

In the Privy Council.

UNIVERSITY OF LONDON

V.O. 1

-9 OCT 1956

ON APPEAL

FROM THE SUPREME COURT OF PALESTINE, DISTRICT OF GAZA

L. GAL STUDIES

BETWEEN

MA'MUR AWQAF OF GAZA

44483

Appellant

AND

1. THE VILLAGE SETTLEMENT COMMITTEE OF
BARBARA and

2. THE GOVERNMENT OF PALESTINE

Respondents.

RECORD OF PROCEEDINGS.

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In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF PALESTINE.

BETWEEN

MA'MUR AWQAF OF GAZA

Appellant

AND

1. THE VILLAGE SETTLEMENT COMMITTEE OF
BARBARA and

10 2. THE GOVERNMENT OF PALESTINE

Respondents.

RECORD OF PROCEEDINGS.

No. 1.

MEMORANDUM OF CLAIM.

(Translation from Arabic.)

(Land Settlement of Title) Ordinance.

*Before the
Settlement
Officer.*

No. 1.
Memo-
randum of
Claim,
22nd
January
1936.

Part A.

No. of Claim : 160.

Village : Barbara.

Sub-District : Gaza.

Part B.

20	1. Name of person in whose favour right to registration is claimed.	Full address of same.	Interest or share claimed.
----	---	-----------------------	----------------------------

Mamur Awkaf Gaza, for the time being in his capacity as Mutawalli of Wakf in the District of Gaza	Gaza, Wakf Dept.	In whole.
---	------------------	-----------

2. Category of land : Wakf Sahih. Wakf el Haramain el Sharifein and Sheikh Youssef.

3. Nature of right claimed : Mulk.

4. How acquired :

*Before the
Settlement
Officer.*

*Manner of acquisition.
Possession and usage for
a long time.*

No. 1.
Memo-
randum of
Claim,
22nd
January
1936,
continued.

5. Registration in Land Registry : . . .
6. By whom is House and Land Tax paid : . . .
7. Description of parcel : . . .
8. Area claimed : . . .
9. Other rights affecting parcel (or share) : . . .
10. Is partition desired : . . .
11. Charges on parcel or share : . . . 10
12. Supporting documents : . . .
13. Additional statements or details (if any) :

All the lands of Barbara which were not registered in the Tabu Registers because the raqaba of this land is wakf and it is in the possession of the Wakf for a very long time, half of it for the Haramein esh Sharifein and the other half for the Sheikh Yusef.

14. I, Mamur Awkaf Gaza, Jamil Eff. Shehabi, on behalf of the Supreme Moslem Council, 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 20 is truly set forth therein.

(Sgd.) JAMIL EFF. SHEHABI.

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

(Sgd.) . . .

Settlement Officer, or,
Assistant Settlement Officer.

Date : 22.1.36.
Gaza.

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

Place : Barbara.

Name : . . .

Date : . . .

No. 2.

MEMORANDUM OF CLAIM.

(Translation.)

Land Settlement Ordinance, 1928-33.

Part A.

No. of Claim : 160.

Sub-District : Gaza.

Reg. Block : Name . . .

Village : Barbara.

No. See B (13)

Before the
Settlement
Officer.No. 2.
Memo-
randum of
Claim,
20th
February
1936.

Part B.

- | 10 | Name of person in whose favour right to registration is claimed. | Full address of same. | Interest or share claimed. |
|----|--|------------------------|----------------------------|
| | Mamur Awkaf Gaza for the time being in his capacity as Mutawalli of Wakf, Gaza District. | Gaza, Wakf Department. | In whole. |
-
2. Category of land : Wakf Sahih. 12 Qirats for Wakf al Madina al Munawarra, and 12 Qirats for the wakf of Zawiyet Sheikh Yusef.
3. Nature of right claimed : Ownership.
- 20 4. How acquired :
- Manner of acquisition :*
- According to Hujjeh of the Wakfieh attached and other proving documents.
5. Registration in Land Registry : I have no knowledge of its registration.
6. By whom is Rural Property Tax paid : Cultivators.
7. Description of parcel :
- Land : A part thereof for cultivation ; it was planted with trees in the old times and a part thereof is planted with trees now.
- Boundaries : As shown on map.
- 30 8. Area claimed : about 4000 dunams.
9. Other rights affecting parcel (or share) : . . .
- (A) Servitudes to which parcel is subject :
- Nil.
- (B) Servitudes over other land enjoyed by the parcel :
- Nil.
10. Is partition desired : . . .
11. Charges on parcel or share : . . .
- Particulars where charge is not registered : Nil.
12. Supporting documents : A copy of Hujjeh Wakfief attached.

*Before the
Settlement
Officer.*

No. 2.
Memo-
randum of
Claim,
20th
February
1936,
continued.

13. Additional statement or details (if any) :

Plot of Abu El Sharif	No. 1264	The whole of the plot of 'Ajouj El Qibli.	
Plot of Abu El Khazayin	No. 1265	No. 1271/30 (Parcel 30 only) ;	
Plot of El Bassa	No. 1266	out of this plot, for plot of	
Plot of El Twal	No. 1267	El Hawakir El-Shanich.	
Plot of Kafa El Sahra	No. 1277	The Awkaf used to collect a quarter	10
Plot of El Jundiat	No. 1276	of the produce of these lands from	
Plot of 'Ajouj El Shami	No. 1278	the cultivators in the old times ; the	
Plot of 'Ajouj El Qibli	No. 1275	quarter was substituted by one tenth of the produce only.	

14. I, Mamur Awkaf Gaza, Jamil Ishac Shehabi, 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 validity of my claim is truly set forth therein.

(Sgd.) . . .

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

(Sgd.) . . .

Settlement Officer.

Date : 20.2.36.
Gaza.

30

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

Name : . . .

Date : . . .

No. 3.

MEMORANDUM OF CLAIM.

(Translation from Arabic.)

Land Settlement Ordinance, 1928-33.

Before the
Settlement
Officer.No. 3.
Memo-
randum of
Claim,
24th
October
1936.

Part A.

Sub-District : Gaza

No. of Claim : 1692.

Village : Barbara

Reg. Block : Name : El Hawaki El
Quhala Ash-
Shamiah No.
1271.

10

Provisional Parcel No. 30

Final Parcel No. 34

Part B.

- | 1. Name of person in whose favour
right to registration is claimed. | Full address of same. | Interest
or share
claimed. |
|---|-----------------------|----------------------------------|
| The Mukhtar for the time being of
Barbara Village for the benefit of
the public education at the village
of Barbara. | Barbara | In whole. |
-
2. Category of Land : . . .
3. Nature of right claimed : . . .
4. How acquired :
- | <i>Part or share :</i> | <i>Date :</i> | <i>From whom :</i> | <i>Manner of acquisition</i> |
|------------------------|---------------|--------------------|---|
| Whole | | | Assigned for the
general welfare
of the village
for about the last
fifty years. |
5. Registration in Land Registry : Not registered.
6. By whom is Rural Property Tax paid : . . .
7. Description of parcel :
- Land : for building.
- Boundaries : N. 55/Road.
E. 1269/Road.
S. 1269/Road.
W. 55/Road.
8. Area claimed : 6. - -
9. Other rights affecting parcel : Nothing.
10. Is partition desired : . . .
11. Charges on parcel or share : Nothing.

Before the
Settlement
Officer.

No. 3.

Memo-
randum of
Claim,
24th
October
1936,
continued.

12. Supporting documents : . . .
13. Additional statement or details (if any) :
The tithes for this Block are paid to the Wakf.
14. We, Mukhtars of Barbara Village for the time being, for the benefit of the public educational purposes of the village, 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.) ISMAIL ABDUL HAMID.

Read over to the signatories and sworn to and signed by them in 10 my presence.

(Sgd.) . . .

Settlement Officer.

Dated : 24.10.36.

District : Gaza.

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

(Sgd.) . . .

GAZA.

Two Seals.

No. 4.
Memo-
randum of
Claim,
Undated.

No. 4.

20

MEMORANDUM OF CLAIM.

Land Settlement Ordinance, 1928-33.

Part A.

Sub-District : Gaza.

Village : Barbara.

No. of claim : 114.

Reg. Block : Nos. 1262, 1267,
1271 and 1278.

Final Parcel Nos. 1262, 1263,
1264, 1265, 1266, 1267, 1276-1278.

Part B.

- | 1. Name of person in whose favour right to registration is claimed. | Full address of same. | Interest or share claimed. | 30 |
|---|-----------------------|----------------------------|----|
| His Excellency the High Commissioner for the time being in trust for the Government of Palestine. | Jerusalem. | — | |

2. Category of Land : Miri unregistered land.

3. Nature of right claimed : . . .

4. How acquired : . . .

5. Registration in Land Registry : Not registered.

6. By whom is Rural Property Tax paid : . . .

40

- 7. Description of Parcel :
Boundaries : As per block plan.
- 8. Area claimed : As per block plan.
- 9. Other rights affecting parcel : . . .
- 10. Is partition desired : . . .
- 11. Charges on parcel or share : . . .
- 12. Supporting documents : . . .

*Before the
Settlement
Officer.*

No. 4.
Memo-
randum of
Claim,
Undated,
continued.

13. Additional statement or details (if any) :

The lands appear to be claimed by :

- 10 (A) The Wakf Administration alleging the land to be Wakf
and (B) Individual claimants by cultivation.

With regard to (A) it is not admitted and denied that the land is wakf. With regard to (B) any parcel found to be under effective and maintained cultivation prior to 1921 may be granted to individual claimants on payment of Bedl Misl.

14. I, . . . of Jerusalem, 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.

20 (Sgd.) . . .

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

(Sgd.) . . .

Date : . . .

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

(Sgd.) . . .

Date : . . .

Place . . .



*Before the
Settlement
Officer.*

**No. 5.
PROCEEDINGS.**

Case No. 5/37/Barbara.

No. 5.
Pro-
ceedings,
16th
October
to
15th
November
1944.

Claims Nos.: As in Blocks Nos. 1264-1267, 1275-1278 and 1271/30.
C/Claims Nos. 114—Government. 160-Awqaf.

Before THE SETTLEMENT OFFICER, GAZA SETTLEMENT
AREA.

Plaintiff: Ma'mur Awqaf, Gaza.

Defendants: The Village Settlement Committee of Barbara representing
the Village Claimant. 10

Third Party: The Government of Palestine.

Parcels in Dispute: All parcels in Blocks Nos. 1264-1267, 1275-1278 and
1271/30.

PARCELS AFFECTED BY OTHER C/CLAIMS.

<i>Final Parcel No.</i>	<i>C/Claim No.</i>	<i>Case No.</i>	
1264/21, 50, 58, 60 ; 1265/46, 60 ; 1266/69, 70, 72, 77, 135, 136 ; 1277/53, 55, 58, 59, 61	1872	22/37	
1265/43	990	14/37	
1264/11 & 34 1266/32, 23 & 84	564 297-299	16/37 16/37	20
1264/16, 41 ; 1265/46, 60	1002--1003	10/37	
1264/58, 60	Exh. " BB "	22/37	
1265/24, 84 ; 1267/56, 57	1868	20/37	
1266/13, 83, 98	312	6/37	
1266/18, 83	312	7/37	
1276/63, 66	1871	21/37	
1277/6, 21	1876 1875	12/37	30
1277/58	1877	9/37	

At Barbara on 16.10.44 before Mr. Clearly with the Qadi of Gaza, Ali Mohammad Al Dajouni, sitting with him under section 11 (3) of the Settlement of Title Ordinance.

Before the
Settlement
Officer.

Present :

Said Eff. Zein Ad Din, Advocate for Plaintiff.

Power of Attorney from the Ma'mur Awqaf of Gaza—Exh. O.

Power of Attorney from the Acting Director of Awqaf—Exh. S.

Power of Attorney from Awqaf Committee and the Supreme Moslem Council—Exh. T.

10 Elias Eff. Nasr, Advocate for Defendant. Exh. U.

Taufiq Eff. Nasr for the Attorney General vide authority dated 6.6.44, seen and returned to him.

No. 5.
Pro-
ceedings,
16th
October
to
15th
November
1944,
continued.

Elias Eff. Nasr for Defendants : I object to the Plaintiff's claim. Under section 17 (1) of the Ordinance a claim to waqf must be made by the Mutawalli of the Waqf or by such person as may be duly authorised by the Supreme Moslem Sharia Council. The point is that claims must be re-made. I do not speak of the appearance. In this case claim (Exh. A.2) was submitted by Jamil Eff. Shehabi, Mamur Awqaf Gaza. He doesn't allege that he is the Mutawalli of the Waqf concerned; nor does he allege
20 that he claims on behalf of the Supreme Moslem Sharia Council.

(Settlement Officer points out that two claims were submitted—first Exh. A.1 dated 22.1.36, which the Mamur Awqaf signed as “on behalf of the Supreme Moslem Council”; and the second Exh. A.2 is dated the 20th May 1936 and is the one referred to. The () is endorsed in pencil (in English) to the effect that it is superseded by the second. The writing is thought to be that of a Settlement clerk.)

Advocate : Land claim is signed as Mamur Awqaf—but even first claim is defective, as no evidence that he was authorised to submit the claim for the S.M.C.

30 No evidence on file that Jamil Eff. was even appointed as Mutawalli of Awqaf Gaza. There must be a tawliya in respect of this particular waqf.

None of the Ps/A submitted to-day can validate acts of Mamur Awqaf as claimant. Rely on 2 decisions of Supreme Court—C.A. 176/38 (P.L.R. 412) and C.A. 218/43 (Appelbaum, Vol. 2, p. 615).

Sa'id Eff. for the Awqaf : Both claims correct. Mamur Awqaf represents a waqf official. The M.H. and under Awqaf Law a Mamur Awqaf is the Mutawalli of all Awqaf madbuta—which have no Mutawallis. Mamur Awqaf, Gaza, has administered all the awqaf in Gaza District
40 including that of Barbara village since Turkish times.

Settlement Officer invites the Qadi to advise on the question whether the Mamur Awqaf is in fact the Mutawalli of Waqf which have no person appoint to be Mutawalli.

Qadi advises as follows : Under the law, the Mamur Awqaf is always the Mutawalli of Awqaf madbuta he also administrated them.

Before the *RULING—Settlement Officer.*
Settlement
Officer.

No. 5.
Pro-
ceedings,
16th
October
to
15th
November
1944,
continued.

In the fact, Settlement Officers have always accepted that the Mamur Awqaf is, in law, the Mutawalli of Awqaf madbuta, and they have for years registered the ownership of Awqaf madbuta in the place of the Mamur Awqaf for the time being. The Qadi's advice supports the view taken by Settlement Officer and I therefore overrule the objection. Even if there was doubt about the claim, I should proceed under 27 (4) of the Land (Settlement of Title) Ordinance, as though the claim had been properly made.

Sa'iid Eff. for Plaintiff: Land concerned belongs to two waqfs : 10

Half to waqf al Madina al Munawara.

Half to waqf Zawiet Sh. Yousef El Barbarawi.

The dedication is thought to be 650 years old, because at that time Sh. Yousef El Barbarawi was alive. Therefore waqf cannot be older than 650 years but it may be less than that.

There is no existing waqfiya. Proof of the land being waqf will be submitted as follows :—

(1) Daftar Khaqani of Istambul, of which a true copy is available. This must be accepted as proof under Art. 3 of the Law of Disposal of Immovable Property of 1331 A.H. 20

(2) A certified extract from the Daftar Khaqani of Istambul of a photostate copy of which I now produce (Exh. W).

(3) Entries in the Daftar al Muzarin of the waqf concerned the daftar being kept in the Government Revenue Office—I submit a certified extract (Exh. X).

(4) About the Daftar el Arabi wal Muraqqafat of Barbara village—certified copies will be submitted (Exh. V).

(5) A schedule of the barer made by the Mamur Awqaf in 1325, I submit the original (Exh. Z).

(6) A schedule of the barer made by the Mamur Awqaf in the 30 same year—I submit the original (Exh. AA).

(7) A schedule as above for the year 1330 (Exh. BB).

(8) A schedule of farming and of tithes dated 1333 signed by the Mamur Awqaf Abu Maglis Idara (Exh. CC).

(9) A schedule of farming and of the tithes dated 1333 signed as above (Exh. DD).

(10) Certified copy of extract from book of ifara Wahider Musaqafat Iwa Aradi of Barbara Waqf—p. 19 dated 1919 (Exh. EE).

(11) Same as 10, but page 13, dated 1918—(Exh. FF).

(12) List of villages and lands on which Government collects 40 tithes and pays to the S.M.C. under agreement a year amount of LP.23,000 Barbara is mentioned—24 qirats.

(Copy of the agreement is attached to it, Exh. GG).

(13) Copy of page 48 of the Register of tithes () (register kept by the waqf Dept.) (Exh. HH).

(14) Extract from Awqaf Register of various incomes for 1329 (Financial) Exh. II.

(15) Copy of the Supreme Court Judgment in case C.A. 107/41—the land concerned in that case is registered in the same registers as the land now in dispute (Exh. JJ).

(16) Letter from District Officer, Gaza, in which it is stated that the lands claimed are waqf according to the revenue records. (Exh. C already submitted.)

10 (17) An admittance by the members of the O.H. (Exh. D) (already submitted) in which it is stated that the land is waqf.

Some other documents be produced later.

*Before the
Settlement
Officer.*

No. 5.
Pro-
ceedings,
16th
October
to
15th
November
1944,
continued.

Settlement Officer : All these documents should have been in long ago so that both Settlement Officer and other parties should have known what they were all about. Documents, in Settlement cases, should be submitted with the claims.

Advocates for Defendants and Government representative ask that Sa'id Eff. shall send them copies of the further documents to be submitted.

On Sa'id Eff. says that he will do so, they are satisfied.

20 *Sa'id Eff.* : From 1289 to 1325 (financial years) the Mutawallis used to lease the land directly to cultivators from one quarter of the crops—this was in addition to the tithes and werko which the cultivators paid to Government direct.

From 1325 until the occupation (about) the land was under the administration of the Waqf Dept. who farmed out by auction, the right to collect the waqf shares of the crops for a certain sum.

Here as the advocate does not appear to be clear as to what possession the Waqf Dept. had, and how they had it, Settlement Officer adjourns for 15 minutes to allow the advocate to consult with the Mamur Awqaf.

Resumed—parties as before.

30 *Sa'id Eff.* : From 1325 (Mabi) until 1919 A.D. the Waqf Dept. used to farm out the right of collecting the waqf share in the crops, which was one quarter, and the Multagim paid to the Waqf Dept. one half of the value of the one quarter.

40 From 1919 onwards, the Govt. collected the tithe-product 12½%, then 10%, then the commuted Tithe. The sum collected, less 6% for collection, was paid by Government to the Waqf Dept. until the agreement came into force to commute the revenue due to the Waqf Dept. During this period, the Waqf had no possession themselves, nor did they bare the lands. Nor did they have anything in lieu of their right to possess or bare it except the 12½% referred to. We considered this in lieu of right of possession.

Advocate of Defendants : Can't say anything documents produced as no time yet to read them.

I am instructed that the defts. claim the land to be miri and that it has never been waqf in any way—not even the revenue was dedicated.

*Before the
Settlement
Officer.*

I have only been instructed during the last few days and cannot plead care properly especially in view of the documents just submitted by plaintiffs.

No. 5.
Pro-
ceedings,
16th
October
to
15th
November
1944,
continued.

Also there are a great many kushans for the land—kushans I believe older than the Tabu registers. These I have to study before submitting them. I want more than seven days to study these. Fourteen days sufficient.

Settlement Officer : I order defendants to produce all their documents to me within fourteen days, and to send copies to the plaintiff. I also order the defendants to submit their pleadings within fourteen days and to send copies thereof to the advocate of plaintiff and to the Attorney General's representative. 10

Attorney General's representative : Government claim the regats of the land—that is, that is waqf gheir sahih. No. () between Government and defendants except as regards tithes. Government admits that tithes always to the Waqf. I deny that anything more than the tithes were ever paid to the Awqaf department by Government. By tithe, I mean the original $12\frac{1}{2}\%$ and then the 10% and afterwards the taxes substituted for it.

Arrangement between the Government and the Awqaf for the Government to pay an annual benef. sum to the Waqf Dept. in lieu of tithes included the land in dispute. Govt. does not challenge the extent of the land—that is, all the land concerned in this case is miri mauqufa. 20

Hearing adjourned till Wednesday, 15th November, 1944, at Barbara and to be continued on the 18th November.

(Sgd.)

Settlement Officer.

16/10/44.

Sa'id Eff. dispenses with 7 to 8 of the 13 witnesses called for the plaintiff. See Exh. P and add two more names. 30

(Sgd.)

Settlement Officer,

16/10/44.

Resumed at Barbara on 15.11.44. Qadi of Gaza sits with Settlement Officer as before.

Sa'id Eff. Zein ed Din—for plaintiff as before.

Aziz Eff. Shehadeh and Bishara Azer for Defendant.

Zufia Eff. Nan for Attorney General—as before.

Zufia Eff. for Government. Government claims the whole area is miri mauqufa. If any part is found to be covered by miri or mulk qushans, this may be excluded from the rent. Government position is that land is not waqf sahih. If any part of land comes within section 29 of the Ordinance i.e. Did one prove any right in it, then this must be registered in the name of Government. 40

No. 6.

EVIDENCE of Abu Ghazala.

*Before the
Settlement
Officer.*

1st witness for plaintiff, WASFI ABU GHAZALA, sworn, states :—

*Plaintiff's
Evidence.*

From Mudir Mal, Gaza. Have in that position since 1st February 1944. Before that was Asst. Mudir Mal for 13 years. (Shown Exh. X) I certified this as true copy. The original register is with me—it is called "Amlak Daftari." It covers a number of villages of Gaza Sub-District (11 villages). One of them is Barbara. It is a register of all the properties in each of the villages covered. It gives the names of the owners,

No. 6.
Abu
Ghazala,
Examina-
tion.

10 description of the land, boundaries, values of the land, areas, etc.

At the end of the entries for Barbara, the entries are signed and certified by the two Mukhtars and 4 "members." There is no date against this certificate (on page 37) but there are some additions on the following pages, and on page 45 there are five endorsements first one by two surveyors; second by two "members"; the third by the two mukhtars and four members; the fourth by members of the Committee; and the fifth contains no signature. The last two endorsements are dated 20 Rajab, 1290, and 21st Aust. 1289. The total area, for both miri and waqf is given as 8628 dunums. Farla (1st class) 4489 ds.,
20 Farla (Medium) 1016 ds. Farla (Poor) 2469 ds. Hawakir (1st class) 289.3. Hawakir (Medium) 164 ds. Hawakir (Poor) 38 ds. Contains particulars of the number of trees etc. also. The third endorsement on page 45 reads as follows :—

30

"To-day there came to our village Barbara, the officer in charge of recording of Lands, Khalid Eff. and he measured the lands, and kurum and hawakir of the Waqf el Haramein ash Sharifein and Sheikh Yussef, this with the assistance of the surveyors, completely without omitting a plot even of half a dunum. This land is the land which under the administration of Mustafa el Alami and Seiyid Aldar Razzaq Eff. This refers to the land which is in the hands by way of Muzaril and pays one quarter of the product of the land and hawakir above mentioned to the Waqf ash Sharif, and after taking the estimation of the land and hawakir mentioned in this book, in the presence and with the knowledge of the above mentioned official and the estimators, the total come to 778.000 piasters and which annual werko of 3112 piasters will be paid by the people in possession of the land, and who agree to pay the above mentioned werko to the Government and a quarter of the product to the Waqf.

40

(Dated 11th Jamad al Akhir, 1290.)

(Signed by Mukhtars.)

1st Hamman Muhammad
2nd Muhd. al Malih Mustafa
and by members."

Witness continues: On page 38 there are names of cultivators and the land of Awqaf al Haramein ash Sharifein Ash Youssef. On page 40, in the remarks column, is put "Mutawalli, Mastafa Eff. el Alami."

Adjoining each name are put the boundaries and the areas and kind of land.

Before the
Settlement
Officer.

Plaintiff's
Evidence.

—
No. 6.

Abu
Ghazala,
Examina-
tion,
continued.

(*Shown Exhibit Y.*) This is certified by the former Mudir Mal and by two clerks. The register called "Amlak Daftari" is a register of all the properties—miri, mulk and waqf. *Exh. X.* is an extract of the Awqaf properties in that register, and *Exh. Y* is a full copy of all the entries in the register,—waqf, miri, mulk, etc. The "Amlak Daftari" is kept in the Revenue Section of the Government at Gaza.

(*Shown Exh. C.*) This is in my handwriting and is signed by the District Officer, Gaza, Aid Ashazzay Eff. Kleibo—date is 16th May, 1936—addressed to Asst. Settlement Officer, Barbara.

According to my memory, the sum of LP.158.012 mils was paid 10 annually by the Government to the waqf until 1935. This was the committee tithe less collection charge. It is not "khums," but "reshar." I know Ard el Mugraga and Mas'aid. Government need to pay the tithes to the Awqaf in respect of these lands. This land paid "khums"—that is, a double tithe, all was paid to the Waqf Dept. after deducting collection charges.

(*Shown Exhibit ZZ.*) This is certified by the Mudir Mal and the District Officer, and is dated 1.1.31. In some of the Waqfs mentioned, no payment of tithes is due to Government and in other some is paid to Government. 20

In the Revenue Records, Barbara Waqf was to be treated separately from Barbara () that is why the entry appears in this bit as "Barbara Waqf."

This is the only village in which the miri and waqf are treated separately. In some villages only part of the tithe is payable to the waqf—for instance, in Quastina only part of the tithe goes to the waqf, and the rest remains to Government.

I do not know of any other village part of whose lands are miri and part waqf.

Cross-
examina-
tion.

Cross-examined by advocate for defendants : There is no registration to 30 the waqf mentioned in the Amlak Daftari being Waqf Sahih or Gheir Sahih. There is no mention in any of the registers that the Barbara Waqf land paid khums. I do not know of any entry in any register showing that the Government or the Waqf took a quarter of the produce. I have not searched for such an entry. I do not know whether Barbara Waqf pays the urban or what. I haven't examined the question. I do not know if *Exh. X* refers only to Waqf properties or not. It is a copy of the entries appearing in the Amlak Daftari.

I cannot say where the Waqf land is—haven't tried to apply the entries to the Government. 40

Cross-examined by Rep. of A. G. : I have never used the Amlak Daftari. Can't say if it was for werko only. *Exh. Y* is a copy of all the entries respecting Barbara which appear in the Amlak Daftari. It was made at the request of the Waqf Dept. On page 45 in the certificate referred to it is mentioned that $\frac{1}{4}$ of the produce is to be paid ; but there is no mention of any actual payment of this. In *Exh. ZZ* it is not mentioned what kind of Wakq—whether Sahih or not.

No. 7.

EVIDENCE of Kamal Badr.

Before the
Settlement
Officer.

2nd witness for plaintiff, KAMAL BADR, sworn, states :

Was Mudir Mal, Gaza, from 1926 till 1929, and from 1930 till March, 1944. Was formerly a Revenue Dept. official under the Turks—know some Turkish. Have forgotten a lot.

Plaintiff's
Evidence.

No. 7.

Kamal
Badr,
Examina-
tion.

(*Shown Exh. AA.*) Have not seen this before. What I understand from this document is that it is a list showing the Waqf villages, the lands of which were given to Multazimis with the concurrence of the Maglis
10 Idara, Gaza. The name of the Multazim is shown against each village.

Barbara is shown and Multazim is Hafiz Eff. el Alami. Date of the list is 1325 (Fiscal).

The text under the list means that some of the villages paid khums and some paid *Eshr*. In the list it is stated that Mughragh pays Khums ; but that Musa'id was left to Govt. estimation. That is, no Maltazim. It does not say what the other villages pay. But here is no mention of any village other than Mughragh paying khums. List made by "Wahil el Bogaf" and it is approved by the Maglis Adara.

In those days the tithes of the Government and the Waqf were put
20 up to auction in any outstanding list. The highest bidder was granted the right to collect the tithes in return for the payment of a lump sum. For Waqf villages, the multazim paid direct to the waqf dept. This continued until some time during the last war, when the Turkish Government made its estimation and collected its share of the produce in kind. Government made its arrangements for payment to the Waqf where Waqf tithes concerned.

Exh. BB. This is a list of the villages in which Govt. collected the tithes in hand—year 1330 (fiscal) during the war.

Exh. CC. This is like Exh. BB but it refers to the summer crop of
30 Barbara only. These lists show that the Awqaf received tithes from certain villages. It does not mean that the Waqf owned the land. There is nothing in these documents to show that the Waqf used to receive a quarter of the produce.

Some questions have arisen as to questions about tithes. Sa'id Eff. is questioning at length about payments of tithes to the Awqaf, but Settlement Officer considers this to be a waste of time since it is plain that the Government had been paying tithes to the Waqf Department, in respect of Barbara lands for many years. In other words Settlement Officer does not think any oral testimony is required to show that the
40 Waqf dept. have been receiving the tithes of certain lands of Barbara from Government. None of the other parties denies it, and Government positively confirms it.

Witness continues : I do not know that the waqf dept. are the owners of any of the land of Barbara ; only know that the Waqf is entitled to the tithes.

Cross-examined by Repres. of Attorney General : (Shown Exh. AA) : Cross-
I can't understand what is meant by " Barbara village with Sheikh Youssef." examina-
I do not think it means the miri and waqf combined. tion.

Before the
Settlement
Officer.

Plaintiff's
Evidence.

Before the occupation the tithe was $12\frac{1}{2}\%$. Where the tithe was payable to the waqf only 10% was paid and the $2\frac{1}{2}\%$ remained to Government. It was, I think, for the Ottoman Empire Bank and Educational purposes.

Re-examined: $12\frac{1}{2}\%$ was collected after the occupation, and from 1925 it was reduced to 10% . It remained 10% for 3 years, and then the average for 4 years was taken and it was called commuted tithe. In 1934, the Rural Property Tax was substituted for the tithe.

The Government and Waqf made an agreement whereby a fixed lump sum was paid yearly by Govt. the waqf—but this was made in Jerusalem 10 and payments were made there. Don't know about them.

No. 7.
Kamal
Badr,
Cross-
examina-
tion,
continued.
Re-examin-
ation.

No. 8.

EVIDENCE of Hafiz Izzat Al Alami.

No. 8.
Hafiz
Izzat Al
Alami,
Examina-
tion.

3rd witness for the plaintiff, HAFIZ IZZAT AL ALAMI, sworn, states :

Am 95 years of age. Am a land-owner in Barbara since 1301 A.H. After my father died in 1304 A.H. I was a multazim for the Government tithes and waqf tithes. I was multazim in Barbara lands—many times—for waqf of the miri. There were separate—one for waqf and one for miri—I refused to take one without the other. The Mamur Awqaf was a member of the Mejlis Idara—the Mejlis farmed the taxes out. Mamur Awqaf 20 was my brother, Sheikh Khalil el Alami.

I know that the tithe was collected by the multazim. I as multazim then paid a fixed amount as approved beforehand to Government. Govt. paid to the waqf. I never collected anything but tithe. Never collected a quarter of the crops for the waqf. I personally collected the tithe—stayed for a number of days, erected a tent and stayed in village.

Villagers of Barbara owned the land—waqf owned the tithe. I know some of this waqf land. I owned, and still own, part of this waqf land. Can't point it out because I have partners who cultivate it.

Can't say how many dunums the waqf land was. The land I own of 30 the waqf land is not registered. I bought 2 qirats in it in my father's time, but he owned nothing in it. I bought more later from various people. Muhammad ar Reiyan—2 qirats, in miri, and waqf from Muhd. Qanu Dhyab, also 2 qirats; from Uthman Dhiyah also 2 qirats; from Abdallah Farajallah, 2 qirats. They are all dead. Have barrani "documents of purchase" not with me now, at home.

I did not register the purchaser because registration fees were too high. I waited for Settlement—in Turkish times we waited for Settlement, which was always promised. I trusted the fellahim. Can't say if the waqf land is registered in the Land Registry or not. Mustafa el Alami 40 was my father. I had heard that he went to Barbara to divide the tithe—as a Multazim. Don't know that he was a mutawalli. He died in 1304 A.H. when I was a school boy. I did not go with my father—it was my brother Uthman who went. I don't know that my father was mutawalli, or that there was a mutawalli. But he was a mutawalli for a waqf which owned shops in Gaza, but he gave it up.

Cross-examined by advocate for defendants : Never knew waqf dept. to own any of the waqf land concerned. Waqf had had the tithe only. Fellahim here had possession. They are the owners. Know this for up to 50 years. No one ever disputed them—they have bought and sold as owners without dispute.

Before the Settlement Officer.

Plaintiff's Evidence.

Waqf dept. know that I had purchased land in the waqf land but never disputed. My brother was Mamur Awqaf. Never heard that this land was waqf sahih. Don't know if the waqf land is registered in Tabu. I was a multazim for a period of 20 years.

No. 8.
Hafiz
Izzat Al
Alami,
Cross-
examina-
tion.

10

No. 9.

EVIDENCE of Ahmad Khalil ash Shawa.

4th witness for the plaintiff, AHMAD KHALIL ASH SHAWA, sworn, states :—

No. 9.
Ahmad
Khalil ash
Shawa,
Examina-
tion.

Am 87 years of age—am a land owner in Gaza. I used to be a multazim in Turkish times, in waqf and miri land. The waqf was el Harameen and Sh. Youssef. The Majlis Idara and Wakil el Awqaf and to give me the farming rights. I had it, for one year only—in time of Abd el Hamed the Sultan. The mutawallis at that time were Sh. Mustafa el Alami and Sh. Abd Ar Hazzaq el Alami—mutawallis of al Haramein and of Sh. Youssef. Both of them were mutawallis for both waqfa.

20

Sh. Mustafa died I think in 1304 A.H. My father died in 1302. that is how I remember. The waqf I was multazim for was waqf sahih. I knew this because it was so registered in the Daftar Khaqani. Don't know who became mutawalli after those mentioned above. Kh. Khalil Alami, son of Mustafa Alami, was the Wakil Awqaf for many years up to the occupation.

The Alami family own land in Barbara—including waqf land. I don't know how they became owners.

Cross-examined by advocate for plaintiff : I am brought by the Awqaf as a witness because I am an old man and used to be a member of the Gaza Awqaf Committee in Turkish times. I have appeared as a witness for the Awqaf many times. I have no record of the waqf land—only my memory. I have never read the Daftar Khaqani—can't say if it is mentioned in it that the land in question is waqf sahih. I have never seen any waqfeyeh or any record showing this land to be waqf sahih. I do not know the waqf land in Barbara nor the area of it. Year I was multazim I collected the tithe—for miri and for waqf. No difference between them.

Cross-
examina-
tion.

Settlement Officer : I collected the miri tithe myself. The waqf tithe I gave to a sub-multazim, Ahmad el Alami. I don't know what he got from the Waqf land. The fellahim were in possession of the land. During my time they only paid the tithe. I never knew the waqf department to be in possession of the land. Waqf dept. did not tell me to collect anything from the fellahim except the tithe. I was not astonished that the fellahim in possession of the waqf land were only paying to the waqf the tithe.

*Before the
Settlement
Officer.*

No. 10.

EVIDENCE of Uthman Mustafa.

*Plaintiff's
Evidence.*

No. 10.
Uthman
Mustafa,
Examin-
ation.

5th witness for the plaintiff, UTHMAN MUSTAFA at Jaffa, sworn, states :—

Am 60 years of age. Am a mudaris and Khatib in the Mosque, and am so employed by the waqf dept. I used to be President of the Waqf Committee in 1340. Was for 10 years.

There is land in Barbara which belongs half to Waqf al Haremein and half to Waqf Sh. Youssef. Other parts of the land is miri. I do not know if this land is waqf sahih or not. It is an old waqf. More than 600 years old. 10

No X-exn.

By Settlement Officer : I have never visited the land in question. It was the duty of the Waqf Committee to look after the Awqaf in Gaza, and small plots in villages. But bid waqf lands used to be attended to by the Government.

In my time the waqf lands of Barbara were never leased to anybody as far as I know. The Awqaf only got tithes from these lands.

No. 11.
Namiq
Ahmad
el Alami,
Examin-
ation.

No. 11.

EVIDENCE of Namiq Ahmad el Alami.

6th witness for the plaintiff, NAMIQ AHMAD EL ALAMI, sworn, states :— 20

Am 80 years of age. A land owner in Barbara and elsewhere. I own 32½ qirats in miri awqaf—all Barbara is 300 qirats. Each waqf and miri is 300 qirats. I am an owner since 1304 A.H. Only thing dedicated in the land is the tithe. We always heard that the Government paid the tithe to the Awqaf. The werko we paid to Government never any mutawalli for this waqf. Every one was free to buy and sell this land. My uncle, Mustafa, was Wakil Awqaf in Gaza O never a mutawalli.

(Then witness withdraws this.) It was Sheikh Khalil Alami who was the Wakil Awqaf in Gaza. Sheikh Mustafa was the Qadi. Sh. Khalil became a Wakil after Sh. Mustafa died. 30

As far as I ever knew, the Awqaf were only entitled to the tithe in the Barbara Waqf land. Had it been waqf Sahih, the Awqaf would have paid taxes on it to the Government, and would have leased the land.

Some of the waqf land is registered in the Tabu. I did not take a Tabu kushan—only recorded in Maliya.

Cross-
examin-
ation.

Cross-examined by advocate of defendants : Am 80 years of age—for last 60 years no one has ever disputed our ownership of the waqf land, nor have we ever paid anything more than the tithes.

Department of waqf never in possession of any of the land.

Advocate for plaintiff states that he only has three more witnesses 40 to bring—the Mudir el Awqaf of Jerusalem, the Chief Clerk of the Department of Awqaf in Jerusalem and the Qadi of Jerusalem.

Hearing adjourned till Saturday 18th November, same time and place.

(Sgd.)

Settlement Officer.
15.11.44.

No. 12.

EVIDENCE of Abd ar Razzaq Nu'man As-Shihabi.

Before the
Settlement
Officer.

Resumed on 18.11.44 at Barbara.

Qadi of Gaza sits with Settlement Officer as before.

Plaintiff's
Evidence.

Present :

Sa'id Eff. for Plaintiff as before.

Aziz Eff. and Bishara Eff. for Defendants, as before.

Taufiq Eff. for Attorney General.

Witness for Plaintiffs continued.

No. 12.
Abd ar
Razzaq
Nu'man
As-Shihabi,
Examina-
tion.

10 7th Witness for the plaintiff, ABD AR RAZZAQ NU'MAN AS-SHIHABI, sworn, states :

Am 55 years of age—a clerk in the Department of Awqaf Jerusalem. I produce Daftar Khaqani of Waqf lands in Palestine. This book is kept in the Department of Awqaf, Jerusalem. It bears the approval of the Mudir Daftar Khaqani, of Syria, and is dated 18th May, 1284. It is also signed as part of the approval by the Arabic clerk of Awqaf, Jerusalem District—sealed by him (name on seal is Jarallah) and by another Arabic clerk (Mohammad Salim (Seal)).

20 An entry appears in the register regarding Barbara Waqf—on page 12 appears the following entry :—

“ *Barbara* Share of al Madina al Munawara—12 qirats.
Share of Zawiya Sh. Yousef el Barbarawi—12 qirats.”

I produce a photograph of this part of the book (Exh. IIII). This book contains particulars of all Arab Awqaf of Palestine. On page 1 of the record appears the following entry :—

“ Waqf Tamim ad Dari al Ansari—6 qirats.
Waqf al Quds ash Sharif—18 qirats.”

30 Al Insh—1 share to Waqf Tamim ad Dari. Al Ushr and fees to the Sultan. I produce a photograph of this part of the page (Exh. JJJJ). On same page appears—“ Nijm, share of Malik ad Dhahr for the Mosque 8 Qirats, Waqf Burhan ad Din Abu Sharif 12 qirats. Waqf Sultan Qeit Bey for his school in Jerusalem 4 qirats. Then follows some words not understood. I produce a photo of this also (Exh. KKKK). On the next page, last entry appears—“ Kafr Ana Waqf Imare Khashi Sultan in Jerusalem.” I produce a photo (Exh. LLLL).

40 Where there is no mention to the contrary, the waqf is waqf sahih. (S.O. enquires whether there is any entry to this effect in the Daftar itself. Witness says that there is nothing.) Shown Exh. W. Last para. of this pertains to Barbara Waqf. This document is from the Waqf administration in Istambul. Amin Bey Tamimi, member of the Supreme Moslem Council, went to Istambul to obtain various extracts from Waqf records. This is one he brought back with him. (Translations into Arabic and English of Exh. W are in the file.)

Shown Exh. PP. This was found in the Dept. of Awqaf in Jerusalem.

Shown Exh. OO. The same.

Shown Exh. NN. The same.

Before the
Settlement
Officer.

Plaintiff's
Evidence.

No. 12.
Abd ar
Razzaq
Nu'man
As-Shihabi,
Cross-
examina-
tion.

Cross-examined by advocate for defendants : I do not know how Waqf Khaski Sultan, and/or Waqf Sinan Pasha, were registered in the Land Registry as a result of Settlement. I do not know of any village the lands of which are Waqf. Khaski Sultan or Waqf Sinan Pasha. The kind of Waqf—whether sahih or Gheir Sahih is not mentioned in the Daftar Khaqani.

I have no personal opinion as to whether a waqf is waqf sahih because there is no mention of tithes or fees in the entry respecting it, but in such cases it is the general practice in the Waqf Dept. to deem it waqf sahih. (Ref. last entry in the Daftar—referred to on page 52.) There is no mention here of anything about tithes or fees I cannot say whether the lands of Kafr Ana are waqf sahih or not. I cannot be sure about my original statement that if no tithes or fees are mentioned, the land must be waqf sahih. 10

Settlement Officer : I dealt with Kafr Ana lands many years ago—my recollection is that there were miri mauqufa—not waqf sahih. I am sure, in fact, that they are not waqf sahih.

Sa'id Eff. : I agree that the lands of Kafr Ana are miri Mauqufa.

Cross-examination continues : The Daftar produced does not give areas on description or boundaries of the land entered in it. I do not personally know the land in question. Waqf sahih means that the raqafa and the tusuruf of the land is dedicated. The produce only would not be dedicated. 20

Re Exh. OO : This refers to tithes only. There is nothing in it about the Waqf having the produce, or receiving khums—only tithes.

Cross-examined by Attorney General's representative : The date of original registration is not mentioned in the Daftar produced. The original registrations might be any time before the date of the Daftar 100 or 200 years or anything. The Daftar has been in the Waqf Dept. Jerusalem ever since it was made—about 79 years ago. 30

I cannot say what action was taken to obtain registration of any of these waqfs in name of the Awqaf.

Exh. PP : I personally do not know whether anything was ever ascertained as to the conditions and administration of the waqf after this was written.

It refers only to Waqf Zawiyeh Sh. Youssef—not to Madina al Manawara.

Re-examin-
ation.

Re-examined : I was not a Mufti or Qadi. I am not an expert in Waqf matters—am only a clerk. I do clerical work only.

Settlement Officer : I should like to know what entries there are in the Daftar regarding Gaza villages. As it will take some time, I will recall the witness later. In the meantime he can search the Daftar. 40

No. 13.

EVIDENCE of Rajat Mustafa Abu Sha'ban.

Before the
Settlement
Officer.

8th witness for the plaintiffs, RAJAT MUSTAFA ABU SHA'BAN, sworn, states :—

Plaintiff's
Evidence.

Am a clerk in Department of Awqaf, Gaza—for last six years. (Shown Exh. EE.) This is an extract from Daftar Ijara Wahida and Muaqqafat and Aradi. Whenever Waqf land is leased, the lease is recorded in this daftar and when amount due is paid the entry is stretched out.

No. 13.
Rajat
Mustafa
Abu
Sha'ban,
Examina-
tion.

10 Exh. EE is extracted from page 19 of the daftar. The heading is "Qaria Barbara al Waqf." Under the column "names of lessees" is entered "Uhdad al Ahali khussd al Waqf." This means that the sum of 5600 piasters and 8 milliems is required from the people for the Waqf share.

Entry is for year 1918—summer tithes.

Underneath is a column headed "tslimat." This means "collections." The amount due, that is 5600 piasters and 8 milliems is shown as collected through Muhd. Hamduna on 6th January 1919. Another entry is "In accordance with a list (or extract) from the Revenue Office dated 20 31.1.1919." This means that the details of the collection are entered in the Government extract. I do not know whether the money was received direct or was received from the Government. It is a Turkish register.

Exh. FF : Same sort of entry as for EE except that collection was made in kind—values stated.

This daftar is kept in the Waqf Department, Gaza.

Exh. MM : I found this in the records of the dept. of Awqaf, Gaza. It is dated 1st December 1323—signed (sealed) by Wakil Awqaf, Gaza—"Khalil."

30 *Cross-examined by advocate of defendants* : Particulars of produce and their weights (kilos and grammes*) appear in blue ink. There are no such particulars in black ink. I do not know when the entries in blue ink were made.

Cross-
examina-
tion.

No. 14.

EVIDENCE of Abdel Hamid As Sari.

No. 14.
Abdel
Hamid
As Sari,
Examina-
tion.

9th witness for the plaintiffs, ABDEL HAMID AS SARI, sworn, states :—

Am the Qadi of Jerusalem, Shown Exh. LL. This was issued in the Sharia Court, Jerusalem, on 985 A.H. It is 382 years old—original was—this Exh. is a copy. The register from which it was copied is in the Sharia Court, Jerusalem. (Sa'id Eff. wishes to put questions to obtain 40 the Qadi's opinion on the kind of Waqf involved.) (Aziz Eff. objects. Points out that the Qadi of Gaza sits with Settlement Officer to give opinions on Waqf law and you cannot bring another Qadi in to give opinions.)

Settlement Officer : Would like to hear the question first—Sa'id Eff. says this witness is a technical witness.

Before the
Settlement
Officer.

Plaintiff's
Evidence.

No. 14.
Abdel
Hamid
As Sari,
Examina-
tion,
continued.

Witness continues : It is not mentioned what land is concerned. Only that $\frac{1}{2}$ Barbara Waqf is for Waqf Sh. Yousef and $\frac{1}{2}$ for al Haramen. (Sa'id Eff's questions now are merely requests for the witness to read out parts of documents. This is not necessary—all can read them.)

Before the Ottoman Land Code and the Tabu, all the waqfs were waqfs sahih. This is according to Sharia Law. According to document Exh. LL, Barbara village is wholly waqf sahih— $\frac{1}{2}$ to Sh. Yousef Waqf and $\frac{1}{2}$ to Al Haramein. This what is plain in the document.

I cannot say what is the exact meaning of "khudawendiker" (a Persian word), but I believe it to mean "bara'a Sultanijar." There was 10 a Sultan named "Murad Khudawendiker." (Questions now asked apparently with intention of proving the waqfs concerned to be old ones. *Settlement Officer* points out that no-one is saying that the Waqf Sh. Yousef or the Waqf al Haramein do not exist or that they are not old. The question is : Was the land in dispute dedicated to these waqfs, or was only the tithe dedicated ? Hence it is a waste of time to go into the history of the two waqfs.)

Exhibit PP : I understand from this exhibit that the waqf exists.

Cross-
examina-
tion.

Cross-examined by advocate for defendants : I know nothing at all about the Barbara Waqf Land itself. 20

I understand from the contents of Exhibit LL that the land itself is Waqf—not merely the income. I was in Nablus in 1918. I had not then gone to Al-Azhar.

Cross-examined by representative of Attorney General : The man who dedicates land must be the mulk owner of it—and there would be no necessity to obtain the Sultan's permission. No need for a bara'a either. Can be done before the Qadi. Miri cannot be dedicated.

Reference Exh. LL. It means that *half* of the village belongs to one waqf and half to the other.

By Settlement Officer : According to Exhibit LL, there is no miri land 30 in Barbara, all is waqf. If part of the lands of Barbara are miri, it doesn't agree with what Exhibit LL says. I agree that Waqf, Senan Pasha Waqf Khalil ar Kahran, and Waqf Khaski Sultan are old—before the Land Code and Tabu.

Settlement Officer asks : How is it then that we have whole villages, the category of whose land is Waqf Sinan Pasha, Waqf Khalil ar Rahman and Waqf Khaski Sultan—all miri mauqufa ?

Witness replies : Perhaps the mutawallis failed to prove their case as to such lands being Waqf Sahih.

No. 15.

EVIDENCE of Abd ar Razzaq Nu'man As-Shihabi (recalled).*Before the
Settlement
Officer.*

7th Witness for Plaintiff recalled, states :

*Plaintiff's
Evidence.*

I have searched the registers and have found entries regarding Gaza villages—

Yazur—Waqf Khalil ar Rahman.

Masan—Waqf Khalil ar Rahman.

Khusas—Waqf Sultan Qect. Bey 6 qirats, Waqf Jam'i Jareli
2 qirats, Waqf Khalil ar Rahman 13 qirats, Waqf
Za'met 4 qirats.No. 15.
Abd ar
Razzaq
Nu'man
As-Shihabi
(recalled).

10

Al Zina—(name not mentioned).

Julis—Waqf Sultan Qeil Bey and 5 others.

Ildis—Waqf Awlad Khadiya bint Dallel and Awlad Zeiman.

Betani Sharqu—various.

Juladiya— „ (3 Waqfs).

Sumsum—

Bi'r Tabiger—Waqf Khalil ar Rahman.

Beit Daras—Waqf Ali Nu'man Abdallah at Tamimi and others.

Dir Suneid—No name of Waqf.

20

(Many others also).

There is no mention against these as to tithes or fees.

No. 16.

EVIDENCE of Ahmad Abd ar Rahman Muhammad.*Defendants'
Evidence.*

1st witness for the defendants, AHMAD ABD AR RAHMAN MUHAMMAD, sworn, states :

No. 16.
Ahmad
Abd ar
Rahman
Muhammad
Examina-
tion.

Am 75 years of age—a land-owner of Barbara—all my life have been a land-owner and my father before me. I know the land in dispute—there are 8 blocks and a parcel in another. Land is owned by 3 main parties (sections Dar Ahmad, Dar Salih and Dar Abu Nahil).

30

The members of those sections—are in possession of the disputed lands. All my life they have been in possession. Some is planted with trees and some without trees. All Mafruz now.

No one has ever disputed the ownership of the people of the three sections until settlement. The Waqf Department never had possession of any part of these lands. Never knew or heard that the lands were Waqf sahih. Dept. of Waqf never had any part of the produce, nor even leased any part of the land to any one. Never knew or heard of a mutawalli for these lands.

40

We used to pay tithes and werko to the Government. Never paid a fifth (khums) to the waqf or Government or a quarter either. I have heard of Waqf Sheikh Youssef and al Haramein. Don't know where these lands are. I know that the land is our property and that the Government takes the tithes and werko—that is all.

Advocate : Am not asking this witness anything about the Kushaus produced by us, but will recall him on this point if it should become necessary.

Before the
Settlement
Officer.

Defendants'
Evidence.

No. 16.
Ahmad
Abd ar
Rahman
Muhammad
Cross-
examina-
tion.

Cross-examined by advocate for plaintiff: The lands in dispute came to us from our father and grandfathers. I can't say if the land is registered or not—haven't seen the registers. Was never a mukhtar. Can't produce werko receipts—can't say whether it was mentioned in the werko receipt that land was waqf.

We did not have separate threshing floor for waqf land and miri land. Never attended any auction. Never knew anything about there being separate out bidding bits for iltezan of tithes. Did not know Khalil al'Alami, have heard his name. Did not attend before the Majlis Idara at time of the auction. I own 7 qirats in the land—in what is disputed 10 and what is not disputed. I am a member of the V.S.C. of the village.

(Exh. D). I recognize my seal on this (point to it). Can't remember contents ; (document read out) this is what we signed. I only *heard* that the tithe was paid by Government to the Waqf. I did not know it as a fact, and I did not intend that I should sign that. I knew it as a fact. I do not know that the land is waqf. None of this land ever attached and sold by auction, so far as I know. Did not hear that any person bought any of this land and registered in the Tabu. The ifraz between the sections took place 68 years ago, and the division between members of the sections also made then. 20

I attended the ifraz—no documents—not usual to do so—we trusted each other. I do not remember what Najati Eff. did when he came to the village.

Re-examin-
ation.

Re-examined: Barrani sales have always been taking place between the people until now. I do not know the rules of inheritance in mulk and in miri.

By Settlement Officer: I remember Muhd. Hamdun—he is in the Hejaz now. He is a land owner. Was a mukhtar long ago. Do not know that he ever collected any money on behalf of the waqf.

No. 17.
Hussein
Ramadan
Al Haj,
Examina-
tion.

No. 17.

30

EVIDENCE of Hussein Ramadan Al Haj.

2nd witness for the defendants, HUSSEIN RAMADAN AL HAJ, sworn, states :

Am 70 years of age—a member of the V.S.C. and a land owner all my life own land. Know land in dispute—it is 8 blocks and a parcel in another. This land belongs to the people of the village. Ruba' Dar Ahmad, Ruba' Dar Salih, and Ruba' Dar Abu Nahil. All my life I have known them to be the owners and to be in possession. No one has ever disputed them. Waqf do not own any of it, nor has waqf ever had any possession nor cultivated, nor leased it. Nor have they appointed 40 Mutawallis. Land not waqf sahih—never heard that it was. We paid the tithes to the Government. In Turkish times, the Multazim collected the tithes. None of us ever paid khums—only tithe. We paid werko. Never gave my part of produce to the Awqaf. No one of that Dept. ever came to collect any part of the crop or anything in lieu.

People used to buy and sell the land—in the Tabu if they wished or intended. Don't know anybody who registered a sale in the Tabu. When an owner died, his heirs took the land and divided it between them, according to how many there were.

*Before the
Settlement
Officer.*

*Defendants'
Evidence.*

Cross-examined by advocate for plaintiff: We used to get their share in inheritance, but if they renounced it of course, the men got it. It was usual for women to be given money—not shares in land. This is custom up to date. Land in dispute not known as Ard el Waqf. Land came to us from our fathers and grandfathers. Don't know about registration, 10 sikhas were registered long ago, but kushans lost at the occupation.

No. 17.
Hussein
Ramadan
Al Haj,
Examina-
tion,
continued.

Cross-
examina-
tion.

I remember the A. Settlement Officer Amin Eff. Darwish. I never put my thumb-print on any document with regard to this land. I do not remember meeting with others and signing a document. (Document is read out) no such document was read out to me; but can't remember that I thumb-printed a document to this effect. Hafez el Alami was a multazim. Crops were put on the threshing floor in 10 heaps. Crops of the land in dispute not kept separate from crops of the land—all put together. I own $3\frac{1}{8}$ qirats in the general lands. We all owned in the 20 general lands. No separate threshing floor for waqf and for miri. I know Muhd. Hamduna—was a Mukhtar; also Muhammad Abu Danja a Mukhtar; Muhd. Ayish is another name for Muhd. Hamduna. Abu Daiya died. In Turkish times, tithes collected by the Multazim. Was not present in last year of the war—was a soldier. Do not know if the people mentioned collected money and paid it to the Revenue Dept. for the Waqf in 1918 or 1919. Do not know of any mortgage, but there have been sales and leases in the land in dispute (Then denied this).

No. 18.

EVIDENCE of Ahmad Dhib Abdar Lahim.

No. 18.
Ahmad
Dhib
Abdar
Lahim,
Examina-
tion.

30 3rd witness for the defendants, AHMAD DHIB ADBAR LAHIM, sworn, states :—

Am 45 years of age. Mukhtar for last 3 years. I know land in dispute. It is owned by the fellahim of the village. Waqf have no right in it. Never had possession or had any part of crops. Nor did they lease it to any one. Don't know that the land is waqf sahih. We pay taxes to Government—the tithes. Never paid the khums, nor a quarter of the produce.

Cross-examined by advocate for plaintiff: We pay to tax collectors. There is one tax on the land which is disputed and the land which is not 40 disputed. I don't know about there being two records. We are asked for one amount for each person.

Cross-
examin-
ation.

My father was mukhtar before me. I was not mukhtar at time of the A.S.O. (shown Exh. D). My father had a seal, but can't say if it is in this document.

PROCEEDINGS (continued).

Before the
Settlement
Officer.

No. 19.
Pro-
ceedings
(continued)
18th to
24th
November
1944.

Representative of Attorney General does not wish to call any evidence. Advocate for defendants does not wish to call any more evidence. Advocate for plaintiffs wishes to submit final pleadings.

Settlement Officer : You may do so—but to reach me by Thursday morning 23rd November. Others may reply if they wish.

Will discuss the case with the Qadi on Thursday in the Settlement Office at Gaza—at midday.

Date of notification of decision to be notified.

10

(Sgd.)

Settlement Officer.

18.11.44.

Gaza 23.11.44.

Settlement Officer meets with Qadi of Gaza (who has sat with Settlement Officer under section 11 (3) of the Ordinance) and invites the Qadi to give his advice.

The Qadi states : All Moslem Waqfs were Waqf Sahih originally. The produce of land cannot be dedicated until it actually exists. It is necessary for a thing to be in existence before it can be dedicated as waqf. It is not therefore possible to dedicate tithes and taxes in advance; this can only be done when they actually exist. Therefore I am definitely of opinion that this waqf is waqf sahih. It is admitted in this case there is waqf land in Barbara; therefore, for the reasons given, it is waqf sahih. This is proved by:—

- (A) The argument above.
- (B) The fact that a tawbiya was issued—this made as a decision.
- (C) The entries in the Daftar Khaqani produced.
- (D) The entries in the register Amlak ad Daftari.
- (E) The fact that no entries of rates were made in the Land Registry.
- (F) The records of the tithes paid to the waqf.
- (G) The fellahim would not prove that the land was not waqf sahih. The period of prescription against a waqf is 36 years. But in this case there is no prescription against the waqf because it is proved that the waqf department have been in receipt of the tithes. Therefore there can be no possibility of prescription in this case.

Even if the Settlement Officer finds that the Department of Waqf received only tithes, the land would still be waqf sahih.

40

Question by Settlement Officer : How do you explain the existence of miri mauqufa land (i.e. Waqf Ghair sahih)? Whose villages have been settled during settlement as Miri Mauqufa. In those cases the Waqf Dept. never claimed the ownership of the land, i.e., that it was Waqf Sahih, but claimed

to be entitled to the tithes and half the Land Registry fees. Many villages were so settled—the waqfs concerned are Waqf Khalil ar Rahman, Waqf Sinan Pasha, Waqf Khaski Sultan and others.

*Before the
Settlement
Officer.*

Reply : In law and logic, such waqfs cannot exist because it is not possible for a thing to be dedicated as waqf until it exists.

No. 19.
Pro-
ceedings
(continued)
18th to
24th
November
1944,
continued.

Question by Settlement Officer : Further than what I have stated, the Government and the Supreme Moslem Council have made an agreement for the payment of a lump sum annually by Government to them in lieu of the tithes formerly paid to them.

10 *Reply :* This only affects the collection of the tithes. It is quite impossible for the tithes alone to have been dedicated, and the land concerned must be waqf sahih.

Question by Settlement Officer : In the course of our discussion you have used the term “Waqf Gheir Sahih.” What do you understand by that term ?

Reply : Take Waqf Khaski Sultan. This must originally have been waqf sahih, but owing to some failure on the part of the mutawalli or administration the fellahim took possession of the land and cultivated it and made transactions, and in the course of time the waqf ceased to exist as waqf sahih.

(Sgd.)

Settlement Officer.
23.11.44.

*Note :—*This meeting took place after midday to-day. The written pleadings of the advocate for the plaintiff (Mamur Awqaf) which should have reached me this morning, have not been received up to 2.00 p.m.

(Sgd.)

Settlement Officer.
23.11.44.

30 Settlement Officer decides to send the Waqf register of Ijara Wahida produced at the hearing by the 8th witness for the plaintiff. The Mamur Awqaf, being asked verbally to produce this register, agrees to do so and sends it by messenger to the Settlement Officer.

(Sgd.)

Settlement Officer.
23.11.44.

24.11.44.

40 Settlement Officer examines the register referred to above. On the outside of the cover he finds the following endorsement: “Register of tithes of waqf villages 1918–1920.”

*Page 13.—*Entries appear in respect of Barbara village Waqf. They are headed in ink, “Winter tithes, 1918.”

*Page 19.—*Similar entries headed in ink, “Summer tithes, 1918.” The payments made are stated to be “in accordance with a list from the

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Officer.

Revenue Office." On other pages, similar entries appear in respect of summer and winter tithes due, and collected from other Gaza villages—as follows :—

No. 19.
Pro-
ceedings
(continued)
18th to
24th
November
1944,
continued.

Qastina ; Bir Tuviya ; Mason ; As Sawfir, ash Shamaliya ;
As-Sawafir ash Sharqiya ; Summeil ; Al-Masmiya al-Kabira ;
Al Masmiya ash Saghira ; and Yazur.

All these villages have been settled as *Miri Mauqufa*. Other entries appear in respect of Abu Argut, al Mughraqa, and Hasa'id and the amounts due are stated to be for the *khums*. These areas were settled as *waqf sahih*.

It is very plain that the register is *not* a register of Ijara Wahida, 10 but a record of revenue due to and paid to the waqf. Both of tithes and khums. It is apparent that the waqf department were merely using up an old Turkish register probably having nothing else to use in these early days, and that the register never purported to be a register of amounts due and received for leases (Ijara Wahida).

(Sgd.) O. PUSEY,

Settlement Officer.
24.11.44.

No. 20.
Decision.
7th
December
1944.

No. 20.
DECISION.

20

Case No. 5/37/37 Barbara.

Before THE SETTLEMENT OFFICER, GAZA SETTLEMENT AREA.
Plaintiff : Ma'mur Awqaf, Gaza.

Defendants : The Village Settlement Committee of Barbara, representing the village claimants.

Third Party : The Government of Palestine.

Parcels in Dispute : All parcels in Blocks Nos. 1264-1267, 1275-1278 and 1271/30.

DECISION.

This case concerns the ownership of an area of approximately 30 3900 dunums of the lands of Barbara village. The following is a summary of the claims of the parties :—

(A) The plaintiff claims the land as waqf sahih, a half share belonging to Waqf al Maidina al Munawwara and a half share to Waqf ash-Sheikh Yusef al Barbarawi.

(B) A large number of persons who are in possession of the land, represented in this case by the Village Settlement Committee as defendants, claim the land to be theirs. In their claims, these claimants mostly admitted the land to be unregistered but a few claimed that their parcels were registered. The attitude of these 40 claimants is that they have no interest in the question whether the land is miri or miri mawqufa (the tithe only being dedicated) as this question does not affect their rights in any way, but they deny that the land is waqf sahih and that the waqfs concerned, or the

Dept. of Awqaf, have ever had possession of the land or anything in kind or in money as rent. They would not challenge any decision that the land was all miri mawqufa, but if there was possibility of a decision being given that it was waqf sahih, they would be prepared to prove that some was registered as miri.

*Before the
Settlement
Officer.*

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Decision,
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continued.

10 (c) The Government, cited as third party, originally claimed all the land as unregistered miri but agreeing that any parcel effectively revived before 1921 and maintain under cultivation ever since could be granted on payment of badl misl. In a letter dated 1st October, 1937, however, the Director of Land Settlement limited the claim to the reqaba of the land.

Before me, the Government representative admitted all the land to be miri mawqufa and that the tithes (or the equivalent of the tithes) are paid to the Dept. of Awqaf.

2. Under the provisions of section 11 (3) of the Land Settlement of Title Ordinance, I invited the Qadi of Gaza to sit with me, which he did. His advice may be summed up as follows:—

20 (A) It is quite impossible for the tithes or produce to have been dedicated as Moslem Law does not allow of anything being dedicated until it exists. Therefore the tithe alone could not have been dedicated, as and as it is admitted that the land is waqf, it can only be waqf sahih.

(B) All the Moslem waqfs are waqf sahih, and if any lands are now treated as miri mawqufa, it must be that through some failure of the administration the cultivators took possession.

30 (c) In addition, the fact that a tawliya was issued; that entries about the waqfs appear in the Daftar Khaqani and other registers; that the land is not registered in the Land Registry; that the tithes were paid to the waqfs; and that the defendants did not prove that the land was not waqf sahih, prove that the land is waqf sahih.

(D) The period of prescription is 36 years, but as tithes were paid to the waqfs no prescription could have run.

3. With all respect to the Qadi, I cannot agree with him and I cannot take his advice. With regard to (A) and (B) above, it is quite plain from article 4 (ii) of the Land Code that Awqaf Gheir Sahiha, known also as awqaf Takhsisat (or, to use the term adopted at Settlement, miri mawqufa lands), the tithes on which alone have been dedicated, can and do exist. (There are also other kinds of Awqaf Takhsisat, but with these I am here not concerned.) With regard to (C) and (D) above, I will deal with the points hereunder.

4. I will now deal with the basis of the Plaintiff's claim and will make my observations on each.

(1) *Entry in the Daftar Khaqani of Istambul.*

Two documents were produced, one written in the old characters and one in the new. They appear to be identical. They do not, however, appear to be copies of or extracts from entries in the register, but a statement

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Decision,
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1944,
continued.

of what is contained in it. The point arises whether the statement means that the two waqfs concerned are entitled to 12 qirats each (that is, one half each) of the crops of the land, or to one half of the collections. Since the land was in the hands of cultivators (according to the plaintiff's claim), the meaning cannot be that each waqf was entitled to half of the crops, since only a share in the crops would be due to the waqfs as rent—not all of it. If, however, the land was under direct cultivation by the administrators, there would appear to be little sense in saying that half the crops was due to each, but rather, I should think, the entry would have been to the effect that each had a half share in the ownership. 10

I therefore conclude that the meaning is that each waqf was entitled to a half share in whatever was due to them in the land, but as it is not stated what the waqfs were entitled to, the documents afford no proof that the land itself is waqf sahih. It could equally well be that the lands are miri mauqufa and the waqfs shared the tithes and taxes on it.

(2) *Entry in the Daftar Khaqani of Palestine.*

This register was produced and also some photographs of entries in it. The entry relating to Barbara is short, as indeed are all the entries. It gives only the following details :—

“ *Barbara :* 20
Share of all Madina al Munawwara—12 qirats.
„ „ Zawiyet ash Sheikh Musuf al Barbarawi—12 qirats.”

The plaintiff's advocate drew attention to an entry in respect of Kafr 'Ana lands, which reads :—

“ *Kafr 'Ana :*
Waqf 'Imaret Khaski Sultan in Jerusalem.”

Now I happen to have dealt with the lands of Kafr 'Ana many years ago and I know that they are not waqf sahih. The plaintiff's advocate, further, admitted that they were miri mauqufa.

Further, search of this register elicited the fact that other villages in 30
Gaza district, which settlement records show to be miri mauqufa, were entered in a similar manner. Examples are the entries for Yazur, Abasan and Bir Tuviya.

It is therefore demonstrated that the entry in respect of Barbara does not differ from the entries in respect of known miri mauqufa lands, hence the Barbara entry is certainly no proof that the lands concerned are waqf sahih.

(3) *Entries in the register of properties (Amlak Daftari).*

This register is kept in the Revenue Department of Gaza, and it appears to be a register of all properties in this and other villages. Under 40
a large number of entries the first and second mukhtars and a number of “ members ” signed a note to the effect that these properties are under the administration of certain persons, that they are however in the possession of persons of the village for cultivation, that the waqfs received a quarter of the crops, and that they agree to pay the werko to Government and the quarter of the crops to the waqfs. This is dated the 11th Jamad el Akhir, 1290.

This is the only evidence that in any way points to the land having been treated as waqf sahih. In the absence of a waqfiya or other evidence of dedication and of any other evidence whatsoever that the land having been treated as waqf sahih, I do not think this old certificate is sufficient proof of the land being waqf sahih. I will return to this question later.

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Settlement
Officer.*

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continued

(4) *Schedules of leases of Waqf Dept. land and entries in the Waqf Dept. register of leases (Ijara Wahida).*

These so-called schedules of leases have been found to be merely records of the farming out of tithes. There are no schedules of leases.

10 With regard to the entries in the alleged register of leases, it is quite plain that these have nothing to do with leases on ijara wahida. The witness from the Awqaf Dept. who produced it explained that when the lease was recorded in the register and when the amount due was paid the entry was struck out. This may very well have been the purpose for which the register was *supplied* in Turkish times but it is quite plain that this is not the purpose for which it was *used* in 1918 and 1919, for it is quite plain that the entries therein are merely records of tithes and "khums" due and paid to the Dept. of Awqaf. No doubt in those days, registers were scarce, and there can be no doubt that the officials of the Awqaf, 20 being in need of a book to record the tithes and "khums" received, found this unused register and made use of it for that purpose. This is sufficiently proved to me by the following :

(A) In addition to Barbara, entries appear in the register in respect of the following villages :

Qastina ; Bit Tuviya ; Abasan ; As Sawafir esh-Shamaliya ;
As Sawafir esh Sharqiya ; Summeil ; al Masmiya al Kabira ;
al Masmiya as-Saghira ; and Yazur.

30 Land Settlement records show *the lands of these villages to be miri mauqufa*, the tithes and taxes being dedicated and not the land.

These entries cannot therefore be in respect of ijara wahida.

(B) The register is marked on the outside of the cover—
"Register of tithes from waqf villages."

All entries are headed in ink for the villages mentioned above—
"Summer (or Winter) Tithes" followed by the year.

(C) Entries appear in respect of "khums" due and paid in respect of the following lands—

Abu Arqub ; al Mugraqa and Al Massa'id.

40 These were settled as *waqf sahih*. The lands paid "khums" half being tithe and half as rent and therefore no leases of ijara wahida were entered into. This system in fact, saved the trouble of entering into leases.

The effect of this register, then, is to show that Barbara was treated in the same manner as miri mauqufa land elsewhere, and not as waqf sahih land.

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continued.

(5) *Various documents relating to the farming out by and payment of the tithes to the Department of Awqaf.*

Since it is not denied by the defendants, and it is confirmed by Government, that tithes have been paid to the Dept. of Awqaf, it was not necessary to produce these records. The farming out and payment of tithes do not prove that the land is waqf sahih any more than they prove that the farming out and payment of tithes in other villages mentioned in the documents, and which are known to be miri mauqafa lands, were waqf sahih.

These lists, then, do not help the plaintiff, but rather they show 10 against that the Barbara lands paid only tithes and are not distinguishable from other land which are miri mauqafa.

(6) *The judgment of the Supreme Court in other Waqf cases.*

C.A. 107 and 108/41 and H.C. 108/42 are referred to. There is a great difference between those waqf cases and this. In the first place, most of the claimants in these cases claimed the land as waqf sahih, whereas in this case the claimants most definitely deny that it is waqf sahih. In the second place, the report of the case shows that the claimants against the Department of Awqaf paid "khums," whereas all the evidence in this case is to the effect that the claimants against the Dept. of Awqaf paid 20 only the tithe. The plaintiff's advocate has submitted that "khums" was not paid in respect of Al Masa'id lands which were concerned in one of the Supreme Court cases referred to above, but the entries in the register produced by the Dept. of Awqaf (see (4) (c) above) shows that "khums" was paid on these lands.

Therefore, there is nothing in these cases which helps the plaintiff.

(7) *Admittance by the V.S.C. that land is waqf land.*

The V.S.C. never admitted that the land was *waqf sahih*, and there is nothing to support the plaintiff's claim in the admittance referred to.

(8) *Certificate issued from the Jerusalem Sharia Court in 985 A.H.* 30

There is nothing in this showing that the land is waqf sahih. Where revenue of any kind is due to a waqf, a mutawalli appears to be necessary to receive and administer it, and the appointment of a mutawalli does not in my opinion imply that any land from which a waqf obtains revenue is necessarily waqf sahih.

(9) *Allocation of a quarter of the crops to the Dept. of Awqaf from 1289 till 1325 (fiscal years), and farming-out of the right to collect this from 1325 (fiscal year) until 1919 A.D.*

Apart from the entry in the register of properties (see 4 (3) above) there is no evidence to support these alleged bases of the plaintiff's claim. 40 All witnesses called for the plaintiff on this point, as well as those of the defendants, were unanimous on the point that the Dept. of Awqaf farmed out and received only the tithes.

The pleas, then, that the Dept. of Awqaf actually received a quarter of the crops or farmed out the right to collect this are absolutely unsupported.

(10) *Receipt of tithes may be considered as being in lieu of rent.*

The plaintiff admits that from 1919 to date the Dept. of Awqaf have received only the tithes (or the equivalent of tithes) in respect of this land, but his advocate argues that this may be considered to be in lieu of possession of the land or in lieu of rent.

I cannot for one moment take this view, and I do not think it necessary to enter into details as to why I do not, and it is self-evident that tithes and rent are entirely different things.

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Officer.*

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continued.

5. The only real evidence pointing to the land being waqf sahih is
10 the note entered in the register of properties referred to in para. 4 (3) above. If the administrators of the waqfs concerned, or the Dept. of Awqaf on their behalf, had been in receipt of a quarter of the crops or payment in lieu, or had leased the land, or in any way had acted as owner, from the date of that entry until the present time, no doubt I could have assumed, in the absence of a waqfiya or other evidence of dedication, that the waqf had a legal origin, and I could have held that the land was waqf sahih. But it is clear from the evidence brought by the plaintiff, apart from the
20 defendants, that for the last 50 years at least the waqfs have received only tithes on the land. The only witness of those brought by the plaintiff on this point who said that the land was waqf sahih based his
30 knowledge on the fact that the waqf was registered in the daftar khaqani, but he admitted that he had never seen this record or that he had ever seen any record at all showing that the land was waqf sahih. He further admitted that the claimants represented by the V.S.C. had always had possession of the land and that they had paid only tithes.

6. I therefore find as follows :—

(A) That the entry signed by the mukhtars and “ members ”
30 in the register of properties is not in itself sufficient to prove the dedication of the land as waqf sahih, in the absence of any evidence to prove that the land had been so treated.

(B) That, far from proving that the land has been treated as waqf sahih, the evidence is overwhelmingly to the effect that it has been treated for the last 50 years as miri mauqufa, the rights of the waqfs concerned being restricted to the receipt by them of the tithes.

(C) That, even if the land could be considered to have been waqf sahih in 1290 A.H. when the mukhtars and others signed the certificate or note referred to above, the rights of the waqfs concerned
40 in the ownership would now be prescribed by the running of time, and only their right to tithes and other revenue would remain.

7. I therefore hereby dismiss the claim of the plaintiff that the land is waqf sahih, and order it to be registered in the names of the claimants who are represented by the V.S.C. as miri mauqufa (Waqf al Haramain ash Sharifein and Waqf ash Sheikh Yusef al Barbawi), subject, however, to the result of the settlement of any disputes there may be between those claimants.

8. I order the plaintiff to pay LP.5 to the defendants as costs. The value of the land at the most conservative estimate is not less than

Before the Settlement Officer. LP.80,000.- and it is probably in fact worth over LP.100,000.-. The maximum hearing fees are therefore payable, viz. LP.20 and I order that this sum shall be paid by the plaintiff.

No. 20.
Decision,
7th
December
1944,
continued.

27.11.44.

(Sgd.) O. PUSEY,
Settlement Officer,
Gaza Settlement Area.

Decision notified at Barbara on 7.12.44 in the presence of the plaintiff in person and of the advocate for the defendants.

(Sgd.) O. PUSEY, 10
Settlement Officer,
Gaza Settlement Area.

7.12.44.

No. 21.
Order
granting
leave to
appeal,
5th
January
1945.

No. 21.
ORDER granting Leave to Appeal.

Case No. 5/37/Barbara.

Application for Leave to Appeal.

Applicant (Plaintiff) : Mamur Awqaf, Gaza.

Respondents (Defendants) : The Village Settlement Committee of
Barbara. 20

Third Party : The Government of Palestine.

In my decision notified on the 7th December, 1944, I ordered the land concerned in this case to be registered in the names of the persons who were represented by the Village Settlement Committee and the Plaintiff now applied for leave to appeal.

Leave to Appeal is hereby granted.

(Sgd.) O. PUSEY,
Settlement Officer,
Gaza Settlement Area.

5th January, 1945.

30

No. 22.

GROUNDS OF APPEAL.

(Translation).

Civil Appeal No. 25/45.

*In the
Supreme
Court.*

No. 22.
Grounds of
Appeal,
15th
January
1945.

IN THE SUPREME COURT OF PALESTINE SITTING AS A COURT
OF CIVIL APPEAL.

In the Appeal of :—

MA'MUR AWQAF of Gaza, represented by Advocates
SA'ID ZEIN ED DIN and MOH'D NIMR EL HAWARI *Appellant*

10

V.

1. SETTLEMENT COMMISSION AT BARBARA VILLAGE, representing the claimants of the said village, Gaza. Represented by Advocate ELIAS EFF. NASSER, Jaffa
2. GOVERNMENT OF PALESTINE - - - *Respondents.*

Appeal from the decision of the Settlement Officer, Gaza Area, in Case Barbara 5/37 dated 7.12.44, whereby plaintiff's claim, namely, that the land in question is one of waqf sahih, was dismissed.

On 6.1.45 appellant was served with an order issued by the Settlement
20 Officer granting leave to appeal from the said decision.

GROUNDS OF APPEAL.

1. The Settlement Officer erred in not consenting to and in not acting in accordance and in compliance with the advice made to him by the Shari'a Qadi whom he called upon and appointed under section 11 (3) of the Settlement Ordinance.
2. The Settlement Officer erred in disregarding the record made in Daftar Khaqani, Istanbul, which record supports the plaintiff's claim that the land subject-matter of claim is one of waqf sahih.
- 30 3. The Settlement Officer erred in disregarding the records of the Daftar Khaqani of Palestine, which records too support the plaintiff's claim that the land, subject-matter of claim, is one of waqf sahih.
4. The Settlement Officer erred in holding that the register named "Quued Amlak Daftari" was not sufficient evidence, which register, the Settlement Officer himself admits, is the only evidence showing that the land, subject-matter of the claim, is one of waqf sahih.
- 40 5. The Settlement Officer erred in holding that the records of the said properties as sufficient evidence against the claim of the Government as to the question of the waqf's ownership in the said land on the understanding that it is the Government who disputes the waqf in the ownership of the land and not the cultivators.

*In the
Supreme
Court.*
No. 22.
Grounds of
Appeal,
15th
January
1945,
continued.

6. The Settlement Officer erred in disregarding the instrument by which the Mamur Awqaf was appointed as such purporting to show that the land in question has been dedicated as waqf sahih, since a long time exceeding 650 years, as per Al Hamdwoundoukariya decree issued by the Sultan Murad the Ottoman Hamda-wondoukar which decree is not issued but in respect of properties dedicated as waqf sahih.

7. The Settlement Officer erred in holding that the fact that the waqf authorities discontinued to receive $\frac{1}{4}$ of the produce since fifty years and reducing it to that of the 'Usher value affects the nature and kind of waqf so as to make it Qaqf Gheir Sahih (untrue waqf) instead of being 10 waqf sahih.

8. The Settlement Officer erred in holding that the untrue waqf was made some time before the Ottoman Law coming into force, but the true fact is the contrary.

9. The decision of the Settlement Officer is contrary to Law.

10. The decision of the Settlement Officer is contrary to the evidence adduced.

11. The Settlement Officer erred as to the findings he reached at.

12. The Settlement Officer erred in holding that the land, subject matter of the claim, was not as one of waqf sahih. 20

For the above mentioned reasons and grounds and for those which I shall submit at the trial I humbly pray that :—

(A) Copy of this statement of appeal together with the annexures thereof be served upon respondents.

(B) Decision of the Settlement Officer be set aside, that the judgment be given adjudging that the land, subject-matter of the claim, is one of waqf sahih and that an Order be made directing that the said land in question be registered in the name of Ma'mur El Awqaf in his capacity as Mutawalli thereof.

(c) Respondents be ordered to pay costs and advocate's fees. 30

With all due respects.

(Sgd.) SA'ID ZEIN ED DIN,
Counsel for Appellant.

Date : 15.1.45.

No. 23.
JUDGMENT.

Civil Appeal No. 25/45.

IN THE SUPREME COURT SITTING AS A COURT OF CIVIL
APPEAL.

*In the
Supreme
Court.*

No. 23.
Judgment,
3rd July
1945.

Before : THE CHIEF JUSTICE (SIR WILLIAM FITZGERALD),
MR. JUSTICE FRUMKIN and MR. JUSTICE ABDUL HADI.

In the Appeal of :—

- 10 MA'MUR AWQAF GAZA - - - - - *Appellant*
V.
1. THE VILLAGE SETTLEMENT COMMITTEE
OF BARBARA.
2. GOVERNMENT OF PALESTINE - - - - - *Respondents.*

Appeal from the Decision of the Land Settlement Officer, Gaza Settlement Area, dated 7th December, 1944, in Case No. 5/37/Barbara.

For Appellant : Sa'id Eff. Zein Ed Din.

For Respondents : No. 1. Mr. E. Georges Elia.

No. 2. Omar Eff. Wa'ary.

JUDGMENT.

20 This is an appeal from the decision of the Settlement Officer, Gaza Settlement Area. Although the hearings before the Settlement Officer and this Court were protracted, the issue can briefly be stated. It is whether the land, which is the subject-matter of this claim, is waqf sahih or miri mauqafa.

The plaintiff at the Settlement proceedings and the appellant in this case was the Ma'mur Awqaf of Gaza. He claims that the land is waqf sahih, a half share belonging to Waqf al Madina al Munawwara, and a half share to waqf ash Sheikh Yusef Al Barbarawi. The Settlement Officer came to the conclusion that it was miri mauqafa and not waqf sahih. It is of course regrettable that in arriving at that conclusion the Settlement Officer was forced to disagree with the opinion of the Kadi, whom he invited to act as an assessor.

30 There is no doubt that the waqf is a very old one. It can be traced through documents as far back as 650 years. The Settlement Officer examined all the documents which were produced by the plaintiff, and for the reasons which he stated in his judgment he came to the conclusion that they did not lead inevitably to the inference that the property was waqf land, which is not denied, but there was nothing in them to preclude the Settlement Officer from coming to the conclusion that it was waqf gheir
40 sahih.

Apart from this finding of the Settlement Officer, which is based on the documents and which we cannot say was unreasonable, there is other evidence, which in our opinion is conclusively against the appellant. It was proved that for at least 74 years the Government collected the tithes on this land and paid them over to the waqf. If it were waqf sahih the Supreme Moslem Council would have collected their share of this waqf

*In the
Supreme
Court.*

No. 23.
Judgment,
3rd July
1945,
continued.

direct from the village, and the taxes would have been paid direct to the Government from the Awqaf Department. The procedure in regard to the collection of the tithes by the Government, which we are satisfied has been followed for 74 years, is inconsistent with the waqf being waqf sahih.

For these reasons we are of opinion that the appeal must be dismissed, and the decision of the Settlement Officer confirmed. The first respondent is entitled to the costs of this appeal to be taxed on the lower scale to include a sum of LP.15.—advocate’s attendance fee for the hearing of this appeal.

Delivered this 3rd day of July, 1945, in the presence of 10
for the appellant, and for the respondents.

(Sgd.) M. ABDULHADI,
Puisne Judge.
(Sgd.) G. FRUMKIN,
Puisne Judge.
(Sgd.) W. J. FITZGERALD,
Chief Justice.

No. 24.
Order
granting
final leave
to appeal
to His
Majesty in
Council,
26th
October
1945.

No. 24.

ORDER granting Final Leave to Appeal to His Majesty in Council.

Privy Council Leave Application No. 40/45. 20

**IN THE SUPREME COURT SITTING AS A COURT OF CIVIL
APPEAL.**

Before : THE ACTING CHIEF JUSTICE (MR. JUSTICE EDWARDS).

In the Application of :—

MA'MOUR AWQAF OF GAZA - - - - - *Applicant*
V.

- 1. THE VILLAGE SETTLEMENT COMMITTEE
OF BARBARA.
- 2. THE GOVERNMENT OF PALESTINE - *Respondents.*

Application for leave to appeal to His Majesty in Council from the 30
judgment of the Supreme Court sitting as a Court of Civil Appeal dated
3.7.45 in C.A. 25/45.

For Applicant : N. Abcarius Bey.
For Respondents : No appearance.

ORDER.

WHEREAS by Order of this Court dated the 24th day of September, 1945, the applicant was granted conditional leave to appeal to His Majesty in Council subject to the following conditions :

- (i) That the appellant do enter within two months of the date of this Order into a Bank guarantee from one of the recognized 40
banks to be approved by the Chief Registrar in a sum of LP.300.—
effective for years or more, for the due prosecution of the appeal

and the payment of all such costs as may become payable to the respondents in the event of the appellant not obtaining an order granting final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the appellant to pay the respondents' costs of the appeal (as the case may be) ;

(ii) That the appellant do take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England within two months of the date of this Order.

10 AND WHEREAS the applicant has fulfilled the said conditions in that he has filed a guarantee bond in the sum of LP.300.— issued by Barclays Bank (D.C. & O.), Jerusalem, dated 8th October, 1945 as prescribed, and has filed a list of documents which should constitute the file to be despatched to England, and has 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 applicant.

20 Given this 26th day of October, 1945.

(Sgd.) D. EDWARDS,
Acting Chief Justice.

*In the
Supreme
Court.*

No. 24.
Order
granting
final leave
to appeal
to His
Majesty in
Council,
26th
October
1945,
continued.

No. 25.

LETTER OF GUARANTEE.

(Not printed.)

No. 25.
(Not
printed.)

LAND REGISTRY EXTRACT.

Land
Registry
Extract,
28th July
1944.

No.	Date	Yuklama or Daimi	Village or City	Situation	Nature of property	Class of property	No. of shares	Boundaries	Nature of Grant of Title deed	Name of present proprietor	No. of property as per Werko registers	Value in dis- position	Remarks
82	Jan. 98	Yuklama	Barbara	Ashraq	Olive Orchard	Mulk	1/4	bounded on 4 sides Kashef	By appro- priation and con- struction	Awadalla bin Issa	3299	375	Remainder one share to the waqf of Sh. Youssef.
83	do.	do.	do.	do.	do.	do.	2/4	do.	do.	Shehadeh bin Nasr	do.	750	
158	do.	do.	do.	Droun	do.	do.	1/2	bounded on 4 sides el Kurah	do.	Ali bin Saleh	7275	8250	1 share to Ali bin Saleh the other share to waqf Gaza Mosque.
201	do.	do.	do.	Qasrani	do.	do.	3/4	do.	do.	Shaker bin Rabi'	3252	7875	Remainder 1 share to Great Mosque Gaza waqf.
208	do.	do.	do.	do.	do.	do.	21/24	do.	do.	Sh. Mohd. bin Rabi'	3366	4000	Remainder 3 shares to waqf of Gt. Mosque Majdal.
224	do.	do.	do.	Karm Satri	do.	do.	12/24	bounded on 4 sides El Satr Karm Dar Saleh road & El Kashf	do.	Abdallah Ghussein	3290	3000	10 shares to waqf of Barbara village Mosque.
225	do.	do.	do.	do.	do.	do.	2/24	do.	do.	Darwish bin Suleiman Abu Mariam	do.	500	
284	do.	do.	do.	Abu El Hijeh	do.	do.	2/96	4 sides El Kurah	do.	Dukhan bin Rabi'	3232	125	
285	do.	do.	do.	do.	do.	do.	do.	do.	do.	Sh. Mohd. Rabi'	do.	125	
286	do.	do.	do.	Abu el Hujeh	do.	do.	do.	do.	do.	Shakir bin Rabi'	do.	do.	
287	do.	do.	do.	do.	do.	do.	14/96	do.	do.	Yusef bin Muteir	do.	800	The rest of the olive tree 35 shares to the Gt. Mosque at Gaza—attach- ment levied on demand.
288	do.	do.	do.	do.	do.	do.	2/96	do.	do.	Abdalla bin Rabi'	do.	125	
289	do.	do.	do.	do.	do.	do.	13/96	do.	do.	Abdul Malik bin Muteir	do.	800	
290	do.	do.	do.	do.	do.	do.	do.	do.	do.	Hassan bin Muteir	do.	125	do. do.
291	do.	do.	do.	do.	do.	do.	do.	do.	do.	Omar & Muteir Sons of Muteir	do.	800	
310	do.	do.	do.	Gharbiyeh	do.	do.	4/24	Road—Road threshing floor & el Haj Ayish	do.	Ali bin Abu Layla	3286	7000	The said olive trees 8 shares to the waqf of Gt. Mosque Gaza.
311	do.	do.	do.	do.	do.	do.	3/24	do.	do.	Abdul Malik bin Hassan	do.		
312	do.	do.	do.	do.	do.	do.	3/24	do.	do.	Hassan bin Hussein	do.	5300	
313	do.	do.	do.	do.	do.	do.	3/24	do.	do.	Omar bin Hussein	do.	5300	
314	do.	do.	do.	do.	do.	do.	3/24	do.	do.	Imteir bin Hussein	do.	5300	
342	do.	do.	do.	do.	do.	do.	12/24	Salkh-Sulei- man Abd Rabbo Road—Salkh	do.	'Eita bin 'Eita	3540	2437	10 shares to waqf of Barbara village Mosque.
343	do.	do.	do.	do.	do.	do.	2/96	do.	do.	Mustafa bin Salameh	4540	425	
595	do.	do.	do.	Satr	do.	do.	12/24	4 sides El Kashf	do.	Muhd. bin Ramadan	3482	2500	8 shares to waqf of Gaza Mosque.
596	do.	do.	do.	do.	do.	do.	4/24	do.	do.	Mustafa bin 'Ayish	do.	500	
885	do.	do.	do.	El Jal	do.	do.	1/4	Road on 4 sides	do.	Mustafa bin Saleh	3847	937	1 share to waqf of Great Mosque of Gaza.
886	do.	do.	do.	do.	do.	do.	2/4	do.	do.	Yusef bin Kusta of Sdoud	do.	2875	
889	do.	do.	do.	do.	do.	do.	6/24	El Kashf El Kashf El Kashf & road	do.	Jabr bin Yusef	917	2500	10 shares to Great Mosque of Gaza.

Certified True Copy of the Tabu (Land Registry) Registers.

(Sgd.) . . .
Land Registry, Gaza.

Date : 28.7.44.

ORDER of the Ministry of Awqaf, Constantinople.

Exhibits.

Ministry of Awqaf el Sultanieh,
 Legal Advisers.
 No. 30.

Order of
 Ministry
 of Awqaf,
 Constan-
 tinople,
 28 Safar
 1320.

The Accountant,
 Awqaf Department,
 Jerusalem—District.

Your Worship,

In pursuance of your memorandum dated the 13th day of January,
 10 317 No. 102 to the effect, that in view of the fact that the Wakfieh
 (document of dedication) to the Mosque and Tomb of Sheikh Yousif El
 Barbarawi, buried in the village of Barbara, Gaza District, which waqf
 had been temporarily put under control, has not been found, and as the
 conditions of that Wakfieh are unknown to you, and there is no information
 relating to the appointment of a Mutawalli and the discharge of such
 duty, and which memorandum directs the striking out of the registraton
 of appointing a Mutawalli in the event of its existence at the Department
 of the Distribution of the Benefits, and if not there, that it be struck out
 and that the said Awqaf be controlled in a final manner ;

20 Thereupon, we went through the registrations and it appeared there-
 from that the Mutawalliship of the Waqf of Zawiyat Al Sheikh Yousef
 Al Barbarawi, which waqf is of the category constituted in respect of one
 third of the half of the share was entrusted on 24 Rajab, 250 to El Sheikh
 Yousef El Alami, and the Mutawalliship in respect of one third out of one
 half, and one half out of one half was entrusted on 21 Safar, 258 to
 Muhammad Amin and Ali the sons of Yousef Al Alami, and the Mutawalli-
 ship in respect of one third out of one half, and one half out of one half
 was entrusted on 7 Rajab, 274 to Abdallah Ibin Sheikh Wafa.

30 And whereas the wakfieh of the said waqf was not registered, so the
 conditions relating to the manner of administering that waqf were not
 known, as was understood from the Department of the Distribution of
 Benefits.

Therefore, and in order that the offer may be considered, it is necessary
 at the outset to find out whether the gentlemen whose names have been
 mentioned are still alive, relating to the said waqf or not.

We ask that we be informed of that on the request of the legal advisers.

This memorandum is sent accordingly.

28th Safar, 1320 and 21 May, 1318.

NAZIR EL AWAQF EL SULTANIEH.

*Exhibits.***A NOTE presented by District Officer, Gaza, No. 52.**

A note
presented
by District
Officer,
Gaza,
No. 52,
10 Shawal
306.

(Translation.)

District Office of Gaza.
No. 52.

His Excellency,
The Mutasaref (Governor of District),
Jerusalem.

In pursuance of your Order dated the 23rd of May, 305 coupled with the decision of the Administrative Council of the Liwa based on the suggestion of the Accountant of the Awqaf Department providing that the 10 waqf tithes belonging to Gaza District should be put up for public auction with the knowledge of the Local Administrative Council for the purpose of avoiding carrying out the auction by way of going round that village and so that no necessity will arise from detailing a special Officer for this purpose, the said tithes were duly put up to auction and no bidder came forward except in respect of the land of El Mughraka and the village of Barbara, and whether or not an officer has been detailed for putting the auction up to those villages, and whether or not a private officer is detailed by the Markez Liwa and whether the auction carried out with the knowledge of the Local Administrative Council has been approved, it is unexpected 20 to realize more for the winter tithes specified for this fiscal year; this, despite the fact that all means of attraction were used, as it was understood that no bidder came forward. In any event, the matter is now in your hands.

Therefore, and on the instructions of the Administrative Council the matter has been referred to Your Excellency.

10th Shawal, 306.

27 May, 305.

(Sgd.) SALEH KHLOUSI,
Kaim Makam
(District Officer),
Gaza.

30

Z.—LIST of the Tithes of the Waqf Villages, Gaza District, for the year 325.

Exhibits.

(Translation.)

Z.
List of the
Tithes of
the Waqf
villages
Gaza
District
for the
year 325,
16th
September
325.

	Previous year Amount		Total		Present year Share of the Waqf		
	P.T.	Para.	P.T.	Para.	P.T.	Para.	
	9300		8000		7000		
	26300		19300		16887	20	
	17900		28000		24500		
	4150		16000		14000		
	5370		5010		4383	30	
	17350		15553		13608	35	
	2330		11000		9625		
10	2700		43050		37668	30	
	450		3100		2712	20	
	0		540		540		
	15600		0		0		
			11850		10368	30	
	119950		161403		141295	5	

	Allotment to Aid		Increase		Decrease		Nos.
	P.T.	Para.	P.T.	Para.	P.T.	Para.	
	1000		0		1300		19
	2412	20	0		7000		20
	3500		10100		0		21
	2000		0		1500		22
20	626	10	860		0		23
	1944	5	9183		0		24
	1375		0		6350		25
	5381		40720		0		0
	387	20	400		0		27
	0		90		0		28
	0		0		0		29
	1481		0		3750		30
	20107	35	61353		19900		Total

<i>Exhibits.</i>	Names of Villages	Names of contractors and guarantors	Remarks
Z.			
List of the Tithes of the Waqf villages Gaza District for the year 325, 16th September 325, <i>continued.</i>	Masmieh Saghireh	Ali & Ibrahim Bey Meki. Their own property	
	Berkit el Khalil	Na'man Bey el Alami. His own property	
	Yasour	Murshed Eff. Shaheen	
	Kastineh	Serial guarantee issued by Mukhtars	
	Biyar T'baa	Jerusalem	
	Sawafeer Malka	Jerusalem	
	Sawafeer Mukotsh	Abu el Hassan & Attef Eff. guaranteed by Rasheid Eff.	10
	Masmieh Kabira	Jaffa	
	Farm of Abssan	Michael, Elias and Bishara Eff. Their own property	
	Mughraka	Hassan Mustafa Abu Sha'ban	1/5 of produce. In whole.
	Mass'eid Aradi	—	
	Barbara with Sheikh Yousef Aradi	Deposits drawn against Muhsen Eff. el Alami	20

The tithes and 1/5 of the produce of the Waqf Villages at Gaza District for the year 325, were knocked down for auction, and the final bidding was 161403 piasters by virtue of the auction lists. As there was no summer cultivation in respect of the villages Masmieh el Saghireh, Berkit el Khalil, Kastineh, Sawafeer Mukotsh and Barbara, there was a decrease which amounted to 19900 piasters, after deduction from the previous year's income, there appears an increase of 41453 piasters, as shown in the above schedule. It is accordingly forwarded for the purpose of confirmation by Majles el Idara.

Dated 15th September, 325.

Seal of the Attorney
of the Waqf.

30

Forwarded to Majles el Idara on 15th instant.

No. 777.

Whereas the tithes of the Waqf Villages of Gaza District for the current year amounted by auction to 161403 piasters, and whereas after deduction of the decrease in the said villages, we find that there is an increase of 41453 piasters in proportion to the income of the previous year, as stated by the Attorney of the Waqf in his schedule of which he has sent us three copies. We therefore confirm its contents.

Dated 16th September 325.

40

Seals of 4 members
Seal of Mudeer el Mal

Seal of Petition writer.
Seal of the Attorney
of the Gaza Kaymakam.

DD.—VALUATION SCHEDULE of the Winter Tithes of Waqf Villages of the Awqaf Department, Gaza, for the year 333. *Exhibits.*

(Translation.)

DD.
Valuation
Schedule
of the
Winter
Tithes of
Waqf
villages
of the
Awqaf
Depart-
ment,
Gaza, for
the year
333, 8th
September
333.

	Previous Income		Total of following Income		Share of the Waqf	
	P.T.	Para.	P.T.	Para.	P.T.	Para.
	45041		99177		82647	20
	12361		46964		39136	27
	35759		82668		68890	
	9241		29673	20	24727	37
	16441		65379	20	54482	36
	13457		34077	30	27398	20
10	23500		56855	15	56855	15
	21613		37178	5	37178	5
	21409		7794	20	7794	20
	0		0		0	
	8826		0		0	
	0		0		0	
	27565		0		0	
	235213		480133	30	400111	20

	Proportion of the Previous year.							
	Allotment to Aid.		2 shares out of 10		Increase.		Decrease.	
	P.T.	Para.	P.T.	Para.	P.T.	Para.	P.T.	Para.
	12397	5	4132	15	54136			0
	5870	20	1956	33	34603			0
20	10333	20	3444	20	36909			0
	3709	7	1236	16	20432	20		0
	8172	17	2724	7	48938	20		0
	4259	28	1419	22	20620	30		0
	8528	12	2842	33	44726	20		0
	5576	32	1859	23	23001	20		0
	1169	7	389	13	0		12056	
	0		0		0		0	
	0		0		0		8826	
	0		0		0		0	
30	0		0		0		27565	
	60016	28	20005	22	293367	30		48447

<i>Exhibits.</i>	Wheat Price.			Barley Price.		
	P.T.	Para.	No. of kilos.	P.T.	Para.	No. of kilos.
DD.						
Valuation	77416		19354	21576		7192
Schedule	39104		9776	7830		2610
of the	76424		19106	6144		2048
Winter	24800		6200	4654	20	1551
Tithes of	61718		15429	3156		1052
Waqf	26560		6640	3249		1083
villages	54944		13736	10908		3636
of the	39120		9780	4254		1418
Awqaf	6008		1502	3345		1115
Depart-	0		0	0		0
ment,	0		0	0		0
Gaza, for	0		0	0		0
the year	0		0	0		0
333, 8th	0		0	0		0
September	0		0	0		0
333,	0		0	0		0
<i>continued.</i>						
	406094		101523	65116	20	21507
			50			50

Lentils Price.			Maize Price.		
P.T.	Para.	No. of kilos.	P.T.	Para.	No. of kilos.
0		0	0		0
30		10	0		0
0		0	70		28
153		51	0		0
90		30	67	20	27
118	20	39	1211	10	484
387		129	1897	20	759
18		6	1222	20	489
0		0	0		0
0		0	0		0
0		0	0		0
0		0	0		0
0		0	0		0
796	20	265	4468	30	1787
		50			50

	Beans Price.			Bitter Beans Price.			<i>Exhibits.</i> DD.
	P.T.	Para.	No. of kilos.	P.T.	Para.	No. of kilos.	
	0		0	0		0	Valuation Schedule of the Winter Tithes of Waqf villages of the Awqaf Depart- ment, Gaza, for the year 333, 8th September 333, <i>continued.</i>
	0		0	0		0	
	0		0	30		12	
	0		0	0		0	
	168		56	0		0	
	1638		546	0		0	
	90		30	0		0	
	0		0	0		0	
10	0		0	0		0	
	0		0	0		0	
	0		0	0		0	
	0		0	0		0	
	1896		632	30		12	

	Chick-Peas Price.			Onions Price.			Marrowfat Price.		
	P.T.	Para.	No. of kilos.	P.T.	Para.	No. of kilos.	P.T.	Para.	No. of kilos.
	0		0	185		37	0		0
	0		0	0		0	0		0
	0		0	0		0	0		0
	0		0	0		0	0		0
	0		0	0		0	180		72
20	216		54	1045		209	0		0
	0		0	0		0	0		0
	0		0	0		0	0		0
	0		0	0		0	0		0
	0		0	0		0	0		0
	0		0	0		0	0		0
	0		0	0		0	0		0
	216		54	1230		246	180		72

<i>Exhibits.</i>	Fenugreek Price.		No. of kilos.	Names of Villages.	Remarks.
	P.T.	Para.			
DD.					
Valuation	0		0	Masmieh Kabira & Salouja	
Schedule	0		0	Masmieh Saghira	
of the	0		0	Yasour	
Winter	66		16	Kastina	
Tithes of	0		0	Berkt el Khalil	
Waqf	40		10	Biyar T'bia	
villages	0		0	Sawafeer Maslaka	
of the	0		0	Sawafeer Maktash	
Awqaf	0		0	Barbara	
Depart-	0		0	Lands of Abu Arkoub	10
ment,	0		0	Lands of Mufraak	
Gaza, for	0		0	Lands of Massa'eeb	
the year	0		0	Abssan.	
333, 8th					
September					
333,					
<i>continued.</i>					
	106		26	50	Total

The valuation of the Winter tithes as stated in the above schedule for the year 333 amounted to 480133 piasters and 30 para in the Waqf villages belonging to the Awqaf Department of Gaza. It transpired from the Valuation registers on comparison with the previous year, that there is an increase of 244920 piasters and 30 para. Five copies of this schedule were submitted to the Kaymakam (District Officer) for confirmation 20 accordingly.

27th August, 333.

Seal of Gaza Awqaf Office.

No. 88.

As a sum of 480133 piasters and 30 para, value of the Winter produce for the year 333, which was valued by the valuers, registered in the name of the inhabitants of the villages, and as an increase of 244920 piasters and 30 para, was found in comparing it with the previous year. As shown by the schedule, of which five copies were sent by the Awqaf Officer, therefore it was accordingly confirmed. 30

8th September, 333.

Seal of a member.

Seal of the Petition-Writer.

Seal of Mudeer el Maal.

Seal of the Kadi.

Seal of Mufti.

(Sgd.) KAYM MAKAM
(District Officer).

BB.—WINTER TITHES SCHEDULE for the year 330, belonging to the Awqaf Department of Gaza by way of security in respect of the Waqf Villages.

Exhibits.

(Translation.)

The Previous year 329		The following Income-year 330		Share of the Waqf		Allotment to aid	
P.T.	Para	P.T.	Para	P.T.	Para	P.T.	Para.
45650	—	40813	15	35711	30	5101	25
28500	—	20234	35	17705	19	2529	16
18500	—	2029	15	2029	15	—	—
92650		63077	25	55446	24	7631	01

Increase		Decrease		For Each Kilo		For each kilo	
P.T.	Para	P.T.	Para	24 Wheat—kilo No.		11 Barley—kilo No.	20
—	—	4836	25	1465	$\frac{1}{2}$	321	$\frac{1}{4}$
—	—	8265	05	807		73	$\frac{1}{2}$
10	—	16470	25	59		24	$\frac{1}{4}$
—	—	29572	150	2331	$\frac{1}{2}$	419	

For each kilo		For each kilo		For each rottle	
18 Lentils—kilo No.		22 Beans—kilo No.		1 Onions—Rottle No.	10
—		88	$\frac{1}{2}$	—	
	3-4	—		6	$\frac{1}{2}$
4	—	—		210	
4	3-4	88	$\frac{1}{2}$	216	$\frac{1}{2}$

Names of Villages.	Remarks.
Kastina Village	—
Barbara Village	—
Farm of Mugharaka	1/5 of the Produce.
Total	

BB.
Winter Tithes Schedule for the year 330, belonging to the Awqaf Department of Gaza by way of security in respect of the Waqf Villages, 15th July 330.

20 The securities belonging to Awqaf Department in respect of the Waqf villages—Gaza District for the year 330 of the winter tithes and 1/5 of the produce as shown in the above schedule, namely 63077 piasters and 25 para. This appeared from the confirmed register of Majles Idara, and comparing it with previous year there appeared a decrease of 29572 piasters and 15 para. Therefore and in accordance with the certificate of Majles Idara of the District this schedule was accordingly made and arranged.

Seal of Awqaf Officer.

8th July, 330.

Exhibits. No. 876.

DD.
Winter
Tithes
Schedule
for the
year 330,
belonging
to the
Awqaf
Depart-
ment of
Gaza by
way of
security in
respect of
the Waqf
Villages,
15th July
330,
continued.

Whereas the amount of 63077 piasters and 25 para in respect of the securities for the year 330 entered into the account of the Waqf in respect of Kastina and Barbara Villages and the Farm of el Mugharagha ; namely the tithes of the winter produce and 1/5 of the produce. In comparing it with the previous year's income there appeared a decrease of 29572 piasters and 15 para, in accordance with the above schedule. This decrease was due to the lack of rain in this year, which resulted in this decrease in respect of the previous year. It is accordingly confirmed.
15th July, 330.

10

Seals of three members.

Seal of Petition-writer.

Seal of Mudeer el Maal.

Seal of the Kadi.

(Sgd.) District Officer of Gaza.

“ Kayem Makam—Gaza.”

W.—A NOTE from Financial Accountant, Jerusalem, to the Accountant of the Awqaf Department.

(Translation)

Turkish Republic.

Assistant General Director of Tabu and Survey Departments.

W.
A note
from
Financial
Account-
ant,
Jerusalem,
to the
Accountant
of the
Awqaf
Depart-
ment,
12
Muharram
303.

Four shares of the produce of the Palace Farm, attached to Majdal Village—Gaza District goes to the Waqf for reading the Koran in Charkassa School in Gaza, and produce of 20 kirats, Miri share, together with the produce of El Ushes (Tithes) of the Waqf goes to the Finance Treasury ; Also out of 1/3 of the produce of Rasm el Sharki Village, of the same District. The produce of six kirats goes to Waqf of Shehaab el Dein Mosque, and the produce of one kirat goes to Arab el-Sawalimeh, and the produce of 17 kirats. Miri share, goes to the Finance Treasury ; Also of 1/4 of the produce of Beit Jebreen Village, of the same District ; The produce of one kirat goes to Waqf of the Mosque of Beit Jebreen, and the produce of 23 kirats, Miri share, goes to the Finance Treasury ; Also of the produce of Barbara Village of the same District ; the produce of 12 kirats goes to Madineh Muwawarrah, the produce of 12 kirats goes to the Waqf of Zaweit El Sheikh Yousef.

20

30

In this manner it was found registered in the Register.

Copy of this extract was copied from the old Registers of the Tabu, in accordance with the letter of the General Director date 5.9.929 No. 2304/923 N. It was granted to Amin Bey a member of the Supreme Moslem Council—Government of Palestine.

21.1. 930.

N.T.

40

Received a sum of 25 Lira, as fees—
187143—20.1. 930.

Stamps. Seal.

General Director of Tabu Department,
Turkish Republics.

195.

I certify that the seal appearing on the opposite sheet of paper is the seal of the General Director of the Land Registry Department.

21.1. 30.

Legalized.

Seal and signature.

British Consulate General
Constantinople.

This document was received for the first time in Palestine on
10 8.3.1930.

Accountant Awqaf Department.

12 Muharam, 303 and
8 Tishrin Awwal, 301.

A letter from the Treasury Accountant to the Waqf accountant in Jerusalem in respect of accounts as a result of auction of farming out made in respect of waqf Esh-Sheikh Yousef el Barbarani and El Haramein El Sharifein in Barbara.

*Exhibits.*W.

A note from Financial Accountant, Jerusalem, to the Accountant of the Awqaf Department, 12 Muharram 303, *continued.*