E.—Our land and eucalyptus ; N.—Masha ; S.—Awad es Sakkar. The fourth is Mauqi 30 el Atta. E.—Mussa Atta ; W.—Eissa Abdullah ; N.—Fahim Ibrahim and partners ; S.—Masha. The fifth is Mauqi Mughr. W.—Ali Abid ; E.—Awad Sakka, Suleiman Abu Tamam ; N.—Hassan Abed el Karim ; S.—Awad Ibrahim. We have no other lands. All the lands I have described belong to the heirs of Haj Ali Abdulla. Haj Ali cultivated them and never leased them from Hadera. He never paid any sums to Nimr Hassan on account of rent. His possession extended over not less than 40 years. I have read Exhibit O, file 153/32, Jacket 2, and understand its contents. The document does not constitute a renunciation of his rights. We grew barley, lupine. Berkat Atta wheat, water melons and 40 potatoes. All the areas were cultivated by us. The land has been cultivated all the time by us and I have seen it so with my own eyes. And the colonists of Hadera never cultivated any part of the land. As to the cave, it was used by us for storing tibn in it and the land around it was used for vegetables and a threshing floor. Our possession of the cave is ancient.

Examina-
tion.

Xd. by Mr. Kaisermann : My father died about $1\frac{1}{2}$ years ago. Hassan Saiyid died about 16 years ago. Had my father paid Hassan anything

- I should have heard it from others. I know he did not pay anything. He was Mukhtar after Nimr Hassan about 5-6 years perhaps. I was grown up. I can not remember when my father commenced to consult me. I do not remember if he consulted me about the orange groves. He was a Policeman in Hadera and often in the Arab en Nufei'at; he was a tracker. We have no Kushan for our land and I have paid no werko. My father might have done. We camped in Mulleisa, in Mauq el 'Urf. We ourselves camped near Sarakhiye in winter. The Jews are cultivating the land in 'Atta locality. It was not handed over to the Jews at the
- 10 time of the prevention order because they were cultivating them. Some plots were handed over to Jews and some to Arabs, I do not know who came to do this work, perhaps the D.O. and Najati Nashashibi. In Safra no one cultivates, no one cultivates in El Urf, in Zeef were cultivating. We prepared the Zeef 'Urf lands for water melons and were prevented from planting by the order. I have always lived in Infi'at and went to school in our house in. As far as I know the orange groves are one grove. There is a narrow road between the Orange groves. My father lived in both Sharkase and Arab en Nufei'at.
- Xd. by S.O.*—'Abdalla is older than I am by an amount I do not know.
- 20 Ahmad may be my age. My father owned an orange grove and an eucalyptus plantation in Sharkass. The orange grove was held by Kushan. I do not know for how long my father had Kushan. I do not know my father applied for a Kushan from the Government on the grounds of long possession. My father never told me that H. S. obtained Kushans on grounds of long possession. He never explained why he did not obtain Kushans in Infiat as he did in Sharkass. He explained that the first plot allotted to him in Sharkass was sold to someone else and in order to protect his interest he applied for registration. Neither of us have made a mistake.
- 30 *Re-Xd. by Anas Eff.*: No one ever encroached on our lands and there was never any necessity to apply for registration. We camped far from the cultivated patches.
- 2nd Witness for Plaintiff*: FAHIM IBRAHIM EL AJALI, aged 41 years, living at Arab en Nufei'at, Cultivator.
- I know that the late Haj Ali had some land in Safra locality, N.—Fuqra, W.—Masha, E.—Cultivation, S.—Fahim Ibrahim. Mauqi El Zeif, N.—Masha', W.—Awad el Sakka and others, E.—Ali Hassan and partner, S.—Ard el Waqf eucalyptus. Mauqi El 'Urf: N.W., Masha', S.—Awad es Sakka, E.—Haj Ali. Atta locality: E.—Atta, W.—Issa
- 40 Atter, S.—Masha', N.—Fahim Ibrahim. Mughara: N.-E.,—Road, W.—Threshing Floor, N.—Mahsin Akkashi, S.—Awad Ibrahim. The lands belong to Haj Ali, three parcels and the fourth belongs in partnership. Haj Ali cultivated the lands, from the war time up to now. Atta, wheat and barley, melons and beans. Safra, melons. Haj Ali never paid Khums or made any payments on account of the land to Hassan es Saiyid. Haj Ali was in possession to my knowledge for 20 years or more. No one from Hadera ever cultivated the land before the prevention orders. I never saw Haj Ali give any part of the produce to Hadera. As to the cave, it was used for Tibn and the land near by was used as a threshing floor

Before the
Settlement
Officer.

No. 24
Case No.
2/Nufei'at.
Proceed-
ings, 10th
January
1940,
continued.

Plaintiff's
Evidence—
Muhammad
El Haj Ali
Abdalla,
10th
January
1940,
continued.

Examina-
tion by S.O.

Re-exam-
ination.

Plaintiff's
Evidence—
Fahim
Ibrahim el
Ajali, 10th
January
1940.

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exclusively by Haj Ali. He paid tithes. There were never encroachments because the boundaries were clear.

No. 24.
Case No.
2/Nufei'at.
Proceed-
ings 10th
January
1940,
continued.

Plaintiff's
Evidence—
Fahim
Ibrahim el
Ajali, 10th
January
1940,
continued.
Examina-
tion by S.O.

Xd. by Mr. Kaisermann: We, Haj Ali and I, are neighbours. I saw him pay tithe, but how much I do not know. I saw Haj Ali cultivating and his ploughman doing so also and also his cows in all the localities mentioned by me. In 1928 was the last time I saw them cultivating the land with barley. All the Arabs were cultivating all the lands in 1928, those who cultivated Summer crops were prevented, those with Winter crops were allowed to continue. In 1928 I was cultivating all my land. The Jews are cultivating the land in 'Atta. In 1928 it was not cultivated by the Jews and they were not given authority to cultivate on that account. The Jews were permitted to cultivate in order to gain a livelihood. 10

Xd. by S.O.: I cannot remember if Haj Ali ever discussed obtaining Kushans with me. He never discussed his ownership or occupation with me. Hassan es Saiyid never discussed land matters with me. Our usual place for camping is near Sarakhiye south of the orange grove. We measured our crops on the threshing floors, which is some distance from our tents. The boundaries were clear and were always so. I never saw the trespass on Awad el Sakkar's land by the heirs of Haj Ali last week.

Case adjourned until 11th January 1940.

20

9 a.m.

10.1.40.

(Sgd.) CECIL KENYON.

Hadera, 11th January 1940.

Present: Anas Eff. Khamra, representing Plaintiffs
Mr. J. Kaisermann, representing Defendant.

3rd Witness for Plaintiff: On oath—ALI AHMAD ALI, aged 65 years, living at Arab en Nufei'at, Cultivator:—

Plaintiff's
Evidence—
Ali Ahmad
Ali, 11th
January
1940.

I knew Haj Ali Abdulla and know his lands, he had land in Birkat Safra locality. N.—Fugara, E.—Abdulla Tamam and others, S.—Tariq, W.—Masha; also in Zeef: N.—Masha, W.—Awad el Sakkar and others, E.—Ali Hassan and others; S.—Ard el Waqf and Eucalyptus. Also in 'Urf: N.—Masha', W.—Aish el Hussein, S.—Awdd es Sakkar, El-Ali Abdulla. Also in Atta locality: N.—Fahim Ibrahim, E.—Atta, S.—Masha, W.—Issa Atta. Also Mughr locality: a cave and threshing floor—E.—Awad el Sakkar, W.—Ali Abeid, N.—Hassan Johar and others, S.—Awad Ibrahim and others. All these lands belong to Haj Ali Abdulla and he cultivated them for as long as I remember. In Mauqi Safra he had a partner Abdulla Mustafa, his relative. Haj Ali did not lease these lands from the Colonists of Hadera and he paid no sums to the Colony on account of the land. The land was cultivated with melons, potatoes, 30
barley and lupine, wheat, barley, etc. He paid taxes tithe on all these lands. The cave was used for tibn and grew a few onions near the land. He always had possession of the land, certainly more than 40 years. 40

Examina-
tion.

Xd. by Mr. Kaiserman: By the word Barrat I mean the Masha' land. I have two plots of land, both in the mafruz, and I know all the boundaries of all the mafruz land in the Arab en Nufei'at. Perhaps I

do not know them all. My land in 'Atta locality, I am near Haj Ali, in Sarakhiye, a little further away. I know Hamad Abu Tamam, he has land near Haj Ali and I know his boundaries, it is mafruz and in Safra. He has a masha' parcel but do not know his boundaries. Fahim has mafruz and Masha'. I know his mafruz boundaries only. Haj Ali did not consult me concerning financial matters. Each person paid the tithe himself. Haj Ali has land in Sharkass. I never saw Jews planting in this area. I know the orange groves, one only, belongs to Haj Ali and was planted by the Jews. I saw the eucalyptus being planted by the
10 Jews in the land of Haj 'Ali.

*Before the
Settlement
Officer.*

No. 24.
Case No.
2/Nufei'at.
Proceed-
ings, 10th
January
1940,
continued.

Xd. by S.O. : I do not remember if Haj Ali ever leased any of his lands to others. I remember Haj Ali as a little boy ; he lived in Arab en Nufei'at then and afterwards in Sharkass. Sharkass is new and not an old village. Haj Ali may be older than I am. Now I am certain he never leased any of his lands to anyone else in the Arab en Nufei'at. Both before and during the War he worked himself, after that he became wealthy, became a horseman and others worked for him. One of his workmen was of the Infi'at, Ahmad Abdulla Abeed. Haj Ali was a tracker about two or three years in his middle age. I do not know what is middle age. If
20 I knew that such questions were coming to me I should have found answers for them.

Plaintiff's
Evidence—
Ali Ahmad
Ali, 11th
January
1940.
Examina-
tion by S.O.

4th Witness for Plaintiff : DEEB ESH STAWI—aged 35—living at Arab en Nufei'at 'Arabs.

Plaintiff's
Evidence—
Deeb esh
Stawi, 11th
January
1940.

I know Haj Ali's land in Safra. Boundaries : E.—Abu Tamam, N.—Fuqara, S.—Fahim Ibrahim, W.—Musha. Also in Zeef : E.—Ali Hassan and partners, N.—Masha', S.—Road & Waqf, W.—Haj Ali. Also in 'Urf : boundaries as claimed. Atta : same boundaries as claim. Mughr, boundaries as claimed. He has a cave for tibn and grew lentils and onions there on the land nearby. The land belongs to Haj 'Ali by
30 possession. The Jews never cultivated the lands.

Mr. Kaisermann : The Jews never cultivated the land in dispute, but planted eucalyptus in Zeef. I cannot say how long ago it was planted. I haven't any idea. When I saw the eucalyptus I was not surprised, it was not my affair, as it concerned the land owner. There is an orange grove in Mulleias, I do not know who planted it or how long ago, perhaps 8–12 years ago. I knew the land before it was planted. I was away—am a camel owner, and go away with them to Zeita, 'Attil, El Marj, Hauran, long distances, two or three months at a time. I was often away whenever there is work, and during the summer generally, and no-one represents me
40 when away. No one told me that Haj Ali had withdrawn his claim to the orange groves and eucalyptus. I know Ali Samsun, he never cheated me. I never worked for him.

Xd. by S.O. : I know that the eucalyptus and orange groves are in the lands of Haj Ali. I only know he had possession, what legal possession is I do not know. He employed labourers, two from Infiat and two from hill villages. He owned the land and received the produce. He paid the labourers in cash, how much I do not know. Now I know, he paid £P.7–8 a year. There may have been potatoes on the threshing floor. I saw melons there, a few cucumbers as well, only a little cultivation. Egg

Examina-
tion by S.O.

Before the
Settlement
Officer.

No. 24.

Case No.
2/Nufei'at.
Proceed-
ings,

10th
January
1940,
continued.

Plaintiff's
Evidence—
Said es
Sakka, 11th
January
1940.

plants, tomatoes, bamieh, grew in Safra from the 5th month onwards. I last saw the land cultivated before the prevention order. Ahmad el Abeed grew the vegetables. As far as I remember I have been a camel driver all my life, my brother and father also.

5th Witness for Plaintiff: SAID ES SAKKA. Aged 55. Living at Arab en Nufei'at :—

I know the lands of Haj Ali in Safra. Boundaries as claimed. Also in Zeif. Also in 'Urf. Also in 'Atta. Also in Mughr, a cave, used for tibn. Haj Ali cultivated the lands for 40 years and more, most certainly more than 25 years : the lands belonged to him, one parcel was owned in 10 partnership with his brother Abdulla Mustafa. Safra, melons : every four or five years it remained fallow. He cultivated as owner, and took the crops to the threshing floor near the cave.

Xd. by Mr. Kaiserman : Apart from the orange grove no land was planted by the Jews.—After the dispute : the eucalyptus also. I saw it being planted. I never spoke to Haj Ali about the land being planted. There was trouble about it, a quarrel. Haj Ali was not present. The trouble was about all the land. The Turkish officials used to visit us for various reasons and the Mukhtar entertained them and during the war the Turkish army visited us, he paid the expenses of entertainments from 20 his own pocket. He received a salary from the Government. I know Deeb esh Stawi, he is a cultivator and does nothing else, he has camels with his brother and goes away for a few hours or days, never more than two or three days. He is my neighbour. Now I recollect that he used to go to Hauran in his motor car. I have a cart and horses but do not work.

Examina-
tion by S.O.

Xd. by S.O. : Haj Ali used to own Safra, Zeif, 'Urf, Mullura, Mughare, 'Atta. I have no idea how much Haj Ali sold Mulleisi for. Haj Ali worked the land with his own hands before the war, and after the war his sons and labourers ; all the labourers are dead. Before the angle irons were put in 30 there was a ridge left between each plot. In the course of time these ridges became high and formed a passage way for animals. These were the boundaries. The land was abandoned and the Government asked us to put in angle irons and the ridges disappeared in the wind and sand, all over the land.

Anas Eff. Khamra : I could indicate the boundaries if I went to the land and could shew you the ridges.

Witness
called by
Settlement
Officer—

Ahmad Haj
Ali
Abdullah,
11th
January
1940.

Witness called by Settlement Officer on oath : AHMAD HAJ ALI ABDULLAH,
about 30 years, living at Arab en Nufei'at and Sharkass,
Cultivator :—

I lived most of my time in Sharkass. My father discussed with me his land matters in Sharkass. And perhaps the Infiat. I remember when he was a tenant of the P.I.C.A. and he discussed matters with me. He told me that he first purchased a plot of land by an unofficial deed and the Sharkassi were angry with him and sold the land again and gave him another plot. Then he purchased again another plot in Mustakiya of 65 dunums in fact only he only paid tithe and taxes on twenty dunums. He bought the land from Sharkassi, I do not remember who. He told me

he had land in Arab en Nufei'at, by inheritance from his father, Abdulla Suleimann. I do not remember if he told me whether my grandfather was registered in the Daftar Shamsiye. I cannot say with certainty whether my father told my brother the same story.

Xd. Anas Eff. Khamra : He never leased the lands from the Jews, perhaps I cultivated, now I am sure I did.

Xd. by Mr. Kaiserman : My father was Mukhtar since 1932, perhaps. Perhaps the 11th or 12th month of 1931. Perhaps he could sign his name. Many times I saw him sign his name. I can read the signature in Exhibit "R" it is Haj Ali Abdulla. Exhibit Q, the same. Perhaps it is my father's signature. Exhibit "O." That is my father's signature. The seal in Q is not my father's, his used to be larger.

Anas. Eff. : This closes the case for the Plaintiffs.

DEFENDANTS' EVIDENCE.

1st Witness for Defendant : ZVI BOTKOVSKY. Aged 53. Living at Hadera. Farmer. Mukhtar and Chairman of Local Committee.

I know the lands of the Arab en Nufei'at and we leased the lands to the Mukhtar of the Arab en Nufei'at. I myself leased the lands to Hassan es Saiyid. Ali Abdulla was Mukhtar and leased land from the Committee. Ali Abdulla may have cultivated the lands by sub lease from Hassan es Saiyid. In regard to the parcel in Safra I can say with certainty that he did not cultivate because I cultivated the land myself for several years on lease from the Vaad ; the area was 25 dunums. My workmen and myself visited the land for cultivation. I knew Haj Ali very well indeed and also his sons and he never cultivated my parcel or parcels near mine. I know Aharon Krongretski, he has land in Birkat 'Atta, 100 dunums surrounded by eucalyptus trees.

Xd. by Anas Eff. Khamra : I do not know a locality known as Mughara, and do not know that Haj Ali had a cave there for tibn or a threshing floor or that he used the land for 30 to 40 years. I do not know a locality known as Zeif or 'Urf. I know 'Atta, Birkat 'Atta. There are many parcels. I know Birkat Safra very well. I am certain Ali Abdulla did not cultivate the same parcels year by year as the Arabs changed their plots yearly. Hassan es Saiyid used to lease all the land from us. I cannot say whether Ali Abdulla cultivated the same plots or not. I cannot say whether the Arabs lease land from the P.I.C.A. in Sharkass or not, certainly not from Hadera to-day. So far as I know the lands of Arab en Nufei'at were leased by the Committee. As to the lands east of Hadera so long as I was President no lands were leased. I do not know the area of the land in dispute. The lands east of Safra were not leased to Arabs, to Jews of Hadera, that is, where the locality now is. East of the Railway the land has belonged to the K.K.L. for 20 years, and it was never leased to the Arabs.

Xd. by S.O. : I do not (? know) the boundaries of any of the Arab claims in the Arab en Nufei'at. I only know the boundaries of the partition as registered. The parcel I cultivated in Safra was not part of the partition as the parcellation was not demarcated on the ground. I

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Settlement
Officer.

No. 24.
Case No.
2/Nufei'at.
Proceed-
ings, 10th
January
1940,
continued.

Plaintiff's
Evidence—
Said es
Sakka, 11th
January
1940.

Defendants'
Evidence—
Zvi
Botkovsky,
11th
January
1940.

Examina-
tion by S.O.

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Settlement
Officer.*

No. 24.
Case No.
2/Nufei'at.
Proceed-
ings, 10th
January
1940,
continued.

Defendants'
Evidence—
Zvi
Botkovsky,
continued.

cultivated before 1926, so far as I recollect 1922–23 up to 1928. I used to pay about 5 piastres a dunum, that is the rent for sandy land. I think that 5 piastres a dunum is a fair rent for the land near Nassatissin eucalyptus plantation. I think that the land near Breikhtas and 'Atta is worth a rental of about 6 to 7 piastres a dunum a year, and I consider that a fair rental for all the cultivable land taken together would be less than five piastres, much less. I also cultivated land near the Moslem Cemetery, Block 10574, the land there is my private property. I cultivated the land many years. I cannot give an exact date, about 10 years before the dispute. After and during the dispute other Jews cultivated. Haj Ali 10
Abdulla knew how to both read and write, he also knew some arithmetic and many times I saw him write.

Mr. J. Kaiserman : Mr. Mursin, the President, is absent. I wish to call him to testify as to the signing of the documents by Haj Ali Abdulla and himself.

Case adjourned until 9.30 Tuesday, January 30th, 1940.

Hadera, 11.1.40

(Sgd.) CECIL KENYON.

Hadera, 30th January 1940.

Present : Anas Eff. Khamra, representing Plaintiffs, and Muhammad 20
Haj Ali.

Mr. J. Kaiserman, representing the defendants.

Defendant's
Evidence—
Shlomo
Mursin,
30th
January
1940.

2nd Witness for Defendant—on oath—SHLOMO MURSIN. Aged 53 years.
Living at Hadera. Chairman of the local Council.

I am a farmer and orange grove owner and have lived in Hadera for 26 years. I was Member of the Vaad of Hadera in 1927. The signature on Exhibit AA is mine, Baron's signature is under mine, he was the secretary and still is. Exhibit AA is written by the Secretary and is a lease of lands to Ali Abdulla as well as the reeds in the marsh. I remember signing the contract and also remember Haj Ali signing the contract. I knew Haj Ali Abdulla very well indeed. I also recollect Haj Ali signed other contracts. 30
He often came to the office of the local Council, and also to my house. *Exhibit R.* I signed this document on the stamps and also below. The document is a lease of the Barrat Infiat by the V. Committee to Haj Ali Abdulla for the year 1928, cultivation year (5688), and that he should have no claim to compensation for Kharab at the end of the cultivation year. Rent £16. My second signature is on a reservation that all the lands required for the settlers was excepted. Haj Ali signed the contract. The contract was written by Baron, the Secretary. *Exhibit Q.* I signed this document, it is a lease dated (5689) 1929, signed by Baron and by Haj Ali Abdulla. 40

Anas. Eff. Khamra : In Contract AA no boundaries are mentioned, only the "Barrat." The contract is in Hebrew as we are the lessors and that is our official language. Haj Ali knew no Hebrew. There is no writing to say where the contract was drawn, and there is nothing to say that Haj Ali knew the contents. 7th Sivan 5687. Sivan might have been July in that year. £P/5 paid on signature of contract. In contract R, no boundaries are mentioned, only the "Barrat," dated 12th Iyar 5688.

No mention that the contents were translated to Haj Ali Abdulla. The contract was made in Hadera £P.5 paid on signature and on account of rent. No signature of Haj Ali on the stamps. *Exhibit Q*. No boundaries mentioned, only locality, Barrat. Seal of Haj Ali on the stamps. Lease signed at the office of the Committee. He paid us for the land. No interpretation mentioned in the contract, but I translated the contents. Amount paid £10 on signature, total rent £P.32. December 1928—January 1929. By “Barrat” I mean the land of Infiat. There was no dispute with the Arabs at the time. Haj Ali so far as I know leased no other lands. He was then living at Sharkass. He may have leased lands from the P.I.C.A. in Sharkass. Haj Ali’s signature is in copying pencil. I know the lands in dispute; they lie to the West of the Colony. How many parcels of land I cannot say. I know the Safra locality but Haj Ali has no land there. I do not know the separate parcels claimed by Haj Ali, and do not know how long he may have ploughed the land. I cannot say how many years Haj Ali was on the land. Contracts AA, R and Q are for three consecutive years.

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Settlement
Officer.*

No. 24.

Case No.
2/Nufei’at.
Proceed-
ings, 10th
January
1940,
continued.

Defendant’s
Evidence—
Shlomo
Mursin,
30th
January
1940,
continued.

Xd. by S.O.: I do not know the boundaries of the Barrat. Haj Ali Abdulla signed all three leases in my presence.

20 *Re-Xd. by Mr. Kaisermann:* The Committee did not lease other lands to Haj Ali. I translated the contracts honestly and fairly.

Anas. Eff. Khamra: We have proved that certain plots of land in Safra, El Urf, Mulleise, Atta and Zeif are all well defined and known by the witnesses. Possession as owner for more than 20 years for more than the prescriptive period. Possession undisputed. Crops raised by us. Defendants never in possession, never cultivated the land. Defendant admits our possession but as lessee. Defendant’s witnesses do not know the land, only a general vague claim to have leased the Barrat. Consideration £P.16 inadequate for 9,000 dunums. Signatures unauthenticated.

30 Leases claimed to be false, no genuine lease. Registration in our favour.

Mr. Kaisermann: No evidence as to ownership. Claim not proved no documentary evidence, no proof of revival, no proof of planting, no proof of building, the claims withdrawn. He claimed an orange grove and eucalyptus plantation at the last moment. Plaintiff made a false claim, indicates falseness of plaintiff’s other statements. S. O. Witness (one of the plaintiffs) states no word of truth. As to payment and consideration is adequate. Plaintiffs did not deny entirely Haj Ali’s signature, no proof sufficient to upset our Kushan. Costs.

Decision to be notified to all parties.

40 Hadera, 30.1.40.

(Sgd.) CECIL KENYON.

Before the
Settlement
Officer.

No. 25.

CASE No. 7/Nufei'at—PROCEEDINGS.

No. 25. Case No.	Cl. No.	P.P. No.	Plaintiffs :—	Share.
7/Nufei'at. Proceed- ings, 11th January 1940.	369	10571/ 5b	1. Ali Abdallah Suleiman	1
		" / 7	2. Abdallah Mustafa Abdallah	1
		" / 8	Out of	2
		" /11		----
		" /12		
		" /13		
		" /28a		10
Defendants :—				
	60}	10571/ 5b}	1. Hadera Founders Association Ltd.	In whole
	63}	" / 8 }		
	62}	10571/ 7	2. Robert Barach	1
	66}	" /11	3. Gertrude Riese.	1
			4. Edith Manasse.	1
			Out of	3
	67	10571/12	5. Benayahu Wa'adaya.	16
			6. Hillel Wa'adaya.	16
			7. Nissim Wa'adaya	16
			8. Ben-Zion Hodzainoff.	69
			9. Abraham Hayim Hodzainoff.	9
			10. Mordekhai Hodzainoff.	9
			11. Avraham Hayim Yadgaroff.	9
			12. Oholiav Hayim Shauloff	24
			13. Eliyahu Kimigaroff.	24
			Out of	192
	68	10571/13	14. Shelome Bahn.	In whole.
(in case No. 6/Nufei'at)				30
	56	10571/28a	15. The Government of Palestine.	do.
(In case No. 2/Nufei'at).				

The Plaintiff No. 1 died and his heirs are the following :—

1. Fatima Ahmad Al-'Afifi.	13
2. Amna Hasan Al-'Attar.	13
3. 'Aisha Husein El-Ali	13
4. Muhammad 'Ali 'Abdallah.	9
5. 'Abdul Latif 'Ali 'Abdallah.	9
6. Mahmud 'Ali Abdallah	9
7. Jamil 'Ali Abdallah.	9
8. 'Abdallah 'Ali Abdallah.	9
9. Ahmad 'Ali 'Abdallah.	9
10. Sa'd 'Ali Abdallah.	9
	40

<i>Cl. No.</i>	<i>P.P. No.</i>	<i>Plaintiff :—</i>	<i>Share.</i>	<i>Before the Settlement Officer.</i>
		11. Muhammad Shafiq 'Ali 'Abdallah.	9	
		12. Husein 'Ali 'Abdallah.	9	
		13. Shaikha 'Ali 'Abdallah.	9	No. 25.
		14. Jamila 'Ali 'Abdallah.	9	Case No.
		15. Amina 'Ali 'Abdallah.	9	7/Nufei'at.
		16. 'Alya 'Ali 'Abdallah.	9	Proceed-
			—	ings, 11th
			156	January
				1940,
				<i>continued.</i>

10 This case has been consolidated with Case 2/Nufei'at.

Hadera, 11.1.40. (Sgd.) CECIL KENYON.

No. 26.

CASE No. 16/Nufei'at—PROCEEDINGS.

No. 26.
Case No.
16/Nufei'at.
Proceed-
ings, 11th
January
1940.

<i>Cl. No.</i>	<i>P.P. No.</i>	<i>Plaintiff :—</i>	<i>Share.</i>
378	10572/ 3d	1. 'Ali 'Abdallah Suleiman.	In whole.
	/ 4p		
	/ 5a		
	/ 6a		
	/ 9		
<i>Defendants.</i>			
20	83		
	In case 10572/3d	1. Rahel Goldberg.	4
	No. 12/	2. Shemuel Goldberg.	3
	Nufei'at.	3. Hanna Tolkovsky.	3
		4. Yehudith Klibanoff.	3
		5. Shulamith Hochfeld.	3
			—
			Out of 16
			In whole.
	87	6. Leib Schaf.	
	In case		
30	No. 15/		
	Nufei'at.		
	88		
	In case 10572/5a	7. The Government of Palestine.	do.
	No. 2/		
	Nufei'at.		
	89		
	In case 10572/6a	8. The heirs of Mikhael Nastosin.	In whole.
	No. 12/		
	Nufei'at.		
40	92		
	In case 10572/9	9. Ben-Zion Ben-Yehuda Ritov.	do.
	No. 2/		
	Nufei'at.		

<i>Before the Settlement Officer.</i> No. 26. Case No. 16/Nufei'at. Proceed- ings, 11th January 1940, <i>continued</i>	Plaintiff died and his heirs are the following :—		
	1. Fatima Ahmad Al-'Affi.	13	
	2. Amna Hasan Al-'Attar.	13	
	3. 'Aisha Husein Al-'Ali.	13	
	4. Muhammad 'Ali 'Abdallah.	9	
	5. 'Abdul Latif 'Ali 'Abdallah.	9	
	6. Mahmud 'Ali 'Abdallah.	9	
	7. Jamil 'Ali 'Abdallah.	9	
	8. 'Abdallah 'Ali 'Abdallah.	9	
	9. Ahmad 'Ali 'Abdallah.	9	10
	10. Sa'd 'Ali 'Abdallah.	9	
	11. Muhammad Shafiq 'Ali 'Abdallah.	9	
	12. Husein 'Ali 'Abdallah.	9	
	13. Shaikha 'Ali 'Abdallah.	9	
	14. Jamila 'Ali 'Abdallah.	9	
	15. Amina 'Ali 'Abdallah.	9	
	16. 'Alya 'Ali 'Abdallah.	9	
		<hr/>	156

This case has been consolidated with 2/Nufei'at.

Hadera, 11.1.40. (Sgd.) CECIL KENYON. 20

No. 27.

CASE No. 49/Nufei'at—PROCEEDINGS.

No. 27. Case No. 49/Nufei'at. Proceed- ings, 11th January 1940.	<i>Cl. No.</i>	<i>P.P. No.</i>	<i>Plaintiff :—</i>	<i>Share.</i>
	411	10574/22d	'Ali 'Abdallah as Suleiman.	In whole.
		„ /24d		
			<i>Defendants :—</i>	
	148	10574/22d	1. Hadera Founders Association Ltd.	In whole.
	(In case No.			
	32/Nufei'at.)			
	150	10574/24d	2. Yits-haq Lamburg.	29.619 30
	(In case		3. Fania (Feige) Spiro.	3.826
	No. 48/		4. Tania Razemovska	5.737
	Nufei'at)		5. Rachel (Ru) Soikanen.	5.737

Out of 44.919

Plaintiff died and his heirs are the following :—

	<i>Share.</i>	
1. Fatima Ahmad Al-'Affi.	13	
2. Amna Hasan Al-'Attar.	13	
3. 'Aisha Hussin Al-'Ali.	13	
4. Muhammad 'Ali 'Abdallah.	9	40
5. 'Abdul Latif 'Ali 'Abdallah.	9	
6. Mahmud 'Ali 'Abdallah.	9	
7. Jamil 'Ali 'Abdallah.	9	
8. 'Abdallah 'Ali 'Abdallah.	9	
9. Ahmad 'Ali 'Abdallah.	9	
10. Sa'd 'Ali 'Abdallah.	9	

11. Muhammad Shafiq 'Ali 'Abdallah.	9	Before the
12. Husein 'Ali 'Abdallah.	9	Settlement
13. Shaikha 'Ali 'Abdallah.	9	Officer.
14. Jamila 'Ali 'Abdallah.	9	No. 27.
15. Amina 'Ali 'Abdallah.	9	Case No.
16. 'Alya 'Ali 'Abdallah.	9	49/Nufei'at.

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This case has been consolidated with 2/Nufei'at.

Hadera, 11.1.40.

(Sgd.) CECIL KENYON.

continued.

10

No. 28.

CASE No. 66/Nufei'at—PROCEEDINGS.

Cl. No.	P.P. No.	Plaintiff :—	Share.
428	1075/ 5b	'Ali 'Abdallah as-Syleiman.	In whole.
	„ / 7a		
	„ /13a		

No. 28.
Case No.
66/Nufei'at.
Proceed-
ings, 11th
January
1940.

Defendants :—

157	10575/ 5b	1. Aharon Kongretzki.	1
(In Case		2. Matel Kongretzki.	1
No. 62/		3. Binyamin Sachsenhaus.	2
20 Nufei'at)			—
			Out of 4
			In whole.

159	10575/ 7a	4. Shaul David Sachs.	
(In case			
No. 63/			
Nufei'at)			
165	10575/13a	5. The Government of Palestine.	do.
(In case			
No. 62/			
Nufei'at)			

30 Plaintiff died and his heirs are the following :—

	1. Fatima Ahmad Al-'Aafifi.	13
	2. Amna Hasan Al-'Attar.	13
	3. 'Aisha Husein Al-'Ali.	13
	4. Muhammad 'Ali 'Abdallah.	9
	5. 'Abdul Latif 'Ali 'Abdallah.	9
	6. Mahmud 'Ali 'Abdallah.	9
	7. Jamil 'Ali Abdallah.	9
	8. 'Abdallah 'Ali 'Abdallah.	9
	9. Ahmad 'Ali 'Abdallah.	9
40	10. Sa'd 'Ali 'Abdallah.	9
	11. Muhammad Shafiq 'Ali 'Abdallah.	9
	12. Husein 'Ali 'Abdallah.	9
	13. Shaikha „ „	9
	14. Jamila „ „	9
	15. Amina 'Ali 'Abdallah.	9
	16. 'Alya „ „	9

156

This case has been consolidated with 2/Nufei'at.

Hadera, 11.1.40.

(Sgd.) CECIL KENYON.

Before the
Settlement
Officer.

No. 29.

Case No.
95/Nufei'at.
Withdrawn,
10th

January
1940. (Not
printed.)

No. 30.

Case No.
6/Nufei'at.
Proceed-
ings, 11th
January
1940.

No. 29.

CASE No. 95/Nufei'at—WITHDRAWN.

(Not printed.)

No. 30.

CASE No. 6/Nufei'at—PROCEEDINGS.

<i>Cl. No.</i>	<i>P.P. No.</i>	<i>Plaintiff :—</i>	<i>Share.</i>
368	10571/13c	Fahim Ibrahim 'Isa al-Hajibi	In whole
	" /14		
	" /15		
	" /16a		10
	" /17c		
	" /18b		
	" /19b		
	" /27a		
<i>Defendants :—</i>			
68	10571/13c	1. Shelomo Bahn	In whole
69	" /14	2. Yona Hurvitz	10
		3. Ariel Hurvitz	10
		4. Romamti-'Ezer Hurvitz	10
		5. Yitzhaq Hurvitz	10
			20
			—
70	10571/15	6. Avreham Smallniq	Out of 40
		7. Ben-Zion Smallniq	1
		8. Shulamit Smallniq	1
			1
			—
71	10571/16a	9. Yosef Tartakovski	Out of 3
72	10571/17c	10. Yosef Eliyash	In whole
			do.
(In Case No. 5/ Nufei'at)			
73	10571/18b	11. Aharon Meirson	do.
(In case No. 5/ Nufei'at)			
74	10571/19b	12. David Zolterov	do.
(In case No. 5/ Nufei'at)			
281	10571/27a	13. Hadera Founders Association Ltd.	do.
(In Case No. 3/ Nufei'at)			

Hadera, 11th January 1940.

Present :—Anas Eff. Khamra, representing the Plaintiff.

Mr. J. Kaiserman, representing the Defendants 13, 1/18, 97,
2/98.

Cases 6, 18, 38, 62, 97 and 98 consolidated.

PLAINTIFF'S EVIDENCE.

*Before the
Settlement
Officer.*

1st Witness for Plaintiff—on oath—FAHIM IBRAHIM 'ISA AL-HAJIBI, aged 40 to 41 years, living at Arab en Nufei'at, cultivator and Member of Village Settlement Committee.

No. 30.
Case No.
6/Nufei'at.
Proceed-
ings, 11th
January
1940,
continued.

- I own land in the Safra locality, S. Ali Hassan and partners, E. Eucalyptus, W. Masha, N. Tariq and Haj Ali Abdulla. The area is about 30 dunums and it belongs to me. In El 'Urf locality I have a parcel, W. Husein Akkashi, E. Muhammad el Abed, S. Saad es Sakkar and partner, N. Muhammad el Mahsin. In Mulleisi locality I have land.
- 10 W. Salim Ibrahim and partners, N. Muhammad Ibrahim and others, E. Abd. el Qader, S. Orange Grove of Haj Ali. In Mulleisa the land belongs to my brother and me jointly. In Atta locality, E. and N. eucalyptus, W. Salim Ibrahim, S. Ali Abdulla and Issa Atta. This with my brother and uncle. Mughara, Cave, threshing floor and a vegetable patch. In the cave I have partners, four of us in equal shares. The cave is used for the storage of tibn. The land was cultivated with barley, melons, lupine and beans. Some of the land is still under my cultivation, in 'Atta about 10 dunums of my parcel was handed over to Hadera people. All the land was cultivated by our family—before the war by my father
- 20 and after his death by us. We cultivated as owners and not as tenants and we never paid directly or indirectly any khums to Hadera or to Hassan es Saiyid. Tithes were paid by us and I produce some of the tithe receipts, some others are still with Mahmoud el Madi, and the receipts I produce are in respect of the land that I claim to be the owner of. Exhibits A and B dated 23.12.26 and 27.11.27. No one of Hadera ever cultivated the land and no one ever disturbed us in our possession.

Plaintiff's
Evidence—
Fahim
Ibrahim
'Isa al-
Hajibi, 11th
January
1940.

- Xd. by Mr. Kaiserman :* I think Deeb Maqqara signed the tithe receipts. One receipt is for LP.2.780 winter crops, 58 piastres summer crops. I obtained the land from my father. I have one brother, my
- 30 father died during the War 1914–1918. Saleh my brother is younger than I am. We divided the inheritance as follows by agreement. My brother has much less than I have, that is agreed between us. Most of the land is under my cultivation. 'Atta is under our joint cultivation. For the time being the income is joint, but I ask for registration in my name. I know Yusef Kalai, he has no land in Safra and I have never seen him cultivating there. I know Yusef Nour. I never saw him cultivating in Mulleisi. I know Aharon Samsonov. I never saw him cultivating. I never saw Barush Kram cultivating in 'Atta. I was never a watchman for Aharon Samsonov in his crops in Arab en Nufei'at and
- 40 never worked for Jews in Hadera. I know M. Goldenberg, Abu Rubin, and never watched any crops for him. All these persons are neighbours of ours and that is how I know all these persons.

Xd. by S.O. : I know all these persons are landowners and neighbours of ours, but I do not know how they became landowners. I saw M. Botkowski cultivating each of Safra and Mulleisa.

“ Witness says Mulleisa was a slip of the tongue.”

Before the Settlement Officer. 2nd Witness for Plaintiff—MUHAMMAD AL MAHSA, aged 42. Arab en Nufei'at. Cultivator. Member of V.S.C. of Arab en Nufei'at.

No. 30.
Case No.
6/Nufei'at.
Proceed-
ings, 11th
January
1940,
continued.

Plaintiff's
Evidence—
Muhammad
al Mahsa,
11th
January
1940.

I know Fahim Ibrahim and he owns land in Safra. Boundaries as claimed. Also in Zeef, and also in El 'Urf. Boundaries as claimed; and also in Birket 'Atta, boundaries as claimed, and also in Maghara, boundaries as claimed. Mulleisa locality, boundaries as claimed; about 4 to 5 keils. All the lands belong to Fahim in Safra 'Urf and with his brother in Mulleisa and with partners in 'Atta. The land is theirs and they do not lease it from others, and never paid any part of the produce except tithe to the Government. The lands were cultivated by Fahim and his father, 10
by Fahim for about 20 years, just after the occupation. The land was cultivated with all the usual crops. The Jews never cultivated any part of the lands.

Xd. by Mr. Kaisermann: I am a cultivator and when I have spare time I work in Hadera on a daily basis and worked for Mr. Vilensky soon after the war, about 2 or 3 years after the war (1918) and did so until three years before the dispute, in all about 3 years. I know that Fahim never did any other work. I saw Fahim actually cultivating the land he claims, I saw his uncle cultivate. I only went to 'Urf with the survey when they were there. I know D. Frank, he is a neighbour of mine. I do 20
not know Fleichman. I did not see Frank cultivating in 'Urf.

Examined
by S.O.

Xd. by S.O.: I often saw the Arabs cultivating in the Safra locality, and I would know about anyone and everyone who cultivated there. It is not true that Mr. Botkovsky cultivated in the Safra locality or in Mulleisa. My father and brothers cultivated our land. Our land was never enough to support the family, only in a year of very good crops. I worked for Samara, Abou Tyan, Surihi.

Case adjourned until Tuesday, January 30, 1940.

Hadera.

(Sgd.) CECIL KENYON.

Hadera, January 30th 1940.

30

Present: Anas Eff. Khamra, representing Plaintiff.

Mr. J. Kaisermann, representing Defendant.

Plaintiff's
Evidence—
Awad as
Sakkar,
30th
January
1940.

3rd Witness for Plaintiff—on oath—AWAD AS SAKKAR—Aged 70 years, living at Arab en Nufei'at. Cultivator.

I know Plaintiff and have lived here all my life. I know Mauq' Safra' plaintiff has land there, boundaries E.—Road, Euc., N.—Haj Ali, W. Masha, Musa Abu Tamam, S.—Ali Sayegh and myself. In El 'Urf, plaintiff has land, boundaries as claimed. In Mulleisa, Plaintiff has land, boundaries as claimed. In Atta plaintiff has land, boundaries as claimed. In Mughara plaintiff has land, boundaries as claimed. The cave is used for 40
tibn. I saw the father of Fahim cultivating the land and Fahim himself. Their combined cultivation exceeds 20 years, it is as is as long as I remember. They did not lease the land from any person, no Jews cultivated the land. Crops, wheat, barley, melons, lupines. No part of produce paid to Hussein es Saiyid.

Xd. by Mr. J. Kaisermann: I do not know Ab. Samsonov, nor do I know Zefen Ibn Nour. I never saw any Jews working the land. I did not

see plaintiff pay werko but saw him paying tithe, how much I cannot say, nor whether more or less than me. He paid to the Tax Collectors, Surhan and Deeb. Before Hassan es Saiyid there were as Mukhtars only Sheikhs, Hassan was a Sheikh. In the War the Turks often visited us, sometimes we were ill-treated, sometimes not.

*Before the
Settlement
Officer.*

No. 30.
Case No.
6/Nufei'at.
Proceed-
ings, 30th
January
1940,
continued.

Xd. by S.O. : Fahim has no land in Zeif locality. I am 70 and know the lands well. Before the survey the boundaries were furrows—then the survey fixed iron marks. There are no roads to the parcels. The mafruz is over 60 years old. The lands of Selim el Khoury were East of Hadera.
10 He never had lands near the Infi'at.

Re-Xd. by S.O. : Zeif and Safra are separate localities.

4th Witness for Plaintiff—on oath—ALI ABDALLAH HASSAN MBARAK.

Aged 45 years. Cultivator. Living at Arab en Nufei'at.

Plaintiff's
Evidence—
Awad as
Sakkar,
30th
January
1940,
continued.
Examined
by S.O.

Plaintiff has land in Safra. Boundaries as claimed. Plaintiff has land in El Urf, boundaries as claimed. Plaintiff has land in Mulleisa. Plaintiff has land in 'Atta—1/3 Plaintiff, 2/3 others. Plaintiff has no land in Zeif. All the lands belong to the Plaintiff, they are the owners. No Jews of Hadera ever ploughed the lands, plaintiff never leased the lands. Hassan es Saiyid never took a share of the crops.

20 *Xd. by Mr. Kaisermann :* I gave evidence concerning my land in the masha. I have land in the mafruz, and know all the lands and all the boundaries.

Plaintiff's
Evidence—
Ali
Abdallah
Hassan
Mbarak,
30th
January
1940.
Examined
by S.O.

Xd. by S.O. : I never heard that Haj Ali leased any lands. I am a fellah, and have been for 30 years or more, my father was before me. I also was a driver and have horses and worked in the lands nearby in Hadera. I never saw Fahim work for any Jews in Hadera, I do not know if he worked or not. He did not work.

Case adjourned until Thursday, February 1st 1940.

(Sgd.) CECIL KENYON.

30 *Anas Eff. :* Tithe receipts produced in Case 12/Nufei'at mention the name of the plaintiff. And it is prayed that they should be considered in this case.

Agreed.

Hadera, 30.1.40.

(Sgd.) CECIL KENYON.

Hadera, 1st February 1940.

Present: Anas Eff. Khamra, representing Plaintiff and Plaintiff in person.

Mr. J. Kaiserman, representing defendants.

Case No. 18/Nufei'at consolidated with this case.

Order Con-
solidating
Case No.
18/Nufei'at
with Case
No. 6/
Nufei'at.

40

Arab en Nufei'at,

6th February 1940.

Present: Anas. Eff. Khamra, representing Plaintiff.

Mr. J. Kaisermann, representing Defendants.

Mr. Kaiserman : I wish to call Aharon Meison as a witness who is now present.

Anas Eff. : I object to this witness as he was not named by the defendant.

Before the
Settlement
Officer.

S.O. Ruling. There is nothing in the Land Settlement Procedure Rules that prohibits a witness being heard before the case is closed for either party and the witness may be heard.

No. 30.
Case No.
6/Nufei'at.
Proceed-
ings, 6th
February
1940,
continued.

6.2.40.

(Sgd.) CECIL KENYON.

DEFENDANTS' EVIDENCE.

Witness for Defendant—on oath—AHARON MEISON—aged 67 years, living at Hadera.

Defendants'
Evidence—
Aharon
Meison.

I have lived in Hadera since 1924, that is 15 years. I have land in Safra locality, about 15 dunums, now it is less as the English dunum is larger. E.—Forest, W.—Sand, S.—Solotorov, N.—Botskovsky (culti- 10
vator). I cultivated the land for 4 to 5 years and also cultivated Solotorov's land, his land is about 30 old dunums. I paid to S. 60–70 mils a dunum and cultivated the land with my own hands, and can shew the land.

Xd. by Anas Eff. : I cultivated the land during the years 1925 onwards until the prevention order was issued. No Arabs were cultivating near me. I saw some Arabs ploughing far away, about two kilometres away, so far away that you could hardly see them. In 1925 I grew fodder, in 1926 water melons and pumpkins, 1927 barley, 1928 melons. In 1929 disturbances commenced, I cannot remember the month. I also leased other lands. To-day I do not cultivate. I paid £P.700 for 200 dunums 20
and a house. The house is in Hadera, the land is in 6 localities, Safra, Khamra and others. I do not know the names of all the localities in Arab en Nufei'at. I know B. Ram. I know A. Samsonov, he has land in Safra. For watching I paid on chits of paper. I do not know the Arabs well. The watchmen were Arabs and Jews, now they are Jews only. I used to pay 30 piastres a month. I know very few Arabs by sight, those that worked in my orange grove. I cultivate my lands myself. I do not know if the land was cultivated before 1924 as I was not here. The order was that those who were cultivating should continue. I ploughed the land, but as the disturbances 30
commenced I did not proceed. The Arabs were not cultivating in Safra when I was there; no one Arab near me, my neighbours were Jews. Shulamit was one. I paid taxes, werko and tithes for my house, orange grove and land in one sum in the Vaad. I know Shehade, he worked in my orange grove and my land ploughing for me with my horses, I had two pairs. Tithe was paid by me on the cereals, through the Vaad. I never saw any assessor on the land. I know the Arabs by sight, not by name, and I do not know what they did for a living.

Xd. by S.O. : I used to pay for watching on chits sent to me by the Hacklaim by hand of the Jewish or Arab Watchmen. 40

Witness looks around assembled Arabs and picks out Fahim Ibrahim. This man and his brother used to cart manure to the orange groves, I paid him for that work, not as a watchman though: he and his brother had working horses. I cultivated Solotorov's land for three years.

Mr. Kaiserman : I have a workman as a witness who used to plough for Mr. Samsonov and who can shew the land on the ground.

Settlement Officer proceeds to the ground (Malessa near the fig tree) to hear the evidence of Mustafa Hasan 'Abdallah, a witness for defendants.

*Before the
Settlement
Officer.*

S.O. was accompanied, among others, by :—

Ali Hassan As Saiyid.	Adv. J. Kaiserman.
Muhd. Ali Abdallah.	Mr. M. Shneerson.
Awwad as Saqr.	Mr. Aharon Samsonov.
Fahim al Ibrahim.	Mr. Aharon Meirson.
Muhsin Abdallah Akasha.	Mr. Zalman Rutman.
Suliman Dawud Abu Tamam.	Mr. Yafet Milner.
Mubarak Syleiman Mubarak.	Mr. Darjawetz.
Adv. Anas Eff. Khamra.	Mr. Haiyim Rutman.

No. 30.
Case No.
6/Nufei'at.
Proceed-
ings, 6th
February
1940,
continued.

Defendant's
Evidence—
Aharon
Meison,
continued.

6.2.40.

(Intd.) C.K.

Witness for Defendants : on oath—MUSTAFA HASSAN 'ABDULLA.
Aged about 30 years. Living at Hadera :—

Defendants'
Evidence—
Mustafa
Hassan
'Abdulla.

I know Ab. Samsonov. I worked for him about 17–18 years as a cart driver until the rebellion 1936–37. I know the land on which we are standing, it belongs to A.S. and I worked on it for about 10 years. Boundaries, E.—Tariq and Khalili, N.—Yosef Nour (), West, Jacob Samsonov, S.—Orange grove. I can shew all these boundaries. Fig tree is within boundary of Ali. Fahim never cultivated the land. Fahim was watchman for the crops for the Jews and he was watchman of the land. I saw him doing his work and he rode his horse, a red mare. I saw the neighbours I have named cultivating their lands.

Xd. by Anas Eff. : I came with the driver to the land this morning. Ali asked me if I knew the boundaries and I replied that I did. I have not walked along the boundaries yet. My nephew was shot and I cannot say who was accused of the murder. Today I do not work in Hadera. Now I am a ploughman on land in Zeita. I am not on speaking terms with my brother and do not know his business. I do not know the name of the land but have heard it called Mulleisa. No one cultivated near the trees, Sarakkiye. I was 24–25 years old when I came here and I do not know when I first came here—nor do I know the number of years I ploughed. I do not know if the Arabs cultivated, they may have done so before the Jews came. I have seen Arabs cultivating in the North, and West of Atta. I knew H.S. and A. Samsonov said the land belonged to him. It is about 26 dunums, so I estimate from the ploughing time. I was here after the war, how many years though I cannot say. I do not know if Fahim had a plough or if he cultivated here. He was a watchman here and I slept in his tent at night.

Anas Eff. : We have proved plaintiff's possession for a period exceeding the prescriptive period—the lands are well known. Cultivation proved. Fahim's possession not rebutted. Ploughed by him undisturbed in his possession. Never leased the land from any person, cultivated under presumption of ownership. C.A. consideration and benefit must be shifted from tenant to sub-tenant. Lease by Fahim not proved. No proof that land has been leased, no proof that consideration passed from plaintiff to tenant and from tenant to landlord. Plaintiff's possession

Before the
Settlement
Officer

No. 30.
Case No.
6/Nufei'at.
Proceed-
ings, 6th
February
1940.

Defendants'
Evidence—
Mustafa
Hassan
'Abdulla,
continued.

very sound proof for title. No evidence to prove that Plaintiff was watchman, no chits produced, no documentary proof, oral evidence insufficient. Evidence contradictory and doubtful. If he was a watchman he is not barred from being a land owner. Defendant witnesses did not shew the boundaries themselves, their evidence is vague and contradictory. I ask for registration in the name of Plaintiff. As to the ownership of the lands in partnership. Fahim and his partners have so agreed. As to the caves, they are stores and natural sites in possession of people such as the Arabs. As to the land around the caves, the partition is a private arrangement between the Plaintiffs, and it does not affect the ownership of the 10 land. I ask for registration of all these lands in the names of Plaintiffs.

Mr. Kaiserman : Plaintiff's claim is an invention, he was a watchman, but denies the fact categorically to further his case—he is clearly untruthful. As he is untruthful in this he may be so in all his claims. Watching receipts too much to ask for. When books were produced, objection taken by Anas Eff. Proof of cultivation only on parcels actually cultivated. Some plots were never cultivated. Plaintiff claims 10 per cent. of the whole area. Inheritance special case for Infi'at, masha' system, also special case for Arab en Nufei'at.

I ask for registration in my client's name and ask for confirmation 20 of my client's title and with costs.

6.2.40.

(Sgd.) CECIL KENYON.

Decision to be delivered on a date to be notified to parties.

6.2.40.

(Sgd.) CECIL KENYON.

No. 31.
Case No.
18/Nufei'at.
Proceed-
ings, 1st
February
1940.

No. 31.
CASE No. 18/Nufei'at.

Cl. No.	P.P. No.
380	10572/4a
	" /4d
	" /4g
	" /11c

Plaintiff.
Fahim Ibrahim 'Isa al-Hajibi

Share.
In whole

30

Defendants :—

84	10572/4a
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(In case
No. 17/
Nufei'at)

1. Hadera Founders Association Ltd.

In whole

85	10572/4d
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(In case
No. 17/
Nufei'at)

2. Natan Nata' Lerman

2

3. Nata' Moshe Lerman

1

86

10572/4g

(In case
No. 15/
Nufei'at)

4. Tanhum Frank

3

In whole

40

88	10572/11c
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(In case
No. 2/
Nufei'at)

5. The Government of Palestine

In whole

Hadera, 1st February 1940.

This case has been consolidated with Case No. 6/Nufei'at.

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Hadera, 1.2.40.

(Sgd.) CECIL KENYON.

No. 32.
CASE No. 38/Nufei'at.

*Before the
Settlement
Officer.*

<i>Cl. No.</i>	<i>P.P. No.</i>	<i>Plaintiffs :—</i>	<i>Share.</i>	<i>No. 32. Case No. 38/Nufei'at. Proceed- ings, 1st February 1940.</i>
400	10574/7a	1. Fahim Ibrahim 'Isa al-Hajibi	1	
	„ /8-9	2. Saleh Ibrahim 'Isa al-Hajibi	1	
	„ /10a		—	
	„ /11a		Out of 2	
	„ /12a			
<i>Defendants :—</i>				
10	132 10574/7a	1. Hayim Ben-Shaul Rotman	In whole	
	(In Case No. 36/ Nufei'at)			
	134 10574/8	2. Aharon Tsevi Aharonson	do.	
	(In Case No. 36/ Nufei'at)			
	135 10574/9	3. Rahel Samsonov	1	
	(In Case	4. Penina Samsonov	1	
20	No. 36/ Nufei'at)	5. Ofira Samsonov Neiderman	1	
		6. Arye Samsonov	1	
			—	
			Out of 4	
	136 10574/10a	7. Matityahu Nahumi	In whole	
	(In Case No. 35/ Nufei'at)			
	137 10574/11a	8. Aharon Samsonov	do.	
	138 10574/12a	9. The Government of Palestine	do.	
30	(In Case No. 32/ Nufei'at)			

Hadera, 1st February 1940.

See Record of Case 6/Nufei'at for evidence concerning claims of Plaintiffs and Defendants.

Case consolidated with Case 6/Nufei'at.

Hadera, 1.2.40.

(Sgd.) CECIL KENYON.

Before the
Settlement
Officer.

No. 33.

CASE No. 62/Nufei'at.

No. 33.	Cl. No.	P.P. No.	Plaintiffs :—	Share.
Case No. 62/Nufei'at. Proceed- ings, 1st February 1940.	424	10575/3a	1. Fahim Ibrahim 'Isa al-Hajibi	1
		„ /4	2. Saleh Ibrahim 'Isa al-Hajibi	1
		„ /5	3. 'Abd ar-Rahman 'Isa Ahmad	
		„ /13	al-Hajibi	1
				—
				Out of 3
			<i>Defendants :—</i>	
	155	10575/3a	1. Yehuda Slutzkin	2
(In Case			2. Yitshaq Ya'aqov Slutzkin	1
No. 60/ Nufei'at)			3. Hayim Fradkin	2
				—
				Out of 5
	156	10757/4	4. Mikhael Tutelman	In whole
	157	10575/5	5. Aharon Kongretski	1
			6. Matel Kongretski	1
				—
			7. Binyamin Sachsenhaus	2
				—
				Out of 4
	165	10575/13	8. The Government of Palestine	In whole
				—
				20

Hadera, 1st February, 1940.

Present :—Anas Eff. Khamra, representing Plaintiffs.

Mr. J. Kaiserman, representing Defendants.

See Case 6/Nufei'at of record concerning claim of Plaintiffs 1 and 2.

PLAINTIFF'S EVIDENCE.

Plaintiff's Evidence—
Abd er
Rahman
Isa Ahmad
al Hajibi.

Plaintiff No. 3—on oath—ABD ER RAHMAN ISA AHMAD AL HAJIBI.
55 years. Cattle owner :—

I have a share in a mafruz parcel in 'Atta locality with my cousins. I have one-third ; it belongs to us ; as owners, we cultivated wheat and barley and melons. We did not lease it from anyone, nor did we give any part of the produce to H. Saiyid or to the Jews of Hadera and we were never asked to surrender any part of the produce. We paid tithes. No one ever disturbed our possession. We cultivated the land for much more than 30 years. We ask for registration as claimed. Boundaries as claimed.

Xd. by Mr. Kaiserman : We paid taxes, whether werko, tithes or not I cannot say. I do not know the difference. I have been in Wadi Hawareth since the Prevention Orders. Before that I leased land from Hadera in partnership with Daoud Frank. I was paid compensation by the K.K.L. to leave the land in Wadi Hawareth, about ten years ago. I have two wives in Wadi Hawareth, and have lived there many years, long long

years, and one wife in Arab en Nufei'at, but have no land in Wadi Hawareth. I never paid tithes to the English Government. I received money from the K.K.L. and P.L.D.C. as a cultivator in Wadi Hawareth, though I never was a cultivator there.

*Before the
Settlement
Officer.*

No. 33.

Case No.
62/Nufei'at.
Proceed-
ings 1st
February
1940,
continued.

10 *Xd. by S.O.:* I obtained my share one-third by inheritance from my father, the brother of Fahim. Fahim's father divided the land into three and gave me one-third only, out of the five or six parcels in the Mafruz. I know the boundaries of the others. I remember the marriage of my nephew Salih but know nothing about the transactions. I was away at the time.

Witness for Plaintiff 3—on oath—SAAD ES SAKKAR. Aged 55 years, living at Arab en Nufei'at—Cultivator:—

Plaintiff's
Evidence—
Abd er
Rahman
Isa Ahmad
al Hajibi,
continued.
Plaintiff's
Evidence—
Saad es
Sakkar.

I know Plaintiff's land in 'Atta locality and its boundaries are—claimed. It is theirs but I do not know the shares of each. It was cultivated with barley, beans and melons. No part of the produce was paid to any person. All his life Abd er Rahman ploughed the land. The Jews never ploughed any part of the land. Ali Ahmad is on the West and eucalyptus.

20 *Xd. by Mr. Kaiserman:* Abd er Rahman always lived in Wadi el Hawareth, and his family live there. He has no tent in the Arab en Nufei'at. His two wives live in Wadi el Hawareth, he has no wife in the Arab en Nufei'at. Fahim has horses, always had them, since the time of his father. Fahim still has a red mare, he had one before and often saw him riding them around the countryside. I never saw him watching his lands.

30 *Xd. by S.O.:* I saw Abd er Rahman plough the land after the war with my own eyes, and also saw him paying the tithes to the tax collector of the British Government. I never saw Ibrahim and Abd er Rahman cultivating the other lands together but I can recollect as clearly as possible seeing them together in 'Atta, as clearly as I recollect seeing him paying the tithes.

DEFENDANT'S EVIDENCE.

1st *Witness for Defendant—on oath—YEHEZKIEL GOLDENBERG, aged 48 years, living at Hadera, Farmer:—*

Defendant's
Evidence—
Yehezkiel
Goldenberg.

40 I have lived in Hadera for 42 years and am an orange grove owner and land owner and was Mukhtar up till last summer. I know Fahim (Plaintiff No. 1) and especially when he was the watchman of the Barrat, the lands that lie between the forest (Breikhtas) and the sea. He watched the fields ploughed by the Jewish Farmers. He was a watchman for me and watched the land that is now the grove of Nassatissin as it was mine before I sold it. I grew cereals on the land, he was employed by several of us, Samsonov was one of them. I paid him through Samsonov who was in charge of the watching services. He issued Fahim with chits and we paid. The orange grove never belonged to Ali Abdulla.

Xd. by Anas Eff.: We had no need to take receipts as the chits were the receipts. The grove was transferred in the Land Registry in 1927 by me and the lands were fields before that. Fahim's wages were paid

*Before the
Settlement
Officer.*

No. 33.

Case No.
62/Nufei'at.
Proceed-
ings, 1st
February
1940,
continued

Defendants'
Evidence—
Yehezkiel
Goldenberg,
continued.

Examined
by S.O.

monthly. In 1927 the Dardara lands were utilized ; it is difficult to say which is the better, Dardara and Arab en Nufei'at. The land of the orange grove passed to me by inheritance from my father who died in 1919. I cannot say the name of the locality in which the grove stands as the Kushan does not state it. Safra is a swamp. I do not know the boundaries of the locality of that name. I know the boundaries of the lands in dispute in this case. I do not know the parcels that Fahim is claiming : he has no land and has no boundaries. The fields of the Jews are between the forest and the quarry and north of it, and between the forest and saris hillocks we leased to the Arabs as the water is very near the surface. I 10 lived in Qadima Settlement. I do not know that Fahim was a Ploughman, and never saw him ploughing and do not know if he did. Brother unknown. Fahim worked about 4–5 years. 1022–27. No general accounts kept of the watching services : not a general Colony matter. I cannot remember who was the watchman before Fahim. Before Fahim was watchman the land was cultivated and there was a watchman.

Xd. by S.O.: My payments amounted to about 15–18 piastres a month. Fahim brought the chits to me and I paid him. For a year and a half before that I was in Europe. I cannot recollect the name of any other watchman. My father and brother were then alive and took more 20 interest in cereal cultivation. Fahim was paid by me for watching Nassotissin grove, that is the only cultivable land I had there.

Defendant's
Evidence—
Baruch
Ram, 1st
February
1940.

2nd Witness for Defendant—on oath—BARUCH RAM, aged 41—living at Hadera, Farmer :—

I know Fahim, he is from the Arab en Nufei'at and have known him since he was a boy of five. I have cultivated lands in the Arab en Nufei'at, in 'Atta locality, boundaries N.—Breikhtas, S.—Lands of Infi'at, E.—Rutman Bros., W.—Slutzkin Batkir, about 130 dunums. I cultivated as agent of the owners, first in 1925 until 1931, when I ceased to be agent. Kongretzky now in the country. The land is so far as I know is under 30 cultivation as I saw the land ploughed about one month ago. For one year Fahim was my watchman in the land and I paid him myself. I think in 1927, and paid him about 30–40 piastres a month, that was my share. If I remember correctly he had LP.2½ a month as watchman. His job was to prevent cattle straying on to the crops. He rode a mare, a copper coloured mare. Fahim's claim is entirely untrue.

Xd. by Anas Eff. Khamra : It is not a custom to take a receipt from workmen. I kept books shewing my expenditure, I sent my principals in Poland the receipts and a monthly account. When I left the work I handed my books to my principals. As to a written record, there must 40 be some but I am not certain where the record may be. When I first came onto the land I did not see Fahim on the land, he was not cultivating the land. I used to go to the grove of Nassotissin. In 'Atta in 1926 I raised barley and rye. 1927, fodder. No watchman in 1926 in particularly general watching service. Special watchman required in 1927 owing to the presence of many herds. I cannot say if I saw Fahim on the lands in 1926. I never saw Fahim cultivating or ploughing any land in the Infi'at or in Dardara. I do not know if there are any localities in the Arab en Nufei'at. I cannot recollect the names of the Arab watchmen. I only paid Fahim. Samsonov was the man in charge of the watching 50 service.

3rd Witness for Defendant—on oath—AHARON SAMSONOV. Aged 60 years. Living at Hadera. Farmer:—

Before the
Settlement
Officer.

No. 33.
Case No.
62/Nufei'at.
Proceed-
ings, 1st
February
1940,
continued.

Defendant's
Evidence—
Aharon
Samsonov,
1st
February
1940.

I have lived in Hadera 48 years and have lands in the Arab en Nufei'at, bounded on the north by Milner, South by Nassitissin, East Khalili, West my late brother Ya'acov. I used to cultivate the parcel near Sarakkiye, the others I did not. I cultivated the land for eight or nine years until the prevention order, barley, water melons, by workmen, Arab workmen. Mustafa Hassan for seven or eight years, not of the Arab en Nufei'at. Ahmad al Hassan before him. I had other workmen in the orange
10 groves. I know Fahim for many years, for some years he was the watchman of the cereals in the Arab en Nufei'at, he watched my lands and others. I was in charge of the watching services and issued the chits. Fahim never cultivated my land or the land of my neighbours. As far as I remember I cultivated 26 Turkish dunums. I have heard of the name Mulleisa, but do not call the locality by that name. We call the lands Barrat.

Xd. by Anas Eff. Khamra : I do not know the lands claimed by Fahim in this case, I often went to the land to all parts of it, to the eucalyptus forests, once a week or so. I cannot say by names the persons cultivating,
20 but by sight I know many. I cannot say exactly where the Arabs ploughed. Fahim never cultivated the lands—his brother might have cultivated for him or he might have had persons working for him. Fahim was a watchman during the years 1923, 1924, 1925 or so, possible 1926. Fahim watched the lands cultivated by Jew, about LP.2½ a month, and gave him chits to collect his wages from the Jewish cultivators. Baruch Ram I know, he used to pay for general watching services, but I cannot say where he cultivated, it was to the West of Breikhtas, some way from Safra. We had from 5 to 6 watchmen for the fields, but in the Arab en Nufei'at only Fahim, he was sole watchman. Before Fahim there was Mograbi,
30 for a few years, Haj Suleiman Mograbi. After Fahim, Ali el Abid. No records about Fahim, payments. Milner in charge of watching services after me. Fahim did not lease any land from the Colony: he might have been a sub-lessee of either Hassan es Saiyid or Haj Ali Abdulla.

Xd. by S.O. : The Jews cultivated near Safra, near Nassotissin and up to Breikhtas and northwards from the grove as far as possible. Before the farmers were out to cultivate themselves the lands were leased with others to Hassan es Saiyid. The settlers first began to cultivate themselves in 1923–24, about the time Hassan es-Saiyid died, but during his lifetime we cultivated a little, the area was increasing from year to year.
40 I do not know the reason why we leased no lands to Nimer es Saiyid. Haj Ali used to lease land and cultivated it himself and by sub-lessees side by side with us. I paid Fahim for watching my own land with my own hand.

Examined
by S.O.

Case adjourned until February 6th 1940 at Hadera.

(Sgd.) CECIL KENYON.

Hadera, 1.2.40.

Before the
Settlement
Officer.

No. 34.

CASE No. 63/Nufei'at.

Withdrawn. (*Not printed.*)

No. 34.
Case No.
63/Nufei'at.
11th
January
1940.
Withdrawn.
(*Not
printed.*)

No. 35.

CASE No. 97/Nufei'at.

No. 35. Case No. 97/Nufei'at. Proceed- ings, 1st February 1940.	Cl. No.	P.P. No.	Plaintiff :—	Share.
	459	10583/11d	1. Fahim Ibrahim 'Isa al-Hajibi	1
			2. 'Ayish Muhammad Humaidan	1
			3. Saleh Ibrahim 'Isa Al-Hajibi	1
			4. Mubarak Suleiman Mubarak	1
				10
				—
				Out of 4

Defendant :—

327 10583/11d Hadera Founders Association Ltd. In whole
(In Case
No. 40/
Nufei'at)

Hadera, 1st February 1940.

Present :—Anas Eff. Khamra, representing Plaintiffs 1 and 2 and 4 and
Plaintiffs 1 and 2 in person.

Mr. J. Kaiserman, representing the Defendant. 20

This case consolidated with Case 98/Nufei'at.

PLAINTIFF'S EVIDENCE.

Plaintiff's
Evidence—
Fahim
Ibrahim
'Isa al
Hajibi.

Plaintiff No. 1—reminded that he is still on oath.

FAHIM IBRAHIM 'ISA AL HAJIBI: I own a share in the two caves, one belongs to me and my brother, the other to Ayish alone. Mubarak uses the land near the cave for onions. The land near the cave is used for a threshing floor, there are two. 'Ayish cultivates a little of the land. We have used the caves and land from the end of the war (1919) until to-day. We never leased the land from anyone. The land is stony and rocky. My father occupied the caves before me, used them for storing 30 tibn. Ayish used the cave for more than 20 years. With the rocks the land is about 8 dunums. No one interfered with our possession.

Xd. by Mr. Kaiserman: My total claim in the Mafruz is for about 100 dunums. Ayish is my partner in the cave and has always lived in the Arab en Nufei'at. He is a camel owner. I cannot remember if he had camels 20 years ago, he certainly had them 15 years ago. Ayish has a share in a mafruz parcel with S. Ibrahim, about 20 dunums. That is all he inherited from his father. I still have camels.

Xd. by S.O. : My neighbour on the North is Ayish el Husein, and Nassotissin, before him Haj Ali Abdulla. My brother and I inherited from our father. Ayish got his share from his father. Hussein Hamaidan is his brother, he has no share in the cave or threshing floor. Mubarak got his share from his father, he has brothers Ali, Abdulla, neither of them has a share. The father of Mbarak, my father and Ayish owned the parcel. I do not remember H. f. of Ayish.

Note by Settlement Officer : There were seven persons ; it is quite impossible for the shares to be reduced to a quarter.

10 Haifa, 1.2.40.

(Sgd.) CECIL KENYON.

Re-xd. by Anas Eff. : It was not considered important as to the area around the caves that was used by our partners. The land is small and no dispute ever arose between. We have no other place to store our tibn in the Arab en Nufei'at. The caves were used by us jointly. We made no money from the use of the land, no tithes were assessed on the crop.

Plaintiff No. 2. AYISH MUHAMMAD HUMAIDAN. Aged 38 years—living at Arab en Nufei'at—Camelteer :—

We have a cave in Mughara locality, boundaries as claimed, except Nassotissin's grove. The cave is used for tibn and cereals and a general store by me. As far back as I remember I used the cave as a store, my father did before me—certainly more than 20 years. I cannot say how many years my father used it. Fahim used the cave also as long as I remember, more than 20 years, more than 25 years. The land adjoining the cave was cultivated independently, sometimes by persons in partnership. The land was never divided. I ask for registration in my name alone. I never leased the land from anyone and never made any payments to H. Saiyid, nor did Fahim. I do not know if Mbarak has a cave.

Xd. by Mr. Kaiserman : I do not know Birkat Battikh and never heard of it, nor ever lived there. I used to work for Jews in Hadera and carry all types of goods with my camels. I used to have 10, then 5, now 4. I bought the camels after my father's death, he died a year or so before the war, perhaps about 30 years. Camel owning was a good business, in winter I carried oranges. All the year I was busy with my business of camel driving and had camel drivers. I obtained the money to purchase the camels from the cultivation of my lands and from camel driving. My land is in Mulleisa about 30 mainis, 40 dunums. I have no kushan, paid no werko, but paid tithe, I cannot say how much. I paid no tithe for the land near the cave.

Xd. by S.O. : My camels cost me between LP.8-10 each. (Share of Plaintiff is 22 dunums only.) My principal business is cultivation and camel driving. I gave nothing to my half-brother, he never had a share in the cave. All the cave belonged to my father and it all belongs to me. There are two caves, one is mine alone and one belongs to Fahim, the same with the threshing floors. Mbarak used to cultivate nearby, he has a share but I do not know how much.

Re-xd. by Anas Eff. Khamra : I have no objection to registration as claimed.

Before the Settlement Officer.

No. 35.
Case No.
97/Nufei'at.
Proceed-
ings, 1st
February
1940,
continued.

Plaintiff's
Evidence—
Fahim
Ibrahim
'Isa al
Hajibi,
continued.

Plaintiff's
Evidence—
Ayish
Muhammad
Humaidan,
1st
February
1940.

Before the
Settlement
Officer.

1st Witness for Plaintiff. 'ABDULLA HASSAN MUBARAK. Aged 45 years—living at Arab en Nufei'at—Cultivator :—

No. 35.
Case No.
97/Nufei'at.
Proceed-
ings, 1st
February
1940,
continued.

I know the Mughar locality and know the Plaintiffs; they have caves there. Boundaries as claimed. Plaintiffs used the caves since the time of their father, more than 25 years. There are two caves and two threshing floors, a little under cultivation, and the rest is rocky. Mbarak cultivated a piece of land for between 8-10 years. I cannot say if he had a share in the caves, but he had in the land.

Plaintiff's
Evidence—
'Abdulla
Hassan
Mubarak.

Xd. by Mr. Kaiserman : Ayish has brothers living in the Arab en Nufei'at. I know Birkat Battikh, it is north of Hadera and well known 10 by the Arabs. I often visited the place. Ayish was a camel owner and probably knew the place as he used the roads. Mubarak used to cultivate onions.

Xd. by S.O. : No use was made of the stony places, Mbarak came into possession by being allowed to cultivate by Fahim's father. Mbarak got his part by gift from Fahim's father. Fahim's father was the master of Mubarak's father (master and slave); they were not partners. As far as I know Ayish never lived in Birkat Battikh. He used to go with his camels and also had drivers and also cultivated. He had enough on 20 which to live.

Plaintiff's
Evidence—
Salih
Ibrahim
'Isa al
Hajibi, 1st
February
1940.

Plaintiff No. 3—on oath—SALIH IBRAHIM 'ISA AL HAJIBI—aged 35 years, living at Arab en Nufei'at :—

I have land in the Mafruz in Safra, El Urf, Mulleise, and 'Atta, and in Mughr. I have a share in Mulleisi and Atta alone, not in the others. Boundaries Mulleisa, as claimed—Case 74/Nufei'at. Boundaries 'Atta, as claimed Case 62/Nufei'at.

Case 74/Nufei'at.—In Mulleisa Fahim is my partner. *Case 62/Nufei'at.* In Atta Fahim and Abd er Rahman are my partners. In 'Atta we cultivate a part, the other part is cultivated by Jews. *Case 62/Nufei'at—'Atta. Case 74/Nufei'at.*—Mulleisa.—The lands belong to us, as owners by 30 inheritance from our father. We paid tithes. *Cases 97/98/Nufei'at.*—I know the Mughr locality, we have a cave and a threshing floor, the land is rocky. We obtained it by inheritance from our father. Our partners are Ayish and Mubarak. *Case 62 and 74.*—Our cultivation was wheat, barley and melons. Our possession was over 25 years. I ask for registration of these lands as claimed.

I was entitled to shares in every parcel and I gave him my shares as my brother Fahim spent money on me and my marriage expenses. We never paid any sums to Hassan es Saiyid or to the Colonists of Hadera. We paid tithes. No one ever interfered with our possession. *Cases 97, 40 98, Nufei'at.*—Boundaries as claimed, no mention of Jewish groves in the north.

Xd. by Mr. Kaiserman : Cases 97, 98. We have one cave only. I know where Birkat Battikh is, it is to the North of Hadera. I never saw Ayish living in Birket Battikh. I never worked for Jews in Hadera. Nor did Fahim. I know Baruch Oran and Abu Rushdi and others. They are my neighbours, that is how I know them. I have animals, in partner-

ship with Fahim, horses, two, a long time. He, Fahim, never worked for the Jews.

*Before the
Settlement
Officer.*

Xd. by S.O. : I was married five years ago. At the time of recording the claims I renounced my shares in some parcels on account of the marriage expenses, before my marriage. S.O. note (the claims were submitted 25.11.36). My mother gave up her shares in the settlement. I do not know for what reason, nor do I know why my sister surrendered her shares. I was always a cultivator, and never did any other work. I did work with my cart and horses for Jews of Hadera and Arabs wherever
10 there was work but Fahim is weak and never worked at any time, either himself or with his animals. (Witness does not explain why he concealed the fact that his northern boundary is the Jews.) *Cases 97 and 98.*—Mubarak obtained his share, so I hear, as a gift from my father. Ayish was always on the land. I used the cave myself. No use was made of the rocky parts, I think about one-third of the land is rocky, it was not cultivated. I cultivate the lands of our family, that engaged all my time. Fahim did not cultivate as he is not physically fit.

No. 35.
Case No.
97/Nufei'at.
Proceed-
ings, 1st
February
1940,
continued.

Plaintiff's
Evidence—
Salih
Ibrahim
'Isa al
Hajibi, 1st
February
1940,
continued.

Case adjourned until the 6th February 1940 at Hadera.

(Sgd.) CECIL KENYON.

20 Hadera, 1.2.40.

Arab en Nufei'at.

6.2.40.

Present : Anas Eff. Khamra, representing Plaintiff.

Mr. J. Kaiserman, representing Defendant.

Plaintiff No. 4—on oath—MUBARAK SULEIMAN MUBARAK—aged 33 years. Living at Arab en Nufei'at :—

I have a small plot of land in Mughara locality, near the stones of Fahim and 'Ayish. Its boundaries are : E.—Abu Taman, S.—S. Abu Tamam, W.—Haj Ali, N.—Ayish and Hussein. I obtained the land from
30 my master Fahim al Hajibi. I was cultivating the land 15 years before the prevention order, no one interfered with my possession. I know Haj Ali and never leased any land from him and never paid any part of the produce to anyone.

Plaintiff's
Evidence—
Mubarak
Suleiman
Mubarak.

Xd. by Mr. Kaiserman : The prevention order was 11 years ago or so. I was about 10 or 12 years when my master gave it to me. About 10 years before the prevention order. My father was alive at the time. Fahim's father gave it to me, not my father. Fahim's father was my father's master, he did not give my father a present, at the time. Since then I cultivated in the masha'. After I was 15 years. When I was 10 or 12
40 I cultivated the land with onions and ate them all myself. The area was about one dunum. He told me I had one fourth of the area. I know of no other cases of master giving presents in this manner.

Xd. by S.O. : I was told that I had a quarter of the land when the claims were recorded in 1936. The three-quarters belong to others, they cultivated these quarters which are larger than mine, adas, kersenneh, onions. I gave the produce to my mother.

Examined
by S.O.

*Before the
Settlement
Officer.*

No. 36.

CASE No. 98/Nufei'at.

No. 36.	Cl. No.	P.P. No.	Plaintiffs :—	Share.
Case No. 98/Nufei'at. Proceed- ings, 1st February 1940.	460	10583/9c ,, /11	1. Fahim Ibrahim 'Isa al-Hajibi 2. 'Ayish Muhammad Humaidan 3. Saleh Ibrahim 'Isa al-Hajibi 4. Mubarak Suleiman Mubarak	1 1 1 1 — Out of 4

Defendants :—

325 (In case No. 73/ Nufei'at)	10583/9c	1. The Government of Palestine	In whole 10
327 (In Case No. 40/ Nufei'at)	10583/11	2. Hadera Founders Association Ltd.	do.

Hadera, 1st February 1940.

This case has been consolidated with Case No. 97/Nufei'at.

Hadera 1.2.40.

(Sgd.) CECIL KENYON. 20

No. 37.

Case No.
3/Nufei'at.
Proceed-
ings, 6th
February
1940.

No. 37.

CASE No. 3/Nufei'at.

Hadera, 1.2.40.

Cl. No.	P.P. No.	Plaintiffs :—	Share.
365	10571/1b /24b /25 /26 /27d	1. 'Ali Hasan al Sayid 2. Sa'd Saqr Suleiman 3. 'Awad Saqr Suleiman	1 1 1 — 3 — 30

Cl. No.	P.P. No.	Defendants :—	Share.
36 (In Case No. 2/ Nufei'at)	10571/1b	1. Government of Palestine	In whole
78 (In Case No. 2/ Nufei'at)	10571/24b	2. Rivqa Bat Mordekhai Hurvitz	do.

<i>Cl. No.</i>	<i>P.P. No.</i>	<i>Defendants :—</i>	<i>Shares.</i>	<i>Before the Settlement Officer.</i>
79 (In Case No. 2/ Nufei'at)	10571/25	3. Moshe Turetz	do.	No. 37. Case No. 3/Nufei'at. Proceedings, 6th February 1940. <i>continued.</i>
80 (In Case No. 2/ Nufei'at)	10571/26	4. Zvi Ben Mordekhai Solonovitch	do.	
10 81 Hadera, 6.2.40.	10571/27d	5. Hadera Founders Association Ltd.	do.	

This case has been combined with Case No. 4/Nufei'at for both Plaintiff and Defendant.

6.2.40.

(Sgd.) CECIL KENYON.

No. 38.				
CASE No. 4/Nufei'at.				
<i>Cl. No.</i>	<i>P.P. No.</i>	<i>Plaintiff :—</i>	<i>Share.</i>	<i>No. 38. Case No. 4/Nufei'at. Proceedings, 6th February 1940.</i>
366	10571/20a	'Awwad Saqr Suleiman	In whole	
20	„ /21a			
	„ /22			
	„ /23			
	„ /24			
	„ /25b			
	„ /27c			
<i>Defendants :—</i>				
75	10571/20a	1. Binyamin Shulami	In whole	
56 (In Case No. 2/ Nufei'at)	10571/21a	2. The Government of Palestine	do.	
30 76 (In Case No. 2/ Nufei'at)	10571/22	3. Yosef Ya'aqov Bervitz	do.	
77 (In Case No. 2/ Nufei'at)	10571/23	4. Moshe Ben-Zion Sussman	do.	
78 (In Case No. 2/ Nufei'at)	10571/24	5. Rifqa Bat Mordekhai Hurvitz	do.	
40 79 (In Case No. 2/ Nufei'at)	10571/25b	6. Moshe Turetz	do.	
81 (In Case No. 3/ Nufei'at)	10571/27c	7. Hadera Founders Association Ltd.	do.	
50				

Before the Settlement Officer. Arab en Nufei'at, 6.2.40.

Present :—Anas Eff. Khamra, representing Plaintiff.

No. 38.

Mr. J. Kaiserman, representing Defendants.

Case No.
4/Nufei'at.
Proceed-
ings, 6th
February
1940,
continued.

Anas Eff. : I ask for the parties to be recited and my clients should be cited as Defendants.

S.O. Ruling : This case has been returned for rehearing, the parties being the same as in this case and as cited. An objection was lodged in the original case 153/32 page 2 of the English Record and the objection was overruled. No alteration can be made at this stage and the parties must remain as cited.

10

6.2.40.

(It'd.) C. K.

PLAINTIFF'S EVIDENCE.

Plaintiff's
Evidence—
'Awad Saqr
Suleiman.

1st Witness for Plaintiff—on Oath—'AWAD SAQR SULEIMAN. Aged 70, living at Arab en Nufei'at :—

I have lived here all my life and own property in Safra locality. The boundaries are as in claim. I planted the land with melons, it is mine in partnership with Ali Hassan and my brother. I have land in Zeif and El Urf. 10571/17a, 18a, 19a, 20a, 21b, 22c, 27, 27b. In Zeif the land belongs to me *alone*. Boundaries as claimed. 10571/20a, 21a, 22, 23, 24, 25b, 27c. In Zeif I have another parcel in partnership with 20 Ali Hassan and my brother. Boundaries as claimed. 10571/16, 24b, 25, 26, 27d. In Mughais locality a parcel and cave in my name alone. 10574/22h–25c. In Sarakkiya, a parcel in partnership with Ali Hassan and my brother. 10574/1, 2a, 3a. In Mughara locality a parcel in partnership with Ali Hassan and my brother. 10574/1a, 3b, 4–5, 10, 13a, 20b. In Mughara locality. In El 'Urf locality in partnership with my brother only. Boundaries as claimed. 10572/4k, 4a, 5b, c, 9b, 10, 11d, 12a, 14–16.

The cave in case 45 is used by me and my brother. The lands described belong to me, those claimed by me alone were not leased by 30 me from any person. Melons and wheat were grown on the land, also barley below the caves. I never gave any produce of the land as rent and have never seen the Jews of Hadera cultivate the lands : they were cultivated by me all my life—perhaps 40 years. Hassan es Saiyid never collected any portion of the crops—from any Arabs. The same applies to all the lands I hold in partnership. Tithe was paid by me to Government. Nimer El Hassan did not plough any piece of land with me, but he cultivated in partnership with me more than 20 years. And before Nimer his father Hassan es Saiyid. Hassan es Saiyid and my father were 40 brothers.

Xd. by Mr. Kaisermann : Before my father died the land belonged to him and Hassan es Saiyid in partnership—each one had a one-third. Hassan es Saiyid's father, half-brother of my father, and my uncle Suleiman Suleiman Murzuq. They died as follows : Suleiman, Hassan father and then my father. Suleiman's share went to my father. I do not know if half-brother have a share. No one ever obtained a Certificate of Inheritance. *Areas*. Safra 60 m'anaim, Zeif 45 m'anaim olives, Zeif

30 m'anaim, Urf 60 m'anaim. Mulleisa is forest land. I have no land there. I did not claim the land we sat on this morning, it is in the masha'. Areas. Mughr 20 m'anaim alone. Mughr partnership 40 m'anaim. In El 'Urf the land is in partnership with my brother, each one a half share. I cannot explain why I claimed El 'Urf alone. I have a big family and cultivated the lands with my own hands. I have never been to Fuqara. I know Yusef Nour, but not know Meirson or Darjawetz or Efraim Shternin. I cultivated the land on which we are sitting (Safra). The iron mark was put there during the survey, on the north-east corner.

*Before the
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No. 38.
Case No.
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Proceed-
ings, 6th
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1940,
continued.

10 I was present.

Xd. by S.O. : I have two parcels in Mughr locality only. The first boundaries as in (Case 54). The second is bounded by (Case 35). Also a cave (Case 45). I was a partner with Nimr el Hassan and before him Hassan es Saiyid. Ali had no share when Nimer was alive, our custom is to have all the shares so long as we live together in one house.

Plaintiff's
Evidence—
'Awad Saqr
Suleiman,
continued.

Anas. Eff. : I produce the receipt.

Case adjourned until 8.2.40.

(Sgd.) CECIL KENYON.

6.2.40.

20

Arab en Nufei'at,

8.2.40.

Present : Anas Eff Khamra, representing Plaintiff.

Mr. J. Kaiserman, representing Defendant.

Plaintiffs Awad Saqr Suleiman, Ali Hassan es Saiyid, and Sa'ad Saqr Suleiman, present in person.

2nd Witness for Plaintiff—On Oath—DEEB ISHTAWI. Aged 35.
Cultivator. Living in Arab en Nufei'at :—

30 I know Awad, Saad and Ali, the Plaintiffs, they own land in Safra, near the land of Fahim, N.—boundaries as claimed in Zeif also, ownership and boundaries as claimed. Sarakkiye in partnership. Awad, Sa'ad and Ali. Boundaries as claimed. Mughr. Awad has land there, Ard Raml., E.—eucalyptus, W.—Mughr, S.—Abu Tamam, N.—Waqf. This Awad owns alone. Another plot, Ard el Raml. N.—Abdel Qader, W.—Muhammad al Abed, S.—Waqf, E.—Ard el Abid, Awad, Saad and Ali one-third each. Cultivation, Zeif, wheat, barley, melons ; cultivated as owners, no part of crops given in payment of rent. They cultivated for more than 20 years : taxes paid to Government. Jews did not lease the land. In Sarakkiye and Safra Awad cultivates now, he had an order. I never saw the Jews cultivating the land.

Plaintiff's
Evidence—
Deeb
Ishawi.

40 *Xd. by Mr. Kaiserman :* I do not know the area of the land in Sarakkiye though I know the boundaries and have seen it cultivated in partnership, just before the prevention order. I did not see him cultivate after the Prevention Order. Awad cultivates Zeif locality, both his own and the partnership parcel. I saw him cultivate every year. He cultivates himself. I saw Saad and Ali cultivating also every year. I do not know the area of any of the parcels. I have never seen Meirson before two days ago and never saw him cultivating. Never saw any

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Officer.*

Jews cultivate before the order. Never saw Botkovsky cultivate anywhere. I did see him cultivate in the Kibbutz outside Arab en Nufei'at. I do not know if Awad has a Kushan, did not pay werko.

No. 38.
Case No.
4/Nufei'at.
Proceed-
ings, 8th
February
1940,
continued.

Plaintiff's
Evidence—
Deeb
Ishtawi,
continued.

Xd. by S.O. : The boundaries of Zeif are : N.—Safra, E.—Eucalyptus, S.—Waqf, W.—El Urf. Awad is the last claimant in Safra with his partners. Haj Ali and Awad are the last Claimants in El Urf. In El Urf Awad has land that is not being cultivated. Now I remember it is cultivated in part but by who I do not know. I saw Awad pay the tithe. I do not know how much, £P.5. LP.4 in notes and cash. I do not know where, now I do, in Hussein es Saiyid's tent. I was present and paid 10 £P.2½. Hassan es Saiyid was present also. I know everything about the land, without being told. I do not know the name of Awad's uncle. His father's name was—now I do not know. Awad never told me he did not pay produce. I just know he didn't.

Plaintiff's
Evidence—
Abd er
Rahman
Masuas.

3rd Witness for Plaintiff—on oath—ABD ER RAHMAN MASUAS.
Aged 40 years. Cultivator of Arab en Nufei'at.

I know Plaintiff and Safra locality and they have land there : points and boundaries as claimed. Also in Zeif and El Urf, and in Sarakkiye, boundaries as claimed. In Mughr, one cultivated patch, boundaries as claimed, east of the caves. He had a cave and threshing floor. Cave 20 used as a store for tibn. Awad and his partners were in possession for 26 years. I know since I was 14 years' old. The land was used for wheat, barley, melons. I never saw the Jews cultivate the land and know that Awad paid no part of the produce to anyone.

Mr. Kaiserman : I remember the prevention order. I was cultivating barley in the masha' in 'Atta locality and the order was not in my favour. Some land was allowed to the Arabs, some to the Jews. I had a little in 'Atta, another parcel, the Arabs gave me a piece, the year of the prevention order. Mustafa Masaud and Salim Ibrahim cultivated the mafruz parcel that I was allowed to cultivate by the Arabs. No Jews cultivated around 30 me, neither before or after the prevention order. The Jews had a piece a long way away from my parcel. In Safra the land of 'Awad was ready for melons and the prevention order prevented them. I saw all three partners cultivating, Awad, Saad, and 'Ali Hassan themselves. I do not see 'Ali Hassan, I saw his ploughman. The ploughmen were those of Nimer Hassan, he was alive at the time. I do not know the area of the land, or of any of 'Awad's land. I saw 'Awad cultivating in Zeif the year before the prevention order. I do not know how long it takes to plough the land, perhaps three or four days. I do not know Aharon Meirson. I know Shlomo Meirson. Now I do know him but not know his business. 40 I did not see him cultivating. I know Shlomo Meirson. I never saw him cultivating but I am not prepared to say (? say) that he is lying if he says he was ploughing. Awad has no kushan, nor have his partners. They paid tithe, I did not see them paying werko. To-day I have no work. I am a mechanic for the pump in 'Atta and have been for five years. Before that I worked in Hadera, never for a Jew in Hadera before the prevention order. I had work on my land in the mafruz and masha' land. I am physically unfit for work as I have an ailment. We are three brothers but they do not have common holdings.

Xd. by S.O. : The Jews never leased the land to the Arabs, or any land in the Arab en Nufei'at. Hassan es Saiyid and Haj Ali leased land in Charkass. I heard him H. S. say so, from Mr. Lubin.

*Before the
Settlement
Officer.*

4th Witness for Plaintiff—on oath—MUHAMMAD EL HAJ ALI SULEIMAN—Aged 29 years—living at the Arab en Nufei'at :—

No. 38.
Case No.
4/Nufei'at.
Proceed-
ings, 8th
February
1940,
continued.

I know Plaintiff and the lands claimed by them; boundaries as claimed. The land in partnership is held in thirds. In El 'Urf the land belongs to the brothers alone. Awad has a parcel in Mulleisa. Awad and partners did not lease the land. Safra 1/3, Zeif whole, Zeif 1/3rd, 10 Sarakkiye 1/3. Cultivation of wheat and melons; no part of produce paid to anyone. The lands belong to Arab en Nufei'at and have been in our possession.

Plaintiff's
Evidence—
Abd er
Rahman
Masuas,
continued.
Plaintiff's
Evidence—
Muhammad
el Haj Ali
Suleiman.

Mr. Kaiserman : The Plaintiffs have no Kushans and pay no werko. They paid nothing to my father. My father did not tell me they did not pay him any produce. My father leased land from the Bank in Hadera. I know my father did not lease land from the Jews in Arab en Nufei'at, because he did not tell me that he did do so. He often discussed Arab en Nufei'at with me. I often went to Charkass.

Examined
by S.O.

Xd. by S.O. : I lived most of my time in Arab en Nufei'at. Ahmad 20 lived in Charkass for ten years or so, lately before that in Arab en Nufei'at, and I do not know if my father discussed matters with him. As a family we claim 400–600 dunums in the mafruz alone. We have a small property in Charkass. We also leased land from the Jewish Bank in Hadera. We worked the lands ourselves, employed hired labour and paid them at the end of the harvest. Some years we paid the ploughmen in cash, sometimes in kind. The ploughmen waited for their wages until after the harvest, living with the Arabs. The land is not registered and that is why they did not collect it (werko)—the land is large 10–12,000 dunums. The Arabs are poor and could not afford to pay werko. I do not remember 30 the possible registration of this land. The land that became an orange grove (Nassotissin) was not registered. 'Awad belongs to our family. Together we have about 1/2 of the Arab en Nufei'at. Awad's uncle was Suleiman, but his other name I am not certain. Suleiman Marzuq was Awad's grandfather, his uncle was Suleiman Suleiman. My grandfather and Awad's father were cousins.

Re-Xd. by Anas Eff. : My father leased lands from Hadera both before and after the prevention order. The ploughing animals belonged to us.

(Intd.) C.K.

8.2.40.

40 Case adjourned until 2.30 p.m.

5th Witness for Plaintiff—on oath—SA'AD SAQR SULEIMAN. Plaintiff No. 2, Case 3/Nufei'at. Aged 55 years, living at Arab en Nufei'at :—

Plaintiff's
Evidence—
Sa'ad Saqr
Suleiman.

I know the Safra locality and have land there, boundaries as claimed, in partnership 1/3rd. Ali Hassan, Zeif, Awad's land *alone*. Boundaries as claimed. Zeif. Partnership 1/3rd. Boundaries as claimed. El 'Urf. Mughr locality. Boundaries as claimed. Also a store, boundaries as

*Before the
Settlement
Officer.*

No. 38,
Case No.
4/Nufei'at.
Proceed-
ings, 8th
February
1940,
continued.

Plaintiff's
Evidence—
Sa'ad Saqr
Suleiman,
continued.

Examined
by S.O.

claimed. Awad alone. El 'Urf. Awad and Saad, 1/2. When we claimed the land I had a 1/2 share in El 'Urf. I cannot read or write. Land cultivated with barley, melons principally. El Urf, melons, barley, turmos. Never leased the lands from the Colonists. Cultivated as an owner : never paid any part of the crops to Hassan es Saiyid or any other. Paid tithes.

Mr. Kaiserman : It might have been a mistake in recording the claim. Have no Kushan, never paid werko. Paid tithes together—land in El Urf always mine. Each one of us in Safra obtained receipts for all the lands, each of us owned. We were growing winter crops in Safra. 10 I was sowing barley. 'Awad was also sowing barley. Ali was sowing barley also. Nimer was there, not Ali. Nimer's ploughmen. If anyone has said that melons were being prepared it is untrue. I do not know the area of our land. Perhaps 10 keils in Safra for winter crops.

Xd. by S.O. : We obtained the land from our fathers, from my father and uncle. My father and two uncles had the five plots. My father being the eldest had a greater share. My brother Awad is older than I and has a greater share to-day. I have a parcel alone in El-'Urf ; then Suleiman, then Saiyid, father of Hassan es Saiyid. Suleiman had no heirs. I renounced to 'Awad a share in Zeif where he claims alone, and one in the 20 cave localities. I cannot explain why there is no mention of this in my Memorandum of Claim. 'Awad renounced a share to me in El 'Urf, because I renounced to him. As to the claims, a mistake may have been made by the five persons concerned in making the claim. We always had our parcel in El-'Urf in partnership.

Anas Eff. : The interim order was given in our favour because it was under cultivation, my brother and myself, and it was planted with melons.

Case adjourned until the 19th February 1940, at Hadera.

(Sgd.) CECIL KENYON.

Hadera. 8.2.40.

30

Hadera, 27th February 1940.

Present : Anas Eff. Khamra, representing the Plaintiffs, and Plaintiffs in person.

Mr. J. Kaiserman, representing the Defendants.

Plaintiff's
Evidence—
Ali Ahmed
El Ali.

6th Witness for Plaintiff No. 2, Case No. 3/Nufei'at—on oath—ALI AHMED EL ALI. 65 years ; cultivator ; living at Arab en Nufei'at :—

I know the Plaintiffs 1, 2, 3 ; they have land in Safra, W. Masha', N. Fahim Ibrahim, E. Eucalyptus and road, S. Awad as Sakkar ; each has an equal share. Sa'ad has land in El 'Urf alone. E. Awad, W. Ali 40 Abid, N. Fahim and Husein Akkashi, S. Ali Ahmad and Abd el Masuad. Zeif, Sa'ad has a parcel in partnership one-third. Sarakkiye, one-third, W. Eucalyptus, E. Waqf, N. Deeb esh Shtewi and partners, S. Muhammad El Abid. Mughr, one-third. E. Ali 'Abid, S. Abd el Qader, W. Muhammad el Abid, N. Waqf. They have used the land as far back as I remember ; more than 30 years. No sums were paid to the Colonists of Hadera for the use of the land. The lands were never cultivated by the Jews, or by ploughmen on their behalf.

Xd. by Mr. J. Kaiserman : I do not know Aharon Meirson, or any person name Shutawi, nor Djavit. I know Yusef Nour, but never saw him cultivating in Safra. I never saw any Jews ever cultivating in any of the lands of Arab en Nufei'at. I know Abu Shlomo (Botkovski) but never saw him cultivating. I know Ab. Samsonov, never saw him cultivating in the Arab en Nufei'at. In Safra the land was handed over to the Jews. I have seen Jews cultivating this land since the prevention order. No one has a kushan, never paid werko, paid tithe only in the house of the Mukhtar, many times, I do not know how much. H. Saqr and N. Saiyid house. I do not know how many dunums. The Sakkar family are related to H. Saiyid's family.

Xd. by S.O. : I saw Sa'ad cultivating the land. We had no watchman to keep the cattle off the crops. Each cultivator watched his own crops. Sa'ad has more land than I have. I have 58 Maans.

Plaintiff No. 1—Case 3/Nufei'at. ALI HASSAN ES SAIYID, aged 28. Mukhtar, Arab en Nufei'at :—

I have land in *Safra* in partnership with two others, one-third each. *Zeif*, one-third. *Sarakkiye* one-third. *Mughr* one-third. *Threshing Floor* alone, in whole. Sa'ad es Sakkar has land in *El 'Urf*. All boundaries as claimed. I inherited my lands and obtained one-third by succession. Our possession has lasted longer than 20 years, and we are owners and have never leased the lands from anyone, nor ever recognised any person as having any interest in the land. I heard my father had business relations with the Colonists of Hadera. I heard he employed watchmen on behalf of the Colonists and I heard he was paid for that work and he hired labourers. My father leased lands from the Colonists, so did my brother, from the Bank of Hadera, on contract. I may have them. We never paid any part of our produce to the Jews. The Jews never cultivated any of the lands of the Arab en Nufei'at. Never, my brother, paid tithes. My father could not write or read.

Xd. by Mr. Kaiserman : I was never asked before whether my father was a contractor of watchmen. He was paid for his services. It is correct that he received money for watching—concerning Hadera lands only. If the books mention Barrat, then it may have referred to Hadera and my father was induced to sign. These facts about watching are not recent. As a family we claim a little more than half the mafruz. Ali Ahmad is a member of our family. The other half is claimed by 18 families or so. I have no explanation of this, except that every person who occupied the land is entitled to it. My family cultivate the greatest part of the cultivated masha' land. My father had land in Karkour, in Charkass, in Pardess Hanna also. For those lands he had kushans, but I do not know how he acquired them. Some of the lands were sold some remain in our names. I do not know why my father obtained no kushans for the Arabs en Nufei'at nor do I know why we did not pay werko.

Xd. by S.O. : I do not remember if he employed Fahim Ibrahim as a watchman. In Sharkass I have a share with other heirs in my father's land. The shares of my brothers and others are included in my one-third. Witness gives names of 12 co-heirs and declares that with their consent he put in a claim for them all in his own name. My grandfather had

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No. 38.
Case No. 3/Nufei'at.
Proceedings, 27th February 1940,
continued.

Plaintiff's Evidence—
Ali Ahmed
El Ali,
continued.

Plaintiff's Evidence—
Ali Hassan
es Saiyid.

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continued.

one-third ; so did my father and therefore I have one-third. My grand-
father had the land alone. My father was an only son. My father was
the sole owner of the threshing floor. So was my grandfather. I cannot
say how my great grandfather used the land or how it comes in whole to
me whereas the other lands are in thirds. There were no watchmen on
the lands of the Arab en Nufei'at.

*Witness for Plaintiff No. 1—Case 3/Nufei'at—on oath—AHMAD EL
HAJ ALI ABDULLA SULEIMAN. Aged 29–30. Kh. el Sarkas :—*

Plaintiff's
Evidence—
Ali Hassan
es Saiyid,
Plaintiff's
Evidence—
Ahmad el
Haj Ali
Abdulla
Suleiman.

I know *Safra* locality. Plaintiffs have land there ; boundaries as
claimed. Also in *Zeif*, boundaries as claimed. *El Urf* I do not know if 10
Sa'ad has land alone. I saw him ploughing with his brother 'Awad.
Sarakkiye, boundaries as claimed. *Mulleisa*, boundaries as claimed.
Mughr. Threshing floor, Ali Hassan alone ; boundaries as claimed. On
these lands were grown wheat, barley, melons and lupines. The Plaintiffs
have used the land from time immemorial. The Colonists of Hadera never
cultivated the land, no rent was paid.

Xd. by Mr. Kaiserman : I know Muhammad, brother of Ali Hassan ;
he is a driver, a boy, 13–15 years. Taxes were paid, but I do not know
the difference between tithe or werko.

Plaintiff's
Evidence—
Musa
Saiyid el
Weli.

*Witness for Plaintiff No. 1—Case 3/Nufei'at—on oath—MUSA SAIYID 20
EL WELI. 43 years, living at Arab en Nufei'at, casual labourer :—*

I served Hassan es Saiyid for seven years and Nimer for three years.
I know H.S. owned land in *Safra*, boundaries as claimed ; one-third, *Zeif*,
as claimed, one-third. *Sarakkiye*, one-third, boundaries as claimed.
Mughr, threshing floor, Hassan Saiyid alone. *Mulleisa*, one-third,
boundaries as claimed. The threshing floor is perhaps in partnership.
I was a ploughman and ploughed the lands for 10 years. Crops, melons,
barley, wheat. Awad and Sa'ad also cultivated the lands with me. They
owned the land themselves and obtained it from their father. I never
saw the Jews cultivating the land either before or after the order. To-day 30
the Jews are cultivating the land. No one ever interfered with us.

Xd. by Mr. Kaiserman : I was paid £P.11–12 a year, and there is no
claim outstanding between us. I was his only ploughman. I have no
land in the mafruz. And made no claim in the masha'. I do not know
if there are any other persons like me. H.S. was Mukhtar and a cultivator.
He had no other work. Every person watched his own crops. I know
of no particular watchman employed. I heard that H.S. was contractor
for watchmen for Hadera. He leased land south of the Station (Hadera)
and I cultivated it for him.

Xd. by S.O. : I was ploughman and not cultivator ; the three parcels 40
in partnership took us 12 days and also ploughed in the masha', for Hassan
es Saiyid alone. I worked for 10 years up to the Prevention Order and
then left Nimer. I do not remember if Fahim worked as a watchman.
Fahim was his own watchman for himself, and used to ride his horse.
Moh. el Abid grew durra in *Mulleisa* near *Sarakkiye*.

Witness for Plaintiff No. 1 of Case 3/Nufei'at—on oath—MAHMUD EL ATIYA. Aged 55, living at Arab en Nufei'at, Member of V.S.C. :—

*Before the
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I know Plaintiffs and that they have land in *Safra*, boundaries as claimed, one-third; *El-'Urf*. Sa'ad has a parcel there alone, boundaries as claimed. *Sarakkiye*, one-third. *Zeif*, one-third. *Mulleiss*, one-third. All boundaries as claimed. Threshing floor to Ali Hassan alone. The Plaintiffs are the owners and never leased the land from anyone. No Jews ploughed the land nor was any part of the produce paid to any person. The Jews now cultivate in *Safra* and *Sarakkiye*. The Plaintiffs' possession amounts to more than twenty years.

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Xd. by Mr. Kaiserman : I know the difference between the werko and tithe. Werko is paid to the Government. My family is 'Atiya. I do not know how much I have of the mafruz.

Plaintiff's
Evidence—
Mahmud
el Atiya.

Xd. by S.O. : The dispute between us and the Jews commenced in 1928 when the Jews attempted to use the land and take it from its owners. Immediately after the dispute arose the police came and prevented both parties from ploughing. The Jews never ploughed any part of the land until after the Interim Orders were given by Najati Eff. Nashashibi. I do not know on what basis Najati Eff. came to his decision. There was nothing on the land to show how he arrived at it and we were disappointed.

DEFENDANT'S EVIDENCE.

1st Witness for Defendants—on oath—ZEEV DARJAVITZ. Aged 50 years old, living at Hadera, Farmer :—

Defendant's
Evidence—
Zeev
Darjavitz.

I have lived in Hadera 20 years and have land in the Arab en Nufei'at : 10 dunums, boundaries N.—Blum Rosen, S.—Milner, W.—Hadera Founders, E.—Road and Botkovsky. I cultivated the land in 1925 until to-day. Y. Milner cultivates the land now in partnership with Frank and others. Before 1925 my father-in-law Schmidt cultivated the land. I also cultivated an area of 60 dunums for the Hadera Founders, and also 10 for my sister. By Founders I mean the Colony. Botkovsky gave me the land, he was on the Committee. I paid rent 5 piastres a dunum. Taxes, werko and tithe; werko on my own land; tithe on all the land on the assessment. Werko was paid by me direct to the Government, tithe through the Committee.

Xd. by Anas Eff. Khamra : The land I cultivated is in the Arab en Nufei'at, it is so stated in my contract. I do not know the locality name. In 1923 used to help my father. I have seen Arabs cultivating in the vicinity. Cult. Rye 1925. In 1926 maize. My watchman was Ali Abeed. 1927 barley. 1928 fodder, 1930. Mr. Yefet Milner sewed the land; he continued from then. Before 1925 my father-in-law cultivated the land. About 30 years since 1895. He and his wife lived in Arab en Nufei'at and his wife died there. All the land in the vicinity was ploughed by Jews and all the time Jews were my neighbours. In the Autumn I cultivated rye. Also the fodder. The land is not suitable for other types of cultivation, except those mentioned. Melons can be grown there, but I did not do so. The Arab en Nufei'at move to Wadi Hawareth. Any further apart I cannot say. The Arabs cultivated in *Safra*, to the South and South-East of Nassotissin grove. Witness indicated on diagram his

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parcel and land cultivated by him. Baruch Ram has land near the forest. There was a provisional parcellation among the Jews and all the lands of Arab en Nufei'at were divided. I knew Hassan es Saiyid and never saw him ploughing in Sarakkiye. I do not know the names of the Arabs ploughing in Safra.

Xd. by S.O. : I had no written contract of lease from the Founders. I received only one receipt for all the crops, Hadera and Arab en Nufei'at. The tithes were assessed on the Colony threshing floor, all assessments were made on that threshing floor. 'Ali Abid was watchman for the maize for 1926.

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Defendant's
Evidence—
Zeev
Darjavitz,
continued.
Examined
by S.O.

Re-Xd. by Mr. Kaiserman : Memorandum of Claim No. 127 is signed by me. Case 32/Nufei'at.

2nd Witness for Defendant : YEFET MILNER. 41 years. Living at Hadera. Farmer :—

Defendant's
Evidence—
Yefet
Milner.

I have lived in Hadera 35 years and have lands in the Arab en Nufei'at : about 40 dunums ; three parcels : E.—Road, S.—Aron Samsonov, W.—Samsonov and Darjavitz, N.—Darjavitz. I cultivated the land since 1923 until the case and then I was prevented by the Order. After the Order I cultivated the lands handed to me by the Committee and do so now, without being paid, or paying. I saw Aron Samsonov cultivating his land that is 20 South of mine. I also saw Darjavetz cultivating. I knew Fahim Ibrahim, for a long time. I know both Awad and Sa'ad Saqr Suleiman, but have never seen them cultivating the land. The name of the land is *Mulleisa*. Memorandum of Claim No. 128 is signed by me for the land I have been giving evidence. I am Yusef Noar, as called by the Arabs.

Xd. by Anas Eff : Witness indicates on diagram the lands claimed by him in Mulleisa. I first knew the land in 1923, my father cultivated the land before me but I cannot say for how long. I am a farmer, that is my usual work. No Arabs cultivated near me. The lands were cultivated by me for 6–7 years up to 1929 without interruption. Crops, melons 30 (23), rye (24), maize (25), barley (26), melons (27), small barley (28). In 1929 the land was not ploughed. I know Sarakkiye well, never saw Arabs ploughing there. Saw Arabs cultivating in Safra. Do not know El 'Urf or Zeif. I saw Arabs ploughing south-east of Nassotissin's grove. Saw no Arabs in Mulleisa. Boundaries of Darjavitz, S.—myself, N.—Botkovsky, E.—Road, W.—Unknown. I employed a Jewish labourer to help me cultivate. Other Jewish owners did the same. Some neighbours used to employ Arabs. Fahim Ibrahim was my watchman. My father paid taxes. I have not done so, nor made any payments. Assessment of tithe was made on the standing crops. I was never present and 40 never saw the assessors. The threshing floor was in Hadera. My neighbours in 1923 were Derjavitz, Samsonov and have not changed since then. My father was on the land about 40 years. No Arabs cultivated the lands in Mulleisa, not even on lease. Samsonov boundaries : S.—Nassotissin, E.—Road, N.—Myself. Generally the Arabs were living on the land in winter in Safra, in Summer near Nassotissin. Some of the Arabs are cultivators some are labourers, they raised melons on a small area—no idea how much. My father cultivated the land during the first German War.

Re-Xd. by Mr. Kaiserman : Boundaries of Darjavitz are of lands cultivated by him. Arab cultivators : Saqr, Sa'ad and Awad in Safra, never cultivated my land ; never saw Fahim Ibrahim cultivating.

*Before the
Settlement
Officer.*

3rd Witness for Defendant—on oath—BENJAMIN SHULAMIT, 61 years, living at Hadera, Farmer :—

No. 38.
Case No.
3/Nufei'at.
Proceed-
ings, 27th
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1940,
continued.

I have lived in Hadera 17 years, 10—23, and have land in Arab en Nufei'at. Safra locality. Boundaries as claimed. Western land is Sandy, nazzaz. I cultivated my land for four years until the dispute in 1929. I purchased the land from Hirshberg. Rutman Bros., cultivated the land
10 for two years before me, for me. The land was cultivated by me with rye, melons and barley.

Defendant's
Evidence—
Yefet
Milner,
continued.
Defendant's
Evidence—
Benjamin
Shulamit.

Xd. by Anas Eff. Khamra : Witness indicates his parcel on the wider map. I do not know about the land before 1923. Water melons, pumpkins, water melons again, barley. Near me there were no Arabs cultivating. West of my land the land was bor. South it was not cultivated by Arabs. About 600—800 metres away. Arabs cultivated to the South ; they may have been workmen for settlers. I do not know. The Prevention Order did not affect my land as I was always cultivating ; the interim order is in my favour. I know nothing of an order in the favour of anyone except
20 myself. (S.O. note : Interim Order in favour of witness.) We protected the crops by the watching service of the Colony. I cannot say who the watchmen were, whether Jews or Arabs. I paid tithes and werko. Tithe was assessed on the ground and sometimes on the threshing floor by a special commission. Threshing was done on the Colony threshing floor. Watching fees were paid for all my lands. I cannot recollect every individual amount, payments made to the Committee.

Anas Eff. Khamra : I ask for tithe receipts produced in the masha' case to be considered. Witnesses have given evidence in support of my client's claim. Defendants have alleged no lease in this case, and rely
30 solely upon the evidence of persons who claim to have cultivated the land in dispute. These witnesses do not know the boundaries of the lands, even after seven years of cultivation. Milner was unreliable, he did not know his own boundaries. Shulamit knows nothing about his neighbours, and the land cultivated by him does not cover all the land we claim. In Mughr locality there is strong evidence to support our claim, and even if any adverse evidence exists it refers only to fractures of the land we claim. This case is for retrial because prima facie there was evidence that the Arabs were in possession. Our possession is for more than 10 years ; Defendants were never in possession. Our possession has not been disputed
40 until 1928 ; no payments made for rent, etc. Tithes paid by us. As to 'Awad and Sa'ad Saqr Suleiman's joint ownership it is immaterial to the issue in this case. If any surrenders have been made it affects no one but themselves. Succession is immaterial. Since we rely upon Article 20 of the Land Code, the circumstances of our entry cannot be challenged. Admission by witnesses of Defendant that we have been in possession in Safra. I ask for registration in the names of Plaintiffs.

Mr. Kaiserman : No legal questions. Facts of evidence alone to be considered and no sufficient proof has been submitted. Entry on the

*Before the
Settlement
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No. 38.
Case No.
3/Nufei'at.
Proceed-
ings, 27th
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1940,
continued.

land is material. The circumstances are to be considered. The confusion concerning shares and succession shows the claims to be wrong. Defendants' witnesses are reliable and straightforward and do not profess to know every boundary of every parcel in the Arab en Nufei'at. No sufficient evidence to upset Defendants' registered title and I ask for registration in favour of Defendants and dismissal of Plaintiff's claim with costs.

27.2.40.

(Sgd.) CECIL KENYON.

No. 39.

CASE No. 5/Nufei'at.

Defendant's
Evidence—
Benjamin
Shulamit,
continued.

No. 39.
Case No.
5/Nufei'at.
Proceed-
ings, 6th
February
1940.

<i>Cl. No.</i>	<i>P.P. No.</i>	<i>Plaintiffs :—</i>	<i>Share.</i>	<i>10</i>
367	10571/17a	1. 'Ali Hasan as Sayid	1	
	„ /18a	2. Sa'd Saqr Suleiman	1	
	„ /19a	3. 'Awwad Saqr Suleiman	1	
	„ /20b		—	
	„ /21b		3	
	„ /22c			
	„ /27			
	„ /27b			

Defendants :—

72	10571/17a	1. Yosef Eliyash	In whole	
73	10571/18a	2. Aharon Meirson	do.	20
74	10571/19a	3. David Zolterov	do.	
75	10571/20b	4. Binyamin Shulami	do.	
(In Case No. 4/ Nufei'at)				
56	10571/21b	5. The Government of Palestine	do.	
(In Case No. 2/ Nufei'at)				
76	10571/22c	6. Yosef Ya'aqov Bervitz	do.	30
(In Case No. 2/ Nufei'at)				
81	10571/27 }			
(In Case No. 3/ Nufei'at)	„ /27b }	7. Hadera Founders Ass. Ltd.	do.	

Hadera, 6.2.40.

This Case has been combined with Case No. 4 for both Plaintiff and Defendant.

Hadera.

(Sgd.) CECIL KENYON.

No. 40.
CASE No. 15/Nufei'at.

*Before the
Settlement
Officer.*

<i>Cl. No.</i>	<i>P.P. No.</i>	<i>Plaintiff :—</i>	<i>Share.</i>	<i>No. 40. Case No. 15/Nufei'at. Proceed- ings, 8th February 1940.</i>
	377	10572/4k 'Awwad Saqr Suleiman	In whole	
	"	/4n		
	"	/5b		
	"	/5c		
	"	/9b		
	"	/10		
10	"	/11d		
	"	/12a		
	"	/14		
	"	/16		
<i>Defendants :—</i>				
	86	10572/4k 1. Tanham Frank	In whole	
	87	10572/4n 2. Leib Schaf	do.	
	88	10572/5b } 3. The Government of Palestine	do.	
	(In Case	" /5c		
	No. 2/	" /11d		
20	Nufei'at)			
	92	10572/9b 4. Ben-Zion Ben-Yehuda Ritov	do.	
	(In Case			
	No. 2/			
	Nufei'at)			
	93	10572/10 5. Kalman Hirschhorn	do.	
	(In Case			
	No. 2/			
	Nufei'at)			
	94	10572/12a 6. Keren Kayemeth Leisrael Ltd.	do.	
30	(In Case			
	No. 14/			
	Nufei'at)			
	96	10572/14 7. Hadera Founders Association Ltd.	do.	
	(In Case			
	No. 11/			
	Nufei'at)			
	98	10572/16 8. Elimelech HersHKovitz	do.	
	(In Case			
	No. 2/			
40	Nufei'at)			

Arab en Nufei'at, 6.2.40.

This Case has been combined with Case No. 4/Nufei'at for Plaintiff and Defendant one share out of two in favour of his brother Sa'ad Saqr Suleiman—See page 7 and 8 of Record, Case 4/Nufei'at.

8.2.40.

(Sgd.) CECIL KENYON.

Before the
Settlement
Officer.

No. 41.
CASE No. 19/Nufei'at.

	Cl. No.	P.P. No.	Plaintiff :—	Share.
No. 41. Case No. 19/Nufei'at. Proceed- ings, 27th February 1940.	381	10572/11a	Sa'd Saqr Suleiman	In whole
		„ /12		
		„ /13a		
	88	10572/11a	1. The Government of Palestine	In whole
	(In Case No. 2/ Nufei'at)			10
	94	10572/12	2. Keren Kayemeth Leisrael Ltd.	do.
	(In Case No. 14/ Nufei'at)			
	95	10572/13a	3. Alexander Aharonson	do.
	(In Case No. 11/ Nufei'at)			
	Hadera, 27th February 1940.			20

This Case combined for Plaintiff and Defendant for purposes of
hearings with 4/Nufei'at.

Hadera, 27.2.40.

(Sgd.) CECIL KENYON.

No. 42.
Case No.
33/Nufei'at.
Proceed-
ings, 6th
February
1940.

No. 42.
CASE No. 33/Nufei'at.

	Cl. No.	P.P. No.	Plaintiffs :—	Share.
	395	10574/1	1. Ali Hasan al-Sayid	1
		10574/2a	2. 'Awwad Saqr Suleiman	1
		10574/3a	3. Sa'd Saqr Suleiman	1
				30
				—
				3
	125	10574/1	1. Keren Kayemeth Leisrael	In whole
	(In Case No. 31/ Nufei'at)			
	126	10574/2a	2. Penina (Schmidt) Blumrosen	do.
	(In Case No. 32/ Nufei'at)			40
	127	10574/3a	3. Zeev Darjawitz	do.
	(In Case No. 32/ Nufei'at)			

Hadera, 6.2.40.

This Case combined with Case 4/Nufei'at for Plaintiff and Defendant.

(Sgd.) CECIL KENYON.

Hadera, 6.2.40.

No. 43.

CASE No. 35/Nufei'at.

*Before the
Settlement
Officer.*

No. 43.
Case No.
35/Nufei'at.
Proceed-
ings, 27th
February
1940.

<i>Cl. No.</i>	<i>P.P. No.</i>	<i>Plaintiffs :—</i>	<i>Share.</i>
397	10574/1e	1. 'Ali Hasan al-Sayid	1
	„ /3b	2. Sa'd Saqr Suleiman	1
	„ /4-5	3. 'Awwad Saqr Suleiman	1
	„ /10		—
	„ /13a		Out of 3
	„ /20b		

10

Defendants :—

	125 (In Case No. 31/ Nufei'at)	10574/1e	1. Keren Kayemeth Leisrael Ltd.	In whole
	397 (In Case No. 32/ Nufei'at)	10574/3b	2. Zeev Darjawitz	In whole
	128	10574/4	3. Yefet Milner	do.
20	129	10574/5	4. Noah Milner	do.
	136	10574/10	5. Matityahou Nahumi	do.
	138 (In Case No. 32/ Nufei'at)	10574/13a	6. The Government of Palestine	do.
	145 (In Case No. 32/ Nufei'at)	10574/20b	7. Yokhevet Har-Zahav	do.

30 Hadera, 27th February 1940.

This Case combined with Case 4/Nufei'at for both Plaintiff and Defendants.

27.2.40.

(Sgd.) CECIL KENYON.

*Before the
Settlement
Officer.*

No. 44.
Case No.
43/Nufei'at.
Proceed-
ings, 27th
February
1940.

No. 44.
CASE No. 43/Nufei'at.

<i>Cl. No.</i>	<i>P.P. No.</i>	<i>Plaintiff :—</i>	<i>Share.</i>
405	10574/22-1 ,, /25g	'Ali Hasan as Sayid	In whole

Defendants :—

148 (In Case No. 32/ Nufei at)	10574/22-1	1. Hadera Founders Association Ltd.	do.	
151 (In Case No. 41/ Nufei'at)	10574/25g	2. Efraim Shternin	In whole	10

Hadera, 27th February 1940.

This Case combined with Case 4/Nufei'at for purposes of hearing of both Plaintiff and Defendants.

(Sgd.) CECIL KENYON.

Hadera, 27.2.40.

No. 45.
Case No.
45/Nufei'at.
Proceed-
ings, 27th
February
1940.

No. 45.
CASE No. 45/Nufei'at.

20

<i>Cl. No.</i>	<i>P.P. No.</i>	<i>Plaintiff :—</i>	<i>Share.</i>
407	10574/22h ,, /25e	'Awwad Saqr Suleiman	In whole

Defendants :—

148 (In Case No. 32/ Nufei'at)	10574/22h	1. Hadera Founders Association Ltd.	do.	
151 (In Case No. 41/ Nufei'at)	10574/25e	2. Efraim Shternin	do.	30

Hadera, 27th February 1940.

This Case combined with Case 4/Nufei'at for both Plaintiff and Defendants for purposes of hearing.

(Sgd.) CECIL KENYON.

Hadera, 27.2.40.

No. 46.

CASE No. 54/Nufei'at.

Before the
Settlement
Officer.No. 46.
Case No.
54/Nufei'at.
Proceed-
ings, 27th
February
1940.

Cl. No.	P.P. No.	Plaintiff :—	Share.
416	10574/23d	'Awwad Saqr Suleiman	In whole
	,, /24a		
	,, /24		
	,, /26a		
	,, /26b		

Defendants :—

10	149	10574/23d	1. Yitshaq Lamburg	29.619
	(In Case	,,	2. Fania (Feige) Spire	3.826
	No. 52/	,,	3. Tania Razemovska	5.737
	Nufei'at)	,,	4. Rachel (Ru) Soikanen	5.737
	150	10574/24		
	(In Case	,, /24a		Out of 44.919
	No. 48/			
	Nufei'at)			
	152	10574/26a	5. Hadera Founders Association Ltd.	In whole
	(In Case	,, /26b		
20	No. 53/			
	Nufei'at)			

Hadera, 27th February 1940.

This Case combined for purposes of hearing for both Plaintiff and Defendants with Case 4/Nufei'at.

27.2.40.

(Sgd.) CECIL KENYON.

No. 47.

DECISION of the Settlement Officer in Case Nos. 1, 2, 7, 16, 93 and 95/Nufei'at (combined).

No. 47.
Decision
of the
Settlement
Officer in
Case Nos.
1, 2, 7, 16,
93 and 95,
4th April
1940.

	P.P. No.	Plaintiffs :—	Shares.
30	10572/7, 8, 9a,	1. Fatima Ahmad al-Affi	13
	10a, 11e,	2. Amna Hassan al-Attar	13
	16b, 17a,	3. Aisha Hussein al-Ali	13
	3d, 4p, 5a,	4. Muhamad Ali Abdalla	9
	6a, 9.	5. Abdul Latif	9
	10571/1a, 1c,	6. Mahmud	9
	22a, 23a,	7. Jamil	9
	24a, 25a,	8. Abdallah	9
	26a,	9. Ahmad	9
	10571/5b, 7, 8,	10. Sa'd	9
	11, 12,	11. Muhammad Shafiq Ali Abdallah	9 ½
40	13, 28a	12. Hussein	9
	10574/22d, 24d,	13. Shaika	9
	10575/5b, 7a,	14. Jamila	9
	13a,	15. Amina	9
	10583/1-3, 5-7,	16. Alya	9
	9a, 10.		
			156

<i>Before the Settlement Officer.</i>	10571/5b, 7, 8, 17 11, 12, 13, 28a.	Abdallah Mustapha Abdallah	$\frac{1}{2}$	
No. 47.				
Decision of the Settlement Officer in Case Nos. 1, 2, 7, 16, 93 and 95, 4th April 1940, <i>continued.</i>	10572/7, 6a, 10583/1-3, 5-7. 10571/1a, 1c, 28a, 10572/11e, 5a, 10575/13a, 10583/9a 10571/22a 10571/23a 10571/24a ,, /25a ,, /26a 10572/8, 17a ,, /9a, 9 ,, /10a ,, /16b 10571/5b, 8, 10574/22d 10571/7/11 10571/12 10571/13 10572/3d 10572/4p	1. The heirs of Michael Nassatissin 2. The Government of Palestine 3. Yosef Ya'aqov Bervitz 4. Moshe Ben-Zion Sussman 5. Rivqa bat Mordekhai Hurvitz 6. Moshe Turetz 7. Zvi ben Mordekhai Solonovitch 8. Menashe Schwartzstein 9. Ben-Zion ben Yehuda Ritov 10. Kalman Hirschhorn 11. Elimelech Herschkovitz 12. Hadera Founders Association Ltd. 13. Robert Barach 14. Gertrud Riese 15. Edith Menasse 16. Benyahu Va'adya 17. Hillel 18. Nissim 19. Ben-Zion Hodgejainoff 20. Avraham Hayim 21. Mordekhai 22. Avraham Hayim Yadgoroff 23. Oholiav Hayim Shauloff 24. Eliyahu Kimyagaroff 25. Shelomo Bahn 26. Rahel Goldberg 27. Shemuel 28. Hanna Tolkovsky 29. Yehudith Klebanoff 30. Shulamith Hochfeld 31. Leib Schal	In whole In whole do. do. do. do. do. do. do. do. do. do. do. do. 1 1 1 3 16 16 16 69 9 9 9 24 24 192 In whole 4 3 3 3 3 16 In whole	 10 20 30 40

10574/24d	{	32. Yitshaq Lamberg	29.619	<i>Before the Settlement Officer.</i> <hr/> No. 47. Decision of the Settlement Officer in Case Nos. 1, 2, 7, 16, 93 and 95, 4th April, 1940, <i>continued.</i>
		33. Fania (Feige) Spire	3.826	
		34. Tanie Razemovska	5.737	
		35. Rachel (Ru) Soikanen	5.737	
			<hr/> 44.919	
10575/5b	{	36. Aharon Kongretzki	1	
		37. Matel	1	
		38. Binyamin Sachsenhaus	2	
			<hr/> 4	
10 10575/7a		39. Shaul David Sachs	In whole	
10583/10		40. Shimon Gordon	do.	

Third Party :—

10582/10 Central Bank of Cooperative Institutions In whole
(Mortgage) in Palestine Ltd.

The Plaintiffs in this case are the heirs of Ali Abdulla Suleiman and claim the ownership of the lands in dispute by a prescriptive right acquired under Art. 20 of the Land Code against the Defendants who are the registered owners of the land.

20 The Defendants deny the Plaintiffs have acquired any prescriptive title and allege part of the land was never cultivated, part was cultivated by the Defendants or on their behalf and that if the Plaintiffs cultivated any of the land it was as tenants under a written lease between Ali Abdulla Suleiman and the colonists of Hadera or if prior to the leases, then by arrangement in the nature of a sub-tenancy between him and Hassan es Saiyid, late Sheikh and Mukhtar of the Arab en Nufei'at.

30 2. This claim to a prescriptive title was heard and decided by the Settlement Officer in 1932, when he dealt with many similar claims in one case, No. 153/29 Infiat, and dismissed the Plaintiffs' claims. His decision was, on appeal, set aside and remitted for re-trial as it was considered that every prescriptive claim needed separate investigation and the authenticity of the leases relied upon in part by the Defendant should be strictly proved and shown to be evidence against the Plaintiffs who may or may not have been Parties to them.

40 As a result of this remission every claimant submitted a fresh claim to separate parcels and sought by oral evidence to prove his prescriptive right to ownership of the land he claims. In the present case the testator of the Plaintiffs, Ali Abdulla Suleiman was Mukhtar of the Arab en Nufei'at until his death in 1938, and submitted and signed separate claims to eight separate parcels. He claimed ownership of the land as miri, declaring it to be unregistered and his by inheritance and possession for a period exceeding the prescriptive period.

3. At the trial of the claim before me his heirs withdrew the claim to three parcels, a eucalyptus plantation of 36½ dunums and two orange groves of about 200 dunums and 12 dunums respectively as they had no documentary proof to support the claim and could not account for the planting of the land by the Defendants. It was vaguely contended that the

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Plaintiff sold the land unofficially to the Defendant but as the Defendant has been registered owner for about 40 years this is hardly credible. The heirs decided to pursue the claim of ownership to all the other lands though in these instances also they have no documentary proof. But if the heirs are unable to account for the possession of these three parcels by the Defendants it is quite certain that Ali Abdulla was aware that he was claiming the ownership of the plantations, since he correctly described the land and the building erected thereon, they said he obtained all the lands in the same manner, and if the grounds for withdrawal by the Plaintiffs are genuine, then they have abandoned their rights to the most 10 valuable part of their father's property. But if this last minute withdrawal is not genuine but simply made because the heirs were well aware they had no property in the plantations then there is a strong presumption that the other claims may be equally false.

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 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. 20

4. I now come to the actual claims to have possessed and cultivated the land. The Plaintiffs sought to prove by the evidence of five not altogether consistent witnesses the long uninterrupted possession and cultivation of the land by the late Ali Abdulla Suleiman. No one who actually ploughed or cultivated the land gave evidence, though it should not have been difficult to produce first-hand evidence if it existed: the witnesses testified they saw the land being cultivated but clearly this in itself does not disclose the circumstances of the cultivators tenure. Three of the witnesses were plainly untruthful and one of the heirs called as a witness by the Court was obviously at a loss to preserve his oath and 30 defend the Plaintiffs' claim. I come to the conclusion that no reliance can be placed on the Plaintiffs' evidence and the long uninterrupted possession and cultivation is not proved.

5. The Defendants allege that Ali Abdalla Suleiman was a tenant. The leases in original have been produced and the signature proved genuine. Though the leases are in Hebrew, a language that Ali Abdulla could not read, it is by no means unusual in this country for documents to be written in languages unknown to the Parties and there is no evidence to show the lessee was unaware of the contents of the lease. The rent reserved under the lease for 1926 was LE.16, for 1927 LP.16, and for 40 1928 with the Krab LP.32. It has been suggested that this rent is an inadequate consideration for the land leased, but at a rent of 50 milliemes a dunum the area leased would be about 320 dunums, more than the area claimed by the Plaintiffs as arable land and approximately three-quarters of all the land first allotted the Arab and Nufei'at by Interim Possessory Orders granted in 1929, which were based upon the areas actually under cultivation at the time.

The leases of 1926 and 1927 refer to the Barrat lands, and state the boundaries and clearly refer to the lands of the Arab en Nufei'at of which those in dispute in this case form a part. The lease of 1928 refers to six 50

specific plots totalling approximately 440 dunums, stated to be under the cultivation of Ali Abdulla Suleiman and his sub-tenants. These six plots of land cover among others several of the parcels claimed by the Plaintiffs and thus the Plaintiffs could not have been cultivating the land at one and the same time as owners and as tenants, and my conclusion is that they were in possession as tenants and not as owners.

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10 The Land Court observed that the entries in the Colony books are in favour of the Defendants and as such have very little evidential value, but this is not entirely so, they are receipts for money paid to the Colony Committee as rent for the Defendants' land and have been brought to account.

20 6. Part of the land claimed by the Plaintiffs includes Birkat Safra itself, and only recently has the Birkat been drained and made cultivable in parts. It was in the process of filling when these claims were being heard, and could never have been cultivated by the Plaintiffs in the manner their claims suggest. This leads me to believe the Plaintiffs were never in possession as owners; for three years prior to this litigation they were in possession as tenants under written agreements of lease and I have no doubt that if they were cultivating any part of the land prior to that it was a sub-tenant of Hassan es Saiyid, former Mukhtar and lessee of the land. It is well-known that tithe is paid by the cultivator, and payment of tithe is no proof of ownership though it may indicate possession. The Defendants have paid the werko which was a property owners' tax, and the Plaintiffs have not done so, nor taken any steps to secure the registration of their title.

30 For the purpose of granting interim orders for possession, the Settlement Officer caused an enquiry into the possession of the land to be made in 1929, and found the Plaintiffs in possession of 520 dunums and granted orders accordingly. Other lands were in the possession of the Defendants and this judicial enquiry refutes the Plaintiffs' statement they have never been out of possession or seen any Colonists of Hadera cultivating the lands of Arab en Nufei'at.

For all these reasons I find the Plaintiffs' claim not proved and hereby dismiss the claim and enter judgment in favour of Defendants.

Hearing fees LP.20 to be paid by Plaintiffs and LP.10 costs to Defendants to include advocate fees.

Decision written this 31st day of March 1940 at Haifa.

(Sgd.) CECIL KENYON.

40 31.3.40.

Settlement Officer, Haifa
Settlement Area.

Decision delivered this 4th day of April 1940, at Hadera, in the presence of Plaintiffs 4 and 9 in person, Advocate Anas Khamra, representing Plaintiffs and Mr. Kaiserman, representing the Defendants, with usual notification re appeal.

Hadera, 4th April 1940.

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

*Before the
Settlement
Officer.*

No. 48.

**DECISION of the Settlement Officer in Case Nos. 6, 18, 38, 62, 63, 97 and
98/Nufei'at (combined).**

No. 48. Decision of the Settlement Officer in Case Nos. 6, 18, 38, 62, 63, 97 and 98, 4th April 1940.	P.P. No.	Plaintiffs :—	Share.
	10571/13c, 14, 15, — 16a, 17c, 18b 19b, 27a.	1. Fahim Ibrahim 'Isa al Hajibie	In whole
	10572/4a, 4d, 4g, 11c.		do.
	10575/6, 7b, 8a, 9a, 14a.		do. 10
	10574/7a, 8—9, 10a, 11a, 12a.		$\frac{1}{2}$
	10575/3a, 4, 5, 13.		$\frac{1}{3}$
	10583/9c, 11, 11d		$\frac{1}{4}$
	10574/7a, 8—9, 10a, 11a, 12a	2. Saleh Ibrahim 'Isa al Hajibi	$\frac{1}{2}$
	10575/3a, 4, 5, 13		$\frac{1}{3}$
	10583/9c, 11, 11d		$\frac{1}{4}$
	10575/3a, 4, 5, 13	3. 'Abd ar-Rahman 'Isa Ahmad al Hajibi	20
	10583/9c, 11, 11d	4. 'Ayish Muhammad Humaddan	$\frac{1}{3}$
	10583/9c, 11, 11d	5. Mubarak Suleiman Mubarak	$\frac{1}{4}$
		<i>Defendants :—</i>	
	10571/13c	1. Shelomo Bahn	In whole
	„ /14	2. Yona Hurvitz	10
		3. Ariel „	10
		4. Romamti-Ezer Hurvitz	10
		5. Yits-Haq Hurvitz	10
			—
			40
	10571/15	6. Avraham Smallnik	1
		7. Ben Tziyon „	1
		8. Shulamit „	1
			—
			3
	10571/16a	9. Yosef Tartakovsky	In whole
	10571/17c	10. Yosef Eliash	do.
	10571/18b	11. Aharon Meirson	do.
	10571/19b	12. David Zolterov	do.
	10571/27a	13. Hadera Founders Association Ltd.	do.
	10572/4a		
	10582/11, 11d		40
	10572/4d	14. Natan Nata' Lerman	2
		15. Nata' Moshe Lerman	1
			—
			3
	10572/4g	16. Tanhum Frank	In whole

<i>P.P. No.</i>	<i>Defendants :—</i>	<i>Share.</i>	<i>Before the Settlement Officer.</i>
10572/11c 10574/12a 10575/13, 14a 10583/9c 10574/7a	17. The Government of Palestine	In whole	No. 48.
	18. Haiyim Ben-Shaul Rutman	do.	Decision of the Settlement Officer in Case Nos. 6, 18, 38, 62, 63, 97 and 98, 4th April 1940, continued.
<i>Plaintiffs :—</i>			
10574/8 10574/9	19. Aharon Tzevi Aharonson	In whole	
10	20. Rahel Samsonov	1	
	21. Penina „	1	
	22. Ofira „ Neiderman	1	
	23. Arye „	1	
		—	
		4	
10574/10a 10574/11a 10575/3a	24. Matityahu Nahami	In whole	
	25. Aharon Samsonov	do.	
	26. Yehuda Slutzkin	2	
	27. Yits-haq Ya'aqov Slutzkin	1	
	28. Haiyim Fradkin	2	
		—	
		5	
20 10575/4 10575/5	29. Mekhael Tutelman	In whole	
	30. Aharon Kongrezki	1	
	31. Matel „	1	
	32. Binyamin Sachsenhaus	2	
		—	
		4	
10575/6 10575/7b 10575/8a 10595/9a	33. The Palestine Jewish Colonization Association Ltd.	In whole	
	34. Shaul David Sachs	do.	
	35. Beila Gutowitz	do.	
30	36. Aharon Alfred Ticho	1	
	37. Yitshaq Maidanick	1	
		—	
		2	

Third Party :—

10575/6, 7b, 8a, 9a, 14a	The Village Settlement Committee of Arab en Nufei'at	In whole
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The Plaintiffs in this case are five persons who claim between them the ownership of 30 parcels of land in Arab en Nufei'at by prescriptive right acquired by Article 20 of the Land Code against the Defendants who are the registered owners.

40 The Defendants deny the Plaintiffs have any prescriptive title and allege that if any part of the land was cultivated by Plaintiffs it was by arrangement in the nature of sub-tenancies between them and either Hassan es Sayid or 'Ali Abdulla Suleiman, the late Mukhtars of the Arab en Nufei'at and tenants of the Defendants.

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Officer.*

No. 48.
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4th April
1940,
continued.

2. This claim to a prescriptive title was heard and decided by the Settlement Officer in 1932 when he dealt with this and many similar claims in one Case No. 153/29 Infiat and dismissed the Plaintiffs' claims. On appeal this decision was set aside and the case remitted to the Settlement Officer for retrial as it was considered that every prescriptive claim needed separate investigation and the authenticity of the leases relied upon by the Defendants should be strictly proved and shown in evidence against the Plaintiffs who may or may not have been parties to them. The Supreme Court held that the contracts of lease could not be taken in evidence against each person unless it is shewn in the circumstances of each 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. 10

As a result of this remission every claimant submitted a fresh claim to separate parcels and sought by oral evidence to prove his prescriptive right to ownership of the land he claims.

3. At the trial of the claims before me the first Plaintiff withdrew his claim to a parcel of land adjoining the eucalyptus forest of Brakhtas as he found he had no claim to the land and had submitted a claim in error. In his written memorandum of claim he declared on oath the land was his and planted with eucalyptus and was well aware of what he was claiming, since he sought permission on the 16th January 1938 to submit a claim after the Defendants had filed their claims six months earlier. I am quite satisfied he knew he had no right whatsoever to the land and withdrew so obviously false a claim in order not to weaken others he was making based on similar grounds. 20

The Plaintiffs claim to have been in uninterrupted possession as owners for a period exceeding the prescriptive period prior to 1929, to have never leased the land from any person or to have paid any sums in cash or kind by way of rent or other charges to the Colonists of Hadera or to Hassan es Saiyid or Ali Abdulla Suleiman the late Mukhtars of Arab en Nufei'at. The Plaintiffs argue that if the land is covered by the leases between the Mukhtars of Arab en Nufei'at and the Colonists of Hadera they were no Parties to them and so there is no proof of consideration having passed from Plaintiffs to either of these tenants and from tenant to landlord the leases cannot be taken in evidence against them. The Plaintiffs took no steps to obtain registration in the Land Registry and paid no werko, but claim to have paid tithe. 30

The Defendants deny the Plaintiffs have any possession adverse to their registered titles and sought to show the Plaintiffs evidence to be entirely unreliable, that the Plaintiffs themselves to be untruthful, and that the claims are equally bad. I will now deal with the Plaintiffs' evidence in detail and take first the question of inheritance. All the lands are claimed by inheritance, and Plaintiffs rely on their own possession and that of their testators. Plaintiff No. 1 claims parcels as his sole property, one parcel is claimed as the joint property of two brothers who derive their ownership from a common father. One parcel is owned in thirds by the two brothers and a cousin, and two parcels in fourths by the brothers and partners. There were seven persons interested in the last two parcels and three relinquished their shares prior to the claims being submitted, 50 40

but now the shares were varied from sevenths to fourths is not disclosed. In all these parcels there must have been some arrangement between the heirs as the shares claimed by each agree with no recognised form of succession, or alternatively, there is no inheritance of shares and the Plaintiffs claimed the ownership of the land possessed or cultivated by their relatives now deceased.

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Officer.*

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Settlement
Officer in
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1940,
continued.

As to possession, the Plaintiffs claim to be the sole cultivators and users of the land, of this they are quite certain. At no time did they or their witnesses ever see the Defendants cultivating the lands in the Arab en Nufei'at. If the Plaintiffs' statements are true, then the Defendants could not have cultivated, as the lands are open and no farming can be carried on in concealment.

The Defendants are equally certain they have cultivated the lands and their witnesses testified to this effect, though they make no claim to have cultivated continuously, year in and year out as the Plaintiffs do. In the face of these irreconcilable statements which is to be believed? 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.

I examined the tithe registers of the Revenue Office for the years 1920 to 1926 and seen entries shewing that tithe was payable by the first Defendant for lands in Arab en Nufei'at. My attention was drawn to this by the Plaintiff but the register discloses he was jointly responsible with the Defendant for payment of tithe. Though payment of tithe is not conclusive evidence of ownership it does indicate possession and shows the Plaintiff and Defendant were on equal footing so far as liability for tithe is concerned. This is corroborative of the Defendants' claim that they cultivated the land and paid tithe. The same register also shows several Colonists of Hadera as tithe payers in Arab en Nufei'at for the years 1925, 1926 and 1927 and in the face of this evidence I do not believe the Plaintiffs' statement that they never saw any Colonists cultivating the lands.

Finally for the purpose of granting interim orders for possession the Settlement Officer caused an enquiry to be made into the possession of the land and found the Plaintiffs in possession of some lands and the Defendants in possession of some others, and this judicial enquiry refutes the Plaintiffs' claim that the Colonists never cultivated the land.

For these reasons, I find the Plaintiffs' claim fails and is hereby dismissed and judgment entered in favour of Defendants. 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 en Saiyid or Ali Abdulla Suleiman, the tenants of the Colonists.

*Before the
Settlement
Officer.*

No. 48.
Decision
of the
Settlement
Officer in
Case Nos.
6, 18, 38,
62, 63, 97
and 98,
4th April
1940,
continued.

Hearing fees of LP.20 to be paid by Plaintiffs' as follows :—

Fahim Ibrahim Isa al-Hajibi	LP.15.000
Saleh Ibrahim Isa al-Hajibi	LP. 4.000
Abd er Rahman Isa el-Hajibi	LP. 0.800
Ayish Muhammad Humaidan	LP. 0.100
Mubarak Suleiman Mubarak	LP. 0.100

and LP.10 costs to Defendants to include advocates fees.

Decision written this 2nd day of April 1940 at Haifa.

(Sgd.) CECIL KENYON.

Settlement Officer,
Haifa Settlement Area.

10

Decision delivered this 4th day of April 1940, at Hadera, in the presence of Plaintiffs in person. Advocate Anas Khamra, representing Plaintiffs, and Mr. Kaiserman, representing the Defendants, with usual notification re appeal.

(Sgd.) CECIL KENYON.

Hadera, 4th April 1940.

Settlement Officer,
Haifa Settlement Area.

No. 49.

Decision
of the
Settlement
Officer in
Cases Nos.
3, 4, 5, 15,
19, 33, 35,
43, 45 and
54, 4th
April 1940.

No. 49.

JUDGMENT of the Settlement Officer in Cases Nos. 3, 4, 5, 15, 19, 33, 35, 43, 45 and 20 54/Nufei'at (combined).

<i>P.P. No.</i>	<i>Plaintiffs :—</i>	<i>Share.</i>
10571/20a, 21a, 22, 23, 24, 25b, 27c.	1. 'Awad Saqr Suleiman	in whole
10572/4k, 4n, 5b, 5c, 9b, 10, 11d 12a, 13a, 14 16.		
10574/22h, 23d, 24a 24, 25e, 26a, 26b.		30
10571/1b, 24b, 25, 26, 27d, 17a 18a, 19a, 20b, 21b, 22c, 27, 27b.		$\frac{1}{3}$
10574/1, 2a, 3a		40
10574/1e, 3b, 4-5, 10, 13a, 20b		

<i>P.P. No.</i>		<i>Plaintiffs :—</i>	<i>Share.</i>	<i>Before the Settlement Officer.</i>		
10	10574/22l, 25g	2. Ali Hasan al-Sayid	In whole	No. 49. Decision of the Settlement Officer in Case Nos. 3, 4, 5, 15, 19, 33, 35, 43, 45 and 54, 4th April 1940, <i>continued.</i>		
	10571/17a, 18a, 19a, 20b, 21b, 22c, 27, 27b, 1b, 24b, 25, 26, 27d					
	10574/1e, 3b, 4-5, 10, 13a, 20b, 1, 2a, 3a					
	10572/11a, 12, 13a					
20	10571/1b, 24b, 25, 26, 27d, 17a, 18a, 19a, 20b, 21b, 22c, 27, 27b	3. Sa'd Saqr Suleiman	In whole $\frac{1}{3}$			
	10574/1, 2a, 3a, 1e, 3b, 4-5, 10, 13a, 20b					
	<i>Defendants :—</i>					
	10571/1b, 21a, 21b 10572/5b, 5c, 11d, 11a 10547/13a 10571/24b, 24 10571/25, 25b 10571/26 10571/27d, 27c, 27, 27b 10572/14 10574/22, 22h, 26a, 26b 10571/20a, 20b 10571/22, 22c 10571/23 10571/17a „ /12a „ /19a 40 10572/4k „ /4n „ /9b „ /10 10572/12a, 12 10574/1, 1e 10572/16 „ /13a				1. The Government of Palestine	In whole
30	10571/24b, 24	2. Rivqa Ban Mordekhai Hurvitz	do.			
	10571/25, 25b	3. Moshe Turetz	do.			
	10571/26	4. Zvi Ben Mordekhai Slonovitch	do.			
	10571/27d, 27c, 27, 27b	5. Hadera Founders Association Ltd.	do.			
40	10572/14	6. Binyamin Shulami	do.			
	10574/22, 22h, 26a, 26b	7. Yosef Ya'akov Bervitz	do.			
	10571/20a, 20b	8. Moshe Ben-Tzion Sussman	do.			
	10571/22, 22c	9. Yosef Eliash	do.			
40	10571/23	10. Aharon Meirson	do.			
	10571/17a	11. David Zolterov	do.			
	„ /12a	12. Tanhum Frank	do.			
	„ /19a	13. Leib Schaf	do.			
40	10572/4k	14. Ben Zion Ben Yehuda Ritov	do.			
	„ /4n	15. Kalman Hirschhorn	do.			
	„ /9b	16. Keren Kayemeth Leisrael Ltd.	do.			
	„ /10	17. Elimelech HersHKovitz	do.			
40	10572/12a, 12	18. Alexander Aharonson	do.			
	10574/1, 1e					
	10572/16					
	„ /13a					

<i>Before the Settlement Officer.</i>	<i>P.P. No.</i>	<i>Defendants :—</i>	<i>Share.</i>
No. 49.	10574/2a	19. Penina (Schmidt) Blumrosen	do.
Decision	„ /3a, 3b	20. Zeev Darjawitz	do.
of the	„ /4	21. Yefet Milner	do.
Settlement	„ /5	22. Noah Milner	do.
Officer in	„ /10	23. Matityahu Nahumi	do.
Case Nos.	„ /20b	24. Yokhevet Har-Zahav	do.
3, 4, 5, 15,	„ /25g, 25e	25. Efraim Shternin	do.
19, 33, 35,	10574/23d, 24, 24a	26. Yits-haq Lamberg	29.619
43, 45 and		27. Fania (Feige) Spire	3.826
54, 4th		28. Tania Razemovska	5.737
April 1940,		29. Rachel (Ru) Soikanen	5.737
<i>continued.</i>			<hr/> 44.919

The Plaintiffs in these Cases Nos. 3, 4, 5, 15, 19, 33, 35, 43, 45 and 54 Nufei'at which are consolidated are three persons who between them claim the ownership of ten parcels, some of which are held in partnership and others as their separate properties. The claim to ownerships rests on a prescriptive right under Article 20 of the Land Code against the Defendants who are the registered owners.

The Defendants deny the Plaintiffs have any prescriptive title and 20 allege that if any part of the land was cultivated by the Plaintiffs it was by arrangement in the nature of sub-tenancies between them and either Hassan es Saiyid or Ali Abdulla Suleiman, late Mukhtars of the Arab en Nufei'at and tenants of the Defendants.

One of the Plaintiffs is the heir of Hassan es Saiyid and claims ownership by his own possession and that of his late brother and father. In his instance, the Defendants claim that the possession by his father was that of a tenant by a written lease.

These claims to prescriptive titles were heard and decided by the Settlement Officer in 1932, when he dealt with these and many similar 30 claims in one case No. 153/29 Infiat and dismissed the Plaintiffs' claims. On appeal this decision was set aside and the case remitted to the Settlement Officer for retrial as it was considered that every prescriptive claim needed separate investigation and the authenticity of the leases relied upon by the Defendants should be strictly proved and shows in evidence against the Plaintiffs.

The Supreme Court held that the contracts of lease could not be taken in evidence against each person unless it could be shown, in the circumstances of each, from the nature of the cultivation or possession in the case of each separate plot that the particular tenant was in a position 40 to obtain an equivalent rent from the proceeds of the land. So far as concerns the land in dispute in this case there was nothing to prevent any tenant from obtaining an equivalent rent from the proceeds of the land

As the result of the remission, every claimant submitted a fresh claim to separate parcels and has sought by oral evidence to prove his prescriptive right to ownership of the land he claims.

The Plaintiffs claim to have been in uninterrupted possession as owners for a period exceeding the prescriptive period prior to 1929, to have never paid any sums in cash or kind to the Colonists of Hadera or to Hassan es Sayid or 'Ali Abdulla Suleiman by way of rent or other charges.

*Before the
Settlement
Officer.*

No. 49.
Decision
of the
Settlement
Officer in
Case Nos.
3, 4, 5, 15,
19, 33, 35,
43, 45 and
54, 4th
April 1940,
continued.

The Defendants deny the Plaintiffs have any possession adverse to their registered titles and allege the evidence of the Plaintiffs and their witnesses is unreliable. The Defendants have not made any specific reference in the case to the leases between the Mukhtars of the Arab en Nufei'at and the Colonists of Hadera, but since all these Mafruz cases and Masha' cases are interconnected and the general defence of the Defendants is that any cultivation by the Arab en Nufei'at was in accordance with the lease, or by arrangement with the tenant, it is proper that the circumstances of the leases should be considered by me in this case.

The Plaintiffs rely entirely upon oral evidence except for the payment of tithe, for which they have produced a certified extract of the tithe register. I am not impressed with the Plaintiffs' oral evidence, every witness repeated without variation similar replies to stock questions and only under cross-examination did discrepancies appear. I am satisfied that during the past twelve months when inspections of the land were made and the hearings in those cases commenced the evidence-in-chief was well rehearsed and every witness well knew the replies he was to make in evidence. This was disclosed by the anxiety of some of the witnesses who volunteered replies to questions before they have been put to them by the Council for the Plaintiffs.

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.

As to the extract of tithe register, this was found by me on enquiry in the Revenue Office to have been supplied at the request of the Plaintiffs who specified certain persons by name. The extract is thus a record of selected persons and not a complete record of the entries for the years 1920-1927 inclusive. The tithe register for these years shows that some of the Plaintiffs and Defendants were jointly liable for payment of tithe and this concealment of joint responsibility indicates the means by which the Plaintiffs sought to prove their claim. The record refutes the evidence that no Colonists of Hadera ever cultivated any lands in Arab en Nufei'at and if the record is good evidence of ownership as the Plaintiffs would have me believe, it is good evidence in favour of Defendants also.

Finally, there is the question of leases. That the leases apply to the land is certain, and though the Plaintiffs deny ever having paid, as sub-tenants, rent of any nature to the lessees, the nature of the land does not preclude its sub-lease annually and I have no doubt Plaintiffs 1 and 2 had arrangements with Hassan es Saiyid and Ali Abdulla Suleiman, their kinsmen. As regards Plaintiff No. 3, he is the heir of the tenant and may be assumed to be in a position analogous to a tenant in possession after expiration of the lease. In evidence in Case Nufei'at, the leases in original were produced and some of the seals of his father identified by him. In

*Before the
Settlement
Officer.*

other instances he professed ignorance of the inscription on the seals though it was obvious that he was well able to read them and knew well the seals were inscribed with his father's name.

No. 49.
Decision
of the
Settlement
Officer in
Case Nos.
3, 4, 5 15,
19, 33, 35,
43, 45 and
54, 4th
April 1940,
continued.

After considering the evidence of both Plaintiffs and Defendants, I find the Plaintiffs' claim to ownership based on possession adverse to the registered owners is not proved and their claims are hereby dismissed and judgment entered in favour of the Defendants.

Hearing fees of LP.20 to be paid by the Plaintiffs as follows:—

Awad Saqr Suleiman	..	..	LP.10.—	
Sa'ad Saqr Suleiman	..	..	LP. 4.—	
Ali Hassan es Saiyid	..	..	LP. 6.—	

10

and costs to include advocate fees of LP.10 to the Defendants.

Decision written this 4th day of April 1940, at Haifa, and delivered in Hadera the same day in the presence of Plaintiffs in person, Advocate Anas Khamra representing Plaintiffs Mr. J. Kaiserman representing the Defendants, with usual notification re appeal.

(Sgd.) CECIL KENYON,

Hadera, 4.4.40.

Settlement Officer,
Haifa Settlement Area.

*In the
Supreme
Court.*

No. 50.

20

CIVIL APPEAL No. 121/40.

No. 50.
Civil Appeal
No. 121/40,
6th June
1940.

IN THE SUPREME COURT
Sitting as a Court of Appeal.

This is an appeal from the judgment of the learned Land Settlement Officer, Haifa Settlement Area, dated 4.4.40, whereby the claim of the Appellants in respect of the under-mentioned provisional parcels was dismissed, and judgment entered in favour of Respondents in the combined Cases Nos. 1, 2, 7, 16, 49, 66, 93 and 95/Nufei'at:—

Provisional Parcel No.

10572/7, 8, 9a, 10a, 11e, 16b, 17a, 3b, 4p, 5a, 6a, 9.
10571/1a, 1c, 22a, 23a, 24a, 25a, 26a.
10571/5b, 7, 8, 11, 12, 13, 28a.
10574/22d, 24d.
10575/5b, 7a, 13a.
10583/1-3, 5-7, 9a.
10583/10.
10571/5b, 7, 8, 11, 12, 13, 28a.

30

NOTICE OF APPEAL.

The Village Settlement Committee of Hadera, representing the Respondents, admitted before the late Land Settlement Officer Mr. Lowick, 40 in Case No. 153/32 Nufei'at, that Arab en Nufei'at were people in possession of the lands in dispute but pleaded that the said possession was by way of lease. The Land Court in its Appellate capacity set aside the decision of the Land Settlement Officer and remitted the case to him to enquire

whether the alleged leases produced by the Village Settlement Committee of Hadera did apply in each particular case (vide Land Appeal No. 2/32, Haifa).

*In the
Supreme
Court.*

2. The Land Settlement Officer held that the withdrawal of Appellants of part of their claim rendered the remainder of their claim false and untrue. It is submitted that a claimant may relinquish any part of his claim without prejudice to the rest of his claim.

No. 50.
Civil Appeal
No. 121/40,
6th June
1940,
continued.

3. As the possession of the Appellants was admitted by the Village Settlement Committee of Hadera on behalf of the Respondents, the onus of proof was on the Respondents to shew that the said possession was by way of lease. It is submitted that the only issue before the learned Land Settlement Officer was this question of the alleged leases, and he ought to have confined the proceedings to this issue of fact only.

4. The Land Settlement Officer relied in his decision on the interim order given by the late Mr. Lowick, which order was only based on administrative enquiries and not on evidence heard in judicial proceedings. It is to be pointed out with respect that the Appellants were not a party to those proceedings, and therefore the interim order referred to above was not, and could not be taken as, evidence against the Appellants.

5. The learned Land Settlement Officer erred in admitting the entries in the books of the Colony, as the Land Court had expressly indicated that such entries were of no value because they were made and kept by the party producing them. Nevertheless the Land Settlement Officer had disregarded the direction of the Land Court and he based his decision on the said entries.

6. The predecessor in title of the present Appellants was a big cultivator and was in the habit of leasing lands in Hadera and elsewhere. The Respondents failed to prove that he took on lease any plot in the lands of Arab en Nufei'at; and they also failed to prove that any of the alleged contracts of lease did in fact refer to any plot in the lands the subject-matter of this appeal. They also failed to prove that he took lease from anyone, whether Arab or Jew, any of the parcels referred to above. Granting that any of the said Contracts of lease was genuine, then we submit that such contract was in respect of other plots of land outside the boundaries of Arab en Nufei'at, in Hadera or elsewhere.

7. The Appellants were the owners and possessors of the lands in dispute. They paid tithes to Government. They have proved that they are the owners and possessors of the lands in dispute for a period exceeding the prescription limit. Respondents failed to discharge the onus of proof on them to the effect that the Appellants' possession was by way of lease, and the decision of the learned Land Settlement Officer was against the weight of evidence produced. Had the Land Settlement Officer properly addressed his mind to the evidence, he would have come to the conclusion that the lands in dispute were the property of the Appellants, and would have given judgment in their favour.

8. The order granting leave to appeal was served on the Appellants on 10.5.40.

*In the
Supreme
Court.*

No. 50.
Civil Appeal
No. 121/40,
6th June
1940,
continued.

WHEREFORE it is prayed that copy of this Notice of Appeal and annexures be served on the Respondents through their advocate, Mr. J. Kaiserman, Haifa, that a date be fixed for hearing, and judgment given allowing the appeal and setting aside the decision of the learned Land Settlement Officer, and ordering the registration of the parcels referred to above in the names of the Appellants—with costs and advocate's fees.

Dated this 6th day of June, 1940.

(Sgd.) A. KHAMRA.

Advocates for Appellants, 10

A. KHAMRA and M. MADI,
Haifa.

No. 51.
Judgment,
Civil Appeal
No. 121/40,
22nd April
1941.

No. 51.

CIVIL APPEAL No. 121/40.

JUDGMENT OF THE SUPREME COURT.

This Case is similar to Civil Appeal No. 123/40.

The Settlement Officer has re-heard the claims and has found :—

“ 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 20 obvious falsehoods disclosed in their oral evidence, I have no 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.”

and later he said :—

“ I come to the conclusion that no reliance can be placed on the Plaintiffs' evidence and the long uninterrupted possession and cultivation is not proved.”

In these circumstances the appeal will be dismissed. Respondent No. 1 will have his costs on the lower scale and we certify I.P.5 advocate's 30 attendance fee. Respondent No. 12 will have his costs on the lower scale and LP.10 advocate's attendance fee.

Delivered this 22nd day of April 1941.

(Sgd.) HARRY TRUSTED, Chief Justice.

„ R. COPLAND, British Puisne Judge.

„ F. KHAYAT, Puisne Judge.

No. 52.

CIVIL APPEAL No. 123/40.

*In the
Supreme
Court.*

IN THE SUPREME COURT
Sitting as a Court of Appeal.

No. 52.
Civil Appeal
No. 123/40,
6th June
1940.

This is an appeal from the decision of the learned Land Settlement Officer, Haifa Settlement Area, dated 4.4.40, whereby the claim of the Appellants in respect of the undermentioned provisional parcels was dismissed, and judgment entered in favour of the Respondents in the combined Cases Nos. 6, 18, 38, 62, 63, 97, 98/Nufei'at :

10 *Prov. Parcel No. :—*

10571/13c, 14, 15, 16a, 17c, 18b, 19b, 27a.

10572/4a, 4d, 4g, 11c.

10575/6, 7b, 8a, 9a, 14a.

10574/7a, 8-9, 10a, 11a, 12a.

10575/3a, 4, 5, 13.

10583/9c, 11, 11d.

10574/7a, 8-9, 11a, 12a.

10575/3a, 4, 5, 13.

10583/9c, 11, 11d.

20 10575/3a, 4, 5, 13.

10583/9c, 11, 11d & P.P. 10583/9c, 11, 11d.

NOTICE OF APPEAL.

The Village Settlement Committee of Hadera, representing the Respondents, admitted in the proceedings before the Land Settlement Officer in Case No. 153/32 Nufei'at, that Arab Nufei'at were in possession of the lands in dispute, but alleged that the said possession was by way of lease. These facts were found by the late Land Settlement Officer and were stated in his decision in the said action. The Land Court in its appellate capacity set aside the decision of the Land Settlement Officer and remitted the case to him to enquire whether the alleged leases produced by the Village Settlement Committee of Hadera did apply in each particular case (vide judgment in Land Appeal No. 2/32, Haifa).

2. Under the said judgment of the Land Court, it was the duty of the Land Settlement Officer to order Respondents to prove the tenancy of the Appellants in the lands, and not to ask the Appellants to prove their possession of the lands in dispute, as the onus of proof was clearly shifted on the Respondents to prove this point. Consequently, the Appellants ought to have been cited as Defendants in the action and not as Plaintiffs.

40 3. The agreement between the Appellants regarding the number of shares each had to own in the various plots was a matter of concern to the Appellants only. This had no bearing on the question of ownership of the lands in dispute between the Appellants and the Respondents. None of the Appellants contested the ownership of the shares allotted to his co-owner as there was a mutual agreement between the Appellants themselves. Every one of the Appellants was fully entitled to give up any of his shares in the lands in dispute in favour of any other co-owner.

*In the
Supreme
Court.*

No. 52.
Civil Appeal
No. 123/40,
6th June
1940,
continued.

4. Although this case was remitted by the Land Court to the Land Settlement Officer primarily in order to enquire into the question of the alleged leases, yet the Land Settlement Officer did not make any finding in respect thereof, which renders his decision defective from this point as well.

5. The withdrawal by the Appellants of part of their claim did not render the remainder thereof false. The Appellants were free to relinquish any part of their claim at any stage of the proceedings without prejudice to their other rights. This is an established principle of justice, and to hold otherwise would, in our submission, be a denial of justice. The learned Land Settlement Officer was therefore wrong in holding that the withdrawal of part of the claim invalidated the whole proceedings. 10

6. The Appellants cultivated the lands and paid tithes to the Government. The Respondent did not produce tithe receipts which applied to the lands in dispute. The Land Settlement Officer did not state the name of person or persons appearing in the registers, and it is submitted that the findings of the Land Settlement Officer to the effect that the Respondents paid the tithes in respect of these lands to Government was not supported by any evidence. The Appellants were not given the opportunity to know who were those persons as the receipts were not produced in the proceedings. 20

7. The Appellants produced ample evidence to prove their claim. The Land Settlement Officer held that Appellants did not cultivate neither in the mafruz nor in the masha' lands. This amounts to saying that they were not cultivators, which was contrary to the finding in Case No. 12/ Nufei'at at Part II, where he held that the Appellants' predecessors in title were cultivators since time immemorial. Moreover, the Respondents themselves admitted that the Appellants were in possession of the lands in dispute, but they alleged that such possession was by way of lease— which allegation they failed to prove. 30

8. The late Mr. Lowick made enquiry as to who was in possession of the disputed lands at the material time. His enquiry was an administrative one, and the proceedings were not on oath. Consequently, the interim order made by him cannot be taken as basis for decision in the present proceedings.

9. It is submitted that the evidence of the Respondents did not cover the parcels in dispute, because the witnesses did not know the particulars of the lands, and their evidence cannot be taken as basis for decision. The decision of the Land Settlement Officer was therefore against the weight of evidence and had he addressed his mind properly he would have come to a different conclusion, and would have given judgment in favour of the Appellants. 40

10. The Respondents did not produce any contract of lease signed by the Appellants or anyone of them, and this in our submission supports the claim of the Appellants that they are the *bona fide* owners and possessors of the lands in dispute.

11. The order granting leave to appeal was served on the Appellants on 10.5.40.

WHEREFORE it is prayed that copy of this Notice of Appeal and annexures thereto be served on the Respondents through their advocate, Mr. J. Kaiserman, Haifa, that hearing be fixed and parties summoned, and judgment entered in favour of the Appellants allowing their appeal and setting aside the decision of the learned Land Settlement Officer, and ordering the registration of the parcels in dispute in the names of the Appellants—with costs and advocates' fees.

*In the
Supreme
Court.*

No. 52.
Civil Appeal
No. 123/40,
6th June
1940,
continued.

Dated this 6th day of June, 1940.

(Sgd.) A. KHAMRA,

Advocates for Appellants.

A. KHAMRA & M. MADI,

Haifa.

10

No. 53.

CIVIL APPEAL No. 123/40.

JUDGMENT OF THE SUPREME COURT.

No. 53.
Judgment,
Civil Appeal
No. 123/40,
22nd April
1941.

This is one of several cases which were returned by this Court to the Land Settlement Officer. The judgment of this Court, Land Appeal No. 37/33, stated :—

20 “ The Land Court, having personally inspected the lands in dispute in the case, held that it was impossible for the Settlement Officer to arrive at a fair decision without dealing with each plot separately in view of the variation in the categoric and the large area of the Lands in question. This is a question of fact for the said Court to determine, and we as a Court of Appeal cannot interfere with such finding.”

The following point of law which had been submitted, i.e. :—

30 “ The Court held that the contracts of lease, even if proved to be genuine, affected only the signatories thereto. We have (been ?) asked to hold that the contracts, if proved to be valid are operative with regard to all the lands mentioned in the contract.”
was also considered, and the Court found, inter alia :—

“ In my view, the said contracts cannot be taken in evidence against each individual person unless it is shewn in the circumstances of each, from the nature of 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.”

*In the
Supreme
Court.*

Upon that I think it was open to the Land Settlement Officer at the re-hearing to enquire fully into the facts. This he did, and came to certain conclusions.

No. 53.
Judgment,
Civil Appeal
No. 123/40,
22nd April
1941,
continued.

The Appellants now contend that the true position was that it had already been held that they, the Appellants, were in possession of the land, and that the only question was whether they held by virtue of a contract of tenancy. I do not think that was so, and that was not the case they made before the Land Settlement Officer at the re-hearing.

The Land Settlement Officer, found :—

“ After considering the oral evidence of the Plaintiffs (i.e. 10 the Appellants) 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 (i.e. the Respondents) and their witnesses, I come to the conclusion that the Plaintiffs’ statements are not to be believed.”

and later—

“ 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 20 Hassan es Saiyid or Ali Abdulla Suleiman, the tenants of the Colonists.”

Upon these findings of fact the appeal fails, and is dismissed with costs on the lower scale, and we certify LP.10 for attending the hearing to those Respondents represented by Mr. Kaiserman.

Delivered this 22nd day of April, 1941.

(Sgd.) HARRY TRUSTED, Chief Justice.

„ R. COPLAND, British Puisne Judge.

„ F. KHAYAT, Puisne Judge.

No. 54.

CIVIL APPEAL No. 124/40.

*In the
Supreme
Court.*

IN THE SUPREME COURT
Sitting as a Court of Appeal.

In the appeal between :—

1. AWAD SAQR SULEIMAN
2. ALI HASAN AL-SAYID
3. SA'D SAQR SULEIMAN

Appellants

No. 54.
Civil Appeal
No. 124/40,
6th June
1940.

V.

- | | |
|----|--|
| 10 | <ol style="list-style-type: none"> 1. THE GOVERNMENT OF PALESTINE 2. RIVKA BAT MORDEKHAI HURVITZ 3. MOSHE TURETZ 4. ZVI BEN MORDEKHAI SOLONOVITCH 5. HADERA FOUNDERS ASSOCIATION LTD. 6. BINYAMIN SHULAMI 7. YOSEF YA'AQOV BERVITZ 8. MOSHE BEN TZION SUSSMAN 9. YOSEF ELIASH |
| 20 | <ol style="list-style-type: none"> 10. AHARON MEIRSON 11. DAVID ZOLTEROV 12. TANHUM FRANK 13. LEIB SCHAF 14. BEN ZION BEN YEHUDA RITOV 15. KALMAN HIRSCHHORN 16. KEREN KAYEMETH LEISRAEL LTD. 17. ELIMELECH HERSHKOVITZ 18. ALEXANDER AHARONSON 19. PENINA (SCHMIDT) BLUMROSEN 20. ZEEV DARJAVITZ |
| 30 | <ol style="list-style-type: none"> 21. YEFET MILNER 22. NOAH MILNER 23. MATITYAHU NAHUMI 24. YOKHEVED HAR-ZAHAV 25. EFRAYIM SHTERNIN 26. YITSHAQ LAMBERG 27. FANIA (FEIGE) SPIRO 28. TANIA RAZEMOVSKA 29. RACHEL (RU) SOIKANEN |

Respondents.

This is an appeal from the decision of the learned Land Settlement
40 Officer, Haifa Settlement Area, dated 4.4.40, whereby the claim of the
Appellants in respect of the undermentioned provisional parcels was
dismissed and judgment entered in favour of the Respondents—in the
combined cases Nos. 3, 4, 5, 15, 19, 33, 35, 43, 45 and 54/Nufei'at.

Provisional Parcel No.

10571/20a, 21a, 22, 23, 24, 25b, 27c.

10572/4k, 5b, 5c, 9b, 10, 11d, 12a, 13a, 14, 16.

10574/22h, 23d, 24a, 24, 25e, 26a, 26b.

*In the
Supreme
Court.*

No. 54.
Civil Appeal
No. 124/40,
6th June
1940,
continued.

10571/1b, 24b, 25, 26, 27d, 17a, 18a, 19a, 20b, 21b, 22c, 27, 27b.
10574/1, 2a, 3a.
10574/1e, 3b, 4-5, 10, 13a, 20b.
10574/22l, 25g.
10571/17a, 18a, 19a, 20b, 21b, 22c, 27, 27b, 1b, 24b, 25, 26, 27d.
10574/1e, 3b, 4-5, 10, 13a, 20b, 1, 2a, 3a.
10572/11a, 12, 13a.
10571/1b, 24b, 25, 26, 27d, 17a, 18a, 19a, 20b, 21b, 22c, 27, 27b.
10574/1, 2a, 3a, 1e, 4-5, 10, 13a, 20b.

NOTICE OF APPEAL.

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The Respondents admitted in the proceedings before the Land Settlement Officer that the Arab Nufei'at were in possession of the lands in dispute, but pretended that such possession was by way of lease (Case No. 153/32 Nufei'at). The Appellants' witnesses proved the possession of the Appellants of the lands in dispute for a period far exceeding the prescription limit.

2. As the Land Court remitted the case to the Land Settlement Officer to enquire into the application of the alleged leases in each particular case, the onus of proof was on the Respondents to show that the possession of the Appellants was by way of tenancy and not otherwise. Consequently 20 the Appellants ought to have been cited as Defendants and not as Plaintiffs.

3. The alleged leases made by Hassan el Sayyed to the Committee of Hadera Colony was not proved in this case, and the learned Land Settlement Officer did not make a finding regarding the authenticity or otherwise of these leases. The Respondents failed to prove that the Appellants took on lease any of the lands in dispute, either from Hassan el Sayyid or from any other person. There was no evidence that Appellants No. 1 and 3 arranged with the father of Appellant No. 2 the matter of procuring to them the lands in dispute by way of lease. Similarly, there was no evidence that Appellants 1 and 3 through Ali Abdallah Suleiman 30 took on lease the disputed lands. The assumption of the learned Land Settlement Officer in this respect was unwarranted in the circumstances of this case.

4. No written contract of lease was produced by the Respondents signed by Appellants 1 and 2, and no oral evidence was adduced to prove that at any time these two Appellants leased any lands from anyone of the Colonists of Hadera. In the absence of any evidence to this effect, it is submitted that it was incumbent on the learned Land Settlement Officer to enter judgment in favour of the Appellants.

5. The Appellants were the owners and possessors of the lands in 40 dispute for a considerable period of time, and they used to pay the tithes to the Government. The mere appearance of the name of one of the inhabitants of Hadera in the Tithes Register does not prove that that person was a joint cultivator with the Appellants. The decision of the learned Land Settlement Officer does not disclose the name of such person, and the decision of the Land Settlement Officer is not supported by any evidence. Similar statements are to be found nearly in every decision of the Land Settlement Officer and it is submitted that the mere appearance

of one or two names of the Colonists of Hadera in the Tithes Register should not, and could not, affect the possession of the whole village over such an extensive area of land.

*In the
Supreme
Court.*

6. The decision of the learned Land Settlement Officer was against the weight of the evidence produced before him. It is submitted that there was ample evidence before the Land Settlement Officer to justify giving judgment in favour of the Appellants. It is further submitted that the witnesses of the Respondents did not know the land and their evidence cannot be taken as basis for judgment.

No. 54.
Civil Appeal
No. 124/40
6th June
1940,
continued.

10 7. At the time the late Mr. Lowick gave his interim order, Appellants were in possession of the lands in dispute. During the proceedings before the Land Settlement Officer, the Appellants were in possession of certain parcels.

8. The order granting leave to appeal was served on the Appellants on 10.5.1940.

20 WHEREFORE it is prayed that copy of this Notice of Appeal with annexures thereto be served on the Respondents through their advocate Mr. J. Kaiserman, Haifa, that a date be fixed for hearing, parties summoned, and judgment entered in favour of the Appellants setting aside the decision of the learned Land Settlement Officer and ordering the registration of the parcels in dispute in the names of the Appellants—with costs and advocates' fees.

Dated this 6th day of June, 1940.

(Sgd.) A. KHAMRA.

Advocates for Appellants,

A. KHAMRA and M. MADI,

Haifa.

*In the
Supreme
Court.*

No. 55.

JUDGMENT. Civil Appeal No. 124/40.

No. 55.
Judgment,
Civil Appeal
No. 124/40,
22nd April
1941.

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

Before :—

THE CHIEF JUSTICE,
Mr. JUSTICE COPLAND and
Mr. JUSTICE KHAYAT.

In the Appeal of :—

- | | |
|------------------------|----|
| 1. AWAD SAQR SULEIMAN | 10 |
| 2. ALI HASSAN AL-SAYID | |
| 3. SA'D SAQR SULEIMAN | |

Appellants

I.

- | | |
|-------------------------------------|----|
| 1. THE GOVERNMENT OF PALESTINE | |
| 2. RIVQA BAT MORDEKHAI HURVITZ | |
| 3. MOSHE TURETZ | |
| 4. ZVI BEN MORDEKHAI SOLONOVITCH | |
| 5. HADERA FOUNDERS ASSOCIATION LTD. | |
| 6. BINYAMIN SHULAMI | |
| 7. YOSEF YA'AQOV BERVITZ | 20 |
| 8. MOSHE BEN-ZION SUSSMAN | |
| 9. YOSEF ELIASH | |
| 10. AHARON MEIRSON | |
| 11. DAVID ZOLTEROV | |
| 12. TANHAM FRANK | |
| 13. LEIB SCHAF | |
| 14. BENZION BEN YEHUDA RITOV | |
| 15. KALMAN HIRSCHHORN | |
| 16. KEREN KAYEMETH LEISRAEL LTD. | |
| 17. ELIMELECH HERSHKOVITZ | 30 |
| 18. ALEXANDER AHARONSON | |
| 19. PENINA (SCHMIDT) BLUMROSEN | |
| 20. ZEEV DARJAVITZ | |
| 21. YEFET MILNER | |
| 22. NOAH MILNER | |
| 23. MATITYAHU NAHUMI | |
| 24. YOKHEVED HAR ZAHAV | |
| 25. EFRAIM SHTERNIN | |
| 26. YITSHAQ LAMBURG | |
| 27. FANIA (FEIGE) SPIRO | 40 |
| 28. TANIA RAZEMOVSKA | |
| 29. RACHEL (RU) SOIKANEN | |

Respondents.

Appeal from the decision of the Settlement Officer, Haifa Settlement Area, dated the 4th of April, 1940.

For Appellants :— Subhi Eff. Khadra and Anas Eff. Khamra.

For Respondents :—

No. 1—Mr. Hogan, Crown Council.
 Nos. 3, 4, 7, 8, 14, 15, 17, 23, 28 and 29 Absentees
 —served through the Village Settlement Com-
 mittee of Hadera—Mr. Kaiserman, also for
 Nos. 5, 6, 10, 12, 18, 20, 21, 22, 25 and 16.
 No. 2—deceased—heirs summoned by substituted
 service.
 No. 11—served by substituted service.
 Nos. 9, 19, 24, 26 and 27—served personally—
 absent.

*In the
 Supreme
 Court.*

No. 55.
 Judgment,
 Civil Appeal
 No. 124/40,
 22nd April
 1941,
continued.

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JUDGMENT.

The main point of this appeal is similar to that we have just decided in Civil Appeal No. 123/40.

In this case also the Land Settlement Officer has gone fully into the facts and has found :—

“After considering the evidence of both Plaintiffs and Defendants, I find the Plaintiffs’ claim to ownership based on possession adverse to the registered owners is not proved, and their claims are hereby dismissed and judgment entered in favour of the Defendants.”

20

In these circumstances we see no reason to interfere with his decision, and the appeal is dismissed.

Respondents Nos. 5 and 16 will respectively have their costs on the lower scale and we certify LP.5 each advocate’s attendance fee.

Delivered this 22nd day of April 1941.

(Sgd.) HARRY TRUSTED, Chief Justice.

„ R. COPLAND, British Puisne Judge.

„ F. KHAYAT, Puisne Judge.

No. 56.

P.C.L.A. No. 9 of 1941.

30

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

Order granting conditional leave to appeal to Privy Council in
 Civil Appeal No. 121/40.

(Not printed.)

No. 56.
 Order
 granting
 Conditional
 Leave to
 appeal to
 Privy
 Council in
 Civil Appeal
 No. 121/40,
 30th July
 1941. *(Not
 printed.)*

*In the
Supreme
Court.*

No. 57.

P.C.L.A. No. 10 of 1941.

**Order granting conditional leave to appeal to Privy Council in
Civil Appeal No. 123/40.**

(Not printed.)

No. 57.
Order
granting
Conditional
Leave to
Appeal,
30th July
1941. *(Not
printed.)*

No. 58.

P.C.L.A. No. 11 of 1941.

**Order granting conditional leave to appeal to Privy Council in
Civil Appeal No. 124/40.**

(Not printed.)

No. 58.
Order
granting
Conditional
Leave to
appeal,
30th July
1941. *(Not
printed.)*

10

No. 59.

BANK GUARANTEE.

(Not printed.)

**BARCLAYS BANK (DOMINION COLONIAL AND OVERSEAS).
JERUSALEM.**

No. 59.
Bank
Guarantee,
26th
September
1941. *(Not
printed.)*

26th September 1941.

No. 60.

ORDER granting final leave to Appeal to His Majesty in Council.*In the
Supreme
Court.***ORDER.**No. 60.
Order
granting
final Leave
to Appeal,
27th
October
1941.

Whereas by order of this Court, dated the 30th July, 1941, the Petitioners were granted conditional leave to appeal to His Majesty in Council, subject to the following conditions :—

(i) That the Appellants do enter within two months of the date of this Order into a Bank Guarantee in a sum of LP.300 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 despatch thereof to England within two months of the date of the Order.

And whereas the Petitioners have fulfilled the said conditions, in that they have filed a guarantee bond for the sum of LP.300, as prescribed, and have filed a draft copy of the Record of Appeal intended to be dispatched to England, and have further applied for the settlement thereof, and the parties have appeared before the Chief Registrar of this Court for the settlement thereof, which record has been settled.

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

Given this 27th day of October 1941.

(Sgd.) R. COPLAND, Acting Chief Justice.

„ D. EDWARDS, British Puisne Judge.

Before the
Settlement
Officer.

PART II.

No. 1.

CASE No. 111/29/Nufei'at, Part II.

No. 1.
Preliminary
Discussions,
24th March
1930.

Before the SETTLEMENT OFFICER Jaffa and Hadera Area.

Parties :—

- I. Village Settlement Committee, Arab en Nufei'at.
- II. Village Settlement Committee, Hadera.
- III. The Attorney-General's representative.
- IV. 1. 'Adel Ibrahim Haj 'Abdalla Es Samara.
 2. Abdalla " " " " " 10
 3. Farid " " " " "
 4. Abdellatif " " " " "
 5. Abdel Hamid " " " "
 6. Mahmud El Haj 'Abdalla es Samara.
 7. Aref " " " " "
 8. Fatme, widow of Ibrahim Haj 'Abdalla es Samara.
 9. Nazira, " " " " "
- V. The Palestine Agudat Netayim Co. Ltd., represented by
 Advocate Boris Gissin.
- VI. Joshua Hankin. 20

PRELIMINARY.

Hearing of disputes at Hudiera—Infiat.

(A) *Mr. Dukhan*, Attorney-General's Representative.—The land covered by the map consists of various areas to which Colonists of Hudera claim they hold Kushans, while the Arabs Infiat claim that the kushans do not apply to the areas shewn in the map but that they are entitled to certain areas on the grounds of possession and cultivation. The Government have directed that they should make a claim to land included on the map submitted by me by a green line, and accordingly Government claims about 4,680 dunums which lies between the green line up to the sea as not included in the kushans of Khudeira Colony. The Government considers the lands as Mewat lands. Anyone who cultivates such lands may be entitled to the land on payment of Bedl Misl. I am instructed that if any of the claimants establish a claim by effective cultivation, to agree to the land being awarded to him upon payment of Bedl Misl. There is a second part of the Government Claim. There are three localities to the East of the green line, one is called Birket es Safra, the second Bein el Birkatein, and Kharrubet el Basha. With regard to these three localities, Government is satisfied that the Colonists of Hudeira hold Kushans, but since the Western Boundary of these Kushans is not definitely fixed, Government's submission is that we are entitled to collect from the Colonists of Hudeira Bedl Misl for the excess of area over the registered area. This claim is without prejudice to any claim from anyone establishing a right by possession and cultivation to land falling within these kushans. I request that the boundaries of the Kushans be first demarcated and evidence heard as to where the line should actually run on the ground. I base my application on Section (4) of Land Court Ordinance 1921, (c) and (g). 30 40

(B) *Mr. Kaiserman*, as attorney for V.S.C. of Hudeira.—I have no objection to fixing the boundaries of the Kushans on the land.

*Before the
Settlement
Officer.*

No. 1.

Preliminary
Discussions,
24th March
1930,
continued.

(C) *Mr. Moghannam* : I speak on behalf of the Supreme Moslem Council as represented by their Haifa and Acre Office, in accordance with power of attorney submitted. I also represent the Village Settlement Committee of the Arabs Infiat. I submit that so far I have seen there are four plaintiffs, viz., Government, Hudeira Colonists, Mr. Hankin and Abdalla Eff. Samara. It is rather unfortunate that neither parties have been served with the essential documents in this case, and subject to all
10 documents being placed at my disposal after this sitting, and subject to the production of an old map and registers possessed by Government appertaining to these lands, which I understand was used by Government in their enquiry into the rights into these lands, as I believe the production of these registers and map will be of great assistance in arriving at a decision. I request the production of the applications received by the Department of Lands from the Colonists of Hudeira under the Correction of Land Registers Ordinance which were refused by that Department. I ask that all documents in possession of Government on this subject be produced. I ask for the report of Mr. Andrews on the report and the
20 conclusions of Mr. Colville on this report. It will be easier to demarcate the boundaries if the Court has these documents before us. In the old registers there are servitudes shewn which affect the claim. Subject to these reservations the Arabs Infiat are ready to assist in the verification of boundaries, but we maintain that the land W. of the eucalyptus trees is vested in the Arabs, nor do we admit the right of Government to these lands for Bedl Misl or otherwise. As far as the Waqf claim I must make very strong reservations, as there are areas used as cemeteries in the disputed area that are by their nature waqf. I accept hearing evidence for demarcating the boundaries of the alleged kushans if all parties
30 concerned with the concurrence of the S.O. shall expressly admit that in case the result of the demarcation shall by decision in first instance or appeal or at any stage during the proceedings include all or any of the lands claimed as Waqf such decision or order shall not lose the title of the said waqf land but shall ipso facto eliminate the said cemeteries as established as waqf land vested in the Moslem Supreme Council and excluded from the boundaries of such title.

(D) *Abdalla Ibrahim Sammara* : I appear as one of the heirs of Ibrahim Samara under Art. 16 (4) of the Land Settlement Ordinance.

(E) *Farid Ibrahim Samara* } We appear as the partners of the
40 (F) *Mahmoud Abdalla Samara* } late Ibrahim Samara.
The other partners of Samara family were duly summoned.

(G) *Mr. Hankin (Yehoshu'a)* and

(H) *Agudath Neta'im Palestine Co. Ltd.*,

did not appear although they were duly summoned.

(D), (E), (F).—We have no objection to this course.

Mr. Doukhan : If the existence of a cemetery is established within the area that may be excluded from the kushan the Government will make no claim whatsoever to this land.

Mr. Kaiserman : I agree to Moghannam's reservations and associate
50 myself with Mr. Doukhan's remarks, subject to Mr. Moghannam not calling witnesses on the question of the boundaries of the kushans in his capacity as representative of the Supreme Moslem Council.

Mr. Moghannam : Mr. Kaiserman is not entitled to make this reservation.

*Before the
Settlement
Officer.*

No. 2.

No. 2.
Interim
Orders,
24th March
1930.

INTERIM ORDER : The Settlement Officer decides to hear the application of the Representative of the Attorney-General for the defining of the boundaries of (A) the three kushans held by the Colonists of Hudeira, (B) the N. boundary of the kushan held by Abdalla Ibrahim Samara and partners, and (C) the southern boundary of Hefzi Bah. This issue will be decided in accordance with Section 12 of the Land Settlement Ordinance subject to the reservations made by the parties.

24.3.30. (Sgd.) F. G. LOWICK, S.O.

Hearing adjourned until the afternoon.

10

24.3.30. (Sgd.) F. G. LOWICK, S.O.

The hearing was resumed at 2.30 p.m.

The following parties were entered :—

Part (A). To fix the boundaries of the Kushans of Kharrobet el Pasha, Bein el Birkatein, and Es Safra held by the Colonists of Hudeira.

Part (B). To fix the N. boundary of the Kushan held by Abdalla Ibrahim Samara and partners.

Part (C). To fix the S. boundary of Hefzi Bah.

Plaintiff : The Government of Palestine.

Defendants : *Mr. Moghannam* stated that as the original Plaintiffs 20 in the cases entered in the Land Court were the Colonists of Hudeira, the latter should appear as co-Plaintiffs in this action. The District Court also in a judgment directed them to bring an action in the Land Court to prove their ownership.

Mr. Kaiserman resisted this view.

INTERIM ORDER : In view of the fact that it is necessary to hear the claims of all parties concerned in the area in dispute, and that it is clear that the Government should appear in this case as Plaintiff, and as from the nature of the dispute it is not possible to associate other parties with the Government as Plaintiffs, the Settlement Officer orders 30 that the parties be entered as follows :—

Plaintiff : Government of Palestine.

Defendants : V.S.C. of the Arabs Infiat.

Third Parties : (1) V.S.C. of Hudeira.

(2) Abdalla Ibrahim Samara and partners.

(3) Yehoshu'a Hankin.

(4) Agudath Netaim Co. Ltd.

24.3.30.

(Sgd.) F. G. LOWICK.

Mr. Doukhan : I rely on the three kushans mentioned in my Memo. of Claim, and on the evidence of two senior officers who made inspection 40 and enquiries on the spot, viz., Mitri Eff. Hanna Benjamin Fishman.

Mr. Kaiserman, representing Third Party No. 1: I rely on the personal evidence of Mr. Botkovsky and Mr. Samsonoff to establish the boundaries ; report submitted to and order given the Mejlis Idara dated 319 ; a map of 1892 and 1893.

Abdalla Ibrahim Samara, Third Party 2: I rely on our Kushan and the evidence of witnesses Hassan el Seruji of Wadi Hawareth, Mohamed Dirsie and Salem el Abid all of the same place.

*Before the
Settlement
Officer.*

(3) and (4): Not present.

Defendants, Mr. Asfour: I reserve my right of making any objection to any evidence mentioned or to be mentioned by any of the parties in this case, and for the purpose of deciding the boundaries, I name as expert witnesses Fahim Ibrahim, Suliman Daud, Muhamed Mahsin.

No. 2.
Interim
Orders,
24th March
1930,
continued.

10 *Mr. Yehoshu'a Hankin*, Third Party No. 3, then appeared: I rely on my kushan presented at settlement, according to which we paid Bedl Misl to the Government, the boundaries which were demarcated on the ground between Hudeira and Hefzi Bah, 39 years ago and on a map signed by Mejlis Idara and the neighbours. I also call Messrs. Samsonoff and Botkovsky as witnesses.

Case adjourned to 9 a.m. to-morrow.

Hudeira, 24.3.30.

(Sgd.) F. G. LOWICK, S.O.

The hearings were resumed on the ground on the morning of the 25th March 1930.

No. 3.

20 *In reply to Plaintiff on behalf of the Government*:

Mr. Hankin produced a map date about 36 years ago—attached and marked C. The original of which was submitted to the Settlement Officer. The dividing line between Hefzi Bah and Hudeira lands is marked with the points A-B.

No. 3.
Evidence of
Yehoshu'a
Hankin,
25th March
1930.

Mr. Hankin cross-questioned by Mr. Doukhan:

30 A. Ard Kharrubet el Basha is on my boundary. Point B coincides with Birket es Safra and point A coincides with one of the hills known as Tlul el Khudar. I think I can point out the boundaries of the kushans dated 321 and 327 on the map and on the ground. Mr. Hankin stated that he can indicate to the Surveyor the boundaries of the kushan dated 321. 'Ein el Shuman is in land which he ceded to Hudeira people. 'Ein el Shuman is on the boundary and Ard el Gharat is no longer in his possession, but now is included in the Fuqara boundary now owned by the P.I.C.A. The West boundary described as Raml el Tayyar el Bahr is about 100 metres along the sea shore. The southern boundary described as cultivable land to the north of Kharrubet el Basha and 'Utol is south to the line A-B. Cultivable lands of Kharrubet el Basha and sandy lands near the seashore. As regards the second Kushan dated 327—The W. boundary is the seashore. The S. boundary is described as the lands of
40 Kharrubet el Basha which are situated south of the line A-B. I can indicate these boundaries to the surveyor on the ground. Resulting from the sale of the centre portion of the area to Agudath Netaim and another person, the land became divided into three parcels: the Eastern, the Central, as stated, and the West, along the seashore. The Central portion described on the map as Eisenberg is the area sold to Agudath Netaim

Before the Settlement Officer. and another. The Kushan of 327 covers the Western Division. The Kushan of 321 is the Eastern Division of the area plus the portion ceded to Fuqaar.

No. 3.
Evidence of
Yehoshu'a
Hankin,
25th March
1930,
continued.

Question : The following boundaries are those shewn in the Shamsiya book of 1296. These were transferred to the Daftar Daimi of 308 on which the Kushans now under consideration are based. Can you point out these boundaries on the map and ground? *Boundaries :—*

South : Ard Muftalah known as Ard Kharrubet el Basha and 'Utol.

East : Ard Muftalah, 'Ein Shuman, 'Ein Safra and Ard el Gharat. 10

North : Wadi Khuderia and Sand.

West : White Sand.

Answer : Yes. These are the boundaries of the three divisions I have described.

Question : I also wish to ask you whether you can identify the following boundaries given in the Daftar Daimi of 308 which were transferred to the book of 321?

South : Ard Muftalah known as the Land of Kharrubet el Basha and 'Utol.

East : Ard Muftalah, 'Ein Shuman and 'Ein Safra—which is at 20 a distance of about two dunums of the Mughar.

North : Wadi Hudeira and Raml.

West : Raml Abyad Illathi Yab'ud 'an haram el bahr one hundred old pics.

Answer : Yes. I can indicate these boundaries to the surveyor on the map and also on the ground. The area is the same as in the registration of 1296 and 1308.

Question : The localities of Birket Safra and 'Ein Shuman is recorded in the Shamsiya of 1296 with the following boundaries :—

South : Birket Ibreiktas and Ard Muftalah.

30

East : Ard el Hod and Muftalah.

North : Ard el Gharat.

West : Raml 'Utol.

Can you point out these boundaries?

Answer : I can indicate the boundaries with the exception of Ard el Hod and Muftalah. They are vide map attached marked T. 'Ein Shuman as far as I can remember, is somewhere on the line of eucalyptus indicated on map T—as C-I. Breiktas is the land bounded by the line C-I-D-C. Ard Muftalah is in the position shewn on the map as J-K-K. I cannot identify the eastern boundary. Ard el Gharat is the area shewn 40 on the map as H. Raml 'Utol is the seashore sands along the line E-F.

Witness cross-questioned by Attorney for Defendants : I do not know of any locality known as Ard el Huwat. I do not know a locality known as Jazirat el Basha within the lands of Hudeira and Infiat.

*Witness cross-questioned by Attorney for Third Party I.—*I purchased from Selim Khouri for myself and my partners all the lands now contained within the boundaries of Hudeira, Dardara and Infiat, as well as all its

interests and rights and servitudes. When we purchased we demarcated the outer boundaries with the assistance of the neighbours and the Tabu of Haifa and Tulkarem. Shaker Basha had already sold his share to Salim Khuri and had no right in the lands at the time of the purchase by me. The western boundary of the area we bought is along the seashore. On the southern boundary are Tel Mas'ud and the lands of Zeita and 'Attil which I cannot see on the map T. I cannot speak of the disputed area to the South as there was no dispute till 1927-28 between the Government or the Arabs and the Colonists. (Witness indicated as the Southern

10 Boundary of the land purchased by him in the area now in dispute—as the line MHO). At the time of the purchase there was a built mark at point M. Another point is Birket 'Ata—not quite on the shore but about 100 metres away towards Wadi Hawarith to the south. Minat Abu Zabura is in the lands of Samara, a little to the south of point M.

I know engineer Ernest Vogt. I know that he made a map of Hudeira. I also know engineer Gregory Wilbushevitz. He also made a map. These are the maps (copies) produced by attorney for Third Party I, and appended and marked U and V. Map U was made for the purpose of defining the boundaries with the neighbours to prevent disputes as to boundaries. At

20 the time of drawing this map a mazbata was also drawn in the presence of the Maamurs of Haifa and Tulkarem and all the neighbours. Owing to bad health conditions, Dr. Yoffe and myself suggested to build the Colony Kadima. I know a place known as Kadima. It is near the seashore—nearer to the boundary of Wadi Hawarith than to Hefzi Bah. Kadima was a summer resort for Hudeira Colonists and consisted of wooden houses. These lands were separated from the Masha' lands and the Government compelled them to obtain Mafruz Kushans although Masha'a Kushans for the whole area were held by us.

Re-Xd. by Attorney for Defendant: A. It is quite possible that none

30 of the Kushans of Hudeira lands shew the boundary as the sea for you know how we used to get our Kushans. When I bought Hudeira lands and Hefzi Bah lands, neither the Government nor anybody else had any opposition to these lands, and later on I obtained the correction of the Kushan of Hafzi Bah to show the Western boundary as "Mayat Dira' 'Atik 'an el Bahr." There were no disputes about these lands till 1927. I heard that the Majlis Idara visited the lands but I do not know for which purpose. For about two years the Colonists lived at Kadima and found that their health conditions were no better and returned to the Colony. It is an absolute lie that there was a dispute with the Arabs and that we

40 had to leave it and that the Arabs thereupon destroyed our houses. There has never been a village of Infiat during my experience of the locality. I never heard of a Khirbet Infiat. There is no locality known as Barrt Infiat. There is a Barra which is now in Hefzi Bah known as Barrt Ti'us Raml el Saris. There is no land known as Barrt Fuqara. I do not know any place called Barrat Damaira. I understand by the word Barra the open place; it does not mean uncultivated land as distinguished from cultivated. There was no land known as Barrt Infiat at the time of the purchase.

Farid Samara on behalf of Third Party II: Q. Do you know that

50 Tel el Jariye is the limit of our boundary on the sea?

*Before the
Settlement
Officer.*

No. 3.
Evidence of
Yehoshu'a
Hankin,
25th March
1930,
continued.

Evidence of
Farid
Samara,
25th March
1930.

Before the
Settlement
Officer.

No. 3.

Evidence of
Farid
Samara,
25th March
1930.
continued.

A. I never heard of Tel el Jariye. The area now claimed by Samara at the time we purchased the land belonged to Tayyan. We met Tayyan and fixed the boundaries as I have already said—about 100 metres south of Birket 'Ata. I do not know of Barri Infeat.

Questions by S.O. : A. (by Hankin)—The boundary was fixed north of Nim'at Abu Zabura in the presence of the Tayyan family who were at that time the adjoining owners and the mark is still in existence. I do not know that there is a copy of a map signed by the neighbours of Hudeira. But I know that there existed a Mazbata signed by the neighbours confirming the map. The original mazbata I believe was handed over to the Government. A copy I made was lost while I was absent from Palestine on exile. I do not know the limits of the area now disputed. But I remember that Sheikh Hasan and the father of 'Ali el 'Abdallah from Infeat Arabs signed the Mazbata. The West boundary of the map to which the Mazbata referred was shewn as at a short distance from the Sea. The southern boundary was vouched for by the Tayyan family. This boundary was identical with the boundary as claimed by Hudeira Colony now. 10

Plaintiff's
Evidence—
Mitri
Hanna,
25th March
1930.

Witness No. 1 for Plaintiff : MITRI EFF. HANNA—Land Officer—Sworn
—51 years old :—

In March 1929 I held an investigation into the lands now in dispute with a view to ascertaining whether the rights of Government were involved. On 4th April 1929 I submitted a joint report with Mr. Fishman attached and marked Q. 20

(Report was read to and confirmed by Witness.)

Mr. Asfour, Attorney for Defendants : I reserve my right to cross-examine witness Mitri Hanna later on if necessary.

Mr. Kaiserman, Attorney for Third Party I : I am not concerned with the northern boundary. I will reserve the right to examine Mr. Mitri Hanna regarding the other boundary—at a later stage.

Witness examined by Mr. Hankin : Q. Why do you say the N.W. point of the Kharrubet el Basha locality cannot be precisely located on the Turkish plan—showing the southern limit of Hankin's land ? 30

A. First : The Arabs shewed me a Kharrub tree as being the Kharrubet el Basha. Second : The Jews shewed me a number of Kharub trees within the sand nearer to the sea. Third : Naturally they submitted a Turkish map to identify Kharrubt el Basha. The object of this map is to shew Hankin's land known as Ti'us Raml Wa Saris. The object was not to shew Ard Kharrubt el Basha. For these three reasons I cannot point out where is situate the N.W. corner of Kharrubt el Basha mentioned in the relevant Kushan. I was unable to ascertain the position of the point Kharrubt el Basha mentioned in your Kushan. The Arabs pointed out to one tree as being "the Kharrubt el Basha," the Jews shewed me another tree. 40

Cross-questioned by Attorney for Defence : Q. Do you understand when a boundary is given as Kharrubet el Basha that one single tree is intended or a group of trees ?

A. This locality is known as Kharrubet el Basha locality. The Northern boundary is given as the Kharub tree of the Basha and Arad Raml 'Utol. I understand from this that the intention is one tree and if it were more than one tree it would have said "Kharrub" (plural) el Basha. The Arabs shewed me Kharrub shoots coming from the ground and said this was the place of the tree. In short the Jews pointed out to me another place west of the point shewn by the Arabs, where they stated was Kharrubt el Basha. On the place indicated by the Jews there was about three Kharub trees and they said here is Kharrubt el Basha. I do not
 10 know whether they meant that one or the group of trees was the Kharubt el Basha or whether it was the situation of the old tree. We were under the impression that Jazirt el Basha and Kharubt el Basha were identical as the boundaries were the same. I did not come across a record in respect of Khirbet el Basha.

Before the
Settlement
Officer.

No. 3.
Plaintiff's
Evidence—
Mitri
Hanna,
25th March
1930,
continued.

Mr. Asfour, Attorney for Defendant : I reserve my right to re-cross-examine this witness after inspection of the old registers.

Mr. Hankin questions : Q. Is the map submitted correct or incorrect as regards area described ?

A. I do not remember whether Mr. Hankin's map was available at
 20 the time of investigation on the ground.

Questions by S.O. : A. We did not attempt to establish Mr. Hankin's boundaries on the ground with his map.

INTERIM ORDER BY S.O. : Settlement Officer decided to send Government Surveyor to compare the boundary shown in map Document "C" with the boundary as claimed by Mr. Hankin—as shewn by the map of the Survey Department.

(Sgd.) F. G. LOWICK, S.O.

Witness II on behalf of Plaintiffs : Mr. BENJAMIN FISHMAN—Land Officer—Sworn—32 years old :—

30 I remember having furnished a report on 4th April 1929—marked Q—and read over to me—which I confirm.

Plaintiff's
Evidence—
Benjamin
Fishman,
25th March
1930.

Witness cross-questioned by Mr. Hankin : A. I came to the conclusion that Kharrubt el Basha locality is situate about 400 metres east from the sea coast line from an examination of your map—which is exactly the point where the words written on the map end. I also came to this conclusion from an examination of the ground and enquiries made on investigation. I was convinced that any point within the portion of the area covered by the words Kharrubt el Basha in the map can be called Kharrubt el Basha. This was expressly stated on the map. But I was
 40 not so certain that the portion covered by the space beyond the last point of the words Kharrubt el Basha in the map was within or without it, and assumed that this was the starting point of the 'Utol which extended to the seashore.

Questions by Attorney for Plaintiff : A. I came across and interpreted other Turkish maps in the same manner to the satisfaction of all concerned. In my opinion there are three points in the Western Boundary of Kharrubt el Basha as appears from official documents. On the South is Dahrat el

Before the
Settlement
Officer.

No. 3.
Plaintiff's
Evidence—
Benjamin
Fishman,
25th March
1930,
continued.

Munter. Kadima is in the centre. If we follow in an approximately straight line from Muntar in a northerly direction through the West of Kadima we reach at a point on the Hefzi Bah boundary which is approximately 400 metres away from the seashore and which coincides with the point described above. The lands situate west of this line are in my opinion the Raml 'Utol referred to in the Kushan.

Mr. Hankin in reply to S.O.'s question: The line A-E divides my lands from those of the Colonists.

Mr. Fishman questioned: A. The tree indicated by the Sheikhs of Arab Infiat is about 300 metres S.W. to Birket Safra. The second point indicated to us was a group of trees about 800 metres from the seashore in the neighbourhood of two hills. This was indicated by Messrs. Botkovsky and Samsonov on behalf of Hudeira. To the east of Breiktas at a distance of about 300 metres another tree trunk was indicated by one of the Infeat Sheikhs as being "the Kharrubt el Basha." No tree was indicated to me either by Arabs or Jews within the lands. I consider 'Utol as being "the Kharrubt el Basha."

Questioned by Attorney on behalf of Defendants: A. Ard Jazirat el Basha appears on the registers as a locality in Hudeira lands.

Defendants reserve right to recall witness at a later stage. 20

Attorney for Government and Third Party I—reserve the right to examine witness on questions arising from examination by Defendants in respect of Jazirt el Basha as compared with Kharrubt el Basha.

The hearing is adjourned till to-morrow morning 8 a.m.—when we shall proceed along the line to the sea.

25th March 1930.

(Sgd.) F. G. LOWICK, S.O.

The hearing was resumed on the ground on the morning of the 26th March 1930.

Evidence of
Zvi
Botkovsky,
26th March
1930.

Witness 1 called by Mr. Yehushua Hankin, Third Party III—Mr. ZVI BOTKOVSKY—Sworn—43 years old :— 30

A long knowledge of land transactions and Turkish Kushans he knows that boundaries were frequently described not by definite points but by localities. It is thus necessary in order to arrive definitely at a boundary firstly to demarcate the boundaries of the localities abutting on the boundary. In the case of this boundary dispute the Kushans give three indications, Birket Safra, Kharrubt el Basha and Raml 'Utol and the boundary was fixed in accordance with this information. There is no difference—Both Mr. Hankin and ourselves (Hudeira) agree on this line. The whole of this boundary was never disputed by anybody until quite recently, as far as I know. Mr. Hankin's map has always been accepted (Exhibit C) by the Government when transactions were effected in that area. Mr. Hankin's map (Exh. C) agrees with the Hudeira map of year 1893 (Exh. U) as regards the common boundary. In the same manner as Hankin's relative Kushans agree with his map. Similarly the Hudeira Kushans agree with the Hudeira map. This boundary was at one time clearly marked with concrete marks stones, irons as is shewn by the map, 40

but by the lapse of time, drifting of the sands or the action of irresponsible people, these marks mostly disappeared. The extreme point of our line in the map (shewn point B) was a mark situated at about 30 metres above sea level—"Punkt B ist mit Steinen ausgefüllt ca 30 meter ueber Meerspiegel"—(Point B is filled with stones about 30 metres above the sea level). The owners of both sides on the boundary have for the last 40 years paid Werko taxes to Government against receipts. No other person or body has ever paid these taxes on the land in question.

*Before the
Settlement
Officer.*

No. 3.
Evidence of
Zvi
Botkovsky,
26th March
1930,
continued.

Plaintiff not concerned with evidence of this witness.

10 *Third Parties I and II* are also not concerned.

Witness cross-questioned by Attorney for Defendants (Mahmud Eff. Madi questions): The southern boundary of Arab Fuwqra is not as you say Kharrubt el Basha but Ard el Gharat. We understand by Raml 'Utol the sand on which nothing will grow and which is near the seashore and sometimes covered by sea water. The wild Kharub and Saris trees are not within the area called Raml 'Utol. Raml 'Utol is only found near the seashore. I do not know what the writer of Raml Tayyar and Raml 'Utol meant by these words when first registered, but from my own experience after making several experience—Raml Tayyar can be made use of while Raml 'Utol cannot be made use of at all because it is sometimes covered by sea water. The Arabs carried out the work of erecting the marks. We never heard or saw any sign that of dissatisfaction among the Arabs with regard to the fixing of this boundary. I never heard that Arab Infeat had any boundary. It is clear that they live within the lands of Hudeira. The lands on which the Arab Infiat graze their flocks is also within the boundaries of Hudeira. From the Kushans it does not appear that lands were left aside for grazing purposes. But we have made use of land which we have not cultivated for grazing, first for our own animals, next for those of our neighbours, including the Arab Infeat and also from other tribes coming from a long distance. The animal tax collected by the Government is a tax on the animal per capita and is not a grazing tax. We have collected from Arab Infeat a grazing fee in accordance with contracts we hold. We have produced contracts showing that we let to Arabs Infeat lands both for grazing and cultivation. The Government collected werko also on the 'Utol and Saris from Colonists of Hudeira and Mr. Hankin.

No re-examination.

Second witness of Third Party No. 3—Mr. AHARON SAMSONOV—Sworn
—50 years old :—

Evidence of
Aharon
Samsonov,
26th March
1930.

40 Witness indicated on map (Exhibit U) the line from Birket Safra to the hill near the bay at point B as being the Hudeira Hefzi Bah boundary. I was present when the boundary was fixed. The boundary was fixed on our knowledge of the localities in conjunction with the information of the Kushans. My knowledge of this is 38 years ago. At the time this boundary was demarcated I was a child but I do not know what was the function of the Arabs who were present. But I do know that the boundary was fixed between the lands of Hudeira and those of Hefzi Bah. The line fixed was between the southern hill of Tlul el Khudor (two hills)

*Before the
Settlement
Officer.*

on West and on the East Birket Safra (northern edge). The boundary was in an approximately straight line between those points.

No. 3.
Evidence of
Aharon
Samsonov,
26th March
1930,
continued.

Witness cross-examined by Attorney for Defendants : The next hill on which there is a cemetery is on Hefzi Bah lands—the tombs are not those of Jewish dead. I do not know the dead of which tribe are buried in it. I was a child and do not know to whom belonged the lands on which we are sitting. The P.I.C.A. for five, six or ten years owns lands on the boundary in the direction of Fugara. I never walked on the boundary in this region which is claimed by Arabs Infeat. I do not know what signs the P.I.C.A. fixed on the boundary of the land they purchased. 10 All I know about the boundary as indicated by me is the boundary I have no other particulars to give. I was present on the ground at the time of fixing this boundary. The land to the south of us is Kharrubt el Basha. I do not know the West boundary of Kharrubt el Basha. I know our boundaries. I do not know the name of the locality in which we are sitting. It is part of Hefzi Bah. I can point out land in Kharrubt el Basha which is cultivated by the Jews. I know Birket Safra. I know the locality of Birket Safra lands. Kharrubt el Basha lies on Western side of Safra locality. I know the original approximate boundaries, but I never paid much attention about these boundaries because they are 20 within our lands. I do not know any particular features marking the boundaries of these localities for the same reasons I have given before. Kharrubt el Basha comprises cultivated and uncultivated lands. The south-western portion of Kharrubt el Basha is lands cultivated by Jews. I do not know the ancient locality names of the lands of Hefzi Bah. I have been of the lands of Khudeira neighbouring the sea several times. Mr. Animals (sic) has animals in Hudeira. The Hudeira flocks have grazed in this locality situate west of Breiktas. The boundary pointed by Arab Infeat is no boundary. The boundary is as pointed by Mr. Hankin.

Att. to Government : No questions as this concerned a boundary 30 between two parties.

Att. for Third Parties I (Mr. Kaiserman) : I reserve my right to ask cross-examining witness at a later stage.

Evidence of
Ezekiel
Komornick,
26th March
1930.

Expert called by S.O.—Government Surveyor Mr. EZEKIEL KOMORNICK
—Sworn :—

I am surveyor in charge Government Survey—39 years old.

Question by S.O. : I was able to apply the map “ C ” put in by Third Party III to the ground. I intersected all angle irons marked in white and also another line of angle irons marked green. The south line is that marked with white angle irons. The north is that marked with green 40 angle irons. The white line ends on the western side at a white mark and also an old angle iron at the Southern Tel El Akhdar. The other line ends north to the cemetery approximately 600 meters north of the mark just previously mentioned (on the seashore). I took as a base a line from a pipe mark slightly north of Birket es Safra and the mark on the southern Tel el Akhdar. I intersected most of the white angle irons on the sheet (10,000) from the ground and fixed their positions on the Government 1 : 10000 Plan. I then made a tracing of that portion from the Government plan of the area concerned and applied the tracing to

Mr. Hankin's plan. I found that the line of white angle irons agrees with the southern boundary of Hefzi Bah shewn in Mr. Hankin's map "C." According to Mr. Hankin's map the distance from the point of Southern Tel el Akhdar to the mouth of Wadi Hudeira is approximately 2700 m. I have shewn the point previously mentioned on the Government 20 : 000 map which also shows the mouth of Wadi Hudeira. The approximate distance on this map between Southern Tel el Akhdar and the mouth of the Wadi Hudeira is the same. I have shewn the boundary according to Mr. Hankin's map on map marked "T" with a line of small circles in ink.

*Before the
Settlement
Officer.*

No. 3.
Evidence of
Ezekiel
Komornick,
26th March
1930,
continued.

Witness cross-examined by Attorney to Defendants: I have not surveyed myself the original map of which "T" is a print.

In answer to S.O.: I have satisfied myself that the other line on map "T" is the line of white angle irons stretching from the pipe mark and the north of Birket Safra to the mark on the Southern Tel el Akhdar.

In answer to Attorney for Defendants: I do not know who fixed the pipe mark or the angle iron referred to above.

Witness 1 by Defence: NIMR HASAN SA'ID—Sworn—28 years' old :—

Evidence of
Nimr Hasan
Sa'id, 26th
March 1930.

20 The land on which we are sitting is Ard Arab Infeat. The boundary between the Infeat lands and Fuqara is the line of angle irons marked green. The western boundary of Arab Infiat lands is the sea. The cemetery on the hill to the north of Southern Tel Akhdar belongs to us. The line of eucalyptus trees on Breiktas are the east boundaries of Infeat lands. The Saris bushes and the herbage are used for grazing our animals from ancient times. I never heard till recently that Hudeira people claimed ownership of the area in dispute. The Government used to take tithe from us for lands cultivated in this area and still does and collects animal tax on our flocks and herds. I never heard that Mr. Hankin had flocks grazing here. He has no flocks. I never saw the people of Hudeira grazing their animals on this land or cutting wood in this area.

Cross-examined by Mr. Hankin: I never in my life knew that Mr. Hankin's boundary is Tel-Akhdar (Southern). I know that our boundary in the north is Fuqara. My father's name was Hasan Sayed. I never heard that my father sold his lands to Shaker Basha. I have no knowledge that our fathers sold all of their lands to Shaker Basha and declared that they do not possess any more lands. I never knew that you claimed land on this boundary. Therefore I did not make any objection. We do not pay Werko.

40 *Re-examination by Attorney for Defendants:* The land which used to be divided into feddans was cultivated lands, not the bur. The bur land which is suitable for grazing was considered masha'a and not divided. I never heard that Turkish Government used to sell grazing lands to anyone.

Questions by S.O.: A. I never heard until the last few days of a locality described as Kharrubt el Basha.

Before the
Settlement
Officer.

Witness 2 for Defence : SULEIMAN DAUD ABU TAMAM—Sworn—
26 years' old :—

No. 3.
Evidence of
Suleiman
Daud Abu
Tamam,
26th March
1930.

The land on which we are at present is Arab Infeat lands. The northern boundary of Arab Infeat lands is the lands of 'Arab Fuqara. The boundaries is marked by a spot called Dabbel Darwish. The boundary is now marked by angle irons in green. The burial ground on hill to the north of Tel Akhdar (South) is a cemetery of Arab Infeat. The eastern boundary of Arab Infeat are the line of eucalyptus trees of Breiktas. The western boundaries of the Infeat lands is the seashore, we used to bathe. The lands we now cultivate was growing with herbage and saris. The 10
land west of the eucalyptus so I hear from my forefathers, was wilderness and parts was from time to time reclaimed and I reclaimed some myself. Our encampments are moved from time to time from place to place. I never heard that Mr. Hankin had flocks which came here nor he lives here. I never heard that Hudeira people graze lands here. The Arabs would not allow them—I never heard of Turkish Government granting grazing lands by Badl Misl.

Cross-examined by Mr. Hankin : Third Party III : I used after I had finished my own cultivation to make contract with your brother to remove wood and I superintended the workmen. I never heard of the locality 20
of Ramel el Saris or its boundaries. I never saw mulberry trees planted by you in this area. I never heard from my father that you had any land in this area, nor did I know the boundary. If you had land here would you have left it without planting ? I do not know what werko is. I paid tithes and animal tax.

Att. for Defendants : We are satisfied with our witnesses. We will not recall more.

Questions by S.O. : I never heard of a locality known as Kharrubt el Basha or a tree known as Kharubt el Basha.

Attorney for Defendants (Mr. Asfour) : Attorney for the Defendants 30
at request of S.O. stated that their claim is for all the lands situated west of eucalyptus trees of Breiktas to the sea is of three categories :—

(1) Waste land—uncultivable and uncultivated, which we claim to be our camping grounds, pastures, right of cutting wood, right of passage and right of water for us and our animals and right of irrigation.

(2) Cultivated land.

(3) Waqf land consisting of four cemeteries and their harams. Our title to all this land is based on (a) succession, (b) undisputed possession, for more than tens of years, which will be proved by :— 40

(i) Witnesses including claimants ;

(ii) Government Registers or extracts thereof of tithe and animal tax.

(iii) Actual features of the lands and their respective categories.

As regards the boundaries we wish to make formal application as follows :
The appointment of a Commission by both sides reporting on the boundaries to decide which are the correct boundaries.

In reply to S.O. : The claims as entered originally were for individual parcels claimed by individual persons. As there is no disagreement between the individual claimants on our side and as we understand the claim on the Hudeira side was entered as a collective claim, and as we have already produced a power of attorney by the individual claimants empowering the Village Committee to act on their behalf in whichever way they see fit, we respectfully apply that all these claims be united and the same be regarded as one collective claim.

*Before the
Settlement
Officer.*

No. 3.
Evidence of
Suleiman
Daud Abu
Tamam,
26th March
1930,
continued.

10 *Att. for Government :* I object to application of Defendants for setting up a separate commission to decide on the boundaries, because it is in contradiction to the machinery set up by the legislator of Palestine for the settling of title and boundary disputes and because an Interim Order to that effect was already given by the S.O. on the 24th instant. In view of the general claim made by Arab Infeat I state that I deny the claims as indicated by their Attorney and if and when the demarcation of the boundaries of the Kushans has taken place, the claim will be looked upon on the merits and the evidence produced and grants from the Government made in accordance with instructions of Government conveyed through me on 24th March 1930.

20 *Att. for Third Party 1 :* I object to application by Defendants.

S.O. questions Attorney for Defendants : What evidence do you propose to produce to prove or disprove the boundaries of the land as shewn in the Kushans ?

30 *Answer :* In Code of Civil Procedure there is an Article to the effect that in case of disagreement between adjoining neighbours a commission should be set up for defining the boundaries and should be elected from unbiased parties. In this case all the oponents have disagreed on the boundaries and on the localities. Even Mitri Eff., the Land Officer, was unable to demarcate the boundaries with precision. Therefore we request that a commission be appointed as a Judge is not allowed in Law to decide an issue on what he personally knows (he must hear evidence).

40 **INTERIM ORDER BY S.O. :** It is clearly laid down and implied in the Land Settlement Ordinance that it is the Settlement Officer who shall fix the boundaries of villages and that he himself decides into disputes and questions of ownership. The S.O. is thus entitled to decide such dispute on the evidence both oral and documentary that is produced before him and from the conditions that he finds upon the ground. The application for the appointment of a Commission is therefore rejected. It is further remarked that the provisions of the Code of the Civil Procedure which is apparently intended to facilitate the business of a Court sitting in a town is not intended to be applied to the work of a Settlement Officer who must of necessity attend on the ground and decide a dispute.

26.3.30.

(Sgd.) F. G. LOWICK, S.O.

Before the
Settlement
Officer.

No. 4.

Evidence re alleged Kadima to which the Colonists allege to have
Kushans.

No. 4.
Evidence re
Kadima
Lands.

Witness for Third Party II—Mr. YEHOSEHU'A HANKIN—Given solemn
declaration—Aged 64 years 3 months :—

Evidence of
Yehoshu'a
Hankin,
26th March
1930.

I am familiar with the place of Kadima. It is quite near to the place
where we are at present. This was a summer resort place for Hadera
farmers. We suffered from the malaria and we built wooden houses and
they sank a well. This land was included within the boundaries of the
registered locality of Kharrubt el Basha which was a Masha'a kushan. 10
But in the case of Kadima mafroz kushans were issued on payment of
Bedl Misl.

Mr. Hankin indicated the position of Kadima as shown on Government
10.000 map marked "Y."

Kadima consisted of two rows of houses and a well.

In answer to Mr. Kaiserman, Attorney for Third Party I: There were
about 35 houses. I was present when they were built and afterwards—
built approximately 33-34 years ago and was lived in for two years—left
because of bad climate.

No questions by Attorney for Government.

20

Defendants reserve right of cross-examination at a later stage.

Evidence of
Zvi
Botkovsky,
26th March
1930.

Witness II for Third Party I—Mr. ZVI BOTKOVSKY—Sworn—43 years
old :—

I know a place called Kadima. It was a summer resort for Hudeira
farmers erected on account of bad climate in the Colony. It consisted
of about 40 houses. Two rows of houses. (Indicated by witness.) A well
was sunk about the centre of the Colony. It was in Mawqa'a Kharrubt
el Basha. The land was composed with a masha'a kushan of Kharrubt
el Basha. As individuals could not obtain registration for their individual
parcels allotted to them, they obtained mafroz kushans and paid on it 30
werko and they still pay werko on the houses which do not exist now.
It was built in 1898. I did not live in it but my brother lived in it and
is buried in Hudeira.

Right of cross-examination reserved by Defendant.

Case adjourned until 9 a.m., 27.3.30, to be continued on S. Boundary
Hudeira-Infeat.

Hearing resumed at Minat Abu Zabura on the morning of March
27th 1930.

Interim
Order, 27th
March 1930.

INTERIM ORDER: The hearing of the case to be adjourned for
23rd, 24th and 25th April. I order that facilities shall be given to all 40
interested parties to inspect all the records bearing on the lands in dispute
at the Land Registry at Haifa and Tulkarem and to take copies.

I also order that the Vaad of the Colony shall give facilities to all interested parties to inspect account books and other records which are stated to show that the Arab Infeat leased the cultivated lands in the disputed area from them.

I further order that facilities be granted to all interested parties to inspect tithe entries and other records dealing with disputed area that are available in Finance Office in Haifa.

Mr. Hankin is required to submit the original map in case he has not yet submitted it.

10 All witnesses who already appeared in this action are required to attend next hearing.

V.S.C. of Hudeira required to produce the remaining Kushans of Kadima area or such as are available.

27.3.30.

(Sgd.) F. G. LOWICK, S.O.

Attorney for Infeats stated that he would himself produce witnesses on the subject of the waqf, and would not require to summon witnesses to the Court.

20 *Attorney for (Govt.) Plaintiff:* States that the only witnesses he wished to produce next sitting in connection with this issue are Mitri Eff. Hanna and Mr. Fishman and he will secure their attendance.

Attorneys for Third Party II: Undertook to produce at the time of the next hearing their witnesses.

Third Party III—stated that he will call his brother Tanhum Hankin and Moshe Lubin as witnesses and will produce them at next hearing.

Third Party No. IV—not represented.

27.3.30.

(Sgd.) F. G. LOWICK, S.O.

30 SECOND INTERIM ORDER: On application of Attorney for Third Party II, I order that extracts to be obtained by the parties from official records shall be certified by the competent official free of charge as these are required for the benefit of the Court.

27.3.30.

(Sgd.) F. G. LOWICK, S.O.

No. 5.

S.O. proceeded to consider the disputed boundary between the land claimed by Abdallah Ibrahim Samara and partners and Hudeira and/or Arab Infeat.

On behalf of Third Party II—

Present:—Sa'id Muhammad Ali Samara. Other partners not present though duly summoned.

40 *Witness for Third Party I:* Mr. YEHOSEHU'A HANKIN—Solemn affirmation:—

About 40 years ago I bought together with the other Colonists of Hudera from Salim Khuri the lands of Hudeira, Dardara and Infeat with all that

Before the Settlement Officer.

No. 4.
Evidence re Kadima Lands, continued.
Interim Order, 27th March 1930, continued.

Second Interim Order, 27th March 1930.

No. 5.
Evidence re boundary disputes between Samara and Hudeira and/or Arab Nufei'at, 27th March 1930.

Evidence of Yehoshu'a Hankin, 27th March 1930.

*Before the
Settlement
Officer.*



No. 5.
Evidence re
boundary
disputes
between
Samara and
Hudeira
and/or
Arab
Nufei'at,
27th March
1930,
continued.

Evidence of
Yehoshu'a
Hankin,
27th March
1930,
continued.

appertain to them. Before proceeding with the transfer we went out on the land with the neighbours and an engineer-surveyor to demarcate the boundaries and a map was made in accordance therewith. (Exhibit U.) At that time our neighbour on the south was Anton Bishara Tayyan. The Samara family at that time had no land there (on the south). There was never any opposition on the part of Mr. Tayyan about this boundary as he agreed with it. About twenty years or so a Sara Azal from Nablus bought part of Wadi Hawarith lands. At the time of taking possession of the lands she did not oppose the boundaries demarcated 40 years ago. I was not present at the time of any public identification of this boundary at the time of the purchase by Sara. About three or four years later Abdallah Samara bought the shares of Sara and partition was effected between Tayyan and Samara. A year before the war I purchased from Samara by contract his share. And he pointed out to me his share within the Wadi Hawarith lands in accordance with the boundary of this map (Exhibit U). There was no opposition on the part of Samara all the time. Only when the Survey Department surveyed Wadi Hawarith lands about two years ago, then the heirs of Samara claimed that this was not the true boundary. At the time of drawing of the contract with Samara he produced to me a map.

In reply to Att. for 3 (1) : I think that I may be able to find it—no doubt a copy of this map is still held by Samara family.

In our map it is clearly indicated in which way we had demarcated our boundary.

In reply to Attorney for 3 (1) : Namely Punkt A ist mit  Steinen angefuellt ca. 2 m. ueber Meerspiegel. (Point A is  filled with stones about 2 metres above sea level. (Exhibit U refers.)

In reply to Attorney for 3 (1) : Yes—the point is indicated on the map as being at a distance of 140 metres from the Mina.

Mr. Tayyan was the only person interested in this boundary at that time (of drawing the map). I do not know the name of any other point on the southern boundary—but the other extreme of it was about 100 metres on the south of Birket Ata which was at the time larger and has since then been drained in part. No person other than Tayyan was at the time interested in the lands situated south to this boundary from Minat Abu Zabura to 'Ata. I can point out to the S.O. Point A on the ground.

Upon inspection by the Court with the parties of the Point A mentioned by the witness the witness said this is the angle and showed it adding it had been filled with stones by us but the sea washed out large parts of these stones but remained some of them to-day. He then pointed out the Mina which is about 140 metres away.

The S.O. satisfied himself that this point is about 140 metres indicated as the Mina.

In reply to 3 (1) : I will instruct my lawyer to obtain from the Court of Appeal the original agreement with Samara or a copy of it.

Attorney for Plaintiff : No Questions.

Attorney for Defendants : Reserves his right to inspect the maps and cross-examine witness at a later stage.

Attorney for 3 (2) : Reserves his right to X.X. witness after inspecting survey map.

Witness 2 for 3 (1) : Mr. ZVI BOTKOVSKY—Sworn—43 years' old :—

Before the
Settlement
Officer.

X.X. by Att. for 3 (1) : I can indicate on the map the boundary between Hudeira and Wadi Hawarith lands (Exhibit U). The first point is near Minat Abu Zabura extending in a straight line to Dabt El Muntar the highest point and continuing to the sands near Birket Atta and through this point to Um el 'Aqareb. The point which we have just seen on the ground is point A on the map. I know this boundary to be the correct boundary for the following reasons :—

No. 5.
Evidence re
boundary
disputes
between
Samara and
Hudeira
and/or
Arab
Nufei'at,
27th March
1930,
continued.

10 (1) I have seen a document signed by Tayyan testifying that this is the correct boundary. This document has been mislaid but I may be able to find it.

(2) There has been negotiations during the last 40 years for the purchase of the lands of Wadi Hawarith and the vendor always produced a map with the same boundary.

I believe that Minat Abu Zabura is mentioned in the contracts of lease to Arab Infeat as being the southernmost point on the west boundary.

Evidence of
Zvi
Botkovsky,
27th March
1930.

20 Attorney for Government X.X. : The south boundary of Kharrubt el Basha is given in the Kushan as Daharat el Muntar which is above or beyond Miqtayet Zaharane. I can indicate on the map (U) Debl el Muntar : as to Miktayet Zaharane. I presume is somewhere near the hill. It is at the apex of the angle formed by the boundary shewn on map U, between point A and the point south of Birket 'Ata. The witness also pointed out on the ground to the highest point on the green hill. I wish to add that the previous owner of the lands south to this land—Azef—has prior to the purchase by Samara negotiated with Hudeira lands about the sale of this land and there has always been agreement between us about this line. During 1911–1914 on the occasion of re-surveying of Hudeira lands for the purpose of partition between the farmers I have visited here together with Josef Treidel the engineer and surveyor and
30 others—to this place and we met several times here the old Samara and there was never a dispute about this land.

Attorney for Defendant : Reserves his right to cross-examine the witness at later stage.

Representative of 3rd 2 : Also reserves right of X.X.

In answer to S.O., representative of third 2 stated—I know of no documents in support of our claim except the Kushan. I know of no map.

INTERIM ORDER.

Interim Order on Application of Attorney for Government :—

Interim
Order, 27th
March 1930.

40 Mr. Komornick, Government Surveyor, was instructed to identify on map Y the point south of Birket Atta and the point of the Apex which is on the south boundary between the point of south of Ata and point A.

27.3.30.

(Sgd.) F. G. LOWICK, S.O.

Attorney for Third Party 1 : We reserve our right to call further evidence on this point at a later stage if necessary.

Before the Settlement Officer. *Witness 1 for Third Party No. 2: MUHAMMAD HASSAN DIRSIYA.*
Sworn, 30 years' old :—

No. 5. I know that the boundary that boundary between Infiat and Samara
Evidence re is Tel el Jariye—(Tel el Jariye shewn on Exhibit Y) to Birket 'Ata.

boundary disputes between Samara and Hudeira and/or Arab Nufei'at, 27th March 1930, continued. *X.X. by Attorney for Third Party 1:* For fifteen years since I have been capable of knowledge I have known that this is the boundary of Samara. Samara is on the land for fifteen years. A Jew was Samara's predecessor. I do not (? know) where the Jew's boundary was. I have never seen a mark near here. We call it "Shakif" not "Zawiya." I do not know of any Zawiye. I have seen two cuttings on the Shakif. 10
I have seen these cuttings—they are old, older than myself. I have never heard for what purpose these were made. They were made by the friction of the water. I do not know Daharat el Muntar. I never heard of such a place called Daharat el Muntar in this neighbourhood nor of Miktayet Zaharan. The place where the cutting in rock is is known as Minat Abu Zabura. I lived all my life in Wadi Hawarith. I often come to Tel el Jariye. I know of the old Ibrahim Samara. He died about three years ago.

No re-examination.

X.X. by Attorney for Defendants: I have never seen anybody either 20
Jews or Arabs cultivate land between Minat Abu Zabura and Birket 'Ata. It is waste land. In the land from Minat Abu Zabura and northward where the Saris grow I have never seen other people except Arabs graze their animals. I never seen anybody from Hudera nor Mr. Hankin preventing anybody from grazing in this area. Six or seven villages despatch their Battikh from Minat Abu Zabura. Arab Infeat also despatched Battikh from here. They passed through these sands.

Attorney for Third Party I: No intention to interfere with any ancient customs regarding rights of access and use of the lands round Minat Abu Zabura used for shipping melons from age and time. We ourselves and 30
the villages that have used these facilities should continue to enjoy these facilities.

Attorney for Government: I confirm that the Government will not interfere with any ancient rights whether for the Arabs or for the Jews in connection with this matter above mentioned.

INTERIM ORDER BY S.O.: Any ancient rights regarding the right of passage and use of lands at Minat Abu Zabura as well as the ownership of the lands will be established in the due course of settlement and recorded in the register.

27.3.30.

(Sgd.) F. G. LOWICK, S.O. 40

Case adjourned to 23.4.30.

27.3.30.

(Sgd.) F. W. LOWICK, S.O.

The hearing was resumed on 23.4.30 in the presence of the parties and their attorneys.

Attorney for Defendants (Mahmud Eff. El Madi): As a result of a meeting held with the representatives of the Hudeira Colonists, we have been able to arrive at an agreement in principle. What remains is for me to refer these fundamental points for agreement to my clients, and I ask for an adjournment.

Mr. Abcarius for V.S.C. Hudeira: We have reached the fundamental bases for an agreement. I support the application for an adjournment. We will notify the Government advocate of the details of the proposed agreement, provided that he has no objection to this course.

10

Adjournment re amicable Settlement.

Government Advocate, Dr. Doukhan: I agree to the suggestions made by the attorneys for the two other parties, on the understanding that they will furnish me with particulars of the proposed agreement, in order that I can consult Government. I have no objection to an adjournment in these circumstances, provided it will be for as short a period as possible. I must have at least a fortnight from the time the proposals are submitted.

Case adjourned to 19.5.30.

Hudeira, 23.4.30.

(Sgd.) F. G. LOWICK, S.O.

No. 6.

20 The hearing was resumed on 19.5.30 in presence of the parties as previously.

The V.S.C. Arab el Faqara apply to be entered as Third Party, represented by Mahmud el Madi and Mr. Asfur by power of attorney.

Attorney for Third Party V: We admit that all land lying to the south of the line claimed by the Arabs Infi'at as their northern boundary belongs to the Arabs Infi'at, and that we have no claim thereto.

30 INTERIM ORDER: That the Arabs el Faqara may subsequent to the completion of this action lodge a claim regarding any rights that they consider they are entitled to in the area north of the boundary claimed by the Arabs Infiat.

19.5.30.

(Sgd.) F. G. LOWICK.

Plaintiff: I ask that the evidence of Mr. Fishman and Mitri Eff. El Hanna, Inspectors of Lands, who conducted an enquiry into this dispute be heard as regards the southern boundary of Kharrubet el Basha Kushan. The other parties may cross-examine them on their report.

40 The southern boundary of the Kharrubet el Basha Kushan is shewn as Dahret El Muntar which is above Miqtayet Zahraniye. At the last hearing the witnesses of the Colonists of Hudeira indicated a certain point as the Dahret Muntar. I wish to produce the evidence of the above witnesses as regards the position of this point.

Before the Settlement Officer.

No. 5.

Evidence re boundary disputes between Samara and Huderia and/or Arab Nufei'at 23rd April 1930, continued. Evidence of Muhammad Hassan Dirsiya, 23rd April 1930, continued. Adjournment re amicable Settlement, 23rd April 1930.

No. 6. Application by Arab Fuqara for admission as Third Party, 19th May 1930.

Interim Order, 19th May 1930.

Before the
Settlement
Officer.

Plaintiff's witness—MITRI EFF. HANNA—Sworn—51 years :—

No. 7.
Plaintiff's
Evidence—
Mitri Eff.
Hanna,
19th May
1930.

I am an Inspector of Lands. The southern boundary of Kharrubet el Basha Kushan is shewn as Dahret Muntar, about Miqtaye El Zahraniye. I did not apply the boundary to the ground when I inspected the ground with Mr. Fishman. We were accompanied by representatives of the Hudeira Colonists and the Infi'at Arabs, who pointed out a hill as being the Dahret Muntar. Among the people who accompanied us were Mr. Botkovsky and Mr. Samsonoff of Hudeira, and Sheikh Nimr and other persons of Hudeira and Arabs Infi'at. They all agreed that a hill 10 about $\frac{1}{2}$ –1 kilometre distance was Dahret Muntar. At a later time I accompanied the Director of Lands to the disputed area, and we proceeded to Dahret Muntar and I satisfied myself that this was the hill indicated. I can point out this place on the ground but I am not certain if I can shew it on the map.

X.X. Defendant : I never said that there was not a registration in the name of Kharrubet el Basha. I stated that the register shewed names Khirbet (Kharrubet, Jezire) el Basha. They all show the same boundaries. My report was based on the information given to me by the persons present. I cannot say without further inspection of the registers if there 20 is any area recorded as Mara' el Arabs.

(Defendant produced certain extracts from the Tabu)—(Marked H.1 and H.2).

There are to (? two) entries shewing the word "pasture" in the Kushans of Birket Atta and Birket Breiktas. The entry implies as far as I can understand from the Turkish that these two localities have been given on payment of Bedl Misl and one third of each is for pasture. My interpretation is that the old inhabitants have a third in these two localities. I cannot state if these localities are included in the Kharrubet el Basha Kushan. I conclude from the Kushan of Kharrubet el Basha that Birket 30 Breiktas is not included in the former locality, and that Birket Atta is also not included. There is a registration for Raml and Saris locality. The southern boundary is shewn as cultivated lands called lands Kharrubet el Basha and 'Utl. I understand from the phraseology that Kharrubet Basha comprises cultivated land. There is on the extract handed to me a locality named "Tayar er Raml and Saris." There is an observation in the entry. I cannot explain the observation as it is in Turkish. The locality is outside the Kharrubet el Basha locality. These extracts refer to the Infeat lands.

("Hefzi
Bah")

X.X. Third Party No. 1 : In our enquiry we went back to the earliest 40 registration of the land in dispute. The boundaries shewn in the Shamsieh (1296) appear without change in all subsequent transactions. (The witness confirmed the boundaries as shewn in his report.) I found an entry that the Arabs Infiat had no further rights to any of these lands (the three localities sold). I believe that Hefzi Bah lands were at one time the land belonging to the Infiat, and were bought by Mr. Hankin from the Government. The southern boundary of Hefzi Bah (Sarris and Raml) is Kharrubet el Basha and Raml Utl and the W. boundary of Kharrubet

el Basha is Raml Utl. The position of the plots known as Kadima is about 400 metres from the seashore. Both the Colonists and the Arabs Infiat agree that the W. boundary of Kharrubet el Basha is the seashore. Both parties pointed the same spot as the Dahret el Muntar, and we were satisfied that this was the point. Both parties agreed as to the boundaries referred in the Kushan with the exception of the northern boundary. The extract (produced by Third Party No. 1) refers to the Wadi Hawarith. The last entry is in the name of Shiekh Ibrahim Samarra and Mohamad Ali, Mahmud and Adil sons of Haj Abdalla Samara, who bought 250 dunums from Selim Ibn Israel Hush el Musawi. The entry previous is a purchase by the same people from Jewish owners. The boundaries in the first entry are shewn W.—The sea, N.—Infi'at. Lands belonging to Hudeira. It is dated Tish 1316. The latter boundaries are shewn as relating to Wadi Hawareth lands.

*Before the
Settlement
Officer.*

No. 7.
Plaintiff's
Evidence—
Mitri Eff.
Hanna,
19th May
1930,
continued.
(1 and 2
attached.)

(Third Party No. 1 produced a photographic copy of a report dated 8.8/1319). Read by witness. This report was furnished to the Mutassarif. It shows that the W. boundary of Kharrubet is the white sand dunes (Ta'wus) to the north of the houses (wooden) belonging to the Jews, On the East Birket Breikhtas, Birket Atta, Ard Mftalahah Khassat (belonging to) the Jews. The report is signed by the Mamur Tabu and others. The other document is in Turkish and I cannot read it.

Attached
marked J.

Third Party (2) X.X.: I did not inspect the boundary between Abdalla Sammara and partners and Arabs Infiat. I never heard the name Sammara mentioned at the time. The extract produced dated 1324 shows the N. and W. boundary of Ard el Hawareth as Arabs Infiat and sea respectively.

Third Party X.X.: The southern boundary of Saris and Raml (Hefzi Bah) are Kharrubet el Basha and Raml el Utl. It agrees with the map produced by you.

Docts. "N"
and "O."

X.X.X. by Plaintiff: The documents N.O. do not describe the W. boundaries as described in the Kushan. They do not agree altogether.

X.X.X. by Third Party No. 1: In the Kushan the W. boundary of Kharrubet el Basha is Raml Utl, and it documents N.O. the description is white sand.

To S.O.: In documents N. and O. it states the boundary as "Ta'yus er Raml which lies to the north of the wooden houses of the Jews. From the manner in which the documents N.O. is written, I believe from examination that the western boundary shewn refers to a portion only of Kharrubet el Basha which was in dispute. No, the boundaries shewn in the document refer to the whole of Kharrubet el Basha. The whole of the W. boundary of Kadima is not described in the documents; viz. that part stretching from Dahret el Muntar to the wooden houses of the Jews. From the comparison of the W. and S. boundary of the Kushan and these documents, I am of opinion that the boundary from Kadima (wooden houses) runs in a curved line towards Dahret el Muntar. My meaning is that this part of the boundary follows the edge of the Raml el Utl to Dahret Muntar. I interpret the term Raml el Utl as sand left without cultivation. The word "Utl" may mean uncultivated, uncultivable, or a meaningless description of the term "Raml." Document O does not mention the northern boundary of the area. I understand the Dahret el Muntar is a point on the southern boundary but not the S. apex of the eastern and western boundaries.

Before the
Settlement
Officer.

No. 7.
Evidence of
Benjamin
Fishman,
19th May
1930.

Defendant's witness: BENJAMIN FISHMAN—Sworn—32 years :—

I am an Inspector of Lands. I furnished a report in April 1929 on this dispute. The southern boundary in the Kharrubet el Basha Kushan is Dahret Muntar illi Foq Miqta' el Zaharani. In company with representatives of Arabs Infi'at and Khudeira Colonists, this point was indicated by them to us from a distance of about 800 metres. As the point was not disputed by these persons we did not proceed there. Among the persons present were Mr. Botkovsky and Sheikh Nimr and Sh. Ali Abdalla.

X.X. by Defendants: I would be able to indicate on the ground the boundary of Birket Breiktas as shewn to us and as included in the Kushan. 10
It is difficult to interpret the northern boundary of Kharrubet el Basha being shewn as Kharrubet el Basha in the registration. I am inclined to think that the latter refers to a particular tree. The northern boundary does not appear. In document "O" reference is made to inspection of the four boundaries, and it is possible that the reason why the northern boundary was omitted was that it was not then in dispute. The document does refer to a dispute in one locality only. I interpret the expression "Raml el Tayar" as drifting sand. I don't think there is much difference between "Raml Utl" and "Raml Tayar"; the former is of a more stable nature. 20

X.X. by Third Party 1: I interpret the boundary mentioned as Dahret Muntar as being a boundary on which that Dahr lies. I do not understand that it means that Dahret itself is the southern boundary. I identify Raml Abyad with Ramal Tayar.

To S.O.: I consider that the term Raml el Utl applies to the land of sand dune character not the drifting sand close to the shore but fixed by shrubs and vegetation. To the east of this Raml el Utl is another belt of slightly more reddish sandy soil, which was covered with grass at the time of the last sitting. It is smoother land, not of the nature of dunes. On the whole area are interspersed karub trees and bushes. 30

Plaintiff: I have no further evidence to call. I modify my claim as shewn on the map submitted by me in that I claim no land on the east of a line drawn from Dahret el Muntar to Kadima.

Third Party
Evidence—
Ahmed Bek
Kathuda,
19th May
1930.

*Third Party No. 1: Witness—*AHMED BEK KATHUDA—60 years :—

I was Mudir Nahiyeh for 12 years at Kaisariyeh. Hudeira was under Kaisariye. The Jews about 25 years ago built houses near the sea. They were built of wood in the middle of a plot of land near the sea. They lived there for two summers. The plot of land was cultivated. Between the houses and the sea the land was cultivated, as far as the cliff where the sand comes down. I used to come to see them. The Jews of Hudeira 40
rented the land to Mustafa Bek (my brother) and Ali Eff. for three years or two years. They signed contracts. The signature on the contract produced is that of my deceased brother Mustafa. The land originally belonged to the Infiat and was bought by Shaker Pasha and Salim Khuri. The Arabs used to pay the Khoms.

"K"

X.X. by Plaintiff: . . .

X.X. Defendant: My brother and his partner signed this contract after the building of Kadima, about 5-6 years later. At the time of the

building I was secretary to the Mudir of Kaisariye. I don't know the boundaries of Infeat Arabs or Breiktas, or Kharrubet el Basha. I don't know lands name Kharrubet el Basha. There is a lot of "Utl" land. The Infeat Arabs used to pasture their flocks there, and their tenants were also there, and they used to pitch them sometimes in their lands and sometimes in the Hudeira lands. The Government used to take tithes and animal tax from the Arabs. The Arabs Infeat and Fugara used alone to graze their flocks there. My brother rented the land of the Infeat. All of it. There were four of five localities rented to them. Ard el Hariwat was included, also Jezirat Mansur, also Ard el Mellaisa, also Birket es Safra. My brother informed me of this. I did not go out and plough or collect.

*Before the
Settlement
Officer.*

No. 7.
Third Party
Evidence—
Ahmed Bek
Kathuda,
19th May
1930,
continued.

X.X.X. by Third Party I : . . .

To S.O. : My brother and his partner used to lease all the land which was cultivable between Hudeira and the sea, which were known as the Infeat lands. The Jews as owners used to lease them to us, and we gave them to the Arabs Infeat for a share in the crops. I don't know if the Arabs Infe'at used to cultivate any lands on which they did not pay a share. I know this about the lands of this locality as I was at Kaisariye for 40 years. In my position as Mudir and Secretary I knew who were the owners and who were the cultivators of the land in any locality of my Nahiya. I don't know what lands were owned by the Arabs Infeat. My brother and Ali Eff. lived at Kaisariye and told me about it. We lived in one place. Once they brought a contract for signature (witnessing) before the Mejlis el Nahiye, and I was present at the time. This (document "K") is not the contract which was witnessed in my presence ; it was another contract.

Third Party No. 1 Witness—MUSTAFA BUSHNAC—Sworn—50 years :—

Third Party
Evidence—
Mustafa
Bushnac,
19th May
1930.

I lived at Kaisariye, prior to eight years ago, for about 32 years. I used to visit Hudeira. I remember the houses built by the Jews near the sea. I do not think the land between the houses and sea was cultivated. The land round the houses was cultivated. The houses were in about the middle of ground. My brother's name was Ali Eff. He lived at Kaisariye. He is an invalid. I was a merchant. I worked with my brother. My brother and Mustafa Bek leased land at Hudeira for two or three years. I used to work with them. He leased the cultivated land known as the Infi'at land and gave it for cultivation to the Arabs Infi'at. I did not know the boundaries. They, my brother and Mustafa, used to pay 3-400 Mejidis to the Committee and they used to get the fifth.

X.X. by Defendants : I left Kaisariye and went to Tulkarem because we sold our land. I was present at the time of the leasing. I was not present when the lease was signed. I was with him but I was not present when the contract was signed. I don't know how many contracts were signed. I don't know the details of the work. The particulars of this business I do not think were entered on my books. Ard Hawi is in Hudeira. It was not included in that contract. I do not know any of the localities of the land of the Infeat. I used to go to the Arabs Infi'at lands to collect debts. They used to buy goods from me. I did not know anything regarding the leasing of this land except what my brother told me. I do not remember if my brother and his partner ever rented the land on other occasions.

*Before the
Settlement
Officer.*

I probably should have known if they had leased. Sh. Mohamed el Hilu was a member of the Mejlis Mehalla at Kaisariye. I do not remember if the Mejlis Mehalla ever used to certify contracts.

No. 7.

Third Party
Evidence—

Mustafa

Bushnac,

19th May

1930.

continued.

Third Party

Witness—

Mr. Joshua

Hankin,

20th May

1930.

Doct. "I."

Third Party No. 1 Witness—Mr. JOSHUA HANKIN—Sworn—64 years :—

I produce a copy of a map of the Wadi Hawarith lands which shows the boundary between those lands and the Hudeira lands. The date of the map is May 1330. I indicate the boundary in question. The line starts from point (A) near Minat Abu Zabura and it extends to a point about 200 metres away from Birket Atta. The map was prepared on the instruction of Samara in connection with a proposed sale to Zarifi. 10
I then, about two years before the War, agreed to purchase these lands in accordance with agreement I have already lodged in Court. About 40 years ago I bought all the Hudeira lands from Selim Khouri, known as Infi'at, Hudeira and Dardara. When I bought these lands we in presence of the tabu officials and the neighbours fixed marks on the land and I bought according to these marks and no rights remained to anyone else. There only remained a locality known as Taw'us el Raml and Saris which I bought from the Government which is now Hefzi Bah. I know the locality called Kharrubet el Basha as it abuts on my lands. The western boundary is shewn as Raml el Utl. When I purchased the lands— 20
Raml el Utl was pointed out to me as the seashore, in the presence of the persons I have mentioned. The Kushan for Taw'us el Raml and Saris is 100 old pics from the seashore. I remember the Kadima. All the lands of Kharrubet el Basha are cultivable excepting land by the seashore which is white sand. There is no difference between the land on which the Kadima stands and the remainder of the land up to the cliffs. I know the man called Suliman Daud ; he was always a labourer in the garden of my brother. If this man has stated on oath that he never worked for my brother it would be a definite lie.

X.X. by Plaintiff: It was said at the time that it was not legal to 30
give a Kushan up to the seashore but that there must necessarily be left 100 metres from the sea. It would not be correct to say that I only bought up to a certain line excluding a strip of land ; I bought up to the seashore. It is not known to me that a strip of waste land was excluded from the sale and remained to the Government. According to this entry (in Daftar Shamsieh) this land should belong to the Government. I cannot say if this is the reason the western boundary is not shewn as the sea.

Case adjourned to 8.30 a.m. to-morrow.

19.5.30.

(Sgd.) F. G. LOWICK.

The hearing was resumed on 20.5.30 in the presence of the parties 40
as previously represented.

YEHOSHUA HANKIN—Witness for Third Party No. 1 :—

X.X. by Defendants: I do not know the lands of the Infeat but I know the lands of Hudeira which include Hudeira, Dardara and Infeat. I know the boundaries of Kharrubet el Basha. I don't know the boundaries of Birket Breiktas, nor Birket Atta, nor Um el 'Akarib. The areas registered in the Tapu are not correct, they are less than the true areas. There was no 'Utl land in the Infeat except the locality Taw'ous er Raml

wa Saris. All the rest of the land was cultivable. The whole of this land as shown on the map was purchased by Shaker Pasha from the Arabs. The boundaries of Kharrubet el Pasha on the north are Birket Safra, Ain Shoman and the sea. There is no difference between Kharrubet el Pasha, Khirbet Pasha and Jeziret el Pasha. I am not a prophet to interpret what was in the heart of the clerk when he wrote that the N. boundary of Kh. el Pasha was Kh. el Basha. Kharrubet el Basha meant the land of Kharrubet el Basha. I did not pay Bedl Misl for Kharrubet el Basha. The houses "Kadima" are built on the cultivated land of

- 10 Kh. el Basha. We paid Bedl Ushr when we obtained mafruz kushans for the plots at Kadima. If the Tabu Registers show that Bedl Misl was paid, this is in accordance with fact. We did this owing to the difficulty of obtaining a partition as many of the owners of shares were not present. I have never heard before that a part of the land was granted to the Arabs Infiat as pasture. I don't know how the registration of Birket Ata and Birket Breiktas was arranged. I cannot point out the boundaries of all the localities of Infe'at, but I know the outside boundaries of the area and the boundaries of Kharubbet el Pasha. I can point out the boundaries of 'Ain Shomman. It is possible that I could point out the boundaries
- 20 of the locality as shown in the Tapu. There are no swamps in Taw'us er Raml and Saris. The last locality belonged to the Government. The Arabs graze their flocks in all the world, where they can get in they go. The condition of granting was payment of Bedl Misl. If any excess area was subsequently found Bedl Misl was to be paid; this was the only condition.

X.X. by Third Party 2 : I don't know the date of the contract between your father and Zarifi. I was not present. I never made a map of your lands. I produced the copy of the map from the Government in connection with a dispute between you and Tayans. I know the Birket 'Atta. Birket

30 'Atta was originally very big and afterwards was partially dried up. It is possibly for this reason that your eastern boundary is shewn as reaching to Birket Atta.

X.X.X. Plaintiff : . . .

X.X.X. Third Party 1 : . . .

X.X. Defendants : . . .

- To S.O.* : I purchased 13 localities of the Infeat lands. Each locality had a Kushan. I don't know which lands are in dispute in this case. As regards the N. boundary of Kharrubet el Pasha being shewn as Kharrubet el Pasha, there was many years ago a big Kharrubet Tree in this boundary.
- 40 I visited the ground many times and I found that this tree ceased to exist. I was told that the Arabs cut down the tree. I understand that it is this tree that is referred to in the Kushan as being the northern boundary. The Taw'us er Raml and Saris was originally known as the Barrat Infeat. No part of Taw'us er Raml and Saris was originally part of Kharrubet el Basha. Taw'us er Raml and Saris is bounded on the south by Hudeira lands. When I bought Taw'us er Raml and Saris, I bought all the land belonging to the Government in this locality, and I therefore think it is possible that the area of 'Utl excluded from the Kh. el Basha Kushan was included in the land granted to me on payment of Bedl Misl. I bought
- 50 all the land belonging to the Government in this locality. The portion

*Before the
Settlement
Officer.*

No. 7.
Third Party
Witness—
Mr. Joshua
Hankin,
20th May
1930,
continued.

*Before the
Settlement
Officer.*

No. 7.

Third Party
Witness—

Mr. Joshua

Hankin,

20th May

1930,

continued.

of Kharrubet el Pasha which was excluded as 'Utl was situated on the boundary of Taw's er Raml and Sarris. It is possible that the explanation of the northern boundary of the Kushan of Kh. el Basha being described as Kh. el Basha is that the latter was the 'Utl land of Kh. el Basha. It is possible that this is the reason why the southern boundary of Taw'us er Raml and Sarris is described not as Kh. el Basha but as the cultivated lands of Kh. el Basha. It is possible therefore that there were two areas known as Kh. el Basha (1) the cultivated lands of Hudeira included in the Hudeira Kushan (2) the 'Utl lands of Kh. el Basha which were subsequently included in the Taw'ous er Raml and Sarris. I can point out the boundaries of the 10 Kh. el Basha 'Atl lands. They are in the North Birket Safra, Ain Shoman to the sea.

Att. for Defendants : I ask that any evidence affecting the question of rights by possession should not be taken into consideration.

Third Party
Evidence of
Shabatay
Levy, 20th
May 1930.

Witness for Third Party No. 1 : Mr. SHABATAY LEVY—Sworn—
54 years :—

I am employed by the P.I.C.A. in land matters. The lands of Breikhtas were originally registered in the name of Government, as part of the Infeat lands. The first entry is in 1296 Mal. In 1307 the Jews purchased all the lands of Infeat, Hudeira and Dardara. Birket Ma and 20 Utl Breikhtas was in 1296 registered in the name of Government and remained registered in the name of Government after the Jews had bought the Infeat lands. After the Jews had settled in the Colony, they began to suffer from fever. Thereupon two of the most wealthy residents of Hudeira applied for a concession to dry up the swamp. They were Mr. Slutzkin and Mr. Berman. The Wilayet Council granted the concession and agreed to the registration of the swamps in their name, on payment of Bedl Misl and subject to drying up the swamp. The registration was carried in 1312 (Mal). In the first Kushan and registration there is a condition that of the land reclaimed, two-thirds should belong to the 30 concessionaires and one-third as pasture for the old inhabitants. They found the undertaking too large for their means and then application was made by the concessionaires and the Colonists to Baron Rothschild, suggesting that he should undertake the reclamation and that the land should pass to him. The Baron finally agreed to this. The edges of the swamp were drained but it was impossible to drain the centre as it was deep water. The drying of the swamp was carried out by planting of eucalyptus. It became clear that it was only possible to reclaim the land by planting eucalyptus. These operations lasted for nine years. Part of the 40 eucalyptus was planted in a depth of $\frac{3}{4}$ metre of water, and finally the whole area was planted and neither water or grazing remained in the whole area. We then occupied ourselves with the registration of the lands. It was difficult to obtain registration in the name of Baron Rothschild, and registration was effected in the name of Mr. Farrajì, as nominee, who was resident in Constantinople, and one-half was registered in the name of this nominee, and the remainder in the name of the original concessionaires as a guarantee that the Baron should complete the drainage. When the latter registration was effected, the Government dropped the condition that one-third of the reclaimed land should be for pasturage, seeing that the plantation covered the entire area and none of the 50

inhabitants had any objection to this planting and the Kushan of Mr. Farraji does not contain any condition as to pasturage. The place which was thus drained is known as the Breiktas forest. The land still remains registered in the name of representatives of the Baron. No person grazes there as no grass grows between the trees. The registration before me of the year 1321 is in favour of Mr. Frank, the representative of the Baron. It contains no stipulations at all. It has since been registered in the name of P.I.C.A. and since the Occupation, under the Correction of Land Registers Ordinance. At Birket Atta we have carried out no
 10 reclamation. The same concession also applies to the Birket Atta. As far as I know the people of Hudeira have planted trees round the edge of the pool. The pool of water remained and is now being pumped out by machinery. The transfer by Sultzkin and Berman to Ferraji was in the form of a sale. Birket el Atta remains registered in the name of Sultzkin and Berman.

*Before the
Settlement
Officer.*

No. 7.
Third Party
Evidence of
Shabatay
Levy, 20th
May 1930,
continued.

X.X. by Plaintiffs : . . .

X.X. by Third Party No. 2 : . . .

X.X. Defendants : I have been employed for 37 years by the P.I.C.A. and I know all I said and more. I know the boundaries shewn in the
 20 Kushan of Birket Breikhtas, but I could not point them out on the ground. I have visited the land when it was planted. I have cut thousands of trees from these lands. I did not say that cultivated lands resulted from the drainage. My knowledge of the Birket Breiktas was concerned with drainage, reclamation and planting. I know nothing of 'Utl er Raml in Breikhtas. I do not know what happened to 'Utl er Raml. I did not work on Birket Atta at all. I know nothing about the other lands of the Infeat, as my concern was only with Birket Breikhtas. I have no other documents regarding the concession than the Kushan. The Kushans
 30 were given on the condition of cleaning and draining and that one-third of the area should remain in the hands of "its old people." There is no reference to any concession in the Kushan. I am certain that the omission of the condition regarding pasturage in the later Kushans of Breikhtas meant that this condition was cancelled, as the land was inspected by commission before the issue of these Kushans. The conditions regarding Birket Atta are perhaps still in force.

X.X.X. by Third Party 1 : My interpretation of "Kadim Ahali Sinnu" is not the *ancient* inhabitants but the previous inhabitants. The people of Hudeira obtained registration of the lands in this area in 1307 but they had settled there sometime previously. The application of this
 40 term in 1312 is in my opinion to the persons living in Hudeira and its surroundings.

Witness for Third Party No. 1 : AMRAN KHAZANOFF.—Sworn.—Aged
 39 :—

Third Party
Evidence—
Amran
Khazanoff,
20th May
1930.

I am an agronome. I was born and raised on a farm and studied for 3½ years in California, obtaining my B. & M.Ag. Since 1920 I am in the service of the P.I.C.A. I was in charge of experimental cultivation and sand dune afforestation and at present I am in charge of the dept. I have seen the place known as Kadima. There is a well there. The soil

Before the
Settlement
Officer.

No. 7.
Third Party
Evidence—
Amran
Khazanoff,
20th May
1930,
continued.

there is more or less of a sandy texture. It is cultivable. The soil from the well westwards is of the same nature until the cliff is reached. It is all cultivable land. To the north and south the soil is broadly speaking of the same nature except in two places where the beach sand pockets out. The soil to the east is of a similar nature. Looking towards the north one sees the beach sand where it broadens out. Raml 'Utl is in my opinion waste sand which cannot be used for agriculture. The soil to the west of Kadima is soil not sand, but sandy soil certainly not of the waste kind. White sand is sand of the seashore which may sometimes be carried in by wind action. I have been carrying experiments and planting for the P.I.C.A. at Caesariya since 1922-3. I consider myself as an expert at this work. I have worked on a commission of the Government in this connection. The Caesariya lands are composed of beach sand, dune sands, cultivable and cultivated land. I have seen land inferior to that at Kadima which were passed as cultivable land. 10

Att. for Plaintiff: I agree that the land on which Kadima stands is not the type of Raml el Utl. I reserve my right to cross-examine this witness, if it is found necessary that the S.O. should inspect the land in the present ((? presence)) of experts.

X.X. by Plaintiff: There is Raml el Utl in the area. It is beach sand of an alkaline nature which blows about and does not grow anything of an agricultural nature. Waste sand is certainly what I have described it to be both commonly and scientifically. Ard Muftallah would not apply to white shifting sand, or to waste and uncultivable sand. The work at Kaisariye is reclamation not ordinary cultivation. Under the conditions of 40 years ago land might be then described as Utl which would now be considered Muftallah, but this is not the case with sand. 20

X.X. by Defendants: . . .

To S.O.: I am familiar with the land to the west of Hudeira. The categories of land in the sandy near the sea are as follows: Beach sand, white in colour, varying in width, narrow near the cliffs, widening out in the north and south. This changes very abruptly into cliffs on the west and sandy eastwards to the eucalyptus, with the exception of the very north where the sand is not white but yellow. The yellow sand is not in every case waste sand, but it is soil which has been subject to the erosive action of the wind. The white sand is waste sand. 30

Case adjourned to 2.45 p.m.

(Sgd.) F. G. LOWICK.

The hearing was resumed at 2.45 p.m. in the presence of the parties.

19.5.30.

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Tuesday, 20th May, 1930—2.45 p.m.

No. 7.
Evidence of
Zvi
Botkovsky,
20th May
1930.

Witness for 3 (1): ZVI BOTKOVSKY.—Sworn.—43 years' old :—

X.X. by Att. for 3 (1): I have been in Hudeira for 36 years, since 1894. For 23 years I have been holding official positions in the Vaad. I was also Mukhtar and Member of the Va'ad. For some years prior to the war, as President of the Va'ad, I signed contracts for the lease of the Infeat

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Evidence of
Zvi
Batkovsky,
20th May
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continued.

Evidence of
Zvi
Batkovsky,
20th May
1930,
continued.

The contract says that the lease is for ploughing and sowing. Right of pasture is not mentioned because we used to pasture together with tenants of the leases. I know Birket Breiktas. The boundaries according to the Kushan are on the four sides, cultivable lands. The forest of Breiktas was planted on the soil of Breiktas which is the same as the soil of Breiktas, i.e. of the marsh, according to the Kushan—and the boundaries are exactly the same to this date. I knew of the Kushan which was granted by the Government to Berman and Slutzkin. I know that the latter received marsh of Birket Ata and Breiktas against a small payment on the condition that they should drain these marshes. The rights to Breiktas had passed to Baron Rothschild from the grantees with the agreement of all the colonists. As regards Birket 'Ata, the inhabitants of the Colony have taken over the work and started in 1911 . . . Berman and Slutzkin surrendered their rights to the Colony as the Colony was interested to drain the marsh which Berman and Slutzkin could not undertake. The Colonists took certain reclamation measures such as planting trees and channels to pump out the water. The Colony did not exercise any grazing rights because the marsh was full of water and unfit for grazing. The places drained were utilized by plantations and cultivation. It appears that the irrigation installation was not sufficient to drain the swamp, the Colony has now invested £P.3,000, to instal a pipe and plant to pump out the water. The intention is to pump out the water and make a plantation. I was a member of the Commission which went out with Messrs. Fishman and Mitri—not to define the boundaries of the dispute, but of the Colony lands. There was complete agreement between the parties as to the eastern, western and southern and there was only dispute as regards the northern . . . As regards Birket Breiktas, when I say the end I mean the eucalyptus trees, when I say Birket 'Ata I mean the end covered with water.

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No. 7.

Evidence of
Zvi
Botkovsky,
20th May
1930,
continued.

nature of the soil where Kadima was built and the surroundings is the same. The soil between Kadima and the sea is—The South has a large stretch of the same type but to the North is different. The soil towards the North is the same soil but of worse quality as that of Kadima, but it carries also trees and we endeavour to put some under cultivation. The Raml of Birket Safra Kushan is not 'Utol, it is Ramel and 'Utol. The sands to North of Kadima is of the same nature of sand as the western boundary of Safra.

X. by Defendants : I leased the lands in question sometimes in my capacity of Mukhtar and in some cases in my capacity as Head of the Va'ad. I received lease money and these sums are entered in the account books of the Va'ad. I know the boundaries. It consists of three localities only, namely (1) Kharrubet el Basha, (2) Birket Safra Wa'Uyun Shuman, (3) Bein el Birkatein. During recent years the lease was in respect of only a part of these lands. All the land from Breiktas to Ata to Minat Al Zabura to the sea all are comprised in these three kushans. I do not know of a Mawqa'a Ramel . . . I know a locality Raml south of 'Ata—it is part of the area—a sandy section—of Birket Ata. Birket Ata is outside these boundaries of the lease. There is a sandy stretch of a few hundred metres from Birket Ata to Wadi Hawarith—some of which is planted with eucalyptus. It is not true as you say—Birket Ata has a separate Kushan. The localities are three. Birket Ata is not included in the lease. Breiktas to Ata to Minat Abu Zabura is only one Kushan, namely Kharrubet el Basha. As far as I am concerned and as far as concerns all the inhabitants of Khudeira, there is no dispute, as all our lands are covered by Kushans. I know Daharet Um el 'Aqareb. Daharat Um El 'Aqareb Wa Tel Mas'ud is East of our lands and not West. This land is situate at the extreme south-east corner of Hudeira lands—Ard el Ahwat—is East of Breiktas and Safra—only three of the 13 localities of the Infeat lands are situate West of the eucalyptus trees. All present Hudeira lands—except for the areas covered by the Kushans for Dardara and Hudeira, are Infeat lands. Some lease contracts are in Arabic and Turkish—not all are in Hebrew.

X.X.X. by Attorney for 3 (1) : These contracts which are in Arabic and Turkish were signed before the Notary Public of Jaffa. There are other eight contracts in the file—namely for 1920, 1921, 1922, 1923, 1924, 1927, 1928, and 1929. Those signed before the Notary Public are for the year 1329, 1331—every one of them being for two years. To the best of my knowledge those contracts are covered by the boundaries I have before described.

Evidence of
Eliyahu
Kantor,
20th May
1930.

Witness for 3 (1)—Mr. ELIYAHU KANTOR—Sworn—60 years old :— 40

X.X. by Attorney for 3 (1) : (Map “ L ” produced.) I made the plan now produced to me of all the lands of Siekh Ibrahim Samara (Exhibit “ L ”). I received my order from the P.I.C.A. When I came to the land I found some Beduins and asked them to call Sheikh Ibrahim Samara to point out the boundaries. Sheikh Samara produced a man who knows the boundary and also chainmen to assist me. This map was prepared in accordance with the boundaries pointed out to me on the ground.

(No cross-examination.)

Advocate for 3 (1) : This closes our case.

Third Party 2 : I wish to call the following witnesses :—

(1) Salem el 'Abid,

(2) Hasan el Suruji,

(3) Husein Musa Suruji,

to prove the boundaries between us and Infeat.

Advocate for Defendants : Formal application.

*Before the
Settlement
Officer.*

No. 7.
Evidence of
Eliyahu
Kantor,
20th May
1930,
continued.

10 We submit that within the boundaries of Kharrubt el Basha the experts of the Colony have included the lands of 'Ein Safra, Breiktas and Birkatein, without defining the boundaries. The western boundary of Ata and Breiktas were not defined. Defining of these boundaries are needed because they have been the boundaries of the Beduins of Infeat and have been passed wrongly to a third party—and Government cannot grant against Bedl Misl what belongs to others. Pastures. In our opinion—a person cannot sell what he does not own. Breiktas was owned under restrictions and servitudes and the transfer could not have been made without the restriction. Application is made to define the boundaries of these two localities as well and that the registered owners, namely P.I.C.A., Berman and Slutzkin, be cited as parties in this case.

20 Amongst other claims made were rights for servitudes, public thoroughfare and no definition was made as to their boundaries. For all these claims Your Honour has given leave to raise in the third day of the hearings.

Questions by S.O.

Attorney for Defendant : All the lands west of the eucalyptus forest are owned by the Arabs Infeat. We deny that there is a place Kharrubt el Basha in the face of registration—although we admit that there is Safra Shuman, Breiktas and Bein el Birkatein—no definite boundaries have been pointed out to show the boundaries of these latter localities.

30 (Formal Petition submitted.)

Attorney for Plaintiffs : The Government is not interested in claims as between other parties. The request was made to demarcate the boundaries of the three localities : Safra, Breiktas, Birkatain. On merits of Defendants' application, I leave it in Your Honour's hands.

Attorney for Defendant : We are calling the witnesses enumerated in the list already submitted. Another list will be produced to-morrow morning.

Case adjourned to Wednesday, 21.5.30, 8.30 a.m.

20.5.30.

(Sgd.) F. G. LOWICK, S.O.

Before the
Settlement
Officer.

The hearing was resumed on 21.5.30 in the presence of the parties as before with the exception of Third Party No. 2.

No. 8.
Notes of
Defendant's
Evidence
21st May
1930.

No. 8.

Attorney for Defendants : I am producing witness to give evidence on—

- (1) Boundaries.
- (2) Possession.
- (3) Other rights
 - a. Pasturage
 - b. Wood-cutting
 - c. Water
 - d. Passage
 - e. Habitation for sites and tents
 - f. Right of storing fodder
 - g. Cemeteries.

10

(4) In addition our rights registered in the Tapu which include right of pasturage in locality Birket 'Atta including Birket el Ma and Raml el Utl, and in Birket Breikhtas, comprising the pool and the Raml el Utl bounding it, Taw'us er Raml and Saris.

I will produce the following witnesses to prove the boundaries of :— 20

- (A) Birket Atta locality.
- (B) Birket Breikhtas locality.
- (C) Tawus er Raml and Sarris.

I hold that the boundaries of (A) are as laid down in the Kushan also (B) and (C).

Awad es Sahi.
Ali el Ahmed.
Mahmud el Attia.
Mohamed el Mehsin.
Fahim el Ibrahim.
Ali Abdulla.

30

These persons know the boundaries of the localities and can point them out.

Attorney for Third Party 1 : The remarks of Defendants seem to be a mere waste of time, in view of the interim order of 24.3.30 to the effect that the boundaries of the three Kushans be defined.

Defendants : In the proceedings it was laid down by the S.O. that we should have the right of cross-examining the witnesses on the ground. We ask for that right.

Interim
Order, 21st
May 1930.

INTERIM ORDER : The Settlement Officer having inspected the papers finds that the order referred to provided for the simple cross-examination of the witnesses and that no provision was made for further cross-examination on the ground. The defence had an opportunity for cross-examination of witnesses on the ground at the time the northern, western and southern boundaries of Kharrubet el Basha were enquired into, and they have since had an opportunity of further cross-examination of the same witnesses in Court. Moreover the Defendants' witnesses were 40

heard on the ground. Further evidence on these boundaries cannot now be submitted by Defendants, nor can further facilities for cross-examination now be granted. It should be noted that the fixing of the said three boundaries is without prejudice to any rights that the Defendants may claim within these boundaries.

(Sgd.) F. G. LOWICK.

21.5.30.

Attorney for Third Party 1: I ask that the first opposition made by the Arabs Infeat to the registration of the lands in dispute in the name of the Jewish Colonists dated 7.3.29 be put into the file of this case.

Attorney for Plaintiff: I put in this document.

Attorney for Defendants: I confirm that the document is signed by my clients.

Attorney for Third Party 1: The important part of this document in connection with this case is contained on page 1 and page 2, where applicants state that the lands of Hudeira are bounded on the W. by Birket es Safra, Ayun Shaman, Birket Ata and Birket Breiktas, and that the lands between this boundary and the sea are those which are disputed.

No. 9.

20 *Witness for Third Party 2*: HASAN ES SURRUJI.—Sworn.—Over 80 :—

The lands of Wadi Hawarith, north and south belong to Samara. The northern boundary of Wadi Hawarith lands is from a point known as Tel el Jari to the south of Ma 'Atta in a straight line. Tel el Jari is at a distance to the north of Minet Abu Zabbura. I do not know that Sheikh Ibrahim es Samarra brought surveyors to make a map of Wadi Hawarith.

X.X. Plaintiff: . . .

X.X. Third Party 1: I know that Samarra bought the land from a Jew from Nablus. It was mafruz. I knew the boundary since I was 15 or 16 years ago. I do not know when the partition was carried out. I was with them when the partition took place. I do not know that a map was made when the partition was carried out 15 or 16 years ago. Tel el Jari is to the north of Minat Abu Zabura. I don't know how far. I was at this place when the S.O. visited it some time ago. I saw the trench marked on the rock when the S.O. inspected it. The trench has been there since I was born. It is an old built trench, the origin of which I do not know. I do not know if it's a boundary mark. It is a small trench. I have never seen one like it.

X.X. by Defendant: I cannot define the northern boundary of the Infeat lands. The southern boundary is Tel el Jari.

40 *X.X.X. by Third Party No. 2*: The trench is very old.

To S.O.: I know that the boundary is as I state from of old. There is no cultivation in the vicinity of this boundary. I have walked along this boundary in the case of a dispute the Arabs of Wadi Hawareth. This was 50 or 60 years ago.

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Officer.*

No. 8.
Notes of
Defendant's
Evidence,
21st May
1930,
continued.

Interim
Order, 21st
May 1930,
continued.

No. 9.
Defendant's
Evidence—
Hasan es
Surrui,
21st May
1930.

Before the
Settlement
Officer.

Witness for Third Party 2: SALIM EL ABID.—Sworn.—60 years of age :—

No. 9.
Evidence of
Salim el
Abid, 21st
May, 1930.

Wadi Hawarith North West lands belong to Samara. The northern boundary is from Tel el Jari to Birket 'Atta. Tel el Jari is about 15 minutes walk north of Abu Zabura. I know this boundary from the time Samara purchased and before. I don't know that your father had a map made of the Wadi Hawarith. The cattle of Wadi Hawarith graze outside this boundary. I mean on the south side of Tel el Jari. I used to cut wood from Tel el Jari and southwards.

Plaintiff: No. X.X.X.

10

Third Party 1 X.X.X.: I am cultivator. So is Hasan Hurruji. There are Mukhtars living at the Wadi Hawarith. I have lived there for 20 or 30 years. The Samarras purchased the land 15 or 16 years ago from a Nablus Jew. I do not know when the land was partitioned. I live at a distance of 1½ hours from Abu Zabura. I live in the lands of Samara. I don't know Mr. Hankin. I don't know what is a map. I do not know if I signed a map. Show me my finger print. I don't pay attention if I sealed or signed a map. I know that there is an action regarding the Ard Tayan between the Jews and Arabs. I have no connection with the case. I was present when the S.O. was at Abu Zabura a short time ago. I saw 20 the trench on the seashore. It is an angle. I have seen it for 30 or 40 years. I don't know who made it. It is God's work not built. There is another like it from the Mina Zabbura to the south. There is none other like it. I never asked about it. I don't know Dahr el Muntar, and I don't know the southern boundary of Wadi Hawarith, nor the eastern boundary. The western boundary is the sea.

Third Party No. 2: I have no other witnesses or evidence.

Plaintiff: My instructions are to claim as Government property the plot of land which lies to the west of a certain line which lies to the west of Kaddima to the north by the Kushan of Hefzi Bah and to the south in 30 accordance with evidence brought by the parties concerned. I have no claim to any land east of this line except in so far as Bedl Misl for any excess area that may be found.

Plaintiff, Third Party No. 1 and Defendant all agree that the boundary Raml el Utl shewn on the Kushan should be demarcated by S.O. after hearing the evidence on the spot of the following two expert witnesses :—

Mr. Masson or Ragheb Eff. of the Department of Agriculture.

Mr. Khazonoff expert of the P.I.C.A.

The counsel to be given the opportunity of examining these witnesses on the ground.

40

(Sgd.) F. G. LOWICK.

Note re procedure to be carried out.

Parties to submit pleadings not later than 31.5.30. S.O. to give judgment. S.O. to apply the judgment to the ground after hearing expert witnesses as agreed. Parties to have an opportunity to cross-examine experts and to plead as regards any issue arising out of their evidence.

Case adjourned sine die.

21.5.30.

(Sgd.) F. G. LOWICK, S.O.

INTERIM ORDER.

*Before the
Settlement
Officer.*

Definition of the Northern, Western and Southern boundaries of Kharrubet el Basha Kushan.

No. 10.
Interim
Order, 8th
July 1930.

The Village Settlement Committee of Hudeira (Third Party No. 1) have produced Kushans (Exhibit "M.1," etc.) for a locality described as Kharrubet el Basha.

The boundaries of the locality are shewn in the Kushan as :—

North : Kharrubet el Basha and Raml el Utl.

South : Dahret Muntar which is above the Miqtaya of Zahraneh.

10 *East* : Birket Breiktas, cultivated lands and Birket 'Atta.

West : Raml el Utl.

These boundaries are identical with those recorded in the original registration in 1296 in the daftar Shamsieh, in which however the following additional information is given :—

	area	3202 dunums
	To be deducted	1188 dunums
		—
	Utl.	2014 dunums
	Under cultivation	800
		—
20		1214 dunums
		—

This entry was in favour of the Arab Infe'at who afterwards transferred their ownership to Shaker Pasha and Selim el Khury. The areas mentioned were no doubt in accordance with custom nominal areas, the real areas being very much greater.

From this record it may be inferred that in 1296 the aforesaid registered boundaries of Kharrubet el Basha comprised "Utl" land, excluded from registration, cultivated land, and land not "Utl" but cultivable. It is clear that this locality lies to the West of Birket Breiktas and Birket Atta, two well-known physical features and to the East of the Raml el Utl which is an equally well-known feature adjoining the sea.

30 While the Government experts Messrs. Hanna and Fishman in their report date 4th April 1929 (Exhibit "Q") stated that the Sheikhs of Arab Infe'at, the Defendants in this action, agreed on three of the boundaries quoted in the Kushan, their attorneys in Court claim ownership of all the lands situated West of the Eucalyptus trees of Birket Breiktas to the sea. Moreover the Village Settlement Committee of Hudeira have produced prima facie evidence of ownership and possession of lands West of the Eucalyptus trees, such evidence being Kushans (Exhibit "M.1" etc.), photographic copy of a report (Exhibit "O") submitted to the Majlis Idara in August 1319, originals of leases of the land in this area
40 (Exhibit "K" to "K.23"), whereas the Village Settlement Committee of the Arabs Infe'at have produced no documentary evidence whatsoever in support of their claims in spite of frequent warnings during approximately a year prior to the hearing of the case, other than uncertified judgments in the case of certain misdemeanours given early in 1929 by the Magistrate's Court, Haifa, a Court not competent to decide questions of ownership of

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No. 10.
Interim
Order, 8th
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continued.

land (Exhibit "m"). They have however by the frivolous and procrastinating manner in which they have presented their claims given the impression to the Settlement Officer that their principal aim is to delay and obstruct so far as possible a judicial settlement of the issues at trial. As an example in their pleadings dated 31.5.30 they apply at this late stage in the proceedings for leave to cross-examine further the witnesses on the ground, whereas they had already ample opportunity to cross-examine these witnesses during the four days that evidence was taken on the ground and they did not raise the question of cross-examination on the ground when they subsequently cross-examined these witnesses 10 in Court.

The Settlement Officer rejects the suggestions of the Village Settlement Committee of the Arabs Infe'at that the name of the locality referred to in the Kushan is Jezirat el Pasha. The witness Mitri Hanna has testified that in the Land Registry Records the name of the locality has been carelessly written and might be read as "Khirbet," Jezirat or Kharrubet, on account of the omission or misplacing of dots, but when he and Mr. Fishman held an enquiry on the land, it was clear that sheikhs of the Infe'at were familiar with the designation of Kharrubet for the locality in question. Moreover the name would appear to be descriptive as the 20 area contains a large number of Kharrub trees. Mr. Hankin's map (Exhibit "C.1") dated about 36 years ago shews the Southern boundary of Hefzi Bah as Kharrubet el Basha and Utl and this boundary agrees with the Northern boundary of Hudeira as claimed by the Village Settlement Committee of Hudeira. The submission that the Kushan refers to a locality named Jezirat el Basha appears to be frivolous. The Settlement Officer finds that the Northern boundary of the area included ab antiquo in the Infe'at lands as testified to by Messrs. Hankin, Botkovsky and Samsonoff, coincides with the Southern boundary of Hefzi Bah as claimed by Mr. Hankin and indicated by a red line on map (Exhibit "I"). 30 This decision is without prejudice to the category and ownership of the land both South and North of this line.

As regards the Northern boundary of Kharrubet el Basha registered lands this is described in the Kushan as Kharrubet el Basha and Raml Utl. The interpretation of the description Kharrubet el Basha as a boundary gives rise to some difficulty. It has been suggested by witnesses that the term Kharrubet el Basha relates to a particular tree of large size known as the Pasha's Karrub tree which was situated on the boundary line between the ancient Infe'at lands and Hefzi Bah lands. The Settlement Officer is not satisfied with the evidence in support of this view, moreover 40 the description of a boundary as Raml Utl and a tree would be inadequate unless it could be shewn that the Eastern and Western boundaries formed an apex at the tree.

A close examination of all available evidence would appear to support the assumption that the description of the Northern boundary of the Kushan described as Kharrubet el Basha relates to a tract of land and not a particular tree. If a tree was intended it would probably have been described as a particular tree, for example Shajeret el Basha, Shajera Kebira, Shejera Kadima. In this connection the following should be carefully considered :—

(A) The entry in the Uklama of 1296 expressly states that 1188 dunums of Utl which are obviously included within the

boundaries of the Kharrubet el Basha Kushan are deducted from the area. The net area after this deduction is shewn in all subsequent transactions.

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(B) The area of Utl so deducted is clearly distinct and separate from the Raml Utl which is described as forming the western boundary of Kharrubet el Basha, that is to say situated outside the area to which the original registration relates.

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continued.

10

(C) The Kushan for the Birket es Safra and Ain Shuman locality shews the western boundary of that locality as Raml wa Utl, and not as Kharrubet el Basha, while Birket es Safra and Ain Shuman does not appear in the Kharrubet el Basha Kushan as an eastern boundary.

(D) The northern portion of the area, claimed by the Village Settlement Committee of Hudeira as being within the Kushan boundaries of Kharrubet el Basha is composed of white sand of a semi dune formation in parts of which Kharrub trees exist. Whether the term "Utl" can be applied to this area will be decided after hearing the evidence of the experts.

20

(E) The name Kharrubet el Basha is evidently a descriptive term as Kharrub trees in considerable numbers exist over the locality.

30

The most logical interpretation to place on these facts is that the northern boundary of Kharrubet el Basha Kushan described as "Kharrubet el Basha" is an area of the Kharrubet el Basha locality in which Kharrub trees exist, and which was excluded from registration in the Uklama of 1296 as "Utl." That on the eastern side of this excluded area is a tract of Raml el Utl is clear from the Kushan of the Birket es Safra and Ain Shuman locality, and it is evident that there is also a tract of Raml el Utl adjoining the sea, that is to say the continuation to the north of Raml el Utl recorded as being the western boundary of the Kushan of Kharrubet el Basha. This view is not necessarily at variance with the map produced by Mr. Hankin (Exhibit "C 1") relating to Hefzi Bah, which shows the southern boundary of Hefzi Bah as Raml Utl and Kharrubet el Basha which may mean a part of Kharrubet el Basha locality not necessarily included in the Kharrubet el Basha Kushan. It will however be necessary to hear the evidence of the expert witnesses regarding the nature of the soil in this northern area before giving a definite decision regarding the northern boundary of Kharrubet el Basha Kushan.

40

As regards the southern boundary this is defined in the Kushan as "Dahret Muntar which is above the Miqtaya of Zahraneh." This description is inadequate as it establishes only one point on the southern boundary unless it is shewn by the evidence of the experts that the western boundary described as Raml Utl curves eastwards and forms an apex at Dahret el Muntar. On the evidence of the same witnesses who gave evidence regarding the northern boundary, the Settlement Officer is satisfied that this point approximately co-incides with point "B" shown on map (Exhibit "1"). As regards the claim of Abdullah Samarah and partners (Third Party No. 2), the Settlement Officer is satisfied, relying on the evidence of the witnesses Messrs. Botkovsky, Samsonoff and Hankin and after the examination of the mark on the seashore, and of the map (Exhibit "L") that the northern boundary of Wadi Hawareth lands and the southern boundary of the lands included ab antiquo in the boundaries

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No. 10.
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Order, 8th
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continued.

of the Infe'at Lands is as shewn in the line A-B-C in map (Exhibit " L ") and line A-B-C in the Government map (Exhibit " Y "). The Settlement Officer is moreover satisfied that this boundary was recognised by the predecessors of Abdullah Samara and partners in the ownership of the Wadi-Hawareth lands namely Antone Bishara Tayyan, Sara Azzal and the " old Samara." It is not however to be inferred that the effect of this decision is to include the whole area north of this line within the locality of the Kharrubet el Basha Kushan but an area to be defined may be excluded as Raml Utl after hearing the evidence of the agricultural experts.

As regards the western boundary of the Kharrubet el Basha, this is described in the Kushan as Raml Utl. The Settlement Officer is satisfied with the submission of the Attorneys for the Village Settlement Committee of Hudeira that the interpretation of this expression is " waste sand " not " waste," " waste land " or " sandy waste."

The exact location of the boundaries of Kharrubet el Basha Kushan described on the north (portion) and on the west stretching as far as Dahret el Muntar as Raml Utl will be decided after hearing the evidence of the agricultural experts.

The following information is given for the guidance of the experts :— 20

(A) It is clear from the first registration of Kharrubet el Basha in the Uklama of 1296 that this locality consisted of cultivated land, and uncultivated but cultivable land, and Raml Utl which was excluded from the Kushan. The boundaries shewn in the Uklama have been maintained without change in all subsequent transactions.

(B) That the old village site of Kadima which the Settlement Officer is satisfied was situated in the position indicated by the witnesses Hankin, Samsonoff and Botkofsky was included in the Kharrubet el Basha locality and therefore the soil similar in nature 30 to that on which the site is situated cannot be described as Raml el Utl.

(C) From examination of the Kushans referring to Hefzi Bah on the north and Wadi Hawareth on the south of the disputed area, the following descriptions of the western boundary of these areas are shewn :—

Hefzi Bah. Original description " Raml Tayar " meaning drifting sand corrected later to " 100 old pics from the seashore."

Wadi Hawareth. " The seashore."

The type of soil referred to in these descriptions should be compared 40 with that to which the description Raml Utl or waste sand applies. The terms used seem to denote conditions widening in an ascending degree in the following order :—

- (1) The seashore,
- (2) 100 old pics from the seashore,
- (3) Drifting sand, and
- (4) Waste sand.

(D) It should be moreover noted that the boundaries described as Raml Utl were fixed in 1296 and this description must obviously be interpreted as land which was considered as " Raml Utl " or 50 waste sand under the conditions of cultivation practised by the Arabs at that time.

(E) The possibility of advance of the waste sand by drifting.

After hearing the expert witnesses the Settlement Officer will proceed to define the Eastern boundary of the Kharrubet el Basha locality, the boundaries of the Birket es Safra and Bein el Birketein localities, also of the Birket Atta, to hear arguments regarding any claim of the Defendants to rights of Birket Breiktas and if such rights are established to define the boundaries of this area, and finally to hear arguments regarding the category and ownership of any land in disputed area which are not included in the Kushans possessed by the Colonists of Hudeira.

*Before the
Settlement
Officer.*

No. 10.
Interim
Order, 8th
July 1930,
continued.

10 Hudeira, 8.7.30.

(Sgd.) F. G. LOWICK,

Settlement Officer,

Jaffa & Hudeira Settlement Areas.

No. 11.

The hearing was resumed at Hudeira on 8.7.30 in presence of parties and representatives. Interim order was read.

No. 11.
Notes of
Proceed-
ings, 8th
July 1930.

(Initialled) F. G. L.

Defendants : We submit that if another expert than Mr. Masson be heard on the question of soil, that we call Mr. Farah as a witness, as Mr. Khazanoff in our opinion is not an independent expert. Alternatively
20 we make an application that Mr. Masson alone should be heard.

Third No. 1 Att. : I have no objection to Mr. Farah being heard provided that no delay is caused.

INTERIM ORDER : That Mr. Farah be heard as a witness, provided he attends without delay and is ready to give evidence at the same time as the other experts.

8.7.30.

(Sgd.) F. G. LOWICK.

Defendants : We make an application that evidence of prescription should be heard, as we claim that we have obtained a prescriptive right by possession for more than 10 years.

30 INTERIM ORDER : That the case shall follow the course as laid down, namely to fix the boundaries of the Kushans of Bein el Birketein and Birket es Safra and Ain Shoman and the Eastern boundary of Kharrubet el Basha.

8.7.30.

(Sgd.) F. G. LOWICK.

THE COURT then proceeded to consider the boundaries of Birket es Safra and Ain Shoman.

Plaintiff : These boundaries are described in the Kushan as follows :—

S.—B. Breikhtas and Ard Muftallah.

E.—Art el Hot Muftallah.

40 N.—Ard el Gharat.

W.—Raml wa Utl.

My claim is not for the ownership of any land ; I claim Bedl Misl for excess area. These boundaries are to be interpreted by the Settlement Officer on the land. I have no more evidence to offer.

Before the
Settlement
Officer.

No. 11.
Notes of
Proceed-
ings, 8th
July 1930,
continued.

Third Party (1): We don't dispute these boundaries.

Defendant: We do not propose to bring any further evidence on the Northern boundary between Birket es Safra and Hefzi Bah/or Arab Fuqara, which has already been heard by the S.O. We do not admit any of the registrations or any of the boundaries. We do not propose to state definitely what evidence we intend to call.

Third Party (1): I refer to Art. 83 of the Law of Civil Procedure. A party is required to state the names of his witnesses.

Defendant: The Plaintiff has not clearly stated the boundaries of the areas claimed by him nor have the Third Parties. 10

Case adjourned for 15 minutes.

8.7.30.

(Sgd.) F. G. LOWICK, S.O.

Note.—The inspection being fixed for 9.7.30, the S.O. proceeded to hear the claims of the Arabs Infeat with regard to certain rights in the localities of Birket Breikhtas and Birket el Atta. These claims are dealt with as Part II of this case.

8.7.30.

(Sgd.) F. G. LOWICK, S.O.

No. 12.
Expert's
Evidence—
Mr. Masson,
9th July
1930.

No. 12.

The hearing was resumed on the land on 9.7.30 in presence of Plaintiff, Defendants and Third Party 1. 20

Mr. G. G. MASSON, Chief Agricultural Officer, Government of Palestine, Agricultural Expert :—

I have been handed a copy of the Interim Order of the S.O. dated 7.7.30. I consider that the description waste sand (Raml Utl) depends not entirely for the purposes of this enquiry on the physical properties of the sand altogether, but must be considered in conjunction with the physical features of the hills made up of that sand. To amplify that statement I have seen sand hills on the Southern portion of the Western boundary, the sand of which is of such a quality that it would grow certain crops, but from the rough state of the terrain, it could be classed as uncultivable land in that to the ordinary cultivator the cost of putting it under cultivation would be prohibitive. I am of opinion that the following classes of sand fall within the description waste sand : 30

(A) Seashore.

(B) Drifting sand dunes of white sand probably saline with sea scrub in places.

(c) Sand of slightly yellowish colour sparsely covered with saris and other bushes, of dune or very irregular conformation which makes it almost a physical impossibility to cultivate reasonably. I will admit that this soil would grow a crop such as vines, but whether vines would not get covered up with sand, or last for years, I am not in a position to state. 40

It is quite possible that the land on which we are sitting (on W. side of Kadima) was of category (c) 50 years ago. The present Colony of Hudeira was built on a sandhill of reddish sand and why should not Kadima have

Before the
Settlement
Officer.

No. 12.
Expert's
Evidence—
Mr. Masson,
9th July
1930,
continued.

been built on a sandhill. There are two points to be considered as to the changes that may have taken place during the last 50 years (1) that 50 years grazing may have tended to enhance dune formation by the destruction of the natural herbage and (2) which is my own trend of thought, that continued and increased grazing to a certain point will not only increase the fertility but increase the natural herbage and cause a sandy slope to become fixed and of an enhanced fertility. I am in no way stating that the present condition has been the subject of change during the
10 past 50 years, but I am stating that there has been a great possibility. I don't think that edge of sand category (c) has materially moved forward during the past 50 years. As (c) may have been originally either categories (A) and (B) it has now changed colour and in most places is covered with bushes and fixed. In certain places on the Northern boundary sand of category (B) abuts on cultivable soil without any intermediate tract of sand category (c). I don't remember any other places in which this is the case. In such places there has no doubt been encroachment by the sand-dunes category (B) into the cultivated land. In some places it will drift comparatively slowly and others fast. The advance is in an irregular
20 line. In some places the advance is in a southerly direction and in others in an easterly or north-easterly. On this Northern boundary it is evident from the registrations of Hefzi Bah and Kharrubet el Basha that Raml Utl existed here 50 years, and this tract must have extended East-West direction to be the common boundary of these two localities. At the point of Dahret el Muntar the soil is of category (c) which if not of this particular conformation, would grow crops. South of Kadima, the three categories of sand are found irregularly but the soil is of a more fixed nature. The edge of the waste sand is very irregular. The line of division between waste sand and cultivable land southwards from Kadima tends roughly to bend inwards in the direction of Dahret el Muntar. South and West
30 of this line there is an irregular area stretching to Minet Abu Zabura and Wadi Hawarith land. From superficial view from a distance this area appeared to be composed of sand of different colour more or less fixed. I am of opinion that this would be described as "Raml Utl" under ordinary standards of Arab cultivation.

Plaintiff: I will not cross-examine, but reserve my right to re-examination.

Witness X.X. by Attorney for Defendants: From the examination of the ground between Breiktas and the sea I found certain areas that have not been cultivated for some years. These questions were asked in view
40 that Attorney for Defendants claimed that Raml 'Utol means uncultivable and cultivable but not cultivated sand.

Witness X.X. by Attorney for 3 (1): I can give no estimate of the distance which categories (A) and (B) of sand lie from the sea. The hill on which Hudeira stands and also Kadima might have been of the same construction as category of sand (c). Category (c) is cultivable, but expensive to cultivate. For the purposes of this question of the meaning of waste sand it is possible to classify uncultivable with land which is cultivable but not cultivated—for the view in point. It is possible to classify in
50 one group land which is incapable of cultivation and land which is capable but not. I will give the example of the land in a hill—because of the contours of the land. Soils of precisely of the same composition—the

Before the
Settlement
Officer.

No. 12.

Expert's
Evidence—

Mr. Masson,
9th July
1930,
continued.

Expert's
Evidence—

Mr.
Khasanoff,
9th July
1930.

valley is cultivated and the slope is not cultivated owing to the conformation of the land. On this particular terrain the soil is so irregular up and down that it is possible to say that it is uncultivable. The rate of advance of sand in North of Palestine is not very fast.

No re-examination.

Mr. KHAZANOFF, Agronom of P.I.C.A.—Sworn—Age 39 years :—

In reply to Attorney for 3 (1): I maintain that present Hedera was not built on a sand dune. It is on sandy soil and so it was before. It never was a dune. Generally I agree with possibility of classifying the lands in question into the three categories described by Mr. Mason with 10 probably another fourth category.

(A) I agree with category (A) falls within the description waste sand as it is unfit for cultivation.

(B) As regards category (B) it has been defined as drifting sand. I am of the opinion is also included in description of waste sand.

(C) As regards category (C) this consists in my opinion of two categories :

(i) White sand held in place by some vegetation, and

(ii) Yellow or yellowish sand which is also held, generally 20 speaking, by vegetation.

The white sand (C) (i) is I think of the description which is generally considered as waste sand. The yellow sand (C) (ii) I consider as fit for cultivation particularly for vine. I have known such soils planted with vines and I know very old vineyards on this soil. The remainder of land is not sand is sandy soil. I am satisfied that this area—the latter area—has become sandier in the course of the fifty years under discussion caused by more intensive cultivation. The dropping of animals only affect the soil only where the animals are gathered in large numbers. The effect of grazing and passage of flocks is to reduce herbage and tends to lead to 30 more sandy conditions through erosion. I have this effect in similar areas through intensive grazing and on the other hand I have seen improvement of the soil by exclusion of flocks. The cultivable area here has obviously been encroached upon in the course of years by drifting of sand in easterly and south-easterly directions. It is difficult to estimate the rate of advance, and any view that may be offered is a theoretical view. It is generally agreed that low and shallow dunes drift swifter and quicker than steep dunes. In France the rate of advance has been found in case of shallow dunes from 10–25 metres per year. The rate of progress depends on the nature of the soil and the obstacles and obstructions it meets. A 40 rigid obstacle by creating eddies promotes more rapid movement in certain places. In the sandy region here as well as in the soil of the type of Kadima we meet with the Kharub tree and Saris. Such trees never originate in white sand—always have their roots in soil and are found sometimes where soil has been covered by sand. The best obstruction of moving sand in Palestine is the saris bush. Here we have obstacles—some intensifying some preventing movement. I have seen in Cesarea sand which advances at rate of 10 m. a year. In some places the sand passes at this rate in others at greater rate and it is not possible to generalize. In the area S. and S.W. of Hefzi Bah soil of Kadima type goes right to the 50

edge of the cliff the bottom of which is beach sand. Whatever sandy pots in this area are not waste sand but are due to wind erosion caused by wind. Towards the south in the direction of Daharet el Muntar there is a widening out of white sand or more or less the description of class (C) (ii) more or less fixed by vegetation. (As regards the triangle Daharet el Muntar, Seashore and Wadi Hawarith lands.) There is a tract—West slightly to North and South of Daharet el Muntar—slightly like category C (ii). There is also there some soil belonging to category C (ii). The remainder of the triangle is mostly category C (i) and category (ii) with some better soil as well.

*Before the
Settlement
Officer.*

No. 12.
Expert's
Evidence—
Mr.
Khazanoff,
9th July
1930,
continued.

No cross-examination by Plaintiffs and 3 (1).

To Defendant: My evidence is based on scientific knowledge, and my practical farmer born in Palestine. I never was an official of the Land Registry. I do not profess to be acquainted with Kushan terminology, although I know Arabic well and I know the meaning in common parlance.

No. 13.

NOTES ON PROCEDURE.

No. 13.
Notes on
Procedure,
9th July
1930.

Case adjourned until to-morrow when the following procedure will be adopted:—

- (i) Claims of Arabs Infiat to rights at Birket Breiktas and Birket 'Atta.
- (ii) Arguments to admissibility of evidence on a matter to which S.O. has already issued an Interim Order.
- (iii) Arguments, if any, arising out of evidence of expert witnesses.
- (iv) Definition of Boundaries of Birket Safra and other localities; also of earlier boundary of Kharrubt el Basha.

After this, next hearing fixed for 24th and 25th July 1930, at Hudeira.

(Sgd.) F. G. LOWICK,

30 Hudeira 9.7.30.

Settlement Officer.

The hearing was resumed at Hudeira on 10.7.30 in the presence of the parties as at previous hearings.

Att. to Defendants: Amongst the points decided in the interim order was the interpretation placed by the S.O. on the description Raml Utl. I submit that this point has not been fully investigated and I ask that further evidence should be heard. An interim order by a Court of Law can be amended. I base myself on the amendment to Art. 66 of the Code of Civil Procedure and a judgment of the Court of Cassation on 17 Tis. Aw 1311, whereby the Court held that an interim order given by a Court can be amended by the same Court. The reason is that such orders are not subject to appeal and for the better discharge of such cases provisions were made for the amending or cancelling of such interim orders. We submit that it is essential that further evidence be heard as we claim that the definition of Raml Utl is not decided by hearing of expert witnesses Agricultural but that the only means of disposing of this argument is to hear evidence of Land Registry terminology. Evidence

*Before the
Settlement
Officer.*

No. 13.
Notes on
Procedure,
10th July
1930,
continued.

to dispose of this point should be evidence of land experts as to the definition of utl as opposed to Muftellah, and the second part is the nature of land intended by old demarcation committees taking into consideration of the standard of cultivation of those days and the custom which has taken the part of law. No opportunity was given to us to tender evidence on this point. To serve the ends of justice the application should be allowed. We suggest that the interpretation of Raml Utl is land which was not worked, and the word we can be interpreted by considering the meaning of "umal atleen" meaning "not working labourer" and we submit that the word "utl" refers to things "unworked."

10

Plaintiff: I am not altogether interested, and while I am not altogether satisfied with the interim order, but I submit that the only recourse is to appeal. In my humble opinion Art. 66 of Code of Civil Procedure does not bear the interpretation of the Defendants. On contrary Art. 66 bears the contrary meaning. There is no appeal except from a final judgment. The case to which they refer is in 1311, and consequently has no bearing on the Article as amended in 1312. The Art. 66 is I maintain intended to prevent the upsetting of an interlocutor in the same Court and for preventing an appeal on an interlocutory order. I maintain that the application should fail.

20

Attorney to Third Party 1: I must agree with Dr. Doukhan (Plaintiff). It is an elementary provision of law that a Judge cannot interfere with an interlocutory judgment once it is given. Even if we agreed to the matter being re-opened, no Court has the power to do it. We have had Land Registry experts in the box and they could have been examined on any point including this. If the Defendants omitted to do this, they have only themselves to blame. I refer also to Articles 177 and 179 of Code of Civil Procedure. At one time any interlocutory order might be appealed without waiting final decision of the case. Your interim order is binding. The claim of Defendants is to the sea; they are constantly seeking to change the basis of their claim and I reserve my right to refer to this practice at a later stage.

30

Attorney for Defendants: Section 177 of C.P.C. has been cancelled. The amendment of 1312 to Art. 66 states that no judgment has been appealed against until the end, whereas the judgment of 1311 provides that a Judge may reverse his interlocutory judgment, an entirely different matter. I maintain my first submission. I ask for re-opening.

INTERIM ORDER: Application is refused. Defendants have already had an opportunity of cross-examining experts of the Department of Lands and could then have raised this question.

40

Moreover, it may be remarked that it is clear that the interpretation placed by them on Raml Utol does not find support in the first registration of Kharrubet el Pasha in 1295 and 1296 that states clearly that the lands of Kharrubet el Basha are composed of cultivated lands 800 dunums, utol 1188 dunums and other land which must be obviously cultivable and not cultivated 1214 dunums.

10.7.30.

(Sgd.) F. G. LOWICK, S.O.

Pleadings re Agricultural Expert Witnesses.

*Before the
Settlement
Officer.*

No. 13.
Notes on
Procedure,
10th July
1930,
continued.

Plaintiff's Attorney—Dr. Doukhan: As regards the evidence of the expert witness (Agriculturists) I must state that I totally rely on Mr. Masson's evidence as fully confirming Government's contention that there must have been an area of land which at time of registration, it was not intended to include within the boundaries of the registered title held by the Hudeira Colonists and by their predecessors in title. I must confess I was greatly impressed by the evidence of Mr. Khazonoff who in form and substance was of a nature which had it not been for the
10 original registration 50 years ago, when Turkish Government did not possess such high qualified scientific knowledge as that which was contained in Mr. Khazonoff's evidence, his opinion might have been preferred to that of Mr. Masson, but the Hudeira Colonists cannot claim more than their predecessors, viz., Arabs Infeat, Shaker Pasha and Khowri. The opinion of Mr. Masson is more in conformity with the facts, and I rely on it rather than that of Khazonoff. I request that Mr. Masson's evidence be used as a basis for the demarcation of the Western line.

Attorney for Third Party 1: Your Honour, I think everyone was absolutely satisfied with technical evidence of Mr. Khazonoff, who showed
20 his great ability and impartiality. The difference between him and Mr. Masson was one which could be reconciled. It is a question not of expertise but expert evidence given to enable the Court to decide a question. Mr. Masson said that the Kadima and Hudeira itself was standing on the same category of soil he described as (c). If this is so Hudeira, Kadima and category (c) being all of the same category must be included in our Kushan. Mr. Khazonoff and Mr. Masson have both agreed that category (c) is a sandy soil. I will be able to point out an area in another locality in the Daftar Shamsieh 9000 donums as Raml Muftellah, and there is a
30 further entry of "utl." As we have already submitted the Kushan of Kharrubet el Basha includes cultivated land, and utl land and Taht el Taslieh land, meaning land being made in a condition for cultivation. In the total area 1188 donums are deducted as 'utl, 800 donums under preparation, leaving 1214 donums cultivated. The only deduction that I can make is that there were utl lands, cultivated lands and lands under preparation. The evidence of Khazonoff would therefore fit in excellently with the Kushan. Therefore the only thing that was meant to be excluded was waste sand incapable of cultivation or preparation. Therefore category (c) was included in the Kushan. This is amplified by the Mejlis Idara decision which refers to white sand. It is amplified by the application
40 of the Infeat put to the Land Department on 7th March 1929 where the western boundary is given as the sea. And in the statement of claim (Memo. of Claim) made by the Infeat to the S.O. in which it is stated that the W. boundary. In other localities both the past and present Government gave Kushans up to the white sand of the seashore, which supports our contention regarding our Western boundary. The question is one between ourselves and the Government and relates to payment of Bedl Misl. Both experts agree that category (c) is soil of a cultivable nature. We leave the actual line of this boundary to be fixed by the S.O.

Attorney for Defendants: That there was a difference of opinion
50 between the experts no one can deny. We suggest that a third expert be appointed for the benefit of the Settlement Officer. We state that the

*Before the
Settlement
Officer.*

No. 13.
Notes on
Procedure,
10th July
1930,
continued.

evidence of the experts is conflicting. In addition to all that there are two points that remarkable interest. The so-called area of Kh. el Basha comprises 3202½ donums of which 1188 are shewn as utl; the first registration in the name of Ass'ad Suliman of Arabs Infeat leaves out the 1188 donums and is for 2014 donums, which means that more than one-third was excluded from the Kushan of Kh. el Basha. To prove that the claim of the Hudeira Colonists to the Kh. el Basha is not authentic it is clear that one-third of the area is excluded. I am not making any admissions on the part of my clients. I am only criticizing the evidence and points raised by the Hudeira V.S.C. The Kadima area was granted on payment of Bedl Misl and was thus not included in the original kushan. Therefore the soil of the nature of site of Kadima was excluded as utl. This supports to a great extent the evidence of Mr. Masson. In view of the conflict of evidence I suggest that if you see fit a third expert should be appointed. 10

No. 14.
Mr.
Butkovsky
re-called,
10th July
1930.

No. 14.

Mr. Butkovsky re-called.

Attorney for Third Party 1: I call Mr. Butkovsky to describe the boundaries of Birket es Safra and Bein el Birkatein as claimed by V.S.C. of Hudeira. 20

Already Sworn—Member of V.S.C. Hudeira.

As regards—

(1) *Birket es Safra and Ayun Shuman Kushan.*

(A) *The Northern Boundary* is described as Ard el Gharat, is the line on which the Court stood on the first day of these proceedings, as indicated by our witnesses.

(B) *The E. Boundary* of Birket Safra is a straight line from S.W. end of the Eucalyptus trees separating our land from the Fuqara to the North end of the Eucalyptus trees at Birket Breikhtas. 30

(C) *The Southern Boundary being Birket Breikhtas and Ard Muftallah* is the Northern side of the trees of Birket Breikhtas and cultivated in the Kushan Area of Kharrubet el Basha.

(D) *W. Boundary Raml and Utl.* This is the Raml wa Utl of Kharrubet el Basha.

(2) *As regards Birket Ma Utl Breikhtas.*

N.B. witness referred to an aide memoire.

(A) N.—*Ard Muftallah* partly of Kushan Birket Safra and partly of Kushan Kh. el Basha.

(B) W.—	do.	viz. land of Kh. el Basha.	40
(C) E.—	do.	land of Ard el Hot.	
(D) S.—	do.	land of Kushan Bein el Birkatein.	

(3) *As regards Bein el Birkatein Kushan.*

- (A) N.—*Birket Breikhtas*.—The southern edge of the forest.
 (B) E.—*Ard Muftallah taba' el Arab*.—The description is a survival of the ancient owners who were the Arabs which is called El Hot which is in the possession of Hudeira for 40 years. It is East of the line of the Eucalyptus.
 (C) S.—*Birket Ata*—Raml—is of two parts (1) Birket Ata and (2) Raml Muftallah west of Birkatein.
 (D) W.—*Ard Muftallah wa Raml* of the Kharrubet el Basha Kushan.

Before the
Settlement
Officer.

No. 14.
Mr.
Butkovsky
re-called,
10th July
1930,
continued.

(4) *Birket Ata and Raml Qible el Birka.*

- (A) N.—*Ard Muftallah Arab Infeat*.—Is part of Ard el Hot and Bein Birkatein Kushan
 (B) E.— do. part of Um Akarib and Tel Mass'ud.
 (C) S.—*Ard Raml Ghorzat Sidir & Ard Wadi Hawareth*. I know this boundary as Wadi Hawareth but includes some 100 metres of sand.
 (D) W.—*Ard Muftallah wa Ard Utl Raml*. Is land of Kharrubet el Basha.

(5) *Kharrubet el Basha.*

Eastern Boundary Birket Breikhtas, Cultivated lands and Birket Atta. This Eastern Boundary is made up of three parts, viz., Birket Breikhtas, Bein el Birkatein and Birket Atta.

No X.X.

30 *Defendants* : We wish to call evidence to fix the boundaries of (2) Birket Breikhtas and (4) Birket Atta. If you desire to call further expert evidence as to the nature of Raml Utl, this can be heard. So far as the definition Raml Utl is concerned we are prepared to leave this to you acting on the evidence of the experts already given. We desire to call oral evidence only as regards the following boundaries.

S. Boundary of Birket Safra, and any part of the W. Boundary which may not be determined as Raml Utl. All boundaries of *Birket Breikhtas* and *Birket Atta*.

W. Boundary of Bein el Birkatein.

40 We will call the Members of V.S.C. of Arabs Infeat only to give evidence.

(Foregoing read over to parties in Court.)

Hearing adjourned until 24.7.30. Both parties to produce their witnesses.

(Sgd.) F. G. LOWICK,
Settlement Officer.

Before the
Settlement
Officer.

No. 15.

CASE No. 111/29—Part II.

Proceedings.

No. 15.
Proceed-
ings.

Applicants : The V.S.C. of the Arabs Infeat.

Plaintiffs : Represented by Advocates Mahmud el Madi, Asfur and Bustani, by power of attorney.

Defendants : Re Birket Breikhtas.

1. The Palestine Jewish Colonization Association, represented by Advocates Abcarius, Kaiserman and Farraji, by power of attorney.

10

Defendants : (Re Birket Atta and Raml Qibl el Birket).

2. The heirs of Hawa Birman, the heirs of Isaac Jacob Slutzkin—who are absentees—represented by the Village Settlement Committee of Hudeira under Section 15 (1) of the Land Settlement Ordinance 1928 Exhibit 3 (c) of Hud. Claim File (Hud/5/2 H)—who are represented by Advocates Abcarius, Kaiserman and Farraji by power of attorney.

Application
by
Plaintiffs.
Undated.

Application made under Section 12 of the Lands Ordinance.

(A) The original registrations of Birket Atta and Birket Breikhtas in the Shamsieh Book of 1296 was in the name of Arabs Infeat. The land was described as "Bass wa Mustanqa." These two localities were transferred to Birman and Slutzkin subject to certain conditions, which were that the land should be drained, provided that one-third be left as "Mara, wa Turk wa ibka" to its "old people" (Kadim Ahali Sinna). Our application is that these two localities belong to the Arab Infeat as under Tabu Regulations that no land of Metruki nature shall be registered in the name of any persons. This is also laid down in Art. 92 of the Land Code, and Art. 97 of the Land Code gives powers to certain people to pull down buildings and pluck trees up.

30

(B) *Alternatively.*—We ask that in virtue of the inscription relating to these parcels in the Land Registry Nos. 28 and 29 of 1312 the land was granted on condition that the land be drained and that one-third should be left for its old inhabitants. We submit that this grant was made subject to the fulfilment of certain conditions, and if the conditions were as we maintain not fulfilled, the grant was voided.

We ask that these two localities after definition of boundaries be registered in our name.

(Sgd.) W. BUSTANI. (Sgd.) MAHMUD EL MADI. (Sgd.) J. ASFOUR.

Plaintiffs : Our proofs are the Shamsieh Registration of 1296.

40

(1) *Birket Ma, wa Utl Raml Birket Breikhtas.*—866½ dunums and 1408 donums recorded in the name of Arab Infeat.

(2) *Birket Atta wa Raml Illati Qiblit El Birket.*—693 donums recorded in the name of Arabs Infeat.

These two areas were transferred by Nos. 28 and 29 in the Land Registry in September 1312. Both these localities were described as "Buttock wa Bass" and there is an inscription in the case of both these

localities as follows : According to an order from the Vilayet the said two plots " Buttok wa Bass " have been given on Bedl el Misl—after they are cleared and dried (tatheir and Tanshif) one-third of which shall be left and remain as pasture to their old people. Such is the condition. There is a subsequent transaction in reference to Birket Breikhtas in which this inscription does not appear but we maintain that the first owner was only shewn as being entitled two-thirds after reclamation, and could not in any case dispose of more than that. Part (A) of our application is based on a point of law as stated in our application. We will prove that it is

10 Metruki from the entries in the Shamsieh of 1296, and also by evidence of witnesses and by the nature of the land.

*Before the
Settlement
Officer.*

No. 15.
Application
by
Plaintiffs.
Undated,
continued.

*As regards part (B).—*We rely on the actual condition of the land, which shows that no drainage has been carried out by the Colonists although some has been done by the Beduin. Except the areas planted with eucalyptus—which is not drainage—no land has been possessed by the inhabitants of Hudeira in these two areas. The pools exist as they did in the past and the planting of eucalyptus trees is in no sense drainage. We also rely on the admissions made by the Jewish Witnesses in Part I of this case. We claim that the registrations in 1312 were illegal and we

20 apply that the Government be cited as third parties.

Dr. Doukhan, representing the Attorney-General : Without going into the merits of this application, it is based on a misapprehension. This Government is not responsible for the acts of its predecessors, under the Treaty of Lausanne, etc. It is not necessary for the Government to appear as any property not found to be in the ownership of any person automatically under settlement is recorded in the name of the Government.

INTERIM ORDER : That it is not necessary neither is it reasonable that Government should enter as a third party as a result of a mere claim by a party that the previous Government acted illegally in granting a

30 disposition for an area in which the present Government claims no interest.

(Sgd.) F. G. LOWICK. S.O.

8.7.30.

Attorney for Defendants (1) and (2) : I ask that the original Daftar Shamsieh of 1295/6 in connection with these localities be produced in Court on the morning of 10.7.30.

ORDER : That these books be so produced.

(Initialled) F.G.L. S.O.

8.7.30.

(Dr. Doukhan undertook to have the Books produced.)

40

Note of Argument for Parties.

Attorney for Defendants (1) and (2) : The Daftar Shameish for these lands known as included in the area of Infeat, will show that certain lands were allotted to certain Arabs of Infeat and the names of allottees were shewn on the old registers. All that was not specifically allotted was retained by the ex Government. The Arabs to whom those lands were allotted, sold the lands to Shaker Pasha, who sold to Selim Khoury and the Arabs retained no interests of any kind in the area and there are lists on the

Note of
Argument
for Parties,
7th July
1930.

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Settlement
Officer.*

No. 15.
Note of
Argument
for Parties.
7th July
1930,
continued.

file shewing the plots allotted to the Arabs. When the Arabs sold, they retained nothing and owned nothing. Birket Breikhtas having been registered in 1296 as Government land and remained under such registration until the year 1312. The Hudeira Jews bought in 1307, the lands sold by the Arabs. In 1312 Government sold Birket Breikhtas to Slutzkin and Birman, that is as owner granted the lands on payment of bedl misl. The notes on the Kushan were in effect that the area was subject to drainage, and when drainage was carried, two-thirds to go the grantees and the right of pasturage on one-third to the old inhabitants, or rather that one-third was to be left as pasturage of the "old inhabitants." It is clear 10 that their right was not in the land but to pasture in one-third of the land, as the land had been already sold to Berman and Slutzkin. As regards the meaning of the old inhabitants, the Jewish Colonists had bought the lands of the Infeat five years previously and there were no "old Arab inhabitants" existing on the land at that time. We are prepared to prove that the draining of Birket Breikhtas was not completed until 1905. It was started shortly after the great war made but not completed until 1905. We submit that the reference to "old inhabitants" refers to the Colonists of Hudeira and not to Arabs who did not hold any property in the area. Subsequently one-half Birket Breikhtas was transferred to Mr. Farraji 20 in 1319 and in 1321 all Breikhtas was transferred to Mr. Frank and in these two transactions the observation was removed. The transfer to Mr. Frank was by order of Daftar Khakani Constantinople and the observation had been previously removed. The land was not capable of being planted with pasture and the only way of dealing with the marsh was by planting Eucalyptus trees which Mr. Shabatai Levy at the last hearing stated were even planted in water. Nothing grows under eucalyptus trees and the area was absorbed as a forest. Some of the trees were planted by Arabs Infeat employed as labourers. The Plaintiffs knew what was going on and made no complaint. No pasturage grows under the trees and such a long period 30 which is more than prescriptive have elapsed—no one has disputed the rights of to this forest for some 19 years, since 1321 and previously. Mr. Frank subsequently transferred his right to the P.I.C.A. and no mention of any observation was made. As far as Breikhtas is concerned P.I.C.A. holds by Kushan, predecessors, Farraji and Frank, held by Kushan without observation, obtaining the land from persons who had acquired the land from the Government direct. I fail to see how the Plaintiffs can come to-day to defeat a kushan without any documents in hand. Art. 5 of the Land Code states left for the use of public is of two kinds, that left for the use of public generally as a road, or land assigned to a village 40 such as pasture. The Infeat were not inhabitants legally but tenants. Art. 92 is not relevant, Art. 97 deals with pasture assigned to existing rights. One cannot assign in existing rights. The provision made by the Government was afterwards abolished by the Government as when the Government had seen that no practical use could be made from it or the expense of drying and that the planting with eucalyptus was advantageous to the countryside. The original grantor removed the restriction. The Jews having had principal ownership for all these years everyone is barred by prescription from claiming anything. The matter is purely between Government and Colonists and no one else can have any rights. 50

As regards Birket Atta, we have Kushan from the ex Government. We have paid bedl misl. There is a note on it that one-third of pasturage

should be left to the old inhabitants. We say the old inhabitants are the Colonists—The Arabs are the tenants and have no right. The Colonists are holders by Kushan. This agreement is between the ex Government represented by present Government and Berman and Slutzkin. It is in the course of being drained and it is costing thousands of pounds, and until that condition is realized, it is a matter between us and the Government. There was no time limit to the process. Any delay is a matter between ourselves and Government. Plaintiffs state it is not drained, therefore what do they claim—absurd.

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Officer.*

No. 15.
Note of
Argument
for Parties,
7th July
1930,
continued.

10 (The evidence of Mr. Shabatai Levy, pp. 70–72, Part I, of this case, was read in Court.)

Att. for Defendants : I do not wish to call this witness further.

Case adjourned to 10.7.30.

(Sgd.) F. G. LOWICK,

Hudeira. 7.7.30.

Settlement Officer.

The hearing was resumed on 10.7.30.

Attorney for Plaintiffs : The registration of all the plots 13 plots sold to Hudeira are made in the Daftar Shamsieh of 1295 and 6 in the name of the Arabs Infeat, which forms the heading to the columns dealing with those lands. At the end of the list are a number of signatures or names of persons reading “Beyan Asmar istikkak of Arabs Infeat bi ard Infeat,” dated in 1296, with a mention that the Kushan was issued in 1296 or Taharrara Kushan atu fil Jedawil Mais 1296. It might be argued that this is not a registration of lands made in favour of owners, but in favour of Government. This is not a correct statement because the heading does not say lands of Infeat as a *locality*, but *lands of Arab Infeat*. This coupled with the mention in the registration of 1312 of the “old people” also coupled with the statement of owners in the Daftar es Shamsieh remarkably verifies the fact that those lands were registered in the name of the owners. As regards the Kushans that were made in 1296 which omits the two localities now under consideration, Kushans for which were not included as they were not included in the sale. They could not be sold as they were in the nature of Metruki lands. In support of this it will be also apparent from the inscription of 1312 in that those lands were of the nature of metruki and were wrongfully given on condition of draining and one-third of the area should be given to its old inhabitants. I submit that these two localities have been ab antiquo the property of our clients, are of metruki variety and were wrongfully registered in 1312 in the name of other person, and our possession has been undisturbed from ab antiquo.

40 *Witness called by S.O. :* MOHAMED EFF. DIBBI—Sworn—57 years :—

I am a tabu clerk. The book I have produced to-day is the Daftar Aradi es Shamsieh which includes records of the Arabs Infeat. This book shows all the lands in Lewa Acca which originally belonged to the Government including the lands of the Infeat. The Shamsieh book registers lands in the names of persons. The lands included in the Daftar were recorded as the property of the Government and were afterwards granted to individuals on payment of bedl misl. The heading in question in the Daftar Shamsieh is “Aradi Arab Infeat.” The meaning is these

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Mohammad
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Evidence of
Mohammad
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continued.

localities belong to the Arabs Infeat. I mean that all lands included in the Daftar belonged to the Government. The Daftar contains records of a considerable number of villages among which is the Arabs Infeat. The list means that the land belonged to the Arabs Infeat. The Commission recorded the lands in the name of the Government, and afterwards Kushans were issued for certain localities on payment of Bedl Misl. The first Commission went out and recorded the lands and a second commission went to assess Bedl Misl on the excess area, and registered the property in the name of the people.

To Att. for Defendants : According to the register 18 localities were granted to the Arabs Infeat. Three localities were not granted to the Arabs Infeat, named (1) 'Utl Birket Breikhtas, (2) Birket Atta wa Raml illazi Qiblet el Birka, (3) Tawwus Raml wa Saris. Three was granted by Bedl Misl in Tish II 1308 (1) and (2) were granted in 1312 by payment of Bedl Misl to Hawa Berman and Ishak Yacub Slutzkin. The two localities (1) and (2) remained in the name of the Government until 1312 when they were granted on payment of Bedl Misl. According to the record at foot of list, 18 localities were granted to Arabs Infeat and 17 to people of Sheikh Helu. The three localities shewn above on this page were not included. 10

X.X. by Plaintiffs : There are 21 localities under the heading Ard Infeat. If they were all included in the ownership of the Infeat Kushans would have been granted. There are no exceptions mentioned in the note at the foot of the list. There is no mention that the three localities are not included. If I were to read this book in 1296 at the time the inscription there was nothing to show me that these three localities were excluded. The registration of those lands in the book gave the right to the Arabs Infeat to take the lands on payment of Bedl Misl.

To S.O. : (A) The procedure was that first a Commission went out to enquire and record what lands were unregistered and therefore were considered as belonging to the Government. (B) The lands were registered according to the villages or localities in which they were situated, e.g. Lands of Shefa Amr, Lands of Arabs Infeat. (C) The lands were then considered as being the property of the Government. (D) The second Commission went out to assess the areas of the land, and granted to people who were entitled under payment of bedl misl. The three areas (1), (2) and (3) mentioned above are considered as being of the Arabs Infeat who were granted no Kushans for them. 30

Attorney for Defendants : It is not necessary to hear evidence as to whether the land was of the Metruki nature. It obviously was not. Article 5 of the Land Code expressly describes in second part that metruki is land assigned for the common purpose of the inhabitants in general of the villages or town. These lands were clearly not so assigned but were expressly retained by the Government and sold by the Government to private individuals and no Kushans are issued as a general rule for metruki lands. We hold a Kushan on payment of Bedl Misl and it is a waste of time to hear evidence which being oral is inadmissible. 40

Attorney for Plaintiffs : We base our assumption that this land is Metruki on two points—the mere fact that these lands were not granted by Kushan in 1296 and after 16 years during which we enjoyed possession 50

is an illegal act which we ask you to declare as such. We have heard evidence that the land was in the possession of the Infeat from 1296 to 1312. This conclusion is strengthened by the observation in the entry of 1312 that one-third should be left as a pasture, etc. It would appear that there was a servitude on this land which belonged exclusively in common to the Arabs Infeat for their cattle. We are prepared to produce oral evidence regarding actual usage. I ask that you will be influenced by the fact that a Kushan was issued.

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No. 15.
Evidence of
Mohammad
Eff. Dibbi,
10th July
1930,
continued.

INTERIM ORDER : Part II of Case 111/29 adjourned to 24.7.30.

10

10.7.30.

(Sgd.) F. G. LOWICK, S.O.

The hearing was resumed at Hudeira on 24.7.30.

No. 16.

INTERLOCUTORY JUDGMENT.

Case No. 111/29—Part II.

No. 16.
Inter-
locutory
Judgment,
24th July
1930.

The application of the Village Settlement Committee of the Arabs Infe'at for the definition of the boundaries shewn in the Kushans issued for the localities (1) Birket Ma wa Utl Raml Birket Breikhtas (2) Birket Atta wa Ramal elleti quibliyit el Birket was made under Section 12 of the Land Settlement Ordinance 1928. Similar powers are provided under
20 Section 4 (c) of the Land Courts Ordinance 1921. In the latter section it is implied that the Court must decide whether the claims to the areas are valid and undisputed except with regard to the boundaries, prior to the demarcation of the boundaries and this course has been adopted in the hearing of these claims.

(2) The Settlement Officer does not agree with the contention of Applicants that lands may be Metruki by the mere conditions of being suitable for grazing or having been used for grazing. Article 5 of the Land Code clearly lays down that Metruki of the second variety is "that which is *assigned* for the inhabitants generally of a town or village or of
30 several villages or towns grouped together as for example pastures." Moreover marshes were usually reserved as State Domain, being often revenue-bearing from the sale of Samawa and Halfa. In the case of the two areas now in question it is clear that this course was adopted when the lands of the Infe'at were recorded in 1295 and 1296 in the Daftar Shamsieh. The two localities were not granted to the Arabs Infe'at on payment of Bedl Misl and remained State Domain ; they were in no sense metruki *assigned* to the inhabitants for grazing.

(3) It is clear that the said localities remained as State Domain until 1312, when they were granted on payment of Bedl Misl to Berman and
40 Slutzkin for the purpose of reclamation. The grant was somewhat in the nature of a concession as it was specifically laid down that the swamps would be cleared and drained. No time limit was prescribed and the question of delay or failure to complete the reclamation is a matter that concerns the grantors, viz., the Turkish Government and its successor the Palestine Government and the grantees Messrs. Berman and Slutzkin

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Settlement
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locutory
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1930,
continued.

and their successors in the case of Birket Breikhtas locality. The Arabs Infe'at have obviously no right of action against the grantees for failure to carry out the conditions of the grant.

(4) The registrations in favour of Slutzkin and Berman contain a further condition, viz., that after reclamation 1/3 (one-third) of these two localities is to be left and to remain as pasturage to its old inhabitants. The Settlement Officer has no hesitation in interpreting the words "its old inhabitants" as referring to the Arabs Infe'at the ancient inhabitants as distinct from the new settlers, the Colonists of Hudeira. This reference is also of importance in connection with the general dispute as it makes clear that the Turkish Government realised that the old inhabitants still lived in the locality and had at least a moral claim to grazing for their flocks. 10

(5) The subsequent course of events differed in the case of the two localities. In regard to Birket Breikhtas, the half of this locality was transferred to Mr. Farraji in 1319 and the whole locality was in 1321 transferred to Mr. Frank. The latter two gentlemen represented the interests of Baron Rothschild, the founder of the Palestine Jewish Colonization Association (P.I.C.A.). In the entries of 1319 and 1321 the condition that 1/3 (one-third) should remain as pasturage to the old inhabitants is omitted. Mr. Shabatai Levy, a leading official of the P.I.C.A. in his evidence contained in pp. 70-72 of Part I of this case and gives in the presence of both parties testified that the omission was deliberate and was made by the Turkish Government after enquiry when it was found that the cost of draining was very heavy and the method adopted of planting eucalyptus trees prevented the growing of any herbage for grazing. The Settlement Officer rejects the claim of the Arabs Infe'at to one-third of the area of the locality of Birket Breikhtas as pasturage. 20

(6) As regards the locality Birket Atta the position is different. The locality still remains registered in the names of the original grantees Berman and Slutzkin and the two conditions affecting the grant still remain on the register. Drainage operations have only recently been inaugurated and the rights of the Arabs Infe'at are a matter for amicable adjustment between the parties or for further litigation when the reclamation is completed. The Settlement Officer decides that the condition that after reclamation 1/3 (one-third) of the locality is to be left and remain as pasturage to the old inhabits, viz., the Arabs Infe'at shall be recorded in the Schedule of Rights in respect of the area to which the Kushan for Birket Atta wa Raml illati quibliyit el Birket may be found to apply. 30 40

(7) The Settlement Officer will proceed to hear evidence on the boundaries of Birket Atta Kushan, but in view of the finding contained in paragraph 5 of this judgment it will not be necessary to fix the boundaries of the Birket Breikhtas Kushan as these are shewn in the Kushans held by the Jews of Hudeira of Birket es Safra, Bein el Birkatein and Kharrubet el Basha as being the Southern, Northern and Eastern boundaries of these three localities respectively. Moreover as regards the Eastern boundary this falls within a locality which is not in dispute in this action.

Hudeira, 24.7.30.

(Sgd.) F. G. LOWICK,

Settlement Officer,
Jaffa Settlement Area.

50

The Interlocutory Judgment of this date was read in Court.

Attorney for Plaintiffs : The interlocutory judgment of to-day appears to contradict that of 8.7.30 in so far as the last paragraph of the latter judgment is concerned, as regards all the localities included in the said para with the exception of Birket Atta. I ask that an opportunity should be given us in this or in other subsidiary actions following final judgment in this action, for claiming prescriptive rights, and also of raising the question of the category of land dealt with in the interlocutory judgments.

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Settlement
Officer.*

No. 16.
Inter-
locutory
Judgment,
24th July
1930,
continued.

10 The S.O. proceeded to hear evidence as to the Birket Atta Kushan boundaries.

24.7.30.

(Intd.) F. G. L.

No. 17.

EVIDENCE re Birket Ata Boundaries.

Ali Abdulla.

No. 17.
Evidence re
Birket Ata
Boundaries,
24th July
1930.

Plaintiff's witness—ALI ABDULLA of Arabs Infeat—Sworn—56 years of age :—

Evidence of
Ali Abdulla.

I know the boundaries of the locality Birket 'Atta. The place where we are is in the locality 'Atta. The Eastern boundary is Tel Masoud and
20 Um Akarib. The Northern boundary is as pointed out to Mr. Hathun Abu Husewa. It goes southwards in a straight line to Dia Abu Shehab, thence to Tel Masoud and thence to Um el Akarib. I point out these landmarks. On the Western side the boundary is the sea. On the Southern side to Aran es Sidr and to Wadi Hawarith lands.

X.X. by Defendant : I was born in 1292 A.H., and have lived here all my life. I was employed in the Palestine Police up to two years ago and served in Hudeira. I was employed less than two years. I don't know if I gave my age as 52 to the Police, or remember what age I gave. I am a grandfather and have four wives and eight children. The land
30 now in question belonged to the Arabs Infeat before the Jews came. The Arabs Infeat sold it to Sadiq Pasha and Selim Khouri. Birket Atta never belonged to the Government, nor did the Birket itself belong to the Government. The Birket Ma boundaries are on the north the boundary of the eucalyptus and the swampy places bounded by the eucalyptus trees. It stretches from the Shahili tree and follows the depression to the swamps and sand dunes and on the western side is bounded by a rise on which carob and saris trees exist and on the South the sand dunes and on the East eucalyptus and orange groves. Before the planting of eucalyptus the water used to reach the Shahili tree and this was 40 years
40 ago. The Shahili trees age is about 20 years. When the Birka was full persons used to ride along the higher ground. The Raml qibli el Birka is the sand dunes south of Birket Ma and North of Wadi Hawarith lands. On the East the boundary is orange groves and Irani es Sidr, and on the West the sea. I have never seen the Kushans for the Birk Atta locality. I don't know the boundary. I have never seen the Kharrubet el Basha Kushan nor do I know its boundaries.

Before the
Settlement
Officer.

No. 17.

Evidence re
Birket Ata
Boundaries,
24th July
1930.
continued.

Plaintiff's
Evidence—
Suliman el
Daoud,
24th July
1930.

X.X.X. Plaintiffs : The Birket Atta locality was not sold to Selim el Khuri but the land east of it was sold. It belongs still to Arabs Infeat.

Plaintiff's witness 2—SULIMAN EL DAOUD—of Arabs Infeat—Sworn—
26 years of age :—

I know the locality Birket Ma Atta and I know the locality Ramel Atta. The Western boundary of the latter is the sea. The Eastern boundary is from the North Hakim Abu Hesiwy, to Dra' Shehab to Tel Masoud to Um el Akarib. The Northern boundary is Birket es Salahiya, Sheikh Zurage and from Breikhtas to the sea. On the South Aranit Sidr, and Wadi Hawarith lands and white sands. The boundaries of the Birket 10
contain the low ground reaching to the Shakli tree, to the ridge on the W. with Saris and Kharrub trees ; on the South the Wadi sand ; and on E. the middle of the Eucalyptus trees.

X.X. by Defendants : I have seen in years of heavy rains the water reach the Shatuli tree, about 15 years ago. The Raml Qibli el Birket N. boundary is Birket Ma. S. Wadi Hawarith lands ; W. Sea and E. cultivated lands. I never seen the Kushan for the locality. I have never heard of the boundaries of Kharrubet el Basha. The boundary on the W. is at a distance N. of Minet Abu Zabura. I don't know the locality Bein el Birkatein. 20

Attorney for Plaintiffs : The remainder of my witnesses will give the same evidence.

Defendant's
Evidence—
Zvi
Botkovsky,
24th July
1930.

Witness for Defendant—Mr. ZVI BOTKOVSKY—Sworn—44 years :—

Lived in Hudeira since 1894. The boundaries of the locality Birket Ma and Raml Qibli el Birka are E. Eucalyptus and planted Bayaras ; S. the sand on the South of Birket ; W. the lands which contain the Kharrub trees and the boundary is below the trees and on N.W. a straight line from our actual position to the ridge, separating the cultivated lands from the Marsh. N.E. the edge of the eucalyptus trees at our actual position. The boundaries of the Raml Qiblit el Birka—N. March Birket 30
Atta, E. the plantations of eucalyptus and oranges which are on our lands of Tel Massoud and Um el Akarib ; S. Wadi Hawarith lands ; W. a straight line from the direction where we are at present from the corner of the Kharrub trees on the ridge to the Wadi Hawarith lands and the land on the W. of this line is Kharrubet el Basha. I know the boundaries of the land of Um el Akarib. The W. boundary is shewn in the Kushan is Birket Atta, Bein el Birketein and Birket Breikhtas. The E. boundary of Kharrubet el Basha is in this locality Birket Atta. S.E. boundary of Um el Akarib locality is Dahret Um el Akarib. Tel el Masoud is one of the Um el Akarib Kushan.

X.X. by Plaintiffs : I know the boundaries by cultivation, and I have been for many years in charge of the Colony and of the Tabu transactions. I have cultivated lands in the Atta locality many times. I mean in the vicinity. I have never cultivated in the locality itself as it is marshy. It has no cultivable lands. It is composed of marsh and sand on the southern side. The Jews have not reclaimed any lands in this locality. There has never been any dispute previously regarding this area. The fig trees to the N.E. is in the Ard el Hot locality. There is no locality known as Melissa. I never heard of Urf Iven Surahiya is a birket near Kadima. It is bounded by eucalyptus and in the middle is 50
water. There is no locality known as Mowka Jira Atta.

X.X.X. : Our present position is in Bein el Birkatein locality.

Witness for Defendant—AHARON SAMSONOFF—Sworn—52 years :—

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Settlement
Officer.*

I live in Hudeira since 1891. I remember the granting of concession for Birket Atta and Raml Qibliyet Atta. Our Kushan was issued for both localities. The boundaries of Birket Ma are shown by the marshy lands. S.—the sand dunes, W.—the rise on the ground on W. of the Birket. E.—Arable land partly planted with eucalyptus. N.—on the edge of the green growth visible from here. The boundaries of Raml Qibli el Birka : N.—The Birket ; S.—lands of Wadi Hawarith ; W.—South from the carub trees on the rise W. of Birket. E.—Plantations of oranges and eucalyptus. The concession did not include any other lands. The fig trees to W. of us are in Ard el Ahwat.

No. 17.
Evidence re
Birket Ata
Boundaries.

Defendant's
Evidence—
Aharon
Samsonoff,
24th July
1930.

X.X. by Plaintiffs : I have known the boundaries since I was 11 or 12 years old. I planted all the eucalyptus trees round. I was 6 or 7 years at school of which two years in Palestine and four or five in Russia. I left school when I was 14 or 15 years. Since I came to Hudeira I took an interest in the boundaries. There has been no dispute as to the locality Atta. I have never cultivated in this locality. It is a marsh. I don't know the following localities—Orf, Malissa, Jour Atta ; Serahiya is a pool marsh with trees round.

20 *X.X.X. : Nil.*

Case adjourned to 31.7.30 for final Judgment.

Pleading in writing to reach Settlement Officer by 29th July 1930.

(Sgd.) F. G. LOWICK,

24.7.30.

Settlement Officer.

No. 18.

FINAL JUDGMENT of Settlement Officer.

Case No. 111/29/ Nufei'at.

No. 18.
Final
Judgment
of Settle-
ment
Officer,
31st July
1930.

30 1. This action was heard in two parts, (1) 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 Colonists of Hudeira, namely the Kushans for the localities of (A) Kharrubet el Basha, (B) Birket es Safra wa Ayun Shuman and (c) Bein el Birketain ; and in Part II of the action a similar application was made by the Village Settlement Committee of the Arabs Infe'at in the case of the localities (D) Birket Ma wa Utl Breikhtas and (E) Birket Atta wa Raml Qibliyet El Birkat.

40 2. Although it is a matter for regret that the Arabs Infe'at should have become dispossessed of lands which prior to 1296 were presumably in their hands, and although the nature of the methods presumably employed to secure their dispossession may be deprecated, the Settlement Officer cannot be influenced by sentimental considerations but 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 obtained registration by payment of Bedl Misl of the 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

No. 18.
Final
Judgment
of Settlement
Officer,
31st July
1930,
continued.

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.

4. The Settlement Officer confirms all the interim orders and interlocutory judgments delivered by him in both parts of this action. He decides that the boundaries of the area included in the kushans held by the representatives of the Jewish Colonists in respect of the localities of (A) Kharrubet el Basha, (B) Birket Safra wa Ayun Shuman, (C) Bein el Birkatain, and by the Palestine Jewish Colonization Association in respect of (D) Birket Ma wa Utl wa Utl Breikhtas are as indicated by a red line 10 on the attached map, and that the boundaries of (E) Birket Atta and Raml Qibli el Birket are as indicated on the map by a blue line.

5. The demarcation of the Western and Northern boundaries of the Kharrubet el Basha Kushan and the Western boundary of the Birket es Safra and Ayun Shuman locality depended on the Interpretation to be given to the description Raml Utl or Raml, as is also the case in respect to a portion of the Western Boundary of the Birket Atta and Raml Qibli el Birka and the Western portion of the Southern boundary of the Kharrubet el Basha Kushan subject in the case of the last-named to the description of Dahr el Muntar which is above Miqtayet Zahrani given 20 in the Kushan as forming the Southern boundary. It has been suggested that there is a material difference between the evidence of the two expert witnesses, but the Settlement Officer does not agree with this view. Mr. Masson divided up the sandy lands into three categories saying " (A) the seashore, (B) drifting sandhills of white sand probably saline with sea scrub in places and (C) sand of a slightly yellowish colour sparsely covered with saris and other bushes of dune of very irregular conformation which makes it almost a physical impossibility to cultivate reasonably. I will admit that this soil would grow a crop, such as vines, but whether vines would not get covered up with sand or last for years I am not in a position 30 to state." He was of opinion that all three localities fell within the description of waste land.

Mr. Khazanoff agreed that categories (A) and (B) were waste sand but subdivided category (C) into two classes, viz., (C.I) land which would not grow vines, and (C.II) land which would grow vines. Category (C.I) he included within the description of waste sand while he excluded (C.II) from that description. The Settlement Officer is of opinion that neither the Turkish officials nor the Arabs Infeat did consider land of this description as cultivable at the time of the entries in the Daftar Daimi of 1295-6, nor would the Arabs Infeat have consented to pay Bedl Misl on such land. 40 On the basis of the standard of cultivation employed in 1295-6, the Settlement Officer finds that land of category (C.II) as described by Mr. Khazanoff would have been at that time considered as waste sand not included in the registration. This view has been adopted by him in fixing the boundaries shewn in the Kushans as Raml Utl, subject to allowances made where it appeared to him justifiable for advance of the sand by drifting. In regard to the Southern Boundary of Kharrubet el Basha, this is defined as Dahr el Muntar and it has been found on inspection that the waste sand on the Western Boundary of Kharrubet el Basha forms an apex with the waste sand West of Birket Atta at the point 50 Dahret Muntar and this waste sand has likewise been excluded by the Settlement Officer from the Kushan area of Kharrubet el Basha Kushan.

6. The Settlement Officer rejects the claim of the Government to Bedl Misl on any area within the three first-named localities (A), (B) and (C) which may be found on survey to be in excess of the registered areas as he considers that the boundaries shewn in the Kushan are sufficiently definite to be preferred to the actual areas.

No. 18.
Final
Judgment
of Settlement
Officer,
31st July
1930.
continued.

7. The Settlement Officer finds that the area not included in the afore-mentioned Kushans, the boundaries of which are indicated on the Map by a green line, is of the Mewat category of State domain. In giving this decision the Settlement Officer wishes to record that the Arabs Infe'at
10 whose presence and continued subsistence in this locality was clearly recognized by the Turkish Government as is shewn 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.

8. This judgment is without prejudice to prescriptive 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
20 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.

(Sgd.) F. G. LOWICK,

Settlement Officer

Jaffa. 31.7.30.

Jaffa & Hudeira Settlement Areas.

(Exempted from Court Fees. (Intd.) F.G.L.)

No. 19.

JUDGMENT of the Land Court of Haifa on Appeal, in File No. 1/30.

FILE No. 1/30. Appeal from a decision of the Land Settlement
30 Officer, Hudera Area.

JUDGMENT.

In this appeal against the judgment of the Settlement Officer, Hudera Area on an action which he heard in two parts, the Appellants have set out six grounds of appeal.

With regard to the first ground of appeal the Appellants are in our judgment bound by their claim which is recorded on pages 1 and 2 of Part II of the action and signed by their Attorney Mr. Asfour.

The Settlement Officer partly in his Interlocutory Judgment of 24.7.30 and partly in his final judgment of 31.7.30 has fully dealt with the
40 Appellants' claim.

We hold therefore that the first ground of appeal fails.

The second ground of appeal raises two questions (A) whether the Settlement Officer was bound to consider Rule 4 of the Rules of Court (Evidence taken out of Court) of November 3rd, 1926 ; (B) and if we hold that he was so bound whether he used his discretion correctly in refusing to appoint experts to fix the boundaries to be demarcated. In our

No. 19.
Judgment
of the Land
Court of
Haifa on
Appeal in
File No.
1/30, 3rd
January
1931.

No. 19.
Judgment
of the Land
Court of
Haifa on
Appeal in
File No.
1/30, 3rd
January
1931,
continued.

judgment the Settlement Officer is in no way bound by Rule 4 and even if we were of a contrary opinion we would hold that in the circumstances the Settlement Officer exercised his discretion correctly in refusing to appoint experts (Vide p. 38 of the Record of Proceedings, Part I).

The second ground of appeal also fails.

The Appellants did not pursue the third ground of appeal.

For the sake of convenience and clarity we will deal with the fourth and fifth grounds of appeal together.

In our judgment Section 4 of the Land Court Ordinance 1931 cannot be read with the Land Settlement Ordinance 1928, but we are of opinion 10 that although it was unfortunate that the Settlement Officer referred to Section 4 of the Land Court Ordinance in the first paragraph of his Interlocutory Judgment of 24.7.30, yet, as we will explain hereunder, the reference in no way vitiates the judgment.

The last paragraph of the Interim Order of 8.7.30 (Part I) reads as follows :—

“ After hearing the expert witnesses the Settlement Officer will proceed to define the Eastern Boundary of the Kharrubet El Basha locality, the boundaries of Birkat es-Safra and Bein-el-Birketain localities also of the Birket Atta, *to hear* arguments 20 regarding any claims of the Defendants (Appellants) to rights in Birket Breiktas *and if* such rights are established to define the boundaries of this area, etc.”

The Appellants not only did not object to the ruling by the Settlement Officer but in pursuance of his ruling submitted orally their claim which as we have previously said is recorded on page 1 and 2 of Part II. The Appellants' claim was based on Section 12 of the Land Settlement Ordinance. In the last paragraph of the claim it is recorded that the Settlement Officer is asked to demarcate the boundaries of Birket Breiktas.

It is evident however from the wording of the Appellants' claim that 30 the Appellants were fully aware that the Settlement Officer required them to establish rights over Birket Breiktas before he would proceed to demarcate the boundaries.

After hearing Appellants' Claim to rights over Birket Breiktas, the Settlement Officer issued his Interlocutory Judgment of 24.7.30 in which he rejected the Appellants' claim to rights over Birket Breiktas and ruled that it was unnecessary to demarcate the boundaries of Birket Breiktas because of the failure of Appellants to establish any rights over the area and because, as he stated in his judgment, the Northern, Southern and Western boundaries were those shewn in the Kushans held by the Jews 40 and the Eastern boundary fell within a locality which was not in dispute in the action (Part I).

Before a Settlement Officer proceeds to demarcate the boundaries of an area under Section 12 of the Land Settlement Ordinance 1928, he must in our opinion satisfy himself that there is a bona fide doubt or dispute as to the boundaries of the area. In the circumstances, we are satisfied that the Settlement Officer was justified in not demarcating the boundaries of Birket Breiktas and we hold that the fourth and fifth grounds of appeal fail.

The sixth ground of appeal was not pursued by the Appellants.

We dismiss the appeal and confirm the judgment of the Settlement Officer and we do not make an order as to costs.

(Sgd.) J. M. DE FREITAS.

„ O. PLUNKETT.

„ ALI HASNA.

5th December 1930.

This judgment was sent to the Land Settlement Officer on

Delivered in the presence of Mr. Bustani on 3.1.31.

10

(Sgd.) J. M. DE FREITAS.

3.1.31.

No. 19.
Judgment
of the Land
Court of
Haifa on
Appeal in
File No.
1/30, 3rd
January
1931,
continued.

No. 20.

JUDGMENT of the Supreme Court sitting as a Court of Appeal. Land Appeal 7/31.

JUDGMENT OF THE SUPREME COURT.

Sitting as a Court of Appeal.

Land Appeal 7/31.

Before :—

THE CHIEF JUSTICE,
Mr. JUSTICE BAKER, and
Mr. JUSTICE KHAYAT.

No. 20.
Judgment
of the
Supreme
Court
sitting as a
Court of
Appeal.
Land
Appeal
7/31, 7th
January
1932.

20 *In the Case of :—*

THE ARAB INFE'AT VILLAGE SETTLEMENT
COMMITTEE, represented by—

1. NIMR HASSAN ES SAIYED
2. FAHIM EL IBRAHIM
3. SULEIMAN ED DAUD
4. MUHAMMAD EL MUHSIN
5. ALI EL ABDALLAH

Appellants

V.

30

1. THE GOVERNMENT OF PALESTINE through
Mr. DOUKHAN Attorney for the Lands Dept.
2. KHOUDEIRA VILLAGE SETTLEMENT COM-
MITTEE
3. YEHODHU'A KHANKIN
4. ABDALLAH SAMARA & PARTNERS
5. AGUDATH NETA'IM
6. PALESTINE JEWISH COLONIZATION
ASSOCIATION

Respondents.

Appeal from the judgment of the Land Court of Haifa dated 5th December 1930, delivered on 3rd January 1931.

JUDGMENT.

No. 20.
Judgment
of the
Supreme
Court
sitting as a
Court of
Appeal.
Land
Appeal
7/31, 7th
March 1932,
continued.

Section 186 of the Code of Civil Procedure laid it down that an appeal should be lodged by presenting an application direct to the Court of Appeal.

Section 22 of the Addendum to the Civil Procedure Code provided that a petition for appeal could be made to the Court of Appeal or to the Court of the place in which the Appellant resides.

Section 57 (2) of the Land Settlement Ordinance expressly prescribed that Notice of an appeal from the judgment of a Land Court to the Court of Appeal shall be lodged with the Court of Appeal within a certain time. 10

The Land Courts Ordinance 1921 in Sec. 7 (2) expressly imports, subject to any Rules of Court, into the procedure of Land Courts the procedure laid down in the Code of Civil Procedure as amended.

The Land Settlement Ordinance 1928 does not expressly import this Code or its Addendum.

This Ordinance expressly requires Notice of the appeal to be lodged with the Court of Appeal. Can it be said that filing the notice in the Land Court addressed "to the President of the Supreme Court through the Presidency of the Land Court Haifa" is such lodging?

We are bound to hold that it is not: and that therefore the appeal 20 which was only forwarded to the Supreme Court on the 21st March has not been lodged with this Court within the prescribed time. Therefore, we are not seized of the appeal.

We must therefore give judgment for the Respondents with £.6 advocate's fees and costs.

Delivered this 7th day of March, 1932.

(Sgd.) MICHAEL F. J. McDONNELL,
Chief Justice.

*Before the
Settlement
Officer.*

No. 21.
(Continuation of Case 111/29.)
CASE No. 153/32.

30

Before the SETTLEMENT OFFICER, Jaffa—Hadera Area,
at Hadera, 6.7.32.

No. 21.
Case No.
153/32.
Notes of
Proceed-
ings, 6th
July 1932.

NOTES OF PROCEEDINGS.

Plaintiff: V.S.C. of Hadera—represented by Power of Attorney in Case 111/29, File by Adv. Abcarius Bey and Adv. Kaiserman.

Defendant: V.S.C. of 'Arab Infi'at—represented by P/A in Case 111/29 File by Advocate Mahmud El Madi.

Claim as in Ex. (A).

40

Advocate Madi: In Case 111/29, the Settlement Officer ruled that the Arab Infi'at should be entered as Defendants. As the Arabs are in possession, I ask that they should be entered as Defendants as in the original action.

Advocate Abcarius : In the Case 111/29, Government was Plaintiff and we were Third Parties ; but although it is largely immaterial on settlement procedure how the parties are entered, I think it is more regular if we were entered as Defendants. We claim ownership by Kushan ; we have paid werko ; we have submitted prima facie evidence that the Arabs Infiat were in possession as our tenants. We have submitted contracts of lease, extracts of our a/cs, and werko receipts.

*Before the
Settlement
Officer.*

No. 21.
Case No.
153/32.
Notes of
Proceed-
ings, 6th
July 1932,
continued.

Advocate Madi : We claim possession. The contracts of lease apply to certain persons only ; prescription is a defence not a weapon of attack.

- 10 ORDER : 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 Hadera, and as the Village Settlement Committee of Hadera 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 Hadera.

(Sgd.) F. G. LOWICK. S.O.

Hadera. 6.7.32.

- 20 *Adv. Madi* : I wish to call attention to the fact that neither Mr. Hankin or the P.I.C.A. are represented.

Adv. Abcarius : If the judgment of the Settlement Officer in Case 111/29 is read, it will be seen that no rights were granted to Hankin in that judgment. He is not a kushan holder in this area. Mr. Farraji of the P.I.C.A. is expected to attend in a few minutes.

- 30 *Adv. Madi* : I ask that each person of the Arabs Infiat be heard as separate Plaintiff and that the individual landholders of Hadera be heard as Defendant. When the Settlement was commenced each person of the Arabs Infiat presented an individual claim. The Arabs marked their parcels and demanded that these parcels be recorded in their names. And it was necessary to draw up a Schedule of Claims for these parcels, so that any one of them might claim against the other. As the S.O. settled the question of boundaries first, the question of possession was left until this date. I object to the case being heard between Village Settlement Committee and Village Settlement Committee. It is necessary to enter each party separately and to mention each parcel. The Mamur Awqaf has asked for registration of certain cemeteries and the V.S.C. cannot represent these religious sites.

- 40 *Abcarius Bey* : So far as I remember no individual claims were rendered. There may have been some individual claims. This land is held as musha' by the Colonists of Hadera. My opponents have contradicted themselves. If you refer to p. 36 of record of 111/29, you will see that the Attorney of the Arabs Infiat applied that the case should be decided on the basis of collective claims by the two sides. The land was claimed as musha' by both sides. We are still in a state of undivided shares. It is impossible to state which of our lands is owned by individuals. Our defence is based on our collective ownership.

Adv. Madi : The Colony of Hadera applied to the Land Registry before the settlement for the acceptance of partition of this land. The

*Before the
Settlement
Officer.*

No. 21.
Case No.
153/32.
Notes of
Proceed-
ings, 6th
July 1932,
continued.

Arabs opposed this partition and registration. There were about ten actions brought by persons of Hadera in the Courts of Haifa against certain Arabs. Certain persons of Hadera brought actions in the Land Court against individuals of Infiat. These actions were transferred to the Settlement. If the lands are musha' then the shareholders should be entered as parties, not the V.S.C. as representing the common interests.

Abcarius Bey : On p. 85 of the record, it is clear that the Arabs Infiat acting collectively asked that witnesses on possession should be heard. As regards the cemeteries, the Hadera do not claim this and assent to the S.O. demarcating these cemeteries.

10

ORDER : The statement of the advocate for the Arabs Infiat that the claims to rights on the area in dispute have not been scheduled and published is devoid of truth. The Schedule of Claims as regards the musha' shares claimed by the Colonists of Hadera was published on 9th September 1930, and the Schedule of Claims signed by the Village Settlement Committee of Arabs Infiat to rights in the same land was published on the 4th October 1930.

As the lands are claimed by persons resident in Hadera and absentees as Musha' to the Colony, the Settlement Officer decides that these common rights be represented by the Village Settlement Committee in accordance with Sec. 14 (1) of the Land Settlement Ordinances. Moreover under Sec. 15 (1) the Village Settlement Committee is empowered to represent the interests of absentees.

20

In view of the admissions of the Attorneys for the Arabs Infi'at in Case 111/29, and the fact that the Arab Infiat submitted 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.

(Sgd.) F. G. LOWICK,

Settlement Officer

30

6.7.32.

Jaffa Settlement Area.

Att. for Plaintiffs : I desire to prove my clients possession by witnesses and by the Tithes records, and evidence that the Arabs are living on this land. I ask that the Government be summoned as Third Parties, as regards the Mewat Area fixed in accordance with your judgment in Case 111/29. I proposed at the original hearing to call the Mudir el Mal to prove that my clients have paid tithes from the time of the Turks up to the time of the Commuted Tithes and I ask that he be called as a witness. Owing to the dispute my clients have not been assessed for commuted tithe. My clients claim prescription from their absolute possession for 30 years.

40

Adv. Farraji representing P.I.C.A. attended.

Abcarius Bey : If Plaintiffs have any witnesses to be heard, I suggest that they should be heard.

Att. for Plaintiffs : My witnesses that are present here are the following :—

Mustafa Husein el Musa.
Suliman Daud Abu Tamam.
Fahim el Ibrahim.

Saad Abu Tamam.
Hassan el Muri.
Hammad el Muhsein.
Mahmud el Atiya.
Salim el Ibrahim.

*Before the
Settlement
Officer.*

No. 21.
Case No.
153/32.
Notes of
Proceed-
ings, 6th
July 1932,
continue^d.
Plaintiff's
Evidence—
Mustafa
Hussein el
Musa, 6th
July 1932.

Plaintiffs' Witness : MUSTAFA HUSSEIN EL MUSA, of Wadi Hawareth Shemali, Sworn, 27 years :—

10 I know the Infeat lands. The Infiat cultivate them. I know this from 11-12 years and before. The saris and sandiyan shrubs are used by the Infiat and their flocks graze there. I do not remember having seen any persons of Hadera grazing animals there. Nor have I seen anyone of Hadera cultivating there. The Arabs water their flocks from Atta, Safra, etc. They dig pits for drinking. They get their wood from Barryat Infiat. These are saris, ballut and other trees there.

20 *To Abcarius Bey :* The boundary is from W. Hawareth to Tel-el-Jarieh. I have never cultivated them. We purchase our stores, etc., from Hadera. I know Hasan Sayed ; he died 3-4 years ago. I don't know that he leased the land. I know Ali Abdulla. I know he used to plough the lands with the Infiat. I don't know their relations between them. I don't know anything of rent paid. I don't know under what conditions the Arabs Infiat cultivated.

Plaintiffs' Witness : SULIMAN DAUD ABU TAMAM. Of Arabs Infiat. Sworn. 28 years :—

30 Knows lands of Arab Infiat. Bounded E.—Breikhtas, N.—El-Fuqara, S.—W. Hawareth lands, and W.—The sea. Part of it is cultivated. Arabs Infiat cultivate this land, from old. I remember from 15 years. I have not seen other people cultivating. The Arab Infiat are in possession of the uncultivable land, by putting their camps there, grazing, and obtaining firewood, and for watering their animals, from Birket Safra, Moqua zi ; Ayun-el-Mulleisa, Birket Atta. I have cultivated lands and continue to cultivate them since my father's death. We paid tithe. I have never seen anyone of Hadera cultivate or graze animals there.

To Adv. Abcarius : I am 28 years of age. I have cultivated from 16 years. I have cultivated some years one piece and others two or three pieces. I have cultivated 90 dunums, in the Mullaisa, and another about 40 dunums—about 50 dunums. Each year I ploughed these three parcels. The boundary of the parcels are as follows :—

90 dunums—N.—Ali Abu Tamam.

S.—Ahmed Husein Abu Tamam ;

W.—The Caves ;

E.—Road and Eucalyptus.

40 40 dunums—E.—Ein el Mulleisa Road ; and the other three sides, forest.

50 dunums—E.—Road ; N.—Bul el Salahiye ;

W.—Forest ; S.—Forest.

I know Ali Abdulla. I did not pay him anything. He was a mere cultivator. I did not know that he leased the ground. I have never paid werko. I know Hassan el Sayid. I never paid them the Khoms on my crops. I knew Mustafa Bek of Kaisariye. He used to come to Hadera from time to time. I never paid him the Khoms.

Plaintiff's
Evidence—
Suliman
Daud Abu
Tamam,
6th July
1932.

Before the
Settlement
Officer.

No. 21.
Case No.
153/32.
Notes of
Proceed-
ings.

Plaintiff's
Evidence—
Suliman
Daud Abu
Tamam,
6th July
1932,
continued.

Adv. Mahmud el Madi : I have a claim in respect of Raml and Birket Atta.

Adv. Kaiserman : Any rights of Messrs. Berman and Slutzkin in the Birket Atta and Raml are now transferred to the P.I.C.A.

ORDER : That the Palestine Jewish Colonization Association represented by Advocates Farraji and Kaiserman be entered as Defendant II.

(Sgd.) F. G. LOWICK,

Settlement Officer.

Jaffa Settlement Area.

Hudera. 6.7.32.

The same witness :

To Adv. Kaiserman : I know Ibrahim Labzolvsky. I know his orange grove. It is within the boundaries of Infiat mentioned by me. I don't know the area. I know Shalomon el Laham (Gordon). His orange grove is within the boundaries of the Infiat. I know the eucalyptus groves in our lands. They are old. I am told that the Turkish Health Authorities planted them.

To Adv. Madi : I have never seen Jews of Hudera cultivate cereals or vegetables on this area.

Plaintiff's
Evidence—
Fahim
Ibrahim
Eisa, 6th
July 1932.

Plaintiff's witness : FAHIM IBRAHIM EISA. Of Infiat. Sworn. 27-28 years :—

I know the boundaries of Infiat. N.—B. Safra and Fuqara, E.—Eucalyptus from Ard el Fuqara to Wadi Hawareth, S.—Wadi Hawareth and Abu Zabura ; W.—Sea. I know these lands. The land is of various description for drinking, for tents, for animals. The Arabs Infiat possess this land and nobody else from the time of our forefathers. They cultivate the cultivable lands and use other lands for grazing and for woods. Nobody of Hudera has cultivated land except a piece of land of Ali Abdulla which was planted with oranges some years ago.

To Adv. Abcarius : We have never paid werko. My father was Ibrahim Eisa el Hajbi. I never paid a khoms to Ali Abdulla and Hassan es Sayid. I don't know that this land was purchased by people of Hudera. We never leased it. I did not know that Shaker Pasha bought this land nor Salim el Khouri. We did not plant the Eucalyptus on this land (Surrahiya). I have heard it was planted by the Government. I should be surprised if my father signed a contract of lease.

To Adv. Kaiserman : I cultivated battikh. Sometimes in partnership. It is possible that I have been in partnership with (Abu Shlomo) Botkovsky in battikh cultivation, but I don't remember in what part. I ploughed the land and the labourers were hired. I don't know how the costs was divided. I never was in partnership with Botkovsky in the land of Infiat. I don't remember. " Ghazale " Aaronsohn. I know her. I leased land from her. She returned the money to me after I went to Court. The land was in the Hudera lands not in the Infi'at. We made a contract. I brought an action in Court about it. I took two adjacent to one another. The contract produced is signed by me (Ex. F). The description " Bavra " relates to the land of Arab Infi'at. I have 5 qittas in Arab Infi'at. (1) Moqa' Safra ; (2) Moqa' el 'Urf ; (3) El Mulleisi ; (4) do. ; (5) El Atta. The total area is about 400 dunums. I have also a cave. My family consists of 7-8 persons. We cultivate battikh and cereals.

10

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To Adv. Madi : It is possible that I paid 187 piastres tithe in one year. In 1921 I may have paid piastres 60.42 mils (64.2 mils) for tithe for barley. In 1926 it is possible I paid 58 piastres melon tithe.

Before the
Settlement
Officer.

Plaintiff's witness : SAAD AHMAD ABU TAMAM of Arabs Infi'at, Sworn, 32 years of age :—

No. 21.
Case No.
153/32.
Notes of
Proceed-
ings.

10 Knows Infiat lands and their boundaries. Arabs Infiat are in possession since they were created. They plough, thresh, graze their flocks, water. The Barrat of Infiat is used for camps and grazing. The Infiat cut wood from Barrat Infiat. I never saw anyone from Hadera plant cereals there. There is an orange grove to Braham ; he obtained the land from Ali Abdalla.

Plaintiff's
Evidence—
Saad
Ahmed
Abu
Tamam,
6th July
1932.

To Abcarious Bey : Musa is my uncle. We have never paid werko. The Government made a commuted tithe some years ago. We have not paid the tithe since 1928. I don't know if Hudera people have paid it. I have not cultivated for four years. I have previously ploughed one piece. The boundary of Barrat lands are on E.—The Eucalyptus to the sea on the West ; S.—Hawarith, N.—Birket Safra. I don't know that the Infiat Arabs sold this land to Shaker Basha and by him to Selim-el-Khour. I have never paid the Khoms to Ali Abdalla, Hassan Sayed and Mustafa Bek.

To Adv. Madi : Ali Abdulla and Hassan Sayed, Mustafa Bek have never so far as I have heard leased this land. I have never known Mustafa Bek enter these lands as lessor or lessee.

Advocate Madi : I dispense with Hassan Merei.

Plaintiff's Witness : MUHAMMAD MOHSON EL OCCASHI—of Arabs Infi'at—Sworn—30 years of age :—

Plaintiff's
Evidence—
Muhammad
Mohson el
Occashi,
6th July
1932.

30 I know Arab Infiat lands and their boundary. N.—Fuqara, E.—Lane of Eucalyptus, S.—Wadi Hawarith, W.—The sea. It is possessed by the Infiat from of old. We plough part, graze one part, drink, cut wood, etc. I have never seen anyone of Hudera cultivate cereals or vegetables or graze animals there. The meaning of Barrat includes all the lands of the Infiat. The greater part is uncultivable. The Arabs dig pits and drink from there. I have never seen Jews of Hudera drinking from these wells nor their animals. In the portion found by the Court to be Mewat there is no wood and no grazing.

40 *To Abcarious Bey* : I don't know how many dunums the Barrat consists of. Less than half is uncultivable. We have not paid werko. I have never paid Khoms to Ali Abdalla, Hassan Sayed and Mustafa Bek. I don't know where the Jews graze their animals. I cultivated previous to the case about 90 dunums. Boundaries N.—Raml el Abyed ; E — Ali Abdalla ; S.—Muhammad el Abed ; N.—Ali Abdalla and Aysha Husein. The Arabs take the wood from the eucalyptus groves of Breiktas if they want any but the Jewish people do not take wood. I don't know who dried Birket Breiktas—Alla perhaps. I have heard that the Government planted the eucalyptus trees. The Health Department is draining Birket Atta. The Government is doing it.

To Adv. Madi : We have not knowledge that the P.I.C.A. is drying up the marshes ; if we did, we would prevent them.

Before the Settlement Officer. *Plaintiff's Witness :* MAHMOUD ATTIYA HAMMAD—Sworn.
36 years :—

No. 21.
Case No.
153/32.
Notes of
Proceed-
ings.
—
Plaintiff's
Evidence—
Mahmoud
Attiya
Hammad,
6th July
1932.

I know the land of Arabs Infiat, and the boundaries and all the parts of the land. The Arab Infiat possess this land by cultivation on the cultivable land, and in the uncultivable land, pitch our camps, graze our flocks and cut our wood. This has been the same from of old both in my memory and my father's. I have never seen Jews of Hudera cultivate cereals, graze animals or cut wood there, or water their animals. In the land found to be Mewat there is no wood to cut, nor grazing nor for camp sites. Each localities have its name—gave names—all are included in Infiat lands. There are caves there which are possessed by us and used for storing tibn. The Jews have never used these caves. There are springs used from of old for the flocks. Bieket Safra, Atta, Muleisi and Sarrafiya. We also water from dug wells. 10

To Adv. Abcarius : We don't pay werko. I don't know boundaries of Kharrubet Pasha, Bein el Birkatein. The boundaries of Birket Safra are E.—Eucalyptus, N.—Ard el Fuqara, W.—The sea, S.—Ard Hawarith. These are the boundaries of Arab Infiat lands. I don't know boundaries of Birket Safra. The Jews do not graze in Infiat lands.

To Adv. Madi : The lands were known by us by names different from Kharrubet el Basha, etc. . We heard the name for the first time—Kharrubet el Basha at the time of the case. We did not ask for rights in Kharrubet el Basha, by this name. 20

To S.O. : I have never heard the name of locality Jezirat el Basha.

To Adv. Madi : Kharrubet el Basha as pointed out to us is included in our lands. We possess it.

Plaintiff's
Evidence—
Salim
Ibrahim
Hammad,
6th July
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Plaintiff's Witness : SALIM IBRAHIM HAMMAD—Arabs Infiat—
Sworn—45 years :—

Knows lands of Infiat and the boundaries. Arabs Infiat have been possession from of old. I have seen them ever since I was born. Part of it is camping ground and grazing ; part for cultivation ; rights of passage, cutting wood, watering. Ard el Khorsh is known as "Ard el Barra." There are watering places from of old viz., Ard Mullaisa, Atta, Serafin, Ard es Safra. We dig for water. Nobody but the Arabs use the lands. I have never seen Jews of Hudera live or cultivate on these lands. I have never leased lands from Hasan Sayed or Ali Abdulla, or Mustafa Bek or have seen them leasing or possessing. Arabs Infiat cultivate vegetables at the Atta lands on the W. of B. Atta. Nobody of Hudera plant vegetables there. We have cultivated there for a number of years. The Arabs cultivate land on the W. side of Atta. The area found to be Mewat does not contain grazing or wood. We camp all over the ground at different times. We have never paid rental to anyone on our camping grounds. 30 40

To Abcarius Bey : We have not paid werko. I don't know boundaries Kharrubet el Basha, Bein el Birkatein. The boundaries of Safra, N.—Ard Fuqara ; E.—Breikhtas ; S.—Wadi Hawarith ; W.—Minet Abu Zabbura. I ploughed three parcels. I have not ploughed since the action.

To Adv. Madi : Our lands had special names such as Mulleisi, Breikhtash, Atta, Birket es Safra, Serrafiye, Mughar, Mkamat Mkheileh, 50

El 'Urf. The whole of Infiat lands is included in these localities. I have heard since settlement started of a locality Jezirat el Basha. I don't know the boundaries of Jezirat el Basha. I was not present when the boundaries were fixed.

To S.O. : I heard of the Jezirat el Hudera locality from the Jews of Hadera.

Attorney for Plaintiffs : I have other witnesses. A part of them are present. I will produce other witnesses to-morrow. I wish to call Mr. Andrews to produce his report and Mamur of Mal with the daftars of
 10 tithe collections and animal tax collections, also Muhammad Ragheb Bey, Inspector of Agriculture, Nasib Jaber of Haifa, Said Khalil of Arara Village, as they were tithe inspectors, and also Dib el Azzat and Mukhtar of Arabs Dameiri Ahmad Jabr el Tammimi and Sh. Mohammed Helu of Arabs Fuqara and Hussein Musa Surraj of Wadi Hawarith, and the remaining witnesses of Arabs Infiat we will produce. I ask that the Kushan of Atta and Breiktas be produced in this action, which were produced in Case 111/29. I also ask that you should visit the land again.

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Notes of Proceedings.

Plaintiff's Evidence—Salim

Ibrahim Hammad, 6th July 1932, continued.

INTERIM ORDER.

INTERIM ORDER : The Plaintiffs were notified on 20.6.32 of this
 20 case and ordered to submit the names of witnesses and their pleadings within seven days. They failed to communicate the names of their witnesses.

Interim Order, 6th July 1932.

Their Attorney in Court gave the list of names of their witnesses which were present, and these have been heard by the Settlement Officer.

The Settlement Officer refuses to hear further witnesses which are present or to grant an adjournment for the attendance of other witnesses.

(Sgd.) F. G. LOWICK,

Settlement Officer

Jaffa Settlement Area.

6.7.32.

Abcarius Bey for Defendants : My witnesses are : Mr. Botkovsky, Ali Abdalla. I refer to the proceedings in Case 111/29 in which Ahmad Bey Bushnak gave evidence. (Record pp. 62 et seq.) and Mustafa Bushnak also gave evidence. On p. 76 of the record et seq. the evidence of Zvi Botkovsky was given. I rely on the evidence given in the principal case and found in the record. I call Mr. Botkovsky.

Defendant's witness : ZVI BOTKOVSKY—Sworn—46 years :—

I have examined the contracts contained in dossier 111/29 B Exhibits K to K.23.

(*Adv. Madi* : I object to these contracts being read to the witness.)

K. This is in Arabic and I cannot understand it but I know to what it refers. It is a contract of lease made by the Committee of Hudera to certain people for cultivating certain lands.

(*Adv. Madi* : I object to the translation being left to the end of this witness's statement. I ask that it be translated word for word.)

There are 14 contracts, the last is dated in 1929. The last contract is between the Committee of Hadera and Ahmad Abdalla. This contract

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relates to the Arabs Infiat lands on the W. side of Hadera. The last contract does not relate to all the land and the one before 1928 relates to a part of the lands only. This is also between the Committee and Ali Abdalla. There is contract for 1927 between the same parties for a part of the land. Also for 1926 between the Committee and Hasan es Sayid, which includes all the land known as the Infiat lands. Hasan was Sheikh of the Infiat and Mukhtar. He died about three years ago. I don't know who succeeded him as Mukhtar but Ali Abdulla had affairs with the Vaad of Hudera. The reason why we only leased to Ali Abdulla a portion of the land in 1927 to 1929 was because we cultivated the other part. The 10 contract with Hasan es Sayid was for land stated to be bounded E.—Eucalyptus plantation continuing to Birket Safra to the South and to the end of Birket Breiktas to the North ; N. and S.—Boundaries of Hudera, W.—Seashore. In the 2nd, 3rd and 4th paras. of the contract provide :—(2) that this land is leased to Hassan es Sayid for 1926 without claim to the Krab ; (3) provides for payment of £E.45 rent ; (4) the colony reserves the right to pasture in the land of Barrya. In the contract for 1924 and 1923—between Hasan es Sayed and Hadera Vaad containing the same conditions. The previous contract is 1922 between the same parties, the fourth paragraph re grazing is not included. The rental is £E.50. 20 In 1921 between the same parties. Rental £E.60—for all the land. In 1920 between same parties. All the land. Rent £E.150. In this contract provision is made for Hasan es Sayed to take the rushes and reeds from Birket Atta. It also states that the rentor is forbidden to cut the reeds and rushes before he pays the first instalment and if he fails to pay at the beginning of the harvest the Committee may let the rushes and reeds to other persons, and will lose £E.50 out of the £E.75 paid. These contracts, 12 in number, were in the original file of Case 111/29 and I produce two additional contracts (Ex. G & H) dated Tishrin 2, 1307, and the other in 1901. The 12 contracts of lease in the file 111/29 are dated 1319, 1331, 30 1329, 1910 ; these are in Arabic and the others I have mentioned are in Hebrew.

(*Adv. Abcarius* : These contracts commenced from the date of the granting of a Kushan to Hudera Colonists. Some of the contracts are for two years, some for three, and some are authenticated before the Notary Public).

Witness, continuing : I produce four contracts dated 1921, 1923, 1924, 1925 (Ex. I. J. K. L.) between Committee of Hadera for the cutting of rushes and reeds from Birket Atta. 1921 with Muhammad Sayed Attili Husein Kasem Arraki. 1923 with Daghout Ahmad Saleh Daud of 40 Tireh. 1924 with Muhammad Arraji and Brother Abdalla of Tireh. 1925 with Muhammad Mustafa Essad Zudin and Abdullah Ibrahim and Ahmad el Yusuf from Tireh. The amount of rent was paid and is shewn in the Books of the Colony.

(*Adv. Madi* : I ask that these documents should either not be accepted or that we should be given an opportunity to study them.)

Hearing adjourned until 8.30 a.m. The V.S.C. ordered to give advocate for Plaintiffs access to books and contracts.

(Sgd.) F. G. LOWICK,

Settlement Officer
Jaffa Settlement Area.

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The hearing was resumed in presence of the parties and their Attorneys at Hudera on 7.7.32.

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The examination-in-chief of the Defendant's witness *Zvi Botkovsky* continued: The persons leasing the land paid the rent to the Vaad. I identify the schedule (Exh. 25 in Case 111/29B) which contains all the entries in our books regarding the amounts paid by the lessees. It begins from 1912 and covers the period until 1928. For example in 1921, the amount due was £E.60 and the books show that this amount was paid in two instalments. These amounts are shewn in the Schedule, which agrees
10 with books. In 1922 £50 was payable by the lessee; this amount was paid in four instalments, by Hasan Sayed. In 1925 £35 was payable under the contract, this was paid in one amount. As regards Ali Abdulla. We pay werko on the land West of the Eucalyptus each year; Kharrubet el Basha, Bein Birkatein, Birket Safra. I produce a Register made by the Mamur Werko, showing the collections made from the people of Hudera, in respect of Judera Dardara and Infiat lands, for the year 1322 which shows the amounts annually assessed in respect of these lands. There are notes that in 1328 an increase of 25 per cent. on house tax was made and in 1330 an increase of 50 per cent. in the werko, and in 1331 an increase
20 in house tax of 5 per cent. for the Walieh and 10 per cent. for Municipalities. I also produce seven receipts as examples showing that Werko was collected on the Dardara Hudera and Infiat lands. I can produce others if necessary. (Ex. M.) I have found another contract of lease dated 1902 (Ex. N.). (The contract is apparently signed by Mukhtar Owai Arabs Infiat—Hasan Sayed, and by Muhammad Abu Arjor, Ahmad Mustafa el Abdi, Hasan Abdulla, Mustafa Muhammad Mutleq, Zacharia and Hussein el Farran, Nasr el Dahir, Ibrahim el Najjar, etc.). Our animals graze in Hudera lands and Infiat lands. We cultivated the land of Infiat and planted trees. We purchased the Infiat lands with Dardara and Hadera from
30 Selim Khouri in 1307. We purchased all the land within these boundaries of these Kushans. In that year we made a contract of lease with the Infiat Arabs for the Infiat lands. We always used the trees which we uprooted from the Infiat. In the war the Turkish Government took from us much wood from our eucalyptus trees and the trees in the Infiat lands. We were paid for the wood. The commuted tithes were applied in 1927. The people assessed were the owners of the lands in Hudera, Infiat Dardara and were the inhabitants of the Colony. The schedule does not mention any persons of the Arabs Infiat. We paid the commuted tithe on the Infiat lands from 1928 until the present time. The name Infiat is men-
40 tioned. The Government assessed one amount for all the lands of Hudera, Dardara and Infiat and we divided it up among the cultivators. Between 1307 when we purchased the lands from Selim Khoury, until January 1929, there was no dispute between us and the Infiat. As far as I know our relations were always amicable prior to this present dispute. The Infiat lands are known as "Barrat Infiat." We have one big orange grove and one small grove, also eucalyptus plantations in the Infiat lands. The orange grove (big) 200 dunums and the small one 15 are in Kharrubet el Basha.

To Adv. Madi: The Infiat lands never reached the Railway. They
50 reached the land of Zeita. They reached the Damaria lands on the North. I know the Zowaniya and Helu lands, which are outside the disputed area. They are distant about two kilometres from Breiktas. We know each

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locality by its name. Ard el Hourī is about $1\frac{1}{2}$ kms. from Breikhtas, it is part of the Infiat Kushan. I was eight years old when I came to Hudera. I have been here since 1894. There were about 100 inhabitants then. I became Mukhtar in 1908. When we purchased the land, it was not planted with trees and marshy. Baron Rothschild helped us to plant it and drain it. A big part of the land was full of sarris and by deep ploughing we turned it into cereal land. At first it was very unhealthy in every place in Hadera. By draining it is now healthy. I know that Hadera people have possessed the land in dispute from the time of the purchase until the present time. We leased the land to the Arabs Infiat by the 10 contracts I have produced. We planted mulberries and other trees, also latterly oranges. The person leasing the land was the Colony representative Nakimovsky. From the contracts produced by me it is clear that we leased the land year by year. In the years when no contracts were signed the rental was charged and collected and shown in the Colony land books. In the first ten years of the Colony the persons who leased the lands were Nakimovsky and Hankin on behalf of the Colonists. The lands were ploughed partly by us and partly by the Infiat as our tenants for the first two years. The same applies to the second period of ten years. We used to let the land mentioning the general boundaries but we used 20 to cultivate a part. From 1310–1320 I cannot now say how much the Arabs Infiat cultivated and how much we cultivated. In any case the Infiat did not cultivate thousands of dunums but hundreds. In the last contract of lease 440 dunums is mentioned, contract of 1928 between Ali Abdalla and the Colony of Hadera. When Hassan es Sayed leased the land our relations were such that no one opposed anyone else. When we cultivated land within the leased area, we did not reduce the rent payable to him. At the time we leased to Hassan Sayed we had in the Infiat lands an almond grove which he guarded for us. Hasan Sayed acted as our guard a number of times but I don't remember the dates or the years. 30 When I say "We," I mean the cultivators of Hudera. 40–50 used to cultivate on the Infiat lands. The P.I.C.A. used to plough and plant trees from 1310 to 1327. The P.I.C.A. is looked upon as of the Colonists of Hudera. From 1320–1330, the state of affairs remained the same. Before the dispute we started to plough more land and lease to the Infiat a less area. The Arabs used to steal the trees and when we saw them we prevented them. They stole for 38 years. There are many complaints with the Police against cutting trees by them. I don't remember against whom. The flocks of the Infiat drank from all the sources on our lands, not only from those mentioned by you. Every year flocks came to the wells 40 and waters of our lands, Birket Battikh, Kazzazie, etc. When we leased land we leased our own land. P.I.C.A. planted trees and drained the marshes; they never planted cereals and potatoes. P.I.C.A. had land there and divided it among the cultivators. The P.I.C.A. planted eucalyptus trees and own the land on which they stand. It is about 20 years since they divided. Certain persons applied for Kushans under the Correction of Land Registers Ordinance. Heirs of Samuelson was among them; he has land there. I don't know how much. Dov and Lea Bolkin—I don't know if they have land there. Nisan Rutman as agent of Aaronson has land in the Infiat. I don't know if he has land of his own. 50 I have seen him ploughing regularly each year; he has almonds there. A number of persons made applications of the same nature. I know that

Fishel Aaronson had an almond grove. The contract for 1902 (Ex. N) it is dated 1902.

(*Adv. Madi* : The seal bears the date 1319.)

I was not present when this deed was executed. It is for all the lands of Infiat and Dardara. It is made through Isac Finer. In our registers there is an entry "Isac Finer renting the Khoms of Infiat."—2,600 piastres and balance 5,200 piastres. I cannot say how many years he rented the khoms; it may have been for four years. This is the only contract we have found with this man. I was not present when these contracts to
 10 Finer were executed. I know Khalil Ibrahim el Damieri, Bakir and Saleh Isac Sharkas; I don't know the other signatories. I don't know if Hasan es Sayed signed the contract or sealed it. I cannot explain the differences in colour of the ink. The contract of 1307—I cannot say if the locality Kharrubet el Basha is mentioned. The whole lands of Hudera and Infiat were leased by that contract. I was not present at the execution of the contract. So far as I know after the purchase all the lands were leased for one year. In the contract of 1901 I was not present when it was executed. It is signed by persons not of the Infiat. The contract of 1924 (regarding leasing reeds and rushes) does not bear signature but
 20 finger prints. It is written in Hebrew. The contract of 1925 (regarding reeds and rushes) is signed by finger prints. It bears four prints. Contract of 1923 (regarding reeds and rushes) is sealed with fingerprints. Contract of 1921 for reeds and rushes. It was not signed in my presence. Isaac Kreimitz has land in Infiat lands about 50 dunums; it was Mafruz and is now Musha'. He has cultivated it about 20 years ago. I don't know Boris Baruck. He planted trees and the Arabs pulled them up. I don't know how long it has been cultivated.

To Adv. Abcarius : Arabs Infiat cultivated the land as tenants. The land of Infiat was musha'; we partitioned it; certain persons asked for
 30 Kushans under the Correction of Land Registers Ordinance.

To S.O. : The amount of the rental was fixed by agreement. There was no relation between the amount of the rental and the tithe. The Vaad paid the commuted tithe on the leased land since 1928. The lessor could either cultivate himself or sub-lease to other cultivators. Usually he cultivated a part and sub-leased the remainder to the Arabs Infiat and sometimes to other Arabs as well. It (rent) was usually collected from the actual cultivators on the threshing floors. The Arabs Infiat had not fixed threshing floor.

Defendant's witness : ALI ABDALLA SULIMAN. Of Arab Infiat.
 40 58-9 years. Sworn :—

I cannot read or write but I can sign my name. I have three seals. K.3, K.5, L.22 are signed by me. (Contracts of Lease.) The document produced by you (Abcarius Bey) bears a signature like my signature. (The document was read in Court.) (Ex. O.) This document is not to be considered. I was angry with the Arabs Infiat and I signed it. If now I swear I cannot say this land belonged to the Jews. I did not write the document on oath.

To Adv. Madi : I know the disputed lands of Infiat, and their boundaries. E.—Breikhtas and Iran es Sidr and lane of eucalyptus;
 50 N.—Arabs el Fuqara; S.—Wadi Hawarith; W.—The sea. Arabs Infiat have possessed it from of old until this date. I have cultivated

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there for 37 years. They used a part as grazing and for camps ; part for cultivation ; and a part was shifting sand for camel pasturage ; the Arabs used to cultivate vegetables, melons and cereals. The Jews of Hadera have not cultivated this land except a Jew who cultivated about 15 dunums which he had purchased. Infiat got their firewood from these lands ; the Hadera people in the 37 years never grazed their animals or took their wood from these lands. No one of the Infiat paid Hasan es Sayed a " Khoms." I never was aware that he leased the disputed lands. Arabs Infi'at used to pay the tithe on the crops on this land. The Bushnaks never took a share in the crops from us. No one of the Infiat leased land from the Jews in the disputed area or paid them rental. The document produced by Defendants is not true ; it is a lie ; I was angry. I don't know who wrote. I did not know the writer. I was with Samsonov. Samsonov promised me money but did not pay me. Hassan Sayed had 1,000 dunums in Sharkas lands and I have 400 there. I have two tents in Arab Infiat. I am Mukhtar of Sharkas and Arabs Infiat. I signed the document from anger with my tribe and from greed at the offer of money. 10

(This witness is one of the Plaintiffs—Mukhtar and Member of the V.S.C. of Arabs Infiat who has been instructing Attorney for Plaintiffs 20 during these proceedings.)

Advocate Abcarius and Kaiserman : This completes the evidence for defence.

Advocate Madi : I ask that further witnesses which are present should be heard, to prove the possession of my clients for the period of prescription and to prove the rights of servitudes enjoyed by my clients. I submitted a list of 97 (73 ?) witnesses at the time of the original entry of the disputes (Action 111/29).

Note : The S.O. has already given an order regarding the hearing of further witnesses (Record p. 16) and declines to re-open this matter. 30

Adv. Abcarius : My clients admit that the Arabs Infiat have exercised possession of part of these lands and used them for grazing and other purposes but their possession was as tenants, in accordance with leases.

Adv. Kaiserman and Farraji : We do not admit that the Birket Breikhtas and Birket Atta were in possession of the Arabs. Birket Atta is being dried now and Birket Breikhtas is planted with eucalyptus trees.

Adv. Madi : See typescript.

Adjourned to 15.7.32 at Jaffa at 1 p.m.

Advocate Madi to submit pleadings in writing within three days on S.O. and copy to Mr. Kaiserman. 40

Adv. Abcarius : We do not require a copy. We will submit our pleadings within three days.

Hudera. 7.7.32.

(Sgd.) F. G. LOWICK.

At Jaffa.

The hearing was resumed on 15.7.32 in the presence of Mahmoud el Madi, Advocate of the Arabs Infi'at, Mr. Ehezkiel Goldenberg, representing the Village Settlement Committee of Hadera, and advocate Farraji representing the Palestine Jewish Colonization Association.

Judgment was thereupon delivered.

Before THE SETTLEMENT OFFICER, Jaffa-Hadera Area, at Hadera.

Plaintiff: Village Settlement Committee, 'Arab Infi'at.

Defendant: Village Settlement Committee, Hadera.

JUDGMENT.

This action is the continuation of Action 111/29, in which the Settlement Officer defined the boundaries shewn in the Kushans of the inhabitants of Hadera. This judgment has been confirmed by the Supreme
10 Court. The original action was heard between the Village Settlement Committee of the 'Arabs Infi'at on the one hand and the Village Settlement Committee of Hadera and the Palestine Jewish Colonization Association and others on the other hand.

As regards the appearance of the two Village Settlement Committees the Settlement Officer was of opinion that the common interest of the two villages was concerned and that the Village Settlement Committees were entitled under Section 14 (1) of the Land Settlement Ordinance to represent the villagers claiming rights. No objection was raised to this procedure during the hearing of action 111/29.

20 The attorney of the 'Arabs Infi'at applied that this action should be heard as between individual members of the 'Arabs Infi'at and between individual members of the village of Hadera. In support of his claim he stated that individual memoranda of claim were submitted by various persons of the 'Arabs Infi'at in 1929. No map was however submitted with these claims to enable the Settlement Officer to connect the claims with the land.

The Colonists of Hadera at first desired to claim the land in dispute as composed of mafruz parcels on the grounds of an unregistered partition made of masha' lands. As the ownership of a part or the whole of these
30 masha' lands was disputed, they however decided to claim the whole area as masha', and a musha' claim was submitted on 14.8.30, and a Schedule of Claims was published including these musha' claims on 9.9.30. The Village Settlement Committee of 'Arabs Infi'at submitted on 29.9.1930 counter-claims to these musha' claims on behalf of the 'Arabs Infi'at, and these counter-claims were scheduled on 4.10.30. The Settlement Officer considered these counter-claims as being in substitution for the original claims submitted by members of the tribe. As the Settlement Officer has already given a decision, that the lands now in dispute were included
40 in the Kushans of the people of Hadera with the result that there was a legal presumption that they were the owners of the land, it was clear that the Kushan holders should be considered as the original claimants, while the 'Arabs Infi'at as unregistered claimants claiming a title based on adverse possession should be considered as the counter-claimants. The Settlement Officer therefore refused to consider the original claims made by the 'Arabs Infi'at prior to the settlement of the issue regarding the boundaries of lands included in the Hadera kushans, and regarded only the joint counter-claims submitted by the Village Settlement Committee of the Infi'at subsequent to his decision regarding that issue.

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Although the Village Settlement Committee of Hadera admitted the possession of the 'Arabs Infi'at of land situated in the area in dispute maintaining however that this possession was not adverse to their Kushan but was possession as their tenants, the Settlement Officer heard the evidence of eight of the witnesses of the Infi'at 'Arabs who were available at the time their claim was investigated. He refused to grant an adjournment for the securing of the attendance of a large number of other witnesses in view of the fact that notification of the hearing had been served upon them on 20.6.1932 in which they were explicitly ordered to submit a list of their witnesses, which they failed to do. Moreover such witnesses 10 could only testify to material possession which is not in dispute. The Settlement Officer does not believe the evidence of the witnesses heard, when they stated that the 'Arabs Infi'at had never delivered to the Jews of Hadera or persons acting for them a "Khoms" of their crops.

Mr. Zwi Botkovsky, a leading member of the Colony of Hadera, 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 20 Sheikh of the Infiat, for the years 1927, 1928 and 1929. The witnesses produced the account books of the Hadera 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 30 of the Infi'at lands and this is confirmed by the evidence of the witnesses Ahmad Bek Kathudar and Mustafa Bushnak in the original action (Case 111/29, pp. 62, 63 and 64 of English Record).

The Jewish Colonists of Hadera 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 40 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 Daftar el Shamsieh of 1295-6 which was examined in Case 111/29 in conjunction with the subsequent Tabu records showed that they obtained registration of certain lands at that time and that they subsequently disposed of lands at that time and that they subsequently disposed of all their lands. This record is, in the opinion of the Settlement Officer, in no manner corroborative to their present claim. 50

The Supreme Court in Land Appeal No. 137/23 dealing with the question of the nature of evidence which could be accepted to defeat the

holder of a Kushan stated in that action—"There is no written evidence to contradict the registered title which carries a presumption of ownership. The evidence of witnesses, the possession of the Respondents, the admissions of other parties interested however convincing are not sufficient to override the general rule that has been established in this Court that a registered title will not be set aside except by some evidence in writing sufficient to support an adverse title or to corroborate evidence in support of such adverse title." A similar principle is laid down in the second paragraph of the judgment of the Supreme Court in Land Appeal No. 55/1927.

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continued.

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 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 Infi'at, in the Schedule of Rights.

20 As regards the claim to certain cemeteries, the Attorney for the Defendants have agreed that such cemeteries shall in due course be demarcated by the Settlement Officer and recorded as such. This will be effected, when the judgment in this action has become final.

The Plaintiffs to pay 20 LP.Court, and to pay LP.2.500 costs to the Defendants.

(Sgd.) F. G. LOWICK,

Settlement Officer,
Jaffa Settlement Area.

Jaffa. 15.7.32.

NOTIFICATION.

30 I hereby notify you of this judgment and inform you that no application for leave to appeal will be considered unless submitted to me in writing stating the grounds for the application within 30 days from this date.

(Sgd.) F. G. LOWICK,

Settlement Officer,
Jaffa Settlement Area.

Jaffa. 15.7.32.

No. 23.
Judgment
of the Land
Court of
Haifa.
Land
Settlement
Appeal No.
2/32, 20th
April 1933.

No. 23.

JUDGMENT of the Land Court of Haifa. Land Settlement Appeal No. 2/32.

**VILLAGE SETTLEMENT COMMITTEE OF ARAB
INFIAT**

Appellants

V.

**VILLAGE SETTLEMENT COMMITTEE OF HUDEIRA
P.I.C.A.**

Respondents.

JUDGMENT.

The subject of this appeal is a large tract of land lying between the Colony of Hedera and the sea—of such a size that it would take a man the 10
better part of a day to ride round its boundaries without leaving him very
much time to examine the land itself. It is more particularly delineated
in the map referred to in the judgment of the Settlement Officer dated
31st July 1930, in Case No. 111/29, a copy of which map forms a part
of the Record in this Appeal.

The judgment of the Settlement Officer in Case No. 111/29 decided :—

(A) That the area bounded by the red line on the above-mentioned map is included in the Kushans of the Hedera Colonists and the Palestine Jewish Colonization Association ;

(B) That the area bounded by the blue line on the said map 20
is included in the Kushan of the heirs of Berman and Slutzkin ;
and

(c) That the area bounded by the green line on the said map
is State Domain and Mewat land.

This judgment has become final and its findings cannot be challenged.

Case No. 153/32 is stated to be a continuation of Case No. 111/29
and its object was to decide the ownership of the area bounded by the
red line on the map referred to above.

The Settlement Officer gave judgment in favour of the Hedera
Colonists and the Palestine Jewish Colonization Association and 30
dismissed the claim of the Arabs of Infi'at who are the Appellants
in this Appeal.

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 unsatis-
factory because the Settlement Officer attempted to decide in one fell
swoop a case the nature of which was 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 40
be the same, and consequently, wherever there are differences, the question
of ownership should form the subject of a separate enquiry and each case
should be tried on its merits.

The Settlement Officer 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 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 of the Settlement Officer is directed to Section 2 of the Registration of Land Ordinance, 1929.

No. 23.
Judgment
of the Land
Court of
Haifa.
Land
Settlement
Appeal No.
2/32, 20th
April 1933,
continued.

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.

The Court fees and expenses of inspection arising out of this Appeal will be paid by both parties in equal shares.

Judgment delivered in the presence of the parties; subject to a right of appeal.

Dated the 20th day of April 1933.

(Sgd.) AZIZ DAOUDI (Sgd.) O. PLUNKETT (Sgd.) C. R. W. SETON
Judge Judge President

No. 24.

LAND APPEAL No. 37/33.

JUDGMENT of the Supreme Court on Appeal. Land Appeal 37/33.
IN THE SUPREME COURT.
Sitting as a Court of Appeal.

No. 24.
Judgment
of the
Supreme
Court on
Appeal.
Land
Appeal
37/33, 9th
May 1935.

Before :—

30 THE CHIEF JUSTICE,
Mr. JUSTICE FRUMKIN,
and
Mr. JUSTICE KHAYAT.

In the Case of :—

1. THE PALESTINE JEWISH COLONIZATION ASSOCIATION
2. VILLAGE SETTLEMENT COMMITTEE, KHUDEIRA

Appellants

V.

40 VILLAGE SETTLEMENT COMMITTEE ARAB
INFIAT

Respondent.

Appeal from the judgment of the Land Court of Haifa dated the 20th April 1933.

JUDGMENT.

The Land Court, having personally inspected the lands in dispute in the case, held that it was impossible for the Settlement Officer to arrive

No. 24.
Judgment
of the
Supreme
Court on
Appeal.
Land
Appeal
37/33, 9th
May 1935,
continued.

at a fair decision without dealing with each plot separately in view of the variation in the categories and the large area of the lands in question. This is a question of fact for the said Court to determine and we, as a Court of Appeal, cannot interfere with such finding.

The point of law submitted to us is this :—

The Court held that the contracts of lease, even if proved to be genuine, affected only the signatories thereto. We have been asked to hold that the contracts, if proved to be valid, are operative with regard to all the lands mentioned in the contract.

It was argued in reply that unless the tenant under the agreement has 10 enjoyed the benefit of the contract and obtained the consideration of the lease from each person claiming independent possession, it could not be held that the tenancy affected that particular person and interrupted prescription as is pleaded here.

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 20 with trees.

In each case, this would be a question of fact to be determined on the basis of the relationship between the tenant and the sub-tenant, while assuming the absence of any possibility of collusion between the holder of the registered deed and the tenant by virtue of the agreement.

In view of the fact that the judgment of the Land Court deals in the main with questions of fact with which we cannot interfere and that the sole point of law involved depends on findings of fact, I am of opinion that the appeal should be allowed on this point subject to the view expressed above and the case should be remitted with this modification to the Land 30 Court for transmission to the Settlement Officer to act accordingly.

Costs to follow the event.

Delivered this 9th day of May, 1935.

(Sgd.) MICHAEL F. J. McDONNELL,
Chief Justice.

LAND APPEAL No. 37/33.

JUDGMENT OF Mr. JUSTICE FRUMKIN.

The land in dispute in this case was already the subject-matter of other proceedings before the Land Settlement Officer in Case No. 111/29, in which case judgment was given on 31st July 1930. Upheld by the Land 40 Court on the 5th December 1930. An appeal from the judgment of the Land Court to the Supreme Court sitting as a Court of Appeal was dismissed on the 7th March 1932, on formal grounds. In his judgment, which has thus become final, the Land Settlement Officer held that the land involved forms part of the land included in the kushans of the Appellants, and is subject, inter alia, to prescriptive claims based on adverse possession.

The object of the present proceedings before the Land Settlement Officer was to establish whether the Respondents had such prescriptive claims based on adverse possession. The Land Settlement Officer rejected such claims in his judgment in Case No. 153/32 of 15th July 1932. This judgment was set aside by the Land Court on 20th April 1933, and this is an appeal from this judgment of the Land Court.

The Land Court in setting aside the judgment of the Land Settlement Officer apparently relied on the following grounds :—

10 (1) 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 orchard lands, which have obviously been cultivated and other land which never has been . . .

(2) That the Settlement Officer would appear to have placed too much reliance on the contracts of lease produced by the Respondents and on the entries in their book as to payment of rent ; and

20 (3) That the Land Settlement Officer placed too much reliance on the judgment of the Court of Appeal which he quotes in his judgment.

The facts of the case are fully set out in the judgments of the Land Settlement Officer. In brief : the land claimed was once registered in the name of the tribe represented by the Respondents, sold by them and passed from hand to hand until registered in the names of the Appellants, the tribe remaining on the land, cultivating some parts and grazing on other parts : paying the khums to the registered owners, the Appellants. They never planted any area, nor did they claim prescriptive title on any area planted by the Appellants, within the limits of the land in dispute.

30 This last fact answers the first ground on which the judgment of the Land Court seems to be based : the land claimed consists more or less of one category : unplanted land cultivated and uncultivated.

Now we have to bear in mind that the dispute comes before the Land Settlement Officer not for the first time. He went into great length in the matter on the first occasion and has then decided that the land claimed by the Respondents was included in the kushans of the Appellants.

40 On the second occasion, he was faced with what he rightly described as a legal presumption that the Appellants were the owners of the land. This presumption, apart of the leases by Appellants and the entries in their books, was based merely on their kushans confirmed by a judgment which became final and on payment of Werko by them. The onus of proof to rebut this presumption was upon the Respondents who failed to do so to the satisfaction of the Land Settlement Officer who was the only judge of the facts. While quoting the judgment of the Supreme Court in Land Appeal No. 137/23, the Land Settlement Officer, nevertheless, did not deprive the Respondents of the opportunity of proving their case by oral evidence. He heard such witnesses as were produced by them and distinctly says that he disbelieved them.

The grounds relied upon by the Land Court are, therefore, unwarranted.

50 The appeal must be allowed, the judgment of the Land Court set aside, and the judgment of the Land Settlement Officer affirmed with costs.

Delivered this 9th day of May 1935.

(Sgd.) G. FRUMKIN,
Puisne Judge.

No. 24.
Judgment
of the
Supreme
Court on
Appeal.
Land
Appeal
37/33, 9th
May 1935,
continued.

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF PALESTINE.

BETWEEN

FATIMA AHMAD AL'AFIFI and Others (Plaintiffs) - - *Appellants*

AND

THE GOVERNMENT OF PALESTINE YOSEF YA'AQOV
BERVITZ and Others (Defendants) - - - - *Respondents.*

RECORD OF PROCEEDINGS.

STONEHAM & SONS,
108A CANNON STREET,
LONDON, E.C.4,
Solicitors for the Appellants.

T. L. WILSON & CO.,
6 WESTMINSTER PALACE GARDENS,
LONDON, S.W.1,
Solicitors for the Respondents.

PART III.
DOCUMENTS AND EXHIBITS.

COPY OF ENTRIES FROM RURAL TAX REGISTER FROM 1920 TO 1927.

NAME	1920		1921		1922		1923		1924		1925		1926	1927		Village	Remarks.
	Winter £P. mils	Summer £P. mils	Winter £P. mils	Summer £P. mils	Winter £P. mils	Summer £P. mils	Winter £P. mils	Summer £P. mils	Winter £P. mils	Summer £P. mils	Winter £P. mils	Summer £P. mils	£P. mils	Winter £P. mils	Summer £P. mils		
Ahmad Abu Tamam ..			.420	1.500	.105		.135	.600	.445	.450	.050	4.000		2.800		Arab El-Nafia'at	
Hassan Said .. ..	.180	5.000	.070	1.130	.716	.450	1.695	.300	5.184	8.250	.834 .200	.200				"	
Hassan Said Abu Tamam		9.906	.700													"	
Hassan Said & Issa ..	2.195		3.490													"	
Hassan Said & Mohamad	1.895															"	
Khalil El Ahmad Abu Tamam							.200				.600	1.300	2.400			"	
Deeb El-Shtabawi ..												.130	.080			"	
Saad Saker .. ..			.420	.565		.115			.378	.225	.230			1.319		"	
Sleiman Daoud												1.300	2.400			"	
Saad El - Ahmad Abu Tamam			1.400								.030	3.500	.960			"	
Shtabwi Akasheh ..	.360	5.182	1.795	1.695	.560	.225	.225	.100								"	
Awad Saker .. ..	.130	2.600	.350	.750	.120	.115	.335	.600	.468	4.650	.345	.800	1.820			"	
Ali Abyed .. ..	.570	10.150	2.380	1.130	.255	.400	.650	.544	2.268	.900	.770	.863	.975	.407		"	
Ali El-Ahmad .. ..											.100	.300	1.625	1.220	.050	"	
Ayesh El Hassan ..	.130	2.400	.435 .100	.750	.240	.115	.575		.446	.075	.160	.100				"	
Ali Abu Tamam ..	.100	3.000	.500	1.130	.205	.175	.435	.700	.180	2.400	.050	2.930				"	
Abdalla Hassan Mubarak		.150	.140	.150	.060	.225										"	
Issa El Furun			3.490		.115	.115	.275	.800	.333	.150	.410	.500	2.275	.424		"	
Abd El-Issa Hajeh ..			.175													"	
Issa El Atta .. ..			.955			.285	.135	.700			.100	.650				"	
Abd Said Mansouri ..	.065	6.250 .545	.350	.380	.145	.225						.098				"	
Ayesh El Hamdan ..													1.600			"	
Fahim El Abraham ..	.425	8.885 1.500	.420	1.880	.665	.115	.170	.400		2.400	.510	.300	.650 .585	.2000		"	
Nimr El Hassan ..	.065	2.500			.095	.115		.300		3.300		.030 .040	1.356	.080		"	
Nasr El-Rouli .. ..			.115	.380	.340		.615	.600	1.053	.090	.440 .150	.325	1.626			"	
Mohamed El Abyed ..	.325	2.000 3.792	1.915	1.500	.630	.175	.810	1.134	1.305	.150 1.800	.485 1.200	1.300	1.120	.060		"	
Mousa Abu Tamam ..	.100 .360		.115 .087				.520			.150	.800		4.000			"	
Mahmoud Attiyeh ..					.370				.225	2.400						"	
Mustapha Masoud ..		.600 .090				.115		.400			.500 .030	1.300	.418 .143 .810	.050		"	
MD/2c																"	

186 *Documents
and
Exhibits.*
Copy of
Entries
from Rural
Tax
Register
from 1920
to 1927.

Per request of Advocate Anis eff. El Khanna Attorney of Arab Nafia'at this copy was extracted from
Register of Rural Tax as from 1920 to 1927.

Certified true copy,

(Sgd.)
Collector of Revenue,
Haifa. 5.1.40.